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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

Estate of JOHN C. ANDERSON, Deceased.	2d Civil No. B251507 (Super. Ct. No. PR120185) (San Luis Obispo County)
JOHN W. FORD, Objector and Appellant, v. ALFREDA SMITH, Petitioner and Respondent.	

John W. Ford appeals a judgment declaring the March 5, 2010, trust and will of John C. Anderson void, and imposing a constructive trust upon the assets held by Ford, either as trustee of the trust or as Anderson's personal representative. We affirm.

FACTUAL AND PROCEDURAL HISTORY

Anderson, a longtime resident of San Luis Obispo, died on January 3, 2012, at age 87. He lived with his wife in their family home on Broad Street until her death in 2007. Anderson had no biological children, but treated his wife's daughter, Edna Monk, and Monk's daughter, Alfreda Smith, as his daughter and granddaughter respectively.

In 1994, Anderson retained attorney Mary Harris to prepare a trust and will bequeathing most of his estate to his wife, but in the event she predeceased him, to Monk

and Smith. The June 2, 1994, will provides: "I have one (1) child, Edna Monk," and "I have one (1) grandchild whose name is Alfreda Smith." The will also names Smith's three children as Anderson's great-grandchildren. Anderson spoke to Harris regarding Smith and her children in loving terms and did not inform Harris that they were not biological relatives.

Following his wife's death, Anderson experienced forgetfulness and increasing cognitive deficits. Anderson's immediate neighbor, Crystal Gossage, sometimes found him disoriented and wandering in the street. She would return him to his home where he had lived for many decades. Anderson also occasionally made statements to Gossage regarding his wife, as though she was still alive. Although Gossage and Anderson were longtime friends, he sometimes did not recognize her.

Robert Washington, a family friend for many years, became Anderson's live-in caregiver after the death of Anderson's wife. Washington observed that Anderson could not prepare his own food, manage his medications, or dress without assistance. Anderson also experienced paranoia, insisting that others were stealing from him and burglarizing his home. On two occasions, he threatened Washington with a firearm, asserting that Washington was an intruder.

Doctor Steven Goodman, Anderson's primary care physician, had treated Anderson for 20 years. In 2008, Anderson neglected his medication regime and missed medical appointments. By 2009, Goodman concluded that Anderson suffered from progressive dementia; Anderson could not reason logically and was unable to protect himself. In 2010, Goodman contacted San Luis Obispo County Adult Protective Services and informed the agency that Anderson suffered from self-neglect. He also advised Smith to take legal steps to protect Anderson and manage his affairs.

Following his wife's death, Anderson engaged attorney Harris to revise his trust and will. He expressed a continued desire to bequeath his estate to Smith and her children, and identified the assets of his estate as bank accounts, three vehicles, and his Broad Street home. Smith accompanied Anderson to an estate-planning meeting with Harris in 2007, and again in 2009.

During meetings in 2007 through 2009, Harris noticed a decline in Anderson's mental state and appearance. He missed several appointments and then appeared without proper identification for notarization of his amended trust. Harris contacted Smith on February 6, 2009, and informed her that testamentary documents had been prepared. Anderson did not execute the documents, however. On March 27, 2009, Anderson informed Harris that he planned to discuss his estate plan with his cousin, Pastor Henry Ford of the Springfield Baptist Church in San Luis Obispo.[1] Henry later telephoned Harris and stated that the 2009 documents did not comply with Anderson's testamentary wishes. Until then, Harris was unaware of any Ford cousins or their relationship with Anderson because Anderson had never mentioned them.

As close cousins and longtime friends with Anderson, appellant John and Henry had frequent contact with him throughout their lives, including 2009 and 2010. John lived in San Luis Obispo for many years until he moved to Mississippi in 2002. He and Anderson shared dinners, sports, and church activities for nearly five decades. John and Henry did not notice any cognitive decline or forgetfulness in Anderson following his wife's death.

On October 6, 2009, John and Anderson consulted Harris to discuss a power of attorney or "guardianship," and changes to Anderson's estate plan. During the meeting, Harris spoke with Anderson privately who stated his intent to bequeath most of his estate to Smith and her children. Anderson described Smith as "my girl," and stated that he wanted her to "do right by her kids." Harris inquired specifically about Anderson's Broad Street home; he confirmed that Smith should inherit the property.

John then joined the discussion and informed Harris that Smith was not biologically related to Anderson and that Anderson did not intend to bequeath his estate to her or her children. In John's presence, Anderson approved an estate plan that coincided with John's suggestions. Harris believed that Anderson was uncomfortable, however, with John's ideas. Concerned with Anderson's cognitive decline, his

[1] We shall refer to John and Henry Ford by their first names not from disrespect, but to ease the reader's task.

susceptibility to undue influence, and the inappropriate pressure from John, Harris declined to prepare a different estate plan. John became confrontational, responded that Anderson would obtain another attorney, and ended the meeting. Harris continued to communicate with Anderson afterwards concerning real property in Mississippi owned in part by his sibling, but she did not prepare additional documents.

On February 24, 2010, John accompanied Anderson to the offices of another attorney, James McKiernan. McKiernan met with Anderson privately for a short time; their conversation concerned Anderson's request for a trust as well as general conversation. John then joined the discussion and McKiernan gave Anderson a trust questionnaire. Anderson completed the handwritten questionnaire prior to leaving the office. McKiernan then prepared a trust and will dated March 5, 2010, which Anderson later executed in John's presence. McKiernan mailed the original trust transfer deed to John in Mississippi, rather than to Anderson in San Luis Obispo.

The 2010 trust and will exclude Smith as a beneficiary or heir. The documents bequeath 50 percent of Anderson's estate to John, 25 percent to Anderson's sister, and 25 percent to Smith's son, Jamar Dion Williams. The trust names John as trustee and John's son as successor trustee.

In September 2010, John accompanied Anderson to Wells Fargo Bank, where Anderson had approximately $65,000 in accounts. Anderson withdrew the funds from his accounts at the bank and placed them in a different bank. Wells Fargo Bank employees were concerned with Anderson's confused mental state and notified Adult Protective Services, who in turn notified Smith. A social worker and a police officer investigated the bank's report and interviewed Anderson. In John's presence, he stated that Smith was "after his assets" and "trying to get what I got." Anderson also stated that "[John] Ford [was] the only one" that he trusted. The social worker and police officer concluded that Anderson was lucid and oriented; they also did not believe that John was pressuring him.

On September 3, 2010, Smith filed a petition for conservatorship of Anderson's person and estate. Prior to the conservatorship hearing, John moved

Anderson to Mississippi to reside with him. John instructed Washington, Anderson's caretaker, to inform Anderson that he was taking "a little trip," as opposed to moving. Washington described Anderson's mental state as child-like at the time.

Smith attempted to contact Anderson in Mississippi and notified authorities there of her concern for Anderson's well-being. When Anderson died in 2012, John did not notify Smith of his death or the date of the California funeral service. John also did not notify Smith's son that he inherited a 25 percent interest in Anderson's estate.

On July 26, 2012, Smith filed a petition to determine the validity of the 2010 trust and will, and to impose a constructive trust upon the assets held by John in his trustee or representative capacity. Smith asserted that Anderson lacked testamentary capacity and was subject to John's undue influence regarding the 2010 trust and will. Following trial, the trial court decided that Smith met her evidentiary burden of establishing a presumption of undue influence and that John did not rebut the evidence giving rise to the presumption. The court then declared the 2010 trust and will void on the grounds of undue influence, and it imposed a constructive trust upon the assets held by John in his trustee or representative capacity.

John appeals and contends that the trial court abused its discretion in invoking the presumption of undue influence and shifting the burden of proof to John to disprove undue influence regarding the 2010 trust and will.

DISCUSSION

John argues that there is insufficient evidence of extraordinary pressure or coercion that destroyed Anderson's free will regarding disposition of his estate. He asserts that insufficient evidence exists that he actively participated in procuring the preparation or execution of Anderson's trust and will because he merely chauffeured Anderson to the attorney's office and was present during execution of the 2010 trust and will. (*Estate of Fritschi* (1963) 60 Cal.2d 367, 376 [active participation requires more than the incidental activity of obtaining an attorney for the testator, witnessing the will, and compensating the attorney].) John claims that insufficient evidence exists that he obtained an undue benefit from the 2010 testamentary documents, pointing out that he

had a significant and close relationship with Anderson for nearly 70 years. (*Estate of Sarabia* (1990) 221 Cal.App.3d 599, 607 [undue influence involves "a qualitative assessment of the relationship between the decedent and the beneficiary"].) John adds that the evidence rebuts any presumption of undue influence.

Generally, a testator is presumed competent and may dispose of his property without regard to whether the disposition is fair or appropriate. (*Hagen v. Hickenbottom* (1995) 41 Cal.App.4th 168, 181.) A contestant may overcome the presumption of competency, however, by showing that the will was the product of undue influence. (*Id.* at pp. 181-182.)

"Undue influence" is "pressure brought to bear directly on the testamentary act, sufficient to overcome the testator's free will, amounting in effect to coercion destroying the testator's free agency." (*Rice v. Clark* (2002) 28 Cal.4th 89, 96.) As a general rule, the person challenging a testamentary instrument bears the burden of proving undue influence. (Prob. Code, § 8252, subd. (a); *Rice*, at p. 96.) A presumption of undue influence, shifting the burden of proof, arises, however, upon a showing that 1) the person alleged to have exerted undue influence had a confidential relationship with the testator; 2) the person actively participated in procuring the instrument's preparation or execution; and 3) the person would benefit unduly by the testamentary instrument. (*Rice*, at pp. 96-97.) If these three elements are established, a presumption of undue influence arises, and the party defending the testamentary instruments must present evidence sufficient to overcome the presumption. (*Ibid.*)

Direct evidence of undue influence is rarely obtainable. (*Lintz v. Lintz* (2014) 222 Cal.App.4th 1346, 1355.) Undue influence is usually established by inferences drawn from all the circumstances. (*Ibid.*) Undue influence may be demonstrated by evidence that the beneficiary had control over the decedent's business affairs, the decedent was dependent upon the beneficiary for care and attention, or the decedent deferred to the beneficiary. (*Estate of Washington* (1953) 116 Cal.App.2d 139, 145.)

In determining whether the trial court's decision is supported by substantial evidence, we resolve all conflicts and draw all reasonable inferences in favor of the judgment. (*Martinez v. County of Ventura* (2014) 225 Cal.App.4th 364, 369; *Estate of Gelonese* (1974) 36 Cal.App.3d 854, 861.) We do not redetermine the weight of the evidence or the credibility of witnesses. (*Estate of Auen* (1994) 30 Cal.App.4th 300, 311.) "The appellate court has no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses, or to resolve conflicts in the evidence or in the reasonable inferences that may be drawn from the conflicts." (*Wells Fargo Bank N.A. v. Weinberg* (2014) 227 Cal.App.4th 1, 8.)

The trial court's decision here is supported by sufficient evidence, including reasonable inferences therefrom. The factual circumstances, each considered alone, may be of little weight, but viewed collectively, support the three elements of undue influence. (*Rice v. Clark*, *supra*, 28 Cal.4th 89, 96-97.)

First, as the parties agree, John had a confidential relationship with Anderson. (*Estate of Sanders* (1985) 40 Cal.3d 607, 615 [confidential relationship exists where one party gains the confidence of the other and purports to act or advise with the other's interest in mind].) A confidential relationship "is particularly likely to exist when there is a family relationship or one of friendship." (*Ibid.*)

Second, the evidence and reasonable inferences therefrom establish that John actively participated in the preparation of the 2010 trust and will. John made an appointment with Harris to discuss changes to Anderson's estate plan. John informed Harris that Smith was not biologically related to Anderson and that Anderson did not intend to bequeath his property to her. Privately, Anderson had informed Harris that he intended Smith and her children to be his heirs, except for his interest in a Mississippi property. Harris observed that John was pressuring Anderson regarding his beneficiaries and that Anderson was uncomfortable with John's statements. Harris believed that Anderson was highly susceptible to undue influence and that John was influencing Anderson regarding his estate plan. When Harris refused to draft new testamentary instruments, John stated that they would seek another attorney. John later took Smith to

attorney McKiernan who drafted a will and trust that benefitted John to 50 percent of Anderson's estate. John was present when Anderson completed the trust questionnaire and when Anderson executed the trust and will.

Third, John unduly benefitted from the 2010 trust and will by comparison to the dispositions in Anderson's 1994 trust and will. (*Estate of Sarabia*, *supra*, 221 Cal.App.3d 599, 607 [evidence of "undue" profit may include comparison of decedent's prior wills or past expressions of his testamentary intent].) In the absence of John's influence, Anderson intentions were to bequeath his property to Smith – "[his] girl" in order that she could "do right by her kids." Although John and Henry may have been close relatives to Anderson, they were not mentioned in the 1994 trust and will, and Harris was not aware of their existence.

Moreover, John has not overcome the presumption of undue influence. Although Anderson may have had periods of lucidity, he was suffering from dementia in 2009 and 2010. John moved him to Mississippi during the pendency of the conservatorship hearing, advising Anderson's caretaker to describe the move as "a little trip." John did not maintain contact with Smith thereafter and did not inform her of Anderson's death and his funeral service.

The judgment is affirmed. Smith shall recover costs.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Martin J. Tangeman, Judge

Superior Court County of San Luis Obispo

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