IN THE COURT OF APPEALS OF IOWA

JAN 29 1997
CLERK SUPREME COURT
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No. 6-513 / 95-1224

IRWIN GRAU,

Plaintiff-Appellant,

vs.

ALFRED GRAU and THOMAS GRAU,

Defendants-Appellees.

Appeal from the Iowa District Court for Carroll County, Gary L. McMinimee, Judge.

In this consolidated appeal, Irwin Grau contests district court rulings from two related actions, one in law and one in equity, finding in favor of defendants on his action for undue influence and recision of contract surrounding a will contest. **AFFIRMED.**

Robert Kohorst and William T. Early of the Kohorst Law Firm, Harlan, for appellant.

Russell S. Wunschel and Dee Ann Wunschel of the Wunschel Law Firm, Carroll, for appellees.

Heard by Huitink, P.J., and Streit and Vogel, JJ. Sackett, J., takes no part.

HUITINK, P.J.

Magda Grau inherited a 200-acre farm from her husband in 1947. Following her husband's death, Magda's three sons, Thomas, Alfred, and Irwin, assisted her with farm operations. Thomas purchased forty acres and the buildings from Magda in 1979 for $900 per acre. He also rented the balance of the farm from Magda.

In 1989, Magda sold the balance of the farm to Thomas for $800 an acre. Her attorney, Erwin Hansen, advised her the agreed price was consistent with prevailing prices in the area. Hansen prepared the necessary documents, including a provision authorizing Thomas to prepay the balance of the purchase price prior to the due date of the final payment. This transaction necessitated a change in Magda's 1985 will. Magda accordingly executed a codicil to her will leaving each of her sons a one-third interest in her contract with Thomas.

Irwin, upset by Magda's decision to sell the farm to Thomas, demanded compensation for his prior work on the farm. Magda had Hansen write Irwin requesting an itemization of those services for which he expected compensation. Irwin did not respond. Magda died in January 1991.

Thomas sued Irwin and Alfred for specific performance of the contract. Irwin sued Thomas and Alfred alleging Magda's contract with Thomas and her 1989 codicil were the product of Thomas's undue influence. Irwin sought both monetary damages and rescission of the contract. Venue for these separate actions was assigned to the

same county and the cases were consolidated for trial.

At trial, Irwin attempted to introduce expert testimony from a lawyer who reviewed the record in this case. Counsel for Thomas objected to this testimony citing the legal conclusions the expert intended to state, the absence of any need for expert testimony, and resulting confusion to the jury. The district court sustained this objection and excluded the expert's testimony.

Irwin's offer of proof indicates the expert was prepared to testify that Magda's contract with Thomas and the codicil to her will were the result of Thomas's undue influence. The expert would have also opined that Magda was susceptible to undue influence, Thomas had the opportunity to exercise undue influence, and Thomas had the disposition to exercise undue influence.

The jury found that Magda's decision to sell the farm to Thomas and change her will were not the product of undue influence. The district court granted Thomas's request for specific performance. Irwin's motions for new trial were denied. Irwin appeals.

The sole issue raised in this appeal concerns the district court's ruling excluding the testimony of Irwin's expert witness. We review evidentiary rulings for an abuse of discretion. *Poyzer v. McGraw*, 360 N.W.2d 748, 752 (Iowa 1985). We will reverse only on a showing of a manifest abuse of discretion resulting in prejudice to the complaining party. *Miller v. Bonar*, 337 N.W.2d 523, 528 (Iowa 1983).

We employ a liberal rule which allows expert testimony if it will aid the jury and is based on special training, experience, or knowledge with respect to the issue in question. Iowa R. Evid. 702. An expert's opinion is not objectionable because "it embraces an ultimate issue to be decided by the trier of fact." Iowa R. Evid. 704.

However, the admissibility of expert testimony is not without limitations. In addition to the express requirements of rule 702, an expert is generally not permitted to state a legal conclusion. *Miller*, 337 N.W.2d at 529. For example, an expert may not testify that someone was negligent or to a person's guilt or innocence. *State v. Myers*, 382 N.W.2d 91, 94-95 (Iowa 1986); *Aller v. Rodgers Mach. Mfg. Co.*, 268 N.W.2d 830 (Iowa 1978). Additionally, expert testimony, like other evidence, may be excluded if its probative value is outweighed by the risks of confusing or misleading the jury. Iowa R. Evid. 403. Similarly, such evidence may be excluded by considerations of undue delay, waste of time, or cumulative evidence. *Id.*

In excluding the expert's testimony, the district court stated:

> [G]iven the offered testimony of Mr. Brooks . . . [and] the issues in this case, the court believes that this testimony will not materially assist the jury, especially when weighed in respect to the time involved to go through this testimony, cross examination . . . and also considering the potential for confusion.

Our review of this ruling in the context of the record made prior to Irwin's offer of proof confirms the validity of the district court's analysis. There is nothing in the record to suggest the jury was unable to resolve the issues or understand the

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evidence inherent in Irwin's undue influence claim without the aid of an expert. We find no abuse of discretion in the district court's ruling excluding this evidence for the reasons stated by the district court.

Moreover, the offer of proof indicates the expert intended to state his mixed conclusions of law and fact on each of the four elements of proof essential to a successful claim of undue influence.[1] As such, this testimony was nothing more than an attempt to tell the jury what result to reach. It was therefore also properly excludable as a legal conclusion. The judgment of the district court is affirmed.

AFFIRMED.

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[1] The four elements of proof necessary to a successful undue influence claim are: (1) a person susceptible to undue influence; (2) another person had the opportunity to exercise such influence, (3) the person was disposed to unduly influence another; and (4) the result complained of was clearly brought about by undue influence. *See In re Estate of Davenport*, 346 N W 2d 530 (Iowa 1984); *In re Estate of Huston*, 27 N W 2d 26 (Iowa 1947).