

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Francisco Gerardo Diaz v. Frank E. Ashworth

963 So.2d 731 (Fla. 3d DCA 2007) · No. 3D06-2150

SUMMARY

The Florida Third District Court of Appeal affirmed the probate of a will, holding the testator had testamentary capacity under the three-part test requiring a general understanding of his property, his relationships to potential beneficiaries, and the practical effect of the will. The court also held that although a presumption of undue influence arose from the beneficiary’s confidential relationship and active procurement, the proponent met his burden under Florida Statute §733.107 by proving by a preponderance of the evidence that the will was not the product of undue influence.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Cope; Fletcher; Lagoa
JURISDICTION	Florida
DOCKET	3D06-2150
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a final judgment dismissing a will contest complaint after a bench trial.
PRECEDENTIAL VALUE	Binding within Florida Third District Court of Appeal
PARTIES	Francisco Gerardo Diaz v. Frank E. Ashworth

TOPICS

- probate procedure
- probate
- will contests
- undue influence

PRACTICE AREAS

- Probate
- Wills and Trusts
- Estate Litigation

QUESTIONS PRESENTED

- Whether the testator had testamentary capacity at the time of executing the will.
- Whether the will was procured by undue influence.

HOLDINGS

1. The testator had testamentary capacity at the time of executing the will, as he understood the nature and extent of his property, his relation to potential beneficiaries, and the practical effect of the will.
2. Although a presumption of undue influence arose under *In re Estate of Carpenter*, the proponent met his burden under §733.107, Florida Statutes, to prove by a preponderance of the evidence that the will was not the product of undue influence.

KEY QUOTATIONS

*"It has long been emphasized that the right to dispose of one's property by will is highly valuable and it is the policy of the law to hold a last will and testament good wherever possible. See In re Weihe's Estate, 268 So.2d 446, 451 (Fla. 4th DCA 1972), quashed on existing facts, 275 So.2d 244 (Fla. 1973); In re Dunson's Estate, 141 So.2d [601] at 604 [(Fla. 2d DCA [*734] 1962)]. To execute a valid will, the testator need only have testamentary capacity (i.e. be of "sound mind") which has been described as having the ability to mentally understand in a general way (1) the nature and extent of the property to be disposed of, (2) the testator's relation to those who would naturally claim a substantial benefit from his will, and (3) a general understanding of the practical effect of the will as executed. See In re Wilmott's Estate, 66 So.2d 465, 467 (Fla.1953); In re Weihe's Estate, 268 So.2d at 448; In re Dunson's Estate, 141 So.2d at 604. "A testator may still have testamentary capacity to execute a valid will even though he may frequently be intoxicated, use narcotics, have an enfeebled mind, failing memory, [or] vacillating judgment." In re Weihe's Estate, 268 So.2d at 448. Moreover, an insane individual or one who exhibits "queer conduct" may execute a valid will as long as it is done during a lucid interval. See Id.; see also Coppock v. Carlson, 547 So.2d 946, 947 (Fla. 3d DCA 1989) (whether testator had the required testamentary capacity is determined solely by his mental state at the time he executed the instrument), rev. denied, 558 So.2d 17 (Fla.1990)." (733-34)*

FACTUAL BACKGROUND

Jorge Mesa and his partner Silvio Segarra owned a home with rights of survivorship. After Segarra died in 1999, Mesa executed a will benefiting Diaz, a priest who had provided spiritual and personal support. The relationship later cooled, and neighbors Frank and Cecilia Ashworth began assisting Mesa. In June 2003, Mesa, suffering from advanced AIDS, was hospitalized. On July 10, 2003, against medical advice, Mesa left the nursing center and, with the Ashworths' assistance, visited his physician and then Attorney Pilafian's office, where he executed a new will leaving his entire estate to Frank Ashworth. Mesa returned home under hospice care and died on July 28, 2003.

PROCEDURAL HISTORY

Diaz challenged the probate of Mesa's will, which named Ashworth as sole beneficiary, on grounds of lack of testamentary capacity and undue influence. After a bench trial, the trial court dismissed the complaint, finding Mesa competent and not unduly influenced. Diaz appealed.

DISPOSITION

affirmed

CASES CITED

- Raimi v. Furlong, 702 So.2d 1273 (Fla. 3d DCA 1998)
- In re Weihe's Estate, 268 So.2d 446 (Fla. 4th DCA 1972)
- In re Dunson's Estate, 141 So.2d 601 (Fla. 2d DCA 1962)
- In re Wilmott's Estate, In re Wilmott's Estate, 66 So.2d 465 (Fla. 1953)
- Coppock v. Carlson, 547 So.2d 946 (Fla. 3d DCA 1989)
- In re Estate of Carpenter, 253 So.2d 697 (Fla. 1971)
- Hack v. Janes, Hack v. Janes, 878 So.2d 440 (Fla. 5th DCA 2004)
- In re Weihe's Estate, 275 So.2d 244 (Fla. 1973)
- Coppock v. Carlson, 558 So.2d 17 (Fla. 1990)

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