

SUPREME COURT OF GEORGIA

Simmons v. Norton

290 Ga. 223 (2011) · Decided November 7, 2011

SUMMARY

The Georgia Supreme Court affirmed summary judgment for the proponent of Charles Powell Norton's will in a caveat proceeding. The court held that the evidence showed, at most, Samuel Norton's opportunity to influence the testator and did not establish that he actually exerted undue influence at the time the will was executed.

CASE DETAILS

|                       |                                                                                                                                                         |
|-----------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Georgia                                                                                                                                |
| WRITING FOR THE COURT | Hines, Justice                                                                                                                                          |
| JURISDICTION          | Georgia                                                                                                                                                 |
| DECIDED               | November 7, 2011                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                |
| PROCEDURAL POSTURE    | Caveators appealed the superior court's grant of summary judgment to the proponent of the will in a will contest alleging undue influence.              |
| STANDARD OF REVIEW    | The court reviewed the grant of summary judgment, determining whether the evidence showed any genuine issue of material fact regarding undue influence. |
| PRECEDENTIAL VALUE    | Published Georgia Supreme Court opinion                                                                                                                 |
| PARTIES               | Celia Beth Simmons, Lisa Kay Norton v. Samuel R. Norton                                                                                                 |

TOPICS

- undue influence
- will contests
- probate procedure
- probate
- power of attorney

PRACTICE AREAS

- Probate
- Wills and estates
- Estate litigation

QUESTIONS PRESENTED

1. Whether the evidence created a genuine issue of material fact that Samuel exercised undue influence over Charles in the making of the May 27, 2008 will.

2. Whether evidence of Samuel's post-execution conduct, including actions under a power of attorney and changes to certificate-of-deposit beneficiaries, supported an undue-influence challenge to the will.

## HOLDINGS

1. Summary judgment for Samuel was proper because the evidence showed no actual exercise of undue influence in Charles's making of the will. Opportunity to influence, a substantial benefit, or a familial relationship alone is insufficient.
2. Evidence of conduct occurring after the will was executed did not support a finding that Samuel exercised undue influence in the making of the May 27, 2008 will.

## KEY QUOTATIONS

*“Undue influence sufficient to invalidate a will amounts to deception or force and coercion operating on the testator at the time of execution such that the testator is deprived of free agency and the will of another is substituted for his.”* (290 Ga. at 224)

*“Evidence showing only an opportunity to influence and a substantial benefit under the will does not show the exercise of undue influence.”* (290 Ga. at 224)

## FACTUAL BACKGROUND

Charles Powell Norton executed a will on May 27, 2008, after meeting alone with the attorney who drafted it and explaining how he wanted his property distributed. Samuel drove Charles to the attorney's office but waited outside and did not know the destination beforehand; the evidence showed that Samuel did not participate in Charles's decision to make the will. The caveators relied on Samuel's opportunity to influence Charles, Charles's prior statements about an equal division of property, his health, and post-execution actions involving a power of attorney and certificates of deposit.

## PROCEDURAL HISTORY

Samuel R. Norton offered his father's will for probate. The probate court rejected Celia Beth Simmons's and Lisa Kay Norton's caveat and granted probate in solemn form. The caveators appealed to the superior court, which granted Samuel's motion for summary judgment. The Supreme Court of Georgia affirmed.

## DISPOSITION

affirmed

## CASES CITED

- *Holland v. Holland*, 277 Ga. 792, 793 (2) (596 S.E.2d 123) (2004)
- *Lipscomb v. Young*, 284 Ga. 835, 836-37 (672 S.E.2d 649) (2009)
- *Harper v. Harper*, 274 Ga. 542, 544 (2) (554 S.E.2d 454) (2001)
- *Quarterman v. Quarterman*, 268 Ga. 807, 808 (2) (493 S.E.2d 146) (1997)

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