

IN THE IOWA DISTRICT COURT FOR WRIGHT COUNTY

IN RE: ESTATE OF LOIS LEONA
SCHLICHTING,

WAYNE SCHLICHTING and MERLIN
SCHLICHTING,

Plaintiffs,

vs.

MELVIN SCHLICHTING, Individually
and as Executor,

Defendant-Proponent,

and

BILLY GRAHAM EVANGELISTIC
ASSOCIATION and TURNING POINT
FOR GOD,

Additional Defendants.

CASE NO. ESPR016586

**DEFENDANTS' PROPOSED JURY
INSTRUCTIONS**

COME NOW Defendant-Proponent Melvin Schlichting and Defendants Billy Graham Evangelistic Association and Turning Point for God, pursuant to the Court's Trial Scheduling Order, and hereby request the Court instruct the jury in this matter in accordance with the following Proposed Jury Instructions and Verdict Form. Defendants reserve the right to supplement these proposed instructions.

No. ____ - Statement Of The Case (ICJI 100.1)

No. ____ - Duties Of Judge And Jury, Instructions As Whole (ICJI 100.2)

No. ____ - Burden Of Proof, Preponderance Of Evidence (ICJI 100.3)

No. ____ - Evidence (ICJI 100.4)

No. ____ - Deposition Testimony (ICJI 100.5)

No. ____ - Interrogatories (ICJI 100.6)

No. ____ - Credibility Of Witnesses (ICJI 100.9)

- No. ____ - Contradictory Statements, Non-Party, Witness Not Under Oath (ICJI 100.13)
- No. ____ - Contradictory Statements, Non-Party, Witness Under Oath (ICJI 100.14)
- No. ____ - Statements By A Party Opponent (ICJI 100.15)
- No. ____ - General Instruction To Jury (ICJI 100.18)
- No. ____ - Cautionary Instruction - Juror's Notes (ICJI 100.21)
- No. ____ - Use of Electronic Devices (ICJI 100.23)
- No. ____ - Elements - Will Contest (ICJI 2700.1)
- No. ____ - Right to Make a Will
- No. ____ - Right to Change a Will
- No. ____ - Codicil- Definition
- No. ____ - Testamentary Capacity (ICJI 2700.2)
- No. ____ - Unsoundness Of Mind Before Or After Execution (ICJI 2700.3)
- No. ____ - Undue Influence - Essentials for Recovery (Wills) (ICJI 2700.4)
- No. ____ - Reaffirmation of Will by Codicil
- No. ____ - Undue Influence - Essentials for Recovery (Codicils) (ICJI 2700.4)
- No. ____ - Definition of Undue Influence - Person Charged With Undue Influence Need Not Be Present (ICJI 2700.5)
- No. ____ - Circumstances to Be Considered (ICJI 2700.6)
- No. ____ - Definition of Confidential Relationship (ICJI 2700.7)
- No. ____ - Effect of Confidential Relationship on Will Contest
- No. ____ - Definition of Tortious Interference With Inheritance
- No. ____ - Tortious Interference With Inheritance- Essentials for Recovery
- No. ____ - Damages

Verdict Forms

Deb Tharnish

Deborah M. Tharnish, AT0007858
Elizabeth Meyer, AT0010139
Davis, Brown, Koehn, Shors & Roberts, P.C.
215 10th Street, Suite 1300
Des Moines, Iowa 50309
Telephone: (515) 288-2500
Facsimile: (515) 243-0654
E-mail: DeborahTharnish@davisbrownlaw.com
ElizabethMeyer@davisbrownlaw.com
ATTORNEYS FOR DEFENDANTS

Copy to:

David J. Dutton
Nathan J. Schroeder
Dutton, Braun, Staack & Hellman, PLC
3151 Brockway Road
P.O. Box 810
Waterloo, IA 50704
Phone: 319-234-4471
E-mail: duttond@wloolaw.com
schroedern@wloolaw.com
ATTORNEYS FOR PLAINTIFFS

PROOF OF SERVICE	
The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on <u>July 17, 2017</u> by:	
<input type="checkbox"/> US Mail	<input type="checkbox"/> FAX
<input type="checkbox"/> Hand Delivered	<input type="checkbox"/> E-mail
<input type="checkbox"/> Overnight Delivery	<input checked="" type="checkbox"/> EDMS
<p><i>Deb Tharnish</i></p> <p>Signature: _____</p>	

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Statement Of The Case. Members of the Jury: In this case the Plaintiffs, Merlin Schlichting and Wayne Schlichting claim that the 2004 Will of Lois Schlichting, and the 2014 and 2015 Codicils to that Will, are invalid because Lois was unduly influenced by Jesse Schlichting to make the 2004 Will, and because Lois either lacked capacity and/or was unduly influenced to make the 2014 and 2015 Codicil. The Plaintiffs also allege that Melvin tortiously interfered with their expected inheritance by unduly influencing Lois to give only Melvin income generated by the land in her irrevocable trust during her lifetime, instead giving any of the income to Plaintiffs. The Defendants deny the Plaintiffs' claims. .

Do not consider this summary as proof of any claim. Decide the facts from the evidence and apply the law which I will now give you.

Authority

Iowa Civil Jury Instruction No. 100.1

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Duties Of Judge And Jury, Instructions As Whole. My duty is to tell you what the law is. Your duty is to accept and apply this law.

You must consider all of the instructions together because no one instruction includes all of the applicable law.

The order in which I give these instructions is not important.

Your duty is to decide all fact questions.

Do not be influenced by any personal likes or dislikes, sympathy, bias, prejudices or emotions.

Authority

Iowa Civil Jury Instruction No. 100.2

Roushar v. Dixon, 231 Iowa 993, 2 N.W.2d 660 (1942)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Burden Of Proof, Preponderance Of Evidence. Whenever a party must prove something they must do so by the preponderance of the evidence.

Preponderance of the evidence is evidence that is more convincing than opposing evidence. Preponderance of the evidence does not depend upon the number of witnesses testifying on one side or the other.

Authority

Iowa Civil Jury Instruction No. 100.3

Mabrier v. A.M. Servicing Corporation of Raytown, 161 N.W.2d 180 (1968)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Evidence. You shall base your verdict only upon the evidence and these instructions.

Evidence is:

1. Testimony in person or by deposition.
2. Exhibits received by the court.
3. Stipulations which are agreements between the attorneys.
4. Any other matter admitted (e.g. answers to interrogatories, matters which judicial notice was taken, and etc.).

Evidence may be direct or circumstantial. The weight to be given any evidence is for you to decide.

Sometimes, during a trial, references are made to pre-trial statements and reports, witnesses' depositions, or other miscellaneous items. Only those things formally offered and received by the court are available to you during your deliberations. Documents or items read from or referred to which were not offered and received into evidence, are not available to you.

The following are not evidence:

1. Statements, arguments, questions and comments by the lawyers.
2. Objections and rulings on objections.
3. Any testimony I told you to disregard.
4. Anything you saw or heard about this case outside the courtroom.

Authority

Iowa Civil Jury Instruction No. 100.4

Iowa Rules of Evidence.

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Deposition Testimony. Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. Consider that testimony as if it had been given in court.

Authority

Iowa Civil Jury Instruction No. 100.5

Iowa R. Civ. P. 1.704

Farley v. Seiser, 316 N.W.2d 857 (Iowa 1982)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Interrogatories. During this trial, you have heard the word 'interrogatory'. An interrogatory is a written question asked by one party of another, who must answer it under oath in writing. Consider interrogatories and the answers to them as if the questions had been asked and answered here in court.

Authority

Iowa Civil Jury Instruction No. 100.6
Iowa R. Civ. P. 1.509

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Credibility Of Witnesses. You will decide the facts from the evidence. Consider the evidence using your observations, common sense and experience. You must try to reconcile any conflicts in the evidence; but, if you cannot, you will accept the evidence you find more believable.

In determining the facts, you may have to decide what testimony you believe. You may believe all, part or none of any witnesses' testimony.

There are many factors which you may consider in deciding what testimony to believe, for example:

1. Whether the testimony is reasonable and consistent with other evidence you believe;
2. The witnesses' appearance, conduct, age, intelligence, memory and knowledge of the facts; and,
3. The witnesses' interest in the trial, their motive, candor, bias and prejudice.

Authority

Iowa Civil Jury Instruction No. 100.9

Burger v. Omaha & C.B. St. Ry. Co., 139 Iowa 645, 117 N.W.35 (1908)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Contradictory Statement, Non-party, Witness Not Under Oath. You have heard evidence claiming a witness made statements before this trial while not under oath which were inconsistent with what the witness said in this trial.

Because the witness did not make the earlier statements under oath, you may use them only to help you decide if you believe the witness.

Decide if the earlier statements were made and whether they were inconsistent with testimony given at trial. You may disregard all or any part of the testimony if you find the statements were made and they were inconsistent with the testimony given at trial, but you are not required to do so.

Do not disregard the testimony if other evidence you believe supports it or if you believe it for any other reason.

Authority

Iowa Civil Jury Instruction No. 100.13

Iowa R. Evid. 5.613

State v. Barry, 549 N.W.2d 316, 318 (Iowa App. 1996) (A prior inconsistent statement of a witness not under oath may be considered for impeachment purposes only).

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Contradictory Statements, Non-Party, Witness Under Oath. You have heard evidence claiming [name of witness]made statements before this trial while under oath which were inconsistent with what [name of witness]said in this trial. If you find these statements were made and were inconsistent, then you may consider them as part of the evidence, just as if they had been made at this trial.

You may also use these statements to help you decide if you believe [name of non-party witness]. You may disregard all or any part of the testimony if you find the statements were made and were inconsistent with the testimony given at trial, but you are not required to do so. Do not disregard the trial testimony if other evidence you believe supports it, or if you believe it for any other reason.

Authority

Iowa Civil Jury Instruction No. 100.14

State v. Thompson, 397 N.W.2d 679, 683 n.2 (Iowa 1986)

Iowa R. Evid., 5.801(d)(1)(A).

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Statements By A Party Opponent. You have heard evidence claiming [name of party] made statements before this trial [while under oath] [and] [while not under oath].

If you find such a statement was made, you may regard the statement as evidence in this case the same as if [name of party] had made it under oath during the trial.

If you find such a statement was made and was inconsistent with [name of party]'s testimony during the trial you may also use the statement as a basis for disregarding all or any part of [name of party]'s testimony during the trial but you are not required to do so. You should not disregard [name of party]'s testimony during the trial if other credible evidence supports it or if you believe it for any other reason.

Authority

Iowa Civil Jury Instruction No. 100.15

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

General Instruction To Jury. Upon retiring you shall select a foreman or forewoman. It will be his or her duty to see discussion is carried on in an orderly fashion, the issues are fully and freely discussed, and each juror is given an opportunity to express his or her views.

Your attitude at the beginning of your deliberations is important. It is not a good idea for you to take a position before thoroughly discussing the case with the other jurors. If you do this, individual pride may become involved and you may later hesitate to change an announced position even if shown it may be incorrect. Remember you are not partisans or advocates, but are judges - judges of the facts. Your sole interest is to find the truth and do justice.

Authority

Iowa Civil Jury Instruction No. 100.18

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Cautionary Instruction - Juror's Notes. During the trial, you have been allowed to take notes. You may take these with you to the jury room to use in your deliberations. Remember, these are notes and not evidence. Generally, they reflect the recollection or impressions of the evidence as viewed by the person taking them, and may be inaccurate or incomplete.

Upon reaching a verdict, leave the notes in the jury room and they will be destroyed.

Authority

Iowa Civil Jury Instruction No. 100.21
Iowa R. Civ. P. 1.926 (1)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Use of Electronic Devices. You may not communicate about this case before reaching your verdict. This includes cell phones, and electronic media such as text messages, Facebook, MySpace, LinkedIn, YouTube, Twitter, email, etc.

Do not do any research or make any investigation about this case on your own. Do not visit or view any place discussed in this case, and do not use Internet maps or Google Earth or any other program or device to search for or to view any place discussed in the testimony. Also, do not research any information about this case, the law, or the people involved, including the parties, the witnesses, the lawyers, or the judge. This includes using the Internet to research events or people referenced in the trial.

This case will be tried on evidence presented in the courtroom. If you conduct independent research, you will be relying on matters not presented in court. The parties have a right to have this case decided on the evidence they know about and that has been introduced here in court. If you do some research or investigation or experiment that we do not know about, then your verdict may be influenced by inaccurate, incomplete or misleading information that has not been tested by the trial process, including the oath to tell the truth and by cross-examination. All of the parties are entitled to a fair trial, rendered by an impartial jury, and you must conduct yourself so as to maintain the integrity of the trial process. If you decide a case based on information not presented in court, you will have denied the parties a fair trial in accordance with the rules of this state and you will have done an injustice. It is very important that you abide by these rules.

It is important that we have your full and undivided attention during this trial.

Authority

Iowa Civil Jury Instruction No. 100.23

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Elements - Will Contest. The law presumes a person has the mental ability to make a will. To overcome this presumption, the plaintiffs must prove one of the following propositions was true at the time each challenged will or codicil was made:

1. Lois Schlichting did not have the mental ability to make a will or codicil.
2. Lois Schlichting's will or codicil was the result of undue influence.

If the plaintiffs have failed to prove either of the above proposition your verdict, will be for the defendants. If the plaintiffs have proved either of the above propositions, your verdict will be for plaintiffs.

You must consider whether the plaintiffs have proved one of these propositions for each individual will or codicil that is challenged.

Authority

Iowa Civil Jury Instruction No. 2700.1

In re Estate of Adams, 234 N.W.2d 125 (Iowa 1975)

In re Estate of Huston, 238 Iowa 297, 27 N.W.2d 26 (1947)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Right to Make a Will: A person with the mental ability to make a will is entitled to dispose of her property as she sees fit. The right to make a will is not limited to those who are kind, considerate, or in the opinion of others, just. The fact that others think the person's chosen distribution is unequal or even unjust is not a sufficient basis for setting aside a will.

Authority:

Hart v. Lundby, 137 N.W.2d 642, 647 (Iowa 1965).

In re Springer's Estate, 110 N.W.2d 380, 383 (Iowa 1961) ("the law is slow to deny the right of any person to dispose of his property by will as he sees fit").

In re Klein's Estate, 42 N.W.2d 593, 601 (Iowa 1950) ("distribution thought by others to be unequal or even unjust is insufficient basis for finding of either testamentary incapacity or undue influence")

In re Estate of Heller, 11 N.W.2d 568, 591 (Iowa 1943) ("The right of an individual to dispose of his property as he sees fit, even though he make what others might think was an unequal or unjust disposition, or give nothing to some or all of those who are regarded as naturally entitled to his bounty, is nevertheless a sacred right").

Zinkula v. Zinkula, 154 N.W.158 (Iowa 1915).

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Right to Change a Will: A person has the perfect right to change her mind over time about how to dispose of her property.

Authority:

Hart v. Lundby, 137 N.W.2d 642, 647 (Iowa 1965) (A testator has a perfect right to change his mind”).

Drosos v. Drosos, 103 N.W. 2d 167, 172 (Iowa 1960)(“a declaration of the testator two years before the will was made concerning his then intention toward plaintiff is entitled to little if any weight. He had a perfect right to change his mind.”)

In re Klein's Estate, 42 N.W.2d 593, 602 (Iowa 1950)(“Testatrix had a perfect right to change her mind”).

In re Diver's Estate, 240 N.W. 622, 626 (Iowa 1932)(“The testator had a perfect right to change his mind as to the disposition he would make of his property.”)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Codicil-Definition. You have heard the term “codicil” used during this case. A codicil is a supplement or addition to a will which modifies, explains, or otherwise qualifies the will in some way.

Authority

Black's Law Dictionary, 10th Ed. 2014.

In re Flannery's Estate, 264 N.W.68, 71 (Iowa 1935).

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Testamentary Capacity. A person has the mental ability to make a will if she:

1. Knows a will is being made.
2. Knows the kind and extent of her property.
3. Is able to identify and remember those persons she would naturally give her property to.
4. Knows how she wants to distribute her property.

A will is valid if the person making the will meets the above tests, even if her mental or physical powers are impaired. A person does not have to be able to make contracts or carry on business generally. However, you may consider physical weakness or infirmity, the rational nature of the distribution, along with any other evidence in deciding if a person has the mental ability to make a will.

A person must have the same capacity required to make a will in order to make a codicil.

Authority

Iowa Civil Jury Instruction No. 2700.2

In re Estate of Adams, 234 N.W.2d 125 (Iowa 1975)

Drosos v. Drosos, 251 Iowa 777, 103 N.W.2d 167 (1960)

In re Estate of Kenny, 233 Iowa 600, 10 N.W.2d 73 (1943)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Unsoundness Of Mind Before Or After Execution. Lack of mental ability to make a will must exist at the time the will was made. You may consider evidence of Lois Schlichting's condition of mind at other times if you decide such evidence throws some light on her mental ability at the time the will was made.

Authority

Iowa Civil Jury Instruction No. 2700.3

In re Estate of Gruis, 207 N.W.2d 571 (Iowa 1973)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Undue Influence - Essentials For Recovery. Plaintiffs claim that the August 19, 2004 Will was the result of undue influence by Jesse Schlichting. The law presumes a person is free from undue influence. To overcome this presumption, and to prove that the August 19, 2004 Will was the result of undue influence, the Plaintiffs must prove each of the four following propositions:

1. At the time the will was made Lois Schlichting was susceptible to undue influence.
2. Jesse Schlichting had the opportunity to exercise such influence and carry out the wrongful purpose.
3. Jesse Schlichting was inclined to influence Lois Schlichting unduly for the purpose of getting an improper favor.
4. The result was clearly brought about by undue influence.

If the Plaintiffs have failed to prove one or more of these propositions, your verdict will be for the Defendants. If Plaintiffs have proved all of these propositions, your verdict will be for Plaintiffs

Authority

Iowa Civil Jury Instruction No. 2700.4

In re Estate of Davenport, 346 N.W.2d 530 (Iowa 1984)

In re Estate of Houston, 238 Iowa 297, 27 N.W.2d 26 (1947)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Reaffirmation of a will by codicil. A will or codicil which was invalid as originally executed because of undue influence is republished and validated by the execution of a codicil to the will at a time when the maker of the will was no longer subject to undue influence.

Authority

Abel v. Bittner, 470 N.W.2d 348, 350-51 (Iowa 1991).
Iowa Code § 633.282.
Iowa Code § 633.284.

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Undue Influence - Essentials For Recovery. Plaintiffs claim that the December 3, 2014 Codicil and August 28, 2015 Codicils were both the result of undue influence by Melvin Schlichting. The law presumes a person is free from undue influence. To overcome this presumption, and to prove that the December 2, 2014 Codicil and August 28, 2015 Codicils were the result of undue influence, the Plaintiffs must prove each of the four following propositions:

1. At the time the codicil was made Lois Schlichting was susceptible to undue influence.
2. Melvin Schlichting had the opportunity to exercise such influence and carry out the wrongful purpose.
3. Melvin Schlichting was inclined to influence Lois Schlichting unduly for the purpose of getting an improper favor.
4. The result was clearly brought about by undue influence.

If the Plaintiffs have failed to prove one or more of these propositions, your verdict will be for the Defendants. If Plaintiffs have proved all of these propositions, your verdict will be for Plaintiffs

Authority

Iowa Civil Jury Instruction No. 2700.4

In re Estate of Davenport, 346 N.W.2d 530 (Iowa 1984)

In re Estate of Houston, 238 Iowa 297, 27 N.W.2d 26 (1947)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Definition Of Undue Influence - Person Charged with Undue Influence Need Not Be Present. Undue influence means something more than and different from the natural, wholesome, relationship between wife and husband concerning their mutual interests. The influence growing out of such relation is manifestly not ordinarily 'undue' or improper.

Undue influence means a person substitutes his or her intentions for those of the person making the will. The will then expresses the purpose and intent of the person exercising the influence, not those of the maker of the will. Undue influence must be present at the very time the will is signed and must be the controlling factor. The person charged with exercising undue influence need not be personally present when the will was being made or signed but the person's influence must have been actively working at the time the will was being made and signed.

Authority

Iowa Civil Jury Instruction No. 2700.5
In re Estate of Cory, 169 N.W.2d 837 (Iowa 1969)
Walters v. Heaton, 223 Iowa 405, 271 N.W. 310 (1937)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Circumstances To Be Considered. In deciding if there was undue influence, you may consider the following:

1. Dominance over the maker of the will.
2. Whether the condition of the maker's mind was subject to such dominance.
3. Whether the distribution of the maker's property is unnatural, unjust or unreasonable.
4. The activity of the person charged with exercising the undue influence and whether the person had the opportunity and frame of mind to exercise undue influence. Activities may include suggestion, request and persuasion short of controlling the will of the maker, but they do not alone constitute undue influence. Consider such activities along with any other evidence of undue influence.
5. The intelligence or lack of intelligence of the maker of the will.
6. Whether the maker of the will was physically or mentally weak.
7. Whether the person charged with exercising undue influence was the controlling party in a confidential relationship with the maker of the will.
8. Any other facts or circumstances shown by the evidence which may have any bearing on the question.

No one of the above circumstances is more important than any other.

Authority

Iowa Civil Jury Instruction No. 2700.6
In re Estate of Davenport, 346 N.W.2d 530 (Iowa 1984)
In re Estate of Herm, 284 N.W.2d 191 (Iowa 1979)
Frazier v. State Central Savings Bank, 217 N.W.2d 238 (Iowa 1974)
Johnstone v. Johnstone, 190 N.W.2d 421 (Iowa 1971)
In re Estate of Willesen, 251 Iowa 1363, 105 N.W.2d 640 (1960)
In re Estate of Burrell, 251 Iowa 185, 100 N.W.2d 177 (1959)
O'Brien v. Stoneman, 227 Iowa 389, 288 N.W.2d 447 (1939)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Definition Of Confidential Relationship. A confidential relationship is present when a person has gained the complete confidence of another and purports to act or advise only the interest of the other person..

Authority

Iowa Civil Jury Instruction No. 2700.7

Matter of Estate of Herm, 284 N.W.2d 191, 199 (Iowa 1979)

Burns v. Nemo, 252 Iowa 306, 105 N.W.2d 217, 220 (1960)

Merritt v. Easterly, 226 Iowa 564, 284 N.W. 397, 399 (1939)

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Effect Of Confidential Relationship on Will Contest. Where a confidential relationship exists between the person making a will and a beneficiary, and the beneficiary participates in either the preparation or execution of the contested will, a suspicion, but not a presumption, of undue influence arises.

Authority

In re Estate of Steensma, 847 N.W.2d, 2014 WL 1495492 at * (Iowa Ct. App. Apr. 16, 2014).

In re Estate of Bayer, 574 N.W.2d 667, 675 (Iowa 1998).

In re Estate of Baessler, 561 N.W.2d 88, 93 (Iowa Ct. App. 1997).

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Definition Of Tortious Interference With Inheritance: A person commits the tort of tortious interference with inheritance if a person by undue influence or other tortious means intentionally prevents another from receiving from a third person an inheritance that he would otherwise have received. The independent tortious conduct must be aimed at inducing the third party to make a change to her testamentary plans, resulting in interference with the plaintiff's inheritance.

In the absence of conduct that is independently tortious, there is no liability for tortious interference with inheritance. Thus, a person who by legitimate means merely persuades the third party to disinherit a child or change the child's inheritance is not liable to the child.

Authority

Restatement (Second) of Torts § 774B, including cmt. C (1979)

Huffey v. Lea, 491 N.W.2d 519 (1992).

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Tortious Interference With Inheritance-Essentials for Recovery: Plaintiffs claim that Melvin Schlichting intentionally interfered with their inheritance. In order to recover under this claim, each plaintiff must prove all of the following propositions:

1. The plaintiff had an expectancy that he would receive an inheritance from Lois Schlichting upon Lois's death.
2. Melvin knew of the plaintiff's expected inheritance.
3. Melvin intentionally and improperly interfered with the plaintiff's expectancy by unduly influencing Lois.
4. There was a reasonable certainty that the plaintiff would have received an inheritance but for Melvin's interference.
5. The plaintiff has suffered damages as a result of the loss of his inheritance.

If a plaintiff fails to prove any of these propositions, you must find for the defendant, and the plaintiff is not entitled to any damages. If a plaintiff proves all of these propositions, he is entitled to damages in some amount.

Authority

Restatement (Second) of Torts § 774B (1977).

Huffey v. Lea, 491 N.W.2d 519 (1992).

DEFENDANTS' PROPOSED JURY INSTRUCTION NO. _____

Damages

If you in favor of Merlin Schlichting or Wayne Schlichting's favor of their claim for tortious interference with inheritance against Melvin Schlichting, then you must determine the amount of damages to which Merlin and/or Wayne is entitled. You will consider the amount of damages for each party separately. You must award such sum as you find will fairly and justly compensate them for the damages you find they sustained as a direct result of Melvin's conduct.

The damages in question are as follows:

1. Loss of Inheritance Damages: These damages are for the expected inheritance that you find Merlin or Wayne lost as a result of Melvin's undue influence with regard to the 2014 Codicil, 2015 Codicil, or Lois Leona Pals Irrevocable Trust.

2. Consequential Damages: These damages are for the losses Merlin or Wayne suffered by having to file this lawsuit to protect their interests. This does not include attorneys fees. The judge will determine that question if necessary.¹

Authority

Huffey v. Lea, 491 N.W.2d 519 (1992).

Restatement (Second) of Torts § 774A (1977).

¹ Note that Defendants have not included instructions regarding emotional distress or punitive damages, as the evidence at trial will not support submission of these matters to the jury.

IN THE IOWA DISTRICT COURT FOR WRIGHT COUNTY

IN RE: ESTATE OF LOIS LEONA
SCHLICHTING,

WAYNE SCHLICHTING and MERLIN
SCHLICHTING,

Plaintiffs,

vs.

MELVIN SCHLICHTING, Individually
and as Executor,

Defendant-Proponent,

and

BILLY GRAHAM EVANGELISTIC
ASSOCIATION and TURNING POINT
FOR GOD,

Additional Defendants.

CASE NO. ESPR016586

**DEFENDANTS' PROPOSED
VERDICT FORM: WILL CONTEST**

We find the following verdict on the questions submitted to us:

I. Undue Influence: 2004 Will

Was Lois Schlichting's 2004 Will the product of undue influence by Jesse Schlichting?

YES

NO

II. Testamentary Capacity: 2014 Codicil

Did Lois Schlichting have the capacity to make her 2014 Codicil?

YES

NO

III. Undue Influence: 2014 Codicil

Was Lois Schlichting's 2014 Codicil the product of undue influence?

YES

NO

IV. Testamentary Capacity: 2015 Codicil

Did Lois Schlichting have the capacity to make her 2015 Codicil?

YES

NO

V. Undue Influence: 2015 Codicil

Was Lois Schlichting's 2015 Codicil the product of undue influence?

YES

NO

Please proceed to sign the Verdict Form.

FOREPERSON*

*To be signed only if verdict is unanimous

JUROR**

JUROR**

JUROR**

JUROR**

JUROR**

JUROR**

JUROR**

** To be signed by the jurors agreeing thereto after six hours or more of deliberation.

IN THE IOWA DISTRICT COURT FOR WRIGHT COUNTY

IN RE: ESTATE OF LOIS LEONA
SCHLICHTING,

WAYNE SCHLICHTING and MERLIN
SCHLICHTING,

Plaintiffs,

vs.

MELVIN SCHLICHTING, Individually
and as Executor,

Defendant-Proponent,

and

BILLY GRAHAM EVANGELISTIC
ASSOCIATION and TURNING POINT
FOR GOD,

Additional Defendants.

CASE NO. ESPR016586

**DEFENDANTS' PROPOSED
VERDICT FORM: TORTIOUS
INTERFERENCE WITH INHERITANCE**

We find the following verdict on the questions submitted to us:

Merlin Schlichting

Question 1: Did Plaintiff Merlin Schlichting have an expectancy that he would receive an inheritance from Lois Schlichting?

YES

NO

(If your answer is "no," go to the questions relating to Wayne Schlichting)

Question 2: Did Melvin Schlichting know or have reason to know that Merlin Schlichting had an expected inheritance?

YES

NO

(If your answer is "no," do not answer any further questions.)

Question 3: Did Melvin Schlichting intentionally and improperly interfere with Merlin Schlichting's expected inheritance by unduly influencing Lois Schlichting with regard to her 2014 Codicil?

YES

NO

Question 4: Did Melvin Schlichting intentionally and improperly interfere with Merlin Schlichting's expected inheritance by unduly influencing Lois Schlichting with regard to her 2015 Codicil?

YES

NO

Question 5: Did Melvin Schlichting intentionally and improperly interfere with Merlin Schlichting's expected inheritance by unduly influencing Lois Schlichting with regard to her Irrevocable Trust?

YES

NO

Question 6: Was there a reasonable certainty that Merlin Schlichting would have received an inheritance but for Melvin Schlichting's undue influence?

YES

NO

(If your answer is "no," go to the questions relating to Wayne Schlichting)

Question 7: What are Merlin Schlichting's damages?

(a) Loss of Inheritance _____

(b) Consequential Damages _____

Wayne Schlichting

Question 1: Did Plaintiff Wayne Schlichting have an expectancy that he would receive an inheritance from Lois Schlichting?

YES

NO

(If your answer is “no,” do not answer any further questions.)

Question 2: Did Melvin Schlichting know or have reason to know that Wayne Schlichting had an expected inheritance?

YES

NO

(If your answer is “no,” do not answer any further questions.)

Question 3: Did Melvin Schlichting intentionally and improperly interfere with Wayne Schlichting’s expected inheritance by unduly influencing Lois Schlichting with regard to her 2014 Codicil?

YES

NO

(If your answer is “no,” do not answer any further questions.)

Question 4: Did Wayne Schlichting intentionally and improperly interfere with Wayne Schlichting’s expected inheritance by unduly influencing Lois Schlichting with regard to her 2015 Codicil?

YES

NO

(If your answer is “no,” do not answer any further questions.)

Question 5: Did Wayne Schlichting intentionally and improperly interfere with Wayne Schlichting’s expected inheritance by unduly influencing Lois Schlichting with regard to the Irrevocable Trust?

YES

NO

(If your answer is “no,” do not answer any further questions.)

Question 6: Was there a reasonable certainty that Wayne Schlichting would have received an inheritance but for Melvin Schlichting's undue influence?

YES

NO

(If your answer is "no," do not answer any further questions.)

Question 7: What are Wayne Schlichting's damages?

(a) Loss of Inheritance _____

(b) Consequential Damages _____

FOREPERSON*

*To be signed only if verdict is unanimous

JUROR**

JUROR**

JUROR**

JUROR**

JUROR**

JUROR**

JUROR**

** To be signed by the jurors agreeing thereto after six hours or more of deliberation.