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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

IN THE MATTER OF THE ESTATE OF ANN TAUBER, Deceased;

LLOYD HEFFREN, Executor,

Plaintiff-Appellant,

vs.

RUTH E. TAUBER,

Defendant-Appellee.

Filed February 26, 1985

4-470
84-75

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

Plaintiff executor appeals from an order setting aside a default judgment and from a decree entered after trial awarding defendant, Ruth Tauber, the defaulting party, two savings accounts held in the name of the decedent, Ann Tauber, and Ruth. AFFIRMED.

Keith Stapleton, Clear Lake, for plaintiff-appellant.

William L. Meardon and Thomas D. Hobart, of Meardon, Sueppel, Downer & Hays, Iowa City, for defendant-appellee.

Heard by Schlegel, P.J., and Hayden and Sackett, JJ.

Plaintiff executor appeals from an order setting aside a default judgment and from a decree entered after trial awarding defendant, Ruth Tauber, the defaulting party, two savings accounts held in the name of the decedent, Ann Tauber, and Ruth. The executor raises only two issues on appeal.

I.

First, the executor claims that the trial court abused its discretion in setting aside a default judgment entered against Ruth. The executor filed an application to determine ownership of the two bank accounts held by decedent and Tauber as joint tenants. The trial court entered an order prescribing notice to Tauber and directing her to file objections prior to September 15, 1982. Tauber filed no objection prior to the September 15 date and on September 17, 1982, the trial court entered a default judgment and decree determining the estate to be the owner of the two accounts free and clear of any claims of Tauber. On November 12, 1982, Tauber filed a motion to set aside the default judgment and decree alleging that the court lacked subject matter jurisdiction because the joint accounts under Iowa law passed outside the probate administration and the court sitting in probate lacked subject matter jurisdiction to determine ownership of the two accounts. Tauber further alleged that after she received the papers she took them to her attorney who misplaced them until after September 17, 1982. She claimed her lack of response was because of inadvertence, mistake and excusable neglect. Her attorney filed his affidavit that the papers had been brought to him, lost on his desk, and that Tauber at all times intended to defend. He further stated that he examined the accounts, determined that they were joint tenancy and passed to Tauber by virtue of the joint tenancy. After hearing the trial court determined that it had authority to hear the cause under §633.11, the Code, and that the judgment should be set aside under 236 Rule Civ. P.

Under R. Civ. P. 236, a default may be set aside "for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty." A trial court has broad discretion in ruling on a motion to set aside a default judgment and will be reversed on appeal if this discretion is abused. Speckter v. City of Burlington, 320 N.W.2d 653, 655 (Iowa 1982).

We fail to find that the trial court abused its discretion in setting aside the default.

II.

The second and last issue raised by the executor on appeal is as stated in the executor's brief. "The trial court erred in failing to find existence of confidential, fiduciary relationship between a trusted advisor and the beneficiary, and in relieving such advisor of the burden of proving the fairness and reasonableness of her personal transaction with the beneficiary.

Although our review is de novo, we give weight to the trial court's finding. The estate has the burden to show by clear proof the existence of the claimed confidential relationship in which Ruth was the dominant person and Ann the subservient one. See Matter of Estate of Clark, 357 N.W.2d 34, 37 (Iowa App. 1984). The gistof the doctrine of confidential relationship is the presence of a dominant influence under which the act is presumed to have been done. The purpose of the doctrine is to defeat and correct betrayals of trust and abuses of confidence. Luse v. Grenko, 251 Iowa 211, 214, 100 N.W.2d 170, 172 (1959).

The decedent, Ann, had no business experience. In fact, she had never written checks nor maintained a checking account. She had an eighth grade education and had led a secluded life while her husband lived. She and Ruth were married to brothers, but the families had few contacts while Ann's husband was alive. Ann was in frail health at the time of her husband's death. Ann, immediately after her husband died, contacted Ruth and asked Ruth to help her take care of herself. Ruth and her husband did household chores for Ann, and

Ruth helped her by paying bills. Ann was concerned because her husband had made no provision for her in his will.

Ann was employed as a secretary at the University of Iowa. She was in good health. Ruth took Ann to see an attorney. Ann was concerned about obtaining funds from her husband's estate, drawing a will and setting up bank accounts for her care. Ann wanted Ruth to be able to use Ann's funds to care for Ann. Attorney Leff, who was Ann's attorney, was asked at trial:

> Q. Now, during the times that you saw Ann and Ruth together, can you describe their relationship for me? A. Well, Ann was very meek and didn't talk very much. She was hard to talk to, and wouldn't say very much and Ruth did most of the talking for her. Every time that I needed to see her for some of the papers and things concerning George's estate, I would call either Ruth or Ann and Ruth would bring her in. She didn't have a car, didn't ride the bus. She was not feeling well a lot of the times. She was very weak and frail, and she would ask Ruth all of the things that we talked about doing there, what she should do. We talked about her election to take under the will and whether she wanted to try to get the tools and also I talked with her about the application for widow's allowance, and she consulted Ruth on everything she did, wouldn't sign any papers for anything for me unless Ruth heard about them and said it was okay."

The other evidence in the record clearly supports the observations of Attorney Leff as to the relationship between these two women.

Considering Ann's frail health, limited education and total lack of even personal business experience, and the evidence of her request for help from Ruth and then her total reliance on Ruth's help in making decisions, we agree with the estate that the trial court erred in failing to find the existence of a confidential relationship between Ann and Ruth and that the court further erred in relieving Ruth of the burden of proving the fairness and reasonableness of her personal transactions with the beneficiary.

These are the only two issues addressed by the estate on appeal and the only issues we can and will consider.

The estate has not challenged on appeal the finding of the trial court awarding the account to Ruth. The trial court is therefore affirmed.

AFFIRMED.