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JUN 29 1993
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 3-225 / 92-512

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RONALD L. EDWARDS, As Conservator of the Estate of Bernice E. Edwards,

Appellant,

vs.

MARTHA E. WOOD and **WAYNE WOOD**,

Appellees.

Appeal from the Iowa District Court for Scott County, David J. Sohr, Judge.

The plaintiff conservator appeals a judgment of the district court refusing to set aside a $10,000 gift made by a ward to two friends. **AFFIRMED.**

Thomas C. Fritzsche of Fritzsche Law Office, Bettendorf, for appellant.

James S. Zmuda of Califf & Harper, P.C., Moline, Illinois, for appellees.

Heard by Donielson, P.J., and Sackett and Habhab, JJ.

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DONIELSON, P.J.

In December 1989, eighty-three-year-old Bernice Edwards was hospitalized for a ruptured aorta. She had previously lived independently in suburban Minneapolis. Following her hospitalization, Bernice was transferred to a nursing home in Wayzata, Minnesota. In May 1990, her son, Dr. Ronald Edwards, was appointed his mother's legal conservator in a Minnesota probate proceeding.

Martha and Wayne Wood, who currently reside in Davenport, were long-time friends of Bernice. On January 25, 1990, Martha and Wayne traveled to Minnesota to visit Bernice in her nursing home. During their visit, Bernice asked the Woods to use a blank check to transfer $15,000 from one of her accounts to themselves. Bernice dictated a memorandum to Martha, which stated the money was to be used first to pay her burial expenses and the balance was a gift to the Woods. Five thousand dollars was subsequently used in the purchase of a preneed funeral arrangement. The balance, $10,000, was accepted as a gift by the Woods.

Following several unsuccessful demands, Ronald filed a petition seeking the return of the $15,000 in July 1990. In November 1991, following a bench trial, the district court ruled Bernice intended to give the Woods a gift of $10,000. The court found Wayne had been without authority to arrange for a preneed funeral arrangement and ordered

the Woods to pay Ronald $5000. Ronald filed a rule 179(b) motion which the district court denied.

Ronald now appeals. He argues the district court should have set aside the gift pursuant to a 1991 amendment to Minnesota Statute section 525.56 (1990) because at the time Bernice made the gift she was recovering from hospitalization, under a heavy medication regime, and unable to attend to her own financial affairs. Ronald also claims a confidential relationship existed between Bernice and the Woods. We note Ronald concedes there is substantial evidence to support the district court's finding Bernice made an intended gift to the Woods. Thus, we will not address that issue.

I. **Scope of Review.** Initially, we consider the proper scope of review. Ronald contends the district court had equitable powers to set aside the gift and our review should be de novo. The Woods argue our review should be limited to the correction of errors of law.

The essential character of a cause of action and the relief it seeks, as shown by the complaint, determine whether an action is at law or equity. Harding v. Willie, 458 N.W.2d 612, 613 (Iowa App. 1990) (citing Moseback v. Blythe, 282 N.W.2d 755, 758 (Iowa App. 1979)). If both legal and equitable relief are demanded, the action is ordinarily classified according to what appears to be its primary purpose or its controlling issue. Moseback, 282 N.W.2d at 758.

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The petition filed by Ronald designates this action as one at law. The controlling issue is whether a gift was properly made by Bernice to the Woods. This case is clearly an action at law and we review only for errors of law. Iowa R. App. P. 4. Findings of facts in a law action are binding on us if supported by substantial evidence. Iowa R. App. P. 14(f)(1). We construe the trial court's findings broadly and liberally. Grinnell Mut. Reins. Co. v. Voeltz, 431 N.W.2d 783, 785 (Iowa 1988). We are prohibited from weighing the evidence or the credibility of the witnesses. Id.

II. Setting Aside the Gift Pursuant to Minnesota Law. Ronald contends the district court abused its discretion in declining to set aside the transaction pursuant to a 1991 amendment to Minnesota Statute section 525.56 (1990).

This amendment provides if a ward made a gift during the two-year period before establishment of the conservatorship, the conservator may petition the court for review of the transaction and the court may set aside the transaction upon a finding the ward was subject to duress, coercion, or undue influence. See Minn. Stat. § 525.56 (1990), amended by Act of May 16, 1991, ch. 118, S.F. 691.

Ronald contends the district court took judicial notice of the 1991 amendment and therefore it should be controlling. We disagree. The district court specifically stated:

> The Court: Well, I'm afraid that [the 1991 amendment] does not apply to Iowa. Minnesota statutes don't control what contracts are effective in Iowa. I will not take judicial notice of it -- of its effect. I will take judicial notice it was passed by the State of Minnesota. I don't say that it's the law of Iowa that this Court is in any way bound by.

Ronald has not challenged this ruling on appeal.

Iowa law does not have a comparable statute which would allow a conservator to petition a court to set aside a gift which occurred up to two years prior to the establishment of the conservatorship. Because Minnesota law is not controlling in this action, we find no abuse of discretion.

III. Common Law Authority to Set Aside Transaction. Ronald also contends the district court erred in refusing to find a confidential and fiduciary relationship existed between the Woods and Bernice and in refusing to set aside the transaction on that basis.

A confidential relationship arises whenever "'one of the parties is duty bound to act with the utmost faith for the benefit of the other party . . . [and] a continuous trust is reposed by one person in the skill and integrity of another.'" First Nat'l Bank v. Curran, 206 N.W.2d 317, 321-22 (Iowa 1973) (citation omitted). A fiduciary relationship exists when one of the parties "'is under a duty to act for or to give advice for the benefit of another upon matters within the scope of the relation.'" Kurth v. Van Horn, 380 N.W.2d 693, 695 (Iowa 1986) (citing Restatement (Second) of Torts § 874, comment a (1979)).

Once a confidential or fiduciary relationship is established, the person in whom the trust is reposed has the burden of proving the fairness of his or her actions and that the inferior party had full freedom and understanding of those actions. In re Estate of Lundvall, 242 Iowa 430, 440, 46 N.W.2d 535, 540 (1951).

On several occasions, Wayne Wood offered Bernice his opinion regarding investments which Bernice had made. The Woods also performed numerous favors for Bernice, such as providing her with transportation and making phone calls at her request. However, the Woods performed the above only in the capacity as close and long-time friends. At the time Bernice made the gift of $10,000 to the Woods, there was not a fiduciary or confidential relationship between the Woods and Bernice. We further note even if such a relationship existed, there was substantial evidence the Woods never took advantage of Bernice and that Bernice acted voluntarily and intelligently in making the gift. We affirm on this issue.

The costs of this appeal are taxed to Ronald.

For the reasons stated, we affirm the judgment of the district court.

AFFIRMED.