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2018 IL App (4th) 170860-U

NO. 4-17-0860

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 21, 2018
Carla Bender
4th District Appellate
Court, IL

In re ESTATE OF DAVID C. MYREN, Deceased	)	Appeal from the
	)	Circuit Court of
(Justin Myren, Joshua Myren, Andrea Myren, and	)	Sangamon County
Joseph Myren,	)	No. 14P348
Plaintiffs-Appellants,	)	
v.	)	Honorable
Barry O. Hines, Executor,	)	John W. Belz,
Defendant-Appellee).	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not err in denying plaintiffs' amended petition to contest the validity of decedent's will.

¶ 2 In July 2014, David C. Myren died leaving a will which disinherited his four children, plaintiffs Justin Myren, Joshua Myren, Andrea Myren, and Joseph Myren. In April 2015, plaintiffs filed an amended petition to contest the validity of David's will. Defendant, Barry O. Hines, as executor of David's estate, asked for the amended petition to be dismissed. In November 2017, the trial court denied the amended petition.

¶ 3 On appeal, plaintiffs argue the trial court erred in failing to invalidate David's will. We affirm.

¶ 4 I. BACKGROUND

¶ 5 David died on July 19, 2014, and left a will dated July 11, 2012. In July 2014,

Hines filed a petition for probate of the will and for letters testamentary. As heirs, the petition named David's sons, Justin, Joshua, and Joseph, and his daughter, Andrea. As legatees, the petition named the National Rifle Association (NRA) and the Rocky Mountain Elk Foundation. The trial court admitted the will to probate.

¶ 6 In January 2015, Justin, on behalf of himself and his siblings, filed a petition to contest the validity of David's will. The petition alleged David lacked testamentary capacity because of insane sexual delusions. David and his wife, Joanne, divorced in 1996. Joanne died in 2001. Justin claimed David executed a will in April 2003 and left his entire estate equally to his children. In July 2012, David executed a will disinheriting his children and grandchildren and leaving his entire estate equally to the NRA and the Rocky Mountain Elk Foundation. The petition alleged David, from 2010 until his death, "developed and suffered from insane sexual delusions as to the character and activities of his four children." As examples, the petition stated as follows:

> "a) David Myren came to believe that all four of his children had sexual relations with their mother, Joanne;
>
> b) David Myren came to believe that all four of his children wanted to have sexual relations with him;
>
> c) David Myren came to believe that his eldest son, Justin, and his wife, Anjanette, wanted to have three[-]way sexual relations with him;
>
> d) David Myren came to believe that his middle son, Joshua, made sexual advances toward him; and
>
> e) David Myren came to believe that his daughter, Andrea,

> was a 'whore' who had had sexual relations with his business associates and who had followed him to Colorado to have sex with his friends while elk hunting."

The petition stated no facts supported David's belief and, as a result of his insane sexual delusions, David was incapable of recognizing and providing for the natural objects of his bounty, *i.e.*, his four children and his grandchildren, when he executed his 2012 will.

¶ 7 In February 2015, Hines filed a motion to dismiss the petition to contest the validity of David's will pursuant to section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2014)). Hines argued the allegations in the petition failed to establish facts showing David lacked testamentary capacity. Following a hearing, the trial court granted plaintiffs leave to file an amended challenge. In April 2015, plaintiffs filed an amended petition to contest the validity of David's will and raised similar claims.

¶ 8 In August 2017, the trial court conducted a hearing on the amended petition. Andrea Myren testified she had no knowledge of her mother ever having any inappropriate sexual contact with Andrea's brothers. Andrea also denied having sexual relations with any of her father's business associates or hunting companions. After her parents' divorce, Andrea and her brothers lived with their mother, and they stayed with David every other weekend.

¶ 9 Joshua Myren testified the Myren family farm consists of approximately 330 acres. Joshua stated the farm had been in the family since the 1950s, and "it should stay in our family." He had no reason to believe his mother had any inappropriate sexual contacts with himself or his siblings. On cross-examination, Joshua admitted his parents' divorce had been "rough."

¶ 10 Joseph Myren testified he had no reason to believe his mother had any

inappropriate sexual contacts with himself or his siblings. Following his parents' divorce, Joseph lived primarily with his mother. Joseph admitted he was not entirely surprised about being disinherited.

¶ 11 Justin Myren testified he had a "great relationship" with his mother. He denied having any inappropriate sexual contact with her, and he was unaware of any such contact between her and his siblings. Justin was contesting the will "to try to preserve the Myren farm" and "pass that on to the next generation."

¶ 12 On cross-examination, Justin stated his parents' divorce involved "really rough times," and "there was definitely a lot more anger from my father's side." Justin was aware his father sold 90 acres of farmland prior to his death.

¶ 13 Anjanette Myren, Justin's wife, testified Joanne was a "great" mother-in-law. Anjanette had no reason to suspect Joanne had any inappropriate sexual contact with her own children. Neither Anjanette nor Justin ever expressed a desire to engage in a three-way sexual relationship with another man. She stated David was intentionally excluded from a family gathering in fall 2012 "after we had stopped communicating with him."

¶ 14 Vaughn Renfro had a working and social relationship with David since 1977. According to Renfro, David said in 2012 he was "going to kick Josh out because Josh wanted to have sex" with him. In 2011 or 2012, Renfro stated David told him that "Andrea was a whore." David also said Andrea worked for the government as a spy, and his truck and house had been bugged. David once accused Renfro of sleeping with Joanne and fired Renfro's brother and son because he said they too were sleeping with Joanne.

¶ 15 On cross-examination, Renfro stated David "was an avid NRA member," although he did not know David was affiliated with the Rocky Mountain Elk Foundation.

Renfro stated David "was an avid elk hunter" and "would go to Colorado about every other year." Renfro recalled stating at his deposition that David said he was not going to leave the children anything because they would not let him see his grandson.

¶ 16 Abe Stutzman testified he first met David in the late 1980s. Stutzman recounted that sometime between 2010 and 2012, David made a comment that Joshua "wanted to sleep with [David]." Stutzman also recalled a statement where David said Andrea followed him to Colorado and "was trying to sleep with all of the guys in the hunting lodge out there."

¶ 17 On cross-examination, Stutzman testified David "off and on made statements" about writing his children out of the will, which Stutzman took "as a frustrated parent when the kids don't do what you think they should do." David also expressed his frustration with the children not helping with the upkeep of the land. Stutzman also stated David expressed his frustration at not seeing his grandchildren enough. Stutzman stated David "loved the Rocky Mountain Elk Foundation" and donated a youth hunting trip to raise funds to support it.

¶ 18 Gibbs Glisson testified he went to high school with Joseph and Joshua. He later became "pretty good friends" with David and hunted on his Pike County farm. In 2008, David sold Glisson 40 acres of ground adjacent to the farm. On one occasion, David told his three sons they could not hunt on his property. Between 2010 and 2012, David made comments about Andrea "being a whore." Glisson testified David said "Anjanette and Justin were trying to get him into bed." Glisson stated David complained the boys were not helping him out on the farm as much as he would like and also "felt a little bit upset that he was not invited to an Easter at Justin's house."

¶ 19 Naomi Schmidt testified she worked as a secretary for Hines. David came into the office in July 2012 to discuss making a will. While waiting for Hines, David "said that one

of his sons wanted to have sex with him." On cross-examination, Schmidt stated it was "possible" David could have been joking. Schmidt witnessed David sign his will, and she believed he was of sound mind and memory.

¶ 20 Adam Walsh testified he is an account manager for Century Insurance and also a member of the Rocky Mountain Elk Foundation committee. Walsh recounted that in December 2012 or January 2013, David stated he would allow the committee "to have the hunt this year because he is estranged from his children because they want to have sex with him." David also stated " 'they had sex with their mother.' " Walsh stated "there was no joke about it." On cross-examination, Walsh stated David "never seemed confused at any of the meetings that we had."

¶ 21 Barry Hines testified he had represented David in several land deals over the years and in estate planning, including two wills. Hines also hunted with David in Illinois and in Colorado. In his 2003 will, David left his estate equally to his four children, unless it was proved a child murdered him. On a trip to Colorado in October 2012, David stated he was not allowed to talk to his grandchildren.

¶ 22 On cross-examination, Hines stated David "was a big man" with a "very outgoing personality." He was "very independent," loved the outdoors, and "would have been a lot happier as a mountain man." During the drafting of the 2003 will, Hines asked David about the murder clause. David indicated his concern "about physical violence from his sons." Hines believed it "grew out of the divorce and the fact that they—the children—had taken the side of the mother." When David came to discuss the 2012 will, he "had a plan," knew "exactly what he wanted," and told Hines about it. When asked why he was disinheriting his children, Hines testified David said "he could not see or visit his grandchildren" and his sons "didn't pay any attention to him except when it was hunting season and they wanted to get on the land to hunt."

Hines did not believe David was suffering from any type of delusion at the time he signed the 2012 will. Instead, "he knew what he wanted" and "felt very strongly about it." Hines "felt Dave had the capacity, unquestionable in my mind, and he can do what he wants to do with his property." Hines also stated the charities were David's idea, as he was an "avid Second Amendment advocate," a "vocal advocate" for the NRA, and he had an interest in the Rocky Mountain Elk Foundation. Hines never had any concerns regarding David's mental acuity at any point during his representation.

¶ 23 Jay Cook, a senior vice president at Marine Bank, testified he met David through volunteer activities at the Rocky Mountain Elk Foundation. In 2009, David approached him about auctioning off a youth hunt on his farm in Pike County. In February or March 2013, David again raised the possibility of using his farm for a youth hunt. David told Cook he had "a falling out with his children" and stated " 'they all wanted to have sex with me.' "

¶ 24 On cross-examination, Cook stated David "was a little odd" and "a big Grizzly Adams looking guy." Cook also stated David "was a nice guy" and he enjoyed working with him.

¶ 25 At the close of plaintiffs' case, Hines' attorney made a motion for a directed finding, which the trial court denied. Thereafter, Doug Smith, president and chief executive officer of Farmer's National Bank of Griggsville, testified he became acquainted with David at a land sale in the mid-2000s. Smith stated David reminded him of a "mountain man," but "he was a very sharp guy." In 2009 or 2010, David expressed his intention to leave his estate to the Rocky Mountain Elk Foundation and the NRA. David did not provide any details about why he was not leaving his estate to his children, but Smith stated "he seemed unhappy with them." Smith also stated David said "he would have liked to have seen more involvement in the farm,"

but the children only showed up during deer season.

¶ 26 Dr. Michael Nenaber testified as an expert in the field of internal medicine. He saw David as a patient for "probably about 30 years." Nenaber stated David reminded him of "Grizzly Adams" and was "a personable fellow." David's medical records did not show any indication of a psychological condition or neurosis. Nenaber never recalled giving David a "mini mental health exam," which could be administered if Nenaber became concerned about David's thought processes. Nenaber stated David never showed any confusion regarding who he was or who his children were. In 30 years of treating David, Nenaber stated nothing indicated David was mentally incapable of creating a will.

¶ 27 In November 2017, the trial court issued its written ruling. The court indicated it weighed the credibility of the witnesses and found the estate's witnesses, "including but not limited to the drafter of the Will and David Myren's longtime attorney, Barry O. Hines, his longtime physician, Dr. Michael Nenaber, and his longtime banker, Doug Smith, provided this Court with a credible basis for the Will in question." The court also did "not find, as it is required to otherwise do to set aside the Will, that but for the alleged delusional statements, Mr. Myren would [not] have made the Will in question." The court denied the amended petition to contest the validity of the will. This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 Plaintiffs argue the trial court should have invalidated David's will disinheriting them based on his insane sexual delusions. We disagree.

¶ 30 If a will contest is filed, then the question is not whether the will was properly admitted to probate, but whether the will should be declared invalid. *In re Estate of Alfaro*, 301 Ill. App. 3d 500, 503, 703 N.E.2d 620, 622 (1998). Any ground which, if proved, invalidates the

document as the decedent's will may be raised in a will contest. *Shelby Loan & Trust Co. v. Milligan*, 372 Ill. App. 397, 403, 24 N.E.3d 157, 160 (1939).

¶ 31 This court has noted "the law presumes that all individuals possess testamentary capacity until the contrary is proved." *In re Estate of Fordyce*, 130 Ill. App. 2d 755, 757, 265 N.E.2d 886, 888 (1971); see also *Kuster v. Schaumburg*, 276 Ill. App. 3d 220, 227, 658 N.E.2d 462, 467 (1995) (stating every person is presumed to be "sane until the contrary is shown"). "Thus, it has long been established that to prevail in a will contest where the testator is of legal age, a plaintiff need only show that the will in question was the product of an unsound mind or memory." *DeHart v. DeHart*, 2013 IL 114137, ¶ 20, 986 N.E.2d 85; see also *Fordyce's Estate*, 130 Ill. App. 2d at 757, 265 N.E.2d at 888 (noting it "is well-established that they who seek to set aside a will on the grounds of lack of testamentary capacity have the burden of proving it"). Those asserting a testator's lack of testamentary capacity must prove such by a preponderance of the evidence. See *Roller v. Kurtz*, 6 Ill. 2d 618, 628, 129 N.E.2d 693, 697 (1955).

> "The standard test of testamentary capacity, *i.e.*, soundness of mind and memory, is that 'the testator must be capable of knowing what his property is, who are the natural objects of his bounty, and also be able to understand the nature, consequence, and effect of the act of executing a will.' [Citations.] The absence of any one of these requirements would indicate a lack of testamentary capacity. [Citation.] Thus, if one is able to remember his property and understand the nature, consequences[,] and effect of executing his will, but is incapable of knowing who the natural objects of his bounty are, he is not legally capable of making a will. [Citation.]

> The natural objects of one's bounty include those people related to him by ties of blood or affection, and thus are those who are or should be considered to be recipients of his bequests. [Citation.] It is also possible for testamentary capacity to be destroyed if one suffers from a mental delusion as to one of the objects of his bounty, even though he may recall other objects of his bounty on the face of the contested will." *DeHart*, 2013 IL 114127, ¶ 20, 986 N.E.2d 85.

"To be relevant, evidence of a lack of testamentary capacity must relate to a time at or near the execution of the will." *Kuster*, 276 Ill. App. 3d at 227, 658 N.E.2d at 467. Moreover, our "supreme court has held that proof of the mental condition of a testator two years before the execution of a will was properly received." *Kuster*, 276 Ill. App. 3d at 227, 658 N.E.2d at 467.

¶ 32 In the case *sub judice*, there is no question that David knew what his property was, and he was able to understand the nature, consequence, and effect of the act of executing his will. While David knew the objects of his bounty—his four children—the ultimate question centers on whether his alleged sexual delusions as to those children destroyed his testamentary capacity.

> " 'An insane delusion may render a will invalid if it can be shown that the will was a product of, or influenced by, the delusion. While it is difficult to define "insane delusion," the Supreme Court has held it to be present where a testator, without evidence of any kind, imagines or conceives something to exist which does not exist in fact, and which no rational person would, in absence of

> evidence, believe to exist ***.
>
> The insane delusion must affect the will or enter into its execution. Even if the testator has an insane delusion on a particular subject, if the property and objects of bounty are known by the testator, and the property is disposed of according to a plan, the will will not be set aside for lack of testamentary capacity.' (3 Horner Probate Practice and Estates § 1384, at 2930 (4th ed. 1979).)" *In re Estate of Bonjean*, 90 Ill. App. 3d 582, 584, 413 N.E.2d 205, 206-07 (1980).

See also *Quellmalz v. First National Bank of Belleville*, 16 Ill. 2d 546, 555, 158 N.E.2d 591, 595-96 (1959). "A mental disturbance, therefore, may or may not reach the state where one loses his capacity to make a valid will; and a failure to recognize someone, and an unreasonable prejudice against the natural objects of one's bounty, do not necessarily indicate a failure of mental power." *Roller*, 6 Ill. 2d at 628, 129 N.E.2d at 697. Moreover, "[u]nkind or unjust remarks indicating a prejudice against the natural objects of the testator's bounty do not show he suffered from insane delusions." *Ryan v. Deneen*, 375 Ill. 452, 457, 31 N.E.2d 582, 584 (1940).

¶ 33 In this case, there is little to no evidence that David was suffering from an insane delusion at the time his will was executed. Barry Hines, David's attorney, testified David came to him with a plan, knew exactly what he wanted, and told Hines about it. Hines believed David had the capacity to make his will. Dr. Nenaber stated David never showed any confusion regarding who he was or who his children were. Moreover, Nenaber stated nothing indicated David was mentally incapable of creating a will. While Naomi Schmidt, Hines' secretary, testified David came in to discuss making a will and commented one of his sons wanted to have

sex with him, there is no indication that claim was the reason for making the will. Schmidt noted it was possible he was joking and, in witnessing David's will, believed he was of sound mind and memory. Also, Justin testified no one questioned David's mental capacity to sell 90 acres of farmland to his neighbor in December 2012. See *Sloger v. Sloger*, 26 Ill. 2d 366, 369, 186 N.E.2d 288, 290 (1962) (stating "[w]here a person has sufficient mental capacity to transact ordinary business and act rationally in the ordinary affairs of life[,] he has sufficient mental capacity to dispose of his property by will").

¶ 34 Our supreme court has noted "that where there is insane delusion in regard to one who is an object of the testator's bounty, which causes him to make a will he would not have made but for that delusion, such will can not be sustained[.]" *American Bible Society v. Price*, 115 Ill. 623, 638, 5 N.E. 126, 131 (1886). Here, nothing indicates David would not have made his will but for his alleged insane sexual delusions. Instead, the evidence indicates David had a plan for the distribution of his estate and reasons for doing so.

¶ 35 The testimony at the hearing showed David and Joanne's divorce in 1996 was acrimonious, and David felt the children took their mother's side. Justin stated "there was definitely a lot more anger from my father's side." Hines recounted David said he was disinheriting his children because he "could not see or visit his grandchildren" and his sons "didn't pay any attention to him except when it was hunting season and they wanted to get on the land to hunt." Joshua admitted he had not been speaking with his father in summer 2012 and was banned from the farm. Other than using his land to hunt, David stated his sons "had nothing to do" with him. Anjanette testified the family excluded David from either Thanksgiving or Christmas in 2012, after they had stopped communicating with him. Doug Smith thought David seemed unhappy with his children, wished they were more involved with the farm, and stated

they only showed up during hunting season. Renfro also testified David said he was not going to leave the children anything because they would not let him see his grandson. While the reasons pertaining to the farm and grandchildren do not involve Andrea, and plaintiffs contend David had no other reason to disinherit her but his insane sexual delusions toward her, David could very well have decided to disinherit his three sons and only daughter because of his feelings stemming from the divorce. See *Bonjean*, 90 Ill. App. 3d at 584, 413 N.E.2d at 207 (stating "[i]f that act of disinheritance, whether motivated by prejudice, dislike, or even hatred, can be explained on any rational ground, then the burden of proof necessary to set aside the will has not been met").

¶ 36 Moreover, David had a plan for the distribution of his property.

> " 'If the testator had conceived some charitable purpose which he was anxious to promote, and his anxiety and solicitude for some cherished object of that sort had led him to devise the bulk of his estate for such purpose, it might be said that the testator preferred the promotion of such cherished object of his life to bestowing his estate upon his natural beneficiaries.' " *In re Estate of Nicholson*, 268 Ill. App. 3d 689, 697, 644 N.E.2d 47, 53 (1994) (quoting *Snell v. Weldon*, 243 Ill. 496, 526, 90 N.E. 1061, 1072 (1910)).

A hunter and an "avid Second Amendment advocate," David was by all accounts a strong supporter of the NRA and the Rocky Mountain Elk Foundation. Hines testified David chose the charities himself. Smith testified David had mentioned in 2009 or 2010 leaving his estate to the NRA or the Rocky Mountain Elk Foundation. Cook also noted David donated hunts on his land to the Rocky Mountain Elk Foundation.

¶ 37 "In a nonjury trial, the trial court's factual findings, its weighing of evidence, and its assessment of credibility are entitled to great deference and will not be reversed on appeal unless the factual findings are against the manifest weight of the evidence." *Mathey ex rel. Mathey v. Country Mutual Insurance Co.*, 321 Ill. App. 3d 805, 815, 748 N.E.2d 303, 312 (2001). "A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on evidence." *Hogan v. Adams*, 333 Ill. App. 3d 141, 148, 775 N.E.2d 217, 223 (2002).

¶ 38 Here, the trial court found the testimony of Hines, Dr. Nenaber, and Smith, all longtime acquaintances of David, provided "a credible basis for the Will in question." Moreover, the court could not find that, but for the alleged delusional statements, David would not have executed his 2012 will. "Even if it be conceded that the testator had an insane delusion in the respect claimed, the evidence does not show that it in any way affected or entered into the execution of the will." *Pendarvis v. Gibb*, 328 Ill. 282, 293, 159 N.E. 353, 357 (1927). David had legitimate reasons to disinherit his children, and he had legitimate entities to distribute his property. As the evidence indicates David knew his property and the natural objects of his bounty and he was capable of making a disposition of his property according to his own plan, we find the court's decision denying the amended petition to contest the validity of David's will was not against the manifest weight of the evidence.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the trial court's judgment.

¶ 41 Affirmed.