

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5005-09T3

IN THE MATTER OF THE ESTATE OF
MILDRED B. TROCOLOR,

Deceased.

Argued May 9, 2011 – Decided May 26, 2011

Before Judges Lisa, Reisner and Alvarez.

On appeal from the Superior Court of New Jersey, Chancery Division, Probate Part, Bergen County, Docket No. P-513-08.

Frank Holahan argued the cause for appellants Robert George Trocolor, II and Genevieve Trocolor (McElroy, Deutsch, Mulvaney & Carpenter, L.L.P., attorneys; Mr. Holahan, of counsel and on the brief).

William T. Smith argued the cause for respondent Daryl Wallace (Hook, Smith & Meyer, attorneys; Mr. Smith, on the brief).

PER CURIAM

Defendants Robert Trocolor, II, and his wife Genevieve Trocolor appeal from two May 11, 2010 orders and a May 17, 2010 order concerning the Estate of Mildred Trocolor. We affirm, substantially for the reasons stated in the opinion of Judge Robert P. Contillo dated March 3, 2010.

I

The facts are set forth in Judge Contillo's comprehensive opinion and need not be repeated here in the same level of detail. In summary, this case was a dispute between plaintiff Daryl Wallace and her brother Robert Trocolor, II, who were co-executors of the estate of their mother, Mildred Trocolor. In her complaint, Daryl¹ alleged that while Mildred was alive, Robert and Genevieve (defendants) misappropriated substantial sums of money from three reverse mortgages on Mildred's house. In their counterclaim, defendants alleged that Daryl misappropriated money from Mildred. Prior to the trial, the judge put both sides on notice that if either side proved that the other side looted the mother's estate and defrauded her, he might, as an equitable remedy, bar the guilty party from inheriting from the estate. Neither party objected.

After a three-day bench trial in which all parties testified, Judge Contillo found Daryl to be a completely believable witness and concluded that she did not misappropriate any money. He credited Daryl's testimony that her mother had lent her relatively modest sums of money that Daryl either

¹ We refer to the family members by their first names to avoid confusion.

repaid or that Mildred forgave in a gift letter that the judge found to be authentic.

Robert testified that three reverse mortgages were placed on Mildred's house because she was running out of money to support herself. Yet he also admitted taking at least \$200,000 from the proceeds of those mortgages to pay for improvements to his own house and his children's college tuition. He claimed that Mildred knew about, and approved of, those expenditures, and he produced a purported gift letter from Mildred which he claimed authorized him to take her money to spend as he saw fit. Genevieve testified that she was present when Mildred signed the gift letter. Daryl produced expert testimony that Robert's gift letter was a forgery.

For reasons he explained in considerable detail, Judge Contillo found that Robert was a completely incredible witness. Based on the expert's testimony and his own comparison of Mildred's alleged signature on Robert's gift letter with exemplars of her signature, Judge Contillo determined that the signature was a forgery. The judge found that, without Mildred's knowledge or consent, Robert took approximately \$240,000 of her money and used it to improve his own house and pay his children's college tuition. He also found that, as a result of Robert's misconduct, the equity in Mildred's house was

drained, and she was left without assets at her death. As the judge stated:

What I doubt, and affirmatively disbelieve, and have no credible evidence of, is that Mildred ever agreed to have her lifeline funds - the proceeds of any of the 3 reverse mortgages - used to reconstruct and improve Robert's home - or to finance Robert's children's education. Even Robert's wife did not know that her home improvements - and her children's educations - were being financed by Mildred, or, more accurately, at Mildred's expense, and to Mildred's detriment. And, I find, Mildred clearly did not know, or approve, of the depletion of her assets for these or any other purposes.

In addition to determining that Robert must repay the approximately \$240,000 that he stole from his mother, the court awarded punitive damages, finding that he "helped himself, wrongfully, secretly, recklessly and actionably, to the mother's monies, before she died." In the March 3 decision, the judge directed plaintiff's counsel to submit a form of judgment under the five day rule. Plaintiffs' attorney sent two proposed orders to his adversary and the court, by letter dated May 4, 2010.

Based on his factual findings, the judge signed an order on May 11, 2010, removing Robert as co-executor, and entering judgment against Robert in favor of the Estate and Daryl Wallace for approximately \$260,000. That sum included the amount Robert misappropriated, plus interest and \$1000 in punitive damages.

The judge also authorized Daryl, as executrix, to attempt to collect those sums, and provided that Robert would have no claim against Mildred's estate as a beneficiary, i.e., he would not be entitled to inherit any of the stolen money. The May 11 order also awarded counsel fees against Robert in the amount of about \$89,000.

While the judge disbelieved Genevieve's testimony about the gift letter, he did not find that Daryl proved that Genevieve actually knew that Robert was stealing money from his mother to pay for the home improvements and the children's tuition. Therefore, he declined to enter judgment against Genevieve for the misappropriated sums.

However, the judge found that Robert used "at least \$75,405" of the misappropriated money to improve the home that he and Genevieve owned in Oakland and, to that extent, Genevieve benefited from the stolen funds. The judge did not order that the Oakland house be sold to pay the judgment against Robert. However, in a second order dated May 11, 2010, he created a \$75,000 constructive trust in favor of Daryl, "in that portion of the equity in the property . . . owned by Genevieve Trocolor, individually, or Genevieve Trocolor and Robert Trocolor, jointly."

In a letter dated May 12, 2010, defendants' counsel objected to the forms of the two orders, which the judge had already signed. The May 12 letter objected to the amount of the attorney fee award in the judgment against Robert, and objected to language in the constructive trust order finding that Robert "embezzled" from and defrauded Mildred. Notably, the May 12 letter did not object to the creation of the constructive trust or to the portion of the other May 11 order prohibiting Robert from inheriting from Mildred's estate. In response to the May 12 letter, the judge did not modify the language about Robert's wrongdoing. However, in an amended judgment dated May 17, 2007, the judge decreased the counsel fee award against Robert by about \$20,000.

II

On this appeal, defendants raise the following issues:

POINT I

THE TRIAL COURT ERRED IN DISINHERITING ROBERT AND IN IMPOSING A CONSTRUCTIVE TRUST AGAINST GENEVIEVE.

POINT II

THE TRIAL COURT ERRED IN ACCEPTING RESPONDENT'S "GIFT LETTER" AND IN DETERMINING THE DISPARITY OF DECEDENT'S FUNDS TAKEN BY APPELLANT AND RESPONDENT.

POINT III

THE MATTER SHOULD BE REMANDED TO THE TRIAL COURT TO CONSIDER RESPONDENT'S ACCOUNTING AND TO MODIFY THE RELIEF GRANTED.

Our review of the trial judge's decision is limited. We will not disturb the judge's determination so long as his findings are supported by substantial credible evidence in the record. Rova Farms Resort, Inc. v. Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974). We owe particular deference to the judge's credibility determinations. See State v. Locurto, 157 N.J. 463, 474 (1999). However, we owe no deference to the judge's legal conclusions, Manalapan Realty v. Twp. Comm. of Manalapan 140 N.J. 366, 378 (1995).

On this appeal, defendants agree that the judge properly required both sides to prove by clear and convincing evidence their claims that their mother made gifts to them. See In re Dodge, 50 N.J. 192, 227 (1967). However, citing no supporting case law, defendants argue that the remedies the judge imposed were "an abuse of discretion" because his factual findings were incorrect.

Having reviewed the record ourselves, we perceive no basis to disturb the judge's factual findings. The judge had the opportunity, which we did not, to hear and see the witnesses testify and to determine their credibility. See Locurto, supra,

157 N.J. at 471-72. We find no support for defendants' contention that the judge's factual findings were based on "an inappropriate animus toward Robert." The judge conducted the trial with scrupulous fairness. We also find no basis to interfere with the judge's determination that Daryl, who testified in a clear and straightforward manner, was a believable witness. Further, Daryl produced a detailed accounting of Mildred's funds, which defendants did not contest except in minor respects.²

The judge's pointed and detailed findings concerning Robert's lack of credibility are amply supported by the record. After reading the transcript, we agree with the judge that Robert's testimony lacked the ring of truth. In the last years of her life, Robert handled his mother's finances and knew she was running out of income. He admitted that his mother

² Daryl was forced to produce the accounting by obtaining original records from Mildred's banks and other financial institutions, because Robert, who had Mildred's power of attorney and handled her finances while she was alive, claimed that he had "destroyed" most of her financial records. By destroying the records concerning the reverse mortgages and the amounts he took, Robert also created uncertainty as to the assets that would have been in Mildred's estate but for his wrongdoing. Further, his misappropriations resulted in Mildred incurring far more in mortgage debt — both principal and interest — than she would have incurred had the money been used exclusively for her support. As a result of this mounting debt, there was no equity left in Mildred's house by the time this case went to trial. Robert testified that he expected the mortgage company to take the house through foreclosure.

ferverently wished to remain in her home, but lacked the financial resources to do so without taking out reverse mortgages on her house. He testified that the mortgages were taken out because Mildred needed money. Yet, at the same time, he admitted that as soon as those mortgages were taken out, he helped himself to large chunks of the proceeds to pay for improvements to his own house and to pay his children's college tuition.

Robert claimed that his mother signed a gift letter authorizing him to use the money as he saw fit. Yet, plaintiff presented undisputed expert testimony that the signature on that gift letter was a forgery. We agree with Judge Contillo that the signature on that letter does not match the numerous examples of Mildred's signature in the record. By contrast, as the expert testified, the signature on an earlier gift letter to Daryl matches the known examples of Mildred's signature. That letter forgave relatively small debts Daryl owed her mother, as opposed to the enormous amounts Robert took from Mildred's assets.

Defendants' remaining arguments, concerning the remedies the judge imposed, were not raised in the trial court and were not properly supported on this appeal with any citations to legal authority. We therefore decline to address them. See Paragon Contrs., Inc. v. Peachtree Condo. Ass'n., 202 N.J. 415,

424 n.4 (2010); N.J. Div. of Youth and Family Servs. v. M.C. III, 201 N.J. 328, 339 (2010); Nieder v. Royal Indem. Ins Co., 62 N.J. 229, 234 (1973).

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION