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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

ARLEEN KALSEIM LUND, EXECUTRIX OF THE ESTATE OF ROBERT G. KALSEIM,

Plaintiff-Appellee,

vs.

EFFIE KALSEIM, CORNET KALSEIM, GAYLORD G. KALSEIM, VYVIAN KALSEIM MILLER, MAYMEE KALSEIM HEINEN, and THE STORY COUNTY STATE BANK OF STORY CITY, IOWA,

Defendants-Appellants.

Filed November 26, 1980

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2-63901

Appeal from Hamilton District Court - David R. Hansen, Judge.

Defendants appeal declaratory judgment construing trust provisions. AFFIRMED.

James A. Brewer, of Hegland, Newbrough, Johnston, Brewer & Maddux, Ames, for defendants-appellants.

Stewart H. M. Lund, of Lund & Chambers, Webster City, for appellee Arleen Kalseim Lund.

Robert L. Huffer, of Larson, Huffer & Larson, Story City, for appellee Story County State Bank.

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

PER CURIAM

Defendants appeal declaratory judgment, alleging that the trial court erred in declaring that at the time of his death plaintiff's decedent was vested with a 1/7th interest in the earnings, avails, and proceeds of three land trusts accruing after his death, in declaring plaintiff's decedent vested with a 1/7th interest in the real estate corpus of the trusts at the time of his death, and in declaring that the trusts had expired by their own terms. We affirm.

Review in this equity case is de novo. Iowa R. App. P. 4. We give weight to but are not bound by the trial court's findings of fact. Iowa R. App. P. 14(f)(7).

Three trusts provide the focal point of this action. On May 27, 1948 trust #1 was created, which named Anna Kalseim's nine children as beneficiaries and whose corpus was 320 acres of farmland in Hamilton County, Iowa. On November 12, 1954 trust #2 was created, which named Anna Kalseim's nine children as its beneficiaries and whose corpus was 320 acres in Kossuth County, Iowa. On May 15, 1953 trust #3 was created, which named Anna Kalseim's nine children as its beneficiaries and whose corpus was 80 acres of farmland in Hamilton County, Iowa. At the creation of each trust, each beneficiary, including plaintiff's decedent, Robert G. Kalseim, was given a 1/9th interest in the trust. January 1, 1966, amendments were filed to all three trust agreements assigning Gertrude Kalseim Larson's 1/9th interests to the remaining beneficiaries, leaving Robert G. Kalseim with a 1/8th interest in each trust. On January 1, 1969, amendments were filed to all three trust agreements, assigning Alma Kalseim Peterson's 1/9th interests to the remaining beneficiaries, leaving Robert G. Kalseim with a 1/7th interest in each trust.

After Robert G. Kalseim's death, Arleen Kalseim Lund, Robert's daughter and executrix of his estate, filed a petition for a declaratory judgment interpreting the trust provisions and setting forth guidelines for disposition of the trusts.

I. Defendants contend the trial court erroneously ruled that the three trusts have expired under their own terms. The trusts were created on May 27, 1948, November 12, 1954, and May 15, 1953. Each trust provides for its own termination in the event that it contains property twenty years after its creation. May 27, 1968, November 12, 1974, and May 15, 1973 respectively came and went without any of the trusts being extended in

duration. Therefore, the trial court correctly concluded that the trusts terminated by their own terms and ordered that they be closed.

The trial court also correctly concluded that attempts to extend the three trusts after the dates of automatic termination were ineffective. These amendments were made to the trusts purporting to extend their duration for 10 years. Since the trusts expired before the amendments were made, the amendments failed to extend the duration of the trusts. See 3A C.J.S. Amendment (1973).

Defendants argue that even if the trusts did terminate under their own terms and were not extended by the amendments, the subsequent amendments constituted new trusts lasting for ten years. We disagree. The amendment to trust #1 failed to create a new trust effective against plaintiff because neither plaintiff nor plaintiff's decedent signed it. Plaintiff did sign the amendments to trusts #2 and #3, but she failed to obtain court approval of the amendments. Section 633.350, The Code 1979, provides that all of a decedent's property "shall be subject to . . . control of the court for the purposes of administration, sale, or other disposition. . . ." Normally, the personal representative of an estate cannot sell, mortgage, lease, or exchange the estate's property without court approval. See section 633.99, The Code 1979. The policy underlying this rule is that a personal representative of his own volition should not be able to materially alter the rights of an estate's distributees in a fashion not contemplated by the decedent without approval of an independent and higher authority. Plaintiff's attempt to tie up decedent's 1/7th interest in 400 acres of land by creating new trusts would materially alter distributees' rights and therefore requires court approval before being performed. The trial court correctly concluded that the attempts to extend all three trusts failed, and they expired under their own terms.

II. Defendants contend the trial court erred in determining that plaintiff's decedent at the time of his death was vested with a 1/7th interest in the real estate corpus of the three trusts. Defendants point out that the trusts give the beneficiaries rights in the personalty produced through the management of the realty corpus of the trusts but no interests in the realty corpus as such. We reject defendants' allegation of error, because the trial court never determined that the trusts give the beneficiaries direct realty interests. In its conclusions of law the trial court stated that "[i]t is clear

that each beneficiary's interest was personal property. . . . The interest the beneficiaries had in and to the trust was of a personal property not real property nature."

III. In its final decree the trial court determined:

> [t]hat the Plaintiff's Decedent had at the time of his death a vested 1/7th interest in Trusts 1, 2, and 3 which survived his death and passed to the Plaintiff for the benefit of his estate. That interest included a 1/7th interest in all rents, profits and earnings before and after his death up to and including a 1/7th interest in the ultimate distribution of the assets of the Trusts whether it be by sale of proceeds or in kind.

Although defendants do not dispute that plaintiff's decedent did have a 1/7th vested interest in the three trusts, they contend the trial court erred in determining that plaintiff's decedent at the time of his death had a 1/7th vested interest in the earnings, avails, and proceeds of the trusts that accrued after his death. Defendants base their contention on the following language contained in all three trust agreements:

> . . . that in case of the death of any beneficiary hereunder during the existence of this trust, his or her right and interest hereunder shall, . . . pass to his or her executor or administrator, and not to his or her heirs at law, . . .

We read this trust language as providing that Robert Kalseim's interest in the trusts passes to plaintiff, the executrix of Robert G. Kalseim's estate, upon Robert G. Kalseim's death, whatever may be the extent of Robert G. Kalseim's interest. At his death Robert G. Kalseim had a 1/7th vested interest in the earnings, avails, and proceeds of the three trusts, whatever might be the duration of the trusts. See G. Bogert & G. Bogert, Law of Trusts § 149 (5th ed. 1973). Regardless of the date of termination of the respective trusts, as of the time of his death he still had a 1/7th vested interest in the future earnings, avails, and proceeds of the trusts, and that interest passed to the executrix-plaintiff. In construing the meaning of a trust agreement a court may consider the conduct of interested parties. See In re Whitman's Estate, 221 Iowa 1114, 1127, 266 N.W. 28, 35 (1936). When Arthur Kalseim died, Arthur's executor assigned Effie Kalseim Arthur's share. In numerous amendments to the three trust agreements the remaining Kalseim children recognized Effie as taking Arthur's share in the trusts, including the earnings, avails, and proceeds accruing after Arthur's death. Thus the conduct of the beneficiaries of the trust agreements indicates that a beneficiary's interest in the trusts includes an interest in the earnings, avails, and

proceeds accruing after the beneficiary's death. We therefore affirm the trial court's determination that at the time of his death Robert Kalseim had a 1/7th interest in the future earnings, avails, and proceeds of the three trusts.

AFFIRMED.