



Deed of Gift: Allegations of Elder Abuse Brought Forward to Attack a Deed of Gift

10.01.2016

Note: This article was originally published in the Oct. 2016 issue of Hampton Roads REALTOR® magazine. Read the issue here.

A disturbing case from Waynesboro, Virginia, explains some of the ways a deed can be set aside based on alleged elder abuse. The case is *Kite v. McLaughlin* and was decided by the circuit court on February 10, 2016.

The case involved a deed of gift granted by Virginia Kite to her great-niece, Amanda McLaughlin, conveying Kite's residence to McLaughlin "in consideration of the natural love and affection" between the two. Virginia Kite suffered from diabetes, mild dementia and other ailments and relied on her great-niece, McLaughlin, and her niece, June Haily (McLaughlin's mother) to help her take and monitor her various medications. Her dependence on McLaughlin and Haily increased following the death of Kite's husband in late 2013. After the death of Virginia's husband, she named June Haily as her attorney in fact pursuant to a power of attorney. Virginia signed the deed of gift conveying her home to McLaughlin approximately two weeks after the death of Virginia's husband. Virginia retained a life estate in the house.

After the conveyance of the residence, Savannah Kite, Virginia's granddaughter, sued McLaughlin and Haily to set aside the deed of gift. According to the court, Savannah made "ruthless allegations" against the niece and great-niece. Specifically, she alleged that they altered Virginia Kite's medication regimen and introduced non-prescribed drugs, creating a combination that rendered Virginia temporarily incompetent. She further alleged that the nieces isolated Virginia at family events, including her husband's funeral, and locked Virginia in her room while she suffered from a broken ankle. Worst of all, Savannah alleged that Amanda McLaughlin attempted to smother Virginia with a pillow in hopes of killing her, and caused Virginia to fear for her life and move to Georgia and thereby giving up her life estate in the house.

Based on those alleged occurrences, Savannah claimed that the deed of gift should be invalidated and the nieces should have personal liability on a number of legal theories, including lack of capacity, undue influence and inadequate consideration, and breach of fiduciary duty. The nieces set forth several

defenses, including the allegation that Savannah had not properly pleaded lack of capacity, undue influence and inadequate consideration or breach of fiduciary duty. They thus asked the court to throw out Savannah's suit.

Addressing the allegation of Virginia's lack of capacity to sign the deed, the court stated that the test for determining whether a person lacks sufficient capacity to become bound by a deed is whether, at the time the deed was executed, the grantor possessed sufficient mental capacity to understand the nature of the transaction and agree to its provisions. The court noted that Savannah made several allegations intending to show Virginia's lack of capacity, including that she had been prescribed a number of medications and relied upon the nieces for assistance in taking them, she suffered from a weakness of the mind as a result of mild dementia, the nieces manipulated Virginia's medications, insulin and sugar intake to control her mood and her ability to perceive and understand, and the interaction of the insulin, the drugs and the sugar intake with the existing dementia resulted in Virginia being incompetent and lacking capacity at the time she signed the deed. The court found those allegations to be sufficient, and refused to throw out the lack of capacity claim.

The court spent more time analyzing the claim of undue influence and inadequate consideration. In Virginia, to set aside a deed on the basis of undue influence, a plaintiff must show that the free agency of the contracting party has been destroyed. Whether the free agency of the contracting party has been destroyed can be demonstrated in one of two ways.

First, where one person stands in a relation of special confidence toward another, so as to acquire habitual influence over him, he cannot accept from such person a personal benefit without exposing himself to the risk of having it set aside as unduly obtained. In this particular case, the court noted, one of the defendants (June) was Virginia's attorney in fact at the time of the transaction in question. Even though attorney in fact is certainly a position of special confidence toward another, the court refused to allow Savannah's claim on that basis. According to the court, the test addresses only the flow of benefit between the person in special confidence and the contracting party. Because the benefit of Virginia's deed of gift did not flow to June, the attorney in fact, but to Amanda, the court refused to advance the claim of undue influence and inadequate consideration on that basis.

On the other hand, free agency to contract can also be destroyed where great weakness of mind concurs with gross inadequacy of consideration, or circumstances of suspicion. Because Savannah alleged that Virginia suffered from great weakness of mind (dementia and the drug manipulation) coupled with suspicious circumstances (the alleged elder abuse), the court found that a lack of free agency to contract had been sufficiently pleaded and allowed the claim to go forward.

Finally, the court quickly analyzed the breach of fiduciary duty claim and allowed it to survive. To establish a breach of fiduciary duty, the three elements of duty, breach and damages must be pleaded. The court noted that it is well established a power of attorney holds a fiduciary duty with respect to a principal. June thus had a duty to act in Virginia's best interest. According to Savannah, June breached that duty by engaging in a pattern of self-dealing that resulted in property being improperly and unlawfully stolen and converted from Virginia, resulting in damages of more than \$200,000. The court thus found that all three elements of a claim of a breach of fiduciary duty had been properly pleaded and allowed that claim to go forward as well.

The Kite case did not decide whether Savannah's jarring allegations were true, it merely stated that she had pleaded them sufficiently for the case to go forward. Nevertheless, give a good tutorial on various method of attacking a deed that may have been obtained by elder abuse.

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