

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

KATHERINE M. TRAUTE-UGONE,)
)
Plaintiff,)
)
v.) C.A. No. 099-S
)
THE ESTATE OF ALBERT G. UGONE)
and DOLORES GILESE, EXECUTRIX,)
and DOLORES GILESE, individually,)
)
Defendant.)

MASTER'S REPORT

I - Plaintiff's Motion for Protective Order
II - Defendant's Amended Motion in Limine to Exclude
Plaintiff's Expert from Testifying

Date Submitted: February 2, 2006
Final Report: February 2, 2006

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GLASSCOCK, MASTER

I.

Plaintiff's Motion for a Protective Order

The plaintiff seeks to quash a subpoena seeking “all documents and/or files of whatsoever kind pertaining to Katherine M. Traute-Ugone and/or Albert Ugone.” The subpoena is directed to Carol Braverman, Esquire, a Delaware attorney now or formally representing the plaintiff. The motion also seeks a prohibition against testimony or discovery from Ms. Braverman concerning the communications between Ms. Braverman and her client, the plaintiff. The plaintiff contends that the discovery sought violates the lawyer/client privilege as set out in Delaware Rules of Evidence 502. The defendant argues that that privilege has been waived.

At her deposition, the plaintiff testified that: (1) she communicated to her attorney that her husband, Albert Ugone (“Albert”), was verbally abusive, had threatened to kill her, and that she was afraid of him; (2) she sought legal advice from her attorney on her right to exclude Albert from the marital residence on the basis of his threats; (3) Braverman communicated to her that she could not exclude Albert, absent proof of bodily harm worked upon the plaintiff by Albert; (4) she sought legal advice from Braverman as to the possibility of a divorce from Albert; (5) Braverman communicated to her that a divorce proceeding would likely result in the plaintiff being ordered to pay alimony to Albert.

This case involves whether the plaintiff and Albert intended to terminate ownership of marital property by the entirety, and divide that property between them individually. It

is the plaintiff's position that she did not intend to make such a division. The facts alleged in the plaintiff's deposition testimony referred to above are helpful to her, in that they provide an explanation (consistent with such a lack of intent) for the fact that the plaintiff allowed Albert to place property formerly owned by the entireties in his name, solely, without protest by the plaintiff. The defendant seeks to test these self-serving allegations through evidence or testimony from Ms. Braverman.

In testifying as to her communications with Ms. Braverman concerning her fear of her husband and her desire to divorce him; and in testifying about her attorney's communication to her regarding the attorney's legal advice based on those representations, the plaintiff has waived the attorney/client privilege with respect to those communications. *See* Delaware Rules of Evidence, Rule 510. Therefore, evidence otherwise discoverable concerning those communications between the plaintiff and Ms. Braverman is not subject to the shield of the attorney/client privilege. However, this waiver is only a partial one. It does not, as the defendant appears to argue, open Ms. Braverman's entire file and recollections concerning her representation of the plaintiff. The plaintiff's waiver was limited to those specific areas discussed above.

Therefore, the plaintiff's request to quash the subpoena is denied. The subpoena should be interpreted, however, to apply only to information regarding any communication by the plaintiff with Ms. Braverman concerning whether threats were made by Albert against plaintiff; her fear of Albert and her desire to divorce Albert; as well as any legal advice or

communications made by Ms. Braverman resulting from those communications by the plaintiff.

To the extent documents are discoverable pursuant to the terms of this report, but also contain privileged material for which the privilege has not been waived, a redaction should be made before the documents are provided to the defendant. To the extent documents exist with respect to which the attorney/client privilege has been waived as described above, but for which another privilege is asserted, a privileged log should be created and provided to the defendant. Any resulting issues will be addressed by me at the beginning of trial.

II.

Defendant's Amended Motion in Limine to Exclude Plaintiff's Expert

The plaintiff intends to call Jay Stevens, a CPA, as an expert witness. One of the issues at trial will be the calculation of the elective share of the decedent's estate due the plaintiff. In order to arrive at the proper amount of the elective estate, there must be a computation of the amount to be set-off against the gross estate to reflect the value of joint property transferred to the plaintiff by operation of law upon the decedent's death. Plaintiff seeks to have Mr. Stevens testify as to the value of the property so transferred as adjusted to reflect the contributions of Mr. and Mrs. Ugone, respectively, to the purchase of that joint property. The defendant seeks to exclude Mr. Stevens' testimony because "he did not base his opinions on reliable evidence — merely the plaintiff's unverified statements, [and therefore his testimony would be] based upon unverified and interested statements of a party

and not upon information reasonably relied upon by accountants.” Defendant’s Amended Motion in Limine to Exclude Plaintiff’s Expert Jay Stevens, from Testifying at ¶ 13. The defendant also alleges that Mr. Stevens’ “methodology of tracing” is “untried and unaccepted by Delaware.” *Id.*

Neither of these objections, I find, require the exclusion of Mr. Stevens’ testimony. The fact that the defendant may disagree with Mr. Stevens’ methodology, and the fact that any conclusions he reaches are based on self-serving information provided by the plaintiff, are both useful grounds for cross-examination and certainly may be tested in that manner. Based upon the outcome of his testimony in cross-examination, and whatever arguments are made by counsel at trial, Mr. Stevens’ testimony may or may not prove helpful in addressing the issues at trial. Therefore, the motion to exclude is denied. Nothing in this report shall prevent the defendant from seeking the Court to disregard or strike Mr. Stevens’ testimony at the conclusion of the trial.

III.

Pursuant to Rule 144, and in light of the trial scheduled for next week, I am issuing this report as a final report. All exceptions to this report are stayed pending my post-trial decision on the merits.

/s/ Sam Glasscock, III

Master in Chancery

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