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CLERK SUPREME COURT

**IN THE COURT OF APPEALS OF IOWA**

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| **GEORGE F. TAYLOR,** | ) | 525 |
| Plaintiff-Appellee, | ) | Filed November 26, 1985 |
| vs. | ) | |
| **PATRICIA A. GIPSON,** | ) | 5-460<br>84-1763 |
| Defendant-Appellant. | ) | |

Appeal from the Iowa District Court for Linn County - Harold J. Swailes, Judge.

Defendant appeals judgment striking her name as a joint tenant with plaintiff on a certificate of deposit. **AFFIRMED.**

Peter C. Riley and Mary K. Hoefer, Cedar Rapids, Iowa, for defendant-appellant.

Gregory J. Epping and Richard D. Raymon, Cedar Rapids, Iowa, for plaintiff-appellee.

Considered by Snell, P.J., Schlegel, and Hayden, JJ.

**SCHLEGEL, J.**

Plaintiff, George F. Taylor, brought this action against defendant, Patricia A. Gipson, asking that Patricia's name be stricken from a $150,000 certificate of deposit which had been purchased with his money. George claimed that Patricia had fraudulently caused her name to be added to the certificate when she renewed it for him, at his request. The trial court found that in adding Patricia's name to the certificate of deposit, George had intended not to make a gift to her, but to allow her access to his funds to conduct his business and also found that a confidential relationship existed between George and Patricia, requiring Patricia to sustain the burden of proving that she acted in good faith in the transaction involving the certificate. The court allowed George's petition and ordered Patricia's name to be stricken from the certificate of deposit.

The court further denied Patricia's counterclaim in which she claimed that George made a gift of the certificate to her. We affirm.

Patricia raises two issues in her appeal. First, she claims the court was in error in holding there was a confidential relationship between herself and George. As a part of this claim, she asserts that plaintiff did not plead a confidential relationship, and cannot now rely upon it. Further, she claims that the facts in this case do not support the court's finding of a confidential relationship. Secondly, Patricia claims the court erred in finding that she had failed to sustain her burden of showing good faith in the transfer.

In this equity matter, our review is de novo. We review the whole record and adjudicate anew the rights of the parties upon issues properly reserved. In re Marriage of Full, 255 N.W.2d 153, 156 (Iowa 1977). In our de novo review, we are not bound by the findings of the trial court, though weight will be given to them. Abodeely v. Cavras, 221 N.W.2d 494 (Iowa 1974).

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I. **Confidential Relationship.** The trial court found, after reviewing the evidence concerning the relationship between George and Patricia, that there existed a confidential relationship between them, at least at the time when the certificate of deposit was renewed with the inclusion of Patricia's name. Our review of the record causes us to agree with the trial court that such a relationship existed.

**A. Effect of the Pleadings.** As a part of her denial of the existence of a confidential relationship, Patricia urges us to hold that since George did not plead the existence of a confidential relationship, he cannot now rely upon that finding by the court to uphold the trial court's judgment. We must first decide whether the court's finding of a confidential relationship can be upheld when plaintiff made no specific allegation that the inclusion of Patricia as a joint tenant upon the certificate of deposit was invalid, because of the existence of such a relationship.

Iowa Rule of Procedure 69 requires, in part, that a petition contain "a short and plain statement of the claim showing that the pleader is entitled to relief." The rule does not require that specific theories to be pled in plaintiff's petition. Sulzberger Excavating, Inc. v. Glass, 351 N.W.2d 188, 192 (Iowa App. 1984). In that case, we quoted the Iowa Supreme Court case of Soike v. Evan Matthews and Co., 302 N.W.2d 841, 842-43 (Iowa 1981), for the proposition that a petition is "not required to identify a specific legal theory; it is sufficient if the prima facie elements of a claim are stated and this statement is 'fair notice' to the defendant."

Here, the plaintiff alleged that defendant caused the issuance of the "new certificate of deposit jointly in the names of the plaintiff and the Defendant . . . by the willful, malicious and fraudulent action . . ." and in "reckless disregard of the rights of the plaintiff." We believe that the petition states the prima

facie elements of the claim that the transfer was invalid, because of the existence of a confidential relationship between George and Patricia. George claims it was procured by fraud, and offered evidence to show that the confidential relationship existed between the parties. Upon the showing of such a relationship, "a presumption arises the deed was procured by fraud or undue influence which the grantees must rebut by clear, satisfactory and convincing evidence." First National Bank in Sioux City v. Curran, 206 N.W.2d 317, 324 (Iowa 1973); Oehler v. Hoffman, 253 Iowa 631, 634, 113 N.W.2d 254, 256 (1962).

Plaintiff sought, by equitable action, to secure a declaratory judgment that defendant's name was wrongfully placed upon the certificate in question. We believe the pleadings gave fair notice to defendant. We do not believe it was required that plaintiff state with specificity that he relied upon the existence of a confidential relationship to render the transfer presumptively fraudulent or the result of undue influence. Sulzberger Excavating, Inc. v. Glass, supra.

B. **Proof of Confidential Relationship.** Our de novo review of the record in this case convinces us that plaintiff proved the existence of a confidential relationship. As set out in First National Bank, supra, at page 321, the supreme court quoted Dibel v. Meredith, 233 Iowa 545, 549, 10 N.W.2d 28, 30 (1943), in defining "confidential relationship." There, it stated:

> Confidential relationship is a very broad term and is not at all confined to any specific association of the parties to it. In law it has been defined or described as any relation existing between the parties to a transaction wherein one of the parties is duty bound to act with the utmost good faith for the benefit of the other party. In its broadest connotation the phrase embraces those multiform positions in life wherein one comes to rely on and trust another in his important affairs.
>
> A confidential relationship arises whenever a continuous trust is reposed by one person in the skill and integrity of another, and so it has been said that all the variety of relations in which dominion may be exercised by one person fall within the general term "confidential relation."

The relationship between George and Patricia developed over an extended period of time. It developed into a close friendship, and resulted in Patricia helping George in taking care of his house, in assisting him in the preparation of checks for the payment of expenses, and even the inclusion of Patricia's name on a joint checking account in which only his money was kept. The relationship undoubtedly changed for a time, when Patricia and her husband moved to Louisiana, but George went there to visit and while there became ill and more dependent upon Patricia to take care of him and his business affairs. During this time, the transfer of the certificate of deposit took place. At this time he grew more and more dependent upon Patricia and demonstrated a trust in her to care for his needs. Patricia became the dominant party in their relationship. She achieved influence over George. On the basis of this evidence, the trial court found that the confidential relationship existed. We agree. See First national Bank in Sioux City v. Curran, supra.

**II. Sufficiency of Proof.** When a confidential relationship is shown, the person in whom the trust is reposed has the burden of proof to uphold the challenged transfer. His burden is heavy. He must produce clear, satisfactory and convincing evidence. "He is required to prove 'entire good faith on his part and free, voluntary and intelligent action on their part of the grantor.' " First National Bank in Sioux City v. Curran, supra, at 322. As stated in First National, supra, at 323:

> [W]e think [Mrs. Curran's] showing on the whole issue of the validity of the transfers is not clear, satisfactory and convincing. (Citation omitted.) ("The burden is not met by simply showing that, at the time of the execution, he said that it was all right, or that he was glad of it. The same influence which induced the execution would likewise induce just such remarks.") [Mrs. Curran] has not by clear, satisfactory, and convincing evidence, proved "entire good faith" on her part or "free, voluntary, and intelligent action" on the part of [Miss Crosby].

At the time of the transfer, George was not in a position to obtain any independent advice as to what to do about the certificate of deposit. The mere assenting to the transfer (or modification of its ownership) alone doesn't show that it was done with his free, voluntary and intelligent action.

On the whole record, Patricia has failed to sustain her burden of proving that the transfer is valid. Accordingly, the judgment of the trial court is affirmed.

**AFFIRMED.**