

IN THE SECOND DISTRICT COURT OF APPEAL, LAKELAND, FLORIDA

December 9, 2020

T. NICOLE DRAPP a/k/a Tania Nicole)
Drapp a/k/a Tania Nichole Drapp and)
MICHAEL ROLAND STREIFF,)
)
Appellants,)
)
and)
)
SOUTH FLORIDA LENDING CORP.,)
)
Intervenor/Appellant,)
)
v.)
)
EDWARD REID McDANIEL,)
)
Appellee.)
_____)

Case No. 2D19-1949

BY ORDER OF THE COURT:

Appellee's motion for rehearing en banc is stricken as facially insufficient.

See Fla. R. App. P. 9.331(d).

Appellee's motion for rehearing is denied. To the extent that appellee's motion seeks clarification, the motion is granted insofar as a scrivener's error appearing in the final paragraph of the opinion is corrected and the directive is clarified to reflect that the reversal of the trial court's declaration that the McDaniel-Drapp deed is void necessitates entry of judgment in favor of Ms. Drapp and Mr. Streiff. Accordingly, the

prior opinion dated October 14, 2020, is withdrawn, and the attached opinion is issued in its place.

No further motions for rehearing will be entertained.

I HEREBY CERTIFY THE FOREGOING IS A
TRUE COPY OF THE ORIGINAL COURT ORDER.

MARY ELIZABETH KUENZEL, CLERK

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

T. NICOLE DRAPP a/k/a Tania Nicole
Drapp a/k/a Tania Nichole Drapp and
MICHAEL ROLAND STREIFF,
Appellants,
and
SOUTH FLORIDA LENDING CORP.,
Intervenor/Appellant,
v.
EDWARD REID McDANIEL,
Appellee.

Case No. 2D19-1949

Opinion filed December 9, 2020.

Appeal from the Circuit Court for Pinellas
County; Linda R. Allan; Judge.

Ann M. Allison of Allison Law Group, Temple
Terrace, for Appellants T. Nicole Drapp and
Michael Roland Streiff.

Joseph Stern, Pembroke Pines; and Andy
Dogali of Dogali Law Group, P.A.,
Clearwater, for Intervenor/Appellant South
Florida Lending Corp.

Matthew D. Weidner of Weidner Law, P.A.,
St. Petersburg, for Appellee.

BLACK, Judge.

Edward Reid McDaniel brought an eight-count action against Tania Nichole Drapp and Michael Roland Streiff seeking to invalidate multiple deeds transferring Mr. McDaniel's interest in two properties. Only the count for declaratory relief proceeded to trial, following which the trial court entered a final judgment in favor of Mr. McDaniel and declared the contested deeds null and void. We affirm the final judgment in part and reverse in part.

Few facts are relevant to the resolution of this case. For three years Mr. McDaniel had failed to pay the county property taxes on two properties he owned, and a tax deed sale was imminent. Ms. Drapp, who is Mr. McDaniel's daughter, had been assisting Mr. McDaniel with his affairs when she learned of the delinquent taxes. At the request of Mr. McDaniel and with the financial assistance of Mr. Streiff, Ms. Drapp paid the three years of taxes in May 2016. According to Ms. Drapp, Mr. McDaniel had agreed to repay Mr. Streiff and had agreed to use the two properties as security. Following payment of the taxes, the contested deeds were drawn up and executed. The first deed, a quit claim deed dated September 21, 2016, was signed by Mr. McDaniel as grantor and deeded both properties to Ms. Drapp (the McDaniel-Drapp deed). Ms. Drapp did not draft the McDaniel-Drapp deed. That deed was not recorded until September 2017. The second deed, dated and recorded on January 13, 2017, was executed by Ms. Drapp as attorney-in-fact for Mr. McDaniel and deeded one of the properties to Mr. Streiff. The third deed, dated and recorded February 22, 2017, was also executed by Ms. Drapp as attorney-in-fact for Mr. McDaniel and deeded the second property to Mr. Streiff. Although Ms. Drapp had previously held a power of

attorney for Mr. McDaniel, that power of attorney had been revoked prior to the execution of the second and third deeds. On February 25, 2017, Ms. Drapp and Mr. Streiff executed deeds quitclaiming both properties to South Florida Lending Corporation.

Mr. McDaniel initiated the lawsuit in April 2017. During the course of litigation, in January 2019, South Florida Lending filed a motion to intervene, which was granted. A one-day trial was held on February 22, 2019, during which the court heard testimony from Mr. McDaniel and Ms. Drapp, among others. The single count tried was the request for declaratory relief, which requested a judicial determination as to whether any of the contested deeds were valid. After the parties, including South Florida Lending, submitted written closing arguments, the court entered final judgment in favor of Mr. McDaniel and invalidated all three deeds.

Ms. Drapp, Mr. Streiff, and South Florida Lending challenge the final judgment only insofar as the trial court declared the McDaniel-Drapp deed null and void and entered judgment in favor of Mr. McDaniel as to the validity of that deed. Although Ms. Drapp and Mr. Streiff raise multiple claims of error, we find the issue raised by all three appellants to be dispositive: the trial court failed to apply the correct legal standard in determining that the McDaniel-Drapp deed was invalid, placing the burden on the wrong party, and therefore erred in entering judgment in favor of Mr. McDaniel.

As to the McDaniel-Drapp deed, in his amended complaint Mr. McDaniel alleged that he had no recollection of executing the deed, that he was heavily medicated as the result of significant illness, and that he was under duress and undue

influence from Ms. Drapp. These allegations formed the basis for his request that the court declare the McDaniel-Drapp deed invalid.

To the extent that Mr. McDaniel argued that he lacked the requisite capacity to transfer the properties, the mental capacity of a grantor is "presumed once the existence of the deed is established." See Marcinkewicz v. Quattrocchi, 199 So. 3d 513, 515 (Fla. 3d DCA 2016). And it is the burden of the party seeking to invalidate the deed to prove that the grantor lacked capacity at the time the deed was executed. Id.; see also Parks v. Harden, 130 So. 2d 626, 628 (Fla. 2d DCA 1961) ("The burden rests on those seeking to set aside a deed on the ground of incapacity of the grantor at the time the instrument was executed."). Similarly, "a plaintiff who contests a conveyance on the ground of undue influence bears the burden of proof throughout the proceedings." Ballard v. Ballard, 549 So. 2d 1176, 1177-78 (Fla. 2d DCA 1989) (citing Carpenter v. Carpenter, 253 So. 2d 697, 700 (Fla. 1971)). "A deed may only be set aside on the grounds of undue influence if the party contesting the deed shows that the will of the grantor was overcome, depriving the grantor of free agency." Mulato v. Mulato, 705 So. 2d 57, 62 (Fla. 4th DCA 1997).

Here, it is apparent that the trial court improperly placed the burden on Ms. Drapp and Mr. Streiff. In entering judgment in favor of Mr. McDaniel, the court found that Ms. Drapp and Mr. Streiff "failed to present any credible explanation or reason why [Mr. McDaniel] would voluntarily and knowingly transfer his interest in the[] properties." As the party challenging the deed—whether under a theory of incapacity or undue influence—Mr. McDaniel bore the burden of proof.

Notwithstanding the trial court's error in assigning the burden of proof, the evidence was insufficient to establish incapacity or undue influence. The court found that Mr. McDaniel testified truthfully and credibly but was "mistaken" in his testimony that he did not sign the McDaniel-Drapp deed; that Mr. McDaniel "did not know the nature of the document he was being told to sign by [Ms.] Drapp" and signed the deed "at the direction of [Ms.] Drapp, who knew, or should have known, that Mr. McDaniel did not know what he was signing"; and that Mr. McDaniel was gravely ill, having been diagnosed with lymphoma, at the time he signed the deed. While competent substantial evidence supports the court's findings that Mr. McDaniel was suffering from the physical effects of lymphoma and its treatment and that Mr. McDaniel signed the McDaniel-Drapp deed, the remaining findings are unsupported. See Marcinkewicz, 199 So. 3d at 516; cf. Parks, 130 So. 2d at 628 ("Mere mental weakness will not authorize a court of equity to set aside a deed if it does not amount to inability to comprehend the effect and nature of the transaction and is not accompanied by evidence of imposition or undue influence." (citing Travis v. Travis, 87 So. 762, 763 (Fla. 1921))). There was no testimony that Mr. McDaniel's illness affected his mental capacity or that he was otherwise mentally incapable at the time he signed the deed. Notably, despite finding the testimony of the notary who witnessed Mr. McDaniel's signature to be highly credible, the trial court wholly disregarded the notary's testimony that at the time of the execution of the deed Mr. McDaniel—whom the notary personally knew—did not appear to be impaired in any form. Further, although the McDaniel-Drapp deed was unconventional in that it initially lacked a space for the grantor to sign the deed, testimony established that Mr. McDaniel was familiar with real estate transactions and

deeds, and the notary testified that it was he who instructed Mr. McDaniel on where to sign the deed.

The trial court made no findings of fact with regard to the alleged undue influence, and the evidence does not support that Mr. McDaniel was under "duress, force, coercion, or artful or fraudulent contrivances to such a degree that there [was] a destruction of [his] free agency and willpower." See Ballard, 549 So. 2d at 1178 (quoting Jordan v. Noll, 423 So. 2d 368, 370 (Fla. 1st DCA 1982)). Ms. Drapp's explanation for her involvement in Mr. McDaniel's affairs was reasonable, considering Mr. McDaniel's own testimony and his physical health. See Williamson v. Kirby, 379 So. 2d 693, 696 (Fla. 2d DCA 1980); see also Jordan v. Jordan, 601 So. 2d 287, 289 (Fla. 3d DCA 1992) (noting that only a "slight" or minimal explanation is sufficient to rebut the presumption of undue influence); Sun Bank/Miami, N.A. v. Hogarth, 536 So. 2d 263, 267 (Fla. 3d DCA 1988) (noting same).

Mr. McDaniel did not present sufficient evidence that he lacked the mental capacity to execute the deed at the time the McDaniel-Drapp deed was signed, nor did he present sufficient evidence that he was under duress or the undue influence of Ms. Drapp at the time he signed the deed. The trial court's legal conclusion that the deed was executed by Mr. McDaniel by mistake and through undue influence or fraud is simply unsupported.

Accordingly, we reverse the final judgment insofar as the trial court erred in declaring the McDaniel-Drapp deed void; on remand, the trial court shall enter judgment in favor of Ms. Drapp and Mr. Streiff as to the validity of the McDaniel-Drapp deed. As there was no challenge to the trial court's determination that the deeds

executed by Ms. Drapp as Mr. McDaniel's attorney-in-fact are void, judgment remains in favor of Mr. McDaniel as to the validity of those deeds.¹ On remand, the trial court shall also order immediate reinstatement of the McDaniel-Drapp deed and the subsequent deeds from Ms. Drapp and Mr. Streiff to South Florida Lending, as well as vacatur of the trial court's order directing that the McDaniel-Drapp deed and the subsequent deeds be sealed and removed from electronic databases used for indexing or locating instruments in the official records.²

Affirmed in part; reversed in part; remanded.

CASANUEVA and KELLY, JJ., Concur.

¹In the final judgment, the trial court made many findings and conclusions regarding claims not at issue and not otherwise tried by consent; those findings, including statements regarding South Florida Lending's status as a good faith purchaser and Mr. McDaniel's status as a "vulnerable adult," are not relevant to the court's invalidation of the deeds executed by Ms. Drapp as attorney-in-fact for Mr. McDaniel and therefore not subsumed within this court's affirmance in part of the final judgment.

²The McDaniel-Drapp deed was recorded in the official records of Pinellas County, Florida at Book 19781, Page 1802. The Drapp to South Florida Lending deed was recorded at Book 19781, Page 1852, and the Streiff to South Florida Lending deed was recorded at Book 19781, Page 1853.