IN THE COURT OF APPEALS OF IOWA

No. 7-090 / 96-615

CLERK SUPREME COURT

IN THE MATTER OF THE TRUST OF KENNETH NOE, Deceased,

RICHARD L. NOE,
Appellant.

Appeal from the Iowa District Court for Benton County, Larry J. Conmey, Judge.

Richard Noe appeals a district court ruling holding that there was not a valid lease permitting him to farm property belonging to the Kenneth Noe trust. **REVERSED.**

Morris L. Eckhart of Milroy & Eckhart, Vinton, for appellant.

Ross Hauser of the Shea Law Offices, Cedar Rapids, for appellee trustee Mercantile Bank.

John M. Titler, Cedar Rapids, for appellees Avis Uthoff and Alma McCormick.

Jared O. Bauch of the Bauch Law Office, Traer, for appellee Keith Noe.

John C. Monroe, Cedar Rapids, for appellee John Harder.

Heard by Sackett, P.J., and Cady and Vogel, JJ.

VOGEL, J.

Richard Noe (Richard) appeals a district court ruling that there was not a valid lease permitting him to farm property in the Kenneth Noe trust. Richard argues the trustee did not have the authority to continue the trust in order to sell or lease the real estate in question

Scope of review. Our scope of review in this equity case is de novo. Iowa R. App. P. 4. We give weight to the fact findings of the trial court, especially when we consider the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7). *In re Trust of Killian*, 459 N.W.2d 497, 499 (Iowa 1990).

Background facts. Kenneth died on May 8, 1989. The residuary clause of his will created a trust as follows:

> I hereby give, devise and bequeath all of the rest, residue and remainder of my property of every kind and nature unto the State Bank of Vinton,[1] Vinton, Iowa, as Trustee, to be administered by it, and the principal thereof and the income therefrom held and distributed as follows:
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> A. My Trustee shall pay to my five children, to-wit: Avis Uthoff, Keith Noe, Alma McCormick, Connie Sanvick and Donovan Noe, in equal shares, in annual or semi-annual installments as the Trustee deems advisable, all of the net income from the trust herein established, known as the KENNETH NOE TRUST. This trust shall be continued for the period of five years from and after my death.
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> B. Five years following my death, this trust shall terminate, and the Trustee shall distribute all the income and principal of the trust unto my five children, in equal shares, share and share alike.

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[1] The State Bank of Vinton later became Hawkeye Bank, n/k/a Mercantile Bank.

For sixteen years Richard Noe had farmed property owned by Kenneth. In 1994 and 1995, Richard entered into an oral lease with Avis Uthoff and Keith Noe, and notified the trustee, Hawkeye Bank n/k/a Mercantile Bank ("the Bank") through its vice president, Rick Seger. In both years Richard paid the rent, agreed upon by Richard, Avis, and Keith, in the amount of $22,000. In the fall of 1995, the Bank served a notice of termination of farm tenancy on Richard, apparently in anticipation of the sale of the property.

In the spring of 1996, Richard once again negotiated an oral lease of the farm property with Avis and Keith. They agreed Richard could farm the property in 1996 and that the rent would remain at $22,000. Richard notified the Bank through Seger. Neither Seger nor the Bank responded to this notice nor was Richard informed that the Bank considered the beneficiaries to have no authority to negotiate the new lease. After a second contact to Seger elicited no response, Richard purchased fertilizer and entered into contracts to sell some of the corn to be grown on the property. On March 11, 1996, Richard filed his application for the court's approval of the farm lease on the same terms as the prior two years. The district court denied his application.

Termination of the trust. We are guided by well established principles in interpreting wills and testamentary trusts: (1) the intent of the testator is the polestar and must prevail; (2) this intent, however, must be derived from (a) all of the language contained within the four corners of the will, (b) the scheme of distribution,

(c) the surrounding circumstances at the time of the will's execution, and (d) the existing facts; (3) we resort to technical rules or cannons of construction only when the will is ambiguous or conflicting or the testator's intent is uncertain. *In re Estate of Rogers*, 473 N.W.2d 36, 39 (Iowa 1991). The question in determining intent is not what the testator meant to say, but rather what is the meaning of what the testator did say. *Id.* Further, we are bound by the unambiguous or plain language of a will. *In re Estate of Anderson*, 359 N.W.2d 479, 481 (Iowa 1984).

We find the language of Kenneth's will and testamentary trust unambiguous. Article III, provision "A" of Kenneth's will directs, "This trust shall be continued for the period of five years from and after my death." Provision "B" states, "Five years following my death, this trust *shall* terminate, and the trustee *shall* distribute all the income and principal of the trust unto my five children . . . ." (Emphasis added.) We find this plain language significant in our analysis. The language of the will mandated the termination and distribution at the expiration of five years from testator's death. Thus, the trust terminated on May 8, 1994. The Bank disregarded these clear mandates and, as per the 1994 and 1995 Annual Reports, there was absolutely no indication the Bank attempted to wind up the affairs of the trust in preparation for distribution. The only indication was the notice of termination of farm tenancy, albeit long after the trust terminated.

Moreover, Article IV vests broad authority in the trustee to do what is reasonable and necessary for the "proper administration and distribution" of the trust:

> My Trustee shall have the power and authority to do any act or thing reasonably necessary or advisable for the *proper administration and distribution* of each trust created by this Will, and shall have all powers, duties and responsibilities provided expressly for trustees by the Iowa Probate Code.

(Emphasis added.) We do not find holding the trust open beyond the time mandated in the will to be "proper administration" of the trust.

The Bank argues it was authorized to keep the trust open beyond the five years to sell the farm to carry out Kenneth Noe's intent. There is simply no support for that in the will or in the record. According to the terms of the will, the trustee had several enumerated powers, one of which was the authority to sell. The will did not direct the trustee to sell the assets of the trust prior to distribution. This was a task the Bank took upon itself, after the five-year term of the trust had passed. Under the will, Article IV, provision A, the trustee had the power:

> *[t]o sell,* exchange, borrow, mortgage, lease or otherwise dispose of *any asset for terms within or extending beyond the terms of the trust.*"

(Emphasis added.) We interpret this provision to permit a transaction to begin during the term of the trust but not be completed until after the termination of the trust, as, for example, an installment sale. The focus, then, is on the transaction which may extend beyond the terms of the trust, not the trustee's continued authority. The trustee's authority ceased after the five-year time period mandated in the will. The trustee could continue beyond that point, only to carry out the directive under Article III B., "and the trustee shall distribute all the income and principal . . . ." The Bank

is not authorized to make the distribution a protracted event, in this case, two years after the trust's natural termination. Rather, it was incumbent on the Bank at the close of the five-year period to file the final report, give notice of the trustees application for discharge, obtain an order approving the final report, and make the final distribution.

An analogous situation was presented in *In re Jurgens' Estate*, 239 Iowa 490, 31 N.W.2d 633 (1948). There, the primary purpose of the trust was to support the widow. When the widow died, the need for the trust terminated. The children were vested with the legal title to the land and the trustee had no authority to continue serving as trustee to sell the real estate. However, the trustee made an application for approval to sell part of the real estate. The court held the contract of sale to be invalid as the trustee's authority had terminated before the attempted sale.

The Bank cites *Schaal v. Schaal*, 203 Iowa 667, 213 N.W. 207 (1927) to bolster its argument it was necessary to continue the trust beyond the five-year term. In *Schaal*, a testamentary trust was established for the benefit of the testator's children. The trust was to run for ten years and then, "as soon as convenient and having in view the best interest of the estate, sell and convey any and all of the property then in their possession as such trustees or executors and distribute the proceeds." *Id.* There was a clear directive to sell after the term of the trust and with some discretion given to the trustees.

In the present case, Kenneth Noe clearly directed the trust terminate at the end of five years, and then distribute the principal and income. There was no directive the real estate be sold prior to distribution. For the bank to hold the trust open beyond the express term, with no timely steps taken to distribute is contrary to the plain language of the will. Accordingly, the Bank had no authority to continue to act as trustee. The termination of the farm tenancy was a nullity. In the spring of 1996, only the beneficiaries had the authority to negotiate a farm lease or enter into the sale of the property, although a final order approving the termination of the trust and distribution of assets was not completed.

We find as between Richard L. Noe, Avis Uthoff, and Keith Noe, there was a valid lease to farm the Kenneth Noe land. We make no finding as to how this decision affects the rights of the other beneficiaries under the will. The decision of the district court is reversed.

REVERSED.