STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of RICHARD L. HAYNES, Deceased.

THOMAS J. HAYNES,

Petitioner-Appellee,

v

EDDIE R. BELLERS and BARBARA BELLERS,

Respondent-Appellants.

UNPUBLISHED
November 18, 2003

No. 235232
Jackson Probate Court
LC No. 99-000001-SE

Before: O'Connell, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Respondents, in this will contest, Barbara Bellers and Eddie R. Bellers appeal as of right from an order setting aside a will, a power of attorney, and a quit claim deed. We affirm.

The decedent in the instant case was at one time married to respondent Barbara Bellers. Barbara Bellers divorced the decedent in 1993, but moved back in with him in the spring of 1994. Barbara Bellers resided with decedent at his farm on Curtis Road until his death on September 17, 1999. In April of 1999, decedent learned that he had terminal cancer. As his condition worsened, Barbara Bellers managed the farm and became his primary caregiver. On the morning of August 17, 1999, decedent underwent surgery to remove a stint that had been placed in his liver. Later that same day, decedent signed a will prepared by Barbara Bellers' son, respondent Eddie Bellers. The will left $100 each to the decedent's three sons and $1 to his daughter. But the will left the Curtis Road Property to Barbara Bellers and the remainder of decedent's estate to Eddie Bellers. The following day, the decedent signed a document granting Eddie Bellers durable power of attorney. On August 25, 1999, under his authority as the decedent's attorney in fact, Eddie Bellers signed a quitclaim deed transferring the Curtis Road property to Barbara Bellers. Following the decedent's death, his son, petitioner Thomas Haynes, filed suit challenging the will. The probate court found that respondents had exercised undue influence and set aside the will, the power of attorney and the resulting quitclaim deed.

On appeal, respondents first contend that the probate court erred in not granting their motion for a directed verdict. We disagree.

We review the denial of a motion for directed verdict de novo. *Sniecinski v BCBSM*, 469 Mich 124, 131; 666 NW2d 186 (2003). We examine "the evidence and all legitimate inferences from it in the light most favorable to the nonmoving party" and grant the motion only if the evidence viewed in this light fails to establish a claim as a matter of law. *Id.*

In *Kar v Hogan*, 399 Mich 529, 537; 251 NW2d 77 (1976), the Michigan Supreme Court stated the element necessary for a prima facie case of undue influence as follows:

> [I]t must be shown that the grantor was subjected to threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency and impel the grantor to act against his inclination and free will.

A presumption that this standard is met arises when the evidence shows the existence of three factors. *Id.* These three factors are: (1) existence of a confidential or fiduciary relationship between the grantor and a fiduciary; (2) a transaction benefiting the fiduciary or an interest he represents; and (3) the fiduciary must have had an opportunity to influence the grantor's decision in the transaction. *Id.*

The creation of such a presumption of undue influence does not shift the ultimate burden of proof. *Kar, supra* at 538. The petitioner must still prove the existence of undue influence based on the preponderance of the evidence. *Id.* But the presumption creates a "mandatory inference" in favor of the petitioner. *Id.* at 541. The opposing party must present some evidence tending to rebut the presumption or the petitioner is deemed to have "satisf[ied] the burden of persuasion." *Id.* at 542.

This Court applied the standard from *Kar, supra*, in *In re Conant Estate*, 130 Mich App 493; 343 NW2d 593 (1983), and found the existence of a fiduciary relationship because the decedent granted the respondent, her friend and caregiver, a general power of attorney. *Id*. at 498. And the respondent benefited in that she was given interests in the decedent's savings account and land. *Id.* Finally, this Court stated that the relationship between the decedent and the respondent was such that she "had the opportunity to influence decedent's decisions as regards those interests." *Id.* These factors combined to create a presumption of undue influence. *Id.* at 499.

Respondents in the present case argue that petitioner failed to present sufficient evidence of an opportunity to influence the decedent. The trial court found respondents' opportunity to influence was evident on the face of general power of attorney granted to Eddie Bellers and the quitclaim deed with which he transferred the Curtis Road property to Barbara Bellers. Respondents assert that the fact that Eddie Bellers was granted power of attorney is insufficient to show an opportunity to influence decedent's decision to grant that power.

The opportunity for undue influence is only relevant before Eddie Bellers obtained the power of attorney. Once Eddie Bellers obtained the power of attorney, he did not have the need to influence the decedent because he had absolute control over the decedent's property. The fact that he quitclaimed the decedent's farm to Barbara Bellers after obtaining the power of attorney is probative of the second element necessary for a presumption of undue influence, but not the third. In order to create a prima facie case of undue influence, there must have been an

opportunity for Eddie Bellers to exert influence before decedent signed the will or the document granting power of attorney.

Although, the mere existence of a power of attorney does not automatically mean that the recipient had the opportunity to influence the grantor's decision, we find that petitioner in the present case provided sufficient evidence for the trial court to find that respondents had such an opportunity. Like the respondent in *Conant, supra*, Barbara Bellers was the decedent's companion and primary caregiver during his long illness. And the will itself declares Eddie Bellers to be the "friend and confidant" of the decedent. As in *Conant, supra*, these relationships were such that respondents had ample opportunity to exert influence over decedent's decisions to create a will and grant Eddie Bellers power of attorney. The trial court mistakenly found the opportunity to influence inherent in the power of attorney. Regardless, sufficient evidence of an opportunity for undue influence existed. We will not reverse a trial court's decision when the right result was reached for the wrong reason. *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000).

When viewed in the light most favorable to the petitioner, sufficient evidence existed to create a presumption of undue influence. At the time of the directed verdict motion, respondents had yet to present any rebuttal evidence. Therefore, petitioner had not only presented a prima facie case, but was entitled to a mandatory inference of undue influence. See *Kar, supra* at 541-542. Upon a de novo review, the trial court's decision denying respondent's motion for a directed verdict is affirmed.

Respondents next argue that the trial court abused its discretion in failing to allow a lay witness to give opinion testimony regarding the decedent's lucidity on the day of his surgery, the day he signed the will at issue We disagree. Decisions concerning the admissibility of lay opinions are "within the discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion." *Chastain v General Motors Corp* (*On Remand*), 254 Mich App 576, 588; 657 NW2d 804 (2002), citing *Bachman v Swan Harbor Assoc*, 252 Mich App 400, 438; 653 NW2d 415 (2002). Such abuse exists only where "an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling made." *Id*., (citations omitted).

The witness, Carol Eaton, paid the decedent a visit at the hospital on the afternoon of August 17, 1999. While at the hospital, Eaton served as a witness for decedent's will. At trial Eaton testified that decedent "knew exactly what he was doin' [sic]" when he asked her to sign the will. The trial court sustained an objection to this statement on the grounds that the witness did not have sufficient foundation to give an opinion as to decedent's competence. Eaton's next statement, that decedent "seemed like he was in his right mind," was, similarly, not allowed by the trial court. The trial court, then, allowed Eaton to testify that at the time she was in the hospital room with decedent he "appeared to be aware of what he was doing."

Under MRE 701, lay witnesses may give opinion testimony "where it is rationally based on the witness' perception and helpful to a clear understanding of the witness' testimony or the determination of a fact at issue." *Richardson v Ryder Truck Rental, Inc*, 213 Mich App 447, 455; 540 NW2d 696 (1995). Such testimony is admissible concerning a person's testamentary capacity or lack thereof if the witness first testifies to facts that are consistent or inconsistent with the testator's sanity. *In re Powers Estate*, 375 Mich 150, 175; 134 NW2d 148 (1965).

Despite this general rule, lay witnesses may not give opinion testimony in all situations. The Michigan Supreme Court, in *Moore v Lederle Laboratories*, 392 Mich 289, 295; 220 NW2d 400 (1974), (quoting 2 Jones on Evidence (6th ed), § 14:9, p 605) provided:

> "While the qualifications of an ordinary or nonexpert witness to give testimony as to the inferences he has drawn from the facts he has perceived are tested by the capacity of people generally to draw reliable conclusions from given facts, if the conclusion to be drawn is beyond such capacity and dependent on specialized knowledge, education, experience or training, the witness, if he has such special qualifications, testifies as an expert witness and not as an ordinary witness."

In *Moore, supra,* the question concerned whether a witness could give "an opinion as to whether a person could have died within twenty four hours of a particular disease if that person did not receive a particular drug." *Id.* The Court held that it was error for the trial court to admit the witness' opinion where there was no foundation laid to show that he possessed sufficient knowledge of the effects of the disease if untreated or the effects of the drug in arresting the disease. *Id.* at 295-296.

In the present case, the trial court sustained petitioner's objection to Eaton's opinion testimony on grounds similar to those in *Moore, supra*. Eaton attempted to testify that decedent "knew exactly what he was doin'[sic]" and that "he seemed like he was in his right mind". While such statements might ordinarily be admissible lay opinions, more was required in this situation. As with the witness in *Moore, supra*, no foundation was laid showing Eaton had specialized knowledge concerning the effects of a serious medical condition on a person's mental state soon after the person emerges from anesthesia. The trial court did not abuse its discretion by restricting Eaton's testimony regarding decedent's testamentary capacity because there was no showing she had specialized knowledge of the possible effects of the surgery and anesthesia. We find that the trial court did not abuse its discretion in restricting the scope of Eaton's testimony.

Respondents' final argument is that because they presented evidence rebutting the presumption of undue influence, petitioner failed to present sufficient evidence for the trial court to find the existence of undue influence. We disagree.

A suit to set aside a transaction because of undue influence involves an action sounding in equity. *Conant, supra* at 493. We review equitable determinations de novo, but review the supporting findings of fact for clear error. *Forest City Enterprises, Inc v Leemon Oil Co*, 228 Mich App 57, 67; 577 NW2d 150 (1998). We will not reverse findings of fact made by a probate court sitting without a jury unless they are clearly erroneous. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993). Findings are clearly erroneous when the "reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding." *In re Bennett Estate*, 255 Mich App 545, 549; 662 NW2d 772 (2003), citing *In re Wojan Estate*, 126 Mich App 50, 52; 337 NW2d 308 (1983).

The Michigan Supreme Court in *In re Karmey Estate***,** 468 Mich 68, 75; 658 NW2d 796 (2003) (citing *Kar, supra* at 537), provided the following standard for finding undue influence:

> To establish undue influence it must be shown that the grantor was subjected to threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency and impel the grantor to act against his inclination and free will. Motive, opportunity, or even ability to control, in the absence of affirmative evidence that it was exercised, are not sufficient.

In deciding whether this standard was met in the present case, the trial court first examined the presumption of undue influence it had found at the close of the petitioner's case in chief and determined that it had been rebutted. But the presentation of rebuttal evidence does not totally dissipate the evidentiary value of such a presumption. *Kar, supra* at 541. "Unless the defendant's controverting evidence meet[s] the standard for a directed verdict," the presumption continues to create a permissible inference of undue influence. *Id.* Although petitioner was no longer entitled to a mandatory inference, the presumption continued to provide a valid evidentiary basis for the trial court's finding of undue influence.

In addition to the presumption, the trial court had testimony on which to base its findings. Under MCR 2.613(C) we must defer to the probate court on matters of credibility. *Erickson, supra* at 331, citing *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). And we give "broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, and other influencing factors." *Id.*

In determining whether decedent was unduly influenced to "act against his inclinations and free will" the trial court considered the testimony of numerous witnesses to determine what his inclinations were. The court found the testimony of the decedent's friend, Ronald Konopacki, to be particularly credible. Konopack, stated that decedent was adamant in wanting to provide for Barbara Bellers, John Haynes, and John Haynes' children. The court expressed concern over the testimony of Karen Riter, the hospital employee who notarized the decedent's power of attorney. Riter testified that decedent had stated "his children did not deserve anything because they never stood behind him." The court based its doubts on the fact that John Haynes and perhaps Thomas Haynes stayed at the farm to help care for the decedent. The trial court found that decedent would have had no reason to exclude John Haynes from his will. Because of this the court held that the will and the power of attorney were contrary to the decedent's will and the products of undue influence.

The testimony, combined with the permissible inference created by the rebutted presumption, provided sufficient evidence for the trial court to have found undue influence. We must defer to the trial court's determination concerning Konopacki and Riter's credibility. See *Erickson, supra* at 331. And we give broad deference to the trial court's findings of fact. See *Id.* As such, the trial court's factual findings were not clearly erroneous. Based on these factual findings, upon a de novo review, we find that the trial court did not err in finding the existence of undue influence. See *Forest Lity Enterprises, Inc, supra* at 67.

Affirmed.

/s/ Peter D. O'Connell
/s/ Kathleen Jansen
/s/ Kurtis T. Wilder