STATE OF MICHIGAN

COURT OF APPEALS

In re ESTATE OF PAULINE RUNYON.

LISA TRAMSKI,

Appellant,

v

JOHN R. SPARLING, Personal Representative of the ESTATE OF PAULINE RUNYON, ATTORNEY GENERAL, and LEADER DOGS FOR THE BLIND,

Appellees.

UNPUBLISHED
December 17, 2020

No. 350595
St. Clair Probate Court
LC No. 2018-000277-DE

Before: LETICA, P.J., and RIORDAN and CAMERON, JJ.

PER CURIAM.

Petitioner, Lisa Tramski, appeals as of right the probate court's order declaring a will executed by the decedent, Pauline Runyon, on May 4, 2018, invalid on the basis that Runyon lacked testamentary capacity to execute the will and that the will was the product of Tramski's undue influence. We affirm.

I. FACTS & PROCEDURAL HISTORY

Tramski and Runyon met in August 2017. At the time, Tramski was newly employed as a leasing specialist with Lake Huron Woods, a senior living community in Ft. Gratiot Township. Runyon, then 85 years old, stopped at Lake Huron Woods to inquire about the facility. Tramski informed Runyon that Lake Huron Woods did not have any available units, but gave Runyon a tour of the community and Runyon stayed for lunch in the facility's dining room. A few days later, Runyon called Tramski and asked to be placed on the waiting list. The next day, Tramski delivered an application to Runyon's home. They visited for about an hour, discussing how Runyon was unhappy with her current living arrangement. Runyon was unmarried and never had any children.

According to Tramski, in the months that followed, she and Runyon developed a close friendship. Runyon called Tramski frequently. Because Runyon did not have a driver's license, Tramski would take her to the grocery store about every 10 days. They went out to dinner once a month and she and Runyon took turns paying. According to Tramski, Runyon was lonely and their time together made Runyon happy. Despite the "close" friendship, Tramski did not include Runyon in her 2017 Thanksgiving or Christmas plans.

During the early months, Runyon never talked with Tramski about her finances, or asked for help paying her bills. According to Tramski, however, in approximately November 2017, Runyon began talking constantly about wanting Tramski to take her to see an attorney, specifically John Adair, for the purpose of changing her will. Runyon would mention it three times a month, at least. Runyon wanted to remove someone who had died from her existing will and she wanted to "put" Tramski in her will. Tramski purportedly had no idea what Runyon was talking about and did not know if there was the possibility of any financial gain. Tramski never made an appointment with Attorney Adair because she "just didn't have time."

In January 2018, a unit became available and Runyon moved into Lake Huron Woods. Because of the close proximity, Tramski frequently saw Runyon around the senior living community. According to Tramski, their relationship grew stronger. In February 2018, Runyon gave Tramski $1,000 for her birthday. She also gave Tramski's 20-year-old son, whom she had never met, $1,000 for school expenses. In a note dated February 16, 2018, Runyon promised Tramski an additional sum of $9,000. Tramski explained that this larger sum was to go toward a new car for Tramski because Runyon, a French Canadian, wanted Tramski to take her on a trip to Quebec.

On February 22, 2018, Tramski videotaped approximately two minutes of a conversation with Runyon. During this conversation, Runyon can initially be heard saying, "I'm giving money to . . . ." Before she competed this thought, she apparently became distracted by the light on Tramski's cell phone camera. Runyon then remarked, "But anyway, that money you can do what you want with it." Runyon then clarifies that it should not be given to any man, and Runyon cautions that men chase women for their money. When Tramski stated that she "would never do that," Runyon stated, "It's yours," and "just yours." However, Runyon also encouraged Tramski to use the money to help her son if he needed it for college expenses.[1]

On March 14, 2018, Runyon was injured when she fell while on a casino trip to Detroit and was taken by ambulance to Detroit Receiving Hospital. Tramski knew that something was wrong when Runyon was not on the bus when it arrived back from the day-long outing. One of the other residents informed Tramski of Runyon's fall. Later that evening, Tramski called the hospital and was told that several tests had been performed but no decision had been made whether Runyon would be admitted. Eventually, at approximately 1:30 a.m. on March 15, 2018, the

[1] In its written opinion, the probate court stated that in this video Runyon could be heard telling Tramski "it's *all* yours." During the evidentiary hearing, however, the court reporter transcribed the audio from the video recordings into the record. The court reporter transcribed Runyon's words as, "It's yours. Just yours." Our review of the recording finds that Runyon simply states, "It's yours," without reference to what.

hospital informed Tramski that Runyon was ready to be discharged and Tramski immediately drove to Detroit to retrieve Runyon.

After Tramski arrived at the hospital, she grew concerned because Runyon did not recognize her. Runyon was confused and disoriented to time and place. Nonetheless, the doctors discharged Runyon to Tramski's care. Tramski drove Runyon back to Lake Huron Woods. Because Runyon could not be left alone in her condition, Tramski called an ambulance and Runyon was transferred to McLaren-Port Huron Hospital where she remained for 7 to 10 days. Tramski visited her every day and claimed that Runyon eventually recognized her. Upon Runyon's discharge from McLaren, she was transferred to Regency on the Lake, a rehabilitation facility. According to Tramski, at the time of her transfer, Runyon's condition had improved and her memory was slowly coming back.

On March 19, 2018, Tramski filed a petition to be appointed Runyon's guardian and alleged:

> Do [sic] to a head injury on 3-14-18, Pauline has lost the last 10-15 yrs –she thinks she lives at her residence from 15 years ago, still thinks she married and has no idea what happen to her or where she is.

The probate court approved a full guardianship on March 27, 2018.

According to Tramski, after the fall, and while at Regency, Runyon's physical condition deteriorated and she lost 15 to 20 pounds, but her cognitive condition improved, particularly her memory. On May 4, 2018, while Tramski was at work, she received a call from Regency staff informing her that Runyon's condition was "severe" and that Runyon had developed a Kennedy ulcer. Tramski explained that a Kennedy ulcer grows bacteria and is "like poison." Tramski understood that the ulcer would continue to get larger and that there was no cure. Regency staff informed Tramski that "it could be days before she passes on." Upon hearing this news, Tramski called attorney John Adair and requested assistance in drafting a will. Adair informed Tramski that he was not available. After further discussion, Tramski decided that she would draft a will on her own and from her Lake Huron Woods office, she typed up a document that provided:

> Last Will and Testament of Pauline L. Runyon
>
> May 4th, 2018
>
> I, Pauline L. Runyon, a resident of Fort Gratiot, County of St. Clair, State of Michigan, do hereby make, publish, and declare this to be my last Will and Testament, hereby revoking any and all Wills make by me previously.
>
> I want any debt, including the expenses of my last illness and funeral expenses, expenses of administering my estate, be paid by Lisa M. Tramski soon after my death.
>
> Upon my death, I, Pauline L. Runyon, want Lisa Tramski to be the beneficiary on all my Bank Accounts, which includes Chase Checking Account, Chase IRA account and Huntington Bank Account.

I, Pauline L. Runyon want Lisa Tramski of Burtchville, Michigan to receive all assets and to be my Personal Representative and Beneficiary of my estate.

I, Pauline L. Runyon, sign my name to this document, swearing that the above statements are true.

_____
Pauline L. Runyon

_____
Witness

Tramski admitted that she was aware that Runyon already had a will. However, she claimed that Runyon had told her that all previous wills and legal documents had been revoked.

According to the record before us, Runyon had previously executed two wills, both prepared by an attorney, in 2008 and 2009. In the 2008 will, Runyon directed, among other things, that proceeds of her estate be distributed to several charities, including the Leader Dogs for the Blind, United Way, the St. Vincent de Paul Society, the Salvation Army, and Safe Horizons. She also directed that $30,000 be given to "her friend" John R. Sparling. In the 2009 will, Runyon made the following bequests:

1. To the Leader Dogs for the Blind located in Rochester, Michigan the sum of $25,000.00

2. To my friend, Patricia A. Gofton of Port Huron, Michigan the sum of $2,000.00.

3. Safe Horizons of St. Clair Count, Michigan the sum of $10,000.00 to paid [sic] from the proceeds of the sale of my personal residence.

The 2009 will directed that the residual of Runyon's estate be distributed to her friend, John R. Sparling, and if he should not survive, to be shared equally between his two children. The will also appointed Sparling as the personal representative of Runyon's estate.

After Tramski drafted the will on May 4, 2018, she spoke with James Mallorey, a maintenance man at Huron Lake Woods. Tramski asked Mallorey to meet her at Regency to witness Runyon sign the will that she had drafted. Tramski showed Mallorey the February 22, 2018 video in which Runyon made certain statements. After viewing this video, Mallorey agreed to witness the signing of the will.

At the end of his work day, Mallorey met Tramski at Regency at approximately 4:30 p.m. They walked into Runyon's room and Mallorey asked Runyon if she remembered him. Runyon replied, "yes." Tramski then told Runyon, "I did what you wanted me to do." Tramski further explained that she had spoken to attorney Adair about the will and that Adair said "you should probably sign this document." Tramski explained to Runyon that Mallorey was present to be a third-party witness. Mallorey then asked Tramski to leave the room. According to Mallorey, he read the document to Runyon, which took two to three minutes. He then asked her if she

understood the document and "if it was her wishes." According to Mallorey, Runyon replied, "yes." Runyon did not ask any questions. Mallorey then said, "We need a signature." Because there was nothing to write with in the room, Mallorey left to retrieve a pen. When he returned, he placed the pen on a cafeteria tray. According to Mallorey, Runyon then, of her own volition, picked up the pen and signed the will. After that, Mallorey signed on the line marked "Witness," and noted the date and time, "4:45 p.m. 5-4-2018." When Tramski returned to the room, the will was not further discussed.

Regency nursing and progress notes documented Runyon's condition on May 4, 2018, including immediately before and after Mallorey and Tramski's visit. The notes, in general, confirm that Runyon was suffering from Kennedy ulcers in her sacral area that had developed and were progressing quickly. Runyon was in a great deal of pain and had become combative, aggressive, and physical with the nursing staff. Sometime on May 4, 2018, during a call with Regency staff, Tramski directed that a "full code" status be placed on Runyon. The following day, however, as Runyon's condition deteriorated, the nursing and progress note entered on May 5, 2018, at 5:37 p.m., states that Tramski signed a "DNR" (i.e., do not resuscitate) order for Runyon and requested "comfort care or hospice."

Over the course of the next several days, Runyon's condition deteriorated. She died on the morning of May 12, 2018, at the age of 85. The death certificate notes that Runyon suffered from Alzheimer's dementia for "years." Three days after Runyon's death, Tramski wrote a check to herself in the amount of $9,000 from Runyon's Chase Checking account because she believed that would have been Runyon's wishes.

Tramski filed a petition nominating herself as personal representative of Runyon's estate and requesting that the May 4, 2018 will be admitted to probate. Because Runyon was not survived by any known heirs, the State Public Administrator received notice of the petition. MCR 5.125(A)(1), MCL 700.3306(1).

On behalf of the State Public Administrator, the Attorney General ("AG") filed an objection to Tramski's petition and argued that the May 4, 2018 will did not meet the requirements of a valid will under MCL 700.2502 because there was only one witness to the testator's signature. The AG further argued that Runyon lacked the testamentary capacity to execute the will and that the will was the product of Tramski's undue influence. The probate court appointed Tramski as special personal representative of Runyon's estate, but scheduled an evidentiary hearing to determine the validity of the May 2018 will and ordered that notice be given to all devisees in the previous will. As a result, John R. Sparling and the Leader Dogs for the Blind joined the AG as contestants to the will.

Following the evidentiary hearing, the probate court concluded that Runyon lacked the capacity to execute the will on May 4, 2018. The court noted that videos taken of Runyon on April 13, 2018, depicted a confused person in a fragile physical state. The court relied on entries in the May 4, 2018 medical records to support its finding that Runyon was in significant pain and that she had become aggressive, combative, and physical with the Regency staff. The court found noteworthy Tramski's exclusion of Runyon from the discussion of her Code/DNR status, which indicated that Tramski did not believe that Runyon could participate meaningfully in a conversation about a significant change in her medical treatment. The court further noted that

Runyon was not allowed to read and comprehend the document before she signed it. The court discredited Tramski's testimony that despite Runyon's declining physical condition, her cognition had improved.

In addition, the court found that the May 4, 2018 will was the product of Tramski's undue influence. The court first noted that because of the fiduciary relationship between Runyon and Tramski and other circumstances, there was a legal presumption of undue influence. The court then concluded that there was insufficient evidence to rebut the presumption. Noting that the will did not include bequests to the Leader Dogs for the Blind or Safe Horizons, as all of her prior wills had done, the court found that the May 4, 2018 will did not "appear to express Runyon's desires regarding the distribution of her estate, but Tramski's."

After concluding that the May 4, 2018 will was invalid, the court removed Tramski's as personal representative. Further, given the apparent validity of Runyon's May 29, 2009 will, the probate court appointed John Sparling as successor personal representative. Finally, the court directed Sparling to investigate the circumstances surrounding the $9,000 check Tramski wrote to herself within days of Runyon's death. This appeal followed.

II. STANDARDS OF REVIEW

"The standard of review on appeal in cases where a probate court sits without a jury is whether the court's findings are clearly erroneous." *In re Bennett Estate,* 255 Mich App 545, 549; 662 NW2d 772 (2003). "A finding is clearly erroneous when a reviewing court is left with a definite and firm conviction that a mistake has been made, even if there is evidence to support the finding." *Id.* "The reviewing court will defer to the probate court on matters of credibility, and will give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court." *In re Erickson Estate,* 202 Mich App 329, 331; 508 NW2d 181 (1993); see also MCR 2.613(C).

III. ANALYSIS

Tramski first argues that the contestants failed to overcome the presumption that Runyon possessed the requisite testamentary capacity to execute her will, and therefore, the probate court erred by denying admission of the May 4, 2018 will on that basis. We disagree.

To have testamentary capacity, a testator must "be able to comprehend the nature and extent of his property, to recall the natural objects of is bounty, and to determine and understand the disposition of property which he desires to make." *In re Sprenger's Estate,* 337 Mich 514, 521; 60 NW2d 436 (1953); see also MCL 700.2502. It is presumed that a testator had sufficient capacity to execute a will. *In re Skoog Estate*, 373 Mich 27, 30; 127 NW2d 888 (1964). The contestant of a will has the burden of establishing lack of testamentary capacity, undue influence, fraud, duress, mistake, or revocation. MCL 700.3407(1)(c). Whether a testator had the requisite testamentary capacity is judged at the time of the execution of the instrument, and not before or after, except as the condition before or after is competently related to the time of execution. *In re Powers Estate*, 375 Mich 150, 158; 134 NW2d 148 (1965).

The evidence presented during the evidentiary hearing established that Runyon, at the time she signed the May 4, 2018 will, was 85 years old and had suffered for years from Alzheimer's and dementia. On March 14, 2018, approximately six weeks before signing the will, Runyon fell and suffered a head injury while on a casino trip. Hours after the fall, Runyon was disoriented to time and place and was unable to recognize Tramski. Then, five days after the fall, Tramski successfully petitioned the probate court to be appointed Runyon's guardian. We acknowledge that appointment of a guardian is not conclusive of a testator's capacity to validly draft and execute a will. See, e.g., *In re Paquin's Estate*, 328 Mich 293, 302; 43 NW2d 858 (1950). However, it is significant that in her guardianship petition, Tramski represented that Runyon had "lost the last 10-15 years" of her memory, still believed she was married, and she had no idea what had happened to her or where she was. Runyon was hospitalized for approximately a week after her fall, and then transferred to Regency on the Lake, a rehabilitation facility. Because of her condition, Runyon was unable to return to independent living.

Tramski frequently video recorded Runyon at Regency, until Regency staff asked her to cease and threatened to ban her from the facility. On April 13, 2018, Tramski videotaped Runyon several times. In one video, approximately three minutes long, Runyon can be seen slumped over in a wheelchair. As the video opens, Tramski asks Runyon, "Tell me again, what my name is." In response, Runyon says, "Lisa." When Tramski asks Runyon what they are going to do tomorrow, Runyon replies, "I'm going to go to Younkers." Only seconds later, however, when Tramski repeats the question, Runyon replies, "who knows," and then when Tramski asks if they are going shopping, Runyon replies, "Oh, I don't think so." During this three-minute video, Runyon picks up an empty cup twice. She also asks the name of a Regency nurse with whom she apparently was familiar. The nurse replies, "you know me Pauline." Moments later, when Runyon is asked her own nickname, Runyon appears confused. Only when Tramski suggests, "how about Frenchie," does Runyon reply, "yah." In two other videos, Tramski repeats the inquiry, "tell me my name one more time," and Runyon replies, "Lisa." Runyon appears frail and confused in the April 13, 2018 video. Further, as the probate court noted, the conversation is stilted and Runyon only appears to respond to questions asked.

This evidence demonstrates a progressive decline in Runyon's cognitive abilities in the weeks following her fall. Nursing and progress notes from May 4, 2018, confirm that Runyon's physical condition and mental faculties rapidly deteriorated and she was in a great deal of pain. On the morning of May 4, 2018, Runyon conversed with the Regency staff and taught the nurses the French word for beautiful. Tramski argues that this evidence demonstrates that Runyon was alert and cognitive. However, Runyon was French Canadian and she frequently expressed a longing to return to Quebec. Consequently, her statements that morning could evidence a mind slipping into the past. Moreover, progress notes later that day, indeed within 15 minutes before and after the signing of the will, document that Runyon was in a great deal of pain attributable to rapidly progressing Kennedy ulcers on her sacral area. During nursing assessments, Runyon was aggressive, physically assaultive, and combative with Regency staff. The nursing notes also support the conclusion that Runyon lacked sufficient cognition to participate in decisions regarding her own medical care. At 4:15 p.m., 15 minutes before Mallorey arrived to witness the signing of the will, a nurse spoke to Tramski about Runyon's code status and, according to nursing notes, it was Tramski, not Runyon, who made the decision regarding whether a code would be carried out or resuscitation efforts abandoned.

We recognize that "proof of old age, physical weakness, or forgetfulness is insufficient to establish a lack of mental capacity." *In re Sprenger's Estate*, 337 Mich at 521. However, the evidence established more than a woman advanced in age with a few physical ills who experienced the occasional "senior moment" as Tramski would suggest. Less than two months before executing the will, Runyon suffered a significant head injury that resulted in her hospitalization for more than a week, and prevented her from returning to independent living. There is little evidence to support a finding that Runyon's mental status improved significantly from the time of her fall until her ultimate death.

Tramski admits that Runyon's physical condition consistently deteriorated while at Regency, but she asserts that Runyon's cognitive condition, particularly her memory, actually improved. Indeed, Tramski claims that when she went to Regency on May 4, 2018, it was "just like a normal day." The probate court reasonably could have discredited this testimony as implausible considering that Tramski was prompted to draft a will and race to the facility in response to a phone call from Regency staff indicating that Runyon's condition was fairly dire. Further, Tramski admitted that "every day" she was concerned about Tramski's mental status and every day the status was different.

Similarly, Mallorey testified that he read the will to Runyon, and then asked her if she understood the document and if it was her wishes, and she replied, "yes." He further testified that he believed that Runyon understood the meaning of "a last will and testament." Mallorey explained he thought the written document was consistent with Runyon's "train of thought" in the February 22, 2018 video. However, the video was recorded approximately three weeks before Runyon's fall that led to her decline, and thus, her apparent mental capacity or train of thought as depicted in the video was not a competent basis for evaluating her capacity on May 4, 2018. Moreover, Runyon did not state in the video that she was giving all of her assets to Tramski. Further, Mallorey mistakenly believed that Tramski and Runyon had known each other for a year when, in fact, they had only been acquainted for less than nine months. For these reasons, the probate court did not clearly err by declining to give significant weight to Mallorey's impression of the events and Runyon's mental capacity on May 4.

Despite Tramski's claims to the contrary, the trial court concluded that Tramski's and Mallorey's testimonies were not credible or particularly compelling. The court specifically noted: "While Tramski testified that, despite a declining physical condition, Runyon's cognition had improved, that assertion is directly contradicted by Regency's records, some of which are almost exactly contemporaneous with Runyon's execution of the [w]ill." Regarding Mallorey, the court noted: "There is no demonstration that Runyon was able to read and comprehend the document or even that Mallorey, who was a friend of Tramski and who had only first seen the document shortly before he presented it to Runyon, carried on a conversation with her to discuss its provision." Thus, it is apparent that the probate court discredited their testimony, as was its prerogative. We "will defer to the probate court on matters of credibility, and will give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other influencing factors not readily available to the reviewing court." *In re Erickson Estate*, 202 Mich App at 331.

The fact that Tramski formulated the intent and then created the will without any prompting from Runyon is relevant to determining whether Runyon possessed testamentary capacity. In *In re Ferguson's Estate*, 239 Mich 616, 627; 215 NW 51 (1927), our Supreme Court stated:

> If [the testator] at the time she executed the will, had sufficient mental capacity to understand the business in which she was engaged, to know and understand the extent and value of her property, and how she wanted to dispose of it, and to keep these facts in her mind long enough to dictate her will *without prompting from others*, she had sufficient capacity to make the will. [Emphasis added.]

In this case, the evidence indicated that Runyon's engagement in the enumerated activities on May 4, 2018, was based on prompting from others. The record is devoid of any evidence that on May 4, 2018, Runyon considered the extent and value of her property, formulated a plan for the disposition of her property after her death, and then engaged in any meaningful way in the preparation of a document evidencing her wishes.

After reviewing the record in its entirety, we conclude that the evidence supports the probate court's finding that Runyon was unable to plan and effect any testamentary conveyances, without prompting and interference from others. Accordingly, the probate court did not clearly err when it denied admission of the May 4, 2018 will into probate on the ground that Runyon lacked the testamentary capacity to execute that will.

Next, Tramski argues that the contestants failed to establish that Runyon's May 4, 2018 will was the product of undue influence. We also disagree.

To establish undue influence, it must be shown that

> the grantor was subjected to threats, misrepresentations, undue flattery, fraud or physical or moral coercions sufficient to overpower volition, destroy free agency and impel the grantor to act against his inclination and free will. Motive, opportunity, or even ability to control in the absence of affirmative evidence that it was exercised are not sufficient. [*In re Karmey Estate*, 468 Mich 68, 75; 658 NW2d 796 (2003), quoting *Kar v Hogan*, 399 Mich 529, 537; 251 NW2d 77 (1976).]

In certain situations, however, undue influence will be presumed. A rebuttable presumption of undue influence arises when: (1) there exists a confidential or fiduciary relationship between the grantor and a fiduciary, (2) the fiduciary benefits from a transaction, and (3) the fiduciary had an opportunity to influence the grantor's decision in that transaction. *In re Karmey Estate*, 468 Mich at 73.

Tramski concedes that the presumption of undue influence applies. Although Tramski had the burden of rebutting the presumption of undue influence, the burden of persuasion remained with the contestants. *In re Peterson Estate*, 193 Mich App 257, 260; 483 NW2d 624 (1991).

Tramski testified that she never threatened Runyon or withheld love and affection in an attempt to force Runyon to leave the entire estate to her. Tramski also opined that Runyon understood on May 4, 2018, the nature and extent of her property and that, by signing the

document, she was providing for the disposition of her property after she died. Tramski asserted that Runyon had asked her multiple times to take her to see an attorney. Indeed, Tramski believed that after Runyon signed the May 4, 2018 will, it brought her a measure of peace because the unfinished business had been resolved. Tramski also relies on the February 22, 2018 video, claiming that Runyon can be heard stating that she wished to give the entirety of her estate to Tramski. Finally, Tramski relies on the testimony of Mallorey, her friend and co-worker. Mallorey asserted that he never observed any unusual behavior between Tramski and Runyon. According to Mallorey, Tramski did not dote on Runyon excessively or give her extraordinary compliments. Mallorey emphasized that Runyon did not need any convincing to sign the will and he did not feel like Tramski was pressuring Runyon.

As indicated earlier, the probate court did not find Tramski or Mallorey to be particularly credible or compelling witnesses. Further, our review of the video recording made on February 22, 2018, does not support Tramski's claim that on that day, while being recorded, Runyon stated her intentions to leave her entire estate to Tramski. Despite suggestions to the contrary, Runyon did not state "it's *all* yours." Moreover, at that time, Runyon had recently gifted Tramski $1,000 and purportedly promised in writing to give her an additional sum of $9,000. It is equally plausible that Runyon was referring to these sums of money and not the entirety of her estate. At no time during that recorded February 22, 2018 conversation did Runyon ever refer to her will.

The timing and circumstances surrounding the execution of the will are particularly significant. During all the months that Runyon allegedly pressed Tramski to take her to a legal professional to change her will, Tramski never complied. Tramski did not approach Runyon when her judgment and thought content was normal, but instead waited until Runyon was in considerable pain evidencing mental status changes before she approached Runyon with the will. Tramski readily admitted that she prepared the will and took it to Runyon only after she received a call from the Regency staff informing her that Runyon had developed a Kennedy ulcer and her condition was quite severe. Before showing up at Regency with the new will that she had prepared, Tramski had not seen Runyon that day or had a conversation with her that day about signing a will. When Mallorey arrived at the rehabilitation center, he heard Tramski tell Runyon that she had contacted Runyon's lawyer, that they had talked about her will, and that he said, "you should probably sign this document." Mallorey then requested that Tramski leave Runyon's room. Mallorey claimed that after Tramski left, he slowly read the document to Runyon, asked if she understood the document, and then said, "we need a signature." Mallorey left the room to retrieve a pen and when he returned, he placed it on a nearby cafeteria tray. At that point, Runyon picked up the pen and signed the will. Runyon did not ask Mallorey any questions and there was no indication that she actually read the document herself. According to Mallorey's testimony, the entire process took 15 minutes. Under these circumstances, it does not appear that Runyon was given a meaningful opportunity to review the document;

The fact that Tramski's actions unduly influenced Runyon, is further supported by the fact that the resulting will did not actually evidence Runyon's wishes. "Undue influence such as will invalidate a will, must be something which destroys the free agency of the testator at the time when the instrument is made, and which, in effect, substitutes the will of another for that of the testator." *In re Williams Estate*, 185 Mich 97, 120; 151 NW 731 (1915) (quotation marks and citation omitted.) Tramski acknowledged that she "definitely" knew that it would have been Runyon's wishes to have the Leader Dogs for the Blind included in her will. Nonetheless, Tramski never

asked Runyon if that continued to be her desire and she never included this charitable entity in the will she drafted.

In sum, the probate court did clearly err when it found that Tramski was not able to successfully rebut the presumption of undue influence. Further, contestants satisfied their burden of proving a claim of undue influence. Accordingly, the probate court did not clearly err when it also invalidated the May 4, 2018 will on the ground that it was the product of Tramski's undue influence.

IV. CONCLUSION

We affirm the probate court's order declaring Runyon's May 4, 2018 will invalid on the basis that Runyon lacked testamentary capacity to execute the will and that the will was the product of Tramski's undue influence.

/s/ Anica Letica
/s/ Michael J. Riordan
/s/ Thomas C. Cameron