IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

IN THE MATTER OF THE PURPORTED LAST WILL AND TESTAMENT OF KAREN L. PATTON, DECEASED.	))))	C.A. No. 18996

MEMORANDUM OPINION

Submitted: November 22, 2004
Decided: December 22, 2004
Revised: December 23, 2004

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LAMB, Vice Chancellor.

The petitioner brings this action to invalidate the last will and testament of her deceased sister, and also seeks attorney's fees. The petitioner claims that the will is invalid because the testatrix lacked testamentary capacity or, in the alternative, the will is the product of undue influence. The respondent counterclaims, seeking funeral costs. A trial was held July 14-15, 2004. Having reviewed and considered the record and the post-trial briefs, the court finds that the petitioner has failed to meet her burden to prove the will is invalid, and declines to award her attorney's fees. The court further finds that the petitioner is not responsible for the funeral costs.

I.

Karen L. Patton, the testatrix, died at her home on March 16, 2001, after battling cancer for several years. She died unmarried and without children. She was survived by three sisters, Beatrice Patton Dixon (the petitioner), Barbara L. Wilkins, and Sherry Patton; two brothers, Donald B. Patton (the respondent) and Ronald B. Patton, Sr.; and numerous nieces and nephews.[1] In addition, Karen was survived by Travis Turner who, despite not being related by blood, she helped raise and treated as if he was a blood relation. Travis was a freshman in college when Karen died.

[1] When discussing individuals with the same last names, the court relies on first names for convenience. *See, e.g., Capano v. State*, 781 A.2d 556, 582 n.2 (Del. 2001) ("We usually refer to the brothers by their first names."); *Johnson v. Bell*, 2003 WL 23021932, at *1 n.1 (Del. Ch. Dec. 11, 2003) ("[F]or convenience, I use their first names for, as will shortly become apparent, there are numerous individuals with the surname of Bell who have a role in this litigation.").

Karen was raised by Dorothy Dickerson, also know as "Aunt Sooki," at her home at 405 E. 35th, Wilmington, Delaware 19802 (the "Residence"). Aunt Sooki, although not a blood relation, raised Karen as if she were her own daughter. Aunt Sooki also took in Travis, and raised him from an early age. Karen also took part in caring for Travis when he was a child. When Aunt Sooki died in January of 1997, she left the Residence to Karen. Karen sold her own house and moved into the Residence, taking on the main responsibility of raising Travis. She moved to the Residence specifically so that Travis would not have to change schools.

The will in issue was signed by Karen on March 14, 2001, two days before she died, and recorded at the Register of Wills that same day. The will makes Travis the main beneficiary of Karen's estate, leaving to him the Residence, her cars, and the majority of her personal property. Karen bequeathed to the petitioner a gold rope necklace and the contents of two bank accounts. In addition to what they received under the will, Travis and the petitioner both received insurance policies, valued at $72,000 each. Karen also devised the contents of another bank account to Mark Christopher White. Finally, she bequeathed a certificate of deposit to Patricia Moody and Katrina Jones, to be divided between them equally. Karen appointed Sherry or, in the alternative, Donald, as executor of the estate.

The evidence clearly establishes that, at the time the will was executed, Karen was in the late stages of terminal cancer and was receiving various

medications. In November 1998, Karen was first diagnosed with cancer. After several years of treatment, and upon learning that her disease was terminal, Karen decided to forego continued hospitalization and return to her home, entering hospice care. On March 3, 2001, Karen left the hospital for the last time to return home. After returning home, Karen suffered numerous maladies related to her condition, including nausea, involuntary spasms, bleeding, and great pain, all requiring her to take numerous medications. Despite her condition, it is undisputed that Karen was alert and oriented until the end stages of her disease.

The evidence in this case consisted mainly of the testimony of members of Karen's family and medical professionals. Karen's medical records, the contested will, and other related documents were also entered into evidence. Eight witnesses testified at trial and two testified by deposition.

Dorothy Ashcroft of Delaware Hospice testified by deposition. At the time of her testimony, Ashcroft, a registered nurse, had been employed by Delaware Hospice for twelve years. Ashcroft was the primary nurse on Karen's case and, at the time she testified, had a copy of Karen's hospice file. Ashcroft did not see Karen on the day she allegedly executed her will, but did see Karen the day before and the day after. Ashcroft had little independent recollection of the events at issue and testified primarily from Karen's hospice records.

Ashcroft testified about the medications Karen was taking during her time in hospice care. These included Dilaudid, a potent narcotic, for pain; Haldol, an antipsychotic, to control her agitation; and scopolamine and Phenergan, to control her nausea. Karen was also started on Valium, to control her tremors and twitching. On March 14, 2001, the day the will was executed, Karen was taking Dilaudid, Valium, and Phenergan, with the Phenergan eventually being discontinued. Ashcroft opined that the end stage of Karen's disease began on March 12, 2001.

Ashcroft also testified as to Karen's condition around the time the will was executed. She testified that another nurse, Marie Kerns, saw Karen on March 14, 2001, at 8:30 a.m. According to the records prepared by Kerns, Karen was lethargic, could not be aroused, was breathing very deeply, was snoring loudly, was startled easily, was able to open her eyes, had difficulty with verbal communication, denied pain, had sluggish but reactive pupils, and engaged in twitching and tongue biting. It was at this time that the Phenergan was discontinued to improve Karen's responsiveness. Ashcroft also testified that when she saw Karen the next day, March 15, 2001, Karen's records did not describe her as "confused." Ashcroft could provide no direct information as to Karen's condition in the evening of March 14, when the will was purportedly executed.

Next, Dr. Carol A. Tavani, a board certified neuropsychiatrist and a medical doctor licensed to practice in Delaware, testified. She has been a psychiatric consultant to hospices for many years. She reviewed Karen's medical records, including her hospice records, and described the effects and interactions of the drugs Karen was taking. She stated her belief that these drugs greatly impaired Karen's mentation, or mental activity. In giving her testimony, however, Dr. Tavani noted that she had never personally treated, nor even met with, Karen and that her conclusions were based entirely on Karen's medical records and the testimony of other witnesses.

Dr. Tavani opined that, on March 14, 2001, Karen would have been delirious. After reviewing the standard for testamentary capacity laid out in *West*[2] and *Rick*,[3] and from this diagnosis, Dr. Tavani concluded that, in her opinion, Karen was not competent to execute a will on March 14, 2001. This opinion was based on Dr. Tavani's assertion that while a delirious person is capable of uttering a simple yes or no, a person in this state lacks the memory and judgment necessary to meet the standard for testamentary capacity. Also, Dr. Tavani testified that while a person in a delirium could fade in and out of consciousness, such a person would not have lucid moments where she would be capable of exercising the memory and judgment necessary to execute a will.

[2] *In re Estate of West*, 522 A.2d 1256 (Del. 1987).
[3] *In re Matter of Rick*, 1994 WL 148268, at *5 (Del. Ch. Mar. 23, 1994).

The petitioner, Beatrice Patton Dixon, also testified. The petitioner attended law school for two years, without graduating, and worked in several law-related positions, such as working in the law office of Leonard L. Williams, Esquire. She testified as to her relationship with Karen, the deterioration of Karen's health, Karen's estate planning, and her impressions of Karen's mental condition on the day the will was executed and the days immediately before. The petitioner testified that she had a very close relationship to Karen and that she was Karen's primary caregiver at the end of her life.

The petitioner also testified that she assisted Karen in her estate planning. The petitioner testified that she drafted a will for Karen (which was never executed) some time in 1997. In addition, she testified that Karen granted her a power of attorney on March 9, 2001. The petitioner used the power of attorney to change the beneficiary designations or titles on several accounts, apparently in accordance with Karen's wishes.

Most important, the petitioner testified as to Karen's mental and physical condition on the day the will was executed and the days immediately before. She testified that she was called into Karen's room on March 6, 2001 to hear Karen's wishes with respect to her will. She acknowledged that Karen was then lucid. She also testified that on March 13, 2001, the day before the execution of the will, Karen asked the entire family into her room so that she could say goodbye. The

petitioner testified that, at that gathering, Karen stated that she was ready to die and that she was sufficiently alert and awake to ask that her great-niece, Brianna, leave the room out of concern for Brianna's extreme youth.

With respect to the 14th of March, the petitioner testified that Karen was not alert, in a great deal of pain, and generally non-responsive. The petitioner also testified that she sat with Karen and talked with her, but that she did not recall what they talked about. Furthermore, she stated that the she believed the conversation was one-sided, i.e. she spoke to Karen but Karen did not speak back, because the petitioner did not believe Karen was capable of carrying on a conversation at that time. However, on cross-examination, the petitioner was confronted with her deposition testimony in which she stated that "We talked. We just talked." She then backtracked from her deposition, stating that she did not recall a back and forth conversation.

The petitioner also testified that on the evening of March 14, the police were called to the house and she was asked to leave. She further testified that she asked Karen whether she wanted her to stay, and that Karen only nodded in assent. Again on cross-examination, the petitioner was confronted with a contradictory statement from her deposition in which she testified that Karen spoke to her, asking her to stay. At trial, the petitioner backtracked from her earlier testimony and denied that Karen had said anything.

Several other members of the family and friends of Karen testified at trial. First among these was Gloria Price, Karen's maternal cousin. Price is not a beneficiary of the will. Price testified that she saw Karen a couple of times each year and more often after Karen became ill. She also testified that she regularly visited Karen from March 2, 2001 until Karen passed on March 16, 2001. Specifically, Price testified that she visited Karen twice on March 14, once in the afternoon (from about 12:30 to about 4:00 p.m.), and once again in the evening (from about 6:30 to 11:30 p.m.).

Of the afternoon visit, Price testified that she entered Karen's room and sat with her. In addition to Karen, LaSunja Patton Triplett (a niece of Karen and the mother of Brianna) and Renee Rhem (another niece of Karen and the daughter of Donald Patton) were in the room. While Price described Karen as lethargic and drowsy, she also testified that Karen recognized her.

Of the evening visit, Price testified that Karen's state was the same; she was lethargic and drowsy. However, Karen again recognized her, stating: "Hi, Gloria." In addition, later on, a group of people visited Karen in her room. One of these people (Price was unsure who, but she believes it was Pat Moody, a family friend of Karen) asked Karen if she wanted Beatrice, the petitioner, to be executrix of her estate. Price testified that Karen responded no, that she wanted her sister Sherry to

be the executrix. Price testified that she believed that Karen was aware of what was going on and understood what she was doing.

William Rhem, the husband of Renee Rhem and the son-in-law of Donald Patton, also testified at trial. William is not a beneficiary of the will. William testified that he was at the Residence for most of the day on March 14. Sometime during the afternoon, he was called up into Karen's room to witness the will. LaSunja read the will out loud, which took approximately 15 minutes. At various times, LaSunja asked Karen if she agreed with the dispositions in the will and she assented by nodding or saying "yes." William testified that he believed that Karen was aware of what was going on and understood what she was doing. William observed Karen sign the will and then signed the will as a witness himself.

Renee Rhem, Karen's niece and William's wife, also testified. Renee is not a beneficiary of the will. She testified that she was very close to Karen and that she spoke with her several times about her estate. Specifically, she and LaSunja drafted several questions that they wanted to ask Karen about the disposition of her estate. Renee testified that, on March 6, 2001, Travis, LaSunja, and she were present in Karen's room and questioned Karen as to how she wanted to dispose of her assets. After a short time, the petitioner was also brought into the room. Renee stated that she and LaSunja took notes at the time, and that the will was drafted based on those notes.

Renee further testified that, a few days later, the petitioner came over to Karen's house and began drafting the will. However, Renee soon realized that the petitioner was not drafting the will in accordance with Karen's wishes and confronted her. After arguing with the petitioner for some time, Renee called her father, Donald. Donald then spoke with the petitioner in private. Some time later, LaSunja and Renee drafted the will based on the March 6 notes.

Renee also testified that she was in Karen's room on March 14, when the will was signed. She testified that LaSunja read the will out loud and that, when Karen was asked if the will was consistent with her wishes, she said "yes." Karen then signed the will. Renee also signed the will as a witness. Renee testified that she believed that Karen was aware of what was going on and understood what she was doing. Later, Karen asked Renee to take care of Travis when she was gone.

Barbara Temple, a friend of Karen, also testified as to Karen's condition the evening the will was executed. Like the other witnesses to the will, Temple is not a beneficiary of the will. She testified that she was in the room when Karen signed the will. She stated that someone read the contents of the will and asked Karen if the will was consistent with her wishes. She then saw Karen sign the will and later signed the will herself as a witness. Of Karen's mental state, Temple said that she seemed "ok" and did not act out of the ordinary.

Donald Patton, the respondent and executor of the will,[4] is the brother of both Karen and the petitioner. He is not a beneficiary of the will, but would receive 20% of the estate if the will is invalidated. He testified that he was very close to Karen and that he visited her daily in her home when she entered hospice care. Donald was not present at the will signing, and testified that he had nothing to do with drafting the will. However, he did testify as to the events that took place at Karen's home in the evening of March 14, after the will was signed.

He testified that the family was looking for Karen's checkbook in order to pay some bills. When they were unable find the checkbook, Donald called the petitioner, who told him that he need not worry about the bills because she had a power of attorney and would take care of everything. An argument ensued and the petitioner soon came over to the house. Donald testified that he was suspicious of how the power of attorney was executed and suspected that the petitioner would try to forge a will for Karen. He also testified that he believed that the petitioner had forged wills for both their mother and Aunt Sooki

Donald testified that he and the petitioner continued to argue and eventually went into Karen's bedroom. There, he asked Karen if she wanted Beatrice, the petitioner, to be either the executrix of her will or to have her power of attorney. Karen responded "no." Again, Donald asked Karen if she wanted Beatrice to be

[4] Donald's sister, Sherry, declined to serve as executrix under the will.

either the executrix or to have a power of attorney, and again she said “no.” Donald stated that, at this time, Karen was able to communicate and was clear. Later on, the police were called and the police asked the petitioner to leave.

Travis Turner, the main beneficiary of the will, testified as to his relationship with Karen. He said that he had a very close relationship to her and that he considered her a second mother. Travis was not involved in preparing the will.

Travis testified that that he spoke to Karen on several occasions about the disposition of her estate, and that the will conforms to her wishes. Specifically, he testified that Karen met with him privately in December of 2000 to discuss her estate. He also testified that he was present at the meeting on March 6, 2001, where Karen discussed how she wanted her estate to be devised.

LaSunja Patton Triplett, the niece of Karen and the petitioner, testified by deposition. LaSunja testified that she and Renee prepared questions to ask Karen about the disposition of her estate. LaSunja stated that, on or about March 6, she, Renee, and Travis asked Karen these questions and took notes as to her answers. During this meeting, Karen asked that the petitioner be brought into the room, and Travis left to find her. Thereafter, with the petitioner and Travis present, LaSunja and Renee again began asking Karen questions about the disposition of her estate and taking notes as to her responses. These notes were admitted at trial. LaSunja

testified that she believed the will and the notes were consistent with Karen's wishes for the disposition of her estate.

LaSunja also testified that, a few days later, the petitioner began drafting the will at Karen's residence on a computer, using the notes taken at the March 6 meeting. However, LaSunja stated that she noticed discrepancies between the notes and the draft. Specifically, she noticed that the petitioner was inserting her own name as a beneficiary in places where Karen had instructed other people be placed. LaSunja confronted the petitioner about these discrepancies. She then informed Renee of her belief that the petitioner was improperly drafting the will and Renee also confronted the petitioner. The petitioner then left. LaSunja and Renee finished drafting the will.

LaSunja also testified as to the will signing. She testified that, on or about March 14, she, Renee, William, and Temple went upstairs to Karen's room. There, LaSunja read the will out loud. After reading the will, LaSunja asked Karen if this was everything she wanted. In response, Karen said "yeah," nodded, and held out her hand for a pen. She then signed the will. At several times during her testimony, LaSunja expressed her belief that Karen was coherent when she signed the will and that she understood what she was doing.

II.

Under Delaware law, all will contests start with the presumption that a testator had the capacity to make a will at the time it was made.[5] Thus, it is the party challenging testamentary capacity that bears the burden of proving that the decedent was legally incapable of executing a valid will.[6] Likewise, the challenger carries the burden of proving that the will was a product of undue influence.[7]

In order to be capable of executing a valid will in Delaware, an individual must, at the time of execution, be capable of exercising thought, reflection, and judgment, and must know what she is doing and how she is disposing of her property.[8] The person must also possess sufficient memory and understanding to comprehend the nature and character of the act.[9] Thus, the law requires the testator to have known that she was disposing of her estate by will, and to whom.[10] It is important to note that only a modest level of competence is required for an individual to possess the testamentary capacity to execute a will.[11] Therefore, in order to invalidate a will on the basis of a lack testamentary capacity, the party

[5] *Melson v. Melson (In re Will of Melson)*, 711 A.2d 783, 786 (Del. 1998) (internal citations omitted).
[6] *Id.*
[7] *Id.*
[8] *West*, 522 A.2d at 1263.
[9] *Id.*
[10] *Id.*
[11] *Id.*

contesting the will must show by a preponderance of the evidence that the decedent lacked even this minimal capacity at the time she executed the will.

Having considered the evidence bearing on this issue, the court concludes that the petitioner has failed to overcome the presumption that Karen had the requisite testamentary capacity at the time she executed her will on March 14, 2001.[12]

The petitioner adduced two main pieces of evidence in support of her contention that Karen lacked testamentary capacity. First, she presented Karen's medical records, especially the records of Karen's medication, and the testimony of Dr. Tavani explaining those records. Second, she presented her own testimony as to Karen's condition at the time she executed the will. The court will first address the testimony of the petitioner.

The court finds the testimony of the petitioner not credible. The evidence clearly shows that the petitioner had a very close relationship to Karen and dedicated a great deal of time to her. However, it also shows that some of her dealings with her family were less than honest. In her testimony, the petitioner said that she had nothing to do with drafting the contested will. This directly

[12] There is some confusion as to exactly what time the will was signed on March 14, 2001. William testified that it was in the afternoon and Temple testified that it was in the evening. LaSunja testified that it was signed at dinner time, which she defined as 4:30 to 6:30 p.m. In addition, Price testified that she arrived at the Residence in the evening, which she defined as 4:30 to 6:30 p.m., and did not leave until late in the night, around 11:30 p.m., and that she was not aware of a will signing. From this, the court infers that the will was signed in the late afternoon, somewhere around 5:00 to 6:00 p.m.

contradicts the testimony of LaSunja, Renee, and Donald, all of whom testified that the petitioner began drafting the will.

The court finds the testimony of LaSunja, Renee, and Donald to be credible. First, none of these witnesses are beneficiaries under the contested will. In fact, Donald Patton is entitled to 20% of the estate if the court invalidates the will. Therefore, their testimony is free from the taint of self-interest. The petitioner, on the other hand, would directly benefit if the court invalidates the will. She admits to having drafted wills before and took the initiative in several aspects of Karen's estate, such as procuring a power of attorney from Karen. In addition, the petitioner has legal training that the rest of the family does not. It is logical, therefore, that the family would defer to her in the drafting of a will. Finally, her testimony is blatantly self-serving. Were the petitioner to admit that she took part in drafting the will, it would be much more difficult for her claim that it did not represent Karen's wishes.

Furthermore, on the crucial issue of Karen's condition when she signed the will, the petitioner changed her testimony in subtle, but important, ways. In her deposition, the petitioner testified that she talked with Karen on March 14. At trial, the petitioner testified that there was no conversation, that she did all the talking. This is important because her original testimony contradicts Dr. Tavani's opinion that Karen was delirious on March 14.

The petitioner also testified in her deposition that when, on March 14, the police arrived and asked her to leave, Karen asked her to stay. At trial, she testified that Karen did not ask her to stay. Instead, the petitioner testified that she asked Karen if she wanted her, the petitioner, to stay and Karen nodded in assent. Again, this is important because if Karen was able to ask the petitioner to stay, that would undermine Dr. Tavani's opinion that Karen was delirious.

In sum, the petitioner has a history of dishonest dealings with the family, testified in a self-interested manner, and changed her testimony when it suited her case. Therefore, on the issue of whether Karen had testamentary capacity at the time she signed the will, the court assigns little weight, if any, to the testimony of the petitioner.

The court will now address the testimony of Dr. Tavani. As outlined above, Dr. Tavani testified as to the medication that Karen was taking, and the effect that medication would have on Karen's mentation. She opined that the medication, in conjunction with Karen's weakened condition, would have made Karen delirious. A delirious person, she stated, would not be competent to execute a will.

While the court finds Dr. Tavani to be a credible witness, there are several problems with her opinion. First, Dr. Tavani never treated, nor even met, Karen. She made her diagnosis solely on the basis of the medications Karen was taking and her medical condition. However, the medications Karen was taking were

reduced that morning and Karen's mental condition could have improved. As Dr. Tavani admitted, it is impossible for her to determine if, when the will was later executed, Karen was competent. The doctor stated, "It's just not that much of a science, and especially from trying to derive it from the records to say exactly at what moment one would perk up a little bit."[13]

Furthermore, some of her conclusions were directly contradicted by other credible evidence. In her report, Dr. Tavani states that "[i]n essence, this lady [Karen] was comatose that day."[14] However, the evidence is clear that Karen was awake and responsive at various points through the day. Even the petitioner testified that she nodded in assent when asked a question. When confronted by this fact at cross-examination, Dr. Tavani stated that Karen may have been comatose in the morning and awake in the evening. She stated that she was unsure of Karen's condition because the medical records did not have any information as to it at the time of the signing of the will. This concession highlights the glaring weakness in Dr. Tavani's opinion. While the court found Dr. Tavani to be a credible witness, the usefulness of her testimony was limited because the scope of the medical records was limited, and because she never had any personal contact with Karen.

Moreover, even if the court were to accept Dr. Tavani's testimony, it would not preclude a finding that Karen had the requisite mental capacity to execute the

[13] Tr. of Cross Examination of Carol A. Tavani, M.D. at 14.
[14] Report of Carol A. Tavani, M.D., Trial Ex. 13 at 8.

will. For example, in *Scholl v. Murphy*,[15] Chancellor Chandler, after a bench trial, adopted the master's report and found that the decedent in that case had executed the will during a "lucid interval" and it was, therefore, valid. This was despite the fact that the testator was diagnosed with dementia, and dementia is a progressive disease that could only get worse.[16]

The evidence of Karen's use of medication and of her weakened physical condition is, nevertheless, sufficient to raise a question as to her testamentary capacity. As a result, and absent evidence to the contrary, a reasonable inference could be drawn that Karen was not capable of understanding her actions at the time she signed the will.

Direct evidence to the contrary does, however, exist. The overwhelming testimonial evidence is that, at the time the will was executed, Karen had the minimal capacity necessary to execute a will. Price and William both testified that they believed Karen was aware of what was going on and of what she was doing. Neither are beneficiaries under the will.

Renee testified that the will was read aloud to Karen and Karen was asked if the will reflected her wishes. Karen said "yes," nodded her head, and reached for the pen to sign the will. Renee also said that, soon after signing the will, Karen asked her to look after Travis. Donald testified that he spoke with Karen on

[15] 2002 WL 927381, at *2 (Del. Ch. Apr. 17, 2002).
[16] *Id.*

March 14 and she was able to communicate her choice to serve as the executor of her estate.

Finally, LaSunja testified that she read the will to Karen, and asked Karen if the will conformed to her wishes. Karen said "yeah," nodded her head, and reached out her hand to sign the will. In addition, LaSunja testified that she spent a great deal of time with Karen that day and that she believed that Karen was competent. All of this testimony shows that Karen possessed the minimal competence necessary to execute a will.

In contrast to the testimony of the petitioner, the court finds the testimony of the preceding witnesses highly credible. First, the testimony of these witnesses was forthright and believable. Second, the testimony of the different witnesses was consistent. They all stated that the will reflects the wishes of Karen. They all stated that Karen was awake, sitting up, and signed the will herself. And they all believed that she was coherent and understood what she was doing at the time she signed the will. The only person who saw Karen the night she executed the will and did not believe that she was competent is the petitioner. While the petitioner would like this court to assume that this consistency is due to a conspiracy by the rest of the family against her, a more rational inference is that the witnesses' testimony is consistent because it is the truth. Third, also in contrast to the testimony of the petitioner, none of these witnesses is tainted by self-interest.

None of them are beneficiaries under the will. This is especially true for Donald, who receives nothing under the will but would receive 20% of the estate if the will is invalidated.

In sum, the overwhelming testimonial evidence, which this court finds to be credible, is that Karen was competent to execute a will on March 14, 2001. Thus, the court must find that the petitioner has failed to show by a preponderance of the evidence that Karen lacked capacity at the time she executed the will.

III.

Undue influence is an excessive or inordinate influence considering the circumstances of the particular case.[17] The degree of influence to be exerted over the mind of the testator, in order to be regarded as undue, must be such as to subjugate her mind to the will of another, to overcome her free agency and independent volition, and to compel her to make a will that speaks the mind of another and not her own.[18] The essential elements of undue influence are: (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

[17] *In re Will of Langmeier*, 466 A.2d 386, 403 (Del. Ch. 1983)
[18] *Id.*

demonstrating its effect.[19] Delaware law requires the party alleging undue influence to prove its actual exertion by a preponderance of the evidence.[20]

The only evidence adduced at trial to support the petitioner's claim for undue influence is the testimony of Dr. Tavani that Karen would have been susceptible because of her weakened state, and the self-serving testimony of the petitioner herself.

However, the terms of the will simply do not support an undue influence claim. There was nothing inherently suspicious or surprising about the contents of Karen's will, especially in making Travis the main beneficiary under the will. The entire family testified Travis and Karen were very close, with most stating that he was like a son to Karen. Moreover, the principal asset of the residuary estate is the Residence that Karen inherited from Aunt Sooki. It is natural to believe that Karen would want to leave that asset to Travis who, like her, was raised by Aunt Sooki.

Moreover, even if the court found that the petitioner was a susceptible testator, the undue influence claim must fail because of the lack of any actual exertion of improper influence. That is, the record is simply devoid of any overreaching by Travis (or anyone else). Nothing convinces the court that Travis pressured or influenced Karen in any manner to write her will in a particular way. Rather, the evidence strongly supports the inference that the will was drafted

[19] *West,* 522 A.2d at 1264.
[20] *Id.*

commensurate with Karen's wishes. Therefore, the court must hold that the petitioner has failed to meet her burden in proving undue influence in the execution of the will.

IV.

The petitioner also requests an award of fees for her unsuccessful attempt to invalidate the will.

For an unsuccessful will contestant to receive attorney's fees, she must show, initially, that she had probable cause or reasonable grounds to challenge the validity of the will.[21] The petitioner has failed to make that showing. In fact, the court finds her testimony to be self-serving and lacking in credibility, and at odds with the testimony of all other witnesses to the will signing, which the court found to be credible. The state of the record shows an absence of a reasonable basis, let alone probable cause, for the petitioner's belief that the will was invalid. Instead, the record strongly suggests that the petitioner made a calculated decision that she had nothing to lose—and a fifth of an estate to gain—by attacking the validity of a will that she took the initiative in drafting. Under the circumstances, the court is unwilling to charge her attorney's fees against the estate.

[21] *Ableman v. Katz*, 481 A.2d 1114, 1118-20 (Del. 1984), *rev'd on other grounds*, *Melson*, 711 A.2d at 788.

V.

While not addressed in the closing briefs, there had been some contention at trial that the will was undated at the time of execution and later back-dated to March 14, 2001. The court notes that this issue is immaterial to whether the will can be admitted into probate. The formalities necessary to execute a valid will in Delaware are set forth in 12 *Del. C.* § 202.[22] That section does not require that a will be dated for it to be valid. Therefore, the court does not address this issue.

VI.

Finally, the petitioner contends that the estate is liable for the payment of Karen's funeral bill. The respondent contends that the petitioner and Travis are each responsible for half of the funeral costs because they signed the funeral contract jointly.

Generally, an estate is responsible for the reasonable funeral expenses incurred and paid by those who make the funeral arrangements.[23] In this case,

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[22] In pertinent part, 12 *Del. C.* § 202 states:

> Requisites and execution of will
>
> (a) Every will, whether of personal or real estate, must be:
>
> (1) In writing and signed by the testator or by some person subscribing the testator's name in the testator's presence and by the testator's express direction; and
>
> (2) Subject to § 1306 of this title, attested and subscribed in testator's presence by 2 or more credible witnesses.
>
> (b) Any will not complying with subsection (a) of this section shall be void.

[23] *Smolka v. James T. Chandler & Son, Inc.*, 20 A.2d 131, 134 (Del. 1941).

Beatrice and Travis made funeral arrangements that cost more than $15,000.[24] While this seems like an unusually high number, the respondent did not introduce evidence at trial as to what a "reasonable" bill would be or raise an objection to any particular part of the arrangements made. Instead, in his post-trial briefing, the respondent simply blames the high bill on the petitioner's "extravagance." Because the respondent has failed to establish in the record that the bill was unreasonable or what a reasonable bill would have been, the estate, and not the petitioner, is responsible for the cost of the funeral.

VII.

For all the foregoing reasons, judgment will be entered dismissing the petition and ordering such other relief as is consistent with this opinion. The respondent's counsel is directed to submit an order within 10 days of the date hereof, on notice.

[24] Trial Ex. 20.