

IN THE COURT OF APPEALS OF TENNESSEE
WESTERN SECTION AT NASHVILLE

**BOYD F. GENTRY, WILLIAM T.
GENTRY, LAURA D. PRATER,
NORA B. FANN, CECIL V.
GENTRY, HAROLD L. GENTRY,
MARION SUE GRIFFITH, ANN
STONE, NORA DAUGHTRY,
ELISE M. CLOWERS, and TOMMY
E. MAHAFFA,**

Plaintiffs-Appellees,

Vs.

**DOROTHY RIGSBY, Individually and
as Executrix of the Estate of
LONNIE B. MAHAFFA, Deceased,**

Defendant-Appellant.

FILED

June 11, 1997

**Cecil W. Crowson
Appellate Court Clerk**

Coffee Circuit No. 25,841
C.A. No. 01A01-9610-CV00455

FROM THE COFFEE COUNTY CIRCUIT COURT
THE HONORABLE GERALD L. EWELL, SR.

H. Thomas Parsons; Parsons, Nicholas & Johnson of Manchester
For Appellant

J. Stanley Rogers; Rogers, Richardson & Duncan of Manchester
For Appellees

AFFIRMED

Opinion filed:

**W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.**

CONCUR:

ALAN E. HIGHERS, JUDGE

HOLLY KIRBY LILLARD, JUDGE

This appeal involves a will contest concerning the Last Will and Testament of Lonnie B. Mahaffa and also involves a contest as to certain bank accounts of the decedent. The

contestants are Lonnie B. Mahaffa's eleven nieces and nephews¹, and the proponent of the will is Dortha (Dorothy) Rigsby, a friend of the testator and the executrix of Mahaffa's estate. Dorothy Rigsby appeals from the judgment on the jury verdict finding that a paper writing dated March 11, 1992 is not the Last Will and Testament of Lonnie B. Mahaffa and awarding two bank accounts to Mahaffa's estate.

Lonnie B. Mahaffa died on September 24, 1992 at the age of 86. On October 7, 1992, Dorothy Rigsby filed a petition to probate a paper writing, dated March 11, 1992, as Mahaffa's Last Will and Testament. The will was admitted to probate, and Dorothy Rigsby was appointed executrix of the estate.

On November 2, 1992, the contestants filed a complaint against Dorothy Rigsby individually and as executrix of the estate. The complaint avers that the eleven contestants are the testator's only heirs at law and that the paper writing admitted to probate by Rigsby is not the Last Will and Testament of Lonnie Mahaffa. The contestants aver that Mahaffa was incapable of managing his own business affairs and that the will is not valid because Mahaffa lacked testamentary capacity to make the will. They also allege that Mahaffa was unduly influenced by Rigsby to make the will. Specifically, the contestants allege that Rigsby exerted fraud and undue influence over Mahaffa from late 1991 until his death in 1992. During that period, they allege that Rigsby coerced Mahaffa to convey all of his checking accounts, savings accounts, certificates of deposit, and investment accounts into joint accounts with Rigsby. The complaint prayed for an injunction to prevent Rigsby from disposing of any of the assets of the estate and for a determination that the will was not the Last Will and Testament of Lonnie Mahaffa.

On November 13, 1992, the parties agreed to a preliminary injunction that restrained Rigsby from spending or otherwise disposing of any of the assets of the estate. On December 10, 1992, Rigsby filed an answer that denied the material allegations of the complaint. The parties entered an agreed order of amendment to the complaint, dated September 23, 1993, which added a prayer for relief requesting that the transfers of all checking accounts, savings accounts,

¹ The contestants are Boyd F. Gentry, William T. Gentry, Laura D. Prater, Nora B. Fann, Cecil V. Gentry, Harold L. Gentry, Marion Sue Griffith, Ann Stone, Nora Daughtry, Elsie M. Clowers and Tommy E. Mahaffa. They will be referred to collectively as the contestants.

certificates of deposit, and investment accounts into joint accounts be set aside and declared null and void.

The case was tried before a jury on May 25, 26, 31, and June 1 and 2, 1994. However, the trial court entered an order of mistrial after the jury announced that it was hopelessly deadlocked. The case was retried on February 26, 27, 28, 29, and March 4, 5, and 6, 1996.

On April 28, 1987, Mahaffa executed a will that left his entire estate to his daughter, Barbara M. Polega. He signed a power of attorney to Barbara Polega and allowed her to handle his financial affairs. Mahaffa also transferred his residence to his daughter by deed, but he retained a life estate in the premises. However, Barbara Polega died on September 11, 1990.²

On September 25, 1990, Mahaffa executed a new will that named Vonda Marie Polega³ and her daughter, Mary Katherine Conrad, as beneficiaries and Vonda Polega as executrix of the estate. The will provided that Vonda Polega would receive Mahaffa's house on the condition that she lived there and took care of him until his death. The remainder of the estate was to be divided into equal shares for Vonda Polega and Mary Katherine Conrad. Mahaffa executed a new power of attorney that gave Vonda Polega a broad range of powers to administer his estate. In addition, she added her name to his checking account as a joint account holder with signature authority.⁴ However, Mahaffa did not realize that she had the power to write checks.

In October 1990, Boyd Gentry, a nephew of Mahaffa, discovered that Vonda Polega was writing unauthorized checks on Mahaffa's checking account. A subsequent criminal investigation by the Coffee County Sheriff's Department revealed that Polega defrauded Mahaffa out of \$1,900.00 and that some personal property was missing from Mahaffa's house. On October 17, 1990, Mahaffa changed his checking account to an individual account in his name only.

Boyd Gentry testified that Mahaffa did not have the ability to handle his affairs and that Mahaffa did not know the extent of his estate, the balance in either his checking account or his

² The record does not clearly indicate what happened to the deed to the house after Barbara Polega died. However, from the state of the record, we assume that Mahaffa became the legal owner of the home.

³ Vonda Polega was Barbara Polega's sister-in-law before Barbara Polega was divorced.

⁴ It is unclear if Vonda Polega had survivorship rights on the checking account, but it appears that she did.

savings account, or any information about the certificates of deposit. Gentry opined that Mahaffa did not have the capacity to make a will in 1990 or 1991 because he did not know the amount of his assets and because he was easily influenced by others. He also stated that Mahaffa did not have the physical capacities to take care of household chores like mowing the yard and that Mahaffa was an emotional man who cried frequently from 1990 until his death in 1992. Gentry testified that Mahaffa rarely drove his car and generally had someone drive him on his errands and to church.

After October 17, 1990, Gentry was with Mahaffa daily and spent some nights with him. Eventually, Gentry and Mahaffa hired Carol Marks Rains and her daughter to live in the house with Mahaffa and to take care of him. On May 9, 1991, Mahaffa added Gentry's name to his checking account as a joint account holder, but Gentry refused to take survivorship rights. He testified that he explained the difference between joint signature authority and survivorship rights to Mahaffa and that he told Mahaffa not to give anyone survivorship rights in his accounts. Gentry testified that Mahaffa placed trust and confidence in him and that he assisted Mahaffa with his accounts until 1992.

On October 23, 1990, Mahaffa executed a handwritten will that named his next of kin as beneficiaries. Then, on January 22, 1991, Mahaffa executed another will that left his house to Gentry and Marion Sue Griffith with some small special bequests and the residue of the estate to the nieces and nephews. On October 2, 1991, Mahaffa executed yet another will that left the house entirely to Gentry with the residue of the estate to the nieces and nephews.⁵ However, Gentry disavowed an interest in any of these wills because he stated that he was not taking care of Mahaffa to receive his property.

Rigsby testified that she, her husband, and their two daughters were long-time friends of the Mahaffas. She related their association in the church and as neighbors in the community during the time that Mahaffa's wife was living and was an invalid. She also related the close, friendly relationship of the family after Mahaffa's wife death and during the lifetime of Mahaffa's daughter, Barbara. She testified that during the times that Mahaffa's wife was in the hospital, they assisted the Mahaffa family and drove them back and forth to the hospital and that

⁵ Mahaffa's attorney testified that she drafted additional wills, all of which were unsigned or unexecuted.

they were the people that Mahaffa turned to when his wife was dying. Subsequent to his wife's death, the Rigsbys, Mahaffa, and his daughter, Barbara, remained close friends, and Rigsby drove Barbara to and from the doctor when she became ill. When Barbara Mahaffa died, Mahaffa called Rigsby first, and she immediately went to the hospital and again cared for the family and helped with the funeral arrangements. Rigsby's husband had died before Barbara, and during the time that he was ill suffering from cancer, Mahaffa visited frequently in the Rigsby home with him. Rigsby testified that she was a close family friend and had only the desire to help care for Mahaffa's personal needs and his affairs when she was asked to do so.

In October 1991, Rigsby became actively involved in Mahaffa's affairs. She admitted that Mahaffa placed his trust and confidence in her to assist him with his finances. Mahaffa told Gentry that he no longer trusted Gentry's advice because Rigsby and his attorney told him that Gentry was incorrect about an account with a right of survivorship. According to Gentry, Mahaffa believed, on the advice of Rigsby and the attorney, that an account with a right of survivorship would pass to his estate, not to the joint account holder. Gentry testified that Mahaffa changed his accounts to joint accounts with a right of survivorship for Rigsby because he was afraid that Gentry would abscond with his funds.

Carol Rains testified that Rigsby told Mahaffa that he was feeling bad because Rains was giving him too much medicine that had been prescribed by his doctor. Rigsby changed Mahaffa's medication herself, but when Rains approached Mahaffa with his doctor's orders, Mahaffa rejected her opinion because Rigsby had told him he was not supposed to be taking the medicine. Rains testified that Rigsby pressured Mahaffa into going to places and participating in activities in which he had no desire and that Mahaffa and Rigsby progressively spent more time together after October 1991. Rains stated that Mahaffa asked her to leave because Rigsby said that there was not enough money to pay her⁶, and she left the employment in May 1992.

Mahaffa did not want to go to a nursing home, and Rigsby promised him that she would never put him in one. Rains testified that Rigsby told Mahaffa that Gentry was going to take him to a nursing home and that would be one of the first things that would happen to him. Although

⁶ Rains's salary was \$75.00 per week.

Gentry would not make the same promise to Mahaffa as Rigsby, he never had plans to put Mahaffa in a nursing home.

Rigsby was involved with four major transactions concerning Mahaffa's finances. In October 1991, Rigsby drove Mahaffa to the First National Bank in Murfreesboro, Tennessee where she was added as a joint owner with a right of survivorship in a certificate of deposit worth \$10,000.00.

On December 30, 1991, Rigsby took Mahaffa to the First National Bank in Manchester, Tennessee and had a \$15,000.00 certificate of deposit transferred into her name with joint ownership and with a right of survivorship. Mahaffa removed Barbara Polega's name from the account and added Rigsby's name.

On February 19, 1992, Rigsby accompanied Mahaffa to the First National Bank in Manchester to add her name as joint owner with a right of survivorship to a savings account in the amount of \$25,113.81. The savings account previously was in the names of Mahaffa and Barbara Polega.

Finally, on February 25, 1992, Rigsby and Mahaffa returned to the First National Bank in Manchester to transfer a checking account in the amount of \$28,970.72 into a joint account with a right of survivorship for Rigsby. Gentry's name was removed from the account, and Gentry no longer was involved in Mahaffa's financial affairs.

Rigsby testified that she was surprised when Mahaffa offered her a right of survivorship in the \$10,000.00 certificate of deposit. According to Rigsby, Mahaffa wanted to add Rigsby's name to the certificate because their families had been close for a long time. She testified that she did not know the extent of his assets at the time of the first transfer. Rigsby stated that Gentry expressed displeasure with the addition of Rigsby's name, but that Mahaffa would not change his mind. She drove him to the bank to transfer the \$15,000.00 certificate, but stated that she did not influence him to add her name. At this point in time, Rigsby and Mahaffa frequently attended church and church events together, but she was not helping him with his financial affairs, nor was she living with him.

Rigsby testified that Gentry pressured Mahaffa about both certificates of deposit and that their dispute kept escalating. She claims that Mahaffa asked for her help with his finances after Gentry refused to come back to help. He then transferred the savings account and the checking

account into joint accounts with Rigsby.

After February 1992, Rigsby drew numerous checks on Mahaffa's First National Bank checking account to cover Mahaffa's expenses. In June 1992, Rigsby moved in with Mahaffa, and she cashed a \$125.00 check per week to pay for groceries, gas, and sundries. Before the injunction was issued, she cashed a \$1,000.00 check to pay for the expenses of probating the estate.

At the time of Mahaffa's death, one certificate of deposit was worth \$10,000.00, and the other was worth \$15,000.00. The checking account contained \$31,199.00, and the savings account held \$25,906.00. Each of the four assets at First National Bank was a joint account with a right of survivorship for Rigsby.

On March 11, 1992, Mahaffa executed the will in dispute in this case. The will devised \$500.00 each to the Shady Grove Baptist Church, Laura Prater, Nora Fann, and Marion Sue Griffith. The will then devised the rest and residue of the estate to Dorothy Rigsby, and she was appointed executrix of the estate. Finally, on April 21, 1992, Mahaffa signed a power of attorney for Rigsby.

The jury found that Mahaffa had sufficient testamentary capacity to make the will and to transfer the accounts in question.⁷ However, the jury found that the Last Will and Testament dated March 11, 1992 was procured by undue influence. The jury also found that neither transfer of the certificates of deposit was procured by undue influence. Finally, the jury found that the transfers of the savings account and the checking account were procured by undue influence. The trial court entered judgment on the jury verdict and subsequently overruled Rigsby's motion for a new trial.

Rigsby appeals and presents four issues for our review: 1) whether the trial court erred by not directing a verdict in favor of Rigsby on the issue of undue influence; 2) whether there is material evidence to support the jury's verdict 3) whether the jury's verdict is inconsistent; and 4) whether the trial court erred in its jury charge concerning a "confidential relationship."

The first issue for review is whether the trial court erred in overruling Rigsby's motion for a directed verdict on the issue of undue influence.

⁷ Mahaffa's testamentary capacity to make the will and the transfers is not an issue on appeal.

The rule for determining a motion for a directed verdict requires the trial judge and the reviewing court on appeal to look to all of the evidence, take the strongest legitimate view of it in favor of the opponent of the motion, and allow all reasonable inferences from it in the opponent's favor. The court must discard all countervailing evidence, and if there is then any dispute as to any material determinative evidence, or any doubt as to the conclusion to be drawn from the whole evidence, the motion must be denied. *Bills v. Lindsay*, 909 S.W.2d 434, 438 (Tenn. App. 1993).

It is conceded that Rigsby was handling Mahaffa's business and financial affairs. In this case, the contestants rely on the presumption of undue influence by virtue of a confidential relationship. Rigsby first argues, however, that a confidential relationship was not established because the contestants did not prove dominion and control.

Confidential relationships can assume a variety of forms, and thus the courts have been hesitant to define precisely what constitutes a confidential relationship. *Mitchell v. Smith*, 779 S.W.2d 384, 389 (Tenn. App. 1989). In general terms, it is any relationship that gives one person dominion and control over another. *Id.* In *Mitchell*, this Court stated:

It is not merely a relationship of mutual trust and confidence, but rather it is one where confidence is placed by one in the other and the recipient of that confidence is the dominant personality, with ability, because of that confidence, to influence and exercise dominion and control over the weaker or dominated party.

Id. (quoting *Iacometti v. Fransinelli*, 494 S.W.2d 496, 499 (Tenn. App. 1973)).

The testimony showed that Mahaffa was an emotional man who frequently cried, and many of the witnesses testified that he was easily influenced and manipulated. More than one witness testified that Mahaffa did whatever Rigsby said. Rigsby presented testimony that Mahaffa was still "sharp" and was not confused or disoriented. Rigsby testified that they frequently watched baseball up to the time of his death and that Mahaffa knew the names, statistics, and batting averages of the players for his favorite team, the Chicago Cubs. She denied any effort to control or dominate Mahaffa.

There is a conflict in the testimony of the witnesses, and the credibility accorded to the testimony of the witnesses is the province of the jury. *See Farmers & Merchants Bank v. Petty*,

664 S.W.2d 77, 79 (Tenn. App. 1983). From the evidence, the jury could find that Rigsby was a dominant personality and had the ability to influence Mahaffa.

Rigsby also argues that the contestants failed to establish a *prima facie* case of undue influence. However, as heretofore noted, the contestants are relying upon a presumption of undue influence by virtue of a confidential relationship. The rule in Tennessee is that with the existence of a confidential relationship followed by a transaction wherein the dominant party receives a benefit from the other party, a presumption of undue influence arises that may be rebutted only by clear and convincing evidence of the fairness of the transaction. *Matlock v. Simpson*, 902 S.W.2d 384, 386 (Tenn. 1995). There is certainly no dispute that Rigsby received a benefit, both from the will and from the transfers of the various accounts and certificates of deposit. The jury had for consideration whether there was a confidential relationship, and once the jury determined that there was a confidential relationship with the unrefuted proof that there was a benefit to Ms. Rigsby, there was no need to prove the overt act of undue influence. The jury was then placed in the position of considering whether there was clear and convincing evidence to negate undue influence on the part of Ms. Rigsby.

The second issue is whether there is material evidence to support the jury's verdict. Rigsby reiterates her argument in the first issue that there is no proof of dominion and control to establish a confidential relationship and there is no proof of undue influence.

Undue influence invalidating a will must be such as destroys the free agency of the testator to the extent that the will, though nominally his or her own, is in reality that of another. *Bills*, 909 S.W.2d at 440. We find that there is material evidence in the record to support the jury's verdict. The record contains evidence that shows that Rigsby controlled Mahaffa's finances, influenced his decisions, and was the dominant figure in his life. The jury could find from the record that Rigsby did not prove the absence of undue influence or the fairness of the transactions by clear and convincing evidence.

The third issue for review is whether the jury's verdict is inconsistent. The jury found that Rigsby exerted undue influence over Mahaffa on three occasions: the transfer of the checking account, the transfer of the savings account, and the procurement of the will. However, the jury did not find undue influence in the transfer of the certificates of deposit. We believe that the jury's verdict is not inconsistent because each of the events (the four transfers and the

execution of the will) occurred at a different time and at a different stage in Rigsby and Mahaffa's relationship. The jury could have concluded that Rigsby was not a dominant party and did not have the ability to unduly influence Mahaffa when the certificates of deposit were transferred because it was early in their relationship, while she did have the power to unduly influence the transfers of the savings and the checking accounts further into the relationship a few months later.

Finally, the fourth issue for review is whether the trial court erred in the jury charge about a "confidential relationship." The trial court instructed the jury as follows:

A confidential relationship exists whenever trust and confidence is reposed in one person in the integrity and fidelity of another.

Undue influence may be presumed from a confidential relationship, but the presumption of undue influence is rebuttable by clear and convincing evidence of the fairness of the transaction. In determining the fairness of the transaction the Jury's function is limited to a determination of the testator's capacity to make a will and whether the provisions in the will were arrived at through the free agency of the testator, Mr. Mahaffa, rather than through the imposition of someone else's will. If the Jury finds in favor of the will on these two questions, it has found that the transaction is fair. In other words, if the Jury has found that the testator had capacity to make a will and that the provisions of the will were arrived at through the free agency of the testator, Mr. Mahaffa, rather than through the imposition of someone else's will, then you have found that the transaction was fair.

The term clear and convincing evidence by which any confidential relationship and the presumption of undue influence -- the clear and convincing evidence which must be shown to overcome this situation, if you find a confidential relationship, means evidence -- clear and convincing evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence.

A confidential relationship can assume a variety of forms. In general, it is any relationship which gives one person dominion and control over another. It's not merely a relationship of mutual trust and confidence, but rather it is one where confidence is placed by one in the other and the recipient of the confidence is the dominant personality with ability because of that confidence to influence and exercise dominion and control over the weaker or dominated party.

Rigsby argues that the jury charge was confusing to the jury because of the order of the instructions and the failure to include the elements of dominion and control in the initial definition of a confidential relationship. Rigsby asserts that the jury was led to believe that the existence of trust and confidence alone created a confidential relationship. The contestants argue that the charge was a correct statement of the law and was not confusing to the jury.

The jury instructions need not be perfect in every detail, *Davis v. Wilson*, 522 S.W.2d 872, 884 (Tenn. App. 1974), as long as they are, as a whole, correct. *Elam v. Oakley (In re Estate of Elam)*, 738 S.W.2d 169, 174 (Tenn. 1987). We will not invalidate the jury charge as long as it fairly defines the legal issues involved in the case and does not mislead the jury. *Patton v. Rose*, 892 S.W.2d 410, 416 (Tenn. App. 1994) (quoting *Grissom v. Metropolitan Gov't of Nashville*, 817 S.W.2d 679, 685 (Tenn. App. 1991)).

In this case, the jury charge was a correct statement of the law, and the charge included an instruction about “dominion and control.” Rigsby’s argument merely focuses on the order of the jury charge. We believe that the charge was fair and complete and properly defined the legal issues involved in this case.

Accordingly, the judgment of the trial court on the jury verdict is affirmed in all respects. Costs of this appeal are assessed against the appellant.

**W. FRANK CRAWFORD,
PRESIDING JUDGE, W.S.**

CONCUR:

ALAN E. HIGHERS, JUDGE

HOLLY KIRBY LILLARD, JUDGE