2018 IL App (2d) 170951-U
No. 2-17-0951
Order filed August 16, 2018

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re THE ESTATE OF EDWARD J. MYSTEK SR.	)	Appeal from the Circuit Court of Kendall County.
	)	
	)	No. 16-P-13
	)	
	)	Honorable
(Edward J. Mystek Jr., Petitioner-Appellant, v. Collette Graff, Respondent-Appellee.)	)	Melissa S. Barnhart, Judge, Presiding.

PRESIDING JUSTICE HUDSON delivered the judgment of the court.
Justices Jorgensen and Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court properly denied petitioner's petition to admit a will to probate: the court was entitled to find that petitioner had not overcome the presumption, arising from the lack of any such will among the decedent's effects, that any such will was revoked; in any event, the court was also entitled to find that petitioner's disclaimer of his share of the estate was not fraudulently induced by respondent.

¶ 2 Petitioner, Edward J. Mystek Jr., appeals the trial court's order finding that he failed to overcome the presumption that, because his father's original will could not be located, his father revoked it, and that petitioner's disclaimer of his portion of his father's estate was valid. We affirm.

¶ 3 Edward J. Mystek Sr. died September 18, 2015. His two children are the parties to this case. Petitioner is an inmate at the Lawrence Correctional Center.

¶ 4 Respondent filed a petition for letters of administration asserting that the decedent died intestate. Attached to the petition was a disclaimer signed by petitioner disclaiming any interest in the decedent's estate. The court appointed respondent independent administrator of the estate.

¶ 5 On August 28, 2017, petitioner filed a petition to admit the decedent's will to probate and to vacate the letters of administration. The petition alleged the following. On September 28, 2015, respondent sent petitioner a letter telling him of the decedent's death. Petitioner wrote to the law firm that had handled the decedent's estate planning. One of the attorneys, Gregg Ingemunson, responded that the decedent had named petitioner his executor and sole heir and that Ingemunson was now handling the matter in his office. The letter included a copy of the decedent's purported will dated October 4, 2012.

¶ 6 In December 2015, petitioner received a letter from respondent stating that she planned to visit him to discuss the "enclosed" documents. Those documents included a copy of a statute allowing the Department of Corrections (DOC) to seek reimbursement from inmates for the cost of their incarceration (730 ILCS 5/3-7-6 (West 2014)) and newspaper articles about the DOC seeking such reimbursement from inmates.

¶ 7 When respondent and her husband visited, she expressed concern that the DOC would attempt to seize any money he inherited from the decedent. Respondent said that she had discussed the issue with several attorneys who advised her that, if petitioner attempted to handle any of the decedent's estate transactions from prison, the DOC would intervene and "take it all from [him]." She said that, if she sold the decedent's real estate and put the proceeds in a

savings account for petitioner, he would have the money waiting upon his release from prison. She also said that she would send money to his prison trust account monthly.

¶ 8 Respondent presented petitioner with a document. She told him that, on the advice of her attorneys, he should sign it so that the DOC would not be able to take any portion of the decedent's estate. Petitioner responded that he could not read the document, because he had not brought his reading glasses. Respondent said that he just needed to trust her. Petitioner signed the document and respondent notarized it.

¶ 9 For approximately the next year, respondent regularly deposited $100 or more into petitioner's prison account each month. Following a deposit in January 2017, the deposits inexplicably stopped.

¶ 10 Petitioner contended that respondent fraudulently induced him to sign the disclaimer. He further alleged that she did not properly obtain permission to bring documents into the prison. Had he known that she was bringing documents, he would at least have brought his glasses to the visiting room. Attached to the petition was a copy of a will that the decedent purportedly executed, naming petitioner as the sole beneficiary.

¶ 11 In her response, respondent contended that only an original will can be probated and that petitioner had attached only a copy. She argued that, where an original will cannot be located, the presumption is that the testator revoked it.

¶ 12 Respondent further alleged that she had obtained permission from the warden to bring documents to the visit. She did not recall any discussion of a will naming petitioner as the sole beneficiary and she would have found such a document odd, as she had enjoyed a close relationship with the decedent. She helped facilitate the decedent's sale of his home in Chicago so that he could move to Yorkville and be closer to her. Further, after learning that petitioner

had been arrested (apparently not for the first time), the decedent told her, " 'If he *** is guilty again, I'm done with him.' "

¶ 13 In reply, petitioner alleged that he and the decedent had a very close relationship throughout the decedent's lifetime, as evidenced by several letters the decedent wrote to petitioner while petitioner was in prison. Petitioner also noted that the decedent made several deposits to his prison account. Conversely, petitioner alleged, respondent's relationship with the decedent had been strained since she allegedly stole two social security checks from him.

¶ 14 When the petition was called for hearing, the court asked petitioner if he intended to testify or call witnesses. Petitioner explained that he did not realize that he would have to testify, as all the information was contained in his petition. The following colloquy occurred:

> "THE COURT: Okay. Did you want to testify or did you just want to rely upon the documentation that you have submitted?
>
> MR. MYSTEK, JR.: I'll just rely on the document."

¶ 15 Respondent's attorney, John Baker, said that, given that petitioner had the burden of proof, he saw no need to present evidence. In response to questions from the court, respondent testified that one of her attorneys, John Wyeth, contacted the Ingemunson law firm to verify that it did not have an original will. Under questioning from Baker, respondent testified that she had access to the decedent's property. At no time did she find an original will or a copy of a will.

¶ 16 Wyeth testified that he spoke with Boyd Ingemunson and Gregg Ingemunson, both of whom said that their firm does not keep original wills. Neither had seen a will purporting to be that of the decedent.

¶ 17 The court found that petitioner had not overcome the presumption that the decedent had revoked the prior will. Further, the disclaimer petitioner signed was valid. He admittedly signed

it without reading it, but he could have asked for someone to read it to him or simply sought more time to examine it. Petitioner timely appeals.

¶ 18 Petitioner first contends that the court erred in finding that he failed to overcome the presumption that any prior will was revoked. The standard of review after a bench trial is whether the judgment is against the manifest weight of the evidence. *Chicago's Pizza, Inc. v. Chicago's Pizza Franchise Ltd. USA*, 384 Ill. App. 3d 849, 859 (2008). A judgment is against the manifest weight of the evidence only when the opposite conclusion is readily apparent or when the court's findings are unreasonable, arbitrary, or not based on the evidence. *Id.*

¶ 19 Petitioner appears to contend that the trial court did not consider the allegations of his petition. However, the court expressly allowed petitioner to stand on his petition rather than testify live. Moreover, the court's remarks make clear that it considered the petition's allegations.

¶ 20 Petitioner's principal contention appears to be that the court simply gave insufficient weight to his factual assertions. If a testator retains a will after executing it and the will cannot be found among the testator's personal effects after he or she dies, the presumption is that the testator destroyed the will with the intention of revoking it. *In re Estate of Moos*, 414 Ill. 54, 57 (1953); *In re Estate of Koester*, 2012 IL App (4th) 110879, ¶ 51. The presumption may be rebutted, but the burden is on one seeking to probate such a will to prove that the testator did not revoke it. *Moos*, 414 Ill. at 57. Factors to consider include statements from the testator that he did not intend to revoke the will, evidence that he entertained a kind and loving attitude toward the proposed beneficiary under the will up to the time of death, and evidence of other individuals' access to the will prior to death. *In re Estate of Strong*, 194 Ill. App. 3d 219, 226 (1990).

¶ 21 Here, the court reasonably concluded that, even assuming the truth of petitioner's allegations, he failed to overcome the presumption that the will was revoked. Wyeth testified that he spoke with two attorneys from the Ingemunson firm that prepared the will. Both said that the firm did not have the original and that it was not the firm's practice to maintain original wills. Thus, the inference was that, assuming such a will ever existed, the decedent kept the original. However, respondent testified that she had access to the decedent's home and personal property and did not find a will. It may be, as petitioner suggests, that respondent's testimony was self-serving and perhaps could be viewed with suspicion, but the fact remains that petitioner points to no evidence that respondent destroyed the original will. See *id.* (where a will is missing, we will not presume that another person has destroyed it, as that would be presuming a crime).

¶ 22 Petitioner points to evidence that, despite the decedent's alleged statement that he was " 'done with' " petitioner, he continued to send him letters and money in prison. Respondent points out that the last such deposit occurred in December 2014, more than nine months prior to the decedent's death.

¶ 23 In any event, the resolution of these factual issues was for the trial court as the finder of fact. Particularly given that petitioner had the burden to overcome the presumption of revocation, we cannot say that the court's findings were against the manifest weight of the evidence. Evidence of a few letters and monetary gifts sent to petitioner in prison did not necessarily overcome the presumption of revocation and establish that the decedent intended to completely disinherit his daughter.

¶ 24 Even if the will remained valid, however, it was irrelevant if the disclaimer petitioner signed was valid. The court found that it was. Petitioner contends that this conclusion was against the manifest weight of the evidence. We disagree.

¶ 25 Section 2-7(a) of the Probate Act of 1975 permits an heir or beneficiary to disclaim his or her interest in the succession of any property. 755 ILCS 5/2-7(a) (West 2014). Respondent filed with the court a disclaimer signed by petitioner. Petitioner asserts that respondent fraudulently obtained his signature on the document. We disagree.

¶ 26 Petitioner essentially argues that respondent fraudulently induced him to sign the disclaimer. "To constitute fraud sufficient to invalidate a contract, a representation must be one of material fact made for the purpose of inducing the other party to act, must be known to be false by the maker, but reasonably believed to be true by the other party, and must be relied upon to the other party's detriment." *Grane v. Grane*, 143 Ill. App. 3d 979, 983 (1986). "Fraud in the inducement vitiates the contract and renders the agreement voidable at the option of the injured party." *Id.* at 983-84. Although the disclaimer was not a contract in the strict sense, the same rules would seem to apply.

¶ 27 As the trial court observed, petitioner admittedly signed the document without reading it. However, respondent's letter had informed petitioner that she intended to discuss documents at the meeting. It is undisputed that they discussed the possibility of the DOC taking petitioner's share of the estate if he received it while in prison. Respondent told petitioner that the document was intended to prevent that. There is no evidence that respondent misrepresented the nature of the document. Thus, the trial court reasonably concluded that respondent did not fraudulently induce petitioner to sign the disclaimer.

¶ 28 The judgment of the circuit court of Kendall County is affirmed.

¶ 29 Affirmed.