

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

NUMBER 2006 CA 0558

LIBBY MARIE PHILLIPE

VERSUS

YVONNE BAKER

Judgment Rendered: March 28, 2007

J.E.K.
J.E.K. by [signature]

Appealed from the Twenty-first Judicial District Court
in and for the Parish of Livingston
State of Louisiana
Docket Number 105,813

Honorable M. Douglas Hughes

Todd E. Gaudin
Baton Rouge, LA

Counsel for Plaintiff/Appellant
Libby Marie Phillipe

A. Wayne Stewart
Baton Rouge, LA

Counsel for Defendant/Appellee
Yvonne Baker

BEFORE: KUHN, PETTIGREW, DOWNING, HUGHES, AND
WELCH, JJ.

Downing, J. dissents and assigns reasons.
Welch, J., concurs. by [signature]

HUGHES. J.

Plaintiff appeals a trial court judgment rendered in favor of defendant dismissing her action to nullify a donation *inter vivos*. For the following reasons, we reverse and render.

FACTUAL AND PROCEDURAL HISTORY

For approximately 15 years, Libby Marie Phillipe and Yvonne Baker lived as roommates in a home owned by Ms. Phillipe. Ms. Baker never paid any rent. Ms. Phillipe, who is hearing disabled, came to depend on her a great deal. Over the years, however, Ms. Baker became increasingly domineering toward Ms. Phillipe and began to physically and verbally abuse her. Due to Ms. Phillipe's resultant fear, she finally had Ms. Baker evicted from her home in August 2004. Ms. Phillipe subsequently instituted legal proceedings seeking, among other things, to nullify a donation of immovable property she had made to Ms. Baker.¹ Ms. Phillipe alleged that the donation was null because it had been fraudulently procured by Ms. Baker.

Ms. Phillipe's claims were tried in October of 2005. According to the testimony adduced at trial, Ms. Phillipe received monthly social security or SSI benefits (benefits) because of her hearing impairment. Ms. Phillipe testified that in about 2002, she mentioned her intention to purchase a second home for investment purposes to Ms. Baker. It was Ms. Phillipe's desire to rent the second home to obtain additional income. Ms. Baker told her that she could not put the new home in her name because it would result in the discontinuation of her benefits. Rather, Ms. Baker convinced her to put the home in Ms. Baker's name, via a donation *inter vivos*, to avoid jeopardizing her entitlement to benefits.

¹ Other claims asserted by Ms. Phillipe are not germane to this appeal.

Ms. Phillipe testified that she trusted and relied upon Ms. Baker's intelligence "in this area." It was not Ms. Phillipe's intention to donate the home to Ms. Baker; rather, to maintain her benefits, she just wanted to place the property in "her name." At the signing, Ms. Phillipe did not understand the language of the act of donation or its ramifications. There was no American Sign Language interpreter present to explain the document to her. Ms. Baker, the beneficiary of the act, served as Ms. Phillipe's interpreter, although she was not qualified to do so.

When Ms. Phillipe's attorney questioned her at trial as to whether her benefits indeed would have been discontinued, as had been represented by Ms. Baker, opposing counsel objected on the basis of relevance. After the trial court sustained the objection, it allowed Ms. Phillipe to proffer her testimony. The substance of Ms. Phillipe's proffered testimony was that she subsequently learned that Ms. Baker had lied to her about the termination of her benefits. Ms. Phillipe stated that had she known the truth, she never would have executed the donation.

At the conclusion of the trial, the court rendered judgment in favor of Ms. Baker, finding that Ms. Phillipe had failed to satisfy her burden of proof. From this judgment, Ms. Phillipe now appeals.

DISCUSSION

In her first assignment of error, Ms. Phillipe argues that the trial court made an erroneous evidentiary ruling when it excluded her testimony regarding the truthfulness of Ms. Baker's representation regarding the termination of her benefits. She contends that this evidentiary error requires this court to review the record *de novo* rather than simply applying the manifest error standard of review to the trial court's judgment.

Generally, a trial court is granted broad discretion in its evidentiary rulings. **Duzon v. Stallworth**, 2001-1187, p. 20 (La.App. 1 Cir. 12/11/02), 866 So.2d 837, 854 writs denied, 2003-0589 & 2003-0605 (La. 5/2/03), 842 So.2d 1101 & 1110. According to LSA-C.E. art. 103A, “[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected.” The proper inquiry for determining whether a party was prejudiced by a trial court's alleged erroneous ruling is whether the alleged error, when compared to the entire record, had a “substantial effect” on the outcome of the case. **Arabie Bros. Trucking Co. v. Gautreaux**, 2003-0120, p. 13 (La.App. 1 Cir. 8/4/04), 880 So.2d 932, 942, writ denied, 2004-2481 (La. 12/10/04), 888 So.2d 846. The party alleging prejudice by the evidentiary ruling of the trial court bears the burden of so proving. **Emery v. Owens-Corporation**, 2000-2144, p. 7 (La.App. 1 Cir. 11/9/01), 813 So.2d 441, 449, writ denied, 2002-0635 (La. 5/10/02), 815 So.2d 842.

It is Ms. Phillipe’s contention that the donation was a product of Ms. Baker’s fraudulent representation that Ms. Phillipe would lose her benefits. Because LSA-C.C. art. 1953 defines “fraud” as “a misrepresentation or a suppression of the truth,” we agree with Ms. Phillipe’s position that when a statement has been alleged to be fraudulent, the trial court must necessarily consider the accuracy and objective truthfulness of the statement. Therefore, it was error for the trial court to exclude evidence regarding the statement’s veracity. Moreover, the exclusion of this testimony had a substantial effect on the outcome of this case since it interdicted the fact-finding process on a material issue and exhibited the trial court’s legal error in failing to consider the relevant law.

When the trial court has committed prejudicial evidentiary error, the manifest error standard is no longer applicable, and, if the record is otherwise complete, the appellate court must make its own independent *de novo* review of the record and determine which party should prevail. **Ferrell v. Fireman's Fund Ins. Co.**, 94-1252, p. 4 (La. 2/20/95), 650 So.2d 742, 747; **McLean v. Hunter**, 495 So.2d 1298, 1304 (La. 1986); **Wright v. Bennett**, 2004-1944, p. 6 (La.App. 1 Cir. 9/28/05), 924 So.2d 178, 182. After reviewing the record *de novo*, we find that the uncontroverted evidence supports judgment in favor of Ms. Phillipe.²

A donation *inter vivos* is an act by which the donor divests himself, at present and irrevocably, of the thing given, in favor of the donee who accepts it. LSA-C.C. art. 1468. Donations of immovable property must be made by authentic act. LSA-C.C. Art. 1536. Although the donation may be valid as to form, the substantive requirements of a divestment and donative intent must be fulfilled in order to effect a valid donation. **Rose v. Johnson**, 2006-518, p. 4 (La.App. 3 Cir. 9/27/06), 940 So.2d 181, 184.

Thus, in order to have a valid donation, it must appear that the donor had the intent to divest himself of his property. This intent is an invisible thing existing only in the donor's mind; however, where an authentic act is required, the intent can be inferred from the execution of the authentic act. **Anderson v. Aetna Life & Cas.**, 535 So.2d 1070, 1073 (La.App. 2 Cir. 1988), writ denied, 536 So.2d 1256 (La. 1989). The general rule is that an authentic act is full proof of the agreement contained in it against the contracting parties. However, extrinsic evidence admitted without objection,

² The facts surrounding the donation at issue were not contested, although the record does not contain a copy of said donation. The defendant was represented by counsel who filed an exception of prescription and appeared at trial, but no answer was filed and the defendant did not appear at trial. The existence of the donation was never contested and is not an issue on appeal. The defendant did not file an appellate brief in this court.

as well as parol evidence that is admissible when a party claims an act was executed through fraud, may be considered in determining donative intent. See Anderson, 535 So.2d at 1073.

There is absolutely no evidence that Ms. Phillippe had an altruistic desire to make a gift to Ms. Baker; quite the contrary. She plainly stated that she did not intend to donate the second home. Her testimony is substantiated by the fact that subsequent to the donation, the property was rented to various people in accordance with her original plan. Furthermore, there is no evidence that Ms. Baker ever moved into the home, even after she was evicted from Ms. Phillippe's primary residence. Thus, the undisputed parol evidence in this case establishes that Ms. Phillippe lacked the necessary donative intent.

Moreover, even if we were to find the requisite intent, the record nonetheless supports the conclusion that the subject donation was procured through fraud and/or undue influence. Pursuant to LSA-C.C. arts. 1478 and 1479, a donation *inter vivos* shall be declared null upon proof that it was the product of fraud, duress, or undue influence. A person who challenges a donation because of fraud, duress, or undue influence, must prove it by clear and convincing evidence. However, if at the time the donation was made or the testament executed, a relationship of confidence existed between the donor and the wrongdoer and the wrongdoer was not then related to the donor by affinity, consanguinity or adoption, the person who challenges the donation need only prove the fraud, duress, or undue influence by a preponderance of the evidence. LSA-C.C. art. 1483. It is uncontested that a relationship of confidence existed between the unrelated parties herein. Thus, Ms. Phillippe's burden is simply that of a preponderance of the evidence.

To establish fraud, a party must prove the intent to defraud or gain an unfair advantage and a resulting loss or damage. LSA-C.C. art. 1953. In the analogous case of **Mack v. Evans**, 35,364, pp. 3-5 (La.App. 2 Cir. 12/5/01), 804 So.2d 730, 733-34, writ denied, 2002-0422 (La. 4/19/02), 813 So.2d 1088, Ms. Mack, who was mentally ill, sought to nullify a donation to her sister based on fraud. Ms. Mack claimed that her sister had tricked her into believing that she had to donate her interest in real estate she inherited from their parents in order to qualify for supplemental security income benefits. The court ultimately found that Ms. Mack's sister possessed the requisite intent to defraud based upon Ms. Mack's unequivocal testimony that her sister had misled her to believe it was necessary to make the donation in order to qualify for benefits. Additionally, it determined that in relinquishing her ownership interest in the property, Ms. Mack had suffered a resulting loss. Therefore, the court concluded "that the donation was confected fraudulently" and was therefore null.

Likewise, in the instant case, the evidence presented at trial clearly shows that Ms. Phillipe suffered a resulting loss or damage in that she relinquished her ownership interest in the home. Additionally, Ms. Phillipe testified unequivocally that Ms. Baker lied to her and misled her to believe that her benefits would be terminated. This uncontroverted testimony supports a finding that Ms. Baker had the necessary intent to defraud or gain an unfair advantage.

Moreover, circumstantial evidence, including highly suspicious facts and circumstances surrounding a transaction, may be considered in determining whether fraud has been committed. **Sun Drilling Products Corp. v. Rayborn**, 2000-1884, p. 16 (La.App. 4 Cir. 10/3/01), 798 So.2d 1141, 1153, writ denied, 2001-2939 (La. 1/25/02), 807 So.2d 840. In the

case *sub judice*, we find it highly suspect that the donee, Ms. Baker, acted as Ms. Phillippe's interpreter when they executed the act of donation. Ms. Phillippe clearly did not understand the language in the document and had to rely upon Ms. Baker's explanations, despite the fact that Ms. Baker had neither legal nor sign language training. Thus, we conclude that a preponderance of the evidence indicates that the donation was fraudulent.³

Finally, LSA-C.C. art. 1479 reprobates a donee's exercise of undue influence over a donor. To prove that a donation was the product of undue influence, a party must demonstrate that the donor's "volition" or free will was replaced by the will of someone else. LSA-C.C. art. 1479. The record amply demonstrates that, although Ms. Phillippe feared Ms. Baker, she also depended on her. Because she considered Ms. Baker intelligent in such matters, Ms. Phillippe believed Ms. Baker's statement that unless she donated the home, she would lose her benefits. Furthermore, Ms. Phillippe was unable to comprehend the language in the act of donation and due to her hearing disability had to rely on Ms. Baker's representations. See Kraus v. Wheat, 2003-0393, pp. 5-7 (La.App. 4 Cir. 9/3/03), 856 So.2d 45, 49-50, writ denied, 2003-2729 (La. 12/19/03), 861 So.2d 569. Considering Ms. Baker's constant berating of Ms. Phillippe and Ms. Phillippe's fear, it was unlikely that Ms. Phillippe would question her. Hence, the uncontested evidence establishes that the donation was a result of Ms. Baker's undue influence.

³ Pursuant to LSA-C.C. art. 1954, fraud does not vitiate consent when the party against whom the fraud was directed could have ascertained the truth without difficulty, inconvenience, or special skill; however, this exception does not apply when a relation of confidence has reasonably induced a party to rely on the other's assertions or representations. As previously noted, it is uncontested that a relationship of confidence existed between the parties. Therefore, the exception is not applicable.

CONCLUSION

For all of the foregoing reasons, Ms. Phillipe is entitled to have the donation annulled. Accordingly, the judgment of the trial court is reversed and judgment is hereby rendered in favor of Libby Marie Phillipe, nullifying the donation *inter vivos* to Yvonne Baker of immovable property located at 15085 Haynes Road, Maurepas, Louisiana, 70449. All costs of this appeal are assessed to Yvonne Baker.

REVERSED AND RENDERED.

STATE OF LOUISIANA
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LIBBY MARIE PHILLIPE
VERSUS
YVONNE BAKER

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RRD
Downing, J. dissents.

Ms. Phillipe's testimony is that she intended to commit fraud so she put property in someone else's name. Now she wants to cancel the donation because it was misrepresented to her that she needed to commit fraud.

The majority thereafter says that the evidence was "uncontested." The trial court is the judge of credibility. Once a person says, "I am a cheat but I want you to believe me now," the trial judge, and only the trial judge, can decide whether to believe anything said after that. The evidence may not be contested but the evidence is still not credible and the trial judge may disregard it.