FILED
NOV 22 1978
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

MARTHA H. SCHWARZ, Administrator of the Estate of Homer S. Schwarz, Deceased,

Appellant,

vs.

MARY PAULINE BURROWS, LARRY CRAIG SHOCKEY AND BETTY JOLENE SHOCKEY,

Appellees.

Filed November 22, 1978

697
2-61621

Appeal from Polk District Court - Dale S. Missildine, Judge.

Administrator appeals judgment dismissing suit for conversion of negotiable instruments and exclusion of testimony of attorney for the estate. - Affirmed.

Joseph Z. Marks & Judd Golden, Des Moines, for Appellant.

Baird, Bowers & Oliver, Des Moines, for Appellees.

Submitted to Oxberger, C.J., and Donielson, Snell and Carter, JJ.

PER CURIAM

Plaintiff Martha Schwartz, Administrator of the Estate of Homer Schwartz, appeals judgment dismissing her cause of action for conversion against defendants and refusal to admit testimony of the attorney for the estate. We affirm.

Administrator alleged that defendants, Mary P. Burrows, Larry Shockey and Betty Jolene Shockey wrongfully converted three United States Treasury Notes belonging to her late husband's estate. Trial court found Administrator failed to prove the essential elements of conversion by a preponderance of the evidence. We review this law action on errors assigned and view the record in a light most favorable to the judgment. Sandhorst v. Mauk's Transfer, Inc., 252 N.W.2d 393 (Iowa 1977).

In the instant case, the facts are undisputed. Homer Schwartz purchased three Treasury Notes payable to bearer with face value of $10,000 each. Approximately two weeks before Homer's death, the notes came into the possession of Mary Burrows. She in turn delivered them to her daughter and son-in-law, the Shockeys. The notes were eventually cashed and the proceeds used to purchase a home and certificate of deposit. When questioned by the attorney for the estate who was attempting to inventory the assets, Mary Burrows denied having any knowledge about the Treasury Notes. Mary Burrows was a trusted friend and long-time employee of Homer Schwartz.

Finding no direct evidence of how Mary Burrows acquired possession of the notes, trial court held Administrator failed to prove that defendants "wrongfully took, unlawfully took, and converted" the notes to their own use. Administrator contends that she was not required to prove that the notes were wrongfully taken; that once she proved ownership of the notes and defendants' refusal to surrender them, the burden shifted to defendants to prove that the notes were a gift. This might be true had the administrator been able to prove ownership. The notes in question, however, were bearer instruments and the person in possession of same is presumed to be the owner. See In re Estate of Wearin, 167 Iowa 535, 149 N.W. 621 (Iowa 1914). In Wearin, the dispute concerned negotiable certificates of deposit, which had been indorsed in blank by decedent and found in his widow's possession.

Wearin is apposite to the instant case because a negotiable instrument endorsed in blank then becomes a bearer instrument. Section 554.3204(2), The Code. Viewing the evidence in a light most favorable to the judgment, we agree that Administrator failed to sustain her burden of proof.

Finally, Administrator asserts trial court erred by refusing to admit into evidence the testimony of the attorney for the estate. We have examined the offer of proof and find that any error in excluding the same was harmless because nothing therein is material to the issues involved in this case. See In re Estate of Walton, 213 Iowa 104, 238 N.W. 577, 578 (1931).

AFFIRMED.