

DISTRICT COURT OF APPEAL OF FLORIDA, FIFTH DISTRICT

Hack v. Janes

878 So. 2d 440 (Fla. 5th DCA 2004) · No. No. 5D03-3072 · Decided July 16, 2004

SUMMARY

The Florida Fifth District Court of Appeal affirmed the probate court's admission of Dorothy T. Helling's 1992 will. The court held that, under the 2002 amendment to section 733.107, Florida Statutes, a presumption of undue influence shifts the burden of proof to the alleged wrongdoer, but the proponent need overcome the presumption only by the preponderance or greater weight of the evidence. The court also concluded that competent, substantial evidence supported the findings that Helling had testamentary capacity and was not unduly influenced.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fifth District
WRITING FOR THE COURT	Orfinger, J.; Sawaya, C.J.; Palmer, J.
JURISDICTION	Florida
DECIDED	July 16, 2004
DOCKET	No. 5D03-3072
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the probate court admitting Dorothy T. Helling's 1992 will to probate after a retrial on testamentary capacity and undue influence.
STANDARD OF REVIEW	Whether the probate court's factual conclusions were supported by competent, substantial evidence; legal issues concerning the interpretation and application of section 733.107, Florida Statutes, were reviewed as matters of law.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion
PARTIES	John W. Hack, Tarinee Williams, Alan Williams, Mary Ann Bertino, Diane Bertino, Dawn Bertino Mattson, Orlando Humane Society v. Lorraine A. Janes

TOPICS

- will contests
- undue influence
- burden of proof
- statutory interpretation
- appellate procedure

PRACTICE AREAS

probate estate planning evidence appellate procedure

QUESTIONS PRESENTED

1. Whether competent, substantial evidence supported the probate court's findings that Helling possessed testamentary capacity and was not unduly influenced in executing the 1992 will.
2. Whether the 2002 amendment to section 733.107, Florida Statutes, required the presumption of undue influence to shift the burden of proof to the will's proponent after the contestant established the facts giving rise to the presumption.
3. Whether the proponent of a will must overcome the presumption of undue influence by clear and convincing evidence or by a preponderance or greater weight of the evidence.

HOLDINGS

1. When the facts giving rise to the presumption of undue influence are established in a will contest, section 733.107(2), Florida Statutes (2002), shifts the burden of proof to the will proponent to prove the nonexistence of undue influence.
2. The 2002 amendment superseded Carpenter and Cripe only insofar as those decisions prohibited shifting the burden of proof after the undue-influence presumption arose; their descriptions of the circumstances giving rise to the presumption remain applicable.
3. The will proponent need overcome the presumption of undue influence only by the preponderance, or greater weight, of the evidence, not by clear and convincing evidence.
4. The probate court's findings that Helling was competent and that Janes did not unduly influence Helling were supported by the evidence, and the order admitting the 1992 will to probate was affirmed.

KEY QUOTATIONS

"Because section 733.107(2) specifically mandates that the presumption shifts the burden of proof under sections 90.301 through 90.304 when a presumption of undue influence arises, as it did here, Janes, the alleged wrongdoer, bore the burden of proving that there was no undue influence." (878 So. 2d at 443)

"The preponderance or greater weight of the evidence is the generally accepted burden of proof in civil matters." (878 So. 2d at 444)

FACTUAL BACKGROUND

Dorothy T. Helling executed a 1992 will that substantially benefited Lorraine Janes. Beneficiaries under Helling's 1990 will contested the later will, asserting that Helling lacked testamentary capacity and that Janes procured the will through undue influence while in a fiduciary or confidential relationship with Helling. After retrial, the probate court found Helling competent and determined by the greater weight of the evidence that Janes had not unduly influenced Helling or abused a confidential relationship.

PROCEDURAL HISTORY

Appellants, beneficiaries under Helling's 1990 will, challenged admission of the 1992 will. At the close of appellants' evidence in the first trial, the probate court granted Janes's motion for directed verdict and admitted the will; the appellate court reversed and remanded for a new trial after finding a prima facie case of undue influence. On retrial, the probate court again admitted the 1992 will, finding Helling competent and concluding that Janes had not unduly influenced her. The Fifth District affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Carpenter's Estate, In re Carpenter's Estate, 253 So. 2d 697 (Fla. 1971)
- Hack v. Estate of Helling, 811 So. 2d 822 (Fla. 5th DCA 2002)
- Cripe v. Atlantic First National Bank, 422 So. 2d 820 (Fla. 1982)
- State v. Rolle, 560 So. 2d 1154, 1159 (Fla. 1990)
- Beal Bank, SSB v. Almand and Associates, etc., et al., Beal Bank, SSB v. Almand & Associates, 780 So. 2d 45, 59 n.20 (Fla. 2001)
- Caldwell v. Division of Retirement, Florida Department of Administration, 372 So. 2d 438, 441 (Fla. 1979)
- Seropian v. Forman, 652 So. 2d 490, 494 (Fla. 4th DCA 1995)
- Wieczoreck v. H & H Builders, Inc., 475 So. 2d 227, 227-28 (Fla. 1985)
- Rehab. Advisors, Inc. v. Floyd, 601 So. 2d 1286 (Fla. 5th DCA 1992)
- Foster v. City of Gainesville, 579 So. 2d 774 (Fla. 1st DCA 1991)

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