104-13-65 g.k.

DECREE ENTERED JANUARY 18, 1978, M.B. 223, PAGE 401

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE

BOOK 5290 PAGE 692

ELMA MAE CHEEK	)	
	)	
VS.	)	DOCKET NO. A-8454-I
	)	
T. K. DAVIDSON	)	

O R D E R

This cause came on to be heard on this the 28th day of December, 1977 before the Honorable Ben Cantrell, Chancellor, upon the complaint, answer, plaintiff's interrogatories to the defendant, defendant's answers to plaintiff's interrogatories, testimony of witnesses in open Court, arguments of counsel, and the entire record, from all of which the Court finds the following:

This action attacks the validity of two separate transfers from Elma Mae Cheek to the defendant and his wife an accounting of the funds handled by the defendant.

On May 9, 1975, Mrs. Cheek, in the hospital as the result of an accident in her home, and being at the time 91 years of age, executed a deed to her home to defendant, Tuyl K. Davidson and wife Therese H. Davidson. On the same date, Mrs. Cheek executed a bill of sale which purportedly conveyed all the contents of Mrs. Cheek's home to her niece, Therese H. Davidson, for the sum of $5.00.

Mrs. Cheek's husband died in 1969, and from that time Mr. Davidson and his wife helped her with her affairs. She maintained her own checking account but Mrs. Davidson paid the bills with checks made out for Mrs. Cheek's signature. Mrs. Davidson also visited her regularly, took her to the doctor, shopping, and other places where it was necessary.

In February of 1975 Mrs. Cheek fell at her home and injured her back. She entered the hospital and stayed there for some period of time before going to a nursing home. During her hospital stay the members of the family decided it was necessary for someone to qualify to write checks for

Mrs. Cheek and to handle her bank account. It was agreed among the members of the family that Mr. Davidson would serve in that capacity.

Mrs. Therese Davidson was suffering from cancer during this period of time and Mrs. Cheek was concerned about her condition. Mrs. Cheek had expressed to other members of the family and other third parties the desire to deed her house to Therese. At other times she had expressed the wish that the house remain in the family and not be sold to outsiders.

For several years Mrs. Cheek had displayed certain peculiarities of behavior, most often associated with advancing age. She was extremely hard of hearing, she had trouble identifying people to whom she was talking, she spoke of persons dead for many years as if they were still alive and had been seen by her recently. She became argumentative and unpleasant to certain members of her family.

On May 9, 1975, Mrs. Cheek executed a quit-claim deed to her home transferring it to Mr. and Mrs. Davidson. Mr. Davidson had had the deed prepared by an attorney and has previously presented it to Mrs. Cheek but she refused to sign it until her priest was present. Mr. Davidson then arranged to come back to the nursing home with a notary public on the next day the priest would be present. After Mrs. Cheek received communion she then signed the deed. It is not clear from the record when she signed the bill of sale to the contents of her home, but it is dated the same day. There is no proof in the record that Mrs. Cheek ever consulted the priest about the transfers she was about to make or the effect such transactions would have on her. Mr. Davidson, the priest and the notary public were all present in the room at the time she executed the deed.

Mrs. Davidson died in July of 1975. Mr. Davidson took control of the house and other personal property. He repaired the house, expended between $5,000 and $6,000 on various repairs and also managed the liquid assets of Mrs.

Cheek. Mr. Davidson moved into the house approximately a year later and resides there at the present time. A conservator was appointed for Mrs. Cheek in November of 1976 and he brought this action to set aside the conveyances and to require an accounting of the funds of Mrs. Cheek which came into Mr. Davidson's hands.

The Court is of the opinion that the transfers to Mr. and Mrs. Davidson amounted to gifts of virtually all of the assets of Mrs. Cheek. There is no proof in the record that the services which were performed by Mr. and Mrs. Davidson were performed with a view to being reimbursed, and the law presumes that such services rendered by close relatives are rendered because of the love and affection for the person receiving the services.

The Court is also of the opinion that a confidential relationship existed between Mrs. Cheek and Mr. and Mrs. Davidson. They were the ones on whom Mrs. Cheek relied for the management of virtually all of her affairs. For several years they had taken care of her needs, provided her with transportation and handled her business. The law presumes that a gift made under such circumstances is invalid. It places the burden on the donee of the gift to show that no undue influence was practiced on the donor and that the donor had the benefit of independent advice about making the gift. Turner v. Leathers, 232 S.W.2d 269, and Richmond v. Christian, 555 S.W.2d 105, (Tenn. Sup. Ct. 1977.) There is no proof in the record that Mrs. Cheek received any independent advice, and for that reason the Court is of the opinion that the transfers of May 9, 1975, must fail.

In addition, the Court is of the opinion that Mrs. Cheek lacked the required mental capacity to make the transfers on May 9, 1975.. The intent of Mrs. Cheek expressed on several occasions was to leave the house to Therese. The deed to the home was not made out to Therese but to Mr. Davidson and Therese. Mrs. Cheek knew that Mrs. Davidson was dying of cancer, and

the Court is of the opinion that had she understood the inevitable consequences of her transfer would be to leave the house to Mr. Davidson and, therefore, outside the family, that she would not have taken the course of action that she did.

Therefore, the Court is of the opinion that the transfers should be rescinded. A decree should be entered setting aside the transfers and ordering a reference to the Clerk and Master for an accounting of the assets of Mrs. Cheek that came into the hands of Mr. Davidson. The Master should also report the amount of repairs made to the home by Mr. Davidson.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED that the quit-claim deed executed by Elma Mae Cheek on May 9, 1975 conveying her interest in her real property generally known as 225 Leonard Avenue, Nashville, Tennessee, more particularly described as follows:

> Being Lot No. 33 on the Map of Bransford Realty Company's Subdivision of lots Nos. 8, 10, 11, 12 and part of Lot No. 9 in Block "E" and lots Nos. 6, 7, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19 and part of Lot No. 8 in block "F" and Lots Nos. 6 to 23 inclusive in block "G" in Whitland Realty Company's Subdivision, as of record in Book 547, page 53, Register's Office for said County.
>
> Said Lot No. 33 fronts 60 feet on the westerly side of Leonard Avenue, as now located, and runs back between parallel lines 210 feet to a dead line.
>
> Being the same property conveyed to Tuyl K. Davidson and wife, Therese H. Davidson by Elma Mae Cheek and of record in Book 4923, Page 264, Register's Office for Davidson County, Tennessee.

should be and the same is hereby set aside and rescinded, and declared to be null and void and removed as a cloud on the title of the plaintiff, Elma Mae Cheek, to said property.

IT IS, FURTHER, ORDERED, ADJUDGED and DECREED that the bill of sale conveying the contents of Elma Mae Cheek's home and all her personal property should be and the same is hereby set aside and declared to be null and void and of no effect.

IT IS, FURTHER, ORDERED, ADJUDGED and DECREED that all right, title, and interest of the defendant in the real

property known as 225 Leonard Avenue, Nashville, Tennessee and the personal property conveyed by bill of sale on May 9, 1975 by Elma Mae Cheek to the defendant is divested from the defendant, T. K. Davidson, and all right, title, and interest in the property, both real and personal, is hereby vested in the plaintiff, Elma Mae Cheek.

IT IS, FURTHER, ORDERED, ADJUDGED and DECREED that the defendant, T. K. Davidson, shall make an accounting of the assets of Elma Mae Cheek that came into his hands, before the Clerk and Master, and this matter is hereby referred to the Clerk and Master to determine the amount of money belonging to the plaintiff, Elma Mae Cheek, that came into the hands of the defendant, T. K. Davidson, and the expenditures thereof, and that the Clerk and Master further determine the items of personal property belonging to the plaintiff, Elma Mae Cheek, which were sold at auction or otherwise sold or disposed of by the defendant, T. K. Davidson, and to determine the amount of money received from such sale or sales.

IT IS, FURTHER, ORDERED, ADJUDGED and DECREED that the Clerk and Master shall determine the amount of repairs made to the subject real estate and report the amount of repairs to the Court.

All other matters are reserved.

The costs of this cause are taxed to the defendant, for which execution may issue, if necessary.

Ben H. Cantrell

BEN H. CANTRELL, CHANCELLOR

APPROVED FOR ENTRY:

RONALD K. NEVIN
Attorney for Plaintiff
2108 Parkway Towers
Nashville, Tennessee 37219
244-7706

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been mailed to Mr. Howard Doty, Attorney for Defendant, Suite 308, Stahlman Building, Nashville, Tennessee, 37201 on this the 12th day of January, 1978.

RONALD K. NEVIN

CERTIFICATE OF THE CLERK AND MASTER

STATE OF TENNESSEE)

COUNTY OF DAVIDSON)

I, RAYMOND L. BARRETT, Clerk and Master of the Chancery Court of Davidson County, Tennessee, do hereby certify that the foregoing is a full, true and correct copy of the Decree entered the 18th day of January, 19 78, in Minute Book 223, Page 401, in the cause wherein ELMA MAE CHEEK, Complainant and T. K. DAVIDSON, Defendant File No. A-8454-I, as the same appears of record and now on file in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of said Court at my office in the Courthouse at Nashville, Tennessee, this the 26th day of May, 19 78, and 20 2nd year of American Independence.

RAYMOND L. BARRETT,
CLERK AND MASTER

BY Jana Herrera
DEPUTY CLERK AND MASTER

IDENTIF. REFERENCE

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FELIX Z. WILSON II REGISTER
DAVIDSON COUNTY, TENN.
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