

IN THE COURT OF APPEALS 5/16/95
OF THE
STATE OF MISSISSIPPI
NO. 93-CA-01454 COA

IN THE MATTER OF THE ESTATE OF HARRY
WILLIAMS, DECEASED: PATRICIA ANN WILLIAMS APPELLANT
v.
LUCIA HAWKINS BROWN APPELLEE

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

TRIAL JUDGE: HON. GERALD E. BRADDOCK

COURT FROM WHICH APPEALED: CHANCERY COURT OF WARREN COUNTY

ATTORNEY(S) FOR APPELLANT(S): CEOLA JAMES

ATTORNEY(S) FOR APPELLEE(S): JOHN S. PRICE, JR.

NATURE OF THE CASE: CIVIL-WILL CONTEST

TRIAL COURT DISPOSITION: WILL FOUND TO BE TRUE LAST WILL AND TESTAMENT
OF HARRY WILLIAMS

BEFORE BRIDGES, P.J., COLEMAN AND KING, JJ.

KING, J., FOR THE COURT:

This is an appeal of a will contest from the Chancery Court of Warren County. Patricia Williams contested the validity of the alleged will of Harry Williams. The jury returned a verdict for the proponent of the will, Lucia Brown. Patricia Williams has now appealed, raising the following issues:

1) whether Petitioner's instruction on confidential relationship should have been given to the jury; 2) whether petitioner's instruction on insane delusion should have been given to the jury; 3) whether proponent met her burden of proof to establish by a preponderance of the evidence the validity of the will; and, 4) whether the verdict was against the overwhelming weight of the evidence? Finding no error, we affirm the judgment of the trial court.

I.

In April of 1992, Harry Williams, then aged 75, suffered a stroke, which required that he be hospitalized. Upon being released from the hospital, Williams lived for a short while with his niece, Patricia Williams.

On June 20, 1992, Patricia Williams, at the request of Harry Williams, called Lucia Brown and informed her that Williams would be returning to his own home, and that Williams had requested that Brown look after him. Brown agreed to do so and assisted Williams in the conduct of his business and personal activities.

After returning to his home, Williams called long time acquaintance, Dan Flohr, and requested that Flohr and Attorney Dabney come to his home. When Dabney and Flohr visited Williams in his home, on June 23, 1992, Williams requested that Dabney prepare a will which: (1) named Brown as executrix, and (2) left all of his belongings to Brown. During this visit, Flohr noted that Williams seemed normal.

Williams executed the will on July 13, 1992, and in doing so, revoked a 1986 will, which provided that his niece, Patricia, would be his sole beneficiary. Flohr and Dabney witnessed the execution of the will. They testified that while Brown may have been in the house, she was not in Williams' room during the execution of the will nor was she involved in the execution of the will.

During trial Patricia testified that when she was with Williams after his stroke, he appeared fine and appreciated all of his actions. However, Patricia indicated that Williams was not the type to make a will and not inform his family. Patricia further testified that she "never perceived at any point that Lucia Hawkins Brown exercised any undue influence over [her] uncle," however, she did not believe Williams was entitled to give his property to whomever he desired.

Several nieces of Williams indicated that Brown was an attractive and impressive woman, the kind of woman that Williams liked. They also felt that Williams would not have left his estate to Brown, since he told them he did not trust her.

After deliberation the jury returned a verdict in favor of Brown. Thereafter, Williams perfected this appeal.

II.

Patricia argues that since Brown was a nurse's aide, a confidential or fiduciary relationship existed between Williams and Brown, and she was therefore entitled to an instruction on confidential relationship. However, in resolving this matter it is not necessary that we decide whether the

relationship between a nurse's aide and patient is such as to presumptively declare it to be a confidential relationship.

"In order for a litigant to prove a confidential or fiduciary relationship from which undue influence arises, the relationship must reflect a dominant overmastering influence [which] controls over a dependent person or trust justifiably reposed." *Taylor v. Welch*, 609 So. 2d 1225, 1231 (Miss. 1992). We find that, the record does not establish that Brown had a dominant and overmastering influence over Williams, such that she substituted her will for his.

The evidence indicates that Williams' nieces testified to opinions regarding dominance, which at best could be categorized as a visceral belief. However strongly held these beliefs are, they do not establish the subjugation of Williams by Brown.

III.

Patricia also contends that the trial court should have granted her an instruction on insane delusion. As evidence of this alleged insane delusion, Patricia's witness testified that Williams was angry with his family for no apparent reason. Patricia's brief suggests no other evidence of such delusion.

Insane delusion is defined as, "a conception of a disordered mind which imagines facts to exist of which there is no evidence and belief in which is adhered to against all evidence and argument to contrary, and which cannot be accounted for on any reasonable hypothesis." *Black's Law Dictionary* 794 (6th ed. 1990).

We find that the request for an instruction on the insane delusion is not supported by the record and that there is substantial evidence to support the chancellor's decision to exclude an instruction on insane delusion. "Whenever there is substantial evidence in the record to support the chancellor's findings of fact, those findings must be affirmed here." *Denson v. George*, 642 So. 2d 909, 913 (Miss. 1994) (citing *Johnson v. Hinds County*, 524 So. 2d 947, 956 (Miss. 1988)). The chancellor was not manifestly wrong when he excluded the instruction.

IV.

Williams contends that Brown failed to prove the validity of the alleged will by a preponderance of the evidence. Brown did not brief this issue.

The record indicates that: (1) in 1991, Brown hired Mr. Williams to help her clean dirt from under her house in Vicksburg; (2) before Mr. Williams completed the work, Brown left Vicksburg and returned to New York to care for a friend; she asked Mr. Williams to watch her house while she was gone; (3) Mr. Williams suffered a stroke in April of 1992; (4) Mr. Williams asked Patricia Williams to write Brown and tell her that he had had a stroke, and to ask her to come back to Vicksburg and care for him; (5) after Mr. Williams left the hospital, he moved to Patricia Williams' home; (6) Mr. Williams decided that he wanted to go home and that he wanted Brown to begin taking care of him; (7) with Mr. Williams' permission, Brown hired two sitters, who were responsible for feeding Mr.

Williams and assisting him with other activities, such as walking and sitting with Mr. Williams; (8) Brown was also responsible for bathing and feeding Mr. Williams, and for running errands, such as picking up his prescriptions and buying groceries; (9) Brown completed the checks to pay the sitters, and Williams signed them; (10) Williams called long time acquaintance, Dan Flohr, and requested that Flohr and Attorney Dabney come to his home; (11) when Dabney and Flohr visited Williams in his home on June 23, 1992, Williams asked Dabney to prepare the 1992 will; (12) Dabney and Flohr witnessed the execution of the will by Williams; (13) Brown was not present when Williams executed the will; (14) Williams told one of his sitters that when he died everything that he had would go to Brown; and (15) Williams gave Brown a copy of the will.

We find that the record is sufficient to support that, by a preponderance of the evidence, Williams executed the 1992 will.

V.

Williams alleges that the jury verdict was against the overwhelming weight of the evidence and that the trial court erred when it denied her motion for a new trial. The grant or denial of a new trial has always been within the sound discretion of the trial judge, and absent an abuse of discretion, this Court is "without power to disturb such a determination." *Muse v. Hutchins*, 559 So. 2d 1031, 1034 (Miss. 1990).

We find that the trial court did not abuse its discretion in denying the motion for a new trial. The evidence shows that: (1) Brown acted in good faith in her dealings with Williams; (2) Williams acted with full knowledge and deliberation when he executed the will; and (3) Williams showed independent consent and action when he executed the 1992 will. Such evidence is sufficient to clearly and convincingly show that Brown did not unduly influence Williams to execute the 1992 will.

For the foregoing reasons, the judgment of the trial court is affirmed.

**THE JUDGMENT OF THE CHANCERY COURT OF WARREN COUNTY IS AFFIRMED.
APPELLANT IS TAXED WITH ALL COSTS OF THIS APPEAL.**

**FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, DIAZ,
MCMILLIN, PAYNE, AND SOUTHWICK, JJ., CONCUR.**