Bravata v. Micomonaco

2008 | Cited 0 times | New Jersey Superior Court | May 12, 2008

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION

Argued January 24, 2008

Before Judges Lihotz and Simonelli.

This matter involves a dispute between plaintiffs Salvatore Bravata and Antonina Bravata over the alleged transfer of title to their home located at 236 Marlboro Avenue, West Collingswood (the house), and the alleged transfer of title to a 1992 Buick LaSabre (the Buick) to their daughter, defendant Giuseppa Bravata Micomonaco. Defendant appeals from the final judgment of January 4, 2007, voiding the deed transferring the house to her, compelling her to return the title to the Buick to her father, and compelling her to pay one-half of her parents' attorneys' fees and costs.

In this appeal, defendant contends the transfer of the house and the Buick were valid gifts, and her parents understood what they were doing when they gifted the house and the Buick to her. Defendant also contends for the first time that since title to the Buick was not in defendant's name, Judge Vogelson could not order her to transfer it to her father. We reject these contentions and affirm.

Defendant also contends Judge Vogelson erred in compelling her to pay one-half of plaintiffs' attorneys' fees and costs. We agree and reverse.

The following facts are summarized from the record. In addition to defendant, Mr. and Mrs. Bravata have four other children, Santo, Vincent, Maria, and Angelina.[1] The Bravatas emigrated from Sicily in 1959 and 1960 respectively. They are not wealthy people, have very little education, and do not speak, write or read English. They have resided in the house for over thirty years, and it is their largest single asset. Mr. Bravata also had $100,000 in a savings account in his own name and five separate bank accounts, in his and each child's name, in the approximate amount of $36,000.[2] The Bravatas made known to the family that the child or children who cared for them in their old age would receive the house after they died.

At the time of the trial in February 2006, Mr. Bravata was ninety-three years old, hard of hearing, had a pacemaker, walked with a walker, could no longer drive and needed assistance caring for himself and the house. Mrs. Bravata was ninety-five years old, had Alzheimer's, was bedridden, could no longer speak or take care of herself, and had no apparent mental faculties. Her mental condition

began deteriorating in the early 1990's, and she was diagnosed with dementia in 1995. By approximately 1999, Mrs. Bravata became more forgetful; in 2000 she signed a general power of attorney; by 2001 she did not recognize her husband; and by 2002 she did not remember anyone or anything, could not engage in a conversation or walk, was incapacitated, and could not care for herself. The children initially took turns caring for their mother. Defendant eventually decided that she alone would care for her mother, but wanted her father to give her the house in exchange. Mr. Bravata refused to do so.

Defendant continued her efforts to get the house, but her father continued resisting. Mr. Bravata became ill in October 2002 and was hospitalized. During that time, defendant cared for her mother in defendant's home because the mother could not be left alone, was incapacitated, and needed help with everything. When Mr. Bravata returned home from the hospital, defendant demanded that he give her the house. She also said that she would serve her parents for life if she got the house, but she also threatened to stop caring for her mother if this did not occur. Mr. Bravata still resisted.

Mr. Bravata had a last will and testament, which devised the house to his children in equal shares if his wife predeceased him. In an attempt to resolve the matter, he drafted a new will in August 2002, which defendant rejected. He drafted a second new will in September 2002, which placed the house in a trust for his wife, with defendant as trustee, and distributed the proceeds of the trust equally to the children after his wife's death.

Defendant rejected the second draft, and kept pressuring her father to give her the house, stating she would not continue caring for her mother unless she received it. Defendant eventually developed a solution, which she presented to her father. She agreed to continue caring for her mother if her father signed a document and attached it to the deed, which would give defendant the house after her father died. Defendant also said she would give the papers to Mr. Bravata's brother, "Uncle Joe," whom Mr. Bravata trusted, to hold until her father died, at which time the deed would be recorded. Because Mr. Bravata felt pressured, and because he believed that the attachment would be held by Uncle Joe and would not be recorded until after his death, he agreed to sign it. Mr. Bravata also believed that by signing this document, defendant would serve him and his wife for the rest of their life.

Defendant retained and paid Joseph M. Rollo, Esq. (Rollo) to prepare a deed transferring the house to her. Rollo understood that the Bravatas were giving defendant the house in exchange for her care of her mother, and he expected defendant to continue that care after the deed was signed. Prior to January 12, 2003, Rollo did not speak with Mr. and Mrs. Bravata, and he did not know if they lived with defendant or independently. On January 12, 2003, Rollo went to defendant's home to have the Bravatas sign the new deed. He did ask if the Bravatas had wills or whether that had any assets other than the house, and he made no recommendations to them about the new deed.

Defendant advised Rollo that her parents agreed to sign the deed, but it would not be recorded until

after her father died. Rollo said this was not legal and explained that Mr. Bravata could remain in the house until his death by adding a life estate in the deed.[3] This was the first time that a life estate was mentioned, no one explained it to Mr. Bravata, and he did not understand what it meant.[4] Mr. Bravata signed the papers believing they would be given to Uncle Joe, and that defendant would receive the house after he died. He never intended to give defendant the house as a gift while he and his wife were alive. After the papers were signed, defendant continued caring for her mother.

After January 12, 2003, Mr. Bravata continued paying the taxes and expenses for the house. When he attempted to file for his property rebate in 2004, he was surprised to learn from his accountant that he no longer owned the house. He became very upset, believing defendant had deceived him. Also, a dispute arose between defendant and her father over his money. Defendant demanded that her father place into a joint account $10,000 designated for her mother's funeral expenses, return $5000 he allegedly took from his joint account with her, and give her $20,000, representing one-fifth of the proceeds of the sale of the Philadelphia property. Mr. Bravata refused. As a result, on November 6, 2004, defendant left her wheelchair-bound, incapacitated, elderly mother on the front steps of the house, along with a week's worth of clothing and some diapers. Defendant has neither cared for her mother nor father nor spoken to her parents or siblings since then.

Regarding the Buick, Mr. Bravata has a Pennsylvania driver's license, but he was unable to obtain a New Jersey driver's license. As a result, when he purchased the Buick, in order to obtain insurance, he placed the title in the name of defendant's husband. However, Mr. Bravata paid for the car, paid for its insurance, maintenance and gas, and kept it in his garage, where it remained as of the day of trial. Defendant used the Buick from time to time, but it was Mr. Bravata's car. A few days after defendant returned her mother to the house, she removed the license plates from the Buick and refused to return them. Mr. Bravata has been unable to use the car since then.

Judge Vogelson made very detailed oral factual findings and legal conclusions. He credited the testimony presented by Mr. Bravata and his witnesses, and determined that the Bravatas did not intend to give the house to defendant as a gift; that Mr. Bravata believed he was signing a document to attach to the deed to be held by Uncle Joe until after his death; that Mr. Bravata did not understand that the document he signed would irrevocably and unconditionally give defendant the house and became effective immediately regardless of whether defendant continued caring for her mother; that the Bravatas did not have the benefit of competent, disinterested and independent counsel; that the Bravatas were heavily dependent on defendant at the time they signed the deed, and a confidential relationship existed between them; that the gift was improvident because the house was the Bravatas' largest asset; and Mrs. Bravata's capacity was substantially impaired by dementia, and she may not have had any understanding of what she was doing when she signed the new deed.

The judge concluded that the deed was void because defendant did not overcome the presumption that she exerted undue influence on her parents, and because Mr. Bravata signed the deed under duress. The judge also concluded that the Buick belonged to Mr. Bravata and that defendant

provided no evidence that Mr. Bravata intended to gift it to her.

The factual findings of a trial court in a non-jury case should not be disturbed unless they are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974) (citing Fagliarone v. Twp. of N. Bergen, 78 N.J. Super. 154, 155 (App. Div.), certif. denied, 40 N.J. 221 (1963)); Torres v. Schripps, Inc., 342 N.J. Super. 419, 431 (App. Div. 2001). Rather, a trial court's findings of fact are entitled to "great deference," and should not be disturbed unless they constitute an abuse of discretion or are clearly erroneous. Balsamides v. Protameen Chems., Inc., 160 N.J. 352, 368 (1999); Torres, supra, 342 N.J. Super. at 431. Credibility determinations are included within the trial court's deferential factfinding authority. Ferdinand v. Agric. Ins. Co. of Watertown, 22 N.J. 482, 495 (1956). However, "[a] trial court's interpretation of the law and legal consequences that flow from established facts are not entitled to any special deference[,]" and is subject to de novo review. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) (citing State v. Brown, 188 N.J. 595, 604(1990)).

Our careful review of the record satisfies us that Judge Vogelson's factual findings, credibility determinations, and legal conclusions as to the deed and Buick are amply supported by competent, substantial, and credible evidence and we have no occasion to disturb them. Rova Farms, supra, 65 N.J. at 484. We are also satisfied that the judge correctly applied the law. Manalapan Realty, supra, 140 N.J. at 378.

However, we are not satisfied that the judge correctly awarded plaintiffs' attorneys' fees and costs. Citing In re Estate of Vayda, 184 N.J. 115 (2005), In re Niles, 176 N.J. 282 (2003), and an unpublished trial court opinion,[5] the judge concluded that, since defendant breached her agreement to care for her mother and unduly influenced her parents, she should be responsible for one-half of their attorneys' fees and costs, excluding investigation or discovery. We disagree.

The "American Rule" prohibits recovery of counsel fees by a prevailing party against the losing party, except as authorized by statute, court rule or contract. Vayda, supra, 184 N.J. at 120-21; Niles, supra, 176 N.J. at 293. The only exceptions involve "claims against attorneys (for malpractice, misconduct, or malfeasance by way of a breach of fiduciary duty), or when an executor or trustee has committed "'the pernicious tort of undue influence.'" Vayda, supra, 184 N.J. at 123; see also, Niles, supra, 176 N.J. 298. Here, defendant was not an attorney, executor or trustee, and this case falls under no exception in Rule 4:42-9.

Finally, we decline to address defendant's contention that the judge erred in ordering her to return the title to the Buick to Mr. Bravata. Defendant never raised this contention below. We will "decline to consider questions or issues not properly presented to the trial court when an opportunity for such a presentation is available 'unless the questions so raised on appeal go to the jurisdiction of the trial court or concerns matters of great public interest.'" Nieder v. Royal Indem. Ins. Co., 62 N.J. 229, 234

(1973) (quoting Reynolds Offest Co., Inc. v. Summer, 58 N.J. Super. 542, 548 (App. Div. 1959), certif. denied, 31 N.J. 554 (1960)); R. 2:6-2.

Affirmed in part, and reversed in part.

1. Angelina died prior to the trial.

2. This money came from the sale of Mr. Bravata's apartment building in Philadelphia.

3. The life estate was added to the deed after January 12, 2003.

4. Rollo could not explain why he did not include a life estate in the deed for Mrs. Bravata. However, when he saw the condition she was in, he assumed she would live with defendant until she died. Judge Vogelson found she was bedridden, incapacitated, and unable to carry on any complex conversation on January 12, 2003.

5. The unpublished opinion has not been provided, nor does it constitute precedent or bind us. R. 1:36-3.