

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

2010-CA-00391

LAURA MORRISON YARBROUGH

APPELLANT

VS.

ANN MORRISON PATRICK

APPELLEE

APPELLANT'S REBUTTAL BRIEF

ON APPEAL FROM THE FINAL JUDGMENT OF THE  
CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT  
OF HINDS COUNTY, MISSISSIPPI DATED 2/9/10  
HONORABLE DEWAYNE THOMAS CHANCELLOR

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VS.

CIVIL CASE NO: 2010-CA-00391

ANN MORRISON PATRICK

APPELLEE

APPELLANT'S REBUTAL BRIEF IN  
RESPONSE TO APPELLEE'S BRIEF

COMES NOW, the Appellant, Laura Morrison Yarbrough, by and through her attorney of record and files this her Rebuttal Brief to the Appellee's Brief, and would say as follows:

1.

The Appellant, Laura Morrison Yarbrough, is an elderly lady who is currently ninety (90) years of age. She is in good health in view of her age, and is of good mind and memory.

At the trial of this cause, Mrs. Laura Morrison Yarbrough, was alert and was able to take an active part in the presentation of her case against her daughter, Mrs. Ann Morrison Patrick, regarding the events and circumstances concerning the subject matter before the court.

It is of special notice, that Mrs. Laura Morrison Yarbrough, was a live witness and was testifying under oath, and stated on numerous occasions during the trial of the cause, that at no time did she ever make a gift of her assets, both real and personal to her daughter, and asked GOD to "strike her dead" if she was not telling the truth,

In reading the Appellee's Brief, the Appellee failed to address the live testimony of her mother, Mrs. Laura Morrison Yarbrough and the testimony of her brother, Keith Morrison, as to the reason that Mrs. Yarbrough's property was conveyed by deed and the Certificates being placed in both her name and her daughter's name; the reason being "so that she (Ann Patrick) could get her mother on Medicaid. (R-89).

"She told me if I'd sign everything I had over to her she would get me on Medicaid." (R-89)

Mrs. Laura Yarbrough's son, Keith Morrison, testified under oath, that he heard the conversation between his sister, Ann Morrison Patrick, and his mother, wherein his sister told his mother, that if she would transfer all of her assets to the Appellee (Ann Patrick), that she would get her mother on Medicaid. (R- 45)

Section 99-1-55 Mississippi Code of 1972 provides that there is no statute of limitation on the crime of obtaining money or property under false pretense or by fraud.

2.

The Appellee, Ann Morrison Patrick, has steadfast maintained that the conveyance of the Appellant's real property and her Certificates of deposits was a "GIFT" to her and that she was under no duty to return the Appellant's property to her mother even though her mother had request her to return it to her.

The Question raised in the legal aspect of this case, was the claim of the Appellee, that this was an inter vivos gift; and the Appellant denies the same in view of the fact, that the Appellee, Ann Morrison Patrick, merely manipulated her mother, first by advising her that if she had any real property and money in her name and had to go to the hospital for medical treatment, that Medicaid would take all of her property; and that in order for her medical bills to be paid by Medicaid, that she would have to transfer her land and cash assets to her daughter. This was done, as planned by Mrs. Patrick, she took advantage of her mother's advanced age and poor health, and Mrs. Laura Yarbrough held a position of trust between her mother and herself regarding her mother's well being and care, and concern on a regular basis.

The Supreme Court addressed this matter in the 2008 case of Estate of Summerlin, 989 So2d 1051; the Court specified that there must be certain elements in order to constitute an inter vivos gift.

The Court specified without hesitation, "that where a confidential relationship exists, there is a presumption of undue influence concerning an inter vivos gift." the Court went further to provide the elements of this proposition as follows:

1. Whether one person has to take care of by another.

Response: Even though Mrs. Yarbrough was 89 years of age and was functional to some degree; Mrs. Yarbrough and Mrs. Ann M. Patrick and the other witness at the trial of this cause testified, that Ann Morrison Patrick, did in fact look after her mother, and visited her on a regular basis; she provide meals and took her mother shopping and to the doctors and to the banks on a regular occurrence.

Element No. 2: Whether one person maintains a close relationship with another.

Without question, there was a close relationship between Mrs. Laur Morrisson Yarbrough and her daughter, Ann Morrison Patrick; in fact, she had four (4) children, and relied more upon her daughter, Ann Morrison Patrick, the Appellee more than any of the other three (3) children.

Element No. 3: Whether one person is provided transportation and has their medical care provided by another.

Response: Even though Mrs. Laura Morrisson Yarbrough, had her on automobile and was able to drive, Mrs. Ann Morrison Patrick, testified that she would take her mother to various doctors for her medical care and accompanied her on her various trips to obtain her medicine.

Element No. 4: Whether or not one person maintains joint accounts with another.

Response: There is no question that Mrs. Laura Yarbrough and her daughter Ann Morrison Patrick had joint accounts with each other, Mrs. Ann Morrison Patrick, stated that her Mother, Laura Yarbrough had requested that all of her Certificates of Deposits be issued in both her name and her daughter's name, being a "joint account". in fact prior to the transfer of the land deeds and the Certificates of Deposits, Mrs. Ann Morrison Patrick, was able to write checks on her mother's account. There is no question, that there was a joint account between the Appellant and the Appellee.

Element No. 5: Whether one is of advance age or poor health.

Response: Mrs. Laura Morrison Yarbrough, stated that she was born on August 20, 1920 and was eighty-nine (89) years of age. Mrs. Yarbrough

was functional and relied upon her children to guide her and to protect her and her property which she had worked for all of her life,

Mrs. Ann Morrison Patrick, knew that her mother relied upon her, and when advised by her daughter, that she needed to get all of her assets out of her name in order that Medicaid would not take them if she was required to go to the hospital and have medical treatment; relying upon this fact, Mrs. Laura Morrison Yarbrough, immediately transferred her real property to her daughter by several deeds which had been requested by Ann Morrison Patrick from her attorney, who Mrs. Laura Yarbrough, stated that she had never met or had any knowledge of him prior to the taking of a deposition in this cause.

Accordingly in furtherance of Mrs. Patrick (appellee) obtaining her mother's assets, Ann Morrison Patrick took her mother to the bank and had the bank officer, transfer all of her mother's Certificates of Deposits transferred to a joint account in both her name and her mother's name,

As a result of Mrs. Patrick having placed her name on her mother's Certificate of Deposit (in both names); she was then able without any trouble whatsoever and without her mother's knowledge able to have the Certificates of Deposit put in her name only upon maturity of each of the Certificates of Deposit. This she did in furtherance of her scheme to obtain her mother's assets,

Element No. 6: Whether one is of advance age or poor health,

Mrs. Laura Morrison Yarbrough, is a Christian lady of advance age being now Ninety (90) years of age, having been born August 24, 1920,

Element No. 7: Whether there exist a power of attorney between the one and another.

There was no "power of attorney between Laura Morrison and her daughter, Ann Morris Patrick; however, there was a mother daughter relationship wherein the daughter Ann was strongly involved in the everyday life of her mother. There was in fact a close confidential relationship between them, and as such this Court has held that where there exist such a confidential relationship between two individuals, a presumption of undue influence exist the burden shifts to the beneficiary of a gift to disprove the presumption of undue influence by clear and convincing evidence.

This Court in Summererline, 989 So2d 466 went further to describe how the beneficiary would have to prove the presumption of undue influence; and the beneficiary of the gift must show:

- a. good faith on the part of the beneficiary,
- b. the grantor's full knowledge and deliberation of the consequence of her actions, and
- c. the grantor's independent consent to the action.

In this case from the testimony taken at the trial of this cause, Ann Patrick never came close to meeting the burden. Mrs. Laura Morrison Yarbrough at all times throughout the entire trial maintained "that at no time did she ever make a gift of her property both real and personal to her daughter, Ann Morrison Patrick. On two (2) separate occasions during the trial of this cause, Mrs. Laura Yarbrough, testified under oath, that "she hoped that GOD would strike her dead if she was not telling the truth."

Mrs. Laura Yarbrough, testified, that she was unaware of the fact that all of her Certificate of Deposit were in the name of her daughter only; she testified, that from time to time her daughter would give her a check and advise her, that the check was the interest on her mother's certificates of deposit.

The evidence was over-whelming that Mrs. Laura Yarbrough had placed her property both real and personal in a "constructive trust" with her daughter Ann Patrick, because of the daughter's influence upon her mother to get all of the assets out of her mother's name in order to get her mother on Medicare benefits.

"A constructive trust is a formula through which the conscience of equity finds expression. When property has been acquired in such circumstances that the holder of the legal title may not in good conscience retain the beneficial interest, equity converts him to a trustee" Beatty vs Guggenheim Exploration Co. 122 N.E. 378,380 (N.Y. 1919)

"A trust imposed by a court on equitable ground against one who obtained property by wrongdoing, thereby preventing the wrongful holder from being unjustly enriched."  
BLACK LAW DICTIONARY

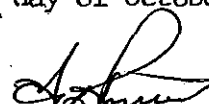
Mrs. Ann Patrick's brother, Keith Morrison, testified under oath, that he was present on several occasions when he would hear his sister (Ann Morrison Patrick) telling his mother (Mrs. Laura Yarbrough), that she needed to transfer all of her property both real and personal out of her name in order that she would be able to get medicare or medicaid benefits. The testimony of Keith Morrison was never challenged or refuted by the Appellee (Ann Morrison Patrick).



CONCLUSION

The Chancellor is the finder of facts, he is the overseer of the equity of a cause before him at the trial of the cause; In this cause it was a blessing that Mrs. Laura Morrison Yarbrough was still alive and was able to personally testify; and there was no better testimony other than her live testimony as to the facts and circumstances of how her daughter, Ann Patrick, had manipulated her and had obtained her property and certificates of deposit. Had Mrs. Yarbrough been deceased and the heirs were fighting over her estate, there could possibly be a question of doubt; however, this was not the case, Mrs. Laura Morrison Yarbrough, was alive and testified under oath, that she had never at anytime given her assets (property and certificates of Deposit) to her daughter, Ann Morrison Patrick as a gift. What better evidence could you have other than the testimony of the grantor herself?

Respectfully submitted on this the 28<sup>th</sup> day of October, 2010,

  
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CERTIFICATE OF SERVICE

I, Harry J. Rosenthal, attorney for the Appellant, Laura Morrison Yarbrough, do hereby certify, that I have this date filed the Appellant's Rebuttal Brief with the Clerk of The Mississippi Supreme Court and have served a true and correct copy of the same by United States Mail, postage prepaid to Hon. Farris Crisler, III at his address 840 East River Place, Suite #400, Jackson, Mississippi and a similar copy being sent by United States Mail, postage prepaid to attorney James Eldred Renfroe at his business address 648 Lakeland East, Suite A, Flowood, Mississippi 39232, as well as a true and correct copy of the Appellant's Rebuttal brief being sent to Hon. Chancellor J. Dewayne Thomas at his address Post Office Box 686, Jackson, Mississippi 39205-0686.

So certified on this 28<sup>th</sup> day of October, 2010.

  
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