

IN THE COURT OF APPEALS OF IOWA

No. 1-095 / 00-0534

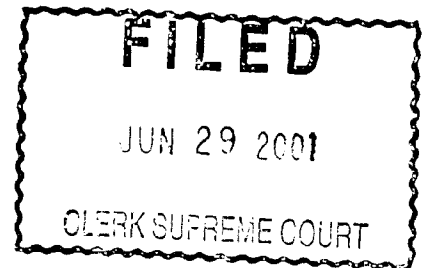
Filed June 29, 2001

IN THE MATTER OF THE ESTATE OF
ESTHER H. SMITH, Deceased,

JEANNE DAWSON,
Plaintiff-Appellant,

vs.

FIRST NATIONAL BANK IOWA n/k/a MERCANTILE
TRUST COMPANY, N.A., Executor, and MURIEL
BAILEY, DON GARNETT, DON SINEK, TERRENCE
JAMES PAUL, SUSAN KAY RITTER, MICHAEL DENNIS
PAUL, RICHARD JOSEPH PAUL, NANCY JANE
McALLISTER, EL KAHIR TEMPLE NO. 139, MASONIC
TEMPLE OF IOWA CITY, IOWA, LUNG SOCIETY OF
IOWA, IOWA CITY CHAPTER OF THE SALVATION
ARMY, FIRST UNITED METHODIST CHURCH OF
IOWA CITY, IOWA, CAMP COURAGEOUS OF
MONTICELLO, IOWA, IOWA CITY PUBLIC LIBRARY,
IOWA CITY CHAPTER OF THE AMERICAN RED CROSS,
UNIVERSITY OF IOWA and UNIVERSITY OF IOWA
FOUNDATION,
Defendants-Appellees.



Appeal from the Iowa District Court for Johnson County, L. Vern
Robinson, Judge.

Jeanne Dawson appeals a district court ruling dismissing her action to
contest Esther Smith's will. **AFFIRMED.**

David M. Nelsen of Nelsen Law Office, Mason City, for appellant.

Robert N. Downer and Dawn Barker Anderson of Meardon, Sueppel &
Downer, P.L.C., Iowa City, and Edward M. Blando and Patrick M. Roby of
Elderkin & Pirnie, P.L.C., Cedar Rapids, for appellee Mercantile Trust Company.

Paul P. Morf of Simmons, Perrine, Albright & Elwood, Cedar Rapids, for appellee University of Iowa Foundation.

Benjamin W. Blackstock and Eric C. Syverud of Blackstock Law Offices, P.C., Cedar Rapids, for appellee El Kahir Temple and Masonic Temple.

Michael D. Green, Iowa City, for appellee Salvation Army.

Ronald Ricklefs, Cedar Rapids, for appellee American Red Cross.

Roger J. Kuhle of Law Office of Roger J. Kuhle, P.C., Des Moines, for appellee Lung Society of Iowa.

Diane M. Stahle, Assistant Attorney General, for appellee University of Iowa.

Donald Burkhardt, Denver Colorado, for appellee Muriel Bailey.

Camp Courageous of Monticello, Monticello, pro se.

Dan Garnett, Iowa City, pro se.

First United Methodist Church of Iowa City, Iowa City, pro se.

Iowa City Public Library, Iowa City, pro se.

Nancy Jane McCallister, Iowa City, pro se.

Michael Dennis Paul, Iowa City, pro se.

Richard Joseph Paul, Iowa City, pro se.

Terrance James Paul, Iowa City, pro se.

Susan Kay Ritter, Roach, Missouri, pro se.

Donald Sinek, Iowa City, pro se.

Heard by Sackett, C.J., and Huitink and Streit, JJ.

HUITINK, J.

I. Background Facts and Proceedings.

Esther Smith died on December 11, 1997, at age ninety-eight. Her November 20, 1990 will was admitted to probate on July 27, 1998. Under the terms of this will Esther made \$160,000 in special bequests to named individual beneficiaries including \$50,000 to Jeanne Dawson. Esther also made charitable bequests of approximately \$1,000,000 to several entities including the University of Iowa Foundation.

Dawson is a niece of Esther's late husband, Roland Smith. Dawson was named as a contingent beneficiary in Roland's 1984 will. Because Esther survived Roland, she received that portion of Roland's estate Dawson would have otherwise received. Dawson's expectations of a substantial inheritance were, however, preserved by Esther's October 1979 will leaving Dawson one-half of Esther's residuary estate.

These proceedings originated with Dawson's action contesting the validity of Esther's November 1990 will. Dawson, citing Esther's age and declining mental and physical condition, claimed Esther lacked the testamentary capacity to make a will in November 1990. She also claimed Esther's November 1990 will was the product of undue influence by William Tucker, the attorney who drafted Esther's will. Dawson therefore requested that Esther's November 1990 will be set aside in favor of Esther's October 1979 will.

The executors moved for summary judgment citing a number of undisputed facts they claimed were fatal to both Dawson's testamentary capacity

and undue influence claims. In her resistance, Dawson cited disputed facts to support her allegations of lack of testamentary capacity and undue influence.

The district court granted the executors' motion for summary judgment.

The court's ruling states:

The court considers the venerable standard that the evidence must be construed in the light most favorable to the resisting party – in this case, the Plaintiff. Of course, more than a scintilla of evidence is necessary to generate a genuine issue of material fact. In this case, the Plaintiff's claim is built entirely on speculation and conjecture – not circumstantial evidence.

For instance, the record is void of any fact which belies Esther Smith's testamentary capacity. . . . Plaintiff has provided the court with no evidence whatsoever which indicates Esther Smith was unable to make a valid Will in 1990. On the other hand, the Defendants have presented a myriad of affidavits by disinterested parties showing that Esther Smith was lucid, competent, and capable of managing her affairs at the time she executed her Will.

Plaintiff asserts that William Tucker is the person who exercised undue influence in having Esther Smith make a new Will. To the extent that he was Ms. Smith's lawyer for almost 40 years and was the person who drafted the Will, he could arguably have been in a position to exercise influence over her. Nevertheless, there is absolutely no evidence in the record to show that Mr. Tucker, in fact, exercised any undue influence over his long-time acquaintance and client. Merely because one or more other lawyers in Mr. Tucker's law firm may have done legal work for the University of Iowa Foundation does not rise to a "scintilla" of evidence that would circumstantially show a disposition to unduly influence a client.

(Citations omitted). Dawson's will contest was accordingly dismissed. On appeal, Dawson challenges the merits of the district court's summary judgment ruling. She argues the court erred by "weighing the evidence and determining the truth of the matter" rather than limiting its determination to the existence of genuine issues of material fact and the executors' entitlement to summary judgment as a matter of law.

II. Standard of Review.

Our scope of review of an order granting summary judgment is for the correction of errors at law. *Ciha v. Irons*, 509 N.W.2d 492, 493 (Iowa 1993). Summary adjudication can be sustained only where the entire record shows there is no issue of material fact and the moving party is entitled to judgment as a matter of law. Iowa R. Civ. P. 237(c). Accordingly, we look to determine whether a genuine issue of material fact exists and whether the law was correctly applied. *Ottumwa Housing Auth. v. State Farm Fire & Cas. Co.*, 495 N.W.2d 723, 726 (Iowa 1993).

The record is examined in a light most favorable to the nonmoving party in determining the existence of a material fact. *Matherly v. Hanson*, 359 N.W.2d 450, 453 (Iowa 1984). The nonmoving party is also given the benefit of any doubt over the propriety of granting summary judgment. *D.R.R. v. English Enter., CATV*, 356 N.W.2d 580, 582 (Iowa Ct. App. 1984). We reverse the entry of summary judgment if the record reveals any unresolved issue of material fact. *Id.*

To successfully resist a motion for summary judgment, the nonmoving party must come forward with specific facts constituting competent evidence supporting the claim advanced. *Winkel v. Erpelding*, 526 N.W.2d 317, 318 (Iowa 1995). An inference based upon speculation or conjecture does not generate a material factual dispute sufficient to preclude summary judgment. *Butler v. Hoover Nature Trail, Inc.*, 530 N.W.2d 85, 88 (Iowa Ct. App. 1994). Inferences may be drawn in favor of the party opposing the summary judgment only if they

are rational, reasonable, and otherwise permissible under the governing substantive law. *Id.* In weighing the inferences drawn from the facts, the task is not to weigh them against each other, but to weigh each against the abstract standard of reasonableness, casting aside those which do not meet the test and concentrating on those which do. *Id.*

III. Executors' Motion to Strike.

The executors have moved to strike portions of the appendix Dawson designated as matters of record below. They contend many of the designated contents of the appendix were not part of the summary judgment record. It is unnecessary to reach this issue because we find Dawson failed, in any event, to meet her burden to come forward with specific facts supporting her claims.

IV. Esther's Testamentary Capacity.

In challenging Esther's testamentary capacity, Dawson must show Esther did not know or understand: (1) the nature of the instrument she executed; (2) the nature and extent of her property; (3) the natural objects of her bounty; and, (4) the disposition she desired to make under her last will and testament. *Pearson v. Ossian*, 420 N.W.2d 493, 495 (Iowa Ct. App. 1988). If her mental capacity is not equal to any one of these tests, she cannot make a valid will. *In re Estate of Gruis*, 207 N.W.2d 571, 573 (Iowa 1973). However, no mere impairment of her mental or physical powers so long as she retains mind and comprehension sufficient to meet the tests above set forth, will render her will invalid. *In re Estate of Sinift*, 233 Iowa 800, 810, 10 N.W.2d 550, 554 (Iowa 1943).

Our review of the record confirms the district court's characterization of Dawson's claim. The fact that Esther's health was declining or that she was fatigued or depressed over Roland's death are insufficient to raise a fact question concerning her testamentary capacity. *Id.* Even under the broadest interpretation of the record, Dawson has failed to meet her burden to come forward with specific facts supporting any essential element of her claim that Esther lacked the testamentary capacity to make a will in November 1990. We affirm on this issue.

V. Undue Influence.

Undue influence must be such as to substitute the will of the person exercising the influence for that of the testator, thereby making the writing express, not the purpose and intent of the testator, but that of the person exercising the influence. *In re Estate of Davenport*, 346 N.W.2d 530, 531-32 (Iowa 1984). The elements necessary to establish a finding of undue influence include:

- (1) Susceptibility to undue influence;
- (2) Opportunity to exercise such influence and effect the wrongful purpose;
- (3) Disposition to influence unduly for the purpose of procuring an improper favor, and
- (4) Result clearly the effect of undue influence.

In re Will of Pritchard, 443 N.W.2d 95, 98 (Iowa Ct. App. 1989). Mental capacity and freedom from influence are presumed. *Id.*

Direct proof of undue influence is not required and circumstantial evidence may be sufficient. *In re Estate of Roberts*, 258 Iowa 880, 889, 140 N.W.2d 725, 730 (1966). "An unnatural disposition of property will not of itself carry the issue

of undue influence to the jury.” *In re Grahlman's Will*, 248 Iowa 535, 554, 81 N.W.2d 673, 684 (1957) (quoting 95 C.J.S. *Wills* § 463 (1957)). “Mere suspicion, surmise, conjecture, or speculation is not enough to warrant a finding of undue influence, but there must be a solid foundation of established facts upon which to rest an inference of its existence.” *In re Will of Prichard*, 443 N.W.2d at 98.

The gist of Dawson's undue influence claim is that Esther's November 1990 will reflects Tucker's desire to advance the interest of the University of Iowa Foundation rather than Esther's testamentary intent. She cites evidence indicating “Esther's disposition of her estate is totally inconsistent with her prior giving as well as unnatural from what she had previously prescribed.”

We, like the district court, find these allegations insufficient to sustain Dawson's burden to come forward with specific facts supporting her undue influence claim. Dawson's claims concerning Esther's prior philanthropy and original testamentary intentions overstate her familiarity with either. The undisputed record indicates Dawson's claimed familiarity and resulting expectations were based on Roland's statements concerning his testamentary intent and nothing Esther may have told her. Dawson also overstates the significance of Tucker's professional relationship with other beneficiaries named in Esther's will. Although other members of Tucker's firm had done work for the University of Iowa Foundation, Tucker was not directly involved. Dawson's claim that Tucker had a professional relationship with other named beneficiaries was flatly denied, and her resistance contains no reference to any evidence supporting this contention. Moreover, Esther's declining health and

despondency over Roland's death do not support the inference that she was susceptible to Tucker's undue influence. In the absence of solid factual support for any inference that Esther's will was the result of Tucker's undue influence, we hold that Dawson has failed in her burden to raise a genuine issue of material fact precluding summary judgment. The judgment of the district court is affirmed in its entirety.

AFFIRMED.