IN THE COURT OF APPEALS OF IOWA

No. 3-156 / 12-1715
Filed March 13, 2013

JOHN KROHN,
Plaintiff-Appellant,

vs.

MARY FRAZEE,
Defendant-Appellee.

Appeal from the Iowa District Court for Jasper County, Randy V. Hefner, Judge.

John Krohn appeals from the district court's ruling in his declaratory judgment action finding the language in Florence Krohn's will was unambiguous. **AFFIRMED.**

Zachary C. Preibe of Jeff Carter Law Offices, P.C., Des Moines, for appellant.

Phil Watson and Christina I. Thompson of Phil Watson, P.C., Des Moines, for appellee.

Considered by Vogel, P.J., and Potterfield and Doyle, JJ.

DOYLE, J.

John Krohn appeals from the district court's ruling in his declaratory judgment action finding the language in Florence Krohn's will was unambiguous. We affirm.

I. Scope and Standards of Review.

This case was brought in equity, and, as John points out, we generally review equity cases de novo. Iowa R. App. P. 6.907. However, when an equity case is resolved on summary judgment, our review is for the correction of errors at law. *Freedom Fin. Bank v. Estate of Boesen*, 805 N.W.2d 802, 806 (Iowa 2011). Because this case was resolved on summary judgment, our review here is for the correction of errors at law, not de novo. *See id.*

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits show there is no genuine issue of material fact, and the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 1.981(3); *Mueller v. Wellmark, Inc.*, 818 N.W 2d 244, 253 (Iowa 2012). We review the record in the light most favorable to the party opposing the motion. *Mueller*, 818 N.W.2d at 253.

II. Background Facts and Proceedings.

The following facts are undisputed. Florence Krohn is the mother of plaintiff John Krohn and defendant Mary Frazee. At some point in 2001, Florence sold John 160 acres of land in Jasper County for one dollar.

On December 26, 2001, Florence executed her last will and testament. At that time, Florence owned a remaining eighty acres of property in Jasper County. Florence's will states, in relevant parts:

> **ARTICLE III**
>
> I hereby bequeath to my daughter, [Mary], the following described real property [consisting of eighty acres]:
>
> > The North Fractional One-half of the Southwest Fractional One-quarter of Section 18, Township 79, Range 20, West of the 5th P.M., Jasper County, Iowa
>
> This is to acknowledge that I have made bequests for my son, [John], during my life and have specifically, therefore, not provided a bequest to him in this, my Last Will and Testament.
>
> **ARTICLE IV**
>
> I hereby give, devise, and bequeath the rest, residue, and remainder of my estate, whether real, personal or mixed and whatsoever situated to my daughter, [Mary]. However, any agricultural real estate which is included in this bequest shall be subject to an option to my son, [John], to purchase such agricultural real estate at the sum of $1200 per acre, provided, however, that my son shall complete said purchase within one year from the date of my death. The price on this option shall be net of all closing costs.

Florence passed away on July 6, 2011. Shortly thereafter, a petition was filed for the appointment of administration and the appointment of an executor. On August 2, 2011, the district court entered its order admitting Florence's will and appointing John as the executor.

On January 10, 2012, John filed his petition for declaratory judgment seeking an order from the district court clarifying the respective rights of the parties under the terms of Florence's will. Mary answered and later filed a summary judgment motion seeking dismissal of John's declaratory judgment action, arguing the will was clear and unambiguous. John asserted the will contained an ambiguity because it made a "separate and inconsistent disposition of the same property." More specifically, John claimed that because the language in Article IV of the will gave him the option to purchase Florence's agricultural property, but the only property Florence owned was the property

named in Article III given to Mary in fee simple, Florence's will inconsistently disposed of the same property causing an ambiguity. He further argued extrinsic evidence should be considered by the district court to resolve the ambiguity.

On August 30, 2012, the district court entered its ruling granting Mary's motion for summary judgment. The court found Florence's will clearly and unambiguously stated her intention to devise her eighty-acre tract to Mary, and the court found the language in Article III noting Florence had already gifted to John other property evidenced Florence had specifically elected not to devise or bequeath any portion of this eighty acres to him. The court determined the extrinsic evidence John sought to introduce would only create an ambiguity, and the court concluded it would not rewrite Florence's will.

John now appeals, contending the district court erred in finding Florence's will was clear and unambiguous as to the disposition of the eighty acres.

III. Discussion.

In the interpretation and construction of wills, we are guided by long-settled principles:

> (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 canons of construction only when the will is ambiguous or conflicting or the testator's intent is uncertain. In determining intent, the question is not what the testator meant to say, but rather what is the meaning of what the testator did say.

In re Estate of Roethler, 801 N.W.2d 833, 842-43 (Iowa 2011). Courts must consider the instrument "as a whole, giving each part meaning and effect." *Id.*

If it is determined there is an ambiguity in the instrument, extrinsic evidence may be considered. *See id.* However, "extrinsic evidence cannot vary, contradict, or add to the will's terms." *Id.* As our supreme court has explained:

> Inappropriate suggestions are often made under the guise of a claimed ambiguity. We have disapproved or rejected a number of them. For example, a court may not, under the guise of ambiguity, add to the provisions of a will. A court may not, under the guise of ambiguity, make or remake the will of a testator. A court may not, under the guise of ambiguity, inquire into the wisdom of the testator's distribution. Finally, a court may not, under the guise of ambiguity, implement broad principles of equity and justice.
>
> We make no apology for these rules; they are rooted in the statute of wills and proceed from clear public necessity. Obviously, after a will is admitted to probate, a testator cannot testify. Intent should therefore be gleaned from the words of the will. Thus, we have said: "Where the language is clear, both in expression and meaning, rules of construction are inapplicable."

In re Estate of Kiel, 357 N.W.2d 628, 630-31 (Iowa 1984) (internal citations omitted). Consequently, if the language of a will is clear and unambiguous, we cannot, under the guise of construction, rewrite it to do for the testator that which she failed to do on her own behalf. *See id.*; *see also In re Estate of Fairley*, 159 N.W.2d 286, 291 (Iowa 1968).

After applying these principles, we agree with the district court that Florence's will is unambiguous and not subject to interpretation through extrinsic evidence. The will clearly and unambiguously bequeaths Florence's eighty-acre tract to Mary, and the instrument clearly and unambiguously explains why that property was not bequeathed to John—Florence had already bequeathed other property to him. Florence's intent is clear in the instrument, and it is clear that if she had intended John have the right to purchase this specific property, she would have included that language in Article III.

Additionally, we agree with Mary that Article IV is a residuary devise clause. A residuary devise clause in a will generally devises "of the remainder of the testator's real property left after other specific devises are taken." *See* Black's Law Dictionary 463 (7th ed.1999) (defining "residuary devise"). Article IV clearly and unambiguously devises to John an option to purchase any *residual* agricultural real estate acquired by Florence that has not been specifically devised in her will. It does not render Article III's bequeath of Florence's eighty acres of property to Mary ambiguous.

Because we agree with the district court that Florence's will is unambiguous, we conclude it did not err in denying John's request to consider extrinsic evidence. Accordingly, we affirm the district court's ruling.

AFFIRMED.