IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO. 2008-CA-01671

DIANE RUTLAND NATIONS, GREGORY RUTLAND, PEGGY RUTLAND JONES, and CALVIN RUTLAND — APPELLANTS

VERSUS

RICKIE DALE RUTLAND and TODD RUTLAND — APPELLEES

BRIEF OF APPELLEES

APPEAL FROM THE CHANCERY COURT
OF LAWRENCE COUNTY, MISSISSIPPI

ORAL ARGUMENT NOT REQUESTED

RAY T. PRICE
Ray T. Price, P. A.
P. O. Box 1546
Hattiesburg, MS 39403-1546
(601) 545-3336
(601) 583-9372 fax
MSB No. [redacted]

Of Counsel for Appellees

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO. 2008-CA-01671

DIANE RUTLAND NATIONS, GREGORY RUTLAND, PEGGY RUTLAND JONES, and CALVIN RUTLAND — APPELLANTS

VERSUS

RICKIE DALE RUTLAND and TODD RUTLAND — APPELLEES

ORAL ARGUMENT NOT REQUESTED

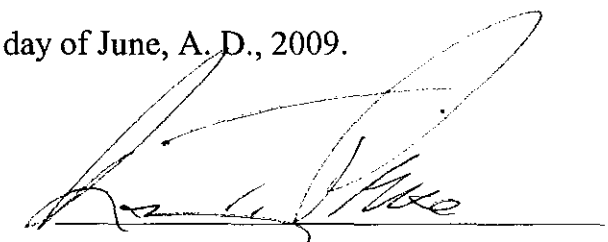
Appellees do not request oral argument in this matter.

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. Rickie Dale Rutland
2. Todd Rutland
3. Hon. Larry Buffington
4. Ray T. Price
5. Malcolm T. Rogers
6. Thomas M. Murphree
7. Joseph B. Moffett
8. Calvin Rutland
9. Diane Rutland Nations
10. Gregory Rutland
11. Peggy Rutland Jones
12. Josie Nell Lambert

Respectfully submitted on this the 5th day of June, A. D., 2009.



RAY T. PRICE
Attorney for Appellees

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE COURT OF APPEALS OF THE STATE OF MISSISSIPPI
NO. 2008-CA-01671

DIANE RUTLAND NATIONS, GREGORY RUTLAND, PEGGY RUTLAND JONES and CALVIN RUTLAND — APPELLANTS

VERSUS

RICKIE DALE RUTLAND and TODD RUTLAND — APPELLEES

BRIEF OF APPELLEES

STATEMENT OF FACTS

This case could be and should be a question on Professor Robert Weems' final exam for his Wills and Estates course. This case perfectly demonstrates, through the life of Willie Ray Rutland, the stages of a decline from having full testamentary capacity to having no testamentary capacity at all. It additionally demonstrates the depths to which mortal men and women will stoop in order to line their own pockets at the expense of a person's most firmly-held intent.

Willie Ray Rutland lived on a farm inherited from his parents and located in Lawrence County, Mississippi. In 1989, when Mr. Rutland was 57 years old, he executed a last will and testament. The proof is uncontradicted that now-Chancellor Joe Dale Walker

represented Mr. Rutland in the preparation and execution of the 1989 will and that he was competent in all respects and not subjected to any form of undue influence. (Tr. 86-89) This will was offered for probate by Mr. Rutland's two nephews, Rickie Dale and Todd Rutland, after his death in 2005. Much to their surprise, they learned that their uncle had executed another will, contemporaneously with the filing of an action against them seeking to set aside deeds to them from Mr. Rutland executed in 1996, which reserved unto himself a life estate. That will was executed in 2002.

All of the testimony indicated that in 1996, Mr. Rutland had become concerned that his health might be in the beginning of a steady decline and so he returned to his attorney, Joe Dale Walker, again without any outside assistance or influence, and asked him to prepare the deeds reserving a life estate, as well as a power of attorney in favor of Todd Rutland. The testimony also is in agreement from all witnesses that it had been known in the family since the execution of the 1989 will that the land owned by Mr. Rutland would be left to Todd and Rickie, they having been the closest to the childless bachelor Mr. Rutland. (Tr. 57) The beneficiary of the purported 2002 will, Diane Nations, even admitted at trial that she personally resented from the time of learning of the execution of the 1989 will, that she and other family members would not receive a part of the land, but that it would instead go entirely to Todd and Rickie. (Tr. 90) Once again, all witnesses agreed that in 1989, Mr. Rutland was physically and mentally fully fit and beyond even the possible reach of undue influence. (Tr. 69-70, 179)

The testimony all indicated that in 2001, Mr. Rutland became upset when he learned that Todd Rutland intended to move him from the assisted living facility where he had been for several years in Lincoln County to Todd's home in Hattiesburg so that he could be with family. (Tr. 65-67) Why Mr. Rutland became so upset is somewhat in dispute, but Mrs. Nations, the primary beneficiary under the purported 2002 will, and the woman running the assisted living facility New Dawn Retirement Center, Elaine Davis, each had a vested interest in Mr. Rutland not moving. (Tr. 151) Mrs. Nations saw the opportunity to become influential in Mr. Rutland's life and Elaine Davis saw the loss of $1,500.00 per month which she was receiving from Mr. Rutland. (Tr. 33, 91) Both were involved in the preparation and execution of the 2002 will, as both admitted and Mr. Rogers testified that both were present during portions of certain conversations that Mr. Rogers had with Mr. Rutland. (Tr. 32) Additionally, Mr. Rutland's brother Calvin Rutland had become involved as well, possibly due to his interest in procuring Mr. Willie Ray Rutland's property, which was adjacent to his own. (Tr. 137)

Malcolm Rogers, Esq., while a fine lawyer in many regards, did a poor job in the execution of the purported 2002 will. Mr. Rogers even admitted that he had placed himself in a position where he had a vested interest in the outcome of the proceedings on the probate of the 2002 will. (Tr. 26-27) Mr. Rogers did not do an adequate investigation into the circumstances surrounding Mr. Rutland's change of heart and such resulted in a failure on his part to be able to be in a position to properly advise Mr. Rutland. (Tr. 34, 36, 143, 146, 151-152, 155) Mr. Rogers' testimony indicates throughout that Mr. Rutland did not

understand the property he owned, believing he had a $10,000.00 CD when in fact it had been $25,000.00, and stating to Mr. Rogers that he had been tricked in 1996 by Rickie and Todd Rutland and/or now Chancellor Joe Dale Walker into signing a deed granting the property to Rickie and Todd when in fact he thought he signed a will. (Tr. 71, 84, 142) Willie Ray Rutland obviously did not recall that he had already executed a will in 1989 and that to do so in 1996 would have been redundant, whereas to do the life estate deed in 1996 would in fact decrease the need for probate of his estate and ease the burden on Todd and Rickie after his death. (Tr. 154) Mr. Rogers did not insure that others were not involved in the procurement of the will, allowing Diane Nations, Calvin Rutland, and Elaine Davis to be present during his several meetings with Willie Ray Rutland. (Tr. 59, 61, 145, 151) He did not discern that the confusion being suffered by Willie Ray Rutland could lead to the will being declared invalid or perhaps he simply did not care due to his conflict of interest. He did not testify that he attempted to discuss with Mr. Rutland that perhaps he should speak with his sister-in-law and nephews regarding their use of his funds during the period of time he was in the nursing home, nor did he testify that he had advised Mr. Rutland that it was primarily his sister-in-law, and not his nephews, who had spent the money which he had placed into the joint account with Josie Nell Rutland, Todd and Rickie's mother. Mr. Rogers did not question the fact that Dr. David Smith, the doctor to whom Mr. Rutland was taken for a mental evaluation at about the time of the execution of the Will, had an ongoing relationship with nursing home owner Elaine Davis, as she had brought Mr. Rutland and probably other residents on many occasions to see Dr. Smith. (Tr. 96)

After a thorough review of the record regarding Willie Ray Rutland's capacity, as well as the extensive evidence of involvement of the beneficiaries of the will, one can only conclude that the beneficiaries were extensively involved in procuring the will, that Mr. Rutland lacked the requisite mental capacity and that Mr. Rutland did not receive independent advice and consent through Mr. Rogers. The Chancellor ruled correctly in finding the 2002 will to be invalid.

Rickie and Todd had grown up being very close to their uncle, their father having died when they were both still very young. All of the facts demonstrate that it was well known within the family that they were the natural objects of Willie Ray Rutland's bounty. Diane Nations admitted resentment toward that natural affection to Todd and Rickie to the exclusion of herself and other family members. Calvin Ray Rutland appeared to have an interest in acquiring the property, at least Mr. Rogers so perceived.

SUMMARY OF THE ARGUMENT

The Chancellor in this case erred when he ruled, without any supporting evidence whatsoever, that the first will and testament of Mr. Willie Ray Rutland executed in 1989 was void because of the presence of a confidential relationship between Mr. Rutland and Todd and Rickie Rutland. No evidence whatsoever in the record exists to support this finding and so this Court should reverse as manifest error has taken place.

As to the finding that the 2002 will was procured when Mr. Rutland lacked requisite mental capacity, said finding is amply supported by the record and would show that Mr.

Rutland was not even aware of the status of ownership of his property, nor the totality of his estate.

ARGUMENT

THE COURT COMMITTED MANIFEST ERROR IN FINDING UNDUE INFLUENCE IN THE EXECUTION OF THE 1989 WILL.

This Court has long held that the findings of fact of a Chancellor will not be disturbed absent legal error or manifest error on a matter of fact.

In this case, the Chancellor erred in both regards. As to the legal standard, the Chancellor did not consider the three necessary factors in deciding whether an undue influence challenge will suffice to set aside a will. In so deciding, the Chancellor must consider three factors which are (1) testamentary capacity of the testator; (2) relationship between the testator and the beneficiaries; and (3) whether or not the circumstances surrounding the execution of the will show that the testator understood the nature and objects of his affection and therefore natural recipients of his bounty and whether or not he received independent advice and consent. In Re: Estate of Smith, 722 So.2d at 606 (Miss. 1998). The Chancellor did not consider all of these factors, but merely found that a fiduciary relationship existed between Rickie Dale Rutland and Todd Rutland at the time of the execution of the 1989 will. Such was legal and factual error.

Legally, the proof, weighed by the controlling law, reveals that without a doubt Willie Ray Rutland had the absolute mental capacity in 1989 to execute the will and that he had the will prepared of his own volition and published to all of his relatives his intent, which went

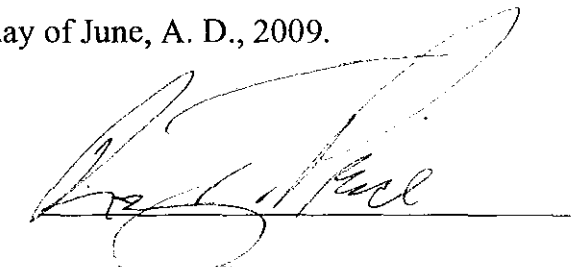
totally unchallenged for thirteen years. The Chancellor manifestly erred in finding that a confidential relationship existed in 1989 between Willie Ray Rutland, Rickie Rutland, and Todd Rutland in that there was absolutely no proof that at that point in time, he had begun to rely on them in any manner whatsoever regarding his business. Indeed, the proof was almost universally in agreement that he did not begin to decline in physical or mental health until the approximate time of 1996, when he executed the power of attorney and deeds which had been the subject of the previous lawsuit filed in 2002. That lawsuit was settled by an agreement between Willie Ray, Rickie, and Todd, that the power of attorney and deeds giving Todd and Rickie the remaining interest after Willie Ray's death would be set aside. No provision whatsoever was made in the settlement agreement regarding the 1989 will, which should have been challenged at that time had Mr. Rutland intended to revoke that will.

The argument of Mrs. Nations that the 2002 will could be used to revoke the 1989 will is ludicrous on its face. The learned Chancellor correctly ruled that the overwhelming evidence showed that Mr. Rutland both was not of the requisite mental capacity and was subjected to undue influence at the hands of the purported beneficiary.

CONCLUSION

The Court should affirm the Judgment as to the 2002 will, and reverse and render as to the 1989 will.

Respectfully submitted on this the 5th day of June, A. D., 2009.

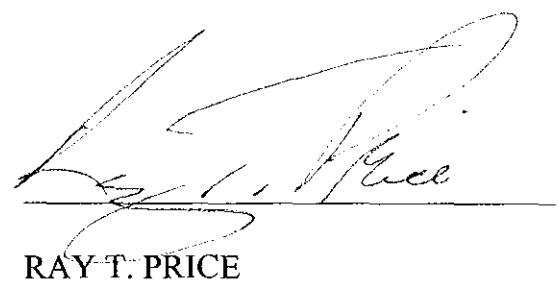


RAY T. PRICE

CERTIFICATE OF SERVICE AS TO FILING

I, Ray T. Price, of counsel for Appellees, certify that I have this date mailed, postage prepaid, the original and three copies of the foregoing Brief of the Appellees to the Clerk of the Supreme Court, Mississippi Court of Appeals, P. O. Box 249, Jackson, MS 39205.

This the 5th day of June, A. D., 2009.



RAY T. PRICE

Ray T. Price
Ray T. Price, P. A.
P. O. Box 1546
Hattiesburg, MS 39403-1546
601-545-3336
601-583-9372 fax
[redacted]

CERTIFICATE

I, Ray T. Price, certify that I have this date mailed, postage prepaid, a true copy of the foregoing to the following:

Hon. Larry Buffington
P. O. Box 924
Collins, MS 39428

Malcolm T. Rogers, Esq.
P. O. Box 668
Monticello, MS 39654

Thomas M. Murphree, Jr., Esq.
6060 River Road South
Summit, MS 39666

Joseph B. Moffett, Esq.
P. O. Box 1060
Fayette, MS 39069

This the 5th day of June, A. D., 2009.

RAY T. PRICE