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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE ESTATE OF ROXIE D. LEISE, Deceased, **STANLEY LEISE,** and **FRANCES PACK,**	)	131
Plaintiffs-Appellants,	)	Filed October 28, 1987
vs.	)	
FRANCIS E. HANSEN, Presiding Bishop, as Trustee, or his successors in office, in Trust for the Reorganized Church of Jesus Christ of Latter Day Saints, and **STEVEN L. LEISE,**	)	7-220 86-1179
Defendants-Appellees.	)	

Appeal from the Iowa District Court for Marshall County (No. 18842), M. D. Seiser, Judge.

The plaintiffs appeal from an adverse directed verdict claiming the court erred in sustaining defendant's motion for directed verdict and motion for judgment notwithstanding the verdict. **AFFIRMED.**

Donald C. Wilson of Wilson, Hall & Craig, Eldora, for plaintiffs-appellants.

Patrick D. Brooks of Brooks, Ward & Trout, Marshalltown, for defendant-appellee Francis E. Hansen, as Trustee.

Considered by Oxberger, C.J., and Donielson and Hayden, JJ. Snell, J., takes no part.

PER CURIAM 132

On December 1, 1983, appellants Stanley Leise and Frances Pack initiated the present action in order to challenge the will and codicil of decedent Roxie D. Leise. In their petition, appellants alleged these documents were the product of undue influence. Jury trial commenced on July 8, 1986. The jury rejected appellants' claim as to the will but were unable to reach a conclusion with respect to the codicil. The district court, which had reserved ruling on appellees' motions for directed verdict, granted their motion for judgment notwithstanding the verdict on the issue of the codicil's validity. This appeal followed. Our review is limited to the correction of legal errors. Iowa R. App. P. 4.

I.

Prior to trial, appellees filed a motion in limine, seeking to exclude certain testimonial evidence. The district court, in that portion of its ruling on the motion pertinent to appellants' first contention here, excluded evidence which appellants claim tended to demonstrate that Carl and Carol McGuire, friends of the decedent and members of appellee church, possessed a disposition to unduly influence the decedent. Such a demonstration is a requirement for a successful claim of undue influence. E.g., Matter of Estate of Davenport, 346 N.W.2d 530, 532 (Iowa 1984). The challenged evidence dealt with an inheritance the McGuires had received from Emma Phillips, with whom the McGuires had maintained a close relationship. The district court excluded this evidence on basic principles of relevancy. See Iowa R. Evid. 401-404.

Initially, we note that the determination of evidence's relevancy is a matter committed to the trial court's sound discretion. Mercer v. Chi, 282 N.W.2d 697, 700 (Iowa 1979). Likewise, a trial court possesses discretion to exclude marginally relevant evidence if the evidence's probative value is outweighed by such concerns as the potential for prejudice, confusion of issues, or waste

of trial time. See Carter v. MacMillan Oil Co., Inc., 355 N.W.2d 52, 55 (Iowa 1984); Carter v. Wiese Corp., 360 N.W.2d 122, 131 (Iowa App. 1984). Our review is for abuse of this discretion. See Kelly v. Iowa State Educ. Ass'n, 372 N.W.2d 288, 299 (Iowa App. 1985).

The present record does not, we think, disclose such an abuse. Nothing contained in this record suggests that Phillips' testamentary gift to the McGuires was the product of undue influence. Certainly, our cases do not grant a presumption of such overreaching. See Luse v. Grenko, 251 Iowa 211, 220, 100 N.W.2d 170, 176 (1959). Phillips' will was never challenged on such a ground. Given these facts, as disclosed by the record, we are not persuaded that error inheres in the district court's decision to foreclose speculation as to the legal catalyst of Phillips' will.

II.

Appellants maintain the district court erred in granting appellees' motion for judgment notwithstanding the verdict on the issue of the codicil's validity. The codicil exercised Leise's power of appointment over a trust established for her benefit, bequeathing the principal of the trust to appellee church. In order to establish their claim, appellants were required to proffer evidence of the following four conditions: (1) the testator must have been susceptible to undue influence; (2) the person alleged to have exercised undue influence must have had the opportunity to do so; (3) such person must have had a disposition to influence the testator unduly for the purpose of procuring and improper favor; and (4) the result must clearly appear to be the effect of undue influence. See Matter of Estate of Henrich, 389 N.W.2d 78, 83 (Iowa App. 1986). Mere suspicion, surmise, conjecture, or speculation is not enough to warrant a finding of undue influence; rather, there must be a solid foundation of established facts upon which to rest an inference of undue influence. Matter of Estate of Daven-

port, 346 N.W.2d 530, 533 (Iowa 1984). Our state follows the general rule finding motive and opportunity alone insufficient to support an inference of undue influence. Id. at 532-33. In order to generate a jury question on the issue, more than a scintilla of evidence must be shown. E.g., In re Cory's Estate, 169 N.W.2d 837, 842 (Iowa 1969).

The district court concluded that insufficient evidence was educed at trial in support of elements (1), (3), and (4). Because our agreement with the district court extends at least to the element of "disposition to unduly influence," we need not address the evidentiary support for the remaining elements. Appellants contend that the following record evidence would support an affirmative finding on the "disposition" element: (1) the McGuires frequently visited Leise during the approximately two months between the drafting of her will and the drafting of her codicil; (2) an officer of appellee church spoke with Leise during this time; (3) appellee church practices an active interest in its members' estate planning and charitable giving; (4) Carl McGuire had a copy of Leise's will during the period prior to the drafting of the codicil, an accusation he denied at trial.

The record demonstrates that the frequency of the McGuires' contacts with Leise during the period in question was in no way disproportionate to or inconsistent with the attention they gave her during the entire time they resided in the same city. That appellee church was concerned about Leise's estate planning and spoke to Leise, through its officers, about that topic in no way discloses a disposition to exert the type of "moral coercion" required by our law. See Estate of Davenport, 346 N.W.2d at 532 (quoting 1 S. Kurtz, Kurtz on Iowa Estates, § 4.45, at 175 (1981)). In addition, we do not believe the record supports appellants' claim that the church officer referred to actually discussed Leise's power of appointment with her. Even assuming that Carl McGuire saw Leise's will during the period prior to the drafting of the codicil, it is only a

speculative nexus that connects this assumption to a finding of the required disposition.

District courts, in ruling on motions such as appellees', are required to view the evidence in the light most favorable to the non-moving party. Watson v Lewis, 272 N.W.2d 459, 461 (Iowa 1978). From this legal principle appellants reason that, because Carl McGuire's testimony that he had not seen Leise's will was contradicted by another witness's testimony, we must assume that McGuire perjured himself and discredit his entire testimony accordingly. We disagree. We think the above-cited principle relates to our determination of the existence, vel non, of a party's substantive claim and does not extend to presumptions of a witness's credibility.

The district court's grant of appellees' motion for judgment non obstante veredicto is affirmed.

AFFIRMED.