

Estate of Gaaskjolen

Marlin and Dora Lee Gaaskjolen were ranchers in Meadow, South Dakota, owning some 3000 acres of ranch and farm land. They had two daughters, Audrey and Vicki. In 1990, Marlin and Dora Lee executed wills, each leaving their entire estate to the other spouse. If the other did not survive, the estate was to be divided equally between Audrey and Vicki. Marlin and Dora Lee made every effort to treat their daughters equally and fairly.

Audrey was a registered nurse who moved into her parents' home in 1999 to care for her parents. Vicki lived about 30 miles away from the family ranch. After Marlin died in 2003, Audrey continued to live at the ranch and provided care for Dora Lee. Dora Lee had multiple health issues including a hip surgery, ulcers, skin cancer, and a mitral valve prolapse. Additionally, in 2007, she suffered a brain injury after she was kicked by a Longhorn heifer. The brain injury forced Dora Lee to spend several weeks in the hospital and go through several weeks of physical therapy. She did not fully recover from the injury and suffered from facial aphasia, which made it difficult for her to speak in more than one or two-word responses.

In exchange for providing full-time care, Audrey possessed and lived on the south half of the property rent free and received a monthly paycheck. At the time, Vicki was leasing the north half of the property from Dora Lee. Vicki subleased the north half for more money than her own rent obligation and deposited the excess funds into a special account for Dora Lee's future needs.

In early 2012, Audrey expressed to Vicki her desire to take over the north half of the ranch because she needed more grass for her cattle and horses. Vicki, however, planned on subleasing it to her daughter and son-in-law. In August 2012, Audrey brought up the lease issue again, claiming that Dora Lee wanted to lease the north half to Audrey. Later that month when Vicki's husband visited Dora Lee, Dora Lee told him she wanted Audrey to be on the property.

After this encounter, Audrey prepared a letter, purportedly signed by Dora Lee, which terminated the lease agreement between Dora Lee and Vicki. Vicki decided legal action would be necessary for Dora Lee's personal welfare and to protect her estate. Vicki filed an emergency petition for appointment of temporary conservator, which was signed by a judge, appointing Decotah Bank as temporary conservator.

Audrey hired attorney John Nooney to represent Dora Lee. All communications between Nooney, his associates, and Dora Lee went through Audrey because Dora Lee could only speak in two or three words to answer leading questions and could not talk on the phone. According to Audrey, Dora Lee was upset about the conservatorship, the lease dispute with Vicki, and the fact that Vicki did not visit her after the conservatorship was in place. However, Audrey's emails made it clear that Vicki was not welcome at the ranch after the conservatorship was filed.

Audrey later contacted attorney James Elsing to draft a new will for Dora Lee. The new will left Dora Lee's entire estate to Audrey and specifically disinherited Vicki, her children and grandchildren. After multiple meetings with Dora Lee, Elsing was satisfied Dora Lee had testamentary capacity and intent, and saw nothing to suggest the presence of undue influence. The new will was signed on December 18, 2012.

A hearing on the petition for permanent conservator was held on February 20, 2013. Dora Lee testified at the hearing, but was mostly unresponsive to questions. The court granted the petition and named Decotah Bank as permanent conservator. Attorney Nooney appealed the decision to the South Dakota Supreme Court. While on appeal, Nooney decided that a codicil would be a good way to reaffirm Dora Lee's testamentary desires.

In May 2013, attorney Shelley Lovrien, on behalf of Dacotah Bank, visited Dora Lee. Dora Lee told Lovrien she did not remember signing anything to engage an attorney and did not know who her attorney was. She also stated that there were changes made to her will but she did not know what they were. She also expressed that she thought her children and grandchildren were the beneficiaries of her will.

The conservatorship appointment was affirmed in February 2014. Later in 2014, Elsing met with Dora Lee regarding the codicil Nooney suggested. On October 24, 2014, Dora Lee signed a codicil that reaffirmed her December 2012 will.

Dora Lee died at the age of 90 on March 29, 2016.

The circuit court concluded that Dora Lee had the testamentary capacity to make a will. However, the court also found that a confidential relationship existed between Dora Lee and Audrey, which created a presumption of undue influence. The presumption of undue influence shifts the burden to the beneficiary to show she took no unfair advantage of the decedent. Because Audrey failed to rebut the presumption of undue influence, the court held that the December 18, 2012 will and the October 24, 2014 codicil were invalid.

Audrey appeals the circuit court's decision that both instruments were the product of Audrey's undue influence.

Mr. John Stanton Dorsey, Attorney for Appellant Audrey Lorius.

Mr. Michael M. Hickey and Ms. Kelsey B. Parker, Attorneys for Appellee Vicki Penfield.

Mr. Greg L. Peterson, Attorney for Personal Representative Decotah Bank.