

FILED 391

IN THE COURT OF APPEALS OF IOWA MAR 24 1981

CLERK SUPREME COURT

IN THE MATTER OF THE TRUST UNDER THE LAST WILL AND TESTAMENT OF

MARY R. MONTGOMERY,)

W. MACK JACKSON, Trustee,)

Appellee,)

vs.)

KEITH MONTGOMERY and)

THOMAS EDWIN MONTGOMERY,)

Appellants.)

Filed March 24, 1981

1-024

2-64966

Appeal from Mahaska District Court - Richard Vogel, Judge.

Trust beneficiaries appeal order of trial court approving trustee's action in leasing the trust farm land to his son. **AFFIRMED.**

Garold F. Heslinga of Heslinga & Heslinga, Oskaloosa, Iowa, for appellants.

Hugh B. McCoy of McCoy & Faulkner, Oskaloosa, Iowa, for appellee.

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

Trust beneficiaries appeal order of trial court approving trustee's action in leasing the trust farm land to his son. They claim that the trustee violated his fiduciary duties by failing to obtain the best possible lease terms and engaging in self-dealing by leasing to his own son. Our review is *de novo*. Iowa R. App. P. 4. We affirm.

Appellee, W. Mack Jackson, was appointed in 1969 as trustee of a trust created under decedent's 1963 will. The corpus consisted in part of a 238-acre farm which had been rented out since decedent's will was probated in 1969. As a result of various objections from the trust beneficiaries to a rental arrangement between the trustee and his son, the trustee was ordered in 1979 to advertise the farm for rent for the 1980 crop year. The order provided that the trustee was allowed to rent the farm to his son if he was the most suitable and available tenant. No particular method of rental was prescribed by the court.

On March 24, 1980, the trustee applied to the court for an order approving a proposed lease to a son of the trustee other than the son who had been the previous lessee. At the hearing on the application the trustee testified that he had advertised the availability of the farm for rent and talked to several prospects but was unable to obtain a cash rent agreement. He therefore proposed to rent the farm to his son, Thomas, on a crop-share basis for two years. The tenant was also to pay \$1,200 per year to rent the farm house, buildings and pasture land, and all costs incurred in combining and shelling the crops. After a hearing on April 7, the court entered an order approving the lease. This appeal by certain trust beneficiaries followed.

The beneficiaries' complaints fall into two major categories—the trustee engaged in self-dealing in leasing the farm to his son, and the lease terms are not the most advantageous possible. As to the claim of self-dealing, section 633.155, The Code, provides: "no fiduciary shall in any manner deal with himself, except on order of court after notice to all interested persons" (emphasis added). Even if we assume that the prohibition against self-dealing extends to the son of the fiduciary, it was still within the power of the court to approve the proposed transaction under the foregoing statute.

On the evidence offered we agree with the trial court's findings and conclusions that no prejudice to the trust estate has been demonstrated from the claim of self-dealing. Compare *Matter of Estate of Klein*, 229 N.W.2d 753, 755 (Iowa 1975). The trial court's order was justified on the basis of the best available lease at the time the prior lease expired. Refusal to approve the transaction might have resulted in the farm going unrented and a resulting loss to the beneficiaries. The order appealed from is affirmed.

AFFIRMED.