

SAM GLASSOCK III
VICE CHANCELLOR

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: December 14, 2011

Decided: December 29, 2011

Rick Stevens
32 Burbank Street
Newark, DE 19702

Richard E. Franta
1301 North Harrison Street #102
Wilmington, DE 19806

Re: In the Matter of the Estate of Robert Lewis Stevens, Sr.,
Civil Action No. 4571-VCG

Dear Counsel and Mr. Stevens:

This matter involves a petition for the review of the will of Robert L. Stevens, Sr. On October 25, 2011, Master Ayvazian issued her final report in the matter, granting summary judgment against Petitioner on all counts (“Master’s Final Report”). The Master’s decision rested on two independent grounds. First, Master Ayvazian, citing Rules 56(c) and (e), found that summary judgment in favor of the Respondent was appropriate after Mr. Stevens failed to file an answering brief in response to the Respondent’s Opening Brief in Support of Respondent’s Motion for Summary Judgment. Second, despite finding that Mr. Stevens had waived his right to contest the Respondent’s Motion, the Master addressed the merits of Mr. Stevens’

claims, including his challenges to the validity of the will of his father, Robert L. Stevens, Sr. (the “Decedent”), based on lack of testamentary capacity and undue influence, as well as the Petitioner’s request that the Respondent be ordered to render an account of his term as attorney-in-fact for the Decedent, based on the Petitioner’s allegations of breach of fiduciary duty. Granting summary judgment on all counts, Master Ayvazian found that there were no issues of material fact with respect to any of the Petitioner’s claims and that the Respondent was entitled to summary judgment as a matter of law.

Following the issuance of the Master’s Final Report, the Petitioner filed timely exceptions and submitted a letter memorandum on November 23, 2011 (“Opening Memorandum”), which I accepted in lieu of an opening brief in support of his exceptions pursuant to Court of Chancery Rule 144. On November 29, 2011, the Respondent submitted a letter memorandum, which I accepted, per his request, as his answering brief. The Petitioner, under Rule 144(a)(1), had until December 14, 2011, to file his reply brief. The Petitioner did not file by that date, and has not filed as of the date of this Letter Opinion, a reply brief; thus, the Petitioner’s right to file a reply is

waived, and I have deemed this matter submitted for decision. I review the factual and legal findings in the Master's Final Report *de novo*.¹

The Petitioner's Opening Memorandum fails to address any of the grounds, factual or legal, upon which the Master based her Final Report.² The Petitioner attached eight exhibits, numbered "A" through "F", to his Opening Memorandum, including letters sent between the parties, power of attorney documents, and superseded wills of the Petitioner's parents. Neither the Petitioner's Opening Memorandum nor any of the exhibits submitted therewith address Master Avayzian's findings on testamentary capacity, undue influence, or the accounting. In fact, in two and a half years of proceedings challenging the will of Robert Lewis Stevens, Sr., the Petitioner has failed to submit *any* evidence to the Court that is probative either of the

¹ See *DiGiacobbe v. Sestak*, 743 A.2d 180, 184 (Del. 1999) ("[T]he standard of review for a master's findings—both factual and legal—is *de novo*."); *Brown v. Wiltbank*, 2011 WL 5027057, at *1 (Del. Ch. Oct. 13, 2011).

² The Petitioner claims to have responded, by letter to the Court on July 11, 2011, to the Master's letter extending the deadline for the Petitioner's answering brief. The Petitioner attached a copy of the July 11 letter to his Opening Memorandum here. The original due date for the Petitioner's answering brief was June 13, 2011. By a July 6, 2011 teleconference with the parties, Petitioner still had not filed his answering brief. At that time, Petitioner's counsel withdrew from the case. In light of that, by letter to the parties the same day, the Master extended the deadline for the Petitioner's answering brief until July 18, 2011, noting, "No requests for an extension of this deadline shall be considered except for exceedingly good cause shown." Letter to the Parties at 1, *In the Matter of the Estate of Robert Lewis Stevens, Sr.*, C.A. No. 4571-VCG (Del. Ch. July 6, 2011). Mr. Stevens' July 11 letter to the Court, which complained of the job done by his recently-withdrawn attorney and requested yet another extension, did not demonstrate good cause for an extension. In any event, the Master did not extend the due date beyond July 18, 2011.

lack of testamentary capacity or of the Respondent's exercise of undue influence. Additionally, the Respondent has produced, or permitted the Petitioner access to, all financial records pertinent to an accounting. Nevertheless, the Petitioner failed to raise any issues of material fact with respect to the accounting before the Master. While the Petitioner took exception to the Master's report generally, he has failed to state any exception to the entry of summary judgment on the accounting issue as recommended in the Master's Final Report.

This matter involves a challenge to the Decedent's Will executed on August 20, 2008. Rather than pointing to any evidence contradicting the findings in the Master's Final Report (or the facts cited in the Respondent's brief in support of summary judgment), the Petitioner's Opening Memorandum merely recounts the Petitioner's version of certain events prior to 2003, critically omitting any allegations regarding the five years leading up to his father's death, during which time the challenged will was actually executed. Even if the Petitioner's version of the facts, alleging pre-2003 illnesses and periods of incompetence of the Decedent, is entirely accurate, it still fails to support a claim of lack of testamentary capacity or undue influence as of August 20, 2008.

I have reviewed the Master's findings and conclusions in their entirety, and I am in agreement both with her determination that the Petitioner waived his right to contest the Respondent's Motion for Summary Judgment as well as her finding that no material issues of fact exist regarding the Petitioner's substantive allegations. The record evidence cited by the Respondent in his Motion for Summary Judgment, and relied on by the Master, includes the deposition testimony of the Decedent's long-time attorney, Sandra Messick, that the Decedent appeared competent when he made his 2008 will, that he knew his property, and that he was aware of the natural objects of his bounty. While this is the minimal state of mind sufficient to have capacity to make a will,³ Ms. Messick went further, stating that the Decedent was direct in his manner and very specific as to his wishes. Ms. Messick's testimony strongly reinforces the presumption of capacity on the part of Decedent as of August 20, 2008. Moreover, the testimony of Ms. Messick belies any suggestion of undue influence. A testator must be susceptible to influence as a prerequisite to a finding of undue influence.⁴ Despite the pre-2003 record of health problems referred to in Petitioner's Opening Memorandum, it is clear that as of August 20, 2008, the Decedent

³ See, e.g., *In re Estate of West*, 522 A.2d 1256, 1263 (Del. 1987) (discussing the requirements for testamentary capacity).

⁴ *Id.* at 1264.

had independent counsel, met with her outside the presence of any beneficiary under the Will, discussed his testamentary scheme with her for over an hour, reviewed the draft that Ms. Messick prepared for him and made changes, was specific in communicating his wishes, and that the provisions of the will “were very much [Decedent’s] idea.”⁵ There is no basis in the record to find that the Decedent was subject to undue influence at the hands of the Respondent. In fact, according to Ms. Messick, the challenged will actually resulted in a decrease of benefits flowing to the Respondent, compared to the will previously in effect.⁶

The burden is on the Petitioner to show lack of capacity or undue influence in this action for review of a will. No evidence of either exists in the record. Moreover, the Respondent has shown sufficient record evidence in his Motion for Summary Judgment to support summary judgment, and the Petitioner has failed to come forward with evidence showing an issue for trial, as is his burden under Court of Chancery Rule 56(e).

Finally, in Count II of his petition, as mentioned above, the Petitioner sought an accounting (to remedy a supposed breach of fiduciary duty involving Respondent’s conversion of the Decedent’s assets) of the

⁵ See Resp.’s Opening Br. in Support of Resp.’s Mot. for Summ. J. at 11, 26 (quoting deposition testimony of Sandra Messick).

⁶ *Id.* at 10.

Respondent's tenure as attorney-in-fact for the Decedent. He has received all documentation necessary for such an accounting. The Petitioner has pointed to no record evidence indicating breach of duty, and this Count was properly dismissed by the Master. Moreover, the Petitioner has failed to take exception to the Master's decision with respect to the request for an accounting.

After a thorough *de novo* review of the record, the briefing below, the exceptions, and the Master's thoughtful Report, it is clear that the Report should be affirmed. Accordingly, the Petitioner's exceptions to the Master's Final Report are hereby DENIED, and the Master's grant of summary judgment in favor of the Respondent on all counts is hereby APPROVED.

IT IS SO ORDERED.

Sincerely,

/s/ Sam Glasscock III

Sam Glasscock III