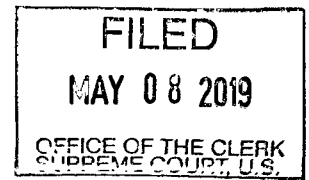


ORIGINAL

NO. 19-5174



IN THE SUPREME COURT OF THE UNITED STATES

WILLIAM C. LEWIS, SR.

ESTHER Y. LEWIS,

PETITIONERS,

vs.

ESTATE OF ROBERT A. LEWIS, ET. AL.,

RESPONDENT(S).

ON PETITION FOR A WRIT OF CERTIORARI TO
THE DISTRICT OF COLUMBIA COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the decision affirming the denial of a trial by jury on Petitioners' claims violated their 7th Amendment to the US Constitution.
2. Whether the DC Court of Appeals erred when it affirmed the decision transferring the asset to the Estate of Respondent.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully pray that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The Memorandum Opinion and Judgment of the DC Court of Appeals to review the merits appears at Appendix C to the Petition and has been designated for publication but is not yet reported.

JURISDICTION

The date on which the DC Court of Appeals decided my case was September 13, 2018. A copy of that decision appears at Appendix C.

A timely petition for rehearing was thereafter denied on February 7, 2019.

The Jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATORY PROVISION INVOLVED

The Fifth Amendment to the United States Constitution.

The Fourteenth Amendment to the United States Constitution.

The Eighth Amendment to the United States Constitution.

STATEMENT OF THE CASE

On November 1, 2013 Petitioners brought an action in the DC Superior Court, Probate Division on behalf of the Estate of Amos W. Lewis, Jr. (“the Estate”) alleging fraudulent conveyance, wrongful withholding of estate assets, and unjust enrichment in connection with two pieces of real property originally belonging to their father A. Lewis. Petitioners are the Co Personal Representatives of the Estate and are two of the surviving children of Amos W. Lewis, Jr. who died intestate on December 8, 1992.

The major litigation action (LIT) was filed as a consequence of the death of Petitioners’ brother Respondent Robert A. Lewis and the probating of Respondent’s estate by his son, Robert T. Lewis (“R.T. Lewis”). Respondent died intestate on August 25, 2013. A controversy arose over two pieces of real property that both Petitioners and R.T. Lewis listed as owned by each Estate. R.T. Lewis was appointed as Personal Representative of his father’s estate in October 2013. R. T. Lewis listed the two pieces of real property located at 638 Quebec Place N.W. (“the Quebec Pl Property”) and 6526 North Capitol Street NW (“the North Capitol Street Property”) as assets of the Estate of Robert A. Lewis.¹ This triggered Petitioners to petition for probate of their father’s Estate in that Petitioners knew that the Quebec Pl. property and the North Capitol Street property belonged solely to Amos W. Lewis, Jr. after the death of Petitioners’ mother. Petitioners also listed these properties as part of their father’s Estate.

¹ The Deeds were allegedly conveyed on December 7 and December 8, 1987. The Deed to the Quebec Place

Following several attempts at mediation ordered by the DC Superior Court, pre-trial dispositive motions, motions in limine and a pre-trial conference, trial was scheduled in this case for October 26, 2015 on Petitioners' and Respondents' competing claims for the assets.²

The trial court heard testimony from all four of Amos Lewis's surviving children, including Petitioners. Testimony also was provided by R.T. Lewis, Respondent's estranged spouse, Wanda Lewis and witnesses for the Respondents. All of Amos Lewis's children testified that he was not in Washington, DC when the Deeds purportedly conveying title to their father's properties to Respondent were executed. According to the testimony of the Lewis siblings, Amos Lewis left Washington, DC on or before August 25, 1987 and never returned. The siblings all testified that their father A. Lewis suffered a stroke in November 1987 which left him debilitated and unable to perform basic tasks, i.e. writing. The siblings testified that Amos Lewis suffered a series of additional strokes in 1988, 1989 1991 and 1992 and that after the second stroke Mr. Lewis was brought into her home of one of the siblings Naomi Williams and her husband who later became his caretakers.

The siblings with the exception of one, Gordon Lewis, testified that there was no way that Amos. Lewis could have signed those Deeds or personally appeared before the DC Notary or executed a re-recording certificate because Amos Lewis

² Petitioners requested a trial by jury as part of the Verified Complaint. During one pre-trial conference held on September 8, 2015 the trial court struck one request for jury trial on grounds that the matter involved issues of equity and damages.

was in Detroit on the dates that all of the signatures were allegedly executed.³ Petitioners essentially testified that the signatures were not their father's, i.e. he wrote big and he could not be in two places – Washington, DC and Detroit, Michigan at the same time and that R.T. Lewis never visited in Detroit.

On December 8, 2015 the trial court held that Petitioners did not prove by clear and convincing evidence, or even by a preponderance of the evidence that the deed to the Quebec Place property executed on December 8, 1987 and bearing the DC Notary's statement was fraudulently executed. The trial court went on to state that it was unable to conclude by neither a preponderance of the evidence nor certainly by clear and convincing evidence that Amos Lewis was in Detroit and not in the District of Columbia on December 7 and 8 when the Deeds were signed, and that Petitioners did not make the case for fraudulent conveyance. The court went on to rule that the Quebec Place property belonged to Respondent, the Estate of R. Lewis. The trial awarded the North Capital Street Property to the Estate.

Petitioners filed a timely notice of appeal to the DC Court of Appeals. The DC Court of Appeals affirmed the decision of the trial court and denied Petitioners for rehearing and or rehearing en banc

REASONS FOR GRANTING THE PETITION

³ A re-recorded Deed was executed in June 1988 purportedly by Amos Lewis; however, Amos Lewis was not in the District of Columbia and had suffered a second stroke by 1988 by the time that the re-recording certificate was executed. The trial court credited the testimony of the Lewis siblings that Amos Lewis was not in Washington, DC to sign the re-recording certificate and that Respondent during his life time signed for it for his convenience.

a. The Decision Affirming the Denial of a Trial by Jury on Petitioners' Claims Violated their 7th Amendment to the US Constitution.

Petitioners maintain that they were entitled to a trial by jury in that they alleged the elements of a constructive which is legal in nature and therefore a constitutional right to a trial by jury attaches. DC Superior Ct. Civ. R. 38(a): *In Re Estate of Johnson*, 820 A2d 535, 538 (D.C. 2003) (quoting *Johnson v. Fairfax Vill. Condo, IV unit owners assn*, 641 A2d 495, 505 (D.C.1994)).

The Seventh Amendment to the US Constitution provides that in civil trials:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

Petitioners argue that based upon the plain language of the Seventh Amendment, Petitioners were entitled to a trial by jury. The amount in controversy exceeded twenty and had the parties been able to present their issues before a jury of their peer and had Petitioners been afforded the opportunity to present their case to a jury a different result would have been reached. This is true in that it was clear that Amos Lewis did not sign the deed to the Quebec property and certainly did not sign the corrective deed. Even the trial court reached this conclusion. Petitioners further argue that there is nothing in the language of the Seventh Amendment that supports the State Court position that real estate matters or matters in equity cannot be hear by a jury.

Based upon the facts, the Verified Complaint and the testimonies of the Lewis siblings evidence was provided that the trial court should have considered the

imposition of a constructive trust to cause the deed to the property to revert back to the estate of Amos Lewis. The concept of a constructive trust will be discuss below. In light of this fact a trial by jury was necessary and appropriate.

b. The DC Court of Appeals erred when it affirmed the decision transferring the asset to the Estate of Respondent.

The DC Court of Appeals affirmed the decision of the trial court, relying solely upon the lower court's position that it could not prove a forgery of the signatures because of the Notary's authentication of the signatures on the deed as being those of Amos Lewis. The DC Court of Appeals opined that the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it. In *re Estate of Sato* 878 a2d 1247, 1250 (d.c. 2005). " quoting DC Code § 17-305 (a) (2001)). Citing also *Ross v Blackwell*, 146 A3d 385, 387 (DC 2016)). Petitioners contend that the Appellate Court applied an improper standard of review in this instance.

The question here is whether the DC Court of Appeals' reliance upon the trial court's position that all of the corroborating testimony by the Lewis siblings lacked great weight when compared to the Notary's statement, or the absence of aged or destroyed medical records, or the absence of a hand writing expert to affirm the lower court's decision was proper. Petitioners contend that it was not. First of all, statement executed by the Notary namely that Amos Lewis personally appeared before her or was "known to be that person" is not proof that Amos was in Washington DC when the deeds were executed or that he even appeared before her.

It is not proof that the Deeds were not forged. D.C. code § 42-142(b)(c) provides that evidence that a person is the person whose true signature is on the document may be identified upon the oath or affirmation of a credible witness personally known to be the notarial officer or identified on the basis of an identification document. Thus, the law as to the Notary with respect to the identities of signers requires nothing more of said Notary than the use of reasonable care to satisfy himself in his own conscience that the signers are the persons they purport to be. *Immerman v Ostertteg*, 199 A2d 869,872 (NJ 1964); *City Consumer Services, Inc v Metcalf*, 722 P. 2d 1065, 1066 (Ariz 1989); *Mitchell v Melton*, et al super. Ct of the Dist at pp 9-10 (Dec 16, 2011).

The testimony of the siblings who knew their father and who knew that he was not in the District of Columbia becomes equally if not more important than a Notary's attestation. In the instant matter all of the Lewis siblings testified *inter alia* that Amos Lewis was not in the District of Columbia when the Deeds were executed, had suffered debilitating strokes before the Deeds were allegedly executed and these strokes affected his writing ability. The Court of Appeals' deference to the trial court's conclusion that the Lewis siblings' testimony carried far less weight than the Notary's authentication of the Deeds was too narrow in interpretation and is not supported by evidence in the record.

The Appellate Court opined that in the absence of a hand writing expert and in the absence of medical records it was not proven by clear and convincing evidence or by the preponderance of evidence that the Deeds were not forged or signed by

someone else. This position by the DC Court of Appeals is also erroneous. It is well settled that a person who has seen someone write his or her name even once, is qualified to testify to the genuineness of a controversial signature or where it is alleged that a signature is that of someone else. *Bates v Hoggs*, 199 KY, 465,251 SW 620, 622 (1923) (personal knowledge of a person's handwriting can be acquired by having seen the person write.); *Storm v Hanson* 41 N.J. super, 249, 124 A.2d 601,604 (App Div 1956); *Black v Morton*, 234 Ark. 360, 352 – SW 2d 177, 179 (1961) (circumstantial evidence may be sufficient to prove the forgery of a Deed).

Petitioners and their siblings all testified that they have seen their father sign his name on many occasions which is an undisputed fact. The weight of the evidence in this regard outweighs or is at least equal to any authentication of Amos Lewis's signature by a handwriting expert. By witnessing the signature of A. Lewis on many occasions, the Lewis siblings actually became handwriting experts who could attest to the validity of Amos's signature. These three siblings all testified that the signatures on those Deeds were not their father's signature.

Although there were no medical records presented, it is clear from Amos Lewis's death certificate presented to probate his Estate that he died from complications of several strokes. The Appellate Court's deference to the trial court's conclusions in the absence of evidence that the memories of the Lewis siblings faded to the extent that all of them could not remember exact dates when all testified that A. Lewis was not in the District of Columbia in December 1987 when the Deeds were purportedly executed was clearly erroneous.

The third reason why certiorari should be granted is the fact that Respondent was not in the District of Columbia in June 1988 and that Respondent signed a re-recording certificate for his own convenience. At issue here is the fact that the first deed allegedly conveyed to Respondent actually conveyed nothing because the square was incorrect (rendering it void). Petitioners' Complaint made reference to the invalid re-recording certificate in paragraphs 12 and 14 of the Complaint as referenced under exhibit No. 2 of the Complaint. Without a power of attorney by Amos. Lewis to Respondent the deed could neither be corrected, could the deed be corrected by Respondent.

A final reason that certiorari to the DC Court of Appeals should be granted is that the Appellate Court did not address the issue of a constructive trust which was raised by Petitioners. A constructive trust may be defined as an equitable device to restore property to the rightful owner and to prevent unjust enrichment. The trust is construed by equity to prevent the unjust enrichment of one person at the expense of another as a result of fraud, undue influence, abuse of confidence or mistake in the transaction that originates the problem. *Joseph v Channin*, 940 SO. 2d 483 (Fla. 4th DCA 2006); *Smith v Wells Fargo Bank*, 991, A2d 20 (D.C. 2010).

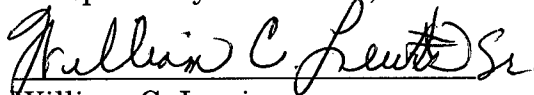
The elements of a constructive trust: (1) a promise; (2) transfer of the property and reliance therein; (3) a confidential relationship; and (4) unjust enrichment. *Gray v. Gray* 412 A2d 1208, 1212 (D.C. 1980). The facts of this case are consistent with the imposition of a constructive trust and the reversion of the Quebec Place property back to the Estate of Amos Lewis. Amos died intestate; the

Verified Complaint alleges that the Lewis siblings' parents wanted the Quebec Place property sold and that R.T. Lewis was given the task of handling the renovations of the property. Moreover, The Lewis siblings testified that through the years they made financial contributions to Respondent for payment of taxes and continued repairs to the Quebec property. This testimony was uncontroverted. Once again the trial court's sole reliance on the Notary's statement to find that the Deed was valid against the wealth of facts in this record supporting the imposition of the constructive trust must be overturned. Here, the Verified Complaint clearly alleges the elements necessary to impose a constructive trust. This is particularly true given the fact that Amos W. Lewis, Jr. died intestate.

CONCLUSION

The petition for Writ of Certiorari should be granted.

Respectfully submitted,



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