

Offices in
Suffolk and
Virginia Beach, Virginia
Tel: 757-399-7506
Fax: 757-397-1267
Web: www.oasthook.com



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Newsletter

Editor
Sandra L. Smith,
Certified Elder Law Attorney

UNDUE INFLUENCE BY BRADLEY BRICKHOUSE

The Texas Tenth Court of Appeals recently decided a case of a will contest that involved an allegation of undue influence. The case styled *In the Estate of Doris Irene Ward, deceased*, involved Doris Ward, her husband Bobby Ward, and Dwana Phillips, Doris's daughter from her first marriage. Dwana was close to Doris; the two ladies talked on the telephone frequently and visited almost every day. Doris suffered from Parkinson's disease and had other health issues. In early 2009, after a brief hospital stay, Doris entered a skilled nursing facility where she resided until her death on March 21, 2009.

On April 17, 2009, Bobby filed an application to probate a will that Doris had executed on December 11, 2008, and he requested appointment as the executor of her estate. The will stated that Doris left all of her real property to Bobby upon her death. This included a seventy-seven acre tract of land that Doris had inherited from her parents. The trial court admitted Doris's will to probate and appointed Bobby as the executor pursuant to the will.

Dwana filed a lawsuit challenging the will, alleging that Doris's will was executed as the result of undue influence exerted by Bobby. She also alleged that the will contained a mistake regarding the disposition of the seventy-seven acre tract of land commonly referred to as the family farm. Dwana testified at trial that Doris had conveyed the seventy-seven acre family farm to her in a handwritten deed, and Dwana asked the court to declare the rights of the parties under the deed. She said that Doris left the deed on Doris's kitchen table before Doris and Bobby went on a trip to Europe. Bobby saw the deed and admitted that it did reference the family farm. After Doris and Bobby left for Europe, Dwana saw the deed on the kitchen table and read it. Dwana understood that the document meant that Doris was conveying the family farm to her. After Doris and Bobby returned from their trip, the document was destroyed. Bobby testified that Doris had intended to give Dwana the family farm, but that she changed her mind and shredded the document. Several witnesses testified regarding the existence and delivery of the deed.

With regard to whether Bobby exerted undue influence over Doris in the execution of the will, the evidence presented to the jury showed that by late 2008, Doris was taking over 20 different medications, and relied heavily on Bobby. The evidence also included a Texas Department of Family and Protective Services report regarding allegations of abuse and the medical neglect of Doris by Bobby. Other evidence included medical records from the nursing home referencing comments by Doris that she was scared of Bobby, did not want Bobby to take her home, that Bobby had choked her, and that he was aggressive and verbally abusive toward her. Additionally, Bobby was present at every meeting with the lawyer regarding the drafting and execution of the will. At the time Doris executed the will, she was unable to read or drive, and she could not walk without assistance.

At the conclusion of the trial, the jury determined that Doris had signed a deed to the family farm, and had delivered the deed to Dwana. The jury also determined that Bobby exerted undue influence over Doris in the execution of the will. The trial court entered its final judgment adopting the jury's findings that denied Bobby's request to probate the will that conveyed him the family farm. Bobby filed an appeal for a new trial and judgment notwithstanding the verdict. The motions were denied, and Bobby appealed that ruling.

The Texas appellate court began its analysis by stating that under Texas law, to establish undue influence, a party must prove: "(1) the existence and exertion of influence; (2) the effective operation of an influence so as to subvert the will or overpower the mind of the grantor at the time of the execution; and (3) the execution of an instrument the maker would not have executed but for such influence." There must be sufficient evidence to show that influence was present and was exerted in executing the will. The appellate reviewed the evidence from the trial and concluded that there was "legally sufficient evidence to support the jury's finding that Bobby exerted undue influence over Doris, at a time when her health and mental capabilities were failing, to subvert Doris's intention to give the family farm to Dwana and that the provisions of the will bequeathing the family farm to Bobby would not have happened but for Bobby's undue influence." With regard to the deed, the Court determined that "there is legally sufficient evidence to indicate that Doris, the grantor, handwrote a deed conveying the family farm to Dwana, the grantee; that it was Doris's intent that Dwana receive the family farm; and that Doris delivered the deed, as defined by the charge, to Dwana." The appellate affirmed the judgment of the trial court.

The attorneys at Oast & Hook can assist clients with their estate, financial, insurance, long-term care, veterans' benefits, and special needs planning issues.

Bradley Brickhouse is an elder law attorney with Oast & Hook, and he practices in the areas of estate planning, guardianships and conservatorships, financial abuse, will contests, estate and trust disputes, and litigation in support of these areas.

Ask Allie

O&H: Allie, we've heard about a traffic-stopping wrestling match in Yosemite National Park. Please tell us about it!

Allie: Sure! You may have seen this on the news, but in case you missed it, some people were hiking in the park when they came upon an interesting sight. Two baby bears were wrestling in the middle of the road while their mother watched patiently nearby. The bears literally stopped traffic during their wrestling match, and they finally moved off the road and caught up with their mother. If you need a smile today, please take a look at <http://www.youtube.com/watch?v=aOdSvMvvyY8>. You won't be able to resist! Time to catch up on my e-mail . . . See you next week!

Announcements

Oast & Hook is proud to announce that it has formed a team that will participate in the 2011 Western Tidewater Walk to End Alzheimer's which is taking place at 10:00 a.m., Saturday, October 8th at the Constant's Wharf in Suffolk. Come out and support Oast & Hook's team. For more information, visit Oast & Hook's team website at <http://alz.kintera.org/2011wt/oasthook>.

Seniorcorp will be offering a free seminar entitled "The Top Ten Things You Need to Know About Aging and About Your Aging Parents" from noon to 1:00 p.m., Tuesday, October 11th. This seminar will be held at Seniorcorp, 240 Clearfield Avenue, Suite 300, Virginia Beach, Virginia, 23462. Please register by phoning 757-419-2356 on or before October 7th.

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