

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 09-3813

Vanguard Fiduciary Trust Company,	*
	*
Plaintiff,	*
	*
v.	*
	*
Dana L. Stuart,	* Appeal from the United States
	* District Court for the
	* District of North Dakota.
Defendant-Appellant,	*
	* [UNPUBLISHED]
and	*
	*
Elisha N. Kabanuk,	*
Defendant-Appellee.	*

Submitted: July 5, 2010
Filed: July 16, 2010

Before LOKEN, BYE, and SHEPHERD, Circuit Judges.

PER CURIAM.

Vanguard Fiduciary Trust Company (VFTC) as trustee for the Burlington Northern Santa Fe Investment and Retirement Plan filed this interpleader action to determine the rights of Dana Stuart and Elisha Kabanuk, who each claimed to be the sole beneficiary of deceased employee Lou Ann Thompson's 401(k) account in the Plan. See 28 U.S.C. §§ 1335 and 1397; 29 U.S.C. § 1132. Stuart and Kabanuk answered, and Stuart filed a cross-claim against Kabanuk, seeking rescission of

Thompson's change-of-beneficiary document based on alleged lack of capacity and undue influence. Stuart appeals *pro se* the district court's¹ judgment entered in accordance with a jury verdict in favor of Kabanuk.

On appeal, Stuart argues that she is the proper beneficiary because the evidence at trial established Thompson's lack of capacity when she signed the change-of-beneficiary document and undue influence by Kabanuk and her mother, Thompson's sister. However, Stuart did not file a motion for new trial or judgment as a matter of law, nor does the record on appeal include a trial transcript. Accordingly, Stuart has failed to establish any preserved error or plain error in the jury's verdict. See Muhammad v. McCarrell, 536 F.3d 934, 938 (8th Cir. 2008); Meroney v. Delta Int'l Mach. Corp., 18 F.3d 1436, 1437 (8th Cir. 1994). Accordingly, we affirm. See 8th Cir. R. 47B.

¹The HONORABLE RALPH R. ERICKSON, United States District Judge for the District of North Dakota.