STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of LINDA LOUISE DOERR.

HEATHER DOERR MORRISON, Individually and as Guardian Ad Litem of COURTNEY DOERR, Minor,

Petitioner-Appellant,

v

FREDRICK DOERR, Personal Representative of the Estate of LINDA LOUISE DOERR,

Respondent-Appellee.

UNPUBLISHED
September 22, 2009

No. 283341
Iron Probate Court
LC No. 07-000007-DE

Before: Whitbeck, P.J., and Davis and Gleicher, JJ.

PER CURIAM.

In this will contest among family members of decedent Linda Louise Doerr, petitioner Heather Doerr Morrison appeals as of right challenging the probate court's order granting a motion for summary disposition filed by respondent Frederick Doerr, the decedent's son and the personal representative of her estate, and a subsequent order identifying respondent as the decedent's sole testamentary heir. We affirm.

I. Underlying Facts and Proceedings

Respondent and petitioner Heather Doerr Morrison are the decedent's children.[1] The decedent died on February 1, 2007, with her husband having predeceased her on May 31, 2006. On June 13, 2006, the decedent executed a will. The June 2006 will left all of the decedent's personal property to respondent, and expressly observed, "I have intentionally not provided for my daughter, Heather Morrison, in this will. I direct that she shall not take, under any conditions, any portion of my estate." The June 2006 will also declared that the decedent intended to revoke all her prior wills, including "that Will dated December 1, 1999." In mid-

[1] Minor petitioner Courtney Doerr is Heather Morrison's daughter.

February 2007, respondent filed a petition requesting that the probate court appoint him as the personal representative of the decedent's estate, and that the court informally probate the decedent's June 2006 will.

In April 2006, Morrison filed objections to the validity of the June 2006 will and a request to remove respondent as the estate's personal representative. The objections asserted that at the time of the decedent's execution of the June 2006 will she lacked sound mind and operated under respondent's undue influence. According to the objections, respondent (1) took advantage of the decedent's grief over the recent loss of her spouse to obtain a power of attorney "whereby he controlled all her movement, finances, and personal property," (2) similarly took advantage of the decedent's grief and frail condition in his scheduling of the appointment for preparation of a new will, (3) "accompanied the decedent to the attorney's office, stayed with her during the time that the contents of the will were discussed; and . . . in fact told the attorney what to put in the will[,]" and (4) made false representations to the decedent, including "that . . . [Morrison] was suing her, all of which resulted in Morrison's exclusion from the June 2006 will.

In August 2007, respondent filed a motion for summary disposition of Morrison's objections on the ground that undisputed facts revealed no support for her claims that respondent had exerted undue influence over the decedent or that the decedent had lacked testamentary capacity. Morrison filed a response opposing respondent's motion, urging that multiple questions of fact existed for trial. The parties' filings focused on deposition testimony by the attorney who prepared the June 2006 will, his secretary, and Morrison. At a summary disposition hearing in September 2007, the probate court initially ruled from the bench, in relevant part as follows, that it would grant the motion:

> I'm going to cut this off because what you can show is clearly now subject for argument in this Motion For Summary Disposition. The Supreme Court made it absolutely clear several years ago that when a Motion For Summary Disposition is filed and we have the testimony of witnesses . . . that says that this person is competent and this is why, then it requires an affidavit, a deposition, an interrogatory, a sworn statement alleging admissible facts be filed with the answer to the Motion For Summary Disposition; and that . . . in the event that it isn't filed . . . then the facts that are alleged in the motion are accepted by the Court. That is absolutely clear. There is [sic] no affidavits filed here.
>
> * * *
>
> Just so the Court of Appeals has a clear record, I'm finding that the affidavits, the sworn testimony that was submitted with the Motion For Summary Disposition, made it clear from that testimony that the . . . decedent was competent, not under influence—
>
> * * *
>
> . . . [A]nd that . . . the response did not provide any sworn testimony, affidavits, depositions, interrogatories, that would lead this Court to believe that there is an issue of material facts [sic]. And, therefore, the motion is granted under (C)(10).

Later, after the court learned that Morrison had not had the opportunity to depose respondent, the court announced that it would "allow the taking of . . . [respondent's] deposition before . . . enter[ing] the order. And you can submit the deposition." In October 2007, the probate court entered an order granting respondent's motion for summary disposition, and noting that the court "has reviewed the deposition testimony of Frederick W. Doerr and finds no evidence that would overcome . . . [the (C)(10)] motion." After another brief hearing in January 2008, the probate court entered an "Order for complete estate settlement" that found valid the June 2006 will, under which respondent constituted the sole heir, and approving respondent's final account.

II. Summary Disposition of Petitioner's Objections to June 2006 Will

A. Standard of Review

Morrison first challenges the probate court's summary disposition ruling, characterizing it as improperly embodying decisions concerning evidentiary weight and witness credibility. We review de novo the probate court's summary disposition ruling. *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004). "Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *West v Gen Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh*, 263 Mich App 621. The party moving for summary disposition bears the burden of supporting its position with admissions, affidavits, depositions, or other documentary evidence; the burden then shifts to the opposing party to prove that a genuine issue of material fact exists for trial. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996); MCR 2.116(G)(5). "Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists." *Id*.

B. Undue Influence Analysis

> To establish undue influence it must be shown 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 the grantor's inclination and free will. Motive, opportunity, or even ability to control, in the absence of affirmative evidence that it was exercised, is not sufficient. [*In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993).]
>
> "The presumption of undue influence is brought to life upon the introduction of evidence which would establish (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." [*In re Karmey Estate*, 468 Mich 68, 73; 658 NW2d 796 (2003), quoting *Kar v Hogan*, 399 Mich 529, 537; 251 NW2d 77 (1976).]

After carefully reviewing the depositions and documentary evidence presented in this case, we find that they do not give rise to material questions of fact with respect to the three undue influence inference elements referenced in *In re Karmey Estate*, 468 Mich 73. Thus, as a matter of law the probate court correctly granted summary disposition of Morrison's objections to the decedent's June 2006 will pursuant to MCR 2.116(C)(10).

1. Confidential or Fiduciary Relationship

We initially observe that Morrison erroneously suggests that respondent and the decedent shared a confidential relationship on the basis of their mother-son relationship. Morrison's brief on appeal refers us to no authority supporting the proposition that the existence of a parent-child bond by itself suffices to give rise to a genuine issue of material fact concerning the presence of a confidential relationship. *Hughes v Almena Twp*, 284 Mich App 50, 71-72; ___ NW2d ___ (2009) (noting that a party's failure to present authority in support of her position "results in the abandonment of an issue on appeal"). And our research uncovered no binding authority adopting this position. See, e.g., *Mannausa v Mannausa*, 370 Mich 180, 184; 121 NW2d 423 (1963) ("In cases involving conveyances from parent to child there is a rebuttable presumption of undue influence only where a fiduciary relationship is found to exist.").

Nonetheless, the evidence simply does not give rise to a genuine issue of fact whether a confidential or fiduciary relationship existed between respondent and the decedent when the decedent executed the June 2006 will. Our Supreme Court recently summarized as follows the meaning of "confidential or fiduciary relationship":

> Although a broad term, "confidential or fiduciary relationship" has a focused view toward relationships of inequality. This Court recognized in *In re Wood Estate*, 374 Mich 278, 287; 132 NW2d 35 (1965),[2] that the concept has its English origins in situations in which dominion may be exercised by one person over another. Quoting 3 Pomeroy, *Equity Jurisprudence* (5th ed, 1941), § 956a, this Court said a fiduciary relationship exists as fact when "'there is confidence reposed on one side, and the resulting superiority and influence on the other.'" 374 Mich 283.
>
> Common examples this Court has recognized include where a patient makes a will in favor of his physician, a client in favor of his lawyer, or a sick person in favor of a priest or spiritual adviser. 374 Mich 285-286. In these situations, complete trust has been placed by one party in the hands of another who has the relevant knowledge, resources, power, or moral authority to control the subject matter at issue. [*In re Karmey Estate*, 468 Mich 74 n 3.]

First, Morrison's contention that respondent "obtained a Power of Attorney over his mother," and thus unduly influenced her participation in the drafting and execution of the June 2006 will, disregards unrebutted facts demonstrating that, leading up to mid-June 2006,

[2] Overruled in part on other grounds in *Widmayer v Leonard*, 422 Mich 280; 373 NW2d 538 (1985).

respondent did not possess formal authority as a fiduciary over all of the decedent's affairs. During respondent's deposition, he acknowledged the existence of a "Durable power of attorney for health care of" the decedent, which she executed on December 1, 1999, the date of her prior will. As the title of this document suggests, the 1991 power of attorney limited the scope of the appointed individual's authority "to act as my Patient Advocate." The 1991 power of attorney named the decedent's "husband, William Walter Doerr," as the decedent's primary patient advocate, and respondent as her "successor Patient Advocate only if my Patient Advocate does not accept my appointment, is incapacitated, resigns or is removed." No evidence tended to suggest that respondent acted as the decedent's patient advocate at any point before her husband died on May 31, 2006.

The decedent later gave respondent a more broad power of attorney, authorizing him to "perform any act and exercise any power with regard to my property and affairs that I could do personally," but the evidence undisputedly establishes that the decedent executed the power of attorney at the same time she signed the June 2006 will. The deposition testimony of attorney Michael Celello, who drafted the June 2006 will and power of attorney, Brittnae Cocking, Celello's legal secretary, and respondent agreed that the decedent executed both the will and power of attorney on June 13, 2006, the day after the decedent and Celello had discussed the contents of the June 2006 will. Consequently, respondent did not have a formal fiduciary relationship with the decedent for any period leading up to the June 2006 will's execution.

We recognize that a party asserting undue influence need not show the presence of a formal fiduciary relationship if the record tends to demonstrate an informal fiduciary relationship. In this case, however, the only evidence of control over the decedent's property potentially attributable to respondent was elucidated in the following portion of his deposition, and apparently related to the period *after* the decedent's execution of the June 2006 will and power of attorney:

> *Morrison's counsel*: You had power of attorney over your mother, to handle her finances and stuff[?]
>
> *Respondent*: Right.
>
> *Morrison's counsel*: So, you handled these [vehicle] transfers for her[?]
>
> *Respondent*: No, I didn't.
>
> *Morrison's counsel*: She handled them?
>
> *Respondent*: No.
>
> *Morrison's counsel*: Who handled them for her?
>
> *Respondent*: My girlfriend handled the finances.

In summary, Morrison has produced no evidence giving rise to a rational inference that at the time the decedent prepared and executed her June 2006 will, respondent and the decedent

shared a confidential relationship or a formal or informal fiduciary relationship. As our Supreme Court previously held, in a conclusion we deem equally applicable here,

> On behalf of appellant it is contended that a fiduciary relation existed as between him and the defendants. The proofs do not support the claim. The daughter . . . , and likewise the son, unquestionably did many things to assist their father, a perfectly natural course of conduct in view of his physical condition. However, the record falls far short of establishing that plaintiff was governed by their advice or that he depended on them in the making of decisions concerning his business affairs, or otherwise. It clearly appears that plaintiff, notwithstanding his physical condition, was able to determine for himself what he wished to do and to refuse to act against his own inclinations. What defendants did to assist him amounted to no more than would be prompted normally by the existing relationship.
>
> Quite possibly the kindly feelings that prompted the acts of the son and daughters on behalf of their father tended to influence him in making the property transfers now under attack. Such an influence is not undue. . . . [*Salvner v Salvner*, 349 Mich 375, 383-384; 84 NW2d 871 (1957).]

Our conclusion that no hint of a confidential or fiduciary relationship existed between respondent and the decedent finds further support in the evidence of record that the decedent prepared the June 2006 will with the assistance of independent legal counsel; Morrison has entirely failed to substantiate that Celello drafted the June 2006 will in other than an independent, objective and professional fashion. *In re Wood Estate*, 374 Mich 287 n 2 (observing that "the presence or absence of independent legal advice is an evidentiary factor which may be weighed, along with other evidence, in determining whether undue influence was exercised"); *Salvner*, 349 Mich 386 (holding that the totality of the circumstances surrounding challenged transactions, including "the fact that plaintiff's attorney prepared each agreement unquestionably in accordance with his understanding as to plaintiff's desires," "indicate that he was not coerced or made the victim of undue influence or persuasion . . . .").

2. Fiduciary's Opportunity to Influence Grantor's Decision

Even assuming that Morrison amply demonstrated a genuine issue of material fact regarding the presence of a confidential or fiduciary relationship between respondent and the decedent, our review of the record reveals no proof tending to suggest that respondent either had an opportunity to influence, or in fact influenced, the decedent's preparation and execution of the June 2006 deed. Morrison's counsel inquired of respondent at his deposition about his contacts with the decedent from the time of his father's death on May 31, 2006 through the decedent's June 12 and 13, 2006 appointments with Celello. Respondent, who resided in Eau Claire, Wisconsin, traveled to Crystal Falls, Michigan, where the decedent lived, sometime on May 31, 2006, and assisted the decedent in making funeral arrangements for Walter Doerr. Morrison, who lived in "lower Wisconsin," and respondent both attended the funeral and stayed in Michigan for several days.

Respondent stayed at the decedent's house between June 5, 2006 and June 7, 2006, when the decedent suffered a seizure, fell, and was admitted to the Iron County Community Hospital's

intensive care unit. The day before the decedent's hospital discharge on June 9, 2006, respondent had an appointment with Celello, at which they discussed "a possible wrongful death lawsuit over [his] father's accidental death," and "probating [his] dad's estate," which Celello told respondent would "be up to my mom . . . to either probate the estate or start proceedings on it, and he asked me to schedule an appointment for her to come in." The day after the decedent's hospital discharge, June 10, 2006, respondent drove her to his Eau Claire home, where Morrison came to visit. Respondent recalled that he and the decedent drove back to Crystal Falls sometime on Sunday, June 11, 2006, in anticipation of her appointment with Celello the next day, and that he remained with her over the next couple nights.

Celello's deposition testimony contains many details of his June 12 and June 13, 2006 meetings with the decedent. Celello recalled that the decedent on June 12, 2006 made the "request[] that I draft a will for her." Celello described that the decedent repeatedly and consistently had voiced her desire to entirely exclude Morrison from taking anything under the June 2006 will; Celello summarized, "She said that her daughter did some things involving the reporting of [sexual abuse] allegations against her husband; that it crushed him; that it made their life . . . 'living hell' . . . . [a]nd that she did not want her daughter to take anything or have any control or impact whatsoever regarding any part of her estate."[3]

The testimony of Celello and respondent agrees that although respondent drove the decedent to Celello's office, respondent did not participate in Celello's discussions with the decedent about the terms of the June 2006 will. According to Celello's recollections,

> *Morrison's counsel*: Did [respondent] stay in the room with her while you were discussing her will?
>
> *Celello*: He was in the room at times, but I would've excluded him during my . . . in-depth discussions with her. But was he in the . . . room at any other times? Yes, certainly, he was. But I always exclude the person that escorts somebody in for a will. I mean, it's very common. In fact, I probably have more people that are escorted by . . . their children than I do that just simply walk in. But . . . it's my practice to exclude them when I'm discussing the particulars of the will. Even though Michigan has done away with the supernumerary, I still feel that it's important to . . . exclude the people.
>
> *Morrison's counsel*: So, you are aware that Linda was your client, and not [respondent]?

[3] Morrison acknowledged in her deposition that the decedent had known of Morrison's claim that she "had sexual intercourse with . . . [her] father and that as a result, it [possibly] produced [Morrison's] daughter." Celello later added that a client's desire to exclude a child from a will "absolutely" raised concern with him, that he generally explored the client's reasons for making the exclusion, and that "[t]he reason we did not specifically put into this will why Heather was being excluded was because of the sensitivity of . . . the reason." Celello denied that the decedent ever mentioned her belief that petitioner "was suing her."

Celello: Certainly.

* * *

. . . The will? No, I never discussed the will with [respondent].

* * *

[Respondent] would've left the room when I discussed the will with Linda.

. . . The will provisions specifically were discussed with Ms. Doerr[]. Now, eventually [respondent] did come into the room. He was there perhaps during times when we were in discussion, but everything else had already been done.

Respondent's counsel: After discussing this matter with Linda and having conversations with [respondent] on unrelated matters, is it your opinion that . . . [respondent] deprived his mother of her own free agency in making this will/

Celello: Absolutely not. I didn't see any hint of influence on the part of [respondent]. . . . He was doing nothing . . . out of the ordinary at all. He was helping his mom out, getting her where she had to go, you know. . . .

Celello testified that he and the decedent discussed at some length the legal significance of the deed to her Crystal Falls residence identifying her as a joint tenant with Morrison's daughter Courtney. When Morrison's counsel inquired whether respondent "was . . . present for this discussion," Celello replied, "I don't know if he was present initially, but there was a discussion regarding the deed provisions, that . . . [respondent] was present for, and . . . I don't recall if it was that day or if it was several months later, in a telephone conversation . . . ."

The will execution occurred on June 13, 2006. Celello described that respondent again accompanied the decedent to his offices, but that respondent "was present . . . not during the discussion of the will. I would've met with her first to go over it, . . . then he would've come back into the room . . . ." Cocking, Celello's secretary, recalled being in the office on June 13, 2006 and watching the decedent sign and initial the will and power of attorney. Cocking remembered that respondent also had been present for the signings, but did recall anyone present speaking about anything "pertaining to the will."

With respect to the period leading up to June 12 and 13, 2006, Morrison recounted that she visited Crystal Falls between June 2 or 3, 2006 and June 6, 2006. Morrison next saw the decedent on June 10, 2006, in Eau Claire, shortly after the decedent's release from the hospital, and thereafter "didn't see her for quite a while, but . . . talked to her as much as possible." Morrison disbelieved that the decedent would have instructed Celello to exclude her from the June 2006 will because the decedent still "talked to [Morrison] on the phone" and "wanted me up for Walter's funeral." However, Morrison conceded that she did not know what the decedent might have told Celello, and that she and the decedent never discussed her will. When respondent's counsel asked Morrison whether she felt that respondent had directed Celello what

to include in the June 2006 will, Morrison answered, "I think [respondent] had a lot to do with it, yes," adding, "Linda lost her support, her stability, her rock . . . . [Respondent] took that spot. Walter made decisions for Linda. Well, when [respondent] took that spot [respondent] decided—start [sic] making decisions."

The instant record, when viewed in the light most favorable to Morrison, reveals sparse evidence at best tending to show that respondent had an opportunity to influence the decedent's preparation or execution of the June 2006 will. Notably, no evidence reflects that respondent and the decedent cohabited for any period before July 2006, after the will's preparation and execution, and no evidence suggests that before Walter Doerr's death respondent had enjoyed any periods of exclusive conversation or visitation with the decedent. After Walter Doerr's death, respondent stayed with the decedent from May 31, 2006 through June 7, 2006, while Morrison and her family also attended the funeral and visited with the decedent. However, the record contains no evidence rationally tending to suggest that respondent had an opportunity to influence the decedent's will formulation or ruminations while staying with the respondent for several days around the time of Walter Doerr's funeral, the decedent's hospitalization between June 7 and 9, 2006, or during the two days preceding the decedent's appointment with Celello.

But even assuming that the sparse evidence gives rise to a genuine issue of fact concerning an opportunity to influence during the nearly two-week period between Walter Doerr's funeral and the June 12 and 13, 2006 visits to Celello's office, the record remains entirely devoid of any reasonable suggestion that respondent took advantage of an opportunity to influence the June 2006 will. Morrison simply presented no evidence, apart from her personal opinion unfounded in any elaborated facts, that respondent ever attempted to influence the contents or execution of the June 2006 will. And the testimony of Celello and respondent consistently established to the contrary.

Because Morrison presented no direct evidence that respondent exerted undue influence around the time of the decedent's June 2006 will preparation or execution, and because Morrison failed to present evidence tending to give rise to a presumption of undue influence, the probate court correctly granted respondent summary disposition under MCR 2.116(C)(10) with regard to Morrison's undue influence contentions.[4]

C. Decedent's Testamentary Capacity

[4] With respect to Morrison's suggestions on appeal that the probate court should have permitted additional discovery toward ascertaining whether the decedent operated under undue influence, we discern "no fair likelihood that further discovery will yield" additional support for the position that the June 2006 will resulted from undue influence. *Liparoto Constr, Inc v Gen Shale Brick, Inc*, 284 Mich App 25, 33-34; ___ NW2d ___ (2009). We further observe that contrary to Morrison's complaint that the decedent's December 1999 will "was never placed into evidence nor reviewed for the purpose of determining the expressed intentions of the testator," the court clerk filed a copy of the decedent's 1999 will in the record on July 16, 2007, more than a month before respondent filed his motion for summary disposition.

> To have testamentary capacity, an individual must be able to comprehend the nature and extent of his property, to recall the natural objects of his bounty, and to determine and understand the disposition of property which he desires to make. The burden is upon the person questioning the competency of the deceased to establish that incompetency existed at the time the will was drawn. [*In re Sprenger Estate*, 337 Mich 514, 521; 60 NW2d 436 (1953).]

Respondent described that immediately after Walter Doerr's funeral on June 5, 2006, "the whole . . . thing was a shocking thing for [the decedent]," that she "obviously . . . was . . grieving," although not hysterical, and that she seemed "emotionally drained." On June 7, 2006, the decedent suffered a seizure, fell, and was admitted to the hospital. The hospital discharged the decedent on June 9, 2006 with several prescriptions.

Celello recounted the following concerning his ascertainment of the decedent's testamentary capacity when they met on June 12, 2006.

> *Morrison's counsel*: Did you make a judgment, at that time, of her mental capacity?
>
> *Celello*: During our conversation, I did, yes.
>
> *Morrison's counsel*: And what was your judgment?
>
> *Celello*: I felt that she had testamentary capacity.
>
> *Morrison's counsel*: Were you aware that . . . her husband, Walter, had just . . . recently died?
>
> *Celello*: Yes.
>
> * * *
>
> *Morrison's counsel*: Did you know that Mrs. Doerr . . . had been hospitalized?
>
> *Celello*: Yes.
>
> * * *
>
> *Morrison's counsel*: Did you know that Linda Doerr was a recovering alcoholic?
>
> *Celello*: I—would have no bearing whatsoever on my decision whether she had testamentary capacity.

Specifically, Celello explained that the decedent "understood . . . the impact that that [joint tenancy] deed was going to have on her estate, which is essentially that the property was not part of her estate." The decedent and Celello also spoke about the necessity of a testamentary trust provision benefiting her granddaughter Courtney, before the decedent decided, "'Well, if . . .

she's getting the house, then I don't think I need to make any other provisions for her, so we don't even need the trust.'" In Celello's estimation, the decedent "absolutely" understood the trust-related concepts he illuminated for her. Celello summarized as follows:

> *Respondent's counsel*: At the time that you met with Ms. Doerr and that you drafted this will and had her sign it, do you believe that she had the mental capacity to know the extent of her assets and debts?
>
> *Celello*: Now, . . . before I allow a person to sign a will, I . . . go through the . . . analysis, the thought process that the courts require us to do as attorneys that draft these wills. I have to make a determination, number one, of whether Mrs. Doerr[] understood . . . the nature and extent of her estate. I believe . . . she did; the nature specifically—or explicitly if you will, because of the complicated concept of . . . the titling of the . . . property and how that was not going to be part of her estate.
>
> Then I have to make a determination that . . . they understand . . . that this is a . . . document that is going to identify it and then . . . get rid of it at the time of their death and that this is not just an autograph session; that we're not here . . . taking any casual actions.
>
> And, finally, they have to be able to . . . maintain that capacity—and that's just testamentary capacity—during the time the will's being drafted and . . . prior to . . . it's being signed.
>
> And those are the four requirements for testamentary capacity. . . . [D]oes it mean she wasn't frail? No, it doesn't mean she wasn't frail. Does it mean that she wouldn't have had, in my opinion, the mental capacity to carry on a complicated litigation involving the wrongful death? No, it doesn't mean that at all. She very well may not have had that capacity. Did she have the capacity to sign that will? Yeah, absolutely, she had that capacity to sign that will.

In Cocking's brief deposition, she characterized the decedent on June 13, 2006 as "seem[ingly] perfectly capable of understanding what her surroundings were and what she was being explained and agreed to," and mentioned that the decedent had spoken to her briefly about the recent death of her husband.

During Morrison's deposition, she described that "[r]ight after [her] father died," she conversed with the decedent, who would "start one thing and go into a totally different subject that made absolutely no sense whatsoever. She would go to do something, stop for a brief second, [and] forget what she was doing . . . ." Morrison visited Crystal Falls between June 2 or 3, 2006 and June 6, 2006. Morrison next saw the decedent on June 10, 2006, in Eau Claire, shortly after the decedent's release from the hospital, and thereafter "didn't see her for quite a while, but . . . talked to her as much as possible." Morrison denied intending to assert that the decedent "did not know who her children and relatives were," but Morrison recalled that, on some unspecified occasions, "[the decedent] would confuse kids. She would call me Courtney. She would call my daughter . . . Heather, . . . She called my son my husband's name." However, Morrison denied that she knew whether "[a]t the time [the decedent] signed the will, . .

. she kn[e]w she had two children[.]" Morrison confirmed that when she visited the decedent on June 10, 2006, the decedent knew who Morrison, respondent and their respective children were, and that "she owned the house in Crystal Falls." Morrison emphasized that the decedent previously had undergone a [2002] hospitalization after "she fell down the stairs and had a brain bleed."

Viewing the evidence in the light most favorable to Morrison, we conclude that she failed to present evidence reasonably tending to prove that at the time the decedent prepared and executed the June 2006 will, she had any difficulty comprehending the nature and extent of her property, recalling the natural objects of her bounty, or determining and understanding the property disposition she desired. *In re Sprenger Estate*, 337 Mich 521. The probate court thus properly granted respondent summary disposition of Morrison's testamentary capacity challenge pursuant to MCR 2.116(C)(10).

III. Morrison's Additional Appellate Assertions

A. Waste Allegation

Morrison contends that the probate court improperly referred to the district court or circuit court her claim that respondent "committed 'waste' of the real property jointly owned by Courtney Doerr and Linda Doerr prior to the death of Linda Doerr, while in [respondent's] capacity as fiduciary . . . ." The parties addressed Morrison's waste claim at the summary disposition hearing in September 2007, in relevant part as follows:

> *The Court*: . . . I believe that what we should do is prepare an order transferring jurisdiction to the civil division of the Circuit or District Court, whatever the damages are. . . .
>
> * * *
>
> . . . I don't want to cause any additional issues here, but I think the best way to do that would be to enter an order of remand, so to speak, to the District Court and then litigate the matter in the District Court.
>
> *Morrison's counsel*: On the damages.
>
> *The Court*: On the damages. . . . First of all, you need to determine whether you agree with [respondent's counsel's] representation that the damages that were done . . . were done to Courtney Doerr's house . . . prior to the appointment of a Personal Representative in this estate. If that is true—
>
> *Morrison's counsel*: Mm-hmm.
>
> *The Court*: —you should then amend your Complaint to—
>
> *Morrison's counsel*: Mm-hmm.
>
> * * *

> *The Court*: Yeh. Amend your Complaint to be Courtney Doerr versus Frederick Doerr, and then stipulate to remand the matter to District Court. And then we would have that postured properly.
>
> *Morrison's counsel*: *All right*. . . . [Emphasis added.]

Because the record reflects that Morrison's attorney affirmatively assented to the remand procedure proposed by the probate court, thus extinguishing any error in this regard, we will not further address this appellate contention. *Grant v AAA Michigan/Wisconsin, Inc (On Remand)*, 272 Mich App 142, 148; 724 NW2d 498 (2006).

B. Disallowance of Courtney Doerr's Real Property Tax Claim

Morrison lastly contends that with regard to the Crystal Falls residence, the probate court erred in upholding the estate's disallowance of "real property taxes in the amount of $768.44." The entirety of Morrison's appellate argument consists of a single paragraph buttressed by neither citation to the probate court record nor supporting authority, which we decline to further address. *Begin v Michigan Bell Tel Co*, ___ Mich App ___; ___ NW2d ___ (Docket Nos. 279891, 284114, issued June 25, 2009), slip op at 5 (observing that an appellant's failure to adequately address the merits of an assertion of error constitutes abandonment of the issue).

Affirmed.

/s/ William C. Whitbeck
/s/ Alton T. Davis
/s/ Elizabeth L. Gleicher