IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

HOWARD SMITH, DARRELL SMITH, and HOWARD SMITH and DARRELL SMITH, IN THEIR CAPACITIES AS CO-TRUSTEES OF THE VIRGINIA MARIE SMITH REVOCABLE TRUST (AN INTER VIVOS TRUST AGREEMENT) EXECUTED ON JUNE 20, 2006,

Respondents,

v.

ROGER C. SMITH and LAVONNE MORRISEY,

Appellants.

DOCKET NUMBER WD83677
(Consolidated with WD83783)

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: March 16, 2021

APPEAL FROM

The Circuit Court of Clay County, Missouri
The Honorable Janet Sutton, Judge

JUDGES

Division Four: Martin, C.J., and Hardwick and Pfeiffer, JJ. CONCURRING.

ATTORNEYS

Thomas E. Hankins, Gladstone, MO, Attorney for Respondents.

Jonathan Sternberg, Kansas City, MO, Attorney for Appellants.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

HOWARD SMITH, DARRELL SMITH, and HOWARD SMITH and DARRELL SMITH, IN THEIR CAPACITIES AS CO-TRUSTEES OF THE VIRGINIA MARIE SMITH REVOCABLE TRUST (AN INTER VIVOS TRUST AGREEMENT) EXECUTED ON JUNE 20, 2006, Respondents,

v.

ROGER C. SMITH and LAVONNE MORRISEY, Appellants.

WD83677 (Consolidated with WD83783) **Clay County**

Before Division Four Judges: Cynthia L. Martin, Chief Judge, and Lisa White Hardwick and Mark D. Pfeiffer, Judges

Ms. Lavonne Morrisey ("Lavonne") and Mr. Roger C. Smith ("Roger") appeal from the judgment of the Circuit Court of Clay County, Missouri ("trial court"), entered after a jury verdict in favor of Mr. Howard Smith ("Howard") and Mr. Darrell Smith ("Darrell"),[1] individually and in their capacities as Co-Trustees of the Virginia Marie Smith Revocable Trust ("Trust"), in this declaratory judgment action to determine the validity of a 2013 amendment to said Trust.

In Points I and II, Lavonne and Roger argue that the trial court erred in denying their motion for judgment notwithstanding the verdict because there was insufficient evidence that Virginia lacked capacity to make the 2013 amendment or was unduly influenced to do so. In Point III, Lavonne and Roger assert that the trial court erred in granting Howard and Darrell a jury trial.

AFFIRMED.

Division Four holds:

1. Substantial evidence at trial demonstrated that Howard and Darrell met their burden of proving by clear, cogent, and convincing evidence that Virginia was unduly influenced to make the 2013 amendment. First, substantial evidence showed Lavonne and Roger had a confidential or fiduciary relationship with Virginia. Second, Lavonne and Roger do not dispute that they received a substantial bequest in the 2013 amendment, to the exclusion of their siblings. Third, there was additional and substantial evidence from which undue influence may be inferred.

Given our ruling as to the sufficiency of evidence of undue influence (Point II), we need not and do not address Lavonne and Roger's additional challenge as to the sufficiency of evidence

[1] Because a number of the individuals involved in this case share the same surname, we refer to them by their first names. In doing so, no familiarity or disrespect is intended.

supporting the trial court's judgment as to Virginia's lack of capacity to make the 2013 amendment (Point I).

2. In Count I of Howard and Darrell's petition for declaratory judgment, they sought a declaration that the 2013 amendment was void because Virginia "lacked sound mind" and "was under the domination and undue influence" of Lavonne and Roger when she executed the 2013 amendment. The primary issues were issues of fact that must be determined by a jury: whether Virginia was of sound mind when she executed the 2013 amendment, and whether Virginia executed the 2013 amendment as the result of the undue influence of Lavonne and/or Roger. The trial court did not err in submitting these issues of fact to the jury for determination.

Opinion by: Mark D. Pfeiffer, Judge March 16, 2021

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