IN THE COURT OF APPEALS OF IOWA

No. 7-315 / 06-0487
Filed June 27, 2007

**IN THE MATTER OF THE ESTATE OF
DORIS E. EGGERS, Deceased,**

PHILLIP EGGERS,
Appellant.

Appeal from the Iowa District Court for Linn County, Robert E. Sosalla, Judge.

Phillip Eggers appeals from the district court's denial of his application to set aside Doris Eggers's will. **AFFIRMED.**

Steven Howes of Howes Law Firm, P.C., Cedar Rapids, for appellant.

Daniel Seufferlein of Klinger, Robinson & Ford, L.L.P., Cedar Rapids, for appellee.

Heard by Huitink, P.J., and Zimmer and Vaitheswaran, JJ.

ZIMMER, J.

Phillip Eggers appeals from the district court's denial of his application to set aside Doris Eggers's will. He contends the court erred in admitting his mother's will to probate because the document was not properly executed. Phillip also argues that a deposition exhibit, which was not admitted into evidence by the trial court, should be considered as part of the appellate record when we review this case. We affirm.

I. Background Facts and Proceedings

Doris Eggers died on February 24, 2001. At the time of her death, Doris had four adult children: Doug Eggers, Paula Giarrusso, Daniel Eggers, and Phillip Eggers. Doris executed a last will and testament on January 9, 2001. Attorney Robert Murphy drafted the will. Under the will, Phillip and Daniel received specific bequests of personal property, and Doris bequeathed the rest of her estate equally to Doug and Paula.[1] The will named Doug the executor of the estate.

During April 2001 Doris's will was admitted to probate, and Doug was appointed as the executor of her estate. Phillip filed an application to set aside his mother's will. Trial on Phillip's application was scheduled and reset on numerous occasions. Several continuances were granted because Doug was serving in the military.

The will contest was tried to the court on October 27, 2005. Phillip filed an application to reopen the record on November 1, 2005. The district court granted

[1] Under Article II of the will, Phillip was awarded Doris's 1991 GMC Jimmy, and he took possession of the vehicle.

Phillip's application and received additional evidence on January 30, 2006. On February 21, 2006, the court issued a ruling denying Phillip's request to set aside his mother's will. Phillip has appealed.

II. Scope and Standards of Review

We review a will contest for the correction of errors at law. *In re Estate of Lachmich*, 541 N.W.2d 543, 545 (Iowa Ct. App. 1995). Findings of facts in a law action are binding on us if supported by substantial evidence. Iowa R. App. P. 6.14(6)(*a*). The sufficiency of the evidence to support the court's finding must be viewed in the light most favorable to the contestant. *In re Estate of Baessler*, 561 N.W.2d 88, 93 (Iowa Ct. App. 1997), *rev'd on other grounds by Jackson v. Schrader*, 676 N.W.2d 599, 604 (Iowa 2003).

III. Deposition Exhibit

We first address Phillip's argument regarding a deposition exhibit that he offered at the time of trial.

During trial, Phillip offered the deposition of Christine Crain as an exhibit. Crain worked for Murphy at his law office in Dubuque in 2001. She did not testify at trial. The estate objected to the introduction of Crain's deposition for a variety of reasons. The trial court reserved ruling on the objections lodged by the estate at the time the deposition was offered. The record reveals the court never made a ruling on the admissibility of the deposition, and the deposition was never received into evidence. The court did not refer to the deposition in its ruling.

Phillip now contends we should consider the deposition as part of the record on appeal even though it was not admitted into evidence at trial.[2] We disagree.

Phillip did not file an Iowa Rule of Civil Procedure 1.904(2) motion for enlargement or amendment of the court's findings or conclusions, and he did not request a ruling on the estate's objection to Crain's deposition. We will generally review only those issues that have been ruled upon by the district court. *Vincent v. Four M Paper Corp*., 589 N.W.2d 55, 64 (Iowa 1999). When a district court fails to rule on an issue properly raised by a party, the party who raised the issue must file a motion requesting a ruling in order to preserve error for appeal. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002). Phillip offered Crain's deposition as an exhibit at trial. It was his obligation to request a ruling from the court on the admission of the exhibit. In the absence of a district court ruling on the admissibility of the deposition, we have nothing to review. We have no authority to consider evidence that was not admitted at trial, and we decline to consider the deposition as part of the record on appeal.

IV. Execution of the Will

Phillip contends the court erred in admitting Doris's will to probate because the document was improperly executed. He maintains the will was not properly witnessed.

Iowa Code section 633.279 (2001) sets forth the requirements for assessing the validity of the will at issue here. It provides:

> All wills and codicils, except as provided in section 633.283, to be valid, must be in writing, signed by the testator, or by some person in the testator's presence and by the testator's express direction

[2] Phillip does not claim any error by the trial court in the handling of the exhibit.

> writing the testator's name thereto, and declared by the testator to be the testator's will, and witnessed, at the testator's request, by two competent persons who signed as witnesses in the presence of the testator and in the presence of each other.

Proof of execution of a will is not dependent upon the recollection or memory of the subscribing witnesses or upon their recollection as to the particulars attending the execution of the will. *In re Klein's Estate*, 241 Iowa 1103, 1110, 42 N.W.2d 593, 597 (1950). We now turn to the evidence presented in this case.

In 2001 Attorney Murphy maintained a law office in Dubuque and a satellite office in Independence, Iowa. In January 2001 Doris was living in Cedar Rapids. Because she was ill and undergoing treatment for cancer, Doris was unable to drive to Murphy's law office in Dubuque or Independence to execute her will. Murphy had known Doris for a long period of time, and he agreed to make the trip to Cedar Rapids so she could execute the will. On January 9, 2001, Murphy drove to Cedar Rapids to Doris's home where she lived with her son, Doug.

Murphy had originally drafted the will as a self-proving will; however, there were not a sufficient number of witnesses present, so Doug called one of Doris's neighbors, Roy W. Parker Jr., and asked Parker if he would come to Doris's home to witness her will. Parker came to Doris's home and was present with Doug, Doris, and Murphy when the will was executed.

At trial Parker testified he suffered from memory problems and takes medication for his condition. Although he was unable to recall the specifics of the events that occurred in Doris's home on January 9, 2001, he recalled being

present in the home, discussing the document, and signing the document. Parker also testified he had been threatened and intimidated by Phillip prior to trial.[3]

Murphy testified he was present on January 9, 2001, when Doris executed the will at her home. He testified that prior to the execution of the will, he asked Doris whether she was over eighteen years of age, whether she was of sound mind, whether the will disposed of her property as she wished, and whether she wanted Parker and Murphy to witness the will. Murphy also testified Doris declared the will to be her last will and testament. Doug's testimony confirmed that he, Doris, Murphy, and Parker were all present during the execution of the will.

After Doris died, Murphy reviewed the will and realized it could not be filed as a self-proving will.[4] Murphy filed a "Testimony of Subscribing Witness" document on April 26, 2001. Murphy testified there were scrivener's errors on the document because he included the incorrect city and county and referred to Roy Parker as William Parker. Murphy filed an "Amended Testimony of Subscribing Witness" on April 27, 2005, but failed to notarize the document. The clerk returned the document to Murphy, so he subsequently had the document notarized and refiled.

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[3] Parker testified Phillip "threatened me to go to prison if I didn't act right or didn't reply right or he said I would have fourteen years of prison. And I took that to the police station that he had threatened me." Murphy testified that after Phillip filed his application to set aside the will, Phillip left threatening messages on his answering machine. Phillip admitted he drove to Murphy's office to force Murphy to give him the inheritance, and he also admitted he threatened to "beat him [Murphy] up." In addition, Phillip left messages for Doug while Doug was serving in Iraq that said Doug would likely be killed in the war.

[4] Murphy testified that his legal secretary at the time notarized the will without his knowledge or permission after he brought the will back to Dubuque.

The district court found substantial evidence supported the conclusion that Doris's will was validly executed. The court found Doris signed the will in the presence of Murphy and Parker, they both observed her sign the will, and they both signed the will in Doris's presence and in the presence of each other. The court also found that despite the shortcomings in Parker's memory, the record clearly revealed Doris validly executed the will.

The district court did not find Phillip to be a credible witness. Furthermore, the court noted Phillip's attacks on Murphy's credibility relied "solely on conjecture and supposition." The court concluded this "innuendo [was] not sufficient . . . to conclude Mr. Murphy did not give credible testimony."

Upon our review, we find no reason to disagree with the district court's conclusions. Three witnesses, Murphy, Parker, and Doug, all testified the will was executed on January 9, 2001, at Doris's home in Cedar Rapids. The two witnesses to the will observed Doris sign the will and signed the will in the testatrix's presence and in the presence of each other. Furthermore, Murphy testified Doris declared the will to be her last will and testament. We conclude Doris's will was property executed, and we affirm the district court's decision to deny Phillip's application to set aside the will.

V. Conclusion

We affirm the district court's decision to deny Phillip's application to set aside his mother's will.

AFFIRMED.