

FILED

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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

FREEMAN G. MERRILL, Executor of the)
Estate of **ANNE J. BAUDLER**, Deceased,)

Plaintiff-Appellee/
Cross-Appellant,)

Filed April 30, 1985

vs.)

FRED HUTCHISON and)
LOIS HUTCHISON, Husband and Wife,)

Defendants-Appellants/
Cross-Appellees.)

4-486
84-650

Appeal from the Iowa District Court for Sioux County - James P. Kelley,
Judge.

Defendants (the grantees of a deed) appeal and plaintiff (the executor of the
grantor's estate) cross-appeals from a decree setting aside the deed. **AFFIRMED.**

Daryl L. Hecht of Crary, Huff, Clem, Raby & Inkster, Sioux City, for
defendants-appellants/cross-appellees.

Harold R. Grigg of Smith, Grigg & Shea, Primghar, for plaintiff—
appellee/cross-appellant.

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

DONIELSON, P.J.

Defendants, the grantees of a deed, appeal from a decree setting aside the deed asserting: (1) that the grantor was not incompetent to execute the deed, and (2) that there was delivery of the deed. On cross-appeal, plaintiff, the executor of the grantor's estate, asserts that a confidential relationship existed between the grantor and defendant Fred Hutchison, and the latter breached the relationship. We affirm.

Freeman G. Merrill, the executor of decedent Anne J. Baudler's estate, brought this action to set aside a warranty deed. Anne, who was ninety-three years old, executed the deed on August 18, 1982, approximately six months before her death. It purportedly conveyed a seventy-acre tract of farm real estate to the defendants in this action, Fred and Lois Hutchison.

The testimony at trial centered on decedent's mental capacity, her relationship with the Hutchisons, and the events of August 18, 1982. Following the trial, the court found that there had not been a confidential relationship between the decedent and Fred Hutchison. The court also determined that there had been no delivery of the deed and that the decedent had been incompetent to execute the deed. Based on the latter two findings, the trial court entered a decree setting aside the deed. The Hutchisons have appealed and the executor has cross-appealed.

Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We give weight to the trial court's findings, however, we are not bound by them. Iowa R. App. P. 14(f)(7).

I. Competency. Defendants claim the trial court erred in finding that Anne was incompetent to transact her own business and understand the legal effect of the deed she executed.

The test of capacity to make an inter vivos transfer is not the same as for testamentary capacity. A higher degree of mental capacity is required. However,

there is a presumption of competency to make a deed. Stephenson v. Stephenson, 247 Iowa 785, 788, 74 N.W.2d 679, 681 (1956). The party asserting that a deed is void must prove by clear and convincing evidence that the person executing the instrument "did not possess sufficient consciousness of mentality . . . to understand the import of her acts." Costello v. Costello, 186 N.W.2d 651, 564 (Iowa 1971).

Applying this standard, we conclude that the trial court correctly found that Anne lacked the mental capacity to execute the deed of August 18, 1982. The record is replete with evidence of Anne's mental and physical deterioration. She had repeated hallucinations, periods of violence, and frequently became disoriented. Witnesses testified that she believed one Dick Wansink was her husband or boyfriend and frequently talked about a baby they had. Hospital records reveal that in June 1982 she was found dangling on the edge of the bed meowing like a kitten.

Defendants argue that Anne had periods of definite mental strength and that nothing indicates she was incompetent when the deed was executed. They rely heavily on Stephenson v. Stephenson, 247 Iowa 785, 74 N.W.2d 679 (1956), to support their argument. We believe that such reliance is misplaced. In Stephenson, the grantor suffered from a heart condition and a kidney ailment, which eventually resulted in his death. Id. at 791, 74 N.W.2d at 682. Due to his illness, the grantor was mentally weak. He had periods of dizziness and at times would have difficulty recognizing people. Id. at 792, 74 N.W.2d at 683. At the time the deed was signed the grantor was unable to orally respond to questions; he communicated by nodding his head when asked if the deed was consistent with his intentions. Id. Based on this evidence the Stephenson court concluded that there was insufficient evidence of mental unsoundness to invalidate the deed.

The principle to be derived from Stephenson is that mental weakness due to a physical infirmity does not constitute incompetence as long as the grantor

understands the import of the transaction. Our decision today is not inconsistent with this principle. Anne was not merely mentally weak due to illness. She had difficulty distinguishing reality from her fantasies or hallucinations. While she had some good days, we agree with the trial court that "good" in this context is a relative term. Furthermore, it is unclear from the record whether Anne was even aware of the fact that she executed the deed. One witness testified that she talked to Anne the day after the conveyance was made. At that time Anne discussed the events that had transpired on August 18, 1982, stating: "Fred [Hutchison] took me for a long ride, I do not know where we went." She did not mention going to an attorney's office or signing any kind of document. In fact, the witness testified that at no time after August 18, 1982, did Anne mention the deed.

We are convinced from the record that Anne was incompetent to execute a deed. Finding no error, we affirm the court's determination that Anne lacked sufficient mental capacity.

II. Delivery of the Deed. Defendants also argue that the trial court erred in concluding that the deed had not been delivered. Our decision on the issue of competency disposes of this claim. "For a valid delivery the grantor must intend the deed to be presently effective as a transfer of title without any reservation of control thereover." Avery v. Lillie, 260 Iowa 10, 15, 148 N.W.2d 474, 477 (1967). Due to Anne's incompetency, it is apparent she was incapable of forming this requisite intent. Thus, there could not be an effective delivery of the deed. We therefore affirm the trial court's determination in this regard.

III. Confidential Relationship. On cross-appeal, plaintiff claims that a confidential relationship existed between Fred Hutchison and the decedent. He argues that this relationship was breached thereby nullifying the deed.

In Oehler v. Hoffman, 253 Iowa 631, 635, 113 N.W.2d 254, 256 (1962), the supreme court set forth characteristics of a confidential relationship:

We have been slow to define the precise limits of a confidential relationship. It is clear it may exist although there is no fiduciary relation. It exists when one person has gained the confidence of another and purports to act or advise with the other's interest in mind. It does not arise solely from blood relationship. 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. Purpose of the doctrine is to defeat and correct betrayals of trust and abuses of confidence.

(emphasis added).

Upon examination of the record, we conclude that a confidential relationship existed. Evidence reflects that the decedent's relationship with Mr. Hutchison went far beyond that of landlord and tenant. Over the thirty-four years that he was a tenant, a friendship developed between Anne and the Hutchisons. Anne was frequently invited over to the Hutchison's for meals. Fred Hutchison testified that he would take her out for dinner on birthdays and other special occasions. Mr. Hutchison and his wife also visited Anne periodically when she was moved to a nursing home.

Aside from the friendship, it is obvious that Anne placed a great deal of trust in Mr. Hutchison. Over the years he handled all of her farm transactions and business, merely providing her with an accounting of farm expenses and farm rents owed.

We believe the relationship between the decedent and Mr. Hutchison was such that it would preclude the existence of an arm's length transaction. Due to the existence of a confidential relationship, the burden would be on the defendant to show the fairness of the transaction in question. This burden has not been met.

Anne was ninety-three years old at the time the deed was drafted. She was frail and her weakened mental state made her particularly susceptible to influence. It is clear from the record that Mr. Hutchison had expressed an interest in the property. We believe it is extremely likely that this influenced Anne's decision. She deeded her property without obtaining any independent legal

advice and the document was drawn up by the defendant's attorney rather than her own. Finally, we are troubled by the events which transpired after Anne signed the deed. Apparently, the deed was not recorded until shortly before Anne's death. This was several months after it had been drafted. Furthermore, Fred Hutchison did not disclose the existence of the deed to anyone until well after Anne's death.

In light of this evidence, it is apparent that defendant has not demonstrated that the transaction was fair. We conclude that the confidential relationship was breached and for this reason the deed must fail.

AFFIRMED.

Hayden, J., concurs and Sackett, J., specially concurs.

SACKETT, J. (specially concurring)

I concur with the majority. I am not, however, convinced that Ann was not competent at the time the deed was signed. Decedent had times of mental strength and the evidence indicates on the day of the transaction she understood what she was doing.

I do determine, however, that there was substantial evidence of a confidential relationship between decedent and the Hutchinsons. In making this determination I have considered decedent's weakened mental condition, her confinement to the nursing home and the fact that she was not as dominant as the defendants who had been entrusted by decedent to farm and manage her farm business for an extended period. See Matter of Estate of Clark, 357 N.W.2d 34, 37 (Iowa Ct.App. 1984); First Nat'l Bank in Sioux City v. Curran, 206 N.W.2d 317, 321-22 (Iowa 1973); Curtis v. Armagast, 158 Iowa 507, 526, 138 N.W. 873, 880 (1912).

When a confidential relationship is established the burden of persuasion shifts to the defendants to uphold the transfer. The defendants' burden is heavy. They must produce clear, satisfactory and convincing evidence to affirmatively establish that in their acquisition of the property they took no advantage of decedent and she acted voluntarily with freedom, intelligence and full knowledge of all the facts. See First Nat'l Bank in Sioux City v. Curran, 206 N.W.2d at 322-23. Defendants have failed to meet this burden.

I therefore determine, as does the majority, that the trial court was correct in setting the deed aside.