

TUESDAY, MAY 25, 2010
9:00 A.M.

NO. 1

#25412

LLOYD STOCKWELL,
Plaintiff and Appellee,

vs.

CECIL STOCKWELL, JR., BRUCE
STOCKWELL, JOHN L. STOCKWELL and
ESTATE OF CECIL STOCKWELL, SR.,
Defendants and Appellants.

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(FOR APPELLEE)

The Honorable Timothy W. Bjorkman
First Judicial Circuit
McCook County

(CIV 05-5)

20-20-10

STATEMENT OF THE ISSUES

- I. Did the trial court err in concluding that the deeds in controversy in this case were delivered on September 27, 2001, despite substantial evidence from Lloyd, his agents, and the trial exhibits indicating the deeds were not delivered until July of 2004?**

The trial court ruled that the deeds were delivered September 27, 2001, despite substantial evidence to the contrary, and despite unequivocal testimony that all conditions attached to the supposed delivery were not lifted until July of 2004.

Relevant Cases:

Western States Land & Cattle Co., Inc. v. Lexington Ins. Co., 459 NW2d 429-434 (SD 1990)

Nelson v. Nelson, 293 NW2d 463, 466 (SD 1980).

- II. Did the trial court err in concluding as a matter of law that Cecil Sr. had sufficient capacity?**

As a derivative of the trial court's ruling on delivery, the court concluded that Cecil Sr. had sufficient testamentary capacity in both September of 2001 and July of 2004, even though he clearly did not know the true nature and extent of his bounty, without prompting.

Relevant Cases:

In Re Estate of Schnell, 683 NW2d 415, 419 SD 2004.

- III. Did the trial court err in concluding that Lloyd did not unduly influence Cecil, Sr.?**

The trial court held that Lloyd was in a position to exercise undue influence, but concluded that Lloyd did not take unfair advantage of his position of trust and confidence despite the fact that Lloyd repeatedly used his father's assets for his own benefit and expressed a motivation to completely disinherit his brothers.

Relevant Cases:

See Matter of Hamm's Estate, 262 NW2d 201, 204-205 (SD 1978).

- IV. Did the trial court error in refusing to admit Appellant's exhibit 81, or any testimony about the statements against interest contained in this exhibit, on the basis of settlement discussions?**

Even though this case is essentially an estate dispute that involves claims of undue influence, the trial court erred by refusing to admit exhibit 81, or any testimony about the exhibit on the basis that it contained settlement negotiations as opposed to admissible statements of testamentary intent.

Relevant Cases:

In re Blake Estate, 136 NW2d 242, 246 (SD 1965)