FILED
OCT 18 1979
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE TESTAMENTARY TRUST OF M. J. FREEMAN, Deceased.

MURIEL C. LINDQUIST,)

Petitioner-Appellee,) Filed October 18, 1979

vs.)

LEWIS W. ROSS, JR.,)

Respondent-Appellant.) 254
2-62871

Appeal from Pottawattamie District Court - L. F. Connolly, Judge.

Testamentary trustee appeals from trial court order removing him as a trustee. AFFIRMED.

Ronald W. Feilmeyer of Cambridge, Feilmeyer, Landsness, Rutherford & Chase, Atlantic, Iowa, for respondent-appellant.

John Sens and John M. French of Stuart, Tinley, Peters, Thorn, Smits & Sens, Council Bluffs, Iowa, for petitioner-appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Appellant, Lewis W. Ross, Jr., appeals from trial court order removing him as a trustee of a testamentary trust under the will of M. J. Freeman, deceased. We review the record **de novo**[1] and affirm the trial court.

I. At the outset we reject the contention of appellant that the attorney for the trustees who prepared and pursued the petition for his removal acted improperly as the result of a conflict of interest. The trial court properly determined that Mr. Peters, as attorney for the trust and an officer of the court, was obligated to serve the best interests of the trust and to bring to the attention of the court a violation of any fiduciary responsibility on the part of the trustees. Mr. Peters at no time represented appellant personally in this matter and properly advised him to seek his own counsel. No evidence was produced to indicate any violation of a confidential relationship in the pursuit of this matter by Mr. Peters. It also appears without question that no prejudice resulted to appellant from the actions taken by Mr. Peters. Had there been other counsel involved, the same matters would have been required to be reported to the court and placed in evidence.

II. Turning to the merits, we conclude that the trial court acted properly in removing appellant as a trustee. Although the evidence was probably not sufficient to find that he was a nonresident fiduciary in violation of section 633.64(1), The Code 1977, his frequent absences from the state support the charges made that he has been inattentive to his duties. The income beneficiary of the trust established substantial reason to be dissatisfied with the financial return received under appellant's management of the farming operation which is the principle trust asset. Appellant's acts in this regard appear to be lacking in necessary management control as a result of delegating too much discretion in farm management to the tenant on the farm. It also appears appellant entered into an improvident leasing arrangement with the tenant without court approval and without consulting his co-trustee. When the record is considered in its entirety, it fully supports a finding of mismanagement of trust assets by appellant. This is a sufficient ground for removal of a fiduciary under section 633.65, The Code.

In ruling on such matters, the trial court is vested with considerable discretion. Anderson v. Telsrow, 237 Iowa 568, 578-79, 21 N.W.2d 781, 786 (1946). No abuse of such discretion has been shown in the present action.

We have considered all arguments presented and find no basis for reversal.

AFFIRMED.

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[1] Section 633.33, The Code 1977; Iowa R. App. P. 4.