

APPEALS COURT OF MASSACHUSETTS

Maimonides School & others v. Harris Coles & others

Maimonides School v. Coles, 881 N.E.2d 778, 71 Mass. App. Ct. 240 (Mass. App. 2008) · No. No. 06-P-1304

SUMMARY

Affirming summary judgment, the court held that the testamentary capacity standard—not the higher contractual capacity standard—applies to a pour-over will and revocable inter vivos trust that form an integrated testamentary plan. The contestants failed to raise a triable issue on mental capacity because their expert opinions were not based on contemporaneous observations and were contradicted by detailed evidence of the testator’s lucidity. The undue influence claim also failed because the disposition to a niece and her husband who provided end-of-life care was not unnatural, and there was no evidence of improper means.

CASE DETAILS

COURT	Appeals Court of Massachusetts
WRITING FOR THE COURT	SIKORA, J.; GELINAS, J.; COHEN, J.
JURISDICTION	Massachusetts
DOCKET	No. 06-P-1304
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from summary judgment entered by the Probate and Family Court in favor of defendants (proponents of trust amendment) in an action for declaratory judgment invalidating a trust amendment.
STANDARD OF REVIEW	De novo review of summary judgment; evidence examined in light most favorable to nonmoving party; summary judgment upheld if no genuine issue of material fact and correct as a matter of law.
PRECEDENTIAL VALUE	Published
PARTIES	Maimonides School, The Carroll Center for the Blind, The Perkins School for the Blind, Beth Israel Deaconess Medical Center, Inc. v. Harris Coles, as trustee of the Leonard R. Brener Revocable Trust and executor of the estate of Leonard R. Brener, Herbert Rosen, Lois Rosen, and others

TOPICS

[summary judgment](#)[trusts](#)[undue influence](#)[will contests](#)[probate procedure](#)

PRACTICE AREAS

Trusts and Estates

Wills

Probate

QUESTIONS PRESENTED

1. Whether the standard for mental capacity to make a will (testamentary capacity) or to contract applies to an amendment to a revocable inter vivos trust that is part of an integrated testamentary scheme with a pour-over will.
2. Whether the contestants' evidence raised a genuine issue of material fact regarding Brener's testamentary capacity at the time he executed the second trust amendment.
3. Whether the contestants' evidence raised a genuine issue of material fact regarding undue influence by the beneficiaries (the Rosens) or fiduciaries (Coles and Attorney Shaw).
4. Whether the motion judge erred in denying the contestants' cross-motion for summary judgment without a hearing.

HOLDINGS

1. The testamentary capacity standard applies because the pour-over will and trust are integrally related components of a single testamentary scheme; applying different standards would risk inconsistent results.
2. The evidence did not create a triable issue; the proponents' detailed and uncontested evidence of Brener's sound mind and deliberative actions entitled them to summary judgment, and the contestants' medical expert opinions were insufficient to defeat the presumption of capacity.
3. The evidence did not create a triable issue; the contestants failed to establish that the disposition was unnatural or that improper means were used, and mere suspicion is insufficient.
4. No error; another hearing would have been futile and no prejudice resulted.

KEY QUOTATIONS

"Mere suspicion, surmise or conjecture are not enough to warrant a finding of undue influence. There must be a solid foundation of established facts upon which to rest an inference of its existence." (at 256)

"The proponent has the burden of proof on the issue of testamentary capacity." (at 252)

"Care does not equate with control.... There is no allegation that [the proponent] limited access by family, and friends ... to the testatrix." (at 256-57)

FACTUAL BACKGROUND

Leonard R. Brener, an elderly stockbroker with an \$8 million estate, died of esophageal cancer in December 2001. In 1997, he executed a pour-over will and a revocable inter vivos trust, initially leaving his residual estate to charity. In March 2001, after his diagnosis, he amended the trust to name four specific charities (including Maimonides School) as residual beneficiaries. In October 2001, about five weeks before his death, he executed a second amendment that drastically altered the disposition, leaving the entire residue to his niece Lois Rosen and

her husband Herbert, who had been his close caretakers during his illness. The four charities sued to invalidate the second amendment, alleging lack of mental capacity and undue influence.

PROCEDURAL HISTORY

The four charitable institutions (contestants) filed an action in the Probate and Family Court seeking a declaratory judgment that the second amendment to Leonard R. Brener's revocable trust was invalid due to lack of mental capacity and undue influence. After discovery, both sides moved for summary judgment. The motion judge allowed the proponents' motion and denied the contestants' cross-motion, entering a judgment that validated the amendment. The contestants appealed.

DISPOSITION

affirmed

CASES CITED

- O'Rourke v. Hunter, 446 Mass. 814, 848 N.E.2d 382 (2006)
- Clymer v. Mayo, 393 Mass. 754, 473 N.E.2d 1084 (1985)
- Palmer v. Palmer, 23 Mass. App. Ct. 245, 500 N.E.2d 1354 (1986)
- Goddard v. Dupree, 322 Mass. 247, 76 N.E.2d 643 (1948)
- Krasner v. Berk, 366 Mass. 464, 319 N.E.2d 897 (1974)
- Tetrault v. Mahoney, Hawkes & Goldings, 425 Mass. 456, 681 N.E.2d 1189 (1997)
- Cleary v. Cleary, 427 Mass. 286, 692 N.E.2d 955 (1998)
- Brogan v. Brogan, 59 Mass. App. Ct. 398, 796 N.E.2d 850 (2003)
- Union Trust Co. of Springfield v. Kittredge, 298 Mass. 515, 11 N.E.2d 435 (1937)
- Santos v. Chrysler Corp., 430 Mass. 198, 715 N.E.2d 47 (1999)