FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

96

In the matter of the Trust of DEAN G. KUNTZ, Deceased;

In the Matter of the Estate of DEAN G. KUNTZ, Deceased;

JEAN LAMBERTSEN,

Appellant.

9-09
88-119

Appeal from the Iowa District Court for Jones County (P 44-0380), L. Vern Robinson, Judge.

Lambertsen appeals from a district court judgment approving the final reports and discharging the executor and co-trustees for the Dean Kuntz estate and trust. **AFFIRMED.**

Jean Lambertsen, pro se.

Richard S. Fry and William S. Hochstetler, of Shuttleworth & Ingersoll, P.C., Cedar Rapids, for the appellees, the executor, Marie Kuntz, and the trustees, John and Marie Kuntz.

Considered by Schlegel, P.J., and Hayden and Sackett, JJ.

SACKETT, J.

Appellant Jean Lambertsen, one of five children of decedent Dean G. Kuntz and a beneficiary under his will, challenges the trial court order authorizing the sale of farm property by decedent's estate. Appellant contends the property should have been transferred to a trust established under the terms of decedent's will and the farm should have been sold by the trustees. We affirm.

Decedent died testate on March 23, 1980. His will which was admitted to probate gave two parcels of farm land to his wife and son, John, as trustees. The trustees were directed to manage the trust until decedent's last living child became twenty-five years old. When that event transpired the will provided a mechanism for sale whereby decedent's children (first sons and then daughters) had a right to purchase within a certain time frame. The sale mechanism dealt with procedures for making offers to purchase and provided when the trustees were to accept these offers.

The will also provided in relevant part:

> 6. At any time that an offer and acceptance shall be signed under this provision, my Trustee shall terminate the Trust and distribute all principal and income, if any, as follows:
> (a) One-third (1/3) to my wife, if she is then living. . . .
> (b) Two-thirds (2/3) to my children. . . .

Decedent's youngest child became twenty-five in October 1982. An application was made in the trust and estate on

October 1, 1986, for an order authorizing sale. The estate was still open at that time. The trial court over objection and after a hearing approved an offer on one parcel from decedent's son Glen Kuntz and an offer on the second parcel from decedent's son Ivan Kuntz. Both Glen and Ivan's offers were to purchase the land on an installment sale contract.

The beneficiaries of the trust and of the estate are the same persons. All beneficiaries, including appellant, were notified of or appeared at the hearing. No appeal was taken from the October 1, 1986, order approving the sale of the two parcels. The issue of whether the two contracts for sale should have been approved is not before us.

The estate and the trust each filed a final report, application for order of distribution and request for discharge of fiduciary. The final report in the estate alleged the two parcels of real estate for tax reasons had not been transferred to the trust. The report requested the vendor's interest in the two real estate contracts be transferred in accordance with decedent's will, basically one-third to decedent's widow and two-thirds to each of decedent's five children. The final report in the trusteeship requested a like distribution of cash held in the trusteeship. Over appellant's objection, the court approved the report, ordered the distributions and discharged the fiduciaries.

Appellant has appealed from the order contending the land should have been transferred to the trust and the proper parties did not sell the property. Appellant does not contend she did not receive her fair share of the vendor's interest through the estate. We determine the estate made the same distribution of the vendor's interest in the installment sales contract as would have been made in the trust.

Appellant contends the estate had no authority to sell and only the trustee could sell. She argues the trial court order authorizing sale by the estate impermissibly altered the terms of the trust. She claims had the property been transferred to the trust, the trust would have been required to remain open to receive and distribute all installment payments received. Appellant argues this is necessary because otherwise there is no one to collect and enforce the payment.

What the appellant's argument ignores is an executor is given broad powers to sell real estate. Iowa Code section 633.386 provides in relevant part:

> 1. Any real . . . property belonging to the decedent, except . . . personal property and the homestead, may be sold, mortgaged, pledged, leased or exchanged by the personal representative for any of the following purposes:
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> * * *
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> b. The distribution of the estate or any part thereof;
>
> c. Any other purpose in the best interests of the estate.
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> * * *

This section provides flexibility to meet problems arising in connection with settlement of modern estates. Any right to possession of real estate at death is always subject to the contingency of lawful sale by the personal representative during probate proceedings. DeLong v. Scott, 217 N.W.2d 635, 637 (Iowa 1974).

The only real issue is whether the court could grant the executor power to sell. The court clearly could. We find no basis for reversal on this ground.

Appellant also now argues the trust should not have been closed because it was necessary for it to exist to receive payments under the installment sale contract. The trust established in decedent's will clearly ordered the trust should terminate when the offer and acceptance were signed. We determine that event has now transpired. The parties each have an undivided interest in the vendor's interest in the two contracts. They personally have a right to receive their payment. And a trust is not necessary for that purpose.

Appellant also argues the failure to transfer to the trust will result in title problems. Having determined the court had authority to authorize the sale, we reject this argument on the grounds raised.

The record before us does not reflect the mechanism for conveying title when the installment contracts are paid in full. We are not clear about who will execute and deliver

a deed at that time. We recognize these details may have been resolved. If not, prudent practices would indicate the establishment of an escrow agent may save later problems.

AFFIRMED.