NO. COA10-1480
NORTH CAROLINA COURT OF APPEALS

Filed: 6 September 2011

IN THE MATTER OF THE ESTATE OF: Iredell County
No. 08 E 0694

MARY ROSE W. RANEY,
Deceased.

Appeal by Defendant from judgment entered 5 February 2010 and order entered 31 March 2010 by Judge Christopher M. Collier in Iredell County Superior Court. Heard in the Court of Appeals 27 April 2011.

Homesley & Wingo Law Group, PLLC, by Andrew J. Wingo and Clark D. Tew, for Defendant-appellant.

McSpadden Law, P.C., by Malcolm B. McSpadden, for Plaintiff-appellee.

HUNTER, JR., Robert N., Judge.

Betty Jane Raney Meadows ("Propounder") appeals from a judgment entered by Judge Christopher M. Collier in Iredell County Superior Court on 5 February 2010 in favor of her brother, John William Raney ("Caveator"). Propounder claims the trial court erred by (1) denying her motion for a directed

verdict; (2) denying her motion for a judgment notwithstanding the verdict; (3) denying her post-judgment motion for a new trial; (4) admitting the medical records of her deceased mother; (5) failing to issue a limiting instruction after Caveator's closing argument; and (6) admitting the medical records of her deceased father. For the reasons set forth below, we find no error.

I. Factual and Procedural History

Propounder's and Caveator's mother, Mary Rose W. Raney ("Testatrix"), died on 6 September 2007. The parties are Testatrix's only surviving children. Testatrix's husband of 68 years and father of the parties, John Henry Raney ("Mr. Raney"), predeceased Testatrix by approximately eleven years. Propounder lived in the same area as her parents and made frequent visits during their life. Caveator lived and worked in the same area as his parents until 1973, when he moved to Florida. While living in Florida, he visited his parents an average of two to three times per year. Caveator subsequently moved to Rock Hill, South Carolina and continued to visit his parents.

In 1987, Testatrix and Mr. Raney executed reciprocal wills (the "1987 Wills"). Both of these wills provided that all of their property was to be devised to the surviving spouse, and

that upon the death of the surviving spouse, their estate was to be equally divided between Propounder and Caveator. The Raney estate consisted primarily of an 80-90 acre parcel of land, and one tract of land along Highway 29 South used at various times as a restaurant or service station (the "Steakhouse Property").

On 16 August 1996, Propounder procured a durable power of attorney executed by Testatrix. Subsequently, a deed was prepared 19 August 1996 by Propounder's attorney, conveying all of the real estate owned by Testatrix and Mr. Raney, other than the Steakhouse property, to Propounder. This deed was prepared three days after Mr. Raney suffered a stroke, while Testatrix was in a nursing home. [1] Clifton Homesley ("Mr. Homesley") prepared the deed.[2] Testatrix and Mr. Raney purportedly signed the deed. The deed was notarized by Carol Neal[3] on 20 August

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[1] Caveator testified that on 19 August 1996, Mr. Raney was immobilized and disoriented while recovering from the stroke.

[2] At the time the deed was prepared, Mr. Homesley was Propounder's attorney. Propounder testified that she did not remember who had the deed prepared and that she did not remember if she was in contact with Mr. Homesley at the time the deed was prepared.

James Ashburn, the attorney who prepared the 1996 will in question, testified that Mr. Homesley sent him a letter that stated, "Dear Jim, the Meadows indicated to me that you may want Mrs. Raney to execute an additional deed. If I can assist you any way, please let me know."

[3] Propounder admitted to knowing Mr. Neal prior to his notarizing the deed, but she testified that she did not remember asking him to come to the Testatrix's nursing home to help take

1996 and by Michelle Fesperman[4] on 16 September 1996. Caveator testified that when he confronted Mr. Neal to determine if he notarized the deed, Mr. Neal was visibly nervous and said, "I don't want to go to jail." Caveator contests the legitimacy of the signatures affixed to the deed. A separate action is currently pending in Rowan County to set aside the deed. The action pending in Rowan County concerns the legitimacy of Propounder's durable power of attorney over Testatrix. Mr. Raney died on 13 October 1996.

Testatrix was prescribed Tegretol on 9 February 1996 to combat a painful nerve infection. Testatrix was on Tegretol at least until March 1999. A medicine like Tegretol can cause some sedation until an individual gets used to it. On or about 12 June 1996, Testatrix's treating physician, Dr. McNeill, diagnosed Testatrix with herpes zoster, also known as shingles. The shingles manifested in a severe rash above one of her eyes, and Testatrix was eventually hospitalized for the condition. She was discharged five days later and returned to Propounder's

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care of the deed. In her deposition, Propounder admitted that she asked Mr. Neal if he could come over and help take care of the matter of notarizing the deed.

[4] Propounder testified that she was not sure if Ms. Fesperman was a friend of her daughter, Crystal. In her deposition, Propounder stated that Ms. Fesperman was a friend of both herself and her daughter, Crystal.

home. Complications from Testatrix's shingles or Tegretol resulted in her not eating well and some sleepiness. Dr. McNeill testified that on 26 June 1996, Testatrix "was lethargic, anorexic, which means she wasn't eating well, and she was occasionally confused and was sleeping more than normal." On or about 5 July 1996, Testatrix was admitted to Presbyterian Hospital in Charlotte because her condition had not improved since her hospitalization in June 1996. She was treated at Presbyterian Hospital for seventeen days, and was then transferred to the Meridian or Genesis Nursing Home. During her time at the nursing home, Testatrix was diagnosed with and treated for encephalitis.

She left the nursing home in November 1996 and moved in with Propounder. Because she had never obtained a driver's license, Testatrix relied on Propounder for all of her transportation needs. In December 1996, Testatrix executed a document entitled "Will" (the "1996 Will"). The 1996 Will mirrored the prior contested deed, leaving only the Steakhouse property to Caveator, with the remainder of the estate to Propounder. Propounder was also named as executrix in the document. The 1996 Will was prepared and witnessed by Attorney John Ashburn.

Testatrix died on 6 September 2007. Caveator filed a motion requesting letters testamentary be issued to him. Propounder then filed the 1996 Will for probate in response to this request. Caveator responded by filing a caveat proceeding.

The trial commenced on 10 September 2010. The evidence presented two different accounts of Testatrix's final years. Caveator's theory of the case was that Testatrix lacked sufficient mental capacity to execute the 1996 Will and was under undue influence from Propounder at the time of its execution. His witnesses testified Testatrix made the following delusional statements: stating that her incapacitated husband had gone to the store to get liquor and that their cows had escaped; that birds were flying into her window and pecking at her eyes; that a tree, which was in fact nonexistent, was outside her window; that someone had sewn leaves in her stomach; that people were playing football in the hallways of the nursing home; that there was a produce stand being operated in the hallways or basement of the nursing home; and that Propounder had run off into the woods at some point. An incident, reported by Caveator's wife, Francis Raney, occurred in October of 1996—three months prior to the execution of the 1996 Will.

Caveator presented deposition testimony of Dr. Frederick

Fifer, a physician who did not directly treat Testatrix.[5] He testified that Tegretol was a drug that can have a disruptive effect on cognitive functions. He also stated that, due to Testatrix's medical conditions and use of Tegretol, she would not have the mental capacity to execute a will. However, the trial court did not admit the deposition testimony as expert testimony and instructed the jury to accord it no more weight than lay testimony.

Caveator testified concerning, among other things, an altercation involving himself, Propounder, and Propounder's husband, James Meadows. According to Caveator, on or about 9 September 1996, a heated verbal exchange escalated, and Mr. Meadows struck him repeatedly. Caveator testified that Mr. Meadows was "out of control" and that he "reckon[ed] [Propounder] thought [Mr. Meadows] was out of it." At that point, Caveator discharged a firearm into the air three times. Propounder informed Caveator's wife, of the incident. Francis Raney testified it was difficult for her to believe Propounder's account of the incident because her husband is "a gentle person"

[5] While Dr. Fifer did not treat Testatrix, he was familiar with Testatrix and Mr. Raney's medical histories. Dr. Fifer treated Mr. Raney and was the partner of Testatrix's treating neurologist, Dr. Donald. Dr. Fifer also reviewed Testatrix's medical records.

and "a teddy bear."

Mrs. Raney's 73-year-old nephew, William Michael Raney ("Mickey"), testified for the Caveator. It was Mickey's testimony that, when he had the occasion to visit Testatrix at Propounder's home following her release from the nursing home, Testatrix was not capable of carrying on an intelligent conversation. He also testified that Propounder "helped [Testatrix] along after most of the questions . . . [telling her] 'mama say yes and mama say no.'" Mickey's wife, Faye Allen Raney ("Faye"), corroborated Mickey's testimony, stating that Propounder "help[ed] [Testatrix] with the questions and the answer[s]" during the conversation Mickey and Faye had with Testatrix at Propounder's home. Mickey testified somebody was home on the six to eight other occasions that he and Faye tried to visit Testatrix at Propounder's home, but that no one would come to the door. Mickey also testified that he and Faye never felt welcome at Propounder's residence. Faye also testified that she and Mickey unsuccessfully tried to visit Testatrix at Propounder's home six to eight times. In addition, Faye testified that the Meadows were startled and did not appear happy to see Faye talking to Testatrix when she ran into her at the Lowe's Hardware store parking lot and that she did not think

the Meadows were encouraging of her visiting with Testatrix.

Propounder's evidence, on the other hand, suggested Testatrix was competent to execute the 1996 Will. Mr. Ashburn stated in a deposition that was read into evidence at trial that he had no concern for Propounder's "desires and concerns," and that Propounder "was just a facilitator to get [Testatrix] up to [his] office."[6] The trial court qualified Testatrix's treating physician, Dr. Robert McNeill, as an expert in internal medicine. Dr. McNeill testified that he did not recall any diagnosis of mental deficiency between 1992 and the end of 1999.

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[6] Mr. Ashburn testified that he had no actual independent recollection of the meeting when the document in question was executed. Because Mr. Ashburn had no recollection of the meetings between himself and Mrs. Raney regarding the execution of the will in question, he testified about his normal practices and procedures when executing a will. When a question arose regarding a testator's competency, Mr. Ashburn testified that his normal practice was to get the testator talking about their personal life in order to gauge their mental capacity. Mr. Ashburn then testified as to the normal practices and procedures he would employ to ensure that a testator "is doing what they want to do and that they don't have a son or daughter, an heir who is pressuring them into executing documents." He testified that his normal practice is to speak to the client alone to ascertain the potential of undue influence. However, on cross-examination, Mr. Ashburn testified that he could not "say for certain . . . that [he] followed [his] normal procedure . . . in the case of Mary Rose Raney." Mr. Ashburn could not say for certain whether he ever spoke to Mrs. Raney about the execution of the will in question outside the presence of Propounder. Mr. Ashburn also testified that he could not "say for certain . . . [if] part of this discussion or perhaps most all of it was had with Propounder and not with Mary Rose Raney."

Dr. McNeill testified that Testatrix exhibited "altered mental status" on 26 June 1996, which he attributed to a bout with shingles or complications from Tegretol. He explained that he believed she returned to her "normal baseline status" by her appointment with him on 10 November 1996. Dr. McNeill testified Testatrix was mentally competent between 25 October 1996 and the end of 1999 and was capable of understanding legal documents.

Propounder testified that Caveator did not generally visit Testatrix and that Propounder and Caveator had a hostile relationship. Her version of the altercation differed significantly from Caveator's version of the incident. She described a heated exchange that concluded with Caveator discharging a firearm at Propounder and her husband. In her account of the events that took place on or about 9 September 1996, Propounder did not mention her husband striking Caveator. Propounder also testified that, when they lived together, Testatrix was capable of cooking and taking care of herself. She also testified that Testatrix was "confused" when hospitalized during the summer of 1996, but the confusion ended when Testatrix recovered and moved in with Propounder. Propounder had no knowledge of delusional behavior exhibited by Testatrix that Caveator's witnesses described. Propounder

further testified that she did nothing to assist Testatrix in procuring the 1996 Will aside from driving her to Mr. Ashburn's office. She also stated that she did not discuss the matter with Testatrix.

Propounder's daughter, Tonya Meadows, testified Testatrix would assist her by watching her children. She also testified that she saw Testatrix nearly seven days a week between 1996 and 1999 and that she believed she was competent during that time. Two pastors familiar with Testatrix testified that she was competent and coherent.

At the close of evidence, Propounder moved for a directed verdict. That motion was denied. The jury concluded Testatrix lacked sufficient mental capacity to make the 1996 Will and that the execution of that document was procured by undue influence. As a result, the trial court set aside the 1996 Will. Propounder filed a motion for judgment notwithstanding the verdict and a motion for a new trial. Both post-judgment motions were denied. Propounder gave timely notice of appeal.

II. Jurisdiction

Propounder appeals from a final judgment. Therefore, we have jurisdiction over her appeal. *See* N.C. Gen. Stat. § 7A-27(b) (2009).

III. Analysis

A. Denial of Motions for Directed Verdict and Judgment Notwithstanding the Verdict

Propounder maintains that the trial court erred in denying her motions for directed verdict and judgment notwithstanding the verdict on the issues of mental capacity and undue influence. We disagree.

A trial court must deny motions for directed verdict and judgment notwithstanding the verdict "if there is more than a scintilla of evidence supporting each element of the non-movant's claim." *Denson v. Richmond County*, 159 N.C. App. 408, 412, 583 S.E.2d 318, 320 (2003) (quoting *Branch v. High Rock Realty, Inc.*, 151 N.C. App. 244, 250, 565 S.E.2d 248, 252 (2002)) (internal quotation mark omitted). In making this determination, the trial court is to consider the evidence in the light most favorable to the non-moving party. *Id.* at 411, 583 S.E.2d at 320. We review the trial court's ruling *de novo*. *Id.*

> In the context of a will caveat, "[u]ndue influence is more than mere persuasion, because a person may be influenced to do an act which is nevertheless his voluntary action." The influence necessary to nullify a testamentary instrument is the "'fraudulent influence over the mind and will of another to the extent that the professed action is not freely done but is

> in truth the act of the one who procures the result.'" Because direct evidence of undue influence is rarely available, our courts look to the "surrounding facts and circumstances, which standing alone would have little importance, but when taken together would permit the inference that, at the time the testat[rix] executed [her] last will and testament, [her] own wishes and free will had been overcome by another."

In re Sechrest, 140 N.C. App. 464, 468-69, 537 S.E.2d 511, 515 (2000) (citations omitted) (alteration in original). "When a fiduciary relationship exists between a propounder and [a testatrix], a presumption of undue influence arises and the propounder must rebut that presumption." *In re Estate of Ferguson*, 135 N.C. App. 102, 105, 518 S.E.2d 796, 799 (1999). In determining the existence of a fiduciary relationship, Caveator's counsel stated, "[T]he instruction for the fiduciary relationship says that by law a fiduciary relationship exists between attorneys, clients, guardians, or principles and their agents . . . [and] the power of attorney would . . . establish that." The trial court concluded a fiduciary relationship existed between Testatrix and Propounder and instructed the jury accordingly. Propounder does not contend this was error on appeal.

The doctrine of undue influence has four general elements: (1) the testatrix is subject to influence; (2) there is an

opportunity to influence the testatrix; (3) a disposition to exert influence; and (4) a result indicating undue influence. *Id.* at 469, 537 S.E.2d at 511. Whether undue influence exists is a question of fact determined by reference to relevant factors, including the following:

> "1. Old age and physical and mental weakness.
> 2. That the person signing the paper is in the home of the beneficiary and subject to his constant association and supervision.
> 3. That others have little or no opportunity to see [her].
> 4. That the will is different from and revokes a prior will.
> 5. That it is made in favor of one with whom there are no ties of blood.
> 6. That it disinherits the natural objects of [her] bounty.
> 7. That the beneficiary has procured its execution."

In re Will of Smith, 158 N.C. App. 722, 726-27, 582 S.E.2d 356, 359-60 (2003) (quoting *Sechrest*, 140 N.C. App. at 468-69, 537 S.E.2d at 515).

When viewing the evidence presented at trial in the light most favorable to Caveator, we cannot conclude the jury impermissibly found the 1996 Will was procured through undue influence. The 1996 Will purported to revoke the prior will under which Caveator stood to inherit substantially more than under the 1996 Will. There was evidence of numerous instances

of delusional behavior, with one incident occurring within three months of the document's execution. This suggests Testatrix was mentally and physically weak at the time she signed the 1996 Will.

Caveator and Propounder (and her husband) were not on good terms. A dispute came to blows, and Caveator discharged a firearm during the incident. This suggests Propounder had a disposition to exercise undue influence to Caveator's detriment. And while the evidence does not explicitly indicate Caveator was barred from visiting Testatrix at Propounder's residence, it does suggest such a visit would be contentious and potentially dangerous.[7]

Propounder testified she did not procure the will's execution; however, the 1996 Will is essentially a reaffirmation of the contested deed through which Testatrix and Mr. Raney purported to transfer most of their assets to Propounder. The circumstances under which the deed was executed, immediately after Mr. Raney suffered a stroke and while Testatrix was residing in the nursing home, suggest the deed may have been

[7] A restraining order was issued against Caveator in response to the "gun incident" and was dismissed in 1997. When asked why he did not see Testatrix until 1998 or 1999 when the restraining order was dismissed in 1997, it was Caveator's contention the Iredell County sheriffs would arrive should he go to Propounder's residence.

signed under coercive circumstances. When viewed in the light most favorable to Caveator, this evidence indicates Testatrix was attempting to ensure the transfer in the now-contested deed occurred without realizing she was initially coerced into executing that deed.

In sum, we conclude Propounder failed to meet her burden of establishing there was no more than a mere scintilla of evidence supporting Caveator's undue influence claim. The trial court correctly denied Propounder's motions for directed verdict and judgment notwithstanding the verdict. Consequently, we do not reach Propounder's testamentary capacity argument.

B. Admission of Testatrix's Medical Records

Propounder next alleges the trial court erred by admitting Testatrix's medical records. She argues, without any specificity as to individual statements, that these medical records contained "a variety of hearsay statements made by either the Testatrix or other nurses."

The North Carolina Rules of Evidence prohibit the introduction of hearsay absent the presence of an applicable exception. N.C.R. Evid. 802. Hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth

of the matter asserted." N.C.R. Evid. 801(c). "We review de novo the trial court's determination of whether an out-of-court statement is admissible pursuant to [an exception]." *State v. Wilson,* 197 N.C. App. 154, 159, 676 S.E.2d 512, 515 (2009).

Propounder does not point this Court to any specific objectionable statements contained within Testatrix's medical records. Propounder merely directs the Court to the location of Testatrix's medical records in the record on appeal. It is well established that "[i]t is not the duty of this Court to supplement an appellant's brief with legal authority or arguments not contained therein." *Goodson v. P.H. Glatfelter Co.,* 171 N.C. App. 596, 606, 615 S.E.2d 350, 358 (2005). Furthermore, even after careful review of the medical records at issue, we cannot discern what portions of those records Propounder believes contain inadmissible hearsay.

The medical records themselves were properly admitted by the trial court under Rule 803(6), which creates an exception from the hearsay rules for records of regularly conducted activity. N.C.R. Evid. 803(6). Propounder alleges the medical records contain multiple instances of hearsay within hearsay, each of which would require its own independent exception. Propounder mentions two possible declarants of these hearsay statements——

Testatrix and the nurses that attended to her.

To the extent the medical records contain statements from Testatrix, those statements are not hearsay. At trial, Caveator was attempting to demonstrate a lack of capacity and susceptibility to undue influence on the part of Testatrix. The statements of Testatrix were not being offered for their truth. Rather, they were evidence demonstrating Testatrix's confusion, disorientation, and otherwise deteriorating mental state. Thus, they would not have been offered "to prove the truth of the matter asserted" and would therefore not be hearsay. Furthermore, our review indicates the majority of Testatrix's statements contained within her medical records, if considered hearsay, would likely have been admissible under several hearsay exceptions. *See, e.g.*, N.C.R. Evid. 803(4) (permitting admission of statements made for purposes of medical diagnosis or treatment); N.C.R. Evid 803(3) (permitting admission of statements describing a then existing mental, emotional, or physical condition); N.C.R. Evid. 803(1) (permitting admission of statements describing an event or condition while perceiving it or immediately after).

Our review of the medical records contained in the record on appeal does not reveal any statements made by medical

professionals constituting hearsay that would not have been similarly admissible under an exception. Therefore, under *de novo* review, we find no error in the trial court's decision to admit Testatrix's medical records.

C. Reference to the Value of Testatrix's Real Estate During Closing Argument

Propounder argues the trial court erred in failing to issue a limiting instruction concerning statements made by Caveator's counsel during his closing argument regarding the value of Testatrix's real estate. We disagree.

The trial court adjourned for a break shortly after Caveator's counsel began his closing argument. The closing arguments are not contained in the record. But a conference that occurred outside the presence of the jury references the statements generally and indicates Caveator's lawyer made statements regarding the value of Testatrix's real estate that were not in evidence. Propounder did not object during the argument, waiting to object outside the presence of the jury. The trial court sustained the objection and directed Caveator's lawyer not to make any further reference to the matter. Propounder's lawyer asked the trial court to issue "some sort of limiting instruction," but also stated that "[he didn't] want to draw attention to it." He did not tender a proposed instruction

to the court. Given the ambiguity of this request and counsel's failure to object in a timely manner, we conclude the trial court did not err in refraining from issuing a limiting instruction.

D. Admission of Mr. Raney's Medical Records

Propounder contends that the trial court erred by admitting a portion of Testatrix's husband's medical records into evidence. Propounder argues this evidence was irrelevant and prejudicial because "[Mr. Raney's] mental capacity or health status in general was not at issue in the trial." Propounder claims she is entitled to a new trial because this evidence was irrelevant and caused substantial confusion of the issues by the jury. We disagree.

"'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." N.C.R. Evid. 401. Irrelevant evidence is inadmissible. N.C.R. Evid. 402. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury" under Rule 403. N.C.R. Evid. 403. Relevancy rulings are

reviewed *de novo*, but are accorded deference on appeal." *State v. Capers*, __ N.C. App. __, __, 704 S.E.2d 39, 45 (2010). Rule 403 determinations are reviewed for abuse of discretion. *Williams v. McCoy*, 145 N.C. App. 111, 117, 550 S.E.2d 796, 801 (2001). "An abuse of discretion occurs when the court's decision 'is manifestly unsupported by reason or is so arbitrary that it could not have been the result of a reasoned decision.'" *Id.* (quoting *State v. McDonald*, 130 N.C. App. 263, 267, 502 S.E.2d 409, 413 (1998)).

Caveator argues Mr. Raney's mental capacity, in conjunction with the evidence presented of the contested deed, was relevant because it gives weight to Caveator's theory of the case. We agree. Mr. Raney's health was relevant to whether Propounder had the disposition to exert undue influence upon Testatrix because it indicated both Mr. Raney and Testatrix were physically and mentally vulnerable when the contested deed was executed. *See supra* Section III. A. Our review indicates the trial court's ruling—that the admission of the evidence of Mr. Raney's health did not run afoul of the Rule 403 balancing test—was not manifestly unsupported by reason or so arbitrary that it could not have been the result of a reasoned decision. Therefore, Propounder's argument fails.

E. Denial of Propounder's Motion for a New Trial

Propounder argues the trial court erred in failing to grant her Rule 59 motion for a new trial for two reasons: (1) the jury's verdict runs contrary to the greater weight of the evidence; and (2) opposing counsel's conduct during closing argument was grossly improper. We disagree.

Rule 59(a)(7) permits a trial court to grant a new trial when the evidence is insufficient to justify the verdict. N.C.R. Civ. P. 59(a)(7). Our Supreme Court has interpreted this to mean "the verdict 'was against the greater weight of the evidence.'" *In re Will of Buck*, 350 N.C. 621, 624, 516 S.E.2d 858, 860 (1999) (quoting *Nationwide Mut. Ins. Co. v. Chantos*, 298 N.C. 246, 252, 258 S.E.2d 334, 338 (1979)). Rule 59(a)(2) permits a trial court to award a new trial based on the misconduct of the prevailing party. N.C.R. Civ. P. 59(a)(2). The trial court's decision pertaining to a motion for a new trial is discretionary and will not be disturbed by an appellate court "unless it is reasonably convinced by the cold record that the trial judge's ruling probably amounted to a substantial miscarriage of justice." *In re Will of Buck*, 350 N.C. at 625, 516 S.E.2d at 861 (quoting *Anderson v. Hollifield*, 345 N.C. 480, 483, 480 S.E.2d 661, 663 (1997)) (internal quotation mark

omitted).

With respect to Propounder's Rule 59(a)(7) motion, a credible argument can be made that Caveator failed to establish Testatrix lacked testamentary capacity and that Propounder met her burden of establishing the 1996 Will was not procured through undue influence. Nevertheless, there was significant evidence of undue influence. *See supra* Section III.A. While this may have been a close case, and a jury could readily find in favor of Propounder based on the evidence she presented at trial, the jury verdict was not against the greater weight of the evidence.

Propounder argues the trial court should have granted her Rule 59(a)(2) motion because the court failed to issue the limiting instruction discussed in Section III.C above and because Caveator's lawyer published evidence to the jury, for the first time, during his closing argument. Evidence comprised of Mr. Raney's and Testatrix's medical records was admitted into evidence, but not published to the jury, before the close of evidence. During his closing argument, Caveator's lawyer presented the records sequentially to the jury, giving the jurors time to examine the documents. The trial court overruled Propounder's objection to the manner of presentation, noting

that the court would allow the presentation to continue even though it was an improper method of publishing the evidence to the jury.

As we have previously explained,

> an attorney has wide latitude in arguing his case to the jury. Further, in North Carolina it is well-established that comment of counsel is ordinarily left to the sound discretion of the trial judge, and that the reviewing court will reverse his decision (that counsel's statements were not grounds for a new trial) only when it is clear that counsel's impropriety was gross and well calculated to prejudice the jury.

Corwin v. Dickey, 91 N.C. App. 725, 728, 373 S.E.2d 149, 151 (1988) (citations omitted). Our review does not disclose gross impropriety calculated to prejudice the jury. Caveator's publication of evidence during his closing argument, while poor trial practice, was not an act of skullduggery. And as we explain above, the trial court was justified, under the circumstances, in refraining from issuing a limiting instruction related to the mention of real property valuations not in evidence. *See supra* Section III.C.

We conclude the denial of Propounder's motion for a new trial pursuant to Rule 59(a)(2) and (7) did not amount to a substantial miscarriage of justice. Therefore, Propounder's argument fails.

IV. Conclusion

For the foregoing reasons, we find no error.

Judges STEELMAN and STEPHENS concur.

Report per Rule 30(e).