IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN RE: THE ESTATE OF NORRIS E. HAMMOND	)	
CATHERINE HAMMOND and NETTIE JONES	)	
Petitioners,	)	
v.	)	*Civil Action No. 5611-VCG*
SHARON SATTERFIELD,	)	
Respondent.	)	

MEMORANDUM OPINION

Date Submitted: August 24, 2012
Date Decided: August 30, 2012

Paul G. Enterline, Georgetown, Delaware; OF COUNSEL: Richard S. Phillips, of THE PHILLIPS LAW FIRM, P.A., Easton, Maryland, Attorneys for Petitioners.

Sharon Satterfield, Windsor, South Carolina, *Pro Se*, Respondent.

GLASSCOCK, Vice Chancellor

This matter involves a petition for the review of a will of Norris Hammond. Hammond died testate on January 31, 2010. He left a will dated July 22, 2009 (the "2009 Will"), which has been admitted to probate.[1] The Petitioners, Katherine Hammond and Nettie Jones, are Hammond's daughters. The Respondent, Sharon Satterfield, is the Executrix and residuary beneficiary under the 2009 Will. Satterfield is not related to Hammond; however, she is married to Hammond's former son-in-law. Hammond's former son-in-law was previously married to Hammond's daughter, whose death preceded Hammond's own by a number of years.

The 2009 Will disinherits the Petitioners. The Petitioners contend that the 2009 Will is invalid because Hammond did not actually execute it. In the alternative, they argue that the 2009 Will was the product of undue influence. They support the probate of an earlier will (the "2003 Will"), under which they are beneficiaries.[2]

In this post-trial Opinion, as explained below, I find that the Petitioners fail to carry their burden to show that the 2009 Will was either a forgery or executed under undue influence.

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[1] Pet'rs.' Tr. Ex. 3.
[2] *Id.* Ex. 2.

I. FORGERY

A. Background

The record demonstrates that Hammond was illiterate. Financial circumstances forced him to leave school, in second or third grade, to work on the family farm. Though he was unable to read, Hammond could write his name. Hammond's middle name, on his birth certificate, is Irvin; however, throughout his life, apparently, Hammond used the middle name Ervin rather than Irvin. Hammond's signature reflected that preference, and in exemplars of his signature admitted into evidence Hammond consistently signed his name "Norris E. Hammond."[3]

The 2009 Will departs from the exemplars signed by Hammond in one curious aspect. Strikingly, the signature on the 2009 Will is "Norris I. Hammond". The 2009 Will, however, contains an affidavit that provides:

> Before me, the subscriber, and on this date personally appeared Norris I. Hammond, Mary Maloy and Roselle E. Roe, known to me to be the Testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument and, all these persons being by me first duly sworn, Norris I. Hammond, the Testator, declared to me and two witnesses in my presence that the instrument is his Last Will and that he had willingly signed or directed another to sign for him, and that he executed it as his free and voluntary act for the purposes therein expressed; and each of the witnesses stated to me, in the presence and hearing of the Testator, that he/she signed the Will as witness and that to the best of their knowledge, the Testator was

[3] *Id.* Exs. 9, 10.

> eighteen years of age or over, of sound mind and under no constraint or undue influence.

The affidavit is notarized and is signed by "Norris I. Hammond" and the two witnesses. The Petitioners contend that the Hammond's signature was forged on the 2009 Will.

B. Standards

When a will is challenged as a forgery, the challenger "has the burden of proving such forgery in a clear, direct, precise, and convincing manner."[4] Moreover, "[w]hile expert opinion evidence is admissible on [whether a will is a forgery], opinion evidence, standing alone . . . [cannot] sustain a finding of forgery, in the face of direct and credible evidence."[5]

Because of the affidavit, the 2009 Will is self proving pursuant to 12 *Del. C.* § 1305.[6] Aside from eliminating the need for attesting witnesses to appear before the Register of Wills, "[t]he affidavit provides verification of witnesses' signatures and attests that the testator executed the will in their presence while appearing to be of sound mind and free from duress."[7]

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[4] *Matter of Estate of Melori*, 1987 WL 6442, at *6 (Del. Ch. Feb. 11, 1987).
[5] *Id.* at *6 (internal quotation marks removed).
[6] *See* 12 *Del. C.* §§1305, 1310.
[7] *Matter of Will of Carter*, 565 A.2d 933, 934 n.2 (Del. 1989).

C. Discussion

In order to prove that the 2009 Will was a forgery, at trial, the Petitioners presented the testimony of an expert, Mr. R. David Wilkinson. Wilkinson testified that the signature purporting to be Hammond's on the 2009 Will was, in fact, in the handwriting of another. Wilkinson reached this conclusion by comparing the signature on the 2009 Will to that of known exemplars of Hammond. The signature on the 2009 Will appears, to the lay eye, consistent with the exemplars. Wilkinson, however, noted technical differences between the two and opined that whoever signed the 2009 Will attempted to copy a known signature of Hammond.

Though the Petitioners argued, with some persuasive force, that the use of "I" in the signature, rather than "E", raises doubts about its authenticity, it is also true that it tends to undercut the Petitioners' expert's theory—that the similarity between the appearance of the signatures is explained by the fact that the signator was a forger copying a genuine signature of Hammond. If a forger was copying a genuine signature, certainly he would tend to accurately transcribe the signature.

The Respondent's explanation for the use of "I" rather than "E" in Hammond's signature is that Hammond had recently obtained (with her assistance) benefits under Social Security, and that his name, consistent with his birth certificate, on all Social Security documents including his Social Security card was "Norris I. Hammond." Under the Respondent's theory, whoever assisted

Hammond in the preparation and creation of the 2009 Will took the name "Norris I. Hammond" from his Social Security card or other documents, and that Hammond signed the 2009 Will accordingly. This theory is not altogether implausible, but remains mere conjecture.

The evidence, therefore, with respect to Hammond's signature is limited to the following: (1) the testimony of a handwriting expert that the details of the purported signature make it unlikely that Hammond himself signed the 2009 Will, and (2) the affidavit of two witnesses and a notary public that Hammond signed, or at least adopted, the document as his will.

The Petitioners, of course, could have called the notary and witnesses to the 2009 Will. There is no suggestion that any of those individuals are unavailable, and failure to call them represents a tactical decision on the part of the Petitioners. As the record stands, however, I am left with the sworn statements of the witnesses, juxtaposed against the opinion of the handwriting expert. Based on these circumstances, I cannot find by clear and convincing evidence that the signature is not that of Hammond.

II. UNDUE INFLUENCE

A. Burden Shifting

A duly-executed will is presumptively valid and free of undue influence.[8] In *In re Last Will and Testament of Melson*, our Supreme Court held that this presumption does not apply when "the challenger of the will is able to establish, by clear and convincing evidence, the following elements: (a) the will was executed by a testatrix or testator who was of weakened intellect; (b) the will was drafted by a person in a confidential relationship with the testatrix; and (c) the drafter received a substantial benefit under the will."[9] In that circumstance, the burden shifts to the proponent of the will.[10]

The Petitioners contend that the 2009 Will represents not the testamentary intent of Hammond, but instead that of the Respondent. The 2009 Will makes the Respondent the chief beneficiary of Hammond's estate and specifically disinherits the Petitioners, his daughters, except for a bequest of $5 each. The 2009 Will supersedes an earlier will, the 2003 Will, that directed that Hammond's real estate was to be sold and distributed equally among the Petitioners and Hammond's then-

[8] *In re Estate of Seppi*, 2011 WL 4132374, at *11 (Del. Ch. Aug. 30, 2011).
[9] 711 A.2d 783, 788 (Del. 1998).
[10] If the burden is shifted, the proponent of the will must show that there was an absence of undue influence and prove by a preponderance of the evidence that "the testator or testatrix possessed the requisite testamentary capacity." *Id.*

girlfriend, Betty Lee Lyons. The 2003 Will left Hammond's personalty to the Petitioners.

The Petitioners argue that they have made a record sufficient, under the *Melson* test, to shift the burden of persuasion to the Respondent to show that the Will is *not* the product of undue influence.[11] The Petitioners, however, have failed to establish any of the *Melson* factors.

First, there is no evidence that Hammond was of "weakened intellect" as such. The Petitioners argue that an inability to read makes a testator so dependent upon a person in a confidential relationship with him who was the drafter of a will and that illiteracy must be deemed the equivalent of weakened intellect in the *Melson* context.

Illiteracy, by itself, is insufficient for a showing of "weakened intellect" under *Melson*. A testator would be disadvantaged by his illiteracy to the extent that without assistance he could not comprehend his will and he would not understand how he was actually devising his estate. If an illiterate person was misled as to the contents of the document that he signed or he did not understand the contents, the result may be that no valid will was created.[12] Though the testator may have been

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[11] *Id.*

[12] *See generally Sharpless-Hendler Ice Cream Co. v. Davis*, 155 A. 247, 248 (Del. Ch. 1931) (explaining that while "no paper is valid to charge an illiterate man[,] one who can neither read nor write, unless it appear, upon a contest, that it was honestly and fairly read or explained to him," when the illiteracy is unknown to the other contracting party, and the illiterate person,

subject to fraud, such a misrepresentation would not mean that the testator had "weakened intellect" or had been subject to undue influence. To the extent that an illiterate person relies on another for guidance in his business dealings, a confidential relationship giving rise to fiduciary obligations may exist,[13] but this relationship does not automatically exist simply because one party is illiterate.

In any event, the Petitioners did not present facts showing that these scenarios are applicable here. The Petitioners did not argue at trial that Hammond was mistaken or defrauded as to the contents of the 2009 Will. The Petitioners only asserted that Hammond's signature was forged or that he executed the 2009 Will under the Respondent's undue influence.

More fundamentally, the Petitioners have utterly failed to provide any evidence, let alone clear and convincing evidence, that the Respondent drafted the 2009 Will. The record discloses only that the Respondent drove Hammond to a senior center in Harrington, Delaware, for a purpose which he expressed as "getting his papers in order" and that she waited in the car while he went inside, presumably to receive assistance for the creation of the 2009 Will.

"chose to affix her name to an agreement without demanding that it be read to her, and without being misled in any way by the other party to it . . . that the contract is binding.").

[13] *Mitchell v. Reynolds*, 2009 WL 132881, at *9 (Del. Ch. Jan. 6, 2009) ("Even outside a formally recognized fiduciary relationship, a relationship predicated on particular confidence or reliance may give rise to fiduciary obligations.").

According to the Respondent, she did not see the 2009 Will and was unaware of its contents until after Hammond's death. She testified that at some point Hammond gave her a document in a sealed envelope to be opened upon his death; that she opened the sealed envelope shortly after he died; and that she found the 2009 Will therein. In sum, all that the record reflects is that Hammond was illiterate and that the Respondent received a substantial benefit under the 2009 Will.

B. Elements of Undue Influence

Because the Petitioners have not met the burden-shifting test of *Melson*,[14] the burden remains on the Petitioners to demonstrate undue influence by the preponderance of the evidence.[15] The elements that the Petitioner must demonstrate are well known: "(1) a susceptible testator; (2) the opportunity to exert influence; (3) a disposition to do so for an improper purpose; (4) the actual exertion of such influence; and (5) a result demonstrating its effect."[16]

The evidence introduced at trial is simply insufficient to demonstrate undue influence. Where an illiterate testator has access to family members or impartial advisors who may assist him in the creation of a will, he is not, without more,

[14] *Melson*, 711 A.2d at 788.
[15] *See id.* at 786.
[16] *In re Estate of West*, 522 A.2d 1256, 1264 (Del. 1987).

"susceptible" to undue influence simply on account of his illiteracy.[17] The evidence presented at trial indicated that, through the time of the making of the 2009 Will, Hammond was a strong-willed person who knew his own mind and was able to express it, and that he had contact with family members and friends.

Even if illiteracy had made Hammond a susceptible testator, the Petitioners have failed to demonstrate that the Respondent had the opportunity to exert undue influence. Hammond lived on his own. The Respondent testified that Hammond came over every morning for coffee and was quite friendly to both the Respondent and her husband. The Petitioners, however, testified that they were also in a good relationship with their father, and that they visited him frequently. There is no evidence that Hammond was reliant upon the Respondent, that the Respondent was able to isolate him, or that circumstances otherwise presented themselves sufficient to allow the Respondent to overbear Hammond's own will.

In closing argument, the Petitioners were only able to point to the fact that Hammond changed his will shortly before his death in favor of the Respondent, and that the Respondent drove him to the senior center on the day that he purportedly created the 2009 Will. The Respondent testified, in a self-serving and not particularly convincing manner, that by the end of his life Hammond was closer to her emotionally than to his own children. The Petitioners testified, also

[17] Hammond was allegedly ill; however, no evidence was presented at trial explaining the extent of this illness or how it rendered him susceptible to undue influence. *See* Pet'rs.' Tr. Ex. 20.

self-servingly and in a manner not particularly convincing, that the reverse was true. The fact remains that the Petitioners have simply failed to put forward evidence sufficient to overcome the presumption that a duly-executed will represents the intentions of the testator.

III. CONCLUSION

The ability to discharge one's property by will is a cherished right. For that reason, a decedent's will may not be overturned simply because it appears unusual, or even foolish; neither may it be set aside because it disinherits the natural objects of the testator's bounty. A duly executed will is entitled to the presumption that it reflects the testamentary intent of the testator. To enforce a document as a will that is the fruit of fraud or undue influence, however, is as much an affront to equity as failure to enforce a valid will. In this case, the evidence presented fell far short of meeting the applicable burden of persuasion, and, for better or worse, the case must turn on the burden of persuasion. Because the Petitioners have been unable to demonstrate that the 2009 Will was executed by someone other than Hammond or was the product of undue influence on the part of the Respondent, there is no basis to strike the 2009 Will, and Hammond's estate should be administered according to that document.

IT IS SO ORDERED.