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FOR PUBLICATION

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

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IN RE: ESTATE OF CARLTON ELLIOTT (
WALTON, DECEASED, JEFFREY O. (
WALTON, ADMINISTRATOR, (
 (
 Plaintiff-Appellant, (
 (
 (Davidson Probate
 (
 v. (Hon. Frank G. Clement, Jr.,
 (Judge
 (
 (No. 01S01-9612-PB-00252
 (
 LESLIE YOUNG, (
 (
 Defendant-Appellee. (

Davidson Probate
Hon. Frank G. Clement, Jr.,
Judge
No. 01S01-9612-PB-00252

For Plaintiff-Appellant:
Jimmy A. Duncan
Nashville
Dan R. Alexander
Nashville

For Defendant-Appellee:
Jack Green
Nashville

O P I N I O N

JUDGMENT OF COURT OF APPEALS
REVERSED; JUDGMENT OF TRIAL COURT
AFFIRMED; CASE REMANDED.

Reid, J.

1 This case presents for review the decision of the Court of
2 Appeals reversing the trial court's denial of a claim of paternity.
3 For the reasons set forth, the decision of the Court of Appeals is
4 reversed and the case is remanded.

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I

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8 The decedent, Carlton E. Walton, died intestate. The
9 decedent's son, Jeffrey O. Walton, qualified as the administrator of
10 the decedent's estate. The petition filed in probate court states
11 that Jeffrey O. Walton is the only child of the decedent.

12

13 Leslie Young, nee, Jackson, the claimant against the
14 estate, filed a petition in the probate court alleging that she is
15 the natural or biological child of the decedent, and, therefore,
16 entitled to inherit from him according to the law of intestate
17 succession.

18

19 The case was heard by the trial judge without a jury. The
20 proof shows that when Young was born on May 9, 1972 her mother, Donna
21 Fowler, had been married to Frank Jackson, Jr. for more than three
22 years. The certificate of birth lists Jackson as the father.
23 Fowler and Jackson were divorced in March of 1973, remarried in
24 November of 1973, and divorced again in 1984. In addition, Fowler
25 filed another complaint for divorce which was dismissed. In all of
26 the divorce proceedings and proof, the parties asserted that Jackson
27 was the father of the claimant. In the last divorce case, Jackson
28 was awarded custody of the claimant and she lived with him until she
29 was 16 years old.

1 According to Young's testimony, Fowler told her when she
2 was 13 that Jackson was not her father, but Fowler did not tell her
3 the decedent was her father until she was 18. Fowler testified that
4 when she first learned that she was pregnant, she informed Jackson
5 and told him the decedent was the father. She also confirmed Young's
6 testimony regarding her conversations with Young when she was 13 and
7 18. Fowler testified that she continued to have sexual relations
8 with the decedent intermittently until his death. According to
9 Jackson's testimony, he told Young when she was 13 that the decedent
10 was her father.

11

12 When Young was about 18, she sought out the decedent and
13 they developed a relationship. The evidence regarding the nature of
14 their relationship is not altogether consistent. Young lived with
15 the decedent for short periods of time for several years before his
16 death and during that time the decedent assisted Young financially.

17

18 According to an expert witness, blood tests of Young,
19 Fowler, and Jackson show conclusively that Jackson is not Young's
20 biological father.

21

22 The trial court found that Young failed to prove by clear
23 and convincing evidence that the decedent was her biological father
24 and dismissed her petition. The Court of Appeals, in its de novo
25 consideration of the evidence, found that the decedent was the
26 biological father of the claimant.

27

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II

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1 In view of the Court's finding that the proof fails to establish her
2 claim, that issue need not be considered in this case.¹

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B

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6 The only issue considered in the trial court and in the
7 Court of Appeals, and the only issue presented by the parties on this
8 appeal, is whether the claimant established paternity by clear and
9 convincing proof. As previously stated, this Court finds that the
10 claimant failed to carry her burden of proof.

11

12 The proof shows that claimant Young is not the biological
13 child of Jackson, who was married to her mother at the time she was
14 conceived and born. Of course, that proof does not establish the
15 identity of the claimant's father.

16

17 On every significant issue the evidence is equivocal.
18 Fowler testified that Young was conceived while she and Jackson were
19 separated, and Jackson in his testimony confirmed that the child was

¹Contrary to the statement by the Court of Appeals in In Re Estate of Armstrong (Adams v. Manis), 859 S.W.2d 323, 327 (Tenn. App. 1993)), Tenn. Code Ann. § 31-2-105 does not define "a person born out of wedlock." Relevant to the issue in Armstrong and the instant case, the statute provides: "A person born out wedlock is . . . a child of the father, if . . . The paternity is established . . . [after] the death of the father . . . by clear and convincing proof." See 41 Am. Jur. 2d, Illegitimate Children § 28 (1995):

In many jurisdictions, where the legitimacy or illegitimacy of a child born in wedlock is in issue, neither the husband nor the wife may testify to non-access between them, unless it is otherwise provided by statute. In some jurisdictions, the inhibition is not confined to testimony of non-access, but prevents any testimony of the husband or the wife tending to illegitimize the issue of their marriage.

Other jurisdictions, however, admit testimony of non-access from any knowledgeable witness, including the spouses themselves.

Id. at 223.

1 not his. Fowler also testified that she and the decedent were having
2 sexual relations regularly during the time the child was conceived.
3 However, Fowler's testimony does not foreclose the possibility that
4 another person was the father.

5
6 The proof shows that the decedent referred to Young as his
7 "young'n," which apparently is a colloquial expression for "young
8 one." However, the proof also shows that the decedent had, in the
9 best light, a fatherly penchant for young women and that he had
10 similar relationships with at least three other young women. Those
11 relationships included living together, providing financial
12 assistance, and referring to each as his "young'n."

13
14 The evidence that the decedent acknowledged Young as his
15 child is conflicting. The testimony of several casual acquaintances
16 indicated that the decedent referred to Young as his child; however,
17 the decedent's sister and a long time lover/friend both testified
18 that they never heard him say Young was his child.

19
20 Obviously, the critical evidence is the testimony of
21 Fowler. Based on this record, neither Young nor Jackson know the
22 identity of Young's father, nor did the decedent. Fowler was the
23 source of their information; consequently, the probative value of the
24 testimony of Young and Jackson, as well as that of Fowler, depends
25 upon Fowler's credibility. The evidence as it relates to this
26 determinative issue was summarized by the trial court:

27
28 What is for me to determine today is whether or
29 not [Young] has established by clear and
30 convincing evidence that the decedent Carl Walton

1 was her father. . . . I cannot overlook the fact
2 that the mother [Fowler] made representations for
3 years in more than one lawsuit that [Jackson] was
4 the father and, in essence, required or had the
5 ability to require that Mr. Jackson financially
6 support and raise [Young], but now that that
7 financial obligation is gone she does a hundred
8 and eighty degree reversal and claims that Mr.
9 Walton was the father.

10
11 . . . [T]he only evidence that's been
12 introduced through [Fowler] Yet her
13 credibility has been impeached because she has
14 been shown to have sworn under oath to the
15 contrary. Several witnesses testify that the
16 decedent Carl Walton claimed that [Young] was his
17 daughter and that [Young's] son was his grandson.
18 Others have taken issue with that and claimed
19 that what he was really saying was that she was
20 his young'n and/or that he called lots of young
21 people his young'n and/or that he stated, well,
22 she's -- I'm not saying she's my daughter, I'm
23 saying that her mother says she's my daughter.

24
25 . . . I am of the impression that the sole
26 basis upon which Mr. Walton believed, if he did
27 believe, that he was the father was based upon a
28 representation by Ms. Fowler and since her
29 credibility has been challenged and she has been
30 shown to have testified falsely in other matters,
31 I can only determine that the petitioner has
32 failed to convince this Court by clear and
33 convincing evidence that the decedent was her
34 biological father and therefore the petition is
35 denied.

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39 The standard for reviewing the trial court's decision is de
40 novo accompanied by a presumption of correctness, giving great weight
41 to the trial court's determinations of credibility. "Unless
42 otherwise required by statute, review of findings of fact by the
43 trial court in civil actions shall be de novo upon the record of the
44 trial court, accompanied by a presumption of the correctness of the
45 finding, unless the preponderance of the evidence is otherwise."
46 Tenn. R. App. P. 13(d). As stated in Randolph v. Randolph, 937
47 S.W.2d 815, 819 (Tenn. 1996),
48

1 We review the findings of fact by the trial court
2 de novo upon the record of the trial court,
3 accompanied by a presumption of the correctness
4 of the findings, unless the preponderance of the
5 evidence is otherwise. Tenn. R. App. P. 13(d).
6 Because the trial judge is in a better position
7 to weigh and evaluate the credibility of the
8 witnesses who testify orally, we give great
9 weight to the trial judge's findings on issues
10 involving credibility of witnesses. Gillock v.
11 Board of Professional Responsibility, 656 S.W.2d
12 365, 367 (Tenn. 1983).

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16 See also Wright v. City of Knoxville, 898 S.W.2d 177, 181 (Tenn.
17 1995)("Because this case was tried without a jury, our review of the
18 issues of fact is de novo on the record of the trial court. However,
19 we must presume that the trial court's findings were correct unless
20 the preponderance of the evidence is otherwise.").

21
22 The record supports the trial court's determination that
23 the claimant's evidence does not reach the standard of clear and
24 convincing.

25
26 The "clear and convincing" standard falls
27 somewhere between the "preponderance of the
28 evidence" in civil cases and the "beyond a
29 reasonable doubt" standard in criminal
30 proceedings. To be "clear and convincing," the
31 evidence must "produce in the mind of the trier
32 of facts a firm belief or conviction as to the
33 allegations sought to be established." Hobson v.
34 Eaton, 399 F.2d 781, 784 n. 2 (6th Cir. 1968),
35 cert. denied, 394 U.S. 928 (1969). "Clear and
36 convincing evidence means evidence in which there
37 is no serious or substantial doubt about the
38 correctness of the conclusions drawn from the
39 evidence." Hodges v. S.C. Toof & Co., 833 S.W.2d
40 896, 901 n. 3 (Tenn. 1992). See e.g. In re
41 Estate of Armstrong, 859 S.W.2d 323, 328 (Tenn.
42 App. 1993).

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46 Fruge v. Doe, ___ S.W.2d ___, ___ n.2 (Tenn. 1997).
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The evidence does not preponderate against the trial court's finding that the claimant failed to prove paternity by clear and convincing evidence.

The judgment of the Court of Appeals is reversed, the judgment of the trial court is affirmed, and the case is remanded to the trial court.

Costs are taxed against the appellee, Leslie Young.

Reid, J.

Concur:
Anderson, C.J., Drowota, Birch,
and Holder, JJ.