

IN THE COURT OF APPEALS OF IOWA

No. 8-934 / 08-0653
Filed March 11, 2009

**IN THE MATTER OF THE ESTATE OF
HERBERT C. SHAFFER, Deceased,**

SARAH M. SHAFFER,
Spouse-Appellant,

vs.

**DIORA HEWER and WAILANA
BARKER, Executors of the Estate of
HERBERT C. SHAFFER,**

Executors-Appellees.

Appeal from the Iowa District Court for Benton County, Thomas Koehler,
Judge.

A surviving spouse appeals from the district court's order denying her
election to take against the will and request for spousal support. **REVERSED
AND REMANDED.**

Stephen Swift and Daniel L. Seufferlein of Klinger, Robinson, & Ford, LLP,
Cedar Rapids, for appellant.

John Mossman and Keith Mossman of Mossman & Mossman, Vinton, for
appellees.

Heard by Vogel, P.J., and Vaitheswaran and Eisenhauer, JJ.

VOGEL, P.J.

Sarah Shaffer appeals from the district court's order denying her election to take against the will of her husband, Herbert C. Shaffer, and her request for spousal support. We reverse and remand.

I. Background Facts & Proceedings

On November 18, 1989, Herbert and Sarah married. Each had adult children from previous marriages. On July 13, 2006, Herbert and Sarah entered into a postnuptial agreement, which essentially provided for the equal division of their cash and personal property. The final provision provided, “[f]ollowing the division of the assets as set forth, each party will be responsible for their own expenses and neither party shall look to the other party for reimbursement for any expense from and after the execution of the agreement.” The agreement was not signed by Herbert or Sarah, but rather by their respective attorneys-in-fact, two of Herbert's daughters and Sarah's son.¹ At the time of the execution of the document, Sarah was hospitalized and remained in medical institutions until she moved to a nursing facility in Indiana in October 2006.

On September 1, 2006, Herbert executed a will, which gave all of his property to his six children in equal shares after payment of claims against the estate, taxes, and expenses associated with his last illness, funeral, debts, and the administration of the estate. On September 16, 2007, Herbert died testate and was survived by Sarah. Sarah elected to take against the will and requested spousal support. See Iowa Code § 633.236 (2007) (providing for a surviving

¹ We note the power of attorney instruments were not included in the record. Thus, the validity of the agreement has not been shown, but was not raised before the trial court nor on appeal.

spouse to elect to take against the will); Iowa Code § 633.374 (providing for spousal support). On March 28, 2008, following a hearing, the district court denied Sarah's application "because the agreement of the parties in 2006 should be honored. It was clearly the intent of the parties to divide their assets and 'go their separate ways.'"² Sarah appeals.

II. Standard of Review

We review the district court's denial of an election to take against a will de novo. Iowa R. App. P. 6.4; *In re Estate of Spurgeon*, 572 N.W.2d 595, 597 (Iowa 1998). We review the district court's denial of an application for spousal support for an abuse of discretion. *In re Estate of Sieh (Sieh II)*, 745 N.W.2d 477, 479 (Iowa 2008).

III. Election Against the Will

Sarah asserts that the district court erred in denying her election to take against the will. She specifically argues that (1) while prenuptial agreements are valid within certain parameters, generally postnuptial agreements are against public policy and are not enforceable by the court; (2) even if postnuptial agreements were valid, this agreement is void as it was not made with full disclosure of the parties' financials; and (3) the language of this agreement does not address a surviving spouse's statutory right to elect against the will and thus, does not even attempt to waive that right.

Iowa Code section 633.236 provides that a spouse may elect to take against the will and receive a statutory share of the decedent spouse's estate.

² The district court also discussed an AIG annuity of which Sarah was the named beneficiary. As the annuity passed outside of the estate, it has no effect on whether Sarah may elect to take against the will.

See also Iowa Code § 633.264 (stating that subject to the rights of a surviving spouse to take an elective share, a person may dispose of their property by will). This right can be waived by a prenuptial agreement. *In re Estate of Ascherl*, 445 N.W.2d 391, 392 (Iowa Ct. App. 1989) (upholding a prenuptial agreement in which “each party waived all rights in the other’s property and waived all rights of election to take against the other’s will”). However, the statute does not provide nor has our case law construed the ability to waive this right in a *postnuptial* agreement. See *In re Kennedy’s Estate*, 154 Iowa 460, 135 N.W. 53 (1912) (finding that a postnuptial contract between “husband and wife, with reference to her [dower] interest in this estate, is of no validity whatever”).³

In the present case, the agreement simply provided that each party would thereafter be responsible for their own expenses. The agreement did not, nor could it, waive the parties’ statutory right to take against the will of the other. See *Sieh v. Sieh (Sieh I)*, 713 N.W.2d 194, 198 (Iowa 2006) (holding assets held in revocable *intervivos* trust by husband, although not intended for surviving spouse, were nonetheless available to her upon husband’s death for purposes of determining the elective share of the surviving spouse under Iowa Code section 633.238); *Cf Ascherl*, 445 N.W.2d at 392 (finding a surviving spouse waived her statutory rights where the *prenuptial* agreement specifically “waived all rights of election to take against the other’s will”). Although the district court found “[i]t was clearly the intent of the parties to divide their assets and ‘go their separate ways,’” our statutory law cannot be so easily side-stepped. As Sarah asserts,

³ If postnuptial agreements are to be considered valid in Iowa, the legislature can so provide.

“[u]pholding the district court’s decision below would necessitate a groundbreaking shift in the probate laws of the State of Iowa.” We agree and conclude the district court erred in concluding that the agreement prohibited Sarah from electing to take against the will.

IV. Spousal Support

Sarah next asserts that the district court abused its discretion in denying her request for spousal support. Iowa Code section 633.374 provides for spousal allowance for twelve months following the death of a decedent as part of the costs of administration of the estate. The statute states that the district court shall take into consideration the station in life of the surviving spouse and the assets and condition of the estate. Iowa Code § 633.374. A showing of necessity is not a prerequisite to the granting of support to a surviving spouse. *Spurgeon*, 572 N.W.2d at 599; *see also Sieh II*, 745 N.W.2d at 480 (stating a financial affidavit need not be filed before an award of spousal support).

In the present case, the district court denied Sarah’s application for spousal support based upon the language of the postnuptial agreement between the parties. However, the agreement between Herbert and Sarah did not address, nor could it waive consideration of the statutory spousal allowance under Iowa code section 633.374, as such a provision would be void. *See Sieh I*, 713 N.W.2d at 198 (holding assets held in revocable inter vivos trust by husband, although not intended for surviving spouse, were nonetheless available to her upon husband’s death for spousal allowance under Iowa code section 633.374); *Cf. Iowa Code § 596.5(2)* (stating the right of a surviving spouse to receive support shall not be affected by a *premarital* agreement); *Spurgeon*, 572 N.W.2d

at 599 (stating that a *prenuptial* agreement waiving spousal support does not prevent it from being awarded, but only makes the award discretionary); *In re Marriage of Spiegel*, 553 N.W.2d 309, 319 (Iowa 1996) (stating that *prenuptial* agreement provisions waiving alimony are void).

Finally, the district court failed to demonstrate consideration of the statutory factors under section 633.374 in making its determination of whether to grant or deny a spousal allowance. See *Sieh II*, 745 N.W.2d at 479 (“[W]e review the support order for an abuse of discretion, keeping in mind the requirement of the statute that the court ‘take into consideration the station in life of the surviving spouse and the assets and condition of the estate.’”). Thus, we conclude that the district court abused its discretion and we reverse and remand for the district court to consider spousal support utilizing the appropriate factors. We express no opinion as to whether spousal support should be granted or if so, in what amount.

REVERSED AND REMANDED.