

COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION
Estate of George Gordon Meade Easby, Deceased
Appeal from the Register of Wills
O.C. No. 1363 AP of 2006
Control No. 069427

OPINION

Introduction

When George Meade Easby (“Meade”) died on December 11, 2005, he was 87. He had never married nor had children although he had signed a Life Partnership Verification Statement on June 29, 2004 together with Robert Yrigoyen. Prior to his death, Meade also executed a will on March 3, 2005. That Will named Robert Yrigoyen, Meade’s “domestic partner and friend,” as Executor.¹ It was probated on January 13, 2006.

On December 12, 2006, the Commonwealth of Pennsylvania, through its Attorney General as *parens patriae* (hereinafter “Commonwealth” or “Petitioner”) filed an appeal from the decree of the Register of Wills granting probate of the March 3, 2005 Will on the grounds of undue influence and lack of testamentary capacity. The Wills Eye Hospital filed a joinder to the appeal on September 20, 2007. The Commonwealth’s petition noted that Meade belonged to a “distinguished Philadelphia family” and he had resided at his family’s 111 West Mermaid Lane Chestnut Hill home—Baleroy—for most of his life. Even when he was young, the petition averred, Meade was interested in preserving that home and the valuable antiques it sheltered “through their ultimate disposition.”² The Commonwealth emphasized that in an August 9, 1999 Will, Meade

¹ Ex. P-28, March 3, 2005 Easby Will, ARTICLES II & III.

² 12/122006 Commonwealth Petition, ¶¶10 & 11.

established a \$1,000,000 charitable remainder trust for the benefit of Robert, and upon Robert's death, provided that the residue would go to charity (specifically Wills Eye Hospital). The 1999 Will also made specific provisions for the gift of decedent's tangible personal property to charity.³

According to the Petition, prior to his death, Meade became frail, lethargic and confused. As a result of medical problems, he eventually required 24 hour nursing care, rarely left his bedroom and became dependent on Robert who had lived at Baleroy "for a period of time prior to Decedent's death."⁴ As Meade weakened, the petition alleges, Robert asserted increasing control over Meade's personal and financial affairs, isolating him from friends and family.⁵ Finally, the Commonwealth asserted that the Will Meade executed on March 3, 2005 was procured as a result of the undue influence of Robert. Moreover, the petition alleged, at the time of its execution, Meade lacked the testamentary capacity to execute a valid will.

In response, Robert challenged the characterization of Baleroy as a "family" home, noting that Meade had become its sole owner more than 30 years prior to his death.⁶ While conceding that at certain times in his later years Meade was frail, lethargic and confused, Robert denied that this accurately portrayed Meade's general condition since in periods of "great clarity" he conversed with friends who came to visit, made decisions about whom he wished to see, and what he wanted to eat or watch on television.⁷ Robert maintained that he "was the Decedent's long-time friend, lover, and Life Partner, and had lived with the Decedent in the functional equivalent of a marital

³ See 12/12/2006 Commonwealth Petition, ¶¶ 9-12.

⁴ 12/12/2006 Commonwealth Petition, ¶ 15-17.

⁵ 12/12/2006 Commonwealth Petition, ¶18.

⁶ 2/16/2007 Answer, ¶ 9.

⁷ 2/16/2007 Answer, ¶16.

relationship for more than ten years prior to the Decedent's death."⁸ As New Matter, Robert asserted that both he and Meade were homosexual and that the Will Meade executed on March 3, 2005 reflected his testamentary wishes.⁹ The Commonwealth responded to Robert's averment in New Matter that Meade was homosexual with a denial and a statement that it was "without knowledge and information sufficient to form a belief as to the truth of the averment contained in Paragraph 1."¹⁰

Several days of hearings were held to consider this appeal. As the testimony evolved, George Meade Easby emerged as a "private," "complex," and "very closeted" person who behaved differently depending on whether he was in gay or heterosexual company.¹¹ Like the film *Rashomon*, the image of Meade that emerged varied significantly depending upon the perspective of the narrator or witness.¹² Since claims of undue influence focus on the nature of relationships, their balances of power and dependency, the varying testimony as to the decedent's relationship with the respondent must be weighed and carefully analyzed. When the record that was presented is considered as a whole, it becomes clear that Meade's March 3, 2005 will was not the

⁸ 2/16/2007 Answer, ¶17.

⁹ 2/16/2007 Answer, ¶¶ 1-2 & 23.

¹⁰ 3/8/2007 Commonwealth Answer, ¶1.

¹¹ For these characterizations of Mr. Easby, *see* the testimony by Lady Mary Wedgwood, 1/15/2008 N.T. at 89 and Walter Opdyke, 12/5/2007 N.T. at 174-77 (Opdyke). Mr. Opdyke elaborated on his observation that Meade was "very closeted" through his recollection of a garden party in New Hope:

In fact, one garden party that he had, he invited two other guys from New Hope and myself and there were gay friends of his from Philadelphia that were there, and we were outside in that, under that pergola that he used to have in the backyard, and I don't know, making some you know, gay remarks, conversation, and he asked us to shush and be quiet because he didn't want the next-door neighbors to hear that there was this all-male party going on over here and obviously there were gay people. He was very closeted.

12/5/2007 N.T. at 177.

¹² The Commonwealth noted the difficulty in dealing with the private dimensions of this case, noting that its source of information came from Meade's "non-gay friends." 12/5/2007 N.T. at 189 (Kenney).

result of undue influence by Robert Yrigoyen. Since the Commonwealth abandoned the claim that Meade lacked testamentary capacity,¹³ that issue need not be addressed.

Factual Background

George Meade Easby first met Robert Yrigoyen in 1993 in New Hope.¹⁴ Shortly after they met, Meade asked Robert to prepare an inventory of his “non-furniture” collections. Robert spent several months preparing this inventory of such items as dishes, silver and other objects. In so doing, Robert learned that Meade’s home and heirlooms were a great source of pride for him.¹⁵ He noted, in fact, that Meade spoke of turning Baleroy into a museum, though Meade believed it was haunted by the spirit of his dead brother.¹⁶

In 1995, Robert moved into Baleroy. Easby paid for the maintenance of the house as well as for food, restaurant and travel expenses. In addition, Meade paid Robert a “certain sum.”¹⁷ By 1997, Robert began charging expenses to Meade’s credit cards, and before 2001, he made ATM withdrawals from his PNC account.¹⁸ When Meade stopped driving, Robert took up that responsibility.¹⁹ Robert not only drove Meade to his doctor’s

¹³ 12/6/2007 N.T. at 189-90 (Kenney). Similarly, Wills Eye Hospital argued that the March 3, 2005 Will was invalid on the grounds on undue influence. See 3/27/2008 Wills Memorandum at 1.

¹⁴ 12/4/2007 N.T. at 99 (Robert).

¹⁵ 12/4/2007 N.T. at 100-03, 110 (Robert).

¹⁶ 12/4/2007 N.T. at 111-12 (Robert). According to one witness, Meade believed that Baleroy was haunted by the ghost of his brother Steven, and it would be Robert’s problem to care for the ghost. 1/15/2007 N.T. at 103 (Lady Wedgwood).

¹⁷ 12/4/2007 N.T. at 117-18 (Robert); Ex. P-13. When asked if Meade paid him \$2000 a month, Robert could not recall the precise amount. 12/4/2007 N.T. at 117-18 (Robert). The Commonwealth maintains that Robert was paid as much as \$4,000 a month by Meade, which Robert agreed to in cross-examination. 12/10/2007 Commonwealth Memorandum at 3 (citing Ex. P-13 at C-01383); 12/4/2007 N.T. at 162 (Robert).

¹⁸ 12/4/2007 N.T. at 125-26 (Robert).

¹⁹ 12/4/2004 N.T. at 114 (Robert).

appointments, but he often went into the doctor's office with him.²⁰ There also came a time when Robert assisted Meade in taking his medications.²¹

Throughout the period of his 12 year relationship with Robert, Meade executed four wills and a codicil. A year after Robert moved into Baleroy, Meade executed a will on March 22, 1996. Robert accompanied Meade to the office of his lawyer, John Donahue, and then served as one of the witnesses to the will. At that time, Meade also executed a power of attorney, naming Robert and his accountant, Marvin Rothstein as his agents.²²

In 1997 Meade executed a new will that was prepared by a new attorney, Lorraine Sciarra, who had been recommended by a friend, Walter Opdyke.²³ Under this 1997 Will, Robert received the same bequests that he had previously received under the 1996 Will, but he was named executor together with Micki Rothstein in the new will.²⁴ Two years later, Meade executed another Will on August 9, 1999. After designating specific bequests to individual friends including Robert, the 1999 Will created a \$1,000,000 trust for Robert, and provided that upon Robert's death, any remaining trust property would be divided 50% to the Wills Eye Hospital and 50% to the Inglis House. Philip Price and Lorraine Sciarra were named executors. Philip Price was named trustee.²⁵

The 1999 Will also stated that it was Meade's "intention" that the tangible personal property located in his residence and the carriage house at 111 West Mermaid

²⁰ 12/4/2007 N.T. at 127-28 (Robert).

²¹ 12/4/2007 N.T. at 129 (Robert).

²² 12/4/2007 N.T. at 132, 134-35 (Robert) & Ex. P-6.

²³ 12/5/2007 N.T. at 154 (Opdyke).

²⁴ 12/4/2007 N.T. at 141. See P- Ex. 5 (March 22, 1996 Will) and P. Ex. 7 (June 12, 1997 Will).

²⁵ Ex. P-8.

Lane remain intact. That property and any personal property on loan to any gallery or governmental institution was to go to an “organization or organizations described in each Sections 170(c), 501(c)(3), 642(c), 2055(a) and 2522 of the Internal Revenue Code selected by my Executors.” His intent was that this property be publicly displayed as a gift from “George Gordon Meade Easby” and his home “Baleroy.”²⁶

The terms of this 1999 will did not remain secret. Meade’s long-time bookkeeper, Marvin Rothstein, admitted that he read the 1999 Will and told Robert that he was the beneficiary of a \$1,000,000 trust fund.²⁷ In fact, Marvin Rothstein admitted to harboring suspicions about Robert.²⁸ Rothstein had worked as a bookkeeper for Meade since the late 1980’s or early 1990’s. Hired to keep track of Meade’s finances and organize his records for the accountant, Rothstein visited Baleroy once a week and shared an office with Robert.²⁹ Before Robert moved into Baleroy, Rothstein had handled all of Meade’s finances and was the point man for interaction with Meade’s the trust fund. Although Meade’s stock accounts were handled by a broker, early on Rothstein instructed the broker to run the purchases and sales by him first before presenting them to Meade.³⁰ After Robert moved in, Rothstein continued paying Meade’s credit card debts.³¹ In fact, from the beginning of their relationship, Rothstein routinely prepared checks for Meade’s signature, though at no time did Meade give Rothstein authority to

²⁶ Ex. P-8, August 9, 1999 Will, Article Fifth. This disposition of personal property is more flexible than the terms of prior wills. In his 1997 Will, for instance, Meade provided for the creation of a George Gordon Meade Easby Foundation which would then own his residence, carriage house and all the personal tangible property therein. June 12, 1997 Easby Will at Article FOURTH.

²⁷ 12/6/2007 N.T. at 158-59 (Rothstein); 12/4/2007 N.T. at 145 (Robert).

²⁸ See, e.g., 12/6/2007 N.T. at 99-102 & 144-50 (Rothstein).

²⁹ 12/6/2007 N.T. at 98-99 (Rothstein).

³⁰ 12/6/2007 N.T. at 119-21 (Rothstein).

³¹ 12/6/2007 N.T. at 124 (Rothstein).

sign on his behalf.³² Rothstein continued to manage Meade’s stock account and a checking account used to pay household bills until Meade’s death.³³

In any event, when Meade learned that his 1999 Will had been read, he wrote an angry note³⁴ stating:

How dare you open this Don’t you ever try this again This is by no means Final!!! So don’t get so smart. I will now of corse (sic) make changes.”³⁵

In addition, the disclosure of the terms of the 1999 Will evidently inspired an exchange of e-mails between Walter Odyke and Robert, that the Commonwealth introduced as Ex. P-9 and that was one of the documents considered in filing the appeal.³⁶ In that e-mail, Opdyke complained about Robert’s attitude concerning Meade, Meade’s will and the “unfounded accusations you made regarding Lorraine ‘inserting’ herself into the situation.”³⁷ When questioned about this e-mail exchange, Robert explained it occurred during an emotionally difficult time; two of his friends had recently died and he was upset that Ms. Sciarra “had inserted herself into the will for her own benefit.”³⁸

Between 1999 and 2003, Robert began taking on greater responsibilities for the care of Meade such as monitoring his medications and keeping track of doctor’s

³² 12/6/2007 N.T. at 138-40 (Rothstein).

³³ 12/6/2007 N.T. at 122, 134 (Rothstein); 12/4/2007 N.T. at 195-96 (Robert)

³⁴ See, e.g. 12/5/2007 N.T. at 160 (Opdyke).

³⁵ Ex. R-18 (emphasis in original).

³⁶ This e-mail was one of the documents that had been submitted to the Attorney General by Philip Price when he raised his concerns about the validity of the March 3, 2005 Will. See, e.g. 12/5/2007 N.T. at 53-54.

³⁷ Ex. P-9, 8/20/99 e-mail. The general, bitter tone of Opdyke’s comments regarding Robert’s relationship—and complaints—about Meade evoked the following response from Robert:

Evidently, you are not speaking to me. This is very painful. Especially now. What can I do or say to make things better? My recent emotional roller-coaster continues. Please don’t keep this door shut.

R.

Id.

³⁸ 12/4/2007 N.T. at 147 (Robert). Walter Opdyke confirmed that Robert had explained this concern over Ms. Sciarra’s role during a subsequent meeting. 12/5/2007 N.T. at 160 (Opdyke).

appointments.³⁹ Robert also assumed responsibility for investing close to \$4,000,000 that Meade had obtained through the sale of furniture in 1999 or 2000 that had been displayed at the State Department. Those funds were invested in a company called NewBridge after Meade consulted with them.⁴⁰ In addition, in 2001 Robert and Meade shared a joint PNC bank account.⁴¹

In 2001, Robert and Meade decided to purchase a home in Florida in their joint names.⁴² This aroused the suspicions of Marvin Rothstein. When Rothstein learned of the proposed purchase of the Florida house, he urged Meade to consult with his lawyer and personally arranged a meeting with Lorraine Sciarra.⁴³ In response to these suspicions, two meetings were held with Sciarra, Meade, Rothstein and Robert. One meeting included Robert and the other did not.⁴⁴ For his meeting, Robert prepared a financial statement.⁴⁵ Despite these meetings, however, Meade and Robert purchased the Florida property.⁴⁶

In 2002, Meade decided to change his will again, and told Robert he wanted a gay attorney to prepare it. Carl Minster was chosen, and on August 21, 2002 Robert and Easby met with Minster to discuss estate and financial planning. Each met separately as well as jointly with Minster.⁴⁷ During this initial meeting, Meade told Minster that he

³⁹ 12/4/2007 N.T. at 150 (Robert).

⁴⁰ 12/4/2007 N.T. at 153-55 (Robert). Robert testified that he did not have authority to withdraw funds from the NewBridge Account. *Id.* at 157-58 (Robert). Marvin Rothstein had no control or involvement with this account. 12/6/2007 N.T. at 132 (Rothstein).

⁴¹ 12/6/2007 N.T. at 131 (Rothstein); 12/4/2007 N.T. at 222 (Robert).

⁴² 12/4/2007 N.T. at 159 (Robert).

⁴³ 12/6/2007 N.T. at 101-02, 144 (Rothstein). The August 20, 1999 e-mail that Josh Opdyke sent Robert, in particular, aroused Rothstein's concerns. *Id.* at 103.

⁴⁴ 12/6/2007 N.T. at 104 (Rothstein).

⁴⁵ 12/4/2007 N.T. at 162 (Robert).

⁴⁶ 12/6/2007 N.T. at 108 (Rothstein).

⁴⁷ 12/4/2007 N.T. 166-67 (Robert); 12/6/2007 N.T. at 74-75 (Minster)(Meade also told Minster he wanted a gay attorney) & Ex. P-38 (Minster & Facciolo, LLC Invoice for initial meeting).

and Robert were in a “gay relationship.”⁴⁸ At that point, Minster testified, Meade was not sure what he wanted to do about his will in general but he did want to change his executor. Consequently, they decided on a codicil to the 1999 Will,⁴⁹ which Meade executed on November 12, 2002 to appoint Robert as Executor. On that date, Meade also executed both an Advanced Directive for Health Care naming Robert as his surrogate and a durable power of attorney naming his “domestic partner and friend, Robert Yrigoyen,” as his attorney.⁵⁰ Robert also executed his will.

At the initial meeting with Minster, Meade also asked for a gay financial adviser.⁵¹ Minster recommended John McGovern, who gave advice on reinvesting funds from the NewBridge Company to the West Capital Management Company.⁵² McGovern met with Robert and Meade in November 2002, and again in April 2003.⁵³

After the first meeting which lasted approximately two hours, McGovern came away with the impression that Meade and Robert were “domestic partners.” He also found Meade coherent and affable.⁵⁴ When McGovern returned to meet with Meade and Robert in April 2003, he brought his managing director, John Fulton to make their investment recommendations. Once again, McGovern testified that Meade understood the discussions.⁵⁵ As an investment strategy, McGovern recommended a Fidelity Investment Fund which issued monthly statements. In April 2003, \$394,450 was transferred to the Fidelity Account and on July 2003, \$165,000 was added.⁵⁶ The Fidelity

⁴⁸ 12/6/2007 N.T. at 74 (Minster).

⁴⁹ 12/6/2007 N. T. at 75 (Minster).

⁵⁰ Ex. P-17.

⁵¹ 12/6/2007 N.T. at 77 (Minster).

⁵² 12/4/2007 N.T. at 175 (Robert) & Ex. P-18

⁵³ 12/5/2007 N.T. at 197-99 (McGovern).

⁵⁴ 12/5/2007 N.T. at 210-11 (McGovern)

⁵⁵ 12/5/2007 N.T. at 212-13 & 215 (McGovern).

⁵⁶ 12/4/2007 N.T. at 180 (Robert); 12/5/2007 N.T. at 197-200 (McGovern).

Account required its own power of attorney form which named Robert.⁵⁷ The financial statements from this investment went to Robert; only he and Meade had authority to transfer funds or write checks on the account.⁵⁸

Around September 2003, Meade started to stay in his bed after he was released from the hospital. To care for him, Robert hired two sisters, Sherma Prince and Zilpha Brown, to serve as full-time nurses. Each worked a 12 hour shift and maintained a record of their care for Meade.⁵⁹ After Easby took to his bed, he no longer socialized outside his home. Prior to that, Easby had gone out to dinner every night of the week and attended parties.⁶⁰ The nurses cost nearly \$100,000 a year.⁶¹ To obtain an income tax deduction, Robert asked Dr. Moock, Meade's long-time physician, to write a letter.⁶² Dr. Moock's April 7, 2004 letter noted that Meade suffered, inter alia, dementia of the Alzheimer type and that "[b]ecause of these diseases and their progression, it is essential that Mr. Easby have full-time nursing care."⁶³

During this period, various items were sold. In 2003, General Meade's civil war pistol was sold for \$165,00 and in 2004 more items were sold to Christies for \$470,000. Robert believed that these funds were invested in the Fidelity Account that he was managing.⁶⁴ Nonetheless, Rothstein remained in charge of paying household bills and

⁵⁷ 12/5/2007 N.T. at 215 (McGovern) and Ex. P-21 (Fidelity Durable Power of Attorney Affidavit dated 5/16/2003).

⁵⁸ 12/4/2007 N.T. at 181 (Robert).

⁵⁹ 12/4/2007 N.T. at 183-84 (Robert). Robert supplied a copy of one of the nursing journals, but he was unable to find the second. 12/4/2008 N.T. at 185 (Robert).

⁶⁰ 12/4/2007 N.T. at 187 (Robert).

⁶¹ 12/4/2007 N.T. at 190 (Robert).

⁶² 12/4/2007 N.T. at 42-43 (Moock); 12/4/2007 N.T. at 191 (Robert).

⁶³ Ex. P-2.

⁶⁴ 12/4/2007 N.T. at 191-96 (Robert).

managing Meade's financial affairs such as buying and selling stock throughout this period.⁶⁵

In January and March 2003, Robert sent e-mails to Minster raising questions about the terms of Meade's trust fund from his mother and the transfer of title of Meade's house at 111 West Mermaid Lane into joint custody with a right of survivorship like the Florida property.⁶⁶ In explaining why he rather than Meade communicated with Minster, Robert stated: "Mr. Easby did not speak on the phone very often, ever" and he used neither e-mail nor "snail mail."⁶⁷ Minster responded to Robert's e-mail inquiries about the house, by noting two advantages to placing the house in joint custody with right of survivorship: it would cut down on inheritance tax and the house would not have to go through probate. Minster wrote, however, that first they should register as domestic partners in Philadelphia and then transfer the property to avoid Philadelphia transfer tax.⁶⁸

Robert recalled that Minster visited him and Meade sometime in 2004 to discuss the transfer of the property,⁶⁹ but Minster had no recollection of such a meeting. Minster also testified that he did not meet with them to sign the Life Partnership Verification Statement but instead sent the packet of information to Robert.⁷⁰ According to Robert, Meade had been interested for many years in some kind of legal document that they had been a couple for ten years.⁷¹ In any event, Meade and Robert signed the "Life Partnership Verification Statement" dated June 29, 2004, but they did not inform Dr.

⁶⁵ 12/4/2007 N.T. at 195-96 (Robert).

⁶⁶ 12/4/2007 N.T. at 197-99 (Robert). See also Exs. P-23 & P-24.

⁶⁷ 12/4/2007 N.T. at 198 (Robert).

⁶⁸ Ex. P-24 (3/9/2004 e-mail from Minster to Robert).

⁶⁹ 12/4/2007 N.T. at 200 (Robert).

⁷⁰ 12/6/2007 N.T. at 33-40 (Minster)

⁷¹ 12/4/2007 N.T. at 201-02 (Robert).

Moock, Marvin Rothstein or any of Easby's friends.⁷² Easby executed a deed transfer on June 29, 2004.⁷³

On September 15, 2004, Minster met with Meade at his home to discuss preparation of a new will. Because Meade was bedridden upstairs, Minster met privately with him for at least a half hour to discuss his Will.⁷⁴ When the Will was completed, Minster took it to Meade for his signature on March 3, 2005. While they were alone, Minster reviewed the terms of the 2005 Will with Meade.⁷⁵ Robert was not in the room when Meade signed the 2005 Will.⁷⁶

As part of its case, the Commonwealth presented testimony and the written records of Meade's treating physician, Dr. Paul Moock, who testified that he noticed a change in Meade's mental status in 2000 and wrote reports and letters that Meade had dementia in 2000 and 2004.⁷⁷ An October 1, 2001 letter by a neurologist, Dr. Laurence Smith, was also submitted confirming his suspicion that Meade had chronic dementia.⁷⁸ Finally, the medical records submitted contained a report by an emergency room physician dated January 27, 2005 that characterized Meade as "alert" and "oriented x 3."⁷⁹

Legal Analysis

In challenging the validity of George Meade Easby's March 3, 2005 will, the contestants have the burden of proving undue influence. Burns v. Kabboul, 407 Pa.

⁷² 12/4/2007 N.T. 206 (Robert) and Ex. P-26.

⁷³ 12/6/2007 at 54-55 (Minster).

⁷⁴ 12/5/2007 at 210 (McGovern); 12/6/2007 at 42-44, 46, (Minster).

⁷⁵ 12/6/2007 N.T. at 83 (Minster).

⁷⁶ 12/4/2007 N.T. at 218-19 (Robert)

⁷⁷ 12/4/2007 N.T. at 24-27 (Moock) & Ex. P-2 at C-01206 (June 29, 2000 "Friends Life Care at Home" Report) Ex. P-2 (4/7/2004 letter by Paul Moock).

⁷⁸ Ex. P-2 at C-01117 through C-01118 and 12/4/2007 N.T. at 36 (Moock).

⁷⁹ Ex. P-2 at C-01177 and 12/4/2007 N.T. at 60-61 (Moock).

Super. 289, 307, 595 A.2d 1153, 1162 (1991), app. denied, 529 Pa. 655, 604 A.2d 247 (1992). Clear and convincing evidence is required to show that a will was procured by undue influence. Estate of Clark, 461 Pa. 52, 60, 334 A.2d 628, 632 (1975). But because of the pernicious, intangible nature of undue influence and the inherent difficulties of proof, it “may be, and often can only be, proved by circumstantial evidence.” Estate of Ziel, 467 Pa. 531, 541, 359 A.2d 728, 734 (1976).

Key elements in any case involving undue influence are presumptions and shifting burdens of proof. Courts have concluded that a presumption of undue influence can be raised if a contestant can show that “(1) when the will was executed the testator was of weakened intellect, and (2) that a person in a confidential relationship with the testator (3) receives a substantial benefit under the will.” Estate of Ziel, 467 Pa. at 541, 359 A.2d at 734. Once the contestant establishes the presumption that the will was procured by undue influence, the burden shifts back to the proponent to prove by clear and convincing evidence that “there was no undue influence.” Leitman Estate, 24 Fid. Rep. 2d 363, 371 (2004)(Mont. Cty. O.C. 2004). Undue influence has been defined as “imprisonment of the body or mind, fraud, threats or misrepresentations, or physical or moral coercion to such a degree as to prejudice the testator’s mind, destroy his free agency, or act as a present restraint upon the making of a will.” Id., 24 Fid. Rep.2d at 370.

A. The Record Established that Robert Yrigoyen Received a Substantial Benefit Under the March 3, 2005 Will

Determining whether a beneficiary has received a substantial benefit “to cause the burden to shift is a case-by-case process.” Estate of LeVin, 419 Pa. Super. 89, 97, 615 A.2d 38, 42 (1992), app.denied, 534 Pa. 639, 626 A.2d 1158 (1993). The respondent

concedes that “in this case the disputed will provided Robert Yrigoyen with substantial benefits,” but he points out that Robert had received the substantial benefit of a \$1,000,000 trust fund under the 1999 Will that the petitioners invoke.⁸⁰ A comparison of the 1999 and 2005 wills, however, establishes that Robert received a more substantial benefit under the latter will. Not only was all real property bequeathed to him, but also all of Meade’s tangible personal property except for specific bequests to Maree Rambo, Sarah Parker and Sylvia Brown. While Meade’s civil war artifacts were to go to the Civil War and Underground Railroad Museum, the residue of Meade’s estate was to go to Robert.⁸¹

B. The Record as a Whole Failed to Establish by Clear and Convincing Evidence that George Gordon Meade Easby Suffered from a Weakened Intellect During the Period Before the March 3, 2005 Will Was Executed

The analysis of whether a testator suffered from weakened intellect or had a confidential relationship frequently overlap. As Judge Drayer has observed, it “is the relationship between, and the relative strengths of, the proponent and the testator that presents the susceptibility to, and opportunity for, improper influence. Thus, although ‘confidential relationship’ and ‘weakened intellect’ are separately stated elements, in theory and in life, evidence of these two factors is part of the same inquiry.” Leitman Estate, 24 Fid. Rep. 2d at 372-73. See also DiMaio Will, 8 Fid. Rep. 2d 370, 373 (Chester Cty. O.C. 1988)(“For the purposes of establishing undue influence, these two factors (‘confidential relationship’ and ‘weakened intellect’) are inextricably linked”).

Weakened intellect does not rise to the level of testamentary incapacity. Estate of Ziel, 467 Pa. at 542, 359 A.2d at 734 (1976). Because undue influence is so subtle and

⁸⁰ Respondent’s 12/10/2007 Memorandum at law at 7.

⁸¹ See Ex. P-28 (Easby March 3, 2005 Will).

intangible, its “fruits” may “not appear until long after the weakened intellect has been played upon.” Estate of Clark, 461 Pa. at 65, 334 A.2d at 634. While there is no “bright line test” for weakened intellect, it is “typically accompanied by persistent confusion, forgetfulness and disorientation.” Owens v. Mazzei, 2004 Pa. Super. 106, 847 A.2d 700, 707 (2004). A confidential relationship for purposes of a will challenge based on undue influence may exploit the weakened intellect of a testator since a confidential relationship is typically defined as existing “whenever one person has reposed 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 Lakatos, 441 Pa. Super. 133, 142, 656 A.2d 1378, 1383 (Pa. Super. 1995)(citations omitted). Moreover, analyzing whether there is a confidential relation encroaches on an analysis of the broader issue of whether there has been undue influence to the extent that an element of a confidential relationship is the exercise of “overmastering dominance on one side.”

The interrelationship of these concepts has a practical effect on the analysis of the record presented during the Easby hearing. After the petitioners presented their evidence, the respondent sought a nonsuit and a ruling on his motion to dismiss, which this court denied by order dated January 2, 2008.⁸² The respondent thereafter had the burden of proving the lack of undue influence by clear and convincing evidence. Estate of Ziel, 467 Pa. at 541, 359 A.2d at 734. As one commentator⁸³ has observed, however, in tackling this burden of proof Robert was not limited to establishing a negative—the lack of undue

⁸² 12/6/2007 N.T. at 178-204; 1/15/2008 N.T. at 115

⁸³ See James F. Mannion, “The Presumption of Undue Influence and the Shifting Burden of Proof,” 18 Fid. Rev. 2d 348-64. See also Pratt Will No.2, 19 Fid. Rep. 2d 228 (Mont. Cty. O.C. 1999)(Judges Drayer and Ott adopting the Mannion analysis).

influence. Instead, he could also prove that the petitioners failed to establish one of the three elements for the presumption of undue influence. See also DiMaio Will, 8 Fid. Rep. 2d 370, 374 (Chester Cty. O.C. 1988)(after all the evidence is presented, the court may revisit the issue of whether contestants produced sufficient evidence on the three pronged test).

In determining whether the proponent met this burden of proof, the record as a whole was examined. In this case, there was no clear and convincing evidence that Meade had a weakened intellect during the relevant period and, moreover, the Proponent established by clear and convincing evidence that Robert Yrigoyen did not exert undue influence over Meade.

To establish that George Meade Easby suffered from weakened intellect for the purposes of establishing undue influence, the Commonwealth presented testimony by various witnesses, beginning with Dr. Paul Moock, who treated Meade from 1993 until his death. Not only did Dr. Moock keep note cards to document his treatment of Meade, but towards the end of Meade's life when he "took to his bed," Dr. Moock made house visits to care for him. Dr. Moock testified that he noticed a change in Meade's mental state around 2000, when he seemed forgetful about taking his medications.⁸⁴ At Robert's request, Dr. Moock filled out a form for the "Friends Life Care at Home" on June 27, 2000, in which he characterized Meade as suffering from dementia and depression.⁸⁵ A year later, Dr. Moock referred Meade to a neurologist, Dr. Laurence Smith, who wrote a

⁸⁴ 12/4/2007 N.T. at 27 (Moock) and Ex. P-2 at C-01050 (April 18, 2000 note).

⁸⁵ 12/4/2007 N.T. at 27-29 (Moock) and Ex. P-2 at C-01205 through C-01207.

letter dated October 1, 2001 stating that “I did speak with his friend/companion, Robert Yrigoyen, who confirmed my suspicion that Mr. Easby has chronic dementia.”⁸⁶

In September 2003, when Meade was released from Chestnut Hill Hospital, Dr. Mook prepared a discharge report that listed dementia as part of Meade’s medical history.⁸⁷ Several months later, Robert asked Dr. Mook to write a letter describing Meade’s condition and care requirements for tax purposes; Dr. Mook complied with a letter dated April 7, 2004, stating that he had been treating Meade for “dementia of the Alzheimer type” and because of this and other ailments “it is essential that Mr. Easby have full time nursing care.”⁸⁸ By April 2004, Dr. Mook testified that he was making house calls to care for Meade because of his refusal to get out of bed even though there was no physical reason preventing him from doing so.⁸⁹ In December 2005, Meade was again admitted to Chestnut Hill Hospital. It was determined that he had terminal lung disease and he was given hospice care until he died 3 days later.⁹⁰ The discharge note from that stay lists “Dementia of the Alzheimer’s type.”⁹¹ On a note card that Dr. Mook kept to document Meade’s condition, he wrote “deceased” and “Alzheimer’s disease-dementia.”⁹²

In weighing this testimony, there are several countervailing factors. Dr. Mook testified, for instance, that his training in mental health issues was limited to a six week neurology course as well as information gleaned from medical journals.⁹³ In explaining

⁸⁶ Ex. P-2 at C-01117 through C-01118 and 12/4/2007 N.T. at 36 (Mook).

⁸⁷ 12/4/2007 N.T. at 41 (Mook) and Ex. P-2 at C-01078 (discharge report dated September 13, 2003 by Dr. Paul Mook).

⁸⁸ Ex. P-2 (4/7/2004 letter by Paul Mook) and 12/4/2007 N.T. at 42 -43 (Mook).

⁸⁹ 12/4/2007 N.T. at 44-45 (Mook).

⁹⁰ 12/4/2007 N.T. at 46-48 (Mook).

⁹¹ 12/4/2007 N.T. at 46 (Mook) and Ex. P-2 at C-01095

⁹² Ex. P-2 at C-01071.

⁹³ 12/4/2007 N.T. at 21-22 (Mook).

how he reached this diagnosis of Alzheimer’s disease, Dr. Moock did not cite specific tests given but instead stated: “Alzheimer’s disease is a particular heading under the broad term of dementia. There’s other things that can cause dementia, but Alzheimer’s disease is a particular one. And because it is so common in people over age 80, like about 40 percent of the people over age 80 have Alzheimer’s, I made the diagnosis of Alzheimer’s disease.⁹⁴” It was through a “process of elimination,” Dr. Moock explained, that he made this diagnosis based on “forgetfulness, confusion as to the time and date, inability to do certain addition and subtractions, mental functions.”⁹⁵

When specifically asked if he had given any mini-mental tests to Meade, Dr. Moock was vague as to the dates of such tests for dementia. Although he noted that he had conducted such tests “over a period of time,” he ceased doing so to avoid embarrassing Meade.⁹⁶ Dr. Moock conceded, moreover, that he had never treated Meade for dementia.⁹⁷ While admitting that he had no notes of giving Meade a mental test in the last 18 months of his life—a period which would have encompassed the drafting of the March 3, 2005 Will,⁹⁸ he agreed that the medical records indicated that a physician in the Chestnut Hill Hospital emergency room had conducted such a test on Meade on January 27, 2005—only 2 months before the disputed March 3, 2005 Will was executed. The report of this emergency room physician stated: “Psychiatric: Patient alert, oriented x 3 and appropriate.16.5.”⁹⁹ Dr. Moock agreed that this report based on an actual test found Meade Easby to be oriented times three as of January 27, 2005.¹⁰⁰ Dr. Moock also

⁹⁴ 12/4/2007 N.T. at 32 (Moock).

⁹⁵ 12/4/2007 N.T. at 33 (Moock).

⁹⁶ 12/4/2007 N.T. at 34, 70-74 (Moock).

⁹⁷ 12/4/2007 N.T. at 50-51 (Moock).

⁹⁸ 12/4/2007 N.T. at 58-60 (Moock).

⁹⁹ Ex. P-2 at C-01177 and 12/4/2007 N.T. at 60-61(Moock).

¹⁰⁰ 12/4/2007 N.T. at 61 (Moock).

conceded that while he had visited Meade on February 21, 2005 and then again on March 14, 2005, he had no personal knowledge of Meade's mental status on March 3, 2005, the date that the 2005 Will was executed and his notes for the two visits preceding and following Meade's execution of his will do not indicate any mental problems "other than the usual complaint of dizziness."¹⁰¹ Finally, Dr. Mook conceded that Meade always recognized him up until his death.¹⁰²

The January 27, 2005 report of the emergency room physician when combined with the testimony of the scrivener, Meade's home health care aide and close friends seriously undermined the petitioners' claim that there was clear and convincing evidence that Meade suffered from weakened intellect when he executed the 2005 Will. Moreover, there is Pennsylvania precedent that a diagnosis of Alzheimer's disease—alone—does not establish either weakened intellect or lack of testamentary capacity; instead, the record of the testator's actions and relationships must be analyzed on a fact by fact basis to determine if he or she had a weakened intellect. See, e.g., Estate of Fritts, 2006 Pa. Super. 220, 906 A.2d 601, 606-607 (2006), app.denied, 591 Pa. 673, 916 A.2d 1103 (2007)(in assessing weakened intellect, court did not err in according little weight to a physician's testimony that the testator suffered from moderate to mild dementia when balanced against the majority testimony of other witnesses such as neighbors and lawyers); In re Angle, 2001 Pa. Super. 144, 777 A.2d 114, 123 (2001)(The existence of Alzheimer's alone "does not establish incompetency to execute a legal instrument" and a "doctor's opinion on medical incompetence is not given particular weight especially

¹⁰¹ 12/4/2007 N.T. at 74-76 (Mook) and Ex. P-2 at C-01069.

¹⁰² 12/4/2007 N.T. at 74 (Mook).

when other disinterested witnesses establish that a person with Alzheimer's disease was competent and not suffering from a weakened intellect at the relevant time).

The scrivener of the March 3, 2005 Will, Carl Minster, had a prior relationship with Meade since he previously prepared the November 2002 codicil for Meade. Minster testified that at that initial meeting Meade was not "fully" sure about what he wanted to do except that he wanted to change the executor of his will.¹⁰³ Before drafting the disputed March 3, 2005 Will, Minster met again privately with Meade on September 15, 2004 for one-half hour in his bedroom. Meade was not in bed, but was sitting in a chair, dressed.¹⁰⁴ Although Minster did not conduct any specific mental tests, he testified that Meade seemed competent, knew who Minster was and appeared to understand their discussions and his estate.¹⁰⁵ During this September meeting, they discussed the 1999 will and any changes Meade might like. Minster's notes indicated that Meade stated that Sarah Parker was to receive the biggest of her choice of Chinese platters, indicating that at that time he was aware that he had a number of Chinese export platters. They also discussed whether to donate his civil war artifacts collection during his life or at his death and that Wills Eye Hospital should be a beneficiary. In considering his will, Meade considered various options and inquired about their consequences.¹⁰⁶ Meade told Minster that he was gay and in a gay relationship with Robert. Minster never doubted Meade's affection for Robert because he expressed it in many ways.¹⁰⁷ Minster noted that a significant portion of his practice deals with gay and lesbian couples and that he

¹⁰³ 12/6/2007 N.T. at 75-76 (Minster).

¹⁰⁴ 12/6/2007 N.T. at 42 & 82 (Minster).

¹⁰⁵ 12/6/2007 N.T. at 78-80 (Minster).

¹⁰⁶ 12/6/2007 N.T. at 71 & 88 (Minster) & Ex. P-40 ("the biggest in her choice of the Chinese export platters").

¹⁰⁷ 12/6/2007 N.T. at 87 (Minster).

employed certain procedures—such as meeting with his clients as couples, and then as individuals—to avoid claims of duress.¹⁰⁸

After the September 15, 2004 meeting, Robert sent an e-mail telling Minster that Meade “wants the remainder trust (after me) to be given to the Wills Eye Hospital.”¹⁰⁹ Several months later, Minster sent a copy of Meade’s will with a cover letter addressed to George and Robert asking them to review it and then set up a date for its execution.¹¹⁰ Robert testified that he “probably” reviewed the will with Meade.¹¹¹ In any event, Robert responded to Minster with an e-mail to make two corrections: one correcting the spelling of Maree Rambo’s name and the other that the civil war artifacts were to go to the “Civil War and Underground Railroad Museum of Philadelphia’ (which has Meade’s relatives on the board).”¹¹² Minster testified that he made the suggested changes because they were minor: “the spelling of somebody’s name and the correct name of the museum in Philadelphia.”¹¹³

Minster completed drafting Meade’s will in March 2005, and Meade executed it at his home on March 3, 2005. Minster testified that on that date he met privately with Meade upstairs to go over the terms of the Will. According to Minster, Meade knew who he was and “what was going on.”¹¹⁴ After going over the terms of the Will, Minster brought the notary in to witness its signing.

The notary who witnessed the signing of the March 3, 2005 Will, Don Compton, also confirmed that there was no doubt that Meade knew what he was doing. Compton

¹⁰⁸ 12/6/2007 N.T. at 74-75, 8-9 (Minster).

¹⁰⁹ Ex. P-24 (11/16/2004 e-mail from Robert to Minster).

¹¹⁰ Ex. P-27 (2/15/2005 Letter from Minster to George & Robert).

¹¹¹ 12/4/2007 N.T. at 217 (Robert).

¹¹² Ex. P-27 (2/18/2005 e-mail from Robert (and Meade) to Minster).

¹¹³ 12/6/2007 N.T. at 60 (Minster).

¹¹⁴ 12/6/2007 N.T. at 61- 63, 82-85 (Minster).

had known Meade for 15 years; he was a friend and neighbor who lived a block away and saw Meade 15 to 20 times a year. On the day the March 3, 2005 will was executed, Meade greeted Compton in his typically jovial manner by joking about the color of his socks. Robert was not in the room when the will was executed, and Meade took several minutes to review it before signing.¹¹⁵

Another friend, Lady Mary Wedgwood, who continued to visit Meade frequently even after he had “taken to his bed,” testified that Meade in early winter 2005 had asked her if she could witness his will,¹¹⁶ thereby underscoring his independent involvement in its execution. As a close friend,¹¹⁷ Lady Wedgwood offered invaluable insights into Meade’s relationship with others. Shrewdly she observed that “[i]f you weren’t talking about what Meade wanted to talk about, he wasn’t going to engage you in conversation.”¹¹⁸ She never encountered any difficulty in conversing with him about such things as jewelry, antiques, Broadway shows, or the London theater.¹¹⁹ Once Meade retreated to his bedroom, Lady Wedgwood continued her visits, never calling in advance and bearing vanilla milkshakes from McDonald’s. The last time she saw Meade was in October 2005. She recalled that he was always able to engage in conversation, he always recognized her, and he had no speech comprehension problems in 2005.¹²⁰

¹¹⁵ 1/15/2008 N.T. at 5-6, 14-18 (Compton). Compton testified as well that he had notarized some documents for Meade in June 2004. Meade was jovial and greeted him by name. His manner was consistent with his behavior throughout the prior years. He displayed no lack of capacity; if he had, Compton would have left. Id. at 7-14.

¹¹⁶ 1/15/2007 N.T. at 97-98 (Lady Wedgwood).

¹¹⁷ Lady Wedgwood testified that beginning in 1993 until his death, she would see Meade at his house, her house or friends’ houses. They also dined together with friends almost every Friday night at Campbell’s. 1/15/2008 N.T. at 88 (Lady Wedgwood).

¹¹⁸ 1/15/2007 N.T. at 91 (Lady Wedgwood).

¹¹⁹ 1/15/2008 N.T. at 91 (Lady Wedgwood).

¹²⁰ 1/15/2008 N.T. at 91-96 (Lady Wedgwood).

The testimony of Lady Wedgwood was particularly insightful and persuasive because she was a close friend to whom Meade revealed his private self. She knew that Meade was gay, “he was not ostentatious about it, but he didn’t –he certainly was not in the closet, but ,....he was a very, very private man.”¹²¹ She understood that Meade and Robert were partners.¹²²

A particularly intimate view of Meade’s mental status was offered by Sherma Prince, his home health care aide from Summer 2003 until his death. Ms. Prince and her sister, Zilpha Brown, cared for Meade 7 days a week; Ms.Prince had the evening shift beginning at 8 in the evening, while her sister had the day shift beginning at 8 in the morning.¹²³ Ms. Prince testified that before Meade moved upstairs in the Fall of 2003, she did not observe him having any speech or memory problems. After he moved upstairs, she testified that Meade was aware of time because he always had his pocket watch. She stated that he did not display forgetfulness in 2004, but began doing so late in 2005, close to his death.¹²⁴ Meade stopped coming down the stairs in 2005 because he had a fall and was afraid he might have another one. Ms. Prince noted that in the last few months of his life, Meade had good days and bad days.¹²⁵

According to Ms. Prince, Meade could be quite opinionated. He would leave notes about what he wanted for lunch or if he wanted ice cream. There were certain television shows or channels he enjoyed such as the Antique Show, Animal Planet, CNN and the Weather channel. He would write down the time of the Antique show so he would not miss it. He knew the times of the programs and would ask to switch from the

¹²¹ 1/15/2008 N.T. at 103 (Lady Wedgwood).

¹²² 1/15/2008 N.T. at 97 (Lady Wedgwood).

¹²³ 1/15/2008 N.T. at 28-30 (Prince). Ms. Brown is presently living in St. Vincent’s in the Caribbean.

¹²⁴ 1/15/2008 N.T. at 36, 42-44 (Prince).

¹²⁵ 1/15/2008 N.T. at 35-36, 51, 78-79 (Prince).

Animal Planet to Larry King. He enjoyed telling Sherma when the wrong price was given for an antique on the Antique show. He once observed that he had the same valuable antique chair as a chair featured on the show and was incensed that too low a price was offered for it. Meade like to read Time Magazine and the Chelsea Antique book and told Sherma that his grandfather had a gun like one in that book but the price indicated was not right.¹²⁶

Ms. Price stated that it was Meade who decided what visitors he would talk to or see. She noted, for instance, that Meade told her to tell his cousin, Philip Price, that he was sleeping once when he called Meade.¹²⁷ Robert, in contrast, never attempted to keep anyone from seeing Meade.¹²⁸

The witnesses presented by the petitioners as to Meade's mental status, in contrast, were either relatives or friends who visited infrequently or an accountant increasingly suspicious of Robert as he assumed some of his former authority and responsibilities.

Philip Price, Meade's first cousin once removed, presented a view of Meade's mental status as confused, remote and uninvolved. Price admitted, however, that he did not see Meade very much in his latter years. Moreover, he was vague as to when he actually saw Meade, and guessed maybe he saw Meade four times between 2003 and 2005.¹²⁹ The one meeting Price did clearly recall occurred in 2004, when he visited Meade at his home to inform him that Price had been elected a member of the Board of

¹²⁶ 1/15/2008 N.T. at 37-42 & 51 (Prince).

¹²⁷ 1/14/2008 N.T. at 48 (Prince).

¹²⁸ 1/15/2008 N.T. at 52-53 (Prince).

¹²⁹ 12/5/2007 N.T. at 16 (Price) ("As I said in my deposition, I remembered seeing him two times before the day before he died, I saw him that day as well. And once in either 2003 or 2005 and once in the winter of February of 2004").

the Civil War and Underground Railroad Museum. At that meeting, Price suggested that if Meade donated some of his artifacts, they would be publicly displayed. Meade, however, never took him up on this offer. According to Price, Meade did not recognize him and did not seem to comprehend what he was discussing.¹³⁰ Another interpretation, of course, is that Meade was simply not interested in making the donation at that time, although he subsequently did so in his March 3, 2005 Will, thereby suggesting that he was not as oblivious as Price suggested. To the contrary, Sherma Prince testified that after Philip Price's visit, Meade told her Price was "only here for the money and furniture."¹³¹

Sarah Price, the wife of Philip, also attended this meeting. According to her, Meade "was not with it;" he was "like a vegetable lying in a hospital bed in a living room."¹³² Sarah Price admitted, however, that she last saw Meade five or six years before he died.¹³³ Philip Price did not appear to have a close relationship Meade and seemed unaware of key aspects of Meade's life. When asked about Meade's relationship to Robert, for instance, Price characterized Robert as a "caretaker" who "looked after his [Meade's] personal effects in terms of the household, that he was an employee who took care of administrative matters in the household."¹³⁴ Another witness presented by petitioners, Susan Carney, had an even more distant relationship with Meade. She stated from the beginning that she had not been Meade's close or intimate friend, but had seen him "socially, three or four times a year until he got really ill."¹³⁵ She described him

¹³⁰ 12/5/2007 N.T. at 17-18 (Price, Philip).

¹³¹ 1/15/2008 N.T. at 48 (Prince).

¹³² 12/5/2007 N.T. at 57 (Price, Sarah).

¹³³ 12/5/2007 N.T. at 55 (Price, Sarah).

¹³⁴ 12/5/2007 N.T. at 16 (Price, Philip).

¹³⁵ 12/5/2007 N.T. at 102 (Carney).

even when they first met in 1993 as not engaging in much conversation except about Baleroy and as having interests that were very “channeled.”¹³⁶ The last time she saw Meade was in March of 2003, and never after he took to his bed.¹³⁷ Her observations concerning Meade’s mental confusion are thus too remote in time, and lack persuasiveness due to the remoteness of her relationship to him.¹³⁸

Petitioners also presented testimony from Maree Rambo, who stated that Meade “failed tremendously as time went on” and “didn’t remember things, people.”¹³⁹ She noted, for instance, that when she took Meade to the funeral of Phil Price’s mother, he didn’t know where he was or who had died. She could not recall, however, the date of the funeral to provide a chronological context in relation to the March 3, 2005 will.¹⁴⁰

Although Ms. Rambo testified that she had known Meade for 40 to 50 years as Chestnut Hill neighbors, she was unclear as to how often she saw Meade during his last year and especially after he took to his bed. While she initially stated she saw him “occasionally” during that period, upon further questioning she stated that she had visited him every week; this, however, contradicted her deposition testimony that she had seen Meade three or four times in a year.¹⁴¹ While she testified generally that Meade did not initiate conversation or have a clue as to the identity of his nurses, she agreed that he always remembered her, Robert, Rothstein, and mutual friends.¹⁴² She admitted that she was upset about dispositions that were made under Meade’s 2005 will because they

¹³⁶ 12/5/2007 N.T. at 102-03 (Carney).

¹³⁷ 12/5/2007 N.T. at 103 & 111 (Carney).

¹³⁸ 12/5/2007 N.T. at 115-16. She stated, for instance, that she was appalled to hear that Meade had signed a “Life Partnership Verification” because none of his good friends knew about it. Id.

¹³⁹ 12/5/2007 N.T. at 69 (Rambo).

¹⁴⁰ 12/5/2007 N.T. at 70 (Rambo).

¹⁴¹ Compare 12/5/2007 N.T. at 71 with 12/5/2007 N.T. at 78-79 (Rambo).

¹⁴² 12/5/2007 N.T. at 72-73, 89-90 (Rambo).

seemed “unfair,” although prior to his death she never knew what Meade had intended to do with his possessions.¹⁴³

These admissions and contradictions undermined Ms. Rambo’s testimony as to Meade’s mental status. But her testimony on the issue of Robert’s alleged undue influence dealt a severe blow to the petitioners’ case as will be discussed when that issue is addressed. This impeachment is critical because Philip Price testified that he had brought this matter to the Attorney General based on statements by Maree Rambo that Meade told her Robert had forced him to sign a new will.¹⁴⁴

Petitioners presented the testimony of another long-time friend, Sylvia Brown, by deposition that was also of limited weight. Although Ms. Brown testified that she had known Meade for nearly 60 years, when asked how often she visited him in 2005 she responded “Not many. Three, four, five.”¹⁴⁵ Moreover, she didn’t stay long, she initiated the conversation and did the talking.¹⁴⁶ She also seemed privy only to one side of Meade’s life. She stated, for instance, that she never thought Meade and Robert were lovers, but then Meade would not have discussed sex in front of “ladies.”¹⁴⁷ She did note that Meade’s family did not bother much with him, Phil Price was probably his closest relative but they rarely saw each other so Ms. Brown was not surprised that Meade’s house went to Robert.¹⁴⁸

Finally, Marvin Rothstein, Meade’s long-time bookkeeper, testified that during the last year of his life Meade lost his ability “to reason, remember,” it became more and

¹⁴³ 12/5/2007 N.T. at 93 & 97-98 (Rambo)

¹⁴⁴ 12/5/2007 N.T. at 22-23 & 25-26 (Price); 84 (Rambo).

¹⁴⁵ Ex. P-1, (11/15/2007 Depo. of Sylvia Brown) at 69 & 6.

¹⁴⁶ Ex, P-1 (11/15/2007 Depo. of Sylvia Brown) at 70.

¹⁴⁷ Ex. P-1 (11/15/2007 Depo. of Sylvia Brown) at 17 & 61.

¹⁴⁸ Ex. P-1 (11/15/2007 Depo. of Sylvia Brown) at 20 & 63.

more difficult to engage him, and he did not seem to understand his finances because “[h]e would never ask any questions about his money.”¹⁴⁹ Yet Rothstein admitted it had been their long-standing practice that he would prepare checks for Meade’s signature. He also admitted that he had long harboring suspicions about Robert, which he brought up quite dramatically before the purchase of the Florida property. Not only were meetings held, but Rothstein involved an attorney, Lorraine Sciarra. Nonetheless, Meade purchased the property,¹⁵⁰ and in so doing rejected Rothstein’s interference in his relationship with Robert. Less weight must therefore be given to Rothstein’s testimony because of his hostility towards Robert and his inappropriate intermeddling in Meade’s personal matters as demonstrated by his reading of Meade’s 1999 will.

C. Robert Yrigoyen had a Confidential Relationship with George Meade Easby But Without Evidence of Overmastering Influence

In will contests premised on claims of undue influence, a confidential relationship “exists whenever circumstances make it certain that the parties did not deal on equal terms but that on one side there was an overmastering influence, and on the other, dependence or trust, justifiably reposed.” Estate of Angle, 777 A.2d at 123 (quoting In re Estate of Jakiella, 353 Pa. Super. 581, 510 A.2d 815, 817-18 (Pa. Super. 1986)).

Although there is no precise test for the existence of a confidential relationship, it occurs “whenever one occupies toward another such a position of advisor or counselor as reasonably to inspire confidence that he will act in good faith for the other’s interest.” Foster v. Schmitt, 429 Pa. 102, 107-08, 239 A.2d 471, 474 (Pa. 1968).

One indicia of a confidential relationship is giving a person a power of attorney over an entire life’s savings, or over a sizable checking account. Foster v. Schmitt, 429

¹⁴⁹ 12/6/2007 N.T. at 114-17 (Rothstein).

¹⁵⁰ 12/6/2007 N.T. at 143-51 (Rothstein).

Pa. at 108, 239 A.2d at 474; Estate of Clark, 461 Pa. at 63, 334 A.2d at 628. But see Estate of Ziel, 467 Pa. at 542-43, 359 A.2d at 73 (power of attorney does not establish a prima facie confidential relationship). In the instant case, Meade in 2002 executed a durable power of attorney naming Robert as his agent and also executed an Advanced Directive for Healthcare naming Robert as surrogate. Ex. P-17. In addition, Robert had a power of attorney over Meade's Fidelity account. Ex. P-21. But while Robert had this authority over the Fidelity account and a joint PNC bank account, Meade still continued to employ Marvin Rothstein who remained in charge of the trust fund, oversaw stock purchases of an account managed by a broker and an account for paying the household expenses.¹⁵¹ There came a point, however, when Rothstein had Robert sign those checks because he was a signatory on the account and had power of attorney.¹⁵²

The petitioners argue that another indicia of an overmastering, confidential relationship was that all communications with Meade's attorney Minster was by Robert. Robert explained this arrangement by noting that he assumed responsibility for corresponding with Minster, because "Mr. Easby did not speak on the phone very often, ever" and he did not correspond by e-mail or "snail mail."¹⁵³ This is consistent with Meade's general modus operandi as testified to by others. Marvin Rothstein, for instance, confirmed that it had been Meade's longstanding practice to have Rothstein prepare checks for his signature.¹⁵⁴ As a longtime friend, Walter Opdyke, observed that

¹⁵¹ 12/6/2007 N.T. at 119-24 (Rothstein).

¹⁵² 12/6/2007 N.T. at 141-42 (Rothstein).

¹⁵³ 12/4/2007 N.T. at 198 (Robert).

¹⁵⁴ 12/6/2007 N.T. at 138-39 (Rothstein).

while Meade was charming and witty, he was “very spoiled. He wanted people to wait on him hand and foot.”¹⁵⁵ To elaborate on this point, Opdyke recalled:

I think that the first time I was at the house, we were sitting in the library, and he [Meade] made the comment to me that wouldn't a glass of wine be lovely, and I said, yes, it would be. And we just continued to sit there, and it finally dawned on me that that was a hint from him that I was supposed to go get him a glass of wine. So eventually I stood up and I said, well, let me go to the kitchen and get some wine. And he said, oh, that would be lovely, and while you're at it, would you get me some coffee?¹⁵⁶

Another factor to consider is whether Meade was “overmastered” by Robert.

While the Commonwealth initially asserted that after Meade took to his bed in September 2003, his isolation and dependence on Robert grew,¹⁵⁷ ironically Meade's taking to his bed could alternatively be interpreted as an assertion of Meade's strong “will” or “independence.” Dr. Moock, for instance, testified that there was no physical reason for this and it was a bone of contention.¹⁵⁸ It was clearly Meade's decision to retreat, and his caretaker, Ms. Prince, testified that he was capable of getting out of bed but refused;¹⁵⁹ moreover, Meade still maintained control over the schedule of his days. She noted that he never had trouble expressing his views and was an opinionated man.¹⁶⁰

Nonetheless, given the amount of trust the Meade displayed in Robert, certain characteristics of a confidential relationship were established. As even the respondent concedes, “[i]n the ordinary sense of the word, their relationship could be described as

¹⁵⁵ 12/5/2007 N.T. at 175 (Opdyke).

¹⁵⁶ 12/5/2007 N.T. at 175 (Opdyke).

¹⁵⁷ 12/12/2006 Commonwealth Petition, ¶18. The record presented did not support this claim that Robert isolated Meade and the Commonwealth, to its credit, did not push it but emphasized instead that “the record clearly establishes the Respondent's control over every aspect of Mr. Easby's life in the years leading up to the signing of the March 3, 2005 will.” 3/27/2008 Commonwealth Memorandum at 13. The total absence of any evidence that Robert sought to isolate Meade from family and friends is, however, a critical consideration.

¹⁵⁸ 12/4/2007 N.T. at 45 & 35 (Moock).

¹⁵⁹ 1/15/2007 N.T. at 71 (Prince).

¹⁶⁰ 1/15/2007 N.T. at 40-43 (Prince).

confidential” based on their “loving, caring, deeply-committed, long-term homosexual relationship based upon mutual trust and affection.”¹⁶¹ Numerous witnesses testified about the deep affection Meade felt for Robert.¹⁶² On balance, there was a confidential relationship but with certain limitations. While Meade’s physical and mental infirmities increased, thereby rendering his relationship with Robert less equal, there was no evidence of the “overmastering influence” that is frequently included in the definition of a confidential relationship.

II. The Proponent of the March 3, 2005 Will Established the Absence of Undue Influence by Clear and Convincing Evidence

Once a contestant establishes a prima facie case of undue influence based on the three elements, the burden of proof shifts to the proponent of the will to establish by clear and convincing evidence the absence of undue influence. Estate of Clark, 461 Pa. at 61, 334 A.2d at 632; Estate of Angle, 777 A.2d at 123. In the instant case, the proponent established that the petitioners had failed to present clear and convincing evidence that Meade Easby suffered from a weakened intellect—one of the three elements necessary for the presumption of undue influence that would shift the burden of proof to the proponent. In addition, the proponent presented clear and convincing evidence of the absence of undue influence, which courts have defined as “imprisonment of the body or mind, fraud, or threats, or misrepresentations, or circumvention, or inordinate flattery or physical or moral coercion, to such a degree as to prejudice the mind of the testator, to destroy his free agency and to operate as a present restraint upon him in the making of a will.” Estate of Angle, 777 A.2d at 123.

¹⁶¹ 12/7/2007 Respondent’s Memorandum at 7.

¹⁶² See, e.g. 12/5/2007 N.T. at 173-74 (Opdyke); 12/6/2007 N.T. at 74 & 87 (Minster); 1/15/2008 N.T. at 52 (Prince); 1/15/2008 N.T. at 96-97 (Lady Wedgwood); Ex. P-1, 11/15/2007 Depo. of Sylvia Brown at 62.

The proponent met his burden of proof in establishing the absence of undue influence by attacking the basis or genesis of the undue influence claim that was at least initially predicated on alleged statements by Maree Rambo, as filtered through Philip and Sarah Price, and by presenting evidence that Robert did not seek to isolate or coerce Meade but instead had a long term, loving relationship with him.

A. The Proponent Successfully Undermined the Basis or Genesis of the Appeal of the Register of Wills Decree

The Respondent established that the genesis of the claim that Meade's March 3, 2005 Will was procured through the undue influence of Robert Yrigoyen can be traced to alleged comments by Maree Rambo, that led Philip Price to contact the Attorney General's office.¹⁶³ The respondent, however, fatally undermined the basis for this claim of undue influence through the cross examination of Maree Rambo, Philip Price, Sarah Price and Marvin Rothstein.

According to Philip Price, Maree Rambo first contacted him to state that "Meade had been pressured to sign [the March 3, 2005 will] by Mr. Yrigoyen"¹⁶⁴ In response to this news, Price called Marvin Rothstein, who then referred him to Lorraine Sciarra, the scrivener of Meade's 1999 Will. Ms. Sciarra thereupon sent Price copies of Meade's prior wills. After comparing the 2005 will with the prior wills, Price contacted the Attorney General's office because he was "well aware of the power of the Attorney General to oversee charitable interests in Pennsylvania."¹⁶⁵

Price's wife, Sarah, however, gave a slightly different story. She stated that she ran into Maree Rambo in a nail salon sometime before or after Meade's death, and Ms.

¹⁶³ 12/5/2007 N.T. at 22-28 (Price, Philip).

¹⁶⁴ 12/5/2007 N.T. at 22 (Price, Philip).

¹⁶⁵ 12/5/2007 N.T. at 28 & 22-28 (Price, Philip).

Rambo told Sarah Price that “Meade had been pressured into signing a will that he did not want to sign.”¹⁶⁶ After Sarah told her husband about this discussion, “at some point the meeting did take place”¹⁶⁷ with Rambo and Price.

Maree Rambo, however, when specifically asked about these critical conversations denied the key bases for the alleged claim of undue influence:

Q: Is there anything that you said to Philip Price’s wife that resulted in Philip calling you and asking for a meeting?

A: I just said that Meade had died.

Q: You didn’t say anything in that conversation about Meade’s will?

A: I didn’t know about the will.

Q: You didn’t know anything about Meade’s will?

A: No

Q: At that time?

A: (The witness nods negatively).

Q: So you never told Sarah Price that Meade Easby had told you that he was being pressured into signing a new will?

A: No.

Q: Never made that statement to Sarah Price?

A: No.

Q: And you never told that to Philip Price?

A: Well, Meade had told me that he didn’t want to go in and do another will.

Q: When did Meade tell you that?

A: Whenever they went in and did the will.

Q: When was that?

A: I don’t know.

Q: And when you say he didn’t want to go in, what do you mean, “he didn’t want to go in?”

A: He didn’t want to go to town to have a new will done.

Q: You accompanied Meade to have a will done in 1999, correct?

A: Right.

Q: Is that the conversation you’re talking about.

A: No. When they were going in to do the second will, I did not go along.

Q: And when did your conversation with Meade take place?

A: About that?

Q: Yes.

A: Just before they went in town the day before, the night before.

Q: The night before who went into town?

A: Robert and Meade.

Q: Went into town to do what?

¹⁶⁶ 12/5/2007 N.T. at 59 (Price, Sarah).

¹⁶⁷ 12/5/2007 N.T. at 58-59 (Price, Sarah).

A: Write a new will, if that's how you say it.
Q: The will that's in dispute in this case?
A: Yes.
Q: And it's your understanding that Meade went into town and did that will?
A: Yes.
Q: And you got that understanding from a conversation with Meade?
A: Yes.
Q: Where were you when the conversation took place?
A: Campbell's restaurant.....

Q: At no time did you know anything about the 2005 will, did you?
A: No.
Q: You never discussed any disposition that Meade wished to make of any of his belongings, did you?
A. No.
Q: Now, when you had your meeting with Philip Price, Philip Price expressed a concern to you that furniture that he felt belonged to his family would not go to his family, correct?
Objection
A: Yes.
Foundation and hearsay.
The court: Asked and Answered.
Q: That's correct, isn't it ma'am?
A: Yes.¹⁶⁸

This intense interrogation demolished the basis/nexus for the alleged undue influence claim initially set forth by Philip Price based on Ms. Rambo's alleged statements. First, Ms. Rambo contradicted Sarah Price's testimony by clearly denying that she ever told her that Robert had pressured Meade into signing a new will. After that admission, all that remained from Marie Rambo's testimony is a vague statement that she may have told Price that Meade "didn't want to go to town to have a new will done."¹⁶⁹ That statement is imprecise on a variety of levels. It does not indicate when Meade made that statement, which is significant since four wills (1996, 1997, 1999, 2005) and a 2002 codicil were introduced into the record. The only chronological clue offered is Ms.

¹⁶⁸ 12/5/2007 N.T. at 84-87 (Rambo,)(emphasis added).

¹⁶⁹ 12/5/2007 N.T. at 85 (Rambo).

Rambo's statement that Meade had told her he did not want to go into town to sign a new will one night while they were dining at Campbell's restaurant. This is highly problematic because according to the record, Meade took to his bed in September 2003 and thereafter ceased socializing with his friends at Campbell's.¹⁷⁰

Moreover, the statement that he "didn't want to go to town to have a new will done" is factually ambiguous in at least two ways; it could just as easily reflect a dislike of going into town as a reluctance to sign a new will. More significantly, Meade did not go into town to have the March 2005 will done. The record is clear that his attorney, Carl Minster, personally visited Meade at home both for the initial will discussions in September 2004 and then for the execution of the will on March 3, 2005.

Not only did the proponent expose the lack of foundation for Ms. Rambo's musings about undue influence through her cross examination, but also in the examination of other key witnesses to establish the absence of other proof of undue influence. Philip Price, for instance, conceded that he had no first hand knowledge of Robert exerting undue influence on Meade; indeed, he had only minimal contacts with Meade during the period after 2003 with 4 visits at most.¹⁷¹ Marvin Rothstein acknowledged that he was not present when the 2005 will was signed and had no knowledge of Meade's state of mind at that time so that the only thing he brought to Price was his suspicions.¹⁷²

¹⁷⁰ The Commonwealth, for instance, stated that "after April 2004, he [Meade] did not leave his home and rarely left the second floor of his bedroom." 12/10/2007 Commonwealth Memorandum at 11-12. Wills Eye Hospital likewise maintains that "Easby remained bedridden in his house after September 2003." 3/27/2008 Wills Memorandum at 11.

¹⁷¹ 12/5/2007 N.T. at 50 & 16 (Price, Philip)

¹⁷² 12/6/2007 N.T. at 167-68 (Rothstein).

B. The Proponent Also Presented Proof of the Absence of Undue Influence and of a Long-Term Loving Relationship

Finally, the respondent established that even though Meade took to his bed in the fall of 2003, Robert did not seek to isolate him from friends or family. The petitioners' own witnesses verified this key point. Maree Rambo admitted, for instance, that Robert never prevented her from visiting Meade whom she could visit whenever she liked.¹⁷³ Similarly, Sylvia Brown testified that Robert never discouraged her visits to Meade, but would leave them alone together. She admitted she had no evidence that as Meade weakened, Robert exercised more control or tried to keep Meade from his friends.¹⁷⁴ While Philip Price did not visit Meade often during his final years, he did not complain that Robert prevented him from doing so.¹⁷⁵

Carl Minster, the attorney who worked with both Robert and Meade in executing several documents, stated that he never witnessed Robert exert any influence on Meade during the drafting of Meade's March 3, 2005 will.¹⁷⁶ Finally, Sherma Prince, Meade's home healthcare aid who cared for him for a 12 hour shift seven days a week, testified that Robert never tried to keep anyone from seeing Meade or sought to prevent calls coming through to him. She never saw Robert threaten Meade; when asked if she ever saw Robert try to induce Meade to do something for him, she replied: "I don't think it would happen. Mr. Easby would not let it happen."¹⁷⁷

A key aspect in this case which neither petitioner explored—undoubtedly out of an admirable sense of delicacy and deference to privacy—is the longstanding, loving

¹⁷³ 12/5/2007 N.T. at 96 (Rambo).

¹⁷⁴ Ex. P-1, 11/15/2007 Depo. of Sylvia Brown at 81.

¹⁷⁵ See, e.g., 12/5/2007 N.T. at 12, 16 (Price, Philip).

¹⁷⁶ 12/6/2007 N.T. at 86-87 (Minster).

¹⁷⁷ 1/15/2008 N.T. at 53 (Prince).

nature of Meade's homosexual relationship with Robert. The Proponent emphasized this loving relationship, with Meade's physician, Dr. Moock, confirming that Robert and Meade had been homosexual lovers.¹⁷⁸ Friends who knew Meade well testified to his strong, tender feelings for Robert. Lady Wedgwood recalled Meade describing Robert as his "dear, dear friend, how wonderful his life was because Robert was in it, and that basically he couldn't live without Robert."¹⁷⁹ Meade's attorney, Minster, stated that Meade told him that he and Robert were in a "gay couple relationship;" Minster never doubted Meade's affection for Robert which he displayed in various ways.¹⁸⁰ Meade's caretaker, Sherma Prince, observed that Meade told her "[t]hat Robert was a very good man and Robert did everything for him." When asked if Meade expressed appreciation for Robert to her, she replied: "Very much, sir."¹⁸¹ Even the petitioners' witness, Sylvia Brown, recalled that Meade spontaneously brought up with her that he like Robert very much, they "were good friends and Robert was extremely kind and helpful to him."¹⁸²

Perhaps the most vivid description of the relationship of Meade and Robert was presented by their younger friend, Walter Odyke, who recalled that when he made some "off-hand" remark about Robert, Meade chastised him and said: "Don't say that, I love him." Odyke then recalled that "Meade said that he would like to go, I think it was to Vermont, it was whatever state at the time had just passed a law validating gay marriages and that he would like to go there and marry Robert. And I was shocked, and I told Robert about this afterward, because, to my knowledge, I never saw Meade ever look at a

¹⁷⁸ 12/4/2007 N.T. at 86 (Moock).

¹⁷⁹ 1/15/2008 N.T. at 96 -97(Lady Wedgwood).

¹⁸⁰ 12/6/2007 N.T. at 74 & 87 (Minster).

¹⁸¹ 1/15/2008 N.T. at 52 (Prince)

¹⁸² Ex. P-1 (11/15/2007 Depo. of Sylvia Brown) at 62.

news program or read a newspaper, and how he knew about this new gay marriage law really puzzled me.”¹⁸³ Opdyke further testified that Meade had confided “that Robert is so good to me and I love him.”¹⁸⁴ This evidence of the longstanding, loving relationship between Robert and Meade undermines any claim of undue influence.

The Life Partnership Verification Statement that Meade and Robert signed on June 29, 2004 contains various provisions including one that the “Partners agree to share the common necessities of life and to be responsible for each other’s common welfare.”¹⁸⁵ Ironically, the various legal and financial arrangements the petitioners invoke to allege undue influence such as joint savings accounts, powers of attorney, real estate holdings in joint names are also essential manifestations of a shared life of common necessities akin to a marriage. The record establishes that Robert and Meade had a longstanding, loving relationship, at the end of which Robert not only gently cared for Meade by making sure he had 24 hour nursing care, but also by assuring him the opportunity to meet with his friends in his beloved Baleroy.

Based on the record presented, the respondent established by clear and convincing evidence the absence of undue influence.

BY THE COURT:

Date _____

John W. Herron, J.

¹⁸³ 12/5/2007 N.T. at 173-74 (Opdyke).

¹⁸⁴ 12/5/2007 N.T. at 176 (Opdyke).

¹⁸⁵ Ex. P-26.

