

FILED

JUN 24 1980 267

CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

SIGNA C. REED,

)

Plaintiff-Appellant,

)

Filed June 24, 1980

vs.

)

FREDERICK C. REED, Executor of the
Estate of F. C. Reed, Deceased,

)

0-130

2-63973

)

Defendant-Appellee.

)

Appeal from Mashaska District Court - Richard J. Vogel, Judge.

Plaintiff appeals from judgment dismissing her petition in an action for declaratory judgment that a purported ante-nuptial agreement between herself and her deceased husband was invalid and unenforceable and that she, therefore, was entitled to a statutory share as a surviving spouse. AFFIRMED.

Theodore Duffield of Patterson, Lorentzen, Duffield, Timmons, Irish & Becker, Des Moines, Iowa, for plaintiff-appellant.

Garold F. Heslinga of Heslinga & Heslinga, Oskaloosa, Iowa, for defendant-appellee.

Submitted to Oxberger, C.J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Plaintiff, Signa C. Reed, appeals from trial court's judgment dismissing her petition in an action for declaratory judgment that a purported ante-nuptial agreement between herself and her deceased husband was invalid and unenforceable and that she, therefore, was entitled to a statutory share as a surviving spouse. On appeal plaintiff asserts trial court erred in: 1) denying her the right to trial by jury; 2) imposing the burden upon her to establish by a preponderance of evidence there was unfairness, fraud or irregularity in execution of the agreement; and 3) finding defendant established, by a preponderance of evidence, the agreement was signed and notarized at the time of its execution and there was no irregularity, fraud or concealment. We affirm.

Plaintiff and defendant's father, F. C. Reed, were married in 1962 when plaintiff was fifty-six years of age and decedent sixty-five. Each was widowed and had one child by a previous marriage. No children were born of their marriage. F. C. Reed died in 1976 and devised all his property, valued in excess of \$230,000, to his only child, defendant-executor, Frederick Reed. Plaintiff thereafter filed an election to take against the will that "[i]n view of the Ante-Nuptial Agreement, entered into on the seventh day of November, 1962, by and between Signa C. VanKlaveren [plaintiff] and myself [F. C. Reed]," gave plaintiff nothing.

The circumstances surrounding execution of the alleged ante-nuptial agreement are in dispute. The record establishes the parties visited the home of decedent's attorney, also deceased at time of trial, a few days before their 1962 marriage. Defendant contends the couple each signed copies of the purported ante-nuptial agreement and, at trial, introduced three typed, executed and notarized copies of the agreement. Plaintiff testified she signed only one blank piece of paper with the understanding the attorney would type in an ante-nuptial agreement relating solely to the spouses' right in the event of divorce and that she was never shown any document until after her husband's death.

On June 22, 1977, plaintiff filed her petition for declaratory judgment asserting invalidity of the purported ante-nuptial agreement because she lacked knowledge of the extent of F. C. Reed's assets and because F. C. Reed's estate is much larger than her separate property. Shortly thereafter plaintiff filed a demand for jury trial which defendant resisted on the ground plaintiff's action sought to set aside a contract and thus was an equitable action. Trial court denied plaintiff's demand and, following trial, dismissed plaintiff's petition. Trial court's ruling stated:

1. Petitioner has not established by a preponderance of the evidence that there was any irregularity, fraud nor [sic] unfairness in the execution of the agreement.
2. Defendant has shown by a preponderance of the evidence that the agreement was signed and notarized and at the time of its execution, there was no irregularity, fraud nor [sic] concealment.

Because the action below was tried in equity, our review is de novo. Iowa R. App. P. 4.

I. Right to Jury Trial. Plaintiff asserts her action for declaratory judgment should be regarded as a substitute for a claim in probate entitling her to a jury trial pursuant to section 633.447, The Code 1979, which provides, in part: "The trial of a claim and the offsets or counterclaims, if any, shall be to the court without a jury; provided, however, that the court may, in its discretion, either on its own motion or upon the motion of any party, submit the same to a jury; . . ."

Plaintiff, however, filed her petition under authority of Iowa R. Civ. P. 261 as an original action, not as a claim in probate. Iowa law is well settled that the validity and construction of a contract is a matter of law for the court to decide, not a question of fact for the jury. Fashion Fabrics of Iowa v. Retail Investors, 266 N.W.2d 22, 25 (Iowa 1978); Rice v. Sioux City Memorial Park Cemetery, 245 Iowa 147, 160, 60 N.W.2d 110, 118 (1953).

Even if we were to consider plaintiff's action as a substitute for a claim in probate, our conclusion would be the same. The district court sitting in probate has full legal and equitable powers to make declaratory judgments in all matters involved in the administration of an estate. § 633.11, The Code 1979. However, except for actions to set aside or contest wills, to appoint, involuntarily, guardians or conservators, and to establish contested claims, all matters shall be tried by the probate court as proceedings in equity. § 633.33, The Code 1979. Thus, plaintiff was not entitled to a jury trial in this case.

II. Burden of Proof. Plaintiff asserts trial court erred in placing the burden of proof on her to establish invalidity of the contract and in concluding defendant had shown there was no fraud, concealment or irregularity. We find plaintiff's assertions unpersuasive. Ante-nuptial contracts are in no way different from any other ordinary contract and are considered and construed as contracts in general. O'Dell v. O'Dell, 238 Iowa 434, 455, 26 N.W.2d 401, 412 (1947). If the contract is fair on its face, and not procured by fraud, it is enforceable as other contracts. Christians v. Christians, 241

Iowa 1017, 1021, 44 N.W.2d 431, 433 (1950); In re Estate of Onstot, 244 Iowa 520, 525, 277 N.W. 563, 566 (1938). Ordinarily, the party assailing the contract has the burden of establishing its invalidity. Christians, 241 Iowa at 1021, 44 N.W.2d at 433; In re Estate of Parish, 236 Iowa 822, 831, 20 N.W.2d 32, 36 (1945); In re Estate of Thorman, 162 Iowa 316, 320, 144 N.W. 5, 7 (1913).

Due to the confidential relationship of the parties resulting from an impending marriage, however, the law requires full and frank disclosure of all material matters to the contract. Christians, 241 Iowa at 1021, 44 N.W.2d at 433; Fisher v. Koontz, 110 Iowa 498, 500, 80 N.W. 551, 551 (1900). "...[W]here the provision for the wife is apparently unjust or grossly inadequate with respect to the size of the husband's estate a presumption arises that the contract was not fairly procured by the husband and the burden of going forward with evidence to rebut this presumption is cast upon him or those claiming under him." (emphasis added) Christians, 241 Iowa at 1021, 44 N.W.2d at 433; Parish, 236 Iowa at 831, 20 N.W.2d at 36; Rankin v. Schiereck, 166 Iowa 10, 15, 147 N.W. 180, 182 (1914).

Applying these principles to the facts of this case, we find there is sufficient evidence in the record to rebut the presumption of unfairness in the face of an apparently inadequate provision for plaintiff. Plaintiff knew decedent many years prior to their marriage. The community was small so that "everybody knew everybody's business." App. P. 34. Plaintiff testified she knew decedent owned farm land and had been a frequent visitor to his home prior to the death of their respective first spouses. She also knew he had a partnership interest in a sale barn. Plaintiff previously had operated a business both with her first husband, as well as on her own following his death, and had negotiated the sale of that business. This testimony establishes a degree of intelligence and knowledge of facts sufficient to satisfy us plaintiff had a general knowledge of the extent of decedent's property and the rights she, as decedent's wife, would have in his property. See Peet v. Peet, 81 Iowa 172, 176, 46 N.W. 1051, 1052 (1890).

The record, unfortunately, does not show the value of decedent's estate in 1962. However, in light of unexpected inflation, we are not convinced the record shows the provisions of the contract are unjust or disproportionate to decedent's worth in 1962. This is especially important in light of plaintiff's right, pursuant to the agreement, to keep all her own property for her present enjoyment and ultimate devise to her only child by her prior marriage.

We further find plaintiff's testimony she signed only one blank sheet of paper to be incredible in light of the executed copies introduced into evidence and her daughter's testimony the signature appeared to be similar to the handwriting of her mother as she observed it over the years.

We believe the language from Christians appropriately summarizes our conclusions in affirming trial court's judgment.

The trial court, who saw and heard the witnesses, found that no fraud, deceit or concealment was practiced against plaintiff, that she was not overreached or misled and was fully aware of the effect of the contract upon her rights. These findings are entitled to substantial weight. Although the evidence at some points is in conflict, we concur in them.

241 Iowa at 1022, 44 N.W.2d at 434.

Judgment of trial court is affirmed.

AFFIRMED.