

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA
COURT OF APPEAL
FIRST CIRCUIT

NUMBER 2014 CA 1296

IN THE MATTER OF THE INTERDICTION OF
PATRICIA ANN GERWIG FOSTER

Judgment Rendered: MAR 06 2015

Appealed from the
Twenty-First Judicial District Court
In and for the Parish of Livingston
State of Louisiana
Docket Number 143770

The Honorable Robert H. Morrison, III, Judge Presiding

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BEFORE: WHIPPLE, C.J., McCLENDON, AND HIGGINBOTHAM, JJ.

WHIPPLE, C.J.

In the matter before us, Patricia Ann Gerwig Foster appeals a judgment of full interdiction. For the reasons that follow, we affirm.

BACKGROUND FACTS AND PROCEDURAL HISTORY

On January 8, 2014, Mrs. Foster's husband, Billy Joe Foster, filed a petition for the interdiction of Mrs. Foster, who was then 68 years old, alleging therein that the interdiction was necessary due to the progressive deterioration of Mrs. Foster's mental and physical state since she suffered a brain aneurysm, which ruptured during surgery on May 24, 2012. According to the petition, as a result of the aneurysm rupture, Mrs. Foster was diagnosed with brain injury, significant cognitive impairment, intellectual impairment, and preliminary indications of dementia. In the petition, Mr. Foster alleged that since her brain injury, Mrs. Foster has undergone dramatic personality changes and has significant memory loss, particularly with short-term memory, and cited incidents where she made decisions using poor judgment, which placed her safety and life at risk. He further alleged that according to Mrs. Foster's physicians, her diagnosis renders her unable to care for her person without substantial assistance, and that due to the cognitive impairments she suffered, that she is unable to care for or make sound decisions concerning her healthcare, finances, personal affairs and business obligations and that she is unable to administer her own medication.

Accordingly, Mr. Foster requested a full interdiction, noting that a limited interdiction would be inappropriate given her current physical and mental incapacity and the fact that her incapacity will not improve. Mr. Foster averred that it was not foreseeable that Mrs. Foster could attend to her person or affairs at this time or in the foreseeable future, thus necessitating a full interdiction. Mr. Foster sought an order of temporary interdiction and his appointment as her

temporary curator pending a hearing on the matter, which was granted by the trial court.

Mrs. Foster, through her personally retained counsel, filed an answer and reconventional demand seeking revocation of the temporary orders and other relief. Specifically, she requested an order that Mr. Foster continue to provide medical insurance for her, a temporary restraining order enjoining Mr. Foster from disposing of any of the community assets, the appointment of an independent appraiser and forensic accountant, and the appointment of an independent medical examiner.¹ The trial court subsequently ordered an independent medical examination, issued a temporary restraining order, and revoked the temporary interdiction of Mrs. Foster and appointment of Mr. Foster as temporary curator, pending a hearing on the matters.

Trial was held on June 2 and June 4, 2014. At the conclusion of the trial, after hearing the testimony of Mrs. Foster's husband, three sons, and siblings, the trial court granted the full interdiction of Mrs. Foster, specifically noting that he did not "want [her to have] the ability to engage in contracts." A judgment granting the petition for full interdiction, appointing Mr. Foster as curator, appointing her son, Lawrence Douglas Foster, as under-curator, and ordering specific limitations and conditions of her interdiction² was signed on June 4, 2014.

¹Mrs. Foster also urged exceptions of insufficiency of service of process, vagueness or ambiguity, and non-joinder of a party, all of which were denied by the trial court and are not before us in this appeal.

²The judgment provided that:

(A) The Interdict shall continue to reside at the La Plantation facility, or at some similar facility, which provides 24 hour [sic] emergency call facilities from her room, and that has provisions for supervised administration of all of her medications.

(B) The Interdict shall not operate any vehicle on the streets or highways unless and until she has been certified as capable to operate a vehicle, and licensed by the State of Louisiana.

Mrs. Foster then filed the instant appeal³ from the judgment of the trial court contending that the trial court erred in ordering a full interdiction, rather than a limited interdiction or other less restrictive means of oversight.

DISCUSSION

A court may order the full interdiction of a natural person of the age of majority, or an emancipated minor, who due to an infirmity, is unable consistently to make reasoned decisions regarding the care of his person and property, or to communicate those decisions, and whose interests cannot be protected by less restrictive means. LSA-C.C. art. 389. Full interdiction is a last resort and, as a result, is warranted only when a person's interests cannot be protected by less restrictive means such as limited interdiction or a procuration, mandate, or trust. If the court determines that less restrictive means can protect the defendant's interests, the court should deny full interdiction. LSA-C.C. art. 389, Revision Comments – 2000, comment (e). If a person is consistently unable to make reasoned decisions regarding the care of both his person and his property, or to communicate those decisions, he is a candidate for full

(C) The Curator shall pay to the Interdict a regular, reasonable allowance for payment of her incidental expenses.

(D) The Interdict shall be offered access to physical and occupational therapy, and such other medical and psychological services to attempt to improve her physical and mental state, so long as she actively seeks and participates in this therapy, and that it provides improvement in the opinion of her health care providers.

(E) This judgment is subject to modification or termination in the future, as provided in Civil Code article 397 and Code of Civil Procedure Article 4554, if a proper showing is made in accordance with law.

(F) The Curator shall have seven (7) days in which to file an inventory and security as provided by law.

³Prior to the commencement of trial, the trial court deferred ruling on Mrs. Foster's reconventional demand, noting that if the reconventional claims were not rendered moot by his decision on the main demand, another hearing could be held if necessary. The trial court's judgment was silent as to the claims set forth in the reconventional demand. Generally, silence in a judgment as to any claim before the trial court is considered a denial of those claims. Satsuma Pentecostal Church v. Harris, 563 So. 2d 1247, 1251 (La. App. 1st Cir. 1990). In the event that the trial court did not consider the claims set forth in the reconventional demand, a final judgment is rendered when the court signs a judgment on either the principal or incidental demand, when the two have been tried separately as provided in LSA-C.C.P. art. 1038. LSA-C.C.P. art. 1915(A)(4). Thus, in either circumstance, this court has proper appellate jurisdiction.

interdiction. LSA-C.C. art. 390, Revision Comments - 2000, comment (b). A person is unable consistently to make reasoned decisions if, for example, he suffers from an infirmity which intermittently deprives him of reason. A person who experiences periodic deprivations of reason can inflict substantial harm to himself or his property during such bouts and is a candidate for full interdiction. In short, that a person suffering from an infirmity may experience lucid intervals does not render him ineligible for full interdiction. LSA-C.C. art. 389, Revision Comments – 2000, comment (d).

The effects of an interdiction are such that a full interdict lacks capacity to make a juridical act. A limited interdict lacks capacity to make a juridical act pertaining to property or aspects of personal care that the judgment of limited interdiction places under the authority of his curator, except as provided in Article 1482 or in the judgment of limited interdiction. LSA-C.C. art. 395.

The petitioner in an interdiction proceeding bears the burden of proof by clear and convincing evidence. LSA-C.C.P. art. 4548. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly wrong. Stobart v. State, Department of Transportation and Development, 617 So. 2d 880, 883 (La. 1993). The trial court may accept or reject, in whole or in part, uncontradicted opinions expressed by an expert as to the ultimate facts, based upon the other evidence admitted at trial. Interdiction of DeMarco, 2009-1791 (La. App. 1st Cir. 4/7/10), 38 So. 3d 417, 424.

Dr. Bradley L. Meek, an internist and Mrs. Foster's primary care physician, testified that Mrs. Foster had impaired mental functioning as a result of the ruptured aneurysm, that she suffered from short-term memory loss, and that her thought process was slow. He did not think that her short-term memory would improve and he was treating her for attention deficit related to her stroke. He explained that her memory loss is attributed to an organic brain problem in

that the scar tissue or damage from the stroke has led to a decreased mental capability and capacity. He further testified that she has developed a new and obsessive irrational behavior in addition to her short-term memory loss. He testified that physically, she has significant balance issues resulting in falls and problems ambulating, which he did not think were going to significantly improve in the near future. In his opinion, Dr. Meek did not think that Mrs. Foster was capable of making decisions concerning her health care and medication administration, in making decisions regarding her personal care in terms of independent living and activities of daily life without assistance, or in making sound and reasonable decisions regarding finances, including the expenditure and investment of money.

Dr. Jessica L. Brown, a medical psychologist who began treating Mrs. Foster after her brain hemorrhage, testified that Mrs. Foster had difficulty managing her impulses and in the context of judgment. As an example, Dr. Brown testified that Mrs. Foster admitted that on two different occasions she opened the door to a moving vehicle in which she was a passenger and threatened to jump from the car. Dr. Brown testified that Mrs. Foster's judgment is limited and that she does not initiate in a way they would want her to initiate to be able to reasonably accommodate for those limitations. She likewise testified as to Mrs. Foster's short-term memory deficit and cognitive limitations.

Dr. Brown testified that Mrs. Foster had developed an obsession with a man she had known over fifty years ago and that she could not rationally make the connection that she would be placing herself at risk if she tried to pursue the obsession without support. Dr. Brown opined that Mrs. Foster's obsessional interest and impulse control problems were symptoms of a psychological disturbance from the brain bleed and brain injury she had sustained, in that her

history revealed that she had been a very stable person for at least two decades prior to these events. Dr. Brown opined that Mrs. Foster's obsession was so illogical that it had a delusional quality to it and, thus, she began to treat Mrs. Foster for delusional behavior. Dr. Brown testified that Mrs. Foster had clear cognitive limitations regarding her thought processes.

Dr. Brown further testified that she did not think that Mrs. Foster could live independently in an apartment unit by herself. Dr. Brown related that Mrs. Foster never showed an interest in administering and managing her medications, telling Dr. Brown to "tell that to my husband" when the subject arose. Based upon her knowledge of Mrs. Foster's medical condition, Dr. Brown did not feel that Mrs. Foster was capable of consistently making reasoned decisions regarding her health care. Dr. Brown opined that, considering Mrs. Foster's judgment and impulse-control issues with regards to money management, as well as her inability to consistently exercise sound judgment, Mrs. Foster clearly would need assistance in managing medications, making complex health care decisions, and in managing her finances so that she could retain sufficient resources to live on the rest of her life.

Dr. William Gouvier, an expert in the field of clinical psychology and neuropsychology, was appointed by the trial court to perform an independent evaluation of Mrs. Foster. After evaluating Mrs. Foster, Dr. Gouvier noted her deficits in memory and attention and testified that Mrs. Foster meets the criteria for dementia. Dr. Gouvier also did not believe that Mrs. Foster would be able to live independently. He testified that her attention deficit was a significant source of her being disabled, noting that even a moment's inattention can be hazardous in certain environments. He opined that she would need assistance in scheduling and making her medical appointments, managing her own medication, and handling her financial affairs. Dr. Gouvier concluded that Mrs.

Foster struggles with cognitive overload and that, although she has the capacity to recognize her own deficits, her capacity is less than full. According to Dr. Gouvier, Mrs. Foster's lack of recognition of her own deficits was troubling. He diagnosed her with "anosognosia," which he defined as her not knowing what she does not know. Based on his evaluation, Dr. Gouvier did not feel that the court should allow her to make all of her own decisions and ultimately recommended a limited interdiction with the appointment of a curator who was not a family member, since she gave him the impression that her family prevented her from being able to do the things that she used to do before her brain injury.

Mrs. Foster's three sons, Billy Joe Jr., William, and Lawrence also testified at trial. All three testified that since her brain injury, their mother's behavior changed drastically in that she has exhibited an onset of memory impairment, cognitive limitations, and impulsiveness, all resulting in her making decisions in which she placed her well-being and safety in danger, as well as the safety of others. As support for the conclusion that their mother suffered impulse-control problems, they described various incidents, including one where she drove her motorized scooter on a state highway to go to a store to buy cigarettes, another where she drove a vehicle unaccompanied and against her physicians' recommendations, and another where she took a cab to the airport to fly to Dallas to see the man about whom she had been illogically obsessing, despite the fact she had not seen or heard from him in over fifty years.

Mrs. Foster's brother, Donnie Lee Lassey, testified that Mrs. Foster is not the same person that she was before the aneurysm ruptured. He described her as being irrational and stated that Mr. Foster has always taken care of Mrs. Foster and has done what is best for her. Mrs. Foster's sister, Mary Anne

Foster, testified that Mrs. Foster wants to do things that are inappropriate and that she was "kind of . . . off the deep end." She described her as angry and noted that she has absolutely no patience. She testified that she was concerned about Mrs. Foster and that harm would come to her, and thought that she had undergone a personality change. He stated that there has been a drastic change in her outlook since her aneurysm ruptured. Mr. Lassey also testified that Mr. Foster was a doting husband.

Mr. Foster testified that the interdiction process is driven by the family's desire to make sure that they can continue to provide good medical support and care, housekeeping, and financial care for Mrs. Foster. He stated that having her interdicted was not something that he wanted to do, but he felt that legally, he had to in order to ensure that he could provide the assistance she requires. Mr. Foster gave numerous examples of Mrs. Foster's irrational behavior with reference to herself and her finances, and gave examples of her general confusion. He noted that since her brain injury, even while Mrs. Foster was living at home and thereafter when she moved to La Plantation assisted living facility, he had scheduled all of Mrs. Foster's medical appointments, refilled her medications as needed, performed CNA⁴ duties in caring for Mrs. Foster's medical needs, and provided for her financially. Mr. Foster testified that he spent his entire adult life making sure that Mrs. Foster received the care and help that she needed, especially in the last two years since her brain injury. Mr. Foster testified that he intended to set up an irrevocable trust, so that if something happened to him, their money would be dedicated to take care of Mrs. Foster.⁵

⁴A "CNA" is a certified nurse assistant.

⁵The cost of Mrs. Foster's care was approximately \$4,500.00 per month at the time of trial.

Mrs. Foster acknowledged her obsession with the man in Texas and past gambling addiction, as well as problems with her short-term memory. She explained that since her brain injury, her condition is very confining and that she feels like her whole life has been taken away from her in that she cannot drive a vehicle or do the things that she used to do before the brain injury. She testified that she would like to regain her mobility and driving privileges and "be back to normal." However, when asked what medications she was currently taking, she responded, "There's a list of them. I couldn't tell you all of them. My husband keeps track of all of that." Mrs. Foster was also unaware of how much it cost for her to stay at La Plantation each month.

We have carefully reviewed the record in this matter, which is replete with expert and lay testimony and demonstrates that Mrs. Foster: (1) is incapable of consistently making sound reasoned decisions; (2) ignored the advice of her physicians; (3) was unable to understand her own condition and limitations; and (4) engaged in conduct that placed herself and others at risk. The general consensus among Mrs. Foster's family members was that the interdiction was required to prevent her from harming herself or others and was necessary for her own well-being and protection. Although Mrs. Foster concedes that she needs assistance with medical and financial matters and contends on appeal that a limited interdiction would be more appropriate herein, there is nothing in the record to rebut the significant evidence of her limitations or to show whether less restrictive means would be available or serve any useful purpose, given her physical and mental limitations.

Louisiana Civil Code article 389 provides that "[a] court may order the full interdiction of a natural person ... who ... is unable **consistently** to make reasoned decisions regarding the care of his person and property, ... and whose interests cannot be protected by less restrictive means." In this matter, the trial

court found that a full interdiction was warranted and less restrictive means were not available or appropriate. The determination of whether to order interdiction is a factual finding, which cannot be set aside in the absence of manifest error or a clearly wrong determination. Interdiction of DeMarco, 38 So. 3d at 426. Given the record before us on review, we are unable to say that the trial court was manifestly erroneous in its determinations. Instead, we find a reasonable basis exists in the record to support its findings. The evidence introduced at trial clearly satisfies the requisite standard of clear and convincing proof and fully supports the trial court's determination that, considering the circumstances herein, a full interdiction was appropriate and warranted.

Accordingly, we find no merit to the assignment of error.

CONCLUSION

For the above and foregoing reasons, the June 4, 2014 judgment of the trial court is hereby affirmed. Costs of this appeal are assessed to the appellant, Patricia Ann Gerwig Foster, and are to be paid by her curator, Billy Joe Foster, out of the interdict's funds under his control.

AFFIRMED.