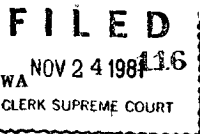


IN THE COURT OF APPEALS OF IOWA



IN THE MATTER OF THE TRUST UNDER THE LAST WILL
AND TESTAMENT OF LAFAYETTE A. SMITH,
Deceased

JOHANNA HUTCHINS,	)	
Appellant,	)	Filed
	)	November 24, 1981
vs.	)	1-341
	)	2-65890
FIRST NATIONAL BANK OF CLINTON, IOWA,	)	
Appellee.	)	

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

One beneficiary of a trust appeals from the trial court's construction of the trust and denial of her request for immediate distribution of her share. AFFIRMED IN PART; VACATED IN PART.

George W. Pillers, Jr., of Pillers, Pillers & Pillers, P.C., Clinton, for appellant.

Donald G. Senneff of Shaff, Farwell & Senneff, Clinton, for appellee First National Bank of Clinton.

Stephen D. Haufe of Jurgemeyer, Frey & Haufe, Clinton, guardian ad litem for appellees Brenda and Belinda Hutchins.

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

PER CURIAM

Johanna Hutchins, one of several trust beneficiaries, appeals from the trial court's interpretation of the trust instrument and denial of her request for either immediate distribution of her share or partial invasion of the principal for her benefit.

In denying the request for immediate distribution or partial invasion of principal, the trial court determined that any invasion of principal for Johanna's benefit during her lifetime was discretionary with the trustee and no abuse of discretion has been shown. We are satisfied that this determination was correct and affirm this part of the trial court's order.

In addition, because Johanna's claim to some distribution of trust principal at this time is based, in part, on a proposed interpretation she places on the trust instrument, which affects the rights of other beneficiaries or potential beneficiaries, the trial court made an adjudication as to the complete scheme of distribution of the trust assets. As to this feature of the case, we entertain some doubt as to the correctness of the trial court's ruling. But we need not and do not reach this issue. No interpretation has been proposed which in our view would alter the discretionary nature of Johanna's right to invade trust principal during her lifetime. Therefore, the trial court's judgment interpreting the instrument in a manner affecting the rights of other parties was not necessary and we vacate that part of the decision and judgment in the trial court.

We are aware in taking this action that it may be in the best interests of all trust beneficiaries and the trustee to secure an adjudication of the type made by the trial court. But such issues should be determined in an adversary proceeding among the competing interests. We are unable to determine from the record that all persons affected by or interested in such determination were before the court or had received notice and hearing that their rights were to be adjudicated. All five primary beneficiaries under decedent's will and certain of their children, both adults and minors, are interested parties in such a determination and entitled to notice and opportunity to be heard.

For the reasons stated, the judgment is affirmed in part and vacated in part. Costs on appeal are taxed one-half to Johanna and one-half to the trustee.

AFFIRMED IN PART; VACATED IN PART.