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ARKANSAS COURT OF APPEALS

DIVISION I
No. CA10-229

	Opinion Delivered March 16, 2011
MELVIN THORN AND SANDRA THORN APPELLANTS	APPEAL FROM THE FAULKNER COUNTY CIRCUIT COURT [NO. CV-2007-20]
V.	HONORABLE MICHAEL A. MAGGIO, JUDGE
NOBLE VANCE PIERSON APPELLEE	REVERSED AND REMANDED WITH INSTRUCTIONS

JOHN MAUZY PITTMAN, Judge

This is an appeal from the Faulkner County Circuit Court's order canceling and revoking a warranty deed appellee executed in 2002 conveying a tract of farm property to appellant for consideration of $100,000. Appellant argues that the trial court clearly erred in finding that she was the dominant party in a confidential relationship with her mother, and that she procured the deed by the exercise of undue influence. We agree, and we reverse.

Although we review traditional equity cases de novo, the test on review is not whether we are convinced that there is clear and convincing evidence to support the trial court's findings but whether we can say that the trial court's findings are clearly erroneous. *Statler v. Painter*, 84 Ark. App. 114, 133 S.W.3d 425 (2003). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left

with a definite and firm conviction that a mistake was made. *Pearce v. Pearce*, 2010 Ark. App. 532. The existence of a confidential relationship between parties to the transfer of property gives rise to a rebuttable presumption of undue influence. *See Breckenridge v. Breckenridge*, 2010 Ark. App. 277. With respect to conveyances of realty, we have said that:

> When it is discovered that the party in whose favor the conveyance was made possessed an undue advantage over the grantor and exercised an improper influence over the grantor, it is an act against conscience and within the cognizance of a court of equity. *Duncan v. Hensley*, 248 Ark. 1083, 455 S.W.2d 113 (1970). Also, a contract made by a party under compulsion is void because consent is of the essence of a contract, and where there is compulsion, there is no voluntary consent. *Id.* To sustain a claim of duress, one must prove that she was compelled, not merely persuaded, to do what she did. *Oberstein v. Oberstein*, 217 Ark. 80, 228 S.W.2d 615 (1950). When it is contended that a deed was obtained by duress or undue influence, the law requires that the proof be clear, cogent, and convincing before the deed can be set aside. *Millwee v. Wilburn*, 6 Ark. App. 280, 640 S.W.2d 813 (1982).

McCracken v. McCracken, 2009 Ark. App. 758, at 8.

Upon our review of the record, it is apparent to us that the trial court clearly erred in finding that appellant Sandra Thorn was the dominant party in this relationship. Sandra is appellee's daughter. She has two brothers, one of whom lived in a trailer on appellee's home property, and testimony indicated that this brother, Leslie, was intended to receive his share of the estate in the form of the three-acre home property upon his mother's death. Appellee testified that, in 2002, she told Sandra that she wanted to get her property settled and divided, and that Sandra suggested that she purchase the land from appellee for $100,000, which sum would constitute her brother Dale's share of the property. Appellee agreed, and drove herself to the land commissioner's office and signed the deed. Appellant paid $100,000 for the

property as agreed. These funds were placed in a certificate of deposit that has accumulated interest and now amounts to $118,000. Appellee, who was in her seventies at the time of the transaction, testified that she did not have a good understanding of legal matters and relied upon her daughter to help her with them.

Upon further examination, appellee (who was eighty-six years of age at the time of the hearing) admitted that she was an independent woman who handled her own financial affairs. She negotiated the purchase of the SUV that she was driving at the time of the hearing and paid cash for it. Her testimony demonstrated that she was familiar with real estate transactions, easements, and leases of mineral rights. And, we think, appellee's claim of ignorance of legal matters is belied by her trial testimony in which she corrected one of the attorneys to add that a particular bequest in her will was not merely to her son, but also to "the heirs of his body." We do not think this is a distinction that could be insisted on by an eighty-six-year-old woman who lacked understanding of the law and was compelled to rely on her daughter in such matters.

Second, even crediting appellee's own testimony, she was merely persuaded by her daughter's suggestion that she should sell the land to the daughter so that the holding would remain intact, and retain the proceeds of the sale to recompense her brother Dale. Although the survey showed the value of the land at the time of the sale to be slightly in excess of $300,000, the sale price of $100,000 was retained for Dale and has been substantially increased by accumulated interest. In light of the many caretaking duties and services appellant

performed and still performs for her mother, we do not think that the arrangement was inequitable.

Finally, we think that the trial court erred in ruling that appellee did not convey her mineral rights by her deed. The deed contained no reservation of mineral rights, and thus the ownership of the mineral rights, including natural gas, passed to the grantee. *Osborn v. Arkansas Territorial Oil & Gas Co.*, 103 Ark. 175, 146 S.W. 122 (1912). It is noteworthy that there was no expectation of any mineral revenue at the time of the sale, and that appellee never raised any questions until recent mineral development began yielding substantial revenue to appellant. Even considering the trial court's better opportunity to assess the demeanor of the witnesses, many other elements of credibility require no observation. We think that appellee's claim of being dominated and exploited in this case is so contrary to her demonstrated acumen and independence that the trial court's finding of dominance and undue influence is clearly erroneous. Consequently, we reverse and remand to the trial court with directions to reinstate the deed.

Reversed and remanded with instructions.

ROBBINS and GRUBER, JJ., agree.