

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI
NO. 2007-CA-00384

CONNIE ELDRIDGE and
POLLY WEAVER

APPELLANTS

VS.

DEBORAH STEVERSON

APPELLEE

APPEAL FROM THE
CHANCERY COURT OF MADISON COUNTY, MISSISSIPPI
CAUSE NO. 2002-569

BRIEF OF APPELLEE

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ORAL ARGUMENT NOT REQUESTED

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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:

Connie Eldridge, Appellant


Polly Weaver, Appellant

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Deborah Steverson, Appellee

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Counsel for Appellee

Respectfully submitted,



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STATEMENT OF THE ISSUES

ISSUE I

Whether the trial court erred as a matter of law by analyzing the contested transfers and transactions using an undue influence analysis

ISSUE II

Whether the chancellor abused his discretion, committed manifest error and erred as a matter of law in allowing the contested transfers and transactions to stand

ISSUE III

Whether the chancellor abused his discretion and committed manifest error by finding that Lucille had a full understanding of her finances and affairs

ISSUE IV

Whether the chancellor erred by not ordering Deborah Steverson to pay the charges incurred for the services of Jim Koerber

B. Statement of the Facts

Lucille passed away on June 29, 2002. Lucille named Deborah and her two sisters, Connie and Polly, as beneficiaries of her estate (T. 49).

Lucille retired from the restaurant business in 1992 or 1993. After she retired, her monthly income totaled \$535.00 in social security benefits (T. 72-73). From 1993 until Lucille's death, Deborah handled Lucille's bank accounts (T. 92).

In 1993, Deborah and Lucille borrowed \$65,000.00 from Trustmark National Bank. The collateral used for this loan was Lucille's property, which was commonly referred to as the "School Street" property. Lucille received half of the loan proceeds because she needed the money to live on. Deborah and Lucille agreed that Deborah would receive the other half of the proceeds, pay off some personal debts (T. 49-50) and make the loan payments. (T. 85) (T. 105) (T. 149).

On June 25, 1997, Lucille executed a general power of attorney to Deborah (Exhibit 11). In 1998, the 1993 loan was refinanced, and \$75,000.00 was borrowed. Of this sum, \$55,000.00 was used to pay off the 1993 loan, and Deborah received the remaining \$20,000.00 (T. 57). Again, Deborah made the monthly payments on the loan until it was paid off in December 2000 (T. 106).

In the latter part of 2000, Lucille sold the "School Street" property to the City of Ridgeland for \$340,000.00. The sum of \$71,823.71 was used at closing to pay off the debt to Trustmark on the property; \$10,000.00 went to the attorney, who had to file suit for Lucille to obtain the asking price (T. 51) (T. 71); and \$5,000.00 went to Deborah to pay off a credit card, which was previously used to pay for an appraisal and ad valorem taxes for the property (T. 52-53) (T. 59). The net proceeds totaled \$276,174.00 (T. 71).

As a result of the sale of the "School Street" property, six people received a gift of \$10,000.00 from Lucille in December 2000. Connie and her husband together received \$20,000.00, Deborah and her husband together received \$20,000.00, and Polly and her boyfriend each received \$10,000.00 (T. 76). Lucille gave an additional \$10,000.00 to Polly just after the first of the year in 2001. Lucille told Connie she was going to give her more money, but Connie told her she didn't want it (T. 77). Because Connie refused the extra money, Lucille gave \$5,000.00 to each of Connie's children, Tammy and Ricky (T. 150) (T. 154).

Deborah sold her "Meadowdale" house to Lucille for \$90,000.00. Lucille and Deborah considered it as an investment for Lucille, who could use the property as "rental property" income (T. 108-09). Of the \$90,000.00 purchase price, existing notes owed by Deborah and secured by the Meadowdale house were paid off on the property totaling \$48,388.20 (T. 109). The remainder of the \$90,000.00 purchase price was left in Lucille's bank account to be used by Deborah towards the cost of building a home by Deborah on the "Woods Road" property that was given to Deborah and her husband by Lucille (T. 109) (T. 112).

In her will, Lucille left the Meadowdale house to Connie and Polly (T. 78-9). Connie and Polly later sold the house for \$110,000.00 (T. 79) (T. 99).

Deborah's name appeared on the signature cards on all three of Lucille's checking accounts (T. 53-55). Lucille and Deborah went through Lucille's bank accounts together every month (T. 115). Lucille's bank statements disappeared after Lucille's death (T. 115). It was not uncommon for Deborah to pay for things from her checking account for Lucille then transfer the money from Lucille's account to her own (T. 117).

Lucille trusted Deborah completely, including managing her bank accounts (T. 80). Lucille never questioned Deborah about any transactions because she trusted Deborah, and she knew Deborah was taking care of her money (T. 93). Tammy Smith, Connie's daughter and Lucille's granddaughter testified to this at trial (T. 146). Tammy had a very close relationship with Lucille (T. 147). She never saw Deborah take advantage of Lucille (T. 148).

Everyone is in agreement: Lucille's mental capacity was fine up until about the time she passed away (T. 75). Lucille was capable of making up her own mind (T. 86). Lucille was strong willed and independent (T. 86-7). The judge verbally indicated at trial that he was confident, based on the answers of the sisters, that Lucille had a sharp mind right up until the end (T. 101). Lucille made it a habit of helping out other people (T. 87). In fact, she got the "School Street" property by helping somebody out, and she got the "Woods Road" property by helping someone out (T. 87).

At trial, Connie testified that she wanted the Court to order Deborah to repay all of the money transfers and expenditures and other challenged financial transactions; she wanted all gifts to Deborah and/or Billy Steverson voided (T. 69-70), and she wanted the court to order Deborah to reimburse her for attorney's fees and fees paid to expert witness (T. 70).

SUMMARY OF ARGUMENT

At trial, Connie and Polly were not successful in convincing the Chancellor that gifts given by Lucille to Deborah *inter vivos* were given as a result of undue influence. While Deborah admitted to a confidential relationship, the Chancellor correctly found that undue influence did not exist. The Chancellor correctly allowed the contested transfers and transactions by Deborah involving Lucille's money and property to stand.

Lucille had a full understanding of her finances and affairs. Lucille trusted Deborah completely and never questioned her. Since 1993 until Lucille's death and afterwards, Deborah managed Lucille's bank accounts. In reviewing the evidence and oral testimony at trial, the Chancellor correctly determined that Lucille exhibited independent consent and action.

The Chancellor had the sole authority to determine the credibility of the witnesses. At trial, the Chancellor was convinced that Lucille was fully aware of her finances and affairs when she gave certain money and gifts to Deborah and her husband. He determined that Lucille did, in fact, play favorites among her daughters. However, even as Connie and Polly testified at trial, Lucille had always favored Deborah.

STANDARD OF REVIEW

In *Will v. Fortenberry*, 592 So.2d 52, 60 (Miss. 1991), the Supreme Court stated its review of a Chancellor's findings is "well settled and very familiar." The Court reiterated that it "will not disturb the findings of a Chancellor when supported by substantial evidence unless the Chancellor abused his discretion, was manifestly wrong, clearly erroneous or an erroneous legal standard was applied." *Bowers Window and Door Co., Inc. v. Dearman*, 549 So.2d 1309 (Miss. 1989) citing *Bullard v. Morris*, 547 So.2d 789, 791 (Miss. 1989); *Gibson v. Manuel*, 534 So.2d 199, 204 (Miss. 1989); *Johnson v. Hinds County*, 524 So.2d 947, 956 (Miss. 1988); *Bell v. City of Bay St. Louis*, 467 So.2d 657, 661 (Miss. 1985); *Culbreath v. Johnson*, 427 So.2d 705, 707-08 (Miss. 1983); *See also Denson v. George*, 642 So.2d 909, 913 (Miss. 1987); *Leggett v. Graham*, 218 So.2d 892, 895 (Miss. 1969).

The well-established standard of review requires that "[w]henver there is substantial evidence in the record to support the chancellor's findings of fact, those findings must be affirmed." *Denson v. George*, 642 So.2d 909, 913 (Miss. 1994). The Chancellor has sole authority to determine the credibility of the witnesses. *Mullins v. Ratcliff*, 515 Sol.2d 1183, 1189 (Miss. 1987).

ARGUMENT

ISSUE I.

Whether the trial court erred as a matter of law by analyzing the contested transfers and transactions using an undue influence analysis.

The Chancellor's Opinion included his findings of fact, and he applied the applicable law to the facts in his Opinion. Connie and Polly wanted the Court to adopt their findings of fact and conclusions of law, which the Chancellor obviously rejected.

Appellants rely upon *McRae v. Watkins*, 522 So.2d 733 (Miss. 1988), (cited by appellants as "Estate of Rockwell v. J. W. Watkins") for their unfounded assertion that transfers to a fiduciary are presumptively void. This is not an accurate statement, as such transfers are merely voidable if the transferee is not able to overcome the presumption of undue influence by clear and convincing evidence. *Leggett v. Graham*, 218 So.2d 892, 895 (Miss. 1969).

In the case of *In Re Conservatorship of McGowen*, 752 So.2d 1078, 1084 (Miss. 1999), this Court cited *Anderson v. Burt*, 507 So.2d 32, 36 (Miss. 1987), as follows:

Common experience teaches that gifts frequently occur between family members, and where a parent has voluntarily given a part of his property to a child we do not interfere. *Moore v. Stone*, 208 So.2d 585-87 (Miss. 1968); *see also Glover v. Glover*, 367 So.2d 167, 175-78 (Miss. 1979), even where a confidential relationship is shown. *Leggett v. Graham*, 218 So.2d 892, 895 (Miss. 1969).

In *McGowen*, the grantees were children of the grantor and were also attorneys in fact by virtue of a power of attorney executed by the Grantor. The lower court was affirmed in its finding that the presumption of undue influence was overcome.

Lucille's mental capacity was fine up until about the time she passed away (T. 75). Lucille was capable of making up her own mind (T. 86). Lucille was strong willed and independent (T. 86-7). Tammy Smith, Connie's daughter and Lucille's granddaughter testified at trial (T. 146). Tammy had a very close relationship with Lucille (T. 147). She never saw Deborah take advantage of Lucille (T. 148). The Chancellor had the sole authority to determine the credibility of the witnesses. In reviewing the evidence and oral testimony at trial, the Chancellor correctly determined that Lucille exhibited independent consent and action. He verbally indicated at trial that he was confident, based on the answers of the sisters, that Lucille had a sharp mind right up until the end (T. 101).

The Supreme Court considers decisions of chancellors under a limited standard of review. *McNeil v. Hester*, 753 So.2d 1057, 1063 (para 21) (Miss. 2000). Specifically, "[t]he chancellor, as the trier of fact, evaluates the sufficiency of the proof based on the credibility of witnesses and the weight of their testimony." *Volmer v. Volmer*, 832 So.2d 615, 621-22 (¶ 21) (Miss. Ct App. 2002) (quoting *Fisher v. Fisher*, 771 So.2d 364, 367 (¶ 8) (Miss. 2000). As well as being the fact-finder, the chancellor is the sole judge of the credibility of witnesses when resolving discrepancies in a witness's testimony. *Murphy v. Murphy*, 631 So.2d 812, 815 (Miss. 1994). Its findings will not be disturbed unless this Court finds that they were made in manifest error. *Richardson v. Cornes*, 903 So.2d 51, 56 (¶18) (Miss. 2005). In other words, "where the record contains substantial credible evidence to support the chancellor's findings, we will defer to them." *Volmer* 832 So.2d at 622.


CONCLUSION


The Chancellor correctly determined that gifts given to Deborah by Lucille *inter vivos* were not given as a result of undue influence. The Chancellor was correct in his determination that the contested transfers and transactions should stand. Lucille exhibited independent consent and action, and the Chancellor correctly determined she was fully aware of her finances and affairs. For the reasons stated and discussed herein, this Court should affirm the judgment of the Madison County Chancery Court.

Respectfully submitted,

DEBORAH STEVERSON

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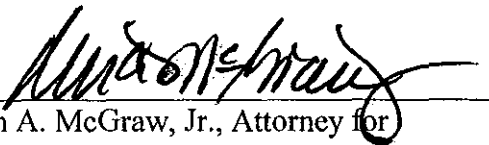
CERTIFICATE OF SERVICE

I, Don A. McGraw, Jr., attorney for Appellee, Deborah Steverson, do hereby certify that I have this day filed this Brief of Appellee with the Clerk of this Court to be received on behalf of the Supreme Court of Mississippi and/or the Court of Appeals and have served a copy of this Brief by first-class mail, postage prepaid, upon the following:

Honorable Cynthia L. Brewer
Chancery Judge – 11th District
P. O. Box 404
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SO CERTIFIED, this the 23^d day of December, 2008.



Don A. McGraw, Jr., Attorney for
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