

OHIO COURT OF APPEALS, FIFTH DISTRICT, LICKING COUNTY

Neumeyer v. Estate of Penick

2009-Ohio-321 (Ohio Ct. App. 2009) · No. 07-CA-146 · Decided January 23, 2009

SUMMARY

The Ohio Fifth District Court of Appeals affirmed summary judgment for the executor, trustee, and charitable beneficiary in a challenge to estate-planning documents. The court held that the appellants presented insufficient evidence of actual undue influence or that the decedent's deteriorating health affected his testamentary capacity. The court also granted reconsideration of its prior dismissal for lack of a final appealable order.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                  |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Ohio Court of Appeals, Fifth District, Licking County                                                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Hoffman, P.J.; Farmer, J.; Delaney, J.                                                                                                                                                                                                                                                                           |
| JURISDICTION          | Ohio                                                                                                                                                                                                                                                                                                             |
| DECIDED               | January 23, 2009                                                                                                                                                                                                                                                                                                 |
| DOCKET                | 07-CA-146                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                         |
| PROCEDURAL POSTURE    | Appeal from an order granting appellees' motions for partial summary judgment on claims challenging the validity of a revocable trust and will based on undue influence and lack of testamentary capacity.                                                                                                       |
| STANDARD OF REVIEW    | Summary judgment is reviewed de novo under the same standard applied by the trial court. The moving party must identify portions of the record demonstrating the absence of a genuine issue of material fact; the burden then shifts to the nonmoving party to present specific facts showing a genuine dispute. |
| PRECEDENTIAL VALUE    | Published Ohio Court of Appeals opinion                                                                                                                                                                                                                                                                          |
| PARTIES               | Suzanne Rae Neumeyer, James Karl Neumeyer, Mark William Neumeyer, Karen Rae Hammond v. Park National Bank, Executor of the Estate of Raymond H. Penick, deceased, and Trustee of the Raymond H. Penick Revocable Trust, Licking County Foundation                                                                |

TOPICS

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## PRACTICE AREAS

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## QUESTIONS PRESENTED

1. Whether the trial court improperly granted summary judgment on the appellants' undue-influence claims by weighing evidence and resolving disputed material facts.
2. Whether the trial court improperly granted summary judgment on the appellants' testamentary-capacity claims by weighing evidence and resolving disputed material facts.
3. Whether evidence of Penick's alleged delusions concerning his relationship with the appellants created a genuine issue of material fact regarding testamentary capacity.

## HOLDINGS

1. Summary judgment was proper because the appellants failed to present competent evidence that improper influence was actually exerted on Penick in connection with execution of the challenged estate documents.
2. Summary judgment was proper because appellants failed to produce evidence that Penick's age, declining health, sensory impairments, or alleged delusions actually rendered him incapable of understanding and executing the challenged estate documents.
3. The appellate court reviews summary judgment de novo and requires the nonmoving party to identify specific evidence creating a genuine issue of material fact after the movant satisfies its initial burden.

## KEY QUOTATIONS

*“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.”* (2009-Ohio-321, ¶ 16)

*“Testamentary capacity exists when the testator has sufficient mind and memory: First, to understand the nature of the business in which he is engaged; Second, to comprehend generally the nature and extent of his property; Third, to hold in his mind the names and identity of those who have natural claims upon his bounty; Fourth, [and] to be able to appreciate his relation to the members of his family.”* (2009-Ohio-321, ¶ 48)

*“Mere allegations, no matter how forcefully stated, are not a substitute for competent evidence.”* (2009-Ohio-321, ¶ 44)

## FACTUAL BACKGROUND

Raymond H. Penick, age ninety-six, executed an amended and restated revocable trust in 2004 that included an \$8 million bequest to the Licking County Foundation, and later modified his estate plan in 2006. His niece and other relatives challenged the instruments, alleging that Penick lacked testamentary capacity and was unduly influenced by Park National Bank through its trust officer, John Gard. The appellants relied on Penick's age,

declining health, poor hearing and eyesight, behavior toward family members, and an abandoned real-estate gift, but presented no competent evidence that improper influence was actually exerted or that his health impaired his capacity when he executed the documents.

## PROCEDURAL HISTORY

After Raymond H. Penick's will was admitted to probate, appellants filed an action in the Licking County Probate Court challenging the 2004 trust and 2006 will and trust. The trial court granted partial summary judgment to appellees on the undue-influence and testamentary-capacity claims relating to the 2004 trust and entered final judgment under Civ.R. 54(B). The Ohio Court of Appeals initially dismissed the appeal for lack of a final appealable order, later granted reconsideration, and addressed the merits, affirming the judgment.

## DISPOSITION

affirmed

## CASES CITED

- Smiddy v. The Wedding Party, Inc., 30 Ohio St. 3d 35 (1987)
- Doe v. Shaffer, 90 Ohio St. 3d 388, 2000-Ohio-186
- Drescher v. Burt, 75 Ohio St. 3d 280 (1996)
- Henkle v. Henkle, 75 Ohio App. 3d 732 (1991)
- West v. Henry, 173 Ohio St. 498 (1962)
- Redman v. Watch Tower Bible Tract Soc. of Pennsylvania, 69 Ohio St. 3d 98, 101, 630 N.E.2d 676 (1994)
- Kennedy v. Walcutt, 118 Ohio St. 442, 161 N.E. 336 (1928)
- Doyle v. Schott, 65 Ohio App. 3d 92, 94, 582 N.E.2d 1057 (1989)
- Birman v. Sproat, 47 Ohio App. 3d 65, 67-68, 546 N.E.2d 1354 (1988)
- Niemes v. Niemes, 97 Ohio St. 145, 119 N.E. 503 (1917)
- Martin v. Dew, 10th Dist. No. 03AP-734, 2004-Ohio-2520, ¶ 19
- Erie Insurance Exchange v. Colony Development Corp., 136 Ohio App. 3d 419, 736 N.E.2d 950 (2000)

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