IN THE COURT OF APPEALS OF TENNESSEE
AT JACKSON
SEPTEMBER 18, 2002 Session

ESTATE OF ZERAH FISHER, DECEASED, BY BOB MEYERS, INDIVIDUALLY & AS THE EXECUTOR OF THE ESTATE OF ZERAH FISHER, ET AL. v. HOWARD E. ROGERS

Direct Appeal from the Chancery Court for Shelby County
No. CH-01-0462-2; Kenny Armstrong, Special Chancellor

No. W2001-02506-COA-R3-CV - Filed December 31, 2002

This appeal involves the transfer of a quitclaim deed for real property. The trial court refused to set aside the quitclaim deed after finding that the Appellants failed to prove the elements of undue influence, fraud, or the presence of a confidential relationship. For the following reasons, we affirm.

Tenn. R. App. P. 3; Appeal as of Right; Judgment of the Chancery Court Affirmed

ALAN E. HIGHERS, J., delivered the opinion of the court, in which DAVID R. FARMER, J., and HOLLY KIRBY LILLARD, J., joined.

John E. Dunlap, Memphis, TN, for Appellants

Kevin D. Balkwill, Memphis, TN, for Appellee

OPINION

Facts and Procedural History

On April 7, 2000, Zerah Fisher, now deceased, executed a quitclaim deed for his home located in Memphis, Tennessee to his nephew, Howard Rogers. The deed conveyed Mr. Fisher's home to "ZERAH FISHER and HOWARD E. ROGERS, as Joint Tenants with Full Rights of Survivorship in the Longest Liver of them." Prior to the execution of the deed, Mr. Fisher had offered to make a gift of the same property to his two stepchildren, Bob Meyers and Rudolph Meyers**.** The stepsons did not accept the transfer.

Mr. Fisher had open heart surgery in December of 2000. Although he recovered from this procedure, he again fell ill in February of 2001, at which time Bob Meyers and Rudolph Meyers learned of the April 7, 2000 deed. On March 2, 2001, approximately two weeks prior to his death,

Mr. Fisher sought to set aside the deed he conveyed to Mr. Rogers. Mr. Fisher died on March 10, 2001, a suggestion of death was filed on March 22, 2001, and the Estate of Zerah Fisher was substituted as a Party Plaintiff.

The Estate, along with Bob Meyers and Rudolph Meyers, petitioned the lower court to set aside the deed transfer to Mr. Rogers claiming the transfer was the result of undue influence exerted by Mr. Rogers. Bob Meyers and Rudolph Meyers claimed that Mr. Rogers was in a confidential relationship with Mr. Fisher**,** that Mr. Rogers procured the services of the attorney who drafted the quitclaim deed, that Mr. Fisher received no independent advice regarding the deed and that Mr. Rogers did not reveal the transfer to anyone until after Mr. Fisher was hospitalized. Mr. Rogers argued that Mr. Fisher was neither ill nor feeble on the date of transfer, that Mr. Fisher understood the nature of the deed and that it was the intention of the parties to effect such a transfer.

The trial court refused to set aside the quitclaim deed, finding that the allegations of fraud against Mr. Rogers were unsupported, the evidence failed to prove the existence of a confidential relationship and the elements of undue influence were not satisfied. The court also found that there was no showing that Mr. Fisher did not comprehend the nature and effect of the quitclaim deed and that Mr. Fisher was not required to receive independent advice because there was no showing of a confidential relationship, undue influence or fraud. The trial court declared that the title in the property was quieted and that sole ownership was vested in Mr. Rogers. Bob Meyers and Rudolph Meyers now appeal the decision of the lower court and argue that the court erred in finding that the elements of undue influence were not satisfied. Mr. Rogers prays for an award of attorney's fees and all costs in conjunction with the present appeal.

Issue

The parties raise the following issue for our review:

1. Whether the trial court erred in ruling that the Appellants failed to prove the elements of undue influence.

Standard of Review

The existence of a confidential relationship and the exercise of undue influence are questions of fact. Clark v. Perry, No. 02A01-9704-CH-00080, 1998 Tenn. App. LEXIS 194, at *12-13 (Tenn. Ct. App. Mar. 19, 1998) (citing Fritts v. Abbott, 938 S.W.2d 420, 421 (Tenn. Ct. App. 1996)). Accordingly, our review of these issues is *de novo* upon the record, accompanied by a presumption that the trial court's findings of fact are correct unless the evidence preponderates otherwise. Id. at *13 (citing Fritts, 938 S.W.2d at 421; T.R.A.P. 13(d)). The presumption of correctness afforded the trial court's findings of fact is particularly important where the court is called upon to resolve conflicting testimony based upon the court's evaluation of the witnesses' credibility. Id. In a similar case involving a claim of undue influence, this Court stated:

> Where the trial judge has seen and heard witnesses, especially where issues of credibility and weight of oral testimony are involved, on review considerable deference must still be accorded to those circumstances. Where the issue for decision depends on the determination of credibility of witnesses, the trial court is the best judge of the credibility and its findings of credibility are entitled to great weight. This is true because the trial court alone has the opportunity to observe the appearance and demeanor of the witnesses.

Id. at *13-14 (citing Ivey v. McAlexander, No. 02 A01-9210-CH-00287, 1993 Tenn. App. LEXIS 578, at *16 (Tenn. Ct. App. Sept. 1, 1993) (citing Tenn-Tex Properties v. Brownell-Electro, Inc., 778 S.W.2d 423 (Tenn. 1989))).

Law and Analysis

The doctrine of undue influence applies "when one party, such as a grantee, is in a position to exercise undue influence over the mind and the will of another, such as a grantor, due to the existence of a confidential relationship." Clark, 1998 Tenn. App. LEXIS, at *8 (quoting Brown v. Weik, 725 S.W.2d 938, 945 (Tenn. Ct. App. 1983)). A grantor seeking to rescind a deed based on this doctrine has the burden of proving (1) that a confidential relationship existed between the parties wherein the grantee was the dominant party, and (2) that the transaction conferred a benefit on the grantee. Id. (citing Matlock v. Simpson, 902 S.W.2d 384, 386 (Tenn. 1995); Fritts, 938 S.W.2d at 421; Williamson v. Upchurch, 768 S.W.2d 265, 269 (Tenn. Ct. App. 1988); Parham v. Walker, 568 S.W.2d 622, 624 (Tenn. Ct. App. 1978)). Once the grantor establishes these elements, a presumption arises that the deed was procured through undue influence. Id. at *8-9 (citing Brown, 725 S.W.2d at 945; Parham, 568 S.W.2d at 624). The burden then shifts to the grantee to prove, by clear and convincing evidence, that the transaction was fair and was not the product of undue influence. Id. at *9 (citing Matlock, 902 S.W.2d at 386; Brown, 725 S.W.2d at 945; Parham, 568 S.W.2d at 624). If the grantee fails to carry this burden, the transaction is presumed void. Id. (citing Parham, 568 S.W.2d at 624).

Confidential relationships can assume a multitude of forms. Id. (citing Mitchell v. Smith, 779 S.W.2d 384, 389 (Tenn. Ct. App. 1989)). Accordingly, courts have been hesitant to provide an exact definition for the term "confidential relationship." Id. (*accord* Williamson, 768 S.W.2d at 269; Brown, 725 S.W.2d at 945). Generally, a confidential relationship includes any relationship of trust and confidence which gives one person dominion or control over another. Id. (citing Mitchell, 779 S.W.2d at 389; Williamson, 768 S.W.2d at 269); see also Childress v. Currie, 74 S.W.3d 324, 328 (Tenn. 2002). More specifically, a confidential relationship is one "where confidence is placed by one in the other and the recipient of that confidence is the dominant personality, with the ability, because of that confidence, to influence and exercise dominion over the weaker or dominated party." Clark, 1998 Tenn. App. LEXIS, at *9-10 (citing Iacometti v. Frassinelli, 494 S.W.2d 496, 499 (Tenn. Ct. App. 1973); *accord* Mitchell, 779 S.W.2d at 389; Williamson, 768 S.W.2d at 269; Gustafson v. Baldridge, No. 02 A01-9102-CV-00009, 1991 Tenn. App. LEXIS 918, at *7 (Tenn. Ct. App. Nov. 27, 1991)).

Although courts have avoided an exact legal definition for the term "confidential relationship," they have discussed the type of evidence which will support the existence of a confidential relationship:

> Evidence of one party's deteriorated mental or physical condition will substantiate the existence of a confidential relationship as well as the ability of the dominant party to influence the weaker party . . . . The weaker party need not be legally insane . . . . Any condition rendering the weaker party unable to guard against the dominant party's imposition or undue influence is sufficient . . . .
>
> Thus, the question to be answered is not whether the weaker party's decision was a good one, or even whether he knew what he was doing at the time. In these cases, the courts must determine whether the weaker party's decision was a free and independent one or whether it was induced by the dominant party.

Id. (citing Williamson, 768 S.W.2d at 270 (citations omitted); *accord* Fritts, 938 S.W.2d at 421). Stated another way,

> there must be a showing that there were present the elements of dominion and control by the stronger over the weaker, or there must be a showing of senility or physical and mental deterioration of the donor or that fraud or duress was involved, or other conditions which would tend to establish that the free agency of the donor was destroyed and the will of the donee was substituted therefor.

Id. (citing Kelly v. Allen, 558 S.W.2d 845, 848 (Tenn. 1977); *accord* Fritts, 938 S.W.2d at 420-21).

The record supports the trial court's conclusion that Mr. Rogers did not exercise sufficient dominion and control over Mr. Fisher. Appellants claim that a confidential relationship was established. In support of this contention, the Appellants claim that Mr. Fisher's health began to deteriorate after the death of his wife in February of 1997, that Mr. Fisher underwent open heart surgery in December of 2000, that secrecy surrounded the deed transfer, and that there was insufficient consideration.

There is nothing in the record to indicate that Mr. Fisher was not of sound mind or had deteriorated to the point that he could no longer exercise his own will. We have previously held that the grief which follows the death of a loved one does not automatically render a person's mind unsound. Young-Green v. Green, No. W1999-00093-COA-R3-CV, 2000 Tenn. App. LEXIS 138, at *11 n.4 (Tenn. Ct. App. Mar. 2, 2000). The record is also devoid of any evidence that Mr. Fisher was so physically deteriorated that he could not exercise his own will. Appellants claim that Mr. Fisher never fully recovered from his open-heart surgery in December of 2000 and that this is when Mr. Rogers began to re-acquaint himself with Mr. Fisher. This contention has no bearing on Mr. Fisher's physical health on April 7, 2000, the date the deed was executed. The open-heart surgery

was performed approximately eight months after the deed was executed. Thus, Mr. Fisher's health in December of 2000 is not relevant to his health on April 7, 2000.

Appellants also claim that secrecy shrouded the deed transfer. Specifically, appellants claim that the existence of the deed was not revealed until February of 2001. While the Appellants may not have been told by either Mr. Fisher or Mr. Rogers of the deed's existence, the deed was recorded on April 10, 2000. Thus, as the deed was a matter of public record, it was not shrouded in secrecy.

Accordingly, we hold that the evidence is insufficient to establish the existence of a confidential relationship between Mr. Fisher and Mr. Rogers. While Mr. Rogers was a blood relative of Mr. Fisher and while he occasionally provided Mr. Fisher with transportation, Mr. Rogers was not Mr. Fisher's primary caretaker, nor was he Mr. Fisher's primary financial advisor. In fact, Mr. Rudolph Meyers testified that his brother, Bob Meyers, took care of all Mr. Fisher's finances.

Further, there was no testimony that Mr. Rogers misled Mr. Fisher or withheld the true nature of the document Mr. Fisher was signing. Mr. Griffin, the attorney who drafted the quitclaim deed, testified that the parties sat down and discussed the deed and that he explained the deed to both Mr. Fisher and Mr. Rogers. Mr. Griffin stated that he was "hired to draft a document to reflect the intentions of the parties" and that he explained the "purpose of the document and what it accomplishes." When asked whether he advised Mr. Fisher of his right to independent counsel, Mr. Griffin responded that he "was hired to draft the document that reflected the parties' intention. . . . so, I don't state that I represented either party." Mr. Griffin testified that he explained the document, asked if the parties had any questions, and asked if there was anything they did not understand. In response, both Mr. Fisher and Mr. Rogers stated that they had no questions and that they understood what they were executing. Mr. Griffin further testified that his firm had never done any previous work for Mr. Rogers.

Finally, Appellants claim that there was a lack of consideration in this transaction, such that this Court should set aside the deed. On the issue of adequacy of consideration, our Supreme Court has held:

> [w]hile there are some cases which hold that inadequacy may be so gross, unexplained or coupled with facts inequitable in character (Stephens v. Ozbourne, 64 S.W. 902), as to raise the presumption of fraud, so as to avoid the instrument, this presumption of fraud will never prevail where it is clearly shown that the grantor intelligently and deliberately disposes of his property in a manner to satisfy himself.

Stamper v. Venable, 97 S.W. 812, 814 (Tenn. 1906). The Court, in Stamper, went on to state that "[w]henever it appears that the parties have knowingly and deliberately fixed upon any price, however great or however small, there is no occasion nor reason for interference by courts." Id. at 814-15 (citations omitted). Further,

> [i]f there is nothing but mere inadequacy of price, the case must be extreme in order to call for the interposition of equity. Where the inadequacy does not thus stand alone, but is accompanied by other inequitable incidents, the relief is much more readily granted . . . . When the accompanying incidents are inequitable and show bad faith, such as concealments, misrepresentations, undue advantage, oppression on the part of one who obtains the benefit, or ignorance, weakness of mind, sickness, old age, incapacity, pecuniary necessities, and the like, on the part of the other, these circumstances combined with inadequacy of price may easily induce a Court to grant relief defensive or affirmative.

Stephens, 64 S.W. at 576 (citations omitted).

Although consideration was less than ten (10) dollars, there is no indication in the record that Mr. Fisher did not intelligently and deliberately dispose of his property. Mr. Griffin testified that he read through the deed with Mr. Fisher, explained its purpose and what it accomplished. Mr. Griffin further testified that Mr. Fisher understood what was explained to him and that the deed was drafted to reflect the parties intentions. Thus, it appears to this Court that the parties knowingly fixed upon a price. Absent a showing of a confidential relationship, misrepresentation, or undue advantage, this Court will not intervene and set aside the deed.

After a thorough review of the record, we conclude that the evidence supports the trial court's conclusion that the Appellants failed to prove the existence of a confidential relationship, failed to show that Mr. Rogers exercised undue influence over Mr. Fisher, and failed to demonstrate fraud. We also find that the evidence supports the trial court's determination that the rule of independent advice was inapplicable to the present case. This Court has previously held that the "lack of independent advice will not invalidate a transaction where there is no confidential relationship or when there is not proof of fraud, duress, or overreaching on the part of the party benefitting from the transaction." Williamson, 768 S.W.2d at 271 (citing McGill v. Headrick, 578 S.W.2d 377, 384 (Tenn. Ct. App. 1978)).

Conclusion

Accordingly, we affirm the trial court. Mr. Rogers is not entitled to attorney fees on appeal, as we find that the appeal was not frivolous. Costs on appeal are taxed to the Appellants, Bob E. Meyers, Rudolph Meyers, and the Estate of Zerah Fisher by Bob Meyers, Executor, and their surety, for which execution may issue if necessary.

_____

ALAN E. HIGHERS, JUDGE