FILED
MAY 25 1982
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MARILYN FEIEREISEN BRUBAKER; ARLENE FEIEREISEN KACHER, and HENRY LEE FEIEREISEN,	)	Filed May 25, 1982
Petitioners-Appellants,	)	305
vs.	)	2-108 2-66949
ROSE MARIE BARLOW, Fiduciary of the Estate of William E. Barlow,	)	
Respondent-Appellee.	)	

Appeal from Linn District Court, Clinton E. Shaeffer, Judge.

The petitioners appeal from the trial court's grant of respondent's motion for summary judgment in an action seeking recovery of funds from a passbook account and three savings certificates which the decedent assigned to them. REVERSED AND REMANDED.

Denver D. Dillard and Mary E. Clemen of Novak Law Firm, Cedar Rapids, for petitioners-appellants.

William L. Meardon of Meardon, Sueppel, Downer & Hayes, Iowa City, for respondent-appellee.

Considered by Oxberger, C.J., and Carter and Johnson, JJ.

The petitioners appeal from the trial court's grant of respondent's motion for summary judgment in an action seeking recovery of funds from a passbook account and three savings certificates which the decedent assigned to them. We reverse and remand.

The petitioners-appellants in this case are the three stepchildren of the dededent, William Barlow. Their mother Florence brought considerable property into her second marriage to William. The property was put into joint tenancy, Florence died, and William became sole owner. On January 27, 1978, William executed several documents entitled "Assignment." The documents stated that William "sells, assigns, and transfers a life estate and interest, with full powers of withdrawal and redemption," unto himself, remainder equally to the children, in a savings account and savings certificates with a total worth of $30,000. William's former attorney, Mr. Crissman, who had drawn up the assignments, testified that it was his understanding that William intended to give the funds to his three stepchildren. The attorney delivered the executed assignments to the children.

Shortly thereafter, Williams' brother and sister-in-law told William that he had given away his entire interest in the accounts. William became angry and attempted to retrieve the assignments from Mr. Crissman and revoke them. Mr. Crissman told him he couldn't, since the assignments had been delivered to the remaindermen. There was some testimony that William told Mr. Crissman he had misunderstood William's intent when he drew up the assignments.

In February 1978, William withdrew all the assigned money from the bank and purchased two certificates of deposit at another bank. Soon thereafter, title was changed to a joint tenancy with decedent's brother Harold.

William died July 20, 1978. The petitioners brought this action in probate to recover the funds assigned to them. Evidence was presented by deposition and

exhibit. The trial court, in ruling on motions for summary judgment by both parties, found that each assignment was revocable and that William had revoked each assignment by withdrawing the funds. The trial court granted the executor's motion and denied the petitioner's motion.

On appeal, the petitioners-appellants assert that (1) the trial court should have found that the assignments were irrevocable gifts; and (2) the trial court erred by finding that William had revoked the assignment, because the transfer of funds from one account to another was a mere change in situs and form.

"In reviewing the trial court's grant of summary judgment, we view the facts in the entire record in the light most favorable to the party opposing the motion. Summary judgment is proper only where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c)." Barnhill v.Davis, 300 N.W.2d 104 (Iowa 1981).

The facts in this case are not in dispute. However, we believe that the petitioners, not the executor, were entitled to summary judgment.

Proof of an inter vivos gift requires a showing that the donor intended to make the gift, delivery of the gift either actually or symbolically, a definite article which is given and acceptance by the donee. Varvaris v. Varvaris, 255 Iowa 800, 124 N.W.2d 163 (1963); Woodward v. Woodward, 222 Iowa 145, 268 N.W. 540 (1936).

The evidence in this case shows that when he executed the assignments, William intended to make an irrevocable gift of the accounts to his three stepchildren. The fact that he retained a life interest did not defeat the gift. In re Gordon's Will, 238 Iowa 580, 27 N.W.2d 900, 901 (1947); Mollison v. Rittgers, 140 Iowa 365, 370, 118 N.W. 512 (1908). The fact that he retained "full powers of withdrawal and redemption" does not mean that he retained a power to revoke the gift. Redemption means a repurchase, a buying back, or a paying of a debt.

Black's Law Dictionary (Rev. 4th Ed. 1968). In this case, it appears William retained the power to redeem the certificates and withdraw the money from the passbook account. We view this circumstance as being only a power to change the form of the res. Nothing in the transaction suggests that William retained any power to revoke the vested interest of the remaindermen to enjoy the res upon his death.

The evidence also shows that after he executed the assignments, William either changed his mind and did not want to make the gifts, or thought he had given away more than he had, due to the incorrect statements made by his brother. Even if William changed his mind and decided he did not want to make the gifts, he could not do so. After delivery, a gift is irrevocable except by mutual agreement of the parties. Frederick v. Shorman, 259 Iowa 1050, 147 N.W.2d 478, 483 (1966). In this case, the assignments had already been delivered to the donees. The language of the assignments reserved a life interest in William but made an irrevocable gift of the remainder to the petitioners.

The trial court ruled that William revoked the gifts by withdrawing the money and purchasing certificates of deposit in another bank in joint tenancy with his brother. We disagree. The assignments gave William a life estate "with full powers of withdrawal and redemption," remainder to the children. The remainder interest of the children could not be defeated by the change in form of the gift. Olson v. Weber, 194 Iowa 512, 187 N.W. 465 (1922). Therefore, the withdrawal of money did not revoke the gift. The ruling on the motions for summary judgment is reversed and the case is remanded to the trial court with instructions to enter summary judgment in favor of the petitioners.

REVERSED AND REMANDED.