

SUPREME COURT OF GEORGIA

Harper v. Harper, 274 Ga. 542

554 S.E.2d 454 (2001) · No. S01A0967 · Decided October 22, 2001

SUMMARY

The Supreme Court of Georgia affirmed summary judgment allowing probate of Denver Harper's will, which favored one son and disinherited another. The court held that evidence of fraud or undue influence by a third party could be relevant, but the caveator presented insufficient admissible evidence to create a genuine issue concerning fraud or undue influence by either the beneficiary or his son. The court also held that the testator's statements were inadmissible to prove fraud or undue influence and that the grandson's statements about newly purchased trucks were not material misrepresentations.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Carley, Justice
JURISDICTION	Georgia
DECIDED	October 22, 2001
DOCKET	S01A0967
DISPOSITION	affirmed
PROCEDURAL POSTURE	A disinherited son filed a caveat to his father's will, alleging fraud and undue influence. After discovery, the superior court granted summary judgment for the propounder, and the caveator appealed by consent through an immediate appeal.
STANDARD OF REVIEW	Summary judgment is reviewed by construing the evidence most favorably for the nonmoving party and determining whether a genuine issue of material fact remains. The court also reviewed the evidentiary and will-validity issues presented by the summary-judgment record.
PRECEDENTIAL VALUE	Published opinion; precedential authority of the Supreme Court of Georgia.
PARTIES	Travis Harper, Caveator v. Russell Harper, Sr., Propounder

TOPICS

will contests

undue influence

hearsay

evidence

probate

PRACTICE AREAS

Probate

Wills and estates

Evidence

Appellate procedure

QUESTIONS PRESENTED

1. Whether evidence of fraud or undue influence by a person other than the beneficiary or propounder may invalidate a will.
2. Whether the evidence created a genuine issue of material fact regarding fraud or undue influence by the propounder.
3. Whether hearsay declarations by the testator were admissible to prove that the grandson committed fraud or exercised undue influence.
4. Whether the evidence created a genuine issue of material fact regarding fraud or undue influence by the grandson.

HOLDINGS

1. A will may be invalidated by fraud or undue influence practiced by any person, including a third party, and there is no statutory requirement that the conduct be directly attributable to the beneficiary or propounder.
2. Summary judgment was proper for the propounder because the record contained no evidence that he made fraudulent misrepresentations or exercised undue influence over the testator.
3. Testator declarations are not admissible to prove the actual fact of fraud or the exercise of improper influence in executing a will; they may be admissible to show the will's validity, but not its invalidity.
4. The evidence did not create a genuine issue of material fact regarding fraud or undue influence by the grandson. The grandson's statements supplied essentially truthful information, the testator independently reached an erroneous conclusion, and the grandson's transportation assistance and connection to the will execution did not establish undue influence.

KEY QUOTATIONS

"Because \"(t)he right to make a will is a valuable right,\" a stringent standard must be met to deprive a person of this power.\" (455)

"Thus, there is no express statutory requirement that the invalidating fraud or undue influence be directly attributable to the beneficiary or propounder." (456)

"A testator's declarations are admissible to show the validity of a will, but not the invalidity of the instrument." (457)

"The indulgence of mere suspicion of undue influence cannot be allowed." (458)

FACTUAL BACKGROUND

Denver Harper devised and bequeathed the majority of his estate to one of his three surviving sons, Russell Harper, Sr. Travis Harper alleged that Russell Harper, Sr.'s son, Russell Harper, Jr., caused the testator to believe that Travis had stolen money buried in the yard after telling him about two trucks associated with Travis's wife's business. The testator then executed a new will after contacting his long-standing attorney; the evidence showed that he was of sound mind, acted freely, and that the grandson did not participate substantively in preparing or executing the will.

PROCEDURAL HISTORY

Denver Harper's will devised most of his estate to Russell Harper, Sr. Travis Harper filed a caveat alleging that Russell Harper, Jr. misled the testator into believing that Travis had stolen money, causing the testator to change his will. The superior court granted summary judgment allowing probate of the will; the Supreme Court of Georgia affirmed.

DISPOSITION

affirmed

CASES CITED

- Brown v. Anderson, 13 Ga. 171, 172(4) (1853)
- McConnell v. Moore, 267 Ga. 839, 841, 483 S.E.2d 578 (1997)
- Slade v. Slade, 155 Ga. 851, 863(3), 118 S.E. 645 (1923)
- Sims v. Sims, 265 Ga. 55, 56, 452 S.E.2d 761 (1995)
- Cornelius v. Crosby, 243 Ga. 26, 28(5), 252 S.E.2d 455 (1979)
- Tingle v. Harvill, 228 Ga. 332, 339-340(5), 185 S.E.2d 539 (1971)
- King v. Young, 222 Ga. 464, 467, 150 S.E.2d 631 (1966)
- McGee v. Ingram, 264 Ga. 649, 650(1), 448 S.E.2d 439 (1994)
- Mallory v. Young, 94 Ga. 804, 807-808, 22 S.E. 142 (1894)
- Jones v. Grogan, 98 Ga. 552, 557(7), 25 S.E. 590 (1896)
- Heard v. Lovett, 273 Ga. 111, 112(2), 538 S.E.2d 434 (2000)
- Yancey v. Hall, 265 Ga. 466, 469(4), 458 S.E.2d 121 (1995)
- Skelton v. Skelton, 251 Ga. 631, 633(4), 308 S.E.2d 838 (1983)
- Brumbelow v. Hopkins, 197 Ga. 247(3), 29 S.E.2d 42 (1944)
- Kendrick-Owens v. Clanton, 271 Ga. 731, 733, 524 S.E.2d 237 (1999)