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December 31, 2007

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Re: In the Matter of: The Estate of Hazel K. Porter
Porter, et al. v. Uhde
C.A. No. 2091-VCN
Date Submitted: September 19, 2007

Dear Counsel:

Three siblings complain about their mother's decision to leave almost all of her estate to another sibling, a decision modifying a previous estate plan which had provided for an equal distribution among the siblings. The three siblings ask the Court to set aside their mother's will because, they contend, it was the product of undue influence exercised by the fourth sibling and a close friend of the mother

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acting at the fourth sibling's behest. This post-trial letter opinion addresses that claim.¹

* * *

On September 9, 2004, Hazel K. Porter (“Hazel”) executed her Last Will and Testament (the “Will”), the instrument at the center of this dispute.² The Will designates one of Hazel's daughters, Defendant Anna P. Uhde (“Anna”), as executrix of the estate. As supplemented by a Memorandum as to Disposition of Tangible Personal Property (the “Personalty Memorandum”),³ the Will establishes the following estate plan:

1. Plaintiff John Porter (“John”)—John, the first of the three challenging siblings, would receive a specific bequest of \$800.
2. Plaintiff Kathleen Alice Pate (“Kathy”)—Kathy, another of the challenging siblings, would also receive a specific bequest of \$800.

¹ The Plaintiffs abandoned at trial a claim challenging the handling of the assets of their mother's estate. Earlier, they had abandoned their claim that she lacked testamentary capacity.

² Pls.' Ex. 3 (the Will). For convenience and clarity, members of Hazel's family are referred to by their first names. See *Sutherland v. Dardanelle Timber Co.*, 2006 WL 1451531, at *1 (Del. Ch. May 16, 2006).

³ Hazel executed the Personalty Memorandum on December 27, 2005, the day before she died. Pls.' Ex. 6 (the Personalty Memorandum); see *infra* text accompanying notes 32-33. See also 12 Del. C. § 212 (authorizing the use of a separate written statement to dispose of tangible personal property).

3. Plaintiff Shirley Zunino-Junca (“Shirley”)—Shirley, the last of the three challenging siblings, would receive a specific bequest of \$800 as well.

4. Sandra Jarrell (“Jarrell”)—Jarrell, who would receive Hazel’s four-digit Delaware license plate, is the daughter of Hazel’s close friend, Anne Murphy (“Murphy”), who is now accused of exercising undue influence over her.

5. Anna—Anna would receive all tangible personal property and the residue of Hazel’s estate, which included personal property worth approximately \$40,000.00 and real property (Hazel’s condominium unit) worth approximately \$188,000.

Thus, under the Will, Anna would receive virtually the entire estate.

The estate plan established by the Will differs dramatically from that of Hazel’s prior will, executed on July 15, 1996 (the “1996 Will”).⁴ Under the 1996 Will, Hazel’s estate would have been distributed equally among her four children, *per stirpes*, with Shirley and Anna serving as co-executrices.

* * *

⁴ See Pls.’ Ex. 2 (the 1996 Will).

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Hazel passed away on December 28, 2005. Her husband, Garland Porter (“Garland”), had died in 1999 after several years in an assisted living facility.⁵ From 1996 until her death, Hazel lived on her own in a unit at Linden Knoll Condominiums, near Wilmington, Delaware. Hazel handled her own financial matters, walked almost everyday, read with the aid of glasses, and drove occasionally (although she preferred not to drive).⁶

Of Hazel’s children, Anna and Kathy enjoyed good relationships with their mother.⁷ Kathy was a part of her mother’s life up until her death, and the two had what Kathy characterized as a normal relationship. Kathy lived approximately 45 minutes away from Hazel and usually visited once each month, partly in order to give her children an opportunity to see their grandmother. Kathy last saw her mother in November 2005, and she last spoke to her by telephone around December 15, 2005.

⁵ By the time of Garland’s death, they were no longer married: Hazel and Garland had divorced so that he would be eligible for certain public benefits. Functionally, however, the two continued to act as a married couple.

⁶ According to Murphy, she and Hazel would exchange books and discuss them. Regarding Hazel’s financial affairs, several witnesses, however, did testify about an incident in which Hazel was defrauded of \$30,000. *See infra* note 46.

⁷ Anna’s relationship with Hazel will be explored later.

Earlier that year, Hazel told Kathy that she was having some health problems.⁸ Hazel had a growth on her lung, which was found to be cancerous after it was removed in May 2005. Following the surgery, Kathy visited and aided Hazel's convalescence; Hazel made a quick recovery, and she was walking with Anna during a trip to Nashville approximately five weeks later.

According to Anna, Kathy was effectively excluded from the Will because Hazel believed that she was not particularly adept at handling money. Apparently, Hazel had instructed Anna to take care of Kathy after her death. Anna testified that before this litigation was initiated, she had planned to give Kathy money in accordance with Hazel's wishes.

Hazel's relationships with her other children, John and Shirley, were more attenuated. Hazel last saw John in the spring of 2004, some four months before executing the Will and some twenty-one months before her death. Although John's relationship with his mother was good at the time of Garland's death, by 2001 and 2002, it had become strained, and by 2004, effectively estranged.

⁸ Kathy was not specifically informed that her mother had cancer. Apparently, Hazel did not want her to know.

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Several incidents that transpired between 2000 and 2004 help to explain this deterioration.⁹

In 2000, Hazel and John executed a contract for the transfer of Hazel's license plate, number 7046, to John for \$1,000.¹⁰ John apparently never paid Hazel.¹¹

On a visit to his mother's residence in 2000 or 2001, John responded to his mother's request for a hug by saying, "I only put my arms around my wife." At trial, John testified that he made the statement in jest and that his mother took it as such. Murphy testified to the contrary, stating that John's remark made Hazel cry. Joking or not, John did not hug his mother that day.

In 2002, John and his wife stayed at Hazel's condominium unit while Hazel was vacationing in Canada. Murphy testified that sometime later, Hazel informed her that the couple had used her linens without laundering them (while at the same

⁹ Many of the dates for the events described below were somewhat unclear at trial; however, the Court has attempted to glean a rough chronology from the testimony. Fortunately, the precise timing of the events discussed is not essential to a resolution of the current controversy.

¹⁰ See Pls.' Ex. 19 (the contract). Murphy witnessed the document, and all three backdated their signatures to June 15, 1995. In Delaware, low-digit, black and white license plates are valuable, and a market for them has developed. See generally LowDigitTags.com, <http://carsandtags.com> (last visited Nov. 27, 2007).

¹¹ Presumably, Hazel retained the plate, which she gave to Jarrell by way of the Personalty Memorandum.

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time doing their own laundry) and that they had removed an excessive amount of paper products and liquor during the visit. Additionally, Murphy testified that Hazel complained that her metal lock-box had been pried open. John denied that these events occurred.

In 2004, John sent an email to Anna that Anna forwarded to Murphy, who gave a printed copy to Hazel. The email asked Anna whether she would come to Delaware to care for Hazel and criticized Hazel for not seeing her great-grandchildren enough. The email upset Hazel.

Not long afterwards, Hazel asked Murphy to be present when her son visited. Hazel had complained that John often spoke condescendingly to her and that she preferred him not to visit. The last time John saw his mother in person was in April 2004 when he and his wife, Rosaline, called at her condominium unit. According to John, Hazel's demeanor was cold, and she did not offer Rosaline a place to sit.

Shortly thereafter, Rosaline happened upon Hazel and Murphy in a Wal-Mart store. According to John, Rosaline repeatedly attempted to initiate a conversation with the two women, but they initially ignored her and only responded when John's wife stood in front of them. At that point, the three women

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conversed briefly before Murphy and a saleswoman walked away. Left alone with John's wife, Hazel abruptly ended the conversation. Rosaline returned to her husband, who was in another part of the store, and told him about the incident, visibly upset and crying. Murphy recalled the encounter differently, testifying that the three women engaged in normal, civil conversation and that when John's wife left, she was neither crying nor upset.

John last spoke to his mother later during the day of the Wal-Mart incident. John testified that he complained to his mother by telephone about how she had treated Rosaline, but that he had ended the conversation on a good note, inviting Hazel to call him anytime. Hazel never again contacted John or informed him of her lung surgery or diagnosis. In fact, Hazel instructed Anna not to tell John or Shirley about the diagnosis and treatment.

Finally, according to Murphy, Hazel was upset with John over an event stemming from Garland's death. Garland had bequeathed the four children approximately \$750 each, which Hazel had asked them to give to her because she had spent a good deal of her own money taking care of Garland. According to

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Murphy, the children did as she requested, but Hazel believed that John had done so begrudgingly.¹²

As to Shirley, despite living less than 25 minutes away from Hazel during the final five years of her life, Shirley last saw her mother in September 2001, more than four years before Hazel's death. The two last spoke by telephone in 2002.

According to Shirley, she and her mother had a good relationship until 2001, when their relationship became strained. Shirley testified that her mother was no longer open, and that she no longer felt that she could call her mother. Although after 2002 Shirley did not communicate with Hazel, she did ask Anna and Murphy to intervene on her behalf, as well as her brother John.¹³ Eventually, however, Shirley came to see Murphy and Anna as encouraging the rift.

¹² Murphy explained that the \$800 gifts Hazel left Kathy, John, and Shirley represented the \$750 gifts from their father plus \$50 interest. Hazel also sensed that Shirley, like John, had been reluctant to relinquish her bequest.

¹³ In fact, Shirley received a note from her mother in 2003 inviting her to lunch. Shirley accepted through her brother John, but Hazel later cancelled the lunch. John conjectured that someone convinced Hazel to cancel.

Shirley suggests that her relationship with Hazel suffered because Hazel faulted her for how she handled Garland's death.¹⁴ Anna and Murphy point to a different explanation: a dispute over a beach trailer that Hazel and Shirley had bought together in 1990. The trailer was titled in Shirley's name in 1994, and Shirley sold it in 1999.¹⁵ Anna and Murphy stressed in their testimony that Shirley did not inform her mother of the sale or give her any of the proceeds, and Anna indicated that this was one of the reasons why Hazel had changed the 1996 Will through a codicil that removed Shirley as one of the executrices.¹⁶ According to Murphy, Hazel equated the trailer proceeds with a fair inheritance for Shirley. Gary A. Bryde, Esquire, the attorney who prepared the Will, likewise testified that Hazel considered herself entitled to some of the proceeds from the sale. Shirley, on the other hand, testified that there was no need to notify her mother or split the proceeds because the two had settled in 1994 when the trailer was titled in her

¹⁴ Shirley did not testify to any specific incident following her father's death. For a possible explanation, see *supra* note 12.

¹⁵ Murphy indicated that the trailer was titled in Shirley's name alone because Hazel believed that she could not own two homes and preserve Garland's entitlement to certain public benefits. See *supra* note 5.

¹⁶ In August 2000, Hazel had executed a codicil to her 1996 Will. Compare 1996 Will Art. 10 with, Pls.' Ex. 4 (the codicil). Murphy drove Hazel to Jarrell's house, where Jarrell notarized the codicil.

name. Whatever the reason for Hazel and Shirley's disaffection, the record is clear that the two did not enjoy a good relationship at the time of Hazel's death.

When Hazel died, John, Kathy, and Shirley were not notified.¹⁷ Charles Mealey, the president of Mealey Funeral Homes, where Hazel's funeral service was held, first found out that Hazel had children other than Anna when John called his office to inquire if a funeral service had been held for his mother. Anna had made the arrangements for Hazel's funeral and selected Mealey Funeral Homes at Murphy's suggestion.¹⁸ Murphy accompanied Anna to the funeral home. Anna told Mealey that there would not be an obituary, that Hazel was from out of town and did not have any contacts, and that Murphy and Hazel's Red Hat society acquaintances were her only friends.¹⁹ When Mealey learned from John that Hazel had other children, he called Anna, who informed him that she was abiding by her mother's wishes. According to Anna, Hazel had expressly informed her that she

¹⁷ The children of the Plaintiffs also were not informed of her death and funeral service.

¹⁸ Anna did not use the funeral home that had held her father's funeral service because she did not remember its name.

¹⁹ Hazel did not want an obituary because Garland had not had one. Garland did not have an obituary because Hazel could not have been listed as his wife, and Hazel did not want one for the same reason: her obituary could not list Garland as her late husband. *See supra* note 5.

did not want John, Kathy, or Shirley notified in the event of her death.²⁰ Anna testified that, although a difficult decision, she felt obligated to honor her mother's wishes.

John learned of his mother's death and burial through a friend on the day of her funeral service. John called Shirley, informing her of the situation.²¹ Shirley in turn called Kathy and asked her if she had heard the news and inquired whether or not it was true. Kathy told Shirley that she was not sure, but that she would attempt to find out. Upon investigation, John and Kathy discovered that their mother had died and that her funeral service had been held.²² Kathy drove to Hazel's condominium unit, where she found Anna and her nephew (Anna's son). Anna told her that it was Hazel's wish that she not be notified.²³ Although Kathy acknowledged that Hazel had told her that there would be significant changes in her new will, Hazel repeatedly assured her that she would be notified of her death.

²⁰ Murphy testified similarly regarding Hazel's wishes. Specifically, Murphy testified that Hazel had told her that, if her children did not want to see her while she was alive, then they should not want to see her when she was dead. Murphy indicated Hazel felt this way about John and Shirley; she also testified that Hazel did not want Kathy to be informed because she thought that Kathy would notify them.

²¹ Shirley and her children were surprised and upset by the situation.

²² The shock of learning of his mother's death and burial has caused John to develop an ulcer and have problems at work.

²³ Kathy and her children were also extremely upset to learn that Hazel had passed away and that the funeral service had already been held.

Kathy, John, and Shirley assert that the Will, executed by their mother in September 2004, was the product of undue influence. Specifically, they complain that Anna exercised undue influence over Hazel with Murphy's aid. Because the relationships among Anna, Murphy, and Hazel are central to this matter's resolution, further exploration of the facts surrounding their friendship is warranted.

Anna and Murphy were very close to Hazel and had daily contact with her.²⁴ Hazel was introduced to Murphy sometime in 1991, and the two became good friends. Both lived in the same condominium complex and typically spent large portions of the day together.²⁵ By Murphy's account, she was the person closest to Hazel, apart from Anna. Murphy estimates that she spent roughly four hours per day with Hazel, the pair usually eating dinner and walking together.²⁶ Murphy was even present at Hazel's death. Although not having as extensive daily contact with her mother as Murphy did, Anna spoke to Hazel usually once each day by

²⁴ Although the two were quite close, Murphy was not Hazel's only friend. Anna testified that Hazel had several more friends and that she was active in two chapters of the Red Hat Society (a women's social organization).

²⁵ Murphy's husband had also died some years prior.

²⁶ Murphy and Hazel walked together almost every day in the year leading up to Hazel's death, weather permitting. Naturally, the two did not go for walks during Hazel's convalescence from surgery in 2005, but they did resume walking about three weeks later.

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telephone. According to Anna, Murphy and Hazel were very good friends, as were (and are) she and Murphy.

In addition to their daily interaction, Hazel, Anna, and Murphy would also spend holidays together. Hazel and Anna commonly celebrated holidays with Murphy's family, including her daughter Jarrell. According to Murphy, one reason why Hazel spent special occasions with her family was because Hazel's other children did not invite her to spend the holidays with them.²⁷

The three women also frequently vacationed together. Anna would travel from her home in Athens, Georgia, to visit her mother three or four times each year when her schedule as a school teacher permitted, usually spending three or four days in Delaware. Hazel also visited Georgia on several occasions when it was the starting point for a trip. In the five years proceeding Hazel's death, she, Anna, and Murphy usually took two trips per year together. They would usually take a "big" vacation and then a "small" one. Anna and Murphy touched upon trips to Alaska, Canada, Las Vegas, Nashville, Niagara Falls, Paris, and Williamsburg.²⁸ Either

²⁷ Hazel's granddaughter, Jennifer Marie Zunino Smith (Shirley's daughter), did invite Hazel to her wedding, but Hazel declined to attend, explaining that she no longer drove much.

²⁸ It is somewhat unclear from the record which trips Anna took, but, from Anna's testimony, it is clear that she went on many of the trips, including those to Alaska, Disney World, Las Vegas, Nashville and Niagara Falls. Anna did not go to Canada with Hazel and Murphy.

Anna or Murphy would buy the airline tickets, if necessary, and the other two would reimburse the purchaser. When Anna was traveling with Murphy and Hazel, she would pay for the group's expenses, and Murphy and Hazel would reimburse her later. In short, the bills for the trips would usually be equally divided. On later trips, however, Anna paid for more than her own share. For instance, Anna paid for both Murphy and Hazel's trip to Nashville in 2005; Anna also paid a greater portion of the expenses for the trips to Disney World and Las Vegas.²⁹ Before the Nashville trip, which was the first trip after Hazel executed the Will, the three had always split expenses evenly.

Anna and Murphy also played a role in Hazel's estate planning. In 2004, Hazel discussed her intent to make a new will with Murphy. Murphy referred Hazel to Bryde, the attorney who also had drafted Murphy's will.³⁰ Hazel then contacted Bryde and expressed an interest in having a new will drafted. Bryde mailed Hazel an Estate Planning Information Questionnaire form (the "Information Form").³¹ Typically, Bryde would mail clients the Information Form, schedule a

²⁹ The Nashville trip occurred approximately five or six weeks after Hazel underwent lung surgery.

³⁰ Bryde is an experienced general practitioner who, by his estimate, has drafted hundreds of wills over the course of his career.

³¹ See Pls.' Ex. 12 (the Information Form).

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consultation, and then draft the documents before scheduling another appointment for the client to execute them. Because Hazel did not like to write, she had Murphy fill out the Information Form according to her instructions on May 11, 2004. After filling out the Information Form, Murphy gave it back to Hazel. Bryde received the Information Form from Hazel around May 24, 2004. Murphy testified that before she filled it out, she did not know how Hazel planned to dispose of her estate in the new will.

Later, Murphy accompanied Hazel to Bryde's office for the initial consultation. Initially, Murphy was not present in the room for Bryde's interview of Hazel; however, after Bryde emerged from his office twice to request Murphy's presence on Hazel's behalf, Murphy entered. When Bryde learned that Hazel planned to leave the bulk of her estate to only one of her children, Hazel explained that it was because she was unhappy with her other three children. Bryde suggested that she add a clause to the Will indicating that she was intentionally omitting to make provision for John, Kathy, and Shirley. Hazel responded that she thought leaving each of them \$800 would be more appropriate. She also told Bryde that she was in control of herself and that she was still capable of taking care of herself.

Bryde mailed Hazel a draft will around September 2, 2004. Hazel then made an appointment with Bryde's office to execute the document. On September 9, 2004, Murphy drove Hazel to Bryde's office. During the short meeting that ensued, Hazel signed the Will in Murphy's presence, as well as in the presence of Bryde and two witnesses. Bryde testified that, although Hazel discussed the Will with Murphy, he had no doubt that Hazel was competent and that the Will was not the product of undue influence. Murphy similarly testified that Hazel signed the Will of her own volition. Anna was not present when the Will was executed; she testified that she had no conversations with Murphy regarding her mother's assets and only learned of the Will when she received it in the mail.

On December 27, 2005, the day before Hazel died, she went to Bryde's office again. Hazel told Murphy that she had an appointment with Bryde, and Murphy and Anna took her to his office. According to Murphy, neither she nor Anna knew what Hazel planned to discuss with Bryde. At Bryde's office, Hazel executed the Personalty Form in their presence.³² In the Personalty Form, Hazel

³² Bryde remembered that Hazel also had executed a new living will and power of attorney on December 28, 2005. Anna testified that Hazel did not execute a new living will and power of attorney that day. No new living will or power of attorney has been found.

gave her four-digit Delaware license plate to Jarrell. At present, Murphy has the license plate, which Anna, as executrix, transferred directly to her.³³

Beyond the dispositive instruments, Hazel had instructed Anna to take care of Murphy. According to Anna, Hazel did not include Murphy in the Will because John and Shirley disliked her. Anna testified that she had not made any suggestions to Hazel regarding how to dispose of her assets and, to her knowledge, Murphy had not either. Murphy testified similarly that neither she nor anyone else, to her knowledge, had made any suggestions to Hazel regarding the Will.

John, Kathy, and Shirley, however, all testified that, as Hazel's friendship with Murphy progressed, Hazel began to imitate Murphy and that Murphy was almost always present when they visited their mother. John and Shirley additionally blamed their deteriorated relationships with Hazel on her friendship with Murphy.

John complained that Hazel mimicked Murphy: she dressed like Murphy, wore her hair like Murphy, attempted to loose weight to be the same size as Murphy, and decorated her condominium similarly to Murphy's unit. John thought

³³ Jarrell suggested and consented to this arrangement because her family did not have a car that needed such a license plate.

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that his mother was easily influenced and pointed to another instance in which his mother had begun to imitate a former friend. He testified that his mother's disposition was growing colder, resembling Murphy's demeanor. According to John, before her friendship with Murphy, Hazel would always leave a detailed itinerary in advance of trips so that her family could contact her if the need arose; later, he said, Hazel would not even inform the rest of her family when she went on trips with Anna and Murphy. Additionally, John complained that he was reluctant to talk about private matters with his mother because Murphy was always present. Basically, John believed his mother could not do anything without Murphy. John also related a disagreement with Hazel and Murphy over the events of September 11, 2001, and the subsequent war in Iraq. After the confrontation, John felt excluded from his mother's life. Since Shirley and his mother were already on bad terms, John claims that with his estrangement, Anna and Murphy had eliminated all opposition to changing his mother's estate plan. Finally, John noted that Anna and Murphy had concealed the fact that Hazel had cancer.

Like John, Kathy also observed that Murphy was almost always present when she visited Hazel, although often at the request of her children (Hazel's grandchildren), who referred to Murphy as "Aunt Anne." Kathy also stated that,

although Murphy did inform her that Hazel was successfully recovering after her lung surgery in May 2005, she never would reveal the specifics of her condition. In any event, Kathy testified that she had no knowledge of any facts demonstrating that Anna had unduly influenced her mother in connection with the Will.

Shirley initially thought that her mother's friendship with Murphy was a good thing,³⁴ but, after a while, she concluded that Murphy was overstepping her bounds and that with their growing friendship, she was losing her mother. Specifically, Shirley concluded that Murphy was dominating Hazel; that it was impossible to invite Hazel to an event without her showing up accompanied by Murphy; and that Hazel was "turning into Murphy." In addition, Shirley related that Murphy would write checks from Hazel's checkbook in order to pay Hazel's bills.³⁵ In general, Shirley thought her mother was needy, dependent, and susceptible to the influence of others. Shirley also blamed her poor relationship with Hazel on her friendship with Murphy.³⁶

³⁴ Before Hazel's friendship with Murphy, Shirley had told Hazel that she needed to find a friend her own age.

³⁵ Murphy testified that she only wrote (but did not sign) checks on Hazel's behalf during her recuperation from a rotator cuff surgery.

³⁶ In her testimony, Shirley spoke of an incident at a bank (after she and her mother had stopped talking) where she encountered Murphy and intentionally failed to inquire as to how her mother

* * *

Because the Plaintiffs claim that the Will was the product of undue influence exerted by Anna with Murphy's aid, they ask that the Will be declared invalid.

* * *

The fundamental principle guiding courts called upon to determine the validity of a will is that a will duly-executed by a competent testatrix is presumed to be valid.³⁷ Accordingly, a challenging party bears the burden of demonstrating that the will was the product of undue influence.³⁸ Undue influence occurs when a testatrix is exposed to an excessive or inordinate influence under the circumstances.³⁹ To be regarded as undue, the influence must subjugate the testatrix's mind to the will of another, overcoming her free volition and forcing her to make a will reflecting a dispositive scheme that is not of her own mind.⁴⁰ Undue influence can be exerted in any conceivable manner, including by flattery, fear, and solicitation.⁴¹ To prove

was doing. According to Shirley, Murphy emphasized this to Hazel, who later complained to another family member that Shirley did not ask about her.

³⁷ *E.g.*, *In re Melson*, 711 A.2d 783, 786 (Del. 1998).

³⁸ *Id.* This burden shifts in certain situations where the drafter receives a substantial benefit under the will. *See id.* at 788. This matter does not involve the paradigmatic (or similar) situation.

³⁹ *In re Langmeier*, 466 A.2d 386, 403 (Del. 1983).

⁴⁰ *Id.*

⁴¹ *Id.*

undue influence, the challenger must show “(1) a susceptible testator; (2) the opportunity to exert influence; (3) a disposition to do so for an improper purpose; (4) the actual exertion of such influence; and (5) a result demonstrating its effect.”⁴²

These elements are fact-specific.

Essentially, the Plaintiffs argue that as Hazel became closer and closer to Murphy and Anna, their relationships with her suffered. Moreover, they contend that it was with Murphy and Anna’s encouragement that their relationships with their mother suffered to the point of estrangement, at least in regard to John and Shirley. But for this encouragement, the Plaintiffs’ argument continues, Hazel’s dispositive plan would have remained as it was in the 1996 Will, distributing Hazel’s assets evenly among the four children. Although the Court is not insensitive to the Plaintiffs’ plight,⁴³ even accepting for purposes of resolving the current controversy that Murphy and Anna did discourage Hazel from maintaining good relationships with her other children, that is insufficient to rebut the presumption that Hazel executed the Will of her own volition, reflecting a dispositive scheme of her own

⁴² *In re Norton*, 672 A.2d 53, 55 (Del. 1996) (citation and quotation omitted).

⁴³ Conduct less than ideal is not necessarily actionable. The same can be said for Anna’s regrettable decision not to inform her siblings of their mother’s death.

mind.⁴⁴ Exploring the basic elements of undue influence bolsters this preliminary analysis.

Turning first to perhaps the most important element, the Court must determine whether or not undue influence was actually exerted.⁴⁵ Although the Plaintiffs have presented evidence that Hazel was close to Anna and Murphy, intimate friendship alone does not beget undue influence. There is simply no evidence that Hazel's will to make a dispositive plan of her own mind was in any way diminished, much less subsumed by, or subjugated to, the will of another. Even assuming that Anna and Murphy convinced Hazel that John, Kathy, and Shirley should not inherit equally, the undue influence doctrine does not serve to bar a testatrix from disposing of her assets as she sees fit after taking into account counsel from friends and family. Bryde testified that the Will was not the product of any undue influence, a conclusion that is supported by the fact that Hazel was able to explain to him her reasons for disposing of her estate as she did. The Court finds no facts suggesting that Hazel did not leave

⁴⁴ The Court notes that there is ample evidence in the record that could explain Hazel's disaffection with John and Shirley—with John, there were the incidents concerning his inheritance from Garland, the license plate, the condominium, the email, and the Wal-Mart, as well as his comportment toward Hazel; with Shirley, there was the trailer incident and the fact that although she only lived 25 minutes away from her mother, she last saw her in 2001.

⁴⁵ *In re McElhinney*, 2007 WL 2896013, at *4 (Del. Ch. Oct. 1, 2007).

her estate as she independently desired when she executed the Will on September 9, 2004. For that reason alone, the Plaintiffs' claim of undue influence must fail.

Additionally, the Court finds that Hazel was not a susceptible testatrix. Although the evidence tends to show that she was very close to and somewhat dependent upon Anna and Murphy, Hazel was active to the end of her life, walking, reading, and traveling.⁴⁶ While this sort of mental and physical activity may not directly refute claims of susceptibility, it does indicate that Hazel had a relatively high level of engagement with the world around her and provides evidence that she retained the vitality to function independently. More importantly, however, it is worth emphasizing again that Hazel understood the nature of her estate and how she wanted to dispose of her assets: she made clear to Bryde, an independent professional, how she wanted her assets distributed—Hazel even rebuffed Bryde's

⁴⁶ One unfortunate event may be seen as undercutting the Court's conclusion that Hazel could, and did, function independently. A few years before her death, she was approached at a shopping center and informed that, if she made a good faith financial commitment (it would turn out to be approximately \$30,000), she would be able to share in a large sum that would soon come to her new acquaintance. They went to the bank and withdrew the funds; that was, of course, the last time Hazel would see those funds or the acquaintance. Hazel exercised bad judgment and suffered because of it. She immediately realized her mistake, and nothing of this nature occurred again. This one momentary lapse does not prove that she was "susceptible" over any relevant period of time. Moreover, even when considered with the other evidence presented by the Plaintiffs, it does not demonstrate any impaired or limited ability to make testamentary decisions.

suggestion that she omit John, Kathy, and Shirley through an explicit clause in the Will—and gave him the reasons why she wanted to give them the gifts she did.

Consideration of two of the remaining elements of undue influence also supports this result. There is but unpersuasive evidence that the Will works a disposition that is the result of undue influence. The Court need not (and should not) probe the substantive propriety of Hazel's decision to leave the bulk of her estate to Anna; a testatrix can dispose of her estate according to her own will so long as she is competent and the will is not the product of undue influence.⁴⁷ Free from undue influence, the law does not dictate that a competent testatrix's will must reflect a well-reasoned distributive scheme; it does not require the estate plan to be "fair." In this case, the record is replete with reasons why a competent testatrix in Hazel's position might chose to leave the lion's share of her estate to Anna: John and his mother had multiple misunderstandings; Kathy was thought to be bad with money; Shirley retained the proceeds from the trailer sale, and she and her mother had stopped speaking.

⁴⁷ See *McElhinney*, 2007 WL 2896013, at *5.

Similarly, as to whether or not Murphy and Anna desired to exert undue influence over Hazel to increase Anna's share of the estate, the evidence is not persuasive. Certainly, there is evidence that Murphy and Anna may have encouraged Hazel's effective estrangement from John and Shirley. There is, however, no evidence beyond the fact that individuals are often motivated by a desire for economic gain that bears on their subjective states of mind: no evidence was produced at trial suggesting that any negative effect Anna and Murphy's alleged actions or commentary had on Hazel's relationships was motivated by a desire to increase Anna's inheritance.⁴⁸

⁴⁸ Although the Plaintiffs accuse Anna of exercising undue influence over their mother, much of their attack on the Will, especially with respect to the contention that Hazel was susceptible to undue influence, focuses on Murphy. Because of Murphy's proximity to, and daily contact with, Hazel, she, as a practical matter, had the opportunity to influence Hazel's conduct to a far greater extent than did Anna. This somewhat unusual aspect complicates the Plaintiffs' efforts. As a third party, Murphy could have exercised undue influence, either individually or jointly with Anna over Hazel for Anna's benefit, but the typical reason for such conduct—direct personal financial gain—was not a motivating force for Murphy. Anna may choose to honor her mother's wishes that Murphy receive some minor gift, but there is no reason to believe that some incidental financial benefit drove Murphy's interactions with Hazel. In short, the Plaintiffs have suggested that the only possible incentive for Murphy to exert any influence over Hazel was solely for Anna's benefit and there is precious little proof to that effect.

Of course, Anna and Murphy had the opportunity to influence Hazel because they both were in contact with her daily.⁴⁹ But, given the facts of this case, this element does little more than to underscore that the women were close friends.

Assessment of the elements of undue evidence in light of the evidence presented reveals that the Plaintiffs have failed rebut the presumption that Hazel's duly-executed Will is valid.

* * *

Therefore, the Plaintiffs' challenge to the Will fails; the Will is valid. Accordingly, judgment will be entered in the Defendant's favor.⁵⁰

Very truly yours,

/s/ John W. Noble

JWN/cap
cc: Register in Chancery-K

⁴⁹ The Court notes that John and Shirley, living less than an hour's drive from Hazel, also had ample opportunity—of which they did not avail themselves—to visit and interact with their mother.

⁵⁰ Anna has asked that the burden of her (and Hazel's estate's) attorneys' fees be shifted to the Plaintiffs. That request is denied because she has produced no proper basis for diverging from the American Rule which allocates a party's legal fees to that party in the absence of certain unusual circumstances. *See, e.g., McElhinney*, 2007 WL 2896013, at *5 n.40.