

**COURT OF COMMON PLEAS OF
PHILADELPHIA COUNTY, PENNSYLVANIA
ORPHANS' COURT DIVISION**

**No. 1326 AP of 2015
Control No. 153300**

Estate of CAROLE LOURENTE, Appeal From Register

OPINION SUR DECREE

OVERTON, J.

Before this Court is the appeal of Bridget Briscella challenging the validity of the Will dated December 10, 2014 and probated by the Register of Wills on February 24, 2015. The main issue raised by the contestants was whether the Will should be declared invalid due to the undue influence of Executor, William Bradley, and the lack of testamentary capacity of Carole Lourente at the time of her execution of the Will. For the reasons set forth below, the contestant has failed to meet her burden of proof and her appeal is denied.

Facts and Procedural History

Carole Lourente died testate and unmarried on January 22, 2015. She was survived by her three children James Lourente, Edward Lourente, and Bridgett Lourente.

On December 10, 2014, approximately six weeks before her passing, Carole Lourente signed a Will leaving \$1.00 to each of her children and naming William Bradley as Executor. (Exhibit P-1). The Will also stated that William Bradley was to receive the entire residue of the Estate. *Id.* at ITEM IX. On February 24, 2015, the Register of Wills admitted Decedent's Will dated December 10, 2014 and granted Letters Testamentary to William Bradley. On October 1, 2015, Bridget Briscella filed an appeal of the Register's decision to probate the Will.



In challenging the Register's decree, Bridget Briscella asserts William Bradley coerced her mother to change her Will one month prior to her death. (Petition for Citation at ¶ 9). Furthermore, she asserts that Decedent's children did not know William Bradley and that he fraudulently obtained a Will. *Id.* at ¶ 5. William Bradley filed an answer denying these allegations. (Answer to Petition for Citation). The Court held a hearing and received testimony on the appeal on October 11, 2016.

At the hearing, contestant Bridget Briscella presented two witnesses. The contestant's first witness was Decedent's granddaughter, Britney Briscella. Britney Briscella testified that during the period from October 2014 to January 2015, she visited her grandmother for approximately 6 to 9 hours about once a week to help Decedent with her daily routine. She stated that her grandmother often repeated thoughts and was confused about names, days, and dates. Britney Briscella testified that her grandmother took a lot of medication and kept a notebook wherein she wrote about what she did on a particular day. She also stated that Decedent sometimes got confused about whether she took her medication for the day. She admitted that Decedent accused her of stealing, but added that she never stole anything from Decedent.

Bridget Briscella then testified. She stated that she had not seen the Will before her mother's death and that her mother never told her anything about the Will. She testified that when her mother's home was being cleaned out, no Will was located in the home. She also testified that her mother routinely used the two spellings "Lourente" and "Laurente"¹ for her last name and that Decedent had two social security numbers. She stated that she and her brothers

¹ The Court notes that on the signature page of the Will, Decedent signed her last name as "Laurente" whereas the typewritten last name under the signature line states "Lourente."

used the "Laurenté" spelling. She admitted that over the past few years, she and her mother rarely spoke and only occasionally spoke on the phone. No medical testimony was presented.

After the contestant rested her case Respondent presented two witnesses. Dawn Mann testified that she knew Decedent for over thirty years and that Decedent served as a grandmother figure. She stated that she saw Decedent about five to six times a week and would help clean, cook meals and help Decedent with bathing. She added that she made Decedent's doctor's appointments and hairdresser's appointments. She admitted that she was the beneficiary on a \$2,000.00 life insurance policy. She stated that Decedent spent time with her friends including William Bradley. She said that Decedent constantly talked on the phone and went out with Mr. Bradley and acted like "a little girl in love." She further testified that Bridget Briscella had not seen Decedent in about fifteen years. She stated that Decedent would call Bridget and leave messages but Bridget would not call back.

Ms. Mann stated that on the day of the execution of the Will, Decedent did not seem confused. She testified that Decedent called her in the morning on December 10, 2014 and asked her to be there at 9:00 am. She stated that William Bradley arrived at around 10:00 am and drove the car that day. She also stated that Decedent had an agenda that was written in a book that she carried.

In recounting the day's events, Ms. Mann recalled that they had breakfast at Pete's Clown House, went to CVS to get more holiday cards, went to the senior center on Broad Street for about twenty minutes and then went downtown to sign the Will. She stated that when they arrived to the office, Decedent told her where to sign on the document. She added that she witnessed Decedent sign the Will. She also stated that Decedent instructed William Bradley to write in her children's names for her. She testified that Decedent was going to have an

outpatient procedure to fix a valve on December 26, 2014 and that she wanted to get her affairs in order. She recalled that after they left the office, they went to Kelly Drive to Boat House Row.

William Bradley then testified. He stated that he and Decedent were “somewhat romantic” and were very close. He added that Decedent always talked about how Bridget never returned her calls or gave her Christmas cards and that it hurt Decedent’s feelings when Bridget hung up on her. On December 10, 2014, he testified that Decedent called him and asked him to help her with running some errands. He stated that he drove Decedent’s car that day. He testified that Decedent was well made-up and dressed casually. He added that she was not confused.

In recounting the day’s events, Mr. Bradley stated that he took Decedent to her case worker on Broad Street. He stated that Decedent then instructed him to go to 1600 Walnut Street. He parked the car about a block away. While they were at the 1600 Walnut Street location, he testified that Decedent told him to write his name in as Executor on the Will and write in that \$1.00 was to go to each of her children. He stated that a notary was present. He added that the notary kept a copy and gave the original and one copy back to Decedent. After they left the office on Walnut Street, he, Dawn Mann, and Decedent went to Kelly Drive. He stated that Decedent reiterated that she did not want her children to have anything because they did not do much for her in the last 20 years. He admitted that he is the beneficiary of a \$500.00 life insurance policy. He also admitted that the relationship with himself and Decedent was romantic on both sides.

Finally, Michael Bradley, the son of William Bradley, testified. He stated that he knew Decedent his whole life and that his father and Decedent spent a lot of time together. He added

that he saw Decedent around October 2014 when he was on fall break from college and that she did not look confused or disheveled. He testified that Decedent was strong-willed. He also stated that he saw Decedent in the hospital in January 2015 and that she was not confused and was playing Rummy with his father.

Discussion

A. Contestant Failed to Establish Undue Influence

Once the proponent of a will proves that the formalities of execution have been followed, a presumption of validity arises when the will is probated. *Burns v Kabboul*, 595 A.2d 1153,1162 (Pa. Super. 1991). The burden shifts to the person contesting the will to prove that the testator lacked mental capacity or that the will was obtained by undue influence. *In re Estate of Nalaschi*, 90 A.3d 8, 11 (Pa. Super. 2014); *See also In re Bosley*, 26 A.3d 1104, 1107 (Pa. Super. 2011). In order to constitute undue influence sufficient to void a will, there must be “imprisonment of the body or mind...fraud, or threats, or misrepresentations, or circumvention, or inordinate flattery or physical or moral coercion, to such a degree as to prejudice the mind of the [testatrix], to destroy [her] free agency and to operate as a present restraint upon [her] in the making of a will.” *In re Ziel's Estate*, 359 A.2d 728, 733 (Pa. 1976) (internal citations omitted).

A contestant who claims that there has been undue influence has the burden of proving, by clear and convincing evidence, that (1) the testatrix was of weakened intellect; and that (2) a person in a confidential relationship with the testatrix (3) received a substantial benefit under the will. *In re Clark's Estate*, 334 A.2d 628, 632 (Pa. 1975); *See also Estate of Reichel*, 400 A.2d 1268, 1273 (Pa. 1979); *Ziel*, 359 A.2d at 734; *Burns*, 595 A.2d at 1162; *In re Estate of Angier*, 552 A.2d 1121, 1123 (Pa. Super. 1989); *In re Koltowich's Estate*, 457 A.2d 1302, 1303-04 (Pa.

Super. 1983). Once the contestant's burden is met, the burden then shifts to the proponent to show the absence of undue influence. *Ziel*, 359 A.2d at 734; *Burns*, 595 A.2d at 1162.

Because undue influence has been described as “subtle, intangible, yet recognizable by human experience,” it may be proven by circumstantial evidence. *Ziel*, 359 A.2d at 734; *In re Estate of Luongo*, 823 A.2d 942, 964 (Pa. Super. 2003). However, “opportunity, suspicion and conjecture do not create or amount to proof of either a confidential relationship or undue influence and cannot carry the cause.” *Luongo*, 823 A.2d at 964; See also *In re Thompson's Estate*, 126 A.2d 740 (Pa. 1956); *In re Quein's Estate*, 62 A.2d 909 (Pa. 1949).

Weakened Intellect

The Supreme Court of Pennsylvania has cautioned that a showing of weakened intellect in the context of a claim of undue influence need not amount to testamentary incapacity. *Clark*, 334 A.2d at 634; *Bosley*, 26 A.3d at 1112. When proving a testatrix was subjected to undue influence, her mental condition at the moment she signs a will is not as significant as it is when reflecting upon testamentary capacity. *Owens v. Mazzei*, 847 A.2d 700, 707 (Pa. Super. 2004). Consequently, weakened intellect will generally be proven through evidence more remote in time from the actual date of the will's execution. *Id.* Additionally, “more credence and weight may be given to the contestant's remote medical testimony.” *Clark*, 334 A.2d at 634.

While Pennsylvania courts have not established a bright-line test to establish the existence of weakened intellect to a legal certainty, they have recognized that it is typically accompanied by “persistent confusion, forgetfulness and disorientation.” *Nalaschi*, 90 A.3d at 14; See *In re Estate of Fritts*, 906 A.2d 601, 607 (Pa. Super. 2006). For example, weakened intellect was found when competent evidence showed that the decedent had been “out of touch”

with reality and had been found living “in filth.” *Estate of Lakatosh*, 656 A.2d 1378, 1385 (Pa. Super. 1995).

In the instant case, the contestant did not prove that Carole Lourente suffered from weakened intellect. In fact, of the two witnesses presented in the contestant’s case-in-chief, only Britney Briscella stated that her grandmother was confused about names and dates and sometimes forgot to take her medication. There was no medical testimony presented with regard to Decedent’s mental state at the time of the execution of the Will, or even any evidence presented that Decedent was confused at all on December 10, 2014.

In addition, Dawn Mann testified that on December 10, 2014, Decedent did not appear confused and that Decedent even organized the day’s events. Ms. Mann also reiterated that Decedent stated she was getting her affairs in order. William Bradley also testified that Decedent was not confused on December 10, 2014. He further testified that Decedent clearly indicated she did not want her children to have more than \$1.00 apiece because they had not done much for her in the past twenty years. There was no indication in the record that Carole Lourente experienced persistent confusion or that she was “out of touch” with reality. Therefore, because of the lack of clear and convincing evidence, the Court does not find that Carole Lourente suffered from weakened intellect.

Confidential Relationship

A confidential relationship exists whenever “circumstances make it certain the parties do not deal on equal terms, but, on the one side there is an overmastering influence, or, on the other, weakness, dependence, or trust, justifiably reposed [for] in both [situations] an unfair advantage is possible.” *Estate of Ziel*, 467 Pa. at 542, 359 A.2d at 734; *Owens*, 847 A.2d at 709.

Here, William Bradley stood in a confidential relationship with Decedent. William Bradley admits that he was in a “somewhat romantic,” very close relationship with Decedent, and that they were companions. The record also indicates that he was named as the Executor to the Will. (Exhibit P-1 at ITEM IX). Finally, Dawn Mann testified that Decedent spent a lot of time with Mr. Bradley and that Decedent always was meticulous about her appearance and wanted to look nice for Mr. Bradley. Therefore, the Court finds ample evidence to support a confidential relationship between William Bradley and Carole Lourente.

Substantial Benefit

“Substantial benefit” has not been specifically defined by Pennsylvania courts, and whether one receives a substantial benefit is determined on a case-by-case basis. *In re Estate of LeVin*, 419 Pa.Super. 89, 615 A.2d 38, 41–42 (1992). Cases that have found a substantial benefit include factual circumstances where the confidant had unfettered control, extensive powers, absolute discretion, or extensive decision-making powers over the testator's estate. *See In re Estate of LeVin*, 615 A.2d at 42-43 (concluding that substantial benefit accrued to executor/trustee who had authority to dispose of the remainder of the testator's \$1.5 million estate as the executor/trustee saw fit and to whomever the executor/trustee chose).

In the instant case, it is clear that William Bradley received a substantial benefit, as he received the entire residue of the Estate absent the three \$1.00 bequests made to James Lourente, Edward Lourente, and Bridgett Lourente. (Exhibit P-1 at ITEM IX). Therefore, the Court finds that the contestant demonstrated William Bradley received a substantial benefit.

Ultimately, the contestant failed to present clear and convincing evidence that Carole Lourente had a weakened intellect sufficient to void a Will or that William Bradley destroyed Decedent’s agency or controlled Decedent’s body or mind through fraud or misrepresentations.

See Ziel, 359 A.2d at 733. While the contestant did prove that there was a confidential relationship and that William Bradley received a substantial benefit, she did not prove that Carol Lourente suffered from a weakened intellect. Therefore, because the contestant failed to show Decedent's weakened intellect by clear and convincing evidence, this Court finds that the Will was not invalid as a result of undue influence.

B. Contestant Failed to Establish Lack of Testamentary Capacity

Testamentary capacity exists when the testator has intelligent knowledge of the natural objects of her bounty, the general composition of the estate, and what she wants done with it, even if memory is impaired by disease. *Reichel*, 400 A.2d at 1270; *Nalaschi*, 90 A.3d at 12-13. As previously stated, when analyzing lack of testamentary capacity, the Court must look to the testator's capacity at the time she signed the testamentary document. *Owens*, 847 A.2d at 707.

Again, in the instant case, there was no testimony presented that indicated that Carole Lourente was at all confused on December 10, 2014 when she executed the Will. Both Dawn Mann and William Bradley stated that she was not confused on that day and that she clearly planned the day's itinerary. William Bradley also indicated that she understood that she gave a \$1.00 bequest to each of her three children and gave her reason for doing so. Therefore, the Court did not find substantial evidence to support a finding of a lack of testamentary capacity.

Conclusion

Based on the record, the contestant failed to meet her burden of clear and convincing evidence that Decedent's Will was the result of undue influence and/or lack of testamentary capacity. The appeal of the decision of the Register of Wills to probate the December 10, 2014 Will is hereby denied as set forth in a separately issued Decree which will bear even date with this Opinion.

BY THE COURT:

Date: 10/19/16



OVERTON, J.

Mario DiClerico, Esquire
Joseph R. Kelly, Esquire
Joseph P. McGowan, Esquire