

Nurse As Beneficiary Of Patient's Will: Nurse Found Guilty Of Undue Influence, Will

“Testator” is the legal term for a person who make a post-mortem distribution of property through a will.

A will is invalid if anything, such as undue influence, destroyed the testator's freedom of choice.

Undue influence means, in essence, that the wishes of another person were wrongfully substituted for the wishes of the testator.

Undue influence is presumed when a person listed as a beneficiary of a will occupied a confidential relationship with the testator, was not a natural object of the testator's bounty and took an active part in the planning, preparation and/or signing of the testator's will.

If the court sees the need to presume there was undue influence from the beneficiary's unusual and close relationship with the testator, the beneficiary has the very difficult legal burden of proof to establish that he or she did not exert undue influence.

When a will is declared invalid by a court, the deceased's property passes to the children or siblings as if there was no will.

SUPREME COURT OF GEORGIA
May 19, 2008

Members of the elderly patient's family hired a full-time live-in nurse to take care of him in his home after surgery for an aneurysm and a leg amputation.

The nurse was the sister of the patient's deceased wife's brother's wife.

Over time the nurse's sister and brother-in-law who had hired her began taking steps to keep the patient's daughter and granddaughters from visiting.

The nurse, her sister and her brother-in-law set up a meeting with the brother-in-law's attorney to have the patient sign a will leaving his only asset, his personal residence valued at \$275,000, to the nurse.

Confidential Relationship Nurse and Patient

Presumption of Undue Influence

According to record in the Supreme Court of Georgia, the nurse took care of all of the patient's personal and medical needs. The elderly amputee depended on his nurse for bathing, grooming, feeding, cooking, housekeeping, arranging medical appointments and transporting him.

The patient apparently believed his daughter and her family did not care to communicate with him and planned to put him in a nursing home. This impression was created in the patient's mind by the fact the nurse and her sister and brother-in-law were screening his phone calls, reading and throwing out his mail and physically preventing the granddaughters from visiting.

After he died his daughter contested the will.

The court ruled the deceased and his nurse had a confidential relationship, that is, the nurse had been able to exert controlling influence over the wishes, conduct and interests of the patient.

The court ruled the nurse had to prove that she did not exert undue influence. She failed to meet that very difficult legal burden of proof, that is, the jury found the will invalid for undue influence. The deceased's home passed to his daughter as if he had no will. **Bean v. Wilson, __ S.E. 2d __, 2008 WL 2077911 (Ga., May 19, 2008).**