IN THE COURT OF APPEALS OF IOWA

No. 1-288 / 00-1225
Filed November 16, 2001

FILED
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CLERK SUPREME COURT

C.E. HOSIER,
Plaintiff-Appellant,

vs.

DONALD B. HOSIER, As Legal Representative of the ESTATE OF C.W. HOSIER, JOHN HOSIER, HOSIER REFRIGERATION SUPPLY, INC., and HOSIER, INC.,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Michael D. Huppert, Judge.

Plaintiff appeals following trial on his action against his father's estate, his brother, and a family-owned business. **AFFIRMED.**

Thomas H. Dahlk, of Omaha, Nebraska, for appellant.

Henry A. Harmon and Donna R Miller of Grefe & Sidney, P.L.C., Des Moines, for appellees.

Heard by Huitink, P.J., and Hecht and Vaitheswaran, JJ., but decided by Huitink, P.J., and Mahan, Hecht, and Vaitheswaran, JJ.

PER CURIAM

Plaintiff Charles E. "Gene" Hosier appeals following trial on his action against his father's estate, his brother, and a family-owned business. He contends the district court erred in granting the estate's motion for summary judgment because there were disputed issues of fact regarding the enforceability of a release he had signed, such as whether it lacked consideration or was procured through fraud and duress. Gene also asserts the court erred in granting the estate's motion for judgment notwithstanding the verdict. Finally, he claims the court erred in failing to admit into evidence testimony of his wife about discrepancies in his mother's will. We affirm the district court on all issues.

I. Background Facts and Proceedings. Mildred and Charles W. "Bert" Hosier were the parents of Gene, Gary, Donald, and John. In 1962, Bert founded Hosier Refrigeration Supply, Inc. and his four sons eventually joined him in the business. Gene began working for Hosier Refrigeration in 1965. The six family members then founded Hosier, Inc., a real estate company, to own the land and buildings from which Hosier Refrigeration conducted its business. After the company opened the Omaha store in 1966, Gene moved to Omaha where he managed that part of the business. Gene then returned to Des Moines in 1985 and became president of Hosier Refrigeration.

A. Gene's Special Year End Bonuses.

Hosier Refrigeration had a history of declaring Christmas bonuses primarily for family members. These bonuses were generally equal, noted in the company records, and approved by the shareholders. In 1990, Gene began

taking a special "year end bonus" which only he and the company bookkeeper, Robert Hunter, received. These bonuses were not reflected in the corporate minutes and neither Bert nor John had knowledge of them.[1] Between 1990 and 1994, Gene was paid bonuses of $262,524[2]. Sometime in late 1994, John became aware of these special bonuses, and he and Bert confronted Gene. On October 5, 1995, a special meeting of the shareholders was held to discuss the matter. Gene claimed authorization for the bonuses through an alleged agreement with Mildred in 1990 that he would be president and take the bonuses for five years, and John would then become president and receive similar bonuses for five years. Gene claimed this agreement was drafted into a written document and placed in the company safe. This written agreement has never been found. Bert and John were never aware of any such agreement.

Over the next several months, a severance agreement and release was negotiated. The final version of the agreement between the parties was signed on February 15, 1996. The terms of this agreement included, among other things:

(1) Gene would resign as president from Hosier Refrigeration effective December 31, 1996;
(2) Gene could keep the $262,524.00 in unauthorized bonuses that he had already been paid;
(3) The company would pay Gene's $60,000.00 salary for 1996 and Gene would not receive any bonuses for the years 1995 and 1996;
(4) Gene agreed that he was not entitled to any additional

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[1] Gary and Donald were no longer part of the family business at this time.

[2] Gene's special "year end bonuses" were as follows: $47,224 in 1990, $49,830 in 1991, $58,870 in 1992, $48,800 in 1993, and $57,870 in 1994.

wages or bonuses from the company;

(5) The company agreed to continue Gene's health insurance through the year 1996;

(6) Gene would receive a company-owned vehicle valued at $18,369.00 and all equity in his life insurance policy;

(7) The company would pay Gene an additional $266,000 in exchange for Gene's Hosier Refrigeration stock; and

(8) Gene agreed not to accept employment with any competing business based or doing business in Des Moines until after January 1, 1997.

All benefits were either conveyed, paid, or accepted by Gene as provided by the agreement and release, with the final payment made in January 2000.

B. Mildred's Estate.

Mildred's will was changed a number of times since her first will in 1966. In her earlier wills, most of her estate was to go to her four sons. On October 27, 1992, Mildred and Bert executed new wills[3] and Mildred executed a warranty deed conveying her homestead to Bert. In this will, most of Mildred's estate was to go to Bert. On June 3, 1993, Mildred purchased a single-premium deferred annuity from the Principal Mutual Life Insurance Company with a face value of $200,000. The annuity initially named the four sons as beneficiaries. On May 3, 1994, Mildred executed a change of beneficiary form naming her husband, Bert, as the sole beneficiary.

Because Mildred began to suffer from Parkinson's disease, she was placed in a nursing home in May 1995. Bert petitioned the court on June 8, 1995, for involuntary conservatorship and guardianship proceedings against Mildred. On August 7, 1995, the court appointed Bert as Mildred's guardian and

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[3] Bert's 1992 will has never been found.

conservator of her property. Mildred died on January 22, 1997.

On April 4, 1997, the Estate of Mildred H. Hosier petitioned the court for probate of her 1992 will, which was admitted on the same date. Gene, however, disputes the authenticity of the will by pointing to various irregularities in the execution of Mildred's 1992 will.[4] Despite these concerns, Gene filed no contest to the probate of the will and took as one of the beneficiaries under the will. On December 1, 1997, the court ordered the distribution of one-quarter of Mildred's shares of Hosier Refrigeration directly to Gene, which was repurchased from Gene by Hosier Refrigeration in accordance with a stock redemption agreement.

C. District Court Proceedings.

Gene filed a petition on October 23, 1998, against Bert[5], John, and Hosier Refrigeration. Gene asserted claims against Bert for interference with a bequest and interference with prospective economic benefit. He sought damages for emotional distress under both of these claims. Gene also asserted several business claims against all of the defendants, which included claims for interference with contract, breach of fiduciary duty, securities fraud, common law fraud, and breach of contract.[6] He sought damages for the loss of his employment income and his stock in the company.

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[4] Gene claims (1) the signature on page 2 of the will is not Mildred's signature; (2) the initials of the attesting witness, his wife Carolyn Hosier, were not placed there by her during the execution; and (3) the will was inconsistent with his understanding of Mildred's testamentary intent.

[5] Bert died while the suit was pending and his estate was substituted.

[6] Two other claims, slander and shareholder inspection, are not involved in this appeal.

On February 8, 2000, the defendants filed a motion for summary judgment on all claims. The district court subsequently granted the defendants' summary judgment motion on all the business claims, but allowed the case to proceed to trial against the Estate of Bert Hosier on the remaining claims, interference with a bequest and interference with prospective economic benefit. During the trial, the court granted the estate's motion in limine to exclude the testimony of Carolyn Hosier regarding the alleged irregularities in the execution of Mildred's 1992 will. The jury returned a verdict in favor of Gene in the amount of $193,875. The court, however, granted the estate's motion for judgment notwithstanding the verdict, stating there was insufficient evidence to support the jury's verdict on all claims.[7] The court accordingly entered judgment in favor of the estate. Gene appeals.

II. Motion for Summary Judgment. Gene contends the district court erred in granting the defendants' motion for summary judgment because there were disputed issues of fact regarding the enforceability of the release and settlement agreement he had signed. We review a ruling on a summary judgment motion for errors at law. *Crippen v. City of Cedar Rapids*, 618 N.W.2d 562, 565 (Iowa 2000); *Swartzendruber v. Schimmel*, 613 N.W.2d 646, 649 (Iowa 2000).

A district court properly grants summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a

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[7] The court also conditionally granted the estate a new trial pursuant to Iowa Rule of Civil Procedure 248 in the event the judgment in favor of the estate is vacated or reversed.

matter of law. Iowa R. Civ. P. 237(c); *Crippen*, 618 N.W.2d at 565; *Swartzendruber*, 613 N.W.2d at 649. A factual issue is "material" only if "the dispute is over facts that might affect the outcome of the suit, given the applicable law." *Fouts ex rel. Jensen v. Mason*, 592 N.W.2d 33, 35 (Iowa 1999). The burden is on the party moving for summary judgment to prove the facts are undisputed. *Interstate Power Co. v. Insurance Co. of N. Am.*, 603 N.W.2d 751, 756 (Iowa 1999).

In ruling on a summary judgment motion, the court must look at the facts in a light most favorable to the party resisting the motion. *Crippen*, 618 N.W.2d at 565. The court must also consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record. *Id.* An inference is legitimate if it is "rational, reasonable, and otherwise permissible under the governing substantive law." *Butler v. Hoover Nature Trail, Inc.*, 530 N.W.2d 85, 88 (Iowa Ct. App. 1994). On the other hand, an inference is not legitimate if it is "based upon speculation or conjecture." *Id.* If reasonable minds may differ on the resolution of an issue, a genuine issue of material fact exists. *Swartzendruber*, 613 N.W.2d at 649.

A. Consideration.

Gene first maintains the court erred in finding the release and settlement agreement were supported by consideration. We agree with Gene a release or a settlement agreement is essentially contractual in nature, and is construed under the legal principles applicable to the construction and interpretation of contracts. *Phipps v. Winneshiek County*, 593 N.W.2d 143, 146 (Iowa 1999).

We ordinarily will not inquire into the adequacy of consideration. *Hubbard Milling Co. v. Citizens State Bank*, 385 N.W.2d 255, 258 (Iowa 1986). We presume a written, signed agreement is supported by consideration. Iowa Code § 537A.2 (1997). Gene had the burden to prove a lack of consideration. *Kristerin Dev. Co. v. Granson Inv.*, 394 N.W.2d 325, 331 (Iowa 1986); *Hubbard Milling*, 385 N.W.2d at 258. We recognize a defense of failure or lack of consideration under section 537A.3 is not precluded from being raised merely because the parties recited a consideration in their agreement. *Hubbard Milling*, 385 N.W.2d at 259. "However, when the defense of lack of consideration is raised, we do ascertain whether any consideration was provided, that is, whether there was a benefit to the promisor or a detriment to the promisee." *Id.* at 258.

Our relevant inquiry is whether or not *any* consideration was given. *PMX Indus., Inc. v. LEP Profit Int'l*, 31 F.3d 701, 704 (8th Cir. 1994) (applying Iowa law). Consideration may take many forms. *Kristerin Dev.*, 394 N.W.2d at 331. Consideration may consist of a performance or a return promise, and it must be "bargained for." *Magnusson Agency v. Public Entity Nat'l Company-Midwest*, 560 N.W.2d 20, 27 (Iowa 1997). Any performance which is bargained for is consideration. *Id.* A performance is bargained for if it is sought by the promisor in exchange for his or her promise and is given by the promisee in exchange for that promise. *Id.*

The district court concluded, and we agree, the settlement agreement and release at issue was signed by all parties, and a stated consideration was set forth in the writing. The settlement agreement and release contained mutual

promises as consideration to support the agreement. Gene made several promises as part of the agreement, which included his resigning as president of Hosier Refrigeration; releasing the defendants from all potential claims he might have against them; and agreeing not to compete against the company for a period of ten months in exchange for the defendants paying him in excess of $300,000 as part of a severance package, allowing Gene to retain the approximately $260,000 in unauthorized bonuses; and their promising not to pursue any legal claims they may have against Gene. Gene has retained all the benefits he received under the agreement. The court generally will not inquire further into the adequacy of the consideration given. *See Kristerin Dev.*, 394 N.W.2d at 331-32.

In viewing the facts in the light most favorable to Gene, we conclude the agreement and release was supported by consideration.

B. Duress.

Gene also contends the release is not enforceable because he was under economic duress to sign the agreement.[8] A contract is voidable by the victim "if the party's manifestation of assent is induced by an improper threat by the other

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[8] Gene comments in his brief the release is unenforceable because he was also under psychological duress. Gene has failed to demonstrate he has preserved the psychological duress issue for review. He did not raise the distinction between economic and psychological duress as part of his resistance to defendant's motion for summary judgment. Likewise, Gene cites no legal basis in his brief to support his claim such a distinction exists under the law. He also fails to provide a definition of what constitutes psychological duress. Gene's random mention of this issue, without elaboration or supportive authority, is insufficient to raise the issue for our consideration. *Soo Line R.R. Co. v. Iowa Dep't of Transp.*, 521 N.W.2d 685, 691 (Iowa 1994); Iowa R. App. P. 14(a)(3) ("Failure in the brief to state, to argue or to cite authority in support of an issue may be deemed waiver of that issue."). Because the deficiency in Gene's brief has hindered this court from its review and consideration of the issue, we find this issue has been waived.

party that leaves the victim no reasonable alternative." *Fees v. Mutual Fire & Auto. Ins. Co.*, 490 N.W.2d 55, 58 (Iowa 1992) (quoting Restatement (Second) of Contracts § 175(1), at 475 (1981)). Based upon this standard, we have recognized a release or settlement agreement may be invalid by reason of economic duress. *Id.; Turner v. Low Rent Hous. Agency*, 387 N.W.2d 596, 598-99 (Iowa 1986). Obviously, the burden of proving economic duress is upon the party alleging it. *Fees,* 490 N.W.2d at 58.

In order to prevail on a claim of economic duress, Gene must prove each of the following elements: (1) he involuntarily accepted the terms of another; (2) he had no reasonable alternative under the circumstances; and (3) and his financial troubles were the result of the defendant's wrongful or coercive acts. *Id.* at 59. The party opposing summary judgment has to demonstrate a factual issue concerning each of the three prongs. *Id.*

Relying on these principles, we disagree with the district court's conclusion Gene has raised sufficient facts to support his contention the settlement agreement and release were the result of economic duress. In viewing the facts in the light most favorable to Gene, we find there are no genuine issues of material fact indicating the challenged settlement agreement and release signed by Gene and the defendants were procured through economic duress. Gene is required to show there was a material fact issue as to all three elements of his economic duress defense and he has failed to do so.

To satisfy the first element of economic duress, the record must show Gene had involuntarily executed the agreement. *See id.* Although Gene readily

admits executing the agreement, he now contends he never intended to abide by it. However, the record is clear Gene knowingly and voluntarily acceded to its terms. Gene is a businessman with a great deal of experience in the company and held the position of president. As such, Gene was fully aware of and understood the terms and was aware of his rights in the agreement and release. The language was clear and unequivocal, not ambiguous. In addition, he understood the release was a full and final settlement of the claims. Most importantly, pursuant to the agreement, Gene had twenty-one days to consider the agreement prior to signing, was advised to seek advice from an attorney, and was given seven days after signing to revoke the agreement. Under these circumstances, we find Gene's state of mind upon signing the contract cannot be attributed to the defendants. Where an experienced businessman had sufficient time to consider and discuss with an attorney the agreement, and understands the content of what he is signing, he cannot now claim the execution of the release and agreement is the product of duress. *See Anselmo v. Manufacturers Life Ins. Co.*, 771 F.2d 417, 420 (8th Cir. 1985). Therefore, under these circumstances, we find Gene has failed to generate a fact issue as a matter of law on this element.

Although we find Gene has not sufficiently established economic duress, we further note even if Gene had successfully met the requisite legal standard for this defense, we agree with the district court's conclusion Gene still would not defeat the defendants' summary judgment motion because no reasonable fact-finder could conclude Gene timely repudiated the contract. "A party, who is

entitled to avoid a contract on the ground of duress should repudiate it promptly after the duress has been removed. Silence and acquiescence for a considerable period thereafter, action in accord with it, and acceptance of benefits under it, amount to a ratification." *Anselmo.,* 771 F.2d at 420. Gene has not only retained all benefits owed to him under the agreement and release, but also waited over two and one-half years from the date he signed the agreement to commence the present action in which he claims it was executed under duress. "[A]lleged victim of duress may not obtain part of the benefits of an agreement and disavow the rest." *Turner*, 387 N.W.2d at 599. Because Gene accepted the benefits of the agreement, acted in accordance with it thereby ratifying it, the district court concluded, and we agree, Gene has waived any economic duress claim he may otherwise have had. *See Anselmo,* 771 F.2d at 420.

C. Fraud.

Gene finally contends the court failed to address his allegation the release was obtained by fraud. Gene's claim of fraud is based upon the same operative facts as his claim of economic duress. The essential elements of an action for fraud are well established: materiality, falsity, representation, scienter, intent to deceive, justifiable reliance, and resulting injury and damage. *See City of McGregor v. Janett,* 546 N.W.2d 616, 619 (Iowa 1996); *Clark v. McDaniel,* 546 N.W.2d 590, 592 (Iowa 1996). For a party claiming fraud to prevail, the proof must be "clear, satisfactory, and convincing." *Janett,* 546 N.W.2d at 619.

After a careful review of the record in the light most favorable to Gene, we

find Gene has failed prove by "clear, satisfactory, and convincing" evidence the release and settlement agreement was induced by fraud. Gene's allegation of fraud rested entirely on his own words that the defendants carried out a fraudulent scheme by first setting him up and then hiding the evidence that he needed to exonerate himself. Gene however fails to offer any additional evidence to support this contention. We therefore conclude the record fails to show by "clear, satisfactory, and convincing" proof that the release and settlement agreement was induced by fraud.

Assuming arguendo that Gene is able to prove a fraud claim, he could not succeed on his claim for he has ratified the settlement agreement and release as a matter of law. Like duress, a contract obtained by fraud is voidable, not void. *See* Restatement (Second) of Contracts §§ 7, 380. A party who has the power to avoid a contract for fraud may lose that power of avoidance by action that manifests a willingness to go on with the contract and accept the benefits, which has the effect of ratifying the contract. *Id.* Our supreme court has stated the following regarding ratification:

> A party to an agreement induced by fraud or deceit is held to the duty of electing either to execute or rescind the contract at the time of discovering the wrong, or within a reasonable time thereafter. . . . Taking any benefit or changing the condition of the property bought after learning of the fraud has been adjudged a waiver of the right to rescind.

Staly v. McNerney, 233 Iowa 1065, 1075, 10 N.W.2d 584, 589 (1943). "On ratification, the affirming party is bound as from the outset and the other party continues to be bound." Restatement (Second) of Contracts § 380.

As we previously concluded, the record is clear Gene retained all the

benefits owed to him under the settlement agreement and release. It is also undisputed Gene waited over two and one-half years from the date he signed the agreement to commence the present action in which he now claims it was executed by duress and fraud. The district court concluded, and we agree, Gene, by his actions in retaining all of the benefits of the agreement and waiting as long as he did to claim fraud in the execution of the agreement, has ratified the agreement as a matter of law. Accordingly, we affirm the district court on this issue.

III. Judgment Notwithstanding the Verdict. Gene also asserts the district court erred in granting the estate's motion for judgment notwithstanding the verdict. We review a district court ruling on a motion for judgment notwithstanding the verdict for correction of errors at law. *In re Estate of Bayer*, 574 N.W.2d 667, 670 (Iowa 1998).

"We view the evidence as the district court did in ruling on the motion, that is, in the light most favorable to the party against whom the motion was directed." *Id.* A motion for judgment notwithstanding the verdict should be denied if there is substantial evidence to support the claim. *Id.* Absent such evidence, judgment notwithstanding a verdict may be sustained. *Id.* "Evidence is substantial when a reasonable mind would accept it as adequate to reach an conclusion." *Id.* If reasonable minds could differ on the issue, a jury question is engendered. *Id.*

A. Tortious Interference Theories.

Gene asserted claims against Bert for interference with a bequest and interference with prospective economic benefit. Gene contends Bert intentionally

and improperly interfered with his anticipated bequest and economic benefit from Mildred by means of fraud or other tortious measures. We recognize a law action for tortious interference with a bequest. *Huffey v. Lea*, 491 N.W.2d 518, 520 (Iowa 1992). Gene, however, has cited no authority, and we have found none, in which Iowa recognizes the theory of intentional interference with prospective economic benefit as a legal theory in a noncommercial context.[9] We will assume, without deciding, that Gene has stated a claim for tortious interference with prospective economic benefit in this case.

We agree with the district court's conclusion the elements of both claims are essentially the same. The necessary proof focuses on the fraud, duress, or other tortious means intentionally used by the alleged wrongdoer in depriving another of receiving from a third person an inheritance or gift. *Id.* at 521.

1. *Interference With Bequest.*

In order to adequately plead a tortious interference cause of action, Gene had to present facts demonstrating Bert's tortious interference with an *intended bequest*. *See* Restatement (Second) of Torts § 774B cmt. d (1979). There must be proof "amounting to a reasonable degree of certainty that the bequest or devise would have been in effect at the time of the death of testator. . . . " *Id.* Without these allegations or inferences, the court has no means by which it can determine whether his share would have been greater than what he received under Mildred's 1992 will.

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[9] We, however, acknowledge the existence in Iowa law for actions in tort for wrongful interference with prospective business advantage, which protects expectancies of future contractual relations. *North v. State*, 400 N.W.2d 566, 569 (Iowa 1987); *Page County Appliance Ctr. v. Honeywell*, 347 N.W.2d 171, 177 (Iowa 1984).

Gene claims the four brothers were intended beneficiaries of Mildred's homestead and her stock in Hosier, Inc.. Gene, however, presented no direct evidence as to the existence of a prior valid will, which would legitimize his expectancies. The record reveals Gene disputes the authenticity of Mildred's 1992 will, which left most of Mildred's property including her homestead to Bert. He points to various irregularities in the execution of the will, which included claims the signature on page 2 of the will is not Mildred's signature. However, the record also reveals Mildred executed a warranty deed on the same date as the 1992 will conveying her interest as sole owner in the homestead to Bert. Gene did not challenge the validity of his mother's signature on this document or the transfer itself. The record is also devoid of any evidence the execution of the deed was the result of tortious conduct by Bert. By executing the deed, the homestead is no longer part of Mildred's estate. Therefore, the homestead was no longer an intended bequest for Gene.

The evidence also shows Mildred never intended to convey her interest in Hosier, Inc. to anyone other than Bert. Drafts of her four wills prior to the 1992 will were introduced into evidence. They either showed all of her property was to go to Bert or she specifically bequeathed her stock in Hosier, Inc. to Bert. Therefore, like Mildred's homestead, the stock was not an intended bequest for Gene.

In viewing the evidence in the light most favorable to Gene, we find Gene has failed to establish he had a valid expectancy of which he had been deprived by Bert's alleged tortious interference. The district court concluded, and we

agree, there was insufficient evidence to submit the intentional interference with bequest claim to the jury. Therefore, we hold the district court properly granted the estate's motion for judgment notwithstanding the verdict on this issue.

2. Interference With Prospective Economic Benefit.

As to the intentional interference with prospective economic benefit, Gene has failed to establish Bert's conduct was independently tortious in character. Gene contends he had a reasonable expectation of receiving monetary benefits as a beneficiary of Mildred's annuity. He claims Bert intentionally and improperly interfered with Gene's expectancy by causing the change of beneficiary to Bert. However, to be successful on such a claim, Gene must prove Bert "interfered with the inheritance or gift by means that are independently tortious in character." *Id.* Absent such conduct, no liability will be imposed. *See id.*

After a careful review of the evidence in the light most favorable to Gene, we find the only evidence to support his claim of improprieties was his testimony the signature on the change form did not look like his mother's. However, there was no expert testimony offered to challenge the signature. There was evidence Mildred's handwriting was inconsistent and deteriorated over time because of her Parkinson's disease. There was no other evidence regarding the circumstances surrounding the change of beneficiary form. We find Gene has provided no evidence to support his contention the change in beneficiaries was the product of tortious interference. As a result, there was insufficient evidence to submit the intentional interference with prospective economic benefit claim to the jury. We therefore conclude the district court properly granted the estate's motion for

judgment notwithstanding the verdict on this issue.

B. Emotional Distress.

Gene also sought damages for emotional distress under both of the tortious interference claims. In light of our conclusion above that the district court correctly entered judgment notwithstanding a verdict on both claims, we need not address the issue of emotional distress as this issue is now moot. We therefore decline to address this issue.

IV. Motion for New Trial. Gene contends the district court erred in granting the estate's motion for a new trial. The district court conditionally granted the estate a new trial pursuant to Iowa Rule of Civil Procedure 248 in the event the judgment in favor of the estate is vacated or reversed. Because we have affirmed the district court's grant of the estate's motion for judgment notwithstanding the verdict, we do not need to address this issue. *See Holdsworth v. Nissly*, 520 N.W.2d 332, 336-37 (Iowa Ct. App. 1994).

V. Admission of Carolyn Hosier's Testimony. Gene claims the district court erred in failing to admit into evidence testimony of his wife about discrepancies in his mother's will. Our review of exclusion of evidence is for correction of errors of law. Iowa R. App. P. 4.

The decision whether to admit evidence is within the sound discretion of the district court, and such decisions will not be disturbed on appeal unless the discretion has been abused and a substantial right of a party has been affected. *Estate of Bayer*, 574 N.W.2d at 675. An abuse of discretion occurs when the district court exercises its discretion "on grounds or for reasons clearly untenable

or to an extent clearly unreasonable." *State v. Maghee*, 573 N.W.2d 1, 5 (Iowa 1997). "A ground or reason is untenable when it is not supported by substantial evidence or when it is based on an erroneous application of the law." *Graber v. City of Ankeny*, 616 N.W.2d 633, 638 (Iowa 2000). Whether a substantial right is affected can only be determined when the record as a whole is considered. *Stumpf v. Reiss*, 502 N.W.2d 620, 623 (Iowa Ct. App. 1993). In addition, we should reverse only when justice would not be served by allowing the district court ruling to stand. *Id.* After a careful review of the record, we find no abuse of discretion by the district court on this issue.

Even assuming the district court erred in refusing to admit Carolyn Hosier's testimony, we conclude any error was harmless, nonprejudicial, and would not have altered the district court's judgment notwithstanding a verdict ruling on our conclusions above. We therefore find no prejudicial abuse of discretion and affirm the district court on this issue.

VI. Summary. We affirm the district court on all issues.

AFFIRMED.