

**IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION**

**O.C. No. 1678 AP of 2015
Control No. 154066**

Estate of JACQUELINE ARNAO, Appeal from the Register

OPINION SUR APPEAL

Paul Santoro, *Pro Se*, (hereinafter referred to as "Appellant") appeals the Orphans' Court's Decree dated August 13, 2018, wherein it denied the Appellant's appeal to open the probate record to permit the admission of the January 19, 2013 document as a later dated will, and affirmed the Decree of the Register of Wills which admitted Jacqueline Arnao's June 12, 2007 Will to probate. The Orphans' Court issues this opinion pursuant to Pa. R.A.P. 1925(a).

Facts and Procedural History

Jacqueline Arnao (hereinafter referred to as "Decedent") died testate on March 4, 2014,¹ survived by her sons: Joseph Santoro and Appellant. Her Will dated June 12, 2007 (hereinafter referred to as the "2007 Will") was admitted to probate on January 29, 2015 and Letters Testamentary issued to Joseph Santoro.²

¹ Exhibit C-1.

² Exhibit C-1.

Jacqueline Arnao, Appeal From Register



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On December 3, 2015, Appellant, who was not named as a beneficiary under the 2007 Will, filed a Notice of Appeal with the Register of Wills and a Petition for Citation to Show Cause Why Appeal from Probate Should Not be Sustained, contending that Decedent's 2007 Will was the product of undue influence, and that the probate record should be opened to permit the admission of the January 19, 2013 document as a later dated will (hereinafter referred to as the "2013 document"). Under the terms of the 2013 document, Appellant would receive the Decedent's property located at 428 N. Lansdowne Avenue in Drexel Hill, Pennsylvania, where he resided, and one-half of the remainder of the estate.³

Joseph Santoro (hereinafter referred to as the "Executor") filed an Answer with New Matter on February 3, 2016 which denied Decedent executed a valid will in 2013 because the document was written by Appellant, was the product of undue influence, and Decedent lacked testamentary capacity at the time it was purportedly executed. The Executor further argued that the 2007 Will was not the product of undue influence. The Executor subsequently died on October 18, 2016. His daughter, Sandra Santoro, was appointed Executrix on February 15, 2017 and substituted as a party in this matter.

³ Exhibit P-1.

A one day trial commenced on September 18, 2017 on the issues of undue influence and lack of testamentary capacity with respect to both documents. All parties were represented by counsel. Sandra Santoro (hereinafter referred to as the “Executrix”) offered the Register of Wills’ probate file into evidence containing the 2007 Will.⁴

The scrivener of the 2007 Will, Harvey Abramson, Esquire, testified to his meetings with the Decedent concerning various estate planning documents and the circumstances surrounding his preparation and her execution of her Will on June 12, 2007 at his law offices in the presence of two witnesses and a notary.⁵ Under her 2007 Will, Decedent left her entire estate to her son, Joseph Santoro. Attorney Abramson testified that prior to the date of execution he interviewed Decedent in private on two occasions, where she stated that she did not want to leave any money to Appellant,⁶ as she had provided for him during his lifetime.⁷ Appellant and Executor accompanied Decedent to Attorney Abramson’s offices on June 12th, 2007, however, neither of her sons were present in the room when the 2007 Will was

⁴ Exhibit C-1, N.T. 9/18/17, p. 6.

⁵ N.T. 9/18/17, p. 79, 84-92.

⁶ N.T. 9/18/17, p. 86, 90.

⁷ N.T. 9/18/17, p. 87.

signed.⁸ At that time, Mr. Abramson spoke with Decedent privately, where she again expressed that she did not want to leave any money to Appellant.⁹

The Decedent informed her sons on the way home from Attorney Abramson's Office that she did not provide for Appellant under the Will.¹⁰

On or about December 26, 2012, Decedent suffered a fall in her home fracturing her right hip. She was taken to the emergency room and subsequently admitted to Kennedy Hospital in Washington Township, New Jersey, at which time she was unable to provide a medical history.¹¹ A hemiarthroplasty procedure to replace her right hip was performed on December 28, 2012.¹² She was discharged to Meadow View Nursing and Respiratory Care Center in Williamstown, New Jersey for rehabilitation on December 31, 2012.¹³

On January 16, 2013 while at Meadow View Nursing and Respiratory Care Center, Decedent fell and was re-admitted to Kennedy Hospital from the emergency room with a left hip fracture and history of dementia.¹⁴ On admission, Decedent was

⁸ N.T. 9/18/17, p. 89-90.

⁹ *Id.*

¹⁰ Exhibit R-2 (also marked as Exhibit P-3), Deposition of Joseph Santoro 1/27/16, p. 13-14.

¹¹ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 18-19,
Kennedy Hospital Surgical Consult record 12/27/12 attached to transcript as Exhibit P-3.

¹² Exhibit R-3 – Kennedy Hospital Records, Operative Report 12/28/12.

¹³ Exhibit R-3 – Kennedy Hospital Records, Discharge Summary 12/31/12;
Exhibit R-4 - Meadow View Nursing and Respiratory Care Center, Admission Record
12/31/12.

¹⁴ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 20,
Kennedy Hospital Emergency Record 1/16/13 attached to transcript as Exhibit P-4.

unable to provide her medical history which was taken from emergency room records. Discharge summary on January 24, 2013 includes dementia as well as left femoral neck fracture and other diagnoses.¹⁵

During this hospital admission, on the afternoon of January 19, 2013, Appellant arrived at the hospital to visit Decedent,¹⁶ accompanied by his friend, Gordon Stark.¹⁷ Appellant testified that Decedent instructed him to write down her “second will” (referred to herein as the “2013 document”).¹⁸ Appellant handwrote the following on a lined piece of notebook paper on the tablet he obtained from the nurses station:¹⁹

1/19/13

AS OF TODAY, I LEAVE MY HOUSE AT 428 N
LANSDOWNE AVE, DREXEL HILL, PA 19026 TO MY SON,
PAUL SANTORO.

THE REMAINDER OF MY ESTATE IS TO BE DIVIDED
EVENLY BETWEEN MY TWO SONS; PAUL AND JOSEPH
SANTORO.

SIGNATURE /s/ J. ARNAO

Witness
GK STARK
/s/ GK Stark²⁰

¹⁵ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 21-23.

Kennedy Hospital discharge record 1/24/13 attached to transcript as Exhibit P-5.

¹⁶ N.T. 9/18/17, p. 29–30.

¹⁷ N.T. 9/18/17, p. 10.

¹⁸ N.T. 9/18/17, p. 13, Exhibit P-1.

¹⁹ N.T. 9/18/17, p. 18, 32.

²⁰ Exhibit P-1, N.T. 9/18/17, p. 18.

Decedent allegedly signed this document, and Gordon Stark signed as witness.²¹ Mr. Stark did not appear nor testify at the trial either live or by deposition. No explanation was given for Mr. Stark's failure to testify, other than that he lives in Africa, and "[y]ou can reach him anytime."²²

References to the Decedent's dementia and delirium are contained in the medical records from the Kennedy Hospital and the Meadow View Nursing and Respiratory Care Center admissions.²³ Psychiatric evaluation ordered on January 20, 2013 for delirium and performed on January 21, 2013 contained findings that the Decedent suffered from dementia and delirium due to general medical condition.²⁴

Expert medical video deposition from Dr. Eunha Kim (hereinafter referred to as "Dr. Kim"), a medical doctor with board certifications in psychiatry and neurology, was presented by the Executrix. Dr. Kim examined the Kennedy Hospital records and the Meadow View Nursing and Respiratory Care Center records,²⁵ as well as Decedent's medical history prior to her admission into these facilities.²⁶ Dr. Kim's expert medical opinion found that Decedent was suffering

²¹ N.T. 9/18/17, p. 17-18.

²² N.T. 9/18/17, p. 48.

²³ Exhibit R-3 Kennedy Hospital records, Exhibit R-4 Meadow View records.

²⁴ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 52-53, Kennedy Hospital Consultation Request 1/20/13 attached to transcript as Exhibit P-17.

²⁵ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 14.

²⁶ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 15.

from advanced dementia, which was further complicated and worsened by delirium caused by her injuries and medications.²⁷

The Executrix motioned for compulsory nonsuit at the close of Appellant's case and at the close of trial.²⁸ The motion was held under advisement by the undersigned Judge at that time.

On September 19, 2017, the undersigned Judge entered Compulsory Nonsuit as to the 2007 Will only, finding that Appellant failed to produce any credible evidence and further failed to prove that Decedent's 2007 Will was not her lawful last will and testament, executed with the required willful and knowledgeable dispositive intent.

The parties, through their respective counsel, filed their Proposed Findings of Fact and Conclusions of Law. Having reviewed the parties' submissions, the record created including the testimony presented in person and by depositions, and the documentary evidence including the medical records and expert medical report, and assessed the credibility of each witness and party, the Orphans' Court issued its Decree on August 13, 2018. The Orphans' Court denied the request to open the probate record to admit the 2013 document as a later dated will. The Court found

²⁷ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 55, Expert Report attached to transcript as Exhibit P-2.

²⁸ N.T. 9/18/17, p. 66-67, 98-99.

that that the 2013 document *was* procured by undue influence and at said time, Decedent lacked testamentary capacity. The Court further restated that the Decedent had testamentary capacity when she executed her 2007 Will, that it was not procured by undue influence, and affirmed the admission of the 2007 Will to probate by the Register of Wills.

Appellant, acting *pro se*, filed his Notice of Appeal on September 12, 2018. By Decree issued the same date, the Appellant was ordered to file a concise statement of matters raised on appeal within twenty one days pursuant to Pa. R.A.P. 1925(b). The Appellant filed his Rule 1925(b) statement on October 12, 2018, albeit late.

Statement of Issues

Appellant raised the following issues repeated verbatim from the Pa. R.A.P. 1925(b) Statement:

1. The trial court erred in finding the “decendent was subject to undue influence at the time when the 2013 document was executed” when the doctor who testified to decedent’s incapacity did admit the following: that he had never met Decedent; that he had never reviewed a video of her; that he had never interviewed anyone whom had known decedent; that an individual diagnosed with dementia can have good days and bad days; that within the medical records he reviewed, it was noted that decedent was at times very cooperative with hospital staff; that within the medical records he reviewed, it was noted that decedent was at times able to provide a

history of her illness; that decedent's disposition and orientation was at times fluctuating.

2. The trial court erred in finding the "decedent was subject to undue influence at the time when the 2013 document was executed" when Paul Santoro testified that Decedent was oriented as to who she was, and her wishes regarding who she wanted to receive her property on January 19, 2013 at approximately 1:30 pm when she dictated her wishes for him to transcribe.

The Orphans' Court combines Appellant's two issues into the following single issue in an attempt to address them as concisely and fully as possible:

Whether the Orphans' Court erred in finding that Decedent was subject to undue influence at the time the 2013 document was executed?

Being cognizant of Appellant's decision to file and pursue his appeal without counsel, even though he was represented at trial, the Orphans' Court shall additionally address Decedent's lack of testamentary capacity in 2013, despite Appellant's failure to raise and preserve this issue on appeal.

Discussion

1. The Orphans' Court did not err in finding that Decedent was subject to undue influence at the time the 2013 document was executed.

The standard of review applicable to Orphans' Court findings has been described by this Honorable Superior Court as follows:

The findings of a judge of the Orphans' Court division, sitting without a jury, must be accorded the same weight and effect as the verdict of a jury, and will not be reversed by an appellate court in the absence of an abuse of discretion or a lack of evidentiary support. This rule is particularly applicable to findings of fact which are predicated upon the credibility of the witnesses, whom the judge has had the opportunity to hear and observe, and upon the weight given to their testimony. In reviewing the Orphans' Court's findings, our task is to ensure that the record is free from legal error and to determine if the Orphans' Court's findings are supported by competent and adequate evidence and are not predicated upon the capricious disbelief of competent and credible evidence.

In re Jackson, 174 A.3d 14, 23 (Pa. Super. 2017) (quoting *In re Paxon Trust I*, 893 A.2d 99, 112 (Pa. Super. 2006)); *In re Estate of Cerwinski*, 856 A.2d 165, 167 (Pa. Super. 2004).

Pennsylvania Courts use a three-part test to determine whether undue influence affected a testator in creating a will. The will opponent must show that the testator was of weakened intellect when the will was executed, the proponent of the will stood in a confidential relationship with the testator, and the proponent of the will received a substantial benefit under the will. *Estate of Glover*, 669 A.2d 1011 (Pa. Super. 1996). Once all elements are satisfied, the burden shifts to the proponent of the will to show the absence of undue influence. *Estate of Glover*, 669 A.2d 1011, 1015 (Pa. Super. 1996) (quoting *In re Estate of Simpson*, 595 A.2d 94, 98 (Pa. Super. 1991)).

The burden of proof on the issue of undue influence as to the 2013 document was initially upon the Executrix. She offered the deposition testimony of Joseph Santoro and the expert medical testimony from Dr. Euhna Kim. Both parties agreed to the submission of the Kennedy Hospital and Meadow View Nursing and Respiratory Care Center records. Appellant, who then had the burden of proving the absence of undue influence, offered only his own lay testimony, as more fully set forth below.

a) Decedent suffered from weakened intellect at the time the 2013 document was executed.

Although no bright-line test has been established, Pennsylvania Courts have recognized that weakened intellect is typically accompanied by persistent confusion, forgetfulness, and disorientation. *Owens v. Mazzei*, 847 A.2d 700, 707 (Pa. Super. 2004).

The expert medical testimony from Dr. Kim, who reviewed Decedent's medical history prior to her hospital admissions, her Kennedy Hospital records and her Meadow View Nursing and Respiratory Care Center records, established that Decedent who was ninety-six years old had a past history of dementia at the time of her admission to Kennedy Hospital in December 2012 and upon her re-admission in

January 2013.²⁹ She was unable to provide her medical history or sign admission papers.³⁰ Dr. Kim’s opinion to a reasonable degree of medical certainty was that on January 19, 2013, Decedent “already had advanced dementia worsened by delirium caused by multiple possibilities such as anemia, hip fracture, the pain and the medications given to her such as morphine and Percocet.”³¹

On January 19, 2013, the date of Appellant’s visit, the medical assessment of Decedent at 8:00 a.m. identified her neurological status as “disoriented to person, place, time, situation.”³² At 1:28 p.m. on that same day, Decedent was administered Risperdal, an antipsychotic medication, to lessen her agitation, as she was combative and had pulled out her IV multiple times.³³ She was also administered Morphine at this time to alleviate pain due to her hip fracture, and to further mitigate her agitation.³⁴

Dr. Kim opined to a reasonable decree of medical certainty that on January 19, 2013, Decedent did not have capacity to compose or modify a will.³⁵ At that

²⁹ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 14-17, Expert Report attached to transcript as Exhibit P-2.

³⁰ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 24-30, Exhibits P-6, P-7, P-8, P-9 and P-10 attached to transcript.

³¹ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 54.

³² Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 41-45, Exhibits P-14, P-15 attached to transcript.

³³ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 32-34, Exhibit P-12 attached to transcript.

³⁴ *Id.* at p. 35-37.

³⁵ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 54.

time, Decedent was already suffering from advanced dementia, which was further complicated and worsened by delirium caused by her injuries and medications.³⁶ It was “entirely impossible” that Decedent had sufficient cognizance to sign a will on January 19, 2013.³⁷

The Orphans’ Court accepts the testimony of Dr. Kim as credible. He is a board certified physician in psychiatry and neurology. His primary practice is as a psychiatrist with an emphasis on geriatric care which includes evaluating and treating elderly patients with dementia, Alzheimer’s disease, and memory loss on a daily basis and he has served as an expert witness for courts over one hundred times.³⁸

Dr. Kim’s testimony remained uncontroverted. Appellant presented no expert medical testimony, instead relying upon his own lay testimony of his meeting with Decedent on January 19, 2013 and his repeated adamant statements that he “did what she told me to do,” and that she “knew what she was doing.”³⁹ Appellant, himself, even admitted that he was aware of Decedent’s dementia prior to his January 19,

³⁶ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 55.

³⁷ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 69.

³⁸ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 11-12.

³⁹ N.T. 9/18/17, p. 48-50.

2013 visit with her at the hospital.⁴⁰ The Court found that Appellant's testimony supported the Court's finding that Decedent suffered from a weakened intellect.

The Orphans' Court's finding that Decedent suffered from weakened intellect around the time she executed the 2013 document is supported by the credible expert testimony of Dr. Kim in conjunction with Decedent's medical records, and Appellant's own awareness of her dementia.

b) Appellant stood in a confidential relationship with Decedent.

A confidential relationship exists whenever one person has placed a special confidence in another to the extent that the parties do not deal with each other on equal terms, either because of an overmastering dominance on one side, or weakness, dependence, or justifiable trust on the other. *Estate of Lakatosh*, 656 A.2d 1378, 1383 (Pa. Super. 1995) (quoting *Estate of Clark*, 359 A.2d 777, 781 (Pa. 1976)).

Appellant testified that Decedent lived with him, that he "looked out after her as she got older," and that he helped her with daily activities.⁴¹ During her lifetime, she provided him with financial assistance, including a penthouse apartment and a beer distributorship.⁴² At the time of his visit with Decedent on January 19, 2013,

⁴⁰ N.T. 9/18/17, p. 47.

⁴¹ N.T. 9/18/17, p. 9.

⁴² N.T. 9/18/17, p. 42, 45.

Appellant was living in the property owned by the Decedent and remained in that property after her death, testifying at trial, that he lived there 11 years.⁴³

Joseph Santoro testified, through trial deposition taken on January 27, 2016 as a result of his failing health, that Appellant “never worked really”⁴⁴ and that Decedent “pretty much supported him [Appellant] all his life.”⁴⁵ He testified that Decedent helped pay Appellant’s debts⁴⁶ and had given Appellant an estimated three million dollars during her lifetime.⁴⁷

Attorney Abramson, scrivener of the 2007 Will, testified that he first met the Decedent in 2005 in conjunction with preparation of a power of attorney, and testified that Decedent did not want Appellant to receive anything under the power of attorney, that he had received “lots and lots of money” from her during her lifetime.⁴⁸ Further, when he met with her to discuss drafting the 2007 Will, he testified that she told him she did not want Appellant to receive anything in her Will as she had provided for him during her lifetime.⁴⁹

⁴³ N.T. 9/18/17, p. 9.

⁴⁴ Exhibit R-2 Deposition of Joseph Santoro 1/27/16, p. 23.

⁴⁵ Exhibit R-2 Deposition of Joseph Santoro 1/27/16, p. 28.

⁴⁶ Exhibit R-2 Deposition of Joseph Santoro 1/27/16, p. 28-29.

⁴⁷ Exhibit R-2 Deposition of Joseph Santoro 1/27/16, p. 87.

⁴⁸ N.T. 9/18/17, p. 79, 82.

⁴⁹ N.T. 9/18/17, p. 86-87.

Appellant, knowing that Decedent was hospitalized and had dementia, visited with her at the hospital, accompanied by his friend, Mr. Stark, who either by choice or design, did not testify in this matter. No hospital personnel were present in the room or even aware of Appellant's actions that day. When questioned whether he asked the nurses if his mother was on any painkillers when he was seeking paper to write out the will, Appellant testified it was "none of their business."⁵⁰

The Orphans' Court's finding that Appellant stood in a confidential relationship with Decedent is supported by the credible testimony of both Joseph Santoro and Appellant that Decedent financially supported Appellant during her lifetime and paid his debts to her own detriment. The "overmastering dominance on one side" that Appellant had over Decedent, in addition to the "weakness and dependence" of Decedent was reinforced by Appellant's testimony that he cared for Decedent as she got older.

c) Appellant received a substantial benefit under the 2013 document.

Pennsylvania Courts have not precisely defined how large a bequest must be to be considered a "substantial benefit". Instead, the Court must look to the circumstances of each particular case. *In re Estate of LeVin*, 615 A.2d 38, 41 (Pa.

⁵⁰ N.T. 9/18/17, p. 32-33.

Super. 1992), quoting *Adams' Estate*, 69 A. 989, 990 (Pa. 1908). Pennsylvania Courts have attempted to refine the substantial benefit analysis and have deemed a bequest of twenty five percent of an estate too small to be considered a substantial benefit, while a bequest of an entire estate undeniably constitutes a substantial benefit. *In re Estate of Simpson*, 595 A.2d 94, 98 (Pa. Super. 1991); *In re Estate of Smaling*, 80 A.3d 485, 498 (Pa. Super. 2013).

Under Decedent's 2007 Will, Appellant received nothing. Decedent purposefully excluded Appellant from her Will as testified to by scrivener Harvey Abramson, Esquire.

As a result of the 2013 document, Appellant would inherit Decedent's home at 428 N. Lansdowne Ave. in Drexel Hill, Pennsylvania and fifty percent of the remainder of Decedent's estate, considerably more than under the 2007 Will.

Appellant would receive a substantial benefit by going from being completely disinherited under the 2007 Will to attaining Decedent's home and fifty percent of the remainder estate under the 2013 document.

The Executrix established that the 2013 document was procured by undue influence, having presented clear and convincing evidence that the 2013 document prepared by Appellant was done at a time when Decedent suffered from a weakened intellect, Appellant was in a confidential relationship with her, and he would receive

a substantial benefit should that document be admitted to probate as Decedent's will.

Appellant failed to present any evidence that the 2013 document was not the product of undue influence.

2. The Orphans' Court did not err in finding that testamentary capacity was present when the 2007 Will was executed and was not present when the 2013 document was executed.

The test to determine testamentary capacity, a quality every *sui juris* person is presumed to possess, is "whether a man or woman has an intelligent knowledge regarding the natural objects of his bounty, the general composition of his estate, and what he desires done with it, even though his memory may have been impaired by age or disease." *In re Estate of Angle*, 777 A.2d 114, 125 (Pa. Super 2001) (quoting *In re Brantlinger's Estate*, 210 A.2d 246, 252 (Pa. 1965)).

In 2007, when Decedent executed her Will, she had testamentary capacity as evidenced by Mr. Abramson's credible testimony that he met with her prior to execution of the 2007 Will and conducted a full and complete interview to ensure she had capacity to make a will.⁵¹ At that time, she was a very good historian about her life and had no memory problems. He did not administer any further mental status examination of Decedent because he was satisfied with her capacity.⁵²

⁵¹ N.T. 9/18/17, p. 84.

⁵² N.T. 9/18/17, p. 85.

Appellant failed to present any testimony, documentary or otherwise, to contradict Decedent's testamentary capacity in 2007.

A sharp contrast exists between 2007 and Decedent's hospitalization in 2013 where she was unable to recount her own medical history or sign any of the admission papers.⁵³ Her medical records are replete with references to dementia and delirium during her January 2013 hospital admission.⁵⁴

On the morning of Appellant's visit on January 19, 2013, Decedent's medical assessment indicated she was "unable to be oriented" and she was given Risperdal and Morphine that afternoon, which had a "significant sedating effect."⁵⁵

Appellant testified that he was aware of Decedent's dementia prior to his January 19, 2013 hospital visit,⁵⁶ yet on that day he failed to ask any doctors or nurses whether Decedent was on any pain medication⁵⁷ or whether she had the capacity to sign a document.⁵⁸ Appellant's testimony that she was oriented as to who she was, where she was, and her wishes regarding her property is simply not credible.

⁵³ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 24-30, Exhibits P-6, P-7, P-8, P-9 and P-10 attached to transcript.

⁵⁴ Exhibit R3 – Kennedy Hospital Records.

⁵⁵ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 24-30.

⁵⁶ N.T. 9/18/17, p. 47.

⁵⁷ N.T. 9/18/17, p. 31.

⁵⁸ N.T. 9/18/17, p. 34-35.

Dr. Kim's expert medical testimony irrefutably established that it was not possible for Decedent to have had capacity on January 19, 2013, as a result of her dementia, delirium, and the medications administered to her on that date, at approximately the same time that the 2013 document was written and executed.⁵⁹

The Orphans' Court found the expert medical testimony of Dr. Kim and the references contained in the medical records more credible than the lay testimony of Appellant, and found that the Decedent lacked testamentary capacity to make a will on January 19, 2013.


Conclusion

The Orphans' Court properly found that this 96 year old woman, who was suffering from dementia superimposed upon by delirium caused by the trauma of fracturing both her hips, hip replacement surgery on the right and pending surgery on the left, two hospitalizations and a stay at a rehabilitation facility, lacked the testamentary capacity to make a will while on anti-psychotic and opioid medication. It is respectfully submitted that the Court's finding, that the said 2013 document was the product of the undue influence exerted on Decedent by Appellant, was fully supported by the facts and the law. Further, at trial, Appellant, who was duly

⁵⁹ Exhibit R-1, Video Deposition Dr. Eunha Kim 8/18/18, transcript p. 53-55.

represented by Counsel, failed to present evidence by the only other witness to the execution of the document, even though the witness was available.

Therefore, it is respectfully submitted that the Orphans' Court's decision which affirmed the Register of Wills' probate of the 2007 Will, and denied Appellant's appeal to permit the probate record to be opened to admit the 2013 document as a later dated will, be affirmed.



CARRAFELLO, A.J.
Dated: 11-14-18

Paul Santoro

Harvey Abramson, Esquire

Adam Cohen, Esquire