

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001333-MR

DANNY CHILDERS

APPELLANT

v. APPEAL FROM PIKE CIRCUIT COURT
HONORABLE EDDY COLEMAN, JUDGE
ACTION NO. 00-CI-00098

JAMES CHILDERS, BILLY CHILDERS,
NEWELL GENE CHILDERS, LARRY CHILDERS,
WILLIAM JERRY CHILDERS, ELENE MAY,
AND BARBARA MANESS

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, CHIEF JUDGE; JOHNSON AND McANULTY, JUDGES.

COMBS, CHIEF JUDGE: Danny Childers, son of Ruth M. Childers, deceased, appeals from a judgment of the Pike Circuit Court entered in favor of the other children of the decedent.

Appellees (as plaintiffs below) had filed a complaint that alleged undue influence and incapacity in a real estate transfer and that challenged the validity of a power of attorney. We affirm.

Ruth Childers executed a deed and a power of attorney in favor of her son, Danny, on February 12, 1999. At that time, she was suffering from last stages of severe Parkinson's Disease and was showing signs of the dementia normally associated with that disease. These two documents essentially disinherited Ruth's other children: James Childers, Barbara Maness, Newell Gene Childers, William Jerry Childers, Elene May, Larry Childers, and Billy Childers -- as well as two grandchildren who survived their mother, Ruth's daughter, the late Nancy Bailey. This disposition was in conflict with a will that Ruth had executed in April 1998, which provided that her children *per stirpes* (thus including the children of Nancy Bailey) would share equally in her estate. Ruth died on November 27, 1999. Her children brought this challenge to the validity of the 1999 deed and the power of attorney.

In their complaint, filed January 21, 2000, Danny's siblings alleged that the deed and power of attorney were invalid since Ruth lacked legal capacity at the time of their execution. They also contended that the documents were the product of Danny's undue influence and intimidation. His siblings claimed that Danny had dissipated Ruth's bank accounts to advance his own best interests.

Following a three-day trial, the jury returned a unanimous verdict, finding that Ruth lacked the required mental

capacity when she executed the deed and power of attorney and that she had been induced to execute the documents by Danny's undue influence. The judgment was entered on May 11, 2004, setting aside the deed and ordering Danny to account for the sums that he had withdrawn from Ruth's bank accounts as her putative attorney-in-fact. This appeal followed.

Danny contends that the evidence presented was not sufficient to establish either that Ruth lacked the mental capacity necessary to execute the deed or that she executed the disputed documents as a result of his undue influence. He cites evidence indicating that Ruth enjoyed lucid intervals despite her illness and argues that the challenged documents were executed during one of these periods. He contends that the allegation that he exerted undue influence upon his mother is supported by no more than mere conjecture. We disagree with his contentions.

The evidence presented at trial indicated that Ruth was in a rapidly deteriorating mental and physical condition as of 1996. She was cared for in her home by her children on an alternating basis and was also assisted periodically by aides hired by the family. Several witnesses testified that Ruth was unable to feed herself; that she was unable to walk by herself; that she was often confused; and that she was plagued by disturbing auditory and visual hallucinations during this time.

In late September 1998, as Ruth was being discharged from Pikeville Methodist Hospital, Danny requested that his mother be permitted to come to his home for a few months. While it was anticipated that the family's alternating schedule for Ruth's care would be continued, discord immediately erupted between Danny and his siblings. By early-Spring of 1999, Danny had begun to restrict visits of some family members with Ruth.

Ruth's condition continued to deteriorate, and she soon became entirely dependent upon Danny and his wife for her personal care. Danny became intimately involved in Ruth's finances. We agree that Danny undertook so close a fiduciary and confidential relationship with Ruth as to suffice to create a climate of undue influence. See Hall v. Orme, 146 Ky. 467, 142 S.W. 1077 (Ky. 1912); Sword v. Fields, 192 Ky. 629, 234 S.W. 202 (Ky. 1921).

As the proponent of the instruments executed under these circumstances, Danny bore the burden of proving that he had acted in good faith, that the deed and power of attorney were executed by Ruth in the exercise of her own independent judgment, and that the transactions were fair and equitable. Coleman v. Greer, 343 S.W.2d 584 (Ky. 1961). After our review of the record, we are not persuaded that the evidence compelled judgment in his favor.

Evidence presented in this case indicated that Danny was aware of the will that Ruth had executed in 1998 and that he was unhappy with her disposition of her estate in that instrument. Danny took an active role in preparing the deed and the power of attorney at issue, and there was evidence to suggest that Ruth had been isolated at the time that they were finally executed and notarized. The notary public (selected by Danny) revealed that the documents had already been executed when they were presented for her seal. The notary testified that she agreed to prepare her certificate only after she was permitted to see Ruth and to inquire as to the signature. While Ruth identified her signature to the notary, she did not specifically acknowledge the documents. The effect of the power of attorney and deed directly contradicted the intentions expressed in Ruth's will. Additionally, Danny did not make the transfer of the real property a matter of public record for more than three months.

Evidence was offered to prove that the challenged instruments were freely and voluntarily made and were the products of Ruth's own judgment. However, we are not persuaded that this evidence was sufficient to supersede the jury's verdict that Danny exercised undue influence over his mother. We conclude that the court did not err in setting aside the deed and power of attorney.

Because of our resolution of the appeal, we need not address the allegation of error as to the admission of the challenged medical records.

We affirm the judgment of the Pike Circuit Court.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR
APPELLANT:

Lawrence R. Webster
Pikeville, Kentucky

BRIEF AND ORAL ARGUMENT FOR
APPELLEES:

Miller Kent Carter
Pikeville, Kentucky