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OPINION OF THE CONNECTICUT PROBATE COURT

IN RE: WILLIAM W. BASSFORD

PROBATE COURT, MIDDLETOWN

MARCH 5, 2015

EDITOR'S SUMMARY & HEADNOTES

Testator's Will was contested based on his lack of testamentary capacity and the exercise of undue influence by Testator's Wife. Though Testator had numerous medical and psychiatric conditions, the Court determined that they did not affect him at the time of the Will's execution and, therefore, did not negate testamentary capacity. Additionally, the Court held that Wife's involvement in Testator's affairs as conservator and spouse did not rise to the level of undue influence. Consequently, Testator's Will was admitted to Probate.

1. **Wills: Admission**

   In considering whether to admit a will, a court looks at whether the testator executed the will with the legal formalities required under section 45a-251 of the Connecticut General Statutes, whether the testator had testamentary capacity at the time the will was executed, and whether the testator executed the will free of undue influence.

2. **Undue Influence: Burden of Proof**

   Unlike due execution and testamentary capacity, undue influence is a matter in avoidance and, thus, the burden of proof vests with the contestant. The opponent of the will must prove undue influence not just by a preponderance of the evidence, but by the higher standard of clear and convincing evidence.

3. Undue Influence: Standards Of

The extent of undue influence sufficient to invalidate a will is such that it induces the testator to act contrary to his wishes, and to make a different will and disposition of his estate from what he would have done if left entirely to his own discretion and judgment.

4. Undue Influence: Generally

What influence is "undue" is more a matter of the means used than of the result accomplished when the contending parties are all natural objects of the bounty.

5. Wills: Due Execution

Any person eighteen years of age or older, and of sound mind, may dispose of his estate by will.

6. Testamentary Capacity: Requirements Of

The well-established test for testamentary capacity is whether the testator has mind and memory sound enough to know and understand the business upon which he is engaged at the time of execution.

7. Testamentary Capacity: Generally

A person may harbor insane delusions and yet have testamentary capacity. A delusion can effect testamentary capacity only when it enters into and controls to some degree the making of a will.

8. Testamentary Capacity: Generally

Mere physical weakness or disease, old age, eccentricities, blunted perceptions, weakening judgment, failing memory or mind, are not necessarily inconsistent with testamentary capacity. One's memory may be failing and yet his mind not be unsound. One's mental powers may be weakening, and still sufficient testamentary capacity remain to make a will.

9. Conservatorship: Generally

The fact that a person is under a conservator does not completely prevent his or her acts from having a legal effect under some circumstances.

10. Testamentary Capacity: Effect Of

The crucial time period for determining testamentary capacity is on the very day and at the time of execution.

11. Testamentary Capacity: Evidence

Evidence of a testator's condition both before and after the will is signed is admitted solely for such light as it may afford as to his capacity at that point of execution and diminishes in weight as time lengthens in each direction from that point.

Opinion*

BACKGROUND

William W. Bassford, M.D. ("Dr. Bassford") died on February 19, 2014. He was survived by his wife of over thirty years, Frances Z. Bassford ("Mrs. Bassford"), and three children from a prior marriage: Jonathan Bassford, Andrew Bassford, and Zelda Alibozek ("Bassford Children"). Dr. Bassford left a Last Will and Testament ("Will") dated May 7, 2012, which he distributed various items of personal property to two of his children, certain grandchildren, and one dollar to his son, Jonathan. The remainder of his estate was left to Mrs. Bassford.

The Bassford Children are contesting the Will based on Dr. Bassford's lack of testamentary capacity and the exercise of undue influence on Dr. Bassford by Mrs. Bassford.

Testimony was heard over two days and more than forty exhibits—primarily medical records—were offered to the Court. Each side presented a psychiatrist as an expert witness.

Dr. Bassford was involuntarily conserved by this Court on November 14, 2011, and Mrs. Bassford was appointed conservator of his person and estate. By way of medical history, Dr. Bassford suffered from mild to moderate dementia, anxiety, post-traumatic stress disorder, and recurring urinary tract infections. His history contains numerous hospital and doctor visits and several inpatient psychiatric stays.

ISSUES

[1] There are three basic questions that need to be considered when deciding whether to admit a will:

1. Did the testator execute the will with the legal formalities required under section 45a-251 of the Connecticut General Statutes?

2. Did the testator have testamentary capacity at the time the will was executed?

3. Did the testator execute the will free of undue influence?

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* This Court's ruling was subsequently appealed to, and affirmed by, the Connecticut Superior Court and Appellate Court. *See Bassford v. Bassford*, No. CV156012903S, 2016 WL 1552888 (Conn. Super. Ct. Mar. 24, 2016), *aff'd*, 180 Conn. App. 331 (2018).

PROPER EXECUTION

As to this initial question, the Court finds that the evidence supports the position that the Will was executed with the legal formalities required by statute. *See* Conn. Gen. Stat. § 45a-251 (2015). Two witnesses testified—one in court and one by deposition—as to the circumstances surrounding the execution of the document. Additionally, the Will contained a self-proving affidavit signed by the two witnesses and was acknowledged by a Commissioner of the Superior Court. No evidence was offered by the Bassford Children to show that the execution of the Will failed to meet the requirements of section 45a-251 of the Connecticut General Statutes.

UNDUE INFLUENCE

[2] Unlike due execution and testamentary capacity, undue influence is a matter in avoidance and, thus, the burden of proof vests with the contestant. The contestant of the Will must prove undue influence not just by a preponderance of the evidence, but by the higher standard of clear and convincing evidence. *See* Ralph H. Folsom, *Probate Litigation in Connecticut*, § 1:15 (2d 2012).

[3] The Connecticut Supreme Court discussed the extent of undue influence sufficient to invalidate a will:

> the degree of influence necessary to be exerted over the mind of the testator to render it improper, must from some cause or by some means be such as to induce him to act contrary to his wishes, and to make a different will and disposition of his estate from what he would have done if left entirely to his own discretion and judgment. That his free agency and independence must have been overcome, and that he must, by some dominion or control exercised over his mind, have been constrained to do what was against his will, and what he was unable to refuse and too weak to resist.

Lee v. Horrigan, 140 Conn. 232, 237 (1953) (citation omitted).

[4] Professor Folsom weighed in on the issue when he wrote: "[w]hat influence is 'undue' is more a matter of the means used than of the result accomplished when the contending parties are all natural objects of the bounty. The testator is free to discriminate and they are free to persuade." Folsom, *Probate Litigation in Connecticut*, at § 1:12.

The Bassford Children claim that Mrs. Bassford exercised a "pattern of undue influence" in her dual capacities as conservator and spouse. While it is true that Mrs. Bassford made all appointments—both legal and medical—for Dr. Bassford and accompanied him on all these visits, there was insufficient evidence to meet the standard set forth in the *Lee* case. Innuendo and suspicion alone do not rise to the level of undue influence.

TESTAMENTARY CAPACITY

The critical issue in this case revolves around the question of whether Dr. Bassford had the requisite capacity to execute a will on May 7, 2012.

[5] Connecticut General Statutes section 45a-250 provides that "[a]ny person eighteen years of age or older, and of *sound* mind, may dispose of his estate by will." Conn. Gen. Stat. § 45a-250 (2015) (emphasis added). The statutes do not, however, define the soundness of mind required for the execution of a valid will. It is necessary to look to case law for a description of the level of capacity required to make a will.

[6][7][8] The well-established test for testamentary capacity is whether "the testator [has] mind and memory sound enough to know and understand the business upon which he was engaged at the time of execution." *Stanton v. Grigley*, 177 Conn. 558, 564 (1979) (citing *City Nat'l Bank & Tr. Co.*, 145 Conn. 518, 521 (1958)); *see also Dripps v. Meader,* 94 Conn. 559, 560 (1920). "A person may harbor insane delusions and yet have testamentary capacity. A delusion can affect testamentary capacity only when it enters into and controls . . . the making of a will." *City Nat'l Bank & Tr. Co.*, 145 Conn. at 522 (internal citations omitted). Indeed, it has been said that:

> [m]ere physical weakness or disease, old age, eccentricities, blunted perceptions, weakening judgment, failing memory or mind, are not necessarily inconsistent with testamentary incapacity. One's memory may be failing and yet his mind not be unsound. One's mental powers may be weakening, and still sufficient testamentary capacity remain to make a will.

Dripps, 94 Conn. at 560 (quoting *Richmond's Appeal*, 59 Conn. 226, 245 (1890)).

[9] While no Connecticut cases appear directly on point, a noted treatise stated, "[t]he fact that a person is under a conservator does not completely prevent his or her acts from having a legal effect under some circumstances. For example, he or she may still be able to make a will." Ralph H. Folsom & Gayle B. Wilhelm, *Incapacity, Powers of Attorney, and Adoption in Connecticut*, § 2.4 (3d 1997).

There is no dispute that Dr. Bassford suffered from numerous medical and psychiatric conditions. The Bassford Children's expert witness, Dr. Harry Morgan, a well-known geriatric psychiatrist, testified that Dr. Bassford's "impaired mental state" and "impaired judgment" did not afford him the testamentary capacity to enter a last will and testament. While Dr. Morgan did not personally examine Dr. Bassford, he based his opinion on a review of hospital records.

Mrs. Bassford's expert witness is also a psychiatrist, Dr. Jay Lasser. Dr. Lasser met with Dr. Bassford for approximately one hour on April 20, 2012, about ten days prior to the execution of the Will. He testified that Dr. Bassford knew his relatives and his assets, and that "while he does demonstrate some

deficiencies in immediate recall, this does not prevent him from solidly understanding and consistently explaining . . . the reasons for wanting to change the will, and the results of these changes." Exhibit B, Letter of Dr. Jay Lasser (May 22, 2012).

The drafter of the Will, Attorney Annette Varese Willis, testified that she met Dr. Bassford at his home to discuss the terms of the Will. Thereafter, on May 7, 2012, she drove the two witnesses to Dr. Bassford's home to execute the document. She spent sixty to ninety minutes with Dr. Bassford, in the presence of the two witnesses, to review and execute the Will. Both witnesses were deposed and stated that Attorney Willis reviewed every page of the Will with Dr. Bassford. *See* Exhibit L, p. 9-10; Exhibit M, p. 31-32.

[10][11] The crucial time period for determining testamentary capacity is "on the very day and at the time of execution." *Jackson v. Waller*, 126 Conn. 294, 301 (1940). Evidence of a testator's condition both before and after the will is signed is admitted "solely for such light as it may afford as to his capacity at that point of [execution] and diminishes in weight as time lengthens in each direction from that point." *Id.* (citations omitted).

In this case, while the serious medical and psychiatric conditions of Dr. Bassford were clear, there was no credible evidence that he did not know the natural objects of his bounty or the nature and extent of his property. Thus, the Court finds that William W. Bassford had the requisite testamentary capacity to execute his Last Will and Testament on May 7, 2012.

CONCLUSION

The Last Will and Testament of William W. Bassford dated May 7, 2012 is hereby ADMITTED and the Executrix named therein, Frances Z. Bassford, is hereby appointed as Executrix of the Estate.

Dated at Middletown, Connecticut this 5th day of March, 2015.

/s/

Joseph D. Marino, Judge