

FIFTH DIVISION

March 16, 2012

No. 1-11-2640

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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IN RE ESTATE OF LOUISE M. KLANYAC	)	Appeal from
	)	the Circuit Court
Deceased,	)	of Cook County,
	)	Illinois, County
CARLA BLAYLOCK, As Administrator With the Will	)	Department, Probate
Annexed,	)	Division
	)	
Citation Petitioner-Appellee,	)	
	)	
v.	)	05 P 6846
	)	
MARY PAPACIO and ALBERT A. KLANYAC, JR.,	)	
	)	Honorable
Citation Respondents-Appellants.	)	Susan M. Coleman,
	)	Judge Presiding.

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JUSTICE McBRIDE delivered the judgment of the court.  
Presiding Justice Epstein and Justice J. Gordon concurred in the judgment.

O R D E R

**HELD:** The trial court declared a deed conveying a home from the deceased to the deceased and one her daughters in joint tenancy with the right of survivorship to be invalid where the deceased lacked the testamentary capacity to transfer her home at the time the deed was executed. That judgment was not against the manifest weight of the evidence where there was testimony supporting the trial court's findings and where

there was no basis to disturb the court's assessment as to the credibility of the witnesses and the weight to be given to their testimony.

¶ 1 This case involves a citation to recover assets filed by the petitioner, Carla Blaylock, against the respondents, Mary Papacio and Albert Klanyac, seeking to recover the house of the decedent, Louise Klanyac, that was allegedly conveyed in a deed from the decedent to the respondent Mary Papacio. Following a bench trial, the trial court found that the decedent did not have competent legal advice and that she lacked testamentary capacity to transfer her home at the time the deed was executed. The court therefore granted the citation, found the deed invalid, and declared the house to be a

¶ 2 n asset of the decedent's estate. On appeal, the respondents contend that the trial court's judgment is against the manifest weight of the evidence. For the reasons that follow, we affirm.

¶ 3 The decedent passed away on May 18, 2004. On September 23, 2005, Carla filed a petition to open the decedent's estate in probate. On July 17, 2006, the circuit court admitted the decedent's will to probate and appointed Carla as administrator with the will annexed. On August 25, 2006, Carla, as administrator, filed a petition for citations to discover information and recover assets pursuant to section 16-1 of the Probate Act of 1975 (755 ILCS 5/16-1 (West 2006)). The petition was brought against the respondents and sought to invalidate the deed and recover the house as an asset of the decedent's estate. A bench trial was held on the petition beginning on August 1, 2011.

¶ 4 There is no verbatim transcript of the proceedings in the trial court. Instead, the relevant facts of this case are taken from a non-verbatim report of trial proceedings that the trial court certified pursuant to Supreme Court Rule 323(c). In addition to the non-verbatim report of proceedings,

two witnesses, Dr. Ravi Yalamanchi and Paul Napolski, testified at trial through evidence depositions. Those depositions are included in the record on appeal.

¶ 5 The record reveals the following undisputed facts. The decedent and her husband, Albert Klanyac Sr., had five children: Carla Blaylock, Vickie Piskule, Sandra Lacy, Mary Papacio and Albert Klanyac, Jr., also known as "Butch." For a number of years prior their deaths, the decedent and her husband owned a house located at 1022 Barnsdale, LaGrange Park, Illinois (the house). The decedent executed a will in 2000, which was prepared by attorney Marvin A. Lanzel. The will provided that all of the decedent's real and personal property was to be given to her husband and, if he did not survive her, then to her descendants who survive her equally. The will appointed Albert Sr. as executor and Sandy as the successor executor. In 2002, the decedent executed powers of attorney for health care and for property, both naming Carla as her agent. For several years prior to her death, the decedent was unable to sign her name or to write at all. A rubber stamp of her signature was made for endorsing checks. The decedent's children would use the stamp to conduct business on the decedent's behalf.

¶ 6 Albert Sr. passed away in November of 2003. Mary, Butch and Sandy were living in the house at the time, and Sandy moved to another residence shortly thereafter. Following her husband's death, the decedent's health began to decline and she began taking several medications. On May 13, 2004, the decedent became unresponsive at her home and was taken by ambulance to the hospital, where she was seen by Dr. Yalamanchi. The following day, May 14, the decedent was sent home on hospice care. On that same date, a warranty deed was purportedly executed transferring ownership of the house from the decedent individually to the decedent and Mary as

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joint tenants with the right of survivorship. Sandy signed the deed on her mother's behalf and placed her own initials after the signature. The decedent passed away at her home on May 18, 2004. Carla was not informed of the deed until weeks after the decedent's death. The deed was recorded on March 15, 2005.

¶ 7 Because the decedent's capacity to transfer her home is the central and contested issue in this case, we individually set forth the relevant testimony of each witness on this issue.

¶ 8 Dr. Yalamanchi, an internist, treated the deceased on May 13, 2004, at LaGrange Memorial Hospital, and also saw her on May 14, prior to her discharge. The deceased was given a discharge diagnosis of "terminal status." The doctor explained that the deceased's health had been deteriorating for a period of time and that the "terminal" diagnosis meant she had less than six months to live with an underlying diagnosis of a variety of things. Dr. Yalamanchi's impression was that the deceased had dementia that was progressing. By dementia, the doctor meant the "inability to take care of herself, take care of others, complete her activities of daily living, prepare her own meals, and to have conversations - intelligent conversations - and more or less just deterioration of her mental status." When Dr. Yalamanchi treated the decedent on May 13, she was unresponsive and could not be verbally or nonverbally aroused. By unresponsive, the doctor meant he was unable to arouse the decedent and elicit from her either verbal or nonverbal responses, such as physical movement. The family indicated to the doctor that there had been minimal to no reaction to verbal stimuli at home. Dr. Yalamanchi testified that the decedent could have been "metabolic," meaning a problem with her liver or kidneys, a urinary tract infection or pneumonia. The decedent's condition also could have been due to her

underlying disorder of dementia.

¶ 9 The doctor testified that he would characterize the decedent's condition as unresponsive or "delirium change of mental status." This could have been caused by metabolic reasons or by the medications she was taking at home. She was taking a pain reliever and a muscle relaxer, and a muscle relaxer can cause an individual to become sedated. The decedent also could have had underlying seizures that can cause a person to be "extremely confused." The decedent opened her eyes and uttered her name occasionally. The doctor told the family that the decedent should be in hospice. He explained that the decedent had been deteriorating over the years, her condition had been progressing since January, and he "got the impression that there was this underlying terminal illness, perhaps from her Parkinson's, which is from medication she is on or some other sort of dementia." The doctor testified that at the time he treated the decedent, using a standard of more likely than not, it was his professional opinion that she was not competent. She was not competent to take care of herself, make decisions for herself, or engage in meaningful conversations. The doctor ordered that all medications be discontinued and that she begin a new narcotic.

¶ 10 On cross-examination, the doctor agreed that it was "possible" that discontinuing the muscle relaxer could have a positive effect on a patient in the decedent's condition. He testified that "at some point some sort of response" could be expected, but it depended on the person's underlying mental status. The doctor also testified that he could "certainly conclude" that the decedent had "some underlying Parkinson's disease" but that he did not do a mental exam on the decedent and had no opinion as to dementia. He opined that it was also "possible" that the

decedent's mental status at that time was related to the medications she was taking at home.

¶ 11 Paul Napski testified that his firm had done some general estate planning for the deceased prior to her death. Napski identified the deed conveying the house and testified that he "would have to think" that he prepared it because the deed indicated he had. He also testified that if he was "not mistaken," the decedent asked him to prepare the deed. When asked if the decedent told him what she wanted, Napski testified that "it was expressed to me, yes, but I don't recollect whether or not she said it to me directly prior to it being prepared or if it was relayed to me by one of the other family members." He was present and sitting at the kitchen table next to the decedent when the deed was executed. He reviewed the deed with the decedent, who was "having some physical issues" at the time. He explained that he was able to ask her questions and that "to the best of [his] recollection, she was able to respond appropriately to my inquiries." He asked her if "this is what she wanted," explained to her what he had done and the legal effect of the deed. At that point, the decedent had "in some way indicated that that was what she wanted." The decedent had problems signing the document, so her daughter did so for her. At that time, the deceased "may have been sitting" with her feet propped up, but he did not recall if she was in bed or a wheelchair. He also did not recall if she spoke any words at that time. When asked if one of the daughters spoke with the decedent at close range, "like speaking into her ear," during the execution process, Napski stated that it was "possible" but that he was not positive. He was "sure" that he had ascertained that the deed reflected the decedent's wishes and he also ascertained that the decedent was unable to sign her name and asked her daughter to do so for her. He also agreed that he was "satisfied" that the decedent willfully and voluntarily executed

the deed. When asked if he had “any doubts” that the deed reflected the decedent’s intentions, he responded “no” and that he would not have signed and notarized the deed if he had.

¶ 12 On cross-examination, Napolski testified that the decedent communicated to him that she wanted to convey the house to Mary prior to May 14. On the day the deed was executed, he “believed” her eyes were open but he was not certain and he did not recall her physically moving around. Napolski did not know if he was aware on May 14 that Carla was the decedent’s agent and he did not recall discussing the deed with her at a later point in time. On May 14, he thought she was mentally competent to execute the deed.

¶ 13 Carla Blaylock was her mother’s agent under her power of attorney for health care and for property. Carla testified that the decedent never told her that she wanted or planned to leave the house to Mary. The decedent also did not trust her other children and thus made no changes to her power of attorney prior to her death. Carla testified that she saw the decedent prior to when she was taken to the hospital, for almost all of her stay at the hospital, and on several visits after she returned home from the hospital. From the time the decedent was taken to the hospital until her death, Carla never saw her alert or coherent at any time and her mother did not recognize anyone’s voice or presence at the hospital or when she arrived home. The decedent was released from the hospital with instructions from hospice that she be taken home to pass away. Carla was present when the decedent arrived home from the hospital on the afternoon of May 14, 2004, and stayed at the house for several more hours. The decedent was in a fetal position with her hands clenched, but as time passed her hands opened and she seemed to be passing away. Carla also testified that after the decedent arrived home from the hospital, she did not communicate with

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Carla in any way, did not nod or shake her head in response to questions, and her eyes were closed all the time. The deed conveying the house was executed sometime after Carla left the house on May 14, and she was not told by her siblings that a lawyer was coming to the house to help with the execution ceremony. She learned of the deed weeks after her the decedent passed away. Carla believed this was done intentionally by Sandy and Mary so that Carla could not object to the transfer or exercise her powers of attorney.

¶ 14 Mary Papacio testified that she and her husband lived in the house with the deceased and Albert Sr. for many years and that they were still living in the house in May of 2004. Both before and after the decedent made her will, she said that she wanted all her children to have a roof over their heads. Carla and Vicki were married with homes of their own and Sandy also had her own home. Mary testified that she overheard the decedent share her intentions regarding the house with Carla. Although the decedent was non-responsive on May 13, 2004, she was given fluids and nourishment at the hospital and was more alert and responsive the following day. After returning home from the hospital, the decedent was "sometimes alert and had her eyes open, and sometimes she was asleep or sitting up with her eyes closed. The decedent did not speak, but would nod or shake her head when asked questions."

¶ 15 While at home, the issue of the house was discussed. The deceased wanted to have a deed prepared leaving the house to Mary, so Sandy contacted the office of attorney Lanzel and spoke with Napolski about the decedent's wishes. Napolski came to the house with a warranty deed and asked the deceased if it was what she wanted. The deceased indicated yes by nodding her head. Because the decedent could not physically sign her name, she asked Sandy to sign the decedent's



name on the deed for her. Sandy did so and, at Napolski's direction, she also signed her initials next to the signature. Napolski, Mary, Sandy, Butch and "perhaps a few other people" were present at this time. Carla was at the house earlier in the day but had left before Napolski came with the deed. Carla asked about the house a month after the deceased passed away, and Mary told her the decedent had deeded her the house.

¶ 16 Sandy Lacy testified that on May 14, 2004, the deceased was alert and expressed her desire to go home from the hospital. After returning home, the deceased spent much of her time sleeping and sitting up in bed with her head usually resting against her shoulder or chest. Sometimes her eyes would be open and sometimes they would be closed. The decedent wanted Sandy to contact the attorney so that a deed could be prepared transferring the house to Mary. Sandy was standing next to the decedent, who was sitting up in bed, when Napolski spoke with the decedent about the deed. Napolski asked the decedent some questions, and sometimes Sandy had to repeat the questions loudly into the decedent's ear. To each question Napolski asked, the decedent nodded or shook her head. When it came time to sign the deed, Sandy mentioned that there was a rubber stamp of the decedent's signature, but Napolski said that an original signature was needed on the deed. Napolski and Sandy asked the decedent if she wanted Sandy to sign the decedent's name on the deed. The decedent nodded her head yes and Sandy signed the decedent's name on the deed and wrote her own initials next to that signature.

¶ 17 Butch Klanyac testified that he lived in the house his entire life and on several occasions heard the decedent state that she wanted all of her children to have a place to live. He overheard the decedent tell Carla that she wanted to leave the house to Mary so that it would stay in the

family and be available if Mary and Butch or any of the other kids needed a place to live. Carla responded to this by yelling and swearing at the decedent. The decedent was "in bad shape" on May 13, 2004, and Butch thought she might die on that day. However, the next day she was "much better" and "back to her former self, although physically weaker." Butch was present when Napolski and Sandy asked the decedent if "this is what [the decedent wanted]," and he testified that the decedent "noded." She also nodded that she wanted Sandy to sign the deed for her.

¶ 18 Terry Blaylock, Carla's husband, testified that from the time the decedent was at the hospital until her death, he never saw the decedent alert or coherent. He was present at times at the hospital and made several visits after the decedent returned home. After she returned home from the hospital, the decedent's eyes were not open and Terry did not see her nod or shake her head in response to questions.

¶ 19 At the conclusion of the evidence, the trial court found that the decedent did not have competent legal advice and that she lacked the testamentary capacity to make a knowing transfer of the house. The court noted that the decedent was rushed to the hospital on May 13, and that she was unconscious, unresponsive and incoherent. The treating physician found her to be incompetent and sent her home the following day because no more could be done for her. The court stated that there was no credible evidence that the decedent's condition improved between when she left the hospital and when she purportedly agreed to transfer the house. The court did not believe the lay testimony that the decedent was alert, attentive and oriented during the execution of the deed. The court found Napolski's testimony "completely unpersuasive" because

he “failed to remember much of anything surrounding the execution of the deed” and he “failed to recall the one fact that all other witnesses agreed upon: that the decedent was non-verbal at the execution of the deed.” The court did not believe that Napolski was able to knowingly confer with the decedent. Accordingly, the court found the deed invalid, granted the petition, and declared the house an asset of the decedent’s estate. This appeal followed.

¶ 20 The standard of review following a bench trial is whether the court’s judgment is contrary to the manifest weight of the evidence. *Chicago’s Pizza, Inc. v. Chicago’s Pizza Franchise Limited USA*, 384 Ill. App. 3d 849, 859 (2008). A judgment is against the manifest weight of the evidence “if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented.” *Best v. Best*, 223 Ill.2d 342, 350 (2006).

¶ 21 In a citation proceeding, the probate court is empowered to determine the title and right of property and enter such order as the case requires. *In re Estate of Kolbinger*, 175 Ill. App. 3d 315, 322 (1988). The objectives of a citation proceeding under the Probate Act are to obtain the return of personal property belonging to the estate but in the possession of, or being concealed by, others or to obtain information to recover estate property. *Kolbinger*, 175 Ill. App. 3d at 322. To recover property in a citation proceeding, an executor must initially establish a *prima facie* case that the property at issue belongs to the decedent’s estate; the burden then shifts to the respondent to prove his or her right to possession by clear and convincing evidence. *In re Estate of Casey*, 155 Ill. App. 3d 116, 121-22 (1987).

¶ 22 Grounds for invalidating a will include undue influence, lack of testamentary capacity, fraud, revocation, and ignorance of contents. *Hall v. Eaton*, 259 Ill. App. 3d 319, 321 (1994). A

finding of lack of testamentary capacity invalidates the whole instrument. *Kelley v. First State Bank of Princeton*, 81 Ill. App. 3d 402, 415 (1980). A trial court's finding that certain property belongs to the estate will not be disturbed on appeal unless it is against the manifest weight of the evidence, as the trial court in such proceedings is authorized to determine all questions of title, claims of adverse title and property rights. *In re Estate of Joutsen*, 100 Ill. App. 3d 376, 380 (1981).

¶ 23 Since the law presumes every person sane until the contrary is proved, the burden rests on the party asserting the lack of testamentary capacity to prove it. *In re Estate of Barth*, 339 Ill. App. 3d 651, 665 (2003). "Testamentary capacity requires that the testator have sufficient mental ability to know and remember the natural objects of her bounty, to comprehend the kind and character of property held, and to make disposition thereof according to some plan formed in the testator's mind." *In re Estate of Osborn*, 234 Ill. App. 3d 651, 658 (1992).

¶ 24 Respondents claim that the trial court's judgment was against the manifest weight of the evidence. They assert that the court ignored the testimony of Napolski, an "unbiased and independent witness," that the decedent was "mentally competent" at the time the deed was executed. Respondents argue that the trial court's finding that Napolski's testimony was "completely unpersuasive" was unsupported by the record and that Napolski was a credible witness. Respondents also claim that there were no witnesses who contradicted the testimony of those who saw the deed executed, and that the court improperly relied upon the testimony of a doctor who saw the deceased for only a short time and the testimony of Carla and her husband, who were at the house only occasionally.

¶ 25 Contrary to respondents' contention, our review establishes that Carla met her burden of proving that the deceased lacked testamentary capacity to convey the house on May 14, 2004.

On May 13, the decedent became unresponsive at her home and was taken to the hospital, where she remained overnight. According to Dr. Yalamanchi, the decedent was unresponsive and suffered from "some underlying Parkinson's disease." Dr. Yalamanchi also testified that in his professional opinion, the decedent was not competent at the time he examined her. He explained that she was not competent to take care of herself, to make decisions for herself, or to engage in meaningful conversations. Carla testified that she saw the decedent for almost all of her stay at the hospital and on several visits after the decedent returned home from the hospital. Carla also testified that from the time the decedent was taken to the hospital until her death, Carla never saw her alert or coherent and she did not recognize anyone's voice or presence either at the hospital or after she returned home. After the decedent returned home, she also did not communicate with Carla in any way, did not nod or shake her head in response to questions, and her eyes were closed all the time. Carla's husband, Terry, similarly testified that he was present at times at the hospital and that he made several visits to the house after the decedent returned home. After returning home from the hospital, he did not see the decedent's eyes open or see her nod or shake her head in response to questions. This evidence was sufficient for the trial court to conclude that the deceased was incompetent on May 13 and that her condition did not improve between the time she left the hospital and when she allegedly agreed to transfer the house through the warranty deed.

¶ 26 Respondent takes issue with the weight the trial court gave to the other witnesses' testimony

that the decedent was more alert and responsive after she returned home from the hospital, that the decedent expressed her desire to have a deed prepared conveying the house to Mary, and that the decedent “nodded” to indicate that the deed reflected her wishes and that she wanted Sandy to sign the deed on her behalf. However, the presence of conflicting testimony or inferences that could be drawn from that testimony does not establish that the trial court’s judgement was against the manifest weight of the evidence. It is well-settled that the trial judge, sitting without a jury, has the obligation of weighing the evidence and making findings of fact. *Dobbs v. Wiggins*, 401 Ill. App. 3d 367, 375 (2010). “When contradictory testimony that could support conflicting conclusions is given at a bench trial, an appellate court will not disturb the trial court’s factual findings based on that testimony unless a contrary finding is clearly apparent.” *Chicago’s Pizza, Inc.*, 384 Ill. App. 3d at 859. In this case, because the trial court’s determination was supported by the evidence, we cannot say that a contrary finding is clearly apparent.

¶ 27 Moreover, the trial court did not believe the testimony that the decedent was alert and coherent after she returned home from the hospital. In particular, the court found Napolski’s testimony “completely unpersuasive.” Although respondents claim that the trial court made improper credibility determinations, it is well-settled that as the trier of fact, the trial judge is responsible for judging the credibility of the witnesses and determining the weight to be given to their testimony. *Chicago’s Pizza, Inc.*, 384 Ill. App. 3d at 859. In this case, the trial court was able to observe the demeanor of all but two of the witnesses and we have no basis in the record to disturb the court’s determination that the testimony indicating the deceased was alert and coherent when the deed was executed was not credible. Further, as the trial court pointed out,

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Napolski could not recall a number of the circumstances surrounding the execution of the deed. For example, he could not recall that the decedent was nonverbal at the time the deed was executed, or if the decedent told him directly that she wanted to transfer the house or if this was told to him by one of the decedent's children. Under these circumstances, we also have no basis in the record to disturb the weight the trial court assigned to Napolski's testimony.

¶ 28 Considering the evidence presented at trial and the trial court's superior position to assess the credibility of the witnesses and the weight to be given to their testimony, we cannot say that the court's finding that the decedent lacked testamentary capacity to transfer her house was "unreasonable, arbitrary, or not based on the evidence." Accordingly, the court's judgment was not against the manifest weight of the evidence.

¶ 29 For the reasons stated, the judgment of the circuit court of Cook County is affirmed.

¶ 30 Affirmed.