IN THE COURT OF APPEALS OF IOWA

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No. 7-120 / 95-1003

IN THE MATTER OF THE ESTATE OF JOHN A. GILLOTTI,
Deceased,
DENISE ANN McCOLLOUGH, DANIEL WARREN BLUE, JULIE DAWN OFFENBERGER, JANA DEE BLUE, SCHUYLER CLAYTON BLUE and SCARLETT MARIA BLUE,
Plaintiffs-Appellants,

vs.

ELIZABETH J. GILLOTTI and JOHN ANDREW GILLOTTI, Fiduciaries of the Estate of JOHN A. GILLOTTI,
Defendants-Appellees.

Appeal from the Iowa District Court for Polk County, Robert J. Blink, Judge.

The plaintiffs appeal a district court ruling denying their claim in probate seeking to enforce an alleged contract between the father of the plaintiffs and the deceased for the sale of the Maid-Rite Company. **AFFIRMED.**

Randy G. Sargent, and William G. Bremer Des Moines, for appellants.

Michael J. Burdette, of Cook, Gotsdiner, McEnroe, & McCarthy for appellants.

Donald L. Carr, II and Jason E. Walke of Sullivan & Ward, P.C., Des Moines, for appellees.

Jeffrey E. Lamson, Des Moines, for appellee

Heard by Habhab, C.J., and Cady, and Vogel, JJ., but decided en banc. Habhab, C.J., and Sackett and Streit, JJ., take no part.

CADY, J.

This is an appeal from a decision by the district court denying a claim in probate. We affirm.

John A. Gillotti died May 13, 1991. A petition to probate his will was filed June 24, 1991. The value of his estate was substantial.

On November 1, 1991 Clayton Blue filed a claim against the estate. Blue sought specific performance of a written contract he allegedly entered into with Gillotti on May 10, 1991. Alternatively, Blue sought money damages in excess of $1,000,000. The personal representatives of the estate disallowed the claim. The matter ultimately proceeded to a lengthy hearing. The district court dismissed the claim following the hearing and this appeal followed.

The evidence relevant to the resolution of the appeal dates back to 1982 when Blue purchased Maid-Rite, Inc., from William Angell. The business had been owned by the Angell family since 1926. The terms of sale included a down-payment with installment payments over a term of years. Gillotti provided the funds for the down-payment, and later made several installment payments to Angell.

Blue defaulted on the purchase contract in 1988, and Angell exercised the acceleration provision under the purchase contract. Rather than lose his investment in the business, Gillotti purchased all the assets of Maid-Rite, Inc. Gillotti also gave Blue the option to purchase these assets within twelve months. Blue continued to work in the business.

Blue failed to exercise the option to purchase the Maid-Rite assets from Gillotti within the twelve-month period. There was evidence Gillotti then began to assume a more active role in the business and sought to exclude Blue. Blue responded by making threats of physical violence to Gillotti and members of his family. Blue had previously been convicted of felony crimes in state and federal court.

On May 9, 1991, Gillotti met with his attorney and a legal assistant for approximately two and one-half hours. The meeting concerned various plans for Gillotti to develop the Maid-Rite Company and to terminate Blue's activities with the company. There was no discussion of transferring the company to Blue.

The following day, May 10, 1991, Gillotti visited the Maid-Rite marketing office. Blue was present, as well as various franchise owners. The events of this day serve as the basis for the present legal dispute.

Gillotti died three days later. Blue subsequently notified Gillotti's son that his father had entered into a written contract on May 10 to sell the business to him. Blue made no additional claim that his interest had been assigned to his children. He later filed his claim against the estate.

Blue repeatedly maintained he held an ownership interest in Maid-Rite Company during the pendency of the claim. On December 23, 1993, however, his children claimed ownership under an assignment from their father. On August 2, 1994, Blue produced a copy of an assignment, dated May 11, 1991, following a break from a deposition involving his children. Blue claimed to have located the previously unmentioned and undisclosed document in the trunk of his car. The Blues' attorney indicated he had never seen the document before, and filed a motion to withdraw as counsel the following day. The Blue children were subsequently substituted as the real parties in interest.

Blue introduced the May 10, 1991 contract into evidence at the hearing. It consisted of different pages from different forms. The ink used to mark and sign the document did not match. There was no continuity from page to page. The typeset on the various pages was inconsistent. The signatures of Blue and Gillotti were witnessed by five individuals, four would benefit if Blue prevailed in the litigation. The testimony of these four witnesses was conflicting. The fifth witness testified he merely observed Gillotti leave the Maid-Rite office as he arrived, and was asked by Blue to sign his name as a witness to a single page which contained only the signature of Gillotti and another witness.

The district court dismissed the claim. It found no valid contract existed between Gillotti and Blue for a variety of reasons including lack of intent, indefiniteness, lack of consideration, and duress. It also found the claim was barred because the real parties in interest failed to file it within the statutory period. Finally, the district court found the claim was barred by the doctrines of laches and estoppel.

The Blue children appeal. They argue the May 10, 1991 contract was valid and enforceable, and their claim was filed within the period of limitation because it related back to the time their father filed his claim. Additionally, they assert the elements of laches and estoppel were not present.

Claims in probate are tried by ordinary actions. Iowa Code § 633.447 (1995). Actions for specific performance are ordinarily in equity. *Breitbach v. Christenson,* 541 N.W.2d 840, 843 (Iowa 1995). Our review, therefore, is de novo. Iowa R. App. P. 4. Nevertheless, we give weight to the findings of the trial court, especially as they relate to credibility of witnesses. Iowa R. App. P. 14(f)(7).

In this case, the trial court made exhaustive credibility findings. The trial court found the testimony of the witnesses for the estate very credible. On the other hand, it generally found the witnesses for claimants less credible. In particular, the trial court found Blue was not a credible witness. These findings are helpful in the resolution of this appeal, and we give them weight.

We choose to begin our analysis by first considering the validity of the alleged contract. Parties are bound to agreements which have been entered into fully and knowingly. *Breitbach,* 541 N.W.2d at 845. On the other hand, contracts induced by an act or event which renders the consent unreal are voidable. One recognized act or event which permits a party to avoid a contract is duress. *In re Marriage of Spiegel,* 553 N.W.2d 309, 319 (Iowa 1996).

Duress is wrongful coercion. It is established if the contract was induced by an improper threat which leaves the victim with no reasonable alternative but to enter into the contract. Restatement (Second) of Contracts § 175 (1982).

Improper threats include obtaining a party's signature on a contract by threats of personal safety so as to deprive the party of the free exercise of will. *Kaus v. Gracey*, 162 Iowa 671, 673, 144 N.W. 625, 627 (1913). The question whether duress has been established, however, rests with the own particular facts of each case. *Smith v. Morgan*, 214 Iowa 555, 560, 240 N.W. 257, 259 (1932).

We agree with the trial court the alleged contract was voidable for duress. First, there was credible evidence revealing a history of threats of physical violence made by Blue against Gillotti and members of his family. Second, the alleged contract was quickly and suddenly entered into under very suspicious circumstances. The transaction did not involve lawyers, and Gillotti's conduct in the days preceding the alleged contract was totally inconsistent with any intent to sell the business to Blue. Moreover, the written document produced by Blue was replete with signs to support a finding of duress. Finally, the credibility findings of the trial court were consistent with a finding of duress. The trial court found Blue was the type of person who would engage in such activity. We conclude the only credible explanation for Gillotti's signature on the alleged contract was it was obtained by improper threats which left Gillotti with no reasonable alternative but to sign the document. Accordingly, the district court properly rescinded the alleged contract and dismissed the claim.

It is unnecessary for us to address the remaining issues raised on appeal. Even if the claim was timely filed, we conclude the contract was voidable for duress. We affirm the decision of the district court.

AFFIRMED.