IN THE COURT OF APPEALS OF IOWA

No. 6-161 / 95-0471

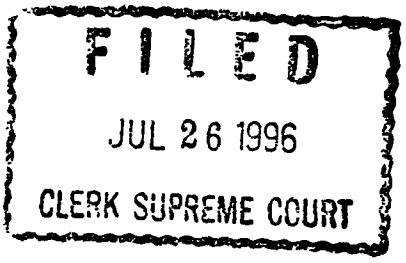
FRANKLIN C. SCHULTZ and LINDA KEETER SCHULTZ,

Plaintiffs-Appellants,

vs.

DOROTHY H. SCHULTZ,

Defendant-Appellee.



Appeal from the Iowa District Court for Iowa County, Thomas M. Horan, Judge.

Franklin and Linda Schultz challenge the order canceling the real estate contract between them and Franklin's mother, Dorothy Schultz. **AFFIRMED.**

Stephen A. Swift, Cedar Rapids, for appellants.

James E. Claypool of Claypool & Claypool, Williamsburg, for appellee.

Considered by Sackett, C.J., and Habhab and Huitink, JJ.

SACKETT, C.J.

Plaintiffs-appellants Franklin and Linda Schultz challenge the order canceling the real estate contract between them and Franklin's mother, defendant-appellee Dorothy Schultz. They claim the trial court erred in finding: (1) the existence of a confidential relationship was properly pled; (2) Dorothy proved they were in a confidential or fiduciary relationship with her and they breached the duties created by this relationship; and (3) Dorothy proved they misrepresented, defrauded, or used undue influence to secure her signature on the contract. We affirm.

In 1988, Franklin and Linda Schultz entered into a contract for the purchase of the family farm from Franklin's mother, Dorothy Schultz. Dorothy claimed she wished to sell the farm containing approximately two hundred forty acres under a "mock sale" so she could more easily handle an increasing debt load. In a letter, she told Franklin she wished to sell the property to him, but she would then like it back.

Franklin determined $110,000 as the price for the property and his attorney prepared an installment sale real estate contract providing for a $10,000 down payment. Dorothy did not have her attorney look over the contract; she signed the contract without independent advice and she claimed it was signed under duress.

Franklin and Linda entered into possession of the property. In about 1993, a dispute developed between Dorothy and Franklin and Linda about the terms of the contract. Dorothy contended Franklin and Linda owed interest in addition to the principal payment provided in the contract. Franklin and Linda contended the interest

was included in the payment. Dorothy caused to be served on Franklin and Linda a "Notice of Forfeiture of Real Estate Contract" and ultimately filed an "Affidavit of Forfeiture." Franklin and Linda in the meantime filed a petition for a declaratory judgment asking for a construction of the contract provisions and that the Notice of Forfeiture and the Affidavit of Forfeiture be considered invalid.

Dorothy answered the petition and alleged she had signed the contract because of financial difficulties, including problems with the Internal Revenue Service for income taxes, and she asked Franklin and Linda to take ownership of her real estate until she solved her financial problems and then have the farm returned to her. She alleged the contract for sale was drafted by Franklin's attorney, she signed without understanding it, and she sold the real estate because of misrepresentation, fraud, and duress. She asked that the real estate be returned to her.

The matter was tried to the court. The trial court found Dorothy was a seventy-three-year-old widow with a ninth grade education and little business experience, and since the death of her husband, she has been dependent on her two sons to manage her property. The court further found Dorothy entered into the real estate contract with Franklin and Linda, which transferred the farm to them for about one-half of its value, without independent advice and assistance. The court also found the money from the contract went to Dorothy's creditors and Franklin and Linda agreed the farm would be returned to Dorothy when her financial problems were resolved. The court determined Franklin and Linda were in the position of a

confidential relationship with Dorothy and they breached the relationship. The court found Franklin and Linda obtained Dorothy's signature through misrepresentation, fraud, or undue influence and declared the contract null and void.

Franklin and Linda first contend Dorothy did not plead the existence of a confidential or fiduciary relationship so as to shift the burden of proof from her to them. Dorothy's answer did not specifically plead the existence of a confidential or fiduciary relationship. However, the facts set forth in her answer would support a finding of a confidential relationship. Therefore, the answer gave sufficient and fair notice of her claim. *See Soike v. Evan Matthews and Co.*, 302 N.W.2d 841, 841 (Iowa 1981).

Franklin and Linda next contend Dorothy failed to establish a confidential or fiduciary relationship and that they breached the duty to her created by the relationship.

Although our review is de novo, we give weight to the trial court's findings. *Oehler v. Hoffman*, 253 Iowa 631, ___, 113 N.W.2d 254, 256 (1962). Dorothy has the burden to show by clear proof the existence of a confidential relationship where Franklin and Linda were the dominate persons and Dorothy the subservient one. *In re Estate of Clark*, 357 N.W.2d 34, 37 (Iowa App. 1984); *see also Luse v. Grenko*, 251 Iowa 211, 214, 100 N.W.2d 170, 172 (1959). 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. *Luse*, 251 Iowa at 215, 100 N.W.2d at 173.

A confidential relationship does not arise solely from a blood relationship such as between parent and child. *Clark*, 357 N.W.2d at 37. As a general rule, the conferring of benefits by a parent upon a child is presumptively valued. *Curtis v. Armagast*, 158 Iowa 507, 522, 138 N.W. 873, 879 (1912). The unfavorable presumption arises only where the child, by reason of its youth and inexperience or other special circumstances, is to some degree under the dominion, control, or paramount influence of the parent, or where the child is the dominant personage in that relationship and the parent has become the dependent one, trusting herself and her interests to his advice and guidance. *Id.*

Applying these principles, we agree with the trial court there was a confidential relationship between Franklin and Dorothy in regard to the transfer of the farm that was greater than the mere relationship of a parent and child. First, there is substantial evidence that when Dorothy recognized she had financial problems, she turned to Franklin and Linda for assistance. Dorothy wrote Franklin:

> I have something to ask of you. First of all, it won't cost you any money but it would help me to get out of the mess I'm in. If I can get the farm price down as low as the law will allow. If we could put through a mock sale between you and I. . . .

Second, Dorothy's turning to Franklin to help her was strong evidence she was depending on him and trusting him to look out for her interests.

Third, Dorothy allowed Franklin to have his lawyer draw up the contract and accepted Franklin's advice on the transaction. *See Pence v. Rawlings*, 453 N.W.2d 249, 252 (Iowa App. 1990).

Fourth, Dorothy was seventy-three years old, had a limited education, and was a widow who had relied in part on her deceased husband for business decisions. A confidential relationship exists when one has gained the confidence of another and purports to advise with the other's interest in mind. *Kunz v. Kunz*, 225 Iowa 1087, ____, 125 N.W.2d 226, 228 (1963).

We agree with the trial court there was sufficient evidence to prove Franklin stood in a confidential relationship with his mother on the dealings on the farm. We affirm on this issue.

Franklin and Linda next contend there was not clear and convincing evidence they misrepresented, defrauded, or used undue influence in securing Dorothy's signature on the real estate contract. Because a confidential relationship was established, the burden shifted to Franklin and Linda to prove the contract was not the result of misrepresentation, fraud, or undue influence. *Oehler*, 253 Iowa at 631, 113 N.W.2d at 256. Because we find Franklin and Linda failed to prove they did not exert undue influence in securing the transaction, we find it unnecessary to address their contention there was no fraud or misrepresentation.

There is clear evidence that despite Dorothy's concerns, the contract was signed, she had no legal representation, and she thought Franklin was helping her out of love. This prong was met. We affirm.

AFFIRMED.