

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2018 CA 1151

LEONA ALLEN

VERSUS

KANITA EDMOND

Judgment Rendered: MAY 14 2019

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On Appeal from the
19th Judicial District Court
In and for the Parish of East Baton Rouge
State of Louisiana
Trial Court No. 666,254

Honorable Timothy E. Kelley, Judge Presiding

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* * * * *

BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

*WTL
TMH*

J. McClendon, J. concurs

HIGGINBOTHAM, J.

Plaintiff, Leona Allen, filed a petition seeking to annul an *inter vivos* donation of immovable property executed by her 95-year-old father, Laurence E. Hall, in favor of defendant, Kanita Edmond, based on lack of capacity and undue influence. In her petition, Mrs. Allen also sought a temporary and permanent injunction enjoining Mrs. Edmond from proceeding with the execution of the donation and eviction of Mrs. Allen from the immovable property. Mrs. Allen now appeals from the adverse judgment of the trial court dismissing her petition and denying all injunctive relief.

FACTS AND PROCEDURAL HISTORY

On April 14, 2000, Mr. Hall and his wife Ora Mae Azard Hall, purchased a home located at 10723 Timberlane Avenue¹ in Baton Rouge, Louisiana. Mrs. Edmond was Mrs. Hall's niece, and, as a child, she visited the Halls at their home. In 2006, Mrs. Hall died, and at that point, Mrs. Edmond's visits with Mr. Hall decreased significantly. Around 2008, when Mrs. Edmond was sixteen, all contact between Mrs. Edmond and Mr. Hall ceased until 2017.

Mr. Hall remained in the Timberlane home until December 2016, when after suffering with a urinary tract infection, dehydration, and acute kidney failure, he moved to the Louisiana War Veterans Home in Jackson, Louisiana. Near the end of March 2017, almost ten years after her last communication with Mr. Hall, Mrs. Edmond telephoned Mr. Hall at the veterans' home. Mrs. Edmond later claimed that during their phone conversation, Mr. Hall told her that he wanted to bless her family with the Timberlane home.

Thereafter, Mrs. Edmond compiled all the necessary paperwork and paid all the necessary fees for Mr. Hall to execute an *inter vivos* donation of the Timberlane home to her. On April 4, 2017, Mrs. Edmond and her husband picked Mr. Hall up

¹ The municipal address of the home is listed as "Timberland Avenue" in the Judgment of Possession in Ora Hall's succession proceeding, but as "Timberlane Avenue" in the April 4, 2017, Act of Donation.

from the veterans' home and brought him to the office of James Field, who had already prepared the donation at Mrs. Edmond's request. On that day, Mr. Hall signed in authentic form an "Act of Donation" donating the Timberlane home to Mrs. Edmond. A couple of months later, on June 16, 2017, Mr. Hall died.

On February 8, 2018, Mrs. Allen filed a petition for injunction and petition to annul the *inter vivos* donation executed by Mr. Hall in favor of Mrs. Edmond. Specifically, Mrs. Allen contended that, at the time of the *inter vivos* donation, Mr. Hall was not of sound mind and was unduly influenced by Mrs. Edmond. Mrs. Edmond answered Mrs. Allen's petition, and the matter came before the court for a trial May 10, 2018. After Mrs. Allen presented her case in chief, Mrs. Edmond's attorney made a motion for an involuntary dismissal, which the trial court granted. The trial court found that Mrs. Allen did not meet her burden of proving that Mr. Hall lacked capacity to execute the *inter vivos* donation or that Mrs. Edmond unduly influenced Mr. Hall into executing the *inter vivos* donation.

Thereafter, on May 30, 2018, the trial court signed a judgment in favor of Mrs. Edmond and against Mrs. Allen, denying all injunctive relief sought and dismissing Mrs. Allen's petition for injunction and petition to annul the *inter vivos* donation. It is from this judgment that Mrs. Allen appeals, contending that the trial court erred: (1) in granting judgment in favor of Mrs. Edmond; (2) in not considering the negligent acts of the notary; and (3) in only considering a portion of Mr. Hall's medical records submitted by Mrs. Allen.

LACK OF CAPACITY AND UNDUE INFLUENCE

In her first assignment of error, Mrs. Allen contends that the trial court erred in granting judgment in favor of Mrs. Edmond. Specifically, she contends that the trial court erred in finding that she did not meet her burden of proving that Mr. Hall lacked capacity to execute the *inter vivos* donation or that Mrs. Edmond unduly influenced Mr. Hall into executing the *inter vivos* donation.

The issue of capacity is a question of fact; thus, the trial court's factual findings as to the issue of capacity will not be disturbed on appeal unless clearly wrong or manifestly erroneous. **Succession of Werner v. Zarate**, 2007-0829 (La. App. 1st Cir. 12/21/07), 979 So.2d 506, 511. Additionally, a trial court's factual findings as to the issue of undue influence is fact intensive and cannot be disturbed on appeal in the absence of manifest error. **Succession of Dean**, 2017-0155 (La. App. 1st Cir. 3/29/18), 247 So.3d 746, 753 (en banc), writ denied, 2018-00679 (La. 9/14/18), 252 So.3d 479.

Capacity to donate *inter vivos* must exist at the time the donor makes the donation. La. Civ. Code art. 1471. To have capacity to make a donation *inter vivos*, a person must be able to comprehend generally the nature and consequences of the disposition that he is making. La. Civ. Code art. 1477. A person who challenges the capacity of a donor must prove by clear and convincing evidence that the donor lacked capacity at the time the donor made the donation *inter vivos*. La. Civ. Code art. 1482(A).

Cases involving challenges to capacity are fact-intensive. The courts will look both to objective and subjective indicia. Illness, old age, delusions, sedation, etc. may not establish lack of capacity but may be important evidentiary factors. If illness has impaired the donor's mind and rendered him unable to understand, then that evidentiary fact will establish that he does not have donative capacity. Each case is unique. The courts will look to the medical evidence that is available, such as the medical records and the testimony of treating doctors, and to other expert testimony, and to the testimony of lay witnesses. Clearly, no quick litmus-paper test exists to apply to the evaluation of mental capacity in all cases. See La. Civ. Code art. 1477, Revision Comments—1991, comment (f).

A donation *inter vivos* or *mortis causa* shall be declared null upon proof that it is the product of influence by the donee or another person that so impaired the

volition of the donor as to substitute the volition of the donee or other person for the volition of the donor. La. Civ. Code art. 1479. A person who challenges a donation because of fraud, duress, or undue influence, must prove it by clear and convincing evidence.² La. Civ. Code art. 1483. Mere advice, persuasion or kindness and assistance should not constitute influence that would destroy the free agency of a donor and substitute another's volition for his own. See La. Civ. Code art. 1479, Revision Comments—1991, comment (b).

As previously noted, both lack of capacity and undue influence must be proven by clear and convincing evidence. The “clear and convincing” standard is a heavier burden of proof than the usual “preponderance of the evidence” standard for civil cases, but is less burdensome than the “beyond a reasonable doubt” standard of a criminal prosecution. **Impson for Impson v. Succession of Impson**, 2017-1133 (La. App. 1st Cir. 2/21/18) (unpublished), 2018 WL 1751638, *2, writ denied, 2018-0452 (La. 5/11/18), 242 So.3d 567. To prove a matter by clear and convincing evidence means to demonstrate that the existence of a disputed fact is highly probable, that is, much more probable than its nonexistence. **Fernandez v. Hebert**, 2006-1558 (La. App. 1st Cir. 5/4/07), 961 So.2d 404, 408, writ denied, 2007-1123 (La. 9/21/07), 964 So.2d 333.

Thus, in order to annul the *inter vivos* donation that is presumed to be valid, Mrs. Allen had the burden of proving that it was highly probable that Mr. Hall did not generally comprehend the nature and consequences of the *inter vivos* donation at the time the *inter vivos* donation was made and/or that the *inter vivos* donation

² In her brief, Mrs. Allen contends that under La. Civ. Code art. 1483, her burden to prove undue influence was by a preponderance of the evidence. Louisiana Civil Code article 1483 provides:

A person who challenges a donation because of fraud, duress, or undue influence, must prove it by clear and convincing evidence. However, if, at the time the donation was made or the testament executed, a relationship of confidence existed between the donor and the wrongdoer and the wrongdoer was not then related to the donor by affinity, consanguinity or adoption, the person who challenges the donation need only prove the fraud, duress, or undue influence by a preponderance of the evidence.

Mrs. Allen did not introduce any evidence to prove that a relationship of confidence existed between Mr. Hall and Mrs. Edmond, and Mr. Hall and Mrs. Edmond were related by affinity. Therefore, Mrs. Allen's burden is clear and convincing evidence.

was the product of influence by Mrs. Edmond that so impaired the volition of Mr. Hall as to substitute the volition of Mrs. Edmond for the volition of Mr. Hall.

During the hearing, the trial court received testimony from Mrs. Edmond, Mrs. Allen, Mr. Field, and Mrs. Heidi Vessel, an attorney who had prepared wills for Mr. Hall in 2014.

Mrs. Edmond testified that she became aware that Mr. Hall was in the veterans' home based on a conversation with Kiera Scott, Mrs. Allen's daughter. In Facebook Messenger, Mrs. Edmond, before making contact with Mr. Hall, messaged Ms. Scott stating "if your mama or whoeva don't want the house I'll love it" and asking her what nursing home Mr. Hall was staying in. She then called Mr. Hall at the veterans' home. Mrs. Edmond testified that the first time she mentioned the Timberlane home to Ms. Scott was after she had spoken to Mr. Hall, and Mr. Hall told her that he wanted to give her the Timberlane home. This testimony was proven to be false when the Facebook messages revealed that Mrs. Edmond mentioned the Timberlane home to Mrs. Scott before she was even aware of what veterans' home Mr. Hall was staying in.

Mrs. Edmond admitted that it had been almost ten years since she last communicated with Mr. Hall and that when they spoke, Mr. Hall did not immediately remember her. Mrs. Edmond testified that she told Mr. Hall that she now had kids, and they lived in a rough area. Mrs. Edmond stated that after speaking with Mr. Hall for about twenty minutes, Mr. Hall said that he wanted to bless her with the Timberlane home.

Shortly after their phone conversation, Mrs. Edmond proceeded to do everything necessary for Mr. Hall to donate the Timberlane home to her—getting the act of cash sale of the home from the clerk of court; obtaining the necessary paper work from the succession of her aunt, Mrs. Hall; paying to get the succession paperwork recorded; engaging Mr. Field to prepare the act of donation; and paying

for all costs of the donation. Additionally, in order to acquire a duplicate identification card for Mr. Hall, which was necessary to complete the *inter vivos* donation, Mrs. Edmond obtained the last four digits of Mr. Hall's social security number from a social worker at the veterans' home, rather than just asking Mr. Hall; took Mr. Hall to the DMV; gave the necessary information to the DMV's receptionist; paid for the identification card; and signed the identification card on Mr. Hall's behalf.

According to Mrs. Edmond, on April 4, 2017, she and her husband picked Mr. Hall up from the nursing home, and after taking him to get his duplicate identification, took him to Mr. Field's office to execute the *inter vivos* donation. Mr. Hall was unable to walk, so they had to get Mr. Hall in and out of the car and wheel him into the DMV and Mr. Field's office. On that day, Mr. Hall signed in authentic form the "Act of Donation" donating the Timberlane home to Mrs. Edmond. Mrs. Edmond's testimony was that Mr. Hall never said he did not want to go nor did he indicate that he did not understand the *inter vivos* donation document. Mrs. Edmond said that Mr. Field read the document to Mr. Hall. Mrs. Edmond testified that after completion of the donation, she returned Mr. Hall to the veterans' home and never visited him again. She said the only other time she saw him was when she attempted to move into the Timberlane home, and Mr. Hall was there with Mrs. Allen.

Mrs. Allen testified that Mr. Hall suffered from Alzheimer's disease, took several types of medicine, and was blind. She testified that once Mr. Hall moved to the veterans' home, he shut his eyes and would not open them anymore. Mrs. Allen said that she did not think Mr. Hall understood what he was doing on the day the *inter vivos* donation was signed.

Mr. Field testified that Mrs. Edmond contacted him about preparing the *inter vivos* donation and that he met with Mrs. Edmond at least once prior to April 4, 2017, the day the *inter vivos* donation was signed. Mr. Field said on April 4, 2017, he

discussed very briefly with Mr. Hall what he was there to do. Mr. Field said he saw no indication that Mr. Hall was not in his right mind, and he felt confident that Mr. Hall understood why he was in his office. Mr. Field did not recall if he read the *inter vivos* donation document to Mr. Hall but stated that it was not his standard practice to read a document to the parties and that he would be surprised if it was suggested that he had read it in this instance. Mr. Field acknowledged that he has notarized thousands of documents and did not remember much from this particular transaction.

Mrs. Vessel testified that Mr. Hall came to her office with his caretakers in 2014 and asked her to prepare a will for him. Mrs. Vessel expressed concern that Mr. Hall's caretakers were taking advantage of him because his caretaker handed her a handwritten document, which was not in Mr. Hall's handwriting, indicating that one caretaker was to receive a sum of money and the other caretaker was to receive a home he owned. Mrs. Vessel said this made her uncomfortable, so she decided to speak with Mr. Hall alone. She said she found that he was an interesting man and that she enjoyed talking with him. During their conversation, Mrs. Vessel read to Mr. Hall the contents of the handwritten document from the caretaker and asked him if that was what he wanted. Mr. Hall expressed that that was not what he wanted and instead asked Mrs. Vessel to execute a will giving his assets to his son, granddaughter, daughter, and charity, and not his caretakers. Mrs. Vessel testified that she thought Mr. Hall had capacity to execute a will at that time.

According to Mrs. Vessel, in May 2015, Mr. Hall came in with a different caretaker to execute another will again leaving money to the caretakers. At that point, Mrs. Vessel again conferred privately with Mr. Hall and then refused to do any more wills because she felt like Mr. Hall was being taken advantage of, was too impressionable, and lacked the required capacity to execute the will. She also contacted Mrs. Allen and told her that she might want to consider reporting elder abuse against Mr. Hall's caretakers.

Finally, Mrs. Allen introduced the medical records of Mr. Hall. The medical records show that in December 2016, Mr. Hall was admitted to Lane Regional Medical Center suffering from a UTI, dehydration, and acute kidney failure. Thereafter, the medical records indicate that he moved to the veterans' home because he was in need of 24-hour assistance. According to his medical records, Mr. Hall suffered from Alzheimer's disease, legal blindness, and deficits in cognition. The medical records dated March 3, 2017, about one month prior to the *inter vivos* donation, stated that Mr. Hall still had deficits in cognition and vision and difficulty with memory.

After thorough review of the record in its entirety, we conclude that the trial court was manifestly erroneous in finding that Mrs. Allen did not establish by clear and convincing evidence that Mr. Hall lacked capacity and was unduly influenced by Mrs. Edmond when executing the April 4, 2017 *inter vivos* donation. The medical evidence, as well as the testimony of the witnesses, revealed that on April 4, 2017, Mr. Hall was ninety-five years old, suffering from Alzheimer's disease, required twenty-four hour care, was on numerous medications, had deficits in cognition, had trouble with memory, was legally blind, and was highly impressionable.

Of particular concern in this case is the fact that Mr. Hall was blind. There was conflicting testimony regarding whether or not the *inter vivos* donation document which was first presented to Mr. Hall in Mr. Field's office was read to him. The trial court addressed this concern by relying on a statement in the medical records that said Mr. Hall was able to read small print occasionally. However, we note that that notation was from 2012, five years prior to the *inter vivos* donation, and the medical records after that time, as well as the testimony of Mrs. Allen, indicated that Mr. Hall was legally blind and kept his eyes closed most of the time after moving to the veterans' home. Additionally, Mr. Hall's duplicate identification card that was obtained on his behalf by Mrs. Edmond on April 4, 2017, was

introduced into evidence, and Mr. Hall's eyes are clearly completely closed in his photograph; in fact, it looks like he is asleep, and the card was not signed by him.

Mrs. Edmond, as revealed by the Facebook messages with Ms. Scott, clearly wanted the Timberlane home when she made initial contact with Mr. Hall. It was her testimony that after one twenty-minute phone conversation, her first conversation with Mr. Hall in almost ten years, Mr. Hall wanted to give her his Timberlane home. Further, Mrs. Edmond completed every step necessary for Mr. Hall to execute the *inter vivos* donation, paid every fee, used private information obtained from a social worker, and picked him up and brought him to the DMV and Mr. Field's office. Mr. Hall's only participation involved signing the *inter vivos* donation document that more than likely was not read to him. Once the *inter vivos* donation was completed, Mrs. Edmond no longer maintained any contact with Mr. Hall.

Mr. Hall's advanced age, cognitive deficiencies, visual impairment, and impressionability, combined with all of the effort made solely by Mrs. Edmond to accomplish the *inter vivos* donation of the property to her, established clear and convincing proof both that Mr. Hall lacked capacity when he executed the *inter vivos* donation of the Timberlane home and that he was unduly influenced into doing so by Mrs. Edmond. Having found merit to Mrs. Allen's first assignment of error, we do not need to address her remaining assignments of error.

CONCLUSION

For the foregoing reasons, the judgment of the trial court granting an involuntary dismissal in favor of Mrs. Edmond is reversed, and the matter is remanded to the trial court for completion of the trial on the merits. All costs of the proceeding are assessed to Mrs. Kanita Edmond.

REVERSED.