STATE OF MICHIGAN

COURT OF APPEALS

In re THEONE NINA BARRETT
CONSERVATORSHIP.

UNPUBLISHED

MICHAEL F. BARRETT, Conservator,

October 22, 1996

Petitioner–Appellant,

v

No. 183674
LC No. 92-21901 CV

JOHN W. BARRETT and JEAN M. BARRETT,

Respondents–Appellees.

Before: Corrigan, P.J., and Taylor and D. A. Johnston,* JJ.

PER CURIAM.

Petitioner, conservator of the estate of Theone Nina Barrett, appeals as of right from a judgment following a bench trial. We affirm.

In the early 1980s, John Barrett moved into a house on the farm of his parents, Norton and Theone Barrett. John Barrett paid Norton Barrett $225 in monthly rent and also helped with chores around the farm. In July 1992, after Norton Barrett's death, Theone Barrett conveyed two eighty-acre parcels to John Barrett. The first parcel had a residence where John Barrett had been living. There was evidence that this was given as a gift to effectuate Norton Barrett's wishes, as reflected in his will. The second parcel was deeded to him along with terms of purchase.

Five months later, in November of 1992, Theone Barrett's daughter, Mary Franklin, petitioned the probate court to be appointed as Theone Barrett's guardian on the basis that Theone was legally incapacitated. That petition was subsequently dismissed, and on May 6, 1993, Theone Barrett herself petitioned to have her son, Michael Barrett, named the conservator of her estate. He was appointed to this post in June, 1993, and brought this action to set aside the conveyances Theone Barrett made to

* Circuit judge, sitting on the Court of Appeals by assignment.

John Barrett in July, 1992. Following a trial of this matter, the probate court declined to set aside the conveyances.

Petitioner first argues that the probate court erred in finding that Theone Barrett was competent at the time she signed the deed conveying 160 acres of her farm to respondent John Barrett. We disagree.

This Court will only overturn findings of fact made by a trial court when such findings are clearly erroneous. In application of this principle, regard must be given to the special opportunity of the trial court to judge the credibility of the witnesses. MCR 2.613(C); *In re Forfeiture of $19,259*, 209 Mich App 20, 29; 530 NW2d 759 (1995). Petitioner relies on the fact that Theone's mental condition varied over time. She had good days and bad days and a history of possibly psychotic symptoms. On this basis, petitioner incompetence because of the presumption that a grantor's condition before and after a conveyance existed at the time the deed was made. *Beattie v Bower*, 290 Mich 517, 525, 287 NW 900 (1939). However, this presumption is not applicable where there is evidence of the grantor's physical and mental condition at the time of the execution of the deed. *Burmeister v Russell*, 362 Mich 287, 290; 106 NW2d 752 (1961). John Barrett, Richard Shulaw, and Margaret Kennedy Shulaw all testified that they were present at the time Theone Barrett signed the deed and indicated that they believed from their observations that she was competent to do so. We are not left with a definite and firm conviction that the lower court erred in relying on this testimony in finding that Theone Barrett was competent at the time she signed the deed. *Arc Industries v American Motorists Ins Co*, 448 Mich 395, 410; 531 NW2d 168 (1995).

Petitioner next argues that the lower court erred in finding that no fiduciary relationship existed between Theone Barrett and John Barrett. We disagree.

The existence of a fiduciary relationship is a question of fact. *Totorean v Samuels*, 52 Mich App 14, 17; 216 NW2d 429 (1974) criticized on other grounds 399 Mich 529, 538 (1977). While there was some evidence that Theone Barrett relied on John Barrett to help her in the management of her affairs, other evidence showed that she made the ultimate decisions and bore the responsibility of managing her own affairs. In light of this evidence, we cannot say that the lower court clearly erred in finding no fiduciary relationship.

Given that there was no fiduciary relationship between Theone Barrett and John Barrett, petitioner's argument that a presumption of undue influence applies to this transaction is unavailaing. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993). Even if such a relationship did exist, there was no error in the lower court's finding that the presumption was rebutted. Undue influence exists where the grantor was subjected to threats, misrepresentation, undue flattery, fraud or physical or moral coercion sufficient to overpower volition, destroy free agency, and impel the grantor to act against the grantor's inclination and free will. *In re Erickson Estate, supra* at 331. As there was evidence that Theone Barrett was not subjected to coercion that destroyed her free will in the matter, the probate court's finding that there was no undue influence involved in the conveyance was not clearly erroneous. Finally, petitioner fails to cite any authority for the assertion that the presumption of

undue influence could not be rebutted due to an alleged lack of consideration for the transfer. Accordingly, we will treat this argument as having been abandoned on appeal. *In re Powers*, 208 Mich App 582, 588; 528 NW2d 799 (1995).

Next, petitioner argues that respondent failed to provide adequate consideration for the land deeded to him by Theone Barrett. Petitioner cites *Beattie*, *supra* at 526, and argues that where deeds of valuable property are procured from an aged and infirm person without proper advice and information, such a purchase can only be sustained on proving that full value was given for the property bought. We agree with the lower court's determination that *Beattie* is distinguishable from the case at bar. In *Beattie*, the Court noted that it would be "preposterous" to believe that the grantor, a man living in an institution and who had been insane for several years, had voluntarily stripped himself of all his property, leaving himself practically a pauper. *Id*. at 531. In this case, unlike the situation in *Beattie*, at the time of the conveyance there was evidence that Theone Barrett was indeed competent and lived in her own home. Further, after the conveyance she still possessed 330 acres of the 490 acres of farmland she inherited from her husband. In light of these facts, we find controlling the contract principles that, absent elements of bad faith, we will not inquire into the adequacy of consideration for a contract and that any consideration is legally sufficient to support a contract. *Dep't of Natural Resources v Westminster Church*, 114 Mich App 99, 104; 318 NW2d 830 (1982); *Rose v Lurvey*, 40 Mich App 230, 234; 198 NW2d 839 (1972). Additionally, the lower court noted that a portion of the property conveyed was intended as a gift. Deeds are valid absent consideration when intended as gifts. *Kar v Hogan*, 399 Mich 529, 545; 251 NW2d 77 (1976); *Daane v Lovell*, 83 Mich App 282, 293; 268 NW2d 377 (1978).

Affirmed.

/s/ Maura D. Corrigan
/s/ Clifford W. Taylor
/s/ Donald A. Johnston