NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

IN RE: ESTATE OF GARY LEE LAUGHMAN, DECEASED	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
APPEAL OF: SANDRA J. FISSEL	:	No. 555 MDA 2018

Appeal from the Order Entered February 27, 2018
In the Court of Common Pleas of Adams County
Orphans' Court at No(s): OC-93-2015

BEFORE: GANTMAN, P.J., KUNSELMAN, J., and MUSMANNO, J.

MEMORANDUM BY GANTMAN, P.J.: **FILED OCTOBER 10, 2018**

Appellant, Sandra J. Fissel, appeals from the order entered in the Adams County Court of Common Pleas, which revoked the decree of the Register of Wills granting letters testamentary to Appellant and removed Appellant as executor of the Estate of Gary Lee Laughman, Deceased. We affirm.

The trial court opinion comprehensively sets forth the relevant facts and procedural history of this case. Therefore, we have no need to restate them.[1]

Appellant raises two issues on appeal:

> WHETHER THE TRIAL COURT COMMITTED AN ABUSE OF DISCRETION OR ERROR OF LAW IN CONCLUDING THAT APPELLANT ASSERTED UNDUE INFLUENCE ON [DECEDENT].
>
> WHETHER THE TRIAL COURT COMMITTED AN ABUSE OF DISCRETION OR ERROR OF LAW IN CONCLUDING THAT

---

[1] We depart from the trial court opinion in only one respect. The record makes clear Appellant paid for the transcripts of the hearings on September 25, 2017, and February 27, 2018, and they are included in both the reproduced record and the certified record.

> APPELLANT PRESENTED SUFFICIENT MEDICAL EVIDENCE AND/OR EXPERT OPINION TO SUPPORT A FINDING THAT DECEDENT HAD A WEAKENED INTELLECT AT THE TIME OF EXECUTING HIS WILL.

(Appellant's Brief at 4).

The relevant standard and scope of review are as follows:

> Our standard of review of the findings of an [O]rphans' [C]ourt is deferential.
>
> > When reviewing a decree entered by the Orphans' Court, this Court must determine whether the record is free from legal error and the court's factual findings are supported by the evidence. Because the Orphans' Court sits as the fact-finder, it determines the credibility of the witnesses and, on review, we will not reverse its credibility determinations absent an abuse of that discretion.
>
> However, we are not constrained to give the same deference to any resulting legal conclusions.

In re Estate of Harrison, 745 A.2d 676, 678 (Pa.Super. 2000), *appeal denied*, 563 Pa. 646, 758 A.2d 1200 (2000) (internal citations and quotation marks omitted). "[T]he Orphans' [C]ourt decision will not be reversed unless there has been an abuse of discretion or a fundamental error in applying the correct principles of law." ***In re Estate of Luongo***, 823 A.2d 942, 951 (Pa.Super. 2003), *appeal denied*, 577 Pa. 722, 847 A.2d 1287 (2003).

For purposes of identifying undue influence, a confidential relationship exists when "the parties did 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." ***In re Clark's Estate***, 461 Pa. 52, 63, 334 A.2d

628, 633 (1975). Thus, a confidential relationship exists where the donor was in a deteriorated mental and physical condition, depended on the donee in his financial dealings, and the donee exercised a high degree of control over the donor's business affairs. ***Id.*** ***See also Estate of Lakatosh***, 656 A.2d 1378 (Pa.Super. 1995) (holding existence of power of attorney given by one person to another is clear indication confidential relationship exists between parties); ***Estate of Gilbert***, 492 A.2d 401 (Pa.Super. 1985) (holding evidence established confidential relationship where father's weakened intellect, coupled with daughter's influence, had destroyed father's capacity to dispose freely and independently of his assets so that *inter vivos* transfers he made to daughter which left his estate insolvent were voidable). ***Compare Luongo, supra*** (determining confidential relationship was not shown, where party claiming existence of confidential relationship provided no evidence that: (1) donee's advice was sought or taken; (2) donee wrote, dictated, or was present when will was either drafted or executed; (3) donee solicited gift in her favor; or (4) donee exercised Power of Attorney more than once in four-year period); ***Montrenes v. Montrenes***, 513 A.2d 983 (Pa.Super. 1986), *appeal denied*, 515 Pa. 608, 529 A.2d 1082 (1987) (stating existence of family relationship is factor to consider, but does not suffice to establish confidential relationship; evidence daughter assisted mother with financial matters did not demonstrate daughter exercised overmastering influence over mother sufficient to void mother's deed of real property to daughter).

A "substantial benefit" in this context means a "substantial share" in the estate or fifty percent (50%) or more of the estate, which would qualify as the bulk of the estate. ***See In re Estate of Simpson***, 595 A.2d 94 (Pa.Super. 1991), *appeal denied*, 529 Pa. 622, 600 A.2d 538 (1991). ***See, e.g., Clark's Estate, supra*** (holding substantial benefit occurred where proponent received approximately 70% of the estate); ***Lakatosh, supra*** (holding proponent, who received all but $1,000.00 of estate, was deemed to have received "bulk" of estate for purposes of "substantial benefit"). On the other hand, "merely being named as executor or trustee in another's will" is not sufficient to make a proponent of a will a "substantial" beneficiary. ***In re Estate of LeVin***, 615 A.2d 38, 44 (Pa.Super. 1992), *appeal denied*, 534 Pa. 639, 626 A.2d 1158 (1993) (holding proponent of will who also had absolute discretion to terminate trust created under will and distribute assets, collect fees and other collateral benefits from estate, received "bulk" of estate for purposes of "substantial benefit"). For example, a proponent who is the scrivener/executor/trustee controlling the estate might qualify as a "substantial" beneficiary under the will. ***Id.*** A proponent who "holds the position of executor and trustee, has control over the entire estate and has a possible residuary interest in the whole estate" might also qualify as a "substantial" beneficiary under the will. ***Id.*** at 42. As these cases demonstrate, the character of the benefit or the extent of the interest in the estate depends on the circumstances of the particular case. ***Id.***

"Although our cases have not established a bright-line test by which weakened intellect can be identified to a legal certainty, they have recognized that it is typically accompanied by persistent confusion, forgetfulness and disorientation." ***Owens v. Mazzei***, 847 A.2d 700, 707 (Pa.Super. 2004).

> The "weakened intellect" which must be shown in order to establish a *prima facie* case of undue influence upon the testator need not amount to testamentary incapacity. Although testamentary capacity is to be determined by the condition of the testator at the very time he executes a will, evidence of incapacity for a reasonable time before or after the making of a will is admissible as an indication of lack of capacity on the day the will is executed. While a testator may dispose of his property as he sees fit, the law is rigid in its insistence that one of weak mind, whether from inherent cause or by reason of illness, shall not be imposed upon by the art and craft of designing persons.

Luongo, supra at 963-64.

After a thorough review of the record, the briefs of the parties, the applicable law, and the well-reasoned opinion of the Honorable Shawn C. Wagner, we conclude Appellant's issues merit no relief. The trial court opinion comprehensively discusses and properly disposes of the questions presented. (***See*** Trial Court Opinion, filed May 29, 2018, at 7-9) (finding Appellant was Decedent's only emergency contact; Appellant acted as Decedent's medical power of attorney, though no paperwork confirmed that role; Appellant asked Decedent if he had will and Appellant actually drafted Decedent's will that left everything to Appellant, which Decedent signed; Appellant provided notary with Decedent's will and was only person present who had relationship with Decedent when Decedent signed will; Appellee, Diane L. Kuhn, met her burden

to show that Appellant was in confidential relationship with Decedent; Appellant received Decedent's entire estate to exclusion of Decedent's other heirs, including Appellee and Decedent's nephew; Appellee met her burden to show that Appellant was substantial beneficiary of entire estate; Appellee's evidence also showed Decedent suffered from weakened intellect on 5/20/15, when he signed will; Dr. Curley testified that between 5/19/15 and 5/26/15, Decedent was mentally and physically incapacitated and suffered from "persistent confusion, forgetfulness and disorientation"; Decedent's medical records corroborate Dr. Curley's testimony; Appellee met her burden to show that Decedent suffered from weakened intellect at relevant time; overall, Appellee made out *prima facie* case by clear and convincing evidence to establish presumption of undue influence, which Appellant failed to disprove). Accordingly, we affirm on the basis of that opinion.

Order affirmed.

Judgment Entered.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/10/2018