IN THE COURT OF APPEALS OF IOWA

No. 3-309 / 12-1525
Filed May 30, 2013

THE ESTATE OF GEORGE WILD, NICHOLE WILD, CHELSEA WILD, BREANNA WILD ATKINSON, TAMMY HICKLE, Conservator for RILEY WILD, A Minor, and THE ESTATE OF MILLARD F. WILD,
Plaintiffs-Appellants,

v.

CHARLENE WILD,
Defendant-Appellee.

Appeal from the Iowa District Court for Allamakee County, George L. Stigler, Judge.

Plaintiffs appeal from the district court's entry of summary judgment in favor of defendant. **AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

Dennis G. Larson of Larson Law Office, Decorah, and James A. Garrett of Jacobson Bristol Garrett & Swartz, Waukon, for appellants.

W. Richard White of Morrow & White Law Office, Waukon, for appellee.

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

DOYLE, J.

The Estate of George Wild, Nichole Wild, Chelsea Wild, Breanna Wild Atkinson, Tammy Hicke, Conservator for Riley Wild, a minor, and the Estate of Millard F. Wild (collectively "the estate") appeal from the district court's entry of summary judgment in favor of Charlene Wild on the estate's petition to establish a constructive trust and to annul the marriage of Millard and Charlene. We affirm in part, reverse in part, and remand to the district court for further proceedings.

I. Background Facts and Proceedings

Millard Wild was born in 1921. He was married to Jean, who died in 2002. George Wild was the son of Millard and Jean. In 2006, Millard married Charlene. At the time of their marriage, Millard was eighty-five years old and Charlene was fifty-three years old. In 2008, Millard died testate. Millard's will appointed George his executor and left the majority of his assets, including three farms in Allamakee County, to George as residuary beneficiary.[1]

In 2010, George died testate. George's will left his estate equally to his four children, Nichole Wild, Chelsea Wild, Breanna Wild, and Riley Wild. Following George's death, Nichole was appointed executrix of his estate. Breanna and Chelsea were appointed successor co-executrices of Millard's estate. Meanwhile, Charlene filed for the surviving spouse's elective share of Millard's estate. *See* Iowa Code § 633.238 (2011).

In 2011, the estate filed this action seeking to impose a constructive trust on Charlene's assets and annul the marriage between Millard and Charlene.

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[1] Millard executed his will in December 2006, ten months after he and Charlene were married. Under the will, he left a house and the one acre upon which it sits to Charlene.

The estate's petition alleged in part that both before and during Millard and Charlene's marriage, Millard had "experienced declining health," and Charlene, Millard's "housekeeper and caretaker," "became the dominant influence of Millard" and "exercised undue influence and fraud upon Millard" to make inter vivos transfers of personal property "in excess of $500,000" for her benefit. Charlene filed an answer denying the estate's claims and alleging in part that she was "not a housekeeper or caretaker" of Millard, Millard "was not in delicate health," and Millard "managed his own accounts and business." Charlene further claimed Millard willed to her household contents "having little or no value," and that she "subsequently gave the majority of the personal property to the children of Millard."

Less than sixty days prior to the date set for trial, Charlene filed a motion for summary judgment, alleging in part that the estate had "no standing to contest the validity of the marriage." The estate resisted the motion, both on its merits and its delinquency.

Following a hearing, the district court entered its ruling granting the motion for summary judgment. The court noted, "The motion is not timely, but because it disposes of the case [it] is ruled on." The court found, "[T]he plaintiffs are not real parties in interest and may not challenge the marriage of Millard F. Wild and Charlene Wild." The court then dismissed the case. The estate appeals.

II. Procedural Issues.

At the outset, we address the estate's contention that the district court erred in considering the motion because it was filed less than sixty days before trial. The estate claims it "should not be punished for Charlene Wild's tardiness."

Iowa Rule of Civil Procedure 1.981(3) provides that a motion for summary judgment "shall be filed not less than 60 days prior to the date the case is set for trial, unless otherwise ordered by the court." Although the practice is not condoned, Charlene's late filing of the motion does not provide a basis for reversal.[2] *Anderson v. Douglas & Lomason Co.*, 540 N.W.2d 277, 281 n.2 (Iowa 1995) ("[T]he late filing of . . . summary judgment motion does not provide a basis for reversal."). We find no abuse of discretion in the court's consideration of the motion. *See id.* ("We believe the trial court has discretion to consider on its merits a summary judgment motion filed later than the deadline contained in [rule 1.981(3)].").

The estate also claims the court did not afford the opportunity for the estate to submit briefs on the motion. We disagree. In its initial resistance, the estate alleged Charlene's motion was "delinquent by eighteen (18) days" and should be denied. The estate did not address the merits of the motion and requested additional time to file a "complete resistance" in the event the district court declined to deny the motion as untimely.

At the hearing on the motion, the estate again argued the motion should be denied in light of its delinquency. The estate's counsel stated, "[W]e haven't bothered to brief it because we didn't deem it to be necessary here." The estate's counsel further suggested the motion was only a partial motion for summary judgment, stating "as we read it, it's only addressing . . . the claim

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[2] At the hearing on the motion, Charlene's counsel explained he only had one secretary, "but she contracted pneumonia, and I was unable to get this within the 60 days prior to the trial date." He admitted the delay was his fault and did not resist "if this matter needs to be continued to accommodate the [estate]."

relating to the marriage annulment"—count IV of Charlene's petition.[3] As the estate's counsel explained, "We have asserted claims as to constructive trust, which we do not read the motion as attacking those counts." Charlene's counsel made no suggestion otherwise.

Without clarifying the confusion, the court asked, "How long would it take to brief it?" Counsel stated he would need two weeks. The estate filed its supplemental resistance eighteen days later asserting, in part, that Charlene's motion "is, at best, a motion for partial summary judgment as it addresses only the claim raised in Count IV of the petition and does not purport to challenge Counts II and III thereof, relating to constructive trust claims." The estate did not address the merits of the constructive trust claims. Charlene made no responsive filing to this assertion. The court's ruling, dated the same day the supplemental resistance was filed, granted the motion for summary judgment and dismissed the entire case. We find the estate was given adequate opportunity to submit a supplemental resistance to the marriage annulment issue. The court did not abuse its discretion in refusing to dismiss the motion on tardiness grounds. We turn to the substance of the estate's appeal.

III. Scope and Standard of Review.

Although in equity, our review of an appeal from the grant of summary judgment is for correction of errors at law. *Kucera v. Baldazo*, 745 N.W.2d 481,

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[3] Although the motion requests the court to dismiss the estate's petition, the motion asserts the estate's petition did not allege any grounds to support a finding the marriage was illegal or void ab initio and further asserts the estate had no standing to seek annulment of a voidable marriage. Charlene's statement of undisputed material facts and brief in support of the motion would lead one to reasonably conclude the motion was limited to the annulment issue only.

483 (Iowa 2008). Summary judgment is appropriate when there are no genuine issues of material fact, and the movant is entitled to judgment as a matter of law. Iowa R. Civ. P. 1.981(3). "Where the parties agree that all material facts are undisputed, and the case presents solely legal issues, summary judgment is the appropriate remedy." *Kucera*, 745 N.W.2d at 483.

IV. Annulment of the Marriage.

The estate claims the marriage between Millard and Charlene should be annulled due to the force or fraud exhibited by Charlene coupled with Millard's incompetence and inability to consent at the time the marriage was entered into. The district court denied this claim, finding the marriage was not void, no statutory grounds permitted annulment of the marriage, and the marriage was immune to attack as a result of Millard's death. The court concluded the estate could not challenge the marriage. We agree. Void marriages are those between certain persons related by blood, and between persons who are already married to another. *See* Iowa Code § 595.19. "When a marriage is void it is (for most purposes) as if no marriage had taken place. In theory it does not need to be judicially annulled." *Peters v. Peters*, 214 N.W.2d 151,155 (Iowa 1974). The estate makes no factual allegations that would support a finding the marriage was void under section 595.19.

A voidable marriage may be annulled. *See* Iowa Code § 598.29. As section 598.29 provides:

> Marriage may be annulled for the following causes:
> 1. Where the marriage between the parties is prohibited by law.
> 2. Where either party was impotent at the time of marriage.
> 3. Where either party had a husband or wife living at the time of the marriage, provided they have not, with knowledge of such

fact, lived and cohabitated together after the death or marriage dissolution of the former spouse of such party.

4. Where either party was a ward under guardianship and was found by the court to lack the capacity to contract a valid marriage.

"[W]hen a marriage is voidable it is legally valid for all civil purposes until it is judicially annulled." *Peters*, 214 N.W.2d at 155. "When the validity of a marriage is doubted, either *party* may file a petition, and the court shall decree it annulled or affirmed according to the proof." Iowa Code § 598.30 (emphasis added). It is not disputed that the estate was not a party to the marriage, and it therefore logically follows the estate was not authorized under the statute to pursue an action to annul the marriage.

Moreover, the timing of the estate's action to challenge the marriage is fatal to its claim. Charlene was married to Millard at the time of his death, and no effort was made to set aside or annul the marriage until after his death. "In many cases it has been held that neither a suit for divorce nor to annul a marriage will lie after the death of one of the parties." *Richardson v. King*, 135 N.W. 640, 645 (Iowa 1912) (citing cases from other jurisdictions for the proposition); *see also* W.W. Allen, Annotation, *Right to Attack Validity of Marriage After Death of Party Thereto*, 47 A.L.R.2d 1393, at § 2 (1956) (setting forth cases in general agreement that a marriage which is merely voidable may not be attacked after the death of either of the parties, unless a statute provides otherwise); 4 Am. Jur. 2d *Annulment of Marriage* § 57 (2007) (noting that right to annulment of a marriage which is voidable only is a personal right and proceedings must be brought during the lifetime of both parties to the marriage, unless specifically provided otherwise by statute).

The estate had no standing to challenge the marriage. We therefore affirm the court's ruling granting summary judgment on Count IV of the estate's petition.

V. Constructive Trust.

The estate's remaining claims are in regard to the district court's refusal to establish a constructive trust over alleged inter vivos transfers of property by Millard to Charlene. "A constructive trust is a remedial device by which the holder of legal title is held to be a trustee for the benefit of another who in good conscience is entitled to the beneficial interest." *In re Estate of Welch*, 534 N.W.2d 109, 111 (Iowa Ct. App. 1995). It is "an equitable remedy applied for purposes of restitution, to prevent unjust enrichment." *In re Estate of Peck*, 497 N.W.2d 889, 890 (Iowa 1993). There are three types of constructive trusts: (1) those arising from actual fraud, (2) those arising from constructive fraud (such as appropriation of property by fiduciaries or others in confidential relationships), and (3) those based on equitable principles other than fraud. *Id.* "Other circumstances supporting imposition of equitable principles include bad faith, duress, coercion, undue influence, abuse of confidence, or any form of unconscionable conduct or questionable means by which one obtains the legal right to property which they should not in equity and good conscience hold." *Welch*, 534 N.W.2d at 111 (citing 76 Am.Jur.2d *Trusts* § 201 at 227-30 (1992)).

In this case, the estate seeks imposition of a constructive trust on two alternative bases. In Count II of its petition, the estate claims a constructive trust should be created because a confidential relationship existed between Millard and Charlene, and Charlene abused this relationship. In Count III of its petition,

the estate contends a constructive trust should be established on the basis Charlene exercised undue influence and fraud upon Millard. Although we found summary judgment was proper as a matter of law on Count IV of the estate's petition in regard to the annulment of the marriage, that finding has no bearing on the estate's claims in Counts II and III in regard to the imposition of a constructive trust with respect to property allegedly acquired by Charlene from Millard.

The purpose of summary judgment procedure is to determine whether a genuine issue of material fact exists. If it is determined there is a genuine issue of material fact, the case must be litigated, and the court considering the motion for summary judgment cannot pass on the merits of the fact question. *Brubaker v. Barlow*, 326 N.W.2d 314, 315 (Iowa 1982).

The constructive trust issue was not advanced in Charlene's motion for summary judgment, nor was it addressed in the estate's resistance. In fact, the estate's supplemental resistance states: "[Charlene's] motion is, at best, a motion for partial summary judgment as it address only the claim raised in Count IV of the petition and does not purport to challenge counts II and III thereof, relating to constructive trust claims." Charlene did not dispute this statement. At hearing, the estate's counsel stated, "We have asserted claims to constructive trust, which we do not read the motion [for summary judgment] as attacking those counts." Charlene's counsel made no protest to the contrary. Although the district court addressed the annulment issue, its ruling is silent concerning the constructive trust issue. The court made no determination whether a genuine issue of material fact existed with regard to the constructive trust issue. Without the constructive trust issue having been briefed, argued, or specifically ruled upon,

we believe it was error for the district court to have dismissed the entire lawsuit. Accordingly, we reverse the grant of summary judgment on Counts II and III and remand this case to the district court for further proceedings in accordance with this decision.

VI. Conclusion.

We affirm the grant of summary judgment in favor of Charlene on Count IV of the estate's petition. We reverse the grant of summary judgment in favor of Charlene on Counts II and III of the estate's petition, and remand to the district court for further proceedings in accordance with this decision.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.