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MEMBER

Mississippi Court Sets Aside Deed for Mental Incapacity

In a January 12, 2010 opinion, the Mississippi Court of Appeals ruled that a deed allegedly signed by Virginia Mapp was invalid due to her lack of capacity. The Court reviewed the legal elements of capacity to execute a valid deed and the specific facts which established a lack of such capacity in this particular case.

Virginia Mapp lived and maintained a home in Forest, Mississippi. Virginia was an owner and operator of a funeral home. In the summer of 2000, she was no longer allowed to drive, and in 2001 she moved to Jackson to live with her daughter, Marilyn. Marilyn testified that she moved her mother because Virginia was no longer able to stay by herself. While Marilyn was at work during the day, Virginia went to an assisted living center.

In July 2001, Virginia was taken to a neurologist for an evaluation of memory loss. After the initial evaluation, the doctor diagnosed Virginia with dementia Alzheimer's type, hypertension, and other infirmities. In his testimony, the doctor described dementia Alzheimer's type as a relentlessly progressive irreversible disease where the patient experiences difficulty with cognition or the ability to think, reason, and manage one's emotions. He testified that on each visit, Virginia showed progression of memory loss, and in January 2002, he recommended that a conservatorship be established for her. He based his recommendation on his evaluations within a reasonable degree of medical probability because Virginia had shown a significant progression of mental infirmity and was in need of protection.

In 2003, Virginia was continuing to decline and showed evidence of psychosis, paranoia, and sleep problems with insomnia. The physician prescribed Virginia antipsychotic medication and diagnosed her with sundowning, a condition in which the individual does fine during the daytime but becomes very agitated and restless during the nighttime. On one occasion, Virginia was admitted to the hospital because she could not be controlled at home. The doctor testified that during 2003 Virginia was overtly psychotic, delusional, out of contact with reality, very agitated, and not sleeping. He continued to treat Virginia until 2004.

On April 2, 2003, a quitclaim deed was filed with the chancery clerk of Scott County purporting to convey certain parcels of property located in Scott County, Mississippi, including the funeral home, from Virginia and Marilyn to Virginia's son, Will Frank Mapp, Jr. ("Will"). The deed contained the alleged signatures of Virginia and Marilyn (although there was question regarding the authenticity of Virginia's signature).

The chancellor found that Virginia lacked the mental capacity required to execute the deed and that Marilyn did not sign the deed. Therefore, the chancellor held that the deed was of no force and effect and did not transfer any property from Virginia and Marilyn.

There is a legal presumption that the grantor of a properly executed deed was mentally competent at the time of its execution. *McMaHan v. Webb*, 990 So. 2d 825, 827 (¶8) (Miss. Ct. App. 2008). Generally, in order to set aside a deed, it must be shown by clear and convincing evidence that the grantor lacked the mental capacity at the moment of execution to understand the legal consequences of his or her actions.

In Mississippi, three ways exist to establish the mental incapacity of a person to execute a deed: (1) the grantor suffered from a total lack of capacity to execute the deed (i.e., that the grantor did not understand the legal consequences of his or her actions); (2) the grantor suffered from a general “weakness of intellect” coupled with either (a) inadequate consideration given for the transfer or (b) a confidential relationship between the grantor and grantee; or (3) the grantor suffered from permanent insanity up to and after the date of execution. *Smith v. Smith*, 574 So. 2d 644, 653-54 (Miss. 1990).

At the time the deed was signed, Virginia had been diagnosed with Alzheimer’s disease for two years. It was noted that Virginia was having increased difficulty with her short-term recall, problems keeping a checkbook, and difficulty keeping up with day-to-day activities. At one point, she was hallucinating and had to be admitted to the hospital. Her physician testified that just a month before the deed was purportedly signed, Virginia was continuing to decline, and he placed her on anti-psychotic medications. However, the testimony of one of the heirs of Will Frank Mapp, Jr. was that one week before the deed was executed Virginia was perfectly normal. The chancellor chose to believe the testimony of her “eminently qualified neurologist” regarding Virginia’s mental incapacity. Therefore, the evidence supported the claim that Virginia lacked the mental capacity to sign any deed giving up her rights to any interest she may have had in the property.

Mapp v. Mapp, 2010 Miss.App. LEXIS 22 (January 12, 2010).

Full case: <http://www.mssc.state.ms.us/Images/HDLList/..%5COpinions%5CCO60399.pdf>

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