

IN THE SUPREME COURT OF IOWA

CONSERVATORSHIP OF JANICE
GEERDES, BY LAURA JENKINS,
CONSERVATOR,

Plaintiff/Appellee,
v.

ALBERT CRUZ,

Defendant/Appellant.

SUPREME COURT NO. 22-1905

Kossuth County No. EQCV027463

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR KOSSUTH COUNTY
THE HONORABLE DON E. COURTNEY

PLAINTIFF/APPELLEE'S RESISTANCE TO APPLICATION FOR FURTHER
REVIEW OF THE COURT OF APPEALS DECISION DATED DECEMBER 6, 2023

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STATEMENT OF THE ISSUES

I. The Court of Appeals Correctly Applied a Higher Degree of Mental Competence For the Transfer by Geerdes to Cruz.

Cases:

Costello v. Costello 186 N.W.2d 651, 654 (Iowa 1971)
Brewster v. Brewster, 188 N.W.2d 672, 674 (Iowa 1922)
Daughton v. Parson, 423 N.W.2d 894 (IA Ct. App. 1988)

II. The Court of Appeals Correctly Found that Geerdes Met the Burden of Proof Necessary to Set Aside the Transfer that was Made by Quit Claim Deed in 2020.

Cases:

Groves v. Groves, 82 N.W.2d 124, 131 (Iowa 1957)

III. The Court of Appeals Correctly Analyzed the Issue of Mental Capacity.

IV. The Court of Appeals Correctly Applied the Standard of Clear, Satisfactory and Convincing Evidence.

STATEMENT AGAINST FURTHER REVIEW

Despite Cruz' arguments to the contrary, this case does not warrant further review under Iowa Rule of Appellate Procedure 6.1103(b). In his Proof Brief, Cruz stated that this case involved

straightforward application of existing law for transfer to the Court of Appeals. The Court of Appeals' did not address an important question of law that has not been or should be settled by the Supreme Court. Instead, the Court of Appeals merely applied existing principles and prior precedent to the facts of the present case in reaching its decision. Therefore, there is no basis for further review.

Cruz specifically cites that the Court of Appeals limited the ability to gift property during a person's lifetime, alleging that such issue is one of broad public importance. This is a mischaracterization of the Court of Appeals decision. A disagreeable result does not equate to an issue of broad public importance.

Cruz also asserts that the Court of Appeals extended a higher degree of mental capacity from transactions in the ordinary course of business to all inter vivos transfers. This is also a misstatement of the Court of Appeals decision, and instead represents Cruz' mere disagreement with the result. The Court of Appeals clearly applied past recognized precedent that a higher standard for mental capacity exists for transactions in the ordinary course of business. Application to the present case and

the facts involved do not create a question of law that is now subject to further review.

Finally, Cruz further asserts that the Court of Appeals acted as "expert witnesses" with respect to review of the evidence and facts in this case. Contrary to such argument, the Court of Appeals merely reviewed and weighed the evidence and testimony as part of the record. To suggest that such decision raises an important question of changing legal principles or public importance would call into question any appellate court decision which the losing party is in disagreement with. Therefore, Cruz has failed to establish that there are sufficient grounds to justify further review by the Supreme Court pursuant to Rule 6.1103(b).

ARGUMENT AGAINST FURTHER REVIEW

I. The Court of Appeals Correctly Applied a Higher Degree of Mental Competence For the Transfer by Geerdes to Cruz.

Cruz argues that the Court of Appeals incorrectly applied a higher degree of mental competence for the "inter vivos gift" made by Geerdes than as required for testamentary transfers. Cruz mischaracterizes the decision by the Court of Appeals. The Court of Appeals correctly applied the recognized precedent that a higher

degree of mental competence is required for the transaction of ordinary business and making of contracts than is necessary for testamentary disposition. *Costello v. Costello* 186 N.W.2d 651, 654 (Iowa 1971). The Court of Appeals at footnote No. 1 stated that the Court followed "well-settled law requiring higher mental competence" for other transactions than testamentary disposition. This is consistent with the language cited in *Costello*, which clearly affirmed that matters other than testamentary disposition of property required a higher degree of mental competence.

Geerdes agrees with the analysis of the Court of Appeals on this issue. The Court noted these factors have been identified in the prior briefs, and are outlined in the *Costello* case. See also, *Brewster v. Brewster*, 188 N.W.2d 672 (Iowa 1922); *Daughton v. Parson*, 423 N.W.2d 894 (IA Ct. App. 1988).

Cruz mischaracterizes the Court of Appeals, in arguing that it has now applied a higher degree of mental competence to all inter vivos gifts. The Court merely used the identified factors in determining the mental competence of Geerdes, and applied such factors to the facts of the case and as contained in the record. The Court of Appeals was correct in applying the higher degree of

mental competence to the record, and finding that Geerdes lack such competence in making the transfer to Cruz.

II. The Court of Appeals Correctly Found that Geerdes Met the Burden of Proof Necessary to Set Aside the Transfer that was Made by Quit Claim Deed in 2020.

In his application, Cruz asserts that the Court of Appeals incorrectly placed the burden of proof on Cruz in determining the validity of the Quit Claim Deed. This assertion is inconsistent with footnote No. 3 of the Court of Appeals, specifically stating that the burden of proof always remains on the conservator seeking to invalidate the deed. Citing *Groves v. Groves*, 82 N.W.2d 124, 131 (Iowa 1957). The Court of Appeals stated that in order to set aside the deed because of lack of mental capacity, the conservator had the burden to show by clear, satisfactory and convincing evidence that Geerdes was incapable of understanding the nature of the transaction and consequences, and the effects upon her rights and interest. *Costello*, 186 N.W.2d at 654.

Cruz' mere disagreement with the Court of Appeals decision is insufficient to invalidate the same. The Court of Appeals noted that weight is given to the factual findings of the District Court especially with regard to witness credibility. The Court properly gave such weight to the District Court, including witness

credibility, and noted that when properly doing so the appellate Court is not justified in reaching a contrary conclusion. Citing *Groves*, 82 N.W.2d at 130.

The Court of Appeals therefore relied on the evidence and record presented to the District Court, and available to the Court of Appeals in making its decision. A decision that is contrary to Cruz' position, does not equate to the Court of Appeals improperly applying the burden of proof, or committing legal error.

III. The Court of Appeals Correctly Analyzed the Issue of Mental Capacity.

Cruz alleges that the Court of Appeals "acted as expert witness" in analyzing the capacity of Janice Geerdes. Cruz' assertions are unfounded. The Court of Appeals used the recognized standard under the accepted burden of proof placed upon Geerdes, and applied such standard to the evidence and record in its decision to affirm the ruling of the District Court. The Court of Appeals merely ruling contrary to Cruz' position, should not result in a characterization that the Court of Appeals acted improperly as an "expert witness".

Cruz' application cites that the medical records offered at trial and as part of the record on appeal, were an exhibit provided by Cruz. This appears to be some effort by Cruz to assert that

because the records were offered by Cruz, they should therefore be read or examined in support of his position. To the contrary, the medical records merely contained factual evidence of the lack of mental capacity by Geerdes which was relied upon by the District Court and affirmed by the Court of Appeals. This is not the Court of Appeals acting as an "expert", but is merely the proper review and application of evidence in the case. Cruz cites no requirement of any expert testimony, because Iowa law does not have such requirement. Therefore, Cruz' assertion that the medical records admitted and considered by the District Court and Court of Appeals are insufficient because they contained no report of a designated expert, is without merit. Instead, all evidence and testimony, including the medical records, was considered by the District Court in making its ruling. The Appellate Court's decision to give weight to the trial court findings is pursuant to recognized authority. As a result, the Court of Appeals correctly analyzed the issue of mental capacity based upon the trial court's findings and the established record, and correctly affirmed the trial court decision.

IV. The Court of Appeals Correctly Applied the Standard of Clear, Satisfactory and Convincing Evidence.

Cruz alleges that the Court of Appeals did not correctly apply the burden of proof to the 2020 Deed by Geerdes. Cruz' argument appears to be a mere repetition of issue with respect to the proper burden of proof used by the District Court and Court of Appeals.

Cruz fails to offer any substantive argument to support the assertion that the Court of Appeals was incorrect in applying the burden of proof of clear, satisfactory and convincing evidence. Cruz merely cites to Judge Buller's dissent in support of such argument. With due respect to Judge Buller, his disagreement with the finding of the majority does not equate to use of an improper standard or automatically invalidate the majority's decision. Both the majority and Judge Buller note that this is a "close case". Such statements do not equate to a required finding against the party with the burden of proof. Instead, such statements simply acknowledge what is true for many cases presented to the Court, which is that there may be argument for both sides in any case. However, both the District Court and Court of Appeals ruled that Geerdes met her burden in proving that the required mental capacity for the 2020 Deed was not present. Mere disagreement

with such result should not and cannot equate to a basis for overruling the same.

CONCLUSION

Cruz has failed to establish sufficient grounds exist for further review in this case. Geerdes respectfully requests that Cruz' application for further review be denied and the decisions of the Court of Appeals and District Court be affirmed.

ATTORNEY'S COST CERTIFICATE

I hereby certify that the actual cost of printing the necessary copies of the foregoing Appellee's Resistance to Application for Further Review is \$-0-.




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**CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION
TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS**

1. This resistance complies with the type-volume limitations of Iowa R.App.P. 6.903(1)(g)(2) because this resistance uses a monospaced typeface and contains 1,670 words of text.

2. This resistance complies with the typeface requirements of Iowa R.App.P. 6.903(1)(e) and the type-style requirements of Iowa R.App.P. 6.903(1)(f) because this resistance has been prepared in a monospaced typeface using Microsoft Office Word 2003 with 12 characters per inch using Courier typestyle.



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1-4-2024

Date

VII. CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 4th day of January, 2024, I electronically filed the foregoing Resistance to Application for Further Review with the Clerk of the Supreme Court using the electronic case *filing system (EDMS) which will send notification of such filing to the following:

Shaun Thompson (via email: shaun@newmanthompsongray.com)



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