**IN THE COURT OF APPEALS OF IOWA**

No. 2-771 / 12-0054
Filed October 31, 2012

**JOYCE FROHWEIN,**
Appellant,

**vs.**

**ESTATE OF IONA BRANDT,**
Appellee.

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Appeal from the Iowa District Court for Hardin County, Michael J. Moon, Judge.

A beneficiary appeals from the probate court's order overruling her objections to the executor's final report in the Estate of Iona Brandt. **AFFIRMED.**

James R. Monroe, Des Moines, for appellant.

Shean D. Fletchall and Michael A. Smith of Craig, Smith & Cutler, LLP, Eldora, and Jim Sween of Sween & Tilton, PC, Eldora,for appellee.

Heard by Doyle, P.J., and Mullins and Bower, JJ.

**DOYLE, P.J.**

Beneficiary Joyce Frohwein appeals from the probate court's order overruling her objections to the executor's final report in the Estate of Iona Brandt. She contends the court erred in finding there was not unpaid interest due to the estate under a real estate contract and that the estate was not entitled to compound interest. Upon our de novo review, we affirm.

***I. Background Facts and Proceedings*.**

Iona Brandt became the sole owner of a 240-acre farm after her husband's death in 1978. In 1979, Iona, then sixty-three years old, executed her will, which was drafted by a local attorney. Iona's will named her two daughters, Sharon Ingebritson and Joyce Frohwein, as her beneficiaries in equal shares. Sharon was designated as the executor.

Around the same time, Iona entered into a contract to sell the farm to Sharon and Sharon's husband (collectively "the Ingebritsons"). The contract was prepared by the same attorney who drafted Iona's will. Relevant here, the contract provided the Ingebritsons would pay Iona a down payment of $1000, and the remaining balance of the purchase price, $479,000, would be paid by the Ingebritsons' paying

> interest on the unpaid principal balance of this contract at the rate of six (6) percent per annum which interest shall begin to accrue on the 1st day of March, 1980. Payments of interest shall be on the 1st day of March in each year thereafter commencing with the 1st day of March, 1981. No principal payment shall be required until the 1st day of March, 1996, at which time a principal payment in the amount of $6,000.00 shall be made. A like amount of principal shall be made on or before the 1st day of each year following March 1, 1996, until the 1st day of March, 2005, at which time all remaining principal and interest shall be fully paid.

Joyce was not pleased with the sale of the property to the Ingebritsons, and her relationship with Iona became strained thereafter.

In the 1980's, the Ingebritsons had financial issues in their farming operation, and they failed to make some scheduled interest payments to Iona. After 1984, the Ingebritsons paid Iona what they could each year, but the amount was generally far less than the actual amount due.

In 1995, Iona and the Ingebritsons modified their original contract by an agreement drafted by the Ingebritsons' bank. The contract modification agreement was designed to improve the Ingebritsons' liquidity. The modification expressly provided that Iona acknowledged the Ingebritsons had "not paid principal and interest payments as scheduled in the original contract and that payment of accrued unpaid interest through 4/18/95 [was] not required." Additionally, the modification stated that Iona waived her right of "forfeiture and foreclosure" based upon the non-payments, and Iona agreed to modify the original repayment schedule to "$1000/month" due beginning in May 1995 and continuing until April 1998, at which time the payment schedule would return to its original form.

The contract was modified twice more, once in 2003 and in 2008. These modifications extended the due date for the balloon payment due under the 1979 contract and 1995 modification. The later modifications did not affect the calculation of the amounts due. At the time of the 2008 modification, Iona was ninety-one-years old and in failing mental health.

Iona died in 2009. After Sharon filed a final report for the estate, Joyce objected. Joyce asserted Sharon had omitted assets from the estate inventory

and had failed to collect interest due under the real estate contracts between Iona and the Ingebritsons. Ultimately, Joyce argued the unpaid interest amounts due between the 1979 contract and the 1995 modification were only delayed in time, not forgiven. Joyce further argued that Sharon shared a confidential relationship with Iona, and Sharon exerted undue influence over her to modify the contract. Additionally, Joyce argued the interest amount should be computed on a compound, not simple, basis.

Following a bench trial, the probate court found that while Sharon and Iona had a close relationship, there was no evidence of a confidential relationship between the women at the time of the 1979 contract or 1995 modification. The court found the contract and amendments were not the effect of Sharon's undue influence upon Iona, and the estate was not entitled to compound interest as Joyce claimed. The court determined Joyce had "been paid all monies to which she is entitled," and it directed the executor to take all steps necessary to close the estate.

Joyce now appeals.

***II. Scope and Standards of Review.***

We review the probate court's rulings on the executor's final report de novo. *See In re Estate of Randeris*, 523 N.W.2d 600, 604 (Iowa Ct. App. 1994). We ordinarily give weight to the court's fact-findings, but we are not bound by them. *See In re Estate of Serovy*, 711 N.W.2d 290, 293 (Iowa 2006). Normally, when a court adopts one party's proposed findings, a closer and more careful scrutiny of the record is required on appeal. *See Soults Farms*, *Inc*. *v*. *Schafer*, 797 N.W.2d 92, 97 (Iowa 2011). Here, Sharon concedes the probate court

adopted her proposed findings and conclusions almost verbatim in its ruling. However, no additional level of scrutiny is required as we carefully scrutinized the record in making our own findings of fact on our de novo review.[1] *See id.*

***III. Discussion.***

On appeal, Joyce contends the probate court erred in finding (1) the language of 1995 modification agreement discharged the Ingebritsons' past unpaid interest; (2) Iona was not subject to undue influence by Sharon when she agreed to the contract modification and thus the agreement was not void; and (3) the estate was not entitled to compound interest.[2] We address her arguments in turn.[3]

***A. Interpretation of the 1995 Modification Agreement.***

We apply ordinary contract principles to the 1995 modification agreement. *See In re Estate of Woodroffe*, 742 N.W.2d 94, 106 (Iowa 2007). Where, as here, the dispute centers on the meaning of certain terms in the modification, "we engage in the process of *interpretation*, rather than *construction*." *Walsh v. Nelson*, 622 N.W.2d 499, 503 (Iowa 2001). "Interpretation involves ascertaining

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[1] The supreme court has reiterated that "a court should never abdicate its duty to independently determine facts, synthesize law, and apply facts to the law." *Soults Farms*, *Inc.*, 797 N.W.2d at 97. Further, trial courts have been admonished "from the wholesale adoption of one party's advocacy because the decision on review reflects the findings of the prevailing litigant rather than the court's own scrutiny of the evidence and articulation of controlling legal principles." *Id.* (internal quotation marks and citations omitted).

[2] Because we address Joyce's claims on their merits, we do not address her arguments and the probate court's ruling concerning the statute of limitations.

[3] In numerous instances, Joyce's brief cites to the "entire record" in support of her arguments. Such references are not particularly helpful. In view of the high volume of cases this court decides, we cannot, nor is it our duty, to rout blindly through a trial record. The rules of appellate procedure require reference to the specific page or pages of the appendix where the pertinent parts of the record appear. *See* Iowa Rs. App. P. 6.903(2)(g)(3), 6.904(4)(b).

the meaning of contractual words; construction refers to deciding their legal effect." *Dental Prosthetic Servs., Inc. v. Hurst*, 463 N.W.2d 36, 39 (Iowa 1990). "Generally, contracts are interpreted based on the language within the four corners of the document." *Clinton Physical Therapy Servs., P.C. v. John Deere Health Care, Inc.*, 714 N.W.2d 603, 615 (Iowa 2006). When interpreting contracts, our primary goal

> is to determine the parties' intentions at the time they executed the contract. Interpretation involves a two-step process. First, from the words chosen, a court must determine what meanings are reasonably possible. In so doing, the court determines whether a disputed term is ambiguous. *A term is not ambiguous merely because the parties disagree about its meaning*. A term is ambiguous if, after all pertinent rules of interpretation have been considered, a genuine uncertainty exists concerning which of two reasonable interpretations is proper.

*Walsh*, 622 N.W.2d at 503 (internal quotation marks and citations omitted) (emphasis added). If an ambiguity is identified, "the court must then choose among possible meanings." *Id.* The disputed language and the parties' conduct "must be interpreted 'in the light of all the circumstances' regardless of whether the language is ambiguous." *Id.* (quoting *Fausel v. JRJ Enters., Inc.*, 603 N.W.2d 612, 618 (Iowa 1999)).

Upon our de novo review, we find the language of the 1995 modification agreement, "that payment of accrued unpaid interest through 4/18/95 is not required," to be unambiguous. Iona clearly acknowledged in the modification agreement the Ingebritsons had not made their payments as required under the original agreement. The language of the modification agreement plainly indicates its purpose was to address the unpaid debt. Accordingly, we affirm on this issue.

***B. Validity of the Modification Agreement.***

Undue influence is the result of overpowering the will of someone or preventing them "from acting intelligently, understandingly, and voluntarily—such influence as destroys the free agency of the [contracting party] and substitutes the will of another person for his own." *Mendenhal v. Judy*, 671 N.W.2d 452, 454 (Iowa 2003). In order to establish undue influence, the person challenging an inter vivos real estate sales contract has to prove that, at the time the contract was made, (1) the seller was susceptible to undue influence, (2) the buyer had the opportunity to exercise such influence and effect the wrongful purpose, (3) the buyer was disposed to unduly influence the seller for the purpose of procuring an improper favor, and (4) the transfer clearly appeared to be the effect of undue influence. *See id.*

However, if the person challenging the contract can demonstrate by clear and convincing evidence the existence of a confidential relationship, then a presumption of undue influence arises, and the burden shifts to the buyer to rebut the presumption. *See Jackson v. Schrader*, 676 N.W.2d 599, 605 (Iowa 2003). To rebut the presumption, the buyer would have to demonstrate, by clear, satisfactory, and convincing evidence that the buyer "acted in good faith throughout the transaction" and the seller "acted freely, intelligently, and voluntarily." *Id.* Also, as noted in *Estate of Herm v. Henderson*, 284 N.W.2d 191, 200 (Iowa 1979), if a person is being dominated—in this case Iona—her "mental strength" has a "direct bearing on the issue of undue influence."

Upon our de novo review of the record, we agree with the probate court that the record only evidences a close relationship between Iona and Sharon.

Among other testimony, the administrator of the care facility where Iona lived in the last years of her life testified that Sharon did not dictate things to Iona. Other witnesses, including the attorney who drafted the original contract in 1979 and Iona's will, testified that it was known that Iona wanted the Ingebritsons to have the farm. Joyce herself admitted her mother was mentally competent at the time she executed the modification agreement. The bank's then lending officer who witnessed Iona signing the modification agreement testified Iona seemed fully able to review the document and did not appear to be relying on anyone to make her decision whether or not to sign it. He further testified he would have made sure Iona reviewed the document and understood it. The express terms of the modification agreement stated that Iona acknowledged there was a past due debt owed by the Ingebritsons and payment of that debt was not required. Joyce failed to prove a confidential relationship existed between Iona and Sharon.

In light of the foregoing evidence describing Iona's competence and understanding of the modification agreement to the date of the agreement, we agree with the probate court that Joyce not only failed to present clear, convincing, and satisfactory proof of a confidential relationship during the relevant time period, but also failed to prove Iona was subject to undue influence.

***C. Compound Interest.***

Finally, Joyce argues the interest due should be calculated on a compound basis. The contract and later modifications are silent as to whether interest is to be computed on a compound or simple basis. "The general rule in the United States is that, when interest is allowable, it is to be computed on a simple rather than a compound basis in the absence of express authorization to

the contrary." *Landals v. George A. Rolfes Co.*, 454 N.W.2d 891, 896 (Iowa 1990). "Compounding is prohibited absent an agreement between the parties which speaks directly to the matter of compounding." *Power Equip., Inc. v. Tschiggfrie*, 460 N.W.2d 861, 864 (Iowa 1990). Consequently, we find no error in the probate's court's ruling that the interest calculation is to be computed on a simple, not compound, basis.

***IV. Conclusion.***

After a careful de novo review, we agree with the probate court's order finding the modification agreement was unambiguous and that Iona agreed to the modification without undue influence from Sharon. We additionally agree the interest calculation is to be computed on a simple, not compound, basis. Accordingly, we affirm the order of the probate court.

**AFFIRMED.**