

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the Estate of ABRAHAM
KARMEY, Deceased.

MARIANNE KARMEY-KUPKA, GEORGE
KARMEY AND IRENE KARMEY,

UNPUBLISHED
February 8, 2002

Petitioners-Appellants,

v

MARGARET KARMEY,

No. 223270
Wayne Probate Court
LC No. 97-585430-IE

Respondent-Appellee.

Before: Saad, P.J., Bandstra, C.J., and Whitbeck, J.

SAAD, P.J. (*dissenting*).

I respectfully dissent.

I do not read *Kar* to have squarely faced, much less decided, the issue of whether the three-part test for triggering a rebuttable presumption of undue influence applies to a “marital” will. Moreover, I do not believe that our Supreme Court would so rule if it had directly addressed this issue.

Were we to apply the three-part test to a will contest where a spouse leaves everything to a surviving spouse, then a factual finding of a good marriage would automatically mean that a rebuttable presumption of undue influence would arise. This surely cannot nor should it be the law. More should be shown to raise a presumption of undue influence between spouses than a good confidential relationship where each understandably looked to the other for advice and took the advice of the other. To hold as the majority does and as the majority interprets *Kar* to have ruled, simply serves to penalize a good marriage by requiring a will contest trial if a third party objects to one spouse leaving virtually the entire estate to the surviving spouse.

/s/ Henry William Saad