

Reinhardt v Cowl

2005 NY Slip Op 30551(U)

June 1, 2005

Supreme Court, New York County

Docket Number: 106520/2005

Judge: Walter B. Tolub

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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: IAS PART 15

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HEDWIG REINHARDT by her attorney-in fact
CHARLES F. GIBBS,

Plaintiff,

Index No. 106520/2005
Mtn Seq. 001

-against-

DORIS COWL

Defendants.

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WALTER B. TOLUB, J.:

By this proceeding, plaintiff attorney-in-fact (hereinafter, "plaintiff"), pursuant to a durable power of attorney, seeks a declaration that a subsequent power of attorney is void. Plaintiff's durable power was executed in September of 2001, defendant's durable power of attorney was executed on March 17, 2005. Plaintiff contends that the principal, Hedwig Reinhardt, lacked the sufficient mental capacity on March 17, 2005 to execute a valid power of attorney.

This proceeding was initiated by an Order to Show Cause, returnable on May 16, 2005. Testimony was taken on May 19 and 23, 2005. Testifying were Norman Reich, a long-time neighbor of the principal, Leonard Baum, Esq., representing the Weizman Institute, the primary beneficiary of the principal under her will of 2001; Charles Gibbs, Esq., the attorney-in-fact to the September, 2001 power of attorney; Lorna Maywand, one of the principal's care givers, who was present at the execution of the (March 17, 2005)

power of attorney; Mardy Sidel, the notary present at the March 17, 2005 execution; Mark Smith, an attorney at Holland & Knight, LLP ("Holland & Knight") and an associate of Mr. Gibbs; and the defendant, Doris Cowl, a relative of the principal. The court was also presented with transcripts of conversations with the principal, her care giver, Ms. Florence Vincent, and Messrs. Gibbs, Smith and in one instance, Ms. Maureen Bateman, an associate at Holland & Knight. The parties have stipulated that the transcripts are accurate.

The principal in this matter is an incredibly accomplished woman, Dr. Hedwig Reinhardt. Dr. Reinhardt is currently 99 years old, has a doctorate in Economics and taught for many years at Baruch College. At present, Dr. Reinhardt's ability to care for herself is severely diminished. She suffers from severe hearing loss, has a full time health aide seven days a week and is substantially cognitively impaired. Her estate is worth roughly between one and two million dollars.

Charles Gibbs, Esq., of the law firm of Holland & Knight is the agent of Dr. Reinhardt pursuant to a September 6, 2001 Power of Attorney. Mr. Gibbs was referred to Dr. Reinhardt by her only sibling George, who died in July of 2004. In 2001, Dr. Reinhardt executed a power of attorney in order to thwart the efforts by either a family member or friend to move Dr. Reinhardt from her Gramercy Park apartment to Florida. Previously, in November of

2000, Dr. Reinhardt had granted a power of attorney to Phillip Camporeale, an accountant, to handle her fiscal affairs. Dr. Reinhardt's will, executed in September of 2001, after leaving substantial bequests to the Weizman Institute and Baruch College, left her residuary estate to her brother George Reinhardt. George died in July of 2004 and pursuant to the will, the residuary legatee is the Weizmann Institute.

Doris Cowl is the daughter of Irmgard Brooksmen, a first cousin of Dr. Reinhardt. Ms. Cowl is a retired schoolteacher who lives in Maryland. Up until 1996, her visits to Dr. Reinhardt were infrequent. From 1996 through 2001, Ms. Cowl visited Dr. Reinhardt in New York approximately three times per year. The frequency of her visits apparently increased, as her concerns that Mr. Camporeale was abusing his position and withdrawing inappropriate sums from the estate, began to grow.

Specifically, Ms. Cowl took issue with \$10,000 gifts made to Dr. Reinhardt's brother, George, in 2002 and 2003. She became more concerned when, after George Reinhardt's death, Mr. Camporeale began writing checks to himself. Apparently, Mr. Camporeale, beginning in July 2004, wrote checks to himself in the amounts of \$1800, \$800, and \$11,000. Upon learning of this, Ms. Cowl stated that she began complaining to Mr. Gibbs and Mr. Smith and that they failed to take any action. In response to this alleged inaction, on or about November 7th, Ms. Cowl visited Dr. Reinhardt and penned

a "joint letter" to Mr. Gibbs (Plaintiff's Exhibit 2). The letter said that they had discussed Ms. Cowl assuming "total power of attorney", Ms. Cowl "becoming executor and beneficiary" under the will and Ms. Cowl approaching Mr. Camporeale regarding an accounting" (Plaintiff's Exhibit 2). The letter further requested that these matters be attended to as soon as possible.

On November 24, 2004, Mr. Gibbs and Mr. Smith arrived at Dr. Reinhardt's residence, tape recorder in hand, to question Dr. Reinhardt about the joint letter. It soon became apparent, that although she seemed to remember Doris' name, she was unable to say if they were related. More significantly, she had no recollection of a letter, or anything relating to changing her power of attorney, her will, or any other fiscal matters (see, Tr. Plaintiff's Ex. 3). In the words of both parties, Dr. Reinhardt was characterized as being "out of it".

Ms. Cowl continued pressing Messrs. Gibbs and Smith to move against Mr. Camporeale, but nothing happened. On January 27, 2005, Mr. Smith again visited Dr. Reinhardt. With some prodding, Dr. Reinhardt recalled Irmgard was her first cousin but guessed that Doris was Irmgard's aunt. She recalled making some decisions back in November, but "I know I made some decisions, but I don't (chuckles) know what" (Tr. Plaintiff's Exhibit 5). She didn't know the name of who was doing her checkbook (Phil Camporeale) and when questioned about recent checks she had signed she couldn't recall

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anything about them (*Id.*). At one point, she stated, "I forget everything [chuckles] ... I feel like an idiot" (*Id.*). The longer the interview went, the less productive it became with Dr. Reinhardt replying to questions with "uh-huhs" or "yeah". Finally, Mr. Smith asks Dr. Reinhardt if she has anything she wants to say and she replies, "nope, I really don't know [chuckles]" (*Id.*).

Mr. Gibbs and Ms. Cowl continued their communications, and by February 23, 2005, it became clear that what relationship previously existed had now become adversarial. Ms. Cowl insinuated that Holland & Knight were protecting the interests of the Weizmann Institute, and Mr. Gibbs implied that Ms. Cowl is attempting to have a 99-year-old feeble and senile woman change her long-standing will, to one that would be of benefit to Ms. Cowl.

Mr. Gibbs further stated in his letter of February 23, 2005 (Plaintiff's Exhibit 6) in no uncertain terms, that both visits to Dr. Reinhardt left him with the impression that Dr. Reinhardt lacked the capacity to either execute a new power of attorney or a new will, and that he believed that currently, all that Dr. Reinhardt needs is a junior bookkeeper to see to the payments of her regular expenses and to complete and file her tax returns.

On March 17, 2005, Ms. Cowl appeared at Dr. Reinhardt's apartment with a notary in order to obtain Dr. Reinhardt's signature on the subject durable power of attorney and a Chase Manhattan Bank power of attorney. The session took roughly twenty

minutes. A good deal of this time was spent certifying Dr. Reinhardt's identity, because most of her documentation was outdated. The notary, Ms. Sitzer, almost left when she was not satisfied that Dr. Reinhardt was competent to execute the power of attorney, but finally Ms. Sitzer relented when Dr. Reinhardt became lucid and appeared competent enough to execute the documents in question. At this point, the powers were executed and notarized.

On April 29, 2005, Ms. Bateman and Mr. Smith return to interview Dr. Reinhardt. During this interview, Dr. Reinhardt was able to recall Doris Cowl's name, but she had no recollection of signing the powers of attorney, in fact she says "what I remember the name...., Ms. Bateman asks, "Do you remember the person", "very little" (Tr. Plaintiff's Ex 10).

Discussion

While the court recognizes the narrowness of the issue presented, whether Dr. Reinhardt had sufficient capacity to execute the power of attorney on the date in question, the court would be remiss if it did not comment on the apparent utilization of a durable power of attorney to create a *de facto* guardianship and to circumvent the safeguards provided for in Article 81 of the Mental Hygiene Law. Granted, such proceedings at times, seem time consuming, burdensome, and expensive, however they do provide safeguards and a method of tailoring powers commensurate with the present and future needs of the incapacitated person. In short, a

power of attorney is no substitute for the appointment of a guardian. That having been said, the court will address Dr. Reinhardt's competency.

In order to execute a valid power of attorney, the principal must have sufficient mental capacity at the time of execution (*Salvation Army v Ferrara*, 3 Misc3d 944 (Sur Ct, Rockland County [2004], citing *Russo and Rachlin, New York Elder Law Practice*, 3:8 at 102 [2002 ed.]). More significantly, as Russo and Rachlin further note, "the Principal must be aware that he or she is signing the document and must understand the nature and effect of the document" (*Russo and Rachlin, New York Elder Law Practice*, 3:8 at 139 [2004 ed.]). It is this court's opinion based primarily on the transcripts that Dr. Reinhardt lacked the required mental capacity to grant a power of attorney on March 17, 2005.

The transcript of November 24, 2004, recorded a little over two weeks after meeting Ms. Cowl, and four months before the execution of the power of attorney, manifests that Dr. Reinhardt suffered a severe loss of both short term and long term memory. Dr. Reinhardt doesn't recall her meeting with Ms. Cowl two weeks earlier, she doesn't recognize the name of her accountant, Mr. Camporeale, and she certainly does not remember her bequest to the Weizmann Institute.

The January 27, 2005 visit, two months prior to the execution of the power of attorney, reveals that Dr. Reinhardt is unable to

articulate Ms. Cowl's relationship to Irmgard (Ms. Cowl's mother). But more significantly, she cannot recall the substance of the November 7th letter or its import. She still does not recognize Mr. Camporeale's name, notwithstanding her having signed a check in the sum of \$1800 *nine days earlier*, and in terms of the long term memory, she manifests no true recognition of her generosity to the Weizmann institute.

Finally, the April 29, 2005 transcript, taken roughly six weeks after the power of the attorney was signed, reveals that Dr. Reinhardt doesn't remember signing the power of attorney, and she doesn't remember the day of the week. When asked if she wants Doris to handle her affairs, she states, "I don't know really" (Plaintiff's Exhibit 10).


Finally, all of the transcripts reveal that many of the responses manifest Dr. Reinhardt's lack of interest in, and or comprehension of, the world around her. She doesn't want to read the letter of November 7th, she has "no" legal problems, and, as to that letter she remarks, "I don't know how to talk what this letter is about. I just don't know them and I really don't care much" (Plaintiff's Exhibit 1, p.1) When told that Mr. Camporeale may be "behaving improperly in taking more money from you than he should", her only reactions are yeahs and uh-hus.

Given her impaired long and short term memory, her apparent lack of judgement and intellect, and her affect, it is this court's

opinion that Ms. Reinhardt could not have had the requisite capacity to execute a valid power of attorney on March 17, 2005, and accordingly, it is the court's opinion that the powers of attorney signed on that day are void.

Settle Judgment.

Dated: 6/1/05



HON. WALTER B. TOLUB, J.S.C.

FILED
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NEW YORK