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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

No. 0-259 / 89-1350

PAUL A. KRITZ and **DONALD L. KRITZ**, Executors of the Estate of **JAMES L. KRITZ**, Deceased; and **CAROL SHAFFER**; **JAMES L. KRITZ, JR.**; **DONALD L. KRITZ**; **ROY A. KRITZ**; **ROGER L. KRITZ**; **JOYCE MOORE** and **PAUL A. KRITZ**;

Appellants,

172

vs.

JEAN F. KRITZ,

Appellee.

Appeal from the Iowa District Court for Dubuque County, Robert J. Curnan, Judge.

Plaintiffs appeal a judgment of the district court finding there was no confidential relationship between decedent and defendant and there was no evidence to establish a trust agreement had been entered into by decedent and defendant. **AFFIRMED.**

David L. Hammer and Angela C. Simon of Hammer, Cox & Simon, Dubuque, for appellants.

Thomas W. McKay of Reynolds & Kenline, Dubuque, for appellee.

Considered by Oxberger, C.J., and Sackett and Habhab, JJ.

OXBERGER, C.J.

James and Jean Kritz were married in April 1982. There were no children born of this marriage. It was James' second marriage and Jean's fourth marriage. The appellants are the seven surviving children of James' prior marriage. At the time of their marriage, James was seventy-five years old and Jean was fifty-four years old. During the time that James and Jean were dating, James suffered three heart attacks and a stroke. During their marriage, Jean provided full-time invalid care for James. In May 1982, James converted the ownership of all his assets into joint tenancy with Jean. He also wrote a will leaving Jean a life estate in his homestead and all of his personal property.

In September 1987, James changed his mind and drafted a new will giving Jean a life estate and giving all of his personal property to his children. James requested Jean to transfer to him all the property they jointly held. Jean refused to do so. Both James and Jean hired attorneys and attempted to negotiate a trust agreement. A draft agreement was prepared, but it did not resolve all the matters and it was not signed by Jean prior to James' death. James died in December 1987.

James' estate and his surviving children sued Jean. They requested the court to: 1) order Jean to specifically perform the trust agreement; 2) reform all documents

changing the title of the property; and 3) change the title of the property because of Jean's fraud and duress on James. The district court found that Jean did not commit fraud, undue influence, or coercion on James. The court refused to reform the title documents. The court also refused to require specific performance of the trust agreement because the agreement was not totally consummated.

James' estate and his surviving children appeal the district court's judgment and decree. They contend that a confidential relationship creating a presumption of fraud existed between James and Jean because James was an invalid and Jean had to take care of his every day living needs. The appellants claim that the confidential relationship created a presumption of fraud and Jean failed to rebut the presumption. They further state that the transfer of James' property into joint tenancy was a result of Jean's undue influence, requiring the reformation of the transfer documents. The appellants also assert that certain stock transfers into joint tenancy should be set aside because the stockbroker made the transfer without proper authorization from James. Lastly, the appellants contend that the trust agreement was consummated and valid and that Jean should specifically perform the agreement. We affirm.

Our scope of review is de novo. Iowa R. App. P. 4. We give weight to the fact-findings of the trial court,

especially when considering the credibility of witnesses, but we are not bound by them. Iowa R. App. P. 14(f)(7).

The plaintiffs first contend the trial court erred in failing to find a confidential relationship existed between James and Jean Kritz. A confidential relationship arises "when one person has gained the confidence of another and purports to act or advise with the other's interest in mind." Punelli v. Punelli, 364 N.W.2d 259, 261 (Iowa App. 1984), citing Oehler v. Hoffman, 253 Iowa 631, 635, 113 N.W.2d 254, 256 (1962). The crux of the doctrine of confidential relationship is the presence of a dominant influence under which the act is presumed to have been done. Oehler v. Hoffman, 253 Iowa 631, 635, 113 N.W.2d 254, 256 (1962). Kind and considerate treatment done by one person which induces an affectionate regard on the part of another does not raise a presumption of a confidential relationship absent some showing that by this means a dominant influence was obtained over the other. Id. at 635, 113 N.W.2d at 256. If a confidential relationship does exist, the effect of such a relationship is to raise a presumption of fraud and undue influence and shift the burden to the party seeking to uphold the transaction to establish by clear and convincing evidence the transaction was entered into voluntarily. In re Estate of Samek, 213 N.W.2d 690, 692 (Iowa 1973).

Our courts have previously recognized a confidential relationship does not arise solely from the fact that James and Jean were married at the time of the transactions. Punelli, 364 N.W.2d at 261. While a confidential relationship may exist between husband and wife, not every transaction between spouses will be presumed to be tainted by fraud or undue influence. Id. The surviving spouse, however, must still affirmatively establish that in the transactions in question he or she took no advantage of the inferior party, but that the latter acted voluntarily with freedom, intelligence and full knowledge of all the facts. Merritt v. Easterly, 226 Iowa 514, 519, 284 N.W. 397, 400 (1939).

A number of Iowa cases have previously addressed the issue of whether a confidential relationship existed between a husband and wife or between close associates. In In re Estate of Lundvall, 242 Iowa 430, 46 N.W.2d 535 (1951), the supreme court found a confidential relationship existed between the decedent, who was eighty-three years old at the time of his death, and his wife. The decedent had suffered a head injury received from a fall about four years before his death. The court found the decedent, after the injury, was less aggressive, less active, and less able to look after his business affairs. Lundvall, 242 Iowa at 434, 46 N.W.2d at 537. Decedent's second wife, who had been married to the decedent for fifty-three years,

took charge of his affairs, and on her own initiative added her name as a joint tenant on certain bank accounts. Id. Decedent's wife also caused to be transferred into her name various United States bonds. Id.

In First National Bank in Sioux City v. Curran, 206 N.W.2d 317 (Iowa 1973), the decedent, an elderly woman whose sight was nearly gone, befriended the defendant, Mrs. Curran, while a resident of an elderly care facility. The decedent took Mrs. Curran into her complete confidence, and the decedent eventually turned over all her business affairs to Mrs. Curran. 206 N.W.2d at 319-20. Mrs. Curran also had complete possession of the decedent's business records. Id at 320. The decedent, however, at all times retained complete control of her mental powers. Id. In 1964 the decedent, at the age of ninety-seven, five bank deposits were transferred by the decedent to Mrs. Curran as joint tenants with right of survivorship. Id. The decedent herself signed the transfer papers. Id. The Iowa Supreme Court ruled that even though the decedent was mentally sharp at the time of the transfers, she had grown to so completely trust and rely upon Mrs. Curran to manage her affairs, that the two were not dealing from arm's length. Id. at 322. The court stated that "[c]ases such as the present one, founded on confidential relationships, do not require a showing that the confident actually stood over the other or in fact bent the will of the other to the confidant's wishes." Id.

However, in Coffman v. Adkins, 338 N.W.2d 540, 544 (Iowa App. 1983), this court failed to find a confidential relationship between a husband and wife where it did not appear the decedent had been incapacitated prior to his death and had not turned over his business affairs to his wife. Similarly, in Oehler v. Hoffman, 253 Iowa 631, 113 N.W.2d 254 (1962), the Iowa Supreme Court found no confidential relationship. However, in Oehler, the court relied on the fact that when the decedent made the transfer at issue, she had the benefit of the independent advice of her attorney. 253 Iowa at 636, 113 N.W.2d at 257.

Upon consideration of the foregoing analysis, we cannot say that a confidential relationship existed between James and Jean. Whether such an arrangement was out of love or out of mutual economic advantage is immaterial, for Jean took care of James as he had wished. Jean took care of all the household chores, and gave James good care in his invalid condition. Though James was in seriously ill health following his heart attacks and stroke, we can find no evidence that James did not have control of his mental faculties at the time he married Jean in exchange for her services in caring for him at home. We believe the record shows that James freely placed his home in joint tenancy with Jean, and was in no way coerced. The record reveals that James and Jean had been dating for three years prior to James' ill health. Most of the other transfers of

property into joint tenancy were completed within one year of the date of marriage. We cannot find any substantial evidence that Jean coerced James into signing over the remaining assets into joint tenancy.

The record reveals that James had a great deal of animosity toward his children, evidenced by his failure to invite them to his marriage to Jean and his 1982 will leaving most of his estate to Jean. During the marriage James had little contact with his children, and often indicated he wished to leave nothing to his children. James' children themselves testified they had retained some ill will toward their father due to their mother's death some years previously. While it is true that James had a change of heart in approximately the year before he died, this may have occurred as a result of James' increasing paranoia about Jean's alleged affairs with a neighbor. We also note this change of heart occurred at approximately the time James had to be placed in the nursing home due to Jean's own health problems.

Upon consideration of all the relevant facts, we agree with the trial court that the conveyances were made with James' full knowledge. While there appear to be discrepancies in Jean's testimony, we are satisfied that upon careful inspection of the trial testimony such discrepancies were due to the extreme pressures of trial and not any conscious attempt to defraud the parties or the court.

The plaintiffs additionally contend the trust agreement should be enforced, and was not incomplete merely because a trustee had not been agreed upon. Jean argues the trust agreement was not complete, and she had never agreed to it.

Under Iowa law, an agreement must, in order to be binding, be definite and certain as to its terms to enable a court to give it an exact meaning. Tri-States Investment Co. v. Henryson, 179 N.W.2d 362, 363 (Iowa 1970). An oral agreement to enter into a written contract, the terms of which are agreed upon, is as valid and obligatory as the contract would be if executed, and is enforceable by specific performance. Dillon v. City of Davenport, 366 N.W.2d 918, 925 (Iowa 1985). In deciding whether there is an enforceable contract, we consider not only language used but also the surrounding circumstances and conduct of the parties. Palmer v. Albert, 310 N.W.2d 169, 172 (Iowa 1981).

Upon our careful review of applicable law and testimony at trial, we conclude that a final agreement had not been reached. The record reveals there was no meeting of the minds, since Jean steadfastly refused to sign any agreement. Attorney Blum testified the issues of whether both James' and Jeans' social security checks should go into the trust had not been resolved, and also pointed out that the marital home had not been deeded back into the trust based on Jean's refusal to do so. Both Blum and Jean

testified Jean had never been presented with an acceptable final draft. It therefore does not appear there was a definite and certain agreement which would enable us to give it an exact meaning. While there was some evidence of agreement between lawyers Kintzinger and Blum, we find no evidence the parties involved were in agreement. Consideration of the surrounding circumstances leads us to conclude no binding trust agreement had been entered into by James and Jean.

AFFIRMED.