

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of RICHARD LACKOWSKI,
Deceased.

LYNETTE HYDE, as Personal Representative of
the Estate of RICHARD LACKOWSKI,

UNPUBLISHED
August 14, 2008

Petitioner-Appellant,

v

DIANE BOYER, PAULA WESSEL, and FRED
SHIELDS,

No. 277018
Gladwin Probate Court
LC No. 06-013180-CZ

Respondents-Appellees.

Before: Markey, P.J., and White and Wilder, JJ.

PER CURIAM.

Following a bench trial, petitioner¹ appeals as of right a verdict of no cause of action. We affirm.

In 1999, decedent was diagnosed with Parkinson's disease and attendant progressive dementia. In 2001, decedent executed a durable power of attorney so that respondent Diane Boyer could help the decedent handle his affairs. Shortly thereafter, Lottie Austin, Boyer's grandmother, died. Boyer was appointed the personal representative of Austin's estate. The evidence established that Austin had had a relationship with decedent for more than 30 years, and that she and decedent held themselves out as husband and wife, although they were not in fact married. Because Austin and decedent had owned the home and property where they resided as joint tenants, decedent acquired sole ownership of the property after Austin's death.

In 2002, decedent executed a quit claim deed on his property, conveying the property to each of the respondents in this case and himself as tenants in common. The rationale for this

¹ Petitioner is the decedent's daughter, who, until just prior to his death, had not seen the decedent in almost 20 years.

amendment was the alleged discovery during the probating of Austin's estate that she had intended for her estate to have a 50% interest in the property after her death, and that the joint tenancy which gave 100% interest in the property to the decedent as her survivor was inconsistent with her intent.

Petitioner claims that at the time decedent executed the quit claim deed giving each of the respondents a 25% interest in the property, decedent lacked sufficient mental capacity to do so. Petitioner also claims that Boyer illegitimately acquired the power of attorney because decedent lacked sufficient mental capacity to sign the power of attorney, and that Boyer inappropriately used the power of attorney to misappropriate some of decedent's funds. Finally, petitioner claims that Boyer misappropriated decedent's truck, taking advantage of his mental incapacity, by selling the 1990 vehicle to Boyer's husband for an unreasonable price.

Following a bench trial, the trial court concluded there was no cause of action, holding that petitioner had not met her burden of establishing that the decedent lacked sufficient mental capacity when he executed either the power of attorney to Boyer or the disputed quit claim deed. The trial court also found that the transaction involving the truck was a fair deal for value, defeating any contention that decedent lacked sufficient mental capacity to consummate the transaction or that Boyer took unfair advantage of decedent in the transaction. This appeal ensued.

Petitioner first argues that, based on medical evidence that the decedent was suffering from dementia at the time of the transactions, the trial court erred by not granting her motion for a directed verdict. We disagree. Decisions on a motion for a directed verdict are reviewed de novo, to determine whether all the evidence and inferences, viewed in the light most favorable to the nonmovant, fail to establish a claim as a matter of law. *Harbour v Correctional Med Services*, 266 Mich App 452, 455; 702 NW2d 671 (2005).

"A firmly embedded principle in our jurisprudence is that legal documents must be executed by one possessing the mental competence to reasonably understand the nature and effect of his action." *Persinger v Holst*, 248 Mich App 499, 503; 639 NW2d 594 (2001). Thus, a person executing a power of attorney or a deed must have sufficient mental capacity to execute those legal documents. *Id.* at 503-505. Specifically, a person

executing deeds of conveyance must have sufficient mental capacity to understand the business in which he was engaged, to know and understand the extent and value of his property, and how he wanted to dispose of it, and to keep these facts in his mind long enough to plan and effect the conveyances in question without prompting and interference from others. [*Id.* at 503-504 (citations and certain punctuation omitted).]

A person executing a power of attorney must likewise be "mentally competent to consent to, render a degree of control over, and appreciate the significance and consequences of the resulting agency relationship." *Id.* at 505.

Taking the evidence in the light most favorable to respondents, one can reasonably conclude that, although the decedent was suffering from a progressive dementia, he was not

incapable of lucidity and was lucid and mentally competent at the times he executed the power of attorney and the quit claim deed. We must discharge our duty of due deference to the trier of fact's assessment of Boyer's credibility on this point. *Amb's v Kalamazoo Co Rd Comm*, 255 Mich App 637, 652; 662 NW2d 424 (2003).

In addition, the trial court's conclusions that the sale of the decedent's truck was for fair value was supported by the uncontradicted testimony from Boyer, who testified that she sold the truck to her husband for \$3,000. As the trial court noted, even if there was a question as to the decedent's mental capacity at that time, the only remedy to the estate would be the difference in value of the truck, and it appeared that the decedent had already been paid its full value. Finally, the trial court found that the money Boyer managed was spent on behalf of the decedent, who had sundry medical bills, and petitioner has presented no evidence that any of this money was misappropriated. Therefore, the trial court did not err when it denied petitioner's motion for a directed verdict.

Petitioner also claims that the trial court's verdict is against the great weight of the evidence. However, we conclude from our review of the record that, considering the deference we give to the trial court's assessment of witness credibility, the verdict was not "manifestly against the clear weight of the evidence." *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 194; 600 NW2d 129 (1999).

Affirmed.

/s/ Jane E. Markey
/s/ Helene N. White
/s/ Kurtis T. Wilder