2015 IL App (4th) 150186-U

NOS. 4-15-0186, 4-15-0199 cons.

FILED
September 29, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Estate of GARY WAYNE SUTTON, Deceased, WALTER SUTTON, Petitioner-Appellant, v. (No. 4-15-0186) DAVID SUTTON, Respondent-Appellee.	)	Appeal from Circuit Court of Pike County No. 05P20
	)	No. 09P9
In re: the Estate of IRA G. SUTTON, Deceased, WALTER SUTTON, Petitioner-Appellant, v. (No. 4-15-0199) DAVID SUTTON, Respondent-Appellee.	)	Honorable John Frank McCartney, Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: In case No. 4-15-0186, the appellate court affirmed the trial court's order requiring the decedent's estate to pay respondent for work-related expenses but reversed the amount and remanded the cause with directions. In case No. 4-15-0199, the appellate court affirmed the trial court's order valuing the decedent's farm based on an oral agreement three years after decedent's death.

¶ 2 In case No. 4-15-0186, respondent, David Sutton, presented a claim in September 2011 for time spent clearing the farm of decedent, Gary Wayne Sutton. In September 2014, the trial court approved David's request and ordered Gary's estate to pay $32,400.

¶ 3 In case No. 4-15-0199, decedent, Ira G. Sutton, died in February 2009, leaving his

farm to petitioner, Walter Sutton, and the remainder of his estate to David. In February 2015, the court valued Ira's farm based on an oral agreement made in July 2012.

¶ 4 In these consolidated appeals, Walter argues the trial court erred in allowing David's claim for administrative expenses and in valuing Ira's farm property. In case No. 4-15-0186, we affirm in part, reverse in part, and remand with directions. In case No. 4-15-0199, we affirm.

¶ 5 I. BACKGROUND

¶ 6 A. Case No. 05-P-20

¶ 7 Gary Sutton died intestate on October 30, 2004, survived by his parents, Ira and Frances, and his three siblings, Marilyn Behrensmeyer, Walter, and David. David is a beneficiary of the real estate owned by Gary. Gary owned a farm consisting of 117.8 acres in Adams County. The farm included 83 tillable acres that had been taken out of production in 1987 and enrolled in a Conservation Reserve Program (CRP). While the farm remained out of production during the next 20 years, natural regeneration occurred, including the substantial regrowth of trees and shrubs, rendering the ground inappropriate for farming.

¶ 8 Following the expiration of the CRP contract in September 2009, David undertook to clear the farm of trees and brush to return it to a condition suitable for farming. He did so with an expectation of reasonable compensation. The fair-market value of the farm prior to the clearing of trees and brush was $322,300. David used a bulldozer for a total of 415 hours to clear the land. In 2010, David also secured a cash-rent tenant, who paid $13,530 to Gary's estate. In the spring of 2011, the farm, represented to include 80 tillable acres, was sold at public auction for $518,320. In September 2011, David presented a claim of $32,400, equating to a rate of $78 per hour, for his work clearing the farm. David based his claim for payment on the

theories of *quantum meruit* and unjust enrichment.

¶ 9 In September 2014, the trial court held a hearing on David's request for payment. David testified he cleared trees from the farm after the CRP contract expired. He signed a cash-rent lease in February 2010 and cleared the land thereafter with a newly purchased bulldozer. He stated he did not have an agreement with the estate to do the work, but he did it because the ground needed to be put back into production. He kept daily logs on the hours spent clearing the land and expected to be compensated for that work.

¶ 10 The trial court found it "undeniable that David Sutton performed the work of clearing the farm and returning it to a farmable condition." The court found David's testimony to be credible. The court noted the rate of $78 per hour for bulldozer work "would appear to be on the low side of acceptable rates being used in other states for similar equipment" and found it to be reasonable. The court also found "the retention of this benefit by the estate without payment would be unjust." Accordingly, the court approved David's request under the theories of *quantum meruit* and unjust enrichment and directed the administrator to pay $32,400. Walter filed a motion to reconsider, which the court denied. Walter appealed (case No. 4-15-0186).

¶ 11 B. Case No. 09-P-9

¶ 12 On February 12, 2009, Ira Sutton, the father of Walter and David, died. In his will, Ira left his Pike County farm to Walter. The remainder of the estate was left to David. Ira indicated his intent to treat his sons "as equally as is practical to do." To that end, Ira directed that his farm real estate be valued at his death, and if the value exceeded the remainder of his estate, Walter was to pay David an amount to equalize their shares of Ira's property. The will also indicated Ira was making no provision for his daughter.

¶ 13 Walter entered into evidence three valuations for the property. Courtney Wade

appraised the land at $257,000 in March 2009 and $349,600 in January 2015. Charles Nordwald appraised the land at $325,000 in October 2009. The estate administrator valued Ira's farm at $416,500, which was based on the auction price of Gary's adjacent farm.

¶ 14 In February 2015, the trial court held hearings on the farm's valuation. Courtney Wade, a real-estate broker and appraiser, testified he appraised Ira's property in March 2009. Although the land totaled 99 acres, Wade appraised only 92 acres because of railroad tracks that ran through the property. Noting the farm had no crops or tilled acres but was only used as a cattle farm, Wade valued the property at $2,800 per acre, or $257,000 in total. Wade also appraised the property in January 2015. Wade noted the 92 acres at that time had 47.06 acres that could be tilled, with the balance being brush and timber. He valued the property at $3,800 per acre, or $349,600 in total.

¶ 15 On cross-examination, Wade stated he was aware of the auction of Gary Sutton's farm, which was immediately adjacent to Ira's farm. Wade did not report the auction price as a comparable sale because of "the family situation involved," meaning a family member might pay more for the property than it is actually worth.

¶ 16 Larry Kabrick, Walter's former attorney, testified to an agreement that had been reached on how to value Ira's farm. The agreement was between David; Bruce Alford, the estate's attorney; and Walter and his attorney during a meeting in the summer of 2012. The agreement was to use the future sale price of Gary's farm as the value on Ira's farm. Kabrick stated the agreement was not put in writing. In the fall of 2012, Gary's farm sold at public auction for $299,880, or $4,250 per acre.

¶ 17 Walter testified the agreement was not discussed during the meeting. He stated he never received any written communication from Kabrick that the valuation of Ira's farm was

going to be based on the auction value of the adjacent farm. Further, Walter never gave any oral authorization to use the auction value for valuation purposes.

¶ 18 Upon questioning by the trial court, Alford stated he was at the July 2012 meeting and his recollection coincided with Kabrick's testimony. Alford stated the parties agreed the price on Gary's farm would be used in calculating the price of Ira's farm.

¶ 19 The trial court found an agreement existed to value Ira's farm at the price per acre of Gary's farm. The court noted Kabrick was "very clear on details," and there were "three attorneys indicating there was an agreement." Walter appealed the court's order (case No. 4-15-0199). This court consolidated the appeals.

¶ 20 II. ANALYSIS

¶ 21 A. David's Administrative Expenses (No. 4-15-0186)

¶ 22 Walter argues the trial court erred in allowing David's claim for administrative expenses based on his bulldozer work in clearing Gary's land. We disagree.

¶ 23 In the trial court and now on appeal, Walter relies on *In re Estate of Brittin*, 247 Ill. App. 3d 756, 760, 617 N.E.2d 877, 880 (1993), where this court noted the law presumes services rendered to a decedent during the decedent's lifetime to be gratuitous if the work was performed by the decedent's family members. However, the services provided by David in this case were not performed for the benefit of Gary during Gary's lifetime. Instead, the services were rendered to Gary's estate five years after his death, and David's claim for expenses was based on the theories of *quantum meruit* and unjust enrichment.

> "*Quantum meruit* literally means 'as much as he deserves.' [Citation.] A party seeking recovery on this theory must demonstrate the performance of services by the party, the conferral

> of the benefit of those services on the party from whom recovery is sought, and the unjustness of the latter party's retention of the benefit in the absence of any compensation. [Citation.] Similarly, a plaintiff may ask the court to remedy the fact that a defendant was unjustly enriched by imposing a contract where there was no contract." *Fleissner v. Fitzgerald*, 403 Ill. App. 3d 355, 361, 937 N.E.2d 1152, 1159 (2010).

¶ 24 In the case *sub judice*, the trial court heard evidence that Gary's farm had been taken out of production. Once the CRP contract expired in September 2009, David undertook to clear the farm of trees and brush to make it suitable for farming. David performed the work with the expectation of reasonable compensation. The court found David's testimony as to the hours worked and the rate charged to be credible. No evidence indicated David's work was gratuitous. Moreover, David's work increased the value of the land and earned money for the estate through the cash-rent lease agreement. We find the court did not err in ordering Gary's estate to pay for David's work on the farm.

¶ 25 While we have found David is entitled to payment, we disagree with the amount awarded by the trial court. As the theory of *quantum meruit* suggests, David is only entitled to as much as he deserves. Gary's estate had a number of heirs, including David. While David conferred a benefit on those heirs, he also conferred a benefit on himself by increasing the value of Gary's land. Thus, he should not be reimbursed for his share of the work on the farm because that work will have benefitted him in the increased farm price. Accordingly, we reverse the reward of $32,400 and remand the cause for the trial court to determine David's share of the work expenses based on his percentage of ownership in the farm when the work was performed

and deduct that amount from the $32,400.

¶ 26 B. Ira's Farm Valuation (No. 4-15-0199)

¶ 27 Walter argues the trial court erred in valuing Ira's farm based on the July 2012 oral agreement instead of at the time of Ira's death. We disagree.

¶ 28 "The fundamental tenet of will construction is to give effect to the intent of the testator. [Citation.] A court determines such intention from the terms of the instrument, by giving words employed their plain and ordinary meaning." *Noll v. Garber*, 336 Ill. App. 3d 925, 929, 784 N.E.2d 388, 392 (2003); see also *In re Estate of Maierhofer*, 328 Ill. App. 3d 987, 992, 767 N.E.2d 850, 854 (2002) (stating "a court's primary objective is to give effect to the testator's intent"). "[W]hen the court examines the language used in the instrument, it must be considered as a whole, and the provisions of a will or trust should not be read in isolation." *Bank of America, N.A. v. Carpenter*, 401 Ill. App. 3d 788, 797, 929 N.E.2d 570, 579 (2010). Interpretation of a will involves a question of law that we review *de novo*. *Ernest v. Chumley*, 403 Ill. App. 3d 710, 714, 936 N.E.2d 602, 606 (2010).

¶ 29 Ira died in February 2009. In his will, Ira bequeathed his farm located in Pike County to Walter. Ira intended the remainder of his estate to go to David. Moreover, section 6 of Ira's will stated as follows:

> "It is my intent to treat my sons, David Sutton and Walter Sutton, as equally as is practical to do. To this end, my farm real estate and the property of whatsoever nature or description making up the rest, residue and remainder of my estate shall be valued at my death. If the value of the farm real estate bequeathed to my son, Walter Sutton, exceeds the value of the rest, residue, and

> remainder of my estate provided by this will to my son, David Sutton, taking into account any liens on any property of my estate and debts of my estate, then my son, Walter Sutton, shall pay to my son, David Sutton, such amount as when added to the gift of the rest, residue and remainder of my estate, will cause the gifts provided for by this will to my sons, Walter Sutton and David Sutton, to be equal."

¶ 30 In this case, Ira's intent was to treat his sons equally. He stated so twice in section 6 of his will. Considering Ira's intent, the question then becomes what value should be put on Ira's land. The trial court was presented with evidence that there was a disagreement as to the correct value of Ira's farm at and near his death. Moreover, Ira's farm has changed since the date of his death. David cleared the land after the CRP contract ended, and a cash-rent tenant has farmed the land. The land has also increased in value. To adequately carry out Ira's intent of equal gifts for his sons, a valuation considering the changes and nearer toward distribution is appropriate. Otherwise, one brother could receive a windfall to the detriment of the other, and that was not Ira's stated intention.

¶ 31 Walter argues the agreement between the attorneys to price Ira's farm based on the price per acre of Gary's land sale was invalid because it was an agreed order that was not in writing and its terms were not clear, certain, and definite. However, the parties did not enter into an agreed order here. The attorneys came to a verbal agreement on how best to price Ira's farm. Also, the figure arrived at by agreement of the attorneys was based on the per-acre sale price obtained at a public auction of the adjacent farm, and such a clear and definite figure would allow the parties to adequately price Ira's farm for purposes of distribution. We find the trial

court did not err in finding sufficient evidence that the attorneys came to an agreement on the price to use in the valuation of Ira's farm.

¶ 32 III. CONCLUSION

¶ 33 In case No. 4-15-0186, we affirm the trial court's judgment ordering Gary's estate to pay David for his work on the farm, reverse the amount awarded, and remand with directions.

¶ 34 In case No. 4-15-0199, we affirm the trial court's judgment determining the value of Ira's farm based on the July 2012 agreement.

¶ 35 No. 4-15-0186: Affirmed in part and reversed in part; cause remanded with directions.

¶ 36 No. 4-15-0199: Affirmed.