

COPY

IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI

CIA
CASE NUMBER 2006-~~TS~~-01585

FILED

APR 20 2007

LESLIE GARY CHAPMAN
Plaintiff - Appellant

OFFICE OF THE CLERK
SUPREME COURT
COURT OF APPEALS

VERSUS

BRIAN ANTHONY CHAPMAN, ET AL
Defendants - Appellees

APPEAL FROM THE CHANCERY COURT OF
PIKE COUNTY, MISSISSIPPI

APPELLANT'S REPLY BRIEF ON BEHALF OF LESLIE GARY CHAPMAN

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ORAL ARGUMENT NOT REQUESTED

**IN THE SUPREME COURT OF MISSISSIPPI
COURT OF APPEALS OF THE STATE OF MISSISSIPPI**

**IN THE MATTER OF THE ESTATE
OF LESLIE W. CHAPMAN, DECEASED;
LESLIE GARY CHAPMAN, ET AL**

PLAINTIFF/APPELLANT

V.

No: 2006-TS-01585

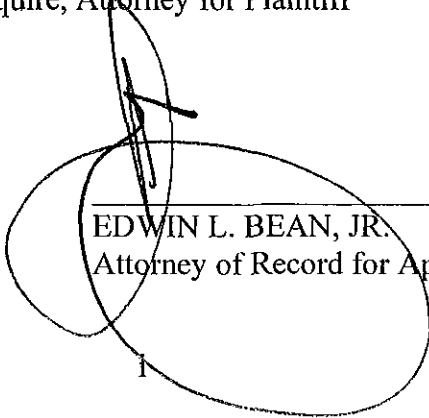
**BRIAN ANTHONY CHAPMAN,
BRUCE WILLIAM CHAPMAN,
LESLEY DARLENE REEVES,
AND BETTY CHAPMAN**

DEFENDANTS/APPELLEES

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 and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Honorable Debbra K. 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, Attorneys for Defendants/Appellees
5. Edwin L. Bean, Jr., Esquire, Attorney for Plaintiff



EDWIN L. BEAN, JR.
Attorney of Record for Appellant

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STATEMENT OF THE ISSUES

Undue Influence

Betty Chapman, the testator, Leslie Chapman's wife, used undue methods to overcome the free and unrestrained will of the testator, Leslie Chapman, in the procurement of and execution of his Last Will and Testament, dated June 18, 1997; thus voiding said will.

STATEMENT OF THE CASE

Statement of Facts Relative to the Issues Presented for Reply

In 1985, Leslie W. Chapman (hereinafter referred to as “Leslie”) and Betty Chapman, his wife, (hereinafter referred to as “Betty”) bought the Summit Pool Hall in both names. (T 56, L 22-26) Leslie drank alcohol on a day-to-day basis and would get inebriated two to three times a week. (T 57, L 28-29) On June 16, 1997, Leslie and Betty’s daughter, drove Leslie to Jackson Mississippi to the V.A. Hospital where he learned that he had a short time to live due to cancer. (T 64, L 16-23) When Leslie and his daughter, Lesley Reeves, returned home on June 16, 1997, Leslie instructed his daughter to not tell Betty what he had learned on his visit to the V.A. Hospital. (T 65, L 18-28) Finally after prodding from Betty, Leslie disclosed to her on June 18, 1997, that he had only six months to live. (T 97, L 25) On June 18, 1997, Betty took Leslie to John Price’s office an attorney, in McComb Mississippi. (T 9, L 6-8) The date that the will was discussed was disputed by Mr. Price as he testified that he saw Leslie approximately one week prior to June 18, 1997, when Leslie was accompanied by his daughter Lesley Reeves and wife, Betty, when they came into his office and Lesley Reeves stated, “that she wanted to make sure that they had an understanding about what she was getting.” (T 26, L 5) Mr. Price further testified that Betty and her daughter, Lesley Reeves, were privy to the conversation about what Leslie wanted to do with his estate in the meeting that took place approximately one week prior to June 18, 1997; (T 26, L15) that there was interplay among the three of them, “we discussed it between the three of them.” (T 26, L 28) Mr. Price further testified that after talking to Leslie that it was, “his impression that his wife had a great deal of influence in you know, helping him manage the situation and maybe even to the extent of handling the money. That she had a great

deal of influence in that situation.” (T 29, L 6) Mr. Price further testified that all three entered his office on June 18, 1997, and that Betty and Lesley Reeves knew before they arrived what was supposed to be in the will, “so that was what they were expecting to be there and that’s what was there.” (T 36, L 17)

After the will was executed, Betty paid Mr. Price’s fee, “she had the checkbook.” (T 42, L 14) On June 18, 1997, Betty was instrumental in getting Leslie to change his mind about his own funeral arrangements. (T 60, L 15-29; T 61, L 1-29; T 62, L 1)

Also, Betty took the will after its execution and placed it in her safety deposit box. She did not disclose its existence and produce it until after Leslie’s death, several requests by the son, Gary Chapman, and his opening the administration of his father’s estate. (T 75, L 24-29; T 76, L 4; T 78, L 23; T 79, L 21-29; T 80, L 25)

ALL EMPHASIS HEREIN AND ABOVE OURS.

SUMMARY OF THE ARGUMENT

The facts of this case are clearly distinguishable from the facts of the cases that the appellee cited as authority making them inapplicable to the case *sub judice*. In the case *sub judice*, Betty Chapman used undue influence through undue methods to overcome the free will of Leslie Chapman. These methods consisted of persuading him to go to a lawyer, telling the lawyer what they wanted in the will, checking the will before its execution to insure it was what they wanted, paying for the will with her own money, secreting the will in her safety deposit box, not disclosing the fact that a will had been executed to the other children until months after their father's death, and refusing to produce the will after several requests by a son.

The facts of this case reveal no typical relationship between a husband and wife which would be loving and trusting enough to know that your spouse will do the right thing, and whose actions are not hidden from the remainder of the family. Betty's veiling her actions in such a way supports the fact that she utilized undue methods to override the will and agency of Leslie in the disposition of his estate.

ARGUMENT

The Appellees in their brief cite the cases of *Genna v. Harrington*, 254 So.2d 525 (Miss. 1971) and *Ard v. Ard*, 438 So.2d 1356 (Miss. 1983) for authority that Mississippi Courts have carved out an exception to the presumption of undue influence arising from a confidential relationship for marriages. The Appellees' readings of those cases are misplaced and clearly not applicable to the facts of this case.

In neither *Genna* nor *Ard*, *Id* were there any facts cited in those opinions which are in any way analogist to the facts in the case *sub judice*. In *Genna*, *Supra*, Agnes E. Barnes Harrington died November 5, 1968, in Harrison County, Mississippi, after having previously executed a will in favor of her husband, Aubrey Highsmith Harrington. The main issue in that case is whether or not Aubrey Highsmith Harrington could take anything as a devisee under the will because the contestants alleged he had intentionally set about to cause the early death of his deceased wife. An ancillary issue was whether or not he had exerted undue influence over her due to the fact that she had made him the sole beneficiary of her last will and testament. There were absolutely no facts cited in *Genna*, *Supra*, that in anyway supports Aubrey Highsmith Harrington's active participation in the drafting and execution of his deceased wife's will.

In *Ard*, *Supra*, the facts cited in that case as well, are totally silent evidencing any active role on the part of Catherine Ard in the execution of Virgil Ard's Last Will and Testament. In the facts cited in *Ard*, *Supra*, the only time Mrs. Ard was mentioned was that she was sitting in the hospital room at the foot of Mr. Ard's bed when his will was executed in the presence of other witnesses. There were absolutely no facts in *Ard*, *Supra* which would indicate that Mrs. Ard actively participated in procuring the will, making sure the will was what she wanted, paying for

the preparation of the will, secreting its existence, and being influential in having the testator change his funeral arrangements the same day, such as in the case *sub judice*.

In the case *sub judice* Betty used undue methods in securing the preparation of Leslie's will, actively participated in making sure the will said what she wanted it to say, took an active role in the execution of the will to the exclusion of other heirs, paid for the will, and later on that day persuaded the testator, Leslie, to change his funeral arrangements. It is abundantly clear that Betty took an active role in persuading and influencing Leslie in the manner in which he disposed of his estate and unduly influenced him by undue methods to leave everything to her to the exclusion of his other heirs.

Betty's suspiciously secreting Leslie's will until long after his death clearly points to the fact that she feared disclosure of the undue methods she used over Leslie to override his free agency. If Betty and Leslie had the generally accepted husband, wife relationship, the facts of this case would be diametrically opposite.

The beneficiary, Betty, made no effort to rebut the presumption of undue influence by even a lessened standard of a preponderance of the evidence, much less the required standard of clear and convincing proof. See *Smith v. Irving*, 827 So. 2d 673, 677 (Miss. 2002).

CONCLUSION

The evidence presented at the trial clearly supports the finding of undue methods exerted upon Leslie by Betty in the preparation of and execution of the will, and subsequent events of June 18, 1997. Betty not only failed to rebut the presumption by clear and convincing evidence, but she failed to rebut the presumption by even a lessened standard of a preponderance of the evidence.

Accordingly, this court should find that the Last Will and Testament of Leslie W. Chapman void *ab initio* due to the undue methods utilized by Betty Chapman in overriding Leslie Chapman's free agency.

Respectfully submitted,

GARY CHAPMAN

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CERTIFICATE OF SERVICE

I, Edwin L. Bean, Jr., 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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Hon. Debbra K. Halford
Chancellor
P.O. Box 575
Meadville, MS 39653

This the 26th day of April, 2007.

EDWIN L. BEAN, JR.