

State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at 518-455-7711 or gspencer@nycourts.gov.

To be argued Thursday, March 16, 2023

No. 26 Matter of the Estate of Maika

Anne and Philip Maika are two of Frank Maika's 12 children and they were his primary caregivers for more than seven years after he suffered several strokes and then the death of his wife in 2009. In 2010, Frank Maika executed a power of attorney appointing five of his children, including Philip Maika (Philip), as attorneys-in-fact to act on his behalf in real estate transactions and other matters if a majority of them agreed on the action. The power of attorney did not authorize them to make major gifts on his behalf. In March 2017, Philip and two of his sisters, acting in their capacities as attorneys-in-fact, conveyed their father's home in Manlius to Philip and Anne as compensation for their home care services. Frank Maika died in July 2017, leaving a will that would have bequeathed his home in equal shares to all of his children. Cora Alsate, as the appointed administrator of his estate, subsequently brought this SCPA 2103 proceeding against Philip and Anne, contending the property had been improperly transferred to them and should be returned to the estate.

Supreme Court granted summary judgment to the administrator and set aside the deed that conveyed the Maika home to Philip and Anne. It ruled the transfer was an improper gift, based largely on the presumption that where parties are related, services were rendered in consideration of love and affection, without expectation of payment.

The Appellate Division, Fourth Department reversed on a 3-2 vote and dismissed the administrator's suit, holding that even if the presumption of impropriety applied, the respondents Philip and Anne rebutted it with "clear, convincing and satisfactory evidence" that there was an agreement by the attorneys-in-fact that their services would be compensated and that "the transfer of property was not a gift." The evidence included "affidavits from the two attorneys-in-fact who voted with Philip to transfer the property. Each averred that the transfer was intended to compensate respondents for their continued care of decedent and that respondents' services allowed decedent to remain in his home. Each further averred that she agreed to the transfer knowing that it would diminish her own share of decedent's estate." It said Philip and Anne also "established that the attorneys-in-fact acted within the authority delegated to them by decedent to transfer real property for his benefit, i.e., as compensation for the services that permitted him to remain in the home in accordance with his expressed wishes."

The dissenters argued that "when an attorney-in-fact child, whose action or vote is necessary to approve a transfer of property allegedly as compensation for services rendered to a parent, is an interested party who stands to receive such alleged compensation, the attorney-in-fact child must rebut the presumption with evidence of the parent's intent to transfer the property as compensation," which the respondents failed to do. "In any event..., we conclude that respondents failed to submit clear and convincing evidence that there was an agreement between respondents and the attorneys-in-fact" that they would be compensated. "Respondents rely only on self-serving statements in their own affidavits and after-the-fact, hearsay statements in the affidavits of two of respondents' siblings who were attorneys-in-fact recounting prior conversations among the attorneys-in-fact, without any contemporaneous evidence to substantiate that the property transfer – which occurred during the terminal months of decedent's illness even though his will would have passed the property equally to all of his children – was intended to compensate respondents for their care of decedent."

For appellant Alsate (estate administrator): Mary L. D'Agostino, Syracuse (315) 565-4500
For respondents Anne and Philip Maika: Daniel R. Rose, Syracuse (315) 422-1152

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No. 27 People v Anthony Debellis

Anthony Debellis was arrested for possession of a weapon in 2018 after he was stopped by police on the Bronx River Parkway for driving with an expired car registration. The officer saw a shiny object in his hand and Debellis said it was a gun magazine, but he denied having a gun with him. The officer found a loaded pistol under the driver's seat floor mat.

Defense counsel sought to establish at trial that DeBellis's possession of the firearm was temporary and lawful based, in part, on Debellis's testimony that he had been driving to a police precinct to turn in the pistol for cash under the NYPD's gun buyback program. He also testified that his gun license had been revoked more than a year before his arrest. Defense counsel did not ask the court to instruct the jury on the defense of voluntary surrender of a firearm under Penal Law § 265.20(a)(1)(f). Supreme Court denied the defense request to charge the jury on the temporary possession defense because Debellis admitted he had owned the gun for more than a year. He was found guilty of second-degree criminal possession of a weapon and related counts.

At sentencing, defense counsel told the court Debellis had just given him a pro se motion to set aside the verdict due to ineffective assistance of counsel. When the court asked if he would adopt the pro se motion, defense counsel said he would not and declared, "I am not going to argue that I was ineffective. I think I was very effective." The court read the pro se motion into the record, denied it on the merits, and sentenced Debellis to seven years in prison.

The Appellate Division, First Department affirmed, finding Debellis was not deprived of effective assistance by "his counsel's failure to request a jury instruction on the exemption from firearms possession laws for a person who voluntarily surrenders a weapon to the police.... There was no reasonable view of the evidence that defendant's conduct satisfied the requirements of that statute...." It further found Debellis had not shown prejudice because his "actions and statements before and during his arrest, including denying having a weapon, were utterly incompatible with his incredible testimony that he happened to be stopped by the police while driving to a police station to surrender his pistol as part of a buyback program." The court also rejected Debellis's claim that his counsel created a conflict of interest by taking an adverse position on his pro se motion, saying the attorney made "a brief and conclusory remark that he believed that he had provided effective assistance. Counsel never went beyond 'defending his performance'...." It said the trial court "'readily recognized the motion's lack of merit, independently of anything said by counsel'...."

Debellis argues he was deprived of effective assistance of counsel because his attorney "conceded weapon possession before the jury but, due to ignorance of the law, failed to present the only applicable defense: voluntary surrender of a firearm under Penal Law § 265.20(a)(1)(f). Instead, counsel went all-in on a baseless temporary-and-innocent possession defense that, as the court correctly held, did not apply as a matter of law. Defense counsel's prejudicial course of conduct effectively directed a guilty verdict against his own client." He also contends his attorney created a conflict by taking an adverse position on the merits of his pro se motion when counsel said, "I think I was very effective."

For appellant Debellis: Matthew Bova, Manhattan (212) 577-2523

For respondent: Bronx Assistant District Attorney R. Grace Phillips (718) 664-2316

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No. 28 People v Thomas P. Perdue

Christian Cirilla was shot in the leg as he argued with a woman in the front yard of her Rochester apartment building in 2017. Thomas Perdue was arrested and charged with the crime three weeks later. Only two eyewitnesses identified Perdue as the shooter at his trial five months later. One was Cirilla and the other was a woman who lived in an upstairs apartment of the same building who said she saw the shooting from her window. She called 911 to report the incident that night and said she could identify the shooter, but the police did not conduct an identification procedure – such as a lineup or photo array – with her before the trial. The prosecutor was unaware the witness would identify Perdue until she was on the witness stand, described the shooter, and said she would recognize him if she saw him again. Defense counsel objected and the court held a bench conference. Defense counsel argued that a first-time in-court identification would be unduly suggestive because Perdue would be the only person sitting with her at the defense table. The court, after hearing that no pretrial identification was made, said “that’s not really good police work.” But the court overruled the objection and allowed the witness to identify Perdue in front of the jury, saying, “She’s subject to cross-examination.” Perdue was convicted of second-degree assault, two counts of second-degree criminal possession of a weapon, and was sentenced to 12 years in prison.

The Appellate Division, Fourth Department affirmed, saying the unexpected first-time identification at trial did not violate Perdue’s right to due process. “Where, as here, ‘there has been no pretrial identification procedure [with respect to a witness] and the defendant is identified in court for the first time [by that witness], the defendant is not [thereby] deprived of a fair trial because [the defendant] is able to explore weaknesses and suggestiveness of the identification in front of the jury’” through cross-examination, it said.

Perdue argues that “in-court identifications where the defendant is seated next to counsel at defense table are tantamount to showups, are inherently suggestive and create a substantial likelihood that they are unreliable;” and that the “in-court identification made five months after the shooting” in this case “likely contributed to a mistaken identification which resulted in a wrongful conviction.” He says other courts have used pretrial procedures, such as lineups, to test a witness’s reliability “when the defense is notified that a witness will make a first-time in-court identification in order to protect the defendant’s right to a fair trial, but because notice that the eyewitness would do so at Thomas Perdue’s trial was not provided until she was already on the witness stand, her testimony as to identification should have been precluded.”

For appellant Perdue: Carolyn Walther, Rochester (585) 753-3480

For respondent: Monroe County Assistant District Attorney Kaylan C. Porter (585) 753-4674