

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Elson v. Vargas

520 So. 2d 76 (Fla. Dist. Ct. App. 1988) · No. No. 87-184 · Decided February 9, 1988

SUMMARY

The Florida Third District Court of Appeal affirmed an order upholding Paula Oliver's will against Dorothy Elson's challenge based on alleged undue influence by the sole beneficiary, Amanda Vargas. The court held that Vargas's confidential relationship with Oliver and active procurement of the will created a presumption of undue influence, but found that Vargas presented sufficient evidence to rebut the presumption. The court deferred to the trial court's factual findings and declined to reweigh the evidence.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Schwartz, C.J.; Hendry, J.; Nesbitt, J.
JURISDICTION	Florida
DECIDED	February 9, 1988
DOCKET	No. 87-184
DISPOSITION	affirmed
PROCEDURAL POSTURE	Dorothy Elson appealed from an order denying her petition to revoke Paula Oliver's will after a nonjury trial at which the trial court upheld the will.
STANDARD OF REVIEW	The appellate court deferred to the trial judge's factual findings after the nonjury trial and held that reweighing the evidence was not its function.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion
PARTIES	Dorothy Elson v. Amanda Vargas, as Personal Representative of the Estate of Paula Oliver, Deceased

TOPICS

- undue influence
- will contests
- probate procedure
- probate
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Vargas's confidential relationship with Oliver and active participation in procuring the will established a presumption of undue influence.
2. Whether Vargas presented sufficient evidence and a reasonable explanation to rebut or dissipate the presumption of undue influence.
3. Whether the trial court's failure expressly to address the presumption and rebuttal in its final order required reversal.
4. Whether the appellate court should reweigh the evidence supporting the trial court's decision to uphold the will.

HOLDINGS

1. When a substantial beneficiary has a confidential relationship with the testator and actively participates in procuring the contested will, a presumption of undue influence arises. Vargas's confidential relationship, sole-beneficiary status, and active procurement of Oliver's will satisfied those conditions.
2. Once the presumption arose, Vargas met her burden of coming forward with a reasonably credible explanation for her active role in Oliver's affairs, thereby dissipating the presumption and leaving undue influence as a permissible inference for the trier of fact.
3. The trial court's failure to address expressly the presumption of undue influence or whether Vargas rebutted it did not require reversal because the findings and evidentiary record demonstrated that the presumption had been rebutted.
4. The appellate court must defer to the trial judge's assessment of the evidence and witness credibility following a nonjury trial and may not reweigh the evidence.

KEY QUOTATIONS

"It is well established that when a substantial beneficiary under a will (1) has a confidential relationship with the testator, and (2) is active in procuring the contested will, the presumption of undue influence arises." (76)

"Once sufficient evidence of undue influence was established, it became the burden of the will proponent to come forward with a reasonable explanation for her active role in the decedent's affairs to rebut the presumption of undue influence." (77)

"Reweighing of the evidence is not this court's function." (78)

FACTUAL BACKGROUND

Paula Oliver's will named Amanda Vargas, who had cared for Oliver during her final months, as sole beneficiary and personal representative. Vargas arranged for an attorney to prepare the will, paid the attorney, took possession of the document, and arranged for neighbors to witness Oliver's signing; the attorney never met or advised Oliver independently. Evidence also showed that Vargas assisted Oliver with her personal, household,

and financial needs, while neighbors and other witnesses described Oliver as strong-willed, mentally competent when she signed the will, and in control of her own decisions.

PROCEDURAL HISTORY

Elson challenged Oliver's will on the ground that it resulted from undue influence by Vargas. After a nonjury trial, the trial judge upheld the will and denied the petition to revoke it. The Third District Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Estate of Carpenter, 253 So. 2d 697, 701 (Fla. 1971)
- Blades v. Ward, 475 So. 2d 935 (Fla. 3d DCA 1985)
- In re Estate of Carpenter, 253 So. 2d 697, 702 (Fla. 1971)
- In re Knight's Estate, 108 So. 2d 629 (Fla. 1st DCA 1959)
- Ahlman v. Wolf, 483 So. 2d 889, 892 (Fla. 3d DCA 1986)
- In re Estate of Paulk, 503 So. 2d 368 (Fla. 1st DCA), review denied, 513 So. 2d 1062 (Fla. 1987)
- In re Estate of Lightfoot, 433 So. 2d 607, 609 (Fla. 4th DCA 1983), review denied, 444 So. 2d 417 (Fla. 1984)
- In re Peter's Estate, 155 Fla. 453, 20 So. 2d 487 (Fla. 1945)
- In re Starr's Estate, 125 Fla. 536, 170 So. 620, 623 (Fla. 1935)
- In re Sharp's Estate, 133 Fla. 802, 183 So. 470 (Fla. 1938)
- In re Algar's Estate, 383 So. 2d 676 (Fla. 5th DCA), review denied, 389 So. 2d 1107 (Fla. 1980)
- Butler v. Williams, 141 So. 2d 4, 5 (Fla. 2d DCA 1962)
- Skelton v. Davis, 133 So. 2d 432 (Fla. 3d DCA 1961)
- Marshall v. Johnson, 392 So. 2d 249, 251 (Fla. 1980)
- Shaw v. Shaw, 334 So. 2d 13, 16 (Fla. 1976)
- Delgado v. Strong, 360 So. 2d 73, 75 (Fla. 1978)

OPINION

PER CURIAM.

520 So. 2d 76 (1988) Dorothy ELSON, Appellant, v. Amanda VARGAS, As Personal Representative of the Estate of Paula Oliver, Deceased, Appellee. No. 87-184. District Court of Appeal of Florida, Third District. February 9, 1988. Rehearing Denied March 8, 1988. Murphy & Parente and Joseph H. Murphy, Coral Gables, for appellant. G. Frank Quesada and Renato Perez, Coral Gables, James C. Blecke, Miami, and Susan S. Lerner, for appellee.

Before SCHWARTZ, C.J., and HENDRY and NESBITT, JJ. PER CURIAM. Dorothy Elson, sister-in-law of the deceased, Paula Oliver, appeals from an order denying her petition to revoke decedent's will. We affirm the trial court's decision.

Under the will being contested, the decedent, Paula Oliver, made Amanda Vargas her sole beneficiary. Vargas had cared for Oliver during her final months of life. Elson filed a petition to revoke Oliver's will alleging that it was invalid as a result of the undue influence which Vargas held over Oliver at the time the will was procured.

After a non-jury trial, the judge upheld the will. Elson appeals. It is well established that when a substantial beneficiary under a will (1) has a confidential relationship with the testator, and (2) is active in procuring the contested will, the presumption of undue influence arises.

In re Estate of Carpenter, 253 So. 2d 697, 701 (Fla. 1971); *Blades v. Ward*, 475 So. 2d 935 (Fla. 3d DCA 1985). Here, Paula Oliver, the testatrix, placed special trust and confidence in Amanda Vargas. Testimony from both sides clearly proved the existence of a confidential relationship.

In addition, Vargas was instrumental in the procurement of Oliver's will and was the sole beneficiary under the will. Toward the end of 1984, Vargas went alone to an attorney's office and had him prepare a will for Oliver designating herself as both the sole beneficiary and personal representative. *77 Vargas paid the attorney and took possession of the document.

Vargas's attorney never met Oliver or discussed her will with her. At no time during the will's preparation did Oliver have independent, disinterested advice. See *In re Carpenter*, 253 So.2d at 702; *In re Knight's Estate*, 108 So. 2d 629 (Fla. 1st DCA 1959). Vargas contacted three neighbors to witness Oliver's signing of the will on January 26, 1985. Within two weeks of the signing, Oliver was admitted to Coral Gables Hospital and was declared incompetent approximately three weeks after admission.

Soon after, Vargas delivered the will to her attorney who later presented it at the competency hearing where Elson was appointed Oliver's guardian. These facts are clearly sufficient to establish active procurement of the will by Vargas, and, coupled with the proof of a confidential relationship, a presumption of undue influence arises. Once sufficient evidence of undue influence was established, it became the burden of the will proponent to come forward with a reasonable explanation for her active role in the decedent's affairs to rebut the presumption of undue influence.

Carpenter, 253 So.2d at 704; *In re Estate of Paulk*, 503 So. 2d 368 (Fla. 1st DCA), review denied, 513 So. 2d 1062 (Fla. 1987); *Blades*, 475 So.2d at 938. This court, in deciding *Ahlman v. Wolf*, 483 So. 2d 889, 892 (Fla. 3d DCA 1986), stated that "*Carpenter* requires only a minimal response to overcome the presumption."

The final order at issue here did not address either the presumption or whether Vargas successfully rebutted the presumption; this omission, however, does not negate the trial court's findings. Ahlman, 483 So.2d at 892; In re Estate of Lightfoot, 433 So. 2d 607, 609 (Fla. 4th DCA 1983), review denied, 444 So. 2d 417 (Fla. 1984).

As an explanation for her actions, Vargas testified that she took care of the enormous physical needs of the terminally ill testatrix, assisted her in cooking and housekeeping, and ran all her errands. There was independent testimony that Oliver hated the idea of going to a nursing home or hospital, saying she preferred to die at home. Vargas also helped Oliver with her financial matters.

The president of a Miami bank where Oliver had an account verified that Oliver had authorized Vargas to do her banking for her. Neighbors, health care workers, a doctor, and a police officer who had contact with Paula Oliver during her last months described her as a very strong-willed woman who wanted things done her way. There was testimony from a disinterested witness that Oliver controlled Vargas and not vice versa.

Such testimony could refute any presumption that Oliver was overly susceptible to Vargas's influence. See In re Peter's Estate, 155 Fla. 453, 20 So. 2d 487 (1945); In re Starr's Estate, 125 Fla. 536, 170 So. 620, 623 (1935). There was evidence that once the will was delivered to her, Oliver maintained it in a drawer by her bedside. This would support a finding that the document was in her physical control.

See In re Sharp's Estate, 133 Fla. 802, 183 So. 470 (1938); cf. In re Algar's Estate, 383 So. 2d 676 (Fla. 5th DCA), (wills are ambulatory and revocability is an essential element of a will), review denied, 389 So. 2d 1107 (Fla. 1980).

In addition, those neighbors who witnessed the signing of the will found the testatrix to be in full command of her mental faculties. See Butler v. Williams, 141 So. 2d 4, 5 (Fla. 2d DCA 1962). One neighbor said that Oliver was well enough to know what she was doing when she signed the will. Another testified that he asked Oliver if she knew what she was doing by making Vargas her sole beneficiary and that the decedent responded affirmatively stating that Vargas was the only person who took care of her when she needed help.

Finally, while Dorothy Elson, Oliver's sister-in-law, could be considered to be within the general parameters of the testatrix's natural bounty, § 732.103(5), Fla. Stat. (1985), the connection is remote. There was evidence that after the death of Mr. Oliver, approximately four years before that of his wife, Elson and her brother's wife had little contact.

The judge could infer that since Elson and Oliver were not related by blood but only through marriage, the appellant was not a natural object *78 of Oliver's bounty. See Skelton v. Davis, 133 So. 2d 432 (Fla. 3d DCA 1961).

In summary, a careful review of the record demonstrates that Vargas offered ample evidence to rebut the presumption of undue influence. Having satisfied the burden of coming forward with a reasonably credible explanation of the facts giving rise to the presumption, Vargas dissipated the presumption and it was relegated to a permissible inference of undue influence within the proper province of the trier of fact to decide.

Carpenter, 253 So.2d at 704; Ahlman, 483 So.2d at 892. In weighing the evidence, the trial judge found that the scales tilted in favor of upholding the will. Even though this is a close case on the facts, we must give all deference to the trial judge's decision, reached, as it was, after hearing the evidence, questioning the witnesses, and observing their demeanor.

Marshall v. Johnson, 392 So. 2d 249 (Fla. 1980); Shaw v. Shaw, 334 So. 2d 13, 16 (Fla. 1976). Reweighing of the evidence is not this court's function. Marshall, 392 So.2d at 251; Delgado v. Strong, 360 So. 2d 73, 75 (Fla. 1978). Consequently, we affirm the trial judge's order upholding the will.