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IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE ESTATE OF)
MAUDE CHAMBERS, DECEASED)

FRANK RAMSEY, individually, and)
as Executor of the Estate of)
Maude Chambers, Deceased; and)
ELLEN MARY RAMSEY,)

Filed June 24, 1977

Appellants,)

vs.)

WILMA KUHN, EVELYN JENSEN,)
RALPH WICKMAN, and HARRIET)
BEARD,)

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No. 2-58582

Appellees.)

Appeal from Palo Alto District Court -- Murray S. Underwood,
Judge.

In a Will contest where it involved the theory of ademption
and the words "*all my interests in*", the latter words prevailed
in interpreting the Will. - AFFIRMED.

Roger A. Berkland, of Emmetsburg, counsel for the executor
Frank Ramsey.

Fitzgibbons Brothers, of Esterville, Francis Fitzgibbons
and Harold W. White, counsel for Frank Ramsey individually, and
Ellen Mary Ramsey.

Charles Barlow, of Emmetsburg, counsel for appellees.

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

DONIELSON, J.

Plaintiffs, Frank and Ellen Mary Ramsey, residuary beneficiaries of the Will of Maude Chambers, appeals the lower court's ruling that held there was no ademption where the real estate devised in the Will was sold on installment contract prior to the decedent's death, and all interests in the realty continued to be specifically devised.

The testatrix, Maude Chambers, executed her Will in 1962. Article II, paragraph 2 of the Will provided that she would leave "*all my interests in*" the legally described realty to specific individuals subject to a trust which was created for five years and provided that the trustees could in their discretions sell the real estate. The defendants in the instant case are the individuals or their heirs to whom the property was devised.

The residual clause of Maude Chambers' Will, Article II, paragraph 5, left all remaining property of the decedent to the plaintiffs, Frank and Ellen Mary Ramsey.

Subsequent to the execution of the Will, Maude Chambers and her husband entered into a contract to sell the real estate described in Article II, paragraph 2, of the testatrix's Will to Bernard and Wilmer Metzger. The testatrix did not make any changes in her Will after the contract to sell the land to the Metzgers.

The Iowa Supreme Court has held in *Newbury v. McCammant*, 182 N.W.2d 147 (Iowa 1970) that in order for property not to be adeemed, the property must be (1) identifiable; (2) found in the estate; and (3) constitute identical property which the testatrix intended should pass to the specific legatees. The first and second requirements are not in dispute. The question left unresolved is the determination of the identical property

Maude Chambers intended to devise to the specific legatees. The appellant contends that the subject matter of the devise were tracts of real estate; tangible real property. However, the appellees, the specific legatees, relied upon the significant phraseology of Article II, paragraph 2 of the testatrix's Will where it stated: "*I leave all of my interests in*" (emphasis added) and then went on to legally describe several parcels of realty.

Iowa has adopted the ademption theory upon what is referred to as the "*modified intention theory*". In re Estate of Wolfe, 208 N.W.2d 923, 924 (Iowa 1973). See also at 925 that legacies are adeemed only where intention appears on the part of the testator himself. We do not find that requisite intent present here in determining the intent of this testatrix pursuant to the overall reading of a Will, see In re Will of Faber, 259 Iowa 1, 141 N.W.2d 554, 557 (1966), the evidence is not substantial in either direction or interpretation. However, we are satisfied that it is clearly sufficient to support the trial judge's findings.

We do believe that it is of some significance that there is nothing in the Will to indicate that nieces and nephews are to receive nothing under the Will. They are not mentioned in any other portion of the Will contrary to the situation involving the plaintiffs-appellants who receive certain benefits from the deceased while she was still alive and they still maintained a residuary interest in this Will.

We agree with the trial court and the appellees and hold the words "*all of my interests in*" negate ademption. The word "*interests*" is a broad term. As stated in In re Estate of Robertson, 246 Iowa 685, 689, 68 N.W.2d 909 (1955):

"The word 'interest' is the broadest term applicable to claims in or upon real estate. In its ordinary signification among men of all classes it is broad enough to include any right, title, or estate in, or lien upon, real estate."

Maude Chambers, the testatrix, when conveying the realty prior to her death retained a security interest with the equitable title passing to the buyer. *Newbury v. McCammant*, 182 N.W.2d 147, at 151 (Iowa 1970). The term "*interests*" in the instant case would also include the right to receive proceeds of the executory installment sales contract.

We, therefore, agree with the lower court's findings by holding that Maude Chambers intended to devise all her "*interests*" in the property at the time of her death. This interest included a security interest and the right to receive payments. She intended that her vendor's interests in the unpaid balance and security interests in the land itself would pass to the persons named in Article II, paragraph 2 of her Will.

We affirm.