

NEW YORK COURT OF APPEALS

American Committee for Weizmann Institute of Science v. Dunn

10 N.Y.3d 82, 883 N.E.2d 996 (2008) · Decided February 14, 2008

SUMMARY

The New York Court of Appeals affirmed dismissal of a charitable organization's petition to vacate a probate decree and obtain discovery concerning alleged undue influence. The court held that a party seeking vacatur based on newly discovered evidence must show a substantial basis for contesting the will and a reasonable probability of success through competent evidence. It also held that the correspondence between the decedent and the charity did not satisfy EPTL 13-2.1 because it did not clearly and unambiguously establish a contract restricting the decedent's testamentary rights.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Ciparick, J.
JURISDICTION	New York
DECIDED	February 14, 2008
DISPOSITION	affirmed
PROCEDURAL POSTURE	A charitable organization that was not a party to the original probate proceeding petitioned to vacate a probate decree under CPLR 5015 based on newly discovered evidence allegedly showing undue influence, sought discovery under SCPA 1404 (4), and alternatively sought the proceeds of the decedent's cooperative apartment based on an alleged contract to make a testamentary bequest. The Surrogate's Court dismissed the petition under CPLR 3211 (a) (7), and the Appellate Division affirmed. The Court of Appeals affirmed.
STANDARD OF REVIEW	On a petition to vacate a probate decree based on newly discovered evidence, the petitioner must establish a substantial basis for contesting the will and a reasonable probability of success on the merits through competent evidence that probably would have altered the original probate result. The Court of Appeals reviewed the Surrogate's refusal to vacate for abuse of discretion.
PRECEDENTIAL VALUE	Published New York Court of Appeals opinion; binding statewide precedent.

PARTIES

American Committee for Weizmann Institute of Science v. Dunn respondents

TOPICS

probate procedure

will contests

undue influence

statute of frauds

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PRACTICE AREAS

Probate

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QUESTIONS PRESENTED

1. What standard governs a nonparty's petition to vacate a probate decree based on newly discovered evidence allegedly demonstrating undue influence?
2. Whether the charity established a sufficient basis for vacatur and SCPA 1404 (4) discovery by alleging that the decedent's will was procured through undue influence.
3. Whether the 1994 correspondence and the decedent's 1998 letter constituted a contract to make a testamentary provision satisfying EPTL 13-2.1.
4. Whether the petitioner was entitled to the cooperative apartment proceeds under SCPA 2105.

HOLDINGS

1. A party seeking to vacate a probate decree based on alleged undue influence must demonstrate a substantial basis for contesting the probated will and a reasonable probability of success on the merits through competent evidence that probably would have altered the original probate proceeding.
2. The petitioner failed to establish a substantial basis for challenging the will or a reasonable probability of success on its undue influence claim, and the Surrogate did not abuse her discretion by refusing to vacate the probate decree or permit the requested discovery.
3. The 1994 and 1998 writings did not provide indisputable, clear, and unambiguous evidence that the decedent agreed to renounce her right to execute a later will making no provision for the charity; therefore, the alleged contract was barred by EPTL 13-2.1.
4. The petitioner was not entitled to the cooperative apartment proceeds under SCPA 2105 because it failed to establish the contractual basis for its claim with the required clear and unambiguous evidence.

KEY QUOTATIONS

"We hold that to establish its entitlement to vacatur under this standard, a party must demonstrate a substantial basis for its contest and a reasonable probability of success through competent evidence that would have probably altered the outcome of the original probate proceeding" (95-96)

"For more than a century, we have repeatedly emphasized that because a will is ambulatory in nature and because a testator has the right to freely revoke a will until death, an agreement not to revoke a prior will "demands the most indisputable evidence of . . . agreement"" (92)

FACTUAL BACKGROUND

Doris Dunn Weingarten executed a will five days before her death that left her Manhattan cooperative apartment, valued at approximately \$1 million, to her niece Jennifer Dunn and named Jennifer's father, Irving Dunn, executor. The American Committee for Weizmann Institute of Science alleged that Weingarten had long intended to benefit the charity and that correspondence in 1994 and 1998 created a binding contract to leave the charity the apartment's sale proceeds. After Weingarten moved into Irving Dunn's apartment for hospice care during terminal cancer, she executed the challenged will, and the charity alleged that Irving or Jennifer exerted undue influence. The charity offered an unexecuted 1981 will, the 1994 correspondence, and the 1998 letter, but no competent evidence corroborating the alleged later conversations or a longstanding, specific testamentary plan.

PROCEDURAL HISTORY

Doris Dunn Weingarten's January 11, 2004 will was admitted to probate by the Surrogate's Court on February 9, 2004. The petitioner, which had not received notice of the probate proceeding, later sought vacatur, discovery, and recovery of the cooperative apartment proceeds, alleging undue influence and a contractual promise to make the bequest. The Surrogate's Court dismissed the verified petition, the Appellate Division affirmed, and the Court of Appeals granted leave and affirmed.

DISPOSITION

affirmed

CASES CITED

- Matter of Westberg, 254 App. Div. 320, 321 (1st Dep't 1938)
- Matter of Musso, 227 A.D.2d 404, 406 (2d Dep't 1996)
- Matter of Walther, 6 N.Y.2d 49, 53, 55 (1959)
- Children's Aid Socy. of City of N.Y. v. Loveridge, 70 N.Y. 387, 394 (1887)
- Marks v. Cowdin, 226 N.Y. 138, 143, 145 (1919)
- Crabtree v. Elizabeth Arden Sales Corp., 305 N.Y. 48, 55, 57 (1953)
- Rubin v. Irving Trust Co., 305 N.Y. 288, 297-298 (1953)
- Edson v. Parsons, 155 N.Y. 555, 568 (1898)
- Hamlin v. Stevens, 177 N.Y. 39, 47-48 (1903)
- Oursler v. Armstrong, 10 N.Y.2d 385, 389 (1961)
- Rubenstein v. Mueller, 19 N.Y.2d 228, 232 (1967)
- Blackmon v. Estate of Battcock, 78 N.Y.2d 735, 739-740 (1991)
- Morris Cohon & Co. v. Russell, 23 N.Y.2d 569, 576 (1969)
- Cobble Hill Nursing Home v. Henry & Warren Corp., 74 N.Y.2d 475, 482 (1989)
- Stulsaft v. Mercer Tube & Mfg. Co., 288 N.Y. 255, 260 (1942)
- Matter of Delisle, 149 A.D.2d 793 (3d Dep't 1989)

