

IN THE COURT OF APPEALS OF IOWA

No. 9-487 / 89-391

FILED

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CLERK SUPREME COURT

IN THE MATTER OF THE ESTATE OF DOUGLAS G. DOWNIE, deceased,
MICHAEL D. DOWNIE and MELANIE DOWNIE,

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Contestants-Appellants,

vs.

LaDONNA SCHROEDER,

Proponent-Appellee.

Appeal from the Iowa District Court for Webster County,
Mark S. Cady and Allan L. Goode, Judges.

The Downies appeal from a district court order granting
LaDonna's motion for summary judgment and admitting the
will into probate as being properly executed. **AFFIRMED.**

Dwight W. James and Frederick W. James of Dwight W.
James and Associates, P.C., Des Moines, for appellants.

Alan H. Bjork of Hanson, Bjork & Russell, Des Moines,
for appellee.

Heard by Oxberger, C.J., and Donielson and Hayden, JJ.

PER CURIAM

The Downies appeal from a district court order granting LaDonna Schroeder's motion for summary judgment and admitting Douglas Downie's will into probate. The Downies contend a self-proving will affidavit does not satisfy the formal execution requirements of Iowa Code section 633.279. They further argue the will cannot be admitted to probate because it was not properly executed. We affirm the trial court's order granting the motion for summary judgment.

Douglas Downie, the decedent, suffered from multiple sclerosis. In 1978 the disease incapacitated him to such a degree he required nursing home care. This is where he met LaDonna Schroeder, who worked in the facility. They began dating in January 1979. Downie left the nursing home and eventually bought the home he lived in at the time of his death. Schroeder lived with him and helped care for him. Although they became engaged in 1985, they never married.

Downie died on September 18, 1987. His will left his motor vehicles, furniture, and home to Schroeder. She also received one-third of all cash, including bank accounts and certificates of deposit. Downie's gross estate was valued at \$407,749.55.

Downie had two children from a former marriage. The children, Michael D. Downie and Melanie L. Downie are the contestants in this case. They each received a one-third

share of Downie's cash and the remainder of his estate. They maintain the will drafted by Terry Guinan, Downie's attorney, is not valid for several reasons. It was not properly executed because the testator's signature and the witnesses' signatures appear only on the self-proving affidavit, not on the will itself. Further, the affidavit was typed so the signature line reads: Testator, Chester J. Larson. This line is signed by the decedent, and slightly below his signature is Larson's. Therefore, the contestants maintain, the witnesses did not witness a will but executed a self-proving affidavit, which does not satisfy the formal execution requirements of the Iowa Code.

Prior to drafting the will, Downie told Guinan how he wanted his estate distributed, including the specific property he wanted to leave to Schroeder and that he wanted her named as executor. Guinan drafted the will in accordance with Downie's wishes. The execution took place in Guinan's office on October 1, 1986. Immediately prior to execution, Schroeder read the will to Downie in the lawyer's presence. Downie was asked if the will was the way he wanted it and he said it was. Then Guinan's secretary, the notary public, and Chester Larson were brought into Guinan's office. Downie acknowledged the document as his will and signed it himself. Downie also directed Chester Larson to sign on his behalf. The lawyer and his secretary signed as witnesses. The notary notarized the instrument.

The principles governing our review of a motion for summary judgment are well established. Summary judgment is proper when there is no genuine issue of fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c). In reviewing the grant of such a motion, we must determine whether a genuine issue of material fact exists and whether the law was correctly applied. Matter of Estate of Henrich, 389 N.W.2d 78, 80 (Iowa App. 1986).

Because the purpose of Iowa Rule of Civil Procedure 237(c) is to avoid useless trials, if there is no genuine issue of fact to be decided, the party with the just cause should be able to obtain a judgment promptly and without the expense of a trial. Id. (quoting Daboll v. Hoden, 222 N.W.2d 727 (Iowa 1974)). The court's role when ruling on a motion for summary judgment is to determine whether a genuine issue exists, not to determine the merits of one which does. Id. To prevail, the party resisting the motion must set forth specific evidentiary facts showing the existence of a genuine issue of material fact in dispute. Id. (citing to Liska v. First Nat'l Bank, 310 N.W.2d 531, 534 (Iowa App. 1981)).

In will contests, more than a "scintilla" of evidence is required to generate a genuine issue of material fact on the grounds of lack of due execution. In re Estate of Davenport, 346 N.W.2d 530, 532 (Iowa 1984).

Iowa Code section 633.279(1) enumerates the requirements for a valid will. The will must be:

1. in writing
2. signed by the testator, or by some person in the testator's presence and by his express direction writing the testator's name thereto;
3. declared by the testator to be his will;
4. witnessed by two competent witnesses who:
 - a. signed at the request of the testator,
 - b. signed in the presence of the testator, and
 - c. signed in the presence of each other.

The trial court concluded the record showed, without dispute, that Schroeder, the executror named by the testator, read the will to the testator and the attorney who drafted the instrument. Downie was asked if that was what he wanted and he stated it was. The will was then executed. Both witnesses have submitted sworn affidavits which confirm the above. The testator signed the will himself, therefore any dispute regarding Chester Larson's signature is irrelevant to the issues at hand. Likewise, the mistaken designation of Chester Larson as the testator, while clearly incorrect, adds nothing of any substance to the contestants position because it was clear to all present they were witnessing the will of Douglas Downie.

Iowa has long adhered to the policy of indulging every presumption in favor of the due execution of a will. See In re Klein's Estate, 42 N.W.2d 593, 598 (Iowa 1950). No one disputes the fact the will devised Downie's property as he wanted. Each element of Iowa Code section 633.279(1)

has been established. The controversy is over the legal consequences which flow from these undisputed facts. Under such circumstances, summary judgment is appropriate. Matter of Estate of Graham, 295 N.W.2d 414, 416 (Iowa 1980). We agree with the trial court the will is valid.

AFFIRMED.