

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE ESTATE)
OF JOHN H. LOW, Deceased,)

BARBARA JACOBSEN, DEANNA)
FINK, JOHN CORR and)
VAN CORR,)

Objectors-Appellants,)

vs.)

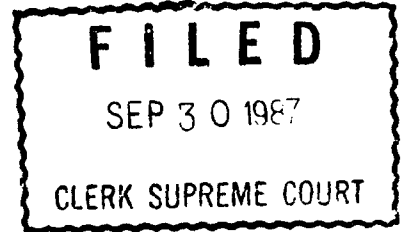
WALTER R. LOW, JR.,)

Executor-Appellee.)

Filed September 30, 1987

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7-337
86-1587



Appeal from the Iowa District Court for Monona County (No. 9370),
Phillip S. Dandos, Judge.

Objectors appeal from a lower court ruling accepting the final report
of the personal representative for the estate of John Low and the awarding
of two certificates of deposit to Walter Low, Jr. **AFFIRMED.**

Laurel L. Boerner of Boerner & Jacobson, P.C., Ida Grove, for
objectors-appellants.

Richard Mock of Onawa for executor-appellee.

Considered by Oxberger, C.J., and Donielson and Hayden, JJ.

PER CURIAM**151**

In this appeal, the objectors/appellants challenge the judgment of the trial court approving the personal representative's final report awarding two certificates of deposit to the appellee, Walter R. Low, Jr. We affirm.

This is an equitable proceeding brought pursuant to Iowa Code § 633.33 (1985), and our review is, therefore, de novo. Iowa R. App. P. 4. We give weight to the findings of the trial court, especially where the credibility of witnesses is involved, but are not bound by them. Iowa R. App. P. 14(f)(7).

The decedent, John H. Low, died intestate on January 25, 1984, survived by his brothers Raymond, Jr., and Edwin, and by his deceased sister's four children, the objectors in this case. Decedent's father, W. R. Low, Sr., predeceased John by three weeks. Raymond, Jr. was appointed the administrator of John's estate. Included in John's estate were two certificates of deposit (CDs) with a value of \$35,000.00. They bore the names John Low or W. R. Low. The issue in this appeal is who is entitled to the CDs.

The objectors argue that "W. R. Low" refers to Walter Raymond Low, Sr. and not Walter Raymond Low, Jr. as the trial court found. In support they cite to their family history and their interpretation. They argue that Low, Sr. was always referred to as W. R. Low, and that Low, Jr. was referred to generally as Raymond. They also argue that one of the CDs was purchased on the same day as another CD that belonged to Low, Sr. and that this indicates the intent of John was to include Low, Sr. and not Low, Jr. on the CD.

Low, Jr. responds by arguing the bank treated the "W. R. Low" as referring to him since the interest checks bore his name. He also argues that John Low wanted to equalize the estate distribution between his brothers.

As stated earlier, the CD's ownership is the primary issue. The question becomes one of what was the decedent's intent when he purchased the CDs

from the bank. In Williams v. Williams, 251 Iowa 260, 100 N.W.2d 185 (1959), the supreme court stated that in bank depositor cases, "[w]here no written agreement is made, or, if so made, is vague, uncertain and ambiguous, extraneous evidence to determine the intent of the depositor is admissible. Id., 251 Iowa at 264, 100 N.W.2d at 188; Siniff v. Siniff, 229 Iowa 56, 293 N.W.841 (19).

The CDs in this case constitute an agreement between the bank and the decedent. Unfortunately, it is unclear as to whom "W. R. Low" refers. This vagueness allows for the introduction of extrinsic evidence to determine John Low's intent.

We have examined the record thoroughly and conclude the CDs should be given to Walter Low, Jr. The record reveals that the bank treated Low, Jr. as one of the CD's owners by sending the interest checks to him. Also, the distribution of the CDs to Low, Jr. effectuates the decedent's intent to equalize the distribution of his assets between his brothers. We note that John Low was aware that Walter, Jr.'s name was listed on the interest checks. He could have corrected any error that may have occurred. We also feel that, while it is an interesting coincidence that one of the CDs was purchased at the same time as one belonging to Low, Sr., the other evidence outweighs this and compels the finding that "W. R. Low" refers to Walter Low, Jr.; and we, therefore, hold the trial court was correct in awarding the CDs to Walter Low, Jr.

AFFIRMED.