

SUPREME COURT OF NORTH DAKOTA

Supreme Court No. 20170392
 Walsh County District Court Case No. 50-2016-CV-68

Rodney G. Risky, individual and as)
Co-trustee of the Annette Risky Family)
Irrevocable Trust dated April 12, 2004,)
)
Plaintiff and Appellee,)
)
vs.)
)
Jeffrey T. Risky, in his capacity as)
Co-trustee of the Annette Risky Family)
Irrevocable Trust dated April 12, 2004)
)
Defendant and Appellant.)

APPEAL OF JUDGMENT AND ORDER GRANTING SUMMARY JUDGMENT TO
 PLAINTIFF/APPELLEE
 AND
 APPEAL OF JUDGMENT AND ORDER GRANTING SUMMARY JUDGMENT TO
 DEFENDANT/APPELLEE ENTERED OCTOBER 3, 2017, IN THE DISTRICT COURT,
 NORTHEAST JUDICIAL DISTRICT, WALSH COUNTY,
 BY THE HONORABLE LONNIE W. OLSON, PRESIDING

BRIEF OF APPELLANT

THEODORE T. SANDBERG

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SUPREME COURT OF NORTH DAKOTA

Supreme Court No. 20170393
Walsh County District Court Case No. 50-2016-CV-72

Joseph Risky; Robert E. Risky; Randy G.)
Risky; John G. Risky; and Jeff T. Risky,)
Individually and as Co-trustee of the)
Annette Risky Family Irrevocable Trust;)
)
Plaintiffs and Appellants,)
)
vs.)
)
Rodney Risky as Co-trustee of the)
Annette Risky Family Irrevocable Trust;)
And the Annette Risky Family Irrevocable)
Trust,)
Defendant and Appellee.)

APPEAL OF JUDGMENT AND ORDER GRANTING SUMMARY JUDGMENT TO
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TABLE OF CONTENTS

	<u>Paragraph</u>
Table of Authorities	i
Statement of the Issues.....	iii
Statement of the Case.....	1
Statement of the Facts	3
Law and Argument	14
I. The District Court erred when it determined there was no genuine issue of material fact and granted Rodney Riskey's motion for summary judgment.....	14
A. The District Court erred when it determined that Rodney Riskey did not have a disposition to exercise undue influence.....	16
B. The District Court erred when it determined that the Trust provision did not appear to be the effect of undue influence	27
Conclusion	30

Table of Authorities

<u>Cases</u>	<u>Paragraph</u>
<u>Albers v. Nodak Racing Club, Inc.</u> , 256 N.W. 2d 355, 359 (N.D. 1977).....	15
<u>American State Bank v. Sorenson</u> , 539, N.W. 2d (N.D. 1995)	14
<u>Brown v. North Dakota State Univ.</u> , 372 N.W. 2d 879, 883 (N.D. 1985).....	15
<u>Campbell Farms v. Wald</u> , 1998 ND 85, ¶ 11, 578 N.W. 2d 96.	15
<u>Cullen v. Spremo</u> , 142 Cal. App. 2d 225, 298 P.2d 579 (1956)	20, 21
<u>Ernst v. Acuity</u> , 2005 ND 179, ¶ 7, 704 N.W.2d 869	14
<u>Estate of Dion</u> , 2001 ND 53, ¶ 34, 623, N.W.2d 720	17
<u>Estate of Dionne</u> , 2009 ND 172, ¶ 8, 772 N.W.2d 891	14
<u>Estate of Mickelson</u> , 477 N.W.2d 247, 250 (N.D. 1991)	17
<u>Estate v. Howser</u> , 2002 ND 33, ¶ 9, 639 N.W.2d 485	16
<u>Farmers Union Oil Co. of Garrison v. Smetana</u> , 2009 ND 74, ¶ 10, 764 N.W.2d 665	15
<u>Greenfield v. Thill</u> , 521 N.W.2d 87, 92 (N.D. 1994).....	15
<u>Gullickson v. Torkelson Brothers Inc.</u> , 1999 ND 155, ¶ 6, 598 N.W.2d 503.....	15, 23
<u>Heng v. Rotech Med. Corp.</u> , 2004 ND 204, ¶ 34, 688 N.W.2d 389	15
<u>In re Estate of Rugani</u> , 108 Cal. App.2d 624, 239 P.2d 500, 505 (1952)	20
<u>In re Estate of Stave</u> , 2007 ND 53, ¶ 13, 729 N.W.2d 706.....	16, 17, 18, 19
<u>In re Estate of Zins by Kelsch</u> , 420 N.W.2d at 731	20
<u>Lire, Inc. v. Bob’s Pizza Inn Rest., Inc.</u> , 541 N.W.2d 432, 433 (N.D. 1995).....	14
<u>Matter of Estate of Dinnetz</u> , 532 N.W.2d 672, 674 (N.D. 1995).....	20
<u>Matter of Estate of Herr</u> , 460 N.W.2d 699, 702 (N.D. 1990)	17
<u>Okken v. Okken Estate</u> , 348 N.W.2d 447, 450 (N.D. 1984)	17

<u>Pear v. Grand Forks Motel Assocs.</u> , 553 N.W.2d 774, 778 (N.D. 1996)	14
<u>Perry v. Reinke</u> , 1997 ND 213, ¶ 13, 570 N.W.2d 224	17
<u>Red River Human Servs. Found. V. State</u> , 477 N.W.2d 225, 229 (N.D. 1991)	15
<u>Rued Ins. v. Blackburn, Nickels & Smith</u> , 543 N.W.2d 770, 773 (N.D. 1996).....	14
<u>Skjervem v. Minot State University</u> , 2003 ND 52, ¶ 4, 658 N.W.2d 750	15
<u>Wachter Dev., L.L.C. v. Gomke</u> , 544 N.W.2d 127, 131 (N.D. 1996).....	15
<u>Wilson v. Farmers Ins. Group</u> , 2003 N.D. 8, ¶ 3, 655 N.W.2d 414	14

Statutes

Paragraph

N.D.C.C. § 59-12-06.....	16
N.D.R.Civ.P. 56	14

STATEMENT OF ISSUES

- I. Whether Walsh County District Court properly granted Rodney Risky's Motion for Summary Judgment and determined errored in determining there was no genuine issue of material fact?
 - A. Whether Walsh County District Court erred in determining that Rodney did not have a disposition to exercise undue influence over Annette?
 - B. Whether Walsh County District Court erred in determining that the purchase option did not appear to be the result of undue influence exerted by Rodney over Annette?

STATEMENT OF THE CASE

¶1 On February 25, 2016, Plaintiff/Appellee Rodney Risky (hereinafter “Rodney”) filed suit against Defendant/Appellant Jeffrey Risky (hereinafter “Jeffrey”) for an order to compel Jeffrey, as Co-trustee of the Annette Risky Family Irrevocable Trust, to sign a purchase option in accordance with a trust provision allowing Rodney to purchase land, bin site and homestead for \$65,000. Jeffrey and his brothers, John G. Risky, Joseph Risky (deceased and represented by family as party), Randy Risky, and Robert E. Risky (deceased and represented by family as a party), answered on March 2, 2016. Jeffrey and his brothers filed a separate action on March 2, 2016, seeking trust reformation based on undue influence.

¶2 On June 6, 2016, an order was entered that joined the two cases after stipulation by the parties. On August 3, 2017, Rodney filed a motion for summary judgment. Jeffrey and his brothers opposed the motion and filed a response to the summary judgment motion on September 6, 2017. A hearing on the Rodney’s Motion for Summary Judgment was held on September 7, 2017. On September 13, 2017, the District Court entered its Memoranda Decision and Order Granting Summary Judgment. Based upon that Memoranda Decision and Order Granting Summary Judgment, a Judgment was entered on October 3, 2017. Jeffrey and his brothers timely filed their Notice of Appeal on November 13, 2017.

STATEMENT OF THE FACTS

¶3 Jeffrey Risky, Rodney Risky, Joseph Risky (deceased), Robert Risky (deceased), Randy Risky and John Risky, are the sons of Gilbert Risky and Annette Risky. (App. 35). Gilbert and Annette lived and farmed in Warsaw, North Dakota. (App. 25). Their son Rodney Risky farmed on the family farm with Gilbert. Gilbert Risky died in December 2003. (App. 45). Gilbert left the farmland and farmstead to Annette. Rodney continued to the farm the land and rented the farmland from Annette. Shortly after Gilbert's death, Rodney scheduled an appointment with Attorney David Peterson (hereinafter "Peterson"), to help Annette with her estate planning, and questions about the farmland if she were to be admitted to a nursing home. (App. 13). At that time, Annette was a farm wife, but she had little to no knowledge of farming, finances, business and appropriate prices for farmland. (App. 50). Rodney being a farmer knew all about farming, finances, business, and prices of farmland. Id. Annette was still vulnerable, grieving, and unknowledgeable about farming matters. Id.

¶4 The appointment with Peterson led to the creation of the Annette Risky Family Irrevocable Trust (the "Trust"). (App. 13). Included in the Trust was a purchase option which allowed Rodney to purchase, approximately 320 acres, a house, yard, barn, bin site and other structures, for the low price of \$65,000. (App. 45). The present value of the property is at or above \$1 million. Id. Rodney arranged the legal appointment for Annette and brought her to the appointment. The only family members that were present at the appointment were Annette and Rodney. (App. 77). None of the other Risky boys were even aware of the appointment.

¶5 Rodney and Jeffrey were named co-trustees of the Trust. (App. 12). Rodney lived close by to Annette, just a mere couple of miles down the road. (App. 15). Conversely, Jeffrey lived the farthest away from Annette and all the other sons, in Chaska, Minnesota. Id. Randy resides in Grand Forks, North Dakota and John resides in Minto, North Dakota. Id. Rodney, as co-trustee, signed the Trust documents on the same day Annette executed the Trust document. (App. 14). Jeffrey was completely unaware of the appointment with Peterson, until Jeffrey was sent only the signature pages of the Trust document from Peterson. Id. Peterson's cover letter to Jeffrey explained the Trust was for the purpose of protecting the farmland and the farmstead if Annette was admitted to a nursing home and stated if Jeffrey had questions he could call. Id. Peterson failed to mention Rodney's purchase option. (App. 48). Jeffrey trusted his brother (whom he called to discuss the matter) and did not inquire beyond the stated purpose of the trust made known to him by Peterson. Jeffrey signed the signature pages and accepted the co-trustee role. (App. 14).

¶6 According to Rodney's testimony, he only learned of the option to purchase the farmland and the farmstead, a year after the execution of the Trust. (App. 26). However, it is known that he had access to a copy of the full the Trust document at the initial appointment. (App. 47). Jeffrey was unaware of the option to purchase the land for the severely low price and did not learn of the purchase option until 2015, when he contacted Peterson. (App. 46).

¶7 In 2015, Annette was in poor health. The family knew Annette was nearing the end of her life. Lesli, Randy's wife, started to take care of Annette in the summer of 2015. (App. 63). One day in the fall of 2015, Annette wanted give some of her personal items away and mark the items with her son's names. Lesli started to assist Annette with the

process. Id. While Annette and Lesli divided up Annette's items, Rodney came into Annette's house and saw what was taking place. Id. Rodney left and shortly after his wife, Lorraine, arrived and insisted that Annette and Lesli should not be dividing up Annette's property. Lorraine insisted it was the responsibility of the boys, not Annette, to divide Annette's property. Lesli was very upset. (App. 63 & 64).

¶8 The next day the family got together to celebrate John's wife's birthday. Annette was there to celebrate. (App. 64). Annette mentioned the events of the previous day and that she seemed very troubled. She stated, "Maybe I need to talk to a lawyer." The family told Annette she didn't need her attorney to divide her property. Id. Annette, very troubled, responded, "I don't know what's in the will. I want to go there and find out what's in the will." Id. It was clear that she did not understand her Will and her Irrevocable Trust. The family took down some notes of questions she had for her attorney. Id. One question concerned the contents of the Will and another question was Annette's concerns that Rodney had too much power. Id. Annette never was able to go and ask her attorney these questions before she died. Id.

¶9 In October 2015, before Annette died, John, Rodney, and Jeff (over the phone) met to discuss what would happen to the farmstead and farmland once Annette passed away. (App. 69). Rodney lied to the brothers and told them he did not know the contents of the Annette's estate plan. Rodney clearly knew of the purchase option provision. (App. 45). Rodney only indicated at this meeting that he wanted to continue farming the land. (App. 69). About two weeks before Annette passed, Jeff learned of the Trust purchase option and told his other brothers. (App. 62).

¶10 A week before Annette passed away, Randy asked Annette if she thought that it was right that Rodney would get the farmstead and farmland for \$65,000. (App. 69). Annette responded, “That isn’t very much.” She became very upset at the issue, so Randy did not press because his mother was so sick and upset. Id.

¶11 Towards the end of Annette’s life, Rodney acted suspicious. The other brothers rarely had uninterrupted time with Annette because Rodney would interrupt, come into the house and ask what was going on. (App. 71). Annette always looked to Rodney for approval. (App. 72). It was clear he had significant influence over her.

¶12 Rodney never told the other brothers about the Irrevocable Trust purchase option provision. Whenever the Trust was brought up, Rodney only implied the Trust was to protect the farmland from the nursing home. The brothers did not know Peterson to be Annette’s attorney. (App. 71). Peterson was Rodney’s attorney. Id.

¶13 Annette died in November 2015. (App. 45). The four brothers met with Peterson after Annette’s death. At this meeting, they reviewed the contents of the Trust and the brothers asked Rodney to “make it right.” Rodney said he would look into paying a higher price for the farmstead and farmland. (App. 62, 70). He also stated he would look into other ways to make the purchase option fairer. Id. Shortly after this meeting, and despite his promise to his brothers, Rodney prepared and signed an option to purchase the farmland contained in the Trust. Jeff, as co-trustee, has yet to sign the option. Rodney filed this action. The three other brothers, Jeff, Randy, and John filed a separate action of Rodney’s undue influence over their mother, Annette.

LAW AND ARGUMENT

I. The District Court erred when it determined there was no genuine issue of material fact and granted Rodney Risky's motion for summary judgment.

¶14 “Whether a district court properly grants summary judgment is a question of law that [this Court] review[s] de novo on the record. “ Ernst v. Acuity, 2005 ND 179, ¶ 7, 704 N.W.2d 869. “[Summary judgment] is a procedural device for promptly resolving a controversy on the merits without a trial if either party is entitled to judgment as a matter of law, and if no dispute exists as to either the material facts or the inferences to be drawn from undisputed facts, or if resolving disputed facts would not alter the result.” Estate of Dionne, 2009 ND 172, ¶8, 772 N.W. 2d 891 (citing Pear v. Grand Forks Motel Assocs., 553 N.W. 2d 774, 778 (N.D. 1996); Lire, Inc. v. Bob's Pizza Inn Rest., Inc., 541 N.W. 2d 432, 433 (N.D. 1995). “The party moving for summary judgment has the burden of showing no material facts are disputed.” Wilson v. Farmers Ins. Group, 2003 N.D. 8, ¶3, 655 N.W. 2d 414. Under N.D.R. Civ. P. 56, summary judgment is appropriate only if, after “[v]iewing the evidence in the light most favorable to the party opposing the motion and giving the party the benefit of all favorable inferences which can reasonably be drawn from the evidence, there is no genuine dispute as to either the material facts or the inferences to be drawn from undisputed facts, or if only a question of law is involved.” Rued Ins. V. Blackburn, Nickels & Smith, 543 N.W. 2d 770, 773 (N.D. 1996); see also, American State Bank v. Sorenson, 539 N.W. 2d (N.D. 1995).

¶15 “This Court has repeatedly held that summary judgment is inappropriate if the court must draw inferences and make findings on disputed facts to support the judgment.” Farmers Union Oil Co. of Garrison v. Smetana, 2009 ND 74, ¶10, 764 N.W. 2d 665; citing Heng v. Rotech Med. Corp., 2004 ND 204, ¶ 34, 688 N.W.2d 389.; see also Campbell

Farms v. Wald, 1998 ND 85, ¶ 11, 578 N.W.2d 96; Wachter Dev., L.L.C. v. Gomke, 544 N.W.2d 127, 131 (N.D.1996); Greenfield v. Thill, 521 N.W.2d 87, 92 (N.D.1994); Red River Human Servs. Found. v. State, 477 N.W.2d 225, 229 (N.D.1991); Brown v. North Dakota State Univ., 372 N.W.2d 879, 883 (N.D.1985); Albers v. NoDak Racing Club, Inc., 256 N.W.2d 355, 359 (N.D.1977). Issues of fact are generally determined by the factfinder. Gullickson v. Torkelson Brothers Inc., 1999 ND 155, ¶6, 598 N.W.2d 503. Issues of fact may become issues of law for the court if reasonable persons could reach only one conclusion from the facts. Id. But undisputed facts do not justify summary judgment if reasonable differences of opinion exist as to the inferences to be drawn from those facts. Skjervem v. Minot State University, 2003 ND 52, ¶4, 658 N.W.2d 750.

A. The District Court erred when it determined that Rodney Risky did not have a disposition to exercise undue influence.

¶16 “A trust is void or subject to reformation by the court to the extent its creation was induced by fraud, duress, or undue influence.” N.D.C.C. § 59-12-06. In order to prove undue influence four elements must be proven: “1) a testator subject to undue influence; 2) the existence of the opportunity to exercise undue influence; 3) a disposition to exercise undue influence; and 4) a result that appears to be the effect of undue influence.” In re Estate of Stave, 2007 ND 53, ¶13, 729 N.W.2d 706; See also Estate v. Howser, 2002 ND 33, ¶9, 639 N.W.2d 485. The District Court determined that Annette was subject to undue influence and that Rodney had the opportunity to exercise undue influence. Jeffrey, Randy and John agree with the District Court’s determination as to the first and second elements of undue influence. Jeffrey, Randy and John specifically take issue with the District Court’s finding on the third and fourth elements of undue influence. Therefore, this brief focuses on the third and fourth elements of undue influence.

¶17 “To be undue, the influence must operate at the time the will is made and must dominate and control the making of the [trust]; it must be such as to make the [trust] express the purpose and intent of the person exercising the influence and not the purpose and intent of the testator.” Estate of Mickelson, 477 N.W.2d 247, 250 (N.D. 1991), quoting, Matter of Estate of Herr, 460 N.W.2d 699, 702 (N.D.1990); see also, Okken v. Okken Estate, 348 N.W.2d 447, 450 (N.D.1984). “For the issue of undue influence to be submitted to a jury, the evidence must be sufficient with regard to each essential element of the claim and the evidence must also create more than just a mere suspicion of undue activity.” Stave, 2007 ND 53, ¶13 (quoting Estate of Dion, 2001 ND 53, ¶ 34, 623 N.W.2d 720 (citing Perry v. Reinke, 1997 ND 213, ¶ 13, 570 N.W.2d 224)).

¶18 In Stave, this Court determined that the son of the testator, who received a disproportionate amount of the estate, did not have a disposition to exercise undue influence because the daughter who was contesting the will, did not provide evidence that the son “was involved in the planning and execution of [testator’s] will,” and there was no evidence presented of the son’s “active participation...in securing the preparation of, or a change in, [the] will.” Stave, 2007 N.D 53, ¶16.

¶19 Dissimilar to Stave, Rodney was involved in the planning and execution of Annette’s Trust and estate planning documents. (App. 46). In Rodney’s Brief in Support of Motion for Summary Judgment, he states that the only proof Jeffrey, John and Randy can provide is that Rodney scheduled an appointment for Annette. (App. 21). This is simply not true. Rodney made the appointment for Annette to meet with attorney Peterson. (App. 71). Attorney Peterson was not Annette’s attorney. Id. Annette and Gilbert’s

attorney was at Hodny Currie in Grafton, North Dakota. Attorney Peterson was Rodney's attorney. Id. Rodney took Annette to the initial appointment to discuss her options for her estate plan. Id. Further, Rodney accompanied Annette to the appointment where she executed the Trust. (App. 47). He signed as co-trustee of the Trust the day the Trust was incepted. Id. Rodney actively participated in securing the preparation of the trust. (App. 46). He was involved in every step of the estate planning for Annette. Id. It is not mere speculation that Rodney was involved, and this is factual and supportable evidence that Rodney at least has the disposition to exercise undue influence over Annette. Id.

¶20 In the past, this Court has considered that when a relationship of “personal confidence” exists there is presumption of undue influence against such a trustee, if the trustee in any way obtains an advantage from the trustee's beneficiary. Matter of Estate of Dinnetz, 532 N.W.2d 672, 674 (N.D. 1995). A relationship of personal confidence exists whenever trust and confidence is reposed by one person in the integrity and fidelity of another. Id. (quoting In re Estate of Zins by Kelsch, 420 N.W.2d at 731 (quoting In re Estate of Rugani, 108 Cal.App.2d 624, 239 P.2d 500, 505 (1952))); see also Cullen v. Spremo, 142 Cal.App.2d 225, 298 P.2d 579 (1956)).

¶21 This Court has repeatedly held this presumption does not apply to will contests. Matter of Estate of Dinnetz, 532 N.W.2d at 674. The present case does not concern a will contest, but rather a trust contest. In Rodney's Brief in Support of Motion for Summary Judgment, Rodney claimed that, “The plaintiffs had just as much, if not more access to Annette.” (App. 21). Further, Rodney argued that each brother had ample time with Annette. (App. 21, 22). It is true that Randy, John and Jeffrey kept in contact with their mother, but it is indisputable that Rodney had the closest physical relationship and daily

interaction with Annette. Rodney had a relationship of “personal confidence” with Annette. It was not disputed that Annette had little to no knowledge about farming, finances, business, and the price of land. (App. 68). On the other hand, Rodney as a current and active farmer in 2004, had all this knowledge. Id. Annette had trust and confidence in Rodney, as he was her son, and she knew he was knowledgeable about such affairs. She had such confidence that she asked him to accompany her to the initial legal appointment, to accompany her to the appointment when the Trust was executed, and to name Rodney as the co-trustee of her Trust. Annette looked to Rodney for approval. (App. 65).

¶22 In its ruling, the District Court determined that the carry-over terms of Gilbert and Annette’s 2000 wills resolved the issue of undue influence, as Jeffrey, Randy and John did not allege undue influence of their parents in 2000. (App. 78). While the Trust provision was a carry-over term from Annette’s will executed in January 2000, this does not automatically mean that Annette wanted the same provision in her Irrevocable Trust executed in 2004. The District Court assumed that simply because Annette’s 2000 estate plan included a purchase option for Rodney, that she possessed the same desire and intention when she executed the 2204 Trust. This is a leap of logic and fact, unsupported, and is a clearly erroneous finding of fact.

¶23 The District Court concluded that issues of fact may become issues of law for the court if reasonable persons could reach only one conclusion from the facts. Gullickson, at ¶6. In the present case, there can be no question that a reasonable person could reach a different conclusion from the same facts. A reasonable person would draw their own inferences from the present circumstances and decide, if, when and how, Rodney had the disposition to exert to undue influence over Annette.

¶24 Moreover, motive must be explored. In 2004, Rodney's position on the farm was unstable. (App. 56). His mother was now in complete control of his fate as a farmer. Id. He had every reason to try to protect his position in the farm. He also had the most contact with his mother. In addition, Annette was grieving, vulnerable, and wanted to protect her assets from the nursing home. (App. 63). She never stated she wanted Rodney to have the farm for dirt cheap. It is not mere speculation that Rodney and Annette discussed Annette's estate plan, and the facts show Rodney was very involved with her estate plan. Rodney alleges he did not discuss her estate plan with her besides the initial appointment he made for her, but it is a natural and obvious inference, that Rodney and his mother discussed the fate of the farm and that included securing his position on the farm. (App. 25). Rodney needed to secure his operation.

¶25 Furthermore, it is quite convenient that Jeffrey, who resided farthest away of all Annette's sons, was named co-trustee, along with Rodney of the Trust. (App. 34). Why not John who lived in Minto, North Dakota, or Randy who lived in Grand Forks, North Dakota? It would have been more feasible to have one of these brothers named co-trustee of the Trust. Of course, the answer to that question is that they were "too available." They most certainly would have been more likely to inquire about the Trust and want to accompany Annette, along with Rodney, to her appointments with Attorney Peterson. It is not mere speculation, it is circumstantial evidence, as to why Jeffrey was named co-trustee and not one of the more accessible and easier to reach brothers.

¶26 Additionally, Annette directly expressed that she was influenced to execute the Trust. According to Annette, Rodney, Randy, John and Jeffrey, the purpose of the Trust was to protect the farmland and farmstead. While the Trust accomplished this goal, it also

secured Rodney's position on the farm. Annette expressed she was influenced by Rodney when she told her other children, that the Trust was not fair and that Rodney was being charged an unfair price for the farmstead and farmland. (App. 69). Annette would get very upset whenever the Trust was brought up. *Id.* She expressed to her sons that she did not understand what was in her will, which leads to another inference that can be drawn, Annette did not understand the ramifications of the purchase option. (App. 64). Annette would get upset and express her desire to talk to an attorney, because she was aware the Trust was irrevocable. It could not be changed. She may have desired to save the farmland and farmstead from a nursing home, but nothing leads to the belief that she wanted to give the farmland and farmstead over to one of her four sons at her death. The natural inference is that Rodney ensured she kept intact the purchase option from her previous will and include it in the Trust. What better way then setting up an appointment for an irrevocable trust that includes the purchase option? Rodney had the disposition to exercise undue influence. There is a genuine issue of material fact.

B. The District Court erred when it determined that the Trust provision did not appear to be the effect of undue influence.

¶27 In its ruling, the District Court determined that the Rodney's receipt of a disproportionate portion his mother's estate was not sufficient to show that the result appeared to be the effect of undue influence. (App. 78). The District Court determined that the affidavits submitted only expressed that Annette wanted the Trust to be fair, but that she did not actually ever change the Trust. *Id.* There is a simple reason why Annette never changed the Trust. She could not. The Trust was set up as an Irrevocable Trust. (App. 34). She relinquished all control over its terms when she executed the Trust in 2004. It was clear from the affidavits submitted by Randy and John, that Annette communicated to them

that she did not completely understand the Trust and she wanted to talk to an attorney to ensure that the provisions were fair. But, Annette was ill and this was impractical at her stage in life, especially since it would involve breaking an irrevocable trust. (App. 64). From all the testimony, it is clear that a reasonable person could draw the inference that Annette did not understand the purchase option provision, but later was made aware by her sons that it was not fair. As she was made aware of the unfairness by John, Randy and Jeff, she expressed great desire to change the Trust. Id. However, this was impossible. It is clear that Rodney advised, encouraged, and made sure the purchase was implemented in Annette's Trust.

¶28 The District Court also used the prior testamentary documents executed in 2000 to provide support for their determination that the purchase option did not appear to be the effect of undue influence. (App. 78). The District Court summarily determined that Annette's state of mind in 2000 was the same as it was in 2004. This rationale could be applied to Annette's expression of her desire to know what was in her will and to make it fair could be applied. The fact that Annette's prior testamentary documents held the purchase option does not automatically make that her intention and state of mind in 2004 when the Trust was executed. Further, Rodney never brought up the testamentary documents in his Brief in Support of Motion for Summary Judgment or in his Affidavit in Support of Motion for Summary Judgment. (App. 11-23). Jeffrey, Randy, and John were never given the opportunity to address this argument or provide evidence to refute that her intentions stayed the same from 2000 to 2004.

¶29 Further, the purchase option most certainly favored Rodney over the other brothers. Although he was farming the land, the family had an understanding that Rodney would

continue to farm the land and eventually own the land, but pay a fair price for the farmland. (App. 69). It never seemed to be Annette's intention to effectively disinherit the rest of her children which was the result of the purchase option. It was Rodney's influence that ensured Annette would reinstate the purchase option into an unchangeable document and solidified his position and future on the farm. No facts support that Annette wanted her sons to be treated unequally and unfairly. Conversely, there are facts that support that Annette wanted her sons to be treated equally and that Annette did not understand the purchase option. (App. 64 & 69). Annette even mentioned to her children that Rodney had too much power. In the end, there is evidence to support that the purchase option appeared to be the result of undue influence. Also, the other brothers were not given proper opportunity to refute evidence concerning the carry-over provision from the 2000 testamentary documents. The Risky brothers should be afforded this chance to conduct discovery, gather evidence, and argue their facts. The purchase option was most certainly a result of undue influence exerted by Rodney over Annette. There is a genuine issue of material fact.

CONCLUSION

¶30 Based upon the foregoing law and argument, Joseph Risky, Robert Risky, John Risky, Jeffrey Risky and Randy Risky respectfully request that this Court find that the Walsh County District Court erred by determining Rodney Risky did not have disposition to exert undue influence over Annette and that the purchase option did not appear to be the result of undue influence, and the Walsh County District Court improperly granted Rodney Risky's Motion for Summary Judgment.

Dated this 27th day of February, 2018.

/s/ Theodore T. Sandberg

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Attorneys for Appellants

SUPREME COURT OF NORTH DAKOTA

Rodney G. Risky, individual and as
Co-trustee of the Annette Risky Family
Irrevocable Trust dated April 12, 2004,

Appellant,

-vs-

Jeffrey T. Risky, in his capacity as
Co-trustee of the Annette Risky Family
Irrevocable Trust dated April 12, 2004

Appelle

Civil No. 50-2016-CV-68

AFFIDAVIT OF SERVICE

Joseph Risky, Robert E. Risky, Randy
G. Risky, John G. Risky, and Jeff T.
Risky, individually and as co-trustee of the
Annette Risky Family Irrevocable Trust,

Appelle,

-vs-

Rodney Risky, as co-trustee of the Annette
Risky Family Irrevocable Trust, and the
Annette Risky Family Irrevocable Trust,

Appellant

Civil No. 50-2016-CV-72

AFFIDAVIT OF SERVICE

STATE OF NORTH DAKOTA)
 : SS.
COUNTY OF GRAND FORKS)

Cynthia S. Rath, being first duly sworn on oath, deposes and says: that she is of legal age, a citizen of the United States, and is not a party to, nor has she an interest in the above-entitled action; that on the 27th day of February, 2018, she served true copies of the following documents:

- **BRIEF OF APPELLANTS**
- **APPENDIX**

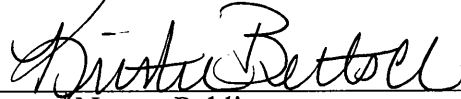
electronically through email to:

Lawrence DuBois
fdflaw@polarcomm.com



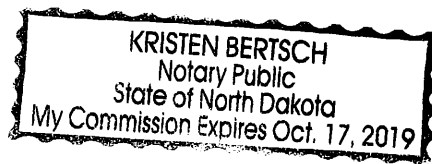
Cynthia S. Rath

Subscribed and sworn to before me this 27th day of February, 2018



Notary Public

My Commission Expires:



SUPREME COURT OF NORTH DAKOTA

Rodney G. Risky, individual and as
Co-trustee of the Annette Risky Family
Irrevocable Trust dated April 12, 2004,

Plaintiff and Appellee,

-vs-

Jeffrey T. Risky, in his capacity as
Co-trustee of the Annette Risky Family
Irrevocable Trust dated April 12, 2004

Defendant and Appellant

Civil No. 50-2016-CV-68
Supreme Court No. 20170392
AFFIDAVIT OF SERVICE

Joseph Risky, Robert E. Risky, Randy
G. Risky, John G. Risky, and Jeff T.
Risky, individually and as co-trustee of the
Annette Risky Family Irrevocable Trust,

Plaintiffs and Appellants,

-vs-

Rodney Risky, as co-trustee of the Annette
Risky Family Irrevocable Trust, and the
Annette Risky Family Irrevocable Trust,

Defendant and Appellee

Civil No. 50-2016-CV-72
Supreme Court No. 20170393

AFFIDAVIT OF SERVICE

STATE OF NORTH DAKOTA)
 : SS.
COUNTY OF GRAND FORKS)

Cynthia S. Rath, being first duly sworn on oath, deposes and says: that she is of legal age, a citizen of the United States, and is not a party to, nor has she an interest in the above-entitled action; that on the 5th day of March, 2018, she served true copies of the following documents:

- **APPENDIX pages 89 and 90**
- **APPENDIX Cover Page**
- **APPENDIX Table of Contents**
- **BRIEF Cover Pages**

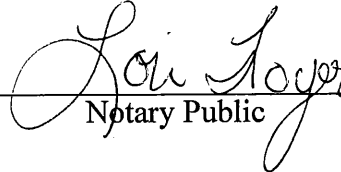
electronically through email to:

Lawrence DuBois
fdflaw@polarcomm.com



Cynthia S. Rath

Subscribed and sworn to before me this 5th day of March, 2018



Notary Public

My Commission Expires:

