



**ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appellant**

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

IN THE COURT OF APPEALS OF IOWA

No. 15-1250 Filed February 8, 2017

ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant,

vs.

MATTHEW RILEY, Defendant-Appellant/Cross-Appellee.

----- ARLIN GEORGE RILEY,  
Plaintiff-Appellee/Cross-Appellant,

vs.

DENISE RILEY, Defendant-Appellant/Cross-Appellee.

-----  
Appeal from the Iowa District Court for Adams County, John D. Lloyd,  
Judge.

Matt and Denise Riley appeal the judgment of the district court finding they engaged in elder abuse by financially exploiting Arlin Riley. Arlin Riley cross-appeals a portion of that ruling denying his request for the return of property.

APPEAL AFFIRMED; CROSS-APPEAL DISMISSED; AND REMANDED.

Matthew G. Sease of Kemp & Sease, Des Moines, for appellants/cross-appellees. Gina C. Badding of Neu, Minnich, Comito, Halbur, Neu & Badding, P.C., Carroll, for appellee/cross-appellant.

Heard by Mullins, P.J., and Bower and McDonald, JJ. MULLINS, Presiding Judge.

Matt and Denise Riley appeal the judgment of the district court finding they



# ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appellant

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

engaged in elder abuse under Iowa Code chapter 235F (2015) by financially

They argue Arlin was not a vulnerable elder

within the meaning of chapter 235F, the district court improperly shifted the

burden of proof to Matt and Denise to affirmatively establish they did not unduly

influence Arlin, and the district court erred in finding Matt and Denise financially

exploited Arlin. Arlin cross-appeals a portion of that ruling denying his request for

the return of rental property and money he contends Matt and Denise withheld

from him. Upon our -appeal; thus, we treat the cross-appeal as

an application for interlocutory appeal, deny the application, and dismiss the

cross-appeal. We remand to the district court for consideration of appellate

attorney fees.

## I. Background Facts and Proceedings

-seven years, Connie, died in July 2012. Arlin and his

wife have two children: Matt, who is married to Denise, and Katie. Following

Connie and his children became

concerned with his ability to handle his finances.

On December 14, 2012, Arlin, accompanied by Matt and Denise, went to a

local bank over forty-five minutes away from the town in which they all lived and

Matt drove separately

and sat outside the bank in his vehicle armed with a weapon for protection, while Arlin and Denise went inside the bank to withdraw the money. On December 21,



## ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appellant

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

Arlin, Matt, and Denise again went to the bank and withdrew \$80,000 in cash

tection on this

occasion too because of the large amount of cash Arlin was withdrawing and the

distance they had to travel home with the money. At the hearing on the petition,

Arlin testified he withdrew the money so that it could be used to invest in real

[c] testified that on both

because he did not have a safe at his home. Matt

and Denise dispute this evidence and both testified at the hearing that on both

occasions, Arlin left their home with the cash and never placed it in their safe.

Matt and Denise testified they never saw the money and did not know what Arlin

did with it.

In early January 2013, certificates of organization were created for 322

Carroll Street LLC and 222 State Street LLC, with Denise listed as the registered

agent for both companies. On January 28, Matt prepared a written power of

attorney using a form from the Iowa State Bar Association, providing Matt the

power to facilitate the acquisition of real estate for investment purposes, access

including gifts of

property to himself. Arlin executed the form, and Denise notarized it. The

power expired by its terms in September 2013.

On February 4, 2013, Arlin transferred \$60,000 from his savings account

to his checking account. He used \$28,996.89 to purchase a property located at



## ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appell

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

322 Carroll Street in Boone. Arlin acquired the property in his name but subsequently transferred it to 322 Carroll Street LLC through a quit claim deed

prepared and notarized by Matt. On February 8, Arlin used \$29,108.20 to

purchase a second property located at 222 State Street in Boone. The property

was acquired in the name of 222 State Street LLC.

In March, Matt created a certificate of organization for 2811 Warford LLC.

Matt was listed as the organizer, and Denise was again listed as the registered agent.

On April 18, a document entitled RECEIPT Arlin, stating his intention to gift all of his stocks in 322 Carroll Street LLC, 222

State Street LLC, and 2811 Warford LLC to Denise. 1 The document further

provided Arlin was my title of the old Dodge truck to Denise and

gifting \$150,000 and his 1997 Ford F150 truck to Katie. The document also

stated Arlin would be putting his home in Granite City, Illinois, and his shares of a

farm he owned with his two brothers into a trust for the benefit of Matt and Katie.

The document stated the gifts will be completed before my

On April 22, Arlin purportedly signed the minutes of special meeting for

322 Carroll Street LLC and 222 State Street LLC, transferring all of his stocks in

the two companies to Denise. Matt prepared all of the documentation for the

transfers, and all transfers were completed without consideration. Arlin testified

attorney provided them to him. He further testified the signatures on these

documents were not his.



**ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appell**

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

1 The document provided Arlin On April 30, Arlin purchased a third property located at 2811 Warford Street in Perry in the name of 2811 Warford LLC. Arlin provided \$37,610.72 for a down payment on the property and became personally liable on the loan note 2 in the amount of \$138,750. Arlin testified he had to finance the purchase because The following day, on May 1, Arlin purportedly signed the minutes of special meeting for 2811 Warford LLC, transferring all of his stocks in the company to Denise. 3

In early June, Matt created a certificate of organization for 1402 Willis LLC. Matt was listed as the organizer and Denise was listed as the registered agent.

On July 3, Matt and Denise purchased a property located at 1402 Willis Avenue in Perry through 1402 Willis LLC. Although Matt and Arlin had previously had conversations about Arlin financing the purchase of the property, no evidence was presented indicating Arlin ever held an interest in this LLC or in the real estate property located at this address. Matt and Denise ultimately purchased Matt had purchased on June 12. Matt and Denise provided no explanation at the hearing on the petition for the source of the cash used to purchase this property

2 Matt signed the mortgage securing the note as manager of 2811 Warford LLC. 3 The record is unclear whether this transfer resulted in Denise owning a 100% interest in the LLCs transferred to her. Arlin testified at the hearing on the petition that he and Matt had agreed Arlin would retain a 99% interest in 2811 Warford LLC, 222 State Street LLC, and 322 Carroll Street LLC, while Matt would receive a 1% interest in the three LLCs to compensate him for his management of the properties. Matt and Denise both testified at the hearing Matt did not own any interest in the LLCs owning the properties or in the properties themselves. but denied it came out of the \$160,000 Arlin



# ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appellant

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

had withdrawn from the bank in

December 2012.

On August 2, Matt took Arlin for a pretreatment assessment with a

irrational choices, unresolved grief over the loss of his wife, and symptoms of

Arlin completed therapy with his counselor in March 2014.

On August 5, 2013, Matt, using power of attorney, withdrew \$3232.25

from his father after learning Arlin had sent a total of \$30,000

to

someone he did not know overseas. 4

account incurred eight overdraft fees in the amount of \$35, plus a return item fee

in the amount of \$35, totaling \$315 in fees. On August 12 and 13, Denise

Denise withdrew \$2040 in cash from her business checking account. 5

Matt and

Denise presented evidence of a document purportedly signed by Arlin

acknowledging receipt of \$2040 in cash from Matt.

4 It is unclear from the record when the transfers started or ended, how many transfers occurred, how much each transfer was for, or exactly how much money was sent in total. There was testimony that Arlin started sending money in late 2012 and continued sending it in increments despite Matt and Katie having told Arlin it was a scam until August 2013 when Matt discovered the transfers had continued and withdrew the money. 5 There is no evidence in the record other than De she did not have checks for this account to transfer the funds back to Arlin and did not

use other forms (e.g., Thus, she made direct transfers between the accounts and ultimately withdrew the cash

because the amount of money and number of transfers were restricted. On June 13, 2014, Arlin met



**ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appell**

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

with his attorney who represented him at the

hearing on the petition, to review the trust prepared by a different attorney. 6 On

August 26, Arlin called the attorney who had prepared the trust requesting information from Matt regarding the four LLCs at issue.

In September 2014, a recorded phone call between Katie and Matt took place. During the phone call, Katie questioned Matt about information on the LLCs at issue and why he refused to provide information and an accounting regarding the LLCs to Arlin. Katie was under the impression Arlin still intended to put the LLCs owning the rental properties into a trust and needed information also stated he had told Arlin to scratch the trust idea.

Matt told Katie that Arlin did not have any ownership interest in the LLCs but did not tell her the LLCs had been transferred to Denise in 2013. Matt also told Katie it. Matt repeatedly stated he believed Arlin was mentally incompetent and unable to control his own finances. Katie told Matt she believed Arlin was competent and capable of handling his finances since he had completed mental-health

counseling six months before was competent to take care of himself. Katie stated she thought it would be hard

6 It is unclear from the record when Arlin first met with the attorney about creating a trust. Arlin testified at the hearing he could not recall when he discussed creating a trust to put the four rental properties, the farm shares, and the house in Granite City into. Katie testified the family discussed putting the four rental properties, the Granite City house, oh, right after my mom passed the properties being purchased, they were supposed to go into the trust. Matt testified

they had discussed putting the rental properties, the house in Granite City, and the farm shares into a trust. for Matt to prove



# ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appellant

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

e is being put into

-

legal affairs. Arlin is capable of making sound decisions and judgments

legal

On February 2, account in August 2013; (2) all activities Matt conducted while acting as attorney-in-fact for Arlin; (3) the \$160,000 in cash Arlin entrusted to Matt and Denise; (4) the four real estate rental properties at issue; and (5) the assets of each of the four LLCs. The letter also requested copies of the operating agreements, the bank statements, and the tax returns for each of the four LLCs owning the four real estate rental properties.

On March 31, 2015, Arlin filed petitions for relief from elder abuse

pursuant to Iowa Code chapter 235F against Matt and Denise. That same day,

the district court entered a temporary protective order restraining Matt and

Denise from having contact with Arlin and prohibiting them from exercising control over Ar The court scheduled a hearing within the time prescribed by statute but later

continued the hearing based upon an agreement by the parties. Arlin, Katie,

Matt, Denise, and a representative Arlin

testified he did not gift his interest in the three LLCs (322 Carroll Street LLC, 222

State Street LLC, and 2811 Warford LLC) to Matt or Denise. Arlin and Katie both

testified Arlin did not gift any money to Katie pursuant to the April 18 document

. 7 Arlin also presented evidence he retained the titles to the





**ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appellant**

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

two trucks mentioned in the document.

Following the hearing, Arlin filed a posttrial memorandum requesting (1) a

full accounting from Matt and Denise of account by Matt, plus reimbursement of \$315 in overdraft fees, for a total of

\$2047.25; (3) a return of \$160,000 in cash that Arlin entrusted to the care of Matt

the four LLCs owning the

On June 18, the district court entered an order finding Arlin was a

vulnerable elder within the meaning of chapter 235F and a victim of elder abuse

ailed to bring

forth any evidence affirmatively establishing that the transfers to Denise were

freely and voluntarily done with full knowledge by [Arlin], 7

Katie admitted Arlin had made at least five payments on her student loans in the amount of \$350 each during 2013 but also stated Arlin had refused her request for \$20,000 to pay off her loans. transfers were to Denise rather than Matthew, Denise was fully complicit in the

Thus, the court ordered Matt and Denise

to transfer 2811 Warford LLC, 222 State Street LLC, and 322 Carroll Street LLC

to Arlin accounting copies of any rental agreements or terms of occupancy between the LLCs and

any tenants, any rental deposits, and any documentation evidencing any

obligation or debt of any of the LLCs. The c and Denise] from taking any actions which might be detrimental to any of the

LLCs, or adversely impact the ability of the LLCs to meet their financial

Additionally, the court found the \$3232.25 Matt had w The

withdrawn in two equal withdrawals is clear. What is not clear is what happened



# ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appellant

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

Thus, the court ordered Matt and Denise to provide

estate owned by 1402 Further, the court ordered Matt and Denise to

he court retained

jurisdiction to enter such other and further orders as may be necessary to protect

Matt and Denise appeal; Arlin cross-appeals. II. Jurisdiction

We must first decide a jurisdictional issue regarding the appealability of

The appeal and cross-appeal each assume there was a

final judgment from which their appeals could be taken. During oral arguments,

each party argued the judgment was final, and the retention of jurisdiction by the

district court was merely for enforcement or collateral purposes. neither party has questioned our jurisdiction to hear and decide this case, we will

sua sponte dismiss an appeal that is neither authorized by our rules nor

River Excursions, Inc. v. City of Davenport, 359

N.W.2d 475, 477 (Iowa 1984). W order was a final judgment, appealable as a matter of right, or merely an

interlocutory decision, which may be appealed only if permission is granted by

the appellate court. See Iowa Rs. App. P. 6.103(1), (3), 6.104. Rowen v.

LeMars Mut. Ins. Co., 357 N.W.2d 579, 581 (Iowa 1984). when the trial court intends to act further on the case before signifying its final

River Excursions, 359 N.W.2d at 477. words, an order is interlocutory if it directs an inquiry into a matter of fact

In re C.S., 516 N.W.2d 851, 857 (Iowa 1994).

Retention of jurisdiction of matters collateral to the subject matter of an appeal, or



**ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appellant**

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

for purposes of enforcing a final order, does not render an order interlocutory.

See *Gutierrez v. Wal-Mart Stores, Inc.*, 638 N.W.2d 702, 707 (Iowa 2002).

In its ruling, the district court concluded Arlin was a vulnerable elder

protected by chapter 235F and Matt and Denise committed elder abuse by financial exploitation. The court ordered Matt and Denise to transfer ownership

of and provide copies of rental agreements and other documents for 322 Carroll

Street LLC, 222 State Street LLC, and 2811 Warford LLC to Arlin, within thirty

days. With respect to those transfers, the court ordered Matt and Denise to

provide a full accounting within sixty days. The court also entered a restraining

order to prohibit Matt and Denise from taking any actions that might be

detrimental to any of the LLCs and may be necessary to protect [Arlin]

The final provision might be considered a typical reference to subsequent

enforcement or other purely collateral matters. But the district court also ordered

Matt and Denise to submit proof of the source of the cash used to purchase the

fourth property owned by 1402 Willis LLC within thirty days. In its findings of fact,

the court found Matt and Denise purchased that fourth property through 1402

Willis LLC and further LLC or the subject real estate. [Matt and Denise] provided no explanation of the

source of the cash The court also found Matt

] in the amount

of \$160,000. The fact that this amount was withdrawn in two equal withdrawals

Further, in



## **ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appellant**

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

its ordered provisions, the court did not explicitly grant or deny Arlin

relief for 1402 Willis LLC. Instead, the district court ordered Matt and Denise to

submit proof of the source of the cash for the purchase of the 1402 Willis Avenue

property. It seems the court was seeking to determine whether there was a link

purchase of 1402 Willis Avenue is ultimately linked to a portion of \$160,000, then it follows the district court was anticipating additional relief when it

expressly retained jurisdiction to enter further orders; conversely, if no link is

found, perhaps the court might enter a further order denying relief as to that

property.

On our rev convinced Rowen, 357 N.W.2d at 581. Instead, it appears as though the court

entered a partial ruling s claims, claims regarding the \$160,000 in cash and the property located at 1402 Willis

Avenue, and retained jurisdiction to enter further orders on those claims. See In

re C.S., 516 N.W.2d at 857; River Excursions, 359 N.W.2d at 477. The standard

rule is that if interlocutory decision, the order is not appealable as a matter of right. See Iowa

R. App. P. 6.103(1), (3); see also Green v. Advance Homes, Inc., 293 N.W.2d

204, 207 (Iowa 1980).

That standard rule is not, however, without exception. Green, 293 N.W.2d

at 207. For purposes of an appeal, a case may have more than one final order.

Id wer of the court to return

the parties to their original positions even though it does not conclusively

Lyon v. Willie, 288 N.W.2d 884, 886



**ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appell**

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

(Iowa 1980). With regard to its finding that Arlin was a vulnerable elder within the

As to the ordered

provisions governing the first three LLCs and their properties, the order was final. Likewise, the restraining order for the protection of Arlin was final.

Those provisions required no further rulings and the order did not anticipate any

further rulings as to those provisions, except perhaps enforcement. On the other

hand, the order from which the appeal and cross-appeal were taken did not

conclusively adjudicate the rights of the parties as to 1402 Willis LLC or the

propriety of the source of the funds used for the purchase of the property in that

LLC. The district court did not finally adjudicate those issues and was apparently

waiting for compliance concerning disclosure of the source of the funds for that

property before finally adjudicating those issues. We determine this is the

exceptional case in which there has been a final appealable order as to some

issues, while the court retained jurisdiction to rule on remaining issues. See *id.*

at 886 87. Accordingly, we will consider the issues raised by Matt and Denise

on appeal as those were the subject of a final order.

But, because we determine the issues relating to 1402 Willis LLC and the

source of funds for the purchase of the property of the LLC are the subject of

interlocutory-ordered provisions, we will

review ha[s] ; see also *In re Marriage of*

Denly, 590 N.W.2d 48, arising from a final judgment is regarded as an application for interlocutory



**ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appell**

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

. -appeal as an application for

interlocutory appeal. . . . we sparingly grant interlocutory

Buechel v. Five Star Quality Care, Inc., 745 N.W.2d 732, 736 (Iowa

2008). one interlocutory, a second

taken from the final judgment River Excursions, 359 N.W.2d at 478. In determining whether we should grant an

application for interlocutory appeal, we must consider (1) whether the order

involves substantial rights, (2) and (3) the interests of judicial efficiency. Iowa R. App. P. 6.104(2);

see also Denly, 590 N.W.2d at 51.

In Rowen, the supreme court granted the application for interlocutory

relief, leaving unsettled only issues that might arise during implementation of the

357 N.W.2d at 582. Here, it appears the district court ordered Matt and

Denise to submit additional evidence to aid the court in making a decision as to

remaining claims his request for an accounting of the \$160,000 he

of 1402 Willis LLC, which

owns the property Arlin claims he provided the funds for purchase. appeals often contribute little more to the judicial process than additional

, 376 N.W.2d

882, 887 (Iowa 1985). We to defer a final

adjudication of the 1402 Willis LLC and its property until Matt and Denise made

the disclosure required per its order. Thus, we decline to grant application

for interlocutory appeal in the interests of judicial efficiency. See id. were to grant and decide this



# ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appellant

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

interlocutory appeal, we might well have to decide

Accordingly, the cross-appeal is dismissed. III. Standard of Review

The parties disagree on the applicable standard of review in this case.

Matt and Denise contend the matter was tried in equity and is similar to claims

brought under chapter 236 (the Domestic Abuse Act), and therefore, the

standard of review is de novo. See *Knight v. Knight*, 525 N.W.2d 841, 843 (Iowa

1994). Arlin claims that because the district court ruled on objections as they

were made at the hearing, the case was tried as a law action, and therefore, our

review is for correction of errors at law. See *Bacon ex rel. Bacon v. Bacon*, 567

N.W.2d 414, 417 (Iowa 1997); *Knight*, 525 N.W.2d at 843. We look to the

case was legal or equitable. *Passehl Estate v. Passehl*, 712 N.W.2d 408, 414

(Iowa 2006). *Id.* (citation omitted). *Van*

*Sloun v. Agans Bros. Inc.*, 778 N.W.2d 174, 178 (Iowa 2010).

In his petition, Arlin did not seek monetary damages, but rather, he sought

an order refraining Matt and Denise from exercising control over his funds,

benefits, property, resources, belongings or assets and requiring Matt and

Denise to provide information about, a complete accounting for, copies of

documents pertaining to, and the return of the four LLCs owning real estate

properties located at 322 Carroll Street, 222 State Street, 2811 Warford Street,

and 1402 Willis Avenue. Arlin also requested the return of the remaining funds

Matt removed from his checking account in August 2013, an accounting of all of -in-fact, and an



**ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appell**

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

accounting for and the

return of the \$160,000 Arlin claimed he entrusted to Matt and Denise. Thus, Arlin

asked the court to use its equitable powers. See *Passehl*, 712 N.W.2d at 414.

Furthermore, the relief authorized in Iowa Code section 235F.6(2) after a judicial

finding of elder abuse and financial exploitation is primarily if not completely equitable in nature and is consistent with the relief requested by Arlin in this

case.

Moreover, neither party filed a jury demand.

8 The court ordered Matt and

Denise to transfer three of the four LLCs to Arlin, to provide information and an

accounting for each of the three LLCs, to provide Arlin and the court proof of the

source of the cash used to purchase the fourth property, and it further restrained

and enjoined Matt and Denise from taking any actions that may harm the LLCs all of which are equitable remedies. Additionally, although the district court here

ruled on some evidentiary objections during the hearing, the court repeatedly

hinder our review of the record. See *id.*

We therefore conclude the case was tried in equity before the district

court, and thus, our review of the record in this case is *de novo*. See Iowa R.

App. P. 6.907. Accordingly, we give weight to the factual findings of the district

8 attorney fees but conclude this order did not convert the equitable action into one at law.

See *Van Sloun* court, especially its assessments of witness credibility, but we are not bound by

them. Iowa R. App. P. 6.904(3)(g).





# ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appellant

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

To the extent the parties raise questions of statutory interpretation, our review is for correction of errors at law. See *In re Det. of Johnson*, 805 N.W.2d 750, 753 (Iowa 2011).

## IV. Analysis

Matt and Denise contend Arlin was not a vulnerable elder within the meaning of Iowa Code chapter 235F, the district court improperly shifted the burden of proof to Matt and Denise to affirmatively establish they did not unduly influence Arlin, and the district court erred in finding Matt and Denise financially exploited Arlin.

by filing a verified petition in the district court. Iowa Code § 235F.2(1). Upon the filing of such a petition, the court shall hold a hearing at which the petitioner Id. § 235F.5(1).

Matt and Denise claim Arlin did not meet his burden in establishing he was a vulnerable elder as defined in Iowa Code section 235F.1(17). Section older who is unable to protect himself or herself from elder abuse as a result of A vulnerable elder may prove the allegation of elder abuse through his own testimony. Id. § 235F.5(6)(a).

It is undisputed Arlin was over the age of sixty at the time the three LLCs were transferred to Denise. Arlin presented no evidence his age alone made him incapable of protecting himself from elder abuse. Thus, we examine whether Arlin suffered from a mental or physical condition at the time of the transfers that



## **ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appell**

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

made him unable to protect himself from elder abuse.

hearing on the petition, Arlin testified his depression lasted only six or seven months until approximately December 2012 or January 2013. He admitted he was no longer depressed by the time he withdrew the \$160,000 from the bank, acquired the properties at issue, transferred the LLCs owning the relevant properties to Denise, or when he sent a total of \$30,000 to an unknown person overseas a period of time spanning from December 2012 until early August 2013. However, Arlin also was depressed] -health counselor in early August 2013 died and after Arlin withdrew the money from the bank, acquired and transferred the properties, and sent the large sum of money overseas .

Furthermore, throughout the record, there are many indications Matt and Denise both believed Arlin was unable to take care of his finances due to his mental-health status. In August 2013, Matt, acting as power of attorney for Arlin, withdrew when he learned the total

amount of money Arlin had sent overseas. Additionally, in a phone call between

Matt and Katie in September 2014, Matt repeatedly stated he did not believe

Arlin was mentally competent enough to handle his own finances. In text counselor clearly shows Arlin

Yet, the counselor wrote the letter in

November 2014 in response to allegations by Matt that Arlin was incompetent.



# ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appellant

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

wife, and symptoms of de competent to all of his legal and non-legal affairs. Arlin is capable of making

counselor wrote the letter a mere two months after the phone call occurred

between Katie and Matt in which Matt claimed Arlin was mentally incompetent. It

the letter was written in the fall of 2014 and health in 2013 before he began counseling. Matt apparently took actions on his

belief Arlin was not capable of making sound decisions concerning his financial

bt as to his own

understanding of his financial decisions and participation. Based on our review

of the evidence, we find Arlin was suffering from a mental condition at the time he

withdrew \$160,000 from the bank, acquired the three real estate properties

located at 322 Carroll Street, 222 State Street, and 2811 Warford Street, and

transferred the three LLCs holding these properties to Denise.

We next consider whether Arlin was unable to protect himself from elder

abuse due to his mental condition. As r confidence with the vulnerable elder and knowingly and by undue influence, deception, coercion, fraud, or extortion, obtains control over or otherwise uses or

diverts the benefits, property, resources, belongings, or assets of the vulnerable

Id. § 235F.1(8). nce with

consanguinity or affinity [9]

Id. § 235F.1(14). Section

communication or conduct which unduly

compels a vulnerable elder to act or refrain from acting against the vulnerable



**ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appell**

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

improperly change or obtain control over the actions or decision making of a

Id. § 235F.1(16).

Section 235F.1 does not define deception, fraud, or extortion.

Matt and Denise assert Arlin failed to prove by a preponderance of the

evidence that they financially exploited him or that he was unable to protect

himself from financial exploitation. 10 Matt and Denise rely on the April 18

they did not financially exploit Arlin

9 thereto holds by affinity the same relation to the kindred of the other that the latter holds

by consanguinity . . . . State v. Allen, 304 N.W.2d 203, 207 (Iowa 1981) (citation omitted). Thus, Denise is a person who Arlin. See Iowa Code § 235F.1(14). 10 Matt and Denise also assert they assisted Arlin in managing his finances in good faith. See Iowa Code § 235F.1(5)(b)(4). Arlin claims Matt and Denise failed to preserve error on this argument. The district court did not rule on this issue and neither party sought a ruling or clarification on the issue after the order was entered; therefore, it is waived. See Meier v. Senecaut of appellate review that issues must ordinarily be both raised and decided by the district because he had intended to gift the three LLCs to Denise along with the Dodge

truck and also intended to gift \$150,000 and the Ford truck to Katie. Matt and

Denise acknowledge Arlin only completed one of these transfers and did so

immediately, while the other transfers had not yet occurred at the time he filed

the petition almost two years later but argue Arlin still had time to complete the

other three gifts. 11

The record shows Matt convinced Arlin to use the life insurance proceeds

Arlin received after real estate rental properties.

They agreed Arlin would have a 99% interest in the properties, while Matt would

have a 1% interest to compensate him for his management of the properties.



**ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appellant**

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

Arlin testified he never received any income from the properties before or after the transfer of the LLCs to Denise. Matt prepared certificates of organization for the LLCs at issue and listed Denise as the registered agent. He also prepared the form giving him power of attorney for Arlin, which allowed him to make gifts of his father property located at 322 Carroll Street, Matt prepared a quit claim deed to transfer the property into the LLC of the same name that he had formed. Arlin testified at the hearing he did not sign the April 18 document showing he intended to transfer 322 Carroll Street LLC, 222 State Street LLC, and 2811 Warford LLC to Denise. Matt prepared the minutes of special meetings for the three LLCs

11

However, the record shows Arlin no longer had sufficient funds to make such a large gift to Katie. In December 2012, Arlin had \$274,048.97 in his savings account and \$10,200.13 in his checking. In April 2015, Arlin had a total of \$6273.79 in his savings account and another \$2551.95 in his checking. without consideration; Arlin testified he did not sign these documents. He also

presented evidence he did not complete any of the other transfers intended as gifts to his children or their spouses as provided in the April 18 document.

Furthermore, the April 18 document provided Arlin intended to transfer his interest in 2811 Warford LLC to Denise before the closing on the property had even occurred and without regard to Arlin personal liability on the loan note for the property in the amount of \$138,750. Additionally, Arlin testified he did not file any gift tax returns.

At the time Arlin acquired and transferred the rental properties at issue, he



## ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appellant

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

was grieving the loss of his wife of thirty-seven years. He fell victim to a scam perpetrated by some unknown person abroad and ended up sending a total of \$30,000 to someone he did not know. The record indicates Matt believed Arlin was unable to manage his own finances as a result of this incident, and so Matt, acting as attorney-in-fact, withdrew all of the remaining funds Arlin had in his account. In June 2014, Arlin met with his attorney about reviewing a trust he had had drafted to put the rental properties into, clearly indicating he still believed he was a member of the LLCs. In the September 2014 phone call between Matt and Katie, Katie asked Matt about the trust and why he would not provide Arlin with information about the LLCs so that Arlin could move forward with the trust. Matt told Katie that Arlin no longer had any interest in the LLCs at issue but refused to state why Arlin no longer had an interest in them or that the LLCs had been transferred to Denise over a year before. He stated goin Matt also whatever about it, then . . . Matt stated Arlin would have a hard time proving the money was his.

Upon our de novo review of the record before us, we find Arlin proved by a preponderance of the evidence he was over the age of sixty and unable to protect himself from financial exploitation by Matt and Denise as a result of his See Iowa Code § 235F.1(17).

Matt and Denise to transfer 2811 Warford LLC, 222 State Street LLC, and 322 Carroll Street LLC to Arlin and to provide a complete accounting for each of these three LLCs, any



**ARLIN GEORGE RILEY, Plaintiff-Appellee/Cross-Appellant, vs. MATTHEW RILEY, Defendant-Appell**

2017 | Cited 0 times | Court of Appeals of Iowa | February 8, 2017

copies pertaining to any rental agreements or deposits concerning the properties

owned by the LLCs, and any documentation regarding any obligations or debts of

the LLCs. We affirm the court from taking any detrimental actions that may adversely impact the LLCs.

Arlin also requests appellate attorney fees. Iowa Code section 235F.6(7)

attorney fees and court

award of attorney fees to those incurred in the district court. Therefore, he

claims, appellate attorney fees may be awarded. See, e.g., *Schaffer v. Frank*

*Moyer Constr., Inc.*, 628 N.W.2d 11, 23 (Iowa 2001) (concluding that because

statute did not limit attorney fees to those incurred in district court it also

contemplated the award of appellate attorney fees); *Bankers Trust Co. v. Woltz*,

326 N.W.2d 274, 278 (Iowa 1982) (holding that the right to attorney fees is

statutory, and that a statute which justifies awarding attorney fees in the trial

court also justifies awarding attorney fees in the appeal). Because we are dismissing the cross-appeal in this case in order to give

the district court an opportunity to bring to completion the interlocutory provisions

of its prior order, we leave the issue of attorney fees for consideration and

resolution by the district court. See *Schaffer*, 628 N.W.2d at 23.

APPEAL AFFIRMED; CROSS-APPEAL DISMISSED; AND REMANDED.

