

IN THE COURT OF APPEALS OF IOWA

No. 9-615 / 89-0498

FILED

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CLERK SUPREME COURT

IN THE MATTER OF THE ESTATE OF GUY C. SEVERSON, Deceased.

RAYMOND J. SEVERSON AND RONALD E. SEVERSON, Co-Executors of
the Estate of Guy C. Severson,

Plaintiffs-Appellees,

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vs.

GARY RAY SEVERSON, BETTY ANN SEVERSON SNIFF, JANE EILEEN
SEVERSON DOORLEY, GEORGE HENRY SEVERSON, JOHN PAUL SEVERSON,
ET AL.,

Defendants-Appellants.

Appeal from the Iowa District Court for Monona County,
Terry L. Huitink, Judge.

Beneficiaries of an irrevocable trust appeal the
decision of the district court. **REVERSED.**

Daniel C. Galvin, Sioux City, for the appellants.

James F. Gaukel of Gaukel, Nevins & Westergaard,
Mapleton, and Michael Paul Jensen, Onawa, for the appellees.

Considered by Donielson, P.J., and Sackett and Habhab,
JJ.

PER CURIAM

The issue in this declaratory judgment action is whether a revocable or an irrevocable trust agreement controls the distribution of real estate owned by decedent Guy C. Severson. The trial court found the intention of the decedent was for the revocable trust to prevail. We determine the evidence clearly shows the real estate was assigned to the irrevocable trust. We reverse the trial court.

Decedent died February 3, 1987. His last will was dated October 7, 1975. The will provided that real estate he owned at his death, which had not been earlier conveyed, should go to a revocable trust that had been created by decedent on October 5, 1975. However, on May 25, 1976, after the will was signed and after the revocable trust was established, but before any real estate was conveyed to the revocable trust, decedent established a second trust. The second trust was an irrevocable trust. The irrevocable trust instrument purported, among other things, to assign certain property to the irrevocable trust. The property was not described in the instrument itself, but the instrument recited that the assigned property was described in an attached Exhibit A.

Sometime after its execution, the irrevocable trust agreement was delivered by one of the trustees to the Monona County recorder. On March 18, 1977, a lawyer, then

representing decedent, sent to the Monona County Recorder, in an apparent response to a contact from the recorder, an Exhibit A. The attorney's memo sending Exhibit A made reference in two places to the irrevocable trust and recited the exhibit was to be attached to the irrevocable trust. Additionally, the exhibit was shown at the top as being an attachment to the irrevocable trust agreement. Exhibit A described the real estate the trial court found was conveyed to a revocable trust. The irrevocable trust, with Exhibit A attached, was then recorded.

Later, deeds were prepared conveying the same real estate to the revocable trust. After decedent's death, this declaratory judgment action was filed to establish which trust took the real estate.

Appellants raise two issues on appeal that in essence contend the irrevocable instrument was controlling and the land was conveyed to the irrevocable trust. Appellees contend appellants have not raised grounds that would be a basis for reversal either in their notice of appeal or in their brief. We disagree.

The real question is, was the land actually conveyed to the irrevocable trust? If the land were transferred to the irrevocable trust, decedent had irrevocably parted with the land and he had no remaining interest to convey in the subsequent deed or his will. Unquestionably, the

irrevocable agreement, with words of conveyance, was delivered to the trustee and recorded. The exhibit listing the land was supplied by the decedent's then attorney to the recorder and correspondence relating thereto explicitly identified the exhibit as the exhibit described in the trust agreement. While the attorney testified at trial the exhibit referred to the revocable trust, this testimony is very clearly contradicted by the correspondence he sent to the Monona County recorder. It is further contradicted by the fact that the revocable trust had no words of conveyance and did not call for an attachment.

Although the revocable trust agreement predated the irrevocable trust, no attempt was made to transfer real estate to the revocable trust until after it had been transferred to the irrevocable trust. There is nothing in the terms of the revocable trust precluding the granting of property to an irrevocable trust. The language of the irrevocable trust clearly provides it is irrevocable.¹ Therefore, the subsequent purported transfer to the revocable trust could not have revoked it. See In re Work

1. Paragraph 15 of the irrevocable agreement provides: "Irrevocability. Having been duly advised that he may legally reserve the power to modify and revoke this trust, the Trustor hereby declares that this trust shall be irrevocable, and the Trustor relinquishes all right or power of any kind to alter, amend, modify, or revoke any of the terms or conditions or provisions of this trust in any way."

Family Trust, 260 Iowa 898, 902, 151 N.W.2d 490, 492 (1967). The subsequent transactions, while inconsistent with the irrevocable trust, show no effort to correct any error made with reference to the irrevocable trust.

On our de novo review we find the evidence is not sufficient to hold the conveyance to the irrevocable trust null and void. We reverse.

REVERSED.

Donielson, P.J., and Sackett, J., concur; Habhab, J., dissents.

HABHAB, J. (dissenting)

I respectfully dissent. I would affirm the trial court in all respects.