IN THE COURT OF APPEALS OF IOWA

No. 6-313 / 95-1019

FILED
OCT 25 1996
CLERK SUPREME COURT

IN THE MATTER OF THE ESTATE OF ANNA M. BUCK, Deceased,

VIOLET A. SPENCER, Co-executor, and **DALE F. BUCK,** Surviving Spouse,
Appellants.

Appeal from the Iowa District Court for Linn County, Van D. Zimmer, Judge.

Violet Spencer, as co-executor of Anna Buck's estate, and Dale Buck, as surviving spouse, appeal a district court ruling in this probate action holding that Edna Etzel, Violet's sister and co-executor, was not required to surrender her interest in an IRA and annuity to the estate in order to support Dale from trust proceeds. **REVERSED AND REMANDED.**

Benjamin W. Blackstock, Eric C. Syvrud, and Jon C. Tack of the Blackstock Law Offices, Cedar Rapids, for appellants.

Joseph G. Bertroche, Jr. of the Bertroche Law Offices, Cedar Rapids, for appellee Edna Etzel.

Considered by Streit, P.J., Vogel, J., and McCartney, S.J.*

*Senior judge from the Second Judicial District serving on this court by order of the Iowa Supreme Court.

McCARTNEY, S.J.

Violet A. Spencer (Violet), as co-executor of the estate of Anna M. Buck, deceased, and her father, Dale F. Buck, (Dale) surviving spouse of the decedent, appeal the decision of the trial court.

The appellants sought to have Edna Etzel (Edna) removed as a co-executor of Anna's estate. They further sought to have a trust imposed upon an annuity and an individual retirement account (IRA) which was, in part, in Edna's name as beneficiary. They argue that sought-for trust imposition was for the benefit of the surviving spouse, Dale. Violet and Edna are also a daughters of the decedent, Anna, and of appellant Dale.

The trial court refused to grant the relief prayed for, hence the appeal.

Our review is de novo and while we give deference to the findings of fact we review the record to determine if the findings and conclusions are proper. *See* Iowa Code §633.33; Iowa R. App. P. 4.

The decedent died testate on April 7, 1994, although the probate inventory filed after the petition for probate of her will states the date of her death to be March 7, 1994. Her will was executed March 25, 1991, and she amended her will by executing a codicil April 4, 1994. In pertinent part, the will creates a trust for the benefit of her husband, Dale, the appellant herein, during his life. Upon his death, the trust estate is then divided equally among her five children, including Violet and Edna.

The decedent owned, at the time of her death, an annuity with the Collins Credit Union with the approximate value of $45,515, and individual retirement accounts at the same credit union totaling $15,184. The estate had a value of approximately $138,000 which included the annuity and the IRA accounts.

The decedent had created IRA accounts initially naming her husband, Dale, as the beneficiary. The IRA accounts were initially established in February of 1983. On March 25, 1991, the decedent changed the beneficiary of the IRA accounts from her husband to her estate.

On March 30, 1994, seven days before her death from cancer of the liver, and accompanied by Edna, the decedent purchased a single-premium annuity through the said credit union and named Violet and Edna as beneficiaries. On the same date, she changed the beneficiary of her IRA accounts from her estate to Violet and Edna. Violet and Edna were named as co-executors under the Last Will and Testament of the decedent, and they were also named as co-trustees under the testamentary trust established for the benefit of her husband, Dale. These two accounts, together with accrued interest on the annuity, totaled $60,760 at the time of her death, or almost 45% of the value of the entire estate.

Violet and Edna executed the probate report and inventory during the latter part of July 1994. The inventory, pertaining to the annuity and IRA accounts relate that the "designated beneficiaries, Edna M. Etzel and Violet A. Spencer, have filed

disclaimers." Edna testified that she was aware of this disclaimer statement at the time she signed the inventory.

Thereafter, Violet, in October 1994, executed a disclaimer to both the annuity and the IRA accounts by an instrument and by her conduct in delivering the proceeds to the estate account. Edna, however, refused to do so, asserting that she is entitled to one-half of these monies in her own right. This action precipitated the instant litigation.

At trial, Violet testified that Anna's purpose in naming her and her sister, Edna, as beneficiaries of these accounts was to provide for their father during his lifetime, with the funds to be distributed in equal shares in accordance with the will upon his death, i.e., equal shares to the five children.

The banker who handled the change of beneficiaries on the IRA accounts testified that in the presence of her mother, Edna stated that the accounts and annuity were for the benefit of the father. It is noteworthy that Edna was alone with her mother and the banker at the time of this transaction and also at the same time the single-premium annuity was purchased with both Violet and Edna as beneficiaries. This banker further testified that Mrs. Buck changed the beneficiaries to Violet and Edna because the two women would care for their father.

The brother, Albert Buck, testified that Edna told him the interest accruing on the IRA accounts belonged to the estate, that Edna was worried about being required

to pay the income tax on the interest accruing on the accounts and that Edna said that these accounts were estate monies designed to care for the father's expenses.

Edna confirmed the foregoing testimony of others in her own evidence given at trial. She acknowledged that she made statements to others that the funds were for the benefit of the father. She equivocated in her testimony about whether she directly said to the banker, "this is for Father," but acknowledged that she had made those statements.

Constructive trusts are within the purview of equity. *Loschen v. Clark*, 256 Iowa 413, 419, 127 N.W.2d 600, 603 (1964). They are designed to avoid injustice, to maintain good faith and good conscience. *Id.*, 127 N.W.2d at 603. They do not, in their creation, depend upon actual fraud, but under the equitable doctrine, that states that which should in good conscience be done, will be done. *Mead v. City Nat'l Bank*, 232 Iowa 1276, 1281, 8 N.W.2d 417, 420 (1943). Rather than created by intent as are regular trusts, constructive trusts are creatures of equitable estoppel. *Loschen*, 256 Iowa at 419, 127 N.W.2d at 603.

Unfair or unconscionable conduct may be sufficient to create a constructive trust, at least where it would be unjust enrichment for the legal owner to retain the benefits. *Id.*, 127 N.W.2d at 603.

Absent fraud, generally a confidential relationship must exist between the transferee and transferor. *Reeves v. Lyon*, 224 Iowa 659, 667, 277 N.W. 749, 753 (1938). A confidential relationship is found wherever confidence is reposed by one

person in another with resulting superiority and influence over the other. *First National Bank v. Curran*, 206 N.W.2d 317, 321 (Iowa 1973). The genesis of this is found in *Curtis v. Armagast*, 158 Iowa 507, 138 N.W. 873 (1912).

No one factor necessarily creates a confidential relationship, and it is necessary to look at the "multiform positions in life." *First National Bank*, 206 N.W.2d at 321-322 (quoting *Dibel v. Meredith*, 233 Iowa 545, 549, 10 N.W.2d 28, 30 (1943).

It is apparent that Anna imposed trust and confidence in Edna by naming her in her will as a co-executor and as a co-trustee. She enjoyed a daughter-mother relationship often found in confidential relationships; there was a great disparity in their physical conditions, Anna being ravaged by liver cancer. Anna further had records of her financial transactions sent to Edna, evidencing trust and confidence.

We are concerned by the fact that Edna took her mother to the bank at a time when her mother was being consumed by her illness, seven days before her death, in order to change the beneficiaries from the estate to the two daughters.

We also view with the concern the disparity in the devolution of property after Anna changed the beneficiaries--Anna did not change her will, but left her will as it had existed for many years providing for a life income for her surviving husband, with the remainder to the children. The changes in beneficiaries, however, resulted in Edna receiving $30,000 from the two accounts and an additional $30,000 passed to Violet. The remaining approximate $70,000 in the estate was passed to the five children, or approximately $14,000 each. Edna would receive approximately

$44,000, compared to $14,000 to her other siblings--and the trust available for Anna's husband was reduced by almost 45% as a consequence of these beneficiary changes.

These changes were made a few days before Anna's death and substantially destroyed a pattern of heirship Anna had established over a number of years.

In her testimony at the trial, Edna's attitude was baleful toward her brother, sister, and sister-in-law. And, in part, she equivocated. Her testimony was not supported by the testimony of others, and her pernicious comments did not appear to be relevant in part to the issues before the court.

We agree with the trial court that the beneficiary forms were clear and unequivocal in naming Violet and Edna as the beneficiaries, and we further agree that Edna has not filed a disclaimer in accordance with the appropriate Code sections. However, these factors do not reach the issues presented in constructive trusts where, more often than not, the conveyances are absolute on their face or conveyances were never made, in accordance with the transferor's wishes to execute such conveyances.

Constructive trusts must be shown by clear and convincing evidence--we are satisfied that the appellants have shown by such evidence that a constructive trust for the benefit of Anna's estate should be imposed upon the beneficial interests in both the IRA accounts and the annuity received or to be received by Violet and Edna.

We are buttressed in this conclusion by the statements made by Edna to others and at trial that the accounts were for her father's benefit.

In view of the foregoing we hold that Edna should be relieved of her further duties as co-executor and as co-trustee. Her refusal to honor her mother's wishes gives rise to a conflict between her own interests and those interests of the other estate beneficiaries.

A corporate co-fiduciary should however be appointed as a replacement for Edna, given the acrimonious relationships between the parties interested and in view of Anna's long-standing desire for co-fiduciaries.

We reverse the decision of the trial court and remand this matter for further proceedings in accordance with the rulings in this decision.

Costs of the appeal except attorney fees, are taxed to the appellee.

REVERSED AND REMANDED.