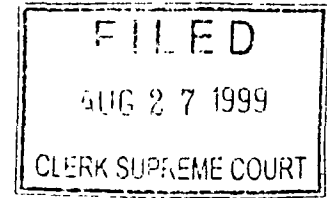


IN THE COURT OF APPEALS OF IOWA

No. 1999-38 (9-193) / 98-1016

Filed August 27, 1999



ROBERT MARTIN,
Appellant,

vs.

**JUDITH SCOTT, Individually and as Executor of the Estate of PHYLLIS
BELLE MARTINDALE,**
Appellee.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen,
Judge.

Robert Martin appeals the district court order overruling his motion for a new
trial following a unfavorable jury verdict on his conversion claim. **AFFIRMED.**

Erik A. Luthens of Luthens Law Offices, P.C., West Des Moines, for
appellant.

Michael F. Lacey, Jr., and Michael S. Jones of Patterson, Lorentzen, Duffield,
Timmons, Irish, Becker & Ordway, L.L.P., Des Moines, for appellee.

Considered by Sackett, C.J., and Vogel and Zimmer, JJ.

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VOGEL, J.

Robert Martin appeals the district court order overruling his motion for a new trial following a unfavorable jury verdict on his conversion claim. We affirm.

Background facts. Robert Martin and Phyllis Martindale began living together in 1971 and married in 1986. Robert and Phyllis did not have any children together, but Phyllis had two children from her previous marriages: David Osborne and Judith Scott. Due to a distrust of banks, Robert and Phyllis stored large amounts of cash in their home throughout their relationship. Phyllis died on May 14, 1995, following a short illness. Shortly thereafter, Robert announced that a large amount of cash was missing from the home. He did not, however, report the situation to the police.

Phyllis's will was admitted to probate and Judith was named executor of the estate. Except for granting Robert a life estate in the marital residence, Phyllis's will left her entire estate to Judith.

On November 14, 1996, Robert filed a petition at law against Judith individually, and as executor of Phyllis's estate, alleging that Judith had converted an estimated \$75,000 to \$100,000 in cash.¹ Judith filed a motion in limine seeking the exclusion of certain evidence and hearsay testimony from trial. The court granted her motion, and the jury returned a verdict in favor of Judith. Robert filed a motion for new trial, claiming that the court abused its discretion in sustaining Judith's motion in limine. The court denied the motion and Robert now appeals.

¹ David Osborne was originally a co-plaintiff in this action, but was voluntarily dismissed from the case prior to trial.

Scope of review. Our standard of review of a denial of a motion for new trial depends upon the grounds for new trial asserted in the motion and ruled upon by the court. *Ladeburg v. Ray*, 508 N.W.2d 694, 696 (Iowa 1993); *Julian v. City of Cedar Rapids*, 271 N.W.2d 707, 708-09 (Iowa 1978). If the motion for new trial and ruling are based on a claim that the trial court erred on an issue of law, then the trial court's decision stands or falls on the correctness of its ruling on the legal question. *Ladeburg*, 508 N.W.2d at 696-97 (citation omitted). If the motion and ruling are based on a discretionary ground, the trial court's decision is reviewed on appeal for an abuse of discretion. *Id.* at 696 (citations omitted). We review the issue before us in this appeal for abuse of discretion. *See Roberts v. Newville*, 554 N.W.2d 298, 299 (Iowa App. 1996).

I. Excluded testimony. In sustaining Judith's motion in limine, the court excluded several categories of evidence, many of which Robert challenged in his motion for new trial. However, in this appeal, Robert only addresses the exclusion of certain hearsay statements made by Phyllis to her son David.

Robert contends that Judith's strategy at trial was to portray her brother David as a bitter man who had been disinherited by his mother, apparently in an attempt to show that he had a motive to take the money. Robert argues that the excluded hearsay statements would have explained why David and Phyllis had a falling out and why she disinherited him in her final will. The trial court ruled that this evidence was, at best, only marginally relevant to the case and concluded that the statements should be

excluded under Iowa Rule of Evidence 403 because they could potentially confuse the jury. We agree that the evidence was not relevant to Robert's claim and further believe that its exclusion did not cause him any prejudice. If anything, the statements would have further supported a theory that David, rather than Judith, had converted the money. We conclude the court did not abuse its discretion in excluding the evidence or in denying Martin's motion for a new trial.

AFFIRMED.