

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of LENA RANGEL, Deceased.

DONNA MOORE,

Petitioner-Appellant,

v

JOYCE MOORE, Personal Representative of the
Estate of LENA RANGEL, Deceased,

Respondent-Appellee.

UNPUBLISHED

May 21, 2009

No. 283516

Arenac Probate Court

LC No. 06-007818-DE

Before: Whitbeck, P.J., and Davis and Gleicher, JJ.

PER CURIAM.

Petitioner appeals as of right an order denying her petition to set aside the wills of decedent and remove respondent as personal representative. We affirm.

On appeal, petitioner first argues that the probate court erred by not finding a mandatory presumption of undue influence by respondent that respondent failed to rebut. We disagree.

Undue influence is an equitable matter. *Adams v Adams*, 276 Mich App 704, 714 n 5; 742 NW2d 399 (2007). This Court reviews dispositional rulings on equitable matters de novo. *Blackhawk Dev Corp v Village of Dexter*, 473 Mich 33, 40; 700 NW2d 364 (2005). This Court reviews all of the probate court's underlying findings of fact for clear error. *In re Baldwin Trust*, 274 Mich App 387, 396; 733 NW2d 419, result only aff'd 480 Mich 915 (2007). "A finding is clearly erroneous where, although there is evidence to support it, the reviewing court is firmly convinced that a mistake has been made." *In re Forfeiture of \$180,975*, 478 Mich 444, 450; 734 NW2d 489 (2007).

As stated in *In re Karmey Estate*, 468 Mich 68, 75; 658 NW2d 796 (2003), quoting *Kar v Hogan*, 399 Mich 529, 537; 251 NW2d 77 (1976):

To establish undue influence, it must be shown that the grantor was subject to threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency and impel the grantor to act against his inclination and free will. Motive, opportunity, or even ability to

control, in the absence of affirmative evidence that it was exercised, are not sufficient.

Further,

The presumption of undue influence is brought to life upon the introduction of evidence which would establish (1) the existence of a confidential or fiduciary relationship between the grantor and a fiduciary, (2) the fiduciary or an interest which he represents benefits from a transaction, and (3) the fiduciary had an opportunity to influence the grantor's decision in that transaction. [*Id.* at 73.]

The burden of proving that undue influence exists lies with the petitioner. *In re Estate of Peterson*, 193 Mich App 257, 260; 483 NW2d 624 (1991), citing *In re Mikeska Estate*, 140 Mich App 116, 120-121; 362 NW2d 906 (1985). The establishment of a presumption of undue influence creates a "mandatory inference" of undue influence and a prima facie showing satisfies petitioner's burden of persuasion. *Id.* Therefore, if respondent fails to offer sufficient evidence rebutting this presumption, petitioner's burden to show that undue influence occurred is still satisfied. *Kar, supra* at 542. Additionally, "[t]he reviewing court will defer to the probate court on matters of credibility, and will give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court." *In re Erickson Estate*, 202 Mich App 329, 351; 508 NW2d 181 (1993); see also MCR 2.613(C).

Based on the facts of this case, there is evidence to establish the presumption of undue influence. A confidential or fiduciary relationship exists when one party has placed complete trust in the other party who has the requisite knowledge, resources, power, or moral authority to control the subject matter at issue. *Estate of Karmey, supra* at 74-75. Moreover, a fiduciary relationship is a broad term that focuses on relationships involving inequality. *Id.* at 74 n 3.

Respondent was primarily responsible for decedent's medical care, managed her affairs, and was a joint holder of her savings account for many years. Decedent also lived in a modular home on respondent's property with respondent and her family living next door. Further, respondent was designated as her attorney-in-fact upon decedent's disability. A power of attorney creates a fiduciary relationship as a matter of law. See *In re Conant Estate*, 130 Mich App 493, 498; 343 NW2d 593 (1983). In addition, respondent was decedent's primary caretaker after decedent was diagnosed with terminal cancer, and decedent's reliance on respondent to manage her financial affairs constitutes a relationship of inequality that independently gives rise to fiduciary obligations. See *First Nat'l Bank & Trust v Albert*, 66 Mich App 252, 261; 238 NW2d 827 (1975) (a fiduciary relationship existed where a person who was suffering from poor health and was incapable of attending to business affairs relied on another to do so).

In January 2006, respondent withdrew approximately \$25,000 from decedent's account as a loan from decedent to respondent and her husband, ostensibly for the husband's business. That money was never paid back, yet 17 days before her death on October 11, 2006, decedent, in her new will, included a provision forgiving all debts owed to her by her children, including the petitioner. It is undisputed that respondent made an appointment for decedent with an attorney, took decedent to the attorney, and was present for the signing of the will.

Based on these facts, respondent received a benefit from the will, because the will forgave the loan for her husband's business. Because of the fiduciary relationship with decedent, respondent certainly had an opportunity to influence decedent's decision to include a debt forgiveness clause in her will. The facts are sufficient to give rise to a presumption of undue influence. *Erickson Estate, supra* at 331. However, the evidence in the record is sufficient to rebut that presumption. Undue influence will only invalidate a will where a decedent's free agency is overcome to the extent that the will expresses the desires of someone other than the testator. *In re Hannan's Estate*, 315 Mich 102, 123; 23 NW2d 222 (1946). The dispositive question is whether the decedent was capable of acting on her own motives and was free to make her own decision, notwithstanding any external persuasion. *Id.*

The probate court found especially credible the testimony of Katrina Bonnell, the attorney who drafted decedent's will. This Court defers to the probate court on matters of credibility. *Erickson Estate, supra* at 351. Bonnell testified that decedent understood her will, was clear in what she wanted included, and instructed Bonnell on what changes to make. This was demonstrated by the fact that after a draft of the will, decedent noticed that one of her children was not included and required a corrective change. Additionally, at one point during the drafting, while both respondent and her husband, David Moore, were out of the room, Bonnell confirmed with decedent that the will was the way she actually wanted it. Also, only a week after this will, a psychological examination of decedent revealed that she was able to make decisions regarding her lifestyle. This evidence is sufficient to show that no action on the part of respondent overpowered decedent's volition in having a will that reflected decedent's wishes.

While there was contradictory testimony on this point, respondent did not engage in a pattern of behavior to keep family away from decedent. At least two other siblings, Shirley Houle and Nathan Childers, who were witnesses for petitioner, testified that they were able to visit decedent whenever they chose. Therefore, despite petitioner's contention, this case is distinguishable from *McPeak v McPeak*, 233 Mich App 483, 491; 593 NW2d 180 (1999), where sufficient evidence of undue influence was found because of a pattern of conduct aimed at isolating the insured from other possible beneficiaries of a life insurance policy.

Petitioner contends that the probate court failed to apply, or even mention the presumption. However, the probate court's finding that decedent was not unduly influenced necessarily entails a finding that there was sufficient rebuttal evidence to reduce the presumption to a mere permissible inference, which it declined to make. Because the probate court's finding entailed the conclusion that there was sufficient evidence to rebut the presumption, it did not err by concluding that undue influence had not been proven.

Petitioner finally argues that the probate court erred by impermissibly making findings of fact regarding decedent's character and ability to exercise her free will, rather than applying the proper undue influence analysis. We disagree. Whether respondent presented sufficient evidence to overcome the presumption of undue influence is a question of fact. *Peterson, supra* at 262.

As we have noted, the record contains sufficient evidence to rebut the presumption of undue influence. Moreover, the probate court did not err by considering facts that established decedent's ability to exercise her free will. See *Peterson, supra* at 261 (relying on this type of evidence in making a determination about undue influence). Unlike *Peterson*, which petitioner

cites, this proceeding was not a motion for summary disposition. The probate court properly acted as the fact finder after a full hearing. We find no reversible error.

Affirmed.

/s/ William C. Whitbeck

/s/ Alton T. Davis

/s/ Elizabeth L. Gleicher