

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-000476-MR

YVONNE DARLING; BYRON PLUMMER;
KIM PLUMMER

APPELLANTS

v. APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 02-CI-00011

DELMAR PLUMMER, INDIVIDUALLY AND AS
ADMINISTRATOR OF THE ESTATE OF SALLIE
PLUMMER, DECEASED; RESERVATION OMEGA
CORPORATION, INC.

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ABRAMSON AND DIXON, JUDGES; ROSENBLUM,¹ SENIOR JUDGE.

ROSENBLUM, SENIOR JUDGE: Yvonne Darling and other living relatives of Sallie

Plummer bring this appeal seeking to reverse the trial court's grant of summary judgment.

¹Senior Judge Paul W. Rosenblum, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

After our review of the issues and record, we affirm the decision of the Greenup Circuit Court but conclude summary judgment was appropriate for different reasons.

Yvonne Darling and Delmar Plummer are siblings. Their mother was Sallie Plummer. During Sallie Plummer's latter years, her son, Delmar, moved into the family home and cared for his mother. In 1996, Sallie Plummer signed a power of attorney giving Delmar the authority to transfer real property and perform other tasks associated with her interests. In 1997, acting through the power of attorney, he conveyed certain tracts of real property owned by Sallie Plummer to Reservation Omega Corporation, Inc. Reservation Omega Corporation is a closely held corporation owned solely by Delmar Plummer.

In 1998, Darling and another brother, now deceased, sought to have their mother declared incompetent. The Greenup District Court held a hearing where Sallie Plummer was found incompetent. Delmar was appointed her guardian. In September of that year, after another hearing, her rights were restored and she was declared competent to manage her own affairs. During this hearing, Sallie Plummer provided testimony regarding the grant of the power of attorney to her son Delmar and the transfer of real property to a corporation. Both sides in this appeal expend significant effort dissecting and analyzing that testimony. Sallie Plummer is now deceased and this is the only sworn testimony from her that is available. Those arguments attempted to put the trial court in a position of deciding whether Sallie Plummer ratified and approved the power of attorney upon recovering her competency.

The trial court determined there was no genuine issue of material fact and granted summary judgment. We give great deference to the trial court and will not substitute our judgment unless there was a manifest abuse of discretion. *Gates v. Gates*, 412 S.W.2d 223 (Ky. 1967). We find no abuse in this case. There is nothing in the record regarding Sallie Plummer's mental capabilities when she first granted the power of attorney to her son Delmar. We will not presume facts from a silent record. See *Kimbrough v. Commonwealth of Kentucky, Child Support Division ex rel. Belmar*, 215 S.W.3d 69 (Ky.App 2006). A transaction with a person not yet adjudicated mentally unsound will not generally be disturbed. See *Everett v. Downing*, 298 Ky. 195, 182 S.W.2d 232 (1944). Whether she was a year later found to be incompetent or whether the trial court eventually restored her rights and found she had regained competency is immaterial to our review. There was no reason presented in the record that she would have been required to ratify and approve the power of attorney upon recovery of her competency. Although the trial court reached the conclusion that she did ratify and approve the power of attorney, we do not need to base our decision on that fact. Delmar transferred the real property pursuant to a valid power of attorney and prior to any finding that his mother was not competent. Because the power of attorney was valid, Delmar had complete authority to act on behalf of his mother. With that in mind, there is no genuine issue of material fact for the court to consider. See *Steelvest, Inc. vs. Scansteel Service Center, Inc.*, 807 S.W.2d 475 (Ky. 1991).

The decision of the Greenup Circuit Court granting summary judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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