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COMMONWEALTH OF MASSACHUSETTS APPEALS COURT
Unpublished decision

SUSAN J. PATTERSON vs. LINDA E. PATTERSON.

08-P-1411

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Susan J. Patterson challenges on the grounds of undue influence and lack of capacity a deed executed by her mother, Constance Patterson, to the defendant Linda E. Patterson. A judge of the Probate and Family Court concluded that the deed was not the product of undue influence and that Constance [FN1] had the requisite mental capacity to execute the deed. Substantially for the reasons stated by the judge, we affirm.

1. Background. Robert and Constance Patterson had four children, Bruce, Sharon, Susan, and Linda. After Robert entered a nursing home in the summer of 2000, he and Constance signed a deed conveying their home located at 10 Rig Lane, West Yarmouth, to Constance solely, reserving a life estate for Robert. Their daughter, Susan, moved into the home in 2000, and by March of 2001, was there on a permanent basis to provide care for Constance. In April of 2001, Susan moved out after disagreements arose between Susan and Constance and between Susan and her siblings, particularly Linda.

On July 18, 2001, Constance executed a will prepared by attorney John McCluskey that devised and bequeathed all of her real and personal property to her children Linda and Sharon. Constance specifically disinherited her husband, [FN2] Robert, and her other children, Bruce [FN3] and Susan. [FN4] Only days later, Linda brought Constance to a new attorney, Robert Smith, whose office was closer, and on July 27, 2001, Constance executed a new will containing essentially the same provisions, naming Linda and Sharon as co- executrices. She also executed a durable power of attorney and a health care proxy that empowered them to act on her behalf. At that time, Smith explained to Constance that her home could be further protected from a Medicaid lien should she require nursing home care if the property were transferred to a family member who lived with her. Constance was living alone at that time.

Robert died in December, 2001, terminating his reserved life estate in the home. In early September of 2002, Linda moved into Constance's home permanently to care for her. On September 25, 2002, Constance, who was accompanied by Linda, met with Smith and executed a deed transferring the home to Linda, solely, reserving a life estate to Constance. On July 12, 2004, Constance died without making any further changes to her estate plan.

1. Undue influence. On appeal, Susan argues that the judge should have shifted the burden of proving that the deed was not the result of undue influence to Linda, who was living with Constance at the time the deed in issue was executed and who held authority under Constance's power of attorney. [FN5] We discern no error in the judge's failure to shift the burden of proof to Linda. See

Rempelakis v. Russell, 65 Mass. App. Ct. 557, 567 (2006). The judge engaged in a thoughtful analysis of the principles of burden shifting that apply when a fiduciary benefits from acts of her principal. See Cleary v. Cleary, 427 Mass. 286, 290-295 (1998); Rempelakis v. Russell, supra at 563-567; Estate of Moretti, 69 Mass. App. Ct. 642, 651-653 (2007). Although Linda (as well as Sharon) held a power of attorney for Constance at the time the deed was executed, the judge's finding that Linda did not use it to effect the transfer was supported by the record. Moreover, although Linda provided transportation and may have initiated the contact with Smith, the judge credited the testimony of Smith and was not persuaded that Linda exercised influence over Constance's decision. [FN6] See Rempelakis v. Russell, supra at 567-570. The record also supports the conclusion that the conveyance to Linda was intended to avoid a Medicaid lien. [FN7]

2. Capacity to execute the deed. There were conflicts in the evidence on the subject of Constance's capacity on the date that she executed the deed. Susan insists that Constance had a long history of memory deficits, confusion, and dementia such that she lacked capacity to execute the deed. The judge relied on contrary testimony from Constance's attorney and her primary care physician. Such credibility determinations are exclusively the province of the trial judge. 'It was for the judge to decide whom to believe and what weight to assign to evidence. With evidence in the record to support [the judge's] finding that the decedent was competent to execute [the deed], the existence of contrary evidence did not render [the judge's] finding unwarranted.' Id. at 568. [FN8]

Judgment affirmed.

By the Court (Grasso, Cohen & Sikora, JJ.),

Entered: March 1, 2010.

FN1. We use first names for ease of reference.

FN2. Constance did so for estate planning and Medicaid reasons and not because of animosity toward her husband.

FN3. There is some suggestion in the record that Bruce had taken money from his parents' accounts earlier. In any event, he is not a party to this action.

FN4. Although not material to this appeal, the judge noted that there was testimony suggesting that Susan had told her mother that if she could not have the bulk of her estate, she wanted nothing.

FN5. Susan does not challenge Constance's will under which she was disinherited; she challenges only the deed of real property to Linda. Because Susan would have no claim to the real property even were a challenge to the deed to succeed, a genuine question arises regarding Susan's standing. Since the parties have not raised the issue, we pass over it.

FN6. Indeed, the judge's findings establish that at various times Susan exerted considerable pressure upon Constance in an effort to obtain a disproportionate share of her estate.

FN7. Whether Linda holds a share of the real property in constructive trust for Sharon is not an issue in this case.

FN8. Linda's request for attorney's costs and fees is denied.