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The Presumption Of Undue Influence Arising From A Confidential Relation Between A Testator And Beneficiary In A Will Contest

Sellers v. Qualls[1]

The caveators of the will were three brothers, a sister, and the daughter of a deceased sister of the testatrix. The proponents were the Rev. Qualls, who was the executor named in the will, and the Bethel Church, of which Qualls was pastor. By her will, the testatrix devised her home property to the Bethel Church and the residue of her estate to her "heirs at law".[2] There were two issues contested — mental capacity and undue influence. At the conclusion of the case, the trial court directed a verdict sustaining the validity of the will, which was affirmed on appeal.

On the issue of undue influence, evidence had been presented to show that the testatrix was a devoted member of the church. She was frequently visited by the Rev. Qualls, and customarily he spoke with her alone. After such visits she seemed quite nervous and upset. It was also discovered that the testatrix had loaned Qualls two thousand dollars on quite liberal terms, and entrusted a large part of her business affairs to him. The day following a private conversation between them which lasted approximately two hours, Qualls, or his wife, brought the testatrix to the Quall's home, where the will was drawn by a lawyer, selected by Qualls. The only other party present was Martin, a deacon of the church, who along with the attorney acted as witness of the execution of the will.

On appeal, Judge Brune opened his opinion by quoting the definition of "undue influence" stated in *Grove v. Spiker*[3]:

> ". . . that degree of importunity which deprives the testator of his free agency, which is such that he is too weak to resist, and will render the instrument not his free and unconstrained act."[4]

The Court held, that the evidence presented constituted sufficient proof that a confidential relation existed between the testatrix and Qualls and considered such a relationship a relevant fact which could be considered along with other

[1] 206 Md. 58, 110 A. 2d 73 (1954).

[2] The record does not disclose the value of the property devised to the Bethel Church nor that of the residue; however it appears that the former was of greater value than the latter.

[3] 72 Md. 300, 301, 20 A. 144 (1890).

[4] *Supra*, n. 1, 70.

pertinent facts in determining whether there was undue influence in connection with the devise. However, the Court firmly stated that the doctrine of equitable confidential relations, which concerns those transactions classified as *inter vivos* in which there arises a presumption of undue influence upon proof of the mere existence of a confidential relation alone,[5] does not extend to testamentary gifts in this state.

An *inter vivos* gift is one that is made and perfected during the lifetimes of the donor and donee,[6] while a testamentary gift is a disposition of property which is not to take effect until the grantor dies.[7] When a gift is made under circumstances satisfying the requirements which establish an *inter vivos* transaction, and there is the existence of a confidential relation between the donor and donee, the burden of going ahead with the evidence shifts, from the party contesting its validity, to the donee, making the latter prove the non-existence of undue influence.[8] However it is generally accepted as the prevailing view in this country that where a will is duly executed by one of a sound mind, the burden of proving undue influence is upon the one who is contesting the will, notwithstanding the existence of a confidential relation between the testator and beneficiary.[9] The philosophy underlying the rule has been most appropriately stated:

> " 'In the maze born of incrimination so common to struggles over the leavings of the dead, we must be ever mindful that our duty to the departed is to maintain their solemnly authenticated testament, and not suffer it to be defeated unless vitiated by the super-imposed will of another.' The burden of proof of undue influence is upon him who asserts it. Mere existence of a confidential relationship between testator and beneficiary does not create a presumption of undue influence, but some additional evidence . . . must be proved in order to impose upon the beneficiary the burden of going forward with the evidence."[10]

As stated in the above quotation, the burden of going forward with the evidence will shift to the proponent where,

[5] Cook v. Hollyday, 185 Md. 656, 45 A. 2d 761 (1946).
[6] Neal v. Neal, 194 Ark. 226, 106 S. W. 2d 595, 600 (1937).
[7] Diefendorf v. Diefendorf, 56 Hun. (N. Y.) 639, 8 N. Y. S. 617 (1890). Patch v. Squires, 105 Vt. 405, 165 A. 919, 921 (1933).
[8] Merryman v. Euler, 59 Md. 588 (1883).
[9] 94 C. J. S. Wills 1085, Sec. 237.
[10] Hazelwood and Thompson, *Attorney and client: Presumption of undue influence: Attorney as testamentary beneficiary*, 31 Cor. L. Q. 80, 84 (1945).

in addition to the confidential relation, evidence is presented to show some suspicious circumstance arising from the maneuvering of the beneficiary as the dominant party in his association with the testator.[11] Therefore, the weight of authority recognizes the application of the doctrine of equitable confidential relations to testamentary dispositions in certain situations, and in such situations treats the problem in the same manner as it is treated where the one benefiting from an *inter vivos* gift was in a confidential relation with the donor.[12] These situations usually involve a bequest or devise[13] to a confidant who actively participated[14] in the preparation or execution of the will;[15] that is, one who initiated the proceedings, employed the draftsman, selected the witnesses, excluded persons from the presence of the testator at the time of the making of the will, or concealed the will after it had been made.[16]

Where the court has shifted the burden to the proponent to prove the absence of undue influence, it is usually held that proof that the testator was the possessor of a sound mind, not particularly susceptible to the pressures being exerted upon him by those within his confidence, and that the will was his clear desire is sufficient to overcome the burden thus cast upon him.[17] However, some courts, being more strict, require evidence that proves that at the time of the execution of the will the testator had the independent advice of a reputable attorney.[18]

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[11] Jones v. Roberts, 37 Mo. App. 163 (1889).

[12] 57 Am. Jur. 277, Wills, Sec. 386; In Re Hull's Estate, 63 Cal. App. 2d 135, 146 P. 2d 242 (1944).

[13] Sulzberger v. Sulzberger, 372 Ill. 240, 23 N. E. 2d 46 (1939). An undue disposition is one in which a party benefits from a will made through his agency in the absence of others having equal or greater claim to the testator's bounty. In Re Bottier's Estate, 106 N. J. Eq. 226, 150 A. 786 (1930); Appeal of Livingston's, 63 Conn. 68, 26 A. 470 (1893). It is essential to the raising of a presumption that evidence be presented that proves that the allegedly active party was directly benefited by the will. If he be merely an executor named under the will, with no other interest directly or indirectly, a draftsman, or a lawyer who drew the will and named one of the executors without bond, the burden will not be shifted. However, *cf.* Little v. Sugg, 243 Ala. 196, 8 So. 2d 866 (1942), where it was held that the presumption will arise from the activity of a confidant of the testator, who, although not directly benefiting, exerted his influence for the benefit of his mother.

[14] Zeigler v. Coffin, 219 Ala. 586, 123 So. 22 (1929). The activities, in all respects, must be directly connected with the execution of the will and must be beyond the mere compliance with, or obedience to, the testator's voluntary instructions.

[15] In re Baird's Estate, 176 Cal. 381, 168 P. 561 (1917).

[16] Bancroft v. Otis, 91 Ala. 279, 289, 8 So. 286 (1890).

[17] In re Bryan's Estate, 82 Utah 390, 25 P. 2d 602 (1933).

[18] In re Teller's Estate, 288 Mich. 193, 284 N. W. 696 (1939).

The rule in Maryland refusing to raise a presumption of undue influence in a will contest, where the testator and beneficiary were in a confidential relation, stems from the early English case of *Parfitt v. Lawless*[19] through an opinion handed down by Lord Penzance, which involved a will devising an entire estate to a catholic priest, the confessor of the testatrix. It was there expressed:

> "In cases of gifts or other transactions *inter vivos,* it's considered by the courts of equity, that the natural influence which such relations as those in question involve, exerted by those who possess it, to obtain a benefit for themselves, is undue influence. The law regarding wills is very different from this. The natural influence of parent or guardian over the child, husband over wife, and attorney over the client may lawfully be exerted to obtain a will or legacy as long as the testator thoroughly understands what he is doing, and is a free agent."[20]

The Maryland courts first dealt with this problem in 1862 in the case of *Tyson v. Tyson,*[21] a will contest in which a child of the testator was the principal beneficiary. It was there held that the doctrine of confidential relations, as recognized in the courts of equity involving *inter vivos* transactions, does not extend to a devise or bequest from a parent to a child. The Court of Appeals held that in such a situation the burden was upon the caveator. It was reasoned that in *inter vivos* situations the benefited party participates; and calling upon him to explain his connection therewith, and the circumstances in which his interests were entangled, would be no hardship since he would only be required to make an explanation within his knowledge. This cannot hold true in a will contest where it is quite usual that the devisee has no knowledge of the testamentary act. To cast upon the devisee the burden of showing under the circumstances the will was made would place upon him a burden which, in many cases, he could not possibly discharge. It was recognized by the Court in the *Tyson* case that in some jurisdictions the doctrine of confidential relations has been extended to bequests under will where the relationship between the testator and beneficiary was that of attorney and client or guardian and ward. The question, however, of whether the extension was recognized in

[19] L. R. 2 P. & D. 462 (1872).
[20] *Ibid,* 469.
[21] 37 Md. 567 (1873).

Maryland, was left unanswered, the Court feeling that it was qualified only to decide upon the facts there presented which involved a disposition from a parent to a child.

In 1879 the question was answered in *Griffith v. Diffenderffer*.[22] The Court ruled that the fact that the beneficiary actively participated in its execution or preparation is nothing more than a suspicious circumstance to be considered by the jury in determining its finding of whether or not there was undue influence.[23] In *Stirling v. Stirling*,[24] the Court even more explicitly held that in a situation where the draftsman is the principal beneficiary, it is not within the province of the court to stigmatize that as a suspicious circumstance, but it is a question upon which reasonable minds could differ and, therefore, a question for the jury to decide. The Court again looked to the rule of the *Diffenderffer* case in *Cook v. Hollyday*,[25] where it was pointed out that the suspicious circumstance depended upon the facts connected therewith and not upon the character of the relationship. The dissent in *Snyder v. Cearfoss*[26] again repudiated the raising of a presumption of undue influence where the principal beneficiary was the attorney who drew the will, when it declared that the presumption of invalidity was inapplicable to such a situation. Such a fact gives rise only to a suspicious circumstance and not to a presumption that the will is invalid.

The Maryland cases have consistently distinguished the case of testamentary gifts from *inter vivos* ones and have held equally as often that the doctrine of equitable confidential relations, which is recognized in the case of *inter vivos* gifts, has no application where the gift is made by a testamentary act.[27] It is within the area where there is proven the existence of suspicious circumstances that the Maryland Court is not in accord with weight of authority. As previously stated, in Maryland no evidence whatever,

[22] 50 Md. 466 (1879).

[23] *Ibid.* Ruling on the question of the existence of a confidential relation between the testator and beneficiary, the Court at page 483 said:

> "But there is an obvious difference between a gift, whereby the donor strips himself of the enjoyment of his property whilst living, and a gift by will, which takes effect only from the death of the testator."

Further, on page 484, the Court continued:

> "The fact that a party is largely benefited by a will prepared by himself, or in the preparation of which he takes an active part, is nothing more than a suspicious circumstance, of more or less weight according to the facts of each particular case."

[24] 64 Md. 138, 146-7, 21 A. 273 (1885).

[25] 185 Md. 656, 45 A. 2d 761 (1946).

[26] 187 Md. 635, *dis. op.* 644, 51 A. 2d 264 (1947).

[27] Koppal v. Soules, 189 Md. 346, 58 A. 2d 48 (1947).

no matter to what extent it shows the participation by the beneficiary in the will's execution, will warrant the shifting of the burden of going forward with the evidence to the proponent of the will.[28] However, upon a close examination of the Maryland cases, and particularly the instant case it is apparent that the Court quite often arrives at the same conclusion as would one that adheres to the view followed by the weight of authority. For example, the jury in the instant case found that the evidence presented proved that the testatrix was of sound mind, free from the alleged pressures being exerted upon her.[29] Such evidence probably would have been sufficient to overcome the burden that would have shifted to the proponent had the case come before a court which follows the opposite view.[30]

The purpose of the majority rule seems to be an attempt to arrive more propitiously at a fair and just conclusion. It should be pointed out that the essential elements that must necessarily be present to shift the burden in the jurisdictions following the majority rule are: (1) that a confidential relation exists; (2) that the beneficiary is the dominant party in the relationship, and (3) that he actively participated in either the preparation or the execution of the will.[31] It is readily noticed that in the cases where these elements are present the caveator is not in a position to prove the very act that constituted the undue influence since he was an outsider to the relation, but there is enough evidence presented to show that but for some influence exerted by the beneficiary the will might have been made in the contestant's favor. Therefore, by a rational conclusion, the burden of going ahead with the evidence should be cast upon the proponent to prove that the influence that might have been exerted by him was not of the type classified by the courts as undue. A review of the basis of the Maryland rule has left upon the writer the impression that it was not originally intended to apply to this situation. It is stated by the Court in the *Tyson*[32] case that it is quite

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[28] *Ibid.*

[29] Evidence was presented which proved that Qualls on several occasions had tried to exchange his house for hers which was of much greater value. On all of these occasions the testatrix would not succumb to the pressures being exerted upon her. Sellers v. Qualls, 206 Md. 58, 70 *et seq.*, 110 A. 2d 73 (1954).

[30] In re Nelson's Estate, 134 Cal. App. 561, 25 P. 2d 871 (1933).

[31] In re Kirby's Appeal, 91 Conn. 40, 98 A. 349 (1916).

[32] 37 Md. 567 (1873). It was also stated by the Court, at page 583, that the justification of the application of the equitable doctrine of confidential relations to *inter vivos* gifts rests upon the fact that the beneficiary usually participates, and in calling upon him to explain his connection therewith and the circumstances in which his interests were entangled, would be no

usual that the devisee has no knowledge of the testamentary act, and to cast upon him the burden of showing under what circumstances the will was made would place upon him a burden he could not possibly discharge. This reasoning is quite in accord with the prevailing view,[33] for it seems concerned only with a situation lacking the elements necessary to constitute a suspicious circumstance.[34] Thus the creation of a rule which would shift the burden of going forward with the evidence to the proponent of the will, when evidence is presented which sufficiently reveals the existence of suspicious circumstances, would in no way be a deviation from the basic rule which distinguishes testamentary gifts from the doctrine of equitable confidential relations as applicable to *inter vivos* gifts.[35]

BERTRAM M. GOLDSTEIN

hardship since he would only be required to make an explanation within his knowledge. Such reasoning could easily be extended to a situation in which the beneficiary of a will had actively participated in the making of testamentary disposition. In this instance also the proponent would only be made to explain that which was within his knowledge.

[33] 94 C. J. S. Wills 1085, Sec. 237.

[34] In re Kirby's Appeal, *supra*, n. 31.

[35] See also, the more recent case of Murray v. Fearing, *Daily Record*, April 20, 1956 (Circuit Court of Baltimore City), which relied upon the principal case and quoted it at length.