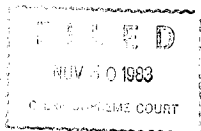


IN THE COURT OF APPEALS OF IOWA



IN THE MATTER OF THE ESTATE OF ESTHER DAVENPORT, Deceased;

JOHN ALBERT DAVENPORT,	)	Filed November 20, 1983
Plaintiff-Appellant,	)	
vs.	)	$\frac{3-297}{2-69558}$
JEAN MARIE CHRISTENSEN,	)	
Defendant-Appellee.	)	

Appeal from Ida District Court, Michael S. Walsh, Judge.

Plaintiff appeals from summary judgment for defendant-executor in this will contest action. **AFFIRMED.**

Sam S. Killinger of Kindig, Beebe, Rawlings, Nieland & Killinger, Sioux City, and Morris C. Hurd, Ida Grove, for plaintiff-appellant.

Joseph J. Heidenreich of Dresselhuis & Heidenreich, Odebolt, and Thomas L. McCullough, Sac City, for defendant-appellee.

Considered by Oxberger, C.J., and Donielson, Schlegel, Hayden, and Sackett, JJ. Snell, J., takes no part.

OXBERGER, C.J.

Plaintiff, Davenport, appeals from a summary judgment for defendant-executor in this will contest action. On appeal, plaintiff asserts that there were genuine issues of material fact regarding his claim that decedent's will was the result of undue influence on or mistake by decedent. We affirm.

A motion for summary judgment will be sustained if the moving party shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Iowa R. Civ. P. 237(c). When a motion for summary judgment is made and supported, an adverse party may not rest upon the mere allegations or denial of his pleadings, but his response must set forth specific facts showing that there is a genuine issue for trial. Iowa R. Civ. P. 237(e). But even if the facts are undisputed, summary judgment is inappropriate if reasonable minds may draw different inferences from them. Colonial Baking Co. of Des Moines v. Dowie, 330 N.W.2d 279, 282 (Iowa 1983).

Davenport contends that there was a genuine issue of material fact as to whether decedent, Esther Davenport, was unduly influenced and whether Esther made a mistake about John Davenport's divorce problems, which resulted in John being left out of the will. The material facts of the case at bar are: Esther Davenport died on February 26, 1981; Esther left an instrument purporting to be her last will and testament dated November 29, 1972; during the first part of November 1972, Esther's daughter, Jean, visited Esther for about four days; the will of the decedent provided that decedent's assets be given to Jean; the will specifically made no provision for John Davenport, Esther's only other child; the decedent's will was executed by the decedent in the presence of George Drusselhuis, attorney at law, and Betty Jo Thayer. Proper execution of the will is not at issue. Davenport contends these facts coupled with his observation that his

mother was confused, at times, with the complexity of the farm operations raises a genuine issue of material fact whether his mother was unduly influenced by his sister Jean. We do not agree. Nor do we agree that reasonable minds could draw different inferences from these undisputed facts. All evidence clearly supports the conclusion that Esther Davenport was not confused, did know what she owned and what she wanted. There was no evidence that Esther consulted Jean Christiansen as to the will in question prior to the making of that will. There is no evidence in the record that Esther was susceptible to any undue influences by anyone.

Furthermore, there is no evidence that Esther had a mistaken belief that John was still having divorce problems. The only reference to "John's problems" were in conjunction with a trust that had been set up in Esther's husband's will. The record is void of any evidence that "John's problems" had any bearing whatsoever on Esther's decision to exclude John as a beneficiary in her will.

We hold that reasonable minds could reach no other conclusion than that Esther Davenport was not susceptible to undue influence nor that she was under any mistaken beliefs about John's divorce problems. Therefore, we affirm the trial court's decision and find that entry of summary judgment was proper.

AFFIRMED.

All judges concur except Schlegel, J., who dissents.

SCHLEGEL, J. (dissenting)

The record in this case would permit a finding that as a matter of law, there is no genuine issue of material fact on the question of lack of due execution. The allegations of lack of testamentary capacity, if not subjected to more convincing evidence at trial, could not be supported merely by the testimony of John Davenport in the discovery deposition taken from him or from anything urged by his resistance to the motion for summary judgment. The issue of undue influence does not, however, present the same appearance. I believe that the resistance to the motion for summary judgment presents a genuine issue of material fact on that issue.

The trial court and the majority of this court make findings of fact on that disputed issue from a wholly incomplete record. Iowa Rule of Civil Procedure 237 does not contemplate submission of all the evidence which may be offered at a trial on the merits. There must simply be sufficient record to demonstrate that there is a genuine issue of fact to be determined at trial.

I believe that on the issue of undue influence, there was such a genuine issue raised by the visit by decedent's daughter in close proximity to the date of execution of a new will leaving everything to that daughter.

For this reason alone, I respectfully dissent.