

IN THE COURT OF APPEALS OF IOWA

No. 9-854 / 09-0329
Filed December 30, 2009

**IN THE MATTER OF THE ESTATE OF
ROBERT V. LIND, Deceased,**

VALGENE LIND and CURTIS LIND,
Plaintiffs-Appellants,

vs.

MADONNA LIND,
Defendant-Appellee.

Appeal from the Iowa District Court for Boone County, Dale E. Ruigh,
Judge.

Plaintiffs appeal the district court's dismissal of their petition to set aside
an insurance policy change of beneficiary form, based on an assertion of undue
influence stemming from a confidential relationship. **AFFIRMED.**

Benjamin Doran, Boone, for appellant.

Loren Nalean, Boone, for appellee.

Heard by Vogel, P.J., and Doyle and Mansfield, JJ.

VOGEL, P.J.

Valgene and Curtis Lind, sons of decedent, Robert Lind, appeal the district court's dismissal of their petition to set aside the change of beneficiary on Robert's life insurance policy.¹ They assert the court should have found a confidential relationship existed between Robert and his second wife, Madonna, and that Robert was subject to Madonna's undue influence in this transaction. Because we agree with the district court that Valgene and Curtis failed to carry their burden to prove either a confidential relationship or undue influence, we affirm.

The parties agree the case was tried in equity and our review is de novo. Iowa Code section 633.33; Iowa R. App. P. 6.4.²

I. Background Facts and Proceedings

Robert and Helen Lind were married for approximately forty-nine years, lived in Ogden, Iowa, and had two sons, Valgene and Curtis. Robert had heart bypass surgery in 2000, and complications left him legally blind. He also suffered from diabetes, and kidney and continuing heart problems. Following Helen's death in 2002, Valgene assisted Robert almost daily with his physical needs.³ On March 4, 2005, Robert married his former high school classmate, Madonna, who was then living in Oskaloosa. Madonna took over Robert's daily care and provided him his desired companionship. Robert and Madonna led a very active social life and remained involved in the community.

¹ We note noncompliance with the rules of appellate procedure, requiring the name of each witness whose testimony is included in the appendix to appear at the top of each page where the witness's testimony appears. See Iowa R. App. P. 6.905(7)(c).

² The case was captioned as an action at law, "LACV37611".

³ Curtis lived in Texas.

The marriage of Robert and Madonna brought some tension to the family, as Valgene and Curtis were not entirely supportive of their father's decision to marry so soon after their mother's death. Curtis and Valgene expressed that when Robert married Madonna, their relationship changed with their father as he became distant and was no longer communicative with them. Robert's sister also testified that after the marriage, she and Robert's daily contact became almost nonexistent. Robert expressed to friends that he was unsure why his family did not approve of his remarriage.

Robert and Madonna entered into an antenuptial agreement, which stated that each retained "the right to own, handle, sell, mortgage, transfer, and administer their own property, both real and personal, as if unmarried. . . ." The day of the wedding, Robert executed a will which devised his personal property and a life estate in his farm to Madonna, and upon her death, the farm was to be distributed one-half each to Curtis and Valgene. Ten days after the wedding, Robert executed a deed creating a joint tenancy with Madonna in his Ogden home.

On June 24, 2005, Robert also named Madonna as the primary beneficiary of his \$50,000 life insurance policy. When the policy was originally purchased in 1984, Helen was the owner and primary beneficiary, with Valgene and Curtis as the contingent beneficiaries. Valgene and Curtis believed that Madonna exerted undue influence over Robert in order to change beneficiaries of the policy. Shortly after the marriage, Madonna contacted Stephen Davidson, Robert's insurance agent, about the policy. He informed her that he could only speak with Robert, the policyholder. Robert did speak to Davidson about the

policy; however, he did not do any further follow-up. Instead, Madonna requested and received a change of beneficiary form directly from New York Life. She then filled in the form, designating herself as the primary beneficiary, and Breanna Lind, Curtis's daughter, as the contingent beneficiary. She testified all this was done according to Robert's directions.

After Robert's death in July 2007, Valgene and Curtis filed a petition alleging that Robert and Madonna had a confidential relationship in which Madonna exerted undue influence over Robert, and sought to have his will, the deed creating the joint tenancy to Robert's home, and the change of life insurance beneficiaries set aside.⁴ After trial, the district court dismissed Valgene and Curtis's petition. They appeal.

II. Confidential Relationship

Valgene and Curtis assert the district court erred in failing to find a confidential relationship existed between Robert and Madonna at the time the beneficiary of the life insurance policy was changed. "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. The purpose of the doctrine is to defeat and correct betrayals of trust and abuses of confidence." *In re Estate of Clark*, 357 N.W.2d 34, 37 (Iowa Ct. App. 1984). In its broadest connotation, the phrase embraces those multiform positions in life wherein one comes to rely on and trust another in his important affairs. *Mendenhall v. Judy*, 671 N.W.2d 452, 455 (Iowa 2003). The existence of a confidential relationship must be proven by clear and convincing evidence. *King v. King*, 291 N.W.2d 22, 24 (Iowa 1980).

⁴ Both the will contest and the action to avoid the deed were dismissed prior to trial.

Valgene and Curtis assert the change of beneficiary form on Robert's life insurance was the product of Madonna's undue influence over Robert, stemming from her confidential relationship with him. A confidential relationship does not arise solely from the fact that two people were married at the time of the transactions. *Punelli v. Punelli*, 364 N.W.2d 259, 261 (Iowa Ct. App. 1984). Robert's long-time friend, George Ralston, witnessed Robert sign the change of beneficiary form for his life insurance. Ralston testified that Madonna suggested he witness Robert signing something, but he was unaware of the content of the document. He testified that he had no discussion with Robert as to what the document entailed, but simply placed Robert's hand on the signature line, and after Robert signed, Ralston signed as the witness. He further testified that Madonna was not in the room when this took place.

We agree with the district court there was insufficient evidence to find a confidential relationship existed between Robert and Madonna such that he did not freely sign the change of beneficiary form. We agree with the district court Valgene and Curtis failed to prove the existence of a confidential relationship.

III. Undue Influence

Valgene and Curtis next assert the district court erred in concluding they failed to carry their burden of proof to show Madonna exerted undue influence over Robert. Without the finding of a confidential relationship, from which undue influence is presumed, Valgene and Curtis needed to separately establish Madonna exerted undue influence over Robert. Their burden was to show "such persuasion as results in overpowering the will of [Robert] or prevents him from acting intelligently, understandingly, and voluntarily—such influence as destroys

the free agency of the grantor and substitutes the will of another person for his own.” *Mendenhall*, 671 N.W.2d at 454. Proof of undue influence must be by evidence that is clear, convincing, and satisfactory, where there is no serious or substantial uncertainty about the conclusion to be drawn from it. *Id.*

Four elements are necessary to establish undue influence: (1) Robert must be susceptible to undue influence, (2) opportunity on the part of Madonna to exercise such influence and effect the wrongful purpose must exist, (3) a disposition on the part of Madonna to influence Robert for the purpose of procuring an improper favor, and (4) the result must clearly appear to be the effect of undue influence. *See id.*

Various witnesses testified as to Robert’s loneliness after the death of his wife, Helen, as well as how happy Robert was in his marriage to Madonna. While his physical decline could have presented an opportunity for overreaching by Madonna, the record supports that Robert maintained an active social life and full mental acuity. For example, when Robert chose to change his will to include Madonna, his attorney, Robbins, testified that he did so because

he was really appreciative of what Donna had done for him, that he wanted to make sure she was taken care of and that was one of the reasons he did change that title to the—to the house to joint tenancy and gave her income from the farm.

He further affirmed that Robert was both independent in his thinking and relied on his own judgment.

The district court found “after marrying Madonna, Robert was not socially isolated. To the contrary, he and Madonna maintained a very active social life.” Robert and Madonna were active in the community: they attended church,

participated in coffee groups, and helped with the food bank; Robert served on the Iowa Commission for the Blind; and they spent two winters in Arizona. While Robert's family noticed his behaviors changed after his marriage to Madonna, the testimony does not suggest Robert was subject to Madonna's undue influence.

We agree with the district court that "[a]ny claim that [Madonna] manipulated, tricked, or otherwise improperly caused Robert to sign documents inconsistent with his personal wishes is unsupported by the evidence." We further agree that "[w]hile Robert trusted his wife [Madonna] and was very grateful for the things she did for him, he did not defer to her in his important decisions. Madonna certainly had no dominance over Robert in his decision-making." As Valgene and Curtis did not meet their burden of proving Robert's actions were the effect of undue influence, we affirm the district court's dismissal of their petition.

AFFIRMED.

Doyle, J. concurs. Mansfield, J., concurs specially.

MANSFIELD, J. (concurring specially)

I cannot agree that there was no confidential relationship here. Robert was seventy-six years old, legally blind, in poor health, and dependent on his wife Madonna in many respects. In matters that required the ability to read documents, such as this insurance transaction, his dependence on her was even greater. Madonna actually handled several aspects of this insurance transaction, including completion of the paperwork and communications with the insurer. Accordingly, while I recognize a confidential relationship does not arise solely because Robert and Madonna were married, *Punelli v. Punelli*, 364 N.W.2d 259, 261 (Iowa Ct. App. 1984), many other facts were present here. In my view, Robert reposed trust in the skill and integrity of Madonna. *Mendenhall v. Judy*, 671 N.W.2d 452, 455 (Iowa 2003). I believe it would be wrong to hold that this newly married spouse did not owe a fiduciary duty to her legally blind husband when assisting him with paperwork relating to a premarital asset.

Having said that, I would affirm the district court's thorough opinion on the alternative ground set forth therein. In other words, I would uphold the district court's alternative conclusion that even if a confidential relationship existed, Madonna proved "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). In this regard, I agree with my colleagues that the testimony of Robert's attorney was significant. He testified at length regarding the other two transactions, i.e., Robert's new will devising his personal property and a life estate in his farm to Madonna, and his deed giving Madonna joint tenancy of

their home. His testimony leaves no doubt that Robert knew what he was doing and did what he wanted to do. Accordingly, I would affirm, although not on the same grounds as are set forth in the majority opinion.