2014 WL 1868760 (Del.Ch.) (Trial Motion, Memorandum and Affidavit)
Chancery Court of Delaware.

In the Matter of: the Estate of Aldon S. HALL.

No. 8122-MA.
May 5, 2014.

Petitioners' Post-Trial Answering Brief

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TABLE OF CONTENTS

TABLE OF CITATIONS

STATEMENT OF NATURE AND STAGE OF PROCEEDINGS

This case was tried on February 3, 2014. This is the Post-Trial Answering Brief on behalf of Petitioners, Anthony S. Hall, Felicia Y. Lake, and Aaron S. Hall. A joint exhibit book was utilized at trial, and references to the exhibits appear as “X-___”. References to the transcript of trial testimony appear as “TR-___”. Depositions of the parties and one witness, Dr. Paul Peet, were also submitted, and references to the depositions appear as “Deponent's Name,___”. Finally, unreported opinions cited in this brief were attached to numbered tabs at the end of the Petitioners' Opening Brief.

STATEMENT OF FACTS

Although Petitioners rely on the Statement of Facts in their Opening Brief, there were several things in Respondent's Opening Brief which were inaccurate or merit response.

First, on page 18 of the Brief, Respondent suggests that Petitioner Anthony Hall was a joint member on the Andrews Federal Credit Union account. In fact, it was the Dover Federal Credit Union account (X-18). As a joint owner, Anthony never agreed to any modification of the ownership of the account (TR-32).

Second, seemingly suggesting some nefarious purpose afoot, Respondent points out that less than a month after Aldon Hall's death the Petitioners had retained counsel and contacted the Register of Wills. In reality the testimony revealed that Aaron Hall discovered his father's original will and it was subsequently filed with the Register of Wills. Significantly, and no doubt because it did not favor her, Respondent never made any effort to probate the will. As the Court is aware, 12 *Del. C.* §1301 requires that original wills be filed within ten (10) days of death. Since Respondent failed to do it, the Petitioners did. Since the Register of Wills would not appoint Anthony as the personal representative of the estate, however, the family consulted counsel, because that is what prudent people do when legal issues arise..

Third, the Respondent's Brief (at page 28) accuses Aaron of preventing Respondent from accessing certain outbuildings on the family homestead. The testimony revealed that the efforts by Aaron were to essentially secure the classic automobile that he and his father had worked on together over the years. But it is also apparent, however, that Respondent was able to gain access to the garage despite Aaron's efforts, since she removed the car and sold it.

Finally, at page 30, Respondent acknowledges collecting $6,240.00 in rent, despite having no legal right to those funds since the property for which rent was being collected was one of the few assets that she wasn't able to claim. And, Respondent admits that she “continues to act as a landlord” despite having absolutely no authority to do so.

ARGUMENT

I. *THE RECORD DOES NOT SUPPORT RESPONDENT'S CLAIM THAT THE DEPOSIT ACCOUNTS WERE TRUE JOINT ACCOUNTS*

In her Opening Brief, Respondent argues that the Petitioners failed to establish that the deposit accounts at issue were not true joint accounts. But Respondent has clearly confused the burdens of proof in this regard. Petitioners cited *In the Matter of the Estate of Rufus Barnes*, 1998 Del. Ch. LEXIS 107, and 25 *Del. C.* §701, in support of the rule that the burden is on the party claiming joint accounts to make that abundantly clear. In Delaware, the presumption is that they are *not* jointly held. Respondent simply concludes that the burden was on the Petitioners, but cites no authority to support that claim, and indeed, there is none. The burden was at all times on the Respondent.

Like the Petitioners, Respondent cites *Walsh v. Bailey*, 197 A.2d 331 (Del. Supr. 1964) to describe what is necessary in the bank documents themselves to qualify for joint tenant status. But Respondent then proceeds to gloss over the documents that were placed in evidence. When addressing the PNC accounts, for example, Respondent asserts that:
“The relevant account registration and agreements in connection with the retitlings clearly reference the Account Agreement which governs these accounts (JX 14). Joint accounts are clearly discussed in PNC Bank's Account Agreement (JX 15)” (Respondent's Opening Brief, page 13).

But Exhibit 15, to which Respondent refers, is a generic document, not tied in any way to the accounts at issue. It simply cannot be *assumed* that that document governs the accounts. And, it is dated October 21, 2013 - more than 2/2 years after the signature cards were executed. As Petitioners also pointed out, at least one account is a Certificate of Deposit, which likely includes the ownership terms within the Certificate itself, and which was not placed in evidence.

The Court in *Walsh v. Bailey* relied on *In re Furjanick's Estate*, 100 A.2d 85 (Pa. Supr. 1953). That Court held as follows:

> When Furjanick opened a new savings account and checking account in the joint names of himself and his niece and then he and his niece signed the aforesaid written agreement setting forth in detail the terms

> of the contract and the rights of the respective parties therein, the money in those accounts was thereafter *owned and held in exact accordance with the terms and provisions of that agreement. This was a complete and detailed agreement* which included a provision as to revocation, hence it could be revoked only as therein set forth.

Nothing approaching that level of proof was submitted by Respondent. She had the burden to prove that the accounts were true joint accounts. The records in evidence fall far short of meeting that burden, and point to nothing more than "convenience accounts" in most instances. Indeed, Respondent did not contribute to any of the accounts (TR-290).

More perplexing is the fact that the Court provided Respondent the opportunity to leave the record open after trial in order to allow her to supplement the record by providing the necessary documents. Respondent failed to take advantage of that opportunity. Petitioners acknowledged that the Citizens Bank records met the *Walsh v. Bailey* criteria. Beyond that, however, the record fails to show that any other account was a true joint account pursuant to Delaware law. And, as Petitioners pointed out in their Opening Brief, the Dover Federal Credit Union accounts should be viewed separately, since Anthony Hall, a joint account holder, never agreed to any modification (TR-32).

II. *RESPONDENT EXERCISED UNDUE INFLUENCE OVER ALDON HALL IN CONNECTION WITH THE RETITLING OF ASSETS*

There is no real disagreement between the parties as to the elements of undue influence, and indeed, they have been articulated on numerous occasions. See, for example, *In the Matter Of: Agnes D. Rick*, 1994 Del. Ch. LEXIS 49, cited in Petitioners' Opening Brief [1] . The first element is that an individual must be susceptible to influence. Respondent spends significant energy arguing that Aldon Hall possessed sufficient mind and memory to make decisions, and pointing to Dr. Peet's statements, most of which simply confirm that Aldon Hall was capable of exercising judgment, that he was able to carry on a conversation, and that he was able to recover from seizures and function.

Respondent is also correct that the Petitioners did not dispute Dr. Peet's opinions. But this is not a *competency* case - Petitioners alleged undue influence. They have never contended that Aldon Hall lacked the ability to contribute to discussions with his doctors about his medical condition, to exercise thought and reflection, or converse in limited fashion with others. What is alleged is that those abilities, by virtue of his obviously deteriorating medical condition and the other facts detailed in Petitioners' Opening Brief, were overcome by the Respondent's influence. Nor is there is a requirement, as Respondent seems to suggest, that lack of competency is necessary for an individual to be "susceptible".

Although Respondent criticizes the Petitioners for "cherry picking" certain items from medical records, the fact of the matter is that Respondent took her husband to Johns Hopkins, a world renowned hospital, because she was frustrated about his worsening condition and because no one could explain his memory problems (TR-272). That is hardly an insignificant event. But counsel was just playing along with his client, who incredibly suggested that despite that examination in Baltimore, she received no feedback from Dr. Dash. It is not reasonable to believe that Respondent took her husband all the way to Baltimore for an appointment with a specialist at Johns Hopkins and did not receive any information from the doctor, and Catherine Taylor Hall's testimony to that effect is just not credible. She is plainly trying to hide from the fact that Aldon Hall's physical condition was deteriorating rapidly, making him even more susceptible to her influence. Not surprisingly, Dr. Dash reduced his opinions to writing, and the parties stipulated to the admission of those records.

It is also noteworthy that Dr. Peet last saw Aldon Hall on May 6, 2010 - during his rehabilitation at Renaissance, at which time the Respondent realized that her husband could no longer take care of himself. Dr. Peet never saw Aldon Hall after his visit to Dr. Leopold, who diagnosed him as "significantly demented", nor did he see him while he was under hospice care and receiving morphine.

Aldon Hall did continue to treat with his primary care physician, Dr. Dunn. Of note is the February 11, 2011 exam (X-25, 8) referencing a recent emergency room visit following the sudden onset of confusion and an inability to speak. Given his physical condition and isolation from anyone other than the Respondent, it is ludicrous to suggest that Aldon Hall was not susceptible to influence.

Respondent's argument that she lacked opportunity to influence her husband rings hallow given the record. Respondent's argument basically boils down to the fact that Petitioners were able to visit with and talk to their father without interference. But, two of the Petitioners live in Baltimore, limiting the frequency of contact, and the Respondent acknowledged that she did not care for Aaron, who essentially had to “make appointments” to see his father. Respondent made it as difficult as possible for the Petitioners to have meaningful contact - she cut off the land line to the Powell Farm Road Property, moved Aldon Hall to her personal residence, and discontinued his cell phone, among other things. As Aldon Hall's physical and mental condition worsened and his ability to communicate became even more restricted, his isolation in the hands of the Respondent became more pronounced. The Petitioners observed that Catherine never left them alone with their father (TR-29, 173), and the Respondent's effort to control her environment was observed by the Petitioners and other witnesses as well (TR-79, 177).

Petitioners acknowledged at the outset that there was no “smoking gun”, although taking her husband to Citizens and PNC to change accounts within a month of learning that he had Parkinson's disease, dementia, and brain damage (TR-291), and taking him to a lawyer to change the deed to the Hall family homestead and using a power of attorney to change the Andrews account just one month before his death, come close. But there was no witness, for example, who observed Respondent browbeating her husband into driving to a bank to execute a new signature card. Frankly, it would be unlikely to find such a person since influence is typically more subtle, and actual evidence of such overt conduct would likely have resulted in charges of **elder abuse**.

Instead Respondent clings to the “he wanted to take care of me” mantra (Respondent's Opening Brief, page 43). Importantly, though, there was absolutely no corroboration of such a statement. Not one individual other than the Respondent ever heard Aldon Hall say that. But the Respondent admitted that she did not need anyone to take care of her. She was twelve years younger than her husband, in good health, and with adequate means (TR-299). Aldon Hall, in fact, was the one who needed care from the beginning of the marriage. It is also significant that Respondent never happened to mention to any of Aldon Hall's children (or anyone else for that matter) that all of their father's assets were in the process of being converted. Had that been something the Respondent thought the Petitioners would embrace, she would presumably have told them.

Felicia Lake had told her father not to sign anything regarding assets (TR-175), and they had discussed his father Aldon D. Hall's wish to have the property passed down to the Petitioners (Felicia Lake deposition, 108). Aaron related a conversation in which his father told him that he planned to leave a significant amount of money to him and his siblings, and also related his understanding that the landscaping business would be left to him (TR-94). And both recalled the meeting during which Respondent announced that they should expect new wills so that everyone would know where they stood (TR-176, 113).

By keeping her actions secret Respondent succeeded in avoiding scrutiny that likely would have triggered inquiry. Respondent knew of Aldon Hall's 1976 will and fully intended to get it changed. Unable to accomplish that, she found another way to gain control of Aldon Hall's assets. In other words, she helped herself!

Finally, Respondent argues that Petitioners failed to establish a result demonstrating the effect of undue influence. Yet it is difficult to imagine a situation in which a result is more obvious. During the brief four years they were married, Respondent effected the transfer of almost every asset in Aldon Hall's name, amounting to more than half a million dollars, at the expense of the children and grandchildren with whom he had spent a lifetime. One wonders how she missed the roughly $40,000.00 in property on Schedule A, but the testimony was also clear that she made every effort after Aldon Hall's to take control of those assets as well.

III. *RESPONDENT IMPROPERLY UTILIZED HER HUSBAND'S POWER OF ATTORNEY*

Respondent's justification for her use of her husband's power of attorney to make a gift to her is that he directed her to do so. Like most of her testimony, though, that statement is not corroborated, and is blatantly self-serving. Nor did she suggest that her self-dealing had been ratified by her husband following his receipt of impartial advice by a disinterested third person. Under those circumstances, the transfer of the Andrews Air Force accounts was improper [2].

IV. *RESPONDENT IMPROPERLY SEIZED AND DISPOSED OF ADDITIONAL ASSETS*

It is abundantly clear that Respondent has problems with Aaron Hall, and her efforts to "get even" have dominated her performance as personal representative of the estate. Aaron was the one who found the will which Catherine Hall would like to have seen disappear, and he had a special relationship and bond with his father that she could not understand or mirror. Although she testified that she was only repeating Aldon Hall's criticisms, there was, once again, no corroboration whatsoever from any independent witness.

Thus it was that she surreptitiously engineered the removal and sale of the car that she knew had special meaning to Aaron [3]. That was after closing out the land line and removing the computer, which she knew full well would impede Aaron's ability to deal with his business customers. Although she protests in her brief (page 56) that she was "darned if she does, and darned if she doesn't", she essentially placed Aaron and his siblings in the same position. She helped minimize or destroy Aaron's ability to derive income, then complains that he is not paying his fair share of expenses, or that he is not properly maintaining (in her eyes) the property.

It is plain to see that the only reason for Respondent selling the car in the manner she did was out of spite, and she has offered no legitimate reason for collecting rent and not turning it over to the Petitioners. But the respondent was no stranger to such overbearing and retaliatory activity. See *Price v. Delaware Department of Correction, et al.*, 40 F. Supp. 2d 544 (D.C. Del. 1999), in which Respondent Catherine Taylor was found to have retaliated against a subordinate following a claim of discrimination and resulted in a $300,000 judgment against the State. Her behavior here should come as no surprise.

CONCLUSION

Petitioners' proposed conclusion remains as was set forth in their Opening Brief.

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Footnotes

1 Petitioners also believe the *Rick* case presents an excellent analysis of undue influence, and a fact patter which supports the same conclusion as the Petitioners seek in this case.

2 As noted in their Opening Brief, the Respondent was unable to articulate any benefit to Aldon Hall from the transfer, which took place just one month before his death.

3 Although Respondent testified that the sale was necessary to raise funds to pay expenses, she also acknowledges that the funds remain *available,* which clearly tells us that a sale was unnecessary! (TR-60). The same is true with the rent that she has collected but not turned over to Petitioners (TR-302).

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