IN THE COURT OF APPEALS OF IOWA 000019

No. 7-433 / 97-0201
Filed September 24, 1997

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CLERK SUPREME COURT

IN THE MATTER OF THE ESTATE OF HILDA S. ARMSTRONG, Deceased,

CARRIE GAYLEAN and CRAIG ARMSTRONG,
Appellants,

vs.

CLAYTON S. ARMSTRONG, Individually and as Executor of the Estate of **HILDA S. ARMSTRONG**, Deceased, and **JUDITH ARMSTRONG DAILEY**,
Appellees.

Appeal from the Iowa District Court for Linn County, Van D. Zimmer, Judge.

The plaintiffs appeal the district court's dismissal of their action to set aside decedent's will. **AFFIRMED.**

John L. Riccolo and David L. Baker of Riccolo & Baker, P.C., Cedar Rapids, for appellants.

Richard G. Hileman, Jr. of Simmons, Perrine, Albright & Ellwood, P.L.C, Cedar Rapids, and Robert L. Huffer of Huffer Law Office, Story City, for appellees.

Considered by Sackett, P.J., and Streit and Vogel, JJ.

STREIT, J.

Carrie Gaylean and Craig Armstrong, children of Darold Armstrong, were excluded from the will of their grandmother, Hilda Armstrong. They appeal the district court's dismissal of their action to set aside the will contending the language of the will is ambiguous and Iowa's antilapse statute entitles them to their father's portion of Hilda's estate. Defendants argue the language of the will clearly and explicitly excluded Darold's children from her will, and, therefore, the antilapse statute does not apply. We affirm.

I. Background and Facts.

The decedent, Hilda Armstrong, died testate in Linn County on September 23, 1995. Hilda had three children, Judith Armstrong Dailey, Clayton S. Armstrong, and Darold Gordon Armstrong. Darold died in August 1994, and was survived by his two children, Carrie Gaylean and Craig Armstrong. A dispute arose during probate regarding whether Darold's share passed to Carrie and Craig under Iowa's antilapse statute or if Hilda's will clearly and explicitly intended to exclude them--making the antilapse statute inapplicable.

Hilda's will reads:

> THREE: All the rest, residue, and remainder of my estate, real, personal, or mixed, of which I die seized or possessed, or to which I may be entitled, I give, devise and bequeath to my children, equally, to-wit: JUDITH ARMSTRONG DAILEY, CLAYTON S. ARMSTRONG, and DAROLD GORDON ARMSTRONG, to share and share alike equally.

> FOUR: If Clayton or Judith do not survive me, that child's portion is to be given to that deceased child's children and spouse who are living to share and share alike equally. In all other respects, the share of a child who does not survive me shall cease and will be divided between those that survive me.

On September 23, 1996, the district court granted the defendants' summary judgment motion and dismissed the plaintiffs' action to set aside the will based on ambiguity. Carrie and Craig appeal.

II. Scope of Review.

Will contests are law actions reviewed for error. Iowa Code § 633.33; Iowa R. App. P. 4.

III. Ambiguity of the Terms of the Will.

Whether the terms of the will are ambiguous is our first inquiry. *See In re Estate of Kiel*, 357 N.W.2d 628, 631 (Iowa 1984). A patent ambiguity exists when the meaning of a will is, on its face, uncertain, doubtful, or obscure. *In re Lepley's Estate*, 235 Iowa 664, 670, 17 N.W.2d 526, 529 (1945). When the terms of a will are unambiguous, courts are precluded from interpreting the terms. *Kiel*, 357 N.W.2d at 630.

Carrie and Craig argue the second sentence of paragraph four is patently ambiguous because it is subject to two interpretations. They argue the word "those" in the second sentence of paragraph four could refer to the Hilda's remaining children or to Hilda's heirs and issue. To determine if it was the intent of the testatrix to exclude the devisee's issue from her will all provisions of the will must be considered;

it is not sufficient to select isolated items or provisions in the will and contend from them that the statute does not apply. *Fischer v. Mills*, 85 N.W.2d 533, 537-8 (Iowa 1957). When section three and four are read together the language of the will is not ambiguous. The second sentence of paragraph four clearly and explicitly means that if Darold dies his share will be divided between Hilda's other surviving children. Because the meaning of the words are unambiguous, the trial court was correct in refusing to interpret the terms of the will. *See Kiel*, 357 N.W.2d at 630.

IV. Iowa's Antilapse Statute.

Iowa's antilapse atatute provides:

> If a devisee dies before the testator, leaving issue who survive the testator, the devisee's issue who survive the testator shall inherit the property devised to the devisee per stirpes, unless from the terms of the will, the intent is clear and explicit to the contrary.

Iowa Code § 633.273(1)(1995). Because the will clearly and explicitly excluded Darold's children, the antilapse statute is inapplicable. Darold's share lapsed at his death and reverted to his living siblings. We affirm the trial court's grant of summary judgment to defendants.

AFFIRMED.