IN THE COURT OF APPEALS OF IOWA

No. 0-667 / 00-0422
Filed December 13, 2000

FILED
DEC 13 2000
CLERK SUPREME COURT

IN THE MATTER OF THE ESTATE OF ELMER C. PETERSON, Deceased,

GERALDINE STOPHER,
Appellant.

Appeal from the Iowa District Court for Linn County, William L. Thomas, Judge.

The defendant appeals a district court ruling granting the Estate's motion for summary judgment and denying her summary judgment motion on the question of whether a prenuptial agreement is valid. **REVERSED AND REMANDED.**

David A. Elderkin and Christopher L. Bruns of Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellant.

Leonard T. Strand of Simmons, Perrine, Albright & Ellwood, P.L.C., Cedar Rapids, for appellee Estate.

Considered by Streit, P.J., and Vogel and Hecht, JJ.

HECHT, J.

Geraldine Stopher filed an election as surviving spouse to take against the will of her deceased husband, Elmer C. Peterson. The executor of Elmer's Estate contended Geraldine waived her right to elect against the will by executing a prenuptial agreement. Geraldine argued the prenuptial agreement was unenforceable because: (1) Elmer failed to make a fair and reasonable disclosure of his property; and (2) she did not have and could not reasonably have had adequate knowledge of Elmer's property at the time the agreement was executed. Geraldine and Elmer's Estate both filed motions for summary judgment. Geraldine appeals from the district court's order granting summary judgment in favor of the Estate. We reverse and remand.

I. Background Facts and Proceedings. The following facts are supported by substantial evidence in the summary judgment record. Geraldine met Elmer at a senior citizens' center in late 1991. Their relationship developed and they made plans to marry on March 21, 1992. About one week before the wedding, Elmer raised the idea of a prenuptial agreement. Each had accumulated property and hoped to pass it on to their heirs. They apparently believed a prenuptial agreement might protect them from "one another's medical bills." Elmer contacted his attorney, William Hochstetler, on March 11, 1992, to request preparation of such an agreement. Hochstetler informed Elmer and Geraldine that Geraldine should have her own counsel in the matter. Geraldine told Hochstetler she did not plan to have counsel in connection with the

prenuptial agreement. Hochstetler directed Geraldine and Elmer to bring a list of their assets and liabilities to his office on March 17, 1992.

Elmer brought "a list of valued accounts as of December 31, 1991." The document disclosed Elmer's total asset value of $459,062.15 "would be approximately the same [on March 17, 1992] except for earned interest, dividends, etc., that ha[d] since accumulated." Geraldine also brought a list of her assets to the appointment with Hochstetler. Her list disclosed assets having a net value of $172,000.

The prenuptial agreement signed by Geraldine and Elmer on March 17, 1992, contained the following provision:

> [T]he parties acknowledge and agree that they have disclosed to the other party (prior to the signing of this Agreement) *the extent and probable value* of their respective individual property interests as of the date of this Agreement. Prior to signing this Agreement, each party has delivered schedules to the other party that reflect their respective investment property interests, including *the approximate value* of such property interests, which were signed by the respective owner and initialed by the other party. The parties specifically acknowledge receipt of the above schedules, which are understood and agreed by the parties to represent *a full and complete listing* of their respective property interests as of the date of this agreement.

(Emphasis supplied). Elmer and Geraldine married on March 21, 1992. Elmer died on June 27, 1997. Geraldine filed an "Election of Surviving Spouse in Relation to Will" on December 17, 1997. The executor of Elmer's Estate subsequently sought an order from the district court upholding the prenuptial agreement.

Geraldine claimed Elmer's disclosure was, as a matter of law, unfair and unreasonable because it failed to include certain property and substantially

undervalued other assets. Specifically, she asserted 396 acres of North Dakota real estate having an assessed valuation in excess of $52,000 were omitted from the disclosure. Geraldine also claimed 200 acres of North Dakota real estate listed on Elmer's disclosure were undervalued by approximately $10,000 compared to their assessed valuation at the relevant time period. She also challenged the validity of the prenuptial agreement on the ground a Templeton Fund investment valued at $10,000 and farm rent income were omitted from Elmer's disclosure. In 1989, Elmer consulted IDS for financial planning assistance and estimated the value of his assets to be $794,459 at that time. Elmer's Estate valued his assets at $728,414 as of the time of his death in 1997. The Estate urged the district court to enter summary judgment in its favor, contending Elmer had fairly and reasonably disclosed his assets; and, in the alternative, Geraldine had, or reasonably could have had, adequate knowledge of her husband's assets at the time the agreement was executed.

In its summary judgment ruling, the district court acknowledged the fighting issues between the parties were: (1) whether Elmer made a fair and reasonable disclosure of his assets; and (2) whether Geraldine had, or reasonably could have had, adequate knowledge of Elmer's property notwithstanding the alleged failure to make full and fair disclosure. In discussing the issue of reasonableness, the district court observed:

> It is not the function of this court to determine the reasonableness of the prenuptial agreement. This Court has no knowledge of whether the valuation of North Dakota farm property represents an objectively reasonable amount, nor is such inquiry relevant . . . . The Court finds the prenuptial agreement expresses the intent of the parties, and is therefore valid and enforceable.

II. Standard of Review. We review the grant of summary judgment for correction of errors at law. *Whalen v. Connelly,* 593 N.W.2d 147, 152 (Iowa 1999). We review the record to determine if genuine issues of material fact exist and whether the trial court properly applied the law. *Anderson v. Miller,* 559 N.W.2d 29, 31 (Iowa 1997). "Summary judgment is appropriate when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law." *Whalen,* 583 N.W.2d at 152 (citation omitted). We examine the record in the light most favorable to the party opposing the motion. Anderson, 559 N.W.2d at 31. "Summary judgment is inappropriate if reasonable minds could differ on how the issue should be resolved." Whalen, 583 N.W.2d at 152 (citations omitted).

III. Error Preservation. The Estate contends Geraldine failed to preserve error on her claim the agreement is unenforceable because Elmer failed to fairly and reasonably disclose his assets before the agreement was executed. In this regard, the Estate notes the district court made no findings as to the reasonableness of the disclosure or whether Geraldine had, or reasonably could have had, knowledge of Elmer's property. We conclude, however, error was preserved notwithstanding Geraldine's failure to file a motion pursuant to Iowa Rule of Civil Procedure 179(b). The district court's ruling acknowledged the parties' contentions as to the central importance of the statutory standards for enforcement of premarital agreements. We conclude the district court's ruling constitutes a clear declination to engage in an assessment of the reasonableness of Elmer's disclosure. Under the circumstances presented here,

a rule 179(b) motion would have been unproductive. Thus, we will address the merits of the district court's ruling on Elmer's motion for summary judgment.

IV. The Disclosure. We are mindful the disclosure provided by the parties to a prenuptial agreement need only be fair and reasonable. *See* Iowa Code § 596.8(3). The statute does not expressly require disclosure of asset values. However, as noted above, Elmer represented in the agreement he was disclosing "the extent and probable value" of his assets. We note the Estate's brief concedes Elmer's omission of one $10,000 Templeton investment account from the disclosure. In addition, Elmer failed to include nearly four hundred acres of North Dakota real estate on his list of assets. The summary judgment record also contains substantial evidence Elmer's disclosure substantially undervalued other real estate[1] that was included in the disclosure.

Our decision is also influenced by the significant disparities in the total asset values listed in Elmer's prenuptial disclosure, his IDS financial plan[2], and the probate inventory.[3] We acknowledge there could be justification for these disparities related to the passage of time and other considerations, but we do not find sufficient explanation in the record for a variation in excess of $250,000. When taken together with evidence of the omission of some assets from Elmer's disclosure and his apparent undervaluation of others, the disparities in the representations of asset values lead us to conclude reasonable minds could

---

[1] Real estate disclosed as having a value of $12,000 was assessed for tax purposes at $21,480 in 1991. In addition, the assessed value of the disclosed and undisclosed real estate was $76,390 in 1991 and $73,150 in 1992.

[2] Elmer listed assets valued at $794,459 in April of 1989.

[3] The inventory listed assets of $628,014. When the value of the North Dakota real estate is added, the total asset value claimed at date of death was $728,714.

differ on whether the disclosure was fair and reasonable. When viewed in the light most favorable to Geraldine, the summary judgment record presents a fact question as to whether Elmer's disclosure was fair and reasonable.

V. Geraldine's Knowledge. Geraldine has also raised a genuine issue of material fact on the issue of whether she had, or reasonably could have had, adequate knowledge of Elmer's property before the execution of the agreement. *See* Iowa Code § 596.8(3). The record contains substantial evidence tending to prove Geraldine did not know of the nature and extent of Elmer's property before March 17, 1992. She testified of her surprise when she learned of the assets that were disclosed on that date. The summary judgment record does not contain evidence from which a reasonable person could find, as a matter of law, Geraldine had or reasonably could have had adequate knowledge of Elmer's property in the absence of fair and reasonable disclosure.

VI. Conclusion. We believe reasonable minds could differ on whether the disclosure made by Elmer on March 17, 1992, was fair and reasonable. Viewed in the light most favorable to Geraldine, a genuine issue of fact is raised in the record with regard to whether Geraldine had, or reasonably could have had, adequate knowledge of Elmer's assets in the absence of fair and reasonable disclosure. Accordingly, we conclude the district court should not have granted summary judgment.

REVERSED AND REMANDED.