STATE OF MICHIGAN

COURT OF APPEALS

IN RE ESTATE OF MICHAEL GURNIAK.

KATHERINE SHANNON, AND GARY GURNIAK,

Petitioners-Appellants,

v

SHIRLEYAN GURNIAK, personal representative of THE ESTATE OF MICHAEL GURNIAK,

Respondent-Appellee.

UNPUBLISHED
June 24, 2008

No. 277537
Ottawa Probate Court
LC No. 05-053341-DE

Before: Bandstra, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Petitioners Katherine Shannon and Gary Gurniak appeal as of right the probate court's dismissal pursuant to MCR 2.116(C)(10) of their claims that their father, Michael Gurniak (Gurniak), lacked sufficient testamentary capacity to execute his March 9, 2005 will, and further, that during the last two years of Gurniak's life, he lacked sufficient mental capacity to enter into transactions transferring his sole ownership of stocks, accounts and other property to joint ownership with his wife, respondent Shirleyan Gurniak. We affirm.

This Court reviews a trial court's decision on a motion for summary disposition de novo. *Dressel v Ameribank*, 468 Mich 557, 561; 664 NW2d 151 (2003); *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 352 NW2d 201 (1998). A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim. *Id.* It permits summary disposition when there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law. *Babula v Robertson*, 212 Mich App 45, 48; 536 NW2d 834 (1995). In presenting a motion for summary disposition, the moving party has the burden of supporting its position with affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of material fact exists. If the opposing party fails to present admissible documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817 (1999); *Graham v Ford*, 237 Mich App 670, 672-673; 604 NW2d 713 (1999).

A person executing a will must have testamentary capacity. *Persinger v Holst*, 248 Mich App 499, 504; 639 NW2d 594 (2001). To have testamentary capacity, an individual must "'be able to comprehend the nature and extent of his property, to recall the natural objects of his bounty, and to determine and understand the disposition of property which he desires to make.'" *Id.* (citations omitted); *In re Sprenger's Estate*, 337 Mich 514, 521; 60 NW2d 436 (1953); *In re Vollbrecht Estate*, 26 Mich App 430, 434; 182 NW2d 609 (1970). Thus, to be competent to execute a will, a testator must know what property he owns, to whom he wishes to give the property, and how the will disposes of the property. *Id.* Courts will presume that a testator has such capacity; the burden is on those questioning it to establish otherwise. *In re Powers Estate*, 375 Mich 150, 158; 134 NW2d 148 (1965), *In re Sprenger's Estate*, *supra*; *In re Vollbrecht Estate*, *supra*. Testamentary capacity is judged at the time of the execution of the will, and not before or after, unless the condition of the testator before or after the execution of the will is competently related to the time of execution. *In re Powers Estate*, *supra.* "Weakness of mind and forgetfulness are insufficient to invalidate a will if it appears that the mind of the testator was capable of attention and exertion when aroused and he was not imposed upon." *In re Paquin's Estate*, 328 Mich 293, 302; 43 NW2d 858 (1950). Simply put,

> If [the testator] at the time [he] executed the will, had sufficient mental capacity to understand the business in which [he] was engaged, to know and understand the extent and value of [his] property, and how [he] wanted to dispose of it, and to keep these facts in [his] mind long enough to dictate [his] will without prompting from others, [he] had sufficient capacity to make the will. A testator may be suffering physical ills and some degree of mental disease and still execute a valid will, unless provisions thereof are affected thereby. [*In re Ferguson's Estate*, 239 Mich 616, 627; 215 NW 51 (1927).]

Petitioners argue that the probate court erred by concluding that they failed to establish any genuine issue of material fact as to Gurniak's mental capacity at the time he executed his will. We disagree.

Petitioners rely on medical evidence that Gurniak was diagnosed with "pretty mild" dementia in September 2003, that dementia is a progressive disease, and that Gurniak was suffering from delirium when he was admitted to the hospital on March 13, 2005, after collapsing at his home, as circumstantial evidence that Gurniak lacked testamentary capacity on March 9, 2005. They assert that, considering this circumstantial evidence, there must necessarily be a question of fact as to Gurniak's mental capacity at the time he signed his will. However, evidence presented by respondent establishes that at the time he executed his will, Gurniak was alert, coherent, and competent. Gurniak's attorney, Paul Ledford, testified at deposition that Gurniak comprehended the nature and extent of his property and understood and approved of the manner in which his will disposed of that property. Gurniak knew that petitioners were his children, but clearly expressed his intent to disinherit them. This was consistent with Gurniak's longstanding statements, reported by bank manager Mary Papp, about his relationship with petitioners and his intent that they not get "one red cent" of his money. Before Gurniak executed his will, Ledford reviewed it with him in detail, to ensure that he understood it and that it comported with his wishes. Ledford noted that, because the will was disinheriting petitioners, he asked "very pointed and specific questions" of Gurniak regarding the manner in which he wished his property to be disposed, asking Gurniak multiple times in various ways if he wanted

petitioners disinherited; Gurniak clearly and forcefully indicated that he did. When Ledford described a "no contest" clause as a "drop dead" clause "basically [telling] people who were disinherited that they could go and drop dead," Gurniak "seemed to chuckle a bit" and "smiled and shook his head yes." Ledford was satisfied, based on his extensive discussion with Gurniak, that Gurniak understood the import of the will he was signing and the manner in which it disposed of his property and that Gurniak was competent to execute the will. Ledford's description of Gurniak's actions and demeanor bear this out. Additionally, Shirleyan's deposition testimony also indicates that Gurniak was competent to execute his will. In light of this unequivocal evidence, the trial court properly granted respondent's motion for summary disposition. As aptly noted by the probate court, "the testimony surrounding the execution of the will shows a man who is severely underweight and close to death, but not a man who is mentally incompetent to dispose of his property."

Petitioners also argue that the probate court erred by concluding that there was no genuine issue of material fact as to Gurniak's mental capacity when he conducted a number of transactions, prior to 2005, changing his sole ownership of certain assets to joint ownership with Shirleyan. "The test of mental capacity to contract is whether the person in question possesses sufficient mind to understand in a reasonable manner the nature and effect of the act in which the person is engaged." *In re Estate of Erickson*, 202 Mich App 329, 332; 508 NW2d 181 (1993). To prevail on their challenge to these transactions, petitioners must establish not only that Gurniak was of unsound mind when he entered into them, but also that the unsoundness was of such a character that he had no reasonable perception of their nature or terms. *Id.* Petitioners' reliance on circumstantial medical evidence that Gurniak suffered from mild dementia fails to establish any genuine issue of material fact as to Gurniak's mental competence to enter into the challenged transactions, in the face of uncontroverted deposition testimony from bank personnel that Gurniak understood the nature and consequence of the transactions, and that he entered into them knowingly and willingly.

We affirm.

/s/ Richard A. Bandstra
/s/ Michael J. Talbot
/s/ Bill Schuette