IN THE SUPREME COURT OF MISSISSIPPI
NO. 2006-CA-00373

BRANDI MCMAHAN — APPELLANT/CROSS-APPELLEE

VS.

MONA WEBB, CONSERVATOR, AND AMY MALLETTE — APPELLEE/CROSS-APPELLANT

APPEAL FROM THE CHANCERY COURT OF JACKSON COUNTY

ORAL ARGUMENT NOT REQUESTED

REPLY BRIEF OF APPELLANT BRANDI MCMAHAN

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SUMMARY OF THE ARGUMENT

Amy's reply brief fails to produce any facts or authority to support the Chancellor's setting aside of the warranty deed.

First, Amy completely mischaracterizes Dr. Stoudenmire's testimony. Dr. Stoudenmire did not testify that "Amy lacked the mental competency to execute the documents she was signing." *Appellee's Brief*, p. 3. On the contrary, Dr. Stoudenmire's testimony was limited to Amy's competency to manage funds as opposed to mental incompetency, T. 363-64, although he did opine that Amy suffered from a "weakness of intellect." T. 370.

Secondly, Amy fails to cite any supporting authority for the Chancellor's finding that Amy could not have a "lucid interval," R.E. 32, thus confirming that the Chancellor applied an erroneous legal standard in finding that Amy was mentally incompetent at the time the deed was executed.

Third, even if Amy was suffering from a "weakness of intellect," in order to prevail she was required to show either a confidential relationship or a lack of consideration. However, the evidence adduced at trial showed no confidential relationship. Furthermore, at the time the deed was executed on June 12, 2001, the sisters were particularly close, as evidenced by the fact that Brandi lent Amy money from May 26, 2001 until at least November 27, 2001, R.E. 50-51; Amy visited Brandi in the hospital in Hattiesburg while Brandi was in labor with her daughter, who was born on July 27, 2001, T.331-32; 24, and, on August 3, 2001, Amy had Brandi's unborn child added to their father's trust. T. 186-87; R.E. 54-55. Moreover, even Amy admitted that she was on speaking terms with Brandi at the time of their father's funeral in March of 2001. T. 335-36.

Indeed, there was *no evidence* adduced at trial that refuted the sisters were close at the time the warranty deed was executed.

In sum, Amy fails to produce any facts or authority to support the Chancellor's setting aside of the warranty deed. Therefore, this Court must reverse and render, reinstating the deed set aside by the Chancellor in her Final Judgment entered on February 9, 2006 and remand to the lower court for the sole purpose of partitioning the subject property.

ARGUMENT

I. AMY FAILS TO REBUT BRANDI'S ASSERTION THAT THE CHANCELLOR'S FINDING THAT AMY WAS MENTALLY INCOMPETENT WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND/OR WAS BASED ON AN ERRONEOUS LEGAL STANDARD AND WAS MANIFESTLY WRONG; THUS THE CHANCELLOR ABUSED HER DISCRETION IN SETTING ASIDE THE WARRANTY DEED, AND THIS COURT SHOULD REVERSE AND RENDER, SETTING ASIDE THE JUDGMENT OF THE CHANCERY COURT AND REINSTATING THE DEED, AND REMAND TO THE TRIAL COURT FOR THE SOLE PURPOSE OF PARTITIONING THE PROPERTY

Amy appears to maintain that the fact she had an I.Q. of 74 provides clear and convincing evidence that she could not, "at the time she signed it, understand the legal ramifications of signing the warranty deed." *Appellee's Brief*, p. 7. Even if this were the correct legal standard, Dr. Stoudenmire stated that:

a) his testimony was limited to Amy's competency to manage funds as opposed to mental incompetency. T. 363-64;

b) many people operating at a junior high school level are very successful and I.Q. itself, although a "pretty important factor" is "by no means not [sic] the only factor" in determining a person's ability to enter into contracts. T. 372-73[1]; and

c) Amy suffered from a "weakness of intellect." T. 370.

In fact, there was no testimony from any party that Amy, during the pertinent time period, appeared incompetent to execute the warranty deed.

[1] Indeed, a propensity for doing well, despite lack of academic ability, seems to run in the parties' family as Tommy attained only a 6th or 7th grade education, yet built up a successful trucking business, at the height of which he operated 198 trucks and owned a home valued at $350,000-400,000. T. 229.

Moreover, Amy's endorsement of the Chancellor's finding that Amy could never have a "lucid interval," R.E. 32, is unsupported by any authority. In fact, it is incongruous that the Chancellor should rely largely on the testimony of a person she found to be incapable of having a "lucid interval" for her finding that the warranty deed should be set aside.

In sum, Amy fails to provide any evidence, clear and convincing or otherwise, to support her contention that she was mentally incompetent at the time the deed was executed. As such, Amy fails to refute Brandi's assertion that the Chancellor's finding that Amy was mentally incompetent was not supported by substantial evidence and/or was based on an erroneous legal standard and was manifestly wrong and an abuse of discretion. Accordingly, this Court must reverse and render, reinstating the warranty deed from Amy to Amy and Brandi and remand to the trial court for the sole purpose of partitioning the land.

II. AMY FAILS TO REFUTE BRANDI'S ASSERTION THAT THE CHANCELLOR'S FINDING THAT THE CONSIDERATION FOR THE LAND WAS INADEQUATE WAS NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND/OR WAS BASED ON AN ERRONEOUS LEGAL STANDARD AND WAS MANIFESTLY WRONG; THUS THE CHANCELLOR ABUSED HER DISCRETION IN SETTING ASIDE THE WARRANTY DEED, AND THIS COURT SHOULD REVERSE AND RENDER, SETTING ASIDE THE JUDGMENT OF THE CHANCERY COURT AND REINSTATING THE DEED, AND REMAND TO THE TRIAL COURT FOR THE SOLE PURPOSE OF PARTITIONING THE PROPERTY

Amy's assertion that there was substantial evidence to support the fact that Amy and Brandi did not have a loving and affectionate relationship is incorrect, at least with regard to the pertinent time period, namely around the time the warranty deed was executed on June 12, 2001. In fact, *all of the evidence* showed that the sisters had a loving and affectionate relationship at that time, to wit:

a) Brandi lent money to Amy from May 26, 2001 until at least November 27, 2001. T. 33; C.P. 124; R.E. 22; R.E. 50-51.

b) Amy visited Brandi in Hattiesburg while Brandi was in labor with her daughter, who was born on July 27, 2001. T. 331-32; T.24.

c) Amy agreed to add Brandi's unborn child to their father's trust and the Order for Instruction to Trustee was entered on August 3, 2001. T. 186-87; R.E. 54-55.

Additionally, even Amy admitted that she and Brandi were on speaking terms at the time of their father's funeral in March of 2001. T. 335-36.

Furthermore, although Amy denied at trial that she wanted to gift half the land to Brandi, she told Dr. Stoudenmire that "she thought the contract was that she and Brandy [sic] were going to own the land together and that either she would get the land back or that any money from the sale of the land would be divided equally between the two of them." R.E. 42. Also, Brandi; Brandi's husband, Lance; Paulette, the girls' mother; and Cherri, the sisters' cousin, all testified that Amy told them she wished to split the land with Brandi. T. 33; 72; 101; 133; 221; 273-74.

In sum, there was no testimony, other than the contradictory testimony of Amy, that Amy did not intend to gift half the land to her sister and no evidence that the girls enjoyed anything other than a loving and affectionate relationship at the relevant time. Thus, the Chancellor's finding that the evidence did not show that the sisters had a loving and affectionate relationship was manifestly wrong, based on an erroneous legal standard, and unsupported by any evidence that "reasonable minds might accept as adequate to support [this] conclusion" *In Re Conservatorship of McGowen*, 752 So. 2d 1078 (¶ 11) (Miss. 1999).

Therefore, the Chancellor's setting aside of the deed was an abuse of discretion and this Court must reverse and render, reinstating the warranty deed from Amy to Amy and Brandi and remand to the trial court for the sole purpose of partitioning the land.

III. AMY FAILS TO REFUTE BRANDI'S CONTENTION THAT THE CHANCELLOR WAS MANIFESTLY WRONG AND ABUSED HER DISCRETION IN SETTING ASIDE THE WARRANTY DEED WHERE THERE WAS NO EVIDENCE OF A CONFIDENTIAL RELATIONSHIP BETWEEN BRANDI AND AMY, AND THIS COURT SHOULD REVERSE AND RENDER SETTING ASIDE THE JUDGMENT OF THE CHANCERY COURT AND REINSTATING THE DEED, AND REMAND TO THE LOWER COURT FOR THE SOLE PURPOSE OF PARTITIONING THE PROPERTY

Amy apparently agrees that there was no evidence of a "confidential relationship" as the term is legally defined. Thus, Brandi offers no further argument on this issue.

CONCLUSION

The Chancellor made findings of fact without substantial evidence, applied the wrong legal standard, was manifestly wrong in her conclusions, and abused her discretion in setting aside the warranty deed executed by Amy to Amy and Brandi. The record does not support the Chancellor's finding that Amy was mentally incompetent on the day the deed was executed, and the Chancellor employed the wrong legal standard in concluding that Amy could never have a lucid moment. Furthermore, the evidence revealed that, at most, Amy suffered from a weakness of intellect, and the Chancellor's finding that the testimony did not demonstrate a loving and affectionate relationship between the sisters sufficient to show consideration for the transfer of half of the land to Brandi, was not supported by substantial evidence, was based on an erroneous legal standard, and was manifestly wrong. Finally, the Chancellor was manifestly wrong and abused her discretion in setting aside the deed when the evidence showed there was no confidential relationship between the sisters.

Therefore, this Court should reverse and render, setting aside the judgment of the Chancellor and reinstating the deed, remanding to the trial court for the sole purpose of partitioning the property.

RESPECTFULLY SUBMITTED, this the 29th day of January, 2008.

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CERTIFICATE

I, HOLLY TRUDELL , of the law firm of Phelps Dunbar, LLP, do hereby certify that I have this day mailed, by United States Mail, postage prepaid, a true and correct copy of the above and foregoing correct copy of the foregoing Brief of Appellant to the Honorable Jaye Bradley at her usual business address of Post Office Box 998, Pascagoula, MS 39568, to the Honorable Earl Denham and Honorable Kristopher W. Carter at their usual business address of Post Office Drawer 580, Ocean Springs, MS 39566, and to the Honorable Arthur Carlisle, at his usual business address of 900 Washington Avenue, Ocean Springs, MS 39564.

SO CERTIFIED this the 24th day of January, 2008.

HOLLY TRUDELL