STATE OF MICHIGAN

COURT OF APPEALS

In re Estate of WHITE.

THOMAS BRENNAN FRASER, Personal Representative of the Estate of ERROL L. WHITE,

Petitioner,

and

ANGELA M. BRYANT,

Appellant,

v

DIANE OLEKSIAK, a/k/a DIANE WHITE-OLEKSIAK,

Appellee.

UNPUBLISHED
August 6, 2013

No. 308788
Oakland Probate Court
LC No. 2011-335445-DE

Before: STEPHENS, P.J., and WILDER and OWENS, JJ.

PER CURIAM.

Appellant Angela M. Bryant, the only child of the decedent Errol White, appeals as of right from a probate court order denying her petition for a determination that the decedent died intestate and granting the petition of appellee Diane Oleksiak, the decedent's former wife, to admit into probate the decedent's February 4, 2011, will, and for supervised administration of the estate. We affirm.

I. FACTUAL BACKGROUND

The decedent, Errol L. White, died of a self-inflicted gunshot wound at his home on March 24, 2011. Following his death, appellant Bryant filed a petition seeking a determination that Errol died intestate, and appellee Oleksiak filed a petition to admit into probate a will dated February 4, 2011, which the decedent allegedly executed approximately seven weeks before his

death. The will left Errol's entire estate to Oleksiak, and left nothing to Bryant. The probate court held a two-day bench trial on the competing petitions.

Oleksiak testified that she and Errol White were married on January 30, 1992, and divorced on April 22, 2010, but continued to live in the same house until November 2010. They had no children together. Following the divorce, Oleksiak married another man, with whom she had been involved in an affair during her marriage to Errol. Oleksiak allowed Errol to continue to reside in the marital home, which Oleksiak received in their divorce. Oleksiak testified that even after she moved out of the house, she continued to do Errol's grocery shopping, paid his bills, ironed his clothes, and did the heavy cleaning. They maintained a joint bank account so that she could write checks for him. According to Oleksiak, Errol could do these things for himself but simply did not like to do so. Oleksiak never believed that Errol needed a guardian or could not handle his own financial affairs.

During their marriage, Errol and Oleksiak had a marital trust that was prepared by an attorney in the late 1990s. As part of that trust, they each prepared wills. After the divorce, Errol told Oleksiak that he wanted a new will; he wanted things in place because he was having health issues and he had learned that the marital trust was no longer valid. Errol did not want to pay an attorney to draft a new will, so Oleksiak suggested that he could obtain an estate kit at an office supply store. Oleksiak thereafter bought a kit for Errol at his request. According to Oleksiak, Errol began to type on the preprinted forms but became frustrated and asked Oleksiak to assist him. Oleksiak explained:

> I sat at the computer. Errol sat on a couch, which is maybe two steps behind the computer. He had this paperwork and he had the original trust sitting on the couch and he would flip through things and he'd say, okay, I want to say this, and I want to say that. And then I'd type up what he, you know, he'd say. He'd give me an idea and then I'd type up in sentences what he had to say.

It took a few hours for Errol to dictate the terms of his will and for Oleksiak to type them, and no one else was present. Oleksiak denied that she told Errol what to say in his will. Although Errol was a heavy beer drinker during this period, Oleksiak denied that Errol was drinking alcohol or intoxicated during the making of the will; rather, Errol was only drinking coffee.

Oleksiak printed off the finished will and had Errol read it. She had typed the bottom page showing a place for witness signatures. Errol asked her to make several copies, which she did. Errol then indicated that he wanted to take the will to a notary because he thought it would "be more valid than just any people." Therefore, Oleksiak prepared a separate page for a notary signature. Oleksiak printed two versions of the will, one with a place for a notary signature and one for witnesses. She made five or six copies of each will, left them with Errol, and did not retain a copy. The copies were left on the kitchen table, where they remained for quite some time before Oleksiak moved out of the house in November 2010, and Oleksiak had no further discussions with Errol about the will.

Copies of two versions of a signed will were offered at trial. One copy, dated January 5, 2011, contained the signatures of Errol and a notary. The second copy, dated February 4, 2011, contained the signatures of Errol and two witnesses, Michael and Marlene Koreck. Oleksiak

testified that she was not present when either will was executed, but that Errol gave her the original for each at different times. Each time, she took the original will to her home and placed the document in a file. After Oleksiak took possession of the wills, she and Errol had no further discussions about them, and Errol never indicated that he wanted to change or revoke the wills. At trial, Oleksiak explained that her home was "under construction," so she had "probably 200 boxes and tubs of everything all over, living rooms, bedrooms, basement." She had tried to locate the originals, but was not able to find them. The copies that were offered at trial were obtained from Errol's attorney.

Marlene and Michael Koreck, long-time friends of Errol and Oleksiak, each testified that they witnessed Errol sign his will on February 4, 2011, and then signed it themselves. The Korecks became friends with Errol because their daughter Andrea was a friend of Errol's daughter, Bryant. Marlene testified that Errol contacted her in the late summer or early fall of 2010 to ask if Andrea would be willing to be mentioned in his will. Errol wanted Andrea to administer his estate for the benefit of his granddaughter, Bryant's daughter McKenzie, if Oleksiak predeceased Errol. Marlene had no further conversations with Errol about his will until he called her in January 2011 and then came to their house about a week later, on February 4, 2011, with the paperwork. Errol signed the will in the Korecks' presence, and then each of them signed as witnesses. Marlene and Michael identified their signatures on the back page of the will. Both Korecks testified that Errol did not appear intoxicated when he signed the will, although Marlene stated that his hand was "shaky."

The file of attorney Robert White (no relation to Errol), was admitted into evidence at the trial. White had handled Errol and Oleksiak's divorce and was representing Oleksiak in the probate court action over the will. The file contained copies of the January and February 2011 wills that were admitted into evidence. The file also contained letters from Errol to White. The first letter, dated January 11, 2011, indicated that Errol was enclosing a copy of the notarized version of his will. The letter also stated that Errol and Oleksiak were on very good terms, that Errol trusted Oleksiak's judgment in making decisions on his behalf, and that Bryant was not to be in charge of anything or receive anything if Errol should become incapacitated or die. Errol asked White to step in if the will was contested to verify "that the document was drafted of my own free will and is 100 percent what I want to occur." On January 29, 2011, White wrote Errol to indicate that the enclosed will was not proper under Michigan law because it was not attested by two witnesses. Sometime later, White received a copy of the February 4, 2011, will that was witnessed by the Korecks. An accompanying letter[1] indicated that Errol had "given the original to Oleksiak, copies to Andrea and to a couple of friends and am enclosing a copy for your files." The letter also stated that Errol had "given out several copies so that there can be no question as to my intentions." The letter further stated, "I have also told my friends of my wishes and why I am writing my daughter and grandchildren out of my will."

[1] The letter was dated January 11, 2011, but was received sometime in February and included the copy of the February 4, 2011, will.

Appellant Bryant is Errol's daughter from a previous marriage. At the time of Errol's death, Bryant had two daughters, McKenzie and Sidney. At the trial, Oleksiak testified that Errol was angry with Bryant because she had not allowed him to see McKenzie on her birthday. Oleksiak also testified that Bryant did not visit Errol between April 22, 2010, and November 2010, when Oleksiak moved out of the house, and Oleksiak was not aware that Errol had visited Bryant at her home, although he did go there once to deliver some family photographs.

Bryant did not believe that Errol wrote the proposed wills. She stated that the contents were not consistent with Errol's blue-collar background or personality, explaining that he was not an eloquent person, would not give explanations, and would never admit blame. She also did not believe that the signatures were made by Errol. Bryant refuted Oleksiak's testimony about the breakdown in her relationship with Errol and claimed that Errol attended both of her daughters' birthdays in 2009 and 2010, and attended Thanksgiving at her house in 2010. According to Bryant, their relationship was "fine." She testified that they spoke on the telephone and e-mailed each other, and that Errol visited the children at her house. Bryant was injured in a car accident in 1999, which led to multiple surgeries and eventually required her to quit work in 2007. Bryant testified that Errol was present for all but one of her surgeries and acted as her designated driver as recently as August 2008. Bryant testified that in January or February 2011, Errol came to her house to deliver a box of family photographs and a copy of his Vietnam medals. The box included photographs of Errol at his granddaughters' birthday parties in 2010 and at other family events with Bryant, her husband, and the girls. The probate court sustained Oleksiak's objections to the introduction of medical records naming Errol as Bryant's driver for hospital discharges, copies of Bryant's call logs and telephone bills to show calls from Errol, postings on Bryant's Facebook page allegedly made by Errol, and a record of e-mails that Bryant received from Errol.

A forensic document examiner, Thomas Riley, was called as a witness by Errol's personal representative. Riley was not able to offer an opinion on the authenticity of Errol's signatures from the copies of the two wills, and he was concerned about the court accepting copies in lieu of original documents. Riley explained that the copying process could cause a loss of detail, hide elements of fraudulent writing, and hide evidence of signature manipulation. He also noted that in each of the two wills he examined, the left margins of pages one and two were significantly different. Riley could not tell what caused the differences.

The probate court found that the copy of Errol's February 4, 2011, will was valid and admitted it to probate. The probate court first concluded that Errol gave the original will to Oleksiak, who had not been able to locate it. The court also found that the will was not the product of undue influence or duress, that Errol had the mental capacity to execute the will, and that Errol had not revoked the will before his death.

On appeal, Bryant argues that the probate court erred in admitting the purported February 4, 2011, will because (1) the will was a copy and not the original, (2) the court should have presumed that Errol destroyed the will with the intention of revoking it, (3) the court should have found a presumption of undue influence because Oleksiak was a fiduciary to Errol, and (4) the court abused its discretion in excluding Bryant's hospital records, cell phone records, and Facebook posting, and by not allowing Bryant to testify about statements Errol had made.

II. ADMITTING COPY OF WILL TO PROBATE

Bryant first argues that Oleksiak did not meet her burden of proving that the submitted copy was actually Errol's intended will because neither witness read the document they saw Errol sign, the expert testified that there were unexplained discrepancies between the two pages of the will, Oleksiak's testimony that she misplaced the original will was not credible, and the only evidence of the contents of the will was established by Oleksiak's testimony.

This Court reviews a probate court's factual findings for clear error. *In re Temple Marital Trust*, 278 Mich App 122, 128; 748 NW2d 265 (2008); *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." *In re Bennett Estate*, 255 Mich App at 549. Issues of statutory construction and questions of law are reviewed de novo. *In re Temple Marital Trust*, 278 Mich App at 128.

The proponent of a will has the burden of establishing prima facie proof of due execution in all cases. MCL 700.3407(1)(b). The Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq.*, provides that a formal will is valid if it is "in writing," signed by the testator, and signed by at least two individuals who each signed within a reasonable time after witnessing the testator's signing of the will. MCL 700.2502(1). A copy of an original will may be admitted to probate if the proponent establishes the will's contents and that the will was lost, destroyed, or otherwise unavailable. See MCL 700.3402(1)(c). Under MRE 901(a), a document may be identified or authenticated "by evidence sufficient to support a finding that the matter in question is what its proponent claims." An "original" of a document "is the writing . . . itself or any counterpart intended to have the same effect by a person executing or issuing it." MRE 1001(3). A "duplicate" of a writing "is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography . . . or by mechanical or electronic re-recording, or by chemical reproduction, or by other equivalent techniques, which accurately reproduces the original." MRE 1001(4). With regard to the admission of documents into evidence, "[a] duplicate is admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." MCR 1003.

Here, the testimony at trial established that Errol signed the will in the presence of Marlene and Michael Koreck, who both also signed the will. Marlene and Michael both testified that Errol signed the will in their presence, and they identified their signatures on the submitted February 4, 2011, copy of the will. The probate court found the Korecks' testimony "credible in light of their longstanding friendship with [Errol] White and their lack of pecuniary interest in the outcome." We defer to the probate court's credibility determinations. *Kessler v Kessler*, 295 Mich App 54, 64; 811 NW2d 39 (2011). The copy of the will was obtained from the legal file of attorney White, who received it with a letter from Errol, who in turn stated that he had given the original document to Oleksiak. Oleksiak testified that Errol gave her the original within a few days after the Korecks witnessed it, but she was not able to locate it because her home was under construction and in a state of disarray. Oleksiak testified that the document submitted at trial was indeed a copy of the original that she received from Errol.

The testimony of will proponent, Oleksiak, considered in conjunction with the testimony of Marlene and Michael Koreck, as well as the evidence of Errol's letters and the will copy from the legal file of attorney White all support that the February 4, 2011, copy of the will is what Oleksiak purported it to be. The evidence does not indicate that it would be any less fair to admit the submitted copy of the February 4, 2011, will than to admit the original, if it could be found. Thus, the probate court did not err in determining that the copy of the February 4, 2011, will could be admitted to probate.

III. PRESUMPTION OF REVOCATION

Bryant next challenges the probate court's determination that Errol did not revoke his will before his death. The probate court found that the proximity of time between the witnessing of the will on February 4, 2011, and Errol's death on March 28, 2011, made it unlikely that he revoked it. Further, Errol had made two attempts to make a valid will, sending copies of both the notarized version of the will and the attested will to his attorney, which demonstrated that he was "resolute in his desire to make that document a valid testamentary instrument." On appeal, Bryant argues that the probate court erred by failing to presume that Errol had destroyed his will with the intention of revoking it because the evidence showed that Oleksiak printed 10 to 12 copies of the will for Errol, and none were found among his possessions after he died.

A testator can revoke a will by the "[p]erformance of a revocatory act on the will, if the testator performed the act with the intent and for the purpose of revoking the will or a part of the will." MCL 700.2507(1)(b). A revocatory act would include "burning, tearing, canceling, obliterating, or destroying the will or a part of the will." *Id.* Pursuant to MCL 700.3407(1)(c), the contestant of a will, here appellant Bryant, has the initial burden of establishing revocation. Further, because Bryant as the contestant had the initial burden of proof in establishing revocation, she also had the ultimate burden of persuasion. MCL 700.3407(1)(d).

Bryant relies on *In re Walsh's Estate*, 196 Mich 42; 163 NW 70 (1917), in support of her argument that the probate court erred by failing to apply a presumption of revocation. In *Walsh*, the decedent was known to have executed his will in duplicate, but the duplicate retained by the decedent was never found after his death, despite a diligent search. *Id.* at 46-47, 55. The Supreme Court stated that when a will is known to have been in the testator's possession, but is missing at his death, there is a legal presumption that the testator destroyed the will with the intent to revoke it and that the presumption applies in the case of a duplicate will. *Id.* at 66-67.

Here, however, the unrebutted testimony indicated that Errol did not retain possession of the original of the attested will. The testimony of Michael and Marlene Koreck was clear that Errol executed only one original of his will and did not execute a duplicate. The letter from Errol to attorney White indicated that Errol was sending a copy of the attested will to him, and that he gave the original to Oleksiak. Oleksiak testified that Errol gave her the original. There was no evidence that Errol maintained copies of the attested will for himself. Bryant's reliance on Oleksiak's testimony that she made copies of the unsigned will for Errol is misplaced. The copies of the will that Oleksiak left in Errol's possession were not copies of the attested, or even the notarized, will. They were, at best, unsigned file copies for Errol to keep for himself. Although it is unclear what happened to these copies, they have no legal effect. As such, even if Errol did destroy them, their destruction would not create a presumption of revocation because

they were not yet valid. Because there was no evidence that Errol retained the signed will witnessed by Marlene and Michael Koreck, the failure to locate a copy among Errol's possessions after his death did not give rise to a presumption of revocation.

Accordingly, the probate court did not err by failing to apply a presumption of revocation.

IV. UNDUE INFLUENCE

Bryant next argues that the probate court erred by failing to find that the will was invalid because it was the product of Oleksiak's undue influence. Bryant argues that a presumption of undue influence existed because Oleksiak was a fiduciary to Errol, she had the opportunity to influence his decision in making the will, and she benefited from the will. The probate court disagreed, finding that the evidence did not establish a fiduciary or confidential relationship that gave rise to a presumption of undue influence.

As an initial matter, Bryant incorrectly places the burden of proof on this issue with Oleksiak. Pursuant to MCL 700.3407(1)(c), a will contestant has the burden of establishing undue influence. Because Bryant, as the party contesting the will, has the initial burden of proof with regard to undue influence, she also "has the ultimate burden of persuasion" on this issue. MCL 700.3407(1)(d).

Generally, "undue influence may be shown where the testator was subjected to threats, misrepresentations, undue flattery, fraud, or physical or moral coercion sufficient to overpower volition, destroy free agency and impel the testator to act against [his] inclination and free will." *In re Leone Estate*, 168 Mich App 321, 324; 423 NW2d 652 (1988). "Motive, opportunity, or even ability to control, in the absence of affirmative evidence that it was exercised, is not sufficient." *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993). Moreover, there may be "'specific and direct'" influences on the testator, and a will may "'not have been made but for such influence,'" but the influences are not "'undue'" "'so long as the testator's choice is his own and not that of another.'" *In re Spillette Estate*, 352 Mich 12, 18; 88 NW2d 300 (1958), quoting *In re Jennings' Estate*, 335 Mich 241, 247-248; 55 NW2d 812 (1952).

In certain situations, undue influence will be presumed. A presumption of undue influence arises upon a showing that (1) there existed a confidential or fiduciary relationship between a grantor and a fiduciary, (2) the fiduciary or an interest that he represented benefited from a transaction, and (3) the fiduciary had an opportunity to influence the grantor's decision in the transaction. *In re Karmey Estate*, 468 Mich 68, 73; 658 NW2d 796 (2003), citing *Kar v Hogan*, 399 Mich 529, 537; 251 NW2d 77 (1976). Once this presumption is created, the burden of going forward with contrary evidence shifts onto the person contesting the claim of undue influence. *In re Mikeska Estate*, 140 Mich App 116, 121; 362 NW2d 906 (1985). However, the burden of persuasion remains with the contestant. *Id.*

A fiduciary relationship is a broad term that focuses on relationships involving inequality. *In re Karmey Estate*, 468 Mich at 74 n 3. As noted in Michigan's civil jury instructions, "A 'fiduciary relationship' is one of inequality where a person places complete trust in another person regarding the subject matter, and the trusted person controls the subject of the relationship

by reason of knowledge, resources, power, or moral authority." M Civ JI 170.45. A "fiduciary relationship" has also been defined as

> "[a] relationship in which one person is under a duty to act for the benefit of the other on matters within the scope of the relationship. . . . Fiduciary relationships [usually] arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) when one person has a duty to act or give advice to another on matters falling within the scope of the relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and client or a stockbrokers and a customer." [*In re Karmey Estate*, 468 Mich at 74 n 2, quoting Black's Law Dictionary (7th ed).]

In reviewing the record, we are not left with a definite and firm conviction that the probate court made a mistake in finding that there was no undue influence. First, there was insufficient evidence to support a conclusion that any presumption of undue influence existed. In *In re Karmey Estate*, 468 Mich at 74-75, our Supreme Court stated that although marriage is "a unique relationship," it "is not a relationship that has traditionally been recognized as involving fiduciary duties." Accordingly, the Court held that the presumption of undue influence is not applicable to such a relationship. *Id.* at 75. The Court noted that "[t]he influence of a husband or a wife over that person's spouse could be great—at times almost overwhelming—without being 'undue.'" *Id.* This same reasoning supports the conclusion that a close relationship between divorced parties does not involve fiduciary duties that give rise to a presumption of undue influence. Although the evidence showed that, after the divorce, Oleksiak continued to assist Errol with various tasks such as grocery shopping, payment of bills, ironing, and heavy cleaning, it did not show that Errol had placed trust in her "faithful integrity" or that Oleksiak had assumed "control and responsibility" over Errol. The evidence showed that Errol continued to trust Oleksiak as a close friend. Oleksiak testified that Errol could have taken care of all of his business if he wanted, but he simply did not like to do so, and she was willing to assist. Oleksiak had no duty as Errol's former spouse to act for or give advice to Errol. Bryant acknowledged that she never thought that Errol was not capable of taking care of himself or managing his affairs.

Second, evidence supports the probate court's determination that Errol was not otherwise unduly influenced by Oleksiak. The evidence did not show that Errol's willpower was overpowered by Oleksiak when preparing his will. On the contrary, Oleksiak testified that Errol acted of his own choice and that she merely provided clerical assistance at his request. Oleksiak testified that when she suggested that Errol not include so many explanations in the will, he responded by telling her that it was his will and he wanted explanations in it. Oleksiak also testified Errol was not drinking or intoxicated at the time the will was drafted. Moreover, there was no evidence that Oleksiak was involved in the execution of the will. The will was not signed until several months after Oleksiak typed the drafts and approximately three months after Olesiak moved out of the home she shared with Errol after the divorce. Importantly, Oleksiak was not present when Errol went to the Korecks' house to execute the will and have the Korecks witness it.

In sum, although Oleksiak benefited from Errol's will and had the opportunity to influence him, the probate court did not clearly err in finding that Oleksiak did not unduly influence Errol's preparation and execution of the will.

V. EXCLUSION OF EVIDENCE

Bryant lastly argues that the probate court erred by excluding evidence offered to show her continuing relationship with Errol. We review the probate court's decisions to exclude evidence for an abuse of discretion. *Edry v Adelman*, 486 Mich 634, 639; 786 NW2d 567 (2010).

Bryant challenges the probate court's exclusion of (1) her hospital records, which she alleged would show that Errol was her designated driver for three scheduled appointments; (2) her cell phone logs and telephone bills, which she offered to show that she and Errol spoke regularly on the telephone; and (3) postings on her Facebook page that were allegedly made by Errol, again to demonstrate a relationship between Bryant and Errol. Although the probate court excluded this evidence as inadmissible hearsay, Bryant argues that the evidence was not hearsay because it was not offered to prove the truth of the respective contents, but rather to rebut Oleksiak's contentions that Bryant and Errol did not have a relationship during the last years of his life.

Hearsay "is a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c). Generally, absent an exception, hearsay is not admissible. MRE 802. A hearsay exception exists for records of regularly conducted business activity, which would include the medical records and the cell phone records, if the evidence is admitted through the testimony of the custodian of the record or other qualified witness, MRE 803(6), or through a written declaration under oath by its custodian or other qualified witness, MRE 902(11).

Oleksiak objected to the admission of the hospital discharge records and the telephone bills and call logs on hearsay grounds, arguing that Bryant was not the keeper of the records and could not testify regarding their authenticity. The probate court sustained the objections and excluded this evidence. We find no abuse of discretion in excluding the medical and cell phone records. Bryant was not the keeper of these business records and could not testify regarding their authenticity. As such, the court did not err by excluding them from evidence. Although Bryant argues that this evidence was admissible under MRE 803(3), the hearsay exception for statements of the declarant's then existing state of mind, emotion, sensation, or physical condition, the hospital and telephone records are not Errol's statements and therefore are not evidence of his state of mind or physical condition.

Bryant also attempted to admit postings from her Facebook page, which she obtained by searching on her page by "sender" and then printing those allegedly posted by Errol. Oleksiak objected, arguing that the postings were hearsay, not relevant, and some were of a substantive nature concerning Errol's divorce from Oleksiak and were being offered for the truth of the matters asserted. The court found that the Facebook statements were hearsay. Bryant has not provided this Court with copies of the Facebook evidence that she sought to admit. Nonetheless, assuming that the postings were substantive, the probate court did not abuse its discretion in

finding them to be hearsay and inadmissible. Notably, the court allowed the admission of a log of e-mails that Errol allegedly sent to Bryant, which simply showed that an e-mail was sent from Errol's account to Bryant's account, but not the substance of the e-mail. The e-mail log, unlike the Facebook postings, was not hearsay and was admissible.

Finally, Bryant argues that the probate court erred by excluding evidence of conversations that she and her mother-in-law, Natalie Maynard, had with Errol on the ground that Errol's statements were hearsay. Bryant does not specify any particular statements that were excluded, but rather simply refers to her entire testimony and the testimony of Maynard. A party may not simply announce a position and leave it to this Court to discover and rationalize the basis for the party's claim. *Badiee v Brighton Area Schs*, 265 Mich App 343, 357; 695 NW2d 521 (2005). Accordingly, Bryant has failed to demonstrate that the probate court abused its discretion in excluding the testimony.

Affirmed. Oleksiak, the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Cynthia Diane Stephens
/s/ Kurtis T. Wilder
/s/ Donald S. Owens