COURT OF APPEALS
DECISION
DATED AND FILED

December 16, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2012AP2590 **Cir. Ct. No. 2008PR1693**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

IN RE THE ESTATE OF REBECCA R. DERZON:

LORI LAATSCH AND ROBYN COX,
F/K/A ROBYN L. LAATSCH,

APPELLANTS,

V.

ALAN DERZON, MARK DERZON, PAUL JOHNSON,
SYDNEY JOHNSON AND MARINA JOHNSON,

RESPONDENTS.

APPEAL from orders of the circuit court for Milwaukee County: JANE V. CARROLL, Judge. *Affirmed.*

Before Curley, P.J., Kessler, J., and Thomas Cane, Reserve Judge.

¶1 CURLEY, P.J. Lori Laatsch and Robyn L. Cox, formerly known as Robyn L. Laatsch, appeal the order denying their motion to admit the March 10,

2008 will of Laatsch's half-sister, Rebecca Derzon, into probate, and finding Rebecca's March 10, 2008 will and trust to be the products of undue influence and therefore invalid.[1] The trial court's order was supported by a thoughtful, well-reasoned decision, and Laatsch's arguments on appeal in no way undermine or cast doubt on that decision. Consequently, we affirm.

BACKGROUND

¶2 We glean much of the background information from the trial court's decision, which is largely undisputed. This case involves the estate of Rebecca Derzon, who died on August 25, 2008. Rebecca's estate includes the family business, Derzon Coin, which she owned with her late husband, David.

Rebecca's familial relationships.

¶3 Rebecca, formerly known as Lynn Marie Polinski, married David Derzon in 1978. David had two sons from his first marriage—Alan and Mark Derzon. Rebecca had no children before marrying David and did not have any children with him.

¶4 Rebecca—who was described as "generous," "loyal to her family," and "dedicated to David"—wove herself into the fabric of David's close-knit family. In 1984, she converted to Judaism, which David and his family practiced, and changed her first and middle names from Lynn Marie to Rebecca Ruth to symbolize her role as the Derzon family matriarch. Rebecca referred to Alan and

[1] Hereafter, we refer to the Appellants collectively as "Laatsch." We also note that some of the parties in this matter share last names with other parties; in those cases, we refer to the parties by their first names for clarity.

Mark as her sons and to their children as her grandchildren. She also attended thousands of family gatherings that included Mark and Alan and their families, including holidays, birthdays, shows, sporting events, weekly meals, and vacations—including a trip to Israel.

¶5 Rebecca's ties to her own family members were also close, though fewer in number. Her parents had numerous children together as well as from outside relationships, the result being that Rebecca had three siblings and sixteen half-siblings. Of her many siblings, Rebecca had close relationships with only two: her brother Paul Johnson and her half-sister Lori Laatsch. Rebecca was close with Johnson for her entire life. Rebecca's relationship with Laatsch was different. Rebecca and Laatsch—who were ten years apart in age—lived in the same home together until Rebecca was thirteen and Laatsch was three, but Rebecca moved out after her mother's boyfriend sexually assaulted her. Thereafter, Rebecca and Laatsch rarely saw each other until 1997, when they reunited and Rebecca met Laatsch's daughters. While the parties dispute whether Rebecca and Laatsch had a close relationship upon reuniting in 1997, it is undisputed that Laatsch was a prominent figure in Rebecca's life in the year and a half or so before Rebecca's death.

¶6 On December 20, 2007, David died, leaving his entire estate to Rebecca per the terms of his will. Rebecca died eight months later.

The estate plans.

¶7 Rebecca and David executed similar wills in March 1995, and for more than a decade their estate plans remained in lockstep. The wills bequeathed the entire estate to the surviving spouse upon death. If the spouse did not survive the decedent by thirty days, the residue of the estate would be divided equally

between David's sons, Mark and Alan. In December 1995, both spouses' wills were amended, via the execution of a first codicil, to include Ed Walkowicz, the Derzons' accountant, as co-personal representative.

¶8 Rebecca then executed a second codicil, unbeknownst to David, in August 2006. The second codicil provided that if David did not survive Rebecca by thirty days, the residue of Rebecca's estate would be divided as follows: forty-percent (40%) to Johnson, forty-percent (40%) to Mark Derzon, and twenty-percent (20%) to Alan Derzon. Two major events preceded the 2006 codicil: Rebecca had an extramarital affair,[2] and Alan and his wife forbade Rebecca from driving their children due to concerns that Rebecca's drinking—which family members said had become "an issue" beginning in 2004—had gotten out of control and she was driving their children while intoxicated.

¶9 Rebecca executed a new will after David's death on March 10, 2008, and created the Rebecca R. Derzon Revocable Trust. The 2008 will and trust are at issue in this case. The will was a "pour over" will that transferred the estate assets into the trust at the time of Rebecca's death. The will named Laatsch as personal representative and the trust provided that, upon Rebecca's death, Laatsch would serve as trustee and Laatsch's husband, Eric, would be the successor trustee. Derzon Coin would be divided between Laatsch and Diane Mehalko, a longtime Derzon Coin employee, with Laatsch receiving a seventy-five percent (75%) share and Mehalko receiving a twenty-five percent (25%) share. The will

[2] The affair began in 2005, and David ultimately discovered it sometime in 2006. The affair ended, in the trial court's words, "badly, with Rebecca making allegations of abuse [against her lover] and filing for a restraining order on November 3, 2006." The record also indicates that Rebecca contemplated disinheriting David completely in 2006, but ultimately did not follow through.

also provided for a distribution of $500,000 to Johnson, to be paid in equal payments until he reached the age of sixty-five. The plan additionally directed the trustee to, upon Rebecca's death, establish four separate trusts for Johnson's children—Sydney and Marina—and Laatsch's children—Robyn and Anna.

¶10 On March 10, 2008, Rebecca also signed a durable power of attorney, naming Laatsch as her power of attorney and Eric Laatsch as the successor if Laatsch could not serve.

The trial court's decision.

¶11 The probate process has been rather protracted, beginning shortly after Rebecca's death when Laatsch moved for the admission of the March 10, 2008 will to probate. After months of litigation, Johnson, Alan Derzon, and Mark Derzon became aware of irregularities in the drafting and execution of the March 10, 2008 estate plan, and in June 2011 they filed an amended petition to invalidate that estate plan alleging that Laatsch had unduly influenced Rebecca.

¶12 A ten-day trial ultimately followed, culminating in the trial court's August 22, 2012 decision, which denied Laatsch's motion to admit the will and determined that the will and trust were invalid due to undue influence.

(1) Decision to deny admission of the will.

¶13 The trial court decided not to admit the will for several reasons. First among them was the fact that there were irregularities in the document, the explanations for which given by Attorney John Remmers, the attorney who drafted the will and oversaw its execution, and his staff were "unsatisfactory and incredible." Additionally, the trial court noted that Laatsch and Remmers' law firm had withheld key documents for years—even going so far as to refuse to turn

over "[a]ll of the estate planning documents, including electronic files … until October 14, 2011, over three years after Rebecca's death, and almost a year and a half after the first court order for production [of those documents]."

¶14 Regarding the will's irregularities, the trial court first discussed a watermark that appeared only on the will's signature page indicating that the will was a draft. The court explained that the watermark "in and of itself" did not invalidate the will, but did "raise other questions, such as how it came to be there":

> The will contained a large watermark that ran diagonally across the signature page that said "Draft." The evidence is not disputed that the watermark was on the page at the time that it was signed; rather, the parties dispute the significance of this watermark….
>
> Attorney Remmers … stated that Rebecca insisted on signing the will with the "Draft" watermark across her signature; she did not want to wait for a clean copy.
>
> It is almost inconceivable that an attorney, who practices in the area of probate, would allow a client to execute a will with "Draft" stamped across the signature page and attestation clause, would take no steps to re-execute the will, and would make no markings on the document to explain the "draft." It is particularly difficult to understand, given the facts of this case; the 2008 Will and Trust represented a significant departure from prior estate plans; there was an ongoing relationship between Attorney Remmers and Rebecca Derzon, which continued past the date of signing; and the estate contained a business and substantial assets. Further, Attorney Remmers, in another case decided on April 28, 2008 in Waukesha County, had a marital property agreement invalidated by the court after a finding that it had been signed in a draft form.…
>
> *This court finds that the presence of the "Draft" watermark, in and of itself, does not invalidate an otherwise validly-executed will. The "Draft" watermark does, however, raise other questions, such as how it came to be there.*

> [Attorney] Remmers and Tiffany Evansen, the witnesses to the will, both testified that they first noticed the watermark when they were at Derzon Coin for the will execution on March 10, 2008. The Will was prepared by a secretary at the firm, Karen Schepp. Attorney Remmers testified that the "Draft" watermark was "inserted by our system automatically." Tiffany Evansen, a paralegal at the firm and witness to the will, testified that she first saw the "Draft" when Rebecca was about to sign the will, and that she thought it was "unusual." Although she was frequently called upon to witness estate planning documents for clients, she had never before signed one with a "Draft" watermark. She further testified that watermarks generally appear on every page of a document, and that she did not review the entire will to see if the watermark appeared on other pages. Karen Schepp also testified that "Draft" watermarks should appear on every page. She stated that after the signing, Attorney Remmers asked her to remove the stamp from the electronic file (Word document).[] She testified that she "went in and fixed it." In order to do so, she "had to play with it." She did not remember any specific details about how she did so. To explain the presence of the watermark, Ms. Schepp testified that the "IT people" created a macro which was known to leave a watermark on the last page only.
>
> This explanation by Attorney Remmers and his staff is unsatisfactory and incredible. *The placing of a watermark on a document in Microsoft software "Word"[] is a deliberate process*….[3]
>
> Adding a watermark to one page of a multi-page document is a seven-step process…. *One does not inadvertently add a watermark to only one page.* The testimony of Attorney Remmers and Ms. Schepp, that "the system" or the "IT people" added the watermark, is uncorroborated and not credible. Attorney Remmers, Ms. Evansen, and Ms. Schepp all testified that "Draft" watermarks generally appear on every page of a document. The firm customarily uses "Draft" watermarks. This is

[3] The trial court also found, in a footnote, that the will "was created using Microsoft Office Word 2007."

> evidenced by another document prepared by Attorney Remmers that contains his handwritten instruction to place a "Draft" watermark on the document…. *It simply makes no sense that the "IT people" would create a macro which inserted a "Draft" watermark on the signature page only, contrary to firm practice of having a watermark on every page.* This, combined with Ms. Schepp's extremely vague recollection of removing the watermark, no explanation from Attorney Remmers as to why he had asked her to do so, and Ms. Evansen's lack of recollection of seeing any of the other pages of the will at the time of the signing, raise serious questions as to whether the "Draft" watermark was on the entire will that Rebecca Derzon signed.

(Emphasis added; some formatting altered.)

¶15 In addition, the trial court noted a number of other "irregularities with the will, the trust, and the probate documents offered by the Proponent":

> There are very few notes or memos in the file of Attorney Remmers and his firm. Remmers testified that he had several meetings and telephone conversations with Rebecca about her estate plan, yet there are no file notes which reflect this. This was a complex estate plan and included the business distribution and the conditional distribution to Diane Mehalko…. Either Attorney Remmers prepared the documents from memory—including the power of attorney and living will—or there are notes that were not produced, despite numerous court orders.
>
> There is no invoice from [Attorney Remmers' law firm,] Cramer, Multhauf & Hammes, LLP (CMH) … for preparing the estate planning documents.
>
> The booklets are missing. Attorney Remmers testified that the original documents are given to the client and that the law firm retains one duplicate original copy of the trust. There are two bound booklets prepared with copies of all of the documents—will, trust, power of attorney, and living will. One is sent to the client, the other is retained by the firm. Neither booklet could be found after Rebecca's death.
>
> The will refers to Rebecca's "children"; she did not have children.

> The trust refers to the bequest to Paul Johnson as "fifty hundred thousands," which should read "five hundred thousand."
>
> The electronic copy of the trust, which was produced by Attorney Remmers pursuant to court order … is different from the trust documents admitted into evidence as originals. Diane Mehalko's name is misspelled several times as "Mehalke." This is relevant as to the will because the documents were prepared at the same time and signed on the same day.

(Formatting altered.)

¶16 The trial court further discussed at length the withholding of key documents by Laatsch and by Remmers' law firm:

> The attempts of the CMH law firm, representing Lori Laatsch, to withhold documents after Rebecca's death are well-documented in this case, and such action resulted in Judge Flanagan ordering the removal of Lori Laatsch as trustee and the Cramer law firm as her attorney in March 2010.[] In its affirmance, the Court of Appeals concluded: "The Record indicates that the circuit court faced what could have been intractable problems because of what it found was impermissible stonewalling in an attempt to deprive the minor beneficiaries of their rightful interests."
>
> All of the estate planning documents, including electronic files, were not turned over until October 14, 2011, over three years after Rebecca's death, and almost a year and a half after the first court order for production…. The electronic copies were altered and copied into PDF format, at Mr. Remmers' direction, in order to remove metadata before they were produced. Attorney Remmers testified that he was concerned about other clients' confidentiality, but this concern was not explained or corroborated. The record is devoid of any information to reasonably conclude that the metadata would contain confidential client information. As indicated above, the electronic trust and the original trust are different. The only conclusion from this evidence is that the electronic version of the original trust was not produced. The booklets are missing, and evidence suggests that the booklet maintained by the CMH law firm was taken apart and that only a portion of it was retained.[] When Alan Derzon initially demanded copies of Rebecca's will after

her death, the Cramers law firm provided an unsigned copy of the will, which did not contain the "Draft" watermark….

In this case … David Derzon's heirs, Mark and Alan, began inquiring about the will within days of Rebecca's death, and memos and emails circulating within the firm at the time contemplated a challenge to the will by Alan. Similarly, the law firm also clearly knew that the estate planning documents would constitute evidence relevant to the pending or potential litigation. The documents that were withheld, destroyed, or altered in this case include the will and the trust, which are the cornerstones of the estate plan. Therefore, the evidence supports a finding that the CMH law firm engaged in spoliation of the evidence, and sanctions, therefore, are appropriate.

Further, the court finds that the CMH law firm engaged in egregious conduct, defined as "a conscious attempt to affect the outcome of litigation or a flagrant, knowing disregard of the judicial process." …. This finding is supported by other actions taken by Lori Laatsch and her attorneys in probate court. They represented to the court that no guardian ad litem was needed for Paul Johnson's children because their interests were "virtually represented" by the interests of Robyn and Anna Laatsch. Because the 2008 will and trust significantly lowered the bequest to Paul and his children, this representation was not true. In May 2010, after being served with an Order to Show Cause for not producing ordered documents, Lori Laatsch and Attorney Remmers attempted to close the probate informally. Further, after the Johnson girls filed an objection, CMH again attempted to close the probate proceedings informally, via letter dated June 1, 2010, and contrary to [WIS. STAT. §] 865.03(2)….

The court therefore concludes that the documents were altered or destroyed for the purpose of hiding information from the Derzon sons, who were making inquiries for years beginning immediately after Rebecca's death. The length of the delay, and the number of irregularities in the documents provided, establish that Lori Laatsch and her attorneys had something to hide; their motives are suspect.

The evidence further establishes that the original will and trust were found in a safe deposit box leased jointly by Lori Laatsch and Rebecca Derzon in Hartland, close to Lori Laatsch's home…. Rebecca had two safe deposit boxes in banks close to Derzon Coin…. Yet she

> and Lori, together, opened the Hartland safe deposit box, one that they both had access to, on July 19, 2008. Lori explained that Rebecca chose the Hartland bank to make it more convenient for Lori to access the documents after Rebecca died. This explanation is suspicious, however, because Lori worked at Derzon Coin. Additionally, Lori was due to become three-quarters owner when Rebecca died. The two safe deposit boxes already owned by Rebecca would be convenient to Lori's workplace. Rebecca and Lori both accessed the box on July 19, 2008, when they were at the bank to lease the box, and Rebecca never visited the box again. Lori Laatsch entered the box herself, without Rebecca, on July 25, 2008. She testified that she "believed" that Rebecca had her deposit a document in the safe deposit box at that time. She denied knowing what it was, and she could not remember if it was in a sealed envelope. Lori accessed the box three times after Rebecca's death: August 26, 2008, the day after Rebecca died; September 3, 2008; and April 29, 2009, to close the box.
>
> While the will was supposedly located in the Hartland safe deposit box … an email from Attorney Remmers to Lori Laatsch, dated August 29, 2008, three days after Lori visited the box, reads, in part: "Lori, you need to *find and give me the original of Rebecca's Will.*"

(Emphasis in the trial court's decision.) The court continued:

> Exhibit 44 contains an email from Attorney Remmers to his partners, indicating that he intended to meet with the trustees (Lori and Eric Laatsch) on August 28, 2008, in the afternoon. Exhibit 43 is an email from "Rick" (Eric) Laatsch, with a detailed agenda for that meeting. If the will was, in fact, located in the Hartland safe deposit box on August 26, it should have been turned over to Attorney Remmers for filing at the August 28 meeting. Yet, clearly, as of August 29, it had not been found….
>
> Lori Laatsch's motives and credibility … are important to consider here…. Given that Lori Laatsch had sole access to the will both after it was drafted and after Rebecca's death, she had both motive and opportunity to changes the pages of the will; i.e., to staple the signature page to a different document. At the signing, Tiffany Evans[e]n did not review the will. Attorney Remmers testified that he spent 45 minutes with Rebecca signing all of the documents and that it was his practice to go over the terms of a will with a client at the signing. Yet he did not

> specifically testify that he did so in this case. He identified the will as one that he drafted for Rebecca, and he identified her signature on the last page. He did not identify the other pages specifically.
>
> For all of the above reasons, the Proponent has not met her burden to prove that the Will offered into evidence as Exhibit 4 is the document that Rebecca Derzon signed on March 10, 2008. Therefore, the motion to admit it to Probate is hereby denied.

(2) Decision to invalidate the will and trust because of undue influence.

¶17 After denying the motion to admit the will, the trial court determined that the will and trust were invalid due to undue influence. Specifically, the court found that the two-part test requiring: (a) a confidential relationship between Rebecca and Laatsch, and (b) suspicious circumstances surrounding the creation of the will had been met; and (c) that Laatsch, as the will's proponent, did not provide evidence sufficient to overcome the presumption of undue influence.

(a) Confidential relationship.

¶18 In concluding that Rebecca and Laatsch had a "confidential relationship," the trial court listed numerous factors supporting its conclusion, including that Laatsch was Rebecca's power of attorney; Laatsch and Rebecca were business partners who ran Derzon Coin together after David died; Laatsch had access to Rebecca's condo; Laatsch and Rebecca opened a safe deposit box together; and Laatsch was at Derzon Coin when all of the estate documents were signed there:

> In this case, Rebecca Derzon executed the power of attorney naming Lori Laatsch contemporaneously with the will and trust on March 10, 2008…. Rebecca Derzon granted Lori Laatsch broad power and control over her affairs….

> [Laatsch] was at the hospital for David's surgery in December 2006, after which she began to work full time at Derzon Coin. Rebecca and Lori worked together almost daily from that time until Rebecca's death. Rebecca involved Laatsch in discussions relating to her estate plan, and she asked her to take over Derzon Coin when Rebecca died and to carry on David's "legacy." Lori was also cleaning Rebecca's condominium, which she had access to, demonstrating trust by Rebecca. They opened the safe deposit box in Hartland together, and Lori was present at Derzon Coin when all of the documents were signed, including the power of attorney, which Lori signed as well.

¶19 In concluding that there was a confidential relationship, the trial court also considered the fact that Laatsch and Rebecca were becoming closer at a time when Rebecca was in a fragile emotional state and suffering from substance abuse:

> Rebecca Derzon and Lori Laatsch were, in essence, business partners. Lori was working at Derzon Coin full time and was taking on more and more responsibility, such that it was anticipated that she would own the store after Rebecca died. During that time Rebecca was in a fragile emotional state…. Testimony establishes that Rebecca was depressed after David died, was drinking heavily, and taking prescription medication—sleeping pills. Her behavior was sometimes erratic. Diane Mehalko testified to "walking on eggshells" around Rebecca, who was prone to sudden mood changes and bursts of anger. [Rebecca] discussed her estate plan with her employees at the coin store. Rebecca also worked on her obituary while at work, and she kept a list of things to do "upon my death."

(b) Suspicious circumstances.

¶20 The trial court next concluded that there were suspicious circumstances. In doing so, the trial court cited the lack of explanation for the drastic change in Rebecca's estate plans as well as the fact that bequests made to her temple—bequests that Rebecca discussed with the temple's office manager as

late as May 2008—were not provided for in the will that Laatsch sought to admit to probate. The trial court explained:

> In this case, other than the argument with Alan described earlier regarding driving his children, there is virtually no explanation given for Rebecca's decision to disinherit Mark and Alan Derzon and to significantly reduce the bequest to Paul Johnson. There is no doubt that there was considerable animosity between Rebecca and [Alan's wife], and to a lesser extent, Rebecca and Alan. The problems began in the fall of 2005 and were not resolved at the time of Rebecca's death. However, that does not explain her decision to disinherit Mark Derzon or Alan's children, whom she considered her grandchildren, or to significantly reduce the bequest to Paul Johnson, all of whom she had a close familial relationship with for over thirty years. Mark remained in regular contact with Rebecca after David's death.
>
> Here, there is no explanation provided for Rebecca's change of estate plans. In addition to the rift with Alan, Lori testified that Rebecca wanted Derzon Coin to continue as David's legacy. Presumably, Mark and Alan, who both have law practices, would not be interested in running Derzon Coin. While that may explain a bequest of the store to Lori, it does not explain completely eliminating the other prior beneficiaries.
>
> Also, Rebecca had planned to leave artwork and artifacts that she and David had collected in Israel to her temple, Congregation Beth Israel. Exhibit 35 indicates that she discussed this bequest with the office manager of the temple in May 2008, yet Congregation Beth Israel is not provided for in the current will.
>
> *(c) Unrebutted presumption of undue influence.*

¶21 The trial court further determined that the suspicious circumstances, coupled with the confidential relationship between Laatsch and Rebecca, created a presumption of undue influence and that Laatsch did not rebut the presumption. The court cited several suspicious actions taken by Laatsch and her attorney before and after Rebecca's death; and also noted that Laatsch was a latecomer into

Rebecca's life who only became close with Rebecca during a time when she was suffering from substance abuse and depression. We insert the trial court's findings below, with our own underlined headings for ease of reference:

> 1. Suspicious actions by Laatsch and her attorney.
>
> In addition to the irregularities noted above, other actions of Lori Laatsch's attorneys call their motives and their credibility into question:
>
> Attorney Remmers testified that he had no reason whatsoever to be concerned about undue influence with respect to Rebecca's estate plan. However, in the Derzon files of the Cramer law firm are two specific references to undue influence….
>
> After Rebecca's death, Lori Laatsch and Diane Mehalko recovered $137,000 in cash from two safe deposit boxes leased by Rebecca. This cash was omitted from the inventory filed with Probate Court….
>
> On November 5, 2008, Lori Laatsch, represented by the CMH law firm, filed a Petition to Dispense with Guardian ad Litem, informing the court under oath that the interests of Robyn and Anna Laatsch were substantially identical and not adverse to those of Marina and Sydney Johnson, which is not the case.
>
> On May 6, 2010, the court issued an Order to Show Cause to Lori Laatsch and the CMH law firm for failure to provide inventory, accountings, and documents. While that was pending, on June 1, 2010, Lori Laatsch's attorney filed documents attempting to close the estate, pursuant to an informal administration….

(Formatting altered.)

> 2. Laatsch's relationship with Rebecca.
>
> Lori testified that [she and Rebecca] enjoyed a close relationship [from 1997] until Rebecca's death. She stated that they had an ongoing relationship, would go to lunch together, and that they spent holidays together. The only corroborative evidence of this relationship came from Lori's two daughters, Anna and Robyn Laatsch. They are also beneficiaries of the trust, and have each received

significant cash disbursements of approximately $25,000. Anna's credibility is questionable because she could not recall what, if any, distributions she had received from the trust.

Both Mark and Alan Derzon testified that they did not know that Rebecca had a sister until they met at the hospital during David's surgery in December 2006. The only sibling that Rebecca ever mentioned with Paul Johnson. Of course, both Alan and Mark Derzon are also interested parties as potential beneficiaries.

[Alan's wife] Dalyn Derzon testified that she also first became aware of Laatsch at the time of David's surgery in 2006. She testified that Rebecca had pictures of Paul's kids and Alan's kids in her condo, but none of the Laatsch children.

Attorney Remmers had been Rebecca and David's attorney since 1995. He represented them personally and also worked for Derzon Coin, including preparing the annual minutes for the corporation. He testified that David never mentioned Rick or Lori Laatsch and that he did not know that Rebecca had a sister prior to the time that David got sick. He got to know Lori after David died because she was working at the store and Rebecca then introduced them.

Ed Walkowicz testified that he had been the accountant for Derzon Coin and David and Rebecca since 1984…. He socialized with the Derzons since the 1990's, although he did not maintain a social relationship with Rebecca after David died. He was not aware that Rebecca had a sister until after David died. Lori's presence at that time became "more prominent," and she came in and ran the business. He testified that Lori was "not on the scene yet" in January 2007.

Marina Johnson testified that she had a close, ongoing relationship with Rebecca and David, and that she would visit both the store and their home on the weekends. After David died, she continued to see Rebecca two to three times a week … and took [Rebecca's dog] to the dog park. [Marina] first saw Lori Laatsch at David's funeral and met her some time after that. Sydney Johnson also testified that she had a good relationship with Rebecca and that she saw more of her after David died, two or three times a week. She also met Lori at David's funeral.

> Diane Mehalko, a long-time employee of Derzon Coin, testified that she first met Lori Laatsch when the children, Anna and Robyn, were little. They came into the store "a few times a year."
>
> Attorney Robert Menard, Alan's law partner, testified that he has known David and Rebecca since 1992. He testified that he considered them friends, socialized with them, went to the store, and shared meals with them on a number of occasions. He also saw David and Rebecca at functions involving Alan's children. He never knew of Lori Laatsch or any members from Rebecca's side of the family.
>
> *The evidence is remarkably consistent that Lori first arrived on the scene at the time of David's surgery in December 2006. Other than the Laatsch children's testimony, there is no other corroborative evidence of this long-standing half-sister relationship….*
>
> The credible evidence establishes that Lori Laatsch, while she may have had incidental contact with Rebecca Derzon prior to December 2006, became a much more prominent and consistent figure in Rebecca's life after David became ill.

(Emphasis added.)

3. Rebecca's substance abuse and fragile emotional state.

> Dalyn Derzon testified that she first noticed an issue with Rebecca's drinking in February 2004 and described several specific instances that led to her and Alan confronting Rebecca about driving with the children in December 2005. Their eight-year-old daughter described Rebecca as yelling, screaming, and driving very fast on the wrong side of the road. At family functions, Rebecca would trip and spill. She appeared inebriated and was constantly repeating herself….
>
> Alan testified that he began to notice a change in Rebecca's drinking in February 2004…. Rebecca was "pretty messed up"—stumbling and slurring—and he felt sorry for his dad. In the fall of 2005, [Alan's] fifteen-year-old daughter described Rebecca as driving intoxicated down the wrong side of the road, which prompted the "no driving" rule. Rebecca had bottles of prescription medication around the condo and smoked "pot." [Alan] also recalled the incident where [Rebecca] came to their

house in her underwear…. In February 2007, David was very ill and still recovering from surgery. Alan described Rebecca as morose, depressed, and heavily medicated. By summer 2007, Rebecca was frequently drinking and yelling at David, and Alan described her as "verbally abusive" to David….

Robert Menard, attorney and family friend, testified that he saw Rebecca after David died at the Sendik's grocery store in Whitefish Bay. He was very concerned for her because she appeared intoxicated and because she had slurred speech and was purchasing a case of vodka.

Marina Johnson [the daughter of Rebecca's half-brother Paul Johnson], fifteen years old, testified that she was aware that Rebecca was taking sleeping pills after David died.

Mark Derzon described Rebecca as depressed after David's death, and he also testified that he talked with her frequently on the phone and that she sounded "wasted." Her speech was slurred, she repeated herself quite a bit, and did not make a lot of sense….

It is clear that [Rebecca] was a well-respected, admired, and loved woman…. However, the evidence also paints a picture of a woman who struggled [in] the last two to three years of her life, engaging in uncharacteristic behaviors….

Diane Mehalko testified that, prior to his illness, Rebecca was "mean" to David on occasion, and sometimes "belligerent." … She felt like she was walking on eggshells around Rebecca for the last two years.

Alan testified that [after David's death] Rebecca was depressed and drinking. He described a nonsensical telephone conversation where Rebecca kept repeating statements about knowing that David was still around because the pepper was in front of the oregano on the shelf.

After David's death, Rebecca was preoccupied with her own death and she was in a constant state of redrafting her estate plan. She began the revisions in August 2006, when she executed a second codicil to her will without consulting David. She executed the 2008 will within months of David's death, and secured a third safe deposit box to deposit it in, near Laatsch's home. She prepared the list of things to do "upon my death," which is in evidence.

Post-trial proceedings.

¶22 On January 14, 2013, Laatsch moved for a new trial. The trial court denied the motion, and Laatsch now appeals. Additional facts will be developed as necessary below.

ANALYSIS

¶23 On appeal, Laatsch challenges the trial court's decision to deny the admission of Rebecca's March 10, 2008 will into probate, as well as its conclusion that the will and trust were the products of undue influence. She also makes several additional arguments, including that the trial court erred in denying her motion for a new trial. We consider each argument in turn.

(1) The trial court properly denied the motion to admit the will.

¶24 In arguing that the trial court erred by denying the admission of Rebecca's March 10, 2008 will into probate, Laatsch takes issue with several of the trial court's findings of fact. We uphold the trial court's findings of fact unless they are clearly erroneous. *See* ***Flejter v. Flejter***, 2001 WI App 26, ¶34, 240 Wis. 2d 401, 623 N.W.2d 552. "[A] finding of fact is clearly erroneous when 'it is against the great weight and clear preponderance of the evidence.'" ***Phelps v. Physicians Ins. Co. of Wis., Inc.***, 2009 WI 74, ¶39, 319 Wis. 2d 1, 768 N.W.2d 615 (citation omitted). Under the clearly erroneous standard, we affirm findings of fact as long as the evidence would permit a reasonable person to make the same finding "'even though the evidence would permit a contrary finding.'" ***Royster-Clark, Inc. v. Olsen's Mill, Inc.***, 2006 WI 46, ¶12, 290 Wis. 2d 264, 714 N.W.2d 530 (citation omitted). "Moreover, we search the record not for evidence opposing the [trial] court's decision, but for evidence supporting it." ***Id.***

(a) The "Draft" watermark.

¶25 Laatsch first takes issue with the court's finding that the "Draft" watermark raised questions about the will's validity; specifically, she argues that the court incorrectly found that the will was made using Microsoft Office Word 2007. Laatsch does not, however, cite evidence from the record before the court at trial. Instead, she cites an affidavit from Linda Nowak—the office manager of Remmers' law firm—that was created in January 2013, several months after the court made its decision.[4] In the affidavit, Nowak stated that the firm did not use Microsoft Office Word in 2008:

> I read the court's decision of August 22, 2012 pertaining to the draft watermark on Pg. 6 & 7. The court took judicial notice of the placing of a watermark on a document in the Microsoft "Word" software for 2007. In 2008, the Cramer, Multhauf, and Hammes Law Firm did not use Microsoft Office Word 2007. The Cramer, Multhauf, and Hammes Law Firm did not use the "Word" software for the placing of watermarks on documents.

(Formatting altered.)

¶26 Laatsch's proffered evidence is not persuasive. First, it contradicts evidence in the record before the trial court. For example, Exhibit 57—a printout from an October 14, 2011 email that Nowak sent to various parties, including Remmers—not only is titled "Copies of *MS Word* Documents," (emphasis added) but also reads, as pertinent here: "With respect to the Derzon file, attached as requested as the *MS Word* electronic file documents of the Will, Trust and letter dated 2-18-2008." (Emphasis added.) This email strongly suggests that Remmers' law firm *did* use Microsoft Office Word to create Rebecca's estate plan

[4] This affidavit appears to have been created in support of Laatsch's motion for a new trial.

in 2008. Second, Nowak's affidavit is not corroborated by any other evidence in the record. Third, there is no explanation provided for why, if the trial court made such an obviously erroneous finding in August 2012, counsel took no steps to correct it until nearly five months later. Therefore, we conclude that Nowak's 2013 affidavit does not contradict the great weight of the evidence, *see* ***Phelps***, 319 Wis. 2d 1, ¶39, and does not render the trial court's finding that the will was made using Microsoft Office Word 2007 clearly erroneous.

(b) Other irregularities in the estate documents.

¶27 Laatsch next challenges three findings the trial court made regarding what it concluded were suspicious irregularities in the estate documents: (1) the fact that the "Draft" watermark on the signed will did not appear in Remmers' electronic copy of the will; (2) the fact that electronic copies of the estate documents were converted to PDFs,[5] thereby removing any metadata; and (3) evidence that Remmers' firm took apart the bound booklet containing all of the estate documents.

¶28 Laatsch does not actually dispute these findings; rather, she challenges their significance—providing reasons why, in her opinion, the trial court should not have viewed them as supporting its decision. But we do not reweigh the evidence; our role is to determine whether "'the evidence would permit a reasonable person to make the same finding.'" *See* ***Royster-Clark, Inc.***, 290 Wis. 2d 264, ¶12 (citation omitted).

[5] Lori describes this conversion as "removal of metadata by transferring *Word* documents to PDF." (Emphasis added.) This not only refutes her earlier argument that Remmers' firm did not use Microsoft Office Word to create the documents in question, but also causes this court to seriously question the truthfulness of Novak's January 2013 affidavit.

¶29 It is very clear that the trial court gave ample reasons for its findings. Regarding the removal of the "Draft" watermark, the trial court thoroughly explained why both its appearance on the will and its later removal were suspicious—including the fact that Attorney Remmers recently had a will invalidated in another case for "being signed in draft form." As for the removal of metadata, while Laatsch points to Remmers' testimony about the importance of removing it, the trial court found, and Laatsch does not dispute on appeal, that Remmers' concerns were uncorroborated. Regarding the taking apart of the booklets, Laatsch points to the fact that Remmers' firm ultimately provided the trial court with all the necessary information, but says nothing about the extreme delay in doing so, which was an important factor in the trial court's analysis.

¶30 Therefore, because Laatsch does not dispute the evidence, but instead disputes the trial court's conclusion regarding the meaning of the evidence, and because the evidence would permit a reasonable finder of fact to make the same findings as the trial court, *see* ***id.***, we reject Laatsch's arguments.

(c) Withholding key documents.

¶31 Laatsch also argues that the trial court erroneously held her accountable "for following the advice of [her] lawyers." Specifically, she argues that, contrary to the trial court's findings: (i) she did not know whether her law firm was withholding documents; (ii) she personally never refused to turn over documents; (iii) the 2008 will and trust did not significantly lower the bequest to Paul and his children; and (iv) there was no reason to be suspicious of the fact that the bound booklets containing all of the estate planning documents were missing because she found her copy of the booklet and filed it with the court in 2013.

¶32 Laatsch's arguments are not persuasive. As we have already seen from our recitation of the pertinent parts of the trial court's opinion, as well as from this court's decision affirming the trial court's removal of Laatsch as the estate's personal representative, *see* ***Laatsch v. Johnson***, No. 2011AP377, unpublished slip op. ¶¶1-7, 12 (March 6, 2012), Laatsch's attorney's firm did in fact withhold documents, and Laatsch's insistence that she did not know about it and "never personally refused to turn over any documents" is belied by the many instances in which she herself did not turn over important documents—including failing to give the original of Rebecca's will to her lawyer days after Rebecca's death, and failing to turn over the bound booklet until 2013. Moreover, Laatsch does not provide us with any supporting details that would allow us to overturn the trial court's finding that the 2008 will and trust significantly lowered the bequest to Paul and his children. *See* ***M.C.I., Inc. v. Elbin***, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988).

(d) Findings regarding the trust.

¶33 Laatsch additionally argues that the trial court's "suspicions of the will because of the draft watermark on its last page do not apply to the trust." (Formatting altered.) It appears—though it is not clear from her brief—that Laatsch is arguing that the trust should be valid because it, unlike the will, did not have a "draft" watermark on its last page. However, as noted, there were numerous reasons why the trial court invalidated the will and the trust, and omitting one such reason would not yield a different result. Moreover, as we will discuss in more detail below, the entire estate plan—including the trust—was the product of undue influence and is therefore invalid. We therefore reject Laatsch's argument.

(2) The trial properly determined that the will and trust were the products of undue influence.

¶34 We next turn to Laatsch's argument that the trial court erred in concluding that the will and trust were invalid due to undue influence. "There are two avenues by which an objector to a will on the theory of undue influence may challenge its admission." ***Lee v. Kamesar***, 81 Wis. 2d 151, 158, 259 N.W.2d 733 (1977). The first is a four-part test, in which the objector must prove: "(1) susceptibility to undue influence, (2) opportunity to influence, (3) disposition to influence, and (4) coveted result." ***Id.*** "The second method of challenge is to prove the existence of (1) a confidential relationship between the testator and the favored beneficiary and (2) suspicious circumstances surrounding the making of the will." ***Id.*** at 159. Once the court has determined that a presumption of undue influence exists:

> [There are] two methods by which a will's proponent can destroy the presumption of undue influence. First, the party may contradict the evidentiary facts creating the presumption and destroy the clear, satisfactory and convincing weight of the evidence. The second method is that although the rebutting evidence does not directly contradict the evidentiary facts underlying the presumption of undue influence, the presumption may be overcome with the introduction of sufficient facts to permit its rejection.

Sensenbrenner v. Sensenbrenner, 89 Wis. 2d 677, 688, 278 N.W.2d 887 (1979).

¶35 As noted, the trial court applied the second test, concluding that there was a confidential relationship between Laatsch and Rebecca and that there were suspicious circumstances surrounding the making of the March 10, 2008 will and trust. *See* ***Lee***, 81 Wis. 2d at 158-59. The trial court also found that Laatsch's proffered evidence did not rebut the presumption of undue influence. We address Laatsch's arguments to the contrary below.

(a) Laatsch and Rebecca had a confidential relationship.

¶36 Laatsch challenges the trial court's conclusion that a confidential relationship existed between her and Rebecca by pointing to four allegedly erroneous findings of fact: that Laatsch had a fiduciary relationship to Rebecca via the power of attorney; that Laatsch worked "full time" at Derzon Coin; that Rebecca was in a fragile emotional state; and that Laatsch was present at Derzon Coin when Rebecca signed the estate documents.

¶37 First, Laatsch claims that the power of attorney was not a financial power of attorney, and that therefore it was insufficient to show that a fiduciary duty existed regarding Rebecca's estate. Laatsch misrepresents the record. While Laatsch did in fact testify that she personally never signed any financial power of attorney, the record is clear that on March 10, 2008, Rebecca signed a durable power of attorney naming Laatsch and her husband as Rebecca's financial power of attorney and successor, respectively. Moreover, Laatsch's argument, aside from misrepresenting the record,[6] misses the point. The reason the court highlighted the fiduciary relationship created by the power of attorney was to cite it as an *indicator* of a confidential relationship. *Cf.* ***Hoeft v. Friedli***, 164 Wis. 2d 178, 187, 473 N.W.2d 604 (Ct. App. 1991) ("[A] fiduciary relationship need only be shown to *exist*…. [A] power of attorney creates the fiduciary relationship. Nothing more is needed."). In fact, the trial court found more than it needed to here, because it was unnecessary to find both a fiduciary relationship as well as a

[6] Counsel for both the Appellants and the Respondents make numerous factual misrepresentations in their briefs. We caution counsel that SCR 20:3.3(a)(1) requires candor to the tribunal and prohibits counsel from knowingly "mak[ing] a false statement of fact ... to a tribunal." Counsels' failures to abide by the Wisconsin Supreme Court's ethical rule frustrates the judicial process and is disrespectful to this court.

confidential one: "the objector establishes the first element by proving the existence of *either* a confidential relationship *or* a fiduciary relationship between the testator and the favored beneficiary." *See* ***id.***, 164 Wis. 2d. at 186.

¶38 Second, Laatsch challenges the trial court's finding that she worked full time at Derzon Coin, insisting that she only worked part time. Again, Laatsch's argument misses the mark. The issue before the trial court was not the exact number of hours Laatsch spent at the coin store, but the nature of Laatsch's relationship to Rebecca's family business. The record shows that before Rebecca died, the business was valued at $500,000-$900,000, and within a very short timeframe Laatsch essentially ran the company as Rebecca's "trusted business partner." Therefore, we conclude that the trial court's finding that Laatsch was "taking on more and more responsibility, such that it was anticipated that she would own the store after Rebecca died" was amply supported by the record and supports the trial court's conclusion that Laatsch and Rebecca shared a confidential relationship.

¶39 Third, Laatsch challenges the trial court's finding that Rebecca was in a fragile emotional state around the time that she executed the March 10, 2008 estate plan. In doing so, she cites testimony showing that Rebecca was a strong-willed person who was not susceptible to influence. Again, Laatsch asks us to consider the evidence from her point of view rather than to determine whether the evidence would permit a reasonable factfinder to make the same finding as the trial court. *See* ***Royster-Clark, Inc.***, 290 Wis. 2d 264, ¶12. But that is not the standard. There was plenty of evidence adduced at trial, as shown by the detailed findings of fact set forth above, that Rebecca was suffering from substance abuse in the years immediately preceding her death and that she was very depressed. As such, there is ample evidence in the record to support the trial court's finding that

Rebecca was in a fragile emotional state when she executed the March 10, 2008 will.

¶40 Fourth, Laatsch challenges the finding that she was present during the signing and execution of the March 10, 2008 estate plan, citing testimony that Rebecca had already begun the process of signing the documents when Laatsch arrived. Laatsch does not actually dispute, however, that she was in fact at Derzon Coin on March 10, 2008 when the documents were signed. Again, Laatsch is not challenging the finding but rather its significance. *See* ***id.*** And again, we will not reweigh the evidence, but will uphold the trial court's findings.

(b) Suspicious circumstances surrounded the creation of Rebecca's March 10, 2008 estate plan.

¶41 "The suspect circumstances requirement is satisfied by proof of facts 'such as the activity of the beneficiary in procuring the drafting and execution of the will, or a sudden and unexplained change in the attitude of the testator, or some other persuasive circumstance.'" ***Lee***, 81 Wis. 2d at 166 (citation omitted).

¶42 Laatsch argues that there were no suspicious circumstances because there was a good reason for Rebecca to completely disinherit Mark and Alan—the fact that they did not sit Shiva[7] with her after David died. To support this contention, Laatsch cites testimony from Attorney Remmers that Rebecca said that she wanted to change her will because "something" happened at David's funeral; however, Remmers was unable to say what that "something" was. Laatsch also cites testimony from Diane Mehalko—an employee of Derzon coin, who as we

[7] Shiva refers to the week-long mourning period in Judaism held by immediate family members. *See* http://en.wikipedia.org/wiki/Shiva_(Judaism) (last visited November 21, 2014).

have already seen, stood to gain from the March 10, 2008 estate plan—that Rebecca was "hurt" that Alan and Mark did not attend the luncheon that was held directly following David's burial. This evidence is not strong enough to overcome the trial court's well-supported findings.

¶43 In fact, some of Laatsch's citations do not support her argument that there was a week-long Shiva that David's sons refused to attend.[8] For example, on page 38 of her brief, Laatsch argues: "Following David's death, Rebecca held Shiva in her home for a week, and both Paul and Laatsch sat with Rebecca." However, the cited testimony is actually Alan's testimony that Rebecca and his family had a very good relationship: that Rebecca was a "fun person" with whom he partook in many activities, such as Bucks games, Badger games, and numerous out-of-state vacations, and that Rebecca wanted, shortly after marrying David, to take a Jewish first name. Laatsch likewise cites to Alan's testimony to argue that he "did not talk to Rebecca at any time during the Shiva period." However, in the cited testimony Alan actually testified that: (1) while he did not visit Rebecca's condo after David's death, he did not remember there being a Shiva for his dad; (2) that, given the very large attendance of the funeral, he would have remembered if there was a Shiva; and (3) that there was no Shiva for David's parents when they died, either.

¶44 Moreover, Laatsch does not challenge the trial court's findings that Rebecca planned to leave artwork and artifacts that she and David had collected in Israel to her temple and that the March 10, 2008 estate plan does not mention the

[8] *See* footnote 6 of this Court's opinion.

temple. These circumstances are extremely suspicious given that Rebecca discussed this bequest with her temple in May 2008.

¶45 In sum, the trial court made a detailed, thorough finding that there were suspicious circumstances—including the lack of a reasonable explanation for cutting David's sons out of the will and a bequest to her temple that did not appear in the proffered estate plan—and Laatsch's arguments fail to convince us otherwise.

(c) The trial court correctly found that Laatsch did not rebut the presumption of undue influence.

¶46 Laatsch makes numerous arguments that she claims rebut the presumption of undue influence, including that: the memos in Remmers' file relating to undue influence pertain to David, not Rebecca; the $137,000 that Laatsch took from the safe deposit box was not part of the estate plan; her petition to dispense with the Guardian at Litem for Johnson's daughters was not inappropriate; her attempt to close probate informally was not inappropriate; she had a close relationship with Rebecca for nearly ten years before David fell ill and did not suddenly take on a major role in Rebecca's life only toward the end of Rebecca's life; Rebecca was strong-willed and not easily susceptible to outside influence; and Laatsch was, contrary to the trial court's finding, a credible witness.

¶47 With one exception that we will discuss below, these arguments are either conclusory and unsupported by legal authority or a mere rehashing of arguments that we have already found to be unpersuasive in our discussion of the trial court's decision not to admit the will into probate. We will therefore not address them individually. *See, e.g.*, ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992); ***State v. Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d 555,

564, 261 N.W.2d 147 (1978). It suffices to say that they do not contradict the trial court's thoughtful, well-reasoned and well-supported decision.

¶48 With regard to Laatsch's argument that the memos in Remmers' file relating to undue influence pertain to David, not Rebecca, we have reviewed the memos, and, while they are somewhat vague, we agree that it does appear that they pertain to David's estate rather than Rebecca's. Even assuming that the trial court's finding on this particular topic was incorrect, however, there still is—as was detailed in the trial court's voluminous findings above—plenty of evidence to support the conclusion that Laatsch has not rebutted the presumption of undue influence. Consequently, the trial court's decision must be upheld.

(3) Laatsch's other arguments on appeal are conclusory and insufficiently developed and must therefore be rejected.

¶49 Laatsch makes several additional arguments on appeal, including that: "the trial court erred in ordering that Rebecca Derzon's transfer of Derzon Coin, Inc. stock to the trust, and that the subsequent transfer from the trust to Laatsch and Diane Mehalko were invalid" (formatting altered); the trial court erred in denying Laatsch's motion for a new trial; and a new trial is required in the interest of justice. These arguments are conclusory and insufficiently developed, and therefore we will not consider them. *See, e.g.*, ***Pettit***, 171 Wis. 2d at 646; ***Waste Mgmt. of Wis., Inc.***, 81 Wis. 2d at 564.

¶50 In sum, we agree with the trial court's well-reasoned decision in this matter, and we consequently affirm.

By the Court.—Orders affirmed.

Not recommended for publication in the official reports.