COURT OF APPEALS DECISION DATED AND FILED

June 15, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP1477-FT | **Cir. Ct. No. 2007PR52**

STATE OF WISCONSIN | **IN COURT OF APPEALS DISTRICT III**

IN RE THE ESTATE OF NORMA D. RANKEL:

JILL ARDIS,

APPELLANT,

V.

GARY RANKEL AND KAY RANKEL GAMSKY,

RESPONDENTS.

APPEAL from a judgment of the circuit court for Shawano County: JAMES R. HABECK, Judge. *Affirmed*.

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Jill Ardis appeals a summary judgment dismissing an objection to the admission of Norma Rankel's will on the grounds of undue

influence.[1] Ardis also appeals the appointment of Gary Rankel as personal representative, based on a contention that he improperly obtained survivorship rights in a joint account. We affirm.

¶2 Norma died on June 11, 2007. She was survived by three children: Ardis, Gary, and Kay Rankel Gamsky. Norma left a will dated April 5, 2007. At the time of Norma's death, her estate consisted of two significant assets, a family cottage on Berry Lake near Shawano, which Norma bequeathed to Gary and Kay, and a joint account with Gary. A prior will dated May 27, 2003, had divided the cottage equally among the three children.[2]

¶3 After an application for informal administration was filed, Ardis filed an objection to the admission of the 2007 will. She also objected to the appointment of Gary as personal representative and Kay as alternate personal representative. Among other things, Ardis alleged Gary was unqualified to act as personal representative due to a conflict of interest arising from having "obtained funds or assets of the estate that need to be restored to the estate …."[3]

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[1] This is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

[2] The joint account in Shawano was the result of a sale of Norma's Arizona home in approximately August 2005. Prior to the sale, the Arizona home had been owned by all three children as the result of an estate plan by which Norma and her late husband gifted the property to the children. The children subsequently executed quitclaim deeds to vest title back to their mother. In 2005, Norma sold the Arizona home and moved to Shawano in an apartment near Kay. Soon after moving back to Shawano, Norma asked Gary to open a joint account for the deposit of the funds from the Arizona home sale.

[3] Gary and Kay then filed a demand for formal proceedings concerning the subsequent proceedings of the estate. The parties stipulated that survivorship issues concerning a joint account could be determined by the probate court in conjunction with the issue of the will without the necessity of the appointment of a personal representative, and the parties would be bound by the court's decision subject to normal appeal rights.

¶4 Gary and Kay filed a motion for summary judgment and a hearing was held on March 11, 2009. The evidence established that Ardis and her mother were estranged, and that Gary and Kay were involved with their mother. Affidavits from five members of a social group known as the "ladies of the lake," Norma's treating physician, and her attorney uniformly averred Norma was mentally independent, alert and sharp until the time she died.

¶5 At the conclusion of the hearing, the circuit court found Norma was competent and of sound mind when she executed the 2007 will and there was no evidence to establish undue influence. Further, the court found there was no evidence to render the joint account invalid or establish a conflict of interest regarding Gary's role as personal representative. Ardis now appeals.

¶6 Ardis insists in her brief to this court that "[n]umerous things in the record give rise to competing inferences and support the Appellant[']s right to go to trial regarding the 2007 Will on the issue of undue influence …."[4] However, Ardis fails in her argument to provide citation to the record on appeal. We will not address unsupported arguments and we will not search the record for evidence

[4] Ardis improperly refers to party designations such as "Appellant," rather than to the parties by name as required by WIS. STAT. RULE 809.19(1)(i). Ardis's argument section also fails generally to provide citations to the record on appeal. Moreover, even Ardis's "Statement of Facts" predominately cites generally to multi-page documents, such as "Index 50" or "Index 52." It should be apparent to any lawyer that appellate briefs must give reference to pages of the record on appeal for each statement and proposition made in the appellate brief. WIS. STAT. RULE 809.19(1)(e); ***Haley v. State***, 207 Wis. 193, 198-99, 240 N.W. 829 (1932). We also note Ardis's appendix contains no table of contents or certification, in violation of WIS. STAT. RULE 809.19(2)(a) and (b). Both parties have inappropriately interspersed "spin" into what should have been an objective recitation of the factual occurrences of this case. The fact section of a brief is no place for argument. Furthermore, both parties use the phrase "abuse of discretion." We have not used that phrase since 1992. *See* ***Hefty v. Hefty***, 172 Wis. 2d 124, 128 n.1, 493 N.W.2d 33 (1992). Gary Rankel also inappropriately cites unpublished opinions on numerous occasions. We admonish counsel that future violations of the rules may result in sanctions.

to support a party's argument. *See* ***Grothe v. Valley Coatings, Inc.***, 2000 WI App 240, ¶6, 239 Wis. 2d 406, 620 N.W.2d 463. Moreover, although there is no dispute Norma was ill prior to her death, Ardis's experts either did not address in their affidavits Norma's mental capacities, or offered opinions to an insufficient degree of professional certainty.[5]

¶7 Ardis also suggests without citation that suspicious activities surrounded the 2007 will. Ardis argues that "the 2003 will was changed only after the Las Vegas trip and the secret meeting with her son, Gary." Ardis also emphasizes that "Kay and [her husband] were present during the execution of the 'New Will.'" However, it is uncontroverted that Kay and Gary were not present during working meetings with Norma's attorney, and although Kay and her husband were present during the will execution, there were no changes made to the will at that time. As the circuit court correctly observed at the summary judgment hearing:

> Well, I mentioned Attorney Chereskin met alone with Mrs. Rankel. I find that significant. And not only that it was one day but two days, so there was time to think about this in between. In other words, they weren't at one session and then suddenly somebody popped in and then it all got signed. All right. If I could have some evidence that the heirs suggested a plan – Attorney Bartholomew basically gave me reasons for suspicion, but you can have reasons for suspicion, but that's different than evidence in that regard.

[5] For example, Dr. Stephen Wagner did not address Norma's mental capacities. Michael Mervilde, a licensed social worker, refers to the "possibility" of undue influence. Mervilde also offered medical opinions arguably beyond his expertise as a social worker. However, we need not reach the issue whether, or to what extent, a social worker may render a medical opinion under the facts of this case.

¶8 Nevertheless, Ardis insists that the circuit court "reviewed the record and the opposing affidavits with an eye towards whether or not the Appellant could win at a trial as opposed to determining whether or not the Appellant should be allowed to present her case at trial." We disagree. The circuit court properly determined that Ardis's purported inferences were mere speculation and failed to establish a genuine issue of material disputed fact. *See* WIS. STAT. § 802.08(3).

¶9 Ardis's allegations of fraud in the joint account are equally unavailing. Ardis contends Gary was Norma's fiduciary, by virtue of a "real estate power of attorney," and a "general business power of attorney" executed in May 2003. Ardis claims Gary approached his two sisters as a fiduciary on behalf of his mother and prevailed upon them to quitclaim their ownership interests in Norma's Arizona home back to their mother so that the real estate could be sold and the cash proceeds placed in a joint account with Gary. Ardis insists:

> The actions of Gary in using his Power of Attorney to take all of the Decedent's liquid funds, including the "cash" from an asset that originally belonged to all three children, and place those funds in a joint account that he alone would inherit after her death, as the result of the operation of the rules of survivorship, constitutes an abuse of his fiduciary relationship; a form of self[-]dealing; and fraud ….

¶10 Ardis once again provides no citation to the record to support this argument and it will not be considered. In any event, Gary's response brief asserts that the durable power of attorney executed on May 24, 2003, "has a 'springing' clause such that Mrs. Rankel had to be 'considered to be disabled ... by sworn statement of a physician' in order for Gary to act." Gary contends "there is no evidence that Mrs. Rankel was declared disabled during her lifetime, or that Gary's duties were activated, thus the 2003 POA has no application whatsoever to this case." Gary further asserts the limited power of attorney executed on

August 12, 2005, merely gave him the limited right to "perform any and all functions and sign on her behalf all documents necessary to sell her residence property." Accordingly, Gary argues his "fiduciary responsibility was singularly to sign real estate closing documents."

¶11 Ardis failed to file a reply brief and has therefore conceded the issue. ***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (arguments not refuted are deemed admitted). There are no competing material facts to support Ardis's contention that when Norma asked Gary to deposit the real estate sale proceeds into her bank account, Gary was acting as a fiduciary rather than as a son and joint account holder accomplishing his mother's directive. The circuit court properly granted the motion for summary judgment.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.