Florida 4DCA: No Abuse of Discretion in Undue Influence Case

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Levin v. Levin, 36 Fla. L. Weekly D997a (4DCA May 11, 2011)

In a Palm Beach County case, the Florida 4DCA recently upheld the lower court's decision in an Florida will contest involving allegations of undue influence and insane delusion.

Shirley Levin signed a will in 1987 that split her estate between her two children, Gail and William. In 2008, she set up a trust and signed a new will and died shortly thereafter at the age of 84. Under her new estate plan, Gail received only $350,000 of her $3 million estate. The rest went to William and his children in various amounts.

Gail objected to William's probate of her mother's will, arguing that the will was the product of William's undue influence and that her mother lacked testamentary capacity. On the issue of undue influence, William conceded that he was a substantial beneficiary of his mother's estate plan and that he had a confidential relationship with his mother. But he denied that he was "active in procuring" his mother's new estate plan.

After applying the *Carpenter* factors to the case, the trial court felt that there was "overwhelming" evidence that William did use undue influence to procure his mother's estate plan. On appeal, the 4DCA found no evidence that the trial court abused its discretion on the issue of undue influence. In the lack of such evidence, the 4DCA upheld the trial court's decision on the issue of undue influence.

Gail brought a second, related argument: that her mother was under an "insane delusion" when she executed the will. For support, Gail offered evidence that Gail had visited her mother on multiple occasions within a seven-year period. Before she died, her mother claimed to have only seen her once in the prior ten years. Because the trial court did not address this argument, the 4DCA remanded the case to the trial court for a ruling on this issue.

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