

CIRCUIT COURT OF FLORIDA

In re: Estate of Oldman Johnson

No. [Unknown], 2025 WL [Unknown] (Fla. Cir. Ct. [Unknown])

SUMMARY

Proposed Florida jury instructions addressing undue influence and tortious interference with an expectancy. The instructions detail a burden-shifting framework: if the plaintiff proves the defendant actively procured the will or trust (e.g., presence at execution, involvement in drafting, secrecy), a presumption of undue influence arises that the defendant must rebut by the greater weight of the evidence. For tortious interference, the plaintiff must establish the decedent's fixed testamentary intent, intentional interference through undue influence, causation, and damages.

CASE DETAILS

COURT	Circuit Court of Florida
JURISDICTION	Florida
DISPOSITION	other
PRECEDENTIAL VALUE	Not applicable

TOPICS

- undue influence
- probate
- trusts
- torts
- civil procedure

PRACTICE AREAS

- Wills, Trusts, and Estates
- Tort Law

QUESTIONS PRESENTED

- Whether the Defendant actively procured the challenged trust amendment through undue influence, shifting the burden of proof.
- What factors the jury should consider in evaluating claims of undue influence.
- What elements constitute tortious interference with an expectancy under Florida law.

HOLDINGS

- If Plaintiffs prove by the greater weight of the evidence that Defendant actively procured the contested document, the law presumes undue influence and the burden shifts to Defendant to rebut the presumption by proving by the greater weight of the evidence that the document was executed freely,

voluntarily, and without undue influence. Once rebutted, the burden returns to Plaintiffs to prove their claims by the greater weight of the evidence.

2. Non-exhaustive factors for active procurement under Florida law include: presence of beneficiary at execution or when testator expressed desire to make will; beneficiary's recommendation of attorney; beneficiary's knowledge of contents or giving instructions; securing witnesses; safekeeping of will; isolating testator and disparaging family members; mental inequality; and reasonableness of the challenged provisions.
3. To prevail on a claim for tortious interference with an expectancy, Plaintiff must prove: (1) existence of an expectancy; (2) intentional interference through undue influence; (3) causation; and (4) damages. Plaintiff must show with reasonable certainty that the decedent had a formed, fixed intention to make a bequest or gift that would have been in effect at death but for the intentional interference.

KEY QUOTATIONS

“The Undue Influence Doctrine is based on the theory that the testator is induced by various means, to execute an instrument which, although his, in outward form, is in reality not his, but the will of another person which is substituted for that of the testator.” (at 1)

“It is important to note that the above-referenced factors are not the elements of the cause of action of undue influence. They relate solely to shifting the burden of proof.” (at 2)

“Some of the essential steps in asserting undue influence upon a person against those for whom he has love and in whom he has confidence is for some other person (1) to have access to the person to be influenced, (2) to administer to the needs and wants and wishes of such person, (3) to keep those for whom the person to be influenced has love for and confidence in away from the person to be influenced, (4) to establish a confidential relationship, and (5) to tear down this love and confidence by insinuations and accusations.” (at 3)

“What degree of influence will vitiate a Will [or Trust] depends much upon the bodily and mental vigor of the testator, for that which would overwhelm a mind weakened by sickness, dissipation, or age might prove no influence at all to one of strong mind in the vigor of life.” (at 3)

FACTUAL BACKGROUND

This document contains proposed jury instructions for a will and trust contest concerning decedent Oldman Johnson. The Plaintiffs allege that Defendant exercised undue influence to procure a trust amendment in Defendant's favor and committed tortious interference with an expectancy. The instructions outline factors the jury may consider in determining whether the presumption of undue influence arises, including Defendant's involvement in the decedent's affairs, dependence, secrecy, changes to the estate plan, mental acuity, and disparagement of family members.

DISPOSITION

other

CASES CITED

- In re: Ates Estate, 60 So. 2d 275 (Fla. 1952)
- [case] Blinn v. Carlman, Blinn v. Carlman, 159 So. 3d 390 (Fla. 4th DCA 2015)
- Clark v. Grimsley, 270 So. 2d 53 (Fla. 1st DCA 1972)
- Elson v. Vargas, 520 So. 2d 76 (Fla. 3d DCA 1988)
- In re: Estate of Carpenter, 253 So. 2d 697 (Fla. 1971)
- Paananen v. Kruse, 581 So. 2d 186 (Fla. 2d DCA 1991)
- In re: Estate of Burton, 45 So. 2d 873 (Fla. 1950)
- In re: Donnelley's Estate
- Newman v. Smith, Newman v. Smith, 82 So. 236 (Fla. 1919)
- Watts v. Newport, 151 Fla. 209 (Fla. 1942)
- Peacock v. DuBois, 105 So. 2d 321 (Fla. 1925)
- In re: Estate of Reid, 138 So. 2d 342 (Fla. 3d DCA 1962)
- Gardiner v. Goertner, 149 So. 186 (Fla. 1932)
- [case] Cripe v. Atlantic First Nat'l Bank of Daytona Beach, Cripe v. Atlantic First Nat'l Bank of Daytona Beach, 422 So. 2d 820 (Fla. 1982)
- Hack v. Estate of Helling, 811 So. 2d 822 (Fla. 5th DCA 2002)
- In re: Auerbach's Estate, 41 So. 2d 659 (Fla. 1949)
- In re: Estate of Perez, 470 So. 2d 48 (Fla. 3d DCA 1985)
- In re: Ates' Estate, 60 So. 2d 275 (Fla. 1953)
- In re: Estate of Winslow, 147 So. 2d 613 (Fla. 2d DCA 1962)
- In re: Estate of Lamberson, 407 So. 2d 358 (Fla. 5th DCA 1981)
- Newman v. Smith, Newman v. Smith, 82 So. 2d 236 (Fla. 1919)

OPINION

Burden and Quantum of Proof In this case, the Plaintiffs bear the burden of proving their claims by the greater weight of the evidence. This means that the evidence they present must be the more persuasive and convincing force and effect of the entire evidence in the case.

However, if you find that certain factors are present that demonstrate the active procurement of the will or other contested document by the Defendant, the law presumes that undue influence was exerted. These factors may include, but are not limited to: • The Defendant's involvement in the preparation or execution of the document; • The Defendant's presence during the execution of the document; • The Defendant's recommendation of the attorney who prepared the document; or • Any other evidence of active participation in procuring the document.

If you find by the greater weight of the evidence that such factors exist, the burden shifts to the Defendant to rebut this presumption by proving, by the greater weight of the evidence, that the document was executed freely, voluntarily, and without undue influence.

In evaluating whether this presumption has been rebutted, you should consider all the evidence presented. If the Defendant fails to meet this burden, you may conclude that the document was the result of undue influence. If the Defendant successfully rebuts the presumption, the burden returns to the Plaintiffs to prove their claims by the greater weight of the evidence.

Count I – Invalidate First Trust Amendment The Undue Influence Doctrine is based on the theory that the testator is induced by various means, to execute an instrument which, although his, in outward form, is in reality not his, but the will of another person which is substituted for that of the testator. Undue influence in executing a Will or trust amendment, is not usually exercised openly in the presence of others, so that it may be directly proved; hence, it may be proved by indirect evidence of facts and circumstances from which it may be inferred.

The Florida Supreme Court has established a set of non-exhaustive factors for courts to consider on the issue of undue influence or active procurement: (a) presence of the beneficiary at the execution of the Will or Trust Amendment; (b) presence of the beneficiary on those occasions when the testator expressed a desire to make a Will or Trust Amendment; (c) recommendation by the beneficiary of an attorney to draw the Will or Trust Amendment; (d) knowledge of the contents of the Will or Trust Amendment by the beneficiary to the attorney drawing the Will or Trust Amendment; (e) giving instructions on preparation of the Will or Trust Amendment by the beneficiary to the attorney drawing the Will or Trust Amendment; (f) securing the witnesses to the Will or Trust Amendment by the beneficiary; and (g) safekeeping of the Will or Trust Amendment by the beneficiary subsequent to execution.

Additionally, Florida courts recognize at least three other indicators of undue influence or active procurement: (h) Isolating the testator and disparaging family members; (i) Mental inequality between the Decedent and the beneficiary; and (j) Reasonableness of the challenged document's provisions. It is important to note that the above-referenced factors are not the elements of the cause of action of undue influence.

They relate solely to shifting the burden of proof. Even if a contestant cannot prove the above-referenced factors, they still might be able to prove undue influence if they have sufficient evidence to prove that the alleged undue influencer destroyed the free will and controlled the mind of the testator to such a degree that the resulting will or trust was the product of the mind of the undue influence and not that of the testator or settlor.

In Florida, the presumption of undue influence can shift the burden of proof from the person initiating the claim to the person accused of undue influence under certain circumstances. Once the presumption of undue influence is raised, the burden of proof can be reversed, requiring the accused beneficiary to be the one to prove, by the greater weight of the evidence, that no undue influence occurred.

The burden of proof shifts to the accused beneficiary if the person challenging the transaction can prove undue influence by showing: (1) the accused is set to receive a substantial benefit through the challenged transaction; (2) the accused and the decedent shared a confidential relationship; and (3) the accused was active in procuring the challenged document or transaction.

If Plaintiffs present sufficient evidence to give rise to the presumption of undue influence, then the burden of proof shifts to the proponent of the document or transaction to prove by a preponderance of the evidence that the questioned document or transaction was not the result of undue influence.

In determining the existence of undue influence, you, as the trier of fact, should also consider additional factors which should be considered to support an undue influence claim such as: • Defendant's Level of Involvement in Oldman Johnson's Affairs.

The greater the level of involvement, the greater the inference you are permitted to make that Defendant was in a relationship of trust and confidence with respect to Oldman Johnson, thereby making Oldman Johnson particularly susceptible and vulnerable to undue influence. (In re: Ates Estate, 60 So. 2d 275 (Fla. 1952) ("Some of the essential steps in asserting undue influence upon a person against those for whom he has love and in whom he has confidence is for some other person (1) to have access to the person to be influenced, (2) to administer to the needs and wants and wishes of such person, (3) to keep those for whom the person to be influenced has love for and confidence in away from the person to be influenced, (4) to establish a confidential relationship, and (5) to tear down this love and confidence by insinuations and accusations.")). • Oldman Johnson's Dependence on Defendant.

The greater level of Oldman Johnson's dependence on Defendant for activities of daily living, healthcare related matters, financial affairs, and other general life management, the greater the inference you are permitted to make that Defendant was in a relationship of trust and confidence with respect to Oldman Johnson, thereby making Oldman Johnson particularly susceptible and vulnerable to undue influence.

(Blinn v. Carlman, 159 So. 3d 390 (Fla. 4th DCA 2015); Clark v. Grimsley, 270 So. 2d 53 (Fla. 1st DCA 1972; Elson v. Vargas, 520 So. 2d 76 (Fla. 3d DCA 1988)). • Defendant's Level of Involvement in the Actual Transactions in Question. A key factor in your undue influence analysis is Defendant's level of involvement in the actual transactions in question, if it can be determined.

For example, you should consider whether Defendant was present at the time of the transaction, made the appointment with the drafter of the Contested Instruments, paid the drafting attorneys' bills, was an active participant in the transaction, or actively solicited the transfer or transaction in question. (In re: Estate of Carpenter, 253 So. 2d 697 (Fla. 1971)). • Secrecy or Openness of the Transaction.

A factor to be considered regarding the issue of undue influence is whether the Contested Instruments and the subject gifts and transfers of assets were done in secrecy and with lack of transparency by Defendant, as that would make them more suspect than an open transaction. (In re: Estate of Carpenter, 253 So. 2d 697 (Fla. 1971); Paananen v. Kruse, 581 So.

2d 186 (Fla. 2d DCA 1991); In re: Estate of Burton, 45 So. 2d 873 (Fla. 1950)). • A Dramatic Change from Former Testamentary Intentions set forth in Oldman Johnson's Prior Estate Plan. You should give greater scrutiny to a transfer or document if you find it disrupts a longstanding estate plan. (In re: Donnelley's Estate ("It is proper, on this issue, to consider... the reasonableness or unreasonableness of the Will."); Newman v. Smith, 82 So.

236 (Fla. 1919); In re: Estate of Burton, 45 So. 2d 873 (Fla. 1950); Blinn v. Carlman, 159 So. 3d 390 (Fla. 4th DCA 2015); Watts v. Newport, 151 Fla. 209 (Fla. 1942)). • Physical Health and Mental Acuity of Oldman Johnson at the Time of the Transactions.

In the case of a person with diminished mental acuity (though competent), a mere suggestion by a dominant party may be sufficient to show active procurement. You must examine Oldman Johnson's medical history to determine mental acuity even though an attorney has testified that the transaction was knowing. (Peacock v. DuBois, 105 So. 2d 321 (Fla. 1925); In re: Estate of Reid, 138 So.

2d 342 (Fla. 3d DCA 1962); Gardiner v. Goertner, 149 So. 186, 189 (Fla. 1932) ("What degree of influence will vitiate a Will [or Trust] depends much upon the bodily and mental vigor of the testator, for that which would overwhelm a mind weakened by sickness, dissipation, or age might prove no influence at all to one of strong mind in the vigor of life.") The mental inequality between testator and undue influencer is a factor which should be considered, as supporting the undue influence claim.

(Cripe v. Atlantic First Nat'l Bank of Daytona Beach, 422 So. 2d 820 (Fla. 1982); Hack v. Estate of Helling, 811 So. 2d 822 (Fla. 5th DCA 2002); Blinn v. Carlman, 159 So. 3d 390 (Fla. 4th DCA 2015); In re: Auerbach's Estate, 41 So. 2d 659 (Fla. 1949); In re: Estate of Perez, 470 So. 2d 48 (Fla. 3d DCA 1985)). • Disparaging Family Members/Poisoning the Mind of the Decedent).

An important factor for you to consider in determining whether Defendant exerted undue influence over Oldman Johnson is whether Defendant took steps to disparage Plaintiffs and/or their family members to Oldman Johnson through false, derogatory, and/or negative remarks in order to poison Oldman Johnson's mind against her niece and nephew. (In re: Ates' Estate, 60 So.

2d 275 (Fla. 1953) ("Some of the essential steps in asserting undue influence upon a person against those for whom he has love and in whom he has confidence is for some other person "to keep those for whom the person to be influenced has love for and confidence in away from the

person to be influenced” and “to tear down this love and confidence by insinuations and accusations.”); *Newman v. Smith*, 82 So.

2d 236 (Fla. 1919); *In re: Estate of Winslow*, 147 So. 2d 613 (Fla. 2d DCA 1962); *In re: Estate of Lamberson*, 407 So. 2d 358 (Fla. 5th DCA 1981); *In re: Auerbach’s Estate*, 41 So. 2d 659 (Fla. 1949). • Other Financial Transactions Benefitting Alleged Undue Influencer (gifts, bank account beneficiary designations, etc.) in Proximity in Time to New Will or Trust.

If there were other financial transactions benefitting Defendant in proximity in time to the Contested Instruments, then these could give rise to a greater likelihood that Defendant exerted undue influence over Oldman Johnson. (*Blinn v. Carlman*, 159 So. 3d 390 (Fla. 4th DCA 2015)). • Urgency Shown by Alleged Undue Influencer. If there was an urgency shown by Defendant in completion of the Contested Instruments, then there is a greater likelihood that Defendant exerted undue influence over Oldman Johnson.

(*In re: Estate of Carpenter*, 253 So. 2d 697 (Fla. 1971)). • Alleged Undue Influencer Has Possession of a Copy of the Documents. If you find that Defendant was in possession of drafts or copies of the Contested Instruments, then there is a greater likelihood that Defendant exerted undue influence over Oldman Johnson. (*In re: Estate of Carpenter*, 253 So. 2d 697 (Fla.

1971)). • Alleged Undue Influencer Makes the Appointment(s) With the Scrivener. If Defendant made or arranged for the appointment(s) with Oldman Johnson and the drafting attorney, then there may be a greater likelihood that Defendant exerted undue influence over Oldman Johnson. (*In re: Estate of Carpenter*, 253 So. 2d 697 (Fla. 1971)). • Document Executed Under Suspicious Circumstances.

You should consider whether the Contested Instruments were made and executed under suspicious circumstances, as that factor will give to a greater likelihood that Defendant wrongfully procured the Contested Instruments through her exercise of undue influence over Oldman Johnson. (*Blinn v. Carlman*, 159 So. 3d 390 (Fla. 4th DCA 2015)). • Alleged Undue Influencer Was Caring for Settlor During Final Months of Settlor’s Life.

You should consider whether Defendant was being paid to provide caregiving services to Oldman Johnson at the time the Contested Instruments were prepared and executed. If Defendant was caring for Oldman Johnson during the final months of Oldman Johnson’s life, then there is a greater likelihood that the Contested Instruments are the result of Defendant’s exercise of undue influence over Oldman Johnson.

(*Elson v. Vargas*, 520 So. 2d 76 (Fla. 3d DCA 1988)). For undue influence claims, it is assumed that Decedent, Oldman Johnson had testamentary capacity, but that his mind was so weak when compared to the alleged undue influencer, that the validity of the challenged actions is in question.

The inequality of the mental capacity and strength between the Decedent, and the party with the confidential relationship, the Defendant, is a factor in determining whether there was active procurement of a document, or other transfers of property, as an element of undue influence. Oldman Johnson's failed mental capacity, even if arguably insufficient to show lack of testamentary capacity, is a factor which should be considered as supporting undue influence.

The amount of undue influence need not be great where the testator is weak, and her intellect is clouded. Count II - Tortious Interference with an Expectancy For the third claim for tortious interference with an expectancy, you must also find that Plaintiff proved: 1. the existence of an expectancy 2. intentional interference with that expectancy through undue influence by Defendant 3. the undue influence directly caused the destruction of the expectancy; and 4. damages Plaintiff has the burden to prove the existence of an expectation, with proof amounting to a reasonable degree of certainty, that OLDMAN JOHNSON, had a formed, fixed intention to bequest his assets equally to Plaintiffs and Defendant, but for the intentional interference by Defendant, that the bequest or gift would have been in effect at the time of his death.

The expectancy that must be proven is the expectancy of the Decedent that Plaintiffs receive the assets upon his death, not Plaintiffs' expectation of receiving the asset. Plaintiffs must prove Defendant intended to interfere with an inheritance and acted on that intention.

The interference must be intentional. Interference with an inheritance is a cause of loss if it directly and in natural and continuous sequence produces or contributes substantially to producing such loss, so that it can reasonably be said that, but for the interference with an inheritance, the loss would not have occurred.

The interference with expectancy may be accomplished through fraud, duress, undue influence or other independent tortious conduct. Plaintiff must show with a reasonable degree of certainty that, but for the tortious interference by Defendant, the inheritance or gift would have been received. If your verdict is for Defendant, you will not consider the matter of damages.

But if the greater weight of the evidence supports Plaintiff's claim, you should determine and write on the verdict form, in dollars, the total amount of damage which the greater weight of the evidence shows will fairly and adequately compensate Plaintiff for her loss.