

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA12-547JOY B. HUGHES AND THE JOY B.
HUGHES REVOCABLE LIVING
TRUST

APPELLANTS

V.

ANNA DALTON

APPELLEE

Opinion Delivered February 27, 2013

APPEAL FROM THE SEBASTIAN
COUNTY CIRCUIT COURT, FORT
SMITH DISTRICT
[NO. CV-2011-1525]HONORABLE J. MICHAEL
FITZHUGH, JUDGE

AFFIRMED

PHILLIP T. WHITEAKER, Judge

Joy Hughes and the Joy B. Hughes Revocable Living Trust (Trust) appeal from a Sebastian County Circuit Court judgment denying their petition to set aside a quitclaim deed to eight parcels of land deeded by Hughes to her granddaughter, Anna Dalton. We affirm.

Joy Hughes established the Trust on January 25, 1999. The Trust was created by attorney Paul Giuffre, who routinely handled her estate and business matters. Between November 1998 and December 2010, Joy Hughes purchased eight tracts of land, which were placed in the Trust. Hughes also subsequently executed thirteen amendments¹ to her Trust agreement—each changing the beneficiary of the Trust. An amendment dated September

¹This figure does not include the disputed amendment to the Trust agreement or a fourteenth amendment, which was undated and unsigned. The fourteenth amendment merely reiterates the provision of the previous amendment.

28, 2009, bequeathed to Hughes's daughter Janie McCarty and Dalton ten dollars each. It appointed Hughes's other granddaughter, Alicia De La Cruz, as the successor trustee and beneficiary of the remainder of the property upon Hughes's death.

On February 21, 2011, Hughes, individually and as trustee of the Trust, executed a quitclaim deed of the eight properties to Dalton. Hughes retained a life estate in the properties and the rents, profits, and income produced therefrom. At the same time, Hughes executed a new last will and testament and once again amended her Trust agreement, acknowledging the conveyance of the properties to Dalton by quitclaim deed and naming Dalton successor trustee and beneficiary of all that was remaining in the Trust. The documents also bequeathed to Dalton any bank accounts or items of personal property in Hughes's possession at the time of Hughes's death. These documents were prepared by attorney Matt Davis, not Giuffre.

On February 28, 2011, Matt Davis mailed Hughes the recorded quitclaim deed, the Trust amendment, and the will. He also enclosed his billing statement, which was subsequently paid by Hughes on March 4, 2011.

On March 5, 2011, Hughes executed a correction quitclaim deed to correct the legal description of one of the properties, which had erroneously included language regarding a business no longer located on the property. The recorded correction deed was mailed to Hughes on April 21, 2011.

On May 31, 2011, Hughes contacted Davis's office indicating that she wished to revise the deed to reflect that Dalton would receive nothing under her estate. Davis

informed her that, in order to revise the deed, Dalton would have to either quitclaim her interest in the properties back to Hughes or disclaim her interest in the property. Dalton refused.

On September 29, 2011, Hughes, individually and as Trustee of the Joy B. Hughes Revocable Living Trust, filed a petition to set aside the deed. The petition alleged that Dalton had committed acts of undue influence, fraud, duress, and misrepresentation, including but not limited to (1) misleading Hughes as to the reasons and purposes for having a lawyer selected by Dalton to prepare the paperwork; (2) misrepresenting that Hughes's property would be forfeited to the federal government and/or a nursing home when Hughes moved into a nursing home; and (3) misleading Hughes as to the meaning and effect of the documents to be executed. These acts were allegedly exerted at a time when Hughes was of advanced age, physically afflicted, and generally in a weakened state to protect herself from the privations of Dalton. Dalton answered, denying the allegations.

A hearing was held on May 10, 2012. The trial court stated that it found absolutely no proof that Dalton procured the signatures on the deed by any various means or representations. The court further noted that there was evidence presented that Hughes was competent at the time of the execution, that she wanted to control everything, that she informed Davis of her intentions, and that she understood what she was doing. The court found that Hughes had presented no basis for setting aside the deed.

A judgment was entered on May 22, 2012, denying the petition to set aside the deed. The judgment stated that Hughes and the Trust had "failed to meet their burden of proof

with respect to their claims of undue influence, fraud, duress, misrepresentation, and procurement.”

Hughes and the Trust argue that the trial court imposed the wrong burden of proof in determining whether the deed was procured by undue influence. They contend that they made a prima facie case showing that Dalton procured the changes to the will and the Trust, thereby raising a presumption that the change arose by undue influence. The burden then shifted to Dalton to prove that the changes were not procured by undue influence. They argue that the trial court failed to apply the presumption and erroneously placed the burden on them to prove the absence of undue influence.

We review traditional equity cases de novo. The test on review is a clearly erroneous standard (i.e., whether we can say that the trial court’s findings are clearly erroneous). *Berry v. Walker*, 2012 Ark. App. 16. A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake was made. *Id.* In reviewing a trial court’s findings of fact, we give due deference to the trial judge’s superior position to determine the credibility of witnesses and the weight to be accorded to their testimony. *Munzner v. Kushner*, 2010 Ark. App. 196, 375 S.W.3d 647.

In an ordinary deed transaction, a grantee who procures a deed does not bear the burden of proving the grantor’s mental capacity and freedom from undue influence. A different rule applies if the parties to the deed are in a confidential relationship and the grantee is the dominant party. *Estate of McKasson v. Hamric*, 70 Ark. App. 507, 510–11, 20

S.W.3d 446, 449 (2000). When the grantee is the dominant party in a confidential relationship with the grantor, it is presumed that a transfer of property from the grantor to the grantee was invalid due to coercion and undue influence. *Myrick v. Myrick*, 339 Ark. 1, 2 S.W.3d 60 (1999). In such a case, the grantee bears the burden of rebutting the presumption by producing evidence showing that the transfer of property was freely and voluntarily executed. *Id.*

Hughes and the Trust failed to obtain a ruling from the trial court as to whether a confidential relationship existed between Hughes and Dalton. Our courts have repeatedly held that a party's failure to obtain a ruling is a procedural bar to this court's consideration of the issue on appeal. *Roberts v. Jackson*, 2011 Ark. App. 335, 384 S.W.3d 28. As a result, the burden of proof remained on Hughes and the Trust, as the parties challenging the deed, to prove duress by a preponderance of the evidence. *McKasson, supra*.

There was evidence that Hughes, a shrewd businesswoman familiar with real estate matters, met with attorney Davis for the purposes of taking the property out of her Trust and deeding it over to Dalton while retaining a life estate in the property. She was advised by attorney Davis of the nature and legal consequences of executing the deed. After reviewing the document with Davis, Hughes executed the quitclaim deed, and it was recorded. She later contacted Davis to revise an error contained in the deed, which conflicts with her testimony that she was not aware of what she was signing. Dalton did facilitate the initial contact between Hughes and Davis, and the parties disagree whether Dalton was present during the execution of any of the documents. It is the role of the trial court to decide any

conflict in the evidence. *Painter v. Kerr*, 2009 Ark. App. 580, 336 S.W.3d 425 (credibility determinations resolving inconsistent assertions are for the trial court to decide). Based on these facts, we cannot find that it was clear error for the trial court to find that Hughes failed to prove that Dalton procured the deed or that she exerted any undue influence over Hughes.

Affirmed.

PITTMAN and GRUBER, JJ., agree.

Robert S. Tschiemer, for appellant.

Hardin, Jesson & Terry, PLC, by: *Robert M. Honea* and *Jacqueline Cronkhite*, for appellee.