

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2004-0266, In re Estate of Rita T. Taylor; George Taylor & a. v. Rita Taylor; George Taylor & a. v. Rita Taylor; George Taylor & a. v. Rita Taylor, the court on March 23, 2005, issued the following order:

The respondent, Rita Taylor, appeals an order of the probate court declaring the 1999 will and inter vivos gifts of the decedent, Rita T. Taylor, to be invalid. The sole issue before us is whether the evidence supported the trial court's finding that the actions of the decedent were the result of undue influence. We affirm.

"Whether undue influence exists is a question of fact to be determined based upon the surrounding facts and circumstances." In re Estate of Cass, 143 N.H. 60, 61 (1998). Among the factors to be considered by the trial court are "the relationship between the parties, the physical and mental condition of the donor, the reasonableness and nature of the disposition, and the personalities of the parties." Id. "The influence that a donee exerts over a donor must amount to force or coercion that alters the donor's will and must be more than the mere influence of affection. In cases where the donee acts in a fiduciary capacity to the donor, the donee has the burden of proving an absence of undue influence." Id. (citation omitted).

In this case, the trial court found that: (1) the respondent allowed only certain people to visit the decedent; (2) when the respondent was in the room when her siblings visited the decedent, the decedent fell silent but became more animated when the respondent left the room; and (3) the respondent spoke for the decedent when the decedent was receiving health care. The trial court also found that the decedent executed a will in 1994 that left the homestead property to the respondent and divided the remainder of the property between the decedent's eight children and that the respondent marked up that will in 1998 and took the decedent to an attorney to prepare a new will that left the decedent's entire estate to the respondent. The record also contains substantial evidence that the decedent suffered from numerous medical problems.

Although the record also contains extensive testimony that the respondent provided continuing care to the decedent for many years and that the decedent continued to receive visits from others, we defer to the trial court's judgment in resolving conflicts in the testimony and assessing the credibility of witnesses to determine whether undue influence was exercised. See In re Estate of King, 151

N.H. ___, ___ (decided September 9, 2004) (trier of fact is in best position to **In Case No. 2004-0266, In re Estate of Rita T. Taylor; George Taylor & a. v. Rita Taylor; George Taylor & a. v. Rita Taylor; George Taylor & a. v. Rita Taylor, the court on March 23, 2005, issued the following order:**

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measure persuasiveness and credibility of evidence). Because the record contains evidence that supports the probate court's finding of undue influence, we affirm.

Affirmed.

DALIANIS, DUGGAN and GALWAY, JJ., concurred.

**Eileen Fox
Clerk**

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