

5/20/97

IN THE COURT OF APPEALS

OF THE

STATE OF MISSISSIPPI

NO. 95-CA-00881 COA

IN THE MATTER OF THE ESTATE OF PERRY L. PRIDE: JOYCE BROCK PRIDE

APPELLANT

v.

TRACY ANN PRIDE, SUCCESSOR EXECUTRIX

APPELLEE

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. JAMES E. NICHOLS

COURT FROM WHICH APPEALED: WARREN COUNTY CHANCERY COURT

ATTORNEY FOR APPELLANT:

WREN C. WAY

ATTORNEYS FOR APPELLEE:

ROBERT R. BAILESS

KENNETH B. RECTOR

NATURE OF THE CASE: WILL CONTEST

TRIAL COURT DISPOSITION: TRIAL COURT UPHELD SETTLEMENT AGREEMENT
MADE BY WIDOW

MANDATE ISSUED: 6/10/97

BEFORE McMILLIN, P.J., DIAZ, AND SOUTHWICK, JJ.

SOUTHWICK, J., FOR THE COURT:

Joyce Pride entered into a settlement agreement with the executor of her deceased husband's estate. Joyce later sought to have this settlement agreement set aside. The chancellor upheld the agreement and Joyce appealed. Joyce argues that the settlement agreement is not valid because it was procured by use of duress, undue influence, misrepresentation and breach of a confidential relationship. She also argues that she is entitled to a vested one-half interest in her husband's estate because the will was renounced by operation of law. We disagree with these contentions and affirm.

FACTS

Joyce and Perry Pride were married on September 17, 1993. About that same day, Perry executed a Last Will and Testament. There were no children born of their marriage. Perry had a daughter, Tracy, by a previous marriage. Perry's Will provided that the entire estate would go to Tracy if she survived him, and if she did not, then Joyce was to receive one-half of the estate. Perry died exactly four months later, on January 17, 1994. Tracy survived him and, therefore, Joyce took nothing under the will. Paul R. "Ricky" Pride, Perry's brother, was the executor of the estate and Robert Bailess was selected as the attorney for the estate. Ricky Pride died shortly after the settlement agreement was entered into. Tracy was appointed Successor Executrix.

On January 24, 1994, Joyce and Bailess met to discuss the estate. Bailess told Joyce that she was entitled to remain in the decedent's home during her widowhood, provided she did not remarry. He also told her that she needed to find her own attorney to represent her interests in the estate. Joyce informed Bailess that all she wanted from the estate was the house. After consulting with a different attorney and her father, Joyce decided to sell her interest in the house rather than go through the expenses of keeping it up. The executor offered to pay Joyce \$45,000.00, an automobile and other personal property for her interest in the house and any other claim she had to the estate. Joyce accepted this offer and executed an agreement to that effect. Joyce entered into the agreement without making any inquiry into the value of the estate.

The agreement provided that Joyce would "quitclaim and convey" to the estate "all of her right, title and interest in and to all other Mississippi real property and all Arkansas real property" owned by the decedent. Bailess explained this agreement to Joyce and her father. Joyce was paid \$12,500.00 as required by the agreement and was given the quitclaim deeds relating to properties in Mississippi and Arkansas that she was required to execute pursuant to the settlement agreement. However, instead of signing these deeds as she had agreed, Joyce took them to her attorney. The decision was apparently made to try to repudiate the settlement.

A petition was filed to close the estate and to obtain declaratory relief enforcing the settlement agreement entered into by the executor and Joyce. Joyce filed an objection to this petition claiming that the settlement agreement should be nullified because it was procured by the use of duress, undue influence, misrepresentation, and breach of confidential relationship. Joyce also requested that she be awarded one-half of the estate assets. After hearing testimony on the matter, the trial court overruled Joyce's objection and upheld the settlement agreement. Joyce appealed.

DISCUSSION

1. What Duties did the Executor and Estate's Attorney Owe to Mrs. Pride?

Joyce's first three issues all concern what the executor should have done regarding the settlement agreement. She argues that the executor of the estate stood as a fiduciary not only to the beneficiaries named in the will, but also to the heirs and all other persons having an interest in the estate, including her. Next, she argues that the executor favored one heir over another, i.e., favored the beneficiary named in the will over the widow. Finally, it is alleged that the settlement agreement required court approval.

Of course, Joyce was not a beneficiary of the estate and her interests conflicted with those of the beneficiaries, i.e., a widow's right to renounce would limit the property received by other beneficiaries. Joyce had been told by the estate's attorney that he could not represent her interests. As a result Joyce was told that she should obtain her own attorney for advice about the estate. Although Joyce consulted with an attorney, she decided to follow the advice of her father instead. The executor had instructed the attorney for the estate to give Joyce any information she requested, but Joyce never requested further information before signing the agreement. There is no claim that anyone for the estate failed to disclose information that was requested. Joyce argues that there was a duty to warn her of the impact of her decision.

Joyce relies on statutory language that an executor is required "to manage the assets of the estate for the best interest of those concerned, consistent with the will and according to law." Miss. Code 91-7-47. She contends that this means that the executor had a duty to act in her best interest regardless of the wording of the will because she is included in "those concerned."

The rights and duties of an executor are these:

Every executor or administrator with the will annexed, who has qualified, shall have the right to the possession of all the personal estate of the deceased, unless otherwise directed in the will; and he shall take all proper steps to acquire possession of any part thereof that may be withheld from him, and shall manage the same for the best interest of those concerned, consistently with the will, and according to law. He shall have the proper appraisements made, return true and complete inventories except as otherwise provided by law, shall collect all debts due the estate as speedily as may be, pay all debts that may be due from it which are properly probated and registered, so far as the means in his hands will allow, shall settle his accounts as often as the law may require, pay all the legacies and bequests as far as the estate may be sufficient, and shall well and truly execute the will if the law permit. He shall also have a right to the possession of the real estate so far as may be necessary to execute the will, and may have proper remedy therefor.

Miss. Code Ann. 91-7-47 (1972). "One serving in the capacity of executor or administrator is an officer of the Court and holds a fiduciary relationship to all parties having an interest in the estate." *Holloway v. Holloway*, 631 So. 2d 127, 133 (Miss. 1993). The executor had a duty to protect the interests of the beneficiary Tracy. The will defined the class of beneficiaries, and it was smaller than the list of heirs. The former was the category to whom the executor owed his fiduciary duties. We

find in the statutes and case law no obligation for an executor to inform a widow or any other person of a right they may have to renounce or contest the will. The executor's duty did not permit misleading Joyce, but the duty was fulfilled by advising Joyce that she should seek separate counsel. She took that advice, but now complains about the effect of it.

Even were we to find that an executor owes a fiduciary duty to a widow who is only mentioned in the will and is not receiving property, the unavoidable conflict of interest that arises would require the executor to take steps much like the executor did here. Bailess, as attorney for the estate could not give legal advice to Tracy and to Joyce. Since Tracy was the beneficiary under the will it was necessary for Bailess to advise her. From the beginning he counseled Joyce to seek legal advice elsewhere. There is little else he could do.

2. Renunciation of Will by Operation of Law

A statute provides that if one spouse's will does "not make any provision for the other," there is no necessity for an affirmative renunciation. Miss. Code 91-5-27. Though it seems logical to conclude that this will made no "provision" for Joyce, we need not decide whether a widow's being mentioned in the will and having a contingent interest constitutes "provision" for purposes of this statute. Even if the will was automatically renounced, the settlement agreement entered into after the death of the testator waived any other rights Joyce might have had.

Joyce entered an arms length contract, stating that the terms of that agreement were satisfactory. That was not an illegal contract. Section 91-5-27 does not somehow give here an unwaivable claim. As discussed above, this agreement was freely entered into. The chancellor found

no coercion, misrepresentation, nor undue influence on the executor's part. The agreement ended any question of automatic renunciation.

**THE JUDGMENT OF THE CHANCERY COURT OF WARREN COUNTY IS AFFIRMED.
ALL COSTS ARE ASSESSED TO THE APPELLANT.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING,
HINKEBEIN, KING, AND PAYNE, JJ., CONCUR.**