IN THE COURT OF APPEALS OF IOWA

No. 8-665 / 98-0486

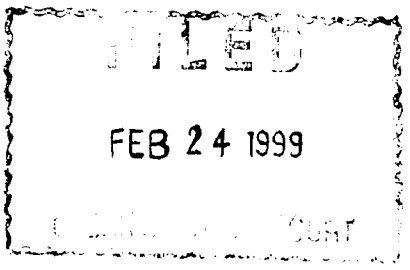
PATRICIA McLAUGHLIN and JOSEPH McLAUGHLIN,

Plaintiffs-Appellants,

vs.

JOSEPHINE McLAUGHLIN ESTATE,

Defendant-Appellee.



Appeal from the Iowa District Court for Floyd County, Gilbert K. Bovard, Judge.

Plaintiffs appeal from the district court order granting summary judgment in favor of defendant on plaintiffs' premises liability claims. **AFFIRMED.**

David M. Nelsen of Nelsen Law Office, Mason City, for appellants.

Timothy A. Clausen of Klass, Stoos, Stoik, Mugan, Villone & Phillips, L.L.P., Sioux City, for appellee.

Considered by Sackett, C.J., and Streit and Mahan, JJ.

SACKETT, C.J.

Plaintiffs-appellants Patricia and Joseph McLaughlin appeal following the district court ruling on summary judgment dismissing their claim for damages suffered by Patricia in a fall. We affirm.

Josephine McLaughlin died testate on July 15, 1994. Plaintiffs filed a petition contending Patricia was injured as a result of defendant estate's negligence when on March 29, 1995, she fell on property she alleged was owned by the estate. Plaintiff Joseph, her husband, claimed a loss of consortium as the result of Patricia's fall.

Defendant filed a motion for summary judgment contending the estate did not own the property at the time of Patricia's fall. The district court ultimately agreed and dismissed the case.

Plaintiffs, on appeal, contend (1) the estate controlled possession of the property, and (2) defendant's motion was not properly supported.

Defendant's motion alleged decedent died on July 15, 1994, and plaintiff Joseph McLaughlin was appointed executor of her estate and had continued to serve in that capacity up to and including the date defendant filed its motion. Defendant further alleged the property where Patricia fell was given to plaintiff Joseph under decedent's will. Attached to the motion were copies of cards from the Floyd County Assessor showing the name on property with the address of 1021-300th Street with a general description of "SE SW EX HY & EX PARCEL 30-94-18" to be Josephine A. McLaughlin. Also written on the top of the card were the words "et al., Life estate - Josephine" and "house only."

Plaintiffs resisted the motion advancing no more than there was a genuine issue of material fact. The district court originally overruled defendant's motion finding the record not clear as to the property where the accident allegedly occurred and what interest Josephine had in the property.

Defendant then filed a motion asking the district court to reconsider its ruling. Defendant alleged it was not disputed Patricia's injury occurred at 1021-300th Street in Dougherty, Iowa, and the general description of the property was "The Southeast Quarter of the Southwest Quarter of Section 30-94-18, Floyd County." Defendant further alleged Josephine's interest in the property was not an issue because Iowa's statutory scheme provided for the immediate passing of that interest at death.

Plaintiffs resisted advancing there was no showing there was a distributee present and competent to take possession of the real estate at Josephine's death, and the personal representative could not take possession of real property.[1] Plaintiffs further advanced Patricia's injury happened within a nine-month period when the personal representative had possession of all property of Josephine. No affidavits accompanied the resistance.

The district court sustained defendant's motion holding if the assessor's notation "Life estate - Josephine" is correct, any possessory interest she had terminated at the time of her death on July 15, 1994, eight months before Patricia fell.

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[1] The personal representative and plaintiff Joseph are one and the same person.

The district court went on to find if Josephine had some form of a fee interest, that interest passed under the terms of her will on the same date, July 15, 1994.

Plaintiffs did not challenge defendant's contention decedent only had a life estate in the property. In fact, the probate inventory in Josephine's estate, made a part of the record, shows two parcels in the southwest quarter of section 30. One is described as an 80-acre tract. The second, shown as 5.5 acres, defines Josephine's interest in the property as a life estate. The only conclusion that can be drawn is the 5.5 acres in the probate inventory shown as a life estate to Josephine is the property in question. Plaintiff Joseph signed the probate inventory certifying truth under penalty of perjury.

We will uphold a grant of summary judgment when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. An issue of fact is "material" only when the dispute is over facts that might affect the outcome of the litigation given the applicable governing law.

When we review the propriety of a grant of summary judgment, the moving party is required to show (1) no genuine issue of material fact exists, and (2) he or she is entitled to judgment as a matter of law. *Dickerson v. Mertz*, 547 N.W.2d 208, 212 (Iowa 1996). In determining whether the movant has met this burden, we review the record in a light most favorable to the party opposing summary judgment, in this case the plaintiffs. *Id.*

We review the record as we would on a motion for directed verdict, with the nonmoving party entitled to every legitimate inference that reasonably can be deduced

from the evidence, and summary judgment is inappropriate if reasonable minds can differ on how the issue should be resolved. *Smith v. CRST Int'l, Inc.*, 553 N.W.2d 890, 893 (Iowa 1996).

The only conclusion we can reach from this record is there is no dispute but that Josephine only had a life estate in the property where Patricia fell. Plaintiffs do not refute this allegation of defendant. Consequently, the general rule is the property passed on Josephine's death to the remainder person or persons. *See In re Estate of Luke*, 184 N.W.2d 42, 46-47 (Iowa 1971). Nor do plaintiffs allege any special circumstances that would preclude possession of the land from immediately vesting in the remainder person or persons. *See id.* Since Josephine's interest in and right to possession of the property terminated at the time of her death, the district court correctly found defendant estate did not own the property at the time of Patricia's fall. We affirm.

AFFIRMED.