

IN THE COURT OF APPEALS 02/27/96

OF THE

STATE OF MISSISSIPPI

NO. 93-CA-01247 COA

**IN THE MATTER OF THE LAST WILL AND TESTAMENT OF FRANCES RAYE
ANGLETON: SELBY DOWLING**

APPELLANT

v.

RUTH ELIZABETH HAND

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 H. MYERS

COURT FROM WHICH APPEALED: JACKSON COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

TRAVIS BUCKLEY

ATTORNEY FOR APPELLEE:

MICHAEL J. MCELHANEY, JR.

NATURE OF THE CASE: PROBATE

TRIAL COURT DISPOSITION: JUDGMENT FOR APPELLEE

BEFORE BRIDGES, P.J., KING, PAYNE, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

The Chancery Court of Jackson County upheld the validity of the last will and testament of Frances Raye Angleton dated May 21, 1982. The chancellor denied the challenge to the will by Selby Dowling, Angleton's sister, and Raye Thibodeaux, Angleton's niece, who claimed that the will was a product of undue influence by Ruth E. Hand. Dowling appeals the chancellor's decision. We find that substantial, credible evidence supports the chancellor's decision and affirm.

FACTS

This case involves a dispute over the validity of the May 21, 1982, will of Frances Raye Angleton, who died October 29, 1982, at age fifty-six. Among her survivors were her sister, Selby Dowling, her only sibling, and her niece, Raye Thibodeaux, who was Dowling's daughter. Under the terms of the will, Angleton specifically bequeathed all her household furniture and a vase to Thibodeaux. Ruth Hand, Angleton's friend of thirty-five years, was bequeathed the residue of the estate and named in the will as the executrix of the estate.

Although Angleton had worked earlier in her life as a nurse anesthetist, she was unable to continue working after she suffered a stroke in 1967. The stroke left her completely paralyzed on the left side. As a result, she was unable to drive a car. The stroke also adversely affected Angleton's writing and peripheral vision. Consequently, Angleton relied heavily for care and assistance on her mother, until her mother's death, and on Ruth Hand.

Upon learning of Angleton's stroke around 1970, Hand frequently visited Angleton and took her on long trips. Angleton would often stay at Hand's house for a period of four to six months, including the last several months before her death. Angleton did not pay Hand any money toward rent or utilities. She did, however, pay for some of the groceries and for her own personal expenses. Angleton never requested to live with any family member, but rather expressed her preference for living with Hand. Among other care-taking duties, Hand obtained Angleton's medication, cooked for her, provided transportation, and wrote many of her letters.

Angleton's niece, Thibodeaux, alleged that her relationship with Angleton deteriorated after Angleton moved in with Hand. She claimed that her telephone calls to Angleton were refused by Hand and that her letters were never acknowledged. In contrast, Hand testified that she never deprived Angleton access to the telephone and that the only times she did not give Angleton the phone when Dowling or Thibodeaux called were when she was in the bathroom or when Angleton instructed her that she did not want to talk to them.

Hand testified that it was Angleton's idea to prepare a will and that she asked Hand to set up an appointment. The lawyer who prepared the will also prepared a general power of attorney for Angleton in favor of Hand on the same day as the will per Angleton's request. He testified that Angleton told him, in the presence of his secretary, that she wanted to provide for Hand as she did in her will. The lawyer and his secretary, alone with Angleton, reviewed the will and questioned Angleton about the accuracy of its contents. The lawyer and his secretary both concluded after approximately thirty minutes of observation that Angleton was acting voluntarily and was not under the influence of another individual. In addition, the testimony of two close neighbors and Hand herself corroborated the testimony of the lawyer and his secretary regarding both Angleton's mental alertness and her intent to name Hand as the primary beneficiary in her will in appreciation of Hand's care.

Dowling and Thibodeaux filed a complaint opposing the probate of the will, claiming that it was the product of undue influence by Hand and that Angleton lacked sufficient mental capacity. Without making any specific findings of fact, the chancellor determined that the will was valid and dismissed the complaint. Dowling appeals.

DISCUSSION

Under this Court's limited scope of review, a chancellor's findings of fact will not be reversed unless they are manifestly wrong and against the overwhelming weight of the evidence. *Estate of Harris v. Bradley*, 539 So. 2d 1040, 1043 (Miss. 1989) (citation omitted). If the findings are supported by substantial, credible evidence, this Court will not reverse. *Estate of Grantham v. Roberts*, 609 So. 2d 1220, 1223 (Miss. 1992) (citation omitted). "As to issues of fact where no specific findings have been articulated by the chancellor, this Court proceeds upon the 'assumption that the chancellor resolved all such fact issues in favor of appellee,' or as a minimum, in a manner which would be in line with the decree." *Love v. Barnett*, 611 So. 2d 205, 207 (Miss. 1992) (citations omitted).

Dowling argues that the will at issue was invalid because Hand, the primary beneficiary, exerted undue influence over Angleton. Although the chancellor did not make any specific finding regarding the issue of undue influence, he did determine that Angleton's May 21, 1982 will was a valid will. Because a will cannot be valid if undue influence was exerted, the chancellor necessarily found that no undue influence was present. We will not disturb such a presumptive finding where there is substantial evidence supporting it. *Id.* (citations omitted).

"Fiduciary or confidential relationships may arise in legal, moral, domestic or in a personal context where there is 'overmastering influence' on the one side or 'weakness, dependence, or trust,' on the other." *McCaffrey v. Fortenberry*, 592 So. 2d 52, 60 (Miss. 1991) (citation omitted). Although the chancellor made no finding of fact whether Hand stood in a confidential relationship with Angleton, the facts in the record indicating Angleton's poor physical health and extreme reliance on Hand for care and companionship strongly support the argument that a confidential relationship did in fact exist. Consequently, for purposes of this opinion we will assume the existence of a confidential relationship.

The supreme court has on occasion stated:

The existence of a confidential relationship, standing alone, does not give rise to a presumption of undue influence. In addition to the relationship, there must be some showing that the beneficiary under the will abused the relationship either by asserting dominance over the testator or by substituting his intent for that of the testator.

E.g., *Estate of Grantham v. Roberts*, 609 So. 2d at 1224 (citations omitted). There is a somewhat disparate line of cases that hold that a presumption of undue influence arises where there is a confidential relationship, without explicitly requiring something more than the confidential relationship itself. *E.g.*, *McCaffrey*, 592 So. 2d at 60. One explanation for the difference is the distinction Chief Justice Hawkins noted between rules pertaining to testamentary gifts and rules involving inter vivos gifts. *Madden v. Rhodes*, 626 So. 2d 608, 618 (Miss. 1993). While a

presumption of undue influence automatically arises where a confidential relationship exists in the context of inter vivos gifts, there must be some *abuse* of the confidential relationship in the context of gifts by will. *Id.* Although this distinction does not completely explain the differences among the cases, we need not resolve here the issue of whether these are in fact different standards because we find that even if a presumption of undue influence did arise, substantial evidence supports the proposition that Hand overcame such presumption.

Once a presumption of undue influence arises, the burden of going forward with the proof shifts to the beneficiary to prove by clear and convincing evidence:

- (1) Good faith on the part of the beneficiary;
- (2) the testator's full knowledge and deliberation of his actions and their consequences; and
- (3) independent consent and action by the testator.

Estate of Grantham, 609 So. 2d at. The record contains sufficient proof of each of these three elements. The first, the good faith requirement, was supported by evidence that Hand furnished her friend a home and personal care free of charge. While Thibodeaux blamed Hand for the problems that developed in her relationship with her aunt, Hand's testimony indicated that Thibodeaux's blame was misplaced. Even though Hand was at some point aware of Angleton's intent to provide for her in the will, the substantial evidence does not support the proposition that Hand exercised bad faith to procure this result.

Regarding the second element, that the testator had full knowledge and deliberation of her actions and their consequences, the already-described testimony of her lawyer, her lawyer's secretary, two of her close neighbors, and Hand demonstrates that Angleton had such knowledge and deliberation. Although Dowling and Thibodeaux maintained that Angleton was too old at the age of fifty-five and too physically weak to have sufficient mental capacity, Angleton's neighbors, her lawyer, her lawyer's secretary, and Hand testified to the contrary. The chancellor was entitled to weigh the evidence and the credibility of the witnesses. We find no manifest error in his determination that Hand's witnesses were more credible than those who testified for Dowling and Thibodeaux.

Lastly, the evidence shows that Angleton exhibited independent consent and action when executing the May 21, 1982, will. Angleton requested that Hand make arrangements for a lawyer to prepare her a will. Angleton expressed her testamentary intent and her understanding of the consequences of her disposition to the lawyer while outside of Hand's presence. The lawyer provided independent counsel, and Angleton paid for his services herself. Moreover, the testimony offered at trial described Angleton as a strong-willed, stubborn, and hardheaded woman, not a woman prone to manipulation. Given the circumstances of this case, the evidence is sufficient to clearly and convincingly demonstrate that Hand did not abuse her relationship with Angleton or substitute her intent for that of Angleton. We therefore hold that any presumption of undue influence was overcome and that the chancellor did not manifestly err in finding that Angleton's will dated and executed on May 21, 1982, was valid.

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

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