IN THE COURT OF APPEALS OF IOWA

No. 0-429 / 99-1691
Filed November 8, 2000

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CLERK SUPREME COURT

IN THE MATTER OF THE ESTATE OF ETHEL M. COLE, Deceased,

LINDA COLE,
Appellant.

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

Appellant, one of the eight children and heirs at law of decedent, appeals from a district court ruling enforcing on the administrator's application, a settlement agreement between appellant and her seven siblings, the eight and only heirs at law of decedent contending the district court erred in refusing her request to rescind the agreement. **AFFIRMED.**

William A. Price, Des Moines, for appellant.

Mark McCormick of Belin Lamson McCormick Zumbach Flynn, P.C., Des Moines, Chad Von Kampen of Simmons, Perrine, Albright & Ellwood, Cedar Rapids, and Orville W. Bloethe of Bloethe-Van Zee Law Office, Victor, for appellee Hills Bank & Trust Co.

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

SACKETT, C.J.

Appellant Linda Cole, one of the eight children and heirs at law of decedent Ethel M. Cole, appeals from a district court ruling enforcing, on the administrator's application, a settlement agreement between Linda and her seven siblings, the eight and only heirs at law of decedent Ethel M. Cole. Linda contends the district court erred in refusing her request to rescind the agreement. We affirm.

Hills Bank and Trust Company, the named administrator of the Ethel M. Cole estate filed an application on June 6, 1998 to sell land inventoried in the estate as an asset of decedent. A hearing on the application to sell was mailed to all the heirs including Linda. On July 15, 1999, prior to the scheduled hearing, all eight children signed a memorandum of agreement. The agreement divided the children into two groups. Four children were in the A group and four were in the B group. The agreement divided the decedent's 30.47 acres of farm real estate between the two groups. Group A was to receive 15.23 acres with a house and an outbuilding, and group B was to receive 15.23 acres. The agreement also provided that Leland, another of Ethel's children who was put in group A, would dismiss a $174,918.14 claim he filed against the estate. Leland was also to receive certain farm machinery.

At the time the agreement was signed Linda owned a trailer house situated on land that was to go to group A. The group wanted the trailer house moved. Leland agreed to keep the trailer house subject to Linda vacating it, paying back taxes and removing her personal property and other specified items from it.

After signing the agreement the eight children appeared in court for the scheduled hearing and were questioned about the agreement. Linda was specifically asked:

> THE COURT: Have you signed an agreement insofar as to how the land is going to be divided?
> LINDA COLE: Yes.
> THE COURT: And how costs and expenses are going to be paid?
> LINDA COLE: I have. I understand that, Sir.

The district court approved the agreement as stated on the record. The hearing was continued at the request of the attorney for the estate to August 31, 1999, to allow a formal document memorializing the agreement to be drawn. The formal document was drawn basically following the agreement made in the memorandum and additionally providing certain provisions as to Leland's talking possession of the buildings on tract A and his taking a cement driveway also on tract A. All children except Linda signed the formalized document. Linda filed an objection to the agreement.

On September 2, 1999 a hearing was held to enforce the agreement signed on July 15, 1999. The district court found it a settlement agreement binding on all eight children and ordered it enforced.

We review Linda's claims de novo. Iowa Code § 633.33 (1999); Iowa R. App. P. 4; *Gustofson v. Fogelman*, 551 N.W.2d 312, 314 (Iowa 1991). Linda first contends she signed the agreement under duress and undue influence was exerted on her to do so. The administrator contends this issue was not preserved for appellate review. We assume without deciding this issue was preserved. Duress and undue influence are affirmative defenses and Linda as the person challenging the agreement has the burden to prove them. *See In re*

Marriage of Speegel, 553 N.W.2d 309, 316 (Iowa 1996). To prove duress Linda must show (1) she involuntarily accepted the terms of the other seven siblings, (2) the circumstances provided her with no other alternatives, (3) the circumstances were the result of the coercive acts of the others. *See Fees v. Mutual Fire & Auto Co.*, 490 N.W.2d 55, 59 (Iowa 1992).

Linda assented to the agreement in the courtroom and made no mention of a threat or coercive act. To show undue influence Linda must show influence that deprived her of her freedom of choice and that substituted the will of another for hers. *See Stetzel v. Dickenson*, 174 N.W.2d 438, 443 (Iowa 1970). Linda has failed to produce evidence to support a finding she was under undue influence when she signed the agreement. We affirm on this issue.

Linda next contends the agreement should be rescinded. The administrator contends Linda did not preserve error on this issue because her written objections were only that she objected to the agreement and the real estate should be sold. Again, we assume without deciding the error was preserved on this issue.

Linda contends the memorandum she signed on July 15, 1999 was modified and replaced and extinguished by the August 31, 1999 memorandum.[1]

Settlement agreements are basically contracts and in reviewing them we apply the general principles of contract interpretation. *See Fees*, 490 N.W.2d at 58; *Walchter v. Aluminum Co.*, 454 N.W.2d 565, 568 (Iowa 1990). Voluntary

[1] Even if it had, the August 15 agreement followed the earlier agreement except it provided Leland would receive and take immediate possession of a house and outbuildings on the parcel going to group A and have the cement driveway next to the house. The modifications in no way effected the interest in the real estate Linda agreed to take.

settlements of legal disputes should be encouraged, with terms of settlement not inordinately scrutinized. *Fees*, 490 N.W. at 58; *Wright v. Scott*, 410 N.W.2d 247, 249 (Iowa 1987). Parties to a valid contract may substitute another in its place. *See Severson v. Elberon Elevator, Inc.*, 250 N.W.2d 417, 421 (Iowa 1977). The burden of establishing this event is on the party raising the claim. *Id.*

To establish a substitution or novation of a contract a claimant must show (1) a previous valid obligation, (2) agreement of al parties to the new contract, (3) extinguishments of the old contract, and (4) validity of the new contract. *Klipp v. Iowa Grain Indem. Fund Bd.*, 502 N.W.2d 9, 11 (Iowa 1993); *In re Estate of Eitzen*, 231 Iowa 1169, 1175, 3 N.W.2d 546, 552 (1942).

Linda did not sign the August 31, 1999 agreement consequently there was no agreement by the eight children who signed the July 15, 2000 agreement to the August contract. Linda has failed to establish a ground for reversal on this issue.

AFFIRMED.