

DISTRICT COURT OF APPEAL OF FLORIDA, SECOND DISTRICT

In re Estate of Catherine B. Bailey

122 So. 2d 243 (Fla. Dist. Ct. App. 1960) · No. No. 1411 · Decided July 20, 1960

SUMMARY

The Florida District Court of Appeal affirmed an order denying a petition to revoke probate of Catherine B. Bailey's will. The court held that the challengers failed to prove lack of testamentary capacity or undue influence, despite evidence concerning Bailey's age, illnesses, medications, and the will's substantial bequest to her youngest son. The court also upheld the probate court's factual findings because they were supported by substantial competent evidence.

CASE DETAILS

COURT	District Court of Appeal of Florida, Second District
WRITING FOR THE COURT	Per Curiam; Allen, C.J.; Kanner, J.; Shannon, J.
JURISDICTION	Florida
DECIDED	July 20, 1960
DOCKET	No. 1411
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal by three children of the decedent from an order of the county judge's court dismissing a petition to revoke probate of their mother's will based on alleged testamentary incapacity and undue influence.
STANDARD OF REVIEW	Findings of fact in a will contest based on conflicting evidence will not be disturbed when substantial competent evidence supports them, unless the probate judge misapprehended the evidence as a whole.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion; precedential within the applicable Florida appellate hierarchy unless subsequently limited or overruled.
PARTIES	Edward B. Bailey, Agnes B. Brenning, John B. Bailey v. Hugh Bradley Bailey, Atlantic National Bank of West Palm Beach, Florida, as Executor of the Estate of Catherine B. Bailey, Deceased

TOPICS

- will contests
- testamentary capacity
- undue influence
- probate procedure
- estate litigation

PRACTICE AREAS

Probate

Trusts and estates

QUESTIONS PRESENTED

1. Whether the contestants proved that Catherine B. Bailey lacked testamentary capacity when she executed the will.
2. Whether the contestants proved that Hugh Bradley Bailey exerted undue influence sufficient to invalidate the will.
3. Whether the probate court's findings based on conflicting evidence were supported by substantial competent evidence and therefore should be upheld on appeal.

HOLDINGS

1. A testator has testamentary capacity when, at the time of executing the will, the testator generally understands the nature and extent of the property, the persons who would naturally claim a substantial benefit, and the practical effect of the testamentary disposition. The contestants failed to prove that Catherine B. Bailey lacked that capacity.
2. Undue influence sufficient to invalidate a will requires overpersuasion, duress, force, coercion, or artful or fraudulent conduct that destroys the testator's free agency and will power; affection, kindness, or attachment alone is insufficient. The contestants failed to establish such influence.
3. A probate court's findings of fact in a will contest involving conflicting evidence must be upheld when supported by substantial competent evidence, absent a showing that the probate judge misapprehended the evidence as a whole.

KEY QUOTATIONS

"Whether one has testamentary capacity is a question determinable only by mental capacity of the testator at the time he executed his will. The making of a will does not depend upon a sound body but upon a sound mind." (245)

"That one may be a user of narcotics does not necessarily deprive him of testamentary capacity." (245-246)

"The burden of overthrowing a will because of lack of testamentary capacity is a heavy one and must be sustained by a preponderance of the evidence." (246)

*"In order for undue influence to exist such as may authorize invalidation of a will, it " * * * must amount to overpersuasion, duress, force, coercion, or artful or fraudulent contrivances to such a degree that there is destruction of the free agency and will power of the one making the will. Mere affection, kindness, or attachment of one person for another may not of itself constitute undue influence." "* (246)

"Of fundamental import is the long established tenet that a probate court's findings of fact based upon conflicting evidence in a will contest will not be disturbed by an appellate court where the substantial competent evidence is sufficient to sustain those findings unless the probate judge has misapprehended the evidence as a whole." (247)

FACTUAL BACKGROUND

Catherine B. Bailey, age eighty-four, executed her will on November 22, 1957, slightly more than two months before her death. The will gave approximately \$30,000 in property to her children in equal shares, but exercised two powers of appointment over trust funds worth approximately three-quarters of a million dollars in favor of her youngest son, Hugh Bradley Bailey. The contestants relied on Bailey's age, prior strokes, illness, and use of phenobarbital and thorazine to argue lack of testamentary capacity, and alleged that Hugh exercised undue influence. Evidence from the drafting attorney's secretary, Bailey's physician, accountants, and other witnesses supported the probate court's findings that Bailey was alert, understood her affairs, and was competent to make the will.

PROCEDURAL HISTORY

Catherine B. Bailey's will was admitted to probate. Four of her children petitioned to revoke probate, but one withdrew after entry of the probate order. The county judge's court dismissed the petition, finding insufficient evidence of undue influence and failure to prove lack of testamentary capacity. Three petitioners appealed, and the District Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Wilmott's Estate, In re Wilmott's Estate, 66 So. 2d 465, 467-468 (Fla. 1953)
- Newman v. Smith, Newman v. Smith, 82 So. 236, 241 (Fla. 1919)
- Hamilton v. Morgan, 112 So. 80 (Fla. 1927)
- Neal v. Harrington, 31 So. 2d 391 (Fla. 1947)
- Fernstrom v. Taylor, 145 So. 208 (Fla. 1933)
- In re Kiggins' Estate, 67 So. 2d 915 (Fla. 1953)
- Heasley v. Evans, Heasley v. Evans, 104 So. 2d 854, 857 (Fla. Dist. Ct. App. 1958)
- In re Starr's Estate, 170 So. 620 (Fla. 1935)
- In re Peters' Estate, 20 So. 2d 487 (Fla. 1945)
- Flagler v. Flagler, 94 So. 2d 592 (Fla. 1957)
- Hooper v. Stokes, Hooper v. Stokes, 145 So. 855, 146 So. 668 (Fla. 1933)
- Williams v. Kane, 88 So. 2d 599 (Fla. 1956)