STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0029

In the Matter of the Charles H. and Laura G. Smith Living Trust,
dated April 3, 1995

Filed August 20, 2012
Affirmed.
Worke, Judge

Hennepin County District Court
File No. 27-TR-CV-10-62

Luther M. Amundson, Susan A. King, Maser, Amundson & Price, P.A., Minneapolis, Minnesota (for appellant Sandra Ring)

Patrick J. Neaton, Neaton & Puklich, PLLP, Chanhassen, Minnesota (for respondent Steven Smith)

Considered and decided by Worke, Presiding Judge; Hooten, Judge; and Collins, Judge.*

U N P U B L I S H E D O P I N I O N

WORKE, Judge

In this appeal from a district court judgment determining that appellant's mother validly executed a trust and two deeds, appellant asserts that the district court erred in its assignment of the burden of proving testamentary capacity and undue influence; appellant also argues that the district court erred by concluding that appellant's mother

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

had testamentary capacity and had not been unduly influenced by respondent to make changes to the trust. Because the district court did not err in its assignment of the burden of proof and because the record evidence supports the district court's conclusions as to testamentary capacity and undue influence, we affirm.

FACTS

Charles and Laura Smith created a living trust in 1995; the trust awarded 45% of the residual value to their daughter, appellant Sandra Ring, 45% to their son, respondent Steven Smith, and 10% to their grandchildren. The elder Smiths amended the trust document in 1999, distributing the assets equally among Sandra, Steven, and Steven's wife, Cynthia. Charles died in August 2004. In 2006, Laura amended the trust document again, removing Sandra and Cynthia as residuary beneficiaries and making Steven the sole residuary beneficiary. In 2008, Laura deeded her house, which was a trust asset, first to herself and then to Steven, reserving a life estate in the home. Appellant contests these latter two actions, asserting that Laura lacked testamentary capacity and was subject to undue influence by Steven.

In 2003, Laura was diagnosed with early-stage Alzheimer's disease. Medical records from 2006 reflect a continuing diagnosis of early or mild dementia. Despite this diagnosis, Laura lived alone, with the help of home health aides and assistance from Steven and his son until April 2009. In 2007 and 2008, clinical records noted that Laura had memory loss, but was considered to be "stable." There was a sharp decline in her cognitive ability in July 2008, when she was hospitalized for acute renal failure.

Laura had a close relationship with Steven, who is a state legislator and an attorney. He was a frequent visitor to her home before Charles's death, and visited even more frequently after Charles's death. Steven's son, Ryan, also frequently visited his grandmother. Sandra infrequently visited or contacted her mother. Sandra's husband was dying during 2005 and 2006 and she worked fulltime, but during her mother's last years, Sandra lived less than two miles away. Sandra was able to document visits to her mother on only a couple occasions between 2004 and 2009, when Laura entered hospice. After Laura entered hospice care in May 2009, Sandra visited several times before Laura's death in June 2009. According to Steven's testimony, Sandra had periods of estrangement from the family. To document her relationship, Sandra produced letters and cards she had received from her mother, but many of them were sent during the 1980s. Laura expressed regret to some of her medical caregivers about her daughter's absence from her life; conversely, she talked a lot about her son's care for her.

In September 2006, Steven contacted an attorney, Paul Melchert, at Laura's request. Melchert had not worked with Laura before, although one of his law partners had; Melchert had previously met with both Sandra and Steven. Steven indicated that Laura wanted to change the terms of the trust; Laura wanted to remove Cynthia Smith as a beneficiary because Steven and Cynthia were getting a divorce. Later, Steven told Melchert that Laura wanted to remove Sandra as a beneficiary of the trust. Although Steven drove Laura to the appointment, Melchert met with Laura alone; he had already drafted an amendment according to the information supplied to him, but he wanted to talk to Laura separately to confirm that this was her desire.

Melchert is an experienced trusts-and-estates attorney who has practiced in that area for at least 25 of his more than 50 years as an attorney. He regularly works with or represents elderly clients. He testified that he refuses to amend or draft a document if he believes that the person lacks testamentary capacity. He considered Laura, not Steven, to be his client; he spoke with her alone so that he could decide if the amendment was her idea. He noted that she appeared to be alert and oriented and to understand the change she wanted to make to the trust. Melchert asked her why she wanted to disinherit Sandra, and Laura indicated that Sandra had cut herself off from the family and that Laura heard that Sandra did not acknowledge that Laura was her mother. Laura also stated that Sandra was "on [her] third husband," although Dennis Ring had died about six months before.

During this interview, Laura suddenly stated that Sandra had told Laura's niece that her mother had sex with Sandra's husband. When Melchert asked Laura about this statement, she appeared to dismiss the thought, stating that it never happened and that she had just read something in the Bible. Other than this momentary lapse, Melchert found Laura to be well-oriented. Melchert agreed that had he known that Laura had been diagnosed with Alzheimer's disease or had he been aware of an expert's diagnosis, he would have contacted her physician for more information. On the other hand, he stated that based on his experience, she appeared to have testamentary capacity. Melchert testified that mild memory loss or Alzheimer's disease would be just one of several factors he would consider when deciding whether a testator had testamentary capacity.

In 2007, Melchert sent Laura a letter asking if she would like to transfer title of her house to Steven, while reserving a life estate, in order to avoid probate. Melchert initially

received no response to the letter. In February 2008, Steven called Melchert to make an appointment in order to transfer the title; Steven testified that he did this at Laura's request. On February 13, 2008, Laura executed two deeds that transferred the title from the trust to Laura and then from Laura to Steven. Melchert opined that this had very little legal effect, because Steven was already the sole beneficiary of the trust and would ultimately gain title to the house through the trust if Laura did not transfer title by quitclaim deed.

From August 2007 through March 2008, Laura had six medical visits with concerns about a rash. Some of the clinical notes acknowledge that Laura had memory loss, but that she continued to live alone, with assistance from her son. Medical notes after July 2008 show a sharp mental decline as Laura entered into renal failure. In September, a home health agency recommended that Laura have 24-hour supervision. In May 2009, Laura was admitted to a nursing home and shortly thereafter started to receive hospice care. Laura died in June 2009.

At trial, Sandra presented the testimony of two expert witnesses, Drs. William Orr and Daniel Dossa. Both experts reviewed Laura's medical records but neither one was acquainted with Laura; she died before they were asked to consider her mental state. Both doctors concluded that she had diminished testamentary capacity that would make her more susceptible to undue influence.

The district court concluded that Sandra had not presented clear and convincing evidence that Laura was incapable of forming rational testamentary intent or that her will

had been overborne by undue influence. The district court denied Sandra's petition in its entirety. This appeal followed.

D E C I S I O N

Burden of Proof

Sandra asserts that the district court erred by assigning her the burden of proof and persuasion as to Laura's testamentary capacity and whether she was unduly influenced by Steven. The district court's determination of whether a person lacks testamentary capacity or was subjected to undue influence is a question of fact; we will not set aside the district court's findings of fact unless they are clearly erroneous, and we will defer to the district court's credibility determinations. *Gellert v. Eginton*, 770 N.W.2d 190, 194-95 (Minn. App. 2009), *review denied* (Minn. Oct. 20, 2009). We review the district court's legal conclusions based on its findings de novo, as a question of law. *Id.* at 194.

The standard for evaluating capacity and undue influence in relation to a trust is the same standard used in relation to execution of a will. *Norwest Bank Minn. N., N.A. v. Beckler*, 663 N.W.2d 571, 579 (Minn. App. 2003); *see also Arneson v. Arneson*, 372 N.W.2d 20, 21-22 (Minn. App. 1985) (construing will and trust using same standards), *review denied* (Minn. Oct. 11, 1985). The standard for contested will proceedings is set forth in Minn. Stat. § 524.3-407 (2010):

> Proponents of a will have the burden of establishing prima facie proof of due execution in all cases, and, if they are also petitioners, prima facie proof of death and venue. Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation. Parties have the ultimate burden of persuasion as

> to matters with respect to which they have the initial burden of proof.

Id.; *see In re Estate of Olsen*, 357 N.W.2d 407, 411 (Minn. App. 1984) ("The contestants of a will have the burden of proving lack of testamentary capacity and undue influence."), *review denied* (Minn. Feb. 27, 1985); *see also In re Estate of Novotny*, 385 N.W.2d 841, 843 (Minn. App. 1986). Here, Steven is the proponent of the trust and would have the burden of proving due execution, which includes making a prima facie showing that Laura had testamentary capacity. Melchert's testimony provided sufficient evidence to establish a prima facie case that Laura was competent to amend the trust.

Because she is contesting the trust, Sandra bears the burden of proving lack of testamentary capacity and undue influence, and she also has the ultimate burden of persuasion. *See id.* In order to meet her burden of persuasion, Sandra would have to show by clear and convincing evidence that Laura lacked testamentary capacity and was subjected to undue influence. *See Gellert*, 770 N.W.2d at 194 (testamentary capacity); *In re Estate of Overton*, 417 N.W.2d 653, 656 (Minn. App. 1988) (undue influence). The district court did not err in its assignment of the burden of proof.

Testamentary Capacity

Sandra contends that Laura lacked testamentary capacity because of her known history of Alzheimer's disease. Sandra's contention was supported by the expert witnesses, Drs. Orr and Dossa, who opined that Laura had a diminished capacity to understand her affairs.

A person has the necessary testamentary capacity to execute a will or trust if (1) the person "understands the nature, situation, and extent of his property and the claims of others on his bounty or his remembrance" and (2) the person is "able to hold these things in his mind long enough to form a rational judgment concerning them." *In re Estate of Congdon*, 309 N.W.2d 261, 266 (Minn. 1981) (quotation omitted). "[T]estamentary capacity is a less stringent standard than the capacity to contract." *Id.* at 267. The district court may consider several factors to determine if a person has the requisite testamentary capacity: (1) the reasonableness of the property disposition; (2) the testator's conduct before and after the disposition; (3) any prior adjudication involving the testator's mental capacity; and (4) expert testimony involving capacity. *In re Estate of Anderson*, 384 N.W.2d 518, 520 (Minn. App. 1986). The district court considered these factors.

Reasonableness

The district court concluded that the amendment of the trust in 2006 was reasonable, based on Sandra's increasing disassociation with Laura and Steven's dedication in caring for Laura. The evidence supports the district court's finding that Sandra's relationship with Laura "changed in the waning years of Laura Smith's life." Although Sandra produced examples of loving exchanges, many of these were from 20 years before Laura's death. The record contains numerous examples of Steven's involvement in his mother's care. It was reasonable for Laura to reward the devoted child and exclude the estranged child.

The decision to quitclaim the homestead to Steven in 2008 was also reasonable. The homestead was already a trust asset and Steven was the only beneficiary of the trust.

Further, Laura was not acting on Steven's advice; Melchert advised Laura to transfer title in order to avoid probate.

Testator's Conduct

There is no question that Laura suffered from occasional delusions and cognitive decline. On the other hand, Laura lived alone and cared for herself until well after she deeded the homestead to Steven. Although medical records noted that Laura had mild or stable Alzheimer's disease, she was also described as alert and oriented. Melchert testified that he considered her to understand the legal decisions that she was making and described her as "clear and very alert." Melchert acknowledged that she appeared to have a temporary delusion about her son-in-law, but that she then dismissed this statement and continued to talk sensibly to him. Laura drove a car until the summer of 2008; she did not require home health assistance until August of 2008.

Prior Adjudications

There were no prior adjudications of mental incapacity. Laura's medical providers diagnosed her with mild or stable Alzheimer's disease.

Expert Testimony

Sandra's experts both agreed that Laura suffered from diminished capacity and noted that it is often difficult for even professionals to understand how Alzheimer's disease affects a person's thinking; a person suffering from the disease often absorbs external cues that tend to mask limitations in reasoning. The district court commented that both experts testified that Laura had "diminished capacity," not that she entirely lacked testamentary capacity. "Expert opinion testimony is not conclusive, but is merely

evidence to be weighed and considered by the trier of fact." *Congdon*, 309 N.W.2d at 267.

In *Congdon*, the testator had a stroke, was partially paralyzed, had difficulty reading and expressing herself, would confuse words, and had memory loss. *Id.* at 266-67. Despite these obvious difficulties, the supreme court nevertheless concluded that there was sufficient evidence in the record to support the district court's decision that the testator had testamentary capacity. *Id.* at 267.

Here, the district court's findings are not clearly erroneous and are supported by record evidence. The district court's conclusion that Sandra did not sustain her burden of proving by clear and convincing evidence that Laura lacked testamentary capacity to amend the trust document in 2006 or transfer property by deed in February 2008 is not erroneous. *See Anderson*, 384 N.W.2d at 521 ("[W]here evidence can support a finding either way, the trial court's decision will not be reversed.")

Undue Influence

Sandra contends that the district court erred by concluding that Laura was not unduly influenced by Steven. In order to demonstrate undue influence

> [t]he evidence must go beyond suspicion and conjecture and show, not only that the influence was in fact exerted, but that it was so dominant and controlling of the testator's mind that, in making the will, he ceased to act of his own free volition and became a mere puppet of the wielder of that influence.

Congdon, 309 N.W.2d at 268 (quotation omitted). A court may consider several factors to determine whether a testator was unduly influenced, including (1) a person's opportunity to exercise influence; (2) the existence of a confidential relationship between

the testator and the person accused of undue influence; (3) the active participation of this person in the preparation of the will; (4) an unusual or unexpected disposition; (5) singularity or oddness in the will provisions; and (6) any type of inducement to persuade the testator to make a will. *In re Estate of Torgersen*, 711 N.W.2d 545, 551 (Minn. App. 2006), *review denied* (Minn. June 20, 2006).

The district court concluded that Steven had the opportunity to exercise influence and that he had a close and confidential relationship with Laura. He called Melchert to make an appointment and he drove Laura to the appointment; the amendment greatly benefited Steven and was detrimental to Sandra. Despite this, the district court found that although "Laura Smith was susceptible to undue influence, and . . . Steven Smith was in a position to exercise undue influence," there was insufficient proof that Steven unduly influenced Laura. The district court noted that Steven's continuing care for his mother, coupled with Sandra's "disassociation" was a "plausible explanation" for the amendment to the trust. As to the quitclaim deeds, the district court noted that the suggestion for deeding the property arose from Melchert, who communicated directly with Laura, whom he considered to be his client. Because the homestead was already a trust asset and Steven was the sole beneficiary of the trust, the decision to transfer the title was not unusual or singular.

In addition, Steven testified that although he made the appointment with Melchert and drove his mother to Melchert's office, he did so at her request. Melchert testified that he spoke separately with Laura and that Steven was not a party to their discussions. Melchert testified that he considered Laura to be his client, not Steven. Melchert stated

that he "[n]ever, have ever . . . allowed a family member" in his office when he was discussing estate matters with a client "because I feel there is a presumption of undue influence if there were."

Both experts reviewed the question of undue influence, but stated merely that Laura would be susceptible to undue influence. This supports the district court's determination that conditions existed that would have permitted Steven to exercise undue influence over Laura; it does not negate the district court's ultimate conclusion that Steven did not dominate and control Laura's will, either at the time the trust was amended or at the time she transferred title to the homestead to Steven. *See In re Estate of Peterson*, 283 Minn. 446, 449, 168 N.W.2d 502, 504 (1969) (stating that undue influence "must be equivalent to moral coercion or constraint overpowering the will of the testator . . . *at the very time the will is made* and [must] dominate and control its making" (quotation omitted)).

The district court's findings are supported by clear and convincing record evidence. The district court acknowledged that it found the testimony of Melchert credible as to Laura's mental state. This is sufficient to support the district court's conclusion that Sandra failed to sustain her burden of proving that Laura was unduly influenced by Steven when she amended the trust document and signed the quitclaim deeds.

Affirmed.