IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE ESTATE OF RUBY L. MACE, Deceased.

DAVID L. MACE, T. S. MACE and G. V. MACE,

Appellants.

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1-343 / 2-66079

Appeal from Page District Court - Paul H. Sulhoff, Judge.

David L. Mace, Thomas S. Mace, and Gary V. Mace, beneficiaries under decedent's will, appeal the denial of their application to recover assets which the fourth beneficiary, George Mace, held in joint tenancy with decedent. REVERSED.

F. Richard Lyford of Dickinson, Throckmorton, Parker, Mannheimer & Raife, Des Moines, for appellants.

Lewis M. Girdner of Brierly, McCall, Girdner & Chalupa, Newton, for appellee.

Considered by Oxberger, C.J., and Donielson, Snell, Carter, and Johnson, JJ.

DONIELSON, J.

David L. Mace, Thomas S. Mace, and Gary V. Mace, beneficiaries under decedent's will, appeal the denial of their application to recover assets which the fourth beneficiary, George Mace, held in joint tenancy with decedent. The appellants assert: (1) that there was sufficient evidence to establish that George Mace, decedent's eldest son, agreed with appellants to distribute the assets he held in joint tenancy with decedent as part of the estate; and (2) that because George Mace had violated his confidential relationship with decedent, the transfers creating joint tenancies between the two were invalid and a constructive trust should be imposed on the jointly held assets.

Our review of this equitable proceeding is de novo. In re Estate of Sheimo, 261 Iowa 775, 778, 156 N.W.2d 681, 683 (1968). We reverse.

I.

After the death of her husband, Ruby L. Mace deposited various sums of money in bank accounts she held in joint tenancy with her three sons, George R., David L., and Kenneth. At one time, decedent held an equal joint tenancy bank account with each of her three sons. George, the oldest son, adjusted the balances in these accounts on various occasions with decedent's knowledge and consent. However, at times funds were transferred into different accounts by George without either decedent's knowledge or consent. George would later obtain written consent after the transfer had been completed. At her death, decedent held about $45,000.00 in a joint tenancy account with George, $12,000.00 in a joint tenancy account with all three sons, and various stocks and bonds in joint tenancy with each son. Thus, most of decedent's property was held in joint tenancy with one or the other of her sons, but most of the joint tenancies were with George.

Decedent's will provided that David was to receive the family residence and that the remainder of her estate was to be distributed 1/3 to each son. Since

Kenneth Mace predeceased decedent, his share was to be distributed equally to his sons, Thomas and Gary Mace. The will further provided that because she understood that title to her jointly-held property would go to the surviving joint tenant regardless of the provisions of her will, she wanted the joint tenancy property to be considered in determining the amount of each 1/3 share. Specifically, each share was to be 1/3 of all her property including that held in joint tenancy but excluding the family residence. George's and David's shares were to be reduced by the amount of property each received as a surviving joint tenant.

Shortly after Ruby's death, the four beneficiaries under her will met in the office of Paul Jones, the attorney for the estate. After Jones had read and explained her will, David Mace asked him to leave the room. David then proposed that all the joint tenancy property and the proceeds from the sale of the family residence be placed in the estate and distributed 1/3 to George, 1/3 to David and 1/3 to Thomas and Gary. The parties are in dispute as to whether George actually agreed to this method of distribution or whether he merely agreed to consider it.

George and David became co-executors of the estate and they filed a probate inventory listing all of George's joint accounts as estate assets. George placed the funds from his joint accounts with his mother in an estate account. In May 1978, George wrote David that he was "still amenable to the distribution of all assets after the sale of the house, and payment of all due bills, into 1/3's." In December 1979, however, George transferred the funds from the estate account into an account he had with his wife. On May 28, 1980, the appellants filed an application to recover the joint funds from George, claiming that he had agreed to the distribution of the funds as part of the estate. George resisted the application. On October 30, 1980, the court denied the application and sustained George's resistance based on its findings that Ruby had ratified the joint tenancy transfers in her will and that David had failed to show that an agreement as to the distribution of the property had been reached.

II.

Appellants assert that the district court sitting in probate should be reversed on two grounds: first, because of the alleged family settlement; and second, since George allegedly violated his confidential relationship with the decedent, the transfers creating joint tenancies were invalid and therefore a constructive trust should have been imposed on the jointly held assets. While we agree that George's acts after the reading of decedent's will would tend to support appellants' assertion that George had agreed to the proposed family settlement, our de novo review of this equitable proceeding indicates that we should reverse on the second ground and impose a constructive trust on the assets held jointly by George and the decedent.

A constructive trust "is a creature of equity used by the courts as a remedial device by which the holder of legal title is held to be a trustee for the benefit of another who in good conscience is entitled to the beneficial interest." Westcott v. Westcott, 259 N.W.2d 545, 547 (Iowa App. 1977). A constructive trust arises by operation of law and the evidence to establish such a trust must be clear and convincing. Id. We find that the facts presented below establish by clear and convincing evidence that a confidential relationship existed between George and the decedent, and that a constructive trust should be imposed.

At the time of her death the decedent was 80 years old and living in Clarinda, Iowa, while George and the disputed accounts, totalling nearly $45,000.00, were both in Newton, Iowa, a considerable distance away. At one point in time, decedent had joint accounts in equal amounts with each of her three sons. George acknowledges that both the initial $10,000.00 given to him by his mother in 1956 and another $15,000.00 given in 1972 were given with the instructions that he invest the money for her. George says that he tried to make as much money for his mother as possible by manipulating the balances in the various accounts. There is no evidence that he ever contributed funds to the accounts other than those funds which came either directly from his mother or from a joint account she held with one of his brothers. The record indicates that money held jointly by decedent and Kenneth Mace was transferred to a joint account with George Mace prior to Kenneth's death to protect the account from Kenneth's creditors. Due to the geographical location of the accounts, the decedent was dependent upon George for all the information she had about the accounts. The evidence indicates that George would often act on his own when transferring funds from one account to another and obtain decedent's signature after the transfer was accomplished. This fact makes this case distinguishable from Groves v. Groves, 248 Iowa 682, 693, 82 N.W.2d 124, 131 (1957), where there was little evidence that the son transacted any business for his mother except by her request. In the instant case, the decedent originally gave the money to George for him to invest for her and she relied so completely on his judgment that he was given the freedom to change accounts first and ask approval later. We find that George used this confidential relationship to obtain a disproportionate share of the decedent's estate and that the only equitable solution is to impose a constructive trust on the assets which George held jointly with Ruby at her death. Only by so doing can we implement the obvious intent of Ruby's will that her assets be totalled, divided into equal shares, and distributed 1/3 to each of her two surviving sons and 1/3 to her grandsons. We, therefore, order that all of decedent's assets, including the jointly held assets and the proceeds from the sale of decedent's house, be totalled and distributed in a manner consistent with this opinion after payment of all charges against the estate.

REVERSED.