

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re ESTATE OF KEITH A. MAHAFFY, SR.,  
Deceased

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KEITH A. MAHAFFY, JR., Personal  
Representative of the Estate of KEITH A.  
MAHAFFY, SR., Deceased,

Plaintiff-Appellee,

v

ORY JOHNSON,

Defendant-Appellant.

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UNPUBLISHED  
August 9, 2007

No. 268566  
Macomb Probate Court  
LC No. 04-179141-CZ

Before: Smolenski, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

In this quiet title action, defendant appeals as of right from the trial court order that was entered pursuant to a jury verdict in favor of plaintiff. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Keith Mahaffy, Sr., the decedent, lived on his farm for more than 30 years. Linda Mahaffy, the decedent's daughter-in-law, testified that in Keith and Marion Mahaffy executed a quitclaim deed in 1989 transferring their interest in this property to their son, plaintiff Keith Mahaffy, Jr. Evidently, they never gave this deed to Keith, Jr. or filed it with the register of deeds. This deed was kept in a safe inside the house. Marion Mahaffy died in 1998. Approximately three years before Marion's death, defendant was hired to help the Mahaffys with household chores, such as cleaning, laundry and preparing meals. Defendant testified that after Marion's death, she continued to do cleaning for the decedent. Defendant would be at the decedent's house three to five days a week for as much as eight to ten hours per day. This contact resulted in a friendship between the decedent and defendant. Upon the decedent's death, plaintiff and other family members discovered that the decedent had signed a quitclaim deed transferring the property to defendant.

Plaintiff thereafter filed this suit to quiet title, claiming that the decedent lack capacity to make the transfer and that defendant exerted undue influence over him. The trial resulted in a

unanimous jury verdict on both counts in favor of plaintiff. Defendant thereafter moved for a new trial or judgment notwithstanding the verdict (JNOV), both of which were denied.

On appeal, defendant first argues that the trial court erred in denying her motion for JNOV because the evidence was insufficient to support the jury verdict. We disagree.

The denial of a motion for JNOV is reviewed de novo. *Garg v Macomb Co Comm Mental Health Services*, 472 Mich 263, 272; 696 NW2d 646 (2005). When reviewing a claim that there was insufficient evidence presented at a civil trial, an appellate court must view the evidence in the light most favorable to the plaintiff. *Scott v Illinois Tool Works, Inc*, 217 Mich App 35, 41; 550 NW2d 809 (1996). If, after reviewing the evidence, reasonable minds could differ, the question should be left to the jury. *Id.*

Defendant claims there was insufficient evidence to support the jury's finding that the decedent lacked the capacity to transfer his property. To prove lack of capacity, a plaintiff must show that the person in question does not have the mental faculties to appreciate the significance of the transaction the person is involved in. *In re Erickson Estate*, 202 Mich App 329, 332; 508 NW2d 181 (1993). This must be proved by a preponderance of the evidence. *Id.* at 333.

The jury was presented with testimony from both sides as to the mental condition of the decedent. The jury heard defendant and two witnesses, one of whom was formerly married to defendant, testify that the decedent was mentally healthy. The decedent was described as being stubborn or bullheaded. On the other hand, the jury also heard several witnesses, including a doctor, testify as to the decedent's forgetfulness, confusion, diminished mental capacity, inability to engage in deep cognitive thought or understand the extent of his assets, inadequate judgment, poor health, and poor hygiene. There was testimony that the decedent did not understand his illness or his medications, even after they had been explained to him numerous times. The jury also heard testimony that the decedent offered to give his farm away to at least three other people besides defendant. Additionally, there was testimony showing that the decedent did not appreciate the value of his property and had made conflicting statements about the value of his house. Finally, the information about the property that the decedent gave defendant was not entirely correct. The address of the property on the filed deed was wrong and several corrections had to be made to the deed by hand. Defendant even stated that the decedent could not make the transfer without help. Based on the testimony, and viewing the evidence in the light most favorable to plaintiff, a reasonable jury could find that the decedent was unable to comprehend the nature and importance of the transaction. Therefore, there was sufficient evidence to support the jury verdict as to lack of competence.

Defendant also argues there was insufficient evidence to prove undue influence. Undue influence requires that the plaintiff show

that the grantor was subjected to threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency and impel the grantor to act against his inclination and free will. Motive, opportunity, or even ability to control, in the absence of affirmative evidence that it was exercised, are not sufficient. [*In re Estate of Karmey*, 468 Mich 68, 75; 658 NW2d 796 (2003), quoting *Kar v Hogan*, 399 Mich 529, 537; 251 NW2d 77 (1976).]

In some cases, however, a presumption of undue influence arises. *Erickson, supra* at 331. This presumption arises when the plaintiff can show evidence of the following elements:

(1) the existence of a confidential or fiduciary relationship between the grantor and a fiduciary, (2) the fiduciary, or an interest represented by the fiduciary, benefits from a transaction, and (3) the fiduciary had an opportunity to influence the grantor's decision in that transaction. [*Id.*, quoting *Kar, supra* at 537.]

In these circumstances, the burden shifts to the defendant to rebut the presumption. *In re Peterson Estate*, 193 Mich App 257, 260; 483 NW2d 624 (1991). Whether this presumption has been rebutted is a matter of fact for the jury to decide. *Id.* at 261-262.

For the presumption of undue influence to exist, the plaintiff must first show the existence of a confidential or fiduciary relationship. A fiduciary is defined by MCL 700.1212(1) as being in “a position of confidence and trust.” Fiduciary has also been defined as a “relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship.” *Karmey, supra* at 75, quoting Black’s Law Dictionary (7th ed). There are four typical ways in which such a relationship arises:

(1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act for or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer. [*Id.*]

Defendant argues there was no evidence of a fiduciary relationship between the decedent and defendant. Defendant testified that she and the decedent were friends who confided in each other, but nothing more.

The evidence established that defendant assisted the decedent and his late wife with the household chores for approximately three years before the wife died. Defendant continued to clean the house for the decedent thereafter. In performing those chores, she would be at the decedent’s house three to five days per week for many hours each day. Defendant admitted she and the decedent developed a friendship as a result of her performing the household chores. Defendant ran errands for and with the decedent, traveling with him to pick up prescriptions or visit the doctor. Defendant was overheard by the decedent’s nephew tell the decedent on several occasions that the decedent’s son was going to place him in a nursing home and take all of his money. There was also testimony that the decedent was not involved in any way with the preparation of the quitclaim deed but that defendant had it prepared by a friend, Dorothy Lualdi. In her answer to plaintiff’s interrogatories, defendant initially lied and said that the deed preparer was the decedent’s accountant. In actuality, Lualdi never even met or spoke with the decedent. Defendant assisted the decedent in filing the deed because he allegedly could not do it himself. Finally, the decedent asked defendant to keep the deed a secret and trusted her to do so. All of these events occurred at a time when, according to several witnesses, the decedent’s physical and mental health was in decline. This evidence, when viewed in a light most favorable to plaintiff,

could lead a reasonable jury to conclude that the decedent placed his trust in defendant and that a fiduciary relationship existed.

Second, to create the presumption of undue influence, a plaintiff must show that the fiduciary benefited from the transaction. Here there is no dispute that defendant benefited from the transfer by receiving the property.

Finally, there must be evidence that the defendant had the opportunity to influence the grantor's decision in making the transfer. As noted above, defendant spent a substantial amount of time with the decedent. The deed was prepared by defendant's friend and accountant. Defendant was the only person to accompany the decedent to the register of deeds office. Finally, the deed was kept secret by the decedent and defendant. Therefore, this evidence supports a jury finding that defendant had the opportunity to influence the decedent's decision to transfer his property.

Given these facts, and viewing them in a light most favorable to plaintiff, there was sufficient evidence to support the presumption that undue influence existed in this case. Therefore, the burden to rebut this presumption was on defendant. *Peterson, supra* at 259-260. If the presumption was not rebutted, the plaintiff is deemed to have met the burden of persuasion. *Id.* Whether the presumption has been rebutted is a matter for a jury to decide and should be given great deference by an appellate court. *Id.* at 261-262. Accordingly, given the existence of evidence to support finding a presumption that defendant unduly influenced the decedent, there was sufficient evidence to support the verdict in plaintiff's favor on the undue influence claim.

Defendant further argues that the jury verdict is against the great weight of the evidence. A motion for a new trial may be granted if the jury verdict is against the great weight of the evidence. *Snell v UACC Midwest, Inc*, 194 Mich App 511, 516; 487 NW2d 772 (1992). An appellate court reviews the trial court's decision on a motion for a new trial for abuse of discretion. *Id.* If there is any competent evidence to support the verdict, the appellate court must defer to the jury regarding the credibility of witnesses. *Allard v State Farm Ins Co*, 271 Mich App 394, 407-408; 722 NW2d 268 (2006).

Here, there was strong evidence supporting plaintiff's claim of lack of capacity, including the testimony of a doctor. The bulk of contrary evidence came from defendant herself and two witnesses, one of whom was formerly married to defendant. Because there was strong evidence supporting plaintiff's claim of lack of capacity, the jury verdict was not against the great weight of evidence and the trial court did not abuse its discretion in denying the motion for a new trial as to that claim.

Likewise, as to the claim of undue influence, there is strong evidence that supports the jury verdict. The opposing evidence again consists mainly of testimony from defendant, an interested party. Therefore, the trial court did not abuse its discretion in denying the motion for a new trial as to the undue influence claim because the jury's finding of undue influence was not against the great weight of the evidence.

Affirmed.

/s/ Michael R. Smolenski  
/s/ E. Thomas Fitzgerald  
/s/ Kirsten Frank Kelly