

IN THE COURT OF APPEALS  
AT KNOXVILLE

**FILED**  
February 29, 2000  
Cecil Crowson, Jr.  
Appellate Court Clerk

EDITH FRANCES ROGERS,	)	E1999-02293-COA-R3-CV
	)	BLOUNT COUNTY
Plaintiff-Appellant,	)	03A01-9903-CV-00087
	)	
	)	
v.	)	HON. W. DALE YOUNG
	)	JUDGE
	)	
THE ESTATE OF ODIS GLENN	)	
ROGERS, ET AL.,	)	
	)	
Defendants-Appellees.	)	AFFIRMED AND REMANDED

L. LEE KULL, Bird, Navratil & Kull, P.L.L.C., Maryville, for Appellant

JERROLD L. BECKER, Becker, Thomforde, Brown, Knight & Hester, P.C., for Appellee

O P I N I O N

Goddard, P.J.

This appeal from the Circuit Court of Blount County involves a determination of whether a husband fraudulently conveyed the bulk of his estate to his children from a previous marriage in order to defeat his wife's elective share of his estate. Edith Frances Rogers, the Plaintiff/Appellant, appeals the Trial Court's judgment in favor of the Defendants/Appellees: the estate of Odis Glenn Rogers; Ted Rogers, as executor of his father's estate; and Nancy Rogers Mayes, daughter of Odis Glenn Rogers, individually.

Ms. Rogers' sole issue, which we restate, is whether the Trial Court erred by finding that Odis Glenn Rogers did not fraudulently convey real and personal property to his children, thereby depriving her of her elective share of his estate. We affirm the judgment of the Trial Court and remand for any further proceedings that may be necessary.

Mr. and Mrs. Rogers were married in February 1983 and remained married until Mr. Rogers' death in March 1997. No children were born of this marriage, although both had children from previous marriages. At the time of their marriage, each owned a house. During their fourteen-year marriage, Mr. and Mrs. Rogers never discussed their personal finances with one another and kept their finances separate, splitting only the costs of their monthly expenses.

In 1992, Mr. Rogers was diagnosed with a serious illness, and on May 5, 1993 he executed his will in which he left all of his property to his two children, Ted Alan Rogers and Nancy Rogers Mayes. At the time of his death, Mr. Rogers owned with his two children approximately \$179,500 in savings bonds, of which approximately \$63,500 had been purchased before his marriage to Mrs. Rogers. On that same date, Mr. Rogers executed a quitclaim deed, which purports to transfer his house to himself and his two children, and executed an agreement that allowed him

to live in his house until his death. In addition, Mr. Rogers executed a "durable power of attorney with health care," designating his son Ted Rogers as his attorney in fact.

On January 9, 1996, Mr. Rogers purchased a Certificate of Deposit with a right of survivorship to his son Ted Rogers in the amount of \$10,000. On March 6, 1997, Ted Rogers, through his power of attorney, placed his name on his father's checking account, which contained approximately \$9,041 and which gave Ted Rogers a survivorship right on the account. On March 30, 1997, Mr. Rogers died.

During her testimony Mrs. Rogers admitted that she executed a will before her husband's death in which she left nothing to her husband and all her real and personal property to her children, grandchild, and great-grandchild. In December 1996, shortly before Mr. Rogers' death, Mrs. Rogers transferred her house to her children, reserving a life estate for herself,

with her personal property to be transferred to her children, grandchild, and great-grandchild upon her death.

Mrs. Rogers contends that she was not aware of the transfers of property from her husband to his children until she was told by Ted Rogers that she had three weeks to move from his father's house. However, Nancy Rogers Mayes testified that Mrs. Rogers was aware that her father was purchasing savings bonds with her and her brother because Mrs. Rogers went with her and her father to the bank in July 1996. While Mrs. Rogers admits that she did go to the bank with her husband and his daughter, she argues that she stayed in the lobby and did not know what transpired regarding her husband's finances.

Mrs. Rogers argues that her husband had promised her that he would take care of her for the rest of her life. She

maintains that she relied on this promise, and with her husband's approval, transferred her house to her two children in 1996. She contends that since her husband's death, she has had to spend her savings to purchase a home for herself because she had to vacate the home belonging to her husband and her former house was too small for her to reside with her daughter's family. Therefore, she asserts that the transfers of property by her husband should be set aside because they were carried out in secrecy and done without consideration.

The Trial Court concluded that there was no evidence of fraud regarding any of the transactions by Mr. Rogers and that all transactions were made in good faith.

In nonjury cases this Court's standard of review is "de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the

preponderance of the evidence is otherwise." Rule 13(d),  
Tennessee Rules of Appellate Procedure.

In determining whether the husband intended to practice  
a fraud upon his wife, the Court looks at several factors:

(1) whether the transfer was made with or without  
consideration, (2) the size of the transfer in  
relation to the husband's total estate, (3) the time  
between the transfer and the husband's death, (4)  
relations which existed between the husband and the  
wife at the time of the transfer, (5) the source from  
which the property came, (6) whether the transfer was  
illusory, and (7) whether the wife was adequately  
provided for in the will.

Finley v. Finley, 726 S.W.2d 923, 924 (Tenn. Ct. App. 1986).

In assessing these factors in the present case, we are  
of the opinion that while Mr. Rogers transferred the bulk of his  
estate to his children during his marriage to Mrs. Rogers, she

did the same with her estate, leaving all of her assets to her children, grandchild, and great-grandchild.

Furthermore, as already noted, the record reveals that throughout their fourteen-year marriage the parties kept their finances separate, choosing only to split the costs of their monthly expenses. As already noted, many of the savings bonds that Mr. Rogers purchased with his two children were purchased long before his marriage to Mrs. Rogers, as was the house that he transferred to his children. Also, with respect to the savings bonds Mr. Rogers purchased during his marriage with Mrs. Rogers, he apparently used his separate assets to purchase the bonds, and it appears that all of the property transferred from Mr. Rogers to his children came from his separate assets.

We find that Mrs. Rogers benefited significantly from receiving her husband's Social Security and retirement pension.



While it is true that Mrs. Rogers was not provided for in her husband's will, she does receive his Social Security benefits and his retirement pension, totaling approximately \$1,500 per month, instead of the approximately \$368 in benefits she would have received from her own Social Security.

For the foregoing reasons, the judgment of the Trial Court is affirmed, and the cause remanded for such further proceedings consistent with this opinion as may be necessary and collection of costs below. Costs of appeal are adjudged against Mrs. Rogers and her surety.

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Houston M. Goddard, P.J.

CONCUR:

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Herschel P. Franks, J.

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D. Michael Swiney, J.