

FILED

JUN 28 1979

IN THE COURT OF APPEALS OF IOWA CLERK SUPREME COURT

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ARTHUR H. JOHNSON, Successor)
Executor of the Estate of)
ANN M. O'KEEFE,)

Plaintiff-Appellant,)

Filed June 28, 1979

vs.)

JOSEPH E. O'KEEFE,)

Defendant-Appellee.)

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2-61908

Appeal from Webster District Court - David R. Hansen, Judge.

Plaintiff-executor appeals from trial court's dismissal of his action to recover for the estate of his decedent property transferred from decedent to defendant during decedent's lifetime. AFFIRMED IN PART AND REVERSED IN PART.

Thomas McCullough of McCullough Law Firm, P.C., Sac City, Iowa; and Johnson, Burnquist, Erb, Latham & Gibb, P.C., Fort Dodge, Iowa; for appellant.

John J. Murray of Murray & Blackburn, P.C., Fort Dodge, Iowa, for appellee.

Heard by Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

CARTER, J.

Plaintiff-executor appeals from trial court's dismissal of his action to recover for the estate of his decedent, property transferred from decedent to defendant during decedent's lifetime and money which had passed from decedent to defendant by virtue of joint tenancy accounts. On appeal plaintiff asserts that defendant, whom the trial court found was acting in a confidential and fiduciary relationship with decedent, has failed to sustain his burden of proving he acted in good faith and did not take unfair advantage of decedent at the time of the transfers. The matter having been tried below in equity, our review is de novo. Iowa R. App. P. 4.

Decedent Ann O'Keefe died on January 18, 1976, at the age of 90. Ann had injured herself in a fall in 1968 and from that time until seven months before her death, she resided in an extended care unit in a hospital. On August 26, 1968, Ann executed a will leaving her estate in equal shares to her brother, Joseph (defendant), Joseph's son, and a nephew. At that time Ann's estate consisted mainly of her interest in a 320-acre farm and her home.

In 1972 the nephew, who was a beneficiary of Ann's will, along with other persons, brought a partition action relating to the 320-acre farm. This resulted in a forced sale over Ann's objections and the payment to her of a sum of money approximating \$87,000.

Shortly after Ann received her share of the partition proceeds, Joseph, who had been Ann's conservator since 1971, deposited the proceeds in various bank accounts, savings certificates and certificates of deposit. There is a dispute as to whether the original accounts were in Ann's name with Joseph acting as conservator only, or whether they were joint tenancy accounts with Ann and Joseph as joint tenants. The trial court found the original accounts were in Ann's name with Joseph acting as conservator. This finding is not significant, however, because it appears that these funds ultimately were transferred to joint tenancy accounts of Ann and Joseph prior to the termination of the conservatorship and without court authorization.¹

On October 23, 1973, Ann joined in Joseph's application to close the conservatorship. It was closed by court order on that date. The notary public who witnessed Ann's

¹ The trial court concluded that these funds were placed in the joint tenancy accounts after the conservatorship was terminated. From our review of the record, and being influenced by Joseph's lack of candor, we conclude this occurred prior to the closing of the conservatorship.

signature on the application testified that on October 23, 1973, she was very alert, quick, happy and wide-awake. This notary also expressed the opinion that Ann's action appeared to be voluntary and that she appeared to be confident.

On November 8, 1973, Joseph drafted a quit claim deed conveying Ann's home to himself. Ann signed the deed before the same notary public who had notarized the October application filed in the conservatorship. The notary testified that Ann was just as competent on that date as she had been in October. Some time in 1974, Joseph drafted a bill of sale of personal property conveying to him all of Ann's household goods and personal property. Joseph did not record the quit claim deed or bill of sale until after Ann's death. A doctor who had treated Ann testified that senility and confusion are manifestations of an organic brain syndrome from which Ann was suffering prior to her death, and that in his opinion, she was not competent after May of 1973. This testimony was contradicted by the testimony of three nurses that Ann was competent in 1973 and 1974. In our resolution of this case, we assume that Ann was competent to act at the time of the material transactions.

In determining plaintiff's claim the trial court correctly stated that the applicable legal standard required Joseph to show entire good faith on his part and free, voluntary and intelligent action on the part of Ann with respect to each of the challenged transactions. We agree that this is the proper legal standard to be applied because we confirm the trial court's finding that there was a confidential and fiduciary relationship between Ann and Joseph. See, e.g., Jahn v. Harms, 249 N.W.2d 638 (Iowa 1977); First National Bank v. Curran, 206 N.W.2d 317 (Iowa 1973); Curtis v. Armagast, 158 Iowa 507, 138 N.W. 873 (1912). But, on our de novo review, we disagree with the result arrived at by the trial court in its application of the legal standard to the facts. With respect to the sum of \$87,985.51 transferred to joint tenancy accounts, we find no evidence which would sustain this transaction other than Ann's apparent alertness at the time she signed the conservatorship closing papers before a notary. There is no indication that any accounting was made to her of these funds or that she had any knowledge of the disposition which was made thereof in apparent violation of section 633.155, The Code. The joint tenancy transactions cannot withstand the challenge of the plaintiff-executor.

With respect to the transfers of real estate, household goods, and furniture, we agree with the trial court's determination that Joseph's evidence was sufficient to sustain those transactions.

While we recognize the possibility that the result which we reach may be contrary to the true wishes of the decedent, we must conclude that Joseph has failed to sustain the heavy burden which the law places upon him to show that he took no advantage of Ann by reason of their relationship. In situations of the type involved in the present case, the presumption of overreaching is intended to have a prophylactic effect. It seeks to avoid self dealing in some cases by reducing the opportunity for self dealing in all cases.

We conclude that the trial court erred in not avoiding that portion of the challenged transactions relating to the joint tenancy accounts and accordingly reverse and remand for entry of a decree consistent with our opinion.

Costs on appeal are assessed 75% to appellee; 25% to appellant.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.

Oxberger, C.J., and Johnson, J., concur; Donielson and Snell, JJ., dissent.

DONIELSON, J. (dissenting)

I dissent. While I do agree that a confidential relationship of a fiduciary nature existed between Ann O'Keefe and her brother, Joseph, I also believe that Joseph acted with the utmost good faith and that Ann acted freely and intelligently in transferring her property which then would become Joseph's after her death.

It is true, as the majority notes, that Ann executed a will in 1968, eight years before her death, naming her nephew, the son of her deceased brother, Frank, as a beneficiary. But a testator, in making a will, does not divest herself of any part of her estate nor does she sacrifice any rights concerning it. Duhme v. Duhme, 260 N.W.2d 415, 420 (Iowa 1977). She is free to convey all of her property, leaving nothing for the beneficiaries to take under the will if she so desires.

Here the evidence is clear that Ann's animosity toward the family of Frank grew in intensity, especially after Frank's wife was successful in receiving a partition of the family farm land that Ann loved and believed strongly should pass intact to the male heirs of the O'Keefe family. Her letters after the partition action provide convincing proof that Ann intended that all of her property should go to Joseph and none of it should go to members of Frank's family.

Evidence is also convincing that Ann, in conveying her home and personal property to Joseph and in placing her monetary assets into joint accounts with Joseph, acted competently, independently and in a fashion that represented her intentions. Lack of independent advice, while important, is not essential to uphold a conveyance made pursuant to a confidential relationship. First National Bank of Sioux City v. Curran, 206 N.W.2d 317, 323 (Iowa 1973). Evidence, although not uncontradicted, is sufficient here to show that while Ann was often confused, she was not confused at those times during which the transactions took place.

Furthermore, evidence convincingly shows that Joseph loved his sister and that he had no intentions of dominating her to achieve economic gain for himself. Joseph did not take advantage of the trusted relationship he had with Ann but rather he acted with the utmost good faith in executing her business affairs in a fashion that she obviously desired.

In recognizing that courts must scrutinize with jealous vigilance transactions between persons in a confidential relationship, Id., I find the evidence in this case

persuasively shows that Ann did not want Frank's family to share in her estate. In considering her letters to Frank, the partition sale of the farm and Ann's reaction to the sale, the testimony of those who cared for Ann in the nursing home, and the genuine love and affection that Ann had for Joseph, I am convinced that the trial judge's extensive well-thought-out, thirty-three page opinion should be affirmed. See Id. (A reviewing court may rely heavily on the trial court in cases such as this one since it is the trial court who saw the witnesses and listened to them.)

Snell, J., joins in this dissent.