

IN THE COURT OF APPEALS 12/29/95

OF THE

STATE OF MISSISSIPPI

NO. 94-CA-00391 COA

BEVERLY J. STAMPER

APPELLANT

v.

**CONSERVATORSHIP OF JESSIE E. O'FLARITY, JAMES P. O'FLARITY,
CONSERVATOR**

APPELLEE

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

TRIAL JUDGE: HON. WILLIAM L. STEWART

COURT FROM WHICH APPEALED: HARRISON COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

WAYNE L. HENGEN

ATTORNEY FOR APPELLEE:

PATTI C. GOLDEN

NATURE OF THE CASE: INTER VIVOS GIFTS

TRIAL COURT DISPOSITION: CONFIDENTIAL RELATIONSHIP EXISTED; FAILED TO
REBUT PRESUMPTION OF UNDUE INFLUENCE

BEFORE FRAISER, C.J., BARBER, DIAZ, AND McMILLIN, JJ.

DIAZ, J., FOR THE COURT:

This appeal arises from an order issued by the Harrison County Chancery Court which set aside an inter vivos transfer of real property to the appellant as a joint tenant with right of survivorship. The court found that a confidential relationship existed between the appellant, Beverly Stamper (Stamper) and her mother Jessie O'Flarity (O'Flarity). The chancellor also found that Stamper failed to rebut the presumption that she unduly influenced her mother to vest title of the property in both of their names as joint tenants with right of survivorship. Feeling aggrieved of this decision, Stamper appeals. Consequently, we are faced with the following issues: (1) whether the chancellor erred in finding a confidential relationship between Stamper, and her mother, O'Flarity at the time of the purchase of the property; and (2) if a confidential relationship did exist, whether Stamper rebutted the presumption of undue influence by clear and convincing evidence. Finding no manifest error, we affirm.

FACTS

In 1985, Stamper went to Biloxi on vacation. Her mother, O'Flarity was eighty-eight years old and living in Arkansas at the time. According to Stamper and her witnesses, O'Flarity was interested in moving to the Coast, and she asked Stamper to look for a house while Stamper was in Biloxi so that she could purchase it in survivorship with Stamper. While Stamper was in Biloxi, she located a four-plex that she thought her mother would be interested in and contacted a real estate agent. Upon discussing the matter with the real estate agent, Stamper contacted O'Flarity, who told her to make an offer. The asking price for the property was one hundred twenty-five-thousand dollars (\$125,000). Stamper offered one hundred ten-thousand dollars (\$110,000) pursuant to O'Flarity's instructions. The seller readily accepted this offer. As the documents were prepared for closing, O'Flarity handled her part of the transaction through the mail. The real estate agent testified that she spoke with O'Flarity over the telephone a few times regarding the property. For the closing, O'Flarity sent the down payment of seventy-five-thousand dollars (\$75,000) to Stamper. After the closing, Stamper flew back to Arkansas and went over the deed with O'Flarity. Additionally, according to James O'Flarity, the conservator, O'Flarity, his mother, assumed a thirty-five-thousand dollar mortgage (\$35,000) which was paid off shortly after the closing with checks issued to Stamper from O'Flarity's account. However, three of the checks were not signed by Jessie O'Flarity, but signed by Gloria O'Flarity, another daughter who handled most of her mother's finances.

O'Flarity has passed away since the trial. She did not testify at trial, but her deposition testimony was read into the record. Gleaning from her responses to the questions posed, she seemed somewhat confused at times, but when asked whether it was her intent for Stamper to stay in the house, she replied, "Not if I can get hold of it." O'Flarity also testified that she had no intention of moving to Biloxi until Stamper convinced her to move. O'Flarity stated, "She made it so beautiful, and it was just the most beautiful thing a mother could want." She denies ever talking to a real estate agent about the property in Biloxi.

DISCUSSION

CONFIDENTIAL RELATIONSHIP

This Court will not reverse a chancery court's findings when it is supported by substantial evidence unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous, or an erroneous

legal standard was applied. *Smith v. Jones*, 654 So. 2d 480, 484 (Miss. 1995) (citations omitted). Furthermore, this Court will not undermine the chancellor's authority by replacing his judgment with our own since the chancellor is in a better position to determine the veracity of the witnesses' testimony. *Madden v. Rhodes*, 626 So. 2d 608, 616 (Miss. 1993).

The supreme court has explained the concept of a confidential relationship or a fiduciary relationship as a relation between two people in which one person is in a position to exercise a dominant influence upon the other because of the latter's dependency upon the former. *Madden*, 626 So. 2d at 617. The dependency may arise either from weakness of mind, body, or through trust; the law characterizes such a relationship as a fiduciary relationship. *Id.* (citations omitted). In determining if a confidential relationship exists, we have looked to see if one person depends on another. *Id.* (citing *In re Will of Varvaris*, 477 So. 2d 273, 278 (Miss. 1985)).

Stamper argues that the chancellor erred in finding a confidential relationship between her and Jessie O'Flarity. She contends that her relationship did not extend beyond that of mother and daughter. The chancellor found that at the time of the events, O'Flarity was physically ill and on medication. She was in and out of the hospital for heart problems and cancer. She was among relatives that she trusted. The chancellor found that O'Flarity was in a position where she was subject to being dominated. In light of these facts, the chancellor found that a confidential relationship existed between Stamper and O'Flarity. We find that these findings are substantially supported by the record. Therefore, we affirm the chancellor's decision.

UNDUE INFLUENCE

The law states that once a confidential relationship exists with an inter vivos gift, the presumption of undue influence automatically arises. *Madden*, 626 So. 2d at 619. The presumption is rebuttable only if the party wishing to uphold the validity of the gift shows otherwise by clear and convincing evidence. *Id.* In *Mullins v. Ratcliff*, the court set out a three-prong test to rebut the presumption of undue influence. In this case, Stamper 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 her actions and their consequences; and
- (3) grantor exhibited independent consent and action.

Mullins v. Ratcliff, 515 So. 2d 1183, 1193 (Miss. 1987) (citations omitted).

As to this issue, the chancellor did not find that Stamper met her burden of rebutting this presumption by clear and convincing evidence. The chancellor failed to find any independent consent or action on the part of O'Flarity. Furthermore, there was no independent consultation with O'Flarity regarding the purchase. There are many unanswered questions regarding O'Flarity's knowledge at the time of the purchase, as well as Stamper's good faith about the transaction. Accordingly, the chancellor found that Stamper failed to meet her burden by clear and convincing evidence. We agree with this finding. As we stated above, when the chancellor's findings are substantially supported by the evidence, we will not disturb the findings.

We find that (1) a confidential relationship existed between Stamper and O'Flarity, and (2) Stamper failed to rebut the presumption of undue influence by clear and convincing evidence. Accordingly, we affirm the judgment of the chancery court.

**THE JUDGMENT OF THE HARRISON COUNTY CHANCERY COURT IS AFFIRMED.
ALL COSTS ARE TAXED TO THE APPELLANT.**

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