

IN THE COURT OF APPEALS OF IOWA

No. 6-058 / 94-1973

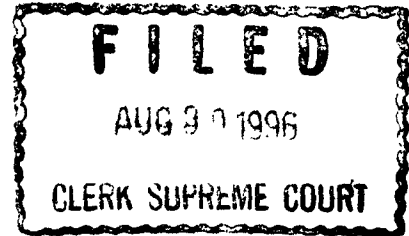
**L. E. ALLISON TRUST by ANNA IRENE ALLISON,
TODD JOSEPH ALLISON, RENEE JUNE ALLISON
GEROT, KENT DAVID ALLISON, ALICIA SUE
ALLISON; and ANNA IRENE ALLISON, Individually,**

Plaintiffs-Appellees,

vs.

**JOHN A. ALLISON; GERALDINE ALLISON;
CLELA G. ALLISON; JOHN A. ALLISON,
Trustee; and CLELA G. ALLISON TRUST,**

Defendants-Appellants.



Appeal from the Iowa District Court for Poweshiek County, Richard J. Vogel,
Judge.

Defendants appeal a district court order appointing a receiver to avoid waste
of farmland held in trust by defendants. **REVERSED.**

H. Michael Neary of the H. Michael Neary Law Office, Ottumwa, for
appellants.

Richard H. Elwood of Elwood & Elwood, North English, for appellees.

Considered by Sackett, C.J., and Habhab and Huitink, JJ.

SACKETT, C.J.

The question in this appeal is whether the trial court was correct in appointing a receiver for 450 acres of farmland in Keokuk and Poweshiek counties. Clela G. Allison owns an undivided one-half interest in the land and holds a life estate on the other undivided one-half interest. The remainder in the undivided one-half interest is owned one-half by appellant John A. Allison and one-half by appellee L. E. Allison Trust. John and L. E. Allison, now deceased, are the children of Clela. The interests of John and the L. E. Allison Trust have been mortgaged. The mortgage does not encumber either Clela's undivided one-half interest in the fee or her life estate.

For a number of years, John and L. E. rented the land in question and owned and farmed this and other land in partnership. They fell on hard times and made an agreement with the Farm Credit Service that resulted in, among other things, the mortgage that encumbers an undivided one-half remainder interest in the 450 acres. The mortgage is a result of a series of transactions to restructure the debt. Many of the facts concerning the restructuring are not relevant to this issue and will not be recited.

The trial court found the land was being rented for less than a fair market rental to John A. Allison's son-in-law and ordered a receiver, finding that at a fair market rental the land would generate sufficient income to pay principal and interest due on the mortgage, taxes, and upkeep, and a payment to Clela. The tenant, in addition to the specified rent, was required to pay the real estate taxes and the upkeep.

There is no claim the taxes and upkeep were not being paid.

Appellants contend the trial court should not have appointed a receiver, that there was no showing of waste, and that the rent from the 450 acres was not responsible for the payment of the mortgage. We agree and vacate the order appointing the receiver.

The court's authority to appoint a receiver comes from Iowa Code section 680.1, which provides:

On the petition of either party to a civil action or proceeding, wherein the party shows that the party has a probable right to, or interest in, any property which is the subject of the controversy, and that such property, or its rents or profits, are in danger of being lost or materially injured or impaired, and on such notice to the adverse party as the court shall prescribe, the court, if satisfied that the interests of one or both parties will be thereby promoted, and the substantial rights of neither unduly infringed, may appoint a receiver to take charge of and control such property under its direction during the pendency of the action, and may order and coerce the delivery of it to the receiver.

An action to appoint a receiver is at equity and, therefore, our review is de novo. *See South Ottumwa Sav. Bank v. Sedore*, 394 N.W.2d 349 (Iowa 1986).

Clela, as owner of an undivided one-half interest and a life tenant in the other undivided one-half interest, is entitled to current possession of the entire farm. As life tenant, she has full control and possession of her tenancy without interference from those holding a remainder or reversion interest. *Holzhauser v. Iowa State Tax Comm'n*, 245 Iowa 525, 532, 62 N.W.2d 229, 233 (1953). The possessor of a life estate is a holder of a possessory interest in the land and, during his or her lifetime,

may take and receive all profits and income from the land. *In re Estate of Rahfeldt*, 253 Iowa 432, 112 N.W.2d 858 (1962).

With regard to waste, a life tenant is chargeable with the condition of the property as it came to him [or her] at the inception of the life tenancy, not with improvements he himself [or she herself] adds which were not merely substitutionary. *In re Estate of Gauch*, 308 N.W.2d 88 (Iowa 1981); *see also Booth v. Booth*, 114 Iowa 78, 79-80, 86 N.W. 51, 51-52 (1901); *Killmer v. Wuchner*, 79 Iowa 722, 724, 45 N.W. 299, 300 (1890).

Clela has no obligation to pay the mortgage and interest that encumbers only the undivided one-half remainder interest on which she has a life estate. The encumbrance placed there by the remaindermen does not encumber her life estate. *See Reddish v. John*, 190 Iowa 49, 53, 179 N.W. 951, ___ (1920). Until Clela's death, the remainder persons have no right to possession of or income from the land.

There was no showing of waste. The tenant pays both the taxes and upkeep. We recognize the land is being rented for less than fair market value. Clela is an adult. There is no showing she is incompetent. There is no claim that John is violating a confidential or fiduciary relationship with Clela. These issues are not before us and this opinion addresses neither.

We reverse and discharge the receiver. Costs of the action, including all costs of the receiver, shall be paid by appellees.

REVERSED.