

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Raimi v. Furlong

702 So. 2d 1273 (Fla. Dist. Ct. App. 1997) · No. Nos. 96-954, 96-998, 96-1002, 96-1011 and 96-1012 · Decided September 17, 1997

SUMMARY

The Florida Third District Court of Appeal reviewed consolidated appeals arising from a will contest and an equitable action concerning Evelyn S. Gruber’s estate. The trial court found that the appellants had used undue influence and conspiracy to obtain estate assets and execute a later will, awarding compensatory and punitive damages and admitting an earlier will to probate. The appellate court concluded that the findings were unsupported by competent substantial evidence or resulted from a misapprehension of the evidence and reversed.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Green; Levy; Gersten
JURISDICTION	Florida
DECIDED	September 17, 1997
DOCKET	Nos. 96-954, 96-998, 96-1002, 96-1011 and 96-1012
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Consolidated appeal from adverse final judgments entered after a nonjury equitable action and a will contest. The appellants challenged findings of civil conspiracy, undue influence, breach of fiduciary duty, testamentary incapacity, damages, and the refusal to admit the decedent's final will to probate.
STANDARD OF REVIEW	The appellate court reviewed factual findings concerning testamentary capacity for substantial competent evidence and whether the probate court misapprehended the legal effect of the evidence. It reviewed the legal sufficiency of the evidence supporting civil conspiracy and undue influence and the propriety of trying an unpled negligent hiring, retention, training, and supervision theory by consent.
PRECEDENTIAL VALUE	precedential
PARTIES	Manuel Raimi, individually and as co-personal representative and trustee, Renee Raimi, Frieda Pantzer, SunTrust f/k/a SunBank/Miami,

TOPICS

will contests undue influence testamentary capacity estate litigation appellate procedure

PRACTICE AREAS

probate trusts estate planning remedies appellate procedure

QUESTIONS PRESENTED

1. Whether competent substantial evidence established a civil conspiracy among the appellants to deprive Gruber of her money and assets through undue influence or breach of fiduciary duty.
2. Whether the bank could be held liable for negligent hiring, training, retention, and supervision when that theory was not pleaded or tried by consent.
3. Whether the evidence established that Gruber lacked testamentary capacity when she executed the Barash Will and Amended Trust.
4. Whether the evidence established that the Barash Will and Amended Trust was procured through undue influence by Manuel Raimi.
5. Whether the Lost Will should be admitted to probate instead of Gruber's last executed will and amendment.

HOLDINGS

1. The evidence was insufficient to establish a civil conspiracy because the record did not show an agreement to commit an unlawful act, knowing participation by the remaining appellants, or an inference of conspiracy stronger than reasonable contrary inferences.
2. The trial court erred in imposing liability on the bank under negligent hiring, training, retention, and supervision theories because those theories were not pleaded or tried by consent.
3. The evidence did not establish that Gruber lacked testamentary capacity when she executed the Barash Will and Amended Trust; the trial court's contrary conclusion misapprehended the legal effect of the evidence.
4. The evidence did not establish a presumption of undue influence or undue influence by Manuel Raimi in the execution of the Barash Will and Amended Trust.
5. The trial court erred by admitting the January 23, 1992 Lost Will to probate; the July 8, 1994 Barash Will and Amended Trust was to be admitted as Gruber's last valid testamentary instrument.

KEY QUOTATIONS

"A civil conspiracy requires: (a) an agreement between two or more parties, (b) to do an unlawful act or to do a lawful act by unlawful means, (c) the doing of some overt act in pursuance of the conspiracy, and (d)

damage to plaintiff as a result of the acts done under the conspiracy.” (702 So. 2d at 1284)

“When a will is challenged on the grounds of undue influence, the influence must amount to over persuasion, duress, force, coercion, or artful or fraudulent contrivances to such an extent that there is a destruction of free agency and willpower of the testator.” (702 So. 2d at 1287)

FACTUAL BACKGROUND

Evelyn S. Gruber was an elderly widow with substantial assets and no children. After her husband's death, she executed several wills, first disinheriting the Furlongs in the Blaustein Will, later benefiting them in the Furlong Wills, and ultimately executing the July 8, 1994 Barash Will and Revocable Trust, later amended to reduce the Furlongs' bequest to \$1,000 after a dispute over a \$350,000 treasury bill. Gruber died on March 3, 1995, and the parties disputed whether her final testamentary documents resulted from testamentary incapacity or undue influence.

PROCEDURAL HISTORY

After Evelyn S. Gruber's death, Manuel Raimi and SunTrust sought administration of Gruber's July 8, 1994 Barash Will and Amended Trust. Estelle Furlong sought administration of an earlier will, challenged the Barash documents, and alleged undue influence, incapacity, conspiracy, and related equitable claims. The trial court found a conspiracy and awarded compensatory and punitive damages, rejected the Barash Will and Amended Trust, and admitted the January 23, 1992 Lost Will to probate. The Third District reversed all judgments and remanded with directions to enter judgment for appellants on the equitable claims and admit the Barash Will and Amended Trust to probate.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Enter final judgment in favor of the appellants on the main equitable action and admit the July 8, 1994 Barash Will and Amended Trust, including its amendment, to probate instead of the January 23, 1992 Lost Will.

CASES CITED

- Florida Fern Growers Assoc., Inc. v. Concerned Citizens of Putnam County, 616 So. 2d 562 (Fla. 5th DCA 1993)
- Nicholson v. Kellin, 481 So. 2d 931 (Fla. 5th DCA 1985)
- Wright v. Yurko, 446 So. 2d 1162 (Fla. 5th DCA 1984)
- Blatt v. Green, Rose, Kahn & Piotrkowski, 456 So. 2d 949 (Fla. 3d DCA 1984)
- American Diversified Ins. Servs., Inc. v. Union Fidelity Life Ins., 439 So. 2d 904 (Fla. 2d DCA 1983)
- Diamond v. Rosenfeld, 511 So. 2d 1031 (Fla. 4th DCA 1987)
- James v. Nationsbank Trust Co. Nat'l Assoc., 639 So. 2d 1031 (Fla. 5th DCA 1994)
- Menendez v. Beech Acceptance Corp., 521 So. 2d 178 (Fla. 3d DCA 1988)

- Trautz v. Weisman, 809 F. Supp. 239 (S.D.N.Y. 1992)
- Karnegis v. Oakes, 296 So. 2d 657 (Fla. 3d DCA 1974)
- 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)
- Lambrose v. Topham, 55 So. 2d 557 (Fla. 1951)
- Hooper v. Stokes, Hooper v. Stokes, 145 So. 855 (Fla. 1933)
- Murrey v. Barnett Nat'l Bank, 74 So. 2d 647 (Fla. 1954)
- In re Carpenter's Estate, In re Carpenter's Estate, 253 So. 2d 697 (Fla. 1971)
- Estate of Brock, 692 So. 2d 907 (Fla. 1st DCA 1996)
- Elson v. Vargas, 520 So. 2d 76 (Fla. 3d DCA 1988)
- Quinn v. Phipps, Quinn v. Phipps, 113 So. 419 (Fla. 1927)
- Tarsagian v. Watt, 402 So. 2d 471 (Fla. 3d DCA 1981)
- Martin v. Martin, 687 So. 2d 903 (Fla. 4th DCA 1997)