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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1674-22**

**IN THE MATTER OF THE
ESTATE OF MARIA IANNACCO,
deceased.**

Submitted January 18, 2024 – Decided June 25, 2024

Before Judges Accurso and Gummer.

On appeal from the Superior Court of New Jersey,
Chancery Division, Bergen County, Docket No.
P-000410-21.

Traina & Traina, attorneys for appellant Francesco
Iannacco (Jack A. Traina, on the briefs).

DeMarco & DeMarco, attorneys for respondents Aldo
Iannacco a/k/a Aldo Iannacco, Jr. and Bianca Martinelli
(Patrick C. DeMarco, on the brief).

PER CURIAM

In this probate case, a son challenges the validity of his mother's last will and testament. Plaintiff Francesco Iannacco filed an action contending the 2020 will of his mother, Maria Iannacco, was the product of undue influence by defendant Aldo Iannacco, Jr., Maria's other son whom she named as the executor

of her estate and as a beneficiary, and Bianca M. Martinelli, Aldo Jr.'s daughter, also a beneficiary named in the will.¹ Following a bench trial, the trial court entered judgment in favor of defendants and dismissed plaintiff's complaint with prejudice.

Plaintiff argues the court erred in not finding suspicious circumstances or the existence of a confidential relationship between his mother and defendants and in failing to recognize certain issues concerning the preparation of the will. Because the court's factual and credibility findings were based on substantial credible evidence and its legal conclusions were correct, we affirm.

I.

Maria, an Italian immigrant, passed away on January 18, 2021. She was married to Aldo Iannacco, Sr, who passed away in 2011. They had two sons, Francesco and Aldo Jr. In 1990, they had reciprocal wills, dividing the marital estate in equal halves between their sons. Plaintiff has a daughter, Giada Iannacco, and a son, Fabio Iannacco. Aldo Jr. has a son, Aldo V. Iannacco, and a daughter, Bianca.

¹ Because some of the parties and people involved in the case share a last name, we use their first names for ease of reading and to avoid confusion. We mean no disrespect in doing so.

On February 5, 2020, Maria executed a last will and testament. In that will, Aldo Jr. was designated the executor and trustee of Maria's estate. The beneficiaries were her sons and grandchildren with each grandchild receiving \$25,000, plaintiff receiving \$1, and Aldo Jr. receiving the rest of the estate. Notary public Maureen E. Brady executed the will, stating Maria and witnesses Cook and his paralegal had "subscribed, sworn to and acknowledged" it before her.

From the late 1970's until her death, Maria lived in a house located in Elmwood Park, New Jersey. At the time of her death, Aldo Jr. had been living there for approximately fifteen years. During the fall of 2019, Bianca moved into a second-floor apartment in the house with her brother and her husband. Aldo Jr. and Bianca were primarily responsible for the care and supervision of Maria's health and wellness, especially after the outbreak of COVID-19.

Following Maria's death, the 2020 will was admitted to probate. The surrogate issued letters testamentary to Aldo Jr. on April 16, 2021. On August 11, 2021, plaintiff filed a verified complaint, seeking to invalidate the 2020 will based on alleged undue influence and to remove Aldo Jr. as executor.² After

² Plaintiff also sought a formal accounting, even though a year had not yet passed since the surrogate issued letters testamentary to Aldo Jr. See N.J.S.A.

discovery, the court conducted a two-day trial. During the trial, several witnesses testified.

Attorney Harold Cook, who prepared the 2020 will, testified about his February 5, 2020 meeting with Maria. He did not speak with defendants before preparing the 2020 will. Cook described Maria as being "fine," "lucid," and "pretty sharp." He recalled she was "an elderly woman" but otherwise did not remember what she looked like. He did not ask her to provide a form of identification. According to Cook, Maria had an Italian accent, but they had no trouble communicating. Maria appeared to read the will after it was prepared; he also read the will to her. The bulk of her estate was her two-family home. When he asked her how she would like to leave her estate, she told him she wanted to exclude plaintiff, indicating they had had a falling out and she had been estranged from him for about three years. She told him she wanted to make some specific bequests to her grandchildren and leave her house to Aldo Jr., with whom she had a close relationship.

Bianca testified that when she moved into the second-floor apartment, Maria told her she had been attempting to contact her attorney to make changes

3B:17-2 (a representative "shall not be required to account until after the expiration of 1 year after his appointment"). In the answer to the complaint, Aldo Jr. agreed to perform an informal accounting.

to her will but had not been able to reach him. Maria asked her for a reference to an attorney. In January 2020, Maria asked her again for a reference; Bianca's friend, whose mother worked for Cook as a paralegal, recommended Cook. Bianca called Cook's office to make an appointment, telling his staff Maria wanted to draft a will. According to Bianca, Maria told her she was upset with plaintiff, explaining that on the rare times he visited her, he would push her to create a power of attorney and wanted her to give him more money because Aldo Jr. lived at the house. Bianca testified Maria had told her she and plaintiff had a "final fight" when she refused to sign a power of attorney. Bianca recalled that when Maria broke her ribs in 2019, plaintiff did not visit or call her and had not spoken to her since then.

Bianca acknowledged Maria did not drive and said she would go food shopping or to doctors' appointments "with us" or other friends or relatives or would pay for a ride. According to Bianca, Maria opened a joint bank account in 2020, put Bianca's and Aldo V.'s names on the account, and deposited \$18,000 in the account with instructions they use the funds to pay for her funeral and other after-death expenses and then retain the rest.

Fabio and Giada testified plaintiff had a close relationship with Maria, Maria could speak English and could read basic English, and had said she

wanted to divide her estate equally between her sons. Fabio conceded the relatives who lived in Maria's house did more for Maria in terms of "day-to-day activities" and scheduling appointments beginning in 2019.

Plaintiff testified about the 1990 will, conversations with Maria when his father was ill about evenly dividing her estate, Maria's refusal to sign the power of attorney, her blindness in one eye and difficulty reading, and her ability to read English. He described their relationship and his involvement in her life in 2019 and earlier. He testified that after Bianca moved into her house, he gave his brother's contact information to Maria's doctor and told Maria because she had other family living in the house, he wanted to focus on his own job search. He admitted that for various reasons he wasn't as active in giving comfort, support, or assistance to Maria in 2020 as he had been before. According to plaintiff, from March 2020 until she was hospitalized in 2021, he spoke with Maria "sporadically," once a week or every other week. When asked for the basis of his claim Bianca had exercised undue influence over Maria, plaintiff conceded he had "no idea" what Bianca may have said to Maria and pointed out Maria had prepared a new will two months after Bianca moved into the second-floor apartment. He described Maria as being dependent, weak, and on oxygen

and stated his belief "most likely they exerted the desire to basically control her"

Aldo Jr. testified that beginning in the latter part of 2019, Maria had complained about plaintiff not calling her. He testified she had told him plaintiff stopped talking to her after he demanded to be her executor and she refused. He confirmed beginning in November 2019, his "household" became responsible for taking Maria to doctor appointments. He testified he had driven her to the appointment with Cook at her request, had not discussed her will with her, and had waited in his truck while she met with Cook. He described his mother as being "independent," other than not being able to drive and needing help maintaining the property. He testified she read the local newspaper and cookbooks.

Dr. Peter Carrazzone, Maria's doctor, described Maria as having an accent, but he had no problem understanding her. He testified she had told him she was upset about her relationship with plaintiff and had problems trying to reach him. Julian Cucco, Maria's nephew, testified plaintiff's family was not present on Christmas Eve 2019 as they had been on past Christmas Eves and that Maria had complained at the end of 2019 that plaintiff did not visit. Angela Giordano Morra, the sister of plaintiff's wife, testified Maria had told her more than once

that she had changed her will because of the way plaintiff "was behaving towards her, not contacting her, just basically alienating her." Maria complained about plaintiff not coming to the hospital and removing himself as an emergency contact on the hospital registry.

On October 13, 2022, the court placed a decision on the record and entered an order finding in favor of defendants. On November 16, 2022, the court entered another order correcting some spelling errors in the prior order and confirming that the terms and conditions of that order remained in effect. In a January 3, 2023 order, the court denied plaintiff's fee application.

In its October 13, 2022 decision, the court acknowledged "many of the witnesses have their own self-interest" but found Cook's and Carrazzone's credible testimony supported the conclusion something had changed in Maria's relationship with plaintiff. The court found taking Maria to appointments and "doing things you do with an elderly parent" were not sufficient to prove the elements of an undue-influence claim and that to conclude otherwise in this case would be "sheer speculation." The court held no confidential relationship existed between the decedent and defendants and no suspicious circumstances surrounded the execution of the will. Accordingly, the court found the will was

not the product of undue influence and entered judgment in favor of defendants. This appeal followed.

II.

Our "review of a judgment following a bench trial is limited." Accounteks.net, Inc. v. CKR Law, LLP, 475 N.J. Super. 493, 503 (App. Div. 2023) (quoting Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011)). "The trial court's factual findings are entitled to deference on appeal so long as they are supported by sufficient credible evidence in the record." Ibid. (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 483-84 (1974)). "Deference is particularly appropriate when the court's findings depend on credibility evaluations made after a full opportunity to observe witnesses testify, Cesare v. Cesare, 154 N.J. 394, 412 (1998), and the court's 'feel of the case.'" Accounteks.net, 475 N.J. Super. at 503 (quoting State v. Johnson, 42 N.J. 146, 161 (1964)). By contrast, the "trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference" and are reviewed de novo on appeal. Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

Those core principles apply equally in will contests. See Gellert v. Livingston, 5 N.J. 65, 78 (1950) ("The findings of the trial court on the issues of testamentary capacity and undue influence, though not controlling, are entitled to great weight since the trial court had the opportunity of seeing and hearing the witnesses and forming an opinion as to the credibility of their testimony."); In re Will of Liebl, 260 N.J. Super. 519, 524 (App. Div. 1992) (a trial court's factual findings "should not be disturbed unless they are so manifestly unsupported or inconsistent with the competent, reasonably credible evidence so as to offend the interests of justice").

"A challenger can set aside a decedent's will . . . on the basis of undue influence." In re Est. of Folcher, 224 N.J. 496, 512 (2016). Our Supreme Court has explained that "undue influence is a mental, moral, or physical exertion of a kind and quality that destroys the free will of the testator by preventing that person from following the dictates of his or her own mind as it relates to the disposition of assets[.]" In re Est. of Stockdale, 196 N.J. 275, 302-03 (2008). Undue influence "denotes conduct that causes the testator to accept the 'domination and influence of another' rather than follow his or her own wishes." Id. at 303 (quoting Haynes v. First Nat'l State Bank, 87 N.J. 163, 176 (1981)). The undue influence must exist at the time the will was executed. Ibid.

"Ordinarily, the burden of proving undue influence falls on the will contestant." Ibid. Nevertheless, "if the will benefits one who stood in a confidential relationship to the testator and if there are additional 'suspicious' circumstances, the burden shifts to the party who stood in that relationship to the testator." Ibid. "In general, there is a confidential relationship if the testator, 'by reason of . . . weakness or dependence,' reposes trust in the particular beneficiary, or if the parties occupied a 'relation[ship] in which reliance [was] naturally inspired or in fact exist[ed].'" Ibid. (alterations in original) (quoting In re Hopper, 9 N.J. 280, 282 (1952)). "[T]he mere existence of family ties does not create . . . a confidential relationship." Est. of Ostlund v. Ostlund, 391 N.J. Super. 390, 401 (App. Div. 2007) (quoting Vezzetti v. Shields, 22 N.J. Super. 397, 405 (App. Div. 1952)).

Suspicious circumstances may arise from a "drastic change in the testamentary dispositions" of the testator. Haynes, 87 N.J. at 177. Although evidence of suspicious circumstances can be "slight," the contestant of a will must present some evidence establishing suspicious circumstances. Stockdale, 196 N.J. at 303. If the challenger of the will successfully shifts the burden of proof to the proponent of the will, "[t]hat burden can be overcome based on

proof of no undue influence by a preponderance of the evidence." Folcher, 224 N.J. at 512.


Plaintiff contends the court failed to recognize the weight of "competent, relevant and reasonably credible evidence" of suspicious circumstances and a confidential relationship. To the contrary, the court considered the evidence presented at trial it found credible and concluded plaintiff had failed to prove the elements of an undue-influence claim. Because that conclusion was supported by credible evidence and a correct interpretation of the law, we have no basis to reverse the court's decision.

Plaintiff identifies as purported evidence of suspicious circumstances the joint account, Aldo Jr. driving Maria to the appointment with Cook, and that Maria executed a new will months after Bianca had moved into the second-floor apartment. But those three things, especially when there was no suggestion of any financial impropriety and Aldo Jr. and other family members routinely drove Maria to appointments, do not outweigh the credible evidence Maria had expressed concerns about her relationship with plaintiff and wanted to change her will. Plaintiff even testified he had chosen to be less involved in Maria's life since the latter part of 2019.

Plaintiff faults Cook for not asking for Maria's identification. But plaintiff didn't include in his complaint a cause of action based on forgery. In fact, he alleged in his complaint, "On or about February 5, 2020, Decedent executed a Last Will and Testament" and attached a copy of the 2020 will to the complaint. He didn't testify the signature on the 2020 will wasn't Maria's, didn't present a handwriting expert to establish a forgery, and didn't present any testimony from the notary and other witness. Plaintiff faulted Cook for not retaining a translator to provide Maria with a copy of the will in Italian or to read it to her in Italian. But plaintiff did not include in his complaint a cause of action based on lack of capacity. And there is no evidence Maria did not understand the will when she read it or when Cook read it to her or that it did not reflect her expressed testamentary intent.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION