IN THE SUPREME COURT OF IOWA

No. 24-1053
Dist. Ct. Case No. ESPR020120

IN THE MATTER OF THE ESTATE OF REX. L. FELTEN, Deceased

KATHY FELTEN,
Plaintiff/Appellant,

v.

KAREN HOFFMAN, Individually and
as Executor of the Estate of Rex Felten,

Defendant/Appellee.

APPEAL FROM THE DISTRICT COURT FOR CLINTON COUNTY
HON. STUART P. WERLING

APPELLANT KATHY FELTEN'S REPLY BRIEF AND REQUEST FOR ORAL ARGUMENT

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No matter what will revisions or estate planning drafts Rex may have explored, it is undisputed his three children would have equally split his property absent his final will that significantly changed this nineteen days before his death to leave nearly everything to Karen. *See* D0053, 6.21.22, MSJ Ruling, at pg. 1. Kathy has never insisted on a larger share than anyone else. Her will challenge was based on her good faith belief, on the merits, that Rex still would have wanted her to share equally with Karen had it not been for his paranoia, mild dementia, and many months of Karen shutting out Kathy and lying to Rex about Kathy.

Importantly, the district court found Kathy presented sufficient evidence to reach jury questions on her claims and denied Karen's motion for directed verdict. *See* D0192, 8.13.24, Tr. 270-271. Yet Karen wants the Court to essentially find that because Kathy ultimately lost on the elements of undue influence and lack of testamentary capacity, she cannot satisfy the good faith and probable cause exception to enforcement of no contest will provisions.

Of course, this logic is extremely flawed because the exception only ever becomes an issue when the will challenger loses. In other words, the

exception *presupposes failure to succeed on the merits*. As detailed in Kathy's opening brief, the exception exists to protect—not punish—such folks where the record shows they acted reasonably in filing the challenge, with the intent to determine the truth by bringing to light adverse facts that the courts would not otherwise have access to. Importantly, the existence of probable cause is measured "at the time of instituting the proceeding." *See* Restatement (Third) of Property: Wills and Other Donative Transfers § 8.5 cmt. c (2003) (emphasis added) (as quoted in *Matter of Est. of Workman*, 898 N.W.2d 204, 2017 WL 706342 at *2 (Iowa Ct. App. Feb. 22, 2017)).

Karen asks the court to overlook all of this.

Instead of responding to the robust public policy considerations and contours of the exception that favor its application to Kathy, Karen rehashes the elements of undue influence and testamentary capacity. Karen also misses the mark with her illogical argument that the exception is a "technical rule" allegedly conditioned on ambiguity in the challenged will lest the testator's intent be ignored. Karen cites no legal authority for this proposition. Of course, clarity of will language is meaningless where the testator lacked testamentary capacity or was unduly influenced in executing it.

It borders on the absurd for Karen to argue application of the exception to Kathy is overly broad. Kathy meets its relatively narrow parameters, and allowing her to take under her father's will would not undermine his intent as a polestar. As Karen acknowledges, courts must consider "the circumstances surrounding [the testator] at the time he made his will" in determining his intent. See *In re Estate of Thompson,* 164 N.W.2d 141, 146-47 (Iowa 1969). Kathy's will challenge made this possible. If the exception did not apply to her, it would be difficult to imagine any circumstance where the exception could apply. Yet Iowa courts have done so in circumstances remarkably similar to Kathy's and refused to do so in the absence of such circumstances. *See* 10.11.24 Appellant Brief at 25-26 (highlighting similarities with *Geisinger v. Geisinger,* 41 N.W.2d 86 (Iowa 1950) and contrasting the facts of *Workman*, 2017 WL 70634234).

Karen incorrectly oversimplifies Kathy's arguments. Karen also misunderstands the evidence Kathy relies on in meeting the exception, which is the totality of the record presented at trial. Kathy nowhere attempts to "mask" a lack of evidence; by contrast her opening brief exhaustively details facts showing she acted in good faith and for probable cause.

A. Kathy Presented Sufficient Evidence on Her Claims.

Karen's arguments rehashing her win on the elements of undue influence and testamentary capacity must fail given that the district court already found Kathy presented sufficient evidence to generate jury questions. Karen's arguments are also full of contradictions. Karen readily emphasizes Rex's "growing trust" in her towards the end of his life as she managed his financial and personal affairs and goes to great lengths to justify it. This strongly contradicts her denial of any capacity or opportunity to influence Rex. Karen also implies Kathy acted in bad faith in contesting the will because Kathy knew Rex was a man of firm principles and not susceptible to influence. This is neither the legal standard nor true. Kathy has detailed myriad examples of Karen's influence over Rex, from convincing him to receive medical care to poisoning and controlling his relationship with Kathy.

Karen cites no evidence of Rex independently raising concerns about Kathy's financial management or worry that Kathy would endanger his assets. These concerns originated with Karen. The most egregious evidence is the letter Karen repeatedly gave to Rex, which she admitted at trial was not based in fact. *See* 10.11.24 Appellant Brief at 12-16 (cataloguing fact details

on this issue with citations). The fact Kathy did not learn of that an actual letter existed until after filing the lawsuit does not cut the way Karen wants it to. The letter further proves Kathy was absolutely right to be concerned.[1] It serves as additional evidence of the fact allegations Kathy made at the time of filing, which she ultimately proved at trial. Her petition contains allegations that Karen was telling Rex Kathy was stealing from him – a major theme of the later discovered letter. See D0015, 10.08.21 Petition, ¶ 18.

Karen also misstates the record regarding the surveillance cameras. Kathy only told Karen to install them *outside* the house to prove to Karen what was actually happening so that *Karen* would stop feeding Rex's paranoia. D0192, 8.13.24,Tr. 123:12-19 (Kathy telling Karen to do so because Karen kept falsely accusing Kathy of stealing things); 146:7-16 (Kathy telling Karen no one was throwing beer cans in the yard and that Karen needed to see it on camera so she would stop making Rex "more paranoid"). Kathy

[1] Ironically, Karen elsewhere calls her own letter "speculative" and emphasizes (without citing) a legal standard for undue influence that requires "more than just suspicions or ambiguous statements." *See* 12.2.25, Appellee Brief at 25. Of course, by her own admissions Karen's letter is comprised of exactly these kinds of inadequate statements. *See* 10.11.24 Appellant Brief 14-16.

never told Karen to install cameras *inside* the house. Karen admitted at trial that Kathy did not know Karen had done so. *Id.* at Tr. 202:9-17 (Karen).

Any conflicted feelings Karen expressed to Rex's attorney about receiving the lion's share of their father's estate were unknown to Kathy when she challenged the will, are irrelevant to the legal standard for the exception, and neither shield Karen from nor undermine the legitimacy of Kathy's undue influence claim. Karen falsely claims nothing in the will suggests "that it was created with the intent to exclude any family members." Yet Kenneth would have taken one-third under the former will, and the new one expressly excluded him. *See* D0005, 8.4.21, Will.

It is also a stretch for Karen to claim Kathy should have known Rex had the mental capacity to execute the new will because Rex signed a document in May 2021 agreeing for Kathy to retrieve certain of her own possessions, including a table Kathy received from her grandmother. First of all, a will is vastly more complex than a permission slip. Furthermore, Karen cites no evidence challenging Kathy's ownership of these items and attendant right to possess them. Finally, Kathy only sought this signature from Rex because she worried Karen would later claim it did not belong to Kathy—which Karen

ultimately did respecting Kathy's other possessions after Rex died. D0192, 8.13.24,Tr. 170:16-171:17.

B. Kathy Contested the Will in Good Faith and for Probable Cause.

Kathy's undue influence claim goes well beyond Rex's health issues—which illustrate his susceptibility and dependence on Karen—to capture the scope of Karen's concerted actions to cut Kathy out of their father's life and malign his view of Kathy, all while Karen managed Rex's life and served as his caretaker in a position of trust. Kathy also had probable cause to believe at the time of filing the will challenge that Rex lacked testamentary capacity. The factual basis for all of this is detailed in Kathy's opening brief.

In a truly bizarre twist, Karen accuses Kathy of ignoring or failing to follow her own attorney's supposed advice to avoid filing these "meritless" claims. This is unsupported on both points. First, there is no evidence in the record whatsoever that undersigned counsel for Kathy ever advised Kathy not to file. In fact, the opposite. *See* DO180, 4.19.24, Fnl Report Obj.[2] at p. 4 ¶ 14 (statement of undersigned counsel that "while the case did not turn out

[2] Kathy's opening brief inadvertently contains the wrong docket number and date for Kathy's objection to the final report. It is correct here.

as desired, he would not hesitate to take an identical case to a jury again"). Second, Karen has zero basis to call Kathy's claims meritless or accuse her of failing to offer sufficient evidence. Karen never filed a motion to dismiss or a motion for summary judgment, Karen's abuse of process claim was denied, and so was Karen's motion for directed verdict. *See* D0192, 8.13.24, Tr. 270-271. Karen does not otherwise respond to Kathy's arguments in her opening brief about why it is problematic to *require* advice of counsel and lengthy jury deliberation as rigid elements of proof for the exception.

Karen claims the *Workman* case "offers a strong analogy" yet fails to identify a single point of factual comparison aside from the testator Margaret having also signed multiple wills in that case, the last of which contained an *in terrorem* clause that the court enforced. This has no persuasive value. These circumstances are necessarily present in virtually every case where the good faith and probable exception is at issue. By contrast, Kathy outlined in great detail the differences between her case and *Workman*. *See* 10.11.24 Appellant Brief at 26-27. Karen's remaining discussion of "questions" supposedly suggested by the *Workman* court is speculative, oversimplifies Kathy's arguments, and misstates the record as discussed elsewhere herein. It is also untethered to the legal standard for the exception—detailed

exhaustively in Kathy's opening brief—which includes the requirement of measuring probable cause at the time of filing.

C. Guidance and Clarification from the Court Is Needed to Build on Precedent, Not Overturn It.

Karen appears to misunderstand why Kathy encourages this Court to revisit and clarify the contours of the good faith and probable cause exception. Kathy nowhere asks the Court to overturn precedent or upend the doctrine of *stare decisis*. During the nearly 75 years that have passed since the Iowa Supreme Court's *Geisinger* ruling, other jurisdictions have examined this exception in greater detail, and scholars have catalogued myriad relevant inquiries. These dovetail with the *Geisinger* analysis and courts routinely consider them in concert with the robust public policy behind this exception. All of this supports a totality of circumstances approach.

None of this is inconsistent with the *Geisinger*[3] ruling, which did not identify a strict litmus test of elements. Kathy's case is remarkably similar to the facts of *Geisinger*. The exception should apply to her based on the precedent it set. Yet the court of appeals appears to imply a much more rigid

[3] Kathy never argued the *Geisinger* ruling was inadequate, and it is unclear why Karen claims otherwise.

test in its *Workman* ruling, which the district court found Kathy did not satisfy. As detailed in Kathy's opening brief, this was error—not only because Kathy in fact satisfies the more rigid *Workman* test, but also because the *Workman* test is problematic. Clarification from the Iowa Supreme Court is needed. If the good faith and probable cause exception does not apply to Kathy, it is extremely unlikely to protect any will challengers in the future.

CONCLUSION

The judgment below that overruled Kathy Felten's objection to the Final Report and enforced the "no contest" provision of the Last Will and Testament of Rex L. Felton, deceased, should be reversed and remanded for entry of an order allowing Kathy to take under Rex Felten's Last Will and Testament and granting any other such relief that the Court finds just and equitable. Costs of appeal should be taxed to the Estate of Rex Felten.

REQUEST FOR ORAL ARGUMENT

Plaintiff/Appellant Kathy Felten maintains the need for oral argument and respectfully requests to be heard orally upon the submission of this appeal.

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CERTIFICATE OF FILING

The undersigned hereby certifies that I, or someone acting on my behalf, filed the foregoing Plaintiff/Appellant's Brief via the Iowa Judicial Branch EDMS system on December 15, 2024.

/s/ Benjamin Arato
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 15th day of December, 2024, a copy of the foregoing Plaintiff/Appellant's Brief was served via the Iowa Judicial Branch EDMS system to the attorneys listed below:

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CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that:

1. This reply brief complies with the type-volume limitation of Iowa R. App. 6.903(1)(g)(1) because this brief contains 2,518 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.9903(1)(g)(1).

2. This reply brief 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 brief has been prepared in a proportionally space typeface using Georgia 14-point.

Dated: December 16, 2024

/s/ Benjamin Arato
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