

STATE OF MICHIGAN
COURT OF APPEALS

In re Estate of MARIE BEAN, Deceased.

ALICE ROACH, JOAN BRASSARD, RYAN
BEAN, and ANDRA BEAN,

UNPUBLISHED
June 15, 2006

Petitioners-Appellees,

v

ROBERT BEAN, Personal Representative,

No. 259329
Muskegon Probate Court
LC No. 03-079143-DE

Respondent-Appellant.

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

PER CURIAM.

Respondent appeals as of right an order granting petitioners' petition to set aside a land contract between respondent and decedent Marie Bean. Respondent also appeals as of right an order setting aside the bill of sale in which decedent sold all her personal property to respondent, as well as the promissory note respondent issued to decedent in exchange for the property. We affirm.

Decedent died intestate in March 2002. She was survived by four children, including respondent Robert Bean and petitioners Alice Roach and Joan Brassard, and by petitioners Ryan and Andra Bean, the two children of her deceased son Elwood. Decedent had suffered from Parkinson's disease for a number of years and had been cared for by her children. In September 1999, decedent granted power of attorney to respondent. In April 2001, respondent and decedent entered into a land contract in which decedent sold respondent all of her real property for \$115,000, to be paid in installments of \$500 per month with 6.5% annual interest accruing on the unpaid balance beginning in October 2005. On the same day, decedent sold respondent all of her personal property for \$13,275. Respondent executed an interest-free promissory note, agreeing to pay decedent \$200 per month until the principle balance was paid in full. Both the land contract and promissory note provided that, when decedent died, any outstanding balance owed on either agreement would be considered paid in full, and respondent would have no remaining obligations to decedent's estate.

Petitioners did not learn about this contract until decedent's estate entered probate in 2003. Petitioners petitioned the probate court to set aside the land contract, alleging that

respondent unduly influenced decedent to sign the land contract and was unjustly enriched as a result. The probate court, sitting as finder of fact, concluded that respondent had unduly influenced decedent to sell her real and personal property to him. The probate court granted the petition and set aside the land contract. It also ordered that the bill of sale and corresponding promissory note be set aside, and it further ordered respondent to return to the estate the property he had acquired through these agreements.

Respondent does not appeal the probate court's finding that, because he held power of attorney over decedent at the time she executed the land contract, bill of sale, and promissory note, a presumption of undue influence existed. Instead, he argues that the presumption was properly rebutted by the testimony of David Jaunese, the attorney who prepared the land contract, bill of sale, and promissory note and witnessed decedent sign these agreements.

This Court reviews for clear error the findings of fact of a probate court sitting without a jury. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993).

A finding is said to be clearly erroneous when the reviewing court is left with a definite and firm conviction that a mistake has been made. *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The reviewing court will defer to the probate court on matters of credibility, and will give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court. *Id.*; MCR 2.613(C). [*Id.*]

The burden of proving that undue influence exists lies with the petitioner. *In re Estate of Peterson*, 193 Mich App 257, 260; 483 NW2d 624 (1991), citing *In re Mikeska Estate*, 140 Mich App 116, 120-121; 362 NW2d 906 (1985). However, the establishment of a presumption of undue influence creates a "mandatory inference" of undue influence and prima facie satisfies petitioner's burden of persuasion. *Id.* Therefore, if respondent fails to offer sufficient evidence rebutting this presumption of undue influence, petitioner's burden to show that undue influence occurred is still satisfied. *Kar v Hogan*, 399 Mich 529, 542; 251 NW2d 77 (1976). Whether respondent presented sufficient evidence to overcome the presumption of undue influence is a question of fact. *Peterson, supra* at 262.

We do not believe the probate court clearly erred when it concluded that respondent failed to present sufficient evidence to overcome the presumption that he unduly influenced decedent to sell her real and personal property to him. Respondent argues on appeal that Jaunese's testimony "confirms that Marie Bean had a full and fair opportunity to determine what she wanted to do with her property" and that "her express intent was to sell her property to Robert Bean." Jaunese testified at the probate trial that he explained the terms of the contracts to decedent outside of respondent's presence and that decedent was clear that she wanted to sell her property to respondent. Jaunese also testified, however, that he consulted only with respondent when drafting the terms of the contract and that respondent requested many favorable contract terms, including the delayed interest payments and the clause that the outstanding balance on the contracts would be forgiven on decedent's death. Jaunese did not discuss the contracts with decedent until the day the prepared contracts were presented to her and executed. Respondent was not in the presence of Jaunese and decedent when they discussed the contracts, but he was elsewhere in the home.

The probate court considered the testimony and concluded that respondent was a persuasive, aggressive individual who appeared to play a significant role in initiating the sale of the property, selecting an attorney, and drafting the documents. The probate court did not find respondent's testimony credible, particularly his statements that his mother was the impetus behind these transactions. Decedent was in her mid-80s and her health had been deteriorating for some time when she executed the land contract and bill of sale with respondent. Testimony presented to the probate court regarding decedent's mental state was mixed. Although hospice caregivers and Jaunese described decedent as alert when they met with her, decedent's daughter, Joan Brassard, noted that at times decedent would become confused and hallucinate. We give broad deference to the probate court with regard to its credibility determinations, *In re Erickson, supra*, and affirm the probate court's conclusion that the testimony was insufficient to rebut the presumption that respondent unduly influenced his elderly, frail mother to sell him all her property on terms that highly favored him and left her other children without a share of her estate. We are not left with a "definite and firm conviction" that the probate court made a mistake when it concluded respondent did not present sufficient evidence to rebut the presumption that he unduly influenced decedent to enter into the land contract and bill of sale. Consequently, we will not reverse the decision to set aside the land contract and bill of sale, and require respondent to return decedent's personal and real property to the estate to be distributed through probate.

Affirmed.

/s/ Peter D. O'Connell

/s/ William B. Murphy

/s/ Kurtis T. Wilder