IN THE COURT OF APPEALS OF IOWA

No. 6-680 / 05-1593
Filed October 11, 2006

IN THE MATTER OF THE ESTATE OF
STEVEN L. SINNER, Deceased,

PAIGE SINNER,
Appellant.

Appeal from the Iowa District Court for Adair County, Darrell J. Goodhue, Judge.

Decedent's daughter appeals from the district court's ruling that decedent was a vested remainderman of his grandparents' estates. **AFFIRMED.**

David Jungman of David L. Jungman, P.C., Greenfield, for appellant.

Matthew Haindfield of Bradshaw, Fowler, Proctor & Fairgrave, P.C., Des Moines, for appellee.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

SACKETT, C.J.

The issue in this appeal from an action construing a will is whether the district court correctly concluded that Steven Sinner, now deceased, was devised in the wills of his grandparents L.E. and Marie Sinner a vested remainder in an undivided one half interest in real estate. The guardian ad litem for Stephen's only heir at law, his daughter Paige Sinner, contends the interest was only a contingent remainder interest and the district court erred in holding otherwise. Steven's creditors contend Stephen's interest was vested and the district court should be affirmed. We affirm.

SCOPE OF REVIEW

A declaratory judgment action to construe a will is tried in equity. Iowa Code § 633.33 (2003); *In re Will of Uchtorff*, 693 N.W.2d 790, 793 (Iowa 2005). Our review is de novo. Iowa R. App. P. 6.4; *see In re Estate of Hurt*, 681 N.W.2d 591, 593 (Iowa 2004).

FACTS

The facts basically are not in dispute. Steven died in August of 2004. His grandfather and grandmother died testate; his grandfather in January of 1974, and his grandfather in September of 1984. Together, L.E. and Marie owned about four hundred acres of farmland and with reference to that property their wills each contained the following paragraph:

> I give, devise and bequeath the life use, possession and income from the following described real estate to my beloved [spouse] and at [my spouse's] death I give, devise and bequeath the life use, possession and income therefrom to my son Daniel L. Sinner. After the death of said [spouse] and after the death of Daniel L. Sinner, I give, devise and bequeath the remainder in said real estate to my

> grandchildren, Sandra Sinner and Steven Sinner and any other child or children born to my son, Daniel L. Sinner, prior to the year, 1983, share and share alike to be their absolute property.

Daniel L. Sinner, Steven's father and the administrator of Stephen's estate, is alive and continues to enjoy a life estate in the property. Sandra Sinner, Steven's sister, also is alive. She received notification of this litigation by mail but did not appear.

The district court found that according to the grandparents' wills, title to the land subject to Daniel's life estate vested in Steven at the time of the death of the grandparents. The position taken by the appellant is that Steven's interest would not vest until the time of the death of Stephen's father; consequently, it had not yet vested in Stephen at the time of his death and was not subject to claims of Stephen's creditors.

VESTED OR CONTINGENT

The guardian ad litem argues (1) the fact that the grandchildren's bequest included the words "share and share alike" without further explanation connoted a per capita distribution to a class of beneficiaries and that a per capita bequest only devises property to those members of the class who are living at the date the bequest to the class vests, (2) that the language of the will indicated it was the testators' intention that the bequests to Steven and Sandra were not given in the present sense but were only given to them "after" Daniel died, and (3) the grandparents wished the land to remain in the family.

The district court rejected the guardian ad litem's arguments, reasoning that such an interpretation where there are designated beneficiaries would be

contrary to the antilapse statute and that the term "share and share alike" refers to the shares the designated individual beneficiaries are to take as among or between them. The court noted that when the year 1983 passed and Daniel had had no other children, the remaindermen were ascertainable. The court found the share vested and there was nothing in the will shielding the interest of the designated beneficiaries from their creditors.

In *Uchtorff*, 693 N.W.2d at 798, the court said, "[W]e held the mere grant of a life estate to one does not render a beneficiary interest contingent on the life tenant's survival." In *Clarken v Brown*, 258 Iowa 18, 21, 137 N.W.2d 376, 378 (1965) as here, the court was asked to determine whether a will established a vested or contingent remainder. In *Clarken* the question was whether decedent T.W. Clarken created a contingent or vested remainder when T.W.'s will gave his brother G.V. Clarken a life estate in farmland and subsequently provided as to the same farmland that:

> "At the death of my brother, G.V. Clarken, I devise and bequeath said above described farm and land to my lawful heirs, as fixed by the Statutes of the State of Iowa.

Clarken, 258 Iowa at 20, 137 N.W.2d at 377. The supreme court agreed with the district court that the remainder vested at the time of T.W. Clarken's death. *Id*. 258 Iowa at 24, 137 N.W.2d at 379. The court reasoned that death of the life tenant merely fixed the time for enjoyment. *Id.* The court further noted there was nothing in the language of the will to indicate to the contrary and no substitutionary or alternative devise of the share of any remainderman who did not survive the termination of the life tenant. *See id.* at 24, 137 N.W.2d

at 379-80. We find no reason to depart from this reasoning. The plain and unambiguous language of the grandparents' wills indicates that Stephen's remainder interest in the land vested at the time of his grandparents' deaths.

AFFIRMED.