

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

Cecil W. Scott)
Plaintiff) Civil Action No. 6604-MA
v.)
Roland E. Scott)
Defendant)
)

MASTER'S REPORT

Date Submitted: May 15, 2013
Report: August 30, 2013
Final Report: September 13, 2013

Plaintiff Cecil W. Scott is a 65 year old disabled man. Fourteen years prior to being adjudicated a disabled person, on November 9, 1996, Cecil¹ executed two deeds (“1996 Deeds”) conveying two real properties he owned to his brother, Defendant Roland E. Scott, each for the sum of “TEN DOLLARS (\$10.00) AND OTHER VALUABLE CONSIDERATION.”² In 2009, Roland initiated a guardianship proceeding in this Court, seeking to be appointed as guardian of the person and property of Cecil. The matter was contested by several of Cecil’s siblings, but the parties reached a compromise at trial whereby Roland was appointed primary guardian of Cecil’s person, and a professional guardian was appointed as guardian of Cecil’s property.³ Subsequently, one of Cecil’s

¹ I will refer to the members of the Scott family by first name only to avoid repetition and confusion. I mean no disrespect by this practice.

² Joint Trial Exhibit C.

³ *IMO Cecil W. Scott*, a disabled person, C.M. No. 14627-S. Trial Transcript on November 8, 2010, at pp. 48-56. Plaintiff’s Exhibit 6.

sisters, Dinah Britt, was appointed guardian of Cecil's property for the limited purpose of pursuing a claim against Roland for the return of the two properties that were conveyed in the 1996 Deeds.

On June 23, 2011, Dinah filed a *pro se* complaint on behalf of Cecil, seeking to set aside the 1996 conveyances. A three-day trial took place in May 2013, after which I reserved decision on Plaintiff's claims that Cecil lacked capacity and was unduly influenced by Roland at the time he executed the 1996 Deeds. After reviewing the record, including the trial testimony and the exhibits admitted into evidence, I am now issuing a final report in which I find that Plaintiff has failed to demonstrate that Cecil lacked capacity when he executed the 1996 Deeds or that the 1996 Deeds were the product of undue influence by Roland. Accordingly, I recommend that Plaintiff's complaint be denied.

Factual Background

The evidence, in most respects, was undisputed. Cecil is one of thirteen children of Margaret Scott, who passed away in January 1989. Cecil graduated from Delaware State College with a degree in business administration.⁴ He was honorably discharged from military service in 1978.⁵ Cecil also suffered from mental illness for several decades, and had been diagnosed with chronic paranoid schizophrenia and polysubstance abuse. After his military discharge, Cecil lived with his mother in her home in Lincoln, Delaware ("Lincoln Property"). His mother's sister, Lorena Williamson lived with her

⁴ Trial Transcript on May 15, 2013, at 4.

⁵ Defendant's Trail Exhibit 6.

son Jackie in a neighboring home and Roland, who is ten years older than Cecil, lived with his wife Gloria about ten minutes away by car. During this time period, several of Cecil's other siblings resided in Michigan, i.e., Dinah, Dennis Scott, Wardell Scott, Harold Scott, and Maggie Hankins.

Cecil's mother was very protective of Cecil. At her death, Cecil inherited the Lincoln Property and became the sole owner of another property located on Slaughter Neck ("Slaughter Neck Property"). He also, in the words of his cousin Jackie, began to "step out."⁶ Cecil lived independently, drove a car, and took care of himself. According to Roland, during this time Cecil was fine except when he was using illegal drugs. Starting in 1992, Cecil became responsible for managing a property that his brothers Dennis and Harold owned in Lincoln, Delaware. A woman named Majesker Johnson had asked if she could place a mobile home on this property in which she would live with her boyfriend and family. Cecil collected the monthly rent from Johnson for approximately two years, but in 1995, Johnson stopped paying rent and presented a document that Cecil had signed purporting to sell the property to her. Dennis was incarcerated in Michigan at the time, so Roland initiated litigation on Dennis' behalf in the Justice of the Peace Court.⁷

Roland asked Cecil if he had signed the purported sales agreement with Johnson. Cecil acknowledged his signature but had no recollection of signing the document. Soon afterward, Roland decided that he needed to handle Cecil's financial affairs. Roland had

⁶ Trial Transcript on May 15, 2013 at 4.

⁷ Defendant's Exhibits 1-3.

been helping Cecil maintain his house after their mother died in 1989. Now, Roland was worried that Cecil might lose his properties because of the incident with Majesker Johnson and because the tenants of the Slaughter Neck Property were involved with illegal drugs. At first, Cecil refused to allow Roland to handle his affairs, but soon they agreed that Cecil would appoint Roland as his financial agent and sell Roland the Lincoln Property and Slaughter Neck Property in exchange for Roland taking care of Cecil for the rest of his life and Cecil remaining in his home.⁸

Roland purchased a general power of attorney form and Cecil signed the document naming Roland as his agent on December 28, 1995.⁹ In September 2, 1996, Cecil was admitted to Milford Memorial Hospital and diagnosed as having suffered a transient ischemic attack (“TIA”).¹⁰ The physician who had attended Cecil during this hospital stay, Dr. Nancy Squires, testified that TIAs are recoverable, and Cecil’s medical records indicated that when Cecil was discharged from the hospital a few days after admission, he was back to his “baseline neurologic status.”¹¹

On October 31, 1996, Roland signed a fiduciary agreement form with Department of Veterans Affairs, becoming Cecil’s legal custodian effective November 1, 1996.¹² On November 9, 1996, Cecil executed the 1996 Deeds at the Milford branch of what was then Wilmington Trust Bank.¹³ The 1996 Deeds had been prepared by Walter G. Feindt, Esquire, who recalled at trial having telephone contact with the individual who was to

⁸ Trial Transcript on May 13, 2013, at 117, 159-160, 164.

⁹ Joint Trial Exhibit B.

¹⁰ Plaintiff’s Trial Exhibit 5.

¹¹ Trial Transcript on May 14, 2013, at 28.

¹² Plaintiff’s Trial Exhibit 4.

¹³ Trial Transcript on May 13, 2013, at 57. Joint Trial Exhibit C.

receive the properties requesting that the deeds be drawn up.¹⁴ It was Feindt's recollection that the grantor was in a medical situation that was going to incur some costs, and that the properties were being transferred to keep them in the family rather than sold to pay for medical expenses.¹⁵ Feindt could not recall whether someone had stopped by his home office to pick up the drafts or whether he had mailed them to the grantor.¹⁶ Feindt's recollection contradicted Roland's testimony that he and Cecil had visited Feindt's home office and talked with the attorney about what they wanted.

The witness and notary who participated in the execution of the 1996 Deeds were Linda Marine and Barbara Popham.¹⁷ At trial, they were unable to recall the events of November 9, 1996. However, they each described their normal practices when notarizing or witnessing the execution of a document such as a deed. Both bank officers testified that they would make sure that the person signing the document understood what he was signing, was not being coerced into signing the document, and was executing the document under his own free will and accord.¹⁸

On August 19, 1997, Cecil was admitted to the Veterans Administration Hospital in Wilmington after suffering a stroke that left him partially paralyzed on the right side of his body, and unable to speak.¹⁹ He was discharged on September 9, 1997, and his discharge papers indicated that Cecil would require the assistance of someone to carry

¹⁴ Trial Transcript on May 13, 2013, at 138, 141-142, 148.

¹⁵ *Id.* at 138.

¹⁶ *Id.* at 139.

¹⁷ *Id.* at 53, 65.

¹⁸ *Id.* at 57-59, 69-70.

¹⁹ Defendant's Trial Exhibit 4, at 6-8.

out his daily living activities.²⁰ Roland's wife Gloria was a certified nursing assistant who worked at hospitals in Milford and Dover.²¹ She quit her work and ultimately retired in order to take care of Cecil who was bedridden at home.²² For nearly four years, Cecil needed intensive care to recover from the stroke and to enable him to live at home. Gloria was the primary caregiver during the day, while Roland helped Cecil at night.²³ Gloria bathed Cecil, cleaned his clothes, cooked his food, and helped him learn to become more independent. At the end of January 2000,²⁴ Roland retired from his employment at Kraft Food, and took over more of the caregiver's responsibilities from his wife.

Eventually, Cecil was able to live on his own again. He had regained the ability to walk, relearned to write with his left hand, and was able to talk a little.²⁵ Gloria subsequently passed away, but Roland continues to visit Cecil almost every day, takes Cecil to doctor's appointment, runs errands for Cecil and takes him shopping, purchases Cecil's clothes and medications, and maintains the home in which Cecil lives.²⁶

When Roland took over Cecil's finances in 1996, the only money Cecil had in his bank account was a few thousand dollars that belonged to Dennis, which sum of money was subsequently returned to Dennis by Roland.²⁷ Over the following 13 years, Roland

²⁰ *Id.* at 8-9.

²¹ Trial Transcript on May 14, 2013, at 106-07.

²² *Id.* at 121.

²³ *Id.* at 128-129.

²⁴ *Id.* at 106.

²⁵ *Id.* at 131-132.

²⁶ *Id.* at 133, 140.

²⁷ *Id.* at 138.

managed to amass over \$210,000.00 in savings for Cecil by the end of 2010.²⁸

According to Roland, he saved approximately two-thirds or \$20,000.00 of Cecil's monthly income, which consisted of veterans' benefits and social security, by doing a lot of maintenance work on the Lincoln Property himself and using his own money to purchase items that Cecil needed. He was saving Cecil's money in the event that he would no longer be able to care for Cecil and non-family caregivers would have to be paid to look after Cecil. Although Roland's fiduciary accountings indicate that he was charging Cecil \$600.00 for rent and \$1500.00 for caregiver's services on a monthly basis, Roland testified that the Veterans Administration had suggested those figures, and the "rent" money was put into a safe at Roland's house and used only for Cecil's needs.²⁹

In 1999, after Cecil's savings had grown considerably, Roland advised Cecil to make a will and leave everything to his daughter. According to Roland, Cecil told him that his daughter was dead and asked him who should be the beneficiary of his will. Roland replied that if he was in Cecil's shoes, he would leave his money to the people who were taking care of him. Cecil agreed, and Gloria drafted a will for Cecil that left Cecil's estate to Roland. Gloria and Roland were the only persons present when Cecil executed his will in 1999. After the guardianship proceeding was initiated, however, Cecil executed a new will with the assistance of his court-appointed attorney *ad litem*. According to Cecil's *in camera* testimony during the guardianship trial on November 8, 2010, Cecil wanted all of his brothers and sisters to receive \$10,000.00 and the remainder

²⁸ Joint Trial Exhibit A.

²⁹ Trial Transcript on May 14, 2013 at 155-158.

of his estate to go to Roland.³⁰ He also wanted Roland to have the Slaughter Neck Property and the Veterans Administration to have the Lincoln Property after his death.³¹

Issues

Cecil, through his guardian Dinah, argues that he was not competent when the 1996 Deeds were executed. He also argues that the 1996 Deeds were the product of Roland's undue influence at a time when he recently had undergone heart surgery and a TIA, and was a chronic paranoid schizophrenic. He contends that Roland lied under oath on numerous occasions so that his testimony concerning the verbal agreement is not credible.

Roland argues that Cecil was of sound mind in 1996 when he executed the deeds, and that his condition did not significantly change until the 1997 stroke. The verbal agreement was made before Cecil's 1997 stroke, and Roland has been performing his side of the bargain ever since November 1996, taking care of Cecil's financial and physical needs, allowing Cecil to reside independently in the Lincoln Property, providing in his own will for Cecil's lifetime rights to the Lincoln Property, and ensuring that Cecil has enough assets to pay for caregivers if necessary.

Analysis

“Under Delaware law, ‘[a]dults are presumed to have contractual capacity and the burden of proving otherwise rests with the party alleging incapacity.’ *Bettis v. Premier Pool & Property Management, LLC*, 2012 WL 4662225, at *2 (Del. Ch. Sept. 26, 2012)

³⁰ Plaintiff's Trial Exhibit 6 at 28-35.

³¹ *Id.* at 45-46.

(quoting *McAllister v. Schettler*, 521 A.2d 617, 621 (Del. Ch. 1986)). In order to prove incapacity, Cecil “must be able to show that he was ‘incapable of understanding the nature and effect of the transaction’ or his mental faculties were so impaired that he was ‘unable to properly, intelligently and fairly protect and preserve his property rights.’” *Id.*

Cecil has presented no evidence showing that on November 9, 1996, when he executed the 1996 Deeds, he was incapable of understanding the nature and effect of that transaction or that his mental faculties were so impaired that he was unable to protect and preserve his property rights. There was no medical testimony presented regarding Cecil’s capacity or lack thereof on November 9, 1996. To the contrary, there was testimony from the only other two people who were present that day, the notary and witness, to the effect that it was their practice to ensure that the individual signing the document understood the nature of what he was doing.

In order to demonstrate undue influence, Cecil would have to show: (1) a susceptible grantor; (2) the opportunity to exert influence; (3) a disposition to do so for an improper purpose; (4) the actual exertion of such influence; and (5) a result demonstrating its effect. *See Estate of West*, 522 A.2d 1256, 1264 (Del. 1987); *In re Langmeier*, 466 A.2d 386, 402 (Del. Ch. 1983). Undue influence must be established by a preponderance of the evidence, and circumstantial evidence may be considered. *West*, 522 A.2d at 1264. However, undue influence is not established if the evidence discloses one or more plausible alternative explanations for the testator’s change of beneficiaries or, as in this case, for the grantor’s conveyance of the properties. *See id.* at 1264-65; *see also Estate of Konopka*, 1988 WL 62915, at *5 (Del. Ch. June 23, 1988).

Cecil has failed to demonstrate any disposition on Roland's part to exert his influence for an improper purpose. Roland has spent the last sixteen to seventeen years taking care of his brother Cecil. He protected his brother against people who might have exploited him and, with the assistance of his deceased wife Gloria, promoted Cecil's health, independence, and well-being despite Cecil's suffering a severe stroke that almost completely incapacitated him in 1997. The other siblings who testified, along with Jackie Williamson, agreed that Roland has taken excellent care of Cecil. Only Maggie complained that Cecil's house and furnishings should have been made more comfortable for him. Roland, however, was saving Cecil's money for the future, in the event paid caregivers would be necessary.

Cecil's claim of undue influence must also fail because there is another plausible explanation for the conveyance of the Lincoln and Slaughter Neck Properties. Roland testified that he agreed to take care of Cecil for the rest of Cecil's life and to make sure that Cecil could remain in his Lincoln home for the rest of his life in exchange for the conveyance of the two properties. It is undisputed by the parties that Roland has been providing this "other valuable consideration," as was stated in the 1996 Deeds, since November 1996.³²

Conclusion

For the foregoing reasons, I recommend that Cecil's request to void the 1996 Deeds be denied. The parties should refer to Chancery Court Rule 144 for the process of taking exception to a Master's Draft Report.

³² Trial Transcript on May 13, 2013, at 207.