IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00585 COA

FRANCIS GAYNELL WHITTINGTON AND LYNNE WHITTINGTON — **APPELLANTS**

v.

LOY WHITTINGTON, BY AND THROUGH HER NEXT FRIEND AND ATTORNEY IN FACT, JOSIE HUNT WILLIAMSON — **APPELLEE**

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

DATE OF JUDGMENT:	02/23/96
TRIAL JUDGE:	HON. W. HOLLIS MCGEHEE II
COURT FROM WHICH APPEALED:	FRANKLIN COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANTS:	K. MAXWELL GRAVES, JR.
ATTORNEY FOR APPELLEE:	SAMUEL M. TUMEY
NATURE OF THE CASE:	CIVIL - REAL PROPERTY
TRIAL COURT DISPOSITION:	WARRANTY DEED FOUND TO BE VOID
DISPOSITION:	AFFIRMED - 11/4/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	11/25/97

BEFORE THOMAS, P.J., HERRING, AND HINKEBEIN, JJ.

THOMAS, P.J., FOR THE COURT:

Francis and Lynne Whittington (Whittingtons) were ordered to return certain properties to Loy Whittington by the Franklin County Chancery Court on the basis of undue influence. Aggrieved, the Whittingtons appeal assigning two issues as error:

> I. THE TRIAL COURT ERRED IN NOT REQUIRING THAT A CONSERVATOR OF THE PERSON AND ESTATE BE APPOINTED IN THE COMMENCEMENT OF THE LITIGATION.
>
> II. WHETHER THE PRESUMPTION OF UNDUE INFLUENCE WAS OVERCOME BY CLEAR AND CONVINCING EVIDENCE BASED ON THE TOTALITY OF THE CIRCUMSTANCES.

Finding no error, we affirm.

FACTS

On June 17, 1994, Loy Whittington executed a warranty deed to Francis Whittington conveying a one acre tract of land in Franklin County, Mississippi. At the time of the execution, Loy was a ninety-four-year-old elderly woman with no living descendants. Francis is, by marriage, the nephew of Loy. On June 20, 1994, Loy executed another warranty deed to Francis conveying three tracts of land in Franklin County totaling 140 acres. On August 25, 1994, Loy filed a complaint against Francis and his wife, Lynne, to cancel the deeds to the two parcels of property and to also recover some personal items belonging to Loy. The chancellor found that a confidential relationship existed between Loy and the Whittingtons and that Loy had been the victim of undue influence from the Whittingtons at the time of the conveyances. The chancellor ultimately concluded that the conveyances were invalid.

ANALYSIS

I. THE TRIAL COURT ERRED IN NOT REQUIRING THAT A CONSERVATOR OF THE PERSON AND ESTATE BE APPOINTED AT THE COMMENCEMENT OF THE LITIGATION.

The Whittingtons argue that the chancellor lacked jurisdiction to hear the case because a conservator had not been appointed prior to the filing of the law suit. The Whittingtons contend that Loy was under the undue influence of other relatives at the time she filed the suit. However, the Whittingtons cite no case authority on this point. Failure to cite authority in support of claims of error precludes appellate review of alleged errors. *Century 21 Deep South Properties, Ltd. v. Corson*, 612 So. 2d 359, 370 (Miss. 1992); *R.C. Petroleum, Inc. v. Hernandez*, 555 So. 2d 1017, 1023 (Miss. 1990).

II. WHETHER THE PRESUMPTION OF UNDUE INFLUENCE WAS OVERCOME BY CLEAR AND CONVINCING EVIDENCE BASED ON THE TOTALITY OF THE CIRCUMSTANCES.

The Whittingtons next contend that they overcame the presumption of undue influence arising out of their confidential relationship with Loy by clear and convincing evidence. Loy argues that the law grants the chancellor wide discretion in determining cases of undue influence where the fiduciary relationship is not in question. Loy contends that the evidence presented by the Whittingtons falls short of meeting the burden of proof necessary to overcome the presumption of undue influence.

We will not disturb the findings of a chancellor when the findings are supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was applied. *Denson v. George*, 642 So. 2d 909, 913 (Miss. 1994); *Carter v. Taylor*, 611 So. 2d 874, 876 (Miss. 1992). "Where a lower court misperceives the correct legal standard to be applied, the error becomes one of law, and we do not give deference to the findings of the trial court." *Brooks v. Brooks*, 652 So. 2d 1113, 1117 (Miss. 1995). "We must consider the entire record before us and accept all those facts and reasonable inferences therefrom which support the chancellor's findings." *Madden v. Rhodes*, 626 So. 2d 608, 616 (Miss. 1993).

Based upon the evidence before him and upon a stipulation by the Whittingtons, the chancellor found

that a presumption of undue influence existed, and therefore, the burden of proof then shifted to the Whittingtons to prove otherwise. In order to rebut the presumption of undue influence, the supreme court has determined that the proponent must prove by clear and convincing evidence:

> (1) good faith on the part of the grantee/beneficiary;
>
> (2) grantor's full knowledge and deliberation of his actions and their consequences; and
>
> (3) grantor's full independent consent and action.

Murray v. Laird, 446 So. 2d 575, 578 (Miss. 1984); as modified in *Mullins v. Ratcliff*, 515 So. 2d 1183, 1193 (Miss. 1987). Also, the supreme court in *Hendricks v. James*, 421 So. 2d 1031, 1041 (Miss. 1982) stated:

> Whenever there is a relationship between two people in which one is in a position to exercise a dominant influence upon the other because of the later's dependency upon the former arising from either weakness of mind or body, or through trust, the law does not hesitate to characterize such relationship as fiduciary in character. The basis of this relationship need not be legal; it may be moral, domestic or personal. Nor is the law concerned with the source of such relationship. The principles are universally affirmed by courts.

In the case *sub judice*, the chancellor found that a confidential fiduciary relationship existed between Loy and the Whittingtons immediately prior to the execution of the warranty deeds to Francis. The record supports the chancellor's findings in that Loy's daughter, whom Loy lived with most of her life, died approximately four months prior to the execution of the warranty deeds. Shortly before the death of Loy's daughter, Lynne Whittington came to Franklin County to stay with Loy until Loy's daughter got home from the hospital. However, Loy's daughter died a week later. Either Lynne or Francis continuously lived with Loy in her home until September of 1994. The record reflects that Lynne assisted Loy with her financial affairs and the running of the home. The record also shows that Lynne Whittington took Loy to an attorney's office on April 22, 1994, a month and a half after the death of Loy's daughter, to have a power of attorney drawn up appointing Lynne as Loy's attorney in fact. Two months later on June 17, 1994, Loy executed the first warranty deed to Francis. Loy was driven to her attorney's office by either Francis or Lynne, and testimony in the record shows that Loy was crying at the time she signed the deed. Loy's doctor testified that Loy could not understand or execute a legal document in her diminished state. Three days later on June 20, 1994, Loy executed the second warranty deed to Francis. The attorney who prepared this second deed testified that Francis called her at home the weekend prior to June 20. Francis told the attorney that it was urgent he get the deed right away, and Francis then asked if he could come over immediately so he could have the attorney draw up the second deed. Francis did, in fact, go to the attorney's house that day; however, the attorney told Francis that she had to do some plat research on the property and that she could not prepare the deed that day, but that she would have it prepared by Monday. That Monday, Francis drove Loy to the attorney's office to have Loy sign the second deed conveying the land to Francis.

Further, from a reading of the record, we were unable to conclude that Loy had independent advice concerning the transfers. Loy and her daughter had intended to transfer the one acre parcel of land to Francis. A survey was done on the property on July 17, 1993. However, eleven months after the

survey, Loy had not signed the warranty deed over to Francis. Francis then asked Loy to sign the property over to him, and as stated previously, either Francis or Lynne drove Loy to her attorney's office. Loy did not get out of the car upon arriving at the attorney's office, and she signed the deed while still in the car. Loy's attorney testified that he could not recollect having a discussion with Loy on June 17 concerning the one acre tract and deed, and that he was not able to testify that he gave Loy any independent advice. Concerning the June 20, 1994 deed, Loy's other attorney stated that she never counseled Loy with regard to the deed, and in fact never spoke with Loy until August 24, 1994 when Loy came to her office to see if she could have the deed set aside and have the power of attorney granted to Lynne terminated. The attorney stated that Francis told her that Loy wanted the deed drawn up, and that she acted only a scrivener and not as an attorney.

The Whittingtons contend that the testimony of the guardian ad litem, John Price, appointed for the benefit of Loy, is enough to overcome the clear and convincing standard. However, Price's testimony, in fact, reveals just the opposite. Price interviewed Loy in the home of one of her relatives. Price found Loy to be a "very frail and fragile person, both physically and mentally." Price asked Loy if she wanted Francis to have her land. Loy responded, "Yes, I want him to have everything I have including the ground that I'm going to be buried in." Price next asked why did she feel that way, and Loy responded, "He is a bastard, and I hate him." Price found Loy to be very impressionable based upon whoever happens to be helping or talking with Loy at that particular time. Price stated that he felt that if someone had asked Loy to sign something, that Loy would have signed anything. In concluding, Price testified that Loy would be subject to a great deal of undue influence, and the best interest of Loy would be served by having the deeds set aside. We can hardly come to the conclusion that Price's testimony proves by clear and convincing evidence that Loy had the clear intention to transfer the two parcels of property to Francis Whittington.

Based upon the record before us, we conclude that the Whittingtons did not exhibit good faith in their dealings with Loy. We also find that Loy did not have full knowledge and did not understand her actions nor the consequences of her actions, and also conclude that Loy did not give her full consent, nor was she given any independent advice concerning the transactions. Therefore, the chancellor's finding that the Whittingtons did not overcome their burden of proving no undue influence on their part by clear and convincing evidence is supported by the record. For these reasons, this assignment of error is without merit and the judgment of the chancellor is affirmed.

THE JUDGMENT OF THE FRANKLIN COUNTY CHANCERY COURT IS AFFIRMED. ALL COSTS ARE TAXED TO THE APPELLANTS.

BRIDGES, C.J., McMILLIN, P.J., COLEMAN, DIAZ, HERRING, HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.