

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF GREENWOOD

EIGHTH JUDICIAL CIRCUIT

KAREN PETIT,

Plaintiff,

Case No.: 2017-CP-24-01343

-v-

PHYLLIS VAN SWOL *f/k/a/* PHYLLIS
KROHN et al.,

Defendants.

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JUN 19 2020
SC Court of Appeals

ORDER

Hocker, J.

This Matter Came Before the Court by way of a motion for reconsideration filed by the Plaintiff in response to this Court’s Order granting summary judgment in favor of the Defendant Phyllis Van Swol. For the reasons stated below, I deny the motion.

FACTS

The facts underlying this litigation are more fully set forth in this Court’s Order Granting Summary Judgment dated and entered January 15, 2020, and those facts are incorporated by reference here. In summary for the purposes of this Order, however, the Plaintiff is the daughter of the decedent Dr. Edward Petit and the Defendant Phyllis Van Swol (F/K/A/ Phyllis Krohn”) was the decedent’s “companion.” For a large period of time, the decedent held an IRA account with the co-Defendant USAA Investment Management Co. (hereinafter “USAA”). The Plaintiff and her sister were the original beneficiaries of the account until 2012, changed the designation of beneficiaries to his granddaughters. That same year, the decedent granted Henry Dorn a durable general power of attorney, the validity of which was upheld by the Greenwood County Probate

Court during capacity proceedings involving the decedent in 2014. While the decedent had granted the Defendant various powers of attorney prior to 2012, there is no evidence that the Defendant acted in furtherance of any such powers or that any person other than the decedent changed the IRA's beneficiaries to his granddaughters.

In any event, after the decedent was declared incapacitated, Mr. Dorn, using his duly executed and judicially approved power of attorney, established an IRA account with Wells Fargo N.A., naming the grandchildren as the beneficiaries thereof. The USAA account was liquidated, transferred into the Wells Fargo account, and closed. When the decedent passed away in 2015, Wells Fargo distributed the account balance to the decedent's grandchildren. This lawsuit was filed several years later, asserting causes of action against the Defendant and USAA for, inter alia, tortious interference with a contract, breach of fiduciary duty, negligence, and undue influence. As stated above, summary judgment was granted in favor of the Defendant on all counts.

ANALYSIS

In her motion to reconsider, the Plaintiff asserts two major exceptions to the Court's ruling. First, the Plaintiff argues that the Court failed to consider that the Defendant told the Plaintiff that she had "unilaterally decided to change the beneficiaries on [the decedent's] IRA, and filled out the form to do so." The uncontroverted evidence in this case demonstrates that the forms submitted to USAA by the decedent to change beneficiaries were completed by the Defendant—in her deposition, she admitted to doing so. At the same time, the uncontroverted evidence also demonstrates that the decedent himself executed the completed forms. As discussed below, there is no evidence in the record that the decedent lacked capacity to sign the forms or that he executed the forms

involuntarily or as a result of fraud or coercion. Moreover, the Plaintiff's allegations that the Defendant concealed the decedent's health condition from her, even in viewed in the light most favorable to the Plaintiff, does not provide any proof that the decedent's will was overborn by the Defendant. In short, there is no evidence in the record to demonstrate that the decedent executed the change of beneficiary forms involuntarily even if completed by the Defendant.

Next, the Plaintiff argues that the Court did not give due weight to the decedent's condition, specifically that he had "dementia, heart problems, and glaucoma that made him unable to read" and that the decedent had recently lost consciousness on a cruise, resulting in significant medical procedures and medication. While the Plaintiff does produce sufficient evidence showing that the decedent suffered from these maladies and was in a bad state at around the time he executed the change in beneficiaries form, she does not tie these facts to the decedent's capacity or any proof that the change in beneficiaries was anything other than voluntary. What the evidence does show, however, is that the decedent's condition continued to deteriorate until he was declared incapacitated by the Greenwood County Probate Court in 2014. All the while, the decedent continued to execute other legal documents which the Plaintiff did not challenge the legality of. One of those documents was the power of attorney executed in favor of Mr. Dorn, signed only a few months after the incident on the cruise and the decedent's change of beneficiaries with USAA. This document was adjudicated by the probate court to be a valid, durable power of attorney. Even when viewed in the light most favorable to the Plaintiff, if there were periods of time between the cruise incident and the execution of Mr. Dorn's power of attorney when the decedent lacked capacity to change his

beneficiaries, the Plaintiff has failed to provide even a scintilla of evidence demonstrating that the change of the USAA account's beneficiaries occurred during a period of incapacity.

Finally, as a point that was not addressed by the Plaintiff in her motion, the account that made distributions to the decedent's grandchildren on his death was the Wells Fargo IRA and not the USAA account. This was the same account established by Mr. Dorn pursuant to his valid power of attorney and the beneficiaries thereto were designated, again, by Mr. Dorn pursuant to his valid power of attorney. This is a point that was repeated in this Court's Order Granting Summary Judgment. Ungirding this point is the dearth of evidence demonstrating that Mr. Dorn's conduct was in anyway improper or not otherwise in the best interest of the decedent, which is only equal to the absence of any evidence tending to show in any way that Mr. Dorn would have behaved differently under different circumstances.

CONCLUSION

For the reasons cited herein, the Plaintiff's Motion to Reconsider is DENIED.

It Is So Ordered.

Presiding Circuit Court Judge
Eighth Judicial Circuit

On _____, 2020
At _____, S.C.



Greenwood Common Pleas

Case Caption: Karen Petit VS Phyllis Jean Krohn , defendant, et al

Case Number: 2017CP2401343

Type: Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

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