

Undue Influence as Defense to Will or Power of Attorney

One of the major cases dealing with undue influence was Haynes v. First National State Bank of New Jersey, 87 N.J. 163, 75-76 (1981). Here the Supreme Court held that the burden of proof establishing undue influence shifts to the proponent when a will benefits a person who stood in a confidential relationship to the decedent and there are suspicious circumstances which need explanation. The suspicious circumstances need only be slight. Id. at 176. Moreover, when the evidence is almost entirely in the possession of one party and the evidence points to the proponent as asserting undue influence, a clear and convincing standard may be applied rather than the normal burden of proof of preponderance of the evidence. Id. at 183.

Furthermore, the Haynes analysis was extended to situations in which there is a transfer of property where the beneficiary of the property and an attorney is on one side and the donor on the other. See Oachs v. Stanton, 280 N.J. Super. 478, 483 (App. Div. 1995).

The court in Oachs determined that under circumstances such as these the donee bears the burden of proof to establish the validity of the gift, even in situations in which the donee did not dominate the decedent's will. Id. at 485. This rule was established to protect a donor from making a decision induced by a confidential relationship the donee possesses with the donor. Id. Again, the burden is a clear and convincing standard. Id.

The Supreme Court in Pascale v. Pascale, 113 N.J. 20, 31 (1998), stated that when a donor makes a gift to a donee that he/she is dependent upon, a presumption arises that the donor did not understand the consequences of his/her act. In these situations the donee must demonstrate that the donor had disinterested and competent counsel. Id. Likewise, undue influence is conclusive, when a mentally or physically weakened donor makes a gift without advice or a means of support, to a donee upon whom he/she depends. Id.

A confidential relationship can be found to exist when one is certain that the parties dealt on unequal terms. In re Stroming's Will, 12 N.J. Super. 217, 224 (1951). The appropriate inquiry is if a confidential relationship existed, did the parties

deal on terms and conditions of equality? Blake v. Brennan, 1 N.J. Super. 446, 453 (1948).

Suspicious circumstances are not required to create a presumption of undue influence with regard to inter vivos gifts and the presumption of undue influence is more easily raised in an inter vivos transfer. See Pascale, *supra*, 113 N.J. at 31; Bronson v. Bronson, 218 N.J. Super. 389, 394 (App. Div. 1987).

Generally, an adult is presumed to be competent to make an inter vivos gift. See Conners v. Murphy, 100 N.J. Eq. 280, 282 (E. & A. 1926); Pascale v. Pascale, 113 N.J. 20, 29 (1988). However, when a party alleges undue influence with regard to an inter vivos gift, the contesting party must prove undue influence existed or that a presumption of undue influence should arise. Pascale, *supra*, 113 N.J. at 30.

A presumption of undue influence arises when a confidential relationship exists between the donor and donee or where the contestant proves the donee dominated the Will of the donor. *Id.*; see also Seylaz v. Bennett, 5 N.J. 168, 172 (1950); In re Dodge, 50 N.J. 192, 227 (1967); Mott v. Mott, 49 N.J. Eq. 192, 198 (Ch. 1891); Oachs v. Stanton, 280 N.J. Super. 478 (App. Div. 1995) (holding that where a confidential relationship existed and that the donor did not rely upon the donee, a shifting of the burden was still appropriate); In re Neuman's Estate, 133 N.J. Eq. 532, 534-35 (E. & A. 1943) (stating in a will context "Such burden does not shift merely because of the existence of a confidential relationship, without more, as in the matter of gifts inter vivos.")

The In re Dodge court explained why a presumption of undue influence arises in a confidential relationship and stated: "In the application of this rule it is not necessary that the donee occupy such a dominant position toward the donor as to create an inference that the donor was unable to assert his will in opposition to that of the donee." In Re Dodge, 50 N.J. 192 (1967). The court referenced a much earlier case in explaining the rule's application:

"Its purpose is not so much to afford protection to the donor against the consequences of undue influence exercised over him by the donee, as it is to afford him protection against the consequences voluntary action on his part induced by the existence of the relationship between them, the effect of which upon his own interests he may only partially understand or appreciate." In re Dodge, *supra*, 50 N.J. at 228 citing Slack v. Rees, 66 N.J. Eq. 447, 449 (E. & A. 1904).

In sum, once it is proven that a confidential relationship exists the burden shifts to the donee to show by clear and convincing evidence that no undue influence

was used. Although the case law indicates suspicious circumstances need not be shown the donee must show all was fair, open and voluntary, no deception was practiced and that the transaction was well understood. Pascale, *supra*, 113 N.J. at 31; see also In re Dodge, *supra*, 50 N.J. at 227; Seylaz, *supra*, 5 N.J. at 173. Furthermore, confidential relationships arise in all types of relationships “whether legal, natural or conventional in their origin, in which confidence is naturally inspired, or, in fact, reasonably exists.” In re Fulper’s Estate, 99 N.J. Eq. 292, 314 (Prerog. Ct. 1926); see Pascale, *supra*, 113 N.J. at 34. It appears confidential relationships exist in all cases in which:

“The relations between the [contracting] parties appear to be of such a character as to render it certain that they do not deal on terms of equality, but that either on the one side from superior knowledge of the matter derived from a fiduciary relation, or from over-mastering influence; or on the other from weakness, dependence or trust justifiably reposed, unfair advantage is rendered probable.” Pascale, *supra*, 113 N.J. at 34, quoting In re Fulper, *supra*, 99 N.J. Eq. at 314; see also In re Dodge, *supra*, 50 N.J. at 228.

In determining whether the Defendant was the dominant person in the relationship there is no clear cut rule and instead the court must look to the particular circumstances of the matter. In re Fulper, *supra*, 99 N.J. Eq. at 315; Giacobbi v. Anselmi, 18 N.J. Super. 600, 616 (Ch. Div. 1952). In Fulper the court determined that a confidential relationship existed in a father-son relationship in which the father was advanced in age, weak and physically depended upon the son. Moreover, since the father sought the son’s assistance on business matters, lived with the son during the winter months and gave the son joint and several power over his checking account an actual repose of trust and confidence in the son was demonstrated. In re Fulper, *supra*, 99 N.J. Eq. at 318.

In the Giacobbi case, *supra*, a confidential relationship was determined to exist between a mother and daughter, even though the mother did not suffer from mental or physical infirmity. There the mother was found to be alert, active, and somewhat independent. However, she turned to the daughter for small issues and problems when they occurred. Giacobbi, *supra*, 18 N.J. Super. at 617.

Therefore, the burden can shift to Defendant to prove by clear and convincing evidence the transaction was not unduly influenced. Furthermore, where a donor makes an “improvident” gift to the donee upon whom she depends that strips the donor

of all or virtually all their assets, as here, a presumption arises that the donor did not understand the consequences of their act. Pascale, supra, 113 N.J. at 31, citing Vanderbach v. Vollinger, 1 N.J. 481, 489 (1949). Under those circumstances the donee must establish that the donor had the advice of competent and disinterested counsel. Id. citing Vanderback, supra, 1 N.J. at 488-89.

Similarly, when a mentally or physically weakened donor makes a gift to a donee whom the donor is dependent upon, without advice, and the gift leaves the donee without adequate means of support, a conclusive presumption of undue influence arises. Id. citing Seylaz, supra, 5 N.J. at 173. However, when a donor is not dependent upon the donee “independent advice is not a prerequisite to the validity of an improvident gift even though the relationship between the parties is one of trust and confidence.” Id. citing Seylaz, supra, 5 N.J. at 173.

Although suspicious circumstances are not required to be established in an inter vivos transfer for a presumption of undue influence to exist, thereby shifting the burden of proof, Plaintiff has raised the issue. Pascale, supra, 113 N.J. at 30.

If Undue Influence was 'Clear,' the Will of the Elderly Testatrix is Denied Admission to Probate.

The testatrix's will was properly rejected as the product of undue influence because the proponent and the testatrix had a confidential relationship and because there were "suspicious circumstances" surrounding the execution of the will.

In Re Probate of the Last Will and Testament of Catelli
Docket # A-2963-01T5

In the Catelli case, Thomas R. Villone was named by his elderly aunt, Anna Villone Catelli, as the executor in a will and as the trustee under a living trust which she executed on January 9, 1996. He appeals from the decision of the Chancery Division which refused to admit that 1996 will to probate, which named his cousin, George Villone, as the Administrator C.T.A. of Catelli's estate, which ordered him to restore assets to the estate, which awarded counsel fees and which dismissed a related complaint that he had filed in his effort to enforce certain provisions of the 1996 trust.

The decision of the trial court was made following two days of testimony and the consideration by the court of deposition testimony given by witnesses, including Thomas Villone, who could not appear in New Jersey. In that decision, the court first held that, as a matter of public policy, the will could not be admitted to probate because at the time of the execution of the 1996 will, Anna Catelli had become blind and the only person who could verify that the contents of the documents had been read to her so that she knew what she was signing was Thomas, who the disputed documents made her sole heir. As an alternate ground, the judge analyzed the testimony and the evidence in the nature of an application for a directed verdict at the close of the plaintiff's case and determined that Thomas Villone could not prevail on the merits. Because we affirm the decision of the court based upon the alternate ground, we do not address the court's public policy rationale.

Viewed in the light most favorable to Thomas Villone, the record discloses the following facts. The testator, Anna Catelli, was a widow who had no children and who lived alone. She had a number of nieces and nephews, including Thomas Villone and George Villone. She also had a brother, Robert, who died in Florida in 1994. Robert had named Thomas, his nephew, as the executor and principal beneficiary of his estate. Thomas, who was a self-employed long distance truck driver living in Arizona, had not had much contact with Anna Catelli, but telephoned to tell her of her brother's death. In that conversation, Catelli had asked him to come and visit her when he was next in New Jersey and he thereafter did so. Early in 1994, while Thomas was visiting her at her home, then in Springfield, Catelli asked him to drive her to her lawyer's office in Maplewood which he did. He learned that day that Catelli had named him as her alternate power of attorney in the event that her long-time physician and confidante, Dr. Coppola, was unable to serve. While he was not aware of it at the time, she had gone to the lawyer's office that day to execute a will that left her estate to a variety of relatives and friends and to two churches and which included him as one of the residuary beneficiaries. Later that year, Catelli suffered a significant stroke which left her partially paralyzed and with limited powers of speech and sight. She was moved by Dr. Coppola to a nursing home, and thereafter to the Garden Terrace Nursing Home where she remained until her death. Thomas visited her at the nursing home from time to time when he was in New Jersey. Shortly before Thanksgiving 1995, Dr. Coppola telephoned Thomas and told him that Catelli wanted to make him her sole heir. Dr.

Coppola died two or three days later. Following Dr. Coppola's death, Thomas invoked the power of attorney to make \$10,000 gifts to himself, his wife and his daughter. He next received from Dr. Coppola's son all of the papers relating to Catelli's assets. While Thomas

http://www.njlaws.com/Undue_influence_by_family.htm

**KENNETH VERCAMMEN & ASSOCIATES, PC
ATTORNEY AT LAW**

2053 Woodbridge Ave.
Edison, NJ 08817
(Phone) 732-572-0500
(Fax) 732-572-0030

TRIAL AND LITIGATION EXPERIENCE

In his private practice, he has devoted a substantial portion of his professional time to the preparation and trial of litigated matters. He appears in Courts throughout New Jersey several times each week on many personal injury matters, Criminal and Municipal/traffic Court trials, Probate hearings, and contested administrative law hearings.

Mr. Vercammen served as the Prosecutor for the Township of Cranbury, Middlesex County and was involved in trials on a weekly basis. He also argued all pre-trial motions and post-trial applications on behalf of the State of New Jersey.

He has also served as a Special Acting Prosecutor in Woodbridge, Perth Amboy, Hightstown, Carteret, East Brunswick, Jamesburg, South Brunswick, South River and South Plainfield for conflict cases. Since 1989, he has personally handled hundreds of criminal and motor vehicle matters as a Prosecutor and now as defense counsel and has had substantial success.

Previously, Mr. Vercammen was Public Defender for the Township of Edison and Borough of Metuchen and a Designated Counsel for the Middlesex County Public Defender's Office. He represented indigent individuals facing consequences of magnitude. He was in Court trying cases and making motions in difficult criminal and DWI matters. Every case he personally handled and prepared.

His resume sets forth the numerous bar associations and activities which demonstrate his commitment to the legal profession and providing quality representation to clients.

Since 1985, his primary concentration has been on litigation matters. Mr. Vercammen gained other legal experiences as the Confidential Law Clerk to the Court of Appeals of Maryland (Supreme Court) with the Delaware County, PA District Attorney Office handling Probable Cause Hearings, Middlesex County Probation Department as a Probation Officer, and an Executive Assistant to Scranton District Magistrate, Thomas Hart, in Scranton, PA.