STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of JOHN PATRICK WHITE.

JEROME M. DAHL as Trustee of the JOHN PATRICK WHITE TRUST,

Appellant,

v

GEOFFREY C. LAWRENCE as Personal Representative of the ESTATE OF JOHN PATRICK WHITE, DONALD J. BAUMGARTNER, JACALYN D. BAUMGARTNER, RICHARD A. BEKKALA, SUSAN P. BEKKALA, and THE UNIVERSITY OF MICHIGAN,

Appellees.

UNPUBLISHED
November 18, 2008

Nos. 279866, 279867
Iron Circuit Court
LC No. 06-000070-DA

JEROME M. DAHL as Trustee of the JOHN PATRICK WHITE TRUST,

Petitioner-Appellant,

v

JACALYN DAHL BAUMGARTNER and RICHARD A. BEKKALA,

Respondents-Appellees.

No. 281420
Iron Circuit Court
LC No. 06-000083-CZ

Before: Beckering, P.J., and Borrello and Davis, JJ.

PER CURIAM.

These three appeals arise out of the estate plan of John Patrick White, who died of lung cancer on July 12, 2006, at the age of 79, having never married and having no children.

Specifically at issue are whether the will White executed in 2006 (the "2006 Will") shortly before his death should be admitted to probate, whether and to what extent a trust White created in 1993 was funded, and whether that trust could recover certain funds that White transferred into a new bank account created in 2006. The first and last of these issues turn on whether White was unduly influenced by his cousin Jacalyn Baumgartner ("Jacalyn") and his friend and, toward the end of his life, caretaker, Richard Bekkala ("Bekkala"). The trial court found no undue influence; it therefore admitted the 2006 Will to probate and determined that the White Trust could not recover the particular funds. The trial court also found that White had only funded the White Trust with a single bank account. The trustee of the White Trust appeals, and we affirm.

A grant or denial of summary disposition is reviewed de novo on the basis of the entire record to determine if the moving party is entitled to judgment as a matter of law. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). This Court may consider summary disposition under the correct court rule even if it is granted under an incorrect court rule. *Tingley v 900 Monroe, LLC*, 266 Mich App 233, 245; 731 NW2d 427 (2005), vacated on other grounds 474 Mich 1104 (2006). "We review the trial court's findings of fact in a bench trial for clear error and conduct a review de novo of the court's conclusions of law." *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). The clear error standard of review affords a certain amount of deference to the trial court's findings, and this Court will only reverse those findings if definitely and firmly convinced that the trial court was mistaken. *Heindlmeyer v Ottawa Co Concealed Weapons Licensing Bd*, 268 Mich App 202, 222-223; 707 NW2d 353 (2005). This Court will affirm the correct result, even if it was not necessarily for the correct reason. *Computer Network, Inc v AM General Corp*, 265 Mich App 309, 313; 696 NW2d 49 (2005).

The language used in a will or trust is reviewed de novo as a matter of law; the fundamental goal of both is to carry out as nearly as possible the intent of the testator or settlor. *In re Estate of Reisman*, 266 Mich App 522, 526-527; 702 NW2d 658 (2005). In the absence of some ambiguity in the document, that intent is presumed to be found in the plain language used therein. *Id*. Standing is an issue of law that is reviewed de novo. *Michigan Citizens for Water Conservation v Nestlé Waters North America Inc*, 479 Mich 280, 291; 737 NW2d 447 (2007). A trial court's decision whether to admit evidence is reviewed for an abuse of discretion, although any preliminary issues of law are reviewed de novo. *Barnett v Hidalgo*, 478 Mich 151, 158-159; 732 NW2d 472 (2007).

This case is very factually intensive. Moreover, the parties alleging that White was unduly influenced admit that they have no direct evidence thereof. Their proofs are, by their own concession, largely based on their views that White's revised estate plan was out of character and contrary to what he would have done if he had been fully aware of various other events in the lives of his family members. It is therefore necessary to go into some detail regarding the evidence adduced during a four-day bench trial.

White was born in 1926. He and his mother were abandoned when he was six or seven years old, and they moved to Iron River, Michigan, where White and his aunt Hope were raised as siblings, their ages being close. Hope had three children, James, Jerome, and Jacalyn. These children, as adults, are involved in this litigation. Collectively, they viewed themselves as having had close relationships with White all of their lives.

White obtained undergraduate and doctorate degrees from the University of Michigan, and according to several witnesses he retained a deep attachment to the University of Michigan throughout his life. He also retained a deep attachment to the Iron River area, keeping a house and his voter and vehicle registrations there despite spending most of his professional life as a professor at Northern Illinois University in DeKalb, Illinois. White was regarded by everyone who knew him as very knowledgeable, very intelligent, very perceptive, very firmly opinionated, very meticulous, very much in control of his life, and very educated; several also noted that although he was friendly, he was also a very direct and even intimidating person. However, he was apparently "baffled" by some things, in particular tax forms and home repairs or "mechanical stuff." White had a close relationship with Hope and Hope's three children, James, Jerome, and Jacalyn.

In 1993, White retired from teaching and returned to Iron River. He set up an estate plan consisting of a trust and a pour-over will. The White Trust document states that it is established "with an initial contribution of one hundred dollars" and providing for the distribution of various assets – the contents of his residences specifically, otherwise in the form of liquidating everything to money – and naming White as the sole trustee.[1] The White Trust provided that White could withdraw any trust assets and amend or revoke the trust's provisions "upon my written and signed direction delivered to the Trustee or attached to this instrument" and alter the trust provisions "by a document executed with the formality required for a valid will or codicil, even though it is not submitted to a probate court." The pour-over will simply devised the entirety of White's estate after payment of obligations and expenses into the White Trust. James and Jerome testified that White discussed his estate plan with them on numerous occasions, advising them that they should do something similar and asserting that the White Trust was "an all encompassing vehicle" in which he had "everything" up to and including his car, his house, his groceries, and potatoes. However, White apparently also told them that he did not have a will because he did not need one, and it is undisputed that – with one notable exception[2] – White never actually *titled* anything in the name of the White Trust.

In 2003, White was diagnosed with cancer of the throat that was, apparently, generally recognized at the time as being terminal. He had a succession of surgeries and medical treatments associated with the cancer, and although the testimony is unclear, it appears that at least some had the effect of making his voice "rough" and "gurgley." He stopped communicating as much with Hope because she was becoming hard of hearing and his voice was becoming unintelligible to her, which White found highly frustrating. Neither James nor Jerome

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[1] It also provides that White may name a cotrustee or resign and appoint a successor. Hope and Jerome were named as successor trustees with James as a backup, but by the time of trial, Hope and James had both resigned, apparently at Jerome's request, leaving Jerome as the only trustee.

[2] A single bank account at Wells Fargo Bank, herein referred to as the "Trust account." The store manager at the Iron River branch of Wells Fargo Bank testified that White had several other accounts at that bank with various other names on each. He also explained that White was a "very private" individual, and he did not wish any of those other people to be able to discover each other or the other accounts.

had any discussions with White regarding his estate plans after this time, and they both reduced their contact with White in general,[3] partly because of other events in their own lives and partly because they did not perceive Jacalyn's emailed updates on White's status to be "encouraging" them to visit. It is undisputed that the "two people closest" to White in his last years were Jacalyn and White's friend Richard Bekkala.

White originally retained Bekkala to perform lawn care services, and eventually they became friends; by 2005 Bekkala had taken on additional personal responsibilities for White, including being placed on White's safety deposit box, picking up White's mail, and running errands. By the end of 2005, Bekkala was also responsible for recording entries in White's check register, which White called "the secretary." Bekkala described his relationship with White as being friends, and his services were voluntary on that basis, although often White would tell Bekkala what to do; Bekkala described White as "very direct." Bekkala testified that he did not even have discretion regarding shopping: White would give him a list of specific items to buy, and Bekkala would do so. This was consistent with other witnesses' testimony regarding their observations of the relationship: as another of White's friends and a former student, Robert McCormick, observed, there was "genuine comradery there," but "[a]nyone who knew J. Patrick knew he was very demanded [sic] and opinionated, and wanted things done in a certain way[, a]nd it's clear to me that [Bekkala] had already been well trained with that respect."

Hope's health was deteriorating, as well; by 2005, Jacalyn was acting as Hope's primary caregiver, and Hope was spending a great deal of time in and out of hospitals or other facilities. During a hospitalization in December 2005, it became apparent that Hope was not competent to care for herself, and indeed at the time she was confused, disoriented, and obviously not able to be discharged to anywhere other than another care facility. James suggested a "divestment plan" to distribute Hope's assets to the siblings in order to preserve those assets, and pursuant to that, Jerome wrote an $11,000 check to each of the siblings from Hope's account. In the meantime, according to Jacalyn, Hope had been in the practice of giving gifts of money to her and to her family for many years. At some point in 2005, Hope gave Jacalyn or her children a number of checks from a Scudder Money Market account, and part of Jacalyn's caregiving duties involved cashing Hope's retirement checks, of which she kept half.[4] Jerome discovered funds to be "missing" from the Scudder account while looking into Hope's finances, and Hope was unable to explain what happened to the funds because she was incoherent at the time.

Jerome contacted James and Jacalyn. Jacalyn admitted that she had taken the money. James and Jerome told her that it needed to be returned and that she could not take money from

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[3] The last time either of them saw White in person was around Thanksgiving in 2005.

[4] There is no dispute that Jacalyn's retention of half of these checks was entirely proper, although Jacalyn considered it a gift, whereas James and Jerome considered it compensation. The testimony was unclear, but it appears that there is some dispute between the siblings as to whether the other half of those checks was properly accounted for. James and Jerome contend that Jacalyn stole the other half, but they also concede that all of the money they feel to have been wrongly taken from Hope was eventually repaid.

Hope; they later characterized it as theft. However, Jacalyn consistently maintained that it was a gift. The siblings held a meeting on the matter that apparently became quite emotionally charged. Neither James nor Jerome were present at the time the checks were signed, Jerome agreed that Hope was "sometimes" competent in 2005 and that he was not present when the checks were signed; James agreed that if Hope *had* been competent at the time, she had the right to give away her money as she pleased. Hope did not testify. Hope made a considerable recovery after being placed in a nursing home. Nevertheless, no additional evidence was presented regarding the nature of the transactions between Hope and Jacalyn beyond Jacalyn calling them a gift and her brothers calling it theft.

In early January 2006, Jacalyn approached White for help and explained to White that James and Jerome believed she had stolen money from Hope but that Hope had in fact given her the money. By that time, White had known about the $25,000 check and the other checks "for a long time." Jacalyn also discussed the "divestment plan" with White to the extent of explaining to White that she had received a check for $11,000 and another for $3,000, and that she had not been involved in Jerome's and James's meeting with an attorney regarding the plan. White decided to give Jacalyn a cashier's check so that the money could be repaid without James or Jerome discovering the source of the funds. The manager at Wells Fargo Bank testified that the cashier's check was issued because White had asked him how one could conceal the source of the funds from a recipient.

In late January 2006, White was readmitted to the hospital, where he underwent some additional medical procedures and his cancer was diagnosed as being imminently terminal. White indicated that he wanted to make a will; Jacalyn and Bekkala testified that they assumed that meant White did not have one, although they agreed that White never actually said that. By this time, Bekkala was significantly involved in White's care, and Jacalyn was primarily responsible for keeping the rest of the family informed about White's condition. When White left the hospital on March 4, 2006, he was very weak and barely able to move on his own, although by the end of the month he was described by his doctors as "making a nice come-back," and he was eventually even able to drive on his own. Nevertheless, Jacalyn contacted attorney Mark Tousignant, who visited with White at home and worked on drafting a new will. The 2006 Will changed White's estate plan in a number of ways[5] and explicitly revoked the 1993 Will, but it did not address the White Trust, because White had indicated to Tousignant that nothing was titled in the trust, and Tousignant concluded that it was an empty vessel. Tousignant was unaware at the time that there actually was a bank account titled in the White Trust. During the proceedings, White expressed anger with James and Jerome at the way they were treating Hope. White also explained that he no longer wished the White Trust to be his estate plan.

On March 7, 2006, White withdrew all but $30,000 from the White Trust bank account and transferred it directly into a new account. The new account was jointly owned by Jacalyn

[5] In significant part, it leaves a large bequest to the University of Michigan, a reduced share to James and Jerome, and some stocks to Jacalyn and Bekkala. It leaves nothing to Hope or to the Iron County Museum and Historical Society.

and Bekkala. The new account did not state whether it had any right of survivorship, but the Wells Fargo Bank store manager testified that he had to approve a transaction of that size, and he had explained to White beforehand the consequences of the new account, including the fact that in a joint account, each person "has got sole equal rights to that money just like you and just like anyone else is [sic] on the account," irrespective of the order of names. He discussed the matter and concluded that all three did in fact all want to be joint owners. He explained that that way, "any one of them could have removed the entire amount at any time after it was opened . . . [e]ven after death."

On March 24, 2006, White signed the 2006 Will. He then tore up what witnesses believed to be his 1993 Will and the White Trust document.[6] White had numerous visitors during this general time period, almost all of whom testified that although he was very weak physically, he remained his usual strong and independent self mentally, and indeed he continued to do so until the end of his life. One witness testified that he seemed not to be the same person she had known because he had difficulty interacting, but numerous other witnesses who had been in greater contact with White testified adamantly to the contrary. White died on July 12, 2006.

The first issue in this case is whether the White Trust was funded with any assets other than the Wells Fargo Bank account.[7] No particular formality is required to establish a trust, so long as the totality of the evidence clearly and unambiguously shows that the settlor intended to do so. *Crissman v Crissman*, 23 Mich 217, 221 (1871); *Frost v Frost*, 165 Mich 591, 593-594; 131 NW 60 (1911). However, it is additionally necessary to do something – in other words, undertake an affirmative act – to "divest the donor of the equitable ownership, and vest such ownership in the donee." *O'Neil v Greenwood*, 106 Mich 572, 579; 64 NW 511 (1895). Where the donor actually retains the property involved, it must be particularly unequivocally demonstrable "that, from the time it is made, the beneficiary has an enforceable equitable interest in the property, contingent upon nothing except the terms imposed by the declaration of the trust itself." *Hamilton v Hall's Estate*, 111 Mich 291, 295-296; 69 NW 484 (1896). A wide variety of acts can suffice. See *O'Neil*, *supra* at 579-580 and *Ellis v Secor*, 31 Mich 185, 189-192 (1875).

However, some kind of explicit conveyance of identified assets for the benefit of another must take place. *Pierowich v Metropolitan Life Ins Co*, 282 Mich 118, 121; 275 NW 789 (1937); *Osius v Dingell*, 375 Mich 605, 613; 134 NW2d 657 (1965). Whether such a transfer took place may also be determined by examining all the facts and circumstances. *Osius*, *supra* at 614. Therefore, the trustee is correct in asserting that formally retitling assets in the name of the trust

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[6] The trustee raised an argument that Tousignant never provided a complete copy of the White Trust document, because an addendum referred to in the document was missing from the documents Tousignant provided. Tousignant provided everything White gave to him, and the trustee found a copy of the addendum, which proved to be merely a discussion of White's views of how a school ought to spend money. The addendum clearly has no bearing on the critical issue of whether, and to what extent, the White Trust was funded.

[7] The trial court ruled that, notwithstanding White's destruction of the White Trust document, he did not revoke the White Trust, or even intend to, because he intentionally and explicitly left $30,000 in the White Trust's bank account. This ruling has not been cross-appealed.

is unnecessary. However, no evidence has been provided of any actual conveyance taking place. The trustee accurately notes that the White Trust document *presumes* that the White Trust contains assets, but that might suggest a prior transfer or an anticipated future transfer at some time before the trust becomes effective. It would also be consistent with the contemporaneously executed pour-over will. A list of assets was found with a draft copy of the White Trust document, but again, this does not necessarily prove anything.

The trustee also relies on the so-called "income-corpus rule." *City of Austin v Austin Nat'l Bank of Austin*, 503 SW2d 759, 760-761 (Tex, 1973). No Michigan court has discussed this, but the rule is simple and rational in appropriate circumstances: an *absolute bequest* of income from some property may be considered an effective gift of the property itself. See 174 ALR 319. In *Coble v Patterson*, 114 NC App 447, 453; 442 SE2d 119, 122; (1994), the Court of Appeals of North Carolina explained that a *testamentary* gift of income, where the testator failed to provide any limitation on the extent of that gift and also failed to provide any *other* disposition of the principal from which that income was derived, will constitute a gift in fee of the principal. In *Matter of Tayrien's Estate*, 609 P 2d 752, 755 (Okla, 1980), a similar rule is explained in the context of the presumption that "a testator intends to dispose of his entire estate and avoid intestacy in whole or in part." This is, again, quite rational: as a *practical* matter, irrevocably divesting one's self of all benefits from some thing *effectively* divests one's self of that thing.

However, the rule is also clearly intended to apply where the "gift" is a testamentary bequest of some sort. Here, the trustee argues that White intended to convey his stocks to the Trust because he arranged to have the dividend checks paid into the White Trust's bank account. We find the "income-corpus rule" inapplicable. On the basis of the evidence here, White *did not* in any way divest himself of control over the income (the stock dividends), or of the corpus (the stocks themselves). As the sole trustee of the White Trust, he retained the right to manipulate at will whatever assets he placed into that trust, including the stock dividend payments. And, in the absence of some manifested intent to permanently surrender all future control of stock dividends, we cannot conclude that merely directing them to go to another entity automatically precluded him from subsequently taking some other action with those stocks. Thus, there is no evidence that White gave up personal control over those stocks.

The trial court rendered the correct legal ruling that White needed to "do something" in order to convey his assets into the White Trust. Furthermore, the trial court did not commit clear error in reaching the factual finding that the evidence failed to show White doing so here. Therefore, we affirm the trial court's holding that, at the time White died, the only asset in the White Trust was the $30,000 in the White Trust's bank account, and all of White's other assets belonged to his estate.

The other issue in this matter is whether White was unduly influenced into making the 2006 Will or transferring all but the above-mentioned $30,000 from the White Trust account into the new joint account.

Initially, we reject the trustee's contention that the new account lacked a right of survivorship. The trustee correctly observes that a bank account *can* be joint without carrying a right of survivorship. *Leib v Genesee Merchants Bank & Trust Co*, 371 Mich 89, 92-95; 123 NW2d 140 (1963). However, if the account does not explicitly say anything about survivors or survivorship, "the intent of the parties can be founded upon other admissible evidence." *Id*. at

94. Furthermore, an "ordinary" joint tenancy is characterized by a right of survivorship, *even if not expressly designated* with such a right – the only effect of no express language is that the right of survivorship in an "ordinary" joint tenancy is unilaterally severable by any party thereto. *Wengel v Wengel*, 270 Mich App 86, 94-95; 714 NW2d 371 (2006). In *Leib*, there was testimony from the bank vice-president but not the depositor as to the "intent of the parties," and there was evidence that the depositor regarded a particular joint account as only his. In contrast, the disinterested evidence here is that White was advised that the legal consequences of placing money into the "new account" would be the creation of a joint account *with a right of survivorship*, even if that was not specifically written on the account, and that White deliberately put his money into that account with full knowledge.

"It can not be claimed that a will is valid, unless the testator not only intends, of his own free will, to make such a disposition, but is capable of knowing what he is doing, of understanding to whom he gives his property, and in what proportions, and whom he is depriving of it as heirs or devisees under the will he revokes[.]" *Beaubien v Cicotte*, 12 Mich 459, 489-490 (1864). Thus, a will is invalid if it is the product of undue influence, meaning that "'the grantor was subjected to threats, misrepresentation, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency and impel the grantor to act against his inclination and free will.'" *In re Karmey Estate*, 468 Mich 68, 75; 658 NW2d 796 (2003), quoting *Kar v Hogan*, 399 Mich 529, 537; 251 NW2d 77 (1976). "Undue influence may be exercised through fraud," and it may also be established by inference. *Dodson v Dodson*, 142 Mich 586, 588-589; 105 NW 1110 (1905). "The influence exerted, to be deemed 'undue,' must be such as amounts to moral or physical coercion, so that the testatrix was prevented from exercising her own judgment and free will, and her act became, in effect, that of another." *In re Klinks Estate*, 210 Mich 614, 618; 178 NW 14 (1920).

A presumption of undue influence arises where the evidence shows "(1) the existence of a confidential or fiduciary relationship between the grantor and a fiduciary, (2) the fiduciary or an interest which he represents benefits from a transaction, and (3) the fiduciary had an opportunity to influence the grantor's decision in that transaction." *Kar, supra* at 537. However, it is always incumbent on the proponents of a will to make at least a prima facie showing that the testator had sufficient capacity to make that will, and ultimately to prove that affirmatively if the other proofs warrant doing so. *Beaubien v Cicotte*, 8 Mich 9, 12-14 (1860); *Kempsey v McGinniss*, 21 Mich 123, 147-150 (1870). The proponent of any particular fact – including the existence of undue influence – has the burden of proving that fact, and the proponent of a *case* continues to carry the burden of proving the *case*. *Kar, supra* at 538-540. The presumption of undue influence is only "mandatory" if no rebuttal evidence is introduced, whereas it remains a "permissible inference" unless such overwhelming rebuttal evidence is introduced that it meets "the standard for a directed verdict." *Id*. at 541.

There is no serious dispute that the elements are met here: Jacalyn and Bekkala were in positions of confidence and trust, they participated in some way in preparing the 2006 Will or in the bank account transfer, and they benefited therefrom. Although the trustee contends that the trial court failed to apply, or even mention, the presumption, the trial court's finding that White was not, in fact, unduly influenced necessarily entails a finding that there was sufficient rebuttal evidence to reduce the presumption to a mere permissible inference that it declined to make. See *Brooks v Delrymple*, 1 Mich 145, 149-150 (1848). Furthermore, when it denied a motion for

reconsideration or a new trial, the trial court did explicitly find the presumption, if any, "was clearly overcome by the evidence at trial." We find no clear error in that finding.

The evidence overwhelmingly shows that White was not subjected to any effective *direct* manipulation. Indeed, the testimony described White as a person who, to his last moments, was far more likely to impose his will on those around him, no matter what his physical condition. We find that ample evidence was provided tending to rebut the presumption of undue influence, reducing that presumption from a mandatory one to a merely permissible one. The gravamen of the will opponents' argument is, in fact, that Jacalyn and Bekkala controlled White indirectly, by controlling what information he had available. Indeed, the will opponents explicitly or implicitly conceded that they had no actual evidence that Bekkala or Jacalyn exerted any other kind of influence over White.

Appellants allege that Bekkala unduly influenced White by failing to record the transfer of all but $30,000 from the White Trust account in White's check register and failed to advise Tousignant of that transaction. However, the check register did not keep a running balance of the account, the transfer was direct, it would be reasonable to conclude that White knew what he had done with his own money, and Bekkala felt it was not his place to give White financial advice or to inject anything into the discussions with Tousignant unless invited.[8] Bekkala in particular was described by all witnesses as clearly a well-trained subordinate. We find in this no evidence that Bekkala lied to White, kept information from White, or otherwise influenced White by arranging for White to receive inaccurate or incomplete information.

Jacalyn allegedly unduly influenced White largely on the basis of allegations that she defrauded Hope, James, and Jerome. Aside from the implication that Jacalyn is of an inherently distrustful character, these allegations have no bearing whatsoever on whether Jacalyn lied to White. The only coherent claim that we can discern that pertains to White is the allegation that Jacalyn failed to disclose to White her alleged theft from Hope, wrongly described James and Jerome as making untrue accusations against her, and mislead White as to James' and Jerome's interest in him and treatment of Hope.

However, the above allegations all presume a particular resolution of the relative credibility of witnesses: Jacalyn consistently maintained that the money she received from Hope was a gift of which White had long since been well aware, and explaining that James and Jerome were accusing her of something she felt was untrue would have been strictly true. The evidence reveals an antagonistic and distrustful family relationship with some likelihood that the siblings genuinely perceived Hope's mental state differently; it is possible that Jacalyn was incorrect, but we see no evidence that she lied. Her emails regarding White were apparently neither encouraging nor discouraging, and James and Jerome testified that they did not visit for a variety of reasons. The evidence does not show that Jacalyn engaged in a program of keeping White's family away from him and making him believe that they were disinterested in his welfare. See *In re Persons' Estate*, 346 Mich 517, 532-534; 78 NW2d 235 (1956). The evidence does not

[8] White asked Bekkala for a suggestion for a single bequest and then subsequently disregarded the suggestion Bekkala offered.

clearly reveal how "supportive" of the divestment plan Jacalyn was, but to the extent she received money from it, she divulged that to White. We find no basis for disturbing the trial court's apparent conclusion that Jacalyn's testimony was credible.

In short, the trial court's statement that there was no evidence "that anybody lied to anybody" might be an overstatement; however, the trial court did not commit clear error to the extent it concluded that there was no evidence that anybody lied to White. The evidence was, in fact, that White was fully in command of his faculties, largely in command of anyone and everyone around him, and if not fully informed about the world around him, then at least not being actively mislead.[9] The evidence of White's self-control was sufficient rebuttal of the presumption of undue influence that the trial court did not commit clear error in finding it merely permissible and deciding that the evidence showed the contrary.

The will opponents also assert that the trial court erroneously excluded evidence of events that took place after the 2006 Will was executed. We disagree. The conduct of a beneficiary after the execution of a will may indeed be probative in determining whether undue influence was exerted over a testator. *Persons' Estate*, *supra* at 532. However, the trial court did not commit any legal error by ruling that such evidence was inherently inadmissible; rather, it did not find the proffered evidence relevant to this case except to the extent it affected something that took place before the will was executed. This is a correct statement of the law. None of the proffered events that took place after the will execution appear to show anything more than a strained family relationship, a belief on the part of Jacalyn and Bekkala that they actually were the copersonal representatives as stated in the 2006 Will, a distrust of and unwillingness to work with James and Jerome, and a belief that the new joint Wells Fargo account was outside of White's estate. The trial court did not err in excluding this evidence as irrelevant to whether Jacalyn or Bekkala unduly influenced White.

"[W]hile it may be said that a testator's blood relations are the natural objects of his bounty, his bounty is not limited by blood relationship, nor have his blood relations any natural or inherent right to his property." *Spratt v Spratt*, 76 Mich 384, 391; 43 NW 627 (1889). Ultimately, the will opponents argue that, because White left an estate plan that seemed contrary to their views of natural justice, White *must* have done so under undue influence. Their proof, however, appears to presume that a finding of undue influence has already been established, or at most consists of evidence from which multiple inferences other than criminal wrongdoing could be drawn, and to the extent it can, it appears to be in the nature of character evidence. Although the evidence certainly does not rule out the possibility of undue influence, the trial court did not commit clear error in reaching the factual finding that none had been proven, even taking the presumption of undue influence into account.

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[9] The will opponents also argue that White did not know what he owned without Bekkala and Jacalyn to tell him. In fact, the evidence shows the opposite: that White knew precisely what he owned, to the extent of making corrections to some of the lists prepared for him, and the help from others was more to establish the specific details and to reconfirm what White already knew.

This conclusion ultimately disposes of the final issue: whether the White Trust can recover the funds that White transferred into the new joint account on March 7, 2006. We agree that the trial court's discussion could be construed as incorrectly applying the principle of standing, but we find that it reached the correct result.

Standing requires, at a minimum, that the defendant caused the plaintiff an actual injury to some legally protected interest that can be repaired by a court ruling. *Lee v Macomb Co Bd of Comm'rs*, 464 Mich 726, 739; 629 NW2d 900 (2001). If the money was not wrongfully removed from the White Trust, the White Trust clearly fails this test. However, "standing" refers to a status required of a would-be litigant to *bring* a lawsuit. *Id*. This writer therefore agrees with the trustee that "standing" depends on the contents of the pleadings alone. See *Dodak v State Administrative Bd*, 441 Mich 547, 560 n 22; 495 NW2d 539 (1993), disapproved of on other grounds *Rohde v Ann Arbor Public Schools*, 479 Mich 336, 353-354; 737 NW2d 158 (2007). Although the trial court did not explicitly cite a court rule, and it did use the word "standing," it is clear from the transcripts that the trial court granted summary disposition pursuant to MCR 2.116(C)(10) because it found that the trustee could not prevail at trial, not because it found the suit barred for a lack of standing

We find this to be correct because, as discussed, the trial court did not commit clear error in finding that White was not unduly influenced and the new joint account had a right of survivorship. Therefore, the trial court did not commit clear error in finding that White had legitimately and properly removed that money from the White Trust in the process of putting it into the "new" account. Therefore, even if it had been proven that Jacalyn and Bekkala were not entitled to retain the money in the "new" Wells Fargo account, the White Trust had no basis for recovering it.

Affirmed.

/s/ Jane M. Beckering
/s/ Stephen L. Borrello
/s/ Alton T. Davis