

**IN THE COURT OF APPEALS OF IOWA**

No. 1-829 / 11-0656  
Filed December 21, 2011

**IN THE MATTER OF THE ESTATE OF  
MINDA K. BABINATE, Deceased,**

**GALE A. GOODVIN,**  
Petitioner-Appellee,

**vs.**

**PAUL D. DE BEY,**  
Executor-Appellant.

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Appeal from the Iowa District Court for Woodbury County, Edward A. Jacobson, Judge.

Executor appeals the district court's order distributing estate assets.

**AFFIRMED.**

Daniel D. Dykstra and Joel D. Vos of Heidman Law Firm, Sioux City, for appellant.

Ray H. Edgington and Colby M. Lessmann of Vriezelaar, Tigges, Edgington, Bottaro, Boden & Ross, L.L.P., Sioux City, for appellee.

Considered by Sackett, C.J., and Vogel and Eisenhauer, JJ.

**EISENHAUER, J.**

Minda K. Babinat and her husband Paul executed reciprocal wills in October 1996. Paul predeceased Minda, who died on November 12, 2009. Gail Goodvin is Paul's daughter and Minda's step-daughter. Earl and Paul De Bey are Minda's brothers/heirs at law. Minda's will was admitted into probate. After providing for the payment of her debts, it provides:

**ARTICLE II**

All the rest, residue and remainder of my property, personal, real and mixed of every kind and nature, I give, devise and bequeath to my husband, PAUL JAMES BABINATE, to have and to hold as his own.

I grant unto my husband the power to sell and convey any and all of the real estate that I may die seized of, and my said husband is to have the use of and the income of all my property subject to administration and burial costs, and during his possession of said property, I hereby direct that he pay all the taxes on said real estate, the upkeep of said real estate including insurance and all expenses in connection with the operation of the real estate.

After the death of my said husband, or in the event we die at the same time, I devise and bequeath the remainder of my estate, consisting of all property, both personal and real of every kind and nature to GALE A. GOODVIN.

On July 2, 2010, the estate's executor, brother Paul De Bey, filed an application to determine the distribution of the assets. The executor argued the assets must be distributed to Minda's intestate heirs (her siblings) instead of to Goodvin. The executor's application states:

4. Iowa Code section 633.273 [(2009)] is an antilapse statute which generally provides that a bequest to a devisee who predeceases the testator does not lapse if the devisee has surviving issue. However, section 633.274 creates an exception to the antilapse statute and specifically provides that a "devise to [a] spouse of the testator, where the spouse does not survive the testator, shall lapse notwithstanding the provisions of section 633.273, unless from the terms of the will, the intent is clear and explicit to the contrary." [Iowa Code § 633.274].

5. The executor thus believes the bequest to [Paul] lapsed because he predeceased the testator. Article II does not contain any clear and explicit contrary intent but only addresses what happens after [Paul's] life estate or in the event of simultaneous death. There is no mention as to what occurs if [Paul] predeceases Minda K. Babinete.

In contrast, Goodvin requested the district court order the estate assets distributed to her because the will's language clearly demonstrates it was not Minda's intent to require her spouse to survive her before the bequest to Goodvin became effective. Alternatively, Goodvin argued the will shows a clear expression of a general plan for the estate applicable to the disposition of any lapsed bequest.

In March 2011, after hearing, the district court ruled:

After reviewing Babinete's will, the Court finds the will is unambiguous and clearly and explicitly demonstrates that Babinete's bequest to her husband should not lapse. Although the will does not use the word "predecease" it does provide that "[a]fter the death of my said husband, or in the event we die at the same time, I devise and bequeath the remainder of my estate consisting of all property both personal and real of every kind and nature, to GALE A. GOODVIN." This will clearly demonstrates that the bequest is not to lapse, but should be distributed to Gale Goodvin. Babinete's husband has died, therefore, the will passes to Goodvin through this clause regardless of whether Babinete's husband survived her. Since the will clearly and explicitly provides for the distribution of the property after the death of Babinete's husband, the bequest does not lapse.

Alternatively, the district court ruled *if* the will did not clearly and explicitly provide for property distribution "in the event Babinete's husband predeceased her, the estate still would pass to Goodvin through a gift by implication." See *In re Estate of Fawcett*, 370 N.W.2d 837, 838 (Iowa Ct. App. 1985) (finding "will clearly reveals a general plan for disposition of decedent's property"). The district court explained:

The will provides for a general scheme or plan. The substance of the will shows the intent of Babinat to leave the property to Goodvin. The only two named beneficiaries in the will are Babinat's husband and Goodvin. In the event that Babinat and her husband died simultaneous[ly] or in the same catastrophe, the property was to be distributed to Goodvin. Similar to *Fawcett*, the will provides a general plan for disposition at the time of the decedent and her husband's death. Therefore, the property would not pass intestate. Thus the residuary of the estate should pass to Goodvin.

The executor appeals and we review this equitable proceeding de novo.

*In re Estate of Serovy*, 711 N.W.2d 290, 293 (Iowa 2006).

"The focus of our analysis is the intent of the testator." *In re Estate of Wagner*, 507 N.W.2d 711, 714 (Iowa Ct. App. 1993). "The rule is well established that a testator's intention must be gathered from the language of the instrument where such language is reasonably clear and unambiguous." *In re Estate of Lamp*, 172 N.W.2d 254, 257 (Iowa 1969). The will "must be read and considered as a whole" and "construed, if possible, to avoid partial intestacy." *Id.* at 257. "The purpose of a residuary clause is to make a complete disposition of testator's estate, so no part may be left to pass as intestate property." *Wagner*, 507 N.W.2d at 714. "This presumption against intestacy is particularly strong where the subject of the gift is a residuary estate." *Id.*

After our de novo review, we agree with the district court. The will does not require the survivorship of Minda's husband as a condition of the gift to Goodvin and encompasses the situation in which Paul predeceases testator Minda. Contrary to the argument of the executor, Minda's will bequeathed her estate to Goodvin "after the death of" Paul without language expressing a limitation on the time at which Paul has died. We conclude Minda, as testator,

showed a “clear and explicit” intent regarding the disposition of her estate at such time as her spouse was not living. Accordingly, the estate assets do not pass intestate.

Alternatively, we agree with the district court’s gift-by-implication analysis. Here, as in *Russell v. Johnston*, 327 N.W.2d 226, 230 (Iowa 1982), the “[d]ecedent’s will clearly denotes a preference for [her spouse] and then for [her named beneficiary], with no provision for further contingent beneficiaries and no reference to [her] heirs at law.” The *Russell* court instructed:

When a testator’s will clearly reveals a general plan or intention as to the disposition of his property, and a situation arises that is not within the express language of the will, such general plan may be regarded as existing but incompletely expressed, and the failure to provide for the situation inadvertent rather than intentional, and a gift may be implied for the purpose of completing the general plan.

*Id.* (quoting *Davis v. Davis*, 258 N.E.2d 277, 282 (Ohio Com. Pl. 1970)).

Under the facts of this specific case, we conclude Minda intended to dispose of her property to Goodvin if Paul was unable to take under the will. Therefore, under a gift by implication, the bequest to Goodvin is valid. See *id.* (holding “we rely primarily on the language contained in the will; however, the substance and intent, rather than the words, are to control”). Accordingly, we affirm the district court.

**AFFIRMED.**