

**IN THE COURT OF APPEALS
OF THE
STATE OF MISSISSIPPI
NO. 96-CA-00932 COA**

**IN THE MATTER OF THE ESTATE OF E.
DURRELL MILES, DECEASED: BUDDY MILES**

APPELLANT

v.

LINDA M. BURLESON

APPELLEE

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

DATE OF JUDGMENT:	JULY 24, 1996
TRIAL JUDGE:	HONORABLE PAT WISE
COURT FROM WHICH APPEALED:	HINDS COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	MEL J. BREEDEN, JR.
ATTORNEY FOR APPELLEE:	WILLIAM ANDY SUMRALL
NATURE OF THE CASE:	CIVIL - WILLS, TRUSTS AND ESTATES
TRIAL COURT DISPOSITION:	CHANCELLOR FOUND THAT APPELLEE HAD REBUTTED PRESUMPTION OF UNDUE INFLUENCE AND CERTIFICATES OF DEPOSIT PROPERLY BELONGED TO APPELLEE.
DISPOSITION:	AFFIRMED - 12/16/97
MOTION FOR REHEARING FILED:	
CERTIORARI FILED:	
MANDATE ISSUED:	2/4/98

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

SOUTHWICK, J., FOR THE COURT:

Buddy Miles brought suit claiming that Linda Burleson unduly influenced his father to give her three certificates of deposit worth \$40,000. The chancellor found no undue influence. On appeal Miles asserts that (1) the chancery court erred in refusing to allow a witness to testify as an expert, and (2) Burleson failed to rebut by clear and convincing evidence the presumption of undue influence. We agree with the chancellor's resolution of these issues and affirm.

FACTS

Durrell Miles died testate on November 19, 1994. In his will, Miles made specific bequests of \$1,000 to each of his six grandchildren with the exception of his granddaughter, Linda Burleson. A separate provision in the will bequeathed Burleson the sum of \$3,000. The remainder of the estate was devised in equal shares to Miles's two sons, Bobby and Buddy. The parties do not contest the validity of the will. Rather, the dispute centers on three certificates of deposit.

Following the death of his wife in 1979, Durrell Miles continued to live at his residence in Jackson. During this time, Burleson assisted Miles on a regular basis with his day-to-day needs. After suffering a stroke in 1988, Miles convalesced at Burleson's home for several months. Later, Miles returned to his own residence, and Burleson continued to assist Miles with his daily activities.

In 1991, Miles decided to purchase a certificate of deposit with funds then in his checking account. At Miles's request, Burleson called several banks to obtain information about the certificates they were offering. After Burleson made the necessary calls, Miles decided to purchase the certificate from Trustmark National Bank. On July 30, 1991, Miles purchased a two-year certificate from Trustmark in the amount of \$15,000 in the name of "E.D. Miles or Linda Miles Burleson." This certificate was subsequently renewed on August 27, 1993.

On January 22, 1992, Miles purchased a one-year certificate of deposit for \$15,000 from Trustmark National Bank. The certificate was issued in the name of "E.D. Miles or Linda Miles Burleson." In July of that same year, Miles purchased a small metal building with the assistance of his family. Miles placed the building near Burleson's residence, and he lived in the building for the remainder of his life.

Later, on June 10, 1993, Miles purchased a third certificate of deposit for a six-month term in the amount of \$10,000 from Trustmark. The certificate was issued in the same style as the earlier certificates. Following the death of Durrell Miles, Burleson redeemed each of the three certificates of deposit.

After the will was admitted to probate, Buddy Miles filed an amended complaint in chancery court alleging that Burleson exercised undue influence over Durrell Miles. Miles asserted that Burleson was listed as a joint owner on the certificates only as an accommodation for administrative convenience. By redeeming the certificates, Miles contended that Burleson wrongfully converted the assets for her own personal use to the detriment of the estate.

The chancellor conducted a trial and concluded that there was a presumption of undue influence as a result of the confidential relationship between Durrell Miles and Burleson. However, the chancellor held that Burleson rebutted the presumption by clear and convincing evidence. The chancellor found that the proceeds of the certificates rightfully belonged to Burleson.

DISCUSSION

I. EXCLUSION OF EXPERT TESTIMONY

During the trial, Buddy Miles tendered Dr. Irvin Cronin, a rebuttal witness, as an expert in the field of psychiatry. Miles attempted to elicit testimony from Dr. Cronin concerning senile dementia and its potential effect on the mental capacity of Durrell Miles. Burleson objected to the qualifications of Dr.

Cronin asserting that the doctor was only qualified as an expert in the field of family practice. The court concluded that any testimony relating to the effect senile dementia would have on Durrell Miles's mental capacity was outside the scope of Dr. Cronin's expertise; therefore, the court excluded the testimony.

Buddy Miles asserts that the court erred in finding that Dr. Cronin was not competent to testify as an expert in regard to the mental condition of Durrell Miles. Based on Dr. Cronin's many years of experience and a six-month period of specialized psychiatric training, Miles argues that the chancellor's exclusion of the testimony was an abuse of discretion. A witness may be qualified as an expert based on his "knowledge, skill, experience, training, or education. . . ." **M.R.E. 702**. The admission of expert testimony is within the sound discretion of the trial court. *Sumrall v. Mississippi Power Co.*, **693 So. 2d 359, 368 (Miss. 1997)**.

The court allowed significant testimony concerning senile dementia. Dr. Cronin testified as to whether Durrell Miles suffered from senile dementia. The court allowed Dr. Cronin to testify based on his knowledge as a family practitioner whether there was a medical link between senile dementia and an individual's susceptibility. The only excluded testimony related to the effect the condition would have specifically on Miles's vulnerability to being swayed by others.

Although a medical doctor may be qualified as an expert in one field, he is not usually an expert in every medical field. Dr. Cronin's participation in a six-month "mini-residency" in the field of psychiatric training occurred more than twenty years earlier. The court questioned Dr. Cronin relating to any specific observations, recommendations, or examinations he made concerning Miles's condition of senile dementia. Thus, we find that there was not an abuse of discretion in prohibiting Dr. Cronin from testifying as an expert in regard to Miles's susceptibility to influence.

II. REBUTTAL OF PRESUMPTION OF UNDUE INFLUENCE

Miles next asserts that the chancery court erred in finding that Burleson presented clear and convincing evidence to rebut the presumption of undue influence which arose concerning the purchase of the three jointly-owned certificates of deposit.

The supreme court has established a three-part test which an individual must pass by clear and convincing evidence to overcome the presumption of undue influence. The three requirements necessary to rebut the presumption are: (1) good faith on the part of the beneficiary; (2) grantor's full knowledge and deliberation of his actions and their consequences; and (3) independent consent and action. *Madden v. Rhodes*, **626 So. 2d 608, 620 (Miss. 1993)**. In applying these three requirements, the court has repeatedly held that the ultimate question remains whether the conveyance was procured by undue influence. *Cooper v. Crabb*, **587 So. 2d 236, 243 (Miss. 1991)**. Thus the three perspectives from which to view the evidence must not become ends in themselves.

During the trial, Burleson described in detail the events preceding the purchase of the certificates of deposit. Burleson investigated the varying interest rates for certificates at several local banks at the express direction of Durrell Miles. Ultimately, Miles decided to purchase the certificates from Trustmark National Bank. Burleson accompanied Miles to Trustmark, and Miles purchased the certificates in the presence of Burleson. Miles then handed the certificates to Burleson and instructed her to put them in a safe place. Additionally, Miles requested that Burleson not disclose the purchase

of the certificates to his sons. According to Burleson, Miles made all of the decisions regarding his finances, including the decisions to renew the certificates.

Although Buddy Miles asserted that his father did not understand the nature of the joint certificates, George Miles, the decedent's nephew and attorney, testified to the contrary. George Miles stated that over the years he drafted several wills for the decedent and that on several occasions the decedent inquired about methods of leaving money that would be free from his sons' knowledge. Miles advised the decedent that he could accomplish this objective by leaving money in a joint account so that the other individual would own the account at Miles's death.

Several witnesses testified about Durrell Miles's mental condition during the period that the certificates were purchased. Burleson testified that Miles's mind was never affected by his illness until the last period in his life. Burleson stated that Miles's suffered from complications with medication; however, he improved after receiving further treatment.

George Miles testified that the illness did not appear to affect the decedent except for memory lapses during the last six months of his life. Miles stated that the decedent was a very strong-willed person who made up his own mind. Additionally, Helen Thompson, a niece of the decedent, testified that she visited frequently with the decedent during the last ten years of his life. She stated that his mental health was "just as plain as it could ever have been."

Dr. Cronin testified that the decedent suffered various health problems including the condition of senile dementia. In response to questions from the trial court, Dr. Cronin stated that the decedent was on medication and that no additional treatment was recommended except to continue with his normal lifestyle.

The three factors of the beneficiary's good faith, the grantor's knowledge and deliberation, and the grantor's independent decision-making are supported by evidence. Whether each is supported by clear and convincing evidence is unimportant if the overall fact-finding that these factors only assist in making is adequately supported, namely, that undue influence did not cause the purchase of these certificates. The chancellor found no such influence, and we agree.

The testimony elicited during the trial reveals that Durrell Miles discussed the possibility of leaving money to an individual without his sons' acquiring knowledge of the transaction. George Miles testified that he advised the decedent how to accomplish this objective. Although Buddy Miles asserts that the testimony of George Miles does not establish independent consent and action, his testimony coupled with the testimony from several other witnesses clearly leads this Court to conclude that Durrell Miles acted independently and with full mental capacity.

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

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