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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

JOHN JAEGER, by his brother and next
friend, ALEX JAEGER,

Plaintiff,

vs.

ORVILLE TUECKE and CHRISTINE
TUECKE, husband and wife; JAMES
TUECKE and BONNIE TUECKE, husband
and wife; and ORVILLE TUECKE and
JAMES TUECKE, as guardians and
conservators of the above-named JOHN JAEGER
and his property, and ORVILLE TUECKE
and JAMES TUECKE, as fiduciaries of the
Estate of JOHN TUECKE,

Defendants.

Filed April 28, 1978

IN THE MATTER OF THE ESTATE OF
JOHN JAEGER,

Deceased;

ALEX JAEGER and HUBERT JAEGER,
Plaintiffs-Contestants,

vs.

ORVILLE TUECKE and JAMES TUECKE,
Defendants-Proponents.

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2-59704

Appeal from Clayton District Court - Frank D. Elwood, Judge.

Defendant-proponents appeal judgment setting aside a deed and conveyance of real estate and the denial of probate to a purported will; they claim undue influence in the inter vivos transaction was not established by clear, satisfactory and convincing evidence, and that the burden in the will contest was impermissibly shifted to them on the basis of an inferred fiduciary relationship. - Affirmed.

Michael Schuster, Guttenberg, for Defendants-Proponents.

James Hart, of Hart & Hart, Elkader, for Plaintiffs-Contestants.

Heard by Allbee, C.J., and Donielson, Snell, Oxberger and Carter, JJ.

PER CURIAM

Defendant-proponents Orville and James Tuecke appeal the judgment setting aside a deed and conveyance of real estate to them by John Jaeger and the denial of probate to a purported will of Jaeger effectively disposing of his entire estate to the benefit of the Tueckes. We affirm.

The deed transactions and the execution of the will occurred within a less than two months period in the summer of 1968. Within this same time frame, after the deed was signed and before the will was executed, the Tueckes were appointed conservators and guardians of John Jaeger upon his voluntary petition. The Tueckes claim that although the plaintiff-contestants Alex and Hubert Jaeger, brothers of the deceased John, introduced evidence which could be viewed as establishing undue influence, it did not clearly, satisfactorily and convincingly lead to such a conclusion. They theorize this failure to meet the higher standard made it reversible error for the trial court to set aside the deed and conveyance. As to the will, they claim the trial court impermissibly shifted the burden to them on an "inferred fiduciary relationship" basis to show the will was in fact John Jaeger's and did not reflect undue influence.

On the facts, the Tueckes urge we should review de novo since the action to set aside the deed brought in equity and the will contest brought at law were consolidated and tried as an equitable action. In our decision we are guided by *In re Estate of Brooks*, 229 Iowa 485, 294 N.W. 735 (1940). Brooks involved a will contest and an action in equity to reform a deed. In that case the court observed that the method of trial becomes important when by agreement of the parties the causes are consolidated and tried together as an equitable action. Even though such a case is tried de novo in the appellate court, "...where testimony is conflicting, great weight is accorded the findings of the trial court, because the witnesses are before him. . ." and he enjoys a far better view of their credibility. 229 Iowa at 493.

At the outset we should note the parties characterized John Jaeger, his mental strength, business acumen and self-sufficiency in widely divergent terms. The trial court rejected the Tueckes' claim that John was a shy bachelor who tired of paying his brother's drinking debts and solicited the Tueckes' services to protect

his estate. The trial court accepted the Jaegers' view that John remained illiterate throughout his lifetime because of his low intellect, that he remained unable to assume responsibility for his own business affairs and daily personal needs, and that he was in 1968 peculiarly susceptible to the attentiveness of the Tueckes due to his increased consumption of alcohol and his dependency. The findings of fact are fully supported by the evidence; we, accordingly, defer to the trial court as Brooks suggests is proper in a case such as this.

Since we view the evidence as found by the trial court sufficient to justify the court's finding of a confidential relationship at the time of the inter vivos transaction, the burden was properly cast upon the Tueckes to sustain John Jaeger's conveyance to them against charges of undue influence. Brooks, supra. Once the evidence established such a relationship in which the Tueckes held the dominant position, the burden was on the Tueckes to show their good faith by clear and convincing proof. Luebke v. Freimuth, 248 Iowa 58, 64, 78 N.W.2d 473, 476 (1956). The record indicates Jaeger conveyed his realty to the Tueckes for a consideration substantially below market value and received only a token payment on the principal. Jaeger was living alone in the years in which his dependency upon the Tueckes was developing. Soon after the execution of the various documents and the creation of the guardian and conservatorship Jaeger was penniless and without food. The trial court found the Tueckes had not dispelled the appearance of self-dealing, impropriety and undue influence in securing the deed. We find no clear and convincing proof of the Tueckes' good faith which would support reversing the trial court's finding.

Although the Tueckes complain of the trial court "inferring" a fiduciary relationship at the time of the execution of the will, we find no reversible prejudice. Guardians and conservators are statutorily-designated fiduciaries. Section 633.634, The Code. It is true, as the Tueckes urge, that the mere existence of a fiduciary relationship at the time of the execution of a will does not raise a presumption of undue influence in the testamentary gifts accorded the fiduciary, Graham v. Courtwright, 180 Iowa 394, 161 N.W. 774, 777 (1917), and does not allow the shifting of the burden to the proponents. The instant case, however, involves a

finding by the trial court that in 1963 John Jaeger was incapable of knowing the disposition he desired to make of his property. This lack of testamentary capacity, if supported by substantial evidence, invalidates the will. Matter of Estate of Adams, 234 N.W.2d 125 (Iowa 1975). We have found such substantial support. Any error which might have occurred in the alleged shifting of the burden of proof on the issue of undue influence in the will contest need not, therefore, be reached.

We find no merit in the Tueckes' claim the trial court abused its discretion to the detriment of their rights in delaying the decision of this case.

AFFIRMED.