IN THE COURT OF APPEALS
AT KNOXVILLE

ELSIE JOHNSON,	) C/A NO. 03A01-9803-CH-00114
Plaintiff,	)
and	)
THOMAS A. NOKES,	)
Plaintiff-Appellee,	) APPEAL AS OF RIGHT FROM THE HAMBLEN COUNTY CHANCERY COURT
v.	)
DONALD CRAYCRAFT,	)
Defendant-Appellant.	) HONORABLE THOMAS R. FRIERSON, II, CHANCELLOR

For Appellant	For Appellee
CLINTON R. ANDERSON Morristown, Tennessee	J. RANDALL SHELTON Morristown, Tennessee

O P I N I O N

AFFIRMED, AS MODIFIED
REMANDED WITH INSTRUCTIONS

Susano, J.

When this case was first before us, *see* ***Johnson v. Craycraft***, 914 S.W.2d 506 (Tenn.App. 1995), we vacated, in part, the judgment of Chancellor Dennis H. Inman. In so doing, we relied upon the then-recently released opinion of the Supreme Court in the case of ***Matlock v. Simpson***, 902 S.W.2d 384 (Tenn. 1995), to justify our holding that a confidential relationship existed, on and after February 23, 1988, between the plaintiff, Elsie Johnson,[1] on the one hand, and the defendant, Donald Craycraft ("Craycraft") and his wife,[2] on the other.[3] We remanded this case to the trial court with instructions to determine whether there was clear and convincing evidence[4] of the fairness of the Johnson-Craycrafts transactions that occurred on and after February 23, 1988, such as to rebut the presumption of undue influence by the Craycrafts -- a presumption arising out of the confidential relationship. In the meantime, Chancellor Inman was appointed to the federal bench. He was replaced by Chancellor Thomas R. Frierson, II, who considered this matter on remand. Chancellor Frierson did not find the requisite clear and convincing evidence to rebut the presumption. Based on Craycraft's accounting of Ms. Johnson's funds transferred to his care, and other relevant documents, the Chancellor awarded a judgment of $237,555.37 to the plaintiff Thomas A. Nokes, the only son of Ms. Johnson. Craycraft appealed, contending, first, that the trial court erred in revisiting a transaction that was affirmed in our earlier opinion; and, second, that the evidence preponderates against the trial court's determination that there was an absence of the clear and convincing evidence necessary to rebut the presumption of undue influence.

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[1]Ms. Johnson died on November 29, 1991, after this action was filed.

[2]Pauline Craycraft died before this suit was filed.

[3]As our opinion states, the finding of a confidential relationship was based upon the fact that Ms. Johnson gave separate unrestricted powers of attorney to each of the Craycrafts on February 23, 1988. ***Johnson,*** 914 S.W.2d at 510.

[4]"Clear and convincing evidence" is defined as "'that measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.'" ***Wiltcher v. Bradley***, 708 S.W.2d 407, 411 (Tenn.App. 1985) (quoting from ***Turner v. Lutz***, 685 S.W.2d 356 (Tex.App. 1985)).

I.

In August, 1987, Ms. Johnson purchased a house in Morristown for $60,500. As our original opinion recites, she took only a life estate in the property, while the remainder interest was placed in the names of her acquaintances, Mr. and Mrs. Craycraft; this despite the fact that Ms. Johnson put up all of the money for the purchase of the property. ***Johnson***, 914 S.W.2d at 507. In the first trial, Chancellor Inman held that there was no confidential relationship, *as a matter of fact*, between Ms. Johnson and the Craycrafts as of the date of that transaction -- a transaction that occurred before Ms. Johnson gave each of the Craycrafts a power of attorney. Accordingly, he refused to invalidate the transfer to the Craycrafts. We affirmed that decision. ***Id***. at 512.

When we remanded this case, we pointed out that the trial court would have to examine *certain* pre-February 23, 1988, transactions between Ms. Johnson and Craycraft:

> The Chancellor will still have to examine pre-February 23, 1988, transactions in which Johnson ostensibly established joint accounts with Donald Craycraft to determine if Johnson intended to make a gift to Craycraft or rather intended merely to place his name on the accounts to facilitate his ability to utilize these assets for *her* benefit. This inquiry is necessary to determine the true ownership of certain assets when the confidential relationship commenced on February 23, 1988.

Id. (Emphasis in first ***Johnson*** opinion).[5] Chancellor Frierson apparently misinterpreted our opinion as authorizing him to revisit the validity of the transfer of the remainder interest to the Craycrafts. That was not our intention. That transfer did not involve the creation of a joint account. The scope of our remand as to the pre-February 23, 1988, transactions was limited to those "in which Johnson ostensibly established *joint accounts* with Donald Craycraft," and then only for the purpose of determining the "true ownership" of those joint accounts, both the regular bank accounts as well as the one certificate of deposit, as of the date on which the confidential relationship was established. ***Id***. at 512. (Emphasis added). The trial court was not authorized to re-examine the validity of the Craycrafts' remainder interest. Therefore, it erred in awarding Nokes $60,000, an amount equal to the check drawn -- pre-February 23, 1988 -- on one of the joint accounts to purchase the Hamblen County residential property. While Nokes is entitled to receive the value of Ms. Johnson's life estate[6] as of the date of the transfer of that interest to the Craycrafts, he is not entitled to the value of the Craycrafts' interest. Chancellor Inman's judgment as to the creation of the Craycrafts' remainder interest, which we affirmed, ***id***., upheld the validity of that transfer.

II.

[5]While Chancellor Inman found no evidence of a confidential relationship between Ms. Johnson and the Craycrafts, he did so without the benefit of ***Matlock***, which was decided after his judgment in this case. His finding of no confidential relationship prompted him to find that the Craycrafts had not converted Ms. Johnson's property; however, he did not address -- probably not being asked to do so -- the question of whether the *creation* of the joint bank accounts and certificate of deposit prior to February 23, 1988, constituted gifts to Craycraft or whether the latter's name was placed on those accounts to facilitate his use of those funds for Ms. Johnson's benefit. We felt that such a determination was required in order to do complete justice; hence our instructions on the remand. *See* Rules 13(b) and 36(a), T.R.A.P.

[6]Ms. Johnson transferred her life estate to the Craycrafts on February 23, 1988, the same day she executed the powers of attorney. Chancellor Frierson's judgment, by holding that the presumption of undue influence was not properly rebutted, held, in effect, that Ms. Johnson made this transfer because of the undue influence of the Craycrafts.

Pursuant to our remand, the trial court also found that Ms. Johnson did not intend to make a gift to Craycraft when she established the joint bank accounts and the certificate of deposit with him prior to February 23, 1988. The evidence does not preponderate against this finding. ***Cf***. ***Leffew v. Mayes***, 685 S.W.2d 288, 292-93 (Tenn.App. 1984). By the same token, we find that the evidence does not preponderate against the trial court's overall determination that the record is devoid of the requisite clear and convincing evidence to rebut the presumption of undue influence created by the confidential relationship between Ms. Johnson and the Craycrafts.[7]

[7]Since Mr. Craycraft was involved, in one way or another, in all of the suspect transactions involving Ms. Johnson and Ms. Craycraft, it is immaterial that her estate was not sued in this proceeding.

III.

The judgment of the trial court, as modified by this opinion, is affirmed.[8] On remand, the trial court will enter an order modifying its judgment to delete $60,000 from it. It will then add to the judgment the value of Ms. Johnson's life estate as of February 23, 1998, the date it was ostensibly transferred to the Craycrafts. Exercising our discretion, we tax the costs on appeal to the appellant.

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Charles D. Susano, Jr.

CONCUR:

_____
Herschel P. Franks, J.

_____
Don T. McMurray, J.

[8]The appellee filed a motion asking us to consider post-judgment facts pursuant to Rule 14, T.R.A.P. We decline to do so because the facts urged upon us were in existence prior to Chancellor Frierson's judgment. Hence, the facts in question are not post-judgment facts, but rather pre-judgment facts.