IN THE COURT OF APPEALS OF MARYLAND

No. 144

September Term, 1994

MAXINE ANDERSON

v.

FRANCIS X. MEADOWCROFT

Murphy, C.J.
Eldridge
Rodowsky
Chasanow
Karwacki
Bell
Raker,
JJ.

OPINION BY MURPHY, C.J.

Filed: July 19, 1995

This case draws into question whether interference with an expected inheritance and fraud in the procurement of a will are viable causes of action in Maryland.

I.

Paul Peter Meadowcroft died on November 18, 1987. Under his will, dated August 2, 1981, he left most of his estate to a cousin, Francis X. Meadowcroft (Francis), as the residuary legatee; he also named Francis as the personal representative.[1] The decedent was survived by three brothers, William, Robert and James Meadowcroft, who filed a caveat to the will. While they claimed that the will was a result of fraud perpetrated on the decedent by Francis, they dismissed their case on April 23, 1992.[2]

Maxine Anderson, filed the complaint in this case in the Circuit Court for Harford County, on October 26, 1993, considerably after the statute of limitations on caveat proceedings had run.[3]

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[1] Francis was actually the contingent residuary legatee under the will. The primary legatee was the decedent's wife, who predeceased him. The contingent specific legatees were the decedent's nephews, Donald K. Manning and William F. Manning, to whom the decedent bequeathed $5,000 and $20,000, respectively.

[2] The plaintiff in this case, Maxine Anderson, was not a party to the caveat proceeding.

[3] The statute of limitations for caveat proceedings is contained in Maryland Code (1974, 1991 repl. vol.), § 5-207 of the Estates and Trusts Article. It states in part:

> "Regardless of whether a petition for probate has been filed, a verified petition to caveat a will may be filed at any time prior to the expiration of six months following the first appointment of a personal representative under a will, even if there be a subsequent judicial probate or appointment of a personal representative."

Francis was appointed personal representative on December 4, 1987.

In the complaint, she claimed that under the decedent's previous will, dated August 29, 1975, she would have received one third of the estate. She alleged that she was the decedent's daughter, and that she lived with the decedent in Baltimore for more than twenty years. She claimed that they maintained a close relationship even after she moved away to Georgia.

She maintained that in the late 1970's, the decedent's health began to deteriorate and "he fell under the influence of Francis X. Meadowcroft." She also alleged that Francis is an attorney practicing in Maryland, and that he learned of the decedent's "sizable estate," and used "his influence and position as an attorney ... to unduly influence, coerce, and persuade the decedent" to change his will, leaving virtually all of his assets to Francis and none to Anderson. Furthermore, Anderson asserted that Francis actually prepared the will that effected this change, and that "such preparation of a Will, wherein the attorney vests himself with the assets of the estate is prima facie invalid and places the burden of proof to show a lack of fraud and undue influence on the attorney who had taken unfair advantage of his fiduciary relationship with the decedent."

The complaint contained two counts -- conversion and fraud -- and sought damages of $450,000 under each count. Francis moved to dismiss and the court granted the motion as to both counts. It held that Anderson could not maintain a conversion action when the property involved was merely "an expectancy interest under the decedent's earlier will." The court also held that Anderson failed

to state a cause of action for fraud because she did not allege that Francis made any misrepresentations to her. Further, the court held that to the extent there was a presumption of fraud in a transaction between an attorney and client, the presumption does not extend to third parties attempting to benefit from it in a case at law. Subsequently, Anderson obtained new counsel and appealed. While the case was pending before the Court of Special Appeals, she filed a petition for a writ of certiorari, which we granted.

Anderson's new attorney, apparently realizing the difficulties associated with the causes of action stated in the complaint, attempts to reframe the issues for appeal to be 1) whether the complaint states a cause of action for tortious interference with an expected inheritance, 2) whether the complaint states a cause of action for fraud in the procurement of a will, and 3) whether the complaint is sufficient to withstand dismissal despite the fact that it did not contain the legal theories that would support a right to recovery. Anderson argues that we should recognize the tort of interference with an expected inheritance and the equitable action for fraud in the procurement of a will and find the complaint sufficient based on its factual allegations, despite her failure to specifically articulate viable legal theories.

Francis argues that the appeal should be dismissed because these issues were not raised in the Circuit Court. He further argues that Maryland law does not recognize the causes of action advanced by Anderson and that we should not recognize them now. To do so, he argues, would subvert the legislative policy expressed in

the Estates and Trusts Article favoring a speedy and final resolution of probate proceedings, as evidenced by the rather short time limitations contained in §§ 5-207, 5-304, and 5-402.

II.

Section Restatement (Second) of Torts, states "One w y p from a third person an inheritance or o liability er for loss of the inheritance or gift." ent a explains that this is an extension of the tort o intentional interference with prospective contracts. Early cases refused t there was "no sufficient degree of certainty that the plaintiff ver would have received the anticipated benefits." W. Page Keeton t al., Prosser and Keeton on t § 130, at 1006 (5th ed. n the asis of evidence of "a high degree of probability that the would have made or changed a bequest." __. at 1007. eeton states that in these cases "[t]he problem appears in reality be one of satisfactory proof that the loss has been suffered instead of Id. eeton further notes that all cases in which courts have permitted

or defamation or conduct depriving a testator or other actor capacity to act, as where there is duress or undue influence. Id.

at 1007-08.

Courts in other jurisdictions have recognized the tort of intentional interference with an expected inheritance. DeWitt v. Duce, 408 So.2d 216 (1981); Frohwein v. Haesemeyer, 264 N.W.2d 792 (Iowa 1978); Cyr v. Cote, 396 A.2d 1013 (Me. 1979); Lewis v. Corbin, 195 Mass. 520, 81 N.E. 248 (1907); Hammons v. Eisert, 745 S.W.2d 253 (Mo. App. 1988); Doughty v. Morris, 117 N.M. 284, 871 P.2d 380 (N.M. Ct. App. 1994); Bohannon v. Wachovia Bank & Trust Co. 210 N.C. 679, 188 S.E. 390 (1936); Firestone v. Galbreath, 67 Ohio St.3d 87, 616 N.E.2d 202 (1993); King v. Acker, 725 S.W.2d 750 (Tex. App. 1987); Barone v. Barone, 170 W.Va. 407, 294 S.E.2d 260 (1982). A substantial number of courts permit plaintiffs to maintain such actions only when they have exhausted probate proceedings or can show that such proceedings would not have provided adequate relief. See Moore v. Graybeal, 843 F.2d 706, 710 (3rd Cir. 1988); McGregor v. McGregor, 101 F.Supp. 848 (D.Colo. 1951), aff'd, 201 F.2d 528 (10th Cir. 1953); Benedict v. Smith, 34 Conn. Sup. 63, 376 A.2d 774 (Conn. Super. Ct. 1977); DeWitt, supra; Robinson v. First State Bank of Monticello, 97 Ill.2d 174, 454 N.E.2d 288, 294 (1983); Axe v. Wilson, 150 Kan. 794, 96 P.2d 880, 888 (1940); Allen v. Lovell's Adm'x, 303 Ky. 238, 197 S.W.2d 424 (1946); Brignati v. Medenwald, 315 Mass. 636, 53 N.E.2d 673, 674 (1944).

We have adopted the tort of wrongful or malicious interference with economic relations. Alexander v. Evander, 336 Md. 635, 650, 650 A.2d 260 (1994); Macklin v. Logan, 334 Md. 287, 296-302, 639

A.2d 112 (1994). But we have not yet considered expanding th
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caveat proceedings. In the business context, where the tort does
y, we have required that the interference be "independentl
wrongful or unlawful, quite apart from its effect on th
plaintiff's business relationsh Alexander, _____, 336 Md. at
657. We have said: "Wrongful or unlawful acts include common law
and '"violence or intimidation, defamation, injurious
ood or other fraud, violation of criminal law, and th
institution l
prose in bad faith,"'" Id K & K Management v.
ee, 316 Md. 137, 166, 557 A.2d 965 (1989) (quoting Prosser, _____
Torts, § 130, 952-953 (4th ed. 1971))).

What Anderson refers to as frau
is a cause of action based essentially on the same facts that
support a cause of action for intentional interference with a
expected inheritance. Fraud in the procurement of a will, ho
is an equitable cause of action that seeks the imposition of
constructive e
proc that have been fraudulently obtained by the defendant.
ee _____, § 184 (1937) ("Where a disposition
f property by will or an intestacy is procured by fraud, duress or
ndue influence, the person acquiring the property holds it upon a

in a probate court."); Keeton, supra, § 130 at 1007 ("Courts of equity have granted relief by imposing a constructive trust [when there has been unlawful interference with an expected inheritance]."); Barone, supra, 294 S.E.2d at 263 ("[I]f by fraud a devisee had procured a will in his favor preventing an intended testamentary gift to someone else, equity will enforce the intended testamentary disposition by impressing a trust in favor of the person defrauded, and treat the actual devisee as a constructive trustee holding title for the rightful beneficiary."); Monach v. Koslowski, 322 Mass. 466, 78 N.E.2d 4 (1948); Latham v. Father Divine, 299 N.Y. 22, 85 N.E.2d 168 (1949).

Anderson maintains that we recognized this cause of action in Potts v. Emerick, 293 Md. 495, 445 A.2d 695 (1982), and Clark v. Callahan, 105 Md. 600, 66 A. 618 (1907). In Potts, the decedent, Timbrook, added Potts's name to three bank accounts, "in a form sufficient to pass sole ownership of the funds to Potts on Timbrook's death." Potts, supra, 293 Md. at 497. In her will, Timbrook stated that she owned several accounts upon which she had placed Potts' name and desired that Potts pay her debts, expenses, and the bequests in the will out of these accounts. She specifically stated in the will that Potts understood this request and had agreed to it. The attorney who prepared the will corroborated this, testifying that Potts said she "fully understood [Timbrook's] intentions, that she would pay all of the bequests and the expenses and the gifts from the funds in the joint accounts." Id. at 498. After Timbrook's death, Potts withdrew all the funds

a Then after consulting an attorney, s s on behalf of the estate and filed a claim with the estate for the sums she had already paid. as personal representative of the estate, filed suit

court imposed. We affirmed, holding that principles of unjus enrichment and restitution warranted imposition of the trust as a means of enforcing Potts' promise to Timbrook.

Clark h t ke the cert payable equally to his daughter, Callahan, and his oster daughter, Clark, but he discovered that the fraternal orders ould not allow him to designate Clark as a beneficiary because she as not a blood relative. He then obtained a promise from Callahan hat she would pay half of the benefits to Clark and made Callahan he sole beneficiary. After the decedent's death, Callahan refused

> "Can s f t assurances that she would carry out her father's directions to share the proceeds [Clark] be permitted to repudiate her promises afte his death, and thus ? We think not.... Such conduct as Mrs. Callahan's, even that the creation of the trust was subsequent t her substitution as beneficiary, constitutes fraud, and g defeat its consummation. By enting to her father's wishes and directions she him to make no other disposition in favor of [Clark] and fastened upon her own conscience a trust o confidence which she cannot rep which a Court of Equity will enforce."

105 Md. at 617.

Neither of these cases directly supports the imposition of a constructive trust based on a claim of undue influence in the procurement of a will where the beneficiary made no promises to the decedent to use the proceeds for a particular purpose. In both cases, the promise made by the defendant to the decedent was the factor that motivated our imposition of a constructive trust. Moreover, in both Potts and Clark, the plaintiffs sought relief that was not available in caveat proceedings; the invalidation of the decedent's will would not have compensated the plaintiffs. Conversely, in the case before us, Anderson could have sought relief in a caveat proceeding to the will and, if successful, could have sought to probate the prior will under which she was a beneficiary.[4] Accordingly, imposition of a constructive trust under the facts of this case would require a significant expansion of Potts and Clark.

III.

In this case, however, we need not decide whether or how far to extend our law to embrace these causes of action because we hold that the complaint does not adequately allege undue influence,

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[4] Courts in other jurisdictions have stated that they would impose constructive trusts, in such situations, only if caveat proceedings do not provide adequate relief. See, e.g., Johnson v. Stevenson, 269 N.C. 200, 152 S.E.2d 214, 217 (1967) ("This right of direct attack by caveat gave her a full and complete remedy at law. Hence, plaintiff, on the facts alleged, is not entitled to equitable relief."). See also Restatement of Restitution, § 184 (providing for imposition of constructive trust "unless adequate relief can otherwise be given in a probate court"). These authorities are analogous to those cited above that require plaintiffs to exhaust probate proceedings before filing a tort action for intentional interference with an expected inheritance.

which forms the basis for both

contends that Francis's position as the decedent's attorney c

a presumption of fraud or undue influence in the procurement

will. Thi e

r inter

_____, we do not extend the presumption to bequests under a will.

S _____, 247 Md. 11, 24-25, 230 A.2d 101 (1967). We have

> "[T]here is an obvious differen
> the donor strips himself y
> w , which takes effect only
> from the death of the testator. In cases of gifts by
> the fact that a party is largely benefited by a wil
> prepared s
> ci of more or less weight according to the

Id Cook v. Hollyday

(1946)). One commentator has observed:

> "In mber of states it is said that the equity rule
> a presumption or inference of undue influence arise
> where the party in whom trust and confidence is reposed
> . ons inter vivos, and does
> not s
> freque assigned for this rule is that the testator
> only property in which his interest is bound t
> cease s
> p have retained but for the
> gift."

Page on the Law of Wills §

We have said that "undue influence which will avoid a wil

must be unlawful on account of the manner and motive of it

exertion, o

force s

destroyed." Moore v. Smith, 321 Md. 347, 353, 582 A.2d 1237 (1990) (quoting Nalley v. Nalley, 253 Md. 197, 202, 251 A.2d 849 (1969)). See also Arbogast, Exec. v. MacMillian, 221 Md. 516, 521, 158 A.2d 97 (1960); Sellers v. Qualls, 206 Md. 58, 70, 110 A.2d 73 (1954); Stockslager v. Hartle, 200 Md. 544, 547, 92 A.2d 363 (1952); Koppal v. Soules, 189 Md. 346, 351, 56 A.2d 48 (1947); Woodruff v. Linthicum, 158 Md. 603, 607-08, 149 A. 454 (1930); White v. Bramble, 124 Md. 395, 400-01, 92 A. 763 (1914). Long ago, we recognized that the this test--for undue influence in procuring a gift by will--is very different from the one used for gifts inter vivos. Griffith v. Diffenderffer, 50 Md. 466, 484 (1879); Tyson v. Tyson, 37 Md. 567, 583 (1873). We observed:

> "In the cases of gifts or other transactions inter vivos, it is considered by courts of equity, that the natural influence which such relations as those in question involve, exerted by those who possess it, to obtain a benefit for themselves, is an undue influence. The law regarding wills is very different from this. The natural influence of the parent or guardian over the child, or the husband over the wife, or the attorney over the client, may lawfully be exerted to obtain a will or legacy, so long as the testator thoroughly understands what he is doing, and is a free agent."

Griffith, supra, 50 Md. at 484.[5] See also Sellers, supra, 206 Md.

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[5] In Griffith, the son-in-law, agent and attorney-in-fact of the decedent employed his own attorney to draft the decedent's will. Furthermore, the decedent consulted the son-in-law in making the will, under which he and his wife were greatly benefited. We refused to allow a presumption of fraud, noting the differences between gifts inter vivos and gifts by will.

In Cook, supra, Cook was an attorney and the brother-in-law of the decedent. He prepared the decedent's will and in it recited the terms of an agreement granting himself an option to purchase certain property at a specified price. It was in this context that we cited the distinction made in Griffith between undue influence involving gifts inter vivos and undue influence involving gifts by

at 71-72 (quoting Griffith).

We have not created a bright-line test to detect the existence of undue influence, but we have identified the following elements that may be characteristic of it:

> "1. The benefactor and beneficiary are involved in a relationship of confidence and trust;
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> 2. The will contains substantial benefit to the beneficiary;
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> 3. The beneficiary caused or assisted in effecting execution of will;
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> 4. There was an opportunity to exert influence;
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> 5. The will contains an unnatural disposition;
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> 6. The bequests constitute a change from a former will; and
>
> 7. The testator was highly susceptible to the undue influence."

Moore, supra, 321 Md. at 353.

Anderson has alleged a confidential relationship (attorney/client), a substantial benefit to Francis, involvement in the drafting of the will, an opportunity to exert influence, a change from a former will, and possibly an unnatural disposition.

The complaint fails, however, because Anderson did not allege facts sufficient to establish the decedent's high susceptibility to undue influence. In some cases we have concluded that the decedent was highly susceptible to influence because his or her mental state had deteriorated. Thus, in Shearer, supra, 247 Md. at 26, we

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will. Nevertheless, in Cook, we found the option to purchase the property to be, not a gift by will, but a confirmation of a previous oral agreement. Thus, the more stringent rules of undue influence applied.

distinguished Mecutchen v. Gigous, 150 Md. 79, 132 A. 425 (1926), in part by stating that in Mecutchen, "[t]here was evidence that the testatrix had a weak mind when the will was executed...." In other cases, we have found the decedent to be highly susceptible to influence when he or she was highly dependent on the beneficiary to meet vital physical needs. For example, in Moore, supra, 321 Md. at 357-58, the decedent was illiterate, partially paralyzed, partially blind, and reliant on the beneficiary to attend to his physical needs and financial affairs. We found that these circumstances created a high susceptibility to undue influence. Also, in Shearer, supra, 247 Md. at 26, we distinguished Griffith v. Benzinger, 144 Md. 575, 125 A. 512 (1924), by stating that "[i]n Griffith, the testator was 76 years of age, was 'almost helpless' because of a chronic and progressive ailment and depended heavily on his mistress, who was also his nurse." When such physical dependence exists along with the other characteristics of undue influence, we have found the combination to be sufficient for a fact-finder to infer that the decedent was motivated by force or fear.

In this case, however, Anderson did not allege any of these circumstances. She neither alleged that the decedent's mental abilities had deteriorated such that he would have been extraordinarily susceptible to his attorney's suggestions, nor that Francis used force or fear to coerce the decedent into changing the will, nor that the decedent was especially dependent on Francis to meet his physical needs. Indeed, Anderson did not even allege

generally that Francis interfered with the decedent's exercise of free agency. Moreover, the mere presence of the word "coerce" in the complaint does not save it; such a conclusory allegation, without supporting facts, is insufficient to state a cause of action. See Maryland Rule 2-305 ("A pleading that sets forth a claim for relief ... shall contain a clear statement of the facts necessary to constitute a cause of action...."); Shepter v. Johns Hopkins University, 334 Md. 82, 103, 637 A.2d 1223 (1994) (holding that a counterclaim violated Rule 2-305 because the allegations were simply conclusory and not factual); Nigido v. First Nat'l Bank, 264 Md. 702, 708-11, 288 A.2d 127 (1972) (plaintiff must allege facts, not merely conclusions, to state a cause of action).

JUDGMENT AFFIRMED, WITH COSTS.