

IN THE COURT OF APPEALS OF IOWA

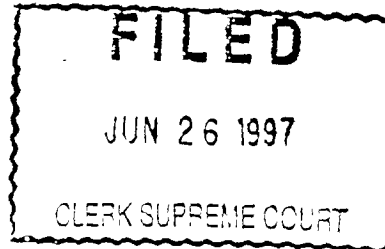
No. 7-097 / 96-0784

000457

**IN THE MATTER OF THE ESTATE
OF LOYD D. SPURGEON, Deceased,
GRACE M. SPURGEON,**
Plaintiff-Appellant,

vs.

LOYD R. SPURGEON, Executor,
Defendant-Appellee.



Appeal from the Iowa District Court for Appanoose County, Richard J. Vogel
(adjudication of law points) and James D. Jenkins (trial), Judges.

Plaintiff appeals a district court ruling holding she was barred from electing
to take against the decedent's will by an antenuptial agreement, she was not entitled
to an allowance from decedent's estate, and she was entitled to a bequest under
decedent's will and certain personal property. **AFFIRMED IN PART; REVERSED
IN PART AND REMANDED.**

John A. Pabst of the Pabst Law Firm, Albia, for appellant.

Kenneth L. Keith of the Keith Law Firm, P.C., for appellee.

Heard by Sackett, P.J., and Cady and Vogel, JJ.

SACKETT, P.J.

Plaintiff-appellant Grace M. Spurgeon, the widow of decedent Loyd D. Spurgeon, appeals from a trial court ruling which found (1) she contracted away, through a valid antenuptial agreement, her right to elect under Iowa Code sections 633.236 to 633.246 to take against Loyd's will; (2) by making an election to take against the will she forfeited the \$15,000 bequest Loyd made for her; (3) she was not entitled support from Loyd's estate under Iowa Code section 633.374; and (4) certain items of personal property she received must be returned to the estate. We affirm in part and reverse in part.

The couple was married in 1979. It was a second marriage for both and each had adult children. One month before their marriage, they signed an antenuptial agreement. There is no challenge to the validity of the antenuptial agreement. They each owned property. The agreement generally allows each spouse to retain his or her own property and to disallow any claims made by one party against the other's property at death, except for the right to occupy a residence.

Loyd died. His will dated August 1983 gave Grace a \$15,000 bequest and certain rights to live in their home.¹ The balance of Loyd's property was given to Loyd's children.

¹ Grace moved out of the home after Loyd's death and her right to occupy the home is not an issue.

Following Loyd's death, Grace filed both an election to take against Loyd's will and an application for an allowance for support. The estate filed a petition to recover from Grace personal property it claimed belonged to the decedent that was in Grace's possession.

The parties requested the trial court adjudicate law points. The trial court ruled on the request finding the antenuptial agreement valid. The court further found no prohibition against Grace electing to take against the terms of Loyd's will. Grace filed an election to take against the will.

The case was then tried on the stipulated issues of whether (1) Grace was entitled to an allowance under Iowa Code section 633.374; (2) Grace was entitled to a statutory share as a surviving spouse under Iowa Code sections 633.236 to 633.246 and the effect of the agreement on her election; and (3) the estate was entitled to certain personal property held by Grace, including a checking account in the name of both Grace and Loyd as joint tenants.

The trial court denied Grace the support allowance and found she had given up her right to elect to take against the will in the antenuptial agreement. The trial court further found Grace was not entitled to the \$15,000 bequest in the will but was entitled to the proceeds in the joint tenancy checking account. She also was ordered to return certain personal property.

Grace appeals contending (1) the district court erred in not awarding her any property pursuant to the provisions of Iowa Code sections 633.236 to 633.246 (1995);

(2) she should be granted an allowance under Iowa Code section 633.374 as Loyd's surviving spouse; and (3) she should be awarded the challenged personal property. Grace argues in the alternative she should have her \$15,000 bequest.

Loyd and Grace had assets in their own names. During the marriage Loyd paid the household expenses and allowed Grace to keep the income from her farm, securities, and social security.

When Loyd died, Grace's personal annual income was about \$25,000. After Loyd's death, Grace's social security payments increased from \$529 a month to \$1362 a month. When Grace moved, she took certain items of personal property from the house with her. She also transferred the \$10,834.43 from a checking account held by Loyd and her in joint tenancy into an account in her name only.

We first address Grace's contention that under Iowa Code section 633.236 she has a right to elect to take against the will. She claims although she may have given up her share of the real property by waiver of her right to dower under the terms of the antenuptial agreement, she did not in the agreement waive her right to elect against Loyd's will and she is entitled to a portion of the estate based on the provisions of sections 633.238(2) and (3).

Iowa Code section 633.236 provides in relevant part:

When a married person dies testate as to any part of the person's estate, the surviving spouse shall have the right to elect to take against the will under the provisions of sections 633.237 to 633.246.

The Iowa courts will uphold antenuptial agreements if they are fair between the parties, and are fairly, freely, and understandingly entered into by persons legally competent to contract, and they do not violate the rights of others at the time made. *Peet v. Monger*, 244 Iowa 247, 254, 56 N.W.2d 589, 593 (1953). They are entitled to the same consideration and construction as other contracts. *Id.* The vital matter to be ascertained is the intention of the parties. *Id.* In seeking that intent, as in seeking the intent of the testator, the antenuptial agreement, as the will, must be taken by its four corners and studied as a whole. *Id.* The intention must be determined from the language of the instrument, the surrounding circumstances, and the conditions of the parties. *Id.* Liberal construction will be given to marriage settlements in order to carry out the intention of the parties. *Id.* at 255, 56 N.W. 2d at 593. The court will not be bound by technical rules and, where necessary to carry out the presumed intent of the parties, will use greater liberality of construction than in the case of wills or deeds. *Id.* Manifest intention will prevail over doubts which might be raised by strict grammatical construction. *Id.*

The antenuptial agreement addresses the fact it is to settle property rights after death. The agreement provided each party was to retain his or her own property. The agreement specifically provided:

4. In the event of the death of either party hereto, the survivor shall have and make no claims of any kind against the estate of the other for any reasons or by way of any right as the surviving spouse of such decedent for dower, statutory right, right of support, right of

inheritance and homestead right; and the parties hereto do hereby waive any claim they might have for any such right of every kind or character. The specific enumeration herein is not to limit the general terms herein used.

5. [I]t being understood that each party to this agreement shall control his or her personal estate, as described herein, and do with the properties thereof whatsoever they wish and will, by his or her orders or directions, or by testament, the same as either could or would do if no marriage relationship existed between them.

(Emphasis added.)

The antenuptial agreement is definite and clear as to the intention of the parties to retain their own property rights and relinquish any claim to the property and estate of the other. Grace waived her rights as surviving spouse to elect to take against Loyd's will. We affirm the trial court on this issue.

Grace next argues the district court should have awarded her an allowance under Iowa Code section 633.374. She maintains an antenuptial agreement does not prevent her from receiving an allowance as surviving spouse, it only makes it discretionary. Grace maintains she should be awarded \$900 per month for one year to bring her up to what she and Loyd were making together. Both parties agreed the antenuptial agreement would not prohibit the court from awarding the allowance if it were appropriate.

The trial court refused to give her an allowance, finding Grace had ample funds to provide for her support and ample resources, social security benefits, and the money in the joint tenancy checking account. The court found, because Grace was

not required to rely on the decedent for her daily support although he paid it; she was not entitled to an allowance. The right to an allowance is waived in the agreement.

An antenuptial agreement does not prevent but makes discretionary an allowance to the surviving spouse. *Estate of Tollefsrud*, 275 N.W.2d 412, 415 (Iowa 1979); *O'Dell v. O'Dell*, 238 Iowa 434, 26 N.W.2d 401 (1947); *Caldwell v. Caldwell*, 192 Iowa 115, 186 N.W. 58 (1922).

Iowa Code section 633.374 provides in applicable part:

The court shall, upon application, set off and order paid to the surviving spouse, as part of the costs of administration, sufficient of the decedent's property as it deems reasonable for the proper support of the surviving spouse for the period of *twelve* months following the death of the decedent. . . . The court shall take into consideration *the station in life of the surviving spouse* and the assets and condition of the estate.

(Emphasis added.)

The statute does not make a showing of necessity a condition for granting the allowance. *Estate of DeVries*, 203 N.W.2d 308, 311 (Iowa 1972). The trial court considered Grace had ample funds for her own support in refusing her an allowance for twelve months from Loyd's estate. The trial court abused its discretion. We reverse the ruling on support and remand to the trial court to assess an allowance applying correct factors.

Grace next claims the trial court should not have taken from her the \$15,000 Loyd gave her in his will because she filed and was unsuccessful in her election to

take against the will. She further claims if we affirm the trial court and find she does not have the right to elect, we should restore her \$15,000.

Generally, a choice to take against the will is an election which nullifies gifts to the surviving spouse in the will. *In re Matter of Campbell*, 319 N.W.2d 275, 277 (Iowa 1982). A spouse generally has to make a choice whether to accept the will and forego a statutory share or reject the will and take a statutory share. *Id.*

Iowa Code section 633.246 provides:

An election by or on behalf of a surviving spouse to take the share provided in either section 633.236, 633.240 or 633.244 hereof once made shall be binding and shall not be subject to change except for such causes as would justify an equitable decree for the rescission of a deed.

Grace did not take a statutory share, having contracted away the right to do so. There consequently was nothing that was available to her under sections 633.236, 633.240, or 633.244. She is still entitled to the \$15,000 bequest given her in the will. We reverse the trial court on this issue.

Grace's last contention is that the trial court should not have ordered she return certain personal property. We find no valid reason to disagree with the trial court's finding on this issue that it was property acquired by Loyd and the antenuptial agreement was that it remain his property.

AFFIRMED IN PART; REVERSED IN PART AND REMANDED.