FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 2-068 / 91-123

510

IN THE MATTER OF THE ESTATE OF FRANK A. JONES, Deceased,

COLLEEN BIVENS, KRISTINE E. NELSON, and RICHARD CRANDALL, As Conservator for Lavina Dethlefs,

Appellees,

vs.

LUCILLE GORHAM, Individually and As Co-Executor of the ESTATE OF FRANK A. JONES; GARY GORHAM; and the CRAWFORD COUNTY TRUST AND SAVINGS BANK, As Co-Executor of the ESTATE OF FRANK A. JONES,

Appellants.

Appeal from the Iowa District Court for Harrison County, Charles L. Smith, III, Judge.

The defendants appeal an adverse final judgment rendered by the district court in an action to set aside a will. **AFFIRMED.**

John M. French of Stuart, Tinley, Peters, Thorn, French & Hughes, Council Bluffs, for appellants.

Allen K. Nepper of Nepper & Tilton, Denison, for Colleen Bivens and Kristine E. Nelson, appellees.

Darwin Bunger of Kurth & Bunger, Carroll, for appellee Richard Crandall.

Heard by Donielson, P.J., and Schlegel and Hayden, JJ.

HAYDEN, J.

Decedent Frank A. Jones, died on December 5, 1988. On March 7, 1985, Frank executed a will prepared by attorney Kenneth Sacks. That will revoked all former wills and codicils executed by Frank. The will provided Colleen Bivens, Frank's niece, was to receive $25,000; Lavina Dethlef, Frank's half-sister, was to receive $10,000; and Lucille Gorham and the bank were to receive $25,000 to be held in trust for Christine Nelson, Frank's stepgranddaughter. The remainder of Frank's estate was to go to Lucille Gorham and her husband, Gary Gorham. Lucille and Gary have been lifelong neighbors to Frank until he was admitted to a nursing home in April 1984. Frank resided at the nursing home until his death. Lucille often provided Frank transportation to the doctor and other appointments. Lucille and the Crawford County Trust and Savings Bank had been voluntarily appointed guardian and conservator for Frank in September 1984.

Plaintiffs filed a petition to set aside probate of will alleging lack of testamentary capacity and Lucille and Gary Gorham unduly influenced Frank to leave the remainder of his estate to them. Defendants filed a motion in limine to prevent physicians from rendering opinions as to Frank's mental state for time periods before March 7, 1985, alleging such opinions were irrelevant and prejudicial. Defendants' motion was overruled by the district court.

At trial plaintiffs introduced evidence which indicated Frank was confused and disoriented in the years prior to 1985. Defendants' evidence showed on March 7, 1985, Frank had been examined by a doctor and found to be mentally competent. The jury found Frank was not under the influence of Lucille or Gary Gorham. The jury also found, however, Frank lacked testamentary capacity on March 7, 1985, and therefore the district court denied probate. Defendants appeal.

An action to set aside a will is triable at law and, accordingly, our review is for errors only and not de novo. In re Estate of Dankbar, 430 N.W.2d 124, 126 (Iowa 1988).

Defendants contend the district court erred in admitting evidence of Frank's mental condition for the time periods before March 7, 1985, the date Frank executed his will.

> In order for a decedent to have general mental capacity to make a will, he must know and understand 1) the nature of the instrument then being executed; 2) the nature and extent of his property 3) the natural objects of his bounty; and 4) the distribution he desires to make of his property.

In re Estate of Henrich, 389 N.W.2d 78, 81 (Iowa App. 1986). In a will contest the burden of proof is on contestants to establish testator lacked one or more of the essentials of testamentary capacity at the exact time of the making of the will. In re Estate of Gruis, 207 N.W.2d 571, 573 (Iowa 1973). However, "evidence of the condition

of the mind of the testator at other times may be received if there is a reasonable basis for the conclusion that it throws some light on his mental competence at the time the will was made." Id.

Defendants offered the testimony of two witnesses relating to Frank's mental capacity on the day he executed the will. Ken Sacks, the attorney who prepared Frank's will, and Dr. Gammel, Frank's treating physician, testified Frank was competent on the day he signed the will. The record indicates, however, Mr. Sacks did not recall whether he was present the date Frank executed the will. Dr. Gammel, however, saw Frank on March 7, 1985, and opined Frank was mentally competent.

Defendants argue because they produced evidence of Frank's mental state on the actual date the will was signed, evidence of Frank's mental condition at times other than the date of the making of the will should not have been admitted. We disagree.

The evidence at issue shows at times prior to March 7, 1985, Frank was experiencing delusions, memory loss, and confusion. We cannot conclude this evidence did not shed additional light on his mental competence at the time the will was made. Therefore, the evidence was properly admitted. We affirm.

Costs of this appeal are taxed to defendants.

AFFIRMED.