

**IN THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
TRUMBULL COUNTY, OHIO**

JILL SFERRA, et al.,	:	OPINION
Plaintiffs-Appellees,	:	
- vs -	:	CASE NO. 2014-T-0123
DAVID A. SHEPHERD, SPECIAL ADMINISTRATOR OF THE ESTATE OF RALPH A. CRAIN, DECEDENT, et al.,	:	
Defendants-Appellants.	:	

Civil Appeal from the Trumbull County Court of Common Pleas, Probate Division, Case No. 14 CVA 0039.

Judgment: Affirmed.

Michael D. Rossi, Guarnieri & Secrest, P.L.L., 151 East Market Street, P.O. Box 4270, Warren, OH 44482 (For Plaintiffs-Appellees).

Thomas J. Wilson, Comstock, Springer & Wilson Co., L.P.A., 100 Federal Plaza East, #926, Youngstown, OH 44503 (For Defendants-Appellants).

COLLEEN MARY O'TOOLE, J.

{¶1} Appellants, David A. Shepherd, Bryan R. Crain, Frederick Crain, and Douglas J. Neuman, Esq., appeal from the November 20, 2014 judgment of the Trumbull County Court of Common Pleas, Probate Division, entering judgment on the

jury's verdict in favor of appellees, Jill Sferra, Thomas R. Crain, Debra L. Pirock, and Marcia McNelis. On appeal, appellants assert the verdict is against the manifest weight of the evidence. For the reasons stated, we affirm.

{¶2} This case arises from a will contest action involving the surviving heirs of Ralph A. Crain ("decedent") who passed away at the age of 91.

{¶3} By way of background, the Crain family is from Weathersfield Township, a rural community in Trumbull County, Ohio. The decedent and his wife, Margaret, had seven children born throughout the years of 1950 through 1960 (Thomas, Frederick, Marlys, Bryan, Marcia, Jill, and Debra). Marlys passed away in 1998.

{¶4} In 2000, the decedent and his wife went to Attorney Neuman to draft new wills.¹ The decedent and Margaret left their estates to each other, and if they did not survive each other, then the estate passed equally to their remaining six children. The decedent named Margaret as his Executor and their daughter, Jill, as alternate Executor.

{¶5} In spring 2013, Thomas wanted his parents to meet with another attorney, Attorney Zuzolo, regarding a variety of issues including whether they should open a trust. Following that meeting, the decedent was concerned because he gave Attorney Zuzolo copies of his will and power of attorney (in favor of Jill and Thomas). The decedent subsequently met with Attorney Neuman and drafted another will on April 29, 2013. That will was identical to the 2000 will except the April 2013 will named Frederick as alternate Executor instead of Jill. Margaret did not accompany the decedent to the meeting with Attorney Neuman nor did she draft a new will. The decedent told his

1. Attorney Neuman, an attorney with 40 years practice experience in estate planning, represented the parties in various transactions since 1993.

children at a family meeting that his estate would be split equally between them if their mother did not survive him.

{¶6} Later that spring, Margaret fell ill and was hospitalized. During that time, the decedent met with Attorney Neuman again. The decedent revoked the power of attorney in favor of Jill and Thomas. Jill advised Attorney Neuman that the decedent had been diagnosed with early stages of dementia. However, Attorney Neuman saw no signs that the decedent was incompetent. Attorney Neuman anticipated and noted that problems would likely arise involving the family members.

{¶7} Margaret died in June 2013. Issues arose among the children regarding the decedent being named as the fiduciary of their mother's estate. The decedent and Attorney Daniel Letson were ultimately appointed as co-commissioners.²

{¶8} On August 6, 2013, the decedent met with Attorney Neuman about executing a new will. The two men discussed various items. On August 19, 2013, the decedent signed another will. In that will, the decedent bequeathed \$10,000 each to Jill, Thomas, Debra, and Marcia. The remainder of the estate, which included the family farm, was bequeathed to Bryan and Frederick. The will named Frederick as Executor and Bryan as alternate Executor. On April 11, 2014, the decedent signed a codicil that added Attorney Neuman as co-executor.

{¶9} In June 2014, the decedent died leaving an estate with an approximate appraised value of \$260,000. More than \$100,000 each went to Bryan and Frederick and \$10,000 each went to Jill, Thomas, Debra, and Marcia.

2. Attorney Letson, an attorney with almost 30 years of experience, practices in the area of wills and estates.

{¶10} On September 3, 2014, appellees (Jill, Thomas, Debra, and Marcia) filed a complaint against appellants (Bryan and Frederick; David Shepherd, Special Administrator of the Estate of Ralph A. Crain, Decedent; and Attorney Neuman.³ Appellees challenged the validity of the decedent's will and codicil. Appellees alleged that their brothers, Bryan and Frederick, exerted undue influence over their father toward the end of his life resulting in the execution of a new will and codicil which did not divide his estate equally among his surviving children.

{¶11} Special Administrator Shepherd filed an answer to the complaint on September 11, 2014. Bryan, Frederick, and Attorney Neuman filed an answer on October 2, 2014.

{¶12} The case proceeded to a jury trial which commenced on November 19, 2014.

{¶13} At trial, the jury heard emotional testimony from the family members. Jill, Thomas, Debra, and Marcia revealed that the decedent became physically and socially isolated from them due to the direction and behavior of Bryan and Frederick. Bryan and Frederick, however, deny any undue influence over their father.

{¶14} Specifically, Jill made reference to an instance that occurred before her mother's death in spring 2013. While at the attorney's office, Jill convinced the decedent for them to immediately leave so they could attend to his dying wife. The decedent agreed. However, Jill stated that Frederick forbade them from leaving the office and ordered the decedent to go back in to get "this done now." According to Jill,

3. On November 19, 2014, appellees were granted leave to amend their complaint to add two other parties, Michele Mastriano and Marisa Frasca, as parties plaintiffs by interlineation and instanter. Neither is a party to this appeal.

from the time of their mother's hospitalization, Frederick had to verify every single thing concerning their parents. Jill testified that Frederick was "the bully" and "the boss."

{¶15} Thomas testified that Frederick and/or Bryan changed the decedent's door locks and never gave keys to the other four siblings. Thomas and Jill indicated that Frederick and Bryan would prevent the four siblings from proceeding past the decedent's kitchen doorway when attempting to visit their father. Jill said that Frederick and/or Bryan draped blankets over the decedent's windows which prevented their father from looking outside.

{¶16} Thomas said that in addition to isolating the decedent from the four siblings, Frederick and Bryan also isolated the decedent from his grandchildren. Although Thomas attempted for the decedent's grandchildren to visit him on holidays, including Father's Day, Fourth of July, Thanksgiving, Christmas, and Easter, Thomas stated his brothers would not allow it.

{¶17} Thomas further said that he was told by Frederick and Bryan to stop bringing straw over to the decedent's home even though Thomas had done so for years and even though it provided the decedent with some extra spending money.

{¶18} For years, Jill, a hairdresser, would cut the decedent's hair for free at his home. However, Frederick began taking the decedent to a barber in Girard. Jill also did the decedent's laundry. However, Jill was later told by Frederick and his wife, Susan, that they would be taking over that chore.

{¶19} Marcia brought meals to her parents for years but said that Frederick and Susan told her to stop or they would throw out the food. On one occasion, Marcia tried

to call the decedent to tell him his sister had passed away. However, Marcia said Frederick hung up on her twice.

{¶20} In the past, the decedent's daughters would take their father to his doctor appointments. However, Frederick and/or Bryan later told them that it was no longer necessary. Jill said she would take the decedent out for breakfast, lunch, or for ice cream. However, following her mother's death, Jill indicated the decedent told her he was no longer allowed to accompany her. Debra testified that Frederick threw her out of the house on two occasions and that she was prevented from seeing the decedent on a holiday.

{¶21} The record also reveals instances of intimidation. In June 2013, Marcia indicated that during a family argument, Bryan ordered the decedent to sit down and follow "the plan," calling his father "Old Man." Frederick indicated he and Bryan were "in" and the others were "out."

{¶22} In August 2013, Jill testified that Frederick assaulted her by holding her in a doorjamb while repeatedly slamming the door into her in the presence of the decedent. Also that month, Marcia indicated the decedent told her he was not supposed to let her inside and that he was afraid. Marcia described the decedent's demeanor as being bullied, scared, and under the control of Bryan and Frederick.

{¶23} As stated, on August 19, 2013, the decedent signed another will, changing the original will which included an equal distribution among his children. In the 2013 will, the decedent bequeathed \$10,000 each to Jill, Thomas, Debra, and Marcia. The remainder of the estate was bequeathed to Bryan and Frederick. In April 2014, the decedent signed a codicil that added Attorney Neuman as co-executor.

{¶24} In October 2013, Marcia indicated Frederick told her that he was “in control” and that he and Bryan were “taking over.”

{¶25} In December 2013, Marcia said the decedent told her he could not talk to her and that Bryan and Frederick were threatening him. Marcia indicated her father, who had dementia and could not hear, was taken advantage of by Bryan and Frederick.

{¶26} In March 2014, Marcia also recalled an incident when she could not get in to visit her father. According to Marcia, Frederick indicated he and Bryan were “in control” and that she gets “nothing.” A month before the decedent’s death in June 2014, Debra’s husband, Robert, overheard Frederick tell Debra, “We’re in. You’re out.”

{¶27} Frederick and Bryan deny any undue influence over their father. Frederick confirmed that he began providing more care for the decedent after his mother’s death, which led to disputes with his siblings. Frederick claimed he was not aware of any terms of his father’s will, or the 2014 codicil, until after he died.

{¶28} Bryan testified the decedent wanted to be in control of his own life and that he and Frederick did what their father wanted them to do. Bryan said he did not influence or threaten his father. Bryan claimed he was never involved in the decedent’s legal affairs and did not know the terms of his will until after the decedent’s death.

{¶29} According to Attorney Neuman, the decedent wanted to keep the farm together after his death and believed that Frederick and Bryan would carry out his wishes. Attorney Letson’s contacts with the decedent occurred after the decedent executed his August 2013 will. Attorney Letson believed that Frederick seemed to provide most of the decedent’s care and saw no evidence that he was controlling his father.

{¶30} Following trial, the jury returned a unanimous verdict in favor of appellees finding that the documents dated August 19, 2013 and April 11, 2014 were not the Last Will and Testament and First Codicil of the decedent. On November 20, 2014, the probate court entered judgment on the jury's verdict. Appellants filed a timely appeal and assert the following assignment of error:

{¶31} "The jury's verdict is against the manifest weight of the evidence and results in a miscarriage of justice."

{¶32} In their sole assignment of error, appellants argue the jury's verdict is against the manifest weight of the evidence and should be reversed because "the greater amount of credible evidence establishes that a testator executed a Last Will and Testament and First Codicil free from any influence or restraint and reflecting his long-standing wish that his family farm continue to operate after his death."

{¶33} "[T]he Supreme Court of Ohio has clarified the analysis used to determine whether judgments in civil cases are against the manifest weight of the evidence. *Eastley v. Volkman*, 132 Ohio St.3d 328, 2012-Ohio-2179, ¶12-23, * * *, (* * *). In *Eastley*, the Supreme Court noted that most of Ohio's appellate courts applied the analysis set forth in *C.E. Morris Co. v. Foley Constr. Co.*, 54 Ohio St.2d 279, * * *, (* * *). *Eastley* at ¶14. In *C.E. Morris*, the court held: "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C.E. Morris* at the syllabus. As the court in *Eastley* observed, this is the standard applicable to determining the sufficiency of the evidence underpinning a judgment. *Id.* at ¶14. The court held that the proper analysis for determining challenges to the

manifest weight of the evidence is the same in civil and criminal cases, and that *State v. Thompkins*, 78 Ohio St.3d 380, * * *, (* * *) (1997) applies to both. *Id.* at ¶17-20. The court quoted with approval the following language used by the Ninth Appellate District:

{¶34} ““““The (reviewing) court (* * *) weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence, the (finder of fact) clearly lost its way and created such a manifest miscarriage of justice that the (judgment) must be reversed and a new trial ordered.” (Alterations made in *Tewarson*) *Tewarson v. Simon*, 141 Ohio App.3d 103, 115, * * *, (* * *)(* * *) (9th Dist.2001) (* * *), quoting *Thompkins*, 78 Ohio St.3d at 387, (* * *), quoting *State v. Martin*, 20 Ohio App.3d 172, 175, * * *, (* * *)(* * *) (1st Dist.1983).” (Parallel citations omitted.) *Eastley* at ¶20.

{¶35} ““The court in *Eastley* further observed that in weighing the evidence in civil cases, courts of appeals must make every presumption in favor of the finder of fact, and construe the evidence, if possible, to sustain the judgment of the trial court. *Id.* at ¶21, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, * * *, (* * *) (1984).’ (Parallel citations omitted.) *Avery Dennison Corp. v. Transact Techs., Inc.*, 11th Dist. Lake No. 2012-L-132, 2013-Ohio-4551, ¶20-22.” (Parallel citations omitted.) *Patterson v. Godale*, 11th Dist. Lake Nos. 2014-L-034 and 2014-L-042, 2014-Ohio-5615, ¶12-14.

{¶36} A will admitted to probate is presumed valid. *Nickels v. Spisak*, 11th Dist. Portage No. 2013-P-0094, 2014-Ohio-2709, ¶17, citing *Kryder v. Kryder*, 9th Dist. Summit No. 25665, 2012-Ohio-2280, ¶29. ““““A presumption arises from the order of admission of the will to probate that the testator was free from restraint. The burden of

proving undue influence is upon the contestants (* * *).” *Krischbaum v. Dillon*, 58 Ohio St.3d 58, 64 * * *(1991), quoting *West v. Henry*, 173 Ohio St. 498, 502 * * * (1962) (construing former R.C. 2741.05, substantively similar language currently set forth in R.C. 2107.74).’ *Id.* ‘The essential elements of undue influence are a susceptible testator, another’s opportunity to exert it, the fact of improper influence exerted or attempted, and the result showing the effect of such influence.’ *West, supra*, at 501.” (Parallel citations omitted.) *Nickels, supra*, at ¶17.

{¶37} Undue influence is not ordinarily susceptible of direct proof. The Supreme Court of Ohio has held:

{¶38} “In any will-contest action, the person who can give the best evidence of influence is dead. Therefore, most evidence will be circumstantial, leaving the factfinder to draw permissible inferences. One such inference may be that the testamentary disposition does not reflect the testator’s true desires at the time of the execution of the will.” *Redman v. Watch Tower Bible and Tract Soc. of Pennsylvania*, 69 Ohio St.3d 98, 102 (1994).

{¶39} In this case, the jury unanimously found that the documents dated August 19, 2013 and April 11, 2014 were not the Last Will and Testament and First Codicil of the decedent. Upon review, competent, credible evidence establishes the essential elements of undue influence.

{¶40} The first element of undue influence revolves around the susceptibility of the testator. *West, supra*, at 501.

{¶41} In the spring of 2013, Margaret fell ill and was hospitalized. During that time, the decedent met with Attorney Neuman again. Jill convinced the decedent for

them to immediately leave the office so they could attend to his dying wife. The decedent agreed with Jill. However, Frederick appeared to readily convince the decedent otherwise. Frederick forbade the decedent from leaving and escorted him back inside stating “[w]e’re going in and getting this done now.” The decedent complied. Jill was unable to get the decedent back outside to go home and/or to visit his dying wife in the hospital.

{¶42} In addition, the decedent also acquiesced in Bryan and Frederick unilaterally assuming various duties previously held by the other siblings. Thomas was told by Frederick and Bryan to stop bringing straw over to the decedent’s home even though Thomas had done so for years and even though it provided the decedent with some extra spending money. For years, Jill, a hairdresser, would cut the decedent’s hair for free at his home. However, Frederick began taking the decedent to a barber in Girard. Jill also did the decedent’s laundry. However, Jill was later told by Frederick and his wife, Susan, that they would be taking over that chore. Marcia brought meals to her parents for years but said that Frederick and Susan told her to stop or they would throw out the food. In the past, the decedent’s daughters would take their father to his doctor appointments. However, Frederick and/or Bryan later told them that it was no longer necessary. Jill said she would take the decedent out for breakfast, lunch, or for ice cream. However, following her mother’s death, Jill indicated the decedent told her he was no longer allowed to accompany her. Marcia testified the decedent was “under the control” of Bryan and Frederick. Marcia indicated the decedent was “in and out,” had dementia, could not hear, and was taken advantage of by Bryan and Frederick.

{¶43} Consequently, the record contains competent, credible evidence that the decedent was easily affected or influenced. We cannot say that the jury erred in determining that the decedent was a susceptible testator.

{¶44} The second element of undue influence revolves around the opportunity of the alleged influencers to exercise their undue influence upon the testator. *West, supra*, at 501.

{¶45} As noted, several witnesses revealed that the decedent became physically and socially isolated due to the direction and behavior of Bryan and Frederick. Thomas testified that Frederick and/or Bryan changed the decedent's door locks and never gave keys to the other four siblings. Thomas and Jill indicated that Frederick and Bryan prevented the four siblings from proceeding past the decedent's kitchen doorway when attempting to visit their father. Debra testified that Frederick threw her out of the house on two occasions and that she was prevented from seeing the decedent on a holiday.

{¶46} On one occasion, Marcia tried to call the decedent to tell him his sister had passed away. However, Marcia said Frederick hung up on her twice. Jill said that Frederick and/or Bryan draped blankets over the decedent's windows which prevented their father from looking outside.

{¶47} Also, Thomas said that in addition to isolating the decedent from the four siblings, Frederick and Bryan also isolated the decedent from his grandchildren. Although Thomas attempted for the decedent's grandchildren to visit him on holidays, Thomas said his brothers would not allow it.

{¶48} Accordingly, the record contains competent, credible evidence that by isolating and insulating the decedent from interplay with his four children, Jill, Thomas,

Debra, and Marcia, and with his grandchildren, Bryan and Frederick enjoyed ample opportunity to exert influence over the decedent. We cannot say that the jury erred in determining the existence of this second element of undue influence.

{¶49} The third element of undue influence concerns the actual or attempted exertion of the improper influence. *West, supra*, at 501.

{¶50} The exertion of Bryan's and Frederick's improper influence over the decedent manifested itself in the tactics of intimidation. As noted, in June 2013, Marcia indicated that during a family argument, Bryan ordered the decedent to sit down and follow "the plan," calling his father "Old Man." Frederick indicated he and Bryan were "in" and the others were "out."

{¶51} In August 2013, Jill testified that Frederick assaulted her by holding her in a doorjamb while repeatedly slamming the door into her in the presence of the decedent. Also that month, Marcia indicated the decedent told her he was not supposed to let her inside and that he was afraid. Marcia described the decedent's demeanor as being bullied, scared, and under the control of Bryan and Frederick.

{¶52} In October 2013, Marcia indicated Frederick told her that he was "in control" and that he and Bryan were "taking over."

{¶53} In December 2013, Marcia said the decedent told her he could not talk to her and that Bryan and Frederick were threatening him. Marcia indicated her father, who had dementia and could not hear, was taken advantage of by Bryan and Frederick.

{¶54} In March 2014, Marcia also recalled an incident when she could not get in to visit her father. According to Marcia, Frederick indicated he and Bryan were "in

control” and that she gets “nothing.” A month before the decedent’s death in June 2014, Debra’s husband, Robert, overheard Frederick tell Debra, “We’re in. You’re out.”

{¶55} Upon review, the record contains competent, credible evidence that Bryan and Frederick exerted improper influence over the decedent. We cannot say that the jury erred in determining the existence of this third element of undue influence.

{¶56} The final element of undue influence requires the plaintiff to produce tangible evidence of the result of the alleged undue influence. *West, supra*, at 501.

{¶57} Jill, Thomas, Debra, and Marcia produced the pertinent documents at issue pertaining to the decedent’s estate. In 2000, the decedent and Margaret left their estates to each other, and if they did not survive each other, then the estate passed equally to their remaining six children. In April 2013, the decedent drafted another will which was identical to his 2000 will but named a different alternate Executor. Margaret died in June 2013. On August 19, 2013, the decedent signed another will. In that will, the decedent bequeathed only \$10,000 each to Jill, Thomas, Debra, and Marcia, while the remainder of the estate, including the family farm, was bequeathed to Bryan and Frederick. The will named Frederick as Executor and Bryan as alternate Executor. On April 11, 2014, the decedent signed a codicil that added Attorney Neuman as co-executor. In June 2014, the decedent died leaving an estate with an approximate appraised value of \$260,000. More than \$100,000 each went to Bryan and Frederick and \$10,000 each went to Jill, Thomas, Debra, and Marcia.

{¶58} Thus, the record reveals that within months after confirming the decedent’s “equal shares” estate plan and in consequence of Bryan’s and Frederick’s stated influence over their father, the decedent signed a will leaving the bulk of his

estate to Bryan and Frederick. Bryan and Frederick claim the decedent left them the farm because the decedent believed that they would carry out his wishes in always keeping the farm together and operating it as such. We note, however, that the decedent's will, apparently upon his attorney's advice, placed no restrictions regarding the use of the property or on Bryan's and Frederick's fiduciary powers to sell, transfer, exchange, or otherwise dispose of the real or personal property.

{¶59} We find the documents presented, in conjunction with the testimony and facts contained in the record, to be competent, credible evidence of the result of Bryan's and Frederick's undue influence upon the decedent. We cannot say that the jury erred in determining the existence of this fourth element.

{¶60} Upon consideration, we must conclude that the jury's unanimous verdict in favor of appellees, finding that the documents dated August 19, 2013 and April 11, 2014 were not the Last Will and Testament and First Codicil of the decedent and were the product of Bryan's and Frederick's undue influence, is not against the manifest weight of the evidence.

{¶61} For the foregoing reasons, appellants' sole assignment of error is not well-taken. The judgment of the Trumbull County Court of Common Pleas, Probate Division, is affirmed.

DIANE V. GRENDELL, J.,

THOMAS R. WRIGHT, J.,

concur.