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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 750809

HAROLD DONALD JOHNSON

Appellant

v.

LONNIE D. KISER

Appellee

APPENDIX

Popp and Tiller
St. Paul, Virginia

Counsel for Appellant

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HAROLD DONALD JOHNSON COMPLAINANT

VS. IN CHANCERY

LONNIE D. KISER
835 BOULEVARD
STATESVILLE, N. C. DEFENDANT

TO THE HONORABLE GLYN R. PHILLIPS, JUDGE OF THE CIRCUIT COURT FOR DICKENSON COUNTY, VIRGINIA:

Your Complainant, respectfully represents:

1.

That he is the Nephew of Hallie L. Kiser, who departed this life, testate, on the 19th day of January, 1972, while a patient at Southwestern State Hospital, Marion, Virginia, and that by virtue of a Will dated the 11th day of July, 1969, the said Hallie L. Kiser, devised all of her estate both real, personal and mixed to your Complainant, Harold Donald Johnson, he being referred to in said Will as Harold D. Johnson, a copy of which said Will is hereto attached marked for identification 'Exhibit B'.

2.

That prior to the death of the said Hallie L. Kiser, Mrs. Coreen Ward was appointed her legal guardian, she having been adjudged mentally incompetent by the Circuit Court of Dickenson County and that the said Coreen Ward did duly qualify as said legal guardian and as such did look after the personal and business transactions of the said Hallie L. Kiser.

3.

That prior to her death, and prior to December 29, 1970, the said Hallie L. Kiser, was the owner of certain real property located in Dickenson County, on Sandy Ridge, Virginia, where she made her home prior to her incompetency and death.

4.

That for the last several years of her life the said Hallie L. Kiser, due to her age, became infirm and at times was sick and under the care of a doctor and became wholly incapacitated and suffered loss of memory as a resutl of her age and infirmity.

5.

That during the month of December, 1970, the said Hallie L. Kiser, was ill and infirm and was incapable of transacting any business matters and at times having any knowledge of her surroundings, and her condition became so acute that in April , 1970, her sister, seeing her condition took her home to live with her at her residence on Sandy Ridge, in Dickenson County, Virginia , and due to her condition, was later admitted to Southwestern State Hospital, where she died.

6.

That to the consternation and amazement of your Complainant, he has recently learned that on January 20, 1971, a deed purporting to be signed by the said Hallie L. Kiser and bearing date on December 29, 1970, and acknowledged before A. M. Phipps, Commissioner in Chancery, for the Circuit Court of Dickenson County, Virginia, conveyed all of her real estate in Dickenson County as above described, to Lonnie D. Kiser which Deed is of record in the Clerk's Office of the Circuit Court of Dickenson County, in Deed Book 148, at Page 180, and that the original deed has been withdrawn from the Clerk's Office by the grantee and that this deed recites in part:

'That for and consideration of the party of the second part furnishing to the party of the first part all necessary food, clothing, fuel, doctors, and medical bills, together with the right to live upon the land during the party of the first part's life, the said party of the first part does hereby grant, sell and convey unto the party of the second part, with covenants of General Warranty, all of that certain lot or parcel of land lying and being in Dickenson County, Virginia, on Sandy Ridge, containing One (1) Acre, more or less, and being the same land conveyed by Robert Kiser and Wife, to Hallie Kiser, by Deed dated the 25th day of June, 1957, and of record in the Clerk's Office of said County in Deed Book 113, at Page 151, reference to which is hereby made for a more complete description of the land hereby conveyed'.

7.

A copy of said deed is filed herewith, marked Plaintiff's 'Exhibit A' , and prayed to be read and considered as a part of this bill.

8.

That your Complainant alleges that on the 20th day of January, 1971, the date of said purported deed that the said Hallie L. Kiser was aged, infirm and ill and in fact, by reason thereof wholly incapacitated from attending properly to her business affairs, and your Complainant further alleges that the said Hallie L. Kiser had no reculation whatever of having executed any such deed, and that if she did in fact sign the aforesaid instrument that the Defendant , Lonnie D. Kiser, fraudulently took advantage of the said Hallie L. Kiser and procured her to sign such deed, she not knowing or understanding the contents or purport of the instrument; and your Complainant further alleges that there was no consideration whatever for said conveyance as the said Lonnie D. Kiser, has not supported the said Hallie L. Kiser and in fact has never done anything for her; and on the contrary, instead of the said Lonnie D. Kiser, supporting her, your Complainant is advised that the said Hallie L. Kiser has contributed to the support of the said Lonnie D. Kiser.

9.

Your Complainant further alleges that any further consideration mentioned in said instrument, to-wit, 'that for and consideration of the party of the second part furnishing to the party of the first part all necessary food, clothing, fuel, doctors and medical bills,' in the lite of the true facts is ludicrous and contrary to the facts and truth, and that the said Hallie L. Kiser has not only paid her own expenses and has paid various sums of money to the said Lonnie D. Kiser and has on numerous occasions maintained the said Lonnie D. Kiser as a member of her household, and your Complainant alleges that the said Hallie L. Kiser has ample property and income to maintain herself according to her

station in life.

10.

Your Complainant further alleges that the said Hallie L. Kiser, had never agreed [redacted] to convey the aforesaid property to the Defendant, nor did she receive any of the consideration alleged in said deed of conveyance nor had she ever though of making a gift or conveyance of her property to the said Lonnie D. Kiser as the said Hallie L. Kiser during her lifetime had relatives who were near and dear to her and who did carefore and maintain the said Hallie L. Kiser as long as she lived and did see that she was decently buried as befitting her station in life, and that it was never necessary for the said Hallie L. Kiser, during her lifetime,to call upon any person or persons for any such aid.

IN CONSIDERATION WHEREOF, your Complainant prays that the Court declare the above mentioned conveyance void, and decree that the Defendant produce said writing and deliver it up to be cancelled; and that meanwhile the said Lonnie D. Kiser, Defendant may be enjoined and restrained from conveying in trust, morgaging or selling and conveying the above described property or any part of it to any person pending the out come and prosecution of this suit.

Harold Donald Johnson,
By
Counsel

POPP & TILLER
Attorneys at Law
St. Paul, Virginia

By G G Popp
Counsel for Complainant

STATE OF VIRGINIA,
COUNTY OF WISE, TO-WIT:

Harold Donald Johnson, the Defendant named in the foregoing bill being duly sworn, says that the several matters and things set forth in the above said bill are true to the best of his knowledge and belief.

Harold Donald Johnson
Harold Donald Johnson

Taken, sworn to and subscribed before me, this 21st day of January, 1972.
My Commission expires November 17, 1973.

Notary Public

THIS DEED, made and entered into this December 29, 1970, by and between Hallie Kiser, party of the first part, and Lonnie D. Kiser, party of the second part.

WITNESSETH:

That for and in consideration of the party of the second part furnishing to the party of the first part all necessary food, clothing, fuel, doctors, and medical bills, together with the right to live upon the land during the party of the first part's life, the said party of the first part does hereby grant, sell and convey unto the party of the second part, with covenants of General Warranty, all of that certain lot or parcel of land lying and being in Dickenson County, Virginia, on Sandy Ridge, containing one acre , more or less, and being the same land conveyed by Robert Kiser and wife to Hallie Kiser, by deed dated on 25 day of June , 1957, and of record in the Clerk's Office of said county in Deed Book 113 , page 151 , reference to which is hereby made for a more complete description of the land hereby conveyed.

There is excepted from this conveyance such exceptions as heretofore made by apt deeds of records.

To have and to hold unto the party of the second part, his heirs and assigns, forever.

Witness following signature and seal.

with: Henry B. Cope
Fred B Cope

Hallie X Kiser
mark (SEAL)

COMPARED
& mailed
To Brian D. Kiser
2-1 1971
Alta M. Rose
clerk
835 Boulevard
Statesville, N.C.

VIRGINIA:
DICKENSON COUNTY, TO-WIT:

I, A. M. Phipps, Commissioner in Chancery, for the Circuit Court for Dickenson County, do hereby certify that Hallie Kiser whose name is signed to the foregoing writing, bearing date on December 29, 1970, has acknowledged the same before me, in my County aforesaid.

Given under my hand this ~~December 29~~ January 20, 1971.

A. M. Phipps
Commissioner in Chancery

VIRGINIA: In the Clerk's Office of the Circuit Court of Dickenson County, January 20, 1971. This deed was delivered to the Clerk of said Court and admitted to record at 4:25 o'clock P. M., after payment of $1.00 tax imposed by Sec. 58-51 (b), in deed book 148 page 186.

Teste: Teddy Bailey, Clerk.
By Alta M. Rose, Dep. Clerk.

Tax $ 3.00 Transfer Fee $ 1.00

EXHIBIT "A"

I, Hallie L. Kiser of Star Route, Dante, Virginia, being of sound and disposing mind and memory, do hereby make, publish and declare this to be my last will and testament, hereby revoking all wills by me at any time heretofore made.

First: I direct all of my just debts to be paid.

Second: I give, devise and bequeath all my estate, real, [illegible] to my nephew, Harold D. Johnson.

Third: I hereby nominate and appoint my said nephew, Harold D. Johnson, Executor of this my last will and testament; and I direct that no security be required of him as Executor.

Given under my hand and seals this 11th day of July, 1969.

Hallie L. Kiser (SEAL)
Hallie L. Kiser

The above signature of the Testatrix was made and the [illegible] will was acknowledged to be her last will and testament by the said Testatrix, in the presence of us, three competent [illegible], [illegible] time; and [illegible] witnesses, do hereunto subscribe the said will on the date last above written, in the presence of the said testatrix and of each other, at the request of the said Testatrix, who was then of sound mind and over the age of twenty-one years.

Name	Address
Janice Patton	Box 785, Clinchco, Va.
John H. Artrip	Clintwood, Va.
Lydia R. Painter	Clintwood, Va.

Exhibit "B"

IN THE CIRCUIT COURT OF DICKENSON COUNTY

HAROLD DONALD JOHNSON, Complainant	:	
v.	:	CHANCERY NO. 3412-A
LONNIE D. KISER, Defendant	:	

TO THE HONORABLE GLYN R. PHILLIPS, JUDGE OF SAID COURT.

The answer of the defendant, Lonnie D. Kiser, to the Bill of Complaint filed against him herein:

1.

Defendant admits that Harold Donald Johnson is a nephew of Hallie L. Kiser, who died January 19, 1972, while a patient at Southwestern State Hospital, Marion, Virginia. However, defendant denies that by virtue of the will dated July 11, 1969, referred to in paragraph 1 of the Bill of Complaint, the said Hallie L. Kiser devised her real estate to the complainant. Defendant alleges that said will did not operate to transfer title to said real estate to complainant, because as will be more particularly hereinafter shown, Hallie L. Kiser conveyed said real estate to defendant on December 29, 1970.

2.

Defendant is not advised as to whether Mrs. Careen Ward was appointed legal guardian of the said Hallie H. Kiser prior to her death nor the authority of said guardian, if appointed, and calls for proof thereof.

Received and filed, this the [illegible] day of [illegible], 19[illegible]
[illegible] Clerk

3.

Defendant admits that prior to December 29, 1970, the said Hallie L. Kiser was the owner of certain real property located on Sandy Ridge in Dickenson County, Virginia, but defendant denies that Hallie L. Kiser resided on said real property immediately prior to her incompetency and death. Defendant alleges that he and the said Hallie L. Kiser resided in said property for at least two (2) years prior to the latter part of 1963, at which time the defendant and the said Hallie L. Kiser moved to Statesville, North Carolina, where they resided continuously until April of 1971, at which time Rachel Sutherland and Grace Johnson, sisters of Hallie L. Kiser, came to North Carolina and brought Hallie L. Kiser to Virginia to reside.

4.

Defendant denies that for the last several years of her life Hallie L. Kiser became wholly imcapacitated and suffered loss of memory because of her age and infirmity.

5.

Defendant denies that during the month of December, 1970 Hallie L. Kiser "was incapable of transacting any business matters and at times having any knowledge of her surroundings," but on the contrary, the defendant states that during the month of December, 1970, and January, 1971, and particularly at the time of execution and acknowledgement of the deed hereinafter mentioned, the said Hallie L. Kiser was entirely competent to transact her business affairs and manage and dispose of her property. The defendant further denies that in April, 1970, Hallie L. Kiser's sister took Hallie L. Kiser to the sister's home in Dickenson County, Virginia, to live. The defendant alleges that Hallie L. Kiser was living in North Carolina in

in April, 1970, had lived in North Carolina continuously from the latter part of the year 1963 until April, 1971, rather than 1970, at which time Hallie L. Kiser returned to Dickenson County, Virginia. The defendant admits that on May 20, 1971, Hallie L. Kiser was commited to Southwestern State Hospital in Marion, Virginia, as a person mentally ill.

6.

Defendant denies that the deed dated December 29, 1970, was "purported" to have been signed by Hallie L. Kiser, but the defendant alleges that by said deed the said Hallie L. Kiser conveyed all her real estate in Dickenson County, Virginia, to the defendant, Lonnie D. Kiser, that said deed was actually signed by Hallie L. Kiser, who was at that time in full possession of her faculities and understood the nature of the transaction and intended to and by said conveyance did transfer all her said real estate to the defendant, Lonnie D. Kiser.

7.

The allegations of paragraph No. 7 do not call for a response by the defendant.

8.

Defendant denies that the deed was dated January 20, 1971, but defendant alleges that the deed was dated December 29, 1971. Defendant again denies that the conveyance is a "purported" deed, but instead alleges that the deed was intended to and effectually did transfer the title of Hallie L. Kiser in said real estate to the defendant, Lonnie D. Kiser. The defendant further denies that Hallie L. Kiser was at the time of the conveyance infirm and ill and by reason thereof wholly incapacitated from attending to her business affairs; and defendant further denies that Hallie L. Kiser had no recollection of having executed said deed and

alleges that upon later becoming incompetent her failure to recall that transaction would not invalidate said conveyance. The defendant denies that he fraudulently took advantage of Hallie L. Kiser and procured her to sign the deed, and further denies that she lacked understanding of the nature of the transaction. The defendant further denies that there was no consideration for said conveyance and denies that he has not supported Hallie L. Kiser, and denies that Hallie L. Kiser has contributed to the support of the defendant. On the contrary the defendant alleges from 1961 to April, 1971, he maintained and supported the said Hallie L. Kiser, provided her with food, clothing, paid for the rented property which they occupied, together with all her living expenses,

9.

The defendant denies all allegations of paragraph No. 9 of the Bill, and alleges that for a period of approximately ten (10) years prior to April, 1971, he provided all necessary food, clothing, fuel, doctors and medical bills and other expenses for the said Hallie L. Kiser.

10.

Defendant denies that there was a failure of consideration for this conveyance, but instead alleges that for the ten (10) year period prior to April, 1971, he provided all necessary food, clothing, fuel, doctors and medical bills and other living expenses for the said Hallie L. Kiser. The defendant denies that during the lifetime of Hallie L. Kiser prior to April,1971, the complainant and other relatives of Hallie L. Kiser maintained and cared for her.

Your defendant, having fully answered, prays that the lis pendens filed herein and recorded January 22, 1972, in Deed Book No. 153, page 537, may be dissolved and that the said defendant be hence dismissed with his costs.

LONNIE D. KISER

By Counsel

Benjamin F. Sutherland
Clintwood, Virginia 24228
Counsel for Defendant

C E R T I F I C A T E

I certify that on February 2, 1972, I mailed a copy of the foregoing Answer to G. G. Popp, Esquire, Popp & Tiller, Attorneys-at-Law, St. Paul, Virginia, Counsel for the Complainant.

Benjamin F. Sutherland

HAROLD DONALD JOHNSON, another witness of lawful age, after first being duly sworn, deposes as follows:

DIRECT EXAMINATION BY MR. POPP:

Q. Will you state your full name?

A. I am Harold Donald Johnson.

Q. How old are you?

A. Thirty-four.

Q. Where do you live?

A. At Elkin, North Carolina.

Q. I believe you are the complaining party in this proceeding?

A. That is correct.

Q. What is your occupation, Sir?

A. School teacher.

Q. Are you any relation to the late Hallie L. Kiser?

A. She was my Aunt.

Q. How old was she at her death?

A. I think seventy-four.

Q. I will ask whether or not she left a will at her death?

A. Yes.

Q. What were the contents of the will?

MR. SUTHERLAND: We admit the will says what it says and it is part of the case.

Q. Were you associated with Mrs. Kiser during the latter months of November and December 1970 and January of '71?

A. Yes, I was.

Q. How often were you associated with her?

A. Well, a couple of times a month. She lived in a town fairly close to where I lived in North Carolina in Statesville. Previous to that she had stayed a few months at my home.

Q. What was her mental and physical condition?

A. Most of the time she didn't know anything. She didn't know what was going on, she couldn't carry on an intelligent conversation. We were constantly afraid to leave her alone. Someone was always with her. She caught a chair afire and a bed on fire in the house.

Q. Was she capable of managing and handling her business affairs?

A. Very definitely not.

Q. Was she capable of handling her personal affairs?

A. No.

MR. SUTHERLAND: Objected to. Calling for a conclusion and further because - it is objected to because it is the ultimate issue in controversy here.

Q. In your opinion was she capable of managing and maintaining her own business and personal affairs?

A. No, sir.

MR. SUTHERLAND: Move to strike. Objection is being made throughout the questioning --

MR. POPP: We agree.

Q. Who was her attending physician during November and December 1970 and January and February 1971?

A. Dr. Lewis, Davis Hospital in Statesville, North Carolina.

Q. During the time that she stayed with you, the few months

she stayed with you, who paid for her room and board and clothing, etc.?

A. Well, nobody. I took care of her. I didn't take any money.

Q. Did she have an income?

A. Yes. She received a check from the Veterans Administration due to the fact her husband had been a World War I Veteran and he was deceased.

Q. How did she acquire that property on Sandy Ridge, if you know?

A. She bought it from Robert H. Kiser.

Q. When did she buy it - what year, if you know?

A. I don't know. We have a copy of the deed.

Q. Do you know approximately when it was.

A. No, I don't. I can't remember. Several years ago, maybe ten or twelve years ago.

Q. During what period of time in terms of years was she associated and lived with Lonnie Kiser?

A. Most of my life.

Q. Did she receive this income from the Veterans Administration all during your life?

A. Yes. Her husband was killed before I was born. When I can first remember her. I can remember it was most of my life.

Q. During the time Mr. Lonnie Kiser and Hallie Kiser lived together on her place there on Sandy Ridge, did Mr. Lonnie Kiser have any employment?

A. Most of the time, no. He worked part of the time. He lived for years there with her and never worked.

Q. You say 'for years'. Approximately how many years?

A. It would be approximately six or seven years, the last six or seven years that they were on Hazel Mountain in Virginia, I can't remember him working anywhere.

Q. When did you move to North Carolina?

A. Sometime around 1964.

CORRINE WARD RECALLED:

REDIRECT EXAMINATION BY MR. POPP:

Q. Mrs. Ward, during the time you were appointed guardian for Hallie L. Kiser, did you take care of her personal affairs?

A. Yes.

Q. Did you pay her bills?

A. Yes.

Q. What outstanding bills did you pay for her at the time?

A. She had a small account with my father and I paid that bill.

Q. How much was that bill?

A. I believe thirty some dollars. I have the check with me.

Q. Do you have the cancelled check?

A. Yes.

Q. Let's see it, please.

A. $38.00. These are all checks to the hospital at Marion where she was. The only other outstanding bill she had was one at the Johnston Memorial Hospital at Abingdon.

Q. How much was that?

A. I believe it was $58.00.

Q. For what period of hospitalization was that?

A. It must have been the period in December 1970 because we began getting bills in January '71. I didn't know where to pay them or not.

Q. You have a statement from Johnston Memorial Hospital in the amount of $58.00. Is that the statement you received?

A. Yes.

Q. I will show you a cancelled check in August 31, 1971, payable to Johnston Memorial Hospital in the amount of $58.00 and ask if that is the cancelled check you paid this bill?

A. Yes.

Q. Will you file this statement from Johnston Memorial Hospital as part of your testimony?

A. Yes.

Q. I will hand you another check dated July 26, 1971, payable to Johnson's Grocery in the amount of $38.00, what was that in payment of?

A. That was a store bill she had with him for groceries. I imagine he has an itemized list.

Q. Did you make any payments to the Southwestern State Hospital for the maintenance and support of Mrs. Hallie Kiser while she was there?

A. Yes, I did.

MR. SUTHERLAND: Read them off there, George, by agreement.

MR. POPP: She can tell the months and amounts.

A. Well, continuously from August 31, 1971, through February 16, 1972, it was $50.00 a month.

Q. Mrs. Ward, during the time that you were acting as legal guardian for Hallie Kiser, I will ask if you received any contributions for her support from Lonnie B. Kiser?

A. No, I didn't.

Q. To you knowledged, did he contribute anything to her support during that period?

A. Not to my knowledge.

MR. POPP: You may ask her.

RECROSS EXAMINATION BY MR. SUTHERLAND:

Q. You were appointed in 1971, I believe?

A. Yes, sir.

Q. And the statement in one of these suit papers that you were appointed in 1970 then was a mistake, is not correct?

A. I have the paper here of the date I was appointed. The date is the 11th day of June, 1971.

MR. SUTHERLAND: That is all.

MR. POPP: That is all I have, Ben.

MR. SUTHERLAND: Okay. The defendant will present his evidence at a later date.

STATE OF VIRGINIA
COUNTY OF DICKENSON, To-wit:

I, Lydia R. Painter, a Notary Public for Dickenson County, Virginia, do hereby certify that the foregoing depositions were duly taken before me at the time and place and for the purpose stated in the caption; that the witnesses were sworn by me and the signatures were waived by agreement of counsel.

Given under my hand this June 2, 1972.
My commission expires February 11, 1976.

Lydia R. Painter
NOTARY PUBLIC

COST OF TAKING AND TRANSCRIBING DEPOSITIONS - $44.20 - Pd. in full

Lydia R. Painter, N P

LONNIE B. KISER, another witness of lawful age, after first being duly sworn, deposes as follows:

DIRECT EXAMINATION BY MR. SUTHERLAND:

Q. State your name and address.

A. Lonnie Kiser, 835 Boulevard, Statesville, North Carolina.

Q. You are the defendant in this suit?

A. Yes, sir.

Q. It is said in the papers in this suit that Hallie Kiser died January 19, 1972. Is that correct?

A. Yes, sir.

Q. How long have you lived in Statesville?

A. I left here the latter part of '63. I have been there ever since.

Q. Are you employed down there?

A. Yes.

Q. Have you been employed since going to Statesville?

A. Yes, sir.

Q. Where did Hallie Kiser live in North Carolina?

A. We lived in three different places.

Q. Did she go to North Carolina with you?

A. Yes.

Q. Did she live with you there continually until the Spring of '71?

A. Yes, sir.

Q. And did you and Hallie Kiser ever live on this property in Dickenson County, the subject matter of this suit?

A. Yes.

Q. How long?

A. For several years.

Q. Was that just before you went to North Carolina?

A. Yes, sir.

Q. Who provided the support and maintenance for Hallie Kiser during the time she lived with you in North Carolina?

A. I did.

Q. Do you recall the occasion of the funeral of Hallie's mother?

A. Yes, sir. We were there.

Q. Now, the deed that is in question in this case was prepared by whom?

A. Mr. Alger Phipps.

Q. Where was it written?

A. Right across the street at his office here in Clintwood.

Q. Why did you select Mr. Phipps to prepare this deed?

A. I have got him several times. I liked Mr. Phipps. He was the first one I thought of.

Q. When was the decision made to come to Virginia to have the deed prepared?

A. We talked about it a time or two coming up here.

MR. POPP: Object to all hearsays with reference to the questions and answers.

WITNESS: She said Tony Kiser was wanting to buy the place. She said, "I can give it away". She said, "I will make you a deed for it if you will go to Clintwood and have it done." That is why we come.

Q. Did she know the members of her family at that time?

A. Yes.

Q. Did she know where this property was located?

A. Yes, sir.

Q. Did she know where she lived?

A. Yes.

Q. Was she aware of what kind of transaction she was engaged in?

A. Yes, she knowed.

MR. POPP: Object to the question as leading and suggesting and move the answer thereto be stricken.

Q. Now, did she sign the deed that is in question in this case?

A. Yes.

Q. Where did she sign it?

A. In Mr. Phipps' office across the street.

Q. Who was present?

A. Me and Fred Cape and James and Agnes Anderson.

Q. Who are the Andersons?

A. He married my sister's girl.

Q. Where does he live?

A. Statesville.

Q. Did he drive up here with you?

A. Yes.

Q. Did the Capes ride in the car with you?

A. Yes, sir.

Q. Was the signature witnessed?

A. Yes, sir.

Q. Who were the witnesses?

A. James Anderson and Agnes Anderson.

Q. Who signed as a witness?

A. Well, they did and Henry and Fred Cape.

Q. Tell about Hallie's health at this time.

A. She had bad health. Her health wasn't too good generally, but she broke her leg and laid in the hospital a while.

Q. How was her memory at the time?

A. I would say it was all right.

MR. POPP: Object to that. Leading and suggesting and calling for a conclusion on the part of the witness.

Q. You can back on a later occasion to Virginia. Is that right?

A. That's right.

Q. Did Hallie Kiser come with you on that occasion?

A. We come to Clinchco and Harold and Rachel found out Hallie was down there. Me and Junior went to Arvil's. They come and talked to her. I didn't know they was down there at Clinchco. After she fixed the papers up they heard about it.

Q. Did they talk to her?

A. Yes, they said they did.

MR. POPP: He said they said. He doesn't know. Move it be stricken.

Q. Who came to Clinchco?

A. Rachel and Harold Johnson.

MR. POPP: Object. He said he didn't know.

WITNESS: Well, I can prove it.

MR. SUTHERLAND: All right. Don't argue. Was this on the second trip up here to see Mr. Phipps?

A. Yes, sir.

Q. Did this happen at Clinchco before you came to Mr. Phipps' office the second time?

A. Yes. The night before I brought her over here.

Q. What did she do the next time you came to Clintwood?

A. She come to notarize the deed.

MR. POPP: I object to that as being hearsay. Move it be stricken.

Q. Were you present when she went to Mr. Phipps' office to acknowledge the deed?

A. Yes.

Q. She acknowledged it before Mr. Phipps and you were there?

A. Yes, sir.

Q. Now, you provided for the support of Hallie Kiser say from the time of her mother's funeral until she returned to Virginia in the Spring of '71?

A. I did.

Q. Did anyone else make any contribution to her support during that time?

A. No, sir.

Q. What did you provide?

A. I provided groceries and her heat, rent and have been ever since I have been down there.

Q. Clothes, doctor bills?

A. I did. One time she broke her leg and I give her $50.00 at one time.

Q. Did you make any payments for these after the deed was signed?

A. No. I wasn't supposed to.

Q. No?

MR. POPP: I object to it and the answer to be given and object to counsel making any statement regarding it.

Q. I want to direct your attention again. Did you make any contribution for doctor, rent, shelter, food, after the deed from Hallie Kiser was made to you?

A. She come back home at Statesville and stayed until they come and got her. They kept after her all the time after she made this statement.

MR. SUTHERLAND: Will you read my question to him?

REPORTER: I want to direct your attention again. Did you make any contribution for doctor, rent, shelter, food, after the deed from Hallie Kiser was made to you?

A. Yes. She stayed with me down there.

Q. Now, did you visit Hallie Kiser in the Abingdon hospital shortly before her mother's death?

A. Yes.

Q. Did she know you?

A. Yes, sir.

Q. At her mother's funeral, did she know people there?

A. Yes.

Q. Did she recognize you?

A. Yes, sir.

Q. And after her mother's funeral, where did she go?

A. She went to Statesville the next day.

Q. Who did she go with?

A. She went with me.

Q. Did she go voluntarily?

MR. POPP: Objected to as being suggesting, leading and calls for conclusion on the part of the witness.

Q. Did Hallie go back to North Carolina with the knowledge of the members of her family here in Virginia?

A. Yes.

Q. Did they make any objection?

MR. POPP: Same objection.

A. No, sir.

Q. Did any of her sisters try to prevent you from taking her to North Carolina?

A. No, sir.

Q. Did any of them request you to take her to North Carolina?

A. Yes, sir. Rachel Sutherland. She come to me twice that morning. She said, "I can't wait on Hallie. I am waiting on Mother",

and said, "Are you taking her back to North Carolina". I said, "I brought her up here". She said, "I waited on Mother and I am down". Rachel thought I was going to leave here there and I took her back.

Q. Was Hallie Kiser able to take care of herself when she went back to North Carolina?

A. Yes. She'ginned' around the house.

Q. Could she feed herself?

A. Yes.

Q. Did she realize where she was?

A. Yes, sir.

Q. Did any of her family visit her during the years she lived in North Carolina?

A. Very little.

Q. Did any of her family visit her in the hospital in Abingdon when she was there shortly before her mother's death?

A. I think Velma Jean did. I don't know about the others.

Q. Is Velma Jean Mrs. Filmore Breeding?

A. Yes.

Q. Was Hallie hospitalized in North Carolina?

A. Yes.

Q. What was the occasion?

A. She fell and broke her leg.

Q. Did anybody from Virginia visit her?

A. None of her sisters. I don't know about the boys.

Q. Did any of the family make any contributions toward the hospital expense on that occasion?

A. No, sir.

Q. Was it your idea that Hallie sign this property over to you?

A. No.

Q. Who originated that idea?

A. She did. She said she wanted me to have it.

Q. What was her purpose coming up here on that occasion in December '70 when you went to Mr. Phipps' office?

A. To get the deed signed over to me.

Q. You have been charged with fraudently getting her into signing this deed. Did you practice any fraud on Hallie Kiser?

A. No, sir.

Q. Did she understand what she was doing?

MR. POPP: This question is objected to. Same objectionas objections as previously stated.

A. Yes, sir.

Q. Was Hallie able to talk at the time the deed was made?

A. Yes, sir.

Q. Do you know why Hallie didn't acknowledge the deed on the first trip up here?

A. I told you. She went down there and talked to her. After I went back home she said, "Let's go back up there and fix it up".

MR. SUTHERLAND: You may ask.

CROSS EXAMINATION BY MR. POPP:

Q. What was the reason she didn't sign the deed on the 29th of December?

A. I don't know why.

Q. Was it like Mr. Phipps stated that while in his office she doubted whether or not you would live up to your obligations?

A. He said she added it in.

Q. You were in the office?

A. Yes.

Q. Did you hear her state that she decided not to sign it?

A. He made the statement.

Q. Rachel Sutherland or Harold Johnson either one did not have anything to do with it?

A. I don't know. They went to Clinchco the night before. I can prove it.

MR. POPP: I move at this point to strike each question and answer in which he testified in regard to Mrs. Rachel Sutherland or Harold

Johnson visiting her in Clinchco in December prior to the making of this deed.

Q. Actually it was your idea to have the deed prepared?

A. No, sir.

Q. Isn't it true that in your presence and the presence of Tony Kiser you asked her to sell the property to you and she refused?

A. No, sir.

Q. Did Mr. Tony Kiser ask her in your presence to sell to him?

A. Yes. She said, "I can't sell, I can give it away" ---

Q. Did she say she was going to give it to Harold ---

MR. SUTHERLAND: Let the man complete his answer.

WITNESS: I did say this. I said, "I will give you $500.00 and let you stay on it the rest of your life".

Q. Did she say she was going to give it to Harold Johnson?

A. No, sir.

Q. You deny it?

A. I don't deny she didn't say she was going to give it to you.

Q. Did you ask her to give it to you?

A. I offered her $500.00 and 'let you stay on it your lifetime'.

Q. Wasn't it your idea to come to Mr. Phipps' office and have the deed prepared?

A. No, sir, it wasn't.

Q. And you brought her on the second occasion?

A. She never refused to come back.

Q. She refused in Mr. Phipps' office on the first occasion when the deed was prepared - she refused to sign it?

A. Yes, sir, she did then and then studied it over.

Q. Did you promise her anything to get her to come?

A. Yes. I promised to take care of her from that day on and I did. She owed two bills.

Q. Did you pay the medical bills?

A. I wasn't supposed to until she signed it.

Q. Did you pay the bills?

A. I have not yet, but I can. One bill is at Abingdon and one down there.

Q. Those down there were paid by Mrs. Ward, were they not?

A. Yes, but I was waiting to see what was going to happen.

Q. Didn't you promise in this instrument that you would pay all the necessary food bills, clothing, doctor, medical?

A. 'Nary one. I paid two is all I was supposed to pay.

Q. When did Mrs. Hallie Kiser fall and break her hip?

A. I didn't keep up with it.

Q. Was that before or after she signed this instrument?

A. That was before.

Q. You have not had any medical bills to pay for her since that?

A. She has been in the hospital a time or two.

Q. Did you pay the bills?

A. I haven't, but I can. I told you that two bills was all I was supposed to pay.

Q. Didn't Mrs. Hallie Kiser have an income check for the government each month?

A. Yes.

Q. How much?

A. I believe she was drawing about $74.00 a month.

Q. I believe that was turned over to you?

A. No, sir.

Q. Didn't you get the check from Mrs. Rachel Sutherland?

A. She was taking care of them.

Q. She turned them over to you when you would come for them?

A. No, sir.

Q. What did Hallie do with the money?

A. Put it in the bank.

Q. What bank?

A. She said the St. Paul Bank. I don't know.

Q. Did she spend any of the money on herself?

A. Yes, what she would want or something.

Q. Matter of fact is you just took all her money and spent it on assisting her own support?

A. I didn't bother her money. I had money.

Q. Did you pay any of the medical bills?

A. I told you two was all I was supposed to after she fixed these papers.

Q. Those have not been paid yet?

A. I don't know.

Q. What two?

A. The one at Abingdon and one at Statesville. The one at Abingdon is $15.00.

Q. Isn't it true before signing this deed that you tried to get Rachel to come and put her in a mental institution?

A. I told her that she ought to be in the hospital. Rachel said, "I can keep her there. If she gets bad enough to go to the hospital, I will let you know". I wanted to put her in down there. They kept coming down there after her time after time. After she fixed them papers every once in a while they would come down there to get her.

Q. Didn't you request Mrs. Rachel Sutherland to have her admitted in a mental hospital in North Carolina?

A. I said, "If she has to go to a hospital".

Q. That was in December 1970?

A. No. I don't recall what date it was.

Q. You knew that her mental condition was bad at the time?

A. No, sir, it wasn't.

Q. You don't deny talking to Rachel about having her committed?

A. I said "If she gets bad enough, let me put her in down here".

Q. It was discussed between you and Rachel Sutherland and some other members of her family as to whether or not she ought to be committed at that time?

A. No.

Q. You were called off from work on several occasions in '70 to get her off the streets, no clothes on?

A. About twice. She went over there to a neighbor's house behind her. She went upstairs. They were afraid she would fall down the steps. She done had her leg broke. She was crossing the street, and afraid a car might hit her. That is why they called me at the job. She had gone up these steps. The lady told me that she was afraid she would fall down the steps.

Q. You didn't object to Rachel Sutherland coming to get her and bring her back to Virginia after she signed the deed, did you?

A. She kept coming. Rachel said, "I will take her up there and keep her". They kept doing that.

Q. Did you pay for any hospital bill while she was committed to the Southwestern State Hospital?

A. No, sir.

~~Q. Did you knew that it was your obligation under this deed?~~

Q. Did you offer to pay any of her medical bills?

A. No, sir.

Q. You knew it was your obligation under this deed?

A. Not until after it was signed.

Q. I am talking about when she was committed to the Southwestern State Hospital after she signed this?

A. No, sir.

Q. You knew it was your obligation under this deed?

A. I told you I wasn't supposed to pay but two. That was all after she signed the deed.

Q. I am talking about just before she died. Don't you think you were obligated to pay that bill at Southwestern State Hospital?

A. No.

Q. Didn't this deed say you were to pay all her medical bills?

A. That was before that. I wasn't supposed to.

Q. Wasn't you supposed to pay for her food and clothing?

A. I done it. I bought some clothes.

Q. Did you pay Southwestern Hospital one penny?

A. No.

Q. Did you offer to pay one penny?

A. No.

Q. You knew that you were obligated under this deed to take care of that?

A. That is not true.

Q. This says here: 'That for and in consideration of the party of the second part' - that is you - 'furnishes the party of the first part ---

A. After she signed the papers.

Q. You didn't do it?

MR. SUTHERLAND: Objected to. The question calls for a conclusion. The consideration says he is to pay necessary medical bills and as the State provides the cost of hospitalization then it is not a necessary expense.

MR. POPP: Let the record show the State does not provide it as counsel for the complainant here contends and the record clearly shows at this time that the bills were paid by Mrs. Corrine Ward, who was appointed legal guardian.

Q. Did you contribute anything to her funeral expenses?

A. I bought a bunch of flowers.

Q. Did you pay any of the expenses of her burial?

A. No.

Q. Didn't Rachel Sutherland object during the month of December '70 to you taking Hallie Kiser back to Statesville, North Carolina?

A. No, sir.

Q. Do you know why she changed her mind and asked to -----

A. Her sisters all kept coming back down there and begging her and jerkins her and tried to slip her off after the papers were signed.

Q. You lived with Hallie Kiser on the property?

A. Yes.

Q. Who were you employed by?

A. For Nelson Kiser a long time. They said I didn't work.

Q. What did you do for Nelson Kiser?

A. I helped him on his house and farm and I worked at a sawmill.

Q. Whose sawmill?

A. Kelly Chaffin's.

Q. How long did you work for Kelly Chaffin?

A. I can't say.

Q. A year?

A. I worked for the coal mines for Clinchfield a long time. I don't know how many years and for Wallace Truck Mines at Cleveland, Virginia.

Q. What these people testified here previously is not true, is it?

A. What was that?

Q. All these witnesses that testified you didn't work is all talk --

A. They know I worked ---

MR. SUTHERLAND: Let me say this: You don't know what the man asked you because he didn't finish. Let him finish.

WITNESS: I tried to tell it too fast.

Q. What these people testified here that you didn't work when you lived with Hallie isn't true?

A. No, it is not true. I was sick one time. I went for a stomach operation at Richlands. I was off a little spell.

Q. When Rachel came to get her sister, Hallie, you consented for her to come?

A. Rachel said, "Let me take her up there". I said, "I would rather put her in down here. We've lived down here all these years and it would be closer to me". She said, "No, let me take her." I didn't refuse and let them bring her on.

Q. After Hallie came back to live with Rachel, did you contribute anything to Hallie's support?

A. No, I didn't.

Q. Did you offer Rachel any money for support?

MR. SUTHERLAND: Objection. Repetitious.

MR. POPP: That's all. No further questions.

FINAL DECREE

This cause came on to be heard this day on the bill of complaint, the answer of the defendant, Lonnie D. Kiser, the evidence in the form of depositions duly taken and filed herein, the stipulations of counsel for the parties, and upon the memorandum filed on behalf of defendant, and the cause was argued by counsel for the parties.

The Court being of the opinion that:

(1) At the time of the execution and acknowledgment of the deed dated December 29, 1970, of record in the Clerk's Office of the Circuit Court of Dickenson County, Virginia, in Deed Book No. 148, page 180, from Hallie Kiser to the defendant, Lonnie D. Kiser, conveying a parcel described as containing one (1.0) acre, more or less, situated in Dickenson County, Virginia on Sandy Ridge, the said Hallie Kiser was competent to transact her business affairs and to dispose of her property;

(2) That the evidence is insufficient to establish that Lonnie D. Kiser obtained the deed by fraud; and

(3) That the evidence is insufficient to establish that Lonnie D. Kiser failed to support and maintain Hallie D. Kiser after the acknowledgment and delivery of the deed as provided by the deed.

The Court doth accordingly ADJUDGE, ORDER and DECREE that said deed is hereby declared to be a valid and effective conveyance of said land; and the Court doth further ADJUDGE, ORDER and DECREE that the lis pendens filed herein and recorded January 22, 1972 in Deed Book No. 158, page 537 be and is hereby dissolved and the Clerk of this Court is directed to enter a release of the lis pendens on the margin of the page of the book in which the same is recorded, together with a reference to the order book and page where this Final Decree is recorded.

To the findings and decree of the Court, the complainant, by counsel, excepts.

Nothing further remaining to be done, this cause is dismissed from the docket.

Enter this March 24th, 1975.

Thurston E. Perry
JUDGE

REQUESTED:

Benjamin F. Sutherland
Benjamin F. Sutherland

Counsel for Lonnie D. Kiser

SEEN:

G. G. Popp
G. G. Popp

Counsel for Complainant

HAROLD DONALD JOHNSON COMPLAINANT

VS. NOTICE OF APPEAL
AND
ASSIGNMENT OF ERROR

LONNIE D. KISER DEFENDANT

The Complainant, by counsel, gives Notice of Appeal and Assignment of Error from the judgment entered herein on the 24th day of March, 1975, and assigns the following errors as required by Rule of Court 5:6:

1.

The Court erred in ruling that the evidence was insufficient to establish that the Defendant Lonnie D. Kiser failed to support and maintain Hallie D. Kiser after the acknowledgment and delivery of the deed as provided by said deed.

2.

There will be no further transcript, statement of facts, testimony or other incidents of this case hereafter filed.

Respectfully Submitted:
Harold Donald Johnson
By
Counsel

POPP & TILLER
Attorneys at Law
St. Paul, Virginia

By G G Popp
Counsel for Complainant

CERTIFICATE

I, G. G. Popp, Counsel of Record for the Complainant, do hereby certify that I have mailed a true copy of the foregoing Notice of Appeal and Assignment of Error to Benjamin F. Sutherland, Esquire, Attorney at Law, Clintwood, Virginia, Counsel of Record for the Defendant, this 10th day of April, 1975, by depositing a true copy of same in the United States Post Office, St. Paul, Virginia, prepaid.

G G Popp
Counsel for Complainant

day of April 1975
Martha Mullins Clerk