IN THE COURT OF APPEALS OF IOWA

No. 6-1034 / 06-0640
Filed March 14, 2007

IN THE MATTER OF THE ESTATE OF IRENE RANSCHAU, Deceased

ROGER P. RANSCHAU and JUDITH ANN MCLAUGHLIN,
Plaintiffs-Appellants,

vs.

CHARLES T. RANSCHAU, RUTHANN RANSCHAU and DAVID RANSCHAU,
Defendants-Appellees.

Appeal from the Iowa District Court for Sioux County, Jeffrey A. Neary, Judge.

Plaintiffs appeal a district court order approving a final report and denying their request for an accounting in a probate estate. **AFFIRMED.**

Michael J. Houchins of Zenor, Houchins & Borth, Spencer, for appellants.

Lloyd W. Bierma of Oostra, Bierma & Van Engen, P.L.C., Sioux Center, for appellees.

Donald Klein of Klein & Klein, Rock Valley, for the estate.

Considered by Vogel, P.J., and Baker, J., and Brown, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

BROWN, S.J.

I. Background Facts & Proceedings

This case involves the estate of Irene Ranschau, who died on December 20, 2002. Irene's husband, Theodore Ranschau, died in 1980. Theodore and Irene had five children—Charles Ranschau, Judith McLaughlin, Roger Ranschau, Susan Bryce, and David Ranschau.

For many years, Theodore, Charles, and Roger had a farming partnership. Roger left the farming partnership in 1980 and began farming on his own. Theodore and Charles continued in the partnership until Theodore died later in 1980. Irene then became Charles's partner in the farming business under the name C & I Farm Partnership. David, who was a banker, began doing the business's books. Beginning in 1998, the farm books were handled by an accounting firm. David still prepared a year-end accounting for the partnership.

Irene's five children inherited equally under her will. David was appointed executor of her estate. Judith and Roger (plaintiffs) objected to the final report submitted by David. They claimed not all of Irene's assets had been included in the estate. In particular, they claimed bank accounts and a combine should have been considered assets owned by Irene at the time of her death. Plaintiffs also asked for an accounting, asserting Irene's interest in the partnership had not been properly calculated.

The district court denied plaintiffs' requests. The court found the bank accounts had belonged to the farming partnership, and had properly been divided with Charles at the time of Irene's death. The court determined the

combine had been a gift to Charles, and was not part of Irene's estate. The court found Irene was satisfied with the year-end accounting for the partnership performed by David, and plaintiffs could not now assert Irene was entitled to more from the partnership. The court concluded plaintiffs were not entitled to an accounting of the farm partnership. Plaintiffs appeal.

II. Standard of Review

This case was tried in equity. In equity cases our review is de novo. Iowa R. App. P. 6.4. We give weight to the fact findings of the district court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 6.14(6)(*g*).

III. Merits

A. Plaintiffs claim two bank accounts were owned solely by Irene, and should have been included as assets of her estate. One account was a money market account at State Bank of Hudson, with a balance of $117,470 at the time of Irene's death. The other account was a checking account at State Bank of Hudson, with a balance of $257,816 on the date of death. David, as the executor, determined these were partnership accounts and allocated one-half of each account to Charles.

Bank records showed the accounts were opened in Irene's name as sole proprietorships for profit. Charles and David were acceptable signatories on the account. Paul Hansen, a vice-president at the Bank, testified the accounts were used as joint farm accounts. He stated he had heard the account referred to as a partnership account. The farming partnership had no other bank accounts.

In considering the ownership of bank accounts, we look to contract law. *Petersen v. Carstensen*, 249 N.W.2d 622, 624 (Iowa 1977). "A bank deposit creates a valid contract between the bank and the depositor by which the bank is obligated to repay the funds subject to its rules and applicable statutes." *Id.* Here, the accounts were created as sole proprietorships by Irene, and did not contain any language creating a joint account. *See In re Estate of Martin*, 261 Iowa 630, 638, 155 N.W.2d 401, 405 (1968) (noting a contract of deposit need not be in any particular form to create a joint account).

Charles and David, however, were acceptable signatories on the account. This situation makes the ownership of the account sufficiently equivocal that we may consider extrinsic evidence concerning the intent of the parties. *See In re Estate of Kokjohn*, 531 N.W.2d 99, 101-02 (Iowa 1995). "Extrinsic evidence is admissible as an aid to ascertaining the intention of the parties to a contract when it sheds light on the situation of the parties, antecedent negotiations, and the objects they were striving to attain." *Petersen*, 249 N.W.2d at 625. The extrinsic evidence offered in this case clearly shows Irene and Charles intended the accounts to be for the benefit of the farming partnership, and not solely for the benefit of Irene.

In determining whether property belongs to a partnership, strong consideration is given to the source of the funds from which the property was acquired. *In re Estate of Allen*, 239 N.W.2d 163, 166 (Iowa 1976). "It has been held in numerous cases that where property is purchased through partnership funds, even though title is taken in the name of one partner alone, the property is

that of the partnership." *Lamp v. Lempfert*, 259 Iowa 902, 908, 146 N.W.2d 241, 245 (1966). Here, the bank accounts were used solely for the partnership, and contained partnership funds.

We determine the district court properly concluded the full amount of the bank accounts would not be included as assets of Irene's estate. The court's allocation of one-half of the accounts to Charles and one-half to Irene's estate was not erroneous.

B. Plaintiffs assert a combine should have been included as an asset of Irene's estate. In 1996, Charles and Irene had problems with the partnership's combine. Charles decided to look for a used combine to replace the old one. Irene insisted that they purchase a new combine. Irene paid $155,750 for a new combine and bean head. The order form shows Charles as the purchaser, and he was the person who used the combine. David testified Irene told him the combine was purchased as a gift to Charles. Charles stated he was unaware of the gift until after Irene had died. Roger and Judith both testified Irene told them she owned the combine.

For a valid inter vivos gift, there must be donative intent, delivery, and acceptance. *Gray v. Roth*, 438 N.W.2d 25, 29 (Iowa Ct. App. 1989). The intent of the donor is the controlling element. *Raim v. Stancel*, 339 N.W.2d 621, 623 (Iowa Ct. App. 1983). A gift is made when a donor has a present intention to make a gift and divests him or herself of all dominion and control over the subject of the gift. *In re Estate of Crabtree*, 550 N.W.2d 168, 170 (Iowa 1996). The

acceptance of a beneficial gift is presumed. *Graham v. Johnston*, 243 Iowa 112, 118, 49 N.W.2d 540, 543 (1951).

The district court concluded the combine and bean head were not assets of the estate, but were gifts by Irene to Charles. The court found that David was the person with the best knowledge as to whether or not the combine had been a gift to Charles. On issues of credibility, we give deference to the findings of the district court. *See* Iowa R. App. P. 6.14(6)(*g*). David did not stand to gain from his testimony, and actually received less from Irene's estate than he would have if the combine had been included in Irene's assets. The gift was beneficial to Charles, and his acceptance would be presumed. *See Graham*, 243 Iowa at 118, 49 N.W.2d at 543. We affirm the district court's conclusion that the combine and bean head were inter vivos gifts from Irene to Charles.

C. Plaintiffs asked for a full and complete accounting of C & I Farm Partnership. They believe Irene did not receive as much as she should have from the partnership. Plaintiffs would like an independent auditor to review the checks of the partnership for the past several years to determine if Irene should receive more from the partnership.

A similar issue was raised in *Lewis v. Lewis*, 166 N.W. 107, 111 (Iowa 1918), where the supreme court stated:

> As surviving partner, Charles Lewis was entitled to the exclusive possession and control of the property, with right to sell and dispose of the same as far at least as was necessary and proper for closing up the partnership business and discharging the claims of partnership creditors. When that was accomplished, if at all, then such surviving partner became liable to be called upon for an accounting by the administrator of the estate of the deceased partner, and to him only. The books will be searched in vain for a

> precedent or for a statement of principle by which an action to compel such an accounting can be maintained by an heir of the deceased partner pending administration of his estate.

Furthermore, even if plaintiffs were in a position to request an accounting, there is no support for their request. The courts are reluctant to later interfere with the accounting of a partnership that was satisfactory to the partners at the time it was made. *See Lamp*, 259 Iowa at 910, 146 N.W.2d at 246. We affirm the district court's determination plaintiffs were not entitled to an accounting.

We affirm the decision of the district court.

AFFIRMED.