

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

IN RE: : **NO. 41-18-0097**
ESTATE OF HELEN L. VAN HORN :
Plaintiffs :
: **ORPHAN'S COURT**

OPINION AND ORDER

Candace Nearhoof asserted a claim against the Estate of Helen Van Horn, her mother, on March 15, 2018 for \$21,600 pursuant to a Personal Care Agreement. The Estate filed an Objection to Claim of Candace Nearhoof on April 12, 2018. This Court held a hearing on the matter August 10, 2018. The Estate is questioning the validity of the Personal Care Agreement stating that Helen Van Horn (Decedent) did not read, understand, or agree to alleged agreement.

Background

Decedent executed her Last Will and Testament on May 11th 2012, leaving the entirety of the Estate to her husband Paul Van Horn, if he did not survive her, the estate was to go to their daughter Paula Moser. At that time Decedent was living with her daughter, Mrs. Moser, who was acting as her Power of Attorney. Mrs. Moser was being compensated for her care during that time. On September 16, 2015, Decedent executed documentation giving her other daughter, Mrs. Nearhoof, Durable Power of Attorney and Health Care Power of Attorney (POA). At this point it is undisputed from testimony that Decedent had been living with Mrs. Nearhoof and her husband, Richard Nearhoof. Exactly two weeks later on September 30, 2015, it is alleged that Mrs. Nearhoof and Decedent entered into the Personal Care Agreement:

Personal Care Agreement

This agreement made on September 30, 2015 by and between Helen L. Van Horn, hereby known as mother, and Candace M. Nearhoof, hereby known daughter/caregiver.

The purpose of this agreement is to set forth the terms under which daughter/caregiver will provide day to day care for her mother and receive compensation. The mother is residing in the daughter's home situated at 2875 Lime Bluff Road, Muncy, PA. Daughter/caregiver shall provide mother with 24 hour per day personal assistance with daily living including bathing, dressing, toileting, hair care, medications, meal preparation, laundry, and doctor appointments.

Compensation for services performed shall be \$1,200.00 per month payable from mother's estate upon her death.

This agreement has been read to Mother and she understands the agreement.

Having understanding of this agreement, We, Mother and Daughter/Caregiver agree to its terms.

[Signature: Candace M Nearhoof, POA]
Helen L. Van Horn, Mother
[Signature: Candace M. Nearhoof]
Candace M. Nearhoof, Daughter/Caregiver/POA

Personal Care Agreement, attached to Notice of Claim 03/15/18.

Mrs. Nearhoof testified that: she spoke with her mother regarding the agreement; the idea originated with her mother; she personally drafted the Personal Care Agreement; she did not have an attorney review or assist in the process; her mother was unable to sign at that point in time due to illness; and no one witnessed the signing (although her husband witnessed discussions that day). Almost a year later on August 17, 2016, Mrs. Nearhoof, as Decedent's POA, and Decedent brought a claim forward against Paul Van Horn, which Decedent was capable of signing. Decedent lived with Mrs. Nearhoof until her death on January 28, 2017. This present action/claim is based upon the above Personal Care Agreement and surrounding facts, which Mrs. Moser contends shows that the Personal Care Agreement was either not read, understood, or agreed to by Decedent.

Discussion

Whether there was a valid Personal Care Agreement free of undue influence from a confidential relationship

Before evaluating the crux of this claim, Mrs. Nearhoof calculates she is entitled to \$21,600 for eighteen (18) months of personal care. This calculation is not correct. Mrs. Nearhoof is not entitled to compensation for services prior to entering into the Personal Care Agreement. The date of the contract, September 30, 2015, till the date of Decedent's death, January 28, 2017, is roughly one (1) year and four (4) months or sixteen (16) months; therefore if this Court found for Mrs. Nearhoof the most she would be entitled to receive is \$19,200.

A typical contested will requires "1) there was a confidential relationship between the proponent and testator; 2) the proponent receives a substantial benefit under the will; 3) the testator had a weakened intellect." *In re Estate of Angie*, 777 A.2d 114, 123 (Pa. Super. 2001). *Inter vivos* transactions, brought against an estate, apply a more stringent standard for the claimant and do not require a clear showing of fraud. *Young v. Kaye*, 279 A.2d 759, 763 (Pa. 1971). Instead "once a fiduciary or confidential relationship is shown to exist, the burden is shifted to the person who is in such relationship" to prove the transaction was entered into absent of fraud and was fair and equitable. *Ruggieri v. West Forum Corp.*, 282 A.2d 304, 307 (Pa. 1971).

A contract may be set aside or rescinded if the parties do not bargain at arm's length. *Biddle v. Johnsonbaugh*, 664 A.2d 159, 161 (Pa. Super. 1995). This can occur when two parties were "engaged in a confidential relationship at the execution of the agreement." *Id.* "[A] confidential relationship is not limited to any particular association of parties but exists wherever one occupies toward another such a position of advisor or counsellor as reasonably to inspire

confidence that he will act in good faith for the other's interest.” *Brooks v. Conston*, 51 A.2d 684, 688 (Pa. 1945). This special confidence is created either because of “overmastering dominance on one side, or weakness, dependence or justifiable trust, on the other.” *Truver v. Kennedy*, 229 A.2d 468, 474 (Pa. 1967). Mere power of attorney does not *per se* create a confidential relationship in instances where attorney “served only at the instance and for the convenience of the decedent.” *In re Estate of Keiper*, 454 A.2d 31, 33 (Pa. Super. 1982). But “[n]o clearer indication of a confidential relationship could exist than giving another person the power of attorney over one's entire life savings.” *Id.* (quoting *In re Estate of Ziel*, 359 A.2d 728, 734 (Pa. 1976)).

First, it is uncontested that Mrs. Nearhoof and her family satisfied the requirements of the Personal Care Agreement. The Personal Care Agreement is an *inter vivos* transaction because it is for services rendered during Decedent’s life time to be paid upon death. It also is not disputed that the Personal Care Agreement exists, but the validity or Decedent’s capability to enter into such a contract is disputed. Therefore the Court must now look to whether a confidential relationship existed between the two parties of the agreement. *Cf. Fiumara v. Fiumara*, 427 A.2d 667, 670-73 (Pa. Super. 1981) (shifting burden applied to death beneficiary designations); *McCown v. Fraser*, 192 A. 674, 677-78 (Pa. 1937) (applied shifting framework to *inter vivos* gifts).

Mrs. Nearhoof, her husband, her daughter, and grandson testified as to Mrs. Van Horn’s condition. She required 24/7 personal assistance and care, which as laid out in testimony and in the personal care agreement, included “bathing, dressing, toileting, hair care, medications, meal preparation, laundry, and doctor appointments.” Personal Care Agreement, attached to Notice of Claim 03/15/18. Decedent was severely dependent on Mrs. Nearhoof and her family to complete

daily functions of living. In addition while living with Mrs. Nearhoof, Decedent transferred her POA from Mrs. Moser to Mrs. Nearhoof so she could not only care for her physically, but also financially. It is evident from testimony and evidence that a confidential relationship existed. Decedent relied entirely upon Mrs. Nearhoof and her family for financial and physical stability and by giving Mrs. Nearhoof POA gave her complete control of her medical and financial future only two weeks prior to executing the Personal Care Agreement. This Court finds that a confidential relationship therefore existed at the time the Personal Care Agreement was created.

The burden then shifts to Mrs. Nearhoof to show that the agreement is “free from any taint of fraud or deception.” *Fiumara*, 427 A.2d at 472. The POA was signed September 16, 2015, at which point Decedent was already being taken care of by Mrs. Nearhoof for some amount of time. After this time, evidence shows Mrs. Nearhoof took complete control of Decedent’s finances, which is the same that occurred while Decedent under the care of Mrs. Moser. Exactly two weeks later the Personal Care Agreement was signed and entered into. Mrs. Nearhoof signed for both herself and Decedent as her POA and provided testimony stating at that point Decedent would not have been able to sign for herself. But her husband, Richard Nearhoof testified that at that point Decedent could have signed. In addition, Mrs. Nearhoof, Mr. Nearhoof, their daughter, and grandchild all testified that Mrs. Nearhoof did in fact feed herself and could handle eating utensils. Mrs. Nearhoof also provided bank statements and copies of checks from Decedent’s time staying with Mrs. Moser showing that her and her husband were compensated, which is admitted by Mrs. Moser’s testimony. This is provided to show the Court that compensation was intended for Mrs. Nearhoof, but this Court does not find this is clear evidence of that fact. If that was the intention of Decedent, Mrs. Nearhoof would have likely been compensated in the same manner, monthly increments by way of check. Mrs. Nearhoof has not

provided testimony of a disinterested witness verifying the Personal Care Agreement was discussed with and comprehended by Decedent, Mrs. Nearhoof drafted the agreement herself, and signed the agreement for both parties, although the timeline and testimony seems to show that Decedent could have signed the agreement herself.

Conclusion

This Court finds Mrs. Nearhoof and Decedent were in a confidential relationship and that Mrs. Nearhoof has failed provided sufficient evidence or testimony to show that the Personal Care Agreement was free from the taint of fraud or deception.

ORDER

AND NOW, this day, September 10, 2018, the Objection by the Estate to the Claim filed by Candace Nearhoof is **SUSTAINED**. Therefore Candace Nearhoof's Notice of Claim is hereby **DISMISSED**.

By The Court,

Nancy L. Butts, President Judge

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