2019 IL App (2d) 190060-U
No. 2-19-0060
Order filed September 16, 2019

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ESTATE OF FRANK DECHARINTE, Deceased	)	Appeal from the Circuit Court of Du Page County.
	)	No. 18-P-1259
(Margaret Decharinte, Petitioner and Counterrespondent-Appellee, v. Joanne Bartolone, Counterpetitioner and Respondent-Appellant).	)	Honorable Brian J. Diamond, Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Jorgensen and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's appointment of the decedent's elderly widow as administrator of his estate was affirmed where the trial court's finding that she was of sound mind was not against the manifest weight of the evidence.

¶ 2 Joanne Bartolone, the only child of decedent, Frank Decharinte, and Margaret Decharinte, decedent's 93-year-old widow, both filed petitions to serve as the administrator of decedent's estate. The court appointed Margaret. Joanne appeals, arguing that Margaret lacks the mental competency to serve as administrator. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Decedent died on August 21, 2018, leaving a will dated March 16, 2001. Margaret, his second wife and widow, filed a petition for letters of administration; Joanne, decedent's daughter with his first wife, filed a cross-petition.

¶ 5 Decedent's will named Downers Grove Community Bank as his sole choice for executor. Downers Grove Community Bank was no longer in business when decedent died, and its successor, Bank Financial, N.A., declined to serve as executor. Joanne's counsel represented that the bank declined to serve because "[t]here is nothing to this estate outside of a condominium that is under a trust."

¶ 6 Decedent's heirs and legatees were Margaret, Joanne, and a revocable trust. The will gave all of decedent's personal and household effects to Joanne. It gave the residue to the revocable trust.

¶ 7 The first hearing on the petitions took place on December 5, 2018. Joanne's counsel suggested to the court that Margaret had cognitive difficulties and was not competent to serve as administrator. Margaret's counsel expressed that, with his and her daughter's help, Margaret would be capable of serving. The court stated that it was inclined to appoint Margaret to serve with supervision, but, after further discussion, it agreed to have her appear at a later hearing.

¶ 8 Margaret was present at a hearing on December 14, 2018. Joanne's counsel, after talking to Margaret, relayed her impressions to the court:

> "I did [speak with Margaret], and I just can't, in good conscience, agree [to her appointment]. She doesn't know what year it is. She thinks it's 2014—basic questions. She doesn't know what season it is. She *** didn't know what day of the week it is. She gets help and assistance on a day-to-day basis from her daughter, Laura. She doesn't handle her own personal finances. She doesn't know what her bank is."

The court itself then questioned Margaret under oath. Margaret stated her address and said that she lived with her daughter Laurie. Margaret testified that she took care of her finances with Laurie's and her other daughter's assistance. When the court inquired whether Margaret wrote her own checks, she answered: "I do write my own checks, yes." The court asked Margaret if she knew what administering an estate entails. Margaret answered, "Yes, I know." The court asked what her understanding of her duties was, and she stated: "There's a lot of things that go on that I don't understand, but I know what should be—" The court interrupted Margaret's answer and said, "[D]o you understand what it means to be an administrator?" Margaret responded: "It takes a lot of will power and a lot of truth." The court asked, "Do you understand that you have to gather the assets and you have to do an inventory and accounting? Did anybody explain any of this to you; do you understand that?" Margaret responded, "Yes, I understand. I had my own account for years, and then I signed up some of it to my husband, and he took over. And he took over the house, and I didn't know, but they did a lot of things I didn't know." When the court asked her if she could "do the duties," she responded, "Yes. And I can have help. I stay with my daughter, and she reads everything, and then she reads it to me." The court asked, "And so you think between the two of you[,] you can handle this?" Margaret said, "Yes." Her counsel interjected, "And certainly with the assistance of myself, your Honor."

¶ 9 The court found that "[s]he's competent enough to handle this with the assistance that she has." Joanne filed a timely notice of appeal.

¶ 10 II. ANALYSIS

¶ 11 Under section 9-1 of the Probate Act of 1975 (Act) (755 ILCS 5/9-1 (West 2018)), a "person who has attained the age of 18 years, is a resident of the United States, *is not of unsound mind*, is not an adjudged person with a disability as defined in this Act and has not been

convicted of a felony, is qualified to act as administrator." (Emphasis added). These are the same as the statutory qualifications for an executor under the Act. See 755 ILCS 5/6-13(a) (West 2018) (setting the qualifications for an executor). Thus, we take authority addressing whether a potential executor is not of unsound mind to apply to the qualifications of a potential administrator as well.

¶ 12 In questioning Margaret's competency to act as administrator, Joanne essentially asserted that Margaret was of unsound mind within the meaning of the Act. A trial court's ruling on a petition for removal of an executor is subject to a manifest-weight-of-the-evidence standard of review. *In re Estate of Savio*, 388 Ill. App. 3d 242, 249 (2009). We apply the same standard of review here, as the issue involves a factual determination as to Margaret's competency to serve as administrator. A trial court's ruling is against the manifest weight of the evidence only if it is unreasonable, arbitrary and not based on the evidence, or when the opposite conclusion is clearly evident from the record. *Savio*, 388 Ill. App. 3d at 247.

¶ 13 Joanne claims that the trial court "erred in relying on preference alone when fitness should have outweighed preference." Under section 9-3 of the Act (755 ILCS 5/9-3 (West 2018)), a decedent's surviving spouse is entitled to preference in obtaining letters of administration. Contrary to Joanne's contention, the record shows that the court did not rely solely on the statutory preference. At the first hearing, the court recognized Margaret's possible infirmity due to her age and stated that it would order supervised administration. Then, it agreed to postpone its decision to appoint Margaret until it had an opportunity to examine her in court with regard to her competence. Ultimately, the court found, not just that Margaret enjoyed statutory preference, but that she was "competent enough to handle this with the assistance that she has."

¶ 14 Under the common law, the general rule is that the capacity to make a will is sufficient to make a person mentally competent to serve as an executor. *Clark v. Patterson*, 114 Ill. App. 312, 317 (1904);[1] *Griffin v. Irwin*, 21 So. 2d 668, 670 (Ala. 1945). Under older formulations of the rule, "idiots and lunatics" were "practically the only ones disqualified" by the common law. *Griffin*, 21 So. at 670; see also *Clark*, 114 Ill. App. at 318; *In re Leland's Will*, 114 N.E. 854, 856 (N.Y. 1916) (noting the "common-law disability of imbeciles and lunatics"). The Illinois Supreme Court, in the appeal from *Clark*, agreed that the common law requires no greater competence of an executor than of a testator. *Clark v. Patterson*, 214 Ill. 533, 542-43 (1905). Sections 9-1 and 6-13(a) of the Act—like the equivalent provision concerning executors in the era of *Clark*—do not add mental competency requirements beyond those of the common law.

¶ 15 The law presumes that adults are mentally competent and places the burden to prove incompetence on the party claiming incompetence; incompetence "cannot be inferred merely from old age, physical illness or defective memory." *In re Estate of Gruske*, 179 Ill. App. 3d 675, 678 (1989). The modern standard for testamentary capacity requires that a testator have the ability to know and remember the natural objects of his or her bounty, to understand the character of his or her property, and to plan a disposition of that property. See, *e.g.*, *In re Estate of Elias*, 408 Ill. App. 3d 301, 316-17 (2011) (stating that rule).

¶ 16 Applying these standards, we hold that the court's finding that Margaret was mentally competent to serve was not against the manifest weight of the evidence. To be sure, some of the answers that she gave the court were vague and nonresponsive. However, Margaret also testified that she paid her own bills, working with her daughters when she needed assistance. Nothing in

[1] Illinois Appellate Court opinions issued before 1935 are persuasive authority only. *Reichert v. Court of Claims*, 203 Ill. 2d 257, 262 n.1 (2003).

her testimony suggested that she was unable to know and remember the natural objects of her bounty—or the natural objects of decedent's bounty, for that matter. Nothing suggested that she could not understand the nature of the property that the estate would manage.

¶ 17 Joanne asserts that the trial court did not "properly weigh the evidence." However, Joanne presented no contrary evidence. Joanne's counsel made certain representations regarding her "interview" with Margaret, but she was not placed under oath. As Margaret's counsel pointed out, "That is [Joanne's counsel's] assertion of the interview."

¶ 18 Joanne cites *In re Estate of Abell*, 395 Ill. 337, 346-47 (1946), and *Dennis v. Dennis*, 323 Ill. App. 328, 337 (1944). Neither *Abell* nor *Dennis* addresses a court's determination of whether a proposed administrator is of unsound mind. Instead, they address whether the court may consider nonstatutory disqualifications: "hostility, adversity and conflict of interest" in *Dennis* (*Dennis*, 323 Ill. App. at 339), and "adverse interest ***, or hostility to those immediately interested in the estate, *** or even of an interest adverse to the estate itself" in *Abell* (*Abell*, 395 Ill. at 346-47). They thus are not relevant.

¶ 19 III. CONCLUSION

¶ 20 For the reasons stated, we affirm the court's appointment of Margaret as administrator of the estate.

¶ 21 Affirmed.