

SCAN

MEMORANDUM

SUPREME COURT, STATE OF NEW YORK

By LALLY, J.
IAS/TRIAL PART 11

WILLIAM AGNEW,

Plaintiff(s),

INDEX No.:12392/02

-against-

MEGAN MORRISON SCHLEGEL, STEVEN J.
SCHLEGEL and THOMAS A WILLIAMS,

Defendant(s).

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Williston Park, NY

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Attorneys for Defendants Schlegel
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Mineola, NY

This is an action in which plaintiffs seeks a judgment (1) setting aside and vacating a deed dated June 24, 2002 which transferred title to real property known as 166 Beech Street, Long Beach, New York from plaintiff to defendant Megan Schlegel and Steven Schlegel; or in the alternative (2) imposing a constructive trust in favor of plaintiff upon said real property; (3) entering a money judgment in favor of plaintiff in the sum of \$450,000; (4) awarding punitive damages and/or (5) awarding damages for waste.

The following witnesses testified on behalf of plaintiff: plaintiff William Agnew; plaintiff's two brothers, Edward Agnew and John Agnew; Edward Agnew's son, Edward; licensed real estate broker Mary Volosavage and Eric Davidson, a certified real estate appraiser.

The following witnesses testified on behalf of defendants: defendants Megan Schlegel and Steven Schlegel, Thomas Williams, and Judith Morrison (sister of the three Agnew brothers, and mother of Megan Schlegel).

It is undisputed that the real property in question was the Agnew family home, originally purchased by the parents (Anne and her husband). Three of the four Agnew siblings (Judith, Edward and John) moved out of said home in their late teens or early twenties. In 1989 her husband passed away and Anne and her youngest child, the plaintiff, continued to reside therein.

Plaintiff always lived with his mother and, while still in good health, she helped him take care of his finances. He started drinking and using drugs in his late teens. After high school graduation he spent four years in the Coast Guard and was then employed as a custodian in the Long Beach School District. He was terminated in January of 2002 as a result of his alcoholism. Plaintiff had two arrests for DWI, the first in 1994 and the second in 1996. At that point he received treatment at FACT Services (Long Beach Hospital). He became an outpatient at South Oaks Hospital in June of 2001, where he was diagnosed with alcohol dependence. He stopped treatment in January 2002 and started to drink again. Everyone in the family was aware of his addiction. In the Morrison family he was known as "Uncle Swill."

At some point plaintiff moved to a room in the basement, but he had the use of the rest of the house, which consisted of a living room, dining room, kitchen and Florida room on the first floor and four bedrooms and a bathroom on the second floor. Periodically, other family members resided in the Agnew house. For example, Megan Schlegel, before her first marriage, Edward and his family from 1985 to 1991, and young Edward in 2001 and 2002.

In 1995 Anne Agnew executed a last will and testament giving the real property and its contents to plaintiff and the remainder to her four children in equal shares (Exh. 1). On July 16, 1998, she transferred the real property to plaintiff and herself as joint tenants (Exh. 2) and on September 9, 1998 said real property was transferred by Ann Agnew and plaintiff to plaintiff with a life estate reserved to Ann Agnew (Exh. 3).

Anne's health began to decline in 1998 when she apparently had a stroke. In 2001 she suffered a second stroke, broke her hip and started to have breathing difficulties. As his mother's health declined, plaintiff performed more chores for her, such as

shopping, laundry, cooking and cleaning. In May of 2002, after a two week hospitalization, Anne Agnew had become very frail, could no longer ambulate, was incontinent and had difficulty breathing. Plaintiff readily admitted that he was unable to adequately care for her. He did not clean her soiled bed and clothes and the room she occupied had a bad smell.

Defendant Megan Morrison Schlegel, granddaughter of Anne Agnew and niece of plaintiff, had a close relationship with her grandmother and visited her often, especially when she became ill. She prepared some food, shopped, cleaned, laid out the medication and provided some social interaction. However, her time was limited because she worked, had a young daughter and was five months pregnant. She married Steven Schlegel on May 25, 2002. Despite plaintiff's and Megan Schlegel's efforts, and the occasional presence of health aids, Anne Agnew was neglected and inadequately cared for because the efforts were uncoordinated and haphazard. Judith Morrison testified that she saw her mother once a month and changed her diapers twice. It is to plaintiff's credit that he was the only one who admitted this inadequacy, "I couldn't change her and I was frustrated."

Megan Schlegel arranged for a meeting at the Agnew house (The Family Meeting) on or about June 19th, to which she invited her mother and plaintiff. Judith Morrison and Megan Schlegel spent about fifteen minutes with Anne Agnew before plaintiff was called into her room.

Neither Megan nor Judith nor plaintiff have a clear recollection of what was said at the family meeting. There is no dispute, however, that none of the three surviving participants knew that the house was owned solely by plaintiff, and it is doubtful if Anne Agnew remembered that fact. At the time Anne Agnew was very frail, spoke in a whisper and was totally dependent on others. According to Megan, Anne said she wanted her to move in to take care of her. Plaintiff testified that Megan said "Grandma wished the house to be used for her health purposes - wants me and Steve to take over the house for her." According to Judith's testimony Anne said "I am going to sign the house over to her, will ask Billy to do this." Plaintiff became angry "there goes my retirement home" and was assured by his mother that "Billy, you

will be taken care of." Judith testified at her EBT that plaintiff did not understand "... don't know if he even heard her." There was also testimony regarding sums of money to be exchanged, but it is unclear how much and for what purpose.

This court is convinced that Megan Schlegel had ample opportunity and tried to convince Anne to transfer the house to her and her new husband in return for healthcare, believing that Anne still had sole, or at least joint, ownership thereof.

After the family meeting, and apparently believing she had convinced those present that the house was to be transferred to her and her husband, Megan Schlegel called three or four lawyers to effectuate this transfer without success, including a call to Mr. Ackerman, the attorney who had handled the prior two transfers for Anne. It was at this point that she learned plaintiff was the sole owner and that Mr. Ackerman would require a contract to be signed first to transfer the real property without consideration. She finally located Thomas Williams, who agreed to handle the transfer of the deed without a contract, which was scheduled for Monday, June 24, 2002.

During the late morning of that day plaintiff consumed the remainder of a twelve-pack of beer, which he had stored under his bed. Thereafter, he purchased another twelve-pack, which he drank with some help from Joseph (Megan Schlegel's brother) who was at the house doing some repair work. Mid-afternoon plaintiff smoked marijuana with Joseph, using a glass pipe. He felt light headed and fell asleep on the couch in the living room. Around four o'clock, Megan Schlegel woke him up, told him they had an appointment at the attorney's office and asked him to take a shower and get dressed. He protested, but followed her wishes. Megan Schlegel drove him to Thomas Williams' office. Plaintiff does not remember anything about the ride there.

At Mr. Williams' office, plaintiff signed the deed transferring the real property to Megan Schlegel and Steven Schlegel without consideration. He remembers some pleasantries being exchanged and believed Mr. Williams was also his attorney, although at one point he stated "this is legal mumbo-jumbo, I think I need a lawyer." Plaintiff still had no knowledge that he was the

sole owner of the real property.

Although plaintiff has suffered blackouts due to his alcoholism, and as a result his memory of certain occurrences is poor, the court finds him to be a credible witness, kindhearted and without guile. He is easily persuaded and gullible, and was dominated by his mother, who died on July 3, 2002.

Plaintiff seeks to invoke the doctrine of constructive fraud. It is well settled that this doctrine casts upon the transferee the burden of proving by clear and convincing evidence that they did not acquire the real property by fraud, coercion, undue influence or some artifice where a confidential relationship exists (Matter of Gordon v Bialystoker, 45 NY2d 692; Matter of the Estate of Mazak v Nauholnyk, 288 AD2d 682; Matter of Bumbaca v Bumbaca, 182 AD2d 756).

There is normally a confidential relationship between grandmother and granddaughter and between uncle and niece. The testimony herein also demonstrated the existence of trust and affection between the parties. "Where such a relationship exists, there must be clear proof of the integrity and fairness of the transaction" (Ten Eyck v Whitbeck, 156 NY 341). "It has been held in the case of a gratuitous conveyance inter vivos, that the confidential relation of the grantee to the grantor casts upon the grantee the burden of showing she had not exercised a forbidden influence, and that the conveyance was fair and honest and free from fault which demands the condemnation of a court of equity" (In re Ruff, In re Williams' Will, 180 AD2d 203).

There is no question that a confidential relationship existed between Ann and Megan Schlegel. Only plaintiff and Megan Schlegel cared for Anne during the last few weeks of her life and plaintiff was unreliable and needed a certain amount of care himself, which Anne hoped Megan Schlegel would provide. That relationship is further substantiated by the appointment of Megan Schlegel as Anne's health care proxy in March of 2001 (Exh. C). There was also a confidential relationship between Megan Schlegel and her uncle, the plaintiff. Megan Schlegel testified that her relationship with plaintiff was one of trust and affection and plaintiff testified that he trusted and love his niece.

Megan Schlegel abused that confidential relationship between her and her grandmother and took advantage of Anne's ill health by attempting to convince her that only if she owned and consequently moved into the Agnew house would she provide her with the necessary healthcare. Upon learning that plaintiff owned the house, Megan Schlegel's task became easier. She only required plaintiff's signature on the deed transferring the house to her, which she believed was obtainable as a result of plaintiff's susceptibility to directions and/or plaintiff's lack of comprehension as a result of his alcohol dependency. Both of these factors played into her hand. Plaintiff believed his mother wanted Megan Schlegel to have certain rights regarding the house and he was definitely intoxicated (in his own words "bombed") on June 24, 2002.

Whether plaintiff believed what he signed in Mr. Williams' office was a renunciation of his inheritance or a relinquishment of certain rights in the house is irrelevant. The testimony fails to demonstrate that plaintiff had any knowledge of his sole ownership and could not consciously transfer real property he didn't know he owned.

Megan Schlegel's failure to inform plaintiff of his ownership of the house was fraud. Based upon her intimate knowledge of the family relationships, her awareness of plaintiff's alcohol dependency and submission to his mother's wishes and obvious intoxication on June 24, 2002, her action can only be described as an unscrupulous seizure of valuable real property. It seems her mother Judith was correct when she testified that "if Megan sets her mind to something, she will do it."

Even if plaintiff knew he owned the property, he did not possess the requisite capacity and understanding to divest himself of his real property and he was induced by deception and fraud to do so. "The acts of a person will be held void if he has not exercised deliberate judgment, but has been imposed upon or overcome by artifice or undue influence; and this rule applies wherever the relations between the parties give one a controlling influence over the other" (First Nat. Bnk of Coffeyville v Wright, et al., 207 AD2d 521).

In accordance with the findings of fact and the foregoing


principles, this court is persuaded that the deed transferring the real property in question from plaintiff to defendants was the result of fraud and artifice and same is hereby declared void and set aside.

Defendants shall pay all real estate taxes upon said property for the time they occupied same. The remainder of the relief requested is denied.

This constitutes the decision of the court pursuant to CPLR 4213(b).

Settle judgment on notice.

Dated: MAR 10 2005


J.S.C.