STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS

Melissa Dixon, Plaintiff Below,
Petitioner

vs) No. 11-0852 (Mason County 09-C-137)

Estate of Faye Hudson and Lesa Doeffinger,
Defendants Below, Respondents

FILED
February 13, 2012
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Petitioner Melissa Dixon appeals the circuit court's order granting partial summary judgment in favor of respondents. This appeal was timely perfected by counsel, with petitioner's appendix accompanying the petition. Respondents Estate of Faye Hudson and Lesa Doeffinger have filed a response.

This Court has considered the parties' briefs and the appendix on appeal. The facts and legal arguments are adequately presented in the parties' written briefs and the appendix on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the appendix presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

Petitioner Melissa Dixon and Respondent Lesa Doeffinger are sisters, and are both the daughters of decedent Faye R. Hudson. Petitioner is a resident of Denver, North Carolina, and Respondent Doeffinger resides in Point Pleasant, Mason County, West Virginia. Decedent passed away as a resident of Mason County, West Virginia, on May 19, 2009. Aside from her two daughters, Decedent was survived by two grandsons, Nicholas Hudson Doeffinger and Joseph Karl Doeffinger, both children of Respondent Lesa Doeffinger.

In January 2008, decedent, along with her husband Lester R. Hudson, executed her Last Will and Testament. Decedent and her husband executed identical reciprocal wills drafted by Louie A. Paterno, an attorney located in Charleston, West Virginia. The wills provided for specific sums of money for the petitioner, the respondent, and each grandchild. The wills placed the sum intended for Nicholas Doeffinger into a trust, as he had been previously injured in an accident and was paralyzed. At the time the wills were executed,

several witnesses were present. Connie Sue Edwards signed as a witness to decedent's will, and testified later that decedent knew who her family members were, knew who the natural objects of her bounty were, and understood the general nature of her assets. Witness Edwards further testified that decedent was not coerced or forced to sign the will. Rebecca Turner notorized decedent's will, and has testified that decedent knew she was executing a will, knew who her family members were, and knew what her assets were at that time. Notary Turner likewise testified that no one coerced or forced decedent to sign the will. Although Attorney Paterno was not present on the date the will was actually executed, he did testify that decedent was not forced or coerced into making her testamentary dispositions.

After decedent's death, petitioner initiated a will contest action against the respondents, challenging the will and a Codicil.[1] Discovery was completed in the action, and at that time, respondent moved for partial summary judgment regarding the validity of the will. Petitioner, in response to the motion for partial summary judgment, produced an affidavit of Leonard Riffle, brother of decedent and uncle of both the petitioner and respondent, indicating that decedent lacked the testamentary capacity to execute the will. Decedent's brother never actually spoke to decedent on the date she executed the will; however, he indicated that at some unspecified time both before and after the date the will was executed, decedent was not competent to execute a will. After a hearing, the circuit court granted respondents' motion for partial summary judgment, finding that the respondents have produced evidence showing that at the time the will was signed, decedent had the requisite testamentary capacity, and that no evidence has been produced that decedent was incompetent at the time she signed her will. Further, the circuit court found that there was no evidence beyond speculation of undue influence. Finally, the circuit court found that the trust was validly created under the will of decedent's husband, and that the statute of limitations has run for the filing of an action to impeach the validity of his will.

Petitioner appeals the circuit court's grant of partial summary judgment in favor of the respondents. This Court reviews a circuit court's entry of summary judgment under a *de novo* standard of review. Syl. Pt. 1, *Painter v. Peavy*, 192 W.Va. 189, 451 S.E.2d 755 (1994). In conducting a *de novo* review, this Court applies the same standard for granting summary judgment that a circuit court must apply. *United Bank, Inc. v. Blosser*, 218 W.Va. 378, 383, 624 S.E.2d 815, 820 (2005). Further, "[s]ummary judgment is appropriate if, from the totality of the evidence presented, the record could not lead a rational trier of fact to find for the nonmoving party, such as where the nonmoving party has failed to make a sufficient showing on an essential element of the case that it has the burden to prove." Syl. Pt. 2, *Williams v. Precision Coil, Inc.*, 194 W.Va. 52, 459 S.E.2d 329 (1995). "'[T]he party

[1] The validity of the codicil was not decided on summary judgment below and thus is not addressed herein.

opposing summary judgment must satisfy the burden of proof by offering more than a mere 'scintilla of evidence' and must produce evidence sufficient for a reasonable jury to find in a nonmoving party's favor.' *Anderson [v. Liberty Lobby, Inc.]*, 477 U.S. [242] at 252, 106 S.Ct. [2505] at 2512, 91 L.E.2d [202] at 214 [1986]." *Williams*, 194 W.Va. at 60, 459 S.E.2d at 337.

Petitioner argues generally that there was a genuine issue of material fact as to whether decedent was capable of forming testamentary intent, and whether she was unduly influenced by the respondent. Petitioner asserts that decedent's brother, Mr. Riffle, interacted with her regularly and knew that she was not able to understand the consequence of executing a will that left a large amount of money to her grandson, and that the respondent kept decedent in an "agitated" state in order to influence her.

In response, respondents argue that the petitioner did not produce any witness who offered anything more than speculation or a witness who saw or spoke with the testatrix during the time the will was executed. On the other hand, respondent produced several witnesses who testified that decedent had formed the requisite testamentary intent, and thus partial summary judgment is proper as there is no genuine issue of material fact.

As to testamentary intent, this Court has stated that:

> "It is not necessary that a testator possess high quality or strength of mind, to make a valid will, nor that he then have as strong mind as he formerly had. The mind may be debilitated, the memory enfeebled, the understanding weak, the character may be peculiar and eccentric, and he may even want capacity to transact many of the business affairs of life; still it is sufficient if he understands the nature of the business in which he is engaged when making a will, has a recollection of the property he means to dispose of, the object or objects of his bounty, and how he wishes to dispose of his property." Syllabus Point 3, *Stewart v. Lyons,* 54 W.Va. 665, 47 S.E. 442 (1903).

Syl. Pt. 6, *James v. Knotts*, 227 W.Va. 65,705 S.E.2d 572 (2010). Moreover, "'[w]hen incapacity of a testator is alleged against a will, the vital question is as to his capacity of mind at the time when the will was made.' Syllabus Point 4, *Stewart v. Lyons*, 54 W.Va. 665, 47 S.E. 442 (1903)." Id. at Syl. Pt. 7. As to those witnessing decedent signing her will, this Court has stated that "' '[e]vidence of witnesses present at the execution of a will is entitled to peculiar weight, and especially is this the case with the attesting witnesses.' Point 2, Syllabus, *Stewart v. Lyons*, 54 W.Va. 665 [47 S.E. 442 (1903)].' Syllabus Point 4, *Frye v. Norton*, 148 W.Va. 500, 135 S.E.2d 603 (1964)." Id. at Syl. Pt. 9. In the present matter, respondents produced several witnesses who testified that decedent had the requisite testamentary intent. The only witness on behalf of the petitioner neither saw nor spoke to

dcedent at the time she executed her will, and only speculated that at that specific time that she was incompetent. This Court finds no error regarding the circuit court's grant of partial summary judgment on the issue of testamentary capacity.

Petitioner also argues that decedent was unduly influenced by the respondent. This Court has stated that "'[u]ndue influence, to avoid a will, must be such as overcomes the free agency of the testator at the time of actual execution of the will.' Syllabus Point 5, *Stewart v. Lyons,* 54 W.Va. 665, 47 S.E. 442 (1903)." Syl. Pt. 10, *James v. Knotts*, 227 W.Va. 65,705 S.E.2d 572 (2010). This Court has expounded on the idea of undue influence, stating that:

> "The influence resulting from attachment or love, or mere desire of gratifying the wishes of another, if free agency is not impaired, does not affect a will. The influence must amount to force or coercion destroying free agency. It must not be the influence of affection or attachment. It must not be mere desire of gratifying the wishes of another, as that would be strong ground to support the will. Further, there must be proof that it was obtained by this coercion, by importunity that could not be resisted; that it was done merely for the sake of peace, so that the motive was tantamount to force and fear." Syllabus Point 6, *Stewart v. Lyons*, 54 W.Va. 665, 47 S.E. 442 (1903).

Syl. Pt. 11, *James v. Knotts*, 227 W.Va. 65,705 S.E.2d 572 (2010). Finally, "'[t]he will of a person of competent testamentary mind and memory is not to be set aside on evidence tending to show only a possibility or suspicion of undue influence.' Syllabus Point 7, *Stewart v. Lyons*, 54 W.Va. 665, 47 S.E. 442 (1903)." Id. at Syl. Pt. 12.

Again, petitioner produces only broad statements that decedent was unduly influenced by Respondent Lesa Doeffinger. However, respondent produced several witnesses who did not have an interest in the estate who testified that decedent was not unduly influenced. This Court notes that under the will, petitioner was actually granted a higher sum than respondent. Given the facts in this case, this Court finds no error in the circuit court's grant of partial summary judgment on the issue of undue influence.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: February 13, 2012

CONCURRED IN BY:

Chief Justice Menis E. Ketchum
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Margaret L. Workman
Justice Thomas E. McHugh