

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.

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.