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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-301

Filed 31 December 2024

Harnett County, No. 17 E 206

IN THE MATTER OF THE WILL OF RODNEY CARROLL HOBBS, Deceased.

Appeal by Propounders from judgment entered 10 August 2023 by Judge C. Winston Gilchrist in Harnett County Superior Court. Heard in the Court of Appeals 22 October 2024.

*Womble Bond Dickinson (US) LLP, by Jesse A. Schaefer and Elizabeth K. Arias, for caveators-appellees.*

*Anderson, Johnson, Lawrence, & Butler, LLP, by Steven C. Lawrence and Charles R. Smith, and Slaughter & Lupton Law, PLLC, by Robert C. Slaughter, III, for propounders-appellants.*

MURPHY, Judge.

The trial court properly admitted evidence of Propounder Marvin Baxter Hobbs's ("Baxter") subsequent acts and conduct related to his knowledge of the challenged will and his administration of the estate as relevant to the issue of original intent and purpose. Photos taken of the decedent after the execution of the challenged will were not unfairly prejudicial to Propounders where testimony

indicated to the jury the dates on which the photos were taken. The decedent's neurology records were relevant evidence relating to the decedent's mental weakness.

Evidence that a fiduciary relationship was created between the decedent and Baxter through a power-of-attorney executed on 13 March 2015 was sufficient to create a presumption that Baxter procured by undue influence the decedent's 15 September 2015 will, which revoked a prior will providing that the decedent's assets be divided equally amongst his five children, disinherited the decedent's four remaining children, and named Baxter as sole beneficiary as to his real estate. The trial court properly denied Propounders' motions for directed verdict and judgment notwithstanding the verdict where Caveators presented evidence of the decedent's old age and physical and mental weakness, that Baxter lived in the decedent's home, and that the decedent was subject to Baxter's constant association and supervision at the time of the 2015 Will's execution; that the 2015 Will differed from and revoked a prior will; that the 2015 Will named Baxter as the sole beneficiary of the decedent's assets; and that the 2015 Will disinherited the decedent's four remaining children.

### **BACKGROUND**

On 17 March 2020, Caveators Valerie Hobbs Wilson, Rodney Glenn Hobbs, and Lindsey Hobbs Golnik filed a *Caveat* requesting that the trial court enter an order setting aside the will executed by the decedent Rodney Carroll Hobbs on 15 September 2015, which changed the disposition of the decedent's assets from the disposition provided in a prior will executed on 16 March 2012. While the 2012 Will

provided that the decedent's estate be divided equally amongst his five children, the 2015 Will provided that the sole beneficiary of the decedent's real estate holdings be Baxter. Caveators alleged that Baxter improperly procured the 2015 Will through undue influence over the decedent and that the decedent lacked capacity to execute the 2015 Will.

On 8 September 2020, the trial court entered an order declaring the Caveators in this proceeding as Valerie Hobbs Wilson, Rodney Glenn Hobbs, and Lindsey Hobbs Golnik and the Propounders in this proceeding as James W. Narron, Administrator CTA; Baxter; and Martin Keith Hobbs. On 13 November 2020, Narron filed an *Answer to Caveators' Caveat*. On 25 November 2020, Baxter filed a *Response to Caveat*. On 18 May 2023, Baxter and Narron filed a *Motion for Summary Judgment*. On 23 June 2023, the trial court entered an order granting Propounders' *Motion for Summary Judgment* on the allegation of lack of testamentary capacity and denying Propounders' *Motion for Summary Judgment* on the allegation of undue influence.

On 31 July 2023, a jury trial on the *Caveat* ensued. At trial, Caveators introduced evidence that, on 13 March 2015, the decedent executed a power-of-attorney appointing Baxter as his attorney-in-fact. Caveators also introduced evidence that, on 1 December 2015, Baxter signed a Change of Beneficiary on behalf of the decedent, which designated the decedent's Estate as the primary beneficiary. The decedent died on 5 February 2017.

On 4 August 2023, the jury returned an affirmative verdict in response to the issue: “Was the execution of the purported 2015 will procured by undue influence?” On 10 August 2023, the trial court entered judgment for Caveators and ordered that the 2015 Will be set aside as null and void. Propounders appealed.

### **ANALYSIS**

On appeal, Propounders argue that the trial court erred in admitting evidence that Propounders contend to be irrelevant or unfairly prejudicial, in denying Propounders’ motions for directed verdict and judgment notwithstanding the verdict, and in giving its jury instruction regarding whether the relationship between Baxter and the decedent gave rise to a presumption of undue influence.

#### **A. Evidentiary Issues**

Propounders first argue that the trial court erred in admitting, over Propounders’ objection, evidence that Propounders contend to be irrelevant or unfairly prejudicial.

The admissibility of evidence under N.C.G.S. § 8C-1, Rule 401 [(2023)] is governed by a threshold inquiry into its relevance. In order to be relevant, the evidence must have a logical tendency to prove any fact that is of consequence in the case being litigated. Trial court rulings on relevancy technically are not discretionary. Whether evidence is relevant is a question of law and we review the trial court’s admission of the evidence de novo. Even though we review these rulings de novo, we give great deference on appeal to trial court rulings regarding whether evidence is relevant.

*Holland v. French*, 273 N.C. App. 252, 262-63 (2020) (cleaned up).

The admission of evidence that is irrelevant or immaterial, however, is harmless unless it has a tendency to mislead or distract from the issue being tried to the prejudice of the objecting party. Not every erroneous ruling on the admissibility of evidence, however, will result in a new trial. The burden is on the appellant not only to show error but to enable the court to see that he was prejudiced or the verdict of the jury probably influenced thereby.

*Martin v. Amusements of America, Inc.*, 38 N.C. App. 130, 134-35, *disc. rev. denied*, 296 N.C. 106 (1978) (cleaned up).

Propounders argue that the trial court erred in admitting, over Propounders' objection, various accounts of a conversation that occurred between Caveators and Baxter at the funeral home after the decedent's death, which tended to reveal that Baxter falsely denied having any knowledge of the location and contents of the decedent's will. Propounders argue that evidence of a conversation which occurred after the challenged will's execution cannot be probative on the issue of undue influence. Propounders also argue that the trial court erred in admitting evidence related to Baxter's performance as Executor of the decedent's Estate, including his denial of claims submitted against the Estate and his failure to adequately identify assets of the Estate. Propounders argue that "these actions have no tendency to make the existence of undue influence at the time of [the] 2015 Will's execution more probable or less probable[.]" merely because they occurred years later. We disagree.

Our appellate courts have long held that "[s]ubsequent acts and conduct are competent on the issue of original intent and purpose." *Cross v. Beckwith*, 293 N.C.

224, 232 (1977) (citation omitted). Upon our review, the trial court did not err in admitting evidence tending to prove Baxter’s dishonesty about his knowledge of the decedent’s will and shedding light on Baxter’s original intent and purpose through his management of the decedent’s Estate. Furthermore, Propounders fail to demonstrate that the probative value of this evidence was substantially outweighed by the danger of unfair prejudice to Propounders, such that the admission of this evidence would constitute an abuse of discretion. *See* N.C.G.S. § 8C-1, Rule 403 (2023) (“Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.”); *accord Holland*, 273 N.C. App. at 266.

Propounders also argue that the trial court erred in admitting four photographs of the decedent that were taken after the execution of the 2015 Will because they “are not reflective of Mr. Hobbs’s physical condition at the time of the 2015 Will’s execution, given the rapid physical deterioration that occurs within elderly individuals[.]” The trial court admitted, over Propounders’ objection, a photograph taken around or about 2 February 2017—three days before the decedent’s death—which depicted Caveators Lindsey and Valerie on either side of the decedent as he lay in bed; two photographs taken in March of 2016 while the decedent was in rehab after a hospital stay, each of which depicted the decedent sitting in a wheelchair; and a photograph taken in September of 2016, depicting the decedent

and Caveator Valerie in the decedent's home. While the photographs depict the decedent on dates after the execution of the 2015 Will, the photographs and surrounding testimony would not unduly confuse or mislead the jury to the prejudice of Propounders, as Caveator Valerie's testimony clearly established for the jury that the photos were taken of the decedent and reflective of the decedent's condition after the execution of the 2015 Will.

Finally, Propounders argue that the trial court erred in admitting the decedent's medical records from UNC Neurology. Propounders' only properly preserved argument against the admissibility of this evidence is that it was not relevant to the issue of undue influence. In essence, Propounders argue that evidence of the decedent's cognitive weakness was irrelevant because the trial court granted summary judgment on the issue of testamentary capacity. However, the decedent's "mental weakness" is one factor directly relevant to the issue of undue influence. *See Caudill v. Smith*, 117 N.C. App. 64, 66 (1994), *disc. rev. denied*, 339 N.C. 610 (1995). It was for the jury to decide the weight of this relevant evidence when determining if the 2015 Will was procured through undue influence.

**B. Motions for Directed Verdict and Judgment Notwithstanding the  
Verdict**

Propounders next argue that the trial court erred in denying their motion for directed verdict and motion for judgment notwithstanding the verdict at trial. "Motions for directed verdict and judgment notwithstanding verdict are questions of

law that appellate courts review de novo.” *Keith v. Health-Pro Home Care Servs., Inc.*, 381 N.C. 442, 455 (2022) (citing *Desmond v. News & Observer Publ’g Co.*, 375 N.C. 21, 41 (2020)).

Under Rule 50 of our Rules of Civil Procedure, a party may move for a directed verdict at trial; or, if the motion for directed verdict is denied, may move for a judgment notwithstanding the verdict. See N.C.G.S. § 1A-1, Rule 50 (2023). When evaluating a motion for directed verdict or motion for judgment notwithstanding the verdict, “all of the evidence which supports the non-movant’s claim must be taken as true and considered in the light most favorable to the non-movant, giving the non-movant the benefit of every reasonable inference which may legitimately be drawn therefrom and resolving contradictions, conflicts, and inconsistencies in the non-movant’s favor.” *Turner v. Duke Univ.*, 325 N.C. 152, 158 (1989). “If, after undertaking such an analysis of the evidence, the [trial court] finds that there is evidence to support each element of the nonmoving party’s cause of action, then the motion for directed verdict and any subsequent motion for judgment notwithstanding the verdict should be denied.” *Abels v. Renfro Corp.*, 335 N.C. 209, 215 (1993); see also *Denson v. Richmond Cnty.*, 159 N.C. App. 408, 412 (2003) (cleaned up) (“A motion for either directed verdict or judgment notwithstanding the verdict should be denied if there is more than a scintilla of evidence supporting each element of the non-movant’s claim.”).



Here, the underlying allegation was based on a caveat to the decedent's will under a theory of undue influence. "Undue influence is a fraudulent influence over the mind and will of another to the extent that the professed action is not freely done but is in truth the act of the one who procures the result." *In re Estate of Loftin*, 285 N.C. 717, 722 (1974) (citation omitted). Establishing undue influence requires evidence of four general elements: "(1) a person who is subject to influence; (2) an opportunity to exert undue influence; (3) a disposition to exert undue influence; and (4) a result indicating undue influence." *Griffin v. Baucom*, 74 N.C. App. 282, 286, *disc. rev. denied*, 314 N.C. 115 (1985). "[T]he burden of proving undue influence is on the caveator[,] and he must present sufficient evidence to make out a [p]rima facie case in order to take the case to the jury." *In re Andrews*, 299 N.C. 52, 55 (1980).

"No test has emerged by which [to] measure with mathematical certainty the sufficiency of the evidence to take the issue of undue influence to the jury." *Hardee v. Hardee*, 309 N.C. 753, 756 (1983). However, we have used a multifactor test indicating several circumstances tending to make evidence more likely to take the issue to the jury. These factors are

- (1) [o]ld age and physical and mental weakness of the person executing the instrument[;]
- (2) [t]hat the person signing the paper is in the home of the beneficiary and subject to his constant association and supervision[;]
- (3) [t]hat others have little or no opportunity to see him[;]
- (4) [t]hat the [instrument is different and revokes a prior instrument[;]
- (5) [t]hat it is made in favor of one with whom there are no ties of blood[;]
- (6) [t]hat it disinherits the

natural objects of his bounty[; and] (7) [t]hat the beneficiary has procured its execution.

*Caudill*, 117 N.C. App. at 66 (citation omitted).

Considering all evidence in the light most favorable to Caveators, *see Turner*, 325 N.C. at 158, Caveators presented more than a scintilla of evidence to support each of the four elements of undue influence, and the trial court properly denied Propounders' motions for directed verdict and judgment notwithstanding the verdict. *See Denson*, 159 N.C. App. at 412.

Caveators introduced evidence that, at the time that the decedent executed the 2015 Will, he was 83 years old. Beginning in 2011 or 2012, the decedent "was having some mobility issues[]" and began having tremors, ultimately leading to a diagnosis of Parkinson's disease. In 2013, the decedent began having bouts of confusion and struggling to dress himself. In November 2014, Caveator Valerie took the decedent to an appointment at UNC Neurology, during which she informed the doctor that she was concerned about the decedent's "memory function, memories, the ability to remember, [and] the effects of some of the medication [the decedent] was taking that caused him to have some nighttime dream disturbances[.]" The decedent was hospitalized in January 2015 and May 2015. The decedent stayed in the hospital for a few weeks in May 2015 and moved to rehab for approximately one month after his release from the hospital. After the decedent was released from rehab, he moved back into his home. Around this time, the decedent was "frail" and "a lot more quiet[.]"

Caveator Lindsey testified that the decedent

had a lot of -- just inability to kind of stand up for himself. He was very much one to go along to get along, and . . . he is very easily influenced just in general in business dealings. He didn't want to push too hard. He always wanted to make peace and wanted everybody to be happy. He just didn't stand up for himself a whole lot.

Caveator Rodney testified that the decedent was "very influenceable" and "a vulnerable-type person."

At some time in 2014, Baxter began staying with the decedent throughout the week. When the decedent was released from rehab around or about July 2015, Baxter began living in his home with him. After Baxter moved into the decedent's home, he installed video cameras where the decedent slept, in the living room, and outside pointed towards where visitors would park their cars. Caveator Lindsey testified that the installation of these video cameras made her uncomfortable. Baxter also changed the locks on the barn door so that the siblings were unable to get inside. Caveator Rodney testified that, due to these actions, Caveator Rodney began trying to see the decedent when Baxter was not around.

Caveators presented evidence that the 2015 Will differed from and revoked the prior 2012 Will, effectively disinheriting four of the decedent's five children, despite testimony that the decedent had never been known to treat one child differently than the others and despite testimony that the decedent maintained close relationships with his other children until his death.

Considering the factors articulated in *Caudill*, 117 N.C. App. at 66, we hold that the trial court did not err in denying Propounders' motions for directed verdict and judgment notwithstanding the verdict. In the light most favorable to Caveators, see *Turner*, 325 N.C. at 158, Caveators presented more than a scintilla of evidence to support each of the four elements of undue influence.

### **C. Presumption of Undue Influence**

Finally, “[w]hen a fiduciary relationship exists between a propounder and testator, a presumption of undue influence arises and the propounder must rebut that presumption.” *In re Estate of Ferguson*, 135 N.C. App. 102, 105 (1999). Here, Caveators introduced evidence that the decedent executed a power-of-attorney appointing Baxter as his attorney-in-fact on 13 March 2015. “The relationship created by a power[-]of[-]attorney between the principal and the attorney-in-fact is fiduciary in nature.” *Anton v. Anton*, 278 N.C. App. 150, 159 (2021) (cleaned up). This evidence was sufficient to create a presumption of undue influence:

The law is well settled that in certain known and definite fiduciary relations, if there be dealing between the parties, on the complaint of the party in the power of the other, the relation of itself and without other evidence, raises a presumption of fraud, as a matter of law, which annuls the act unless such presumption be rebutted by proof that no fraud was committed, and no undue influence or moral duress exerted.

*In re Sechrest*, 140 N.C. App. 464, 471 (2000), *disc. rev. denied*, 353 N.C. 375 (2001) (cleaned up).

By contrast, in *In re Estate of Ferguson*, this Court held that the issue of whether a fiduciary relationship existed between the testator and the propounder should not have been submitted to the jury because, as a matter of law, a fiduciary relationship did not exist between the testator and the propounder at the time that the testator executed her will. *Ferguson*, 135 N.C. App. at 105-106. This was so because the evidence revealed that the testator executed a power-of-attorney naming the propounder her attorney-in-fact at the same time that she executed her will and did not reveal that the propounder served as the testator's attorney-in-fact *at the time that the testator executed her will*. *Id.* at 105.

Here, the trial court properly instructed the jury as follows:

If you find by the greater weight of the evidence that a fiduciary relationship existed between the deceased and Baxter Hobbs when the purported 2015 will was executed, then the law presumes that the will was procured by undue influence. If you find the existence of a fiduciary relationship, ladies and gentlemen, the propounders may rebut the presumption by proving with evidence of equal weight that the purported 2015 will was the free and voluntary act of the deceased. In any event, the burden remains on the caveators to prove by the greater weight of the evidence that the execution of the purported 2015 will was procured by undue influence.

### **CONCLUSION**

The trial court properly admitted evidence of Baxter's subsequent acts to the 2015 Will's execution and of the decedent's mental weakness. Photographs taken of

the decedent after the execution of the 2015 Will were not likely to mislead or confuse the jury.

The trial court did not err in denying Propounders' motions for directed verdict and judgment notwithstanding the verdict and properly instructed the jury on the presumption of undue influence.

AFFIRMED.

Judges STROUD and FLOOD concur.

Report per Rule 30(e).