

DISTRICT COURT OF APPEAL OF FLORIDA

Sturm v. Gibson

185 So. 2d 732 (Fla. Dist. Ct. App. 1966) · Decided April 29, 1966

SUMMARY

The Florida District Court of Appeal reviewed an order denying revocation of probate of Della Swan’s will. The court held that although a confidential relationship existed between the beneficiary and the testatrix, the record did not show that the beneficiary participated in procuring execution of the will or otherwise exerted undue influence. The probate court’s order was affirmed.

CASE DETAILS

COURT	District Court of Appeal of Florida
WRITING FOR THE COURT	Liles, Acting Chief Judge; Liles; Hobson; Overton, Associate Judge; Ben F., Associate Judge
JURISDICTION	Florida
DECIDED	April 29, 1966
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from an order of the Pasco County judge denying a petition to revoke probate of Della Swan's will.
STANDARD OF REVIEW	The probate court's factual findings are entitled to the same weight as those of any other trier of fact and will not be disturbed absent a palpable misconception of fact or manifest misapprehension or misapplication of law.
PRECEDENTIAL VALUE	Published Florida District Court of Appeal opinion
PARTIES	Clark Sturm v. Wayne Gibson

TOPICS

- undue influence
- will contests
- probate
- estate litigation
- appellate procedure

PRACTICE AREAS

- Probate
- Wills and estates
- Estate litigation
- Appellate procedure

QUESTIONS PRESENTED

1. Whether the evidence established that Wayne Gibson exercised undue influence sufficient to revoke probate of Della Swan's will.
2. Whether the county judge's factual findings and treatment of the evidence warranted appellate disturbance.

HOLDINGS

1. The will was not shown to have been procured through undue influence. Although Gibson had a confidential relationship with the testatrix, the record did not show that he participated in procuring execution of the will.
2. The probate court's decision would not be disturbed absent a palpable misconception of fact or manifest misapprehension or misapplication of law.

KEY QUOTATIONS

“over-persuasion, duress, force, coercion, or artful or fraudulent contrivances to such a degree that there is destruction of the free agency and will power of the one making the will.” (732)

“He was the trier of the facts and his decision will be given the same weight as any other trier of fact and unless there is a “palpable misconception of fact or manifest misapprehension or misapplication of law” his decision will not be disturbed.” (733)

FACTUAL BACKGROUND

Della Swan, a Florida resident, executed a will naming Wayne Gibson executor and devising to him a ranch in Pasco County. Gibson had been Swan's ranch foreman and had lived in the same dwelling with her for some time. Clark Sturm, who was named a residuary legatee and received a \$5,000 cash legacy, challenged probate on the ground that Gibson unduly influenced Swan. Gibson drove Swan to the attorney's office, but was not present when the will was executed and did not know its contents until after Swan's death.

PROCEDURAL HISTORY

Clark Sturm, an heir and residuary legatee, petitioned to revoke probate of Della Swan's will, principally alleging that Wayne Gibson exercised undue influence over the testatrix. After taking testimony, the probate court denied revocation. The District Court of Appeal affirmed.

DISPOSITION

affirmed

CASES CITED

- Sturm v. Gibson, 159 So. 2d 917 (Fla. Dist. Ct. App. 1964)
- Heasley v. Evans, Heasley v. Evans, 104 So. 2d 854 (Fla. Dist. Ct. App. 1958)

OPINION

LILES, J.

LILES, Acting Chief Judge. This is an appeal from an order of the county judge of Pasco County denying the revocation of probate of the will of Della Swan, deceased. This cause was previously before this court where we approved a compromise and settlement agreement between the executor of the Estate of Della Swan and certain heirs of the decedent's husband, Theodore *733Swan.

Sturm v. Gibson, 159 So.2d 917 (D.C.A.Fla.1964). Della Swan was a resident of Florida at the time of her death and executed a will wherein she named Wayne Gibson executor of the estate and the beneficiary of a ranch owned by her in Pasco County, Florida. Wayne Gibson had been her foreman on a ranch previously owned by Mrs. Swan in New Mexico and had occupied the same dwelling house of the deceased for some time prior to her death.

The will also named the contestant heir, Clark Sturm, as a residuary legatee and left him the sum of \$5,000.00 as a cash legacy. During the pendency of the probate, Clark Sturm filed his petition seeking revocation of probate, and after taking testimony in the cause the court entered its order refusing to revoke the probate of the will.

The main thrust of contestant's argument for revocation is undue influence exerted upon the testatrix by Wayne Gibson and is directed to the devise of the ranch located in Pasco County, Florida, to Wayne Gibson. We are familiar with the rule laid down in *Heasley v. Evans*, 104 So.2d 854 (D.C.A. Fla. 1958) which enunciates the rule that in order to invalidate a will because of undue influence, such influence must amount to: " * * * over-persuasion, duress, force, coercion, or artful or fraudulent contrivances to such a degree that there is destruction of the free agency and will power of the one making the will.

Mere affection, kindness, or attachment of one person for another may not of itself constitute undue influence. * * * " We are likewise familiar with the rule that mere confidential relationship without more does not amount to undue influence, and also the rule that one who occupies a confidential relationship with a testator and was active in the procurement of a will creates a presumption of fact that the will is the result of undue influence, and the burden will be upon the beneficiary to show that such influence was not exercised.

We have meticulously searched the record and find that there was certainly a confidential relationship between Wayne Gibson and the testatrix. However, we fail to find that Wayne Gibson participated in the procurement of the execution of the will. His only act was to drive the testatrix to the lawyer's office, and according to the testimony of the lawyer who drew the will, Wayne Gibson was not present when the will was executed nor did he know its contents until the death of Mrs. Swan.

There was some testimony that Wayne Gibson recommended the attorney who drew the will but as is the county judge's prerogative, he chose either to disregard this testimony or find that this was not sufficient to show that Wayne Gibson procured the execution of the will.

We are in accord with this finding. The fact that the county judge may or may not have made a statement that he did not consider some of the evidence in making his decision is immaterial. He was the trier of the facts and his decision will be given the same weight as any other trier of fact and unless there is a "palpable misconception of fact or manifest misapprehension or misapplication of law" his decision will not be disturbed.

For the foregoing reasons the probate court's order denying revocation of probation is hereby affirmed. HOBSON, J., and OVERTON, BEN F., Associate Judge, concur.