

DISTRICT COURT OF APPEAL OF FLORIDA, FIRST DISTRICT

In re Estate of Kinney Kellum Knight v. Esther Helen Knight et al.

108 So. 2d 629 (Fla. Dist. Ct. App. 1959) · No. No. A-179 · Decided January 29, 1959

SUMMARY

The Florida First District Court of Appeal reviewed a summary judgment sustaining the will of Kinney Kellum Knight against a contest alleging lack of testamentary capacity, undue influence, and improper execution. The court affirmed the judgment as to the widow and stepdaughter but reversed it as to the testator's brother, W.E. Knight, because his confidential relationship, active participation in preparing and executing the will, and status as a substantial beneficiary created a presumption of undue influence that could not be resolved by summary judgment. The court also declined to consider newly discovered evidence not presented to the probate court.

CASE DETAILS

COURT	District Court of Appeal of Florida, First District
WRITING FOR THE COURT	Sturgis, Chief Judge; Sturgis, C.J.; Carroll, Donald K., J.; Wiggington, J.
JURISDICTION	Florida
DECIDED	January 29, 1959
DOCKET	No. A-179
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from a probate-court summary judgment sustaining the decedent's will against a contest alleging lack of testamentary capacity, undue influence, and improper execution.
STANDARD OF REVIEW	Review of the propriety of summary judgment based on the record presented to the probate court; the appellate court could not consider evidence that had not been presented below.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion
PARTIES	Dexter Lowell Knight v. Esther Helen Knight, W.E. Knight, Elissa Aileen Cowart

TOPICS

[will contests](#)[undue influence](#)[summary judgment](#)[appellate procedure](#)[probate procedure](#)

PRACTICE AREAS

Probate

Wills and estates

Appellate procedure

QUESTIONS PRESENTED

1. Whether summary judgment could sustain the will against the contestant's undue-influence challenge insofar as the will benefited W.E. Knight, who occupied a confidential relation with the testator, participated actively in preparing and executing the will, and was a substantial beneficiary.
2. Whether the evidence established grounds to set aside the will in its entirety or invalidated the provisions benefiting Esther Helen Knight and Elissa Aileen Cowart.
3. Whether the appellate court could consider newly discovered evidence attached to a motion to enlarge the appellate record when that evidence had not been presented to the probate court.

HOLDINGS

1. Summary judgment could not be entered in favor of W.E. Knight individually because the evidence showed a confidential relationship, active participation in the preparation and execution of the will, and substantial benefit to W.E. Knight, thereby raising a presumption of undue influence that W.E. Knight bore the burden of overcoming.
2. The summary judgment was properly sustained insofar as it affected the individual interests of Esther Helen Knight and Elissa Aileen Cowart because the contestant failed to establish a ground for revocation of the entire will, and the provisions benefiting them were separable from those benefiting W.E. Knight.
3. The court did not decide whether the will was so permeated by undue influence or fraud upon the court that it should be set aside in its entirety; that issue was left to the probate court if developed through appropriate pleadings and proofs.
4. An appellate court may not consider evidence that was not presented to and considered by the lower court in deciding the matter under review.

KEY QUOTATIONS

“It is generally held that where a person occupies a confidential relation with the testator and is active in procuring the preparation or execution of the will, and where he is a substantial beneficiary thereunder, a presumption of undue influence arises, and the burden rests on him to overcome the presumption.” (631)

“It does not necessarily follow that he exercised undue influence, but a summary judgment cannot be entered in favor of one who has the burden of overcoming the presumption of undue influence for such proceeding does not afford the contesting party the right of cross-examination and an opportunity to present rebuttal testimony.” (631)

FACTUAL BACKGROUND

Kinney Kellum Knight executed a will on July 11, 1956, while hospitalized in Bunnell, Florida, and died on August 27, 1956. His brother, W.E. Knight, obtained the testator's instructions, consulted attorneys, received and retained the draft, helped procure witnesses, was present at execution, and retained the executed will until

probate. W.E. Knight and the decedent's widow, Esther Helen Knight, were principal beneficiaries, and W.E. Knight had a confidential business relationship with the testator involving enterprises connected to the bequests. The son, Dexter Lowell Knight, challenged the will, but the record contained no proof supporting lack of testamentary capacity or improper execution.

PROCEDURAL HISTORY

Dexter Lowell Knight contested Kinney Kellum Knight's will in probate court. The probate court entered summary judgment sustaining the will. The District Court of Appeal affirmed the judgment insofar as it affected the interests of Esther Helen Knight and Elissa Aileen Cowart, but reversed it insofar as it affected W.E. Knight individually because the evidence raised a presumption of undue influence that could not be overcome on summary judgment. The court denied rehearing and clarified that newly discovered evidence not presented below could not be added to the appellate record.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Proceed in the probate court with respect to W.E. Knight's individual interest and determine, on formally presented evidence, whether W.E. Knight exercised undue influence. Any broader challenge to the entire will must be presented through appropriate pleadings and proofs; the appellate court gave no direction on the factual disposition of that issue.

CASES CITED

- Goertner v. Gardiner, 170 So. 112 (Fla. 1936)
- Adams v. Saunders, 191 So. 312 (Fla. 1939)
- Wartmann v. Burleson, 190 So. 789 (Fla. 1939)
- Gardiner v. Goertner, 149 So. 186 (Fla. 1933)
- Zinnser v. Gregory, 77 So. 2d 611 (Fla. 1955)
- In re Palmer's Estate, 48 So. 2d 732 (Fla. 1950)
- In re Aldrich's Estate, 3 So. 2d 856 (Fla. 1941)
- Tyson v. Aikman, 31 So. 2d 272 (Fla. 1947)