IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

IN RE:	:	No: 41-00-0226
		:
ESTATE OF LAWRENCE A. EATON,		:
Deceased		:

Opinion issued March 9, 2001

OPINION and ORDER

This is a will contest filed by a disinherited illegitimate daughter, Beverly Singer. Ms. Singer has asked the court declare invalid the will of her father, Lawrence A. Eaton, which left his estate to his niece, Judith Noll Gaston, and to his brother-in-law, Laverne Dauber. She claims there are two problems with the will: (1) Mr. Eaton lacked testamentary capacity when he executed it, and (2) Mr. Dauber and Mrs. Gaston used undue influence to procure the execution of the will. Ms. Singer also asks the court to invalidate the Power of Attorney granted to Mr. Dauber and Mrs. Gaston for lack of capacity to execute the document, and to impose a constructive trust upon the assets they transferred using the Power of Attorney.

Will contests are highly difficult to win, and for good reason. The right to dispose of one's assets the way one sees fit is highly valued in our society. This is a radical change from the system in Merry Olde England, where the law imposed severe restraints on the manner in which one could dispose of property. This system, which upheld the landed aristocracy, became increasingly repulsive as history progressed. In order to protect the right to freely dispose of one's assets after death, the law assumes that a will expresses a person's wishes, and anyone trying to invalidate the will faces difficult hurdles.

Since Mr. Eaton is now deceased, we cannot question him about the

circumstances surrounding the execution of his will. We will never know why Mr. Eaton left his assets to Mr. Dauber and Mrs. Gaston, rather than Ms. Singer. We can only say that the evidence presented to us does not constitute sufficient cause to invalidate the will or the Power of Attorney. We are convinced that Mr. Eaton did not lack testamentary capacity, and that the conduct of Mr. Dauber and Mrs. Gaston did not amount to undue influence.

That is not to say that Mrs. Gaston and Mr. Dauber are entirely beyond reproach in their behavior. On the contrary, we find the conduct of Mrs. Gaston to be somewhat shady, as will be explained. However, the conduct does not by any means rise to the level of undue influence. Therefore, we must leave the matter to her own conscience.

Findings of Fact

Mr. Eaton, the long-time owner of a bar located at High Street and Wildwood Boulevard, was a stubborn fellow, a drinker, and a gambler, who loved two things above all else: his wife Helen, and running the bar. He had few blood relatives, and none living close except his illegitimate daughter, Beverly Singer, who was born on January 21, 1935.

Despite the stigma illegitimacy carried in those days, Mr. Eaton was not ashamed of his daughter–in fact, he was proud of her when she came to visit him at the bar, showing her off to his customers. Ms. Singer visited Mr. Eaton every week or two when she was small, usually at his bar, for her relationship with Mrs. Eaton was somewhat strained and Mrs. Eaton was not often present at the bar. Ms. Singer also occasionally

visited her father at Eaton's Motel, in Trout Run, where he and his wife lived. In addition, Mr. Eaton also sometimes picked her up at her home and took her places.

Mr. Eaton occasionally gave Ms. Singer cash from his pocket and assorted gifts such as clothes and tickets to shows. When she was in high school, Ms. Singer saw her father every couple of weeks. As an adult, she visited him less frequently, but continued to see him about two to three times a month, often bringing her daughter and later her granddaughter along. After 1990, when the bar was sold, she saw him less frequently than ever. Despite his open relationship with his daughter at his bar, Mr. Eaton apparently never mentioned Ms. Singer's existence to his wife's relatives, and in fact her closest relations did not know about her until after Mrs. Eaton's death.

Ms. Singer was not the only apple of Mr. Eaton's eye. He also took a great liking to his niece Judy (Noll) Gaston, the daughter of his wife's sister Grace. Mrs. Gaston enjoyed a very close relationship with Mr. Eaton from her birth throughout the rest of Mr. Eaton's life. She grew up in a home located very near to the bar, and frequently visited Mr. Eaton there, although he usually confined her to the kitchen if there were patrons present, giving her a coke or another treat. He did, however, occasionally permit her to sell Girl Scout cookies within the bar. He also took her to the Grower's Market on many Saturdays, where he purchased items of food for his bar and restaurant. Mrs. Gaston remained in close contact with Mr. and Mrs. Eaton throughout their entire lives.

Mr. Dauber was Mr. Eaton's brother-in-law, who knew Mr. Eaton for fifty years. He was a daily patron at the bar, as well as a frequent visitor at the Eaton's home. He also was usually the person Mrs. Eaton would call upon to retrieve Mr. Eaton after a

drinking binge.

As Mr. and Mrs. Eaton grew older, they found it increasingly difficult to manage the bar and the motel. The bar was sold on 25 October 1991. The motel was abandoned after the flood in January 1996, when Mr. and Mrs. Eaton lost not only their home, but practically all of their possessions. In late 1998, Mrs. Eaton was diagnosed with cancer, and soon thereafter Mr. Eaton was placed in a personal care home because Mrs. Eaton was no longer able to care for him and he was unable to take care of himself.

Ms. Singer lost contact with her father after the January 1996 flood. After learning his new phone number by calling information, she called Mr. Eaton's residence several times between 1996 and 1999. She always talked with Mrs. Eaton, as Mr. Eaton's hearing had deteriorated, which it made it difficult to communicate with him by telephone. Mrs. Eaton never invited Ms. Singer to visit, but during their phone conversations she informed her of the problems the couple was experiencing, such as her bladder cancer and Mr. Eaton's various physical problems due to old age. Mrs. Eaton also informed her when Mr. Eaton went to live at the Garden View personal care home, and Ms. Singer went to visit him there for the first time on 2 October 1999. Mr. Eaton recognized her and was happy to see her, although he did not recognize Ms. Singer's daughter or granddaughter. After that, Ms. Singer visited him about every week until his death, sometimes bringing her daughter or granddaughter along, and bringing him candy and other snacks.

During his time at Garden View, Mr. Eaton grew increasingly laconic. Many times

he appeared to engage in "selective hearing," deliberately ignoring people who spoke to him when he did not care to hear what they had to say. Since he was no longer able to consume alcohol, he had acquired a great appetite for junk food and sweets–especially ice cream and candy.[1]

Mr. Eaton and Mrs. Gaston remained in close contact with Mr. and Mrs. Eaton throughout the couple's difficult period. Both helped the couple get back on their feet after the 1996 flood, with Mr. Dauber assisting in the clean up and Mrs. Gaston helping them find a place to live and purchase furnishings. Both continued to be there for the couple, helping out however they could. When Mr. Eaton was living in Garden View and Mrs. Eaton in Sycamore Manor, Mr. Dauber and Mrs. Gaston visited each of them frequently, relaying messages back and forth. Mrs. Gaston took Mr. Eaton for rides in the car, past what used to be his bar and restaurant, as well as outings to McDonald's, to satisfy his hunger for fast food. They also handled the couple's finances and looked after their personal needs. And, of course, they also brought him the candy he craved.

Mr. Eaton's treating physician saw him four times between November 1999 and March 2000. She believed him to be at least moderately demented, and questioned whether he should be living in a nursing home rather than a personal care home. She was of the opinion that he suffered from multi-infart dementia, a cumulative effect of a series of small strokes, along with Parkinson's dementia.

The will at issue was not the only one Mr. Eaton had executed. On 14 February 1991, Mr. Eaton executed a will leaving everything to his wife, but if his wife should

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[1] As the obese but immortal Orson Wells remarked to Marlene Dietrich in the classic film *A Touch of Evil*, "It's either candy or the hooch!"

predecease him, then leaving the bar and restaurant to Shirley Bossinger, $500 to the American Cancer society, and the residue to various charities. He named his wife as executor, with Mr. Dauber as alternate executor.

On 23 January 1998, both Mr. and Mrs. Eaton desired to execute new wills. Mrs. Eaton's will, after certain specific bequests, one of which was $250.00 to Beverly Singer, placed the residue of her estate in a supplemental needs trust for Mr. Eaton, with any residue after his death going to charities. Mr. Eaton left everything to Mrs. Eaton, but specifically rejected the idea of naming the charities as alternate beneficiaries. Instead, he named no alternate beneficiary. Mr. Eaton also appointed his wife executor, with no alternate executor.

In late 1999, Mrs. Eaton was very ill with cancer. Upon the instruction of Mrs. Gaston, Debbie Berrigan, of the Greevy & Associates law firm, prepared a Power of Attorney for Mr. Eaton, appointing Mrs. Gaston and Mr. Dauber. On 3 December 1999, Mrs. Gaston and Mr. Dauber brought Mr. Eaton to visit Mrs. Eaton, who explained to him that she was dying and that he needed to appoint a different Power of Attorney. She suggested Mrs. Gaston and Mr. Dauber. Debbie Berrigan explained the document to him, and after a tearful scene with his wife, Mr. Eaton agreed to the appointment and signed it.

Mrs. Eaton died on 3 January 2000. Mr. Eaton was extremely sorrowful and emotionally devastated–not only because he dearly loved his wife, but also apparently because he knew he would never again be able to live in his own home. Mrs. Gaston and Mr. Dauber brought him to the viewing, at which Beverly Singer was also present. Ms.

Singer introduced herself as Mr. Eaton's daughter, to the great surprise of both of them, who did not know of her existence.

After his wife's death, Mr. Eaton became very depressed and to a great extent, lost interest in living. He spent much time in bed, and his primary desire seemed to be for certain foods, especially ice cream.

Mrs. Gaston and Mr. Dauber, in charge of Mrs. Eaton's affairs after her death, found her will, along with Mr. Eaton's. Realizing he would now die intestate, Mrs. Gaston asked Ms. Berrigan to visit Mr. Eaton and inquire whether he would like to execute a new will. She did so, explaining to him that he would now die as if he had no will, but not explaining that the money would go to his daughter. When she asked Mr. Eaton whether he would like to make out a new will, he responded affirmatively. When she asked who he would like his estate to go to, he looked at Mrs. Gaston and said, "You can have it." There is some discrepancy in the testimony as to what happened next, which is not surprising because it was some time ago, but it appears Ms. Berrigan asked Mr. Eaton whether there was anyone else he wanted in his will. At that point, Mrs. Gaston piped in, asking him whether he wanted herself and Mr. Dauber to continue to take care of him like they had been doing, to which Mr. Eaton replied that he did. Then Ms. Berrigan asked him again whether there was anyone else whom he wanted in his will, to which he replied "Shine," a nickname for Mr. Dauber. Ms. Berrigan then asked Mr. Eaton several times whether there was anyone else he wanted his money to go to. Mr. Eaton responded negatively. Ms. Berrigan then asked whether, if Mr. Dauber or Mrs. Gaston died before himself, he wanted the assets to go to their children, to which Mr. Eaton replied

affirmatively. Mrs. Gaston then said that her children didn't need anything–how about her grandchildren, to which Mr. Eaton again replied affirmatively.

Ms. Berrigan returned on 17 March 2000 with the will. Mr. Eaton was taken into his room, where Ms. Berrigan, Mrs. Gaston, and a notary congregated. Ms. Berrigan sat beside Mr. Eaton, showing him the will, which was printed in large type. She went through the will slowly and methodically, paraphrasing each paragraph and stopping to ask him whether he understood, whether he had any questions, and whether the will reflected his wishes. Mr. Eaton indicated that he understood the provisions of the will, and that it was what he wanted. He responded positively to each of her questions. She made it very clear to him that it would be no problem to change any of the provisions if he desired her to do so, but he indicated he was satisfied, and then signed the will.

Mr. Eaton died on 17 April 2000, from a urinary tract infection and pneumonia.

Conclusions of Law

1. Lawrence Eaton possessed testamentary capacity when he executed the 17 March 2000 will.
2. Lawrence Eaton possessed sufficient competency to execute the 3 December 1999 Power of Attorney.
3. Judith Gaston and Laverne Dauber did not abuse the powers granted to them in the 3 December 1999 Power of Attorney.
4. The 17 March 2000 will was not the product of undue influence.

DISCUSSION

A. Testamentary Capacity and Power of Attorney

Once a will has been probated, a contestant must prove lack of testamentary capacity by clear and convincing evidence. Estate of Pew, 440 Pa. Super. 195, 655 A.2d 521 (1994). A person possesses testamentary capacity if he knows: (1) who are the natural objects of his bounty, (2) of what his estate consists, and (3) what he desires done with his estate. In re Estate of Hastings, 387 A.2d 865, 867 (1978).

Beverly Singer has failed to prove lack of testamentary capacity because she has introduced little or no evidence that Mr. Eaton was not aware of these three things at the time he executed the will. Similarly, little evidence has been introduced to show Mr. Eaton did not understand what he was doing when he executed the Power of Attorney. Even the testimony of Dr. Erinn Wright, if fully believed, does not establish that Mr. Eaton did not possess testamentary capacity or the ability to understand the Power of Attorney he was executing. Therefore, the court granted a non-suit on those two claims. Furthermore, the evidence showed that the Power of Attorney granted Mrs. Gaston and Mr. Dauber the power to engage in estate planning, and that the transfers they made were done pursuant to sound estate planning techniques.

B. Undue Influence

Once a will has been probated, it is presumed valid and the contestant must show the following things by clear and convincing evidence.: (1) the existence of a confidential relationship, (2) the person enjoying the relationship received the bulk of the estate, and

(3) the decedent's intellect was weakened. Estate of Lakatosh, 656 A.2d 1378 (1995). Obviously, the contestant satisfied the first two prongs of the test. Therefore, only the third prong need be discussed.

The court denied the estate's motion for non-suit on the issue of undue influence because we found the evidence produced at the close of Ms. Singer's case sufficient to show weakened intellect by clear and convincing evidence.[2] In her deposition, Mr. Eaton's treating physician, Dr. Erinn Wright, stated that she firmly believed him to be moderately demented due to multi infarct disease and Parkinson's disease. While that opinion was based largely on her observations of him during his four visits with her, rather than objective testing, we concluded that the testimony was nonetheless sufficiently persuasive and certain such that the motion for non-suit must be denied. [3]

Once the contestant succeeds in carrying her burden of showing weakened intellect, the burden shifts to the proponent of the will to show lack of undue influence by clear and convincing evidence. Lakatosh, supra, at 1385. The purpose of this rule is to ensure that a person who holds a position of confidence and trust with someone of

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[2] We also rejected the estate's argument that Dr. Wright's testimony as an expert witness should not be admitted because her opinion was not expressed to a reasonable degree of medical certainty. Although Dr. Wright did not use that exact phrase, she was firm in her professional opinion that Mr. Eaton was at least moderately demented. Similarly, although the legal term "weakened intellect" was never explained to her and she never specifically stated that Mr. Eaton suffered from weakened intellect, her opinions about Mr. Eaton, if correct, would certainly compel one to reach that conclusion.

[3] For reasons beyond the understanding of this court, we were not permitted to hear the estate's evidence before determining whether Mr. Eaton suffered from a weakened intellect. Estate of Pedrick, 505 Pa. 530, 482 A.2d 215 (1984). We urge the Superior Court to revisit this rule, should it have occasion to do so, for it makes no sense for a court to be forced to make a ruling on such an important issue without first hearing all the evidence available.

weakened intellect must act with scrupulous fairness and good faith, and refrain from using the position to the other's detriment and his own advantage. When such a person is benefitted by a will they procured, that person must assume the burden of showing deliberation, volition, and understanding by the testator. Estate of Stout, 746 A.2d 645, 648 (Pa. Super. 2000).

The policy behind this rule is a sound one. However, the shifting burden is far from an insurmountable obstacle, and that is also sound policy, for it often happens that the individuals who occupy such a position of confidence are the very ones whom the testator desires to bequeath his or her estate. Therefore, to rebut the presumption of undue influence one need not show he or she had no part whatsoever in the making of the will. Rather, to be considered undue influence, one's conduct must rise to the level of exerting such control over the mind of the testator–be it physical, mental, or emotional control–that the free will of the testator is essentially destroyed. Undue influence is almost always described in very strong terms by the appellate courts, as shown by the following.

> The word 'influence' does not refer to any and every line of conduct capable of disposing in one's favor a fully and self-directing mind, but to control acquired over another that virtually destroys his free agency. . . . 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 testator, to destroy his free agency and to operate as a present restraint upon him in the making of a will.

Estate of Ziel, 467 Pa. 531, 359 A.2d 728, 733 (1976), citing Williams v. McCarroll, 374 Pa. 281, 97 A.2d 14 (1953). The person exerting undue influence must have acquired control over the testator's mind that operates as a present restraint upon the

testator in the making of the will. Thompson's Estate, 387 Pa. 82, 88,126 A.2d 740 (1956). Undue influence is generally accomplished by a "gradual, progressive inculcation of a receptive mind." Estate of Clark, 461 Pa. 52, 334 A.2d 628, 634 (1975).

In the case before this court, there is no evidence that either Mr. Dauber or Mrs. Gaston acted in a manner which constitutes undue influence. In this court's assessment of the evidence, the most that can be said is that after finding Mr. Eaton's will and discovering that he would die intestate, Mr. Dauber and Mrs. Gaston provided him with the opportunity of making another will, and that after Mr. Eaton said he wanted Mrs. Gaston to have his estate, Mrs. Gaston suggested adding Mr. Dauber as a beneficiary, and substituting her grandchildren for her children, as alternate beneficiaries. That conduct simply does not rise to the level of undue influence.

We are mindful of the rule that a large gift made by a testator of weakened intellect to a "stranger to his blood" raises a presumption of undue influence. Mark's Estate, 148 A. 297 (Pa. 1929). However, in this case the beneficiaries, Mrs. Gaston and Mr. Dauber, while strangers to Mr. Eaton's blood, were certainly not strangers to Mr. Eaton. In fact, the evidence leads us to believe Mr. Eaton considered Mrs. Gaston and Mr. Dauber to be members of his family–in deed, if not by law. In addition to being the nice and brother of Mrs. Eaton, they were on close terms with the couple for many, many years. They celebrated holidays together, and came to the assistance of Mr. and Mrs. Eaton when they needed help, just like family members are inclined to do. The evidence showed that Mr. Eaton had a great fondness for Mrs. Gaston. His affection for Mr. Dauber was not as obvious; however, it is undeniable that Mr. Dauber was an important

figure in Mr. Eaton's life for many years, that he rendered assistance to the couple, including taking on the unenviable task of bringing Mr. Eaton home after his drinking binges.

We also recognize that an examination of whether there has been an unreasonable or unnatural disposition of one's assets is extremely important to assessing the existence of undue influence. Lawrence's Estate, 132 A. 786 (Pa. 1926). Here, however, because of the close relationship of Mr. Eaton to Mrs. Gaston and Mr. Dauber, we can find no unreasonable or unnatural disposition.

In reaching our conclusion that there was no undue influence, we note that Ms. Singer presented no direct evidence of any conduct rising to the level of undue influence. While it is true that undue influence may be proven by circumstantial evidence, that evidence in this case is extremely weak. Mere opportunity for undue influence, suspicion, and conjecture do not prove undue influence. Thompson's Estate, supra, at101. Ms. Singer's credible evidence merely showed that (1) She had a relationship with her father which continued over the bulk of her life; (2) Mr. Eaton gave her small gifts. somewhat irregularly, primarily money, and that the giving took place largely while she was growing up; (3) The gifts dropped off when she reached adulthood; (4) After not seeing him from December 1995 until October 2000, she began to visit Mr. Eaton at Garden View some six months before his death; (5) Mr. Eaton was happy to see her when she visited him, but did not talk much; (6) Mr. Eaton sometimes went into "trances" where he curled up in his bed, uncommunicative and seemingly frightened; (7) In 1989, he secured a birth certificate for Ms. Singer listing himself as her father and told her she'd need it if anything happened

to him; and (8) Some months before executing the will at issue, Mr. Eaton indicated to a personal care home worker that no one on his wife's side of the family would like his will, because he was leaving his daughter almost everything.

The court generally found Ms. Singer's testimony to be credible. The problem, however, is that even if we accepted all of these things listed above, we still would decline to find undue influence because we also found highly credible the testimony of Mrs. Gaston and of Mrs. Berrigan, both of whom were present when Mr. Eaton stated his wishes and when he signed the will.

Did Mr. Eaton know that if he died intestate Ms. Singer would inherit his estate? Surprisingly enough, we cannot say for certain because for some reason, Lester Greevy, Jr., the attorney who prepared his 1998 will, did not explain to him what would happen if his wife died first and he had no alternative beneficiary. Unfortunately, Ms. Berrigan, who is from the same law firm, also failed to explain that when she spoke with Mr. Eaton about the need to prepare a new will.

It would be easy to say Mr. Eaton understood the consequences of intestacy if he had executed the no-beneficiary will right after he secured the birth certificate for Ms. Singer, but the will he executed in 1991, soon after securing the birth certificate, did not mention Ms. Singer and named charities as alternative beneficiaries. It would also be helpful if his wife had died before he made the remark to the personal care worker about Ms. Singer inheriting from him. Despite these curiosities, however, we are inclined to believe Mr. Eaton knew the effect of intestacy.

Why, then, did Mr. Eaton decide to execute a new will? We will never know, but

there are several possible explanations. Perhaps the profound sorrow he experienced after wife death made him feel closer than ever before to her side of the family. Perhaps he was grateful for all the physical and emotional support Mr. Dauber and Mrs. Gaston himself and his wife throughout their lives and especially when they were both confined to institutions. When asked who he wanted as a beneficiary, maybe he suggested Mrs. Noll because he liked her and because she was there at the time. And maybe the suggestion of Mr. Dauber was also pleasing to him, as was the substitution of Mrs. Gaston's grandchildren for her children.

Any of these theories, in this court's opinion, would be supported by the evidence. What we cannot accept is the theory that Mrs. Gaston and Mr. Dauber somehow exerted control over his mind and substituted their own wishes for his own. There was no evidence that either one of them used threats, coercion, flattery, misrepresentation, or any other means to destroy his free will. There is no evidence to suggest that they subtly or blatantly did anything to overpower him mentally, or that his will was overborne in any way by their words or deeds.

By the same token, the fact that Mr. Eaton possessed a weakened intellect does not warrant a conclusion that he could not or did not make up his own mind. On this issue, we are free to consider the evidence introduced by the estate, which proved to our satisfaction that Mr. Eaton was fully capable of making such a decision, and that he did so in this instance.

First, the testimony of Richard E. Dowell, Jr., Ph.D., an expert in neuro-psychology, with particular expertise in evaluating the mental capacity of elderly

individuals, established there was no reason, based on the objective evidence regarding Mr. Eaton's condition, to conclude he was not capable of making decisions of this sort on his own. Although he criticized Dr. Wright's diagnosis of dementia, Dr. Dowell stated that persons suffering from dementia may still be capable of making decisions regarding the disposition of their estate. Dr. Dowell also found no evidence that anyone overpowered Mr. Eaton's mind and made him a victim of undue influence.

But even more convincing is the testimony of those who knew Mr. Eaton during the last several months of his life. Doris Gresh, a worker at Garden View, stated that he responded appropriately to questions, knew who his visitors and caretakers were, ate what he chose, appeared to understand what was going on, and showed no signs of disorientation. Similarly, Bellina Eiswerth's testimony also described a man who was not incapable of making such decisions, and was not reluctant to assert himself when he wanted to.

Debbie Berrigan, who has a wealth of experience in working with elderly individuals on estate planning, testified that she found no reason to suspect Mr. Eaton did not fully understand the questions she asked him when inquiring about making a new will, or that he did not made up his own mind as to who would inherit his estate. She noticed no impairment to his attention span, and his responses to her questions assured her that he heard and understood what she was saying. She felt certain Mr. Eaton understood the will when she explained it to him, and did not doubt his assurance that it was in accordance with his wishes.

Laverne Dauber testified that Mr. Eaton showed no signs of confusion,

disorientation, or forgetfulness around the time he executed the will, and that although Mr. Eaton grew extremely sad after the death of his wife, there was no deterioration in his mental status and his mind remained good. He also testified that Mr. Eaton made up his own mind on decisions, and carried on conversations with himself on subjects such as sports, his health, and the care he was receiving at Garden View.

Mrs. Gaston testified that despite Mr. Eaton's hearing problem, she had no trouble communicating with him, and that he showed no deterioration in his mental state after his wife's death. She also stated that he was always extremely strong-willed, and that she made no effort to try to convince him to leave her anything. She further testified that Ms. Berrigan went over the will very carefully with Mr. Eaton, that she spoke loudly enough for Mr. Eaton to hear, and that Mr. Eaton appeared to fully understand and agree to all the provisions of the will.

All of this testimony, especially that of Mrs. Gaston, the court found to be credible.[4] In short, the evidence compels us to conclude that the will at issue was a product of Mr. Eaton's own free will.

We will probably never know why Mr. Eaton did not leave anything to Ms. Singer. We are even willing to go so far as to acknowledge that it may have been uncomfortable for him to do so in the presence of Mrs. Gaston, since Mr. Eaton had

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[4] We acknowledge the testimony of Bellina Eiswerth, who stated: (1) She was in the next room when the will was being read to Mr. Eaton; (2) Mrs. Berringan was not speaking loud enough for Mr. Eaton to hear; (3) The entire event took no longer than 10 minutes, which was not enough time to go over the entire will; and (4) Although she signed the will as a witness, she was not present when Mr. Eaton signed the will, nor was she asked to be present. Nonetheless, we resolve these contradictions in testimony in favor the estate.

never mentioned her existence to the members of his wife's family. Nonetheless, Mr. Eaton was perfectly free to leave his entire estate to Ms. Singer if he wanted to, and he was given plenty of opportunity to do that. If we were to invalidate the will, we deprive Mr. Eaton of his right to dispose of his assets as he saw fit.

It is useless for anyone to trouble themselves over why Mr. Eaton made the choice he did. The only thing we know for certain is that Mr. Eaton was extremely fond of Mrs. Gaston, and this closeness lasted through his final days, demonstrated by the kiss with which he always greeted her. Perhaps he felt closer to his wife's family than ever after she died. Perhaps this bond was strengthened by the fact that Mrs. Gaston and Mr. Dauber were there for Mr. Eaton and his wife throughout their entire life, and perhaps at the time he made his will, his heart cried out louder than his blood.

Despite our conclusion that no undue influence exists in this case, we cannot help but criticize the performance of some of the participants in this drama. First, Mrs. Gaston was at least indiscreet and at best rude for remaining in Mr. Eaton's presence when he was asked about making a new will, as well as when the new will was read to him. Mr. Eaton's testamentary decisions were extremely personal, and no business of hers. Out of respect for his privacy, as well as out of affection for him, Mrs. Gaston should have introduced Ms. Berrigan, left the room, and never inquired about the substance of their conversation together.

Second, although there was nothing wrong with providing Mr. Eaton an opportunity to make another will, Mrs. Gaston and Mr. Dauber should have at least told Ms. Berrigan that Mr. Eaton had a daughter, so Ms. Berrigan could have explained to him

that if he died without making a new will, his daughter would inherit his estate.

And finally, both Ms. Berrigan and Mr. Greevy should have explained the practical effects of intestacy to Mr. Eaton–whether or not they knew of the existence of his daughter. Any person making a will without an alternate beneficiary is entitled to hear, from the lips of his attorney, what will happen if he or she predeceases the beneficiary, and any person who would die intestate is entitled to know exactly what that means when they are offered the opportunity to make a new will. This is good practice not just for the clients, but for the law firm, as well, for had it been done in this case, this will contest might have been avoided. And of course, it goes without saying that a competency examination before the execution of a will for a person in Mr. Eaton's circumstance should be standard practice. The time and effort required for this precaution is more than compensated by the time, effort, and money that must be spent to defend a will contest such as this one, leaving more assets to distribute to the beneficiaries of the testator's choice.

O R D E R

AND NOW, this _____ day of March, 2001, for the reasons stated in the foregoing opinion, the Appeal of Admission of the Will of Lawrence Eaton, dated March 17, 2000, To Probate, is dismissed, and the multiple requests contained in the document are denied. Specifically, the court declines to declare the 17 March 2000 will invalid, to declare the 3 December 2000 Power of Attorney invalid, to disqualify Judith Gaston and Laverne Dauber from serving as co-executors, or to impose a constructive trust on the assets transferred under the exercise of the Power of Attorney.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Jacques, Esq., Law Clerk
Hon. Clinton W. Smith
Jonathan Butterfield, Esq.
Lester Greevy, Esq.
Edward Mitchell, Esq.
Gary Weber, Esq., Lycoming Reporter