IN THE COURT OF APPEALS OF IOWA

No. 7-469 / 96-1736

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IN THE MATTER OF THE ESTATE OF JANE WARTH, Deceased,

WILLIAM D. WARTH, III,
Claimant-Appellant,

vs.

CYNTHIA PETTENGILL, Fiduciary of the Estate of JANE WARTH,

Defendant-Appellee.

FILED
JAN 28 1998
CLERK SUPREME COURT

Appeal from the Iowa District Court for Pottawattamie County, James S. Heckerman, Judge.

William Warth, III, appeals a district court ruling denying his claim in probate against the estate of Jane Warth for a share of insurance proceeds. **AFFIRMED.**

C.R. Hannan of Reilly, Petersen & Hannan, P.L.C., Council Bluffs, for appellant.

Kristopher K. Madsen and Gary R. Faust of Stuart, Tinley, Peters, Thorn & Hughes, Council Bluffs, for appellee.

Heard by Streit, P.J., and Vogel and Mahan, JJ.

MAHAN, J.

William Warth, III, appeals the district court ruling denying his claim in probate against the Estate of Jane Warth for a share of insurance proceeds. We affirm.

William Warth, Jr., married Eileen Warth in 1951. They had four children: Kathleen, William III, Mary, and Amy. They were divorced in 1975. At the time of the divorce, William Jr. was insured on several insurance policies totaling $80,000. His children were listed as beneficiaries. He married Jane Warth in June 1977. Some time during this marriage, William Jr. changed the beneficiaries under the policies from his children to his wife.

William Jr. died on July 23, 1979. The probate inventory listed the policies of insurance with Jane as beneficiary. The children did not file a claim in the estate or contest it in any way. Jane died on January 11, 1995. The children did not initiate or assert a claim to the insurance proceeds in the fifteen years prior to her death. Instead, William III filed a claim in probate on June 2, 1995, seeking $80,000 plus interest from the date of his father's death. He argued at trial he and his siblings were entitled to the funds on the theories of constructive trust and undue influence. The district court dismissed the claim and William III now appeals.

I. SCOPE OF REVIEW. Our review of this equitable proceeding is de novo. Iowa R. App. P. 4. We have a duty to examine the entire record and

adjudicate anew rights on the issues properly presented. We give weight to the fact findings of the trial court, especially when considering the credibility of witnesses, but are not bound by them. Iowa R. App. P. 14(f)(7).

II. CONSTRUCTIVE TRUST AND UNDUE INFLUENCE. The district court found there was a lack of evidence to establish it was William Jr.'s intent for Jane to hold the life insurance proceeds in trust for William III and his siblings. The district court also found the evidence lacking relative to the issue of William Jr.'s intent to put parameters or restrictions on Jane's usage of these proceeds. In so doing, the district court concluded the evidence failed to establish Jane in any way exercised undue influence over William Jr.

William III filed a 179(b) motion claiming the district court incorrectly put the burden on the claimant to establish the existence of undue influence and a constructive trust. The district court, in denying the motion, stated, "It was, and remains, the opinion of this court that the claimant herein failed to meet his standard of proof. Under the circumstances of this case, it would be extremely inequitable for this court to allow William D. Warth III to prevail on this claim." With regard to the specific issue of a shift in the burden, the court stated, "Assuming arguendo that the burden shifted to the estate to show that the change in the beneficiary on the life insurance policies was free from undue influence, it is the opinion of this court that the same has been established by the defendant."

The claimant relies heavily on *In re Estate of Welch*, 534 N.W.2d 109 (Iowa 1995), and *In re Estate of Baessler*, 561 N.W.2d 88 (Iowa App. 1997), in this appeal. *Welch* held, "One seeking the remedy (constructive trust) must establish the right by clear, convincing and satisfactory evidence." *Welch*, 534 N.W.2d at 111-12. *Baessler* held the claimant must first meet the threshold showing of the existence of a confidential relationship. *Baessler*, 561 N.W.2d at 91. In the instant case, William III has the burden of establishing by clear and convincing proof the existence of a confidential relationship in which Jane was a dominant person and William Jr. the subservient one. Once William III met this threshold showing, the burden would then shift to the estate to negate the charge of undue influence by clear and convincing proof. *Pence v. Rawlings*, 453 N.W.2d 249, 252 (Iowa App. 1990).

In the instant case, the district court correctly ruled William III did not meet the threshold burden. The court concluded the evidence presented by William III was completely lacking. In addition, the court concluded the evidence presented by the claimant himself established William Jr. as capable of making rational decisions relating to the disposal of the insurance proceeds. The court further noted William III was aware since May 9, 1982, Jane was using the proceeds for her own benefit.

In contrast, the district court found the evidence presented by the respondent estate to be persuasive on the issues. Especially compelling was the testimony of William Jr.'s sister, Dee Diederich, who testified her brother was a strong-willed

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person who did what he wanted to do. She described him as a person not susceptible to undue influence and Jane as a person who would not exercise it.

III. SUMMARY. The claimant was aware in 1979 that William Jr.'s probate inventory listed Jane as beneficiary of the insurance policies. The claimant was also aware in May 1982 Jane was using the proceeds for her own benefit. William III did not contest this matter in any way until filing his claim in Jane's estate in June 1995. The evidence in this case is overwhelming that the transfer was free of undue influence and William Jr. did not intend to create a constructive trust for the benefit of the claimant. The burden of proof was properly applied by the trial court. Assuming arguendo the burden would have shifted to the respondent estate, the estate met the burden. There is no evidence in this case it was William Jr.'s intent to create a constructive trust or to put parameters on Jane's use of the insurance proceeds. There is also no evidence in this case Jane exercised undue influence upon William Jr.

We affirm the decision of the trial court in all respects.

AFFIRMED.