

IN THE IOWA DISTRICT COURT FOR KOSSUTH COUNTY

<p>CONSERVATORSHIP OF JANICE GEERDES, BY LAURA JENKINS, CONSERVATOR,</p> <p>Plaintiff,</p> <p>Vs.</p> <p>ALBERT CRUZ,</p> <p>Defendant</p>	<p>NO. EQCV027463</p> <p>FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE</p>
--	--

On July 21, 2022, this equitable action came on for trial before this court. The Plaintiff, the Conservatorship of Janice Geerdes is represented by Laura Jenkins, conservator, and attorney Kevin Sander. The Defendant Albert Cruz appears personally and is represented by attorney Shaun A. Thompson. At the conclusion of the trial the court allowed the parties to file briefs, which the court received on August 8, 2022.

The Petition alleges that the ward lacked the mental capacity to properly execute a quit claim deed to convey property to the Defendant, and that the ward was subject to undue influence and that she was in a confidential relationship with the Defendant at the time the quit claim deed was executed. The parties' stipulated to the admission of exhibits 1, 2, 6, 7, C, D, and E.

The court has reviewed its notes of the proceeding and the briefs of the parties, including reviewing the case law cited by counsel, and enters its findings of fact.

FINDINGS OF FACT

Laura Jenkins, daughter and conservator for the ward, Janice Geerdes lives in Armstrong, Iowa and is one of the children of the marriage between Marlin Geerdes and Janice Geerdes. Marlin died in 1999 and for quite some time after

his death Janice lived in Swea City, a short distance from Armstrong. Janice worked at Exceptional Opportunities but hasn't worked there since Marlin died. Her current income consists of farmland rental, rental houses, and social security.

Janice met Mr. Cruz when he rented a farm house from Marlin and Janice and became close friends with Marlin and Janice. After Marlin died in 1999 Mr. Cruz was around Janice a lot. He was always around and they would go places and for a while drove semi-truck together. In 2008 or 2009 Laura and family became aware of a partnership agreement establishing Blue Acres Pork, which Janice and Albert owned equally. The Warranty Deed dated September 21, 2004 deeded approximately 9.64 acres to Janice and Albert, as tenants in common. They entered into an agreement with Murphy Brown/Smithfield in which Janice and Albert provided the site and building. This deed was an absolute gift from Janice to Albert and he paid nothing for the transfer. Janice had never mentioned this transaction to the family.

In 2003 Janice and Albert began trucking. By 2007 they were done trucking. Laura became aware, because she was assisting Janice with the bills, that Janice was paying a lot of Albert's expenses, including for food and gas. Over the years Albert has received monetary benefits from Janice.

In October, 2017 Janice was a passenger in a vehicle involved in an automobile accident. She was hospitalized for a fractured neck and eventually released to a nursing home in Bancroft, Iowa and then released home. Laura observed that while Janice was in the hospital Albert took her check book into the hospital and had her write checks.

Before the accident Janice was exhibiting mild cognitive impairment with deficits in working memory. Problems are observed with recent memory, judgment, reasoning, and planning ahead. Patients' performance on the SLUMS (Saint Louis University Mental Status Examination) indicates underlying dementia and the need for further assessment. (Exhibit E). Much of Janice's medical records reflect her physical condition after the accident from the admission date of October 9, 2017 through October 24, 2017.

The records after October 24, 2017 indicate that Janice reports recent mental status changes including decreased memory since the accident. In January, 2018, the patient's performance on the SLUMS again reflects dementia

and the need for further testing. It's recommended that Janice receive assistance with bill paying, managing finances.

On January 9, 2019 Janice executed a Quit Claim Deed in which she quit claimed her interest in the real estate described as Parcel "A" of the Survey recorded as Document No. 2004-3311, which the court understands is her interest in the 9.64 acres previously owned as tenants in common with Albert. Laura was not aware of this transaction at the time but she found out about it in February or March, 2019. Laura believes that her mother was under continuing disability according to her observations. Laura spoke with her mother and she had no recollection that she had done that. She transferred her interest in the property but the debt remained her obligation. She owes approximately \$100,000 to Farm Credit and has another loan on farmland and a large debt to the Internal Revenue Service, but not enough income to pay them. Yet she still transferred the hog site described as Parcel "A" to Albert for one dollar in consideration.

On July 30, 2019 a Petition for Conservatorship was filed in the Kossuth County, Iowa district court. Laura was appointed conservator. The inventory report for the conservatorship filed in Kossuth County as GCPR018999 reflects significant real estate assets. In addition to real estate the conservatorship has other miscellaneous assets.

Janice went to Kansas to visit her other daughter, Peggy Redmond, and remained there. A guardianship was filed in Kansas and Peggy is her guardian. Her observations of her mother are that she is not able to take care of herself and she has dementia and hallucinations.

Albert testified that he looked out for Janice when Marlin died. Marlin had told him to take care of Janice. He cleaned her house, took her to doctor, helped her with her car, and took her to the store. Marlin and Albert had talked about building a hog site. After Marlin passed away Janice had him drive her to a site where she talked to the supervisor of the hog site. Janice and Albert then formed a fifty/fifty partnership and he agreed to do the labor and Janice would do the paperwork and they would split the profits equally. After six months Stateline began doing the labor on site. He currently lives on the hog site with his daughter. They used Ms. Lemmon for accounting and tax work. She testified that she met with Janice and Albert in 2019 relating to her intent to transfer her remaining

interest in the hog site. She referred them to an attorney because she wasn't comfortable preparing the warranty deed. During the meeting Janice did most of the talking and in her opinion, she understood the property she owned. She drew out the description of the property. She first met Janice in 2004 or 2005 and her observations are that she was in a similar mine set in 2019 as she was in 2004 or 2005. Exhibit D is a note Albert testified Janice wrote, "Ms Janice Geerdes what I help Albert Cruz is nobody concern. Janice Geerdes."

Charles Laubenthal, rents some of Janice's farm land. He testified that since the October, 2017 accident her mental ability was never the same. With these findings of fact, the court now enters its conclusions of law. He opined that Albert had a clear influence over Janice in financial matters.

CONCLUSIONS OF LAW

This action is in equity. Under established case law, the party alleging lack of mental capacity sufficient to execute a deed has the burden of proving by clear, convincing, and satisfactory evidence that the grantor did not possess "sufficient consciousness or mentality to understand the import of her acts" when the deed was executed. Daughton v. Parson, 423 N.W.2d 894 (1988) citing Costello v. Costello 186 N.W.2d 651, 654 (Iowa 1971). A higher degree of mental competence is required for transaction of ordinary business and making of contracts than is necessary for testamentary disposition of property. Daughton at 896.

It has been established that, when examining the issue of mental capacity, a court may consider the grantor's physical condition; the adequacy of consideration; whether or not the conveyance was improvident; the relation of trust and confidence between the parties to the conveyance, and the weakness of mind of the grantor as judged by her other acts within a reasonable time prior and subsequent to the act sought to be impeached. Id. (quoting Brewster v. Brewster, 188 N.W.672, 674 (Iowa 1922)). We also consider "the lack of independent advice as another relevant factor in determining mental capacity." Id. (citing in re Estate of Herm, 284 N.W.2d 191, 200 (Iowa 1979)).

If a claimant can prove a confidential relationship exists, “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 that the transaction was entered into voluntarily.” Punelli v. Punelli 364 N.W.2d 259, 261 (Iowa App. 1984). A confidential relationship is present when one person has gained the complete confidence of another and purports to act or advise with only the interest of the other party in mind. Uniform jury instruction 2700.7. A confidential relationship exists “whenever a continuous trust is reposed by one person in the skill and integrity of another.” Mendenhall v. Judy, 671 N.W.2d 452, 455 (Iowa 2003) (citation omitted). “The gist of the doctrine of confidential relationship is the presence of a dominant influence under which the act is presumed to have been done. Purpose of the doctrine is to defeat and correct betrayals of trust and abuses of confidence. Oehler v. Hoffman, 113 N.W.2d 254, 256 (1962).

The existence of a confidential relationship triggers a presumption of undue influence. Mendenhall, 671 N.W.2d at 454. To rebut the presumption, the fund recipient must ‘prove by clear, satisfactory, and convincing evidence that the grantee acted in good faith throughout the transaction and the grantor acted freely, intelligently, and voluntarily.’ Jackson v. Schrader, 676 N.W.2d 599, 605 (Iowa 2003).

The court will first examine the question of whether a confidential relationship existed between Janice and the Defendant at the time of the date of the quit claim deed dated January 9, 2019? A confidential relationship is a very broad term and is not at all confined to any specific association of the parties to it. In law it has been defined or described as any relation existing between parties to a transaction wherein one of the parties is duty bound to act with the utmost good faith for the benefit of the other party. In its broadest connotation the phrase embraces those multiform positions in life wherein one comes to rely on and trust another in his important affairs. A confidential relationship arises whenever a continuous trust is reposed by one person in the skill and integrity of another, and so it has been said that all the variety of relations in which dominion may be exercised by one person fall with the general term “confidential relation.” Mendenhall v. Judy 671 N.W.2d 452, 455 (Iowa 2003).

Albert had a friendly relationship with Janice and her husband since sometime in the 1990's. When her husband died Albert and Janice were around each other often. He was always around and they would often go places and drove a semi-truck together for a while. They were in business together and entered into a partnership agreement establishing Blue Acres Pork becoming equal partners in raising hogs. She transferred a tract of land to both of them as tenants in common. Her medical records prior to the automobile accident in January, 2017 exhibited mild cognitive impairment with deficits in working memory. Problems were observed with memory, judgment, reasoning, and planning. Her record indicates underlying dementia. Likewise, her medical records reflect dementia after the accident, all before execution of the Quit Claim Deed dated January 9, 2019. Laura observed that Janice was paying for things for Albert including food and gas. She also wrote a check to Menards at Albert's instruction and for Albert's benefit that came back with non-sufficient funds. Laura arranged to have some of the merchandise returned and paid restitution on the remainder of the funds due. Janice trusted what Albert told her to do as he instructed her to write some checks while she was in the hospital.

The existence of a confidential relationship triggers a presumption of undue influence. Mendenhall, 671 N.W.2d at 454. To rebut the presumption, the fund recipient must 'prove by clear, satisfactory, and convincing evidence that the grantee acted in good faith throughout the transaction and the grantor acted freely, intelligently, and voluntarily.' Jackson v. Schrader, 676 N.W.2d 599, 605 (Iowa 2003).

The court concludes that Janice and Albert were in a confidential relationship. Therefore, the execution of the deed on January 9, 2019 was presumptively fraudulent and the burden shifts to Albert to negate undue influence. The court concludes that Albert has not rebutted the presumption by clear, satisfactory, and convincing evidence that he acted in good faith throughout the transaction and that the grantor acted freely, intelligently, and voluntarily when she signed the quit claim deed on January 9, 2019.

Even if the court were to find that they were not in a confidential relationship the court finds that Janice lacked the requisite mental capacity to quit claim her interest in the property. Her medical records indicated as early as

2017 that she had dementia. The dementia in combination with her age and physical health, the lack of consideration, and the improvident nature of the transaction given that she retained the debt on the property convinces this court that from the entire record there is clear, convincing, and satisfactory evidence that the grantor, Janice, did not possess sufficient consciousness or mentality to understand the import of her acts when the deed was executed. The deed therefore must be and is set aside. The court finds the conveyance invalid.



State of Iowa Courts

Case Number
EQCV027463

Case Title
CONSERVATORSHIP OF JANICE GEERDES V. ALBERT
CRUZ
OTHER DECREE

Type:

So Ordered

Don E. Courtney, District Court Judge,
Third Judicial District of Iowa

Electronically signed on 2022-11-10 09:06:06