

DISTRICT COURT OF APPEAL OF FLORIDA, FOURTH DISTRICT

John P. Kellar v. Estate of John W. Kellar

John P. Kellar v. Estate of John W. Kellar, 257 So. 3d 1044 (Fla. 4th DCA 2018) (Fla. 4th DCA 2018) · No. 4D17-3019

SUMMARY

The Florida District Court of Appeal affirmed the probate court's order granting administration to the decedent's wife, holding that she presented competent substantial evidence to raise a rebuttable presumption of undue influence by the son in procuring the revocation of the decedent's will, and the son failed to prove the nonexistence of undue influence by a preponderance of the evidence. The court further held that the trial court's minor factual errors and an erroneous alternative legal conclusion regarding the prenuptial agreement were harmless. This case applies the burden-shifting framework for undue influence claims in will contests under Florida law.

CASE DETAILS

COURT	District Court of Appeal of Florida, Fourth District
WRITING FOR THE COURT	Gerber, C.J.; Gerber; Levine; Klingensmith
JURISDICTION	Florida
DOCKET	4D17-3019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from circuit court orders granting administration petition and denying rehearing.
STANDARD OF REVIEW	It is axiomatic that the trial court's resolution of conflicting evidence will not be disturbed by a reviewing court in the absence of a clear showing of error, or that the conclusions reached are erroneous. In reviewing the trial court's findings, they must be given the benefit of all reasonable inferences that may be drawn from the evidence. Further, we are prohibited from reevaluating the evidence and substituting our judgment for that of the finder of the facts.
PRECEDENTIAL VALUE	binding
PARTIES	John P. Kellar v. Estate of John W. Kellar

TOPICS

undue influence will contests probate appellate procedure evidence

PRACTICE AREAS

Wills, Trusts, and Estates

Appellate Procedure

QUESTIONS PRESENTED

1. Whether the circuit court erred in finding that the son failed to prove the nonexistence of undue influence by a preponderance of the evidence.
2. Whether the circuit court's erroneous factual findings regarding the son driving the decedent to the lawyer, timing of the guardian's removal of the decedent, and the son's beneficiary status were harmless error.
3. Whether the circuit court's alternative conclusion that the prenuptial agreement precluded revocation of the will was erroneous and, if so, whether it was harmless.

HOLDINGS

1. The circuit court's finding that the son failed to establish, by a preponderance of the evidence, the nonexistence of undue influence was affirmed because the wife presented competent substantial evidence to raise the presumption, and the burden shifted to the son.
2. The erroneous factual findings—regarding the son driving the decedent, timing of removal, and beneficiary status—were harmless because they were inconsequential to the ultimate finding that the son failed to rebut the presumption of undue influence.
3. The circuit court's alternative conclusion that the prenuptial agreement precluded revocation of the will was erroneous, but harmless given the independent finding that the son failed to prove the nonexistence of undue influence.

KEY QUOTATIONS

“It is axiomatic that the trial court's resolution of conflicting evidence will not be disturbed by a reviewing court in the absence of a clear showing of error, or that the conclusions reached are erroneous. In reviewing the trial court's findings, they must be given the benefit of all reasonable inferences that may be drawn from the evidence. Further, we are prohibited from reevaluating the evidence and substituting our judgment for that of the finder of the facts.” (1045)

FACTUAL BACKGROUND

Upon the death of John W. Kellar, a dispute arose between his son, John P. Kellar, and his wife over the administration of his estate. The wife alleged that the son exerted undue influence over the decedent to procure the revocation of a will favoring the wife. The circuit court found a rebuttable presumption of undue influence and shifted the burden to the son to prove its nonexistence by a preponderance of the evidence. The court made three erroneous factual findings but concluded they were harmless. The court also erroneously concluded that the prenuptial agreement precluded revocation, but that was also harmless.

PROCEDURAL HISTORY

The decedent's son appealed the circuit court's order granting the decedent's wife's petition for administration in part and denying the son's counterpetition, as well as the order denying his motion for rehearing. The Fourth District Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- RBC Ministries v. Barbara Tompkins, as personal representative of the estate of Lewis A. Simoneau, RBC Ministries v. Tompkins, 974 So. 2d 569 (Fla. 2d DCA 2008)
- Lindeburg v. Lindeburg, 162 So. 2d 1 (Fla. 3d DCA 1964)
- Estate of Brock, 692 So. 2d 907 (Fla. 1st DCA 1996)

OPINION

Kellar v. Estate Decision Date:24 October 2018 Docket Number:No. 4D17-3019, 4D17-3019 Citation:Kellar v. Estate, 257 So.3d 1044 (Fla. App. 2018) Parties:John P. KELLAR, Appellant, v. ESTATE OF John W. KELLAR, Appellee. Court:Florida District Court of Appeals 257 So.3d 1044 John P. KELLAR, Appellant, v. ESTATE OF John W. KELLAR, Appellee. No. 4D17-3019 District Court of Appeal of Florida, Fourth District.

[October 24, 2018] Henny L. Shomar and Douglas H. Reynolds of Tripp Scott, P.A., Fort Lauderdale, for appellant. Scott A. Weiss, Fort Lauderdale, for appellee. Gerber, C.J. The decedent's son appeals from the circuit court's order granting the decedent's wife's petition for administration in [*1045] part and denying the son's counterpetition for administration, and from the circuit court's order denying the son's motion for rehearing.

We affirm both orders. The wife presented competent substantial evidence to raise the rebuttable presumption that the son exerted undue influence over the decedent to procure the decedent's revocation of his will favoring the wife, and that upon the burden of proof shifting to the son, the son failed to establish, by a preponderance of the evidence, the nonexistence of undue influence.

See RBC Ministries v. Tompkins, 974 So.2d 569, 572 (Fla. 2d DCA 2008) ("[O]nce a will contestant establishes the existence of the basis for the rebuttable presumption of undue influence, the burden of proof shifts to the proponent of the will to establish by a preponderance of the evidence the nonexistence of undue influence.").

In reaching our conclusion, we acknowledge that the circuit court, in rendering its final order, made three erroneous factual findings regarding: whether the son drove the decedent to meet with the son's lawyer; the timing of when the guardian removed the decedent from the home in relation

to a domestic disturbance between the wife and the decedent; and whether the son was a beneficiary of the decedent's earlier wills.

However, viewing these few erroneous factual findings within the perspective of the circuit court's lengthy factual findings, we conclude that the erroneous factual findings were inconsequential to the circuit court's ultimate finding that the son failed to establish, by a preponderance of the evidence, the nonexistence of undue influence.

Thus, the erroneous factual findings were harmless. We also acknowledge that the circuit court, as an alternative basis for its orders, erroneously concluded the decedent's prenuptial agreement precluded the decedent from revoking his will favoring the wife. See *Lindeburg v. Lindeburg*, 162 So.2d 1, 2-3 (Fla. 3d DCA 1964) ("In a contract to make a will, the promisor has the right to change his will... the right being enforced against the promisor is the contract right, and not the will, in the case of the breached contract to make a will....") (footnotes omitted).

However, that error is harmless given our affirmance of the circuit court's finding that the son failed to establish, by a preponderance of the evidence, the nonexistence of undue influence. We conclude without further discussion that the son's other arguments on appeal, not addressed in this opinion, lack merit.

In sum, as our sister court stated in *Estate of Brock*, 692 So.2d 907 (Fla. 1st DCA 1996): It is axiomatic that the trial court's resolution of conflicting evidence will not be disturbed by a reviewing court in the absence of a clear showing of error, or that the conclusions reached are erroneous.

In reviewing the trial court's findings, they must be given the benefit of all reasonable inferences that may be drawn from the evidence. Further, we are prohibited from reevaluating the evidence and substituting our judgment for that of the finder of the facts. *Id.* at 913 (internal citations omitted). Affirmed. Levine and Klingensmith, JJ., concur.