STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1950

In re the Estate of Vernon G. Engelkes, Deceased.

Filed December 14, 2020
Affirmed
Bratvold, Judge

Nobles County District Court
File No. 53-PR-17-976

William J. Wetering, Hedeen, Hughes, & Wetering, Worthington, Minnesota (for appellant Mark Engelkes)

Paul M. Malone, Malone & Mailander, Slayton, Minnesota (for respondent Dorene Chapa)

Considered and decided by Slieter, Presiding Judge; Bratvold, Judge; and Cochran, Judge.

U N P U B L I S H E D O P I N I O N

BRATVOLD, Judge

In this will contest, appellant-objector seeks review of the final judgment entered in favor of respondent-beneficiary following a bench trial. During district court proceedings, appellant claimed that the testator, his father, who was 80 years old when he executed the 2014 will, lacked testamentary capacity or acted under undue influence when he named a friend and bank teller as the sole beneficiary of his estate. In a detailed decision, the district court's findings of fact, conclusions of law, and order for judgment rejected appellant's claims. On appeal, appellant no longer challenges the testator's capacity when he executed

the will. Appellant contends, however, that the district court erred in failing to determine that respondent exercised undue influence over the testator when he executed the will because the district court found that respondent had a confidential relationship with the testator, had an opportunity to exercise undue influence over the testator, and was the sole beneficiary of the will, which excluded the testator's four adult children, including appellant. Because the district court's findings of fact are supported by record evidence, and we discern no legal error in the district court's determination that appellant failed to prove by clear and convincing evidence that respondent unduly influenced the testator in making the 2014 will, we affirm.

FACTS

The following summarizes the district court's findings of fact and the evidence received at trial.

Testator, his family, and the 2014 will

The testator is Vernon G. Engelkes ("Vernon");[1] he married Beverly Engelkes in 1962. Vernon, along with other members of his family, including his two brothers, owned cattle and farmland in Nobles County. Vernon and Beverly dissolved their marriage after more than 50 years. The district court found that their relationship was "acrimonious," their divorce was "difficult," and their adult children "aligned themselves" with Beverly after the dissolution. They had four children: Barbara Edmundson, Theresa Engelkes, Paul Engelkes, and appellant Mark Engelkes.

[1] For ease and clarity, this opinion refers to each member of the Engelkes family by their first name.

After the divorce became final, Vernon executed a will in April 2014, in the presence of his attorney, who drafted the will, and two witnesses. The will nominated Vernon's brother Stanley, as personal representative, and Stanley's wife, petitioner LaDonn Gruis, as alternate. Stanley and Gruis were also present at the execution of Vernon's will.

The will "gave, devised, and bequeathed" all of Vernon's property to his "friend, [respondent] Dorene K. Chapa, absolutely and forever, if she survives me." If Chapa did not survive him, the will provided that his estate would pass to her two teenage daughters in equal shares. The will stated that Vernon intentionally omitted his children, naming each of them, and explaining that he omitted them "not because of my lack of love or affection for them, but because I have provided for them in other ways during my lifetime." When Vernon executed his will, and when he died three years later, Chapa worked as a teller at Vernon's bank in Ellsworth.

Testator's death and discovery of 2014 will

Vernon died on Sunday, October 1, 2017. The next day, the Ellsworth bank manger allowed two of Vernon's children, Paul and Theresa, to access Vernon's safety deposit box, where they found the 2014 will. Paul remained in the bank to read the will and asked the manager, "Who is Dorene Chapa?" The bank manager, whom the district court found "credible in all respects," "had no idea why Paul was asking that" and also testified that Paul appeared to find the will "unsettling."

Paul later returned to the bank and met with the bank manager and Chapa. According to the district court, Paul asked Chapa if she knew that she was in the will and

"had been left everything." The bank manager, according to the district court, said that Chapa "looked totally surprised." The district court found that "[t]he situation was tense," with Chapa "in tears, stating that she did nothing wrong and [had] no pre-knowledge of this situation."

The district court also found that the bank has a policy that "prohibits an employee from receiving a gift from a customer valued at more than $100. Employees such as [Chapa] are required to sign off on bank policies as part of their employment."

Probate proceedings for the 2014 will

Gruis petitioned for formal probate of Vernon's will and requested appointment as personal representative because Stanley was unable to serve. Paul, later joined by Theresa and Barbara, objected to the will, alleging that Vernon lacked testamentary capacity when he executed the will and that Chapa unduly influenced him when he named her and her daughters as will beneficiaries. Mark also objected for the same reasons. During mediation, Paul, Theresa, and Barbara reached a settlement with Chapa, thus, Mark was the sole objector during the three-day bench trial.[2]

At the May 2019 trial, Mark offered testimony from the bank manager and a loan assistant from the bank; the attorney from Luverne who prepared the 2014 will; Mark's siblings, Barbara, Paul, and Theresa; his mother Beverly; and Chapa. Chapa called her husband, Gruis, Mark, Paul, and a neighboring farmer who worked with Vernon. The

[2] Mark objected to the settlement, which was filed with the district court. The settlement agreement provided that Paul, Theresa, and Barbara assigned their individual interests in Vernon's estate to Chapa in exchange for $125,000 each, $100,000 of which depended on the settling children prevailing in their legal dispute with Vernon's brother, Stanley.

testimony established the facts summarized above as well as provided evidence about Vernon's disputes with his family, Vernon's relationship with Chapa, the events preceding the 2014 will, and Vernon's health.

Testator's disputes with his family

In June 2012, Vernon's brother Lloyd passed away. Based on evidence received at trial, the district court found that Vernon, Lloyd, and their brother Stanley, had a "last man standing" agreement providing that "they would not sell the land and that the family property would stay with the last of them to survive." After Lloyd died, according to the district court, "there was significant turmoil" about a proposal to sell Lloyd's land. Vernon asked his wife Beverly to sign a document agreeing to the sale and she refused. The district court found this "result[ed] in significant animosity" between them.

In December 2012, Beverly obtained a harassment restraining order (HRO) against Vernon. According to the district court, Beverly's petition "cited decades of alleged harassment against her" by Vernon. The district court took judicial notice of the petition, affidavit, and HRO. According to the district court, the HRO "ordered [Vernon] out of the house where he had lived with Beverly for decades." Under the HRO, Vernon was allowed to "complete farm chores as long as he had no contact with Beverly." Beverly filed for divorce in May 2013. During divorce proceedings, Vernon lived with his brother Stanley and Gruis.

Meanwhile, the probate of Lloyd's estate continued and Mark brought a legal claim against Vernon. The district court found that Mark claimed Vernon had "improperly

retained" Lloyd's "grain drill and snow blower." The probate court ultimately ruled for Vernon in October 2013.

Vernon and Beverly completed their divorce in January 2014. Beverly remained in the farmhouse "for several months" afterwards. Beverly ultimately moved to Rushmore and Vernon returned to the farm. Gruis "credibly testified" that she cleaned the farmhouse for Vernon when he moved back and helped him when his health later declined. Gruis also testified that Vernon's children "never" helped Vernon and that his children did not visit him after his separation from their mother.

All four of Vernon's children testified at the trial. The district court found Barbara "largely credible, but biased at times in the favor of [Mark's] position." The district court also found that Barbara "was not around" Vernon when he executed the 2014 will; therefore, she had "very limited personal knowledge about [Vernon's] condition at that time." The district court found Theresa "lacked credibility in a number of areas" and found Theresa and Vernon had "a long period of estrangement and anger." The district court also found that Theresa had no contact with Vernon for several years, from 2012 until 2016. The district court also received evidence that Vernon cosigned loans for Mark.[3]

Testator's relationship with Chapa

Testifying about the period after the divorce, the bank manager said that Vernon came to the bank at least once a week and talked to Chapa for 10-15 minutes at a time. The

[3] The bank manager testified that he was a loan officer for Vernon, who had "three large loans with the bank." The bank manager also testified that Vernon told him he had cosigned loans for Mark through a different bank. The bank manager testified that he never saw Vernon with his children and that Vernon "express[ed] dissatisfaction" about his children.

district court found that the evidence showed they "developed a friendship" that made other employees "uncomfortable," causing the bank manager to "become involved." At one point, another bank employee asked the bank manager if Chapa "could reduce the amount of time with [Vernon] if there were other customers in the bank."

Vernon also met with the bank manager, sometimes for up to an hour. The bank manager, according to the district court, "tolerated" Vernon's visits with him and with Chapa "in an effort to be kind to [Vernon] for the benefit of both the Bank and [Vernon]." The bank manager testified that Vernon sometimes would ask Chapa to write out checks for him. The bank manager explained that he allows bank tellers to assist customers, as found by the district court, "with writing out loan payments and signing checks."[4]

Chapa testified that she first met Vernon at the Ellsworth bank. Besides talking with Vernon at the teller windows, which the district court found were "2-3 feet apart within the Bank lobby," Chapa testified that she met Vernon a "couple times" in the bank conference room, when he asked to speak in private about his divorce. Chapa explained that Vernon "just needed someone to listen." The bank manager testified that Chapa had the ability to access Vernon's account information. But no record evidence establishes that Chapa did so.

Chapa testified that she met Vernon outside the bank at his farm three times. First, Vernon offered to show Chapa's teenage daughters his cattle, as part of their 4H

[4] The district court also found that Vernon would visit a Worthington attorney who "kept office hours" at the bank "with the permission" of the bank manager. The district court found that it was not "clear if [the Worthington attorney] was representing [Vernon] or was just a sounding board."

experience; second, Vernon invited Chapa, Chapa's husband, and their daughters to visit the farm together; and third, Vernon's neighbor asked Chapa to deliver some food to Vernon after he returned home from a hospitalization. Chapa sat with Vernon as he ate in his kitchen. Chapa did not recall the date of the first and second visits; she testified that the third visit happened in 2016, after Vernon executed the will.

At some point before Vernon executed the will, he told Chapa that he planned to disinherit his children and make her a beneficiary of his will. Chapa testified that Vernon told her he "did not want to leave . . . anything to his kids and he wanted to leave it to me." Chapa testified she told Vernon that "he needed to do what he wanted to do. I did not try to persuade him anyway at all." Chapa testified that she never saw the 2014 will and did not discuss what Vernon had said with anyone, including her husband. She believed Vernon could change his will at any time.

Before working as a teller at the Ellsworth bank, Chapa had worked as a legal secretary for two law firms, sometimes preparing probate documents. Before moving to the Ellsworth bank, Chapa worked for the same bank at its Luverne branch, starting in 2007.

Events preceding execution of 2014 will

After his divorce, Vernon asked Chapa to recommend a lawyer to prepare his will. Chapa recommended an attorney in Luverne who had advised her brother on his estate plan. The Luverne attorney testified about her three meetings with Vernon, ending with the execution of the 2014 will. The district court stated that it "relie[d] strongly on [the Luverne attorney's] testimony."

Less than one month after Vernon's divorce was resolved, in February 2014, Vernon met, for the first time, with the Luverne attorney that Chapa recommended. At Vernon's request, Chapa made the appointment and accompanied Vernon to the meeting. Based on the attorney's testimony, according to the district court, Vernon told the attorney at their first meeting that he wanted to "do a will, as he had just been through a divorce." The meeting "lasted about 30 minutes" and the attorney gave Vernon a worksheet and asked him to complete it.

Vernon met with the Luverne attorney again in March 2014. Chapa did not attend this meeting. The district court found that the attorney went over the completed worksheet "line by line" with Vernon. The worksheet, which the district court received as a trial exhibit, stated that Chapa was Vernon's first choice for disposition of his property, with her two daughters as second choice. Vernon named Stanley as his first choice for personal representative and Gruis as second choice.

The district court found that, during this meeting, Vernon "expressly asked for his four children to be omitted from the will." The attorney asked why he did not want his children listed in the will. The district court found Vernon responded that he "didn't really have a relationship with his children, they never visited him, they sided with his wife during the divorce, and they historically only contacted him when they wanted money or things." Vernon told the attorney that Chapa was his "friend" and that "she listened to him and cared about him more than his children."[5]

[5] Gruis testified to having a similar conversation with Vernon about his relationship with his children and why he decided to omit them from his will.

Vernon met with the Luverne attorney for a third time in April 2014. Chapa also did not attend this meeting, but Stanley and Gruis were present. The attorney read the will out loud and Vernon executed the will with two witnesses present. Along with reviewing and signing the will, Vernon signed a health-care directive that appointed Stanley as his health-care agent, and a power of attorney naming Stanley and Gruis as co-attorneys in fact.

The Luverne attorney testified that "it did not seem unusual to her" that Vernon was disinheriting his children and "giving everything to a friend because of what he explained about the divorce." In her experience, "it was not common for a parent to disinherit children, but it was not unusual either."

Testator's health

The Luverne attorney testified that "during the three meetings she had with [Vernon]," she "saw no indications in her professional opinion that [Vernon] was incompetent or not understanding what his assets were and who his children were." The district court also found that the attorney "saw no evidence of undue influence or that [Vernon] was being pressured to make a will in the manner that he did."

A neighboring farmer who had a "business arrangement" with Vernon to raise stock cattle and bulls also "credibly testified," according to the district court, that Vernon was "actively engaged" in farming in 2014 and "showed no indication of dementia or reduced mental capacity." The neighboring farmer testified that, during the last year and a half of Vernon's life, he showed "decreased mental activity."

The district court received and reviewed Vernon's medical records. According to the district court, the medical records showed "no report of any mental problems whatsoever in April of 2014," based on records dated two days after Vernon executed the will. The district court found the "first indication" of mental slowness was 13 months after execution of the will, in May 2015. In September 2016, Vernon complained, according to the district court, of "being bitten by a black widow spider." The district court found that, in 2016, Vernon's doctor diagnosed Lewy body dementia "which ha[d] likely been going on for some time." The district court also found that before "the summer of 2016, [Vernon] was reasonably competent."

The district court's decision

The district court denied Mark's objection to the 2014 will in a 29-page written decision with findings of fact, conclusions of law, and a memorandum. The district court described the litigation as "a bitterly contested will contest" and determined that Mark did not sustain his burden to prove Vernon's lack of testamentary capacity, by clear and convincing evidence, when he executed his will in April 2014. The court found that, at the time of execution, Vernon was competent and he knowingly and intelligently made decisions based on his own interests.

The district court described "[t]he issue of undue influence" as "admittedly a closer question," but determined that Mark did not sustain his burden to prove undue influence, by clear and convincing evidence, in the making of Vernon's 2014 will. The district court explained in its memorandum:

> While the optics of [Vernon's] decision . . . to disinherit his children in the favor of a favorite teller at his bank who had a confidential relationship and who paid attention to him are concerning and do raise significant questions, the existence of a confidential relationship by itself does not imply that undue influence was exercised by that person. Considering the totality of the facts in this sad case, [Chapa] has shown that the chaos and dysfunction in [Vernon's] family created a factual narrative whereby [Vernon's] decision to disinherit [Mark] can be shown to have a basis in fact other than any influence by [Chapa.] The Court's obligation in a case such as this is to affirm [Vernon's] testamentary decisions . . . absent a showing of undue influence, coercion, or duress.

While the district court found that Chapa had the opportunity to exercise influence over Vernon and was in a confidential relationship with him, it also found that "other factors do not favor" Mark's position. The district court reasoned that the existence of a confidential relationship between Vernon and Chapa "does not establish anything more than a suspicion in that regard. The evidence establishes, unfortunately, that decedent chose to disown and write his children out of the [w]ill purposefully due to his disagreements with them and their decision to largely abandon him in favor of their mother." As a result, the district court granted the petition for formal probate of the 2014 will.

This appeal follows.

D E C I S I O N

Mark raises one issue on appeal. He argues that the district court clearly erred because it failed to find that Chapa exercised undue influence over Vernon in the execution of the 2014 will. Mark contends that the district court erred by its "strong reliance" on the Luverne attorney's testimony, which "should not be given the weight," and the district court ignored the factors supporting an inference of Chapa's undue influence over Vernon.

Chapa responds that the record evidence supports the district court's determination that Mark did not sustain his burden of proving undue influence in the making of the 2014 will.

A party who contests a will as the product of undue influence has the burden of proof by clear and convincing evidence. Minn. Stat. § 524.3-407 (2018); *see also In re Estate of Rechtzigel*, 385 N.W.2d 827, 832-34 (Minn. App. 1986) (affirming district court's determination that no undue influence occurred). "Clear and convincing" evidence means that "the truth of the facts asserted is highly probable." *Rechtzigel*, 385 N.W.2d at 832. Undue influence is "of such a degree exerted upon the testator by another that it destroys or overcomes the testator's free agency and substitutes the will of the person exercising the influence for that of the testator." *Teschendorf v. Strangeway (In re Wilson's Estate)*, 27 N.W.2d 429, 432 (Minn. 1947) (affirming district court's determination that undue influence affected testator's will); *see also In re Estate of Torgersen*, 711 N.W.2d 545, 550 (Minn. App. 2006) (holding that, to invalidate a will for undue influence, will contestant must show another person exercised influence over the testator when the will was executed "to the degree that the will reflects the other person's intent instead of the testator's intent") (citing *York v. Reay (In re Estate of Reay)*, 81 N.W.2d 277, 280 (Minn. 1957)), *review denied* (Minn. June 20, 2006).

Whether undue influence exists is a question of fact. *Reay*, 81 N.W.2d at 282. On appeal, we do not set aside findings of fact unless they are clearly erroneous. Minn. R. Civ. P. 52.01. Findings of fact are clearly erroneous "only if the reviewing court is left with the definite and firm conviction that a mistake has been made. If there is reasonable evidence

to support the district court's findings of fact, a reviewing court should not disturb those findings." *Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn. 1999).

When evidence conflicts on undue influence, the district court's findings are "final on appeal, even though the appellate court if it had the power to try the questions de novo, might determine otherwise upon reading of the record." *Olson v. Mork* (*In re Olson's Estate)*, 35 N.W.2d 439, 444 (Minn. 1948). On review, this court gives due regard to the district court's opportunity to judge the credibility of the witnesses. Minn. R. Civ. P. 52.01. We do not second-guess the district court's weighing of evidence or disturb the district court's credibility determinations. *In re Salkin*, 430 N.W.2d 13, 16 (Minn. App. 1988) (appellate court does not reweigh evidence), *review denied* (Minn. Nov. 23, 1988); *Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988) (appellate court defers to district court's credibility determinations).

As with other facts, direct or circumstantial evidence may prove undue influence. "Direct evidence of undue influence is not required and is usually unobtainable because the influence is rarely exercised openly in the presence of others. Therefore, the circumstantial evidence must be sufficient to indicate undue influence." *In re Estate of Anderson*, 379 N.W.2d 197, 200 (Minn. App. 1985) (citation omitted), *review denied* (Minn. Feb. 19, 1986).

When evaluating the evidence to determine undue influence, a district court considers several factors: (1) the influencing party's opportunity to exert influence over the testator; (2) the influencing party's active participation in the will preparation; (3) a confidential relationship between the influencing party and the testator; (4) disinheritance

of parties who "probably would have been remembered"; (5) singularity of the provisions of the will; and (6) the exercise of influence or persuasion to induce the testator to make the will. *Wilson's Estate*, 27 N.W.2d at 432. A district court determines the existence of undue influence by considering "all the surrounding circumstances." *Id.*

Mark argues that the district court erred in its findings on the factors outlined in *Wilson's Estate*, 27 N.W.2d at 432. Mark first argues that the district court correctly found that Chapa had the opportunity to influence Vernon in making the 2014 will and that Chapa and Vernon had a confidential relationship. Mark then argues that the district court erred by failing to find the other four factors. We will consider Mark's arguments on each factor, discussing them in the order listed in *Wilson's Estate*.[6]

1. Opportunity to exert influence over the testator

The district court found that Chapa had the opportunity to influence Vernon. Mark contends, and we agree, that this finding has support in the record evidence. Vernon and Chapa met while she was his teller at the bank and they had frequent conversations; some

[6] In her brief to this court, Chapa asks that we take judicial notice of Mark's claims filed in his bankruptcy proceeding. We decline to do so for two reasons. First, Chapa did not file a motion. *See* Minn. R. Civ. App. P. 127 (application for relief on appeal shall be made by written motion). Second, Chapa's brief on this issue makes no argument and cites no caselaw. We generally decline to consider issues that are unsupported by argument or legal authority. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (1971); *see Ganguli v. Univ. of Minn.*, 512 N.W.2d 918, 919 n.1 (Minn. App. 1994) (court of appeals declined to address allegations unsupported by legal analysis or citation). A court need not automatically grant a request to take judicial notice of a fact; the fact must be one not subject to reasonable dispute because it is either (1) generally known within the territorial district of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Minn. R. Evid. 201(b); *see In re Block*, 727 N.W.2d 166, 177 (Minn. App. 2007) (granting motion to strike reference to documents not in the record and declining to take judicial notice).

conversations were long, particularly around the time of his divorce, which was difficult. Chapa and Vernon became friends. While they mostly talked at the bank, Chapa also visited Vernon on his farm, although the timing is unclear. She visited, first, with her two teenage daughters and, second, with her husband, and their daughters.

Shortly after his long marriage ended in divorce, Vernon asked Chapa to recommend an attorney to prepare his will and Chapa referred him to an attorney in Luverne who had advised her brother on his estate. At Vernon's request, Chapa arranged the appointment and rode with Vernon to the first meeting with the Luverne attorney. Chapa acknowledged that it was possible she helped Vernon complete a worksheet for the Luverne attorney. Finally, Chapa testified that, at some point, Vernon told her that he planned to disinherit his children and leave his estate to her.

2. Active participation in the will

Mark argues that the district court found that Chapa "selected the attorney, set the appointment, accompanied Vernon, and filled out" the worksheet used to prepare his new will. Based on these findings, Mark contends that the district court erred because it failed to also find that Chapa actively participated in the 2014 will. Mark also argues that Chapa's decision to recommend the Luverne attorney was "peculiar" because neither she nor Vernon were acquainted with the Luverne attorney.

It is true that the district court found Chapa recommended an attorney to Vernon, arranged the appointment for Vernon, and accompanied Vernon to the first office visit in Luverne. But Mark does not fully characterize the district court's findings or the evidence. The record evidence shows that Vernon asked Chapa for assistance, not that Chapa told

Vernon what to do. *Vernon asked Chapa* to recommend an attorney *and* asked her to arrange his first appointment *and* to accompany him to the first meeting. Although Mark infers a sinister influence because Chapa recommended an attorney who was new to Vernon, Chapa had a logical reason for the referral. She suggested the attorney who had prepared her brother's estate plan. The district court generally rejected Mark's inference about the Luverne attorney as mere suspicion, stating that "[a] suspicion of undue influence doesn't evidence proof of it." Additionally, Mark's brief to this court overlooks that Chapa was not present at Vernon's second and third meetings with the Luverne attorney and that, during the second meeting, Vernon told the Luverne attorney that he wanted to name Chapa as his will beneficiary and explained why he had chosen to disinherit his children.

Mark contends that Chapa "admitted" she filled out the worksheet used to prepare Vernon's will. The record is not so clear. The district court did not find that Chapa filled out the worksheet. Chapa testified that she did not recall filling out the worksheet and did not know if the handwriting on the worksheet was Vernon's, but agreed that the handwriting "could be" hers. Chapa, however, routinely helped Vernon write checks, and other bank tellers provided similar assistance to other customers. So assisting Vernon with a form tracks other requests Vernon made of Chapa as well as requests made by other bank customers of other tellers.

Chapa testified that Vernon told her that he "did not want to leave anything to his kids and he wanted to leave it to [her]," but she also testified that he "didn't go into detail," she never saw his will before he died, and she knew that he could change his will at any

time. After Vernon died, Chapa reacted with surprise when Paul told her she was the beneficiary, according to the bank manager.

Mark argues that Chapa "feigned surprise." The district court did *not* find that Chapa's surprise was feigned. The district court found the bank manager credible and the bank manager described Chapa as "totally surprised." Mark's view of this incident, at bottom, challenges Chapa's credibility. While the evidence may have supported Mark's inference, it also supports the district court's finding that Chapa was surprised to learn of the will's contents. We do not make credibility determinations on appeal and instead defer to the district court's credibility determinations. *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009) ("When evidence relevant to a factual issue consists of conflicting testimony, the district court's decision is necessarily based on a determination of witness credibility, which we accord great deference on appeal."); *see also Sefkow*, 427 N.W.2d at 210 (stating that appellate courts defer to district court credibility determinations); *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000) (noting "[t]hat the record might support findings other than those made by the trial court does not show that the [trial] court's findings are defective"). Thus, Mark has not shown that the district court clearly erred in its findings on Chapa's participation in the 2014 will.

3. Confidential relationship between the beneficiary and the testator

The district court found that Vernon and Chapa had a confidential relationship. Mark contends, and we agree, that the record supports this finding. Chapa was Vernon's bank teller and friend. She had access to Vernon's financial information and his trust as a friend. The district court found that these facts "are concerning and do raise significant

questions, [but] the existence of a confidential relationship by itself does not imply that undue influence was exercised by that person." Mark argues that under *Norlander v. Cronk*, "when a confidential relationship exists between the parties the [*Wilson Estate*] factors slacken in favor of the objector." *See Norlander v. Cronk*, 221 N.W.2d 108 (Minn. 1974).

We disagree with Mark's view of *Norlander*, which involved a warranty deed and not a will. Norlander was the 74-year-old grantor of a warranty deed to his farm; he was inexperienced in business and financial matters, had relied on his two older brothers to help him farm and handle finances, and was shocked and confused following the death of his two brothers. *Id.* at 110. Norlander turned to his neighbor, Cronk, for business advice and for assistance on his farm. *Id.*

Norlander conveyed the farm to Cronk by warranty deed, reserving a life estate for himself. *Id.* Norland later sued Cronk to rescind the warranty deed. *Id.* at 111. Norlander testified that he thought they visited Cronk's lawyer to sign a rental agreement for the farm. *Id.* at 110. The district court found that Cronk had exerted undue influence to obtain the conveyance and invalidated the warranty deed. *Id.* at 111. On appeal, the supreme court affirmed the district court's finding that a confidential relationship existed and upheld the evidence as sufficient to sustain the district court's finding of undue influence by Cronk in execution of the warranty deed. *Id.* at 112-13.

Rather than saying that existence of a confidential relationship "slackens" the *Wilson Estate* factors in favor of undue influence, as Mark contends, the supreme court in *Norlander* commented that the existence of a confidential relationship made the burden of proof "somewhat simpler." *Id.* at 112. *Norlander* teaches that, while a confidential

relationship simplifies the burden to prove undue influence, the *Wilson* factors are still relevant, because, as *Norlander* explained,

> a showing of an opportunity to exercise undue influence, an inclination to do so, and a resulting disposition of property which ignores the natural recipients is usually sufficient to establish undue influence. Participation by the [alleged influencer] in the transaction of transfer and the physical and mental state of the grantor are also factors to be considered.

Id. (citations omitted).

Mark similarly argues that *Olson's Estate* provides that an objector is "entitled to an inference of undue influence" upon a finding of a confidential relationship between the testator and the alleged influencer, combined with the other *Wilson Estate* factors. *Olson's Estate* reversed and remanded a district court's determination of undue influence in the making of a will based on an evidentiary error. *Olson's Estate*, 35 N.W.2d at 447-48. The opinion strongly implied that other evidence, including a confidential relationship, was sufficient to support the challenger's claim that the testator was unduly influenced to bequeath his estate to one of two grandchildren, even though both grandchildren had lived with and cared for the testator. *Id.* at 445 ("Under well-settled rules, the finding of undue influence here should be sustained. There was evidence showing as independent facts both undue influence and its effect upon testator's mind.").

But *Olson's Estate* did not alter the relevance of all six factors recognized in *Wilson's Estate*. *Olson's Estate* recognized the significance of a confidential relationship, but also held that "opportunity to exercise undue influence or the existence of a confidential relation between the testator and a beneficiary are *not*, standing alone, proof of undue

influence . . . .” *Id.* (emphasis added). Like *Norlander*, *Olson’s Estate* referred to the other *Wilson Estate* factors. *Id.* (stating that, when confidential relationship is shown along with bequests to one held in confidence, active participation in the will preparation, disinheritance of relatives, singularity of the will provisions, and acts of evasion, then “an inference of undue influence is permissible”).

We conclude that the district court’s analysis of the confidential relationship between Vernon and Chapa follows *Norlander* and *Olson’s Estate.* The district court correctly evaluated Chapa’s confidential relationship with Vernon as one of six factors before determining whether Chapa unduly influence Vernon in preparation of the 2014 will.

4. Disinheritance of parties that the testator probably would have remembered

Mark argues that the district court clearly erred because it failed to find that Vernon disinherited his children, who Vernon probably would have remembered. We disagree. First, the district court did not overlook this finding and, in fact, noted that Vernon’s 2014 will disinherited his children, that Vernon did so intentionally, and that Vernon gave a reason for doing so in the will. The district court also found that Vernon expressed his intent to disinherit his children to Chapa, the Luverne attorney, and Gruis.

Second, the district court found Vernon had reason to disinherit his children. The district court found that this was a “sad case” where the evidence as a whole showed “chaos and dysfunction” in the family because of an “acrimonious” relationship and a “difficult” divorce, followed by a “serious rift” between Vernon and his children, who aligned themselves with their mother.

Vernon did not see his children for years, relied on Stanley and Gruis for assistance, and developed a friendship with Chapa. The district court found that the children's contrary testimony was not credible. For example, the district court found evidence of a "long period of estrangement and anger" between Theresa and Vernon starting in 2012 and continuing until at least 2016. Similarly, the district court found that Mark and Vernon were on opposite sides of a probate dispute where Mark accused Vernon of wrongly possessing Lloyd's personal property.

Caselaw suggests that, if the record had established a close and loving relationship between Vernon and his children, then it may have been reasonable for Vernon to remember them in his will. *See In re Estate of Larson*, 394 N.W.2d 617, 620 (Minn. App. 1986) (affirming finding of undue influence where record established that disinherited children had a close and loving relationship with testator and there was "no evidence of family rancor sufficient to cause" the testator to favor sole beneficiary to the exclusion of the disinherited children), *review denied* (Minn. Dec. 12, 1986). But the record does not establish a close and loving relationship between Vernon and his children.

In sum, while Vernon disinherited his children, evidence of family acrimony supports the district court's finding that Vernon chose not to remember them. *See, e.g.*, *Marsden v. Puck (In re Marsden's Estate)*, 13 N.W.2d 765, 771 (Minn. 1944) (reversing undue influence finding and holding "nothing unnatural" about testator preferring granddaughter over children "who had shown but little interest in her welfare except to preserve her estate for themselves.").

5. Singularity of the will

Mark argues that because Chapa is the sole beneficiary under the will, the district court erred in failing to find that the will was singular. We note that caselaw does not define what it means for a will to be "singular." Mark appears to construe this factor to mean that the alleged influencer is also the single focus of the will. If so, we agree with Mark that the record supports a finding of singularity. But we see no error because the district court recognized this factor when it found that Chapa was the sole beneficiary of Vernon's will.

Chapa responds that, when Vernon prepared his 2014 will naming her as the sole beneficiary, he also executed other important documents that showed his affection and trust for others—but he did not nominate his children for any role. The record supports Chapa's point. Vernon nominated his brother Stanley as power of attorney, personal representative, and health-care agent. He nominated Gruis as the alternate for these roles. Vernon's decisions in April 2014 thus reflect the rift between Vernon and his children, as well as the support Vernon received from Chapa, Stanley, and Gruis. All three helped Vernon after the bitter divorce, not his children. Thus, while Vernon's 2014 will named Chapa as his sole beneficiary, it also named Stanley and Gruis for trusted roles.

6. Exercise of influence or persuasion to make the will

Mark argues that Chapa exercised undue influence over Vernon to benefit herself in his 2014 will, pointing to her prior work experience as a secretary at two law firms, including some probate experience, her position as a teller at Vernon's bank, her role in recommending the Luverne attorney who prepared Vernon's will, the trust Vernon placed in Chapa, and Chapa's failure to disclose to the bank the terms of Vernon's will, an alleged

violation of the gift policy. Based on this evidence, Mark contends the district court clearly erred in finding Chapa did not exercise undue influence.

Mark emphasizes Chapa's alleged violation of the bank's gift policy, which prohibited employees from receiving gifts from customers valued over $100. Mark highlights that the bank manager testified he was unaware that Chapa was a beneficiary of Vernon's will. Mark claims that *Olson's Estate* "establishes that where the beneficiary seeks to evade detection of their influence an inference of undue influence is created." Mark is correct that *Olson's Estate* states that "acts of evasion on the part of the beneficiary," along with other factors, *permit* an inference of undue influence. 35 N.W.2d at 445. But even if we assume that Chapa evaded the bank's gift policy, *Olson's Estate* does not suggest that acts of evasion, even if combined with a confidential relationship, *require* an inference of undue influence.

Here, the district court did not find that Chapa violated the bank's gift policy. Chapa testified that she did not violate the bank's gift policy by being a beneficiary of Vernon's will because "there was no money trading hands." While reasonable minds could disagree with Chapa's view of the bank's gift policy, the district court was in the best position to weigh her credibility. While Chapa testified that Vernon told her he intended to leave her his estate, Chapa also testified that she never saw Vernon's will until after he died, and she understood Vernon could change his mind at any time.

Mark argues that the district court erred when it relied on the Luverne attorney's testimony. It is true that the district court stated that it "strongly" relied on the Luverne attorney's testimony. In essence, Mark's argument asks this court to reweigh or

second-guess the district court's credibility determinations, which we will not do. *Salkin*, 430 N.W.2d at 16. We observe, however, that the district court did not rely *only* on the Luverne attorney's testimony. Rather, the district court considered the evidence as a whole and found Vernon "chose to disown and write his children out of the [w]ill purposefully due to his disagreement with them and their decision to largely abandon him in favor of their mother."

In sum, while the district court found the presence of four of the *Wilson Estate* factors, it did not find that Chapa actively participated in or actually exercised undue influence over Vernon in the 2014 will. Precedent establishes that evidence of undue influence must show "not only that the influence was in fact exerted, but that it was so dominant and controlling of the testator's mind that, in making the will, he ceased to act of his own free volition and became a mere puppet of the wielder of that influence." *Reay*, 81 N.W.2d at 280.

Thus, our review of the record does not leave us "with the definite and firm conviction that a mistake has been made." *Fletcher*, 589 N.W.2d at 101. Because the record evidence supports the district court's detailed findings of fact, we will not disturb those findings. *Id.* For these reasons, we conclude that the district court did not clearly err by finding that Mark failed to prove by clear and convincing evidence that Chapa unduly influenced Vernon in preparing his 2014 will.

Affirmed.