FILED
DEC 27 1983
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE TRUST UNDER THE LAST WILL AND TESTAMENT OF HAZEL H. COUSINS, Deceased;

GARY L. MUNCK and JANET C. MUNCK,

Appellants.

Filed December 27, 1983

3-340
2-69538

Appeal from Clinton District Court - C. H. Pelton, Judge.

Appellants, who made an offer to buy certain farmland which is an asset of decedent's testamentary trust, appeal from a trial court order disallowing the sale of the farmland to them and allowing the sale to appellees. AFFIRMED.

James L. Pillers, George W. Pillers, Jr., and G. Wylie Pillers, III, all of Pillers, Pillers & Pillers, Clinton, for appellants.

Jerry D. Van Scoy of Shoff, Farwell & Senneff, Clinton, for appellees (Lavern E. Rowson, Herbert H. Smith, and Jean F. Smith).

John S. Peavey of Condon & Peavey, DeWitt, for the trustee.

Heard by Oxberger, C.J., and Snell and Sackett, JJ.

PER CURIAM

This case concerns the propriety of district court actions regarding the sale of certain trust property.

Decedent Hazel Cousins died in January 1981. Her will created a trust for the support of the elderly Gerald C. Hill during his lifetime, with the remainder to certain relatives and charitable organizations. The assets of the trust were mainly farmland, and the trustee was given the power to sell, exchange, mortgage, or otherwise dispose of any trust asset without court order.

In September 1982, the trustee decided to sell the farmland so that he could pay certain trust debts and also better provide for Gerald Hill's increasing financial needs. Plaintiffs Gary L. Munck and Janet C. Munck, who were then leasing the farmland, made the trustee an offer. The trustee rejected the offer but made a counteroffer which was for a purchase price of $250,000, to be paid in the following manner:

> $1,000.00 in cash with this offer as earnest money: also $5,000.00 to be paid upon court approval and signing of contract as part payment .... The remainder ... is to be paid as follows ...: an additional $20,000.00 to be paid on Dec. 15, 1982. Then on 3-1-83 Buyers are to pay $24,000 for a total of $50,000. The balance of $200,000.00 to be carried on a 10 year contract. Interest to be computed at 10%. Principal payments to be $2,000.00 or more per year.

[emphasis added]. The offer to purchase stated further: "When accepted this offer shall become a binding contract for the sale and purchase of the above described premises." The trustee and the Muncks signed and thereby accepted the offer on September 8, 1982.

The trustee then petitioned the court to approve the sale to the Muncks. One of the remaindermen, Lavern E. Rowson, objected to the sale; he asserted that the Munck offer was for a purchase price which was less than the fair market value, and he stated that he had received an offer by a qualified buyer which was for a higher purchase price and was on terms more favorable to the trust. Rowson

filed a copy of the offer to buy, dated September 27, 1982. This second offer to buy was made by Herbert H. and Jean F. Smith. They offered to pay $256,000 for the property, payable on the same terms as the Muncks' offer except that they proposed to pay $44,000 on March 1, 1983, as compared to the $24,000 payment proposed for that date by the Muncks.

On October 1, 1982, after a hearing, the district court entered an order which (1) disapproved the sale to the Muncks, based on its findings that the Munck offer was not the best offer the trustee could get, and (2) directed the trustee to submit for consideration on November 5, 1982, the best offer it had received from either the Muncks, the Smiths, or anyone else. The Muncks moved to vacate this order, asserting that they had not been given notice of the hearing on their offer. Meanwhile, the trustee submitted the Smith offer to the court for consideration pursuant to the order.

On November 5, 1982, the date scheduled for the hearing on the Smith offer, counsel for both the Smiths and the Muncks appeared, even though neither the Muncks nor their counsel had received formal notice of the hearing. The district court, recognizing that both offers were contested, orally continued the hearing on the Smith offer to November 10, 1982. Later the same day (November 5, 1982), the district court, by a different judge, entered an order which: (1) granted the Muncks' motion to vacate the October 1, 1982 order disallowing their offer, and (2) set a hearing date on the offer for November 10, 1982.

Trial on both offers was held as scheduled on November 10, 1982. Thereafter, the district court disapproved the Muncks' offer and approved the Smiths' offer, based on its findings that the Muncks' offer was subject to court approval and that the Smiths' offer was the better of the two. The Muncks have appealed, asserting that (1) the language in their offer to buy which required a down payment of $5,000 "upon court approval and signing of contract" was a specification of the time for the $5,000 payment rather than a requirement that the offer be approved

by the court; (2) only the Muncks' offer, not the Smiths' offer, was before the court on the date trial was held, because the Muncks had not been notified that the Smith offer would be considered on that date; and (3) the district court should have approved the Muncks' offer because it was for the full, fair and reasonable value of the farmland and its terms were advantageous to the trust.

Our review of this matter is de novo. See Iowa Code § 633.33 (1983).

It is not necessary for us to decide whether the trial court's consideration of the Smiths' offer was invalid because of lack of notice to the Muncks. The Muncks were present at each proceeding so evidently they were aware of what was happening. The case revolves around both the interpretation of the words "upon court approval" and the application of the case of In re Estate of Rude, 233 Iowa 792, 10 N.W.2d 536 (1943).

The Muncks argue the words "upon court approval" merely identify the time when the $5,000.00 down payment should be paid. However, contrary to the Muncks' argument, this imposed a condition precedent to the contract. The court must approve the contract before the down payment can be made and, thus, before the contract may be fulfilled. Further, we do not agree that the clause "upon court approval" modifies only the $5,000.00 down payment; this would be an extremely narrow construction of the contract language and an unlikely intended meaning. Therefore, we find that it was necessary for the court to approve the contract before the trustee would be allowed to go through with it.

The main issue in this case is what factors the court should have taken into consideration in approving or disapproving the Munck offer. We find the following language of the Iowa Supreme Court to be dispositive:

> . . . where an executor is given power to sell real estate and enters into a contract for such sale, but the parties make the contract "subject to the approval of the court," the court may refuse to approve the same on the basis that it is not advantageous to the estate and not for the full, fair, and reasonable value of the property, and, in so determining, the court may consider a subsequent offer for the same real estate at a substantially larger price.

In re Estate of Rude, 233 Iowa 792, 799, 10 N.W.2d 536, 539 (1943).

In the instant case, the Smiths' offer was $6,000 higher and the terms provided that $20,000 more would be paid at an earlier date than under the terms of the Muncks' offer. Therefore, the district court properly considered the Smiths' offer in determining whether the Muncks' offer was advantageous to the trust. The court appropriately refused the Muncks' offer after comparing it to the Smiths' offer and determining that the Smiths' offer would be more advantageous to the trust. Because the court must be concerned with the best interests of the trust and of the beneficiaries to the trust, the court properly found that the Smiths' offer should be accepted and the sale approved.

AFFIRMED.