IN THE COURT OF APPEALS OF IOWA

FILED
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CLERK SUPREME COURT

No. 5-546 / 94-1514

IN THE MATTER OF THE ESTATE OF LEILANI RAHE, Deceased,

RITA R. WEIBKE, As Conservator for MARGARET RAHFALDT,

Appellant,

vs.

JAMES J. RAHE, Administrator of the Estate of LEILANI J. RAHE, Deceased,

Appellee.

Appeal from the Iowa District Court for Osceola County, James D. Scott, Judge.

Appeal in probate action denying claim to recover funds allegedly converted by decedent **REVERSED.**

Glenn A. Metcalf of Metcalf, Thompson & Phipps, Moville, for appellant.

Frank E. Kennedy of Koopman, Kennedy & Feller, Sibley, for appellee.

Considered by Sackett, P.J., and Cady and Streit, JJ. Vogel, J., takes no part.

STREIT, J.

This is an appeal from a denial of a claim in a probate action. We reverse.

Margaret Rahfaldt, the claimant-appellant, had two daughters, Leilani Rahe and Rita Wiebke. Margaret was hospitalized in July 1987 and entered a nursing home in August 1987. On July 3, 1987, Margaret gave Leilani a power of attorney with the power "to make bank deposits and withdrawals to and from any bank account that I may own." Leilani administered her mother's finances from July 3, 1987, until the time of Leilani's death on August 4, 1993.

After Leilani's death, Rita was appointed conservator for their mother. At that time, Rita became aware Leilani had written a substantial number of checks on their mother's account for Leilani's personal and family use. On behalf of Margaret, Rita filed a claim in probate alleging Leilani had converted their mother's funds for her personal use Rita demanded an accounting and a judgment for the amount of the converted funds

The parties stipulated as to the number and amount of transfers Leilani had made for her own benefit The record reveals that between the time she acquired the power of attorney in 1987 and her death in 1993, Leilani made 163 transfers of her mother's funds for her personal and family use The transfers totaled $69,383 69

The trial court found a confidential relationship existed between Leilani and Margaret but Leilani had not exerted undue influence in obtaining the power of attorney

or in using Margaret's funds for her personal use. Rita now appeals on Margaret's behalf.

I. Standard of Review.

The parties dispute what is the appropriate standard of appellate review. Actions for the establishment of contested claims are triable in probate as law actions. Iowa Code § 633.33 (1993). During the course of the trial, the court indicated this matter was being tried in equity. However, in its ruling it clarified the matter should be determined as a matter of law and it rendered evidentiary rulings on evidence which had been admitted subject to objections.

In equity cases a trial court ordinarily does not rule on objections to testimony but receives all answers subject to the objections. *See Hughes A. Bagley Inc. v. Bagley*, 463 N W.2d 423, 426 (Iowa App 1990). The hallmark of a trial at law is that a court rules on objections as they are made *Sille v. Shaffer*, 297 N.W.2d 379, 381 (Iowa 1980).

Given the statutory directive that contested probate claims are tried at law, and the trial court's ultimate rendering of evidentiary rulings on all of the disputed evidence, we conclude this matter was tried at law, and, accordingly, our scope of review is limited to the correction of errors at law. Iowa R. App. 4.

II. Confidential Relationship.

A confidential relationship arises whenever a continuous trust is reposed by one person in the skill and integrity of another. *First Nat'l Bank in Sioux City v. Curran*, 206 N.W.2d 317, 322 (Iowa 1973). All the variety of relations in which dominion may be exercised by one person fall within the general term "confidential relation"' *Id.*

> Confidential relationship is a very broad term and is not at all confined to any specific association of the parties to it. In law it has been defined or described as any relation existing between the parties to a transaction wherein one of the parties is duty bound to act with the utmost good faith for the benefit of the other party. In its broadest connotation the phrase embraces those multiform positions in life wherein one comes to rely on and trust another in his important affairs.

Id. at 321-22.

The trial court found a confidential relationship existed between Leilani and Margaret. This finding is supported by the evidence.

Where a confidential relationship exists, a transaction by which the one having the advantage profits at the expense of the other will be held presumptively fraudulent and voidable. *In re Estate of Herm*, 284 N.W.2d 191, 200 (Iowa 1979). The person in whom the trust is reposed is required to go forward with the evidence *First Nat'l Bank in Sioux City*, 206 N.W.2d at 322. Leilani's estate was required to prove by clear, satisfactory, and convincing evidence the "entire good faith" on the part of Leilani and "free, voluntary, and intelligent action on the part of the grantor." *Id.* The burden was upon Leilani's estate to rebut the presumption of overreaching on Leilani's part, and

to affirmatively establish that in the transactions in controversy she took no advantage of Margaret by reason of their relationship, but that Margaret "acted voluntarily with freedom, intelligence and a full knowledge of all of the facts." *Id.* at 323. "The courts must scrutinize with *jealous vigilance* transactions between persons sustaining relations of trust and confidence, to the end that the dominating member shall conduct himself with uberrima fide--the utmost good faith." *Id.* (emphasis added).

A review of the undisputed evidence reveals that from 1987 through 1993 Leilani and her family received 163 transfers in funds from Margaret, and the value of the transfers exceeded $69,000 There was only one significant piece of evidence concerning Margaret's alleged acquiescence to these transfers. Leilani's husband, James J. Rahe, testified that at the time Margaret executed the power of attorney Margaret "told Leilani that if she needed money for any reason whatsoever to -- don't hesitate to use it, use her funds " This evidence is of questionable value given Mr Rahe's status as the administrator of Leilani's estate and his personal benefit over the years from the transfers made from Margaret's funds Such evidence is not sufficient to sustain the heavy burden necessary to uphold the transfers.

There was no evidence to establish Margaret knew of the transfers of funds Leilani made from her account for her personal use. Assuming, arguendo, she knew of such transfers, there is no evidence Margaret knew of the number or amount of the transfers Whether this case is viewed under the standards applied in *First Nat'l Bank*

in Sioux City, or a four-part undue influence test, *In re Estate of Welch,* 534 N.W.2d 1009, 112 (Iowa App. 1995), the estate did not carry its burden of proof.

It is a rare case where the dominant individual in a fiduciary relation can sustain a gift to himself by the one who is dependent upon him. *First Nat'l Bank in Sioux City,* 206 N.W.2d at 323. We find the estate did not by clear, satisfactory, and convincing evidence prove the "entire good faith" on Leilani's part or "free, voluntary, and intelligent action" on the part of Margaret. In so ruling, we keep in mind the able trial court, who saw and heard the witnesses, arrived at a different conclusion. However, we find that as a matter of law the estate did not sustain its burden to uphold the transfers and judgment must be entered against it.

III. Statute of Limitations.

Given our reversal of the trial court's decision, we must address the statute of limitations defense raised by Leilani's estate. As noted above, where a confidential relationship exists, a transaction favoring the party in whom trust has been placed is presumptively fraudulent. Only upon the discovery of fraud or, when in the exercise of reasonable care it should have been discovered, does the statute of limitations begin to run. *See Beatty v. Armstrong,* 247 Iowa 302, 311, 73 N.W.2d 719, 724 (1955). Given the circumstances of this case, the statute of limitations was no bar to the claim against Leilani's estate.

IV. Interest.

A disputed issue before the trial court was Margaret's request for prejudgment interest. In ruling in favor of Leilani's estate, the trial judge did not have to reach this issue. The parties stipulated Exhibits 8 and 9 reflected the number and amount of checks Leilani and her family received from Margaret's account after Leilani obtained Margaret's power of attorney. Based on those exhibits, it appears the following funds were received for the personal use of Leilani and her family:

1987	$ 2,100.00
1988	8,422.00
1989	18,973.50[1]
1990	3,208.00
1991	17,590.59
1992	11,994.00
1993	7,095.60
TOTAL	**$ 69,383.69**

Trust principles apply in fiduciary or confidential relationships. *Matter of Mt. Pleasant Bank and Trust Co. v. Carver*, 455 N.W 2d 680, 684 n.1 (Iowa 1990), *cert. denied, Boatman's Nat'l Bank of St. Louis v. Carver*, 498 U.S. 898 (1990). In such cases the aggrieved party is entitled to precommencement interest as well as postjudgment interest. Applying the governing statutes and case law, we conclude Margaret is entitled to precommencement interest at the rate of five percent until the date of the filing of the action. Iowa Code § 535.2(1)(b)(1993); *Matter of Mt. Pleasant*

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[1] Includes $10,000 in proceeds from 1989 sale of house.

Bank and Trust Co., 455 N.W.2d at 685-86. As a result Margaret is entitled to the following amounts of precommencement interest:

1987	$ 2,100.00	x 5% =	$ 105.00	x 5.75 yrs[2] =	$ 603.75
1988	$ 8,422.00	x 5% =	$ 421.10	x 4.75 yrs =	$ 2,000.23
1989	$18,973.50	x 5% =	$ 948.68	x 3.75 yrs =	$ 3,557.53
1990	$ 3,208.00	x 5% =	$160.40	x 2.75 yrs =	$ 441.10
1991	$17,590.59	x 5% =	$879.53	x 1.75 yrs =	$ 1,539.18
1992	$11,994.00	x 5% =	$599.70	x .75 yrs =	$ 449.78
1993	$ 7,095.60	x 5% =	$ 354.78		$ 354.78
TOTAL PRE-COMMENCEMENT INTEREST					**$ 8,946.35**

Accordingly, judgment is entered in favor of Rita R. Weibke, as Conservator for Margaret Rahfaldt, against Leilani's estate in the amount of $78,330.04 ($69,383.69 + $8,946.35) plus interest of ten percent per annum from October 8, 1993.

REVERSED.

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[2] Interest calculated from 1-1 of following year.