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Confidential Relation-Presumption of Undue Influence

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WILLS

CONFIDENTIAL RELATION—PRESUMPTION OF UNDUE INFLUENCE

Action was brought to contest a will in which the residuary legatees

47. Principal case at p. 549, and footnote 7 of the opinion citing *National City Bank v. Helvering*.
48. 3 C.J.S. §165 (agents); 19 C.J.S. §§786 et. seq. (individual profits from corporate business); 54 Am. Jur. §§311 et. seq. (trustees).
49. See *Dobson v. Comm'r*, 320 U.S. 489 (1943); Paul, "Dobson v. Comm'r: The Strange Ways of Law and Fact," (1944) 57 Har. L. Rev. 753.
1. 6 T.C. 583 (1946), aff'd, 156 F (2d) 929 (C.C.A. 2d, 1946).
2. See 19 Proceedings of the Casualty Actuarial Society (May 26, 1933) pp. 291, 298.
3. Principal case at p. 586: "The figures presently relied upon may leave much to be desired in the way of soundness and accuracy. . ."
4. *Robinette v. Helvering*, 318 U.S. 184, 188 (1943) cf. *Humes v. U.S.*, 286 U.S. 487 (1928).

were the infant sons of the attorney who drafted the instrument. The lower court set aside the probate of the will. This decision was reversed on the grounds of an erroneous instruction. In anticipation of questions which would arise upon a new trial, the court said: (1) that where a confidential relation exists between the testator and a beneficiary, and the beneficiary has been actively concerned with the preparation or execution of the will, the burden of disproving undue influence is cast upon the beneficiary;¹ (2) that this rule should also include the situation where the one actively engaged in the preparation or execution of the will is a member of the immediate family of the beneficiary; and (3) that this rule should apply to testamentary gifts as well as gifts inter vivos. *Sweeney v. Vierbuchen*, 66 N.E. (2d) 764 (Ind. 1946).

According to the general rule, in order to raise this presumption, two circumstances must be present: (1) a confidential relation between the testator and the beneficiary; (2) participation in the preparation or execution of the will by the beneficiary.² Not all jurisdictions recognize that this state of facts will raise a presumption in the case of testamentary gifts.³ The mere existence of a confidential relation between the testator and the beneficiary is not sufficient to establish the presumption.⁴ In the absence of participation by the beneficiary in the preparation or execution of the will, the existence of other facts is not sufficient to establish a presumption of undue influence.⁵ Under the general rule, the evidence in the principal case would have been sufficient to establish a presumption of undue influence if the attorney had been a beneficiary.

The rule has been extended in other jurisdictions to include those

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1. *Contra*: *Munson v. Quinn*, 110 Ind. App. 277, 280, 37 N.E. (2d) 693, 694 (1941) (the so called presumption is in reality an inference).
 2. *Willet v. Hall*, 220 Ind. 310, 41 N.E. (2d) 619 (1942); *Vance v. Grow*, 206 Ind. 614, 190 N.E. 747 (1934); Note (1945) 154 A.L.R. 584; see *In re Llewellyn's Estate*, 296 Pa. 74, 145 Atl. 810, 812 (1929); *In re Bucher's Estate*, 48 Cal. App. (2d) 465, 120 P. (2d) 44 (1941) (beneficiary secured attorney for testatrix); *In re Smalley's Estate*, 124 N.J.Eq. 461, 2 A. (2d) 321 (1938), *aff'd*, 126 N.J.Eq. 217, 8 A. (2d) 296 (1939) (beneficiary discussed will with testatrix, and had his attorney prepare the will); *In re Poller's Estate*, 204 Wis. 127, 235 N.W. 542 (1931) (payment of witness to will by beneficiary).
 3. *In re Geist's Estate*, 325 Pa. 401, 191 Atl. 29 (1937) (in addition to these facts there must be evidence of mental weakness of the testator); *Ebert v. Ebert*, 120 W.Va. 722, 200 S.E. 831 (1939) (undue influence sufficient to invalidate a will is never presumed but must be established by proof).
 4. *Goodbar v. Lidikey*, 136 Ind. 1, 35 N.E. 691 (1893); Notes (1930) 66 A.L.R. 229, (1945) 154 A.L.R. 584.
 5. *Beaver v. Emery*, 84 Ind. App. 581, 149 N.E. 730 (1925) (acts of kindness by the beneficiary towards the testator); *Bundy v. McKnight*, 48 Ind. 502 (1874) (beneficiary had an opportunity to exert undue influence); *Breadheft v. Cleveland*, 184 Ind. 130, 108 N.E. 5 (1915), *aff'd*, 110 N.E. 662 (failure to leave the estate to next of kin); *In re Kelley's Estate*, 150 Ore. 598, 46 P. (2d) 84 (1935) (illicit relations existed between testator and beneficiary).

situations where a confidential relation existed between the testator and a person who was actively engaged in the preparation and execution of the will, which person is not himself a beneficiary but is a member of the immediate family of a beneficiary.⁶ This extension is sound. If this extension were not possible, the person with whom the testator enjoyed a confidential relation might still aid in the preparation and execution of the will, indirectly obtain the benefits of the will, but obtain them none the less, and still avoid the effect of a presumption of undue influence which would otherwise be applied.

In those jurisdictions which have refused to apply to testamentary gifts the presumption which has been applied to gifts *inter vivos*, the reason given is that when unduly influenced a donor of a gift *inter vivos* has been deprived of a beneficial enjoyment of his property, but a testator has not been similarly deprived of this benefit since he is deceased and could not have otherwise enjoyed the benefit of the property given away.⁷ This reasoning is not sound. It is equally important that the determination to give and to whom the gift is to be made should be free from undue influence in the case of testamentary gifts as in the case of gifts *inter vivos*. Once the essential facts necessary to raise a presumption of undue influence are present, the presumption should be applied with equal force to testamentary gifts as it is applied to gifts *inter vivos*.⁸

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6. *Little v. Sugg*, 243 Ala. 196, 8 So. (2d) 866 (1942) (mother and son); *Dudley v. Gates*, 124 Mich. 440, 83 N.W. 97 (1900), *aff'd*, 86 N.W. 959 (1901) (husband and wife); *In re Daly's Estate*, 59 S.D. 403, 240 N.W. 342 (1932) (attorney and son).
 7. See *Folsom v. Buttolph*, 82 Ind. App. 283, 308, 143 N.E. 258, 266 (1924); *Graham v. Courtwright*, 180 Iowa 394, 161 N.W. 774, 777 (1917).
 8. Cf. cases on gifts *inter vivos*, *Olds v. Hitzemann*, 220 Ind. 300, 42 N.E. (2d) 35 (1942); *Castle v. Kroeger*, 111 Ind. App. 43, 39 N.E. (2d) 459 (1942).