IN THE COURT OF APPEALS OF IOWA

No. 1-296 / 10-0938
Filed July 13, 2011

IN THE MATTER OF THE ESTATE OF IONE R. DILLEY, Deceased.

JOHN B. DILLEY,
Plaintiff-Appellant,

vs.

JAMES P. DILLEY, Individually and JAMES P. DILLEY, As Executor of the Estate of Ione R. Dilley, and JAMES P. DILLEY, Trustee of the Ione R. Dilley Revocable Trust,
Defendant-Appellees.

Appeal from the Iowa District Court for Polk County, Peter A. Keller, Judge.

A plaintiff asserts that the district court erred in concluding that his brother did not unduly influence their mother into disinheriting the plaintiff. **AFFIRMED.**

Douglas A. Fulton and Allison M. Steuterman of Brick Gentry, P.C., West Des Moines, for appellant.

Debra Rectenbaugh Pettit and Deborah M. Tharnish of Davis, Brown, Koehn, Shors & Roberts, P.C., West Des Moines, for appellees.

Heard by Vogel, P.J., Vaitheswaran, J., and Huitink, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2011).

VAITHESWARAN, J.

Ken and Ione Dilley's surviving children, John and Jim, became embroiled in contentious litigation over their mother's estate, which included the proceeds from a profitable sale of a farm near the Jordan Creek Mall in West Des Moines, Iowa. The primary issue on appeal is whether Jim unduly influenced Ione to disinherit John.

I. Background Facts and Proceedings

Ione and Ken Dilley executed estate plans during their lives. Under Ione's plan, which took the form of a revocable trust and pour-over will, her trust income was to be used to maintain Ken if he survived her and John and Jim were to receive equal shares of the trust assets upon Ken's death. Ken died in 2002.

In October 2004, Ione spoke to her attorney about removing John and his family as beneficiaries of her trust and leaving everything to Jim. Her attorney gave her several written options, including her requested disposition. In December 2004, she chose the option that provided for Ken's assets to be directed to her trust, with all the trust assets distributed to Jim on her death.

Ione died in 2008. John learned of his disinheritance at that time and sued Jim individually and as executor of Ione's estate. He claimed Jim unduly influenced his mother to change her estate plan. The matter was tried to the district court. The court found no undue influence and declined to invalidate Ione's 2004 amendment to the trust.

On appeal, John raises several issues, all related to the district court's refusal to find undue influence. Our review is for errors at law, with fact findings

binding us if supported by substantial evidence. *In re Estate of Lachmich*, 541 N.W.2d 543, 545 (Iowa Ct. App. 1995).

II. Undue Influence

"Undue influence" is persuasion that overpowers the will of the grantor or prevents the grantor from acting intelligently, understandingly, and voluntarily. *Mendenhall v. Judy*, 671 N.W.2d 452, 454 (Iowa 2003). To establish his claim, John had to prove four elements:

> (1) Ione's susceptibility to undue influence,
> (2) Jim's opportunity to exercise such influence and affect the wrongful purpose,
> (3) Jim's disposition to influence Ione unduly for the purpose of procuring an improper favor, and
> (4) a result which was clearly the effect of Jim's undue influence.

See id.[1]

A. Susceptibility

The district court found that Ione was not susceptible to undue influence, "[a]s [she] was able to live independently and handle her affairs independently and as [she] had testamentary capacity at the time of the execution of her new estate plan." John takes issue with this finding. He asserts that the district court equated Ione's undisputed testamentary capacity with the absence of any susceptibility to undue influence. To the contrary, the court recognized that

[1] John makes several arguments relating to the existence of a confidential relationship between Jim and Ione and its possible effect on the burden of proof and the standard of proof. *See In re Estate of Todd*, 585 N.W.2d 273, 277 (Iowa 1998) (setting forth different burdens of proof depending on the nature of the transfer); *see also Jackson v. Schrader*, 676 N.W.2d 599, 604 (Iowa 2003) (same). The district court found no confidential relationship between Jim and Ione. *See Todd*, 585 N.W.2d at 276 n.3 (defining confidential relationship as "any relation existing between parties to a transaction wherein one of the parties is duty bound to act with the utmost good faith for the benefit of the other party"). This finding is supported by substantial evidence. Accordingly, we need not address John's arguments concerning the burden of proof and standard of proof.

testamentary capacity was only one aspect, albeit an integral one, of susceptibility to undue influence. After discussing that aspect, the court considered Ione's physical and mental condition and whether it was weakened at the time of the amendment to the trust. *See Mendenhall*, 671 N.W.2d at 460–61 (considering grantor's weakened physical and mental condition in determining that she was subject to undue influence). The court stated Ione "was able to manage the tasks of daily living on her own," "managed her health care and medications," and "managed her business and financial affairs." The court noted that she independently sought counsel for the change in her estate plan, a decision made "without Jim's knowledge," and she "was informed of other possible estate planning options and adamantly continued to stand by her plan to disinherit John." These findings are supported by substantial evidence.

In 2004, when the estate plan was changed, Ione lived independently. While she was tethered to an oxygen pump, her longtime attorney testified that this fact "never seemed to hold her back." He continued, "I always still felt that considering that limitation she was still very active and her mind was always sharp as a tack." He recalled that Ione was "on top of her game" and "very independent," "strong-minded," "forceful," and "intense" about her decisions. A second attorney who represented her similarly testified that Ione was "completely mobile" despite her use of oxygen, "had her mental faculties about her," and was "able to carry on a conversation about a plethora of topics." He noted that she did not change the manner in which she communicated with him when Jim was present. In his words, she was "just as frank and forward and engaging and

independent" in a meeting which Jim attended as she had been in a previous meeting outside Jim's presence.

These attorneys' statements about Ione were corroborated by a recording that was made of her estate plan changes. During the taped session, Ione discussed the estrangement between the brothers and her independent efforts to "get this family back together again." She stated that her decision to disinherit John was made after years of thought as well as discussions with several individuals, including her husband, prior to his death. When presented with the documents amending her estate, she questioned her attorney about a key provision concerning the appointment of trustees and appeared to follow the attorney's explanation. While she could not parrot the legalese contained in the document, there is no question she knew what she wanted to accomplish and understood that the legal document served that end. This and other evidence support the district court's finding that Ione was not susceptible to undue influence.

B. Opportunity

The district court found that both Jim and John lived close enough to Ione to have the opportunity to unduly influence her. But, as the court recognized, opportunity alone is not enough to establish undue influence. *See In re Estate of Henrich*, 389 N.W.2d 78, 83 (Iowa Ct. App. 1986). There must also be evidence to show the influence "was in fact exerted with respect to the making of the testament itself." *In re Estate of Davenport*, 346 N.W.2d 530, 533 (Iowa 1984). The court found that neither party made good on the opportunity to unduly influence Ione, as "Ione's strong-mindedness and competence at the time of the

execution of her estate plan would have kept any exercise of undue influence at bay."

This finding is supported by substantial evidence. Jim assisted Ione with her transportation needs, served as her attorney-in-fact, wrote some checks for her, and attended some meetings concerning her financial affairs. But he only used his attorney-in-fact powers on three occasions and his assistance in financial matters was either ministerial or at Ione's direction, at least up to the point she amended the estate planning documents. Notably, all who knew Ione well, including her two attorneys, testified that she was fully capable of managing her financial affairs, and in fact did so. We discern no error in the district court's decision to afford weight to the statements of these individuals rather than the expert witnesses who never met her. *See In re Estate of Bayer*, 574 N.W.2d 667, 670–71 (Iowa 1998) (noting credibility determinations properly left to fact finder).

C. Disposition to Influence Unduly for the Purpose of Procuring an Improper Favor

With respect to this element, the district court again cited Ione's independence and control over her daily life. The court also found "no evidence that Jim was helping his mother only to end up as the sole beneficiary of her estate." On our review of the record, we find some evidence to contradict this categorical statement. Specifically, Jim lost his job approximately a year before Ione changed her estate plan. Additionally, he had purchased a $600,000 home just months before he was fired. Given his financial circumstances, a reasonable fact finder could have found that Jim had an incentive to persuade his mother to

change her estate plan. However, a reasonable fact finder also could have found that this incentive was eliminated when Ione gave Jim $600,000 to pay off the first and second mortgages on his home. While we recognize this gift is a double-edged sword that alternately could be viewed as evidence of undue influence, Ione made the gift only after independently consulting with her attorney, who told her lifetime transfers were an effective estate planning tool.

In sum, we find the district court may have understated the evidence relating to Jim's disposition to influence the outcome. Nonetheless, there is substantial evidence to support a finding that Jim was not disposed to influence his mother for the purpose of procuring a change in the estate plan.

D. Result Clearly the Effect of Undue Influence

The district court found that the revised estate plan was not clearly the effect of undue influence. The court noted that "Ione contacted her attorneys independently, provided a written statement of her reasons for changing her estate plan, and submitted herself to a competency test." The court also noted that the execution of the documents amending the estate plan was recorded and the recording showed her "of sound mind and in no way influenced by others."

In challenging this element, John points to the change in the estate plan itself. *See In re Estate of Dankbar*, 430 N.W.2d 124, 128 (Iowa 1988) (stating "[u]nnatural, unjust, or unreasonable distributions may be properly considered" in determining whether undue influence is present). We have already summarized the testimony of Ione's attorneys concerning the circumstances surrounding her execution of the amendment. This testimony, together with the recording,

amount to substantial evidence in support of the district court's finding on this element.

We conclude substantial evidence supports the district court's finding that Jim did not unduly influence Ione, and the court did not err in declining to invalidate Ione's amendment to her revocable trust.

AFFIRMED.