

TUESDAY, JANUARY 12, 2009
10:00 A.M.

NO. 2

#25241, #25249

IN THE MATTER OF THE ESTATE OF
ROSIENA M. STEWART, DECEASED.

Mr. Terry J. Sutton
Sutton Law Offices, P.C.
PO Box 1053
Watertown SD 57201-1053
Ph 882-3220

(FOR APPELLANTS PETER STEWART
& PATRICIA MITCHELL, #25241)

Mr. Gregory P. Grajczyk
Boos and Grajczyk
Attorneys at Law
PO Box 68
Milbank SD 57252
Ph 432-6801

(FOR APPELLANTS DAVID STEWART,
EDWARD STEWART, JR., DEBBIE
SNYDER & REBECCA PETERSON,
#25249)

Mr. David R. Strait
Austin Hinderaker Hopper
Strait & Benson
Attorneys at Law
PO Box 966
Watertown SD 57201-0966
Ph 886-5823

(FOR APPELLEE ESTATE AND ALLAN
STEWART, JR.)

The Honorable Jon S. Flemmer
Fifth Judicial Circuit
Roberts County

(PRO 07-0029)

STATEMENT OF LEGAL ISSUES

Issue 1: Whether the Trial Court abused its discretion in finding that ROSIENA had the testamentary capacity to validly execute the Will dated December 8, 2001, and admitted to probate by Order of the Court dated March 27, 2009.

Most Relevant Cases:

In Re: The Estate of Dokken, 2000 SD 9, 604 N.W. 2d, 487.

The Matter of the Estate of Linnell, 381 N.W. 2d, 881 (SD 1986).

In the Matter of the Estate of Pringle, 2008 SD 38, 751 N.W. 2d, 277.

Most Relevant Statutes:

S.D.C.L. §29A-2-501

Issue 2: Whether the Trial Court's finding that ROSIENA'S Will dated December 8, 2001, admitted to probate by the Court was not obtained as a result of undue influence is clearly erroneous.

Most Relevant Cases:

Estate of Schnell, 2004 SD 80, 683 N.W. 2d, 415.

Estate of Holan, 2001 SD 6, 621 N.W. 2d, 588.

Estate of Dokken, 2000 SD 9, 604 N.W. 2d, 487.

Most Relevant Statutes:

S.D.C.L. §29A-3-407

II. STATEMENT OF ISSUES

Issue 1: Undue Influence.

Did the trial court err in finding that decedent was not unduly influenced at the time she executed the codicil to her will.

The circuit court found that decedent was not unduly influenced.

Matter of Estate of Unke, 583 N.W.2d 145, 1998 SD 94

Estate of Elliot, 537 N.W.2d 660, 663 (S.D. 1995)

In re Guardianship and Conservatorship of Lanning, 1997 SD 81, 565 N.W.2d 794)

Issue 2: Failure to Apply Presumption.

Did the trial court err in failing to apply a presumption of undue influence under the circumstances in this case?

The circuit court did not apply the presumption, finding no confidential relationship existed.

Estate of Duebendorfer, 721 N.W.2d 438, 2006 SD 79 (2006)

Estate of Smith, 520 N.W. 2d 80 (S.D. 1994)

In re Estate of Madsen, 535 N.W.2d 888 (S.D.1995)

Issue 3: Premature Ruling.

Did the trial court err reaching a premature determination of the critical issues in this case by deciding capacity before Appellant had an opportunity to call their first witness?

Caperton v. Massey Coal Co., Inc., ---U.S. ----, ----, No. 08-22, --- U.S. ----, at ----, 129 S.Ct. 2252, 173 L.Ed.2d 1208, 2009 WL 1576573, (June 8, 2009).

State v. Krana 272 N.W.2d 75 (S.D. 1978)

In re Murchinson, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942 (1955)

Keely v. Moore, 196 U.S. 38, 25 S.Ct. 169, 49 L.Ed. 376 (1904)

Issue 4: Lack of Testamentary Capacity.

Did the trial court err in finding that decedent had testamentary capacity at the time she executed the codicil to her will.

The circuit court found that decedent had sufficient capacity to execute the codicil.

Matter of Estate of Long, 1998 SD 15, 575 N.W.2d 254)

Estate of Dokken, 604 N.W.2d 487, 2000 SD 9

In re Estate of Nelson, 330 N.W.2d 151 (S.D.1983)