IN THE COURT OF APPEALS OF IOWA

No. 6-083 / 95-0328

FILED

NOV 27 1996

CLERK SUPREME COURT

IN THE MATTER OF THE ESTATE OF RICHARD G. STUELKE, Deceased,

SHERRY L. STUELKE,

Appellee,

vs.

SUSAN HORA, Administrator of the Estate of RICHARD G. STUELKE,

Appellant.

Appeal from the Iowa District Court for Jones County, William R. Eads, Judge.

The estate appeals the district court's disposition of Sherry Stuelke's claim for educational and medical support. **REVERSED.**

Stuart Werling, Tipton, for appellant.

Janette S. Voss of Remley, Williams & McQuillen, Anamosa, for appellee.

Considered by Habhab, P.J., Huitink, J., and McCartney, S.J.*

*Senior judge from the second judicial district serving on this court by order of the Iowa Supreme Court.

HUTTINK, J.

The executor of the Richard Stuelke estate appeals from the district court's disposition of Sherry Stuelke's claim for future education and medical support of the descendent's children. We reverse.

Sherry Stuelke was formerly married to Richard Stuelke and is the mother of his two children Erin, born February 7, 1978 and Richard born October 5, 1982. Sherry and Richard were married in North Carolina and obtained a divorce there in 1986.

The Stuelkes' North Carolina dissolution decree incorporated the terms of the their separation agreement. Sherry was awarded custody of the couple's children, and the decree provided Richard would be primarily responsible for supporting the children. Richard agreed to pay the cost of the children's college education so long as they are in good standing at an accredited educational institution and the "[s]aid obligation shall include the cost of tuition, books, fees, room and board, and reasonable living expenses." The decree further provided that Richard pay the cost of the children's secondary education in a private school. Richard also agreed to maintain medical insurance coverage for the children and pay all medical, dental and drug expenses not covered by insurance.

Article X, Paragraph (F) of the agreement provided that all of the foregoing obligations would be paid by Richard's estate in the event of his death. These obligations were to be secured by "life insurance or other security sufficient to fully

meet these expenses." Richard and Sherry also agreed that their agreement "be governed by and construed in accordance with the laws of the state of North Carolina.

In 1989, the Stuelkes agreed to modify their agreement by transferring custody of the children to Richard. Richard's support obligations were not changed. Their consent decree also provided "except to the extent it was amended the terms of the original separation agreement remained in full force and effect."

Following entry of the consent decree, Richard and the children moved to Iowa where the children enrolled in public school. Erin returned to North Carolina in June 1992 to live with Sherry. Richard Jr. also returned to Sherry's home in December 1992 following Richard Sr.'s death.

Sherry initiated these proceedings by filing a $1.5 million claim in Richard's estate for child support and future educational and medical support for her children. The district court, applying North Carolina law, found the estate was liable for the children's medical and educational expenses for as long as each meets the conditions specified in the North Carolina decree. The district court also found that the amount and occurrence of Richard's surviving obligations were not absolute and that the amount of these obligations could exceed the children's social security, TIAA/CREF, and life insurance benefits they received upon his death. The estate's claim that Sherry waived Richard's obligation to pay for the children's private secondary education was also rejected.

The district court's order allowing Sherry's claim provided that Richard's surviving obligations be first paid from the life insurance and TIAA/CREF benefits and the excess, if any, be paid from the remaining assets of Richard's estate To preserve the availability of estate assets to meet these contingencies, the court ordered Richard's estate to remain open for so long as either of the children are entitled to educational or medical support under the terms of the North Carolina decree incorporating the Stuelkes' separation agreement.

On appeal, the estate contends Richard's surviving obligations have been met by the life insurance policies, TIAA/CREF benefits maintained for this purpose and it was error for the district court to conclude otherwise. The estate also argues that Sherry has waived the private school provisions of the separation agreement and the amount of Sherry's claim is too uncertain to support a judgment. Lastly, the estate argues that the extended administration of Richard's estate conflicts with Iowa's public policy requiring timely completion of the administration of estates.

Actions in probate to establish contested claims are tried at law. Iowa Code §633.33; Iowa R. App.P. 4. Contrary to the estate's contentions, our review is limited to errors of law, and is not de novo. *In re Estate of Dodge*, 281 N.W. 2d 447, 449 (Iowa 1979). The district court's findings of fact are binding on us if supported by substantial evidence. Iowa R. App.P. 14(f)(1). Evidence is substantial or sufficient when a reasonable mind could accept it as adequate to reach the same findings.

Waukon Auto Supply v. Farmers and Merchants Sav. Bank, 440 N W 2d 844, 846 (Iowa 1989) (citation omitted). Evidence is not insubstantial merely because it could support contrary inferences. *Grinnell Mut. Reins. Co. v. Voeltz*, 431 N W 2d 783, 785 (Iowa 1988).

The law of another state statutory or common is a question of fact. *In re Drumheller's Estate*, 252 Iowa 1378, 1385, 110 N.W. 2d 833, 836 (1961). Statutes of another state will be judicially noticed if properly plead under Iowa R. Civ. P. 94. Other laws of a sister state may be proved "as facts by the books of reports of cases adjudged in their courts." Iowa Code §622.61; *Matter of Estate of Allen*, 239 N.W. 2d 163, 168-169 (Iowa 1976). In the absence of the required proof, we presume the applicable law of another state is the same as ours. *Id.*

In this case, there is no dispute concerning the applicability of North Carolina law determining which of Richard's support obligations survive his death. The record includes North Carolina case law indicating Richard Sr.'s contractual obligations recited in the Stuelkes' separation agreement to pay educational and medical support survived his death and are a charge on his estate. *See Mullen v. Sawyer*, 178 S E. 2d 425 (N.C. 1971); *Tayton v. Tayton* 139 S.E. 2d 732, 734 (N.C. 1965). Although these cases implicate North Carolina's "ordinary rules of contract law," *Layton*, 139 S.E. 2d at 735, there is no authority in the record explaining North Carolina's rules of contract interpretation or construction. We accordingly presume North Carolina's law relating

to contract interpretation and construction is the same as ours *Matter of Estate of Allen*, 239 N.W. 2d at 168-169.

As stated earlier, the estate contends any of Richard Sr.'s surviving obligations have been satisfied by the $314,000 life insurance proceeds and TIAA/CREF benefits received by the children. The estate cites the following language of Article X, Paragraph (F) of the Stuelkes' separation agreement:

> (F) The husband's (Richard's) obligations shall be binding upon husband's estate. Husband .. will maintain life insurance or other security to fully meet the obligations herein set out. [Emphasis added]

The gist of the estate's argument is that the amount of Richard's post death obligations are limited to the amount of life insurance maintained pursuant to this provision.

The district court rejected this argument as illusory. The court concluded this interpretation of this language would permit Richard Sr. to determine the parameters of his obligation without regard to the sufficiency of the amount of insurance he maintained.

The resolution of this issue requires a review of the district court's interpretation and construction of the contested provision. As determined earlier, we will apply principles of Iowa law governing interpretation and construction of contracts generally. *Baron v. Crossroad Center of Iowa, Inc.*, 165 N.W.2d 745, 749 (Iowa 1969). Interpretation involves ascertaining the meaning of contractual words; construction refers to determining their legal effect. *Fashion Fabric of Iowa, Inc. v. Retail Investors*

Corp., 266 N.W. 2d 22, 25, (citing *Allen Equip. Co.*, 239 N W 2d 135, 139 (Iowa 1976)). In the construction of written contracts, the cardinal principle is that the intent of the parties must control, and except in cases of ambiguity this is determined by what the contract itself says. Iowa R. App.14(f)(14). An ambiguity exists when, after the application of pertinent rules of interpretation to the contract language a genuine uncertainty exists as to which of two reasonable constructions is proper. *Berryhill v. Holt*, 428 N.W.2d 647, 654 (Iowa 1988). An ambiguity does not exist simply because the parties disagree on the meaning of a phrase. *Farm Bureau Mut. Ins. Co. v. Sandbulte*, 302 N.W.2d 104, 108 (Iowa 1981). If a contract is not ambiguous, it will be enforced as written. *Spilman v. Board of Directors*, 254 N.W.2d 593, 596 (Iowa 1977)

Interpretation is reviewed as a legal issue unless it depended at the trial level on extrinsic evidence. Construction is always reviewed as a legal issue. *Fashion Fabrics of Iowa, Inc.*, 266 N.W.2d at 25. The district court's initial and amended findings of fact and conclusions of law make no reference to any ambiguities in the language or terms of the Stuelkes' separation agreement. Moreover, there is no indication that the court relied on extrinsic evidence in determining the meaning of the language used in the agreement. We, therefore, review the district court's determination on these issues as a matter of law for this court to finally decide.

Our task is to determine the intentions of the parties as it finds expression in the language of the Stuelkes' separation agreement. Because a contract is interpreted as a whole, an interpretation which gives a reasonable, lawful and effective meaning to all of the contract's terms is preferable to an interpretation which leaves a part unreasonable, unlawful or of no effect. *Fashion Fabrics*, 266 N.W.2d at 26. We will not interpret a contract as giving discretion to a party which would put one party at the mercy of another, unless the contract clearly requires such an interpretation. *Midwest Management Crop. v. Stephens*, 291 N.W.2d 896, 913 (Iowa 1980). We will not make a new contract for the parties by arbitrary judicial construction. *Kinney v. Capitol Strause Co.*, 207 N.W.2d. 574, 576 (Iowa 1973).

We find the Stuelkes' separation agreement was intended as a final and comprehensive resolution of all financial matters attending their divorce. The unambiguous language of the agreement supports the district court's conclusion that Richard's educational and medical support obligations were intended to survive his death. It is equally clear that the Stuelkes intended to provide sufficient funds to meet these obligations by requiring Richard to maintain life insurance for this purpose. We, however, disagree with the district court's conclusion that Richard's surviving obligations were intended to be unlimited in amount.

As noted earlier, Article X, Paragraph (F) required Richard to maintain life insurance to "fully meet" his obligations. There is also a provision requiring Richard

to verify his compliance with this requirement. We, after reading these provisions in the context of the entire agreement, find the Stuelkes intended to reduce Richard's surviving obligations to a sum certain represented by the amount of life insurance maintained for this purpose. To hold otherwise would render the terms "to fully meet these expenses" meaningless. Moreover, any notion that this interpretation of the contract terms is illusionary is belied by the presence of the verification provision of paragraph (F). We also note that our determination is not inconsistent with the provisions of paragraph (f) binding the estate for Richard's surviving obligations because these obligations have been discharged by the security.

In reaching this conclusion, we have not ignored Sherry's argument that the children's future medical and educational expenses may exceed the $314,000 in life insurance proceeds available to meet them. We, however, do not believe it is reasonable to deny the effect of the foregoing contract language simply because Sherry proposes contingencies under which these funds would be insufficient. Sherry's argument misses the point. There is nothing in the agreement indicating the Stuelkes intended to determine the exact amount of the children's future expenses as a predicate to determining the extent of Richard's surviving obligations or the sufficiency of his security. If that were the case, no amount of insurance or other security short of the entirety of Richard's estate assets would be sufficient for this purpose. Such a scenario

may well reflect Sherry's present intentions, but we do not believe it reflects the Stuelkes' intentions as expressed in their agreement.

We hold that any charge on Richard's estate resulting from his surviving medical and educational support obligations has been satisfied by the life insurance policies and other death benefits he maintained for this purpose. The district court's judgment granting Sherry's claim against Richards estate for medical and educational support for his children is therefore reversed. Costs of this appeal shall be assessed to Sherry.

REVERSED.