IN THE COURT OF APPEALS OF IOWA

No. 8-431 / 07-1219
Filed August 27, 2008

IN RE THE MATTER OF THE ESTATE OF MERRILL C. AMES, Deceased,

DIANE WILLIAMS,
Plaintiff-Appellee/Cross-Appellant**,**
vs.

ESTATE OF MERRILL C. AMES and CHEROKEE STATE BANK, as Executor thereof and as Trustee for the Merrill C. Ames Testamentary Trust,
Defendant-Appellant/Cross-Appellee**.**

Appeal from the Iowa District Court for Cherokee County, Don E. Courtney, Judge.

The executor of the estate of Merrill Ames appeals from the district court order finding Diane Williams did not unduly influence Ames to leave her certain assets. **AFFIRMED.**

Richard A. Cook of Herrick, Ary, Cook, Cook, Cook & Cook, Cherokee, and John A. Wibe of Wibe & Phillips, Cherokee, for appellant.

Steven T. Roth of Roth Law Office, Storm Lake, for appellee.

Considered by Miller, P.J., and Vaitheswaran and Eisenhauer, JJ.

VAITHESWARAN, J.

Merrill Ames named friend Diane Williams a beneficiary of assets totaling $60,443.32. After Ames died, his estate and its executor asserted that Williams unduly influenced Ames to leave her the assets. The district court rejected this argument. We affirm.

I. Background Facts and Proceedings

Williams began a business to assist the elderly with activities of daily living. At the behest of their son, Merrill Ames and his wife June retained her services, paying her seven dollars an hour.

Williams initially focused on helping June. She had little contact with Merrill, who generally stayed in another room when she came.

Within a few months, Williams wound up her business and stopped charging Merrill and June for her services. When June died, she kept in daily or weekly contact with Merrill and volunteered to help him with gardening and other activities.

Merrill developed an affection for Williams and designated her as the beneficiary of many of his assets, including an annuity valued at $18,698.14, three bank certificates of deposit with a total value of $15,522.59, and credit union funds totaling $26,222.59. These designations were inconsistent with Merrill's will, which placed his assets in trust for his three grandsons. According to Williams, Merrill acknowledged the inconsistency but said he had already made provision for his relatives and it was his wish to transfer his liquid assets to her.

Merrill died and his will was admitted to probate. Cherokee State Bank was appointed executor. After the estate was opened, the bank learned of the transfers to Williams. The bank applied for a temporary injunction to restrain Williams from taking possession of the assets pending further investigation. That application was granted.

Williams filed a claim in probate seeking a declaration that she was the owner of the contested assets. The estate answered and filed a counterclaim alleging that Williams was in a confidential relationship with Merrill and either abused that relationship or exerted undue influence over him. The district court concluded that the estate failed to establish the existence of a confidential relationship and the transfers were not a product of undue influence. The court determined Williams was the owner of the contested assets. Following a post-trial ruling, the estate and bank appealed.

II. Analysis

A confidential relationship exists "whenever a continuous trust is reposed by one person in the skill and integrity of another." *Mendenhall v. Judy*, 671 N.W.2d 452, 455 (Iowa 2003) (citation omitted).

> The gist of the doctrine of confidential relationship is the presence of a dominant influence under which the act is presumed to have been done. Purpose of the doctrine is to defeat and correct betrayals of trust and abuses of confidence.

Oehler v. Hoffman, 253 Iowa 631, 635, 113 N.W.2d 254, 256 (1962).

The existence of a confidential relationship triggers a presumption of undue influence. *Mendenhall*, 671 N.W.2d at 454. To rebut the presumption, the fund recipient must "prove by clear, satisfactory, and convincing evidence that

the grantee acted in good faith throughout the transaction and the grantor acted freely, intelligently, and voluntarily." *Jackson v. Schrader*, 676 N.W.2d 599, 605 (Iowa 2003).

The defendants take issue with the district court's determination that Merrill and Williams were not in a confidential relationship. They also argue that Williams did not meet her burden to overcome the presumption of undue influence arising from that claimed confidential relationship.[1] The parties agree the case was tried in equity and our review is de novo. Iowa R. App. P. 6.4.

We agree with the district court that the defendants failed to establish the existence of a confidential relationship. *See Hoffman*, 253 Iowa at 637, 113 N.W.2d at 258 (holding under similar facts that "[a]lthough there is some evidence appellees were the dominant persons in a confidential relationship with the grantor at the time the deed was made, we are not persuaded the showing is sufficiently clear to justify a reversal on this issue"). In reaching this conclusion, we have considered the court's detailed fact findings and have found them fully supported by the record.

Even if we were to assume the defendants established a confidential relationship, the defendants would not prevail because Williams overcame the presumption of undue influence.

With respect to the annuity, Merrill came into the brokerage office alone and asked to change the beneficiary to Williams. When the manager of the brokerage firm overheard the conversation and asked Merrill why he was making

[1] The defendants do not argue that Williams exercised undue influence even in the absence of a confidential relationship. *See Mendenhall v. Judy*, 671 N.W.2d 452, 454 (Iowa 2003).

the change, Merrill responded that Williams "had helped him around the house and done favors for him." This is virtually the same explanation Merrill gave his attorney when he asked to make Williams the beneficiary on another annuity that is not the subject of this appeal. *See Schrader*, 676 N.W.2d at 605 (holding transactions in which the grantor "demonstrated a clear propensity outside of the confidential relationship to reward [the grantee] on her death" rebutted the presumption of undue influence and "fairly reflected [the grantor's] free-will determination").

With respect to the certificates of deposit at the state bank, a bank vice-president testified Merrill came to the bank by himself, retrieved the certificates from his safety deposit box with her help, and told her he wanted to make them payable to Williams on his death. The bank officer asked Merrill whether he was sure he wanted to do this. He said yes. After she completed the transaction, Merrill returned the certificates to his box. The officer perceived him to be lucid stating, "[H]e always seemed to know what he was doing." On the date of this transaction she felt he was in a good mood despite his poor health and his knowledge that death was imminent.

With respect to the credit union transfers, the operations manager of the credit union testified that Williams came in with Merrill but Merrill was the person who made the request to have the funds made payable to Williams on his death. According to the manager, Williams said nothing during the brief conversation.

We recognize that once Williams became aware of Merrill's actions, she did not seriously attempt to dissuade him from transferring these substantial assets to her. Nonetheless, we are not convinced her willingness to accept this

money on Merrill's death amounted to bad faith. Merrill made the transfers of his own volition and either told her after the fact or just before he took the action. Williams did not cajole or coerce him into taking these actions. Based on this evidence, we agree with the district court that Williams rebutted the presumption of undue influence. Accordingly, we affirm the district court's conclusion that she was the owner of the disputed assets.

AFFIRMED.