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IN THE SEVENTH CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE
PROBATE DIVISION

ESTATE OF
ALLEEN CLANTON FERGUSON,

Petitioner,

v.

PAUL EDWARD LIGON,

Respondent.

2009 JUL -2 PM 3:01
RICHARD R. ROOKER, CLERK

Case No. 03P-1283
NOTICE OF ENTRY REQUESTED

BILL GARRETT, Davidson County
Trans:T20090033824 ORDER
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20090521-0047097

ORDER

This cause came to be heard on the 19th day of June, 2007, upon the Petition filed by the Estate of Allen Clanton Ferguson, Answer of the Respondent Paul Edward Ligon, testimony of the witnesses in Open Court, statement of counsel and the entire record herein from all of which the Court finds:

(1) Respondent, Paul Edward Ligon (hereafter "Mr. Ligon"), moved into the home of the Decedent, Alleen Clanton Ferguson (hereafter "Decedent"), located at 4208 Nebraska Avenue, Nashville, Tennessee, 37209, in early 2000. At this time, the real property was unencumbered.

(2) On February 16, 2000, the Decedent executed a valid "Unlimited Durable Power of Attorney" naming Mr. Ligon as her attorney-in-fact.

(3) On April 11, 2000, Mr. Ligon utilized the Power of Attorney to transfer all of the interests of the Decedent in the subject property to himself. He then encumbered the property by executing two deeds of trust totaling $115,000.00. Decedent received no money from Mr. Ligon at the time of the transfer of the property to him from Decedent.

(4) The transfer of the Decedent's interest in the subject property was made without adequate or sufficient consideration, and does not appear to have been for the benefit of the Decedent.

(5) The Decedent continued to live at the house located at 4208 Nebraska Avenue until her death on January 1, 2003. While the Decedent was still living, Mr. Ligon paid off

Decedent's credit card debt in the approximate amount of $16,000.00. Mr. Ligon also expended, during the Decedent's lifetime, approximately $34,000.00 renovating a garage located at the residence. He also expended substantial additional sums remodeling the upstairs portion of the residence. Mr. Ligon produced evidence of the various improvements as illustrated in Exhibit No. 5 which suggests that he also made improvements to the downstairs portion of the residence; but he has produced no receipts, nor any invoices, nor any other tangible proof that any of these improvements actually benefited the Decedent.

(6) In fact, while disputed, testimony suggests that during the declining years of her life, the downstairs portion of the residence where Ms. Ferguson resided held a bathroom without a door and other poor conditions including exposed plumbing in the Decedent's bedroom, falling plaster, and the residence contained evidence of water damage in her kitchen and in her dining room.

(7) On or about January of 2000, the Decedent was diagnosed with ovarian cancer. Apparently, a meeting was held involving various family members whereupon it was agreed that Mr. Ligon, who was the grandson of the Decedent, would move into the upstairs portion of the residence, and it was agreed that he would take on the challenge of fixing up the property. Testimony was presented that a discussion ensued prior to the April 11, 2000 conveyance regarding the possibility that Mr. Ligon might buy the house from the Decedent; but, the actual conveyance of the house from the Decedent by virtue of the Power of Attorney to Mr. Ligon was unknown to family members until several months after the conveyance took place. Furthermore, execution of the Power of Attorney in favor of Mr. Ligon was unknown to family members long after the conveyance. The Executrix of the Estate admits in testimony that no one expected Mr. Ligon and his family to pay rent during the course of his occupancy of the upstairs portion of the residence, and further admits that renovations to the property were not done with any monies or liquid assets of the Decedent and were, in fact, paid for by monies acquired from the deeds of trust loans or from other financial resources of Mr. Ligon.

(8) In addition to making certain renovations and repairs to the home, it is conceded that Mr. Ligon also replaced the Decedent's stove and washing machine, and Mr. Ligon installed central heat and air conditioning in the home.

(9) Following the Decedent's death, numerous items of personal property owned by the Decedent were maintained at the home for a period of several months after which many of them were discarded by Mr. Ligon and his wife. While there is a dispute regarding Mr. Ligon's willingness to provide access to the residence so that the Executrix of the estate, Beverly Johnson, could come in and obtain the personal property of the Decedent, she concedes that she did enter the residence and did acquire certain items of personal property.

(10) The Court has received no proof that would suggest that the Executrix did not, in fact, have access to the personal property of the Decedent. Nor has the Court received any proof or evidence that persuades the Court that Mr. Ligon has retained for his own sole use and benefit any portion of the personal property of the Decedent. The evidence presented persuades the Court that family members including the personal representative were, in fact, allowed to take or remove any such property they may have desired and were not impeded in doing so by the conduct of Mr. Ligon or anyone acting on his behalf. Any miscellaneous items of personal property that may have been left in the care of Mr. Ligon were effectively abandoned by the estate and appear to be disposed of either by donation or disposed as trash items.

(11) The Power of Attorney appears to have been procured by the Decedent without undue influence, duress, or any inappropriate conduct on the part of Mr. Ligon. It further appears that no one disputes that through the efforts of Mr. Ligon significant improvements, both in the form of restoration and remodeling, were made to the subject property.

(12) The deposition of the Decedent taken in 2002 and which is referred to as Exhibit No. 8, reveals that the Decedent was unaware that Mr. Ligon had transferred her interest in the subject real property to himself.

(13) The proof in the instant case is complicated by the fact that Mr. Ligon suffers from Encephalitis and has no memory of the transactions leading up to the conveyance of the real property by virtue of utilizing the Power of Attorney. While the Court

received no active evidence of undue influence on the party of Mr. Ligon, the Court notes that a presumption of undue influence arises when a confidential relationship exists and there is transaction that benefits the dominant party, and a confidential relationship arises from any relationship that gives one person the ability to exercise dominion and control over another. *Kelley v. Johns,* 96 S.W.3d 189 (2002); *Matlock v. Simpson*, 902 S.W.2d 384 (1995).

For all of the foregoing reasons, the Court has determined the following:

(A) The deed (Exhibit No. 3) conveying the Decedent's interest in the subject real property located at 4208 Nebraska Avenue, Nashville, Tennessee 37209 shall be and is set aside.

(B) There has been no wrong-doing on the part of Mr. Ligon regarding the disposal of any personal property that may have been held or owned by the Decedent's Estate.

(C) The present balances of the loans in the original aggregate amount of $115,000 represented by the two Deeds of Trust have been and are an encumbrance upon the subject property. Because it appears that Mr. Ligon utilized (most if not all of) the proceeds from these loans to improve, remodel, and maintain the real property (as well as to pay off the Decedent's credit card debt) and did not use these loans for his personal benefit, Mr. Ligon will not be required to pay these obligations. Conversely, he will receive no credit for payments previously made upon any interest or principal since he has enjoyed the sole use and occupancy of said property from and after the Decedent's death.

(D) The Estate is herewith declared insolvent and the Executrix shall be and is authorized to place the real property on the market, with the sale of said property to be subject to the approval of the Court.

(E) The Court finds no willful intention on the part of Mr. Ligon to defraud the Estate by virtue of the conveyance of the real property, and while it appears that he incorrectly believed that this conveyance was by agreement with other family members, the Court finds that no attorney's fees incurred by the Estate shall be assessed solely upon the Respondent, Mr. Ligon. Rather, attorney's

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fees incurred by the Estate will be taxed to the Estate. Attorney's fees incurred by Mr. Ligon will be borne by Mr. Ligon.

(F) All of the court costs associated with this cause shall be taxed to Mr. Ligon, for all of which let execution issue if necessary.

IT IS SO ORDERED.

Entered this 2nd day of July, 2008.

JUDGE RANDY KENNEDY

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CERTIFICATE OF SERVICE

I, the undersigned, certify that a true copy of the forgoing has been hand mailed by U.S. Mail, postage pre-paid:

MR. BOBBY DAVIS, ESQ.
101 SHEPHERD HILLS DRIVE
MADISON, TN 37115

MR. MATTHEW MAYO, ESQ.
1130 EIGHTH AVENUE, SOUTH
NASHVILLE, TN 37203-4724

MR. THOMAS E. FERGUSON
P.O. BOX 90016
NASHVILLE, TN 37209

MS. MARILYN WEBB
6419 DANCER'S IMAGE
TALLAHASSEE, FL 32403

MS. BEVERLY JOHNSON
2011 QUAIL HOLLOW
CLEVELAND, TN 37312

This 2nd day of July, 2008.

Deputy Clerk

STATE OF TENNESSEE

I, **RICHARD R. ROOKER,** Clerk of the Circuit Court for Davidson County, in the State aforesaid, do hereby certify that the foregoing is a true and correct copy of the ORDER heretofore entered in the SEVENTH Circuit Court for Davidson County, Tennessee, on the 02 day of JULY , 2008 , in Case Number 03P1283 between JOHNSON, BEVERLEY Petitioner, and FERGERSON, ALLEEN C. ET.AL Respondent, as same remains in the records of said Court.

IN TESTIMONY WHEREOF, I hereunto subscribe my name and affix the seal of said Court, at office, in Nashville, the 12 day of MAY 2009

RICHARD R. ROOKER, Clerk,

By _____ Deputy Clerk

SEAL

RICHARD R. ROOKER
CIRCUIT COURT CLERK