

STATEMENT OF ISSUES ON APPEAL

- I. WAS THE PERSONAL REPRESENTATIVE ENTITLED TO PARTITION REAL ESTATE WHICH IS THE SUBJECT OF A SPECIFIC BEQUEST IN THE DECEDENT'S WILL WITHOUT COMPLYING WITH SDCL 29A-3-911?

The Trial Court held in the affirmative and did not require the Appellee (Personal Representative) to comply with the provisions of SDCL 29A-3-911 for partition of estate property. Appellant had no notice of the partition proceedings and the filings related thereto, even though Appellant filed a Demand for Notice in accordance with SDCL 29A-3-204. Appellant argues that the sale should be declared void.

- II. WAS THE PERSONAL REPRESENTATIVE ENTITLED TO SELL REAL ESTATE WHICH IS THE SUBJECT OF A SPECIFIC BEQUEST IN THE DECEDENT'S WILL AND THE DECEDENT'S PERSONAL PROPERTY WITHOUT PROVIDING NOTICE TO A DEVISEE THAT FILED A DEMAND FOR NOTICE?

The Trial Court held the sales were proper even though Appellee (Personal Representative) failed to provide any notice to Appellant. Appellant argues that the sale should be declared void.

- III. DID THE PERSONAL REPRESENTATIVE'S ACTIONS IN FAILING TO GIVE NOTICE OF SALE AND FAILING TO FOLLOW THE SOUTH DAKOTA STATUTE FOR PARTITION OF ESTATE PROPERTY VIOLATE THE PERSONAL REPRESENTATIVE'S FIDUCIARY DUTY?

The Trial Court held that Appellee's (Personal Representative's) failure to give notice did not violate the Personal Representative's fiduciary duty to such an



extent that the sales are void. Appellant argues the failure to provide notice is a violation of a fiduciary duty which requires any actions taken after failure to give notice must be declared void and thereby provide Appellant with an opportunity to protect property that Appellant received by specific bequest in decedent's Will.

STATEMENT OF ISSUES ON APPEAL

- I. **Whether a Personal Representative has the power to sell real property of an estate when it appears that the sale of the property is needed for proper administration of the estate and in the best interests of the estate and when such power is not restricted by the decedent's Will.**

The trial court held in the affirmative and approved the personal representative's sale of 6.17 acres of 132.28 acres and the sale of decedent's personal property.

- II. **Whether a public sale of real property should be voided for failure to give notice under SDCL 29A-3-715(b).**

The trial court held in the negative, ruling that notice was required but that the sale must be confirmed.

- III. **Whether the trial court erred in assessing the Personal Representative \$1,000.00 for his alleged violation of SDCL 29A-3-715(b) even though the court found that no penalty is prescribed by law and no damages were sustained.**

The trial court assessed a \$1,000.00 penalty against the personal representative even though no damages were sustained.