

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-451

AUGUST TERM, 2010

In re Estate of Leslie Larrow

} APPEALED FROM:
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}
} Addison Superior Court
}
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} DOCKET NO. 75-3-09 Ancv

Trial Judge: Cortland Corsones

In the above-entitled cause, the Clerk will enter:

Plaintiffs Jane Nimblett and Joanne Mullen appeal from a superior court decision upholding the will of their father, decedent Leslie Larrow, in which he left the family farm to their brother, defendant William Larrow. We affirm.

Decedent died in April 2008, at the age of 95. His will, which he executed in October 2006, left the farm he owned in Ferrisburg, Vermont to his son William, and various items of personal property to his daughters Jane and Joanne. Jane and Joanne challenged the will and submitted two issues to be decided by the superior court: (1) whether decedent lacked testamentary capacity at the time he executed the will, and (2) whether the will was the product of undue influence by William and/or his wife Karen.

The court held a two-day bench trial in September 2009. In addition to the parties, the witnesses included the attorney who drafted the will, several elder-care social workers and case managers who had worked with decedent over the last several years of his life, and a longtime neighbor of decedent's. In October 2009, the court issued a 21-page written decision containing extensive findings and conclusions. The court found, in summary, as follows. Decedent was a farmer who had, in turn, inherited the farm from his father. Of decedent's three children, two—Joanne and Jane—left the farm after school to take other jobs, while William remained working on the farm after high school, and continued to do so after he married and moved into his own home, drawing a regular paycheck. Decedent sold his dairy herd in 1998 and rented a portion of the farm to another farmer, while William kept horses and beef cattle on the remainder. Decedent continued to live on the farm by himself until concerns about his safety led him to move in with William and his wife in February 2005, although he continued to visit the farm.

The court found that the record evidence was replete with testimony that decedent wished to pass the farm to William upon his death. Although there was evidence that decedent had a variety of health problems, that he was forgetful, and that his cognitive abilities had deteriorated in the years before his death, the court found that his mental functioning remained good at the

time he made the will, that he attended a lengthy meeting with his attorney and an elder care advisor to discuss his desire to make a will and leave the farm to William, and that his mental acuity at the meeting raised no concerns. Decedent's attorney later met with him in private, without William or his wife present, and decedent again stated that he wished to leave the farm to William, correctly identified his other children by name and specified the items of personal property that he wished to leave them, and explained that he wanted the farm to go to William because he was the farmer in the family. After the will was drafted, but before decedent signed it, his attorney had another private meeting with decedent in which the attorney asked him a series of questions about his property and designated beneficiaries, which decedent accurately answered. The attorney testified that decedent appeared frail at the meeting but mentally fine. An assessment of decedent administered by an elder-care case manager eleven days before the will signing revealed no evidence of abuse or exploitation, and his cognitive skills to be sound.

Based on the foregoing, the trial court concluded that decedent met the standard for testamentary capacity reaffirmed by this Court in Landmark Trust (USA), Inc. v. Goodhue, 172 Vt. 515, 519 (2001), to wit, that he had "sufficient mind and memory at the time of making the will to remember who were the natural objects of his bounty, recall to mind his property, and dispose of it understandingly according to some plan formed in his mind." The court further concluded that plaintiffs failed to prove any undue influence by William or his wife, finding that overall William and decedent had enjoyed a good relationship, and that the will reflected decedent's own free will and true desires for his property. See In re Rotax's Estate, 139 Vt. 390, 392 (1981) (undue influence is established when "a testator's free will is destroyed and, as a result, the testator does something contrary to his 'true' desires."). Accordingly, the court upheld the validity of the will. This pro se appeal followed.

Plaintiffs' opening brief does not contain a concise statement of the facts and proceedings below, nor—more importantly—does it contain a clear statement of their claims of error with appropriate citations to the authorities and parts of the record relied on, as required by V.R.A.P. 28(a). Instead, plaintiffs provide a lengthy summary of the testimony of several witnesses, interspersed with occasional short questions or comments suggesting that the testimony was unreliable, inaccurate, confusing, or contradictory. Plaintiffs conclude by stating that they believe there were "valid questions" raised at trial about decedent's mental capacity, and asserting that they have attempted on appeal to "raise questions" as to the reliability of the evidence.

Our review of the trial court judgment is limited. "[W]hen reviewing the factual findings of a trial court, we view them in the light most favorable to the prevailing party below, disregarding the effect of modifying evidence, and we will not set aside the findings unless they are clearly erroneous." Goodhue, 172 Vt. at 520. "Findings of fact will not be disturbed merely because they are contradicted by substantial evidence; rather, an appellant must show there is no credible evidence to support them." Id. When the trial court has "applied its factual findings to the correct legal standard, we will not disturb its conclusion if it is supported by the finding." Id. at 519.

Applying these standards, we discern no basis to disturb the judgment. The court acknowledged certain evidence that decedent's cognitive abilities had deteriorated, and that there had been some tensions in decedent's relationship with William. Ample credible evidence,

summarized earlier, nevertheless supported its findings and conclusions that decedent retained testamentary capacity, and exercised his own free will in passing the farm to William. Plaintiffs have not demonstrated that the court's findings were clearly erroneous, or fail to support its conclusions under a correct legal standard. Therefore, the judgment must be affirmed.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice