IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 19-1214
MUSCATINE COUNTY NO. ESPR011653

IN RE: THE MATTER OF THE ESTATE OF VERA E. CAWIEZELL, DECEASED

Appeal from the Iowa District Court for Muscatine County
The Honorable Thomas Reidel (January 2, 2019 hearing)
and
The Honorable Patrick McElyea (May 13, 2019 hearing),
Judges

APPELLANTS' FINAL REPLY BRIEF

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PROOF OF SERVICE AND CERTIFICATE OF FILING

I certify that on the 5th day of March, 2020, I electronically filed this pleading with the Clerk of Court for the Supreme Court of Iowa. I certify that all participants in the case are registered electronic filing users and that service will be accomplished by this electronic filing.

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APPELLANT'S REPLY BRIEF

ARGUMENT

I. THE TRIAL COURT ERRED IN CONSTRUING AND APPLYING THE LEASE AND OPTION PROVISIONS IN VERA'S WILL

A. Standard of Review. The Coronellis agree that the standard of review on this issue is de novo. (Coronelli Brief Page 15) Appellee Ales has not filed a brief in this appeal.

B. Error Preservation. The Coronellis agree that error has been preserved on this issue. (Coronelli Brief Page 15) Appellee Ales has not filed a brief in this appeal.

C. Reply Argument. The central theme in this appeal is the need to determine what Vera Cawiezell intended when she drafted her will. Ascertaining this intent should be the "polestar" objective of this court. In Re Estate of Eickholt, 455 NW2d 44, 46 (Iowa 1967) In determining what Vera intended the primary focus should be on the language of her will and all provisions of the will should be given effect if possible. Estate of Randall v. McKisbey, 191 NW2d 693, 698 (Iowa 1974).

1. Option vs. Right of First Refusal. The Coronellis contend that the trial court correctly determined that Terry Brooks was only given a right of first refusal regarding Vera's farm. (Coronelli Brief Page 15) The Executors contend that Vera's will gives Terry Brooks an option to buy this farm. (Executor's Brief Page 14) There are important differences between an option and a right of first refusal. An

option gives the option holder a chance to purchase a property regardless of whether the titleholder desires to sell or not. A right of first refusal, however, only allows its holder to match the proposed purchase price if the seller desires to sell and has located a willing buyer. Riley v. City of Hartley, 565 NW2d 344, 346 (Iowa 1997) Additionally a right of first refusal may be an invalid restraint against alienation. An option, however, is only subject to the limits of the rule against perpetuities. Estate of Claussen, 482 NW2d 381, 385 (Iowa 1992). Accordingly an option is much more valuable to its holder than is a right of first refusal. Vera's will by its express terms gives Terry Brooks the "first option" to buy her farm. (Will, Item 3; App. P. 12-13) Unfortunately the trial court eviscerated this bequest when contrary to the language of the will it determined that Terry Brooks only has a right of first refusal. (May 29 Order; App. P. 24) Instead the trial court should have found that Terry Brooks was given an option because an "option" is the specific word Vera used in making this bequest and her stated language should not be ignored. See, Matter of Estate of Kalouse, 282 NW2d 98, 100 (Iowa 1979).

2. The Option Terms. The trial court should also have determined what "favorable terms" under the option bequest means. The Executors respectfully suggest that a twenty-five percent reduction in the market value of the property is fair to both the Coronellis and to Brooks. By contrast, the trial court's requirement that Terry Brooks pay full market or appraised value for the farm certainly benefits the Coronellis but strips any benefit of having an option "at favorable terms" from

Brooks. Vera clearly wanted both Brooks and the Coronellis to benefit from the bequest of her farm and a 25% reduction would fairly carry out this intent. Further, the plain language of Vera's will does not include any time limit on Brooks' option. The trial court therefore erred when it effectively re-wrote Vera's will to include a 90 day time limit on the exercise of Mr. Brooks' rights. Instead Brooks should retain his option for the twenty years following Vera's death. (Will Item 3; App. P. 13)

3. The Lease Provision. The Coronellis ignore the plain language of Vera's will when they contend that Vera only "requested" that Terry Brooks be allowed to lease the property. (Coronellis' Brief Page 20) Instead the will expressly prohibits any "transfer" outside the Coronelli family. (Will Item 3; App. P. 12). Therefore, The Coronellis, if they don't farm Vera's land themselves, cannot lease the farm to any tenant other than Brooks because such a lease would be a "transfer." Dickenson v. Hubbell Realty Co., 567 NW2d 427, 430 (Iowa 1997). By limiting the sale or transfer of her farm Vera gave the Coronellis a clear choice regarding her farm: for the next twenty years the Coronellis or their close family members can either farm the property themselves or let Brooks farm it under his current lease arrangement. Vera also knew that the Coronellis, who are not farmers and live near Chicago, would be unlikely to farm her land themselves and that Terry Brooks would therefore continue to do so. Accordingly prohibiting the lease of her farm to anyone other than Brooks carries out Vera's overall intention to make sure that for a limited period of time following her death that Brooks, her trusted tenant, would benefit from her

farm and would also continue to provide it with the proper husbandry it required. (May 12 Transcript Pages 23-36; App. P. 63-78). Under Estate of Randall, id., this court should give effect to all of the provisions of Vera's will, not just the ones that benefit the Coronellis, because she intended to benefit Brooks as well.

Finally, the Coronellis attempt to avoid the "sale or transfer" limitation in Vera's will by contending that a lease is not a transfer under Iowa law. This argument, however, has been repeatedly rejected by the Iowa Supreme Court. See, Jensen v. Nolte, 10 NW2d 47, 49 (Iowa 1943); Read v. Mincks' Estate, 176 NW2d 192, 193 (Iowa 1970).

II. THE TRIAL COURT ERRED WHEN IT DETERMINED THAT THE TRANSFER LIMITATIONS IN VERA'S WILL WERE INVALID

A. Standard of Review. The Coronellis agree that the standard of review on this issue is de novo. (Coronelli Brief Page 22) Appellee Ales has not filed a brief in this appeal.

B. Error Preservation. The Coronellis agree that error has been preserved on this issue. (Coronelli Brief Page 22) Appellee Ales has not filed a brief in this appeal.

C. Reply Argument. The Coronellis claim that the language of Vera's will gives them fee simple ownership of Vera's farm. (Coronelli Brief Page 23) The Executors contend that the Coronellis were only given a conditional fee (Executors' Brief Page 18). Under older Iowa cases the difference between having fee simple

ownership and having a conditional fee is important because a testator or grantor is free to put transfer restrictions and other limitations in the form of a conditional bequest even though these restrictions may be a restraint on alienation. However a testator cannot convey the full fee to a property and also impose similar restraints on alienation. See, Sagers v. Sagers, 138 NW 911, 912-913 (Iowa 1912).

Vera's will expressly makes the bequest of her farm to the Coronellis "subject to the restriction that they should not sell or transfer the property outside their immediate family within a period of twenty years after my death." (Will, Item 3; App. P. 12-13) Under the Iowa cases this restriction creates a limited fee ownership and not a conveyance of the full fee and is evaluated under a reasonableness standard. See, Trecker v. Langel, 298 NW2d 289, 292 (Iowa 1980).

The farm bequest Vera made under her will is certainly valid under this reasonableness standard. Specifically, the restriction on transfer carries out Vera's desire to benefit Brooks and to protect her cherished farm, the restriction is for a limited 20 year period, the Coronellis remain free to sell the farm to Brooks and their close family, and may even farm it themselves. Also, there is no indication that Vera acted out of spite and the limitation on ownership carries out Vera's intent that the Coronellis' children also benefit from the bequest of the farm. Trecker, id.

Further, the Coronellis rely on McCleary v. Ellis, 6 NW2d 571 (Iowa 1880) for the ancient and largely outdated view that even a single day limitation on alienability is unenforceable. However, the McCleary "single day" test has to a

considerable extent become a matter of form over substance because a grantor under Trecker is free to put reasonable restrictions on alienability by using a conditional fee. Not surprisingly, determining whether a "full fee" or a "conditional fee" was conveyed has therefore become a bountiful source of disputes and litigation as competing grantees and the courts struggle with distinguishing between the two. See, Sagers, id.

Accordingly it was a source of relief when whatever force the "single day" test and the "conditional fee" test retained was eliminated in the context of bequests when this Court adopted §10.2 of Restatement of Property, Third, Wills and Other Donative Transfers. This Restatement provision rejects the McCleary "single day" test, avoids the difficulty in distinguishing between a "full fee" and a "conditional fee" and instead adopts a pro-donor policy which gives paramount importance to honoring the donor's intention. In Re: Coe College for Interpretation of Purported Gift Restrictions, ___NW2d___ (Iowa 2019). The adoption of the Restatement certainly changes Iowa law but it is not correct, as the Coronellis contend, that it is a wholesale overturning of 140 years of Iowa precedent. (Coronelli Brief Page 27) Instead, Restatement §10.2 reflects the approach earlier adopted in Trecker of allowing reasonable restraints against alienation.

The Coronellis attempt to avoid the effect of Restatement §10.2 by claiming that it applies only if the recipient of the gift or bequest is a charity. (Coronelli Brief Page 28) This contention fails, as comments (e), (g), and (h) to §10.2 make clear.

Likewise other courts apply this Restatement provision regardless of whether a charity is involved. See, Ferri v. Powell-Ferri, 72 NE3rd 541, 551 (Mass. 2017) (beneficiary was son of grantor); Cable v. Wells Fargo Bank, 231 P.3rd 108, 111-112 (N.M. 2007) (family trust). And, as explained in The Executors' original brief, Vera's transfer limitation would nevertheless also be enforceable under Restatement of Property, Third, Servitudes, §3.4 and §3.5 (Executors' Brief, Pages 20-22).

Finally, the Restatement also reflects this court's long-standing admonition that "(o)ne may not look into the mouth of a gift horse." Fulton Bank v. Mathers, 166 NW 1050, 1051 (Iowa 1918) Therefore, instead of trying to cut Terry Brooks out of Vera's will to the fullest extent possible the Coronellis should be grateful for the very valuable bequest they received from Vera and should accept her intent to benefit others as well as themselves.

In summary, this court should recognize that the Restatement view it adopted in Coe College should be followed in bequests of real property just as it applies to donations of personal property.

III. THE TRIAL COURT ERRED IN ESTABLISHING THE LEGAL DESCRIPTION FOR VERA'S RESIDENCE

A. Standard of Review. The Coronellis take no position on this issue. (Coronelli Brief Page 28) Appellee Ales has not filed a brief in this appeal.

B. Error Preservation. The Coronellis take no position on whether error has been preserved on this issue. (Coronelli Brief Page 28). Appellee has not filed a brief in this appeal.

C. Reply Argument. The Executors contend that the legal description for Vera's farm residence as determined by the Trial Court was not appropriate. (Executors' Brief Page 25) In their brief the Coronellis state that they take no position on this issue (Coronelli Brief Page 28). Further, Greg Ales, who was the grantee of this residence under Vera's will, has not filed a brief or any other document in this appeal. Accordingly since there is no objection to the Executors receiving their requested relief on this issue the legal description which the Executors proposed should be determined to be the appropriate one. (Application for Approval; App. P. 33-34)

CONCLUSION AND REQUESTED RELIEF

The Trial Court erred when it construed the lease, option, and transfer limitations in Vera's will. Accordingly The Executors request the following relief:

1. That the trial court's decision be reversed regarding the option and lease provisions contained in the will and that this decision be modified to grant Terry Brooks a 20 year option right to buy Vera's farm property at 75% of its fair market value and the right to lease this property during the 20 year option period at the

current terms so long as neither the Coronellis nor their immediate family members desire to farm this property themselves.

2. That the 20 year limited ownership restriction in Vera's will be found to be valid and enforceable.

3. That the legal description for Vera's residence as originally proposed by The Executors be approved.

4. That The Executors have further relief as appropriate.

REQUEST FOR ORAL ARGUMENT

Appellants request to be heard at oral argument in this matter.

Respectfully Submitted,

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March 5, 2020
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