FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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LLOYD WALKER and ALMA WALKER,

Plaintiffs-Appellants,

vs.

LINA LEACH, As Executor of the Estate of ERNEST LEACH, Deceased,

Defendant-Appellee.

Filed September 24, 1985

5-315
84-604

Appeal from the Iowa District Court for Muscatine County - Jack L. Burns, Judge.

Plaintiffs appeal the denial of their claims on a check and a promissory note against decedent's estate. **AFFIRMED.**

Garry D. Woodward, Des Moines, Iowa, for plaintiffs-appellants.

Gary R. Allison of Allbee, Allison, and Denning, Muscatine, Iowa, for defendant-appellee.

Considered by Donielson, P.J., Schlegel, and Sackett, JJ.

SCHLEGEL, J.

Plaintiffs appeal the denial of their claims on a check and a promissory note against decedent's estate. The district court entered judgment for defendant estate on both claims and overruled plaintiff's motion to amend, enlarge and modify findings, conclusions, and judgment. We affirm the trial court.

Earnest Leach, the decedent, was survived by Lina Leach, his common-law wife, and Alma Walker, his step-daughter from a previous marriage. Much of the testimony and allegations concerning the decedent's habits and character is derived from these two individuals. Generally, Alma Walker, and her husband Lloyd, claim that during his later years, Earnest maintained a close relationship with them that eventually led him to ask them to build a new house, which he would pay for with a check for $6,000 and a promissory note worth $40,000, on the condition that he might live with them.

Lina Leach, as executor of Earnest's estate, denied the closeness of the alleged relationship and in turn alleged numerous affirmative defenses: 1) the signatures on the two documents were not the genuine signatures of the decedent; 2) assuming the signatures were genuine, there was no consideration for either the check or the note; 3) the alleged agreement between plaintiffs and decedent is barred by Iowa Code section 622.32 (statute of frauds); 4) the check and note were not properly presented for payment; 5) plaintiffs should be barred from succeeding on their claims due to laches; 6) plaintiffs had failed to rely on any alleged promise made by decedent; 7) if the signatures were genuine, they were obtained by duress; and, 8) decedent was not competent to conduct his own affairs at the time the signatures were obtained.

The trial court determined that the signatures were those of defendant, however, they were obtained at a time when decedent was under duress and not competent to conduct his business affairs. The court also applied the doctrine

of laches to the check but not the note. It found that there was not sufficient evidence to establish an interest in land so as to trigger the statute of frauds. It chose not to deny recovery on the basis of lack of proper presentment, or lack of consideration. The court found for defendant on the basis of duress and incompetency. We affirm the trial court solely on the basis of incompetency.

This case was tried at law under section 633.33 of the Iowa Code. Therefore, our review is on assigned errors. The trial court's findings of fact bind this court if supported by substantial evidence. Iowa R. App. P. 14(f)(1). A finding of fact is supported by substantial evidence if the findings may be reasonably inferred from the evidence. Beeck v. Aquaslide 'N' Dive Corp., 350 N.W.2d 149, 154 (Iowa 1984).

I. According to the evidence, no one other than the plaintiffs and the decedent witnessed the signing of the check and the note. Plaintiffs also failed to produce any witnesses, other than themselves, that could attest to the alleged agreement to build the new home.

Based upon the testimony of the witnesses produced by the decedent's wife, the trial court found the following facts to be true about Earnest Leach.

In 1967, or thereabout, Earnest Leach took Lina Leach as his common-law wife. He and Lina lived together on his farm until his death in March of 1981. Those that knew Earnest testified that he was a very conservative man with a reputation for being notoriously tight with his money. Although Lina helped extensively on the farm, Earnest would give Lina only $10.00 a week for groceries. The rest of the food would be made up from their garden or from money Lina earned herself. Earnest also refused to allow Lina to use the electric clothes dryer bought for her by her children because the electricity would cost too much. The largest Christmas or birthday gift Earnest ever gave Lina was $5.00.

Earnest's banker also testified that he was a shrewd businessman who never made large gifts to anyone.

According to plaintiff's claim, Earnest drove to their home on July 12, 1979, and proposed to them that in consideration for their building a new home and allowing him to live with them, he would pay for the construction costs. Then, Earnest went to his truck, took out a note and a counter check and, after Alma filled out the note and check, signed them. Alma testified that Earnest was not wearing his glasses at the time he signed the documents.

The evidence shows that, even though the plaintiffs had incurred substantial debts while constructing the new home, they did not attempt to cash the six thousand dollar check until July 1980. They took no action to collect on the note until September 1981, approximately five months after decedent had died.

For a period of time, beginning on December 14, 1979, and including most of January 1980, Earnest was a patient at the Americana Health Center nursing home. The defendant produced nursing home records, dated January 2, and 13, 1980, that convinced the trial court that the check and note were in fact signed by Earnest in January, 1980, rather than July, 1979. The nursing home records show that on January 2, 1980, a "Lois Walker," stepdaughter of Earnest Leach visited him and exchanged papers with him that were about the size of a check. When confronted about the exchange, the visitor denied any check was signed. The patient later admitted to the nurse that he had signed a $25.00 check for the visitor. Then, on January 13, 1980, the records indicate that both Alma and Lloyd Walker visited Earnest. The attending nurse, who regularly kept the log, reported that an aide overheard the woman visitor tell the decedent to "sign the papers or else." The nurse also noted that the decedent was crying excessively, was very pale and starry eyed, and was very slow when answering questions. This behavior was in sharp contrast to his immediately preceding

health, for he was scheduled to be released from the home on January 14th. The doctors cancelled his release following the January 13th episode and forbade the plaintiffs from seeing Earnest again.

The plaintiffs objected strenuously to the admission of the nursing home records. They alleged that the records were multiple hearsay and that they were influenced by Lina Leach. Plaintiffs also brought in a handwriting expert that testified that the signatures on the check and note were made on July 12, 1979, and not in January, 1980.

The trial court refused to be persuaded by plaintiff's expert. The trial court may "weigh expert opinion evidence as it does other evidence and accept it in whole, in part, or not at all." Meade v. Roller, 212 N.W.2d 426, 429 (Iowa 1973). The court found that the known signatures of Earnest Leach on July 11, 1979, differed extensively from the alleged signature on July 12, 1979. The signature on July 11, 1979, is spelled correctly and follows the line beneath it. The signature on the note does not follow the line and is not as neat. The signature on the check does not follow the line, runs off the end of the check, and the first name contains an extra "s." The first time any other check signed by the decedent containing an extra "s" in the first name was on August 20, 1979. Others, written the same way, appear after that date. Checks written after August 20 consistently had signatures that did not follow the line beneath them.

The court found that the decedent signed the documents on January 13, 1980, and that he was incompetent to carry on his business affairs at that time. And, there is substantial evidence to support that finding. However, the record also shows that even if the court adopted as true the plaintiff's claim that the documents were signed on July 12, 1979, the decedent was not competent to conduct his business affairs.

The defendant executor produced several witnesses that described Earnest's failing health in the years and months prior to July 1979. We quote evidence summarized by the court to support its findings:

> Allan Ball testified that he lived on property adjoining the decedent's farm; that he had known the decedent since 1966; that the decedent did not have any trouble remembering things during earlier years, but seemed to go downhill after he was burned in a fire in 1974; that in 1977 he found the decedent lying in his farm lane; that he picked the decedent up from the ground; that the decedent seemed so confused and disoriented that he brought him in to his home in town; that during the summer of 1979 the decedent sometimes couldn't remember where he was supposed to go; that he couldn't remember how to get to places he had been oftentimes before; and that sometimes the decedent would cry and say he didn't know what was happening to him.
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> Lina Leach also testified that the decedent became very forgetful; that he couldn't remember where people lived, where the gas company was located, etc., even though he had been to those places many times.
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> On August 19, 1983, the decedent was taken to Muscatine General Hospital because he was badly disoriented. Lina Leach testified that the decedent thought he was in a cornfield when he was at home. Attorney Robert Petersen testified that he had represented the decedent for almost thirty years; that the decedent started showing signs of aging in 1979; that the decedent would start a conversation and then start weeping; that he had the decedent sign a petition for a standby conservatorship in September, 1979; and that the decedent did not seem confused or disoriented and he had no qualms about his mental capacity at that time. He also testified that the decedent never mentioned the note and check in question to him.
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> Roland Paulsen testified that he lived less than one-half mile from the decedent's farm; that he was a vice-president at Central State Bank, where the decedent did his banking; that the decedent was mentally sharp until he was injured in a fire and then he deteriorated both physically and mentally; that the conservatorship did not surprise him because he had observed the decedent deteriorating; that he made the decision not to honor the note because he didn't feel it was legitimate; that he was aware of the decedent's mental health at that time; that the decedent was very aware of how to fill

> out a note and this one was not properly prepared; and that he knew it was not the decedent's nature to be reckless with his money for anyone.
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> On October 22, 1979, the decedent was hospitalized for a heart attack. On November 5, 1979, he underwent a spleen operation. This was after he had been diagnosed as having leukemia. On November 27, 1979, the petition for conservatorship was filed. This was after the decedent's doctor had advised Attorney Petersen that he felt the decedent was unable to conduct his own business. On December 7, 1979, the decedent underwent a bladder operation. On December 14, 1979, he was taken from St. Luke's Hospital to the Americana Health Center.
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> The records from Americana contain numerous entries that refer to the decedent being confused and disoriented.

Defendant Lina Leach also testified that Earnest never used counter checks after April, 1979, and that he always wore his glasses whenever he signed checks.

II. A contract cannot be set aside on the ground of a person's incompetency to enter it unless the evidence shows the person lacked sufficient mental capacity to understand it. Matter of Guardianship of Collins, 327 N.W.2d 230, 233 (Iowa 1984).

> If all of the evidence and the reasonable inferences therefrom lead to the conclusion that the grantor was incompetent, and that he lacked sufficient reason to understand or appreciate his act or the reasonableness and the consequences of his act, then it may be said that such person is mentally incompetent to do the thing against which the complaint is lodged.
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> Furthermore, the test here is not testamentary capacity. A higher degree of mental competence is required for the transaction of ordinary business and the making of contracts than is necessary for testamentary disposition of property.

Costello v. Costello, 186 N.W.2d 651, 654, 655 (Iowa 1971); see also In re Estate of Faris, 159 N.W.2d 417, 420 (Iowa 1968).

We feel that the record, when viewed in its entirety, substantially supports defendant's affirmative defense that the decedent was not competent to conduct his business affairs on July 12, 1979. While some of the more severe physical

illnesses were experienced after July 1979, they were of the nature that one could reasonably infer that they might have affected the decedent much earlier.

We agree with the trial court that the plaintiffs' claims should not be barred on the basis of the statute of frauds or delay in presentment under section 554.3503(2)(a) of the Iowa Code. We feel, however, that the trial court's application of the equitable doctrine of laches is inappropriate in light of the fact that this is an action at law. See Iowa Code section 633.33. Because we affirm the trial court on the basis that the decedent was incompetent as of July 12, 1979, we need not address the issue of duress and the admission of the nursing home records.

AFFIRMED.