FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

CYNTHIA E. HECK and BURDETTE E. SELLE,

Plaintiffs-Appellees,

vs.

CHARLOTTE L. HENDRICKSON,

Defendant-Appellant,

and

JUDITH LYNN FRISBIE VONK and POWESHIEK COUNTY NATIONAL BANK OF GRINNELL, as Executor of the Estate of Ada B. Selle,

Defendants-Appellees.

Filed April 8, 1983

2-524
2-68524

Appeal from Poweshiek District Court - Dick R. Schlegel, Judge.

Defendant appeals from judgment for plaintiffs in this will contest action asserting (1) that there was insufficient evidence that decedent's will was the result of undue influence and (2) that the trial court abused its discretion in admitting the opinions of plaintiffs' nonexpert witnesses as to decedent's susceptibility to undue influence. AFFIRMED.

Donald J. Charnetski and William D. Olson of Tomasek, Vogel & Charnetski, Grinnell, Iowa; and Clifford S. Swartz of Scalise, Scism, Gentry, Brick & Brick, Des Moines, Iowa; for defendant-appellant and for defendant-appellee bank.

Orville Bloethe of Bloethe & Schwiebert, Victor, Iowa; and Charles M. Manly, Grinnell, Iowa; for plaintiffs-appellees.

Considered by Oxberger, C.J., Donielson, Snell and Johnson, JJ. Schlegel, J., takes no part.

PER CURIAM

Defendant, Charlotte L. Hendrickson, appeals from judgment for plaintiffs, Cynthia E. Heck and Burdette E. Selle, in this will contest action. She asserts on appeal (1) that there was insufficient evidence that decedent's will was the result of undue influence, and (2) that the trial court abused its discretion in admitting the opinions of plaintiffs' nonexpert witnesses as to decedent's susceptibility to undue influence. We affirm.

Decedent Ada Selle died in December 1978. Her will, executed in November 1974, was admited to probate. Decedent acknowledged in the will that she had one living son, Raymond Selle, and one deceased son, Wayne Selle, who had four children: Cynthia Heck, Burdette Selle, Donald Selle, and Shirley Selle. Under the will, decedent's grandniece, Judith Vonk, was to receive $500 and Raymond was to receive the remainder of decedent's estate.

Two of Wayne's children, Donald and Shirley, had died at the time decedent's will was admitted to probate. The remaining two children, Cynthia and Burdette, filed a petition to set aside the will, asserting that decedent lacked testamentary capacity at the time she executed the will and also that the will was the result of undue influence. They named as defendants Raymond, both individually and as executor of decedent's estate, and Judith. Raymond answered, and a trial was held.

The trial court found that a confidential relationship existed between decedent and her son Raymond, and that because of this relationship, Raymond was able to influence decedent to execute a will which gave him virtually her entire estate and the children of her deceased son nothing. The trial court set aside decedent's will. Raymond appealed.

During the pendency of appeal, Raymond died. The court, by Justice Schultz, granted a motion by Raymond's counsel to substitute Charlotte Hendrickson for Raymond individually, and the Poweshiek County National Bank of Grinnell for Raymond as executor of decedent's estate.

I. Scope of Review. Our review is on assigned error only. Iowa R. App. P. 4; Iowa Code § 633.33 (1981).

II. Opinion Testimony. Defendant argues that the trial court erred in allowing the admission of opinions of lay witnesses indicating that the testatrix was easily influenced and that she would not have understood a will. We disagree. During the trial, plaintiffs' counsel asked several witnesses whether decedent was a person who was easily influenced. Defense counsel objected each time the question was asked, on the grounds that the question was leading, suggestive, and argumentative; that it called for the opinion and conclusion of the witness; that it was a mixed question of fact and law; and that there was not an adequate foundation. The trial court overruled the objections, and each witness answered that decedent was easily influenced. Plaintiffs' counsel also asked several witnesses whether decedent would have understood a will. Defense counsel objected on the same grounds as he had to the questions about decedent's susceptibility to influence. The trial court overruled the objections, and the witnesses answered the question; two answered that decedent would not have understood a will.

The "receipt of opinion testimony, lay or expert, rests largely in the sound discretion of the trial court, and absent abuse of that discretion to the prejudice of the complaining party, this court will not reverse the trial court's ruling." Wadle v. Jones, 312 N.W.2d 510, 515 (Iowa 1981).

> Whether a nonexpert witness has related sufficient facts to warrant an expression of opinion by him, is very much a question in the sound judicial discretion of the trial court, and will only be disturbed where there appears to have been an abuse thereof. As we stated in Ipsen v. Ruess, 239 Iowa 1376, 35 N.W.2d 82, the facts related need not be conclusive as to mental incompetence. If they are somewhat inconsistent with mental soundness and furnish some support for the opinion given, that is all that is required to make the opinion admissible.

In re Guinn's Estate, 242 Iowa 542, 546, 47 N.W.2d 243, 245 (1951). The court in In re Guinn's Estate, found that no error was committed where contestant had seven nonexperts testify that the testator was of unsound mind. Id. Based upon the nonexperts statements concerning their acquaintance with and knowledge of the testatrix, we find the trial court did not err in admitting the opinion testimony of the lay witnesses.

III. Rules of Law and Sufficiency of the Evidence. Defendant claims that plaintiff failed to produce sufficient evidence to establish undue influence and that the trial court erred by establishing an incorrect legal standard of undue influence shifting the burden of proof to the defendant. We affirm the trial court.

Since our review is on assigned error:

> . . . trial court's findings of fact are equivalent to the special verdict of a jury; if supported by substantial evidence they will not be disturbed; we view the evidence in its light most favorable to the judgment, whether contradicted or not; the findings of the trial court are to be broadly and liberally construed, rather than narrowly or technically, and in case of ambiguity, they will be construed to uphold, rather than defeat, the judgment. [citations omitted.]
>
> These principles do not preclude inquiry into whether trial court applied erroneous rules of law which materially affected its decision. We are not bound by trial court's determination of law. [citations omitted.]

Farmers Insurance Group v. Merryweather, 214 N.W.2d 184, 186-87 (Iowa 1974). With these principles in mind, we review this controversy.

Defendant asserts that the trial court shifted the burden of proof to defendant when it determined that the total disinheritance of plaintiff's made a prima facie case on the issue of undue influence. We believe defendant misconstrued the contents of the trial court's legal conclusions. The trial court clearly and unequivocally applied the undue influence standard of In re Estate of Herm, 284 N.W.2d 191 (1979); Johnstone v. Johnstone, 190 N.W.2d 421 (Iowa 1971); and In re Estate of Cory, 169 N.W.2d 837 (Iowa 1969). Accordingly, we find the trial court did not erroneously shift the burden of proof.

With regard to the sufficiency of the evidence, the court's findings have the effect of a special jury verdict. Farmers Insurance Group, 214 N.W.2d at 189. We do not substitute our judgment for the trial court's. The testimony at trial indicated the following: decedent had been close to Raymond. She became much closer to him after her husband died in January 1974. Although decedent was still driving her car in November 1974, Raymond drove her to her attorney's office to execute the will in question. However, Raymond professed not to know why she wanted to see the attorney. Raymond believed decedent's will was fair even though Cynthia and Burdette received nothing, because "they are grandchildren." Decedent had complained to one of her friends that Raymond was harassing her about changing her will. Decedent had also been close to Wayne's widow and children and had executed a will in August 1972 in which her estate was to be divided equally between Wayne's widow and Raymond. From this record, we find there was substantial evidence supporting the trial court's finding and thus affirm its judgment.

AFFIRMED.