

FILED

MAR 22 1979

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

WESLEY DREESZEN, ELVIE DREESZEN,)
KENNETH BRUENE, MERLIN BRUENE,)
INA DREESZEN VOLKERT, VELMA)
DREESZEN GOETTSCHE, RUTH BRUENE)
GOODBURN, GLADYS BRUENE STRACKBEIN)
and EMMETT DREESZEN,)

Filed March 22, 1979

Appellants,)

vs.)

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2-61331

ARNOLD PUTENSEN,)

Appellee.)

Appeal from Ida District Court - James P. Kelley, Judge.

Residuary legatees seeking damages from executor for breach of fiduciary duties appeal grant of summary judgment to executor. - REVERSED.

Morris C. Hurd, of Hurd & Donahue, P. C., Ida Grove, for Appellants.

Thomas L. McCullough, of McCullough Law Firm, Sac City, and Richard F. Branco, of Branco, Boerner & Renegar, Holstein, for Appellee.

Heard by Oxberger, C. J., and Donielson, Carter and Johnson, JJ. Snell, J., takes no part.

PER CURIAM

Plaintiffs, residuary legatees of the estate of Charles Bruene, appeal trial court's grant of summary judgment to defendant Arnold Putensen, executor of said estate. In their petition, plaintiffs alleged that Putensen breached his fiduciary duties by selling certain farm land in the estate to his nephew and to decedent's niece at a price which was less than fair market value. We reverse.

Our first question is whether a genuine issue of material fact exists which would defeat Putensen's motion for summary judgment. To resolve this issue we examine, in a light most favorable to plaintiffs, the entire record before the trial court including the pleadings, admissions, depositions, answers to interrogatories and affidavits. See Drainage District No. 119 v. Incorporated City of Spencer, 268 N.W.2d 493, 499-500 (Iowa 1978). Affidavits from a prior equity suit between the same parties were admitted, without objection, at the hearing on Putensen's motion. These affidavits show that neighboring farm land which was sold at about the same time as the property at issue herein commanded substantially higher prices. The affidavits further indicate that Putensen may have acted against the advice of his attorney and realtor when he sold the property privately rather than at a public sale. One affiant stated he was unaware of any effort made to advertise the premises for sale. Part of the property in the estate was sold to the executor's niece and her husband. In Matter of Estate of Weise, 257 N.W.2d 1, 6 (Iowa 1977), the court held: "The standard of care generally applicable to executors is that degree of prudence and diligence which a person of ordinary judgment would be expected to bestow upon his own affairs of a like nature. However with respect to assets coming into the hands of a fiduciary, there is an additional burden to act more cautiously than would be expected in the management of its own property." We further find that an executor's actions should not be motivated by self interest or the interests of third parties. See In re Estate of Scheibe, 30 Wis. 2d 116, 121, 140 N.W.2d 196, 199 (1966) (executor sold estate property to his sister). There is a genuine dispute as to whether Putensen complied with these standards.

We do not purport to decide whether plaintiffs can sustain their burden to prove the allegations of their lawsuit. Nevertheless, we hold that they have sufficiently raised the issues to proceed to trial and the defendant's motion for summary judgment should have been overruled.

REVERSED.