FILED 257
DEC 30 1981
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE ESTATE OF AUGUSTA JACOBSON, Deceased.

ELMER JACOBSON and WILLIAM JACOBSON,

Petitioners-Appellees,

vs.

LEROY GRAHAM,

Respondent-Appellant.

Filed December 30, 1981

1-422
2-66654

Appeal from Sac District Court - James C. Smith, Judge.

Respondent appeals from trial court's order setting aside an appraisal of real estate; under the terms of his grandmother's will, he as an optionee was allowed to purchase at the price set by the appraisal, and he claims that trial court erred 1) in failing to dismiss the petitioner's objections to the appraisal and 2) in setting aside the appraisal where there was no pleading, proof or trial court findings of bad faith or fraud on the part of the appraisers appointed by the court pursuant to the will. AFFIRMED.

David D. Dykstra of Gleysteen, Harper, Eidsmoe, Heidman & Redmond, Sioux City, Iowa, for respondent-appellant.

Thomas L. McCullough of the McCullough Law Firm, Sac City, Iowa, for petitioners-appellees.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Respondent, LeRoy Graham, appeals from trial court's order setting aside an appraisal of real estate; under the terms of his grandmother's will, he as an optionee was allowed to purchase at the price set by the appraisal. Respondent claims that trial court erred 1) in failing to dismiss the petitioners' objections to the appraisal and 2) in setting aside the appraisal where there was no pleading, proof or trial court findings of bad faith or fraud on the part of the appraisers appointed by the court pursuant to the will. We affirm.

Respondent is the grandson of Augusta Jacobson, decedent, who died on September 12, 1980. Decedent's will provided that her property (except furniture and furnishings) should be sold and the net proceeds divided among her three children. By codicil, decedent gave respondent an option to purchase any real estate owned by decedent at the time of her death. Upon application by the executor, the court appointed three persons, from the list appointed by the board of supervisors to serve on the condemnation compensation commission in eminent domain proceedings, to appraise the property "at its market value." The property was encumbered by a lease held by respondent. In their report, the three appraisers set two values on the real estate: $186,427.50, without consideration of the lease held by respondent; and, $167,784.75, with consideration of the lease. Respondent filed a timely election to exercise the option, electing alternatively to take with or without consideration of the lease. Thereafter, the executor filed an application for an order directing the procedure for exercising the option. Petitioners, two of the three children of decedent, filed objections to the application on the grounds that "[t]he fair market value of the farm land in question is at least $280,000" and requested that the appraisal be set aside. Respondent resisted the objections, asserting that the appraisal was binding in the absence of a showing of fraud. After petitioners rested their case, respondent moved to dismiss for failure to plead or prove bad faith or fraud. The court reserved ruling on the motion and respondent put on his evidence. In its order, trial court set aside the appraisal on the grounds that it was grossly erroneous and ordered a new panel of appraisers appointed. Respondent appeals from the order overruling his motion to dismiss and setting aside the appraisal.

I. **Scope of Review.** Our review is **de novo.** Section 633.33, The Code 1979.

II. **Propriety of Trial Court's Order.** Respondent argues that petitioners' failure to allege and prove bad faith or fraud required dismissal in this case or

alternatively argues that trial court erred in setting aside the appraisal absent such a pleading or proof.

We begin our analysis by focusing on testator's language in the codicil:

> My grandson, LeRoy Graham, shall have the first opportunity to purchase any real estate owned by me at the time of my death. I direct that within three (3) months after the appointment of the executor of my estate, the Court shall appoint three (3) disinterested appraisers who shall appraise said farm real estate. If the said LeRoy Graham wishes to purchase said land at the appraised price, he shall file his election to exercise this option within thirty (30) days after the report of the appraisers has been filed.

Respondent directs our attention to three Iowa decisions which he asserts controls this case.

The first case is In re Eckey's Estate, 192 Iowa 572, 185 N.W. 118 (1921). In that case testator directed that his real estate be appraised by three disinterested parties, specifically named the appraisers, and gave certain of his children the right to purchase the property at the appraised value. In re Eckey's Estate, 192 Iowa at 573, 185 N.W. at 119. In response to the executor's and other legatees' allegation that the values fixed by the appraisers were not fair values, the court held that there was no claim or evidence that the appraisers acted otherwise than in good faith and therefore upheld the appraisal. Id., 192 Iowa at 575, 185 N.W. at 119.

The decedent, in In re Estate of Giffin, 166 N.W.2d 800 (Iowa 1969), directed that her real estate be appraised by the inheritance tax appraisers and gave two individuals the opportunity to purchase the real estate at the appraised value. The residuary distributees objected to the appraised value and made an offer for the property at about twice the appraised value. The court concluded that the case before it came squarely within the rule of In re Eckey's Estate, and held that the value fixed by the appraisers named in the will was controlling in the absence of bad faith or fraud. In re Estate of Griffin, 166 N.W.2d at 802.

The third case in the trilogy, In re Estate of Lorimor, 216 N.W.2d 349 (Iowa 1974), further confirmed the general rule that, absent bad faith or fraud, the value fixed by appraisers named in a will was controlling. In Lorimor, the testator directed that his farmland " 'shall be appraised by three competent disinterested appraisers appointed by the Court, at its fair and reasonable market value, as determined by the appraisers. . . . and that said beneficiaries . . . shall have the right to acquire the farm at the appraised value.' (emphasis supplied)." In re Estate of Lorimor, 216 N.W.2d at 350. The court found

no allegations of fraud and refused to imply the same. Id. at 353. The court also rejected the beneficiaries' argument that the appraisers had failed to appraise the land at its fair and reasonable market value so as to make the result grossly unfair and unjust. The court concluded:

> The testator had a right to grant an option such as he gave two of his sons to purchase his land and prescribe the method for arriving at the price to be paid. In clear unambiguous terms he chose to authorize the court admitting his will to probate to name three disinterested persons to fix the price to be paid—its fair and reasonable market value as determined by the appointed appraisers. The fair and reasonable market value fixed by the appraisers was controlling in the absence of bad faith or fraud. Hence, in the absence of an allegation of bad faith or fraud the objectors set forth no basis upon which the relief asked for could have been granted.

Id. at 354.

Applying these controlling precedents to the facts of this case, we conclude two distinguishing factors are determinative. Number one is the language of the codicil itself which states that the court is to appoint three disinterested appraisers who shall appraise the real estate. Second is trial court's order of December 1, 1980, appointing the appraisers and directing the appraisal of the property "at its market value." Trial court clearly has the power to provide guidance as to the appraisal under section 633.396, absent specific direction to the contrary under the will. Thus, respondent, having failed to challenge this order, is bound by its directive. Since the evidence is uncontradicted that the appraisal was not at market value, we affirm trial court's order.

AFFIRMED.