

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0752-10T3

IN THE MATTER OF THE ESTATE
OF RENEE HALPECKA a/k/a IRENE
HALPECKA, Deceased,

BRENDA HEDRICK and ANDREA PRICE,

Plaintiffs-Respondents/
Cross-Appellants,

v.

ROSEMARY WALSH, individually and
as Attorney-in-Fact for Renee
Halpecka and as Executrix of the
Estate of Renee Halpecka and JOHN
WALSH,

Defendants-Appellants/
Cross-Respondents.

Argued December 5, 2012 - Decided July 31, 2013

Before Judges Grall, Koblitz and Accurso.

On appeal from Superior Court of New
Jersey, Chancery Division, Probate Part,
Burlington County, Docket No. P-2005-0758.

Anthony Scordo III argued the cause for
appellants/cross-respondents (Law Offices
of Stueben & Scordo, attorneys; Mr. Scordo,
on the brief).

Brenda Lee Eutsler argued the cause for
respondents/cross-appellants (Asbell &

Eutsler, attorneys; Ms. Eutsler, of counsel and on the brief; Francine W. Kaplan, on the brief).

PER CURIAM

When Renee Halpecka died in March 2005, she was eighty-four years old and had been suffering for years from macular degeneration, cataracts, chronic obstructive pulmonary disease, Parkinson's disease, Alzheimer's disease, and rheumatoid arthritis. Halpecka's husband was her caretaker until October 2001, when he died as a consequence of a car accident. At that time, Rosemary Walsh, a neighbor, became her caretaker and obtained authority to serve as Halpecka's attorney-in-fact and medical attorney-in-fact. Walsh assisted Halpecka with matters ranging from grocery shopping and arranging for a house-cleaning service to managing Halpecka's financial affairs and attending her appointments with doctors and meetings with an attorney and bank staff. In fact, regular statements from several of Halpecka's accounts were sent directly to Walsh's home.

Halpecka died on March 18, 2005, leaving the remainder of her estate after payment of funeral expenses and taxes, in equal shares, to three "friends" – Rosemary Walsh, executrix, Andrea Price, alternate executrix, and Brenda Hedrick. Her assets included funds received after Walsh had become her attorney-in-fact – a settlement she obtained as a consequence of her

husband's fatal accident and a brokerage account she received as her sister's sole heir.

In February 2006, Hedrick and Price commenced this litigation against Walsh and her husband, John.¹ Judge Hogan determined that Walsh had a confidential relationship with Halpecka and exercised undue influence to convert probate assets into non-probate assets, which she accomplished through a series of inter vivos gifts and transactions that left nearly all of Halpecka's assets, other than her real estate, payable to Walsh on Halpecka's death. With respect to John, the judge found that he was complicit in and unjustly enriched by Walsh's course of conduct. Consequently, a judgment in excess of \$500,000 plus counsel fees was entered against defendants and in favor of the estate. Plaintiffs' claim for punitive damages, however, was denied.

Defendants appeal contending that the judge erred in:

1) granting their attorney leave to withdraw; 2) resolving the question of a confidential relationship on summary judgment;

¹ Defendants filed a counterclaim which was pending in the trial court when they filed their notice of appeal. We granted defendants' motion for a temporary remand to permit them to dismiss the counterclaim, and that has been done. Defendants also filed a third-party complaint charging Hedrick's husband with slander, which was severed by order of April 18, 2008.

3) concluding that defendants failed to overcome the presumption of undue influence; 4) assigning responsibility for undue influence to John; and 5) awarding counsel fees. Plaintiffs cross-appeal the denial of their claim for punitive damages. Substantially for the reasons stated by Judge Hogan, we affirm.²

Contrary to defendants' claim, the evidential materials submitted on the motion for summary judgment were so one-sided as to permit a determination that plaintiffs were entitled to judgment as a matter of law on the question of a confidential relationship. See Brill v. Guardian Life Ins. Co., 142 N.J. 520, 540 (1995). In addition, the judgment entered following trial "is based on findings of fact that are adequately supported by the record." R. 2:11-3(e)(1)(A). We add the brief comments that follow to address arguments the parties present on appeal concerning the award of counsel fees and the denial of punitive damages. Otherwise, the arguments lack sufficient

² The judge's decisions are:

1. Oral opinion of July 25, 2008, granting counsel's motion to withdraw.
2. Written opinion filed December 16, 2008, granting partial summary judgment on confidential relationship.
3. Oral opinion of March 18, 2009 and written opinion filed July 10, 2009, addressing undue influence and John's complicity.
4. Written opinion filed February 18, 2010, addressing counsel fees.
5. Written opinion filed May 10, 2010, addressing punitive damages.

merit to warrant discussion beyond that provided by Judge Hogan.
R. 2:11-3(e)(1)(E).

Defendants argue that the exception to the American Rule recognized in In re Niles, 176 N.J. 282 (2003), has no application here because there was "no clear and convincing proof in the form of direct testimony of acts constituting undue influence" and only an "artificial presumption establishing same," and that "a finding of undue influence does not necessarily equate to a finding of fraud."

Fraud includes truthful representations that the maker knows or believes are "materially misleading" without "additional or qualifying" information. Restatement (Second) of Torts § 529 (1997); see also id. at § 551 (liability for nondisclosure). In addressing undue influence, the judge determined that Halpecka lacked understanding of the legal consequences and Walsh took advantage of the situation to unduly enrich herself to Halpecka's detriment. The judge elaborated when addressing counsel fees, explaining that Halpecka did not understand the nullifying effects the transactions orchestrated by Walsh had on her estate plan, which, as noted above, was a division of her assets equally among her three friends.

In the judge's view, Walsh defeated Halpecka's estate plan through use of her power of attorney and undue influence as

effectively as if she had used undue influence to have Halpecka change her will. We are satisfied that the record includes clear and convincing evidence of undue influence amounting to fraud, including the evidence that Walsh had statements on several accounts mailed to her residence rather than Halpecka's home.

Defendants also argue that the Supreme Court's decision in In re Estate of Stockdale, 196 N.J. 275 (2008), precludes an award of counsel fees pursuant to Niles in this case. They rely on the following statement: "Simply put, because the claim in this matter was brought by a putative beneficiary rather than by the substitute executor, no counsel fee could be awarded. . . . [T]hat form of relief, permitted in Niles, is not a broader pronouncement about the availability of attorneys' fees in estate contests." Id. at 313. This passage has no relevance in this case.

In Stockdale, there were two wills offered for probate. Id. at 296. One will, executed in the year 2000, was offered by the lawyer who had prepared it and who was one of the two "strangers to the natural bounty of the testatrix and who, solely through the mechanism of undue influence, both gained access to her and then used their confidential relationship to overbear her will to their personal benefit." Id. at 296, 306.

A second will, prepared in 1998, was offered by the attorney who had prepared it at a time before the testatrix came under the influence of the strangers to her natural bounty. Id. at 296. The local first aid squad, a residual beneficiary of the 1998 will, filed a caveat against the 2000 will. Ibid. The attorney and executor of the 2000 will filed a complaint seeking dismissal of the caveat and admission of the 2000 will to probate. Ibid. The first aid squad then filed a third-party complaint seeking compensatory and punitive damages from the strangers as well as acceptance of the caveat and admission of the 1998 will to probate. Ibid. Thus, the Court's reference to the "putative beneficiary" in Stockdale is to the first aid squad.

Hedrick and Price are not in a position comparable to that of the first aid squad in Stockdale, and Walsh is not in a position comparable to that of the two strangers who exerted undue influence in Stockdale. Price was the alternate executor of the only will at issue, and Walsh was the executor. Finally, plaintiffs sought return of the assets transferred during Halpecka's life to the estate.

Indeed, this request for counsel fees falls squarely within the Court's holding in Niles:

We hold that when, as in this case, an executor or trustee reaps a substantial

economic or financial benefit from undue influence, the fiduciary may be assessed counsel fees incurred by plaintiffs and third parties in litigation to restore the estate's assets to what they would have been had the undue influence not occurred.

[176 N.J. at 286.]

As the Court explained in Stockdale, the Niles exception to the American Rule is "directed solely to circumstances in which 'an executor or trustee commits the pernicious tort of undue influence . . . [such as to allow] the estate to be made whole by an assessment of all reasonable counsel fees against the fiduciary that were incurred by the estate.'" 196 N.J. at 307 (alteration in original) (quoting Niles, supra, 176 N.J. at 298-99). The award at issue here addresses the harm of a pernicious tort and achieves the goal Niles intended – making the estate whole. Thus, there is no reason to disturb it.

Plaintiffs' objection to the denial of punitive damages is also based on a misunderstanding of Niles and Stockdale. The award of punitive damages is within the discretion of the factfinder. Maul v. Kirkman, 270 N.J. Super. 596, 619-20 (App. Div. 1994). The judge denied punitive damages on the ground that the remedies awarded in the probate action, which included an award of counsel fees available in a tort action only in narrow circumstances, were adequate to address the wrong, making a punitive damage award inappropriate. For the reasons Judge

Hogan stated, we agree that this determination is consistent with Stockdale and Niles.

Affirmed.

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



CLERK OF THE APPELLATE DIVISION