

Summary of SC93872, *Richard E. Ivie, Jimmie R. Ivie, Ladonna Small and Bernard Ivie v. Arnold Smith and Sidney B. Smith*

Appeal from the Scott County circuit court, Judge Benjamin Franklin Lewis
Argued and submitted May 6, 2014; opinion issued July 8, 2014

Attorneys: Smith was represented by Joseph C. Blanton Jr. and Shaun D. Hanschen of Blanton, Rice, Nickell, Cozean & Collins LLC in Sikeston, (573) 471-1000; and the Ivies were represented by Bruce Lawrence and R. Kye Lawrence of Lawrence & Lawrence LLC in Sikeston, (573) 471-5554.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: The widower of a woman who died in 2009 appeals the circuit court’s judgment that the woman lacked the mental capacity necessary to make changes to her estate plan benefiting her husband and, therefore, that those changes were void, directing her estate to be left to her half-siblings as she initially had instructed. In a unanimous decision written by Judge Zel M. Fischer, the Supreme Court of Missouri affirms the judgment. Substantial evidence supports the circuit court’s judgment that the woman lacked the mental capacity to make two amendments to her trust and, therefore, that both trust amendments were void. Substantial evidence also supports the circuit court’s judgment that the woman’s changes to beneficiary designations and property transfers also were void. Although the circuit court used the wrong standard to make this determination – using the “testamentary capacity” standard that applies to wills and trusts, rather than the “contractual capacity” standard that applies to contractual arrangements such as beneficiary designations and property transfers – this error was not prejudicial. Because it found the woman lacked the lower standard of testamentary capacity, it necessarily found that she lacked the higher standard of contractual capacity as well. Further, the circuit court’s judgment that the woman lacked capacity is not against the weight of the evidence.

Facts: Raised in Missouri, Patricia Watson moved to California early in life to teach elementary school but retained close ties with her half-siblings – Richard Ivie, Jimmie Ivie, Ladonna Small and Bernard Ivie (the Ivies). Watson married three times but had only one child, a daughter who was murdered in 1980. In February 2002, when she was 70 years old, Watson retired from teaching and married her fourth husband, 60-year-old Arnold Smith, in California. At the time, Watson had substantial income and approximately \$1 million in assets, including her California home, several parcels of real estate in southeast Missouri, a pension from the California State Teachers’ Retirement System (CALSTRS), and several bank accounts, retirement accounts and vehicles. Smith, however, had filed for bankruptcy in 1997 and had minimal income and assets. In May 2002, about three months after the marriage, Watson had her Missouri attorney create a trust as well as a will with a provision “pouring over” all her estate’s assets into the trust. She and Smith signed deeds conveying all of Watson’s real estate to the trust. The trust also owned or was the beneficiary of several of Watson’s bank and retirement accounts. The trust named the Ivies as sole beneficiaries, dividing the trust assets and proceeds equally among them. It also stated that it was expressly Watson’s intention that Smith not receive any part of the trust estate. When they moved to Missouri in late 2004, they placed the proceeds from the sale of Watson’s California home in the trust and deeded the new Missouri home to the trust.

In January 2003, a California physician noted she seemed to have paranoia. When Watson and Smith moved to Missouri in 2004, Watson told her sister that she was having trouble remembering words and names and told one of her brothers she thought she was losing her mind. In 2005 Watson visited several physicians, including one at the Mayo Clinic who performed a neuropsychological evaluation that showed some cognitive impairment and suggested Watson would require supervision and assistance with complex activities such as medical, legal or financial decision-making. The physician concluded Watson's condition was consistent with vascular dementia and recommended ongoing monitoring. By November 2006, a new physician diagnosed Watson with Alzheimer's dementia. By May 2007, she needed help with all her daily living activities and failed to recognize family members she previously knew. During a June 2007 hospitalization, she was non-responsive to nurses' attempts to orient her to time and place and made inappropriate statements suggesting impaired memory.

In July 2007, Watson met with her Missouri attorney to create the first amendment to her trust, reducing the Ivies' share to \$25,000 each and granting the remainder to Smith. The amendment also included a no-contest clause that would cause anyone challenging the trust to lose his or her share. Five months later, Watson began receiving in-home nursing care. Her nurses documented the effects of when Watson's dementia was uncontrolled. In December 2007 and January 2008, Watson signed changes to several of her bank accounts and retirement accounts, transferring them from her trust to her own name, with Smith as the beneficiary or the person to whom the accounts would transfer upon her death. Also in January 2008, Smith took Watson to the doctor, marking "yes" next to a number of different symptoms related to her cognitive and memory impairments. Her mental condition continued to worsen, and records from a nursing home indicate she was confused and disoriented throughout her stay in June and July 2008. The day she left the nursing home, Watson signed a second trust amendment her Missouri attorney had prepared that reduced the Ivies' share to \$5,000 each, gave \$5,000 each to Smith's son from a previous marriage and to the stepdaughter of one of Watson's brothers, and left the remainder to Smith. Shortly after Watson signed this amendment, Smith obtained from physicians affidavits of Watson's mental incapacity. He then changed Watson's CALSTRS pension, reducing her during-life payments in exchange for survivor benefits for him. In December 2008, Watson and Smith met with a new attorney, who was unaware of Watson's mental impairment, and retitled Watson's vehicles, adding Smith either as a joint titleholder or a transfer-on-death beneficiary.

Watson died in April 2009. The Ivies then filed actions in the circuit court seeking to set aside the trust amendments, beneficiary designations and various property transfers. During the trial, the Ivies, Smith and Watson's Missouri attorney testified. Each side presented a medical expert; their testimony conflicted. The circuit court entered judgment for the Ivies. It expressly found the testimony of the Ivies' medical expert credible and expressly found the testimony of Smith and Smith's medical expert unpersuasive. It also expressly found unpersuasive the testimony of Watson's Missouri attorney because he was unaware of her medical records or diagnoses when he assisted her in preparing the trust amendments and may not have been present when she signed the first amendment to the trust. The court found that Watson lacked testamentary capacity with regard to all the changes in her estate plan. It ruled void both trust amendments, the changes to the beneficiary designations and the property transfers, directing that the CALSTRS

pension benefit go directly to the Ivies and that the other non-trust assets go to Watson's probate estate. Smith appeals.

AFFIRMED.

Court en banc holds: (1) Substantial evidence supports the circuit court's judgment that Watson lacked testamentary capacity to make the changes to her estate plan and, therefore, that both trust amendments were void. The capacity required to make or amend a revocable trust is the same as that required to make a will – testamentary capacity, which requires a person to be at least 18 years old or emancipated and to be of sound mind. To be of sound mind, a person must: understand the ordinary affairs of life; understand the nature and extent of his or her property; know the persons who are the natural objects of his or her bounty; and understand that, by executing the document, he or she is giving property to persons in the manner specified in the document. The circuit court – which was free to believe any, all or none of the evidence presented at trial – made extensive findings of fact. The law does not require evidence of lack of testamentary capacity on the precise date of execution (signing). The Ivies presented evidence at trial tending to prove Watson lacked testamentary capacity at the time both trust amendments were made. Their medical expert testified that Watson did not have testamentary capacity at any time after July 1, 2007 – before the first trust amendment was signed. Even in the absence of this expert's testimony, there was considerable other evidence of Watson's incapacity – both before and after the amendments were made – from which the circuit court would be permitted to draw an inference of incapacity on the dates in question.

(2) The circuit court misapplied the law of testamentary capacity to the various beneficiary designations on Watson's accounts and CALSTRS pension and other property transfers. The capacity required to make beneficiary designations is governed by the state's nonprobate transfer law, chapter 461, RSMo. This law generally allows persons to transfer property at death to another person or entity, outside of probate proceedings in court, without the formalities required for wills. Because Watson's nonprobate transfers were made through beneficiary designations on her accounts and pension or through transfer-on-death directions on the title for several of her vehicles, all these transfers are matters of agreement. Accordingly, they are governed by the applicable law of contracts. The same is true of her other during-life property transfers. A person must have mental capacity to enter into a contract, or else the contract is deemed void. Mental capacity, therefore, is required to make a beneficiary designation. To the extent the court of appeals' 2006 opinion in *In re Estate of Goldschmidt* is inconsistent with this opinion, it should not be followed any longer.

(3) Although the circuit court misapplied the law regarding the level of mental capacity required to change beneficiary designations, this error was not prejudicial because the mental capacity required to make a contract is higher than the mental capacity required to make a will or trust, which is the testamentary capacity standard the court applied. But, as discussed in paragraph (1), the testimony of the Ivies' medical expert and other evidence in the record supports the court's conclusion that Watson lacked testamentary capacity after July 1, 2007. Accordingly, the court necessarily concluded that she could not have met the higher standard of contractual capacity each time she changed beneficiary designations or transferred property in favor of Smith.

Substantial evidence supports the court's judgment, therefore, that all changes to beneficiary designations and property transfers after July 1, 2007, were void.

(4) The circuit court's judgment that Watson lacked requisite capacity was not against the weight of the evidence. In reviewing the record in a challenge that the judgment is against the weight of the evidence, this Court considers all evidence contrary to the judgment but defers to the circuit court's findings regarding contested factual issues and when the facts found by the circuit court depend on credibility determinations. An appellate court will reverse a circuit court under this standard only in rare cases, when it has a firm belief that the judgment is wrong – when the circuit court reasonably could not have found, from the record at trial, the existence of a fact necessary to sustain the judgment. The circuit court was free to draw the reasonable conclusion, based on the evidence presented, that Watson did not have capacity at each time period at issue. This Court is not firmly convinced that this finding is against the weight of the evidence. Watson showed signs of paranoia as early as January 2003, and her mental condition progressively worsened up to the date of her first trust amendment in July 2007. Her memory problems were recited by her physicians and nurses, Smith and Watson herself. Her physicians diagnosed her with dementia in 2005 and with Alzheimer's dementia in November 2006. Between the time of the first trust amendment in July 2007 and the second trust amendment in July 2008, Watson's nursing and medical records noted continued problems with paranoia, forgetfulness, mood swings and delusions as well as disorientation as to time and place. Shortly after she made the second trust amendment, Smith obtained five physician affidavits that Watson was incapable of managing her estate, making decisions for herself or understanding the nature of a contract.