Missouri Court of Appeals

Southern District

Division One

IN RE THE ESTATE OF VIRGINIA ALICE TOPPING,	)	
FRANK W. LAMPKIN, Executor of the Last Will and Testament of Helen Lampkin,	)	
	)	No. SD36630
Respondent,	)	
	)	FILED: November 30, 2020
vs.	)	
SAM RYAN, ALEX RYAN, and LAURA RYAN,	)	
Appellants.	)	

APPEAL FROM THE CIRCUIT COURT OF DUNKLIN COUNTY

Honorable H. Mark Preyer, Judge

AFFIRMED

Defendants appeal after losing a discovery-of-assets case, charging erroneous exclusion of evidence.[1] We reject Defendants' complaints for reasons explained herein and affirm the judgment.

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[1] We refer to Appellants as "Defendants," Respondent as "Plaintiff," and Virginia Topping as "Decedent." We have substituted Plaintiff for his mother, Decedent's will beneficiary who brought and won the case below but died during this appeal.

In summarizing background facts, we view the evidence and permitted inferences most favorably to the verdict. ***J.J.'s Bar & Grill, Inc. v. Time Warner Cable Midwest, LLC,*** 539 S.W.3d 849, 854 n.1 (Mo.App. 2017). Rule references are to Missouri Court Rules (2020).

Background

Decedent was a talented woman who amassed significant wealth during her 96 years, but suffered dementia near the end. When she passed away, her estate fell woefully short of funding specific will bequests totaling $346,000. Why? Five months earlier, Decedent had named Defendants as transfer-on-death beneficiaries of her $962,000 Wells Fargo account.

To quote the verdict director, the trial issue was whether Decedent "was not of sound and disposing mind and memory when she executed the Beneficiary Designation on February 4, 2016." After three days of trial, jurors quickly and unanimously found for Plaintiff in a verdict supported by lay and medical testimony plus permitted adverse inferences from Defendant Alex Ryan repeatedly invoking his Fifth Amendment privilege against self-incrimination.

Standard of Review

A trial court enjoys considerable discretion in evidentiary rulings; we will not reverse absent clear abuse of that discretion. We presume the trial court ruled correctly and Defendants have the burden to show otherwise. *See* ***Estate of Washington***, 603 S.W.3d 705, 712 (Mo.App. 2020).

Analysis

Defendants' difficulties on appeal begin with flawed points:

I.

> The trial court abused its discretion by erroneously excluding relevant evidence regarding [Decedent's] entire estate plan during trial and whether [Plaintiff] received any money from [Decedent].

II.

> The trial court abused its discretion by erroneously excluding relevant information regarding [Decedent's] entire estate plan during trial and whether the 10 individuals and the church listed in [Decedent's] Will and Codicil received any money from the Wells Fargo Investment Account.

Defendants cannot do as they have done: "merely set out in the point what the alleged errors are without stating why the ruling is erroneous." ***In re Holland***, 203 S.W.3d 295, 299 (Mo.App. 2006). Per Rule 84.04(d), Defendants must also (1) concisely state the legal reasons for their claim of reversible error; then (2) summarily explain "why, in the context of the case, those legal reasons support the claim of reversible error." Omission of these steps leaves us "guessing at the nature of [Defendants'] argument." ***Waller v. Shippey***, 251 S.W.3d 403, 406 (Mo.App. 2008). Defendants "have no excuse" because the rule specifically includes a template. ***Scott v. King***, 510 S.W.3d 887, 892 (Mo.App. 2017).

To compound the problem, Defendants made no offers of proof, a failure that generally dooms any challenge to the exclusion of evidence. *See* ***Eckelkamp v. Eckelkamp***, No. ED108437, slip op. at 7 (Mo.App. Sept. 29, 2020). Such offers are required for trial courts to know the content of proffered evidence and appellate courts to assess any prejudicial effect of exclusion. ***Id***. "Failure to make an offer of proof preserves nothing for review and requires us to dismiss the point." ***Id***.

Hoping to avoid that fate, Defendants cite a narrow exception where (1) the record shows a complete understanding of the excluded testimony; (2) the objection involved a category of evidence rather than specific testimony; and (3) the record shows the evidence would have helped its proponent. ***Id***., slip op. at 8.[2] With this in mind, and deeming the second element satisfied as to each point, we turn first to Point II.

Point II

The first element seems satisfied as to Point II: Defendants wanted to testify that *after* they got the $962,000, they sent some money to some of Decedent's will beneficiaries. Yet such evidence could not have helped Defendants (the third element) for the same reason that the trial court correctly ruled such evidence irrelevant:

> [W]hat they did with the money is not relevant to anybody. They could have given it all to the sisters of the starving children somewhere in the world, that doesn't matter what happened to it. It matters, again, I want this jury to decide on what they believe occurred on February 4th, and whether they believe that

[2] Separately, Defendants also cite case law that *narrative* offers of proof sometimes suffice in lieu of questioning a witness outside the jury's presence. Yet we find no such offer, even after electronically word-searching the transcript for "offer" or "proof" or their variations.

> [Decedent] was of sound and disposing mind and memory on that day.

We likewise discern no logical link between Defendants' money handling in July (or later) and Decedent's mental competency months earlier, and thus find no abuse of discretion in excluding such evidence. Defendants, all cited failings aside, fail to show otherwise as they must to win this point. ***Estate of Washington***, 603 S.W.3d at 712. Point denied.

Point I

We turn back to Point I, which fails the cited exception's first element. We know only that Defendants wanted jurors to hear that Plaintiff[3] received money from Decedent, not necessarily after or because Decedent died, but at any time.

Again, of itself, whether Decedent *ever* gave Plaintiff anything does not tend to show Decedent's competency on February 4, 2016. To quote Plaintiff's brief:

> For argument's sake, if [Defendants] had presented evidence [Decedent] made changes to other TOD designations on other financial accounts around the time of the February 4, 2016 TOD designation, then [Plaintiff] could conceive how that evidence would be relevant, but that evidence does not exist. If, on the other hand, the evidence showed [Decedent] added [Plaintiff] as a beneficiary in 1995 to an account that contained $1,000, that information would be completely irrelevant to the issues decided by the jury.
>
> [Defendants] simply did not attempt to offer any evidence that showed or indicated when the alleged gifts to [Plaintiff] were made, or if they were actually made, by [Decedent]. Therefore, it is impossible to determine if any of the proposed evidence that was never presented by [Defendants] was legally or logically relevant.

We agree with Plaintiff and the trial court.[4] Whether Plaintiff ever received money from Decedent is not, on its face, probative as to Decedent's February 4,

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[3] Actually Plaintiff's now-deceased mother. *See* note 1 *supra*.

[4] The trial court was consistent in its reasoning for excluding such evidence:

> I'm going to try to keep everything I can to the issue of I assume what we're all going to talk about here, is February 4, 2016. And I'm going to keep it on that, so I don't -- I think whether someone got something at sometime in their life is -- whether these folks got something sometime in their life is all irrelevant, because we're talking about the Wells Fargo account and we're talking about what happened to it with regard to the transfer on death designation, which I

2016 mental competency. The record does not show a complete understanding of the excluded testimony; Defendants made no offer of proof to establish relevance;[5] and contrary to rule, Point I neither offers legal reasons for its claim of reversible error nor explains why, in context, such legal reasons support Defendants' claim of reversible error. We deny Point I and affirm the judgment.

DANIEL E. SCOTT, J. – OPINION AUTHOR
NANCY STEFFEN RAHMEYER, P.J. – CONCURS
WILLIAM W. FRANCIS, JR., J. – CONCURS

> believe was signed – at least the evidence so far has shown, signed on February 4th. I think if I let -- if I open it, then it goes -- he gets to tell about what you guys got and then what we did with the money, and that's all not relevant to the issue of whether or not she was of sound and disposing mind and memory on February 4, 2016.

[5] A party's offer of proof should include its position as to relevance of evidence proffered. ***In re King***, 340 S.W.3d 656, 659 (Mo.App. 2011).