

DAILY BUSINESS REVIEW

PROBATE COURT Exploited seniors may have 'new set of options'

JURY REVIEW MAY BE FIRST FOR UNDUE INFLUENCE CASE

by **Susannah Nesmith**
Special to the Review

It's a common story that often lands in probate court. An older gentleman, just months from death, suddenly changes his will and the beneficiaries of his bank accounts and trusts, disinheriting his family in favor of a friend.

But Adrian Thomas and Daniel A. McGowan of Fort Lauderdale-based Adrian Phillip Thomas, got an uncommon result last week in Hillsborough Circuit Court. They won a jury verdict in favor of their clients.

"It may be the first ever jury verdict in an undue influence case challenging a trust," Thomas said. "If it stands, we may have a whole new set of options for senior citizens who have been exploited."

Cases claiming someone exerted undue influence over another person generally are decided by probate judges. The trial was before Circuit Judge Sam D. Pendino, who is assigned to civil cases.

Thomas and McGowan argued, on behalf of Katherine Willis, that her father was incapacitated by Alzheimer's disease when he took her out of his will and changed the beneficiary on 16 accounts and a trust that held the family home, making his girlfriend, Mary Couch, his sole beneficiary.

TORT V. PROBATE

The family presented the jury with autopsy results showing Winfield Willis was suffering from Alzheimer's when he made the changes a few months before he died in October 2009, McGowan said.

Couch's attorney, Christopher Paul Jayson of Jayson Farthing Skafidas & Wright in Tampa, Jayson did not return a call for comment by deadline. McGowan said Jayson argued Winfield Willis knew



what he was doing and did it after getting into a fight with his daughter.

But McGowan said he and Thomas were able to show from Couch's own emails around that time that no such fight ever happened.

"This was a complete break from his long-standing estate plan, done as he was dying," McGowan said. "I told the jury ... that they were going to have the opportunity to set something right and do justice. This guy was taken advantage of."

Michael Schlesinger, a Miami attorney who specializes in probate law, agreed the jury verdict was unusual.

"Typically undue influence is not a case that goes to a jury," said Schlesinger of Schlesinger & Cotzen. "It would be a deviation from accepted law. I think it's newsworthy. As far as its reach in probate litigation, I can't predict. It's going to be interesting to see if this case is taken up and what the courts decide."

McGowan said they were able to get the undue influence issue before a jury by arguing that when Couch got

Winfield Willis to change his accounts, trust and will, she interfered with what Katherine Willis had a right to inherit, a tort claim that typically goes to juries.

"Because we brought it with the tort claim, the judge allowed the jury to hear it," McGowan said.

There are advantages to jury trials.

"With a jury, you can tell a good story on behalf of a sympathetic client," Schlesinger said. "Typically, with a judge, it's hard to get them emotionally involved in the case."

Thomas and McGowan hope to use the Jan. 20 jury verdict to persuade the probate judge to remove Couch as Winfield Willis' personal representative, challenge his final will disinheriting his daughter and recover assets transferred to Couch. They estimate Kathy Willis is

UNDUE INFLUENCE CLAIM

16

Accounts

\$850,000

Value

\$3.5 million

Estate value

due an inheritance totalling \$3.5 million. The jury verdict involved assets of about \$850,000, including the family home in Virginia where she and her father grew up, McGowan said.

"The value of the home to Kathy is more than any amount of money," he said.