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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 9-544 / 97-1609
Filed December 13, 1999

LOUISE L. ROWE,
Plaintiff-Appellant,

vs.

SHELLY TERRANOVA,
Defendant-Appellee.

Appeal from the Iowa District Court for Webster County, David R. Danilson, Judge.

Louise Rowe appeals a district court order which dismissed her action to set aside a real estate conveyance on summary judgment. **AFFIRMED.**

Thomas E. Leahy of Legal Services Corporation of Iowa, Des Moines, for appellant.

James L. Kramer of Johnson, Erb, Bice, Kramer, Good & Mulholland, P.C., Fort Dodge, for appellee.

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

VOGEL, J.

Louise Rowe appeals a district court order which dismissed her action to set aside a real estate conveyance on summary judgment. We find Rowe failed to set forth specific facts to show there was a genuine issue for trial and therefore affirm.

Background facts. On January 30, 1991, at the age of seventy-five, Louise Rowe executed a warranty deed conveying her homestead to Shelly Terranova, a neighbor who had helped care for her over the years. In May of 1997, Rowe filed an action seeking to declare the conveyance void due to fraud and lack of consideration. Terranova moved for summary judgment, asserting that the conveyance was valid and no genuine issues of material fact existed for trial. The district court granted the motion and Rowe now appeals.

Scope of review. We review a summary judgment ruling for error. *Anderson v. Miller*, 559 N.W.2d 29, 31 (Iowa 1997). We examine the record before the district court to decide whether a genuine issue of material fact exists and whether the court correctly applied the law. *See id.*; Iowa R. Civ. P. 237(c). In doing so, we view the facts in the light most favorable to the party opposing the motion for summary judgment. *Anderson*, 559 N.W.2d at 31.

To determine whether a genuine issue of material fact exists, the court must examine the pleadings, depositions, answers to interrogatories, admissions on file, and affidavits. Iowa R. Civ. P. 237(e). The burden is on the moving party to show the absence of a material fact issue, and the resisting party is accorded all possible

inferences reasonably deducible from the evidence. *See Red Giant Oil Co. v. Lawlor*, 528 N.W.2d 524, 528 (Iowa 1995). However, when a motion for summary judgment is made and supported as provided in the rule, an adverse party may not rest upon the mere allegations or denials of his pleadings, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him. Iowa R. Civ. P. 237(e); *Bitner v. Ottumwa Community School Dist.*, 549 N.W.2d 295, 299 (Iowa 1996).

A "genuine" issue for trial exists when the evidence is such that a reasonable jury could return a verdict for the non-moving party. *See Jones v. Palmer Communications, Inc.*, 440 N.W.2d 884, 889 (Iowa 1989) (citation omitted). In our review, we must determine whether any facts have been presented over which a reasonable difference of opinion could exist that would affect the outcome of the case. *Behr v. Meredith Corp.*, 414 N.W.2d 339, 341 (Iowa 1987).

In support of her motion for summary judgment, Terranova provided affidavits from several of Rowe's children who were present when the real estate transaction was discussed, an attorney was contacted and the warranty deed was executed. They all attested that Rowe was of sound mind when she executed the deed, that there was valid consideration, and the Terranova had no hand in securing the deed. Terranova also offered a former will of Rowe's which supported that Rowe had intended for her estate to go to Terranova as reward for her assistance over the years. Rowe's affidavit

in support of her resistance stated only that she did not knowingly nor voluntarily sign the deed and did not know of its existence until September of 1996. She did not offer any medical evidence that would support her claimed lack of knowledge of the transaction. Nothing short of a mere denial was submitted to the court, and that alone failed to put any issue of material fact into play. Noting that Rowe's children are the individuals who would likely benefit if the transaction was found invalid, the district court found that "a jury could only reach one conclusion, that the deed was a valid and voluntary transfer of real estate." After reviewing the record, we agree with the district court's determination that Rowe failed to show a genuine issue of material fact in dispute. Having considered all arguments properly before us on appeal, we hereby affirm the district court's summary judgment ruling.

AFFIRMED.