STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of GRANVILLE FLOYD REYNOLDS.

THELMA A. PELLICCIONI,

Appellant,

v

GRANVILLE E. REYNOLDS, GARY E. REYNOLDS, RAYMOND A. REYNOLDS and WALTER REYNOLDS,

Appellees.

UNPUBLISHED
February 19, 2009

No. 279432
Missaukee Probate Court
LC No. 05-008130-DA

Before: Sawyer, P.J., and Servitto and M. J. Kelly, JJ.

PER CURIAM.

In this dispute over the estate of Granville Floyd Reynolds, appellant appeals as of right the trial court's decision to grant partial summary disposition concerning decedent's 2001 transfer of his farm and the judgment entered after a jury trial. On appeal, we must determine whether the trial court erred when it denied appellant's motion for a directed verdict, whether the jury's verdict is so inconsistent that it must be set aside, and whether the trial court erred when it granted partial summary disposition regarding decedent's 2001 transfer of the farm. We conclude that the jury verdict is not inconsistent and the trial court properly denied appellant's motion for a directed verdict. Further, although we agree that there was a question of fact regarding the validity of decedent's 2001 transfer of the farm, under the unique facts of this case, we conclude that any error does not warrant reversal. For these reasons, we affirm.

I. Basic Facts and Procedural History

Decedent and his late wife were the parents of five children: Raymond A. Reynolds (Ray), Walter J. Reynolds (Jerry), Garry E. Reynolds (Elliot), Thelma A. Peliccioni (Ann), and Granville E. Reynolds (Gene). Decedent had an eighth grade education, and, after his wife died in 1999, he entrusted his financial affairs to Ray and Jerry. Both Ray and Jerry testified that they kept decedent updated by explaining any changes made to decedent's financial arrangements and that decedent always authorized their actions.

In April 2001, Jerry suggested transferring decedent's farm from decedent's sole ownership to ownership by decedent along with his five children equally. On April 9, 2001, a quit claim deed to that effect was signed and later recorded. Ray had the deed notarized by a co-worker, who did not actually witness decedent signing the deed, but did compare the signature on the deed with the signature on file at the bank. Jerry testified that his purpose in suggesting the deed was to avoid probate and that he had discussed this with his father, who agreed and understood the purpose. For tax reasons, the deed was modified to include the words "as joint tenants with full rights of survivorship" and re-recorded in 2003.

In the fall of 2001, Ann left her job at a plant near Detroit and moved in with her father. Thereafter she took care of his daily needs, including doing household chores, taking him to appointments, and providing physical assistance.

In January 2003, Ann called a family meeting at her father's home, which included her father, her four brothers, and a local social worker. Ann's stated purpose for the meeting was to have her father state in front of witnesses that he wished her to have the house after his death. Ray testified he was under the impression Ann had called the meeting to discuss compensation for taking care of their father. While there was a consensus that their father did in fact express a desire for Ann to have the farm, there was also testimony that it was only after an outburst in which she yelled at him and demanded that he "tell these people what we've been talking about." There was some testimony that their father may not have understood what was being discussed at the meeting because of his hearing problems.

Following the family meeting, Ray arranged a meeting in February 2003 with an estate planning attorney, David McCurdy. McCurdy testified that he might have expressed some initial concerns regarding decedent's competence, mostly due to his hearing problems, but thought decedent understood what was being discussed at the meeting. According to McCurdy, decedent stated at one point that he wished Ann to have the farm after his passing because she had taken care of him since his wife's death. McCurdy also stated that he did not draft any documents, other than a letter to decedent that summarized the meeting, because he did not feel that decedent was ready to make a final decision regarding the disposition of his assets.

At trial, McCurdy admitted that decedent participated very little at the initial meeting and that he never expressed any objections to Ray's management of his financial affairs. Ray testified that his father did not express a desire for a will or a living trust while at the meeting, and, in fact, told Ray after leaving the office that he did not want to go back to the attorney and that he just wanted to divide everything equally.

In March 2003, decedent signed a durable power of attorney naming Ray as his attorney in fact. Ray testified that he believed his father understood the purpose of the document because Ray explained it thoroughly and it was signed at the bank, but conceded that is was possible that he did not understand. That same March, decedent suffered a heart attack. His treating doctor noted that he had been suffering from progressive dementia for a period of approximately six months to one year.

In April 2003, Ann returned to McCurdy's office with her father. After this meeting, McCurdy drafted a will for decedent directing that all of his assets be left to Ann and specifically disinheriting his sons unless Ann predeceased them. McCurdy opined that decedent was

competent to execute the will even in light of his recent medical problems. However, on cross-examination, McCurdy admitted that decedent was aware that he currently had money held in joint CD accounts that was to be split equally among his children. Ann testified at trial that she did not force her father to have this will drafted, but she admitted that she had told her father that if he did not have a will drafted she could not continue to care for him. Decedent did not sign the will drafted by McCurdy until June 9, 2003. Decedent's other children became aware of the will after Ray received an unsigned copy in the mail.

On June 21, 2003, Elliot, Ray, and Jerry visited their father at his home while Ann was out. Elliot discussed the June 9 will with his father while his brothers were occupied elsewhere on the property. Elliot testified that his father did not recognize the will, so Elliot asked him what he wanted done with his assets. Elliot stated that he wrote down his father's wishes: that Ann should get the farm and that the money should be split equally. Decedent signed the paper and Elliot witnessed his signature.

In November 2003, Ann closed one of decedent's bank accounts with Citizen's bank. The final payout on the account was a check for approximately $19,000 made out to Ann. She testified that she transferred those funds into an account in her name alone, but maintained that she used the funds to support her dad.

In May 2005, Ann had McCurdy draft a power of attorney naming her as decedent's attorney in fact. Ray testified that when he learned of this, he decided to consolidate all his father's cash assets into one account, which Ray held in his name alone. The total value of this account was more than $350,000. He stated that his reason for doing so was to protect his father's assets in light of Ann's closure of the bank account at Citizen's bank. He further testified that he discussed his actions with his father after he had consolidated the accounts and that his father told him to do what he thought best. Ray admitted that his father did not have access to the money after it was consolidated, but maintained that he considered the money to be held in trust for all his siblings.

Ann testified that in 2005 she could no longer care for her father. Decedent was thereafter placed in a nursing home. Decedent was a resident in a nursing home for approximately one and a half months before he died. Gene testified that while his father was in the nursing home he expressed a desire that his assets be split evenly.

Approximately one month after his father's death, Ray withdrew the funds he had earlier consolidated and distributed them among his siblings. Each of the boys received $74,107.32, and Ann received $59,107.30. Ray testified that he reduced the amount Ann received by approximately $12,000 based on the amount of funds he determined she had already withdrawn.

In November 2005, appellant initiated probate proceedings based on the 2003 will. Appellant's brothers contested the probate proceedings. In April 2007, both appellant and her brothers moved for summary disposition. At the hearing on the motions, the trial court determined that the 2001 deed was valid but that the amendments made to the deed in 2003 were not. The trial court also limited the questions for the jury to whether the first will was valid, whether the second will was valid, and whether Ray's consolidation and distribution of the funds from the accounts was proper.

The jury found that decedent was competent to sign the March 2003 power of attorney. The jury also determined that decedent lacked testamentary capacity for the June 9, 2003 will. The jury also determined that decedent had testamentary capacity to sign a will on June 21, 2003 and that he intended the June 21, 2003 document to be a will, but that it was the result of undue influence. Finally, the jury rejected the contention that decedent wanted to have the money from the accounts that Ray consolidated distributed through his estate. Instead, the jury determined that decedent had instructed Ray to divide these funds equally among his five children.

This appeal followed.

II. Directed Verdict

We shall first address Ann's argument that the trial court erred when it denied her motion for a directed verdict. Specifically, Ann argues that the trial court should have directed a verdict that the money from the accounts that Ray consolidated into one account was property of her father's estate and should have been distributed accordingly. Ann asserts that this result was compelled by the trial court's recognition that the accounts were only "convenience accounts," which were created for estate planning purposes. This Court reviews de novo a trial court's decision on a motion for directed verdict. *Zsigo v Hurley Medical Ctr*, 475 Mich 215, 220-221; 716 NW2d 220 (2006). A directed verdict is appropriate where there is no factual dispute on which reasonable jurors could disagree. *Smith v Foerster-Bolser Constr, Inc*, 269 Mich App 424, 427-428; 711 NW2d 421 (2006).

After Ann's motion for a directed verdict, the trial court acknowledged that there was no evidence that decedent intended the accounts to pass to Ray: "These accounts, regardless of whose names were set up, were . . . to help him in—with his financial situation during his life . . . ." However, the trial court noted that there was also evidence that Ray had a responsibility "to pass them on, according to the wishes of his father, upon . . . death." Hence, the trial court determined that the question was not whether decedent intended Ray to have sole ownership of the funds after his death by giving Ray rights of survivorship in various financial accounts, but rather, whether decedent intended Ray to handle the disposition of the funds in these accounts through some form of informal trust or intended the funds to pass through his estate. And the fact that decedent did not intend Ray to become the sole owner of the funds does not necessitate the conclusion that decedent intended the funds to pass through his probate estate.[1] For that reason, Ann's reliance on authorities dealing with disputes over the ownership of funds held in accounts with rights of survivorship is misplaced. See MCL 487.703, *Pence v Wessels*, 320

[1] The trial court properly left the question of decedent's intent on this matter to the jury. On the special verdict form, the jury was instructed that Ray held his father's funds in various accounts and had "a fiduciary duty to pass on these funds after his father's death according to his father's directions." The jury was then asked to determine whether decedent directed Ray to distribute the funds directly to the five children in equal shares or whether decedent wanted the funds distributed through his estate. The jury found that decedent directed Ray to handle the distribution. Hence, they implicitly found that decedent did not intend these funds to be part of his probate estate.

Mich 195; 30 NW2d 834 (1948), and *Mitts v Williams*, 319 Mich 417; 29 NW2d 841 (1947). Under the facts of this case, the trial court did not err when it determined that there was a question of fact concerning whether Ray properly handled the funds at issue and denied the motion for a directed verdict on this basis.

III. Inconsistent Verdict

Ann next argues that the jury's verdict was so inconsistent that it must be set aside. This Court reviews de novo a claim that a verdict must be set aside as a result of inconsistencies. *Lagalo v Allied Corp*, 457 Mich 278, 282-285; 577 NW2d 462 (1998).

On appeal, Ann specifically contends that the jury's determination that her father was competent to take certain actions, while not competent to take other actions, undermines the verdict because the actions were in close temporal proximity. At trial, both parties presented evidence regarding their father's competence at various points. It was the jury's duty to gauge the credibility of witnesses and determine the facts from the evidence presented, and this Court will not interfere with that role. *Erickson v Soyars*, 356 Mich 64, 69; 95 NW2d 844 (1959); *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004). Further, it is well settled that a person's competence to execute a will or make a conveyance can change from day-to-day. As a result, the validity of a will or conveyance is not necessarily undermined by evidence that the person executing the will or making the conveyance lacked capacity before or after executing the will or making the conveyance. See, e.g., *Fish v Stilson*, 352 Mich 437, 440-441; 90 NW2d 509 (1958). Thus, the fact that the jury determined that the decedent's competence to take certain actions varied over time does not render the verdict inconsistent.

IV. Summary Disposition

Finally, Ann contends that the trial court erred in determining that the 2001 deed was valid at the summary disposition hearing. Ann argues that the 2001 deed was invalid on a variety of grounds and should have been set aside. Although we find no merit to Ann's claims that the deed was invalid as a matter of law, we agree that there was a question of fact as to whether the deed was procured through undue influence. This Court reviews de novo a trial court's decision to grant or deny relief under a motion for summary disposition. *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003).

"A presumption of undue influence arises upon the introduction of evidence that would establish (1) the existence of a confidential or fiduciary relationship between the grantor and a fiduciary, (2) the fiduciary, or an interest represented by the fiduciary, benefits from a transaction, and (3) the fiduciary had an opportunity to influence the grantor's decision in that transaction." *In re Erickson*, 202 Mich App 329, 331; 508 NW2d 181 (1993). In this case, it is undisputed that the decedent entrusted some of his financial affairs to Ray and Jerry prior to the drafting of the 2001 deed. Hence, there is evidence that they had fiduciary or confidential relationships with their father. In addition, it is undisputed that they gained a benefit from the execution of the 2001 deed. Finally, although Ray testified at his deposition that he did not at first know about the 2001 deed, Jerry stated that he initially suggested that the farm should be transferred into joint property as a way to avoid probate and had the deed drafted. Therefore, appellant established the elements for a presumption of undue influence with regard to Jerry.

Because the brothers presented evidence that the 2001 transfer was not the result of undue influence, whether the 2001 deed was in fact the product of undue influence became a question of fact for the jury. *In re Peterson Estate*, 193 Mich App 257, 261; 483 NW2d 624 (1992). Thus, the trial court erred when it granted summary disposition on this issue. Instead, it should have submitted the question of whether the 2001 deed was procured through undue influence to the jury. Nevertheless, given the facts of this case, we decline to remand this issue for determination by a jury.

On this record, it cannot be said that the evidence concerning the 2001 deed would have altered the jury's verdict with regard to the validity of the documents purporting to be the decedent's wills. Thus, even if the jury had considered the evidence and determined that the 2001 deed was invalid as a result of undue influence, the jury's determination that the decedent died intestate would have remained the same. Because the decedent's children would receive the same share under the rules of intestate succession that they actually received under the 2001 deed, any error does not warrant relief. See MCR 2.613(A).

There were no errors warranting relief.

Affirmed. As the prevailing party, appellees may tax costs under MCR 7.219.

/s/ David H. Sawyer
/s/ Deborah A. Servitto
/s/ Michael J. Kelly