

IN THE SUPREME COURT OF MISSISSIPPI

LESLIE GARY CHAPMAN

PLAINTIFF/APPELLANT

V.

No: 2006-CA-01585

BRIAN ANTHONY CHAPMAN

DEFENDANT/APPELLEE

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the Justices of the Supreme Court or the Judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Honorable Debbra Halford, Chancellor, Fourth District Chancery Court
2. Leslie Gary Chapman, Plaintiff/Appellant
3. Brian Anthony Chapman, Bruce William Chapman, Lesley Darlene Reeves and Betty Ruth Chapman, Defendants/Appellees
4. John H. White, Esquire and Rachel L. Wilson, Esquire, Counsel for Defendants/Appellees
5. Edwin L. Bean, Jr., Esquire, Counsel for Plaintiff/Appellant



RACHEL L. WILSON
Counsel for Defendant/Appellees

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STATEMENT OF THE ISSUES

I. CONFIDENTIAL RELATIONSHIP

- A. The existence of a confidential or close relationship between married parties does not give rise to a presumption of undue influence.

II. UNDUE INFLUENCE

- A. The presumption of undue influence, is not applicable in instances of wills made in favor of surviving spouses.

STATEMENT OF THE CASE

Course of Proceedings and Disposition of the Case in the Court Below

The Petition to Probate the Last Will and Testament of Leslie W. Chapman in Common Form was filed in the Chancery Court of Pike County and the Court admitted said will to probate in common form by order dated April 1, 2003. Thereafter, Gary Chapman, Plaintiff/Appellant, timely filed his Petition to Contest the will, a hearing was had on the Petition to Contest and a final judgment was entered by the trial court on August 17, 2006. The trial court, after considering testimony presented and evidence introduced, held that it had proper jurisdiction inasmuch as Leslie W. Chapman had a fixed place of residence in Pike County, Mississippi at the time of his death. It further held that the un rebutted testimony revealed that it was Leslie W. Chapman's intention to leave his estate to his wife, Betty Chapman, with whom he amassed the estate and a fact made clear in Chapman's own words, recorded by his attorney.

Statement of the Facts Relevant to the Issues Presented for Review

Leslie W. Chapman began experiencing difficulty swallowing in February 1997. Chapman sought medical attention for his problems and it was determined that he had a mass in his esophagus. After vigorous testing, Chapman was informed that he had esophageal cancer. Chapman's doctors estimated he had six (6) months left to live, and advised him to put his affairs in order. (T 125-126)

Chapman shared his diagnosis with his wife, Betty Chapman on June 18, 1997 and on that same day, planned to meet with an attorney regarding a will, make the arrangements for his funeral, and get his affairs in order with the Social Security office. (T 60) Chapman, his wife Betty Chapman, and their daughter, Lesley went to Attorney John Price's¹ office regarding the will, which Chapman directed bequeath his entire estate to Betty Chapman and requested that Price prepare a deed giving certain real property to his only daughter, Lesley. (T 28) While there was conflicting testimony as to the time

¹ John P. Price is now Pike County County Court Judge and references in the trial transcript are to "Judge Price," although at the time of the preparation and execution of the will, he was not a Judge, but a practicing attorney.

period between the request to prepare these documents and the execution of the documents, it is undisputed that the documents were prepared by Price, executed by Leslie W. Chapman, witnessed by Price and Sue Moak and that Betty Chapman and Lesley Reeves accompanied Mr. Chapman to the attorney's office. The only testimony offered regarding those present at the actual execution of the will established that Chapman met with his attorney and his attorney's assistant, Sue Moak, alone.

Chapman died on September 10, 1998, and Betty Chapman filed the Petition to Probate Will in Common Form, to which Gary Chapman objected on the basis of a lack of testamentary capacity, which through conference with the Court it was determined that Gary Chapman meant his objection on the basis of undue influence and not lack of testamentary capacity.

SUMMARY OF THE ARGUMENT

I. CONFIDENTIAL RELATIONSHIP

The trial court did not find that no confidential relationship existed between the decedent and his wife, Betty, as Gary Chapman asserts in his brief. (Plaintiff's Brief, Page 6, "Confidential Relationship, ¶ 1) The trial court stated, "...the court does not dispute that there was a close confidential relationship between them [decedent and wife] but does not find that that close confidential relationship arose to the level that she was able to impart her will upon his." (T 147, L12-16)

II. PRESUMPTION OF UNDUE INFLUENCE

Wills made in favor of surviving spouses do not give rise to a presumption of undue influence absent evidence that the devisee spouse used undue methods to overcome the free and unrestrained will of the testator.

ARGUMENT

I. CONFIDENTIAL RELATIONSHIP

In its opinion, the trial court very plainly stated, "...the court does not dispute that there was a close confidential relationship between them [decedent and wife] but does not find that that close confidential relationship arose to the level that she was able to impart her will upon his." (T 147, L12-16) Any assertion that the trial court failed to find that a confidential relationship existed between Leslie W. Chapman and Wife, Betty Chapman is just plain wrong.

However, that notwithstanding, Mississippi courts have carved out an exception to the presumption of undue influence arising from a confidential relationship² for marriages³.

The Contestant/Plaintiff/Appellant has never contested the validity of the marriage of his father, Leslie W. Chapman, to Betty Chapman. Moreover, the testimony is replete with references to the existence of their marriage. (T 52-53).

II. UNDUE INFLUENCE

Wills made in favor of surviving spouses do not give rise to a presumption of undue influence absent evidence that undue methods were used against the testator, so as to prevent him from being a free agent. This Court was unequivocal in its *Genna v. Harrington* ruling when it held that "In order to set a will aside upon the grounds of undue influence on the part of a spouse, it must be shown that the devisee spouse used *undue methods for the purpose of overcoming the free and unrestrained will of the testator so as to control his acts and to prevent him from being a free agent.*"⁴ The Plaintiff/Appellant offered no such evidence at trial, nor has he produced any such evidence as part of his appeal. Absent evidence that Betty Chapman used "undue methods," to control her husband and those acts prevented him from being his own free agent, Gary Chapman fails to meet his burden of proof necessary to set aside his father's will.

² *Murray v. Laird*, 446 So.2d 575, 578 (Miss. 1984); *Dean v. Kavanaugh*, 920 So.2d 528, 533 (Miss. COA 2006); *In re: Estate of Dabney*, 740 So.2d 915, 919 (Miss. 1999)

³ *Genna v. Harrington*, 254 So.2d 525 (Miss. 1971); *Ard v. Ard*, 438 So.2d 1356 (Miss. 1983)

⁴ *Genna v. Harrington*, 254 So.2d 525, 528-529 (Miss. 1971) (emphasis added)

While the trial court, in its ruling, may not have used the exact language in *Genna*⁵ and *Ard*,⁶ it was clearly in accordance with the precedent contained therein. Any further discussion of the evidence or rulings as related to "close relationship" or "undue influence" is moot as a result of the Testator's and Beneficiary's marital relationship.

CONCLUSION

While it can fortunately be said that Leslie W. Chapman and Betty Chapman, as husband and wife enjoyed a close, confidential relationship, that same relationship cannot serve as the basis for setting aside an otherwise valid will, absent evidence that Betty Chapman used undue methods so as to control her husband and prevent him from exercising his own free will.

Therefore, the Defendants/Appellees respectfully request this Court affirm the lower court's ruling and allow the prompt administration of the estate and distribution of the assets as set forth in the Last Will and Testament of Leslie W. Chapman dated July 18, 1997.

Respectfully submitted,

BRIAN ANTHONY CHAPMAN, BRUCE
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REEVES AND BETTY RUTH CHAPMAN,
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⁵ *Id.*

⁶ *Ard v. Ard*, 438 So.2d 1356 (Miss. 1983)

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CERTIFICATE OF SERVICE

I, Rachel L. Wilson, do hereby certify that I have this day mailed postage prepaid by U.S. Mail, a true and correct copy of the above and foregoing document to the following:

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This the 4th day of April, 2007.



RACHEL L. WILSON