

IN THE SUPREME COURT OF THE STATE OF NEVADA

SHIRLEY DICENSO, INDIVIDUALLY,
Appellant,

vs.

JAMES P. MILLER, INDIVIDUALLY
AND AS HUSBAND OF VIRGINIA N.
MILLER; VIRGINIA N. MILLER,
INDIVIDUALLY, AND AS WIFE OF
JAMES P. MILLER,
Respondents.

No. 47133

FILED

MAY 06 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court judgment in a real property quiet title action. Eighth Judicial District Court, Clark County; Mark R. Denton, Judge.

The parties are familiar with the facts, and we do not recount them except as pertinent to our disposition.

Appellant Shirley Dicenso argues on appeal that there is no substantial evidence in the record to support the district court's finding that Vennie Norene Magnum had the capacity to enter into a contract to purchase a home in joint tenancy with respondents James P. and Virginia N. Miller. She further argues that the district court erred in failing to find that Magnum was in a confidential relationship with the Millers, which would have shifted the burden to prove that they did not unduly influence Magnum. For the reasons set forth below, we conclude that these arguments are without merit.

This court will not disturb a district court's findings of fact if they are supported by substantial evidence.¹ "Substantial evidence is that which a 'reasonable mind might accept as adequate to support a conclusion.'"² We, however, review a district court's conclusions of law de novo.³

Magnum's capacity to contract

Dicenso relies on our decision in General Motors v. Jackson⁴ to argue that there is no substantial evidence in the record to support the district court's finding that Magnum had the capacity to enter into a contract to purchase a home in joint tenancy with the Millers because Magnum apparently suffered from dementia or Alzheimer's disease. We disagree.

Dicenso contends that the district court erred in finding for the Millers because the record establishes that Magnum had dementia or Alzheimer's disease. She argues that because Magnum's dementia was established by impartial medical records, an expert medical witness, and Magnum's son, there is no substantial evidence in the record upon which the district court could conclude that Magnum possessed the capacity to contract. Further, Dicenso claims that the only evidence establishing

¹Keife v. Logan, 119 Nev. 372, 374, 75 P.3d 357, 359 (2003).

²Construction Indus. v. Chalue, 119 Nev. 348, 352, 74 P.3d 595, 597 (2003) (quoting Richardson v. Perales, 402 U.S. 389, 401 (1971)).

³Keife, 119 Nev. at 374, 75 P.3d at 359.

⁴111 Nev. 1026, 1031, 900 P.2d 345, 349 (1995) (holding that "the capacity to contract involves a person's inability to understand the terms of an agreement, not his actual understanding").

Magnum's capacity to contract was the false testimony provided by the Millers.

We disagree and conclude that there is substantial evidence in the record to support the district court's finding that Magnum had the capacity to enter into a contract to purchase a home in joint tenancy with the Millers.⁵

Our review of the record reveals that the district court heard testimony from Magnum's son, an expert medical witness, Dicenso, and the Millers. The medical records relied upon by Dicenso's expert medical witness, however, were not introduced into evidence, and the expert medical witness's conclusion as to dementia was not based on a requisite degree of probability for an expert opinion. Additionally, while Magnum's son testified that he did not think that Magnum had the capacity to contract, he also testified that he did not have much contact with Magnum for nearly three years prior to her death. Because it was within the district court's province to determine what weight and credibility to give to the evidence presented, the district court was not clearly erroneous in giving less weight to the testimonies provided by the expert medical witness and Magnum's son in determining that Magnum had the capacity to contract.⁶ Thus, the district court had the discretion to give more

⁵See Chalue, 119 Nev. at 352, 74 P.3d at 597.

⁶See Matter of Guardianship & Estate of D.R.G., 119 Nev. 32, 40, 62 P.3d 1127, 1132 (2003) (providing that "[t]he weight and credibility to be given trial testimony is solely the province of the trier of fact, and a district court's findings of fact will not be set aside unless clearly erroneous" (quoting Locklin v. Duka, 112 Nev. 1489, 1497, 929 P.2d 930, 935 (1996))).

weight to the Millers' testimony as to Magnum having the capacity to contract. As a result, we conclude that the district court could substantially conclude that Magnum did not have dementia or Alzheimer's disease when she entered into the contract to purchase a home in joint tenancy with the Millers.

Further, we conclude that Dicenso did not meet her burden of proof, with clear and convincing evidence, that the deed in question did not create a joint tenancy at the time it was prepared.⁷ As such, we conclude that Dicenso's argument as to false testimony is without merit because she has not demonstrated that either of the Millers falsified their testimony during trial.

Therefore, we conclude that there was substantial evidence in the record to support the district court's conclusion that Magnum had the capacity to contract.

The presumption of undue influence

Dicenso next argues that because Mrs. Miller had a general power of attorney over Magnum, the district court failed to find that Magnum was in a confidential relationship with the Millers when Magnum purchased the home in joint tenancy with the Millers. As a result, Dicenso contends that the Millers should have had the burden to

⁷See Graham v. Graham, 104 Nev. 472, 474, 760 P.2d 772, 773 (1988) (holding that "it is well established that the existence of a valid deed in the form of joint tenancy raises a presumption that the parties intend to own the property as joint tenants, which may be rebutted only by clear and convincing evidence").

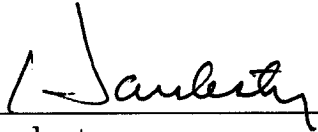
rebut the presumption of undue influence. As such, she argues that a constructive trust had arisen because Mrs. Miller breached her confidential relationship with Magnum by entering into the contract that ultimately benefited Mrs. Miller. We disagree.

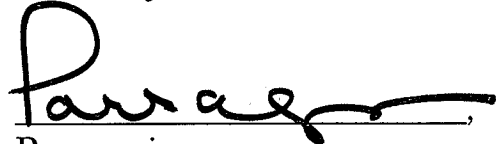
Because the record reveals that Magnum had entered into this contract to purchase the home in joint tenancy in her capacity and not through Mrs. Miller's authority as an attorney in fact—as Magnum had signed the documents herself—we conclude that no confidential relationship as to this home purchase existed. Thus, this home purchase was made outside the scope of Mrs. Miller's power of attorney. Consequently, we conclude that the district court did not err in not shifting the burden of proof as to the lack of undue influence onto the Millers, as the contract was entered into by the parties while outside the scope of a confidential relationship.⁸

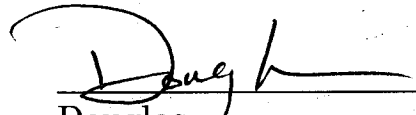
⁸See Schmidt v. Merriweather, 82 Nev. 372, 375, 418 P.2d 991, 993 (1966) (providing that “[a] constructive trust will arise whenever the circumstances under which property was acquired makes it inequitable that it should be retained by him who holds the legal title, as against another, provided some confidential relationship exists between the two and provided the raising of the trust is necessary to prevent a failure of justice”).

Therefore, we conclude that Dicenso's arguments on appeal are without merit.⁹ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Mark R. Denton, District Judge
Lester H. Berkson, Settlement Judge
Cary Colt Payne
Hutchison & Steffen, Ltd.
Salas & McQuigg
Eighth District Court Clerk

⁹We additionally conclude that Dicenso's challenges as to Magnum's capacity and undue influence should have been made during the probate proceedings and that it was improper for Dicenso to make these challenges in a separate action. See, e.g., NRS 137.010 (statute dealing with the proceedings preliminary to a trial for the contests of wills).