

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 95-CA-01165 COA**

IN RE: THE ESTATE OF JAMES ANDREW MORRIS: DONNA MARIE MORRIS DREWERY **APPELLANT**

v.

TALMAGE HERSHEL MORRIS, EXECUTOR **APPELLEE**

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

DATE OF JUDGMENT:	10/04/95
TRIAL JUDGE:	HON. TIMOTHY E. ERVIN
COURT FROM WHICH APPEALED:	ALCORN COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	CHARLES R. WILBANKS, SR.
ATTORNEY FOR APPELLEES:	JOY TANNER BOMAR
NATURE OF THE CASE:	CIVIL - WILLS, TRUSTS AND ESTATES
TRIAL COURT DISPOSITION:	EXECUTOR RECOVERED \$14,000 FOR ALLEGED MISMANAGEMENT OF TESTATORS' FUNDS
DISPOSITION:	AFFIRMED - 12/2/97
MOTION FOR REHEARING FILED:	12/12/97
CERTIORARI FILED:	3/3/98
MANDATE ISSUED:	6/4/98

BEFORE BRIDGES, C.J., HERRING, AND PAYNE, JJ.

HERRING, J., FOR THE COURT:

This action essentially involves a claim by the estate of James Andrew Morris, deceased, against one of the decedent's children, Donna Marie Morris Drewery. Talmadge H. Morris, in his capacity as the executor of his father's estate, filed an action against Mrs. Donna Marie Morris Drewery on February 6, 1989, charging that she maintained a confidential or fiduciary relationship with the decedent and through undue influence, diverted funds of her father for her own use and benefit and for the benefit of her husband during a period when Mr. Morris lived with them in Memphis, Tennessee. After a number of delays, a hearing was conducted on the merits of the complaint on January 11, 1995, in the Chancery Court of Alcorn County, Mississippi. In its written opinion dated August 15, 1995, the trial

court concluded that (1) Mrs. Drewery did, in fact, maintain a fiduciary and confidential relationship with the decedent prior to his death, and (2) that during the decedent's lifetime, Mrs. Drewery improperly obtained loans and otherwise diverted her father's funds for her benefit and for the benefit of her husband in the sum of \$14,100, all in violation of Drewery's fiduciary relationship with her father. Thus, the chancellor granted judgment in favor of the decedent's estate against Mrs. Drewery for the sum of \$14,100 plus interest at the rate of six percent from and after February 17, 1988. Mrs. Drewery now appeals from the chancellor's adverse decision to this Court.

A. THE FACTS

James Andrew Morris, a resident of Alcorn County, Mississippi, died at age eighty-three on August 23, 1984. His wife, Mary Seaton Morris, preceded him in death on December 23, 1980. During their marriage, they had eleven children. In August, 1978, Mr. and Mrs. Morris moved to Memphis, Tennessee, to live with their daughter, Donna Marie Morris Drewery, and her husband, Jimmy D. Drewery.⁽¹⁾ After Mrs. Morris died, Mrs. Drewery and her father traveled to Corinth, Mississippi, where the decedent had his bank accounts and changed one or more of the decedent's accounts to reflect both Mr. Morris and Mrs. Drewery as joint owners of the accounts, with right of survivorship. On June 29, 1982, the decedent signed and delivered a check to his son-in-law, Jimmy Drewery, in the sum of \$5,000. According to Mrs. Drewery's testimony, she and her husband asked her father to loan this money to Mr. Drewery, who said he needed the money to pay bills. Mrs. Drewery testified that her father wanted the money to be a gift, but her husband insisted that the check reflect the money to be a loan. Thus, the Mrs. Drewery prepared the check for her father's signature, which he signed, and delivered the check to Mr. Drewery on June 29, 1982. It is apparently undisputed that this loan was never repaid.

Thereafter, beginning on March 23, 1983, Mrs. Drewery prepared and executed a series of checks on the joint account created by her father at the National Bank of Commerce in Corinth, Mississippi, as follows:

Date Payable To Amount Total

1. March 21, 1983 Cash \$ 100 \$ 100
2. June 27, 1983 Cash \$ 300 \$ 400
3. August 29, 1983 Cash \$1000 \$1400
4. September 23, 1983 Cash \$ 500 \$1900
5. November 28, 1983 Cash \$ 500 \$2400
6. January 16, 1984 Cash \$ 600 \$3000
7. February 16, 1984 Cash \$ 600 \$3600
8. March 14, 1984 Cash \$ 600 \$4200
9. April 16, 1984 Cash \$ 600 \$4800

10. April 16, 1984 Jimmy D. Drewery \$2500 \$7300

11. June 25, 1984 Cash \$1200 \$8500

12. July 15, 1984 Cash \$ 600 \$9100

Grand Total \$9100

It is undisputed that all of these checks were drawn from funds exclusively owned by Mrs. Drewery's father from an account which he later named Mrs. Drewery as a joint owner with right of survivorship. According to Mrs. Drewery, the check to Jimmy D. Drewery in the sum of \$2,500 was made to enable Mr. Drewery and Mrs. Drewery to have money to pay income taxes for the taxable year. According to her, the money from the other checks was used by her each month to help defray the expenses incurred as a result of her father living in her home. She stated that she did not charge rent to her father nor did she charge him a fixed amount each month for any purpose, although he was always anxious to pay his own expenses over the years.

Mrs. Drewery stated that her father was mentally alert until his death and always was very forceful in expressing his views, including his views on how to handle his own money. She did testify, however, that her father would always help her financially if she asked him to, just as he had helped all of his other children over the years.

The record before us discloses that the estate of the decedent was opened on August 23, 1985, at which time his last will and testament was admitted to probate. The record discloses that the decedent's son, Talmadge Hershel Morris, was appointed as the executor of his father's estate in Cause No. 24,188 of the Chancery Court of Alcorn County, Mississippi.

On December 11, 1985, Donna Drewery filed a complaint against the estate of the decedent in Cause No. 24,346 of the Chancery Court of Alcorn County, Mississippi. In this action, she alleged that she had distributed funds to her brothers and sisters with the understanding that they would convey their interest in the homestead of her parents to her in consideration for the aforesaid payments. Thus, she sued for specific performance of their contract, unjust enrichment, and other relief. The estate, in turn, filed an action requesting Mrs. Drewery to account for certain funds of her father which she handled prior to the decedent's death. All actions filed by the parties and the estate court file were eventually consolidated for trial purposes.

On February 23, 1988, the trial court issued its order based upon a bench opinion which was made a part of the record but which is now unavailable for review and not a part of the record considered by this Court on appeal. In its order, the court *inter alia* (1) vested title to the contested house and lot in a special commissioner, who was directed to sell the property by public auction and then hold the sales proceeds in trust until the court could resolve the issues outstanding between the parties, (2) granted Mrs. Drewery an equitable lien in the sum of \$15,000 plus accrued interest against the interests of each of the defendants in the estate of the decedent, (3) denied the request for a further accounting by Mrs. Drewery except as later provided, and (4) authorized and *directed* Talmadge H.

Morris, in his capacity as executor of the estate of James Andrew Morris and *in his individual capacity*, to file an action against Donna Drewery in order to settle "*all disputes*" between the parties in these cases, including the action to recover a "\$5,000 loan from James Andrew Morris and a \$2,500 payment on Plaintiff's taxes from James Andrew Morris' funds." (emphasis added).

A special commissioner's sale was held on March 24, 1988, and the house and lot were sold for \$22,500. This sale was confirmed by the order of the trial court dated April 8, 1988. Mrs. Drewery was given a \$15,000 equitable lien, together with lien for accrued interest, on the proceeds of the sale, which were held in trust in an interest-bearing account by the special commissioner pending further order of the court, after payment of the expenses of sale. Thereafter, on February 2, 1989, Talmadge H. Morris, in his capacity as the executor of the decedent's estate, filed a separate action in the Chancery Court of Alcorn County, Mississippi (Cause No. 25,889) and named Mrs. Drewery as the defendant. In this action, the executor charged that Mrs. Drewery had abused her fiduciary relationship with the decedent and through her own actions and undue influence over the decedent, withdrew and diverted funds from her father's bank accounts for her own use and benefit and for the benefit of her husband. The executor then requested that the estate be awarded a judgment against Mrs. Drewery in the sum of \$12,600, plus interest thereon "from the date taken until paid in full." In addition, the executor requested that the estate be awarded a lien against money being held in trust by the chancery clerk (who had been serving as special commissioner). Mrs. Drewery filed a general denial in response to the claims against her on May 17, 1989. However, a long delay occurred, and no action was ever held in this new proceeding until February 9, 1990, when an agreed order in Cause No. 25,889 was executed by the trial court allowing the court, to rule on "all issues presently pending . . . based upon the record previously made herein." In this agreed order, the trial court was referring to all matters and proceedings previously held in Cause Nos. 24,188 and 24,346, mentioned above. The reason for the delay of the resolution of this matter was apparently caused by the death of Orma R. Smith, Jr., the attorney for Mrs. Drewery. Mr. Smith's partner, John C. Ross, Jr., signed the agreed order allowing the chancellor to rule on the executor's complaint in Cause No. 25,889, based on the prior testimony and proceedings previously held in the estate action (Cause No. 24,188) and in the action previously filed by Mrs. Drewery (Cause No. 24,346).

The trial court, acting in accord with its agreed order dated February 9, 1990, issued a final order on August 1, 1991, apparently designed to dispose of all disputes between Mrs. Drewery and the estate of James Andrew Morris. In this order, the court (1) granted a judgment in favor the estate against Mrs. Drewery as a result of "two alleged loans" of \$5,000 and \$2,500 from the decedent to Mrs. Drewery and her husband, (2) the estate was awarded a judgment against Mrs. Drewery in the sum of \$6,600, as a result of money withdrawn from the decedent's account during his lifetime and deposited to the accounts of Mrs. Drewery or her husband, (3) the estate was granted a lien on the interest of Mrs. Drewery in the proceeds of the sale of decedent's home place, (4) the Chancery Clerk of Alcorn County was directed to distribute one-eleventh of those proceeds to each of Mrs. Drewery's brothers and sisters, and (5) the clerk was authorized to pay the remaining one-eleventh of the proceeds to the estate of the decedent in order to partially satisfy the judgments against Mrs. Drewery, all of which totaled the sum of \$14,100. The court further stated that if any funds were left over after satisfying the judgments, the remaining funds should be paid to Mrs. Drewery.

On May 26, 1992, Donna Drewery filed a motion to set aside the judgment rendered by the trial court in its August 1, 1991, order. In her motion she stated that after her attorney, Orma R. Smith,

Jr., died, she was never made aware of his death until 1992, nor was she made aware that an agreed order had been entered allowing the trial court to decide all issues based upon the record already made in the case. She stated in her motion that the agreed order was executed by Attorney Ross without her authority and that the judgment of the court dated August 1, 1991, should be set aside and a new trial held to decide all issues. A special chancellor was appointed to hear this motion. Subsequently, the trial court's order dated August 1, 1991, was, in fact, set aside, and a new trial was ordered by the special chancellor, the Honorable Mike Carr, dated January 25, 1994.

This action was finally heard for the last time on its merits on January 11, 1995, at which time Donna Drewery was the only witness. Subsequently, the trial court filed its written opinion on August 15, 1995, at which time it basically reinstated most of the court's earlier findings and *inter alia* ruled that (1) Mrs. Drewery had a confidential and fiduciary relationship with her father during his lifetime, (2) the estate of the decedent was entitled to judgment against Mrs. Drewery in the sum of \$14,100, "plus interest at the rate of six percent (6%) per annum from the date of the entry of the original opinion in this case on February 17, 1988," and (3) the \$15,000 lien previously awarded to Mrs. Drewery was released. Mrs. Drewery now appeals the trial court's decision to this Court.

B. THE ISSUES

Mrs. Drewery raises the following issues, which are taken verbatim from her brief:

I. THE TRIAL COURT ERRED IN GRANTING THE EXECUTOR OF THE ESTATE A JUDGMENT AGAINST PLAINTIFF IN THE AMOUNT OF \$14,100.00 AND GRANTING INTEREST TO THE ESTATE AT 6% PER ANNUM FROM FEBRUARY 17, 1988.

II. THE TRIAL COURT ERRED IN ALLOWING ANY EVIDENCE AS TO ANY OTHER SUMS OTHER THAN THE ALLEGED LOANS FROM J. A. MORRIS TO PLAINTIFF IN THE AMOUNT OF \$2,500.00 AND \$5,000.00, AFTER HAVING DENIED FURTHER ACCOUNTINGS OF PLAINTIFF IN THE COURT'S ORDER DATED FEBRUARY 23, 1988.

III. THE TRIAL COURT ERRED IN FAILING TO LIMIT FURTHER ACCOUNTINGS REQUIRED OF PLAINTIFF IN EXCESS OF THOSE ALLOWED BY THE COURT'S ORDER SO LIMITING SUCH ACCOUNTINGS EXECUTED ON FEBRUARY 23, 1988.

IV. THE TRIAL COURT ERRED IN RELEASING THE LIEN OF PLAINTIFF IN ITS ORDER OF JUDGMENT DATED OCTOBER 4, 1995 TO THE \$15,000.00 LIEN, PLUS INTEREST THEREON, WHICH HAD BEEN GRANTED BY THE COURT IN ITS ORDER DATED FEBRUARY 23, 1988 AGAINST THE ESTATE PROCEEDS WITHOUT A HEARING OR EVIDENCE.

V. THE TRIAL COURT ERRED IN ITS ORDER OF JUDGMENT EXECUTED ON OCTOBER 4, 1995 BY DISREGARDING THE JUDGMENT PREVIOUSLY GRANTED BY THE COURT TO PLAINTIFF AGAINST THE DEVISEES IN THE AMOUNT OF \$15,000.00 PLUS INTEREST, WHICH JUDGMENT WAS CONTAINED IN ITS ORDER DATED FEBRUARY 23, 1988.

VI. THE TRIAL COURT ERRED IN AUTHORIZING THE CLERK OF THE COURT TO DISBURSE ANY FUNDS TO THE DEFENDANTS AND PLAINTIFF.

C. ANALYSIS

I. DID THE TRIAL COURT ERR IN GRANTING THE EXECUTOR A JUDGMENT AGAINST MRS. DREWERY IN THE AMOUNT OF \$14,100 WITH INTEREST AT THE ANNUAL RATE OF SIX PERCENT FROM AND AFTER FEBRUARY 17, 1988?

II. DID THE TRIAL COURT ERR IN ALLOWING ANY EVIDENCE AS TO ANY SUMS OTHER THAN THE \$2,500 AND \$5,000 TRANSFER OF FUNDS FROM THE BANK ACCOUNTS OF THE DECEDENT TO JIMMY DREWERY?

III. DID THE TRIAL COURT ERR IN FAILING TO LIMIT FURTHER ACCOUNTINGS REQUIRED OF THE PLAINTIFF BY THE TRIAL COURT'S ORDER OF FEBRUARY 23, 1988?

IV. DID THE TRIAL COURT ERR IN RELEASING MRS. DREWERY'S LIEN FOR MORE THAN \$15,000 THAT HAD BEEN GRANTED BY THE COURT'S ORDER DATED FEBRUARY 23, 1988, WITHOUT A FURTHER HEARING?

All of these issues raised by Mrs. Drewery are interrelated and will be addressed together by the Court. It is necessary to restate the basic findings and ruling of the trial court in the case *sub judice* for the sake of clarity. The trial court essentially ruled as follows: (1) Mrs. Drewery had a confidential and fiduciary relationship with her father and the decedent, James Andrew Morris, prior to his death in 1984, (2) Mrs. Drewery violated and abused that relationship by improperly participating in acts which transferred funds of the decedent to Mrs. Drewery and her husband in the sum of \$14,100. Thus, the court granted a judgment to the estate of the decedent against Mrs. Drewery in the sum of \$14,100 plus annual interest at the rate of six percent from and after the date of the trial court's original opinion in this action on February 17, 1988. (3) The lien in favor of Mrs. Drewery against estate assets in the sum of \$15,000 plus accrued interest, which had been imposed by the trial court in its order dated February 23, 1988, was set aside. (4) The Chancery Clerk of Alcorn County, Mississippi, who had been holding funds of the estate in trust as a result of the sale of the decedent's home place, was directed to distribute one-eleventh portion of these funds to each of the beneficiaries of the last will and testament of the decedent except for Mrs. Drewery. Her one-

eleventh share of the funds was to be applied to the \$14,100 indebtedness which the trial court ruled that she owed to her father's estate. (5) The issue of solicitor's fees for the attorney representing the estate would be decided at a later date.

STANDARD OF REVIEW

An appellate court's standard of review of a chancellor's findings is well settled. We will not overturn the findings of the chancery court if those findings are supported by substantial evidence "unless the chancellor abused his discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was applied." *See Griffin v. Armana*, 687 So. 2d 1188, 1192 (Miss. 1996) (citing *Bowers Window and Door Co., Inc. v. Dearman*, 549 So. 2d 1309, 1312-13 (Miss. 1989); *Bullard v. Morris*, 547 So. 2d 789, 791 (Miss. 1989)). In this case, the chancellor gave no reasons for his findings of fact in his final opinion dated August 11, 1995. Under such circumstances, we presume that all issues at trial were resolved in favor of the estate of the decedent. *Bryant v. Cameron*, 473 So. 2d 174, 179 (Miss. 1985); *Smith v. Dorsey*, 599 So. 2d 529, 533 (Miss. 1992). With these standards in mind, we will address the issues raised by the Appellant.

FIDUCIARY OR CONFIDENTIAL RELATIONSHIP

As stated, the chancellor ruled that Donna Drewery had a "confidential or fiduciary relationship" with the decedent during his lifetime. In *Hendricks v. James*, 421 So. 2d 1031, 1041 (Miss. 1982) the Mississippi Supreme Court defined such a relationship as follows:

Whenever there is 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, arising either from weakness of mind or body, or through trust, the law does not hesitate to characterize such relationship as fiduciary in character.

See also *In re Will and Estate of Varvaris v. Canters*, 477 So. 2d 273, 278 (Miss. 1985) where our supreme court stated, "[I]n determining whether or not a fiduciary or confidential relationship existed between two persons, we have looked to see if one *depends upon another*." (emphasis in original). Both *Hendricks* and *Varvaris* have been cited in a number of later cases involving this issue by the Mississippi Supreme Court. *See Griffin v. Amana*, 687 So. 2d 1188, 1193 (Miss. 1996), *Madden v. Rhodes*, 626 So. 2d 608, 617 (Miss. 1993), and *Estate of Grantham v. Dent*, 609 So. 2d 1220, 1223 (Miss. 1992).

The chancellor was and is best suited to make the judgment as to whether a fiduciary relationship existed between Mrs. Drewery and her father, since the chancellor was the only judge who heard the testimony and observed the demeanor of the witnesses in this action. As stated, this Court will not normally undermine the chancellor's authority in making such a decision by substituting our judgment as to whether such a relationship existed. *Mullins v. Ratcliff*, 515 So. 2d 1183, 1189 (Miss. 1987). After a review of the evidence presented, we conclude that there was substantial evidence to support the chancellor's decision that a confidential or fiduciary relationship existed between Mrs. Drewery and the decedent. In fact, Mrs. Drewery's own testimony in this regard removed any doubt and firmly established that a close and personal relationship of trust existed between the two parties:

My daddy would help me any way I wanted to. I mean, if I needed help for anything, my daddy would help me. Just like he helped Hershel. He helped Hershel buy a farm at Raymond.

In the case *sub judice*, the decedent had been living with Mrs. Drewery for several years, put her name on his bank accounts with right of survivorship, and gave her check-signing authority. In addition, he also gave her his power of attorney. At the very least, a position of trust existed between the parties, which overwhelmingly established that a confidential or fiduciary relationship as we have defined the term existed between the parties. The next question we must ask is what are the legal implications of such a relationship in this case, where Mrs. Drewery has clearly transferred or participated in transferring funds of the decedent during his lifetime for her benefit and for the benefit of her husband?

PRESUMPTION OF UNDUE INFLUENCE

Where a confidential or fiduciary relationship exists between two parties, as in the case *sub judice*, it is well settled that an appellate court will *presume* that any conveyances of personal property or *inter vivos* gifts procured by a fiduciary were as a result of undue influence because of duties existing in law and fact which the fiduciary owes to the grantor. *See Murray v. Laird*, 446 So. 2d 575, 580 (Miss. 1984), *In re Will Lanius*, 507 So. 2d 27, 29 (Miss. 1987). This presumption is rebuttable but can be overcome only by clear and convincing evidence. *Murray*, 446 So. 2d at 580. Where the party owing the fiduciary duty fails to overcome the presumption of undue influence by clear and convincing evidence, the conveyance or gift will ordinarily be set aside. *Griffin v. Amana*, 687 So. 2d 1188, 1193 (Miss. 1996). The reason for such a presumption of undue influence was stated succinctly in *Estate of McRae v. Watkins*, 522 So. 2d 731, 737 (Miss. 1988):

Why is this rule necessary? It is because this is the only method available to frustrate the success of greed in larcenous form, carried out with no one present but the dominant party and his dependent victim This is why the law declares that when there is a fiduciary or confidential relation, and there is a gift or conveyance of dubious consideration from the subservient to the dominant party, it is *presumed* void. *This is not because it is certain the transaction was unfair; to the contrary, it is because the Court cannot be certain it was fair*

(second emphasis added). Moreover, our supreme court has stated very clearly that where gifts *inter vivos* are involved, unlike situations testamentary in nature, it is not necessary to show that any abuse of the confidential relationship has occurred in order for a presumption of fraud to exist. Such gifts are "presumptively invalid." *Madden v. Rhodes*, 626 So. 2d 608, 618 (Miss. 1993). Furthermore, no finding of mental incompetence on the part of the grantor is necessary to raise the presumption, which arises automatically to be rebutted only by clear and convincing evidence. *Hendricks v. James*, 421 So. 2d 1031, 1043 (Miss. 1982). Thus, we must conclude that all of the gifts which constitute the \$14,100 and which are the focal point of this controversy were presumptively void, since we are bound to follow clear precedent set forth by our supreme court.

Mrs. Drewery argues that the \$5,000 should be charged to Mr. Drewery and not charged to her.⁽²⁾ However, the evidence clearly establishes that Mrs. Drewery went to her father and asked him to make a \$5,000 "loan" to her husband. She also said that she benefitted from the loan since Mr.

Drewery informed her that he would use the money to pay off a number of his bills. In *Griffin v. Amana*, 687 So. 2d 1188, 1196-97 (Miss. 1996), the fiduciary procured the gift for a close relative and was held liable as a result of her undue influence in procuring a loan. Thus, we are of the opinion that there was substantial evidence to support the chancellor's ruling that a presumption of fraud existed concerning the transfers of various sums totaling \$14,100 from the decedent's bank account to Mrs. Drewery and her husband. The final question we must ask, therefore, is whether the Appellant presented clear and convincing evidence to rebut the presumption of undue influence?

MURRAY V. LAIRD AND MULLINS V. RATCLIFF

In *Murray v. Laird*, 446 So. 2d 575 (Miss. 1984), our supreme court attempted to clearly state the requirements necessary to overcome or rebut the presumption of undue influence in a case such as this and stated that in order to do so, clear and convincing evidence must be presented to satisfy a three-pronged test:

- (1) Good faith on the part of the grantee/beneficiary;
- (2) [the] Grantor's full knowledge and deliberation of his actions and their consequences;
- (3) Advice [to the grantor from] . . . (a) a competent person, (b) disconnected from the grantee and (c) devoted wholly to the grantor/testator's interest.

Murray, 446 So. 2d at 578. However, in *Mullins v. Ratcliff*, 515 So. 2d 1183 (Miss. 1987), the supreme court reworded the third prong of the test by merely requiring "independent consent and action" by the grantor as opposed to advice from a disconnected and competent third person. *Mullins*, 515 So. 2d at 1194. See also *Madden v. Rhodes*, 626 So. 2d 608, 620 (Miss. 1993) and 70 ALR 4th 499 (validity of *inter vivos* gift by ward to guardian or conservator). In the case *sub judice*, the only evidence that was presented to rebut the presumption of undue influence was the testimony of Mrs. Drewery herself. She stated that her father was independent-minded and that she exerted no undue influence upon him. Moreover, she stated that her father paid no rent and that there was no monthly amount that she and her father agreed upon to defray the expenses incurred as a result of his living in his daughter's home. Nevertheless, Mrs. Drewery's testimony is the only testimony we have to consider in support of the proposition that she did not unduly influence her father when the transfers of funds were made. Under such circumstances, we cannot say that the presumption of undue influence has been overcome by clear and convincing evidence. As stated in *Madden*:

It is not now -- and never has been -- the purpose of the law to frustrate the true wishes of any person to make a gift or devise to whomever he pleases

But a court of equity has an equal obligation to be certain, in a transfer between parties in a fiduciary relation, that an elderly or weak person is not abused or overreached. . . .

. . . [W]hen a court of equity is faced with a large gift to a dominant party by the weaker in a confidential relation, it must hear *from someone besides the beneficiary*, or receive clear and

convincing evidence *beyond that from the lips of the beneficiary*, this is, in truth and in fact, what the donor wished to do on his own.

This rule of law can be quite easily satisfied by any conscientious person.

***Madden*, 626 So. 2d at 624-25** (emphasis added). In the case *sub judice*, we have no evidence in rebuttal to consider other than the testimony of the beneficiary of the transfer of funds. Thus, we cannot say that the chancellor abused his discretion, committed manifest error, or employed an erroneous legal standard in ruling that the \$14,100 transfer of funds should be set aside and that Mrs. Drewery should be surcharged for that amount.

Mrs. Drewery contends that the Appellant should not have been required to file further accountings and that the evidence in this action should not have gone beyond any evidence necessary to establish that checks of \$5,000 and \$2,500 were transferred to Jimmy Drewery. However, the trial court's order dated February 23, 1988, specifically authorized and directed the executor of the estate of the decedent to "file in behalf of the estate all claims against the Plaintiff, Donna Drewery, in order that all disputes between the parties to these cases may be resolved by this Court." Thus, the executor had not only the right but the duty to file whatever claims against the Appellant that were necessary to settle all disputes between the parties. Furthermore, Mrs. Drewery was not required to file any further accountings in these proceedings. While it is true that certain checks signed by her were offered into evidence to show what funds had been transferred to Mrs. Drewery and her husband, no accounting by her was filed or required by the trial court. Finally, it was entirely appropriate for the trial court to remove or set aside Mrs. Drewery's lien for \$15,000 against estate assets, since the court also ruled that she had improperly diverted funds of her father to her own benefit. In summary, we find that the first four assignments of error have no merit.

V. DID THE TRIAL COURT ERR IN ITS ORDER AND JUDGMENT EXECUTED ON OCTOBER 4, 1995, BY DISREGARDING ITS JUDGMENT DATED FEBRUARY 23, 1988, WHICH HAD BEEN PREVIOUSLY GRANTED BY THE COURT TO THE PLAINTIFF IN THE SUM OF \$15,000 PLUS INTEREST?

The Appellant contends, without citing any authority, that the \$15,000 equitable lien granted to Mrs. Drewery by the trial court in its February 23, 1988, order was tantamount to a judgment in the sum of \$15,000 against estate assets. Thus, Mrs. Drewery contends that the trial court improperly set the judgment aside when it released or set aside the equitable lien by its order filed on October 9, 1995. As stated, the Appellant cites no legal authorities to support her position on this assignment of error. Under such circumstances, and in the absence of anything meaningful in the record before us on the subject, it is difficult to assess this issue on its merits. "The failure to cite legal authority can be treated as a procedural bar, and this court is under no obligation to consider the assignments." ***Smith v. Dorsey*, 599 So. 2d 529, 532 (Miss. 1992)**. However, from an examination of the pleadings and other court papers filed in the case *sub judice*, it is apparent that the trial court intended for the \$15,000 equitable lien which it granted to Mrs. Drewery to be temporary in nature, until such time as the court could hold a hearing upon all issues before the court, including the claim by the executor of the decedent's estate that Mrs. Drewery had improperly transferred funds of the estate for her benefit and for the benefit of her husband. This assignment of error, based upon the record before us and the fact

that Mrs. Drewery cites no legal authority to support her contentions on this issue, has no merit.

VI. DID THE TRIAL COURT ERR IN AUTHORIZING THE CLERK OF THE COURT TO DISTRIBUTE THE FUNDS DERIVED FROM THE SALE OF THE DECEDENT'S HOME PLACE?

In its order of judgment filed on October 9, 1995, the trial court ordered "[t]hat the remainder of the proceeds being held by the clerk of this court in this case, shall be equally divided among the Defendants and the Plaintiff." Although the record before us is unclear, there apparently were twelve beneficiaries involved in the estate of the decedent. The chancellor directed that the proceeds of the sale of the home place be equally divided among those beneficiaries, which included Mrs. Drewery. Based upon our previous rulings in this action and in the absence of anything meaningful in the record to dictate a different result, we cannot say that the chancellor abused his discretion in authorizing this distribution of estate assets. The court papers and record do include certain documents which indicate the procedures through which the funds in the hands of the special commissioner were distributed, and Mrs. Drewery contends that the distribution was improperly conducted. However, the disputed distribution of assets took place without supersedeas and after a notice of appeal was filed by the Appellant in these proceedings. Thus, any issues involving this distribution of assets are not properly before us for consideration. Any alleged error in distribution by the chancery clerk or in the receipt of such funds by the executor or others should be taken up in separate proceedings not connected to the issues before us on appeal. This assignment of error has no merit.

CONCLUSION

Mrs. Drewery raises no issue on appeal that the executor in his complaint sought only a judgment against Mrs. Drewery for \$12,600 instead of the \$14,100 judgment ultimately rendered against her. Furthermore, the Appellant does not challenge the fact that the trial court awarded legal interest on the \$14,100 judgment from and after February 23, 1988, the date of the chancellor's original judgment in this action. Since no argument was made on these issues by the Appellant, we will not address them in this proceeding.

THE JUDGMENT OF THE ALCORN COUNTY CHANCERY COURT IS AFFIRMED. STATUTORY DAMAGES AND INTEREST ARE AWARDED. ALL COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.

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

1. According to the record, Mr. Drewery was an attorney.
2. The checks for the remaining \$9,100 sought to be recovered in this action were all signed by Mrs. Drewery on a bank account of her father where she had been added as a joint owner of the

account with right of survivorship.