IN THE COURT OF APPEALS OF IOWA

No. 3-084 / 92-1029

IN THE MATTER OF THE ESTATE OF KENNETH KNIGHT, Deceased,

HAROLD B. HESLINGA, Executor of the Estate of Kenneth Knight,

Appellant,

vs.

JACK NELSON,

Appellee.

Appeal from the Iowa District Court for Mahaska County, James D. Jenkins, Judge.

The estate of Kenneth Knight, et al., appeals from the district court's order that directed the executor to comply with the terms and obligations of an option to sell real estate contained in a lease agreement entered into by the deceased and Jack Nelson. **AFFIRMED.**

James Q. Blomgren and Randall C. Stravers of Pothoven, Blomgren & Stravers, Oskaloosa, for appellant.

Randy S. DeGeest, Oskaloosa, for appellee.

Considered en banc.

HABHAB., J.

The question in this appeal is whether the trial court should have ordered the appellant executor of the Knight estate to sell a thirteen-acre tract of land to the lessee of the land.

The executor appeals and contends the trial court should not have ordered the sale. We affirm.

I.

Decedent died March 12, 1990. He had, on July 17, 1989, leased part of the property in question to appellee Jack Nelson. The lease with Nelson provided, among other things, that the lease was renewable from year to year until either party gave thirty days written notice of termination prior to July 17. The lease also provided:

> At any time during the course of this lease <u>or any extension thereof</u>, the Lessor grants to the Lessee the right to purchase the above described premises and three (3) acres adjacent to the South thereof for the sum of $900.00 per acre, with the exact acreage to be determined by survey at Lessor's expense, and if such option is exercised, real property taxes will be prorated to the date of the exercise of such option. (emphasis added).

Harold Heslinga was appointed executor shortly after decedent's death in March 1990. Neither the executor nor Nelson notified the other they wished to terminate the lease in July 1990. Nelson continued in possession of the property and paid rent for the period ending July 17, 1991. Neither party notified the other they desired to terminate the lease prior to July 17, 1991. Nelson remained in continued possession of the property and paid rent for the period ending July 1992.

In March 1992, Nelson sent the executor a letter saying he was exercising his option to purchase under the lease. Nelson then petitioned the court to compel and authorize the estate to sell the real estate to him under the terms of the option. No written objection to this petition was filed nor were any affirmative defenses asserted. The court ordered the executor to sell. This appeal follows. The question is whether the option in the lease was binding on the estate.

II.

Nelson filed a document in the probate proceedings which he captioned as an "application for order compelling and authorizing sale of real estate". In this application, he asserts the existence of the lease and the option contained therein. He asked that the matter be fixed for hearing, and that the court order the executor to proceed with the sale. That application was filed on April 15, 1992. Hearing on the application was held May 15, 1992. No objections were filed.

The executor was called as a witness at the hearing. Nelson's attorney examined him. The executor, an attorney, testified that he had prepared the lease and the option agreement. He admits that he received notice that Nelson desired to exercise the option. He testified further that he notified the devisee, under the decedent's will, that the option had been exercised, who in turn instructed him not to sign any instrument which would in effect "help exercise the option."

The executor further testified that he and Nelson were proceeding as to the land in question under the terms of the lease that he prepared. In answer to the question, "and it was in force or was being honored by you as executor and by Mr. Nelson during the terms or during the pendency of the estate?", he replied, "Yes. All payments had been made and Mr. Nelson has had possession of the real estate." He testified further that he did not feel that he could exercise the option "from the executor's standpoint" without a court order.

In answer to the court's question, "do you feel that you are bound by this contract?", he replied, "I feel that I stand in the position as executor of the estate in the same position Mr. Knight would stand if he were alive. But since the court has the jurisdiction of this matter, I would prefer not doing it as an individual." In answer to a further question by the court as to whether he thought the price tendered to be a fair price for the property he replied: "if the court please, when I visited with Mr. Knight at the time this lease was drawn, Mr. Knight and Mr. Nelson (sic), Mr. Knight was not too happy about an option to buy. So he put the price higher than the normal price, knowing full well that Mr. Nelson would not exercise the option. Yes, I think it is a fair price."

The appellant now asserts on appeal, that the option agreement contained in the lease was not valid because it was not approved by the court and because it terminated upon the death of the decedent. However, it is clear that this issue was not raised at any time by any of the parties prior to this appeal. Our appellate courts have held that matters not raised in the trial court will not be considered on appeal. See Connor v. State, 362 N.W.2d 449, 457 (Iowa 1985); State v. Lyon, 223 N.W.2d 193, 194 (Iowa 1974). The trial court should be affirmed solely on this ground.

However, assuming the issue somehow was preserved for review, as we explain in Division III and Division IV, the trial court nonetheless should be affirmed.

III.

Generally, an option agreement extends beyond the death of either party, unless the agreement itself or the actions of the parties plainly show the intention of the parties is that the agreement should not extend beyond the death of either party. Petersen v. Olson, 253 Iowa 469, 485, 112 N.W.2d 874, 883 (1962). If a purchase option contract is one which the decedent could not have revoked during his or her lifetime, then the successor in interest to decedent has no greater right to revoke the contract. Id. at 486, 112 N.W.2d at 883. Such a contract is considered to be binding upon a decedent's successor in interest. Id. Further, a purchase option creates in the optionee a power to compel the owner of property to sell it at a stipulated price whether or not the owner is willing to part with ownership. Trecker v. Langel, 298 N.W.2d 289, 290 (Iowa 1980).

IV.

The provision in the lease that relates to the option agreement is clear and unambiguous. The lessor, during his lifetime, granted Nelson an option to purchase during the course of the lease "or any extension thereof." Nelson properly exercised that option during the second extension. He had that right under the provision of the lease.

The appellant now attempts to avoid the option arguing for the first time that, although the terms and provisions of the lease were properly extended, he had no authority to extend that part thereof that relates to the option without first obtaining court approval.

The estate acting through the executor, took the full benefits of the lease by collecting rent. The devisee had to know that the executor took possession of the real estate and was leasing the property to Nelson under the lease. The devisee as the sole beneficiary of the estate was, through the estate, the ultimate beneficiary under the lease. Under the circumstances here, the sole devisee and executor are estopped from making a claim adverse to the clear wording of the option. For us to hold otherwise would create a strange anomaly for, on the one hand, we would be saying that the estate can enforce that part of the lease that entitles it to the benefits derived from the rentals without court approval but, on the other hand, permit it to repudiate that part of the same lease that relates to the option on the grounds that it lacked court approval. We would affirm.

AFFIRMED.

All judges concur, except Sackett, J., and Schlegel, J., who dissent.

SACKETT, J. (dissenting)

I dissent.

Kenneth Knight died on March 12, 1990. His estate was immediately opened and, over two years later, on April 15, 1992, Jack Nelson sought to force the estate to sell land to him because of an option the decedent gave in 1989 as a part of a year-to-year lease. The executor objected to the sale but the trial court ordered the executor to sell the land under the terms of the option and this court has affirmed.

The real question this case raises is whether an executor who could only affirmatively bind an estate to sell realty by seeking and obtaining court approval can bind an estate to sell realty without court approval by nonaction.

The majority finds the executor can. I disagree.

Decedent and Jack Nelson entered into a year-to-year lease that (1) gave Nelson a purchase option during the lease period and (2) was automatically renewable from year-to-year unless either party gave the other thirty days' notice.

I would have no difficulty with the majority decision if Nelson had sought to exercise his option during the term when decedent's death occurred. Nelson did not seek to exercise or establish his rights under the option during that period. Nelson, obviously aware of decedent's death, did not file a claim in the estate. Nelson waited, continued to farm under the lease for two successive terms and then sought to purchase under the option.

The executor sought no court authority to extend the term of the option beyond the term when decedent died.

The majority says for us not to accept Nelson's position "would create a strange anomaly for, on the one hand, we would be saying that the estate can enforce that part of the lease that entitles it to the benefits derived from the rentals without court approval and, on the other hand, permit it to repudiate that part of the same lease that relates to the option on the grounds that it lacked court approval."

An administrator's authority over realty must be derived through compliance with the applicable statutory provision. In re Estate of Jackson, 225 Iowa 359, 366, 280 N.W. 563, 566 (1938).

Iowa Code section 633.386, in applicable part, provides:

> 1. Any real or personal property belonging to the decedent, except exempt personal property and the homestead, may be sold, mortgaged, pledged, leased or exchanged by the personal representative for any of the following purposes:
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> a. The payment of debts and charges against the estate;
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> b. The distribution of the estate or any part thereof;
>
> c. Any other purpose in the best interests of the estate.
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> * * *

Iowa Code section 633.388 provides:

> A petition to sell, mortgage, exchange, pledge or lease any real or personal property shall set forth the reasons for the application and describe the property involved. It may apply for different authority as to separate parts of

> the property; or it may apply in the alternative for authority to sell, mortgage, exchange, pledge or lease. Whenever it is for the best interests of the estate, real and personal property of the estate may be sold, mortgaged, exchanged, pledged or leased as a unit.

Iowa Code section 633.389 provides:

> Upon the filing of the petition unless notice is waived in writing, notice in accordance with section 633.40, shall be served on all persons interested in the property, provided that as to personal property and as to the lease of real property not specifically devised, for a period not to exceed one year, the court may hear the petition without notice. When notice is required, the notice shall state briefly the nature of the application. Upon satisfactory proof, the court may order the sale, mortgage, exchange, pledge or lease of the property described, or any part of the property, at a price and upon terms and conditions as the court may authorized. For the purposes of this section, the term "all persons interested" includes only distributees in the estate and persons who have requested notice as provided by this Code.

The executor objected to the sale and did not find it in the best interest of the estate.

The majority opinion operates against timely closure of estates and jeopardizes the interest of heirs if an option to purchase can be extended without notice to them.

Schlegel, J., joins this dissent.