IN THE COURT OF APPEALS OF IOWA

No. 0-360 / 99-1928
Filed September 27, 2000

IN RE THE ESTATE OF MARY HELEN WALDBILLIG

FILED
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CLERK SUPREME COURT

MARK SITZMAN,
Petitioner-Appellant,

vs.

PAUL J. WALDBILLIG and CAROLE A. CROSBY,
Co-Executors of the ESTATE OF MARY WALDBILLIG,
Respondents-Appellees.

Appeal from the Iowa District Court for Dubuque County, K.D. Briner, Judge.

The petitioner appeals a district court order granting the respondents' motion for summary judgment in petitioner's declaratory judgment action seeking a ruling regarding the rights of the parties under decedent's will concerning the sale of certain farmland. **AFFIRMED.**

Les V. Reddick of Kane, Norby & Reddick, P.C., Dubuque, for appellant.

Stephen J. Juergens of Fuerste, Carew, Coyle, Juergens & Sudmeier, P.C., Dubuque, and Alfred E. Hughes of Hughes & Trannel, P.C., Dubuque, for appellees.

Heard by Hutink, P.J., and Mahan and Zimmer, JJ.

MAHAN, J.

The petitioner appeals a district court order granting the respondents' motion for summary judgment in petitioner's declaratory judgment action seeking a ruling regarding the rights of the parties under decedent's will concerning the sale of certain farmland. Petitioner argues: (1) the executors breached their fiduciary duty by failing to conform their conduct to the intent and wishes of the decedent, as expressed in the will and the mandatory language of the codicil; (2) the terms of the bidding information documents misled him to believe his $200,000 bid was within the fair market value of the farmland; and (3) he substantially complied with the terms of the sealed bid information. We affirm.

Background Facts and Proceedings. The parties agree no genuine issue of material fact exists in this case, but dispute the legal conclusions to be drawn from the facts.

The decedent, Mary Helen Waldbillig, died at Dubuque, Iowa on October 31, 1998. On November 6, 1998, the Last Will and Testament of the decedent was admitted to probate in Iowa District Court, Dubuque County. Paul J. Waldbillig and Carole A. Crosby were appointed executors of the estate.

Article X(C) of the decedent's Last Will and Testament, executed on January 4, 1994, provided in pertinent part:

> I give my Executors, in their absolute discretion, the power to sell, exchange, or otherwise dispose of (at public or private sale), to mortgage, pledge, partition, maintain, or lease (for any term whether extended beyond the term fixed by any law) all or any part of my property, real or personal, on such terms and conditions as they may deem advisable without necessity of any appraisal or order of court.

On January 9, 1997, decedent executed a codicil, which provided in pertinent part:

> I amend Article X(C) of my said Lat Will and Testament of January 4, 1994 *by adding thereto* the following:
>
> It is my wish and desire that before any farm real estate owned by me at my death is offered for sale to the public, my Executors first *solicit purchase offers* for not less than fair market value for said farm real estate from my children who survive me and, if none are received, then *solicit purchase offers* for not less than fair market value for said farm real estate from my grandchildren who survive me. If none are received, then said farm real estate may be offered for sale to the public. (Emphasis added.)

At the time decedent executed the Codicil, she owned an interest in residential property in Key West, Iowa, and certain real estate in Dubuque County, Iowa (hereinafter "farm property"). At her death, decedent no longer owned the residential property in Key West, but was the sole owner of the farm property in Dubuque County. In January 1996, decedent obtained an appraisal of the farm property. The appraiser concluded the "highest and best use" of the land would be rural residential and agricultural, and estimated the fair market value of the property as of January 5, 1996, at $206,000 or $1250 per acre. One hundred fifty of the 168 acres of farm property has been zoned R-1 (Rural Residential) since the 1970s. The remaining eighteen acres has been zoned A-1 (Agricultural).

The decedent's spouse, Joseph Waldbillig, died in 1986. For years prior to his death, the couple had not actively farmed the farm property, but leased it to other farmers. The decedent moved from the farm property into an apartment in July 1998. She leased the farm property to other farmers from the time of her husband's death until her death in October 1998.

The executors obtained a written appraisal of the farm property on December 18, 1998. The appraiser estimated the fair market value as of December 4, 1998, at $230,000 or $1330 per acre.

In January 1999, the executors mailed sealed bid information to the surviving children of decedent. None of decedent's children submitted a bid on or before the deadline stated therein. In March 1999, the executors mailed sealed bid information to the surviving grandchildren of decedent, including the appellant, Mark J. Sitzman (Sitzman). The instructions attached to the sealed bid information provided as follows:

> I. Bid form – Bids must be submitted on the attached bid form, and all information called for thereon must be furnished. *No alteration may be made and no condition or terms may be added to the bid form. . . . All bids are subject to financing to be obtained by the successful bidder . . .* on or before April 20, 1999 at 5:00 p.m. CST. *Bids submitted in any other manner or which fail to furnish all information required or which are altered or conditioned may be rejected at the sole option of the Executors.*
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> . . . .
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> X. Appraised Value – The Executors have secured an appraisal of the land and improvements, which indicated *a market value of $230,000.00 (or $1,330.00 per acre). The Executors will not accept any bid less than $200,000.00.*
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> XI. Right to Reject Bids – The Executors expressly reserve to themselves the right to reject and to refuse to accept any or all bids where, *in the judgment of the Executors, their amount is less than the fair market value of the property or where the bid fails to meet the requirements of the bid proposal or these instructions.* (Emphasis added.)

Bids were to be submitted to the executors' attorneys prior to 4:00 p.m. CST on March 31, 1999, at which time the bids would be opened. The executors had fifteen business days after the bid opening to provide written notification of acceptance or rejection of a bid.

On February 2, 1999, Sitzman contacted attorneys for the executors and requested a copy of the December 1998 appraisal. The executors' attorneys mailed a copy of the appraisal to Sitzman on February 3, 1999.

On March 31, 1999, the attorneys for the executors received a sealed bid, a lead-paint disclosure form and a cashier's check for $1000 from Sitzman and Catherine M. Morgan. No other bids were received from any grandchild of decedent prior to the March 31, 1999 deadline. The sealed bid form, signed by Sitzman and Morgan, provided in part:

> I certify that I have inspected the following described property to my complete and total satisfaction and that I am fully aware of the terms and conditions under which the property is offered for sale.

Sitzman and Morgan submitted a bid for $200,000. At the bottom of the sealed bid form, under the signatures of Sitzman and Morgan, appeared the following handwritten language:

> Subject to:
> • Buyer securing financing
> • Buyer inspection of premises
> • Buyer review of abstract

The attorneys for the estate opened the Sitzman/Morgan bid with the executors present by telephone at 4:00 p.m. on March 31, 1999. An attorney for the estate noted for the executors the presence of all contingencies in the bid. On April 7, 1999, the executors' attorney informed Sitzman the bid form submitted by him on March 31, 1999 did not conform with the sealed bid information. On April 9, 1999, the executors' attorney informed Catherine Morgan the bid form submitted on March 31, 1999 did not comply with the sealed bid information and, in the opinion of one of the executors, the offer of $200,000 was substantially less than fair market value and therefore unacceptable. In a

letter dated April 12, 1999, the executors' attorney notified Sitzman the executors rejected his bid for the following reasons:

> Your bid did not comply with the Sealed Bid Information, in that it contained two conditions or contingencies [inspection of the premises, review of abstract] not permitted by the Sealed Bid Information.
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> Had your bid complied with the requirements of the sealed bid information, there was not unanimous agreement among the Executors that the proposed purchase price of $200,000.00 constituted fair market value of the property.

Between April 8, 1999 and April 13, 1999, attorneys for the estate received four offers to purchase the farm property for $220,000, $236,040, $256,000, and $270,000, respectively. On April 13, 1999, the executors accepted the offer for $270,000 and executed acceptance of the purchase agreement.

On April 20, 1999, Sitzman filed a motion for declaratory judgment asking the court to declare the parties' rights under the will "and the contract formed by [Sitzman's] acceptance of the Estate's offer" to sell the farm property. Sitzman further sought a declaration he had "a legally, binding right to purchase" the farm property "for the amount [$200,000] and under the terms offered, or, alternatively, that the Estate must, under the Will, allow [Sitzman] to purchase the real estate for no less than $200,000.00." The executors filed a resistance to the motion and a counter-motion for declaratory judgment, seeking, inter alia, a declaration the executors were not required to accept Sitzman's offer to purchase the farm property for $200,000, no contract was formed between the parties, Sitzman had no legally binding rights to purchase the farm property, and the executors should

proceed to sell the farm property for $270,000, pursuant to the purchase agreement executed on April 13, 1999.

The parties filed motions and cross-motions for summary judgment. On November 2, 1999, the district court filed its ruling on the parties' motions. The court concluded the language in the codicil established mandatory, not precatory, directions for sale. According to the court, the directives (1) establish an order in which classes of prospective purchasers shall be given an opportunity to bid – surviving children, surviving grandchildren, public; and (2) establish a test for determining which bids will qualify – "purchase offers for not less than fair market value." The court concluded Sitzman's bid did not meet the "fair market value" requirement imposed by the codicil, and did not conform to the conditions created by the executors in the exercise of their powers of sale because the second and third conditions of Sitzman's hand-written note contravened the rules for qualifying bids. The court declared "the sale of the farm property by the executors conformed fully to the requirements of the decedent's will and codicil and provided maximum benefit to the estate. The sale of the farm to the highest bidder is ratified and approved."

Scope of Review. A declaratory judgment action to interpret a will is tried in equity, and our review is de novo. *In re Estate of Rogers*, 473 N.W.2d 36, 39 (Iowa 1991). While we give weight to the trial court's findings of fact, we are not bound by them. *Id.* Summary judgment is appropriate only when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c). In this case, the parties agree no genuine issue of material fact exists. Therefore, we will view the facts in the light most

favorable to the party opposing the motion for summary judgment to determine whether the district court correctly applied the law. *Schoff v. Combined Ins. Co. of America*, 604 N.W.2d 43, 45 (Iowa 1999).

Interpretation of the Will and Codicil. The primary goal in interpreting a will is to discern the intent of the testator. *In re Estate of Thompson*, 511 N.W.2d 374, 377 (Iowa 1994). In interpreting the will and codicil, we are guided by the following well-settled principles:

> (1) the intent of the testator is the polestar and must prevail; (2) this intent, however, must be derived from (a) all of the language contained within the four corners of the will, (b) the scheme of distribution, (c) the surrounding circumstances at the time of the will's execution and (d) the existing facts; (3) we resort to technical rules or canons of construction only when the will is ambiguous or conflicting or the testator's intent is uncertain. (Citation omitted.) In determining intent, the question is not what the testator meant to say, but rather what is the meaning of what the testator did say. (Citations omitted.)
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> In searching the will for the testator's intent, the instrument must be considered as a whole and each part given meaning and effect, if possible. (Citation omitted.)

Estate of Rogers, 473 N.W.2d at 39. A will and its codicil are to be read and construed together as one instrument executed on the date of the last codicil. *In re Estate of Hamilton*, 467 N.W.2d 801, 803 (Iowa App. 1991).

Sitzman argues the executors were not authorized by the terms of the will or the intent of the testator to conduct the bidding process in the manner in which it was conducted; and they breached their fiduciary duty by failing to conform their conduct to the intent and wishes of the decedent. We disagree.

Article IX of the will sets forth decedent's plan of distribution. It required the rest, residue and remainder of her estate be distributed equally to her children, and if any child predeceased her, to the issue of the deceased child, per

stirpes. The 1994 codicil changed Article V of the will, which bequeathed $1,000 to each of the decedent's grandchildren. The codicil removed her deceased daughter's children from this particular devise, "for the reason that they will receive the share of my estate originally intended for their mother." These two provisions, read along with the rest of the will and codicil, establish the decedent's intent to distribute her estate equally among her descendants.

The codicil's amendment to Article X(C) follows decedent's plan of equal distribution. The codicil requires the executors to solicit purchase offers *for not less than fair market value* from decedent's children and grandchildren, prior to offering the farm property for sale to the public. Thus, decedent intended for the executors to sell the farm property if and only if the sale was fair to all descendants. A sale to any child or grandchild for less than fair market value would have frustrated the essence of decedent's will.

An executor is a fiduciary and is frequently referred to as a trustee for all interested parties. *In re Estate of Atwood*, 577 N.W.2d 60, 63 (Iowa App. 1998). A fiduciary must manage an estate with the level of care an ordinary prudent person would exercise under like circumstances in his or her own affairs. *Id.*

The will did not require the executors to sell the farm property. Once the executors decided to sell, however, they were bound by the mandatory language of the codicil.[1] The codicil required the executors to "solicit purchase offers for not less than fair market value" from the children and grandchildren before selling the farm property to the public. The codicil did not, however, tell the executors

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[1] The district court concluded the directions for sale contained in the codicil are mandatory. The parties have not appealed this ruling.

how to "solicit purchase offers." Article X(C) of the will granted the executors "absolute discretion" to sell the farm property "on such terms as they may deem advisable."

We conclude the manner in which the executors conducted the bidding process did not breach any fiduciary duty owed to the estate or interested parties. The will and codicil clearly expressed decedent's intent to equally divide her estate among her descendants. A sale to a child or grandchild for not less than fair market value was essential to accomplish decedent's plan of equal distribution. The bidding process established by the executors was well within the broad powers of sale granted to them by the will. The executors did not reject Sitzman's offer outright. Rather, several days passed before the executors informed Sitzman of their decision to reject his offer.

Bidding Information Document. Sitzman argues the sealed bid information "is analogous to a contract, and therefore the rules of contract interpretation should apply." He asserts the "ambiguous" language of the bidding information misled him into believing $200,000 was within the fair market value range for the farm. Therefore, he argues, his bid satisfied the fair market value requirement. Further, Sitzman argues his substantial compliance with the terms of the sealed bid information entitles him to declaratory relief. We conclude otherwise.

The parties' actions did not result in the formation of a contract. The sealed bid information was a solicitation of bids as required by the codicil, which constituted merely a request for an offer, not an offer to contract. *See* 17A Am.Jur.2d *Contracts* § 44, at 75 (1991) (solicitation of bids constitutes a request

for an offer). The submission of a bid by Sitzman did not result in the formation of a contract. Rather, Sitzman's bid was an offer to purchase the farm property, which the executors were free to accept or reject. Even if the sealed bid information was an offer, Sitzman's bid did not constitute an acceptance of the offer, because it did not comply with the terms of the offer. *See Shell Oil Co. v. Kelinson*, 158 N.W.2d 724, 728 (Iowa 1968) (acceptance must conform strictly to the offer in all its conditions, without any deviations, conditions or qualifications).

The statement "The Executors will not accept any bid less than $200,000.00," considered in isolation, may have been misleading. We question the executors' decision to include such language. However, other facts in the record refute the contention it misled Sitzman. Sitzman received a copy of the 1998 appraisal, and was aware of the 1996 appraisal. He knew the appraised market value of the farm property was more than $200,000, not only in 1998, but also in 1996. In addition, the sealed bid information clearly established the farm property's fair market value at $230,000, and notified all potential bidders of its value. Sitzman had the advice of counsel in preparing his bid. Based on the language in the sealed bid information, and the appraisal information made available to Sitzman, he should have known he risked rejection of his bid by bidding far below the farm property's fair market value.

Sitzman's bid did not substantially comply with the terms of the sealed bid information. It did not meet the fair market value requirement imposed by the codicil. In addition, the district court concluded it placed impermissible conditions

on the bid.[2] Thus, under the terms of the will, the codicil, and the sealed bid information, the executors were free to reject Sitzman's bid.

Conclusion. The will and codicil, read together, established a scheme of equal distribution among decedent's descendants. Decedent intended for the executors to sell the farm property to a descendant if and only if the sale was fair to other descendants. Once the executors decided to sell the farm property, they were bound by the mandatory language in the codicil. The executors, however, retained the broad powers of sale found in the will. The executors had a fiduciary duty to obtain the best sale price for the estate on the farm property. Sitzman failed to submit a bid in compliance with the terms of the sealed bid information. Therefore, the executors were free to reject Sitzman's bid and accept offers from the public to purchase the farm property.

AFFIRMED.

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[2] The district court concluded Sitzman's bid did not conform to the conditions created by the executors in the exercise of their powers of sale not only because it failed to meet the "fair market value" requirement, but also because the second and third conditions of Sitzman's hand-written note contravened the rules for qualifying bids. We focus our decision only on Sitzman's failure to meet the fair market value requirement.