

CALIFORNIA COURT OF APPEAL, THIRD APPELLATE DISTRICT

Estate of Silveira v. Silveira

Estate of Silveira v. Silveira, C064026 (Cal. App. Jul 26, 2011) · No. C064026

OPINION

Estate of Silveira v. Silveira, C064026 (Cal. App. Jul 26, 2011) Estate of LOUIS SILVEIRA, Deceased. BETTY CRICK, Petitioner and Appellant, v. LOUIS SILVEIRA, SR., Objector and Respondent; WELLS FARGO BANK, as Trustee, etc., Respondent. C064026 COURT OF APPEAL OF THE STATE OF CALIFORNIA THIRD APPELLATE DISTRICT (Butte) Dated: July 26, 2011 NOT TO BE PUBLISHED California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b).

This opinion has not been certified for publication or ordered published for purposes of rule 8.1115. (Super. Ct. Nos. PR38621, PR37738) This case involves a dispute between divorced parents over the \$8 million estate of their deceased son, Louis Silveira, Jr. The \$8 million was the result of a settlement with the son's school, which failed to adequately treat him immediately following his heart attack at the school.

When the son died, Betty Crick (the mother) learned she and Louis Silveira, Sr., (the father) were the heirs to the son's estate, even though the father had not been part of the son's life since birth. The mother had a disclaimer prepared that waived the father's right to half the estate.

The father "tried Page 2 to read it" but could not "make sense of it." The mother told him it was "no big deal, it's to have Louis's body transferred to the cemetery." The father signed it. The mother filed a petition to enforce the disclaimer.

The trial court ruled the disclaimer was void because: (1) the mother misrepresented the nature of the disclaimer and the father was not negligent in failing to read it in reliance on mother's misrepresentations; and (2) the disclaimer did not contain an "adequate description of the assets." Mother appeals, contending: (1) the father "should be held to the consequences of his negligence in failing to read the disclaimer" regardless of her "inadequate" or even "misleading" description of the disclaimer; and (2) the disclaimer was adequate as a matter of law.

Finding substantial evidence to support the trial court's conclusions, we affirm the trial court's order voiding the disclaimer and establishing heirship. FACTUAL AND PROCEDURAL BACKGROUND The mother and father married in 1981 or 1982. They had a daughter in 1982, who was adopted by another family a few years later. They had the son in 1984.

The father saw the son only a couple of times shortly after he was born. The mother left for Oklahoma with the son, and the father never saw him again. The father moved to Rhode Island in 1988. He remarried and began raising a family.

The mother moved to Chico in 2000 with the son and her long-time boyfriend. While the son was in high school in 2002, Page 3 he had a heart attack. The school failed to administer "CPR" and otherwise adequately treat him. He was in a coma for a year and one-half, and when he emerged, he still could not eat, drink, or speak. fastease --- Page Break --- Estate of Silveira v. Silveira, C064026 (Cal.

App. Jul 26, 2011) A lawsuit was filed on the son's behalf against the school for failing to adequately treat him. The lawsuit settled in March 2004. The settlement gave the son approximately \$34,000 per month for 20 years with a 3 percent annual increase.

The son died from causes related to his condition in April 2007. The father learned of the son's heart attack, the existence of an unspecified legal settlement for the son, and the son's death from the daughter, who had reestablished contact with the mother at the time of the son's heart attack. When informing the father of the settlement, the daughter told him, "they had won the case and that [the son] got enough to take care of him for the rest of his life."

The law firm overseeing the son's trust attempted to contact the mother and father because they were the heirs to the son's trust. When the firm telephoned the mother and asked for the father's contact information, the mother said he was a "deadbeat" and told the firm, "I bet you would like that address." When the firm asked for the daughter's address as a means of getting in touch with the father, the mother responded, "jump off a bridge."

The mother learned from one of the son's trust officers that the father was going to inherit half of the son's estate. Page 4 She had a lawyer draft a disclaimer for the father's signature. The disclaimer stated the father "disclaim[ed] all of [his] interest" in the following: "1.

The assets of the 2004 Louis Silveira Special Needs Trust... [¶] 2. The remaining monetary receivables payable pursuant to the structured settlement payment contracts... pursuant to court order in the matter of Louis Silveira... v. Chico Unified School District, et. al., Superior Court of California, County of Butte, Case No. 128833." With the unsigned disclaimer in hand, the mother drove unannounced from California to Rhode Island about a month after the son died.

She instructed the daughter not to tell the father she (the mother) was coming. She arrived in Rhode Island on a Saturday afternoon and called the father on the telephone when she was five minutes away from his house. She told him she "had some paperwork for [him] to sign" so she could "move on with her life" but did not tell him what the paperwork was. He told her he was at work and gave her directions to meet him there.

The mother arrived at the father's work around 5:00 p.m. or 5:30 p.m. She got out of the car and gave him a hug. She was "grieving," and the two started "talk[ing] about [the son], what he liked to do...." After 15 to 20 minutes of this conversation, the mother handed the father the disclaimer.

The father "started looking at it and... tried to make sense of what it was." He tried to read it, but he could not understand the words. He told her he did not understand what the terms in Page 5 the disclaimer meant.¹ The mother told him "it's no big deal, it's just to have Louis's body transferred to the cemetery." She "mentioned something briefly" that he "could go [see a lawyer], if [he] wanted to."

The father wondered where he was going to find a lawyer on a Saturday. Thinking the mother was being honest with him, he "took her word for it" and signed the disclaimer. After getting the father's signature, the mother headed back to California that night and faxed the disclaimer to the "bank" the following morning from a motel. When she returned to California, the trustee told her the disclaimer was not "good enough."

The mother had a second disclaimer prepared that, among other things, detailed the amounts in the trust accounts. When the mother returned to Rhode Island to have the father sign the second disclaimer, the father started fasteaze --- Page Break --- Estate of Silveira v. Silveira, C064026 (Cal. App. Jul 26, 2011) becoming "suspicious." He met with an attorney who told him he would be giving up an estate worth \$8 million.

The father's "eyes popped and he had no idea that that was what was at issue." The father told the attorney he had signed an earlier document "he thought was supposed to be to transfer his son's body to a cemetery."

The attorney told him not to sign the second disclaimer and to "get counsel in California." Page 6 The mother filed a petition to enforce the first disclaimer. The father filed a response to void the disclaimer. He alleged the mother misrepresented the nature of the disclaimer and based on that misrepresentation, he signed the disclaimer. Following a hearing on the petition, the trial court ruled the disclaimer was void.

Noting the money was a "windfall" to all involved because it was supposed to be for the son's care during his lifetime, the trial court found: (1) the mother misrepresented the nature of the disclaimer and the father's "lack of knowledge of the content of the disclaimer was not due to his own neglect as he was entitled to rely on the representations of [the mother]," noting the father "believed and trusted" her; and (2) the disclaimer did not contain an "adequate description of the assets."

The mother appeals, contending: (1) the father "should be held to the consequences of his negligence in failing to read the disclaimer" regardless of her "inadequate" or even "misleading" description of the disclaimer; and (2) the disclaimer was adequate as a matter of law. Finding

substantial evidence to support the trial court's conclusions, we affirm. DISCUSSION There Was Substantial Evidence The Father Was Not Negligent In Failing To Read The Disclaimer Based On The Mother's Misrepresentations The trial court found the mother misrepresented the nature of the disclaimer and the father's "lack of knowledge of the Page 7 content of the disclaimer was not due to his own neglect as he was entitled to rely on the representations of [the mother]."

On appeal, the mother contends that while "[n]ormally" "such a conclusion is reviewed" for "substantial evidence," the trial court's conclusion is "not entitled to deference" because it is unsupported by "any evidence" and it "ignore[s the] well-known legal doctrine" that "conclusively presumes that, in the absence of a fiduciary relationship, a party who has signed an instrument is deemed to have assented to all of its terms 'and cannot escape liability on the ground that he has not read it.'" The mother is wrong on both the law and the facts.

We begin by explaining the law. A written disclaimer must be made with knowledge of the rights which a person is relinquishing and an actual intention to relinquish those rights. (*People v. \$241,600 United States Currency* (1998) 67 Cal.App.4th 1100, 1109). Where, as here, the written disclaimer purporting to relinquish the father's inheritance rights was prepared and presented by the mother for the father's signature, cases regarding contract formation provide an appropriate analogy.² When a party "alleges fraud in the execution, the [party] is asserting that it was deceived as to the very nature of contract execution, and did not know what it was signing....

[A] contract fraudulently executed is void, because there never was an agreement." (*Brown v. Wells Fargo Page 8 Bank, N.A.* (2008) 168 Cal.App.4th 938, 958.) "California law... requires that the [party claiming fraud in the execution], in failing to acquaint himself or herself with the contents of a written agreement before signing it, not have acted in an objectively unreasonable manner.

One party's misrepresentations as to the nature or --- Page Break --- *Estate of Silveira v. Silveira*, C064026 (Cal. App. Jul 26, 2011) character of the writing do not negate the other party's apparent manifestation of assent, if the second party had 'reasonable opportunity to know of the character or essential terms of the proposed contract.' [Citation.] If a party, with such reasonable opportunity, fails to learn the nature of the document he or she signs, such 'negligence' precludes a finding the contract is void for fraud in the execution.

(*C. I. T. Corporation v. Panac* [1944] 25 Cal.2d [547,] 549.) (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 423.) "Whether or not failure to read a document is such negligence as to preclude relief is ordinarily a question of fact, and this is particularly true where the failure to read is induced by reliance on the misrepresentation of the other party or of his agent."

(Wright v. Lowe (1956) 140 Cal.App.2d 891, 897, citing, inter alia, C. I. T. Corporation v. Panac, supra, 25 Cal.2d at p. 560.) We review these factual findings for substantial evidence, viewing the evidence in the light most favorable to the prevailing party, resolving all evidentiary conflicts in his favor. (Green v. Green (1963) 215 Cal.App.2d 31, 34-35.)

Page 9 Here, there was substantial evidence to support the court's conclusions the father was not negligent in failing to read the disclaimer³ because his failure to read it was induced by reliance on the mother's misrepresentations. Prior to arriving unannounced in Rhode Island, the mother did what she could to prevent the father from learning he was an heir to the son's multi-million dollar estate.

She refused to provide the father's address or the daughter's address to the law firm overseeing the son's trust so the firm could not contact either of them. She instructed the daughter not to tell the father she (the mother) was coming to see him in Rhode Island. These actions paved the way for the father's later failure to comprehend that he was signing away his inheritance to the son's estate.

When the mother contacted the father in Rhode Island, she misled the father about the nature of the disclaimer. On the phone when she first called him, she said "she had some paperwork for [him] to sign" so she could "move on with her life" but did not tell him what the paperwork was. When she arrived at his workplace and produced the disclaimer, the father "started looking at it and... tried to make sense of what it was."

He tried to read it, but he could not understand the words. This was not surprising, as the mother herself could not read the words in the disclaimer. The mother then told him, "it's no big deal, it's just to have Louis's body transferred to the cemetery."

In light of the mother's misrepresentations and her successful effort to prevent the father from knowing he was an heir to the son's estate, in the father's words, "it made sense to [him]... she... need[ed] this document to be able to do what she needs to do with the body." While the mother "mentioned something briefly" about the father seeing a lawyer if he wanted to, it was reasonable he chose not to.

It was a Saturday night when it would have been difficult to access a lawyer, the mother showed up at the father's workplace virtually without warning, "she was grieving" over the son's death, and she was asking for the father to sign a document that purportedly would allow her to bury the son.

In Page 11 the trial court's words, "[t]he document, as explained by [the mother] seemed innocuous and appropriate in the circumstances." Based on the forgoing, there was substantial evidence the father's failure to read the disclaimer (or take it to somebody who could) was not negligent and was induced by the mother's misrepresentations as to the nature of the disclaimer.

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App. Jul 26, 2011) We address one final point. The mother devotes a substantial portion of her briefs to discounting the trial court's finding the father "believed and trusted" the mother and the trial court's conclusion the father was "entitled to rely on the representations of [the mother]."

In the mother's view, she and the father did not have a "confidential" or "fiduciary" relationship that would have required her not to mislead the father as to the contents of the disclaimer. In finding that the father was entitled to rely on the mother's representations about the content of the disclaimer, the trial court cited *Estate of Sanders* (1985) 40 Cal.3d 607, which states as follows: "'Where there exists a relationship of trust and confidence it is the duty of one in whom the confidence is reposed to make full disclosure of all material facts within h[er] knowledge relating to the transaction in question and any concealment of material facts is a fraud.'" (Id. at p. 616.)

Whether the mother and the father here had a confidential or fiduciary relationship is immaterial. "[T]he rule has long been settled in this state that although one may be under no duty to speak as to a matter, 'if [s]he undertakes to do so, Page 12 either voluntarily or in response to inquiries, [s]he is bound not only to state truly what [s]he tells but also not to suppress or conceal any facts within h[er] knowledge which materially qualify those stated.

If [s]he speaks at all [s]he must make a full and fair disclosure.'" (*Rogers v. Warden* (1942) 20 Cal.2d 286, 289.) The *Rogers* court made this statement in response to the defendant's argument (which is similar to the mother's argument) that "the record does not show any confidential or fiduciary relation between the plaintiff and the defendants and that in the absence of such a relation the defendants were under no obligation to disclose facts known to them."

(*Rogers*, at p. 289.) DISPOSITION The court's order voiding the disclaimer and establishing heirship is affirmed. The father is awarded his costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (2).) ROBIE, J. We concur: RAYE, P. J. MAURO J. Notes: 1.

The mother herself could not read the words in the disclaimer, as discovered by the court when it asked the mother during the hearing to read the disclaimer and she could not. 2. The mother and father both cite contract cases in making their respective arguments. 3.

The mother misreads the court's ruling, erroneously believing the court found the father was negligent. According to the mother, the court "acknowledged, in passing, that [the father] was negligent in failing to read the document or having it read to him."

The part of the court's ruling the mother quotes to support her understanding is as follows: "Any negligence on the part of [the father] is not relevant as the first disclaimer is not enforceable as it does not meet the requirements for a valid disclaimer as provided for in the Probate Code." This statement came in the second part of the court's analysis relating to the validity of the disclaimer.

The court's point was not that the father was negligent. Rather, it was that negligence was irrelevant to the analysis of whether the disclaimer met the requirement under the Probate Code. In the first part of the court's ruling (voiding the disclaimer because of the mother's misrepresentations on which the father --- Page Break --- Estate of Silveira v. Silveira, C064026 (Cal.

App. Jul 26, 2011) reasonably relied) the court specifically found that the father was not negligent: the father's "lack of knowledge of the content of the disclaimer was not due to his own neglect as he was entitled to rely on the representations of [the mother]." (Italics added.) fast