STATE OF MICHIGAN

COURT OF APPEALS

In re estate of MORRIS FRIDMAN, Deceased.

MARSHA BRUM and ERIC BRUM,

Petitioners-Appellants,

v

YEHUDA TATELBAUM,

Respondent-Appellee.

UNPUBLISHED
December 27, 2005

No. 260856
Oakland Probate Court
LC No. 02-283369-DA

Before: Whitbeck C.J., and Talbot and Murray, JJ.

PER CURIAM.

Petitioners appeal by right the trial court's grant of summary disposition, pursuant to MCR 2.116(C)(5), in favor of respondent in this action by petitioners to challenge decedent, Moris Fridman's, purported 2002 will. We affirm.

Petitioners first argue that the trial court erred in determining that decedent revoked his 1999 will by revocatory act. We disagree.

This Court reviews de novo a trial court's ruling on a motion for summary disposition. *Aichele v Hodge*, 259 Mich App 146, 152; 673 NW2d 452 (2003). "In reviewing a motion for summary disposition pursuant to MCR 2.116(C)(5), this Court must consider the pleadings, depositions, admissions, affidavits, and other documentary evidence submitted by the parties." *Id.*, quoting *Jones v Slick*, 242 Mich App 715, 718; 619 NW2d 733 (2000) (footnote omitted). Questions regarding statutory interpretation are also reviewed de novo. *Lee v Robinson*, 261 Mich App 406, 408; 681 NW2d 676 (2004).

"A will . . . is revoked by . . . [p]erformance of a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will . . . . [A] 'revocatory act on the will' includes burning, tearing, canceling, obliterating, or destroying the will or a part of the will. A burning, tearing, or canceling is a revocatory act on the will, whether or not the burn, tear, or cancellation touches any of the words on the will." MCL 700.2507. Where a copy of an original will exists but the testator's copy is missing, there is a rebuttable presumption that the testator destroyed the will with the intent to revoke it. *In re Christoff's Estate*, 193 Mich App 468, 473; 484 NW2d 743 (1992). The burden is upon the proponent of the lost will to show facts

or circumstances which overcome the presumption of revocation. *In re Smith's Estate*, 145 Mich App 634, 637; 378 NW2d 555 (1985). The presumption can be met by declarations of the testator, and whether or not the presumption is rebutted is a question of fact. *Id.*

Here, the testator, decedent, was known to have a copy of the 1999 will in his possession during his lifetime, which was not traced out of his possession. After decedent's death, his copy of the 1999 will could not be found. This factual scenario gave rise to the rebuttable presumption that decedent destroyed the 1999 will with the intent of revoking it. *In re Christoff's Estate*, *supra*. Petitioners, as proponents of the 1999 will, therefore, had the burden of rebutting this presumption, possibly by offering evidence of decedent's declarations to the contrary. *In re Smith's Estate*, *supra*. Petitioners, however, offered no evidence whatsoever to rebut the presumption that decedent destroyed the 1999 will with the intent of revoking it. Rather, three witnesses testified on behalf of respondent that decedent repeatedly declared that he intended to cut petitioner Eric Brum out of his will and that he "ripped up" his copy of the 1999 will with the intent of revoking it.[1] Although Eric Brum testified that decedent was an "eccentric" man who "liked the formality of dealing with attorneys and accountants," this testimony tends to support petitioners' claim that decedent would not have drafted his 2002 will as informally as he did—not that decedent did not destroy the 1999 will with the intention of revoking it. The trial court did not err in determining that decedent revoked the 1999 will by destroying it.

Petitioners next argue that the trial court erred in determining that they were not "interested parties" with standing to challenge the probate of the 2002 will. We disagree.

Whether a party has legal standing to assert a claim constitutes a question of law that this Court reviews de novo. *Heltzel v Heltzel*, 248 Mich App 1, 28; 638 NW2d 123 (2001). Questions regarding statutory interpretation are also reviewed de novo. *Lee*, *supra* at 408.

> "Interested person" or "person interested in an estate" includes, but is not limited to, the incumbent fiduciary; an heir, devisee, child, spouse, creditor, and beneficiary and any other person that has a property right in or claim against a trust estate or the estate of a decedent, ward, or protected individual; a person that has priority for appointment as personal representative; and a fiduciary representing an interested person. Identification of interested persons may vary from time to time and shall be determined according to the particular purposes of, and matter involved in, a proceeding, and by the supreme court rules. [MCL 700.1105(c).]

Generally, to have standing, "a party must have a legally protected interest that is in jeopardy of being adversely affected." *In re Foster*, 226 Mich App 348, 358; 573 NW2d 324

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[1] Petitioners' argument, that decedent's statements regarding the revocation of the 1999 will are inadmissible hearsay, is without merit. MRE 803(3) contains explicit exceptions from the hearsay rule for statements of a declarant's intent, and for statements of memory or belief that relate to the revocation of a declarant's will.

(1997). A party raising a claim must have "'some real interest in the cause of action, or a legal or equitable right, title, or interest in the subject matter of the controversy.'" *Id.*, quoting *Bowie v Arder*, 441 Mich 23, 42-43; 490 NW2d 568 (1992). The standing doctrine applies to appeals as well as trial court actions. See *Winters v National Indemnity Co*, 120 Mich App 156, 159; 327 NW2d 423 (1983).

Decedent was not a blood relative of petitioners. Petitioners, therefore, had no rights in decedent's estate through intestacy. Once the probate court determined that the 1999 will was revoked by revocatory act, any claim petitioners had as devisees was extinguished, and petitioners no longer fell within any of the categories of "interested person" under § 1105. Although the "[i]dentification of interested persons may vary from time to time . . . according to the particular purposes of, and matter involved in, a proceeding," without the 1999 will, petitioners simply cannot show any property right in, or claim against, decedent's estate that is in danger of being adversely affected. The trial court did not err in determining that petitioners were not "interested parties" and that they lack standing to challenge the probate of the 2002 will.

Petitioners also argue that the 2002 will did not revoke the 1999 will. Although defendant raised this argument before the trial court, the trial court did not address or decide this issue; therefore, this issue was not properly preserved for appeal. *Fast Air, Inc v Knight*, 235 Mich App 541, 549; 599 NW2d 489 (1999). Petitioners' argument that the respondent bore the burden of first proving the 2002 will by clear and convincing evidence, before determining whether the 1999 will was revoked, is misplaced. MCL 700.3407(2) provides that where a former will is opposed on the ground that it was revoked by a later will, the court must first determine whether the later will is entitled to probate. The 1999 will in this case, however, was not opposed on the ground that it was revoked by the 2002 will, but rather, it was previously revoked by decedent's revocatory act. Because the trial court properly determined that decedent revoked the 1999 will by revocatory act, it was unnecessary to address whether the 1999 will was revoked by the 2002 will. We, therefore, decline to address this unpreserved issue. *Fast Air, supra*.

Affirmed.

/s/ William C. Whitbeck
/s/ Michael J. Talbot
/s/ Christopher M. Murray