

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE ESTATE OF : No. 41-11-0137  
JEAN B. ADAMS, :  
Deceased : Orphan's Court Division

**OPINION AND ORDER**

Before the Court is a Motion to Appeal the probate of Jean B. Adam's Will. Jean Adams died February 17, 2011 at the age of ninety-three. Prior to her death, Ms. Adams executed a Last Will and Testament dated May 17<sup>th</sup>, 2010. The Will was probated on March 3<sup>rd</sup>, 2011. On April 18<sup>th</sup>, 2011, Decedent's grandchildren, Laura Fletcher and Jason Adams, filed an Appeal from the probate of the Will. Petitioners claim that the Will is invalid because the Decedent lacked testamentary capacity and/or the Decedent was unduly influenced when the Will was created and executed. A hearing on this matter was held on June 29<sup>th</sup>, 2012.

The burden of proof as to the claim of testamentary incapacity, in this case, rests with the Petitioners. Estate of Anton Vanoni, 798 A.2d at 203, 207 (Pa. Super. Ct. 2002)(citing Heiney Will, 318 A.2d 700 (Pa. 1974)). The Petitioners must produce clear and convincing evidence of the lack of testamentary capacity. Id. (citing Williams v. McCarroll, 97 A.2d 14 (Pa. 1953)).

"Testamentary capacity exists when the testator has general knowledge of the natural objects of [her] bounty, the general composition of [her] estate, and what [she] wants done with it, even if [her] memory is impaired by age or disease." In Re: Bosley, 26 A.3d 1104, 1111-12 (Pa. Super. Ct. 2011)(citing Estate of Reichel, 400 A.2d 1268, 1270 (Pa. 1979)). "Neither old age, nor its infirmities including... partial loss of memory, inability to recognize acquaintances, and incoherent speech, will deprive a person of the right to dispose

of his own property.” In Re: Bosley, 26 A.3d at 1112 (citing Estate of Hastings, 387 A.2d 865, 868 (Pa. 1978)).

The Court finds that the Petitioners have failed to satisfy their burden of producing clear and convincing evidence that the Decedent lacked testamentary capacity at the time she executed her Will. Indeed, Petitioners appear to have abandoned any objection regarding testamentary capacity. They have not argued it in their brief, instead limiting their argument to undue influence.

In April 2010, the Decedent met with Attorney Tammy Weber from Marshall, Parker and Associates. Attorney Weber is the managing principle of the firm. She concentrates her practice in the area of elder law and estate planning. Sharon Adams testified that the Decedent wanted to meet with an attorney. As a result, Sharon Adams scheduled a meeting for the Decedent with Attorney Weber. Attorney Weber testified that the Decedent wanted to ensure that her Will reflected her testamentary wishes. Per the Decedent’s directive, Sharon Adams was present during the initial consultation with Attorney Weber and Paul Adams participated by telephone.

The Decedent had general knowledge of the objects of her bounty. She knew all of her closest surviving relatives. Attorney Weber testified that the Decedent was able to explain which relatives she wished to include in the Will. Decedent described her familial relation to each of the beneficiaries to Attorney Weber. The Decedent expressed and eventually decided on a distribution scheme for her estate which provided differently for her various relatives.

The Decedent also clearly had an understanding of the general composition of her estate. Prior to her first consultation with Attorney Weber, the Decedent was able to

complete a questionnaire regarding the Decedent's assets. Attorney Weber and Case Manager Suzanne Brown testified that the Decedent was able to thoroughly identify and discuss all of her assets during meetings in person as well as during phone consultations.

Finally, the Decedent was crystal clear in how she wanted her assets distributed following her death. Attorney Weber drafted the new Will based on a distribution scheme specifically created by the Decedent. The Decedent communicated the exact way in which she wanted her assets to be divided amongst her family members. The Decedent was able to provide an explanation for every change from the prior Wills to the new Will. The Decedent specifically chose to provide for Petitioners differently than the other relatives. Attorney Weber thoroughly and on more than one occasion, discussed with the Decedent the reasons for each change.

Furthermore, the Decedent had previous experience preparing and signing Wills. The Court was provided with two different Wills that the Decedent had previously executed. The Decedent had a better understanding of will preparation than a person creating a will for the first time. The Decedent called Case Manager, Suzanne Brown, to discuss additional changes to her Will following her first consultation with Attorney Weber. Attorney Weber testified that there were even more changes made prior to signing the final document.

Petitioner Fletcher was unable to provide the Court with any examples of how the Decedent lacked testamentary capacity. Laura Fletcher testified that the Decedent suffered from the typical symptoms of aging during this period of time. There was evidence that the Decedent struggled with her memory. However, one may still possess testamentary capacity even though he or she has an impaired memory. There was no evidence to suggest

that the Decedent suffered from any physical or mental ailments beyond the ordinary signs of aging.

Additionally, the Decedent was assessed by the Meadows Assisted Living Home. The written assessment was admitted in evidence as Petitioner's Exhibit 4. According to the assessment, the Decedent did not display any signs of dementia. The Decedent was evaluated as being able to carry out the activities of daily living independently without assistive devices. These activities included eating, drinking, transferring out of a bed or chair, using the bathroom, maintaining personal hygiene and managing her healthcare. Under the heading of "instrumental activities of daily living," the Decedent was evaluated as being able to carry out the tasks independently without assistive devices or with family. These activities included laundry, shopping, transportation, finances, telephone calls, appointments, writing, and socializing. The assessment noted that the Decedent had no impairment with memory, understanding instructions, communicating needs, or articulating thoughts. Finally, the Decedent was able to self-administer medications without assistance from others even in the form of a schedule.

Aside from the assessment conducted by the Meadows Assisted Living Home, the Petitioners did not provide any other medical records to the Court. There is no contradictory evidence to suggest that the assessment was incorrect. Testimony from the Decedent's treating physician was not offered to support that the Decedent lacked testamentary capacity. The only testimony offered by one of the Decedent's caregivers was from Gayle Hummel. Ms. Hummel was employed at the Meadows Assisted Living Home when the Decedent was a resident. She performed the Decedent's initial assessment. Ms.

Hummel's testimony confirmed the findings in the assessment. She explained that the Decedent was competent and understood "what was happening."

Under all of these circumstances, Petitioner's lack of testamentary capacity claim falls far short of meeting the required legal standard.

In order to establish undue influence, the following elements must first be satisfied by a prima facie standard: (1) the Decedent suffered from a weakened intellect at the time the documents were executed; (2) there was a confidential relationship between the proponent of the documents and the Decedent; and (3) the person in the confidential relationship received a substantial benefit under the challenged documents. In Re: Bosley, 26 A.3d at 1108 (citing Estate of Reichel, 400 A.2d at 1270).

Once these three elements have been established by the Petitioners, the burden will then shift to the Respondent to prove that the Will was not obtained through undue influence. In Re: Bosley, 26 A.3d at 1108 (citing Estate of Clark, 334 A.2d 628, 631-32 (Pa. 1975)).

Although no bright-line test has been established to define weakened intellect, it has been characterized by one Common Pleas Court as "a mind which, in all the circumstances of a particular situation, is inferior to normal minds and reasoning power, factual knowledge, freedom of thought and decision, and other characteristics of a fully competent mentality." Paolini Will, 13 Fiduc. Rep.2d 185, 187 (Montg. Cty. 1993). It is "typically accompanied by persistent confusion, forgetfulness and disorientation." Owens v. Mazzei, 847 A.2d 700, 708 (Pa. Super. Ct. 2004)(citing In re Estate of Glover, 669 A.2d 1011, 1015 (Pa. 1996)). Our Supreme Court has noted that "weakened mentality as relevant to undue influence need not amount to testamentary incapacity." Owens, 847 A.2d 708

(quoting In re Estate of Clark, 333 A.2d 628, 634 (Pa. 1975)). As a result, the Decedent's mental condition at the time she modified her Will is "not as significant when reflecting upon undue influence as it is when reflecting upon testamentary capacity." Owens, 847 A.2d 708 (quoting In re Estate of Clark, 333 A.2d 628, 634 (Pa. 1975)).

The Petitioners have established prima facie that the Decedent suffered from a weakened intellect when the probated Will was executed. Laura Fletcher credibly testified that the Decedent had problems with her memory. There were times when the Decedent would take her medication twice because she forgot that it was taken earlier. On other occasions, Ms. Fletcher explained that the Decedent would eat twice because she was unable to remember eating previously. The Decedent would repeat the same stories during conversations with others. Eventually, a Doctor prescribed Aricept for the Decedent's condition.

Additionally, the assessment by the Meadows Assisted Living Home indicated, under the supervision heading, that the Decedent needed to be checked on occasionally. Ms. Hummel explained that eventually the Decedent started to become confused. The home eventually had to start administering the Decedent's medication for her.

Petitioners have also proven prima facie that both Sharon Adams and Paul Adams received a substantial benefit under the probated Will. Sharon Adams and her husband received half of the Decedent's assets under the probated Will. Whereas, the Decedent's previous Will would have provided Sharon Adams and her husband with only one-third of the assets. Paul Adams received the other half of Decedent's assets through the probated Will, which was more than the one-third he would have received under the previous Will.

The determinative issue is whether Petitioners have proven a confidential relationship between the Decedent and the proponents of her Will, namely Sharon Adams and Paul Adams.

A confidential relationship exists when the circumstances clearly demonstrate “an over-mastering influence on the part of the proponents.” In Re Estate of Angle, 777 A.2d 114, 125 (Pa. Super. Ct. 2001). On one side, there must be an over-mastering influence or, on the other side, weakness, dependence or trust. In Re Estate of Fritts, 906 A.2d 601, 608 (Pa. Super. Ct. 2006)(citing Owens v. Mazzei, 847 A.2d 700, 709 (Pa. Super. Ct. 2004)). A confidential relationship “is marked by such a disparity in position that the inferior party places complete trust in the superior party’s advice and seeks no other counsel, so as to give rise to a partial abuse of power.” In Re Estate of Fritts, 906 A.2d 608 (citing Etoll, Inc. V. Elias/Savior Advertising, Inc., 811 A.2d 10, 23 (Pa. Super. Ct. 2002)).

Contrary to Petitioners’ argument that this is a classic case of undue influence, the evidence is insufficient to establish a confidential relationship between the Decedent and Sharon Adams. The relationship between the Decedent and Sharon Adams was nothing more than a caring relationship between family members. Sharon Adams assisted the Decedent per her requests. Sharon Adams transported the Decedent from New Jersey to Williamsport in order to be placed in an assisted living home. Sharon Adams handled the Decedent’s finances at the Decedent’s request, filed an inheritance tax return on the Decedent’s behalf, and took the Decedent to all of her appointments and errands. Attorney Tammy Weber credibly testified that it did not appear to her that the Decedent was being unduly influenced to any extent whatsoever by Sharon Adams.

Contrary to what Petitioners argue, this is not a situation where Ms. Adams exercised overmastering influence over the Decedent or where there was weakness, dependence and trust by the Decedent. While Ms. Adams facilitated the initial meeting with Attorney Weber, it was done specifically at the Decedent's request. Moreover, while Ms. Adams was present for some of the consultations, she was not present for many of them. The testimony was clear from both Attorney Weber and Ms. Brown that the testamentary decisions came from the Decedent and no one else.

The record is devoid of any evidence that Ms. Adams "spoke for" the Decedent, that she contributed substantially to the decision making, that she directed the Attorney or case manager how to proceed, or that she even hinted to the Decedent what she should do. Indeed, the evidence is crystal clear that Attorney Weber took substantial steps to ensure that no undue influence occurred. Yes, Ms. Adams facilitated meetings, provided requested information, assisted the Decedent with her needs, and helped the Decedent as requested. On the other hand, to suggest that there was an overmastering influence is contrary to the facts.

A confidential relationship between the Decedent and Paul Adams, Decedent's son, is also not sufficiently supported by the evidence. The Petitioner alleged that the Decedent could have been influenced by Paul Adams, thereby creating a confidential relationship. The only testimony presented to the Court regarding Paul Adams referenced telephone calls. Paul Adams called Laura Fletcher multiple times to discuss the Decedent's financial affairs. Mr. Adams was on speaker phone with Attorney Weber during the Decedent's first will consultation. Mr. Adams also called when the Decedent was signing the Will, but he was not privy to that conversation. Despite the telephone calls by



Mr. Adams during the consultation and Will signing, Attorney Weber testified that Mr. Adams did not improperly influence the Decedent to any extent whatsoever.

Paul Adams lived in Washington. He did not visit with the Decedent prior to modifying the Will. He was not physically present during any of the consultations regarding the Will. It begs logic for the Court to conclude that Mr. Adams had an over-mastering influence on the Decedent, let alone any influence, under the circumstances.

Laura Fletcher testified that the Decedent left behind a letter after the Decedent moved to Pennsylvania, which was admitted as Petitioner's Exhibit 5. Ms. Fletcher argued that the letter is "strong evidence" of undue influence in that the Decedent "permitted herself to be influenced to tell Attorney Weber a story that directly contradicts a letter she had written about two months before." Specifically, the Decedent advised Attorney Weber that she wanted to change her will, in part, because she was "afraid of her granddaughter." The letter, Petitioners argued, clearly reflects otherwise. The letter expressed the Decedent's gratitude toward Ms. Fletcher. The Decedent explained how thankful she was for the care Ms. Fletcher provided. The letter also discussed that the Decedent wanted to move to a nursing home so that she would not be a burden to Ms. Fletcher. The Decedent stated in the letter that she wished for her affairs to be carried out peacefully.

The Decedent had specific reasons, according to Attorney Weber, as to why she wanted to change her Will. First, she wanted to provide for her grandchildren in a specific way. The Decedent noted that they would be provided "through" an insurance policy. Further, her granddaughter, Ms. Fletcher, was described by the Decedent as "conniving and vindictive." The Decedent was "afraid" of Ms. Fletcher. The estimate to

modify Ms. Fletcher's home to accommodate the Decedent went from \$20,000 to \$80,000. As well, her grandson had run-ins with the law. Attorney Weber even testified that when the Decedent spoke of these reasons, they were obviously distressing. The Decedent "cried" and "shook."

The letter can be interpreted in many different ways and does not as Petitioners contend clearly establish undue influence. Indeed, the Court interprets the letter as proof that the Decedent's statements to Attorney Weber, about why she was changing the Will, were credible. The Decedent not only referenced the significant costs of the addition to the house, but also took great pains to compliment her granddaughter and protect her from aspersions by others. The Decedent actually appears to have been trying to appease her granddaughter, going as far as urging all to carry out her affairs "peacefully." It can be argued, and the Court finds, that the letter is nothing more than a thinly veiled attempt by the Decedent to protect her from further wrath or scorn by the granddaughter.

In the final analysis, the Decedent disposed of her assets exactly as she desired. Attorney Weber and her staff made sure of such. The Decedent was clearly not the victim of undue influence. While she suffered from a weakened intellect and the proponents of the Will benefited greatly from the changes, the Decedent clearly was not the victim of an overmastering influence by anyone. The Decedent did not place complete trust in anyone else, seeking no other counsel. Accordingly, Petitioners undue influence claim fails.<sup>1</sup>

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<sup>1</sup> While the Court concludes that Petitioners have not proven a prima facie case of undue influence; even if they had, the Court would conclude that Respondents proved by clear and convincing evidence that the Will was not obtained through undue influence.

**ORDER**

AND NOW, this \_\_\_\_ day of July, 2012, following a hearing, argument, and submission of briefs, the Court DENIES Petitioners' Appeal from the Entry of the Will dated May 17<sup>th</sup>, 2010. Said will is determined to be valid and shall govern the disposition of the Decedent's estate.

By the Court,

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Judge Marc. F. Lovecchio

cc: Brett Southard, Esquire  
Andrea Pulizzi, Esquire  
Gary Weber, Esquire (Lycoming Reporter)  
Angeline Allen, Intern  
Register & Recorder  
Work File