FILED, Clerk of the Supreme Court, 27 Apr 2026, **091316**

IN THE MATTER OF THE ESTATE OF FRANK D. CARONE	SUPREME COURT OF NEW JERSEY DOCKET NO. 091316 Submission Date: April 27, 2026 CIVIL ACTION
IN THE MATTER OF THE ESTATE OF ROSEANN CARONE	On Petition for Certification from the September 25, 2025 Judgment of the Superior Court of New Jersey, Appellate Division Docket Nos. A-000858-24; A-000860-24 Sat below: Hon. Hany A. Mawla, J.A.D. Hon. Joseph A. Marczyk, J.A.D. Trial Court Docket Nos. P227937; P228307 Sat below: Hon. Frank Covello, P.J. Ch.

BRIEF OF PLAINTIFFS-APPELLANTS ANTON MAYER AND FRANCISCO MAYER

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PRELIMINARY STATEMENT

This appeal comes to this Court by way of Certification granted on March 16, 2026. Plaintiffs Francisco Mayer and Anton Mayer Jr. ("Anton Jr.") filed this undue influence case after learning that their grandparents, Decedents Frank and Roseann Carone, disinherited them in wills both Decedents executed in December 2021 ("2021 Wills") and a will Frank executed in August 2022 ("2022 Will"), despite the loving relationship Plaintiffs had with their grandparents.

The Trial Court ruled on summary judgment that the 2021 and 2022 Wills are presumptively the product of undue influence. It shifted the burden to Defendants Genoveffa Mayer ("Jeanie"), who is Plaintiffs' mother and Decedents' daughter, and her husband Anton Mayer Sr. ("Anton Sr."), to disprove by clear and convincing evidence that they unduly influenced Decedents to change their wills after Defendants' own relationship with their sons deteriorated.

The Trial Court made this ruling after being presented with a litany of suspicious circumstances surrounding the execution of the 2021 and 2022 Wills, including that: (1) both Decedents had been diagnosed with dementia and had suffered significant health issues just before the 2021 Wills were executed; (2) Decedents signed the 2021 Wills in a car on the side of Third Avenue, with Anton Sr. present the entire time and after Anton Sr. drove them from their home

in Wayne, New Jersey to New York City; and (3) Frank signed the 2022 Will just days after being released from the hospital, with both Defendants present for the entire signing.

The central issue on this appeal is whether Plaintiffs have standing to continue to pursue what the Trial Court has already determined to be a meritorious case. At the motion to dismiss stage, the Trial Court properly ruled that Plaintiffs have standing because they are named as beneficiaries in wills Decedents executed in 2006 ("2006 Wills"), and are also named as beneficiaries in unsigned wills in the possession of the estate planning attorney used by both Decedents and Defendants, dated 2007, 2011, 2013, 2014 (each naming both Plaintiffs as beneficiaries), 2015, and 2017 (each naming Francisco as a beneficiary) (collectively, the unsigned 2007-2017 wills are referred to herein as the "Draft Wills"). Plaintiffs thus satisfy the hornbook test for standing in probate disputes, because they are beneficiaries of prior wills that could be probated in the event the 2021 and 2022 Wills were invalidated.

In the context of deciding the summary judgment motions, however, the Trial Court inexplicably reversed course on standing. As discussed below, the Trial Court decided Plaintiffs would be "estopped" from having standing if any of the Draft Wills had been executed (an unresolved question to that point), thereby revoking the 2006 Wills under N.J.S.A. 3B:3-13. Following its summary

judgment ruling and over Plaintiffs' objection, the Trial Court held a limited issue trial solely focused on whether the 2006 Wills were revoked by any of the Draft Wills. The Trial Court found the 2007 and 2011 Draft Wills were validly executed and revoked the 2006 Wills. The Trial Court thus dismissed the case for lack of standing, despite the fact that both Plaintiffs are beneficiaries under the 2007 and 2011 Wills, and Francisco is a beneficiary of *every* Draft Will.

As a result, presumptively invalid wills are admitted to probate and Plaintiffs, who are clearly aggrieved by the probate of those presumptively invalid wills, are left without a remedy. It is an unjust ruling that directly contradicts longstanding controlling decisions by this Court and the Appellate Division, and should not stand.

PROCEDURAL HISTORY

A. *Defendants Move to Dismiss for Lack of Standing at the Outset of the Case, and the Trial Court Determines Plaintiffs Have Standing.*

Plaintiffs brought this action in early January 2023, seeking to invalidate the 2021 and 2022 Wills. (See generally Pa0226-Pa0245.) Plaintiffs alleged that their parents, the Defendants, unduly influenced Decedents to remove Plaintiffs from the 2021 and 2022 Wills. (Pa0236-0238.) At the time they sued, Plaintiffs understood that Decedents intended to provide for them in their wills because that is what Decedents had told them. (Pa0230; Pa0251; Pa0294.) However, in

early January 2023, when they filed the original Complaint, Plaintiffs were not in possession of a signed will in which they were named as beneficiaries. (See generally Pa0226-Pa0265.)

Defendants responded to the Complaint by moving to dismiss on the basis that Plaintiffs lacked standing because they had not identified a prior will of Decedents through which Plaintiffs would benefit. (Pa0266-Pa0268; Pa0274-Pa0276.) In support of their motion to dismiss, Defendants filed a certification from Mr. Zimmerman, who represented (and still represents) Jeanie as Executor of Decedents' Estate, represented Defendants as their estate planning attorney,[1] represented Defendants' business interests, and was Decedents' estate planning attorney during their lifetime. (Pa0282-Pa0285.)

In support of Defendants' motion to dismiss, Mr. Zimmerman certified that he had drafted prior wills for Decedents. (Pa0282-Pa0285.) However, he carefully avoided stating that Decedents had actually executed any wills prior to the 2021 and 2022 Wills. (Pa0282-Pa0285.) He also did not attach the Draft Wills to his Certification. (Pa0282-Pa0285.) More significantly, he did not disclose in his Certification that all of those Draft Wills benefited Francisco and most of them also benefited Anton Jr. (Pa0282-Pa0285.)

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[1] Mr. Zimmerman drafted wills for Defendants disinheriting Plaintiffs, which Defendants executed in 2020. (Pa300.)

The Trial Court ordered a limited period of standing discovery so that Plaintiffs could attempt to locate a prior will of Decedents in which they were named. (Pa0286.) As part of standing discovery, Plaintiffs learned that an attorney named Neil Kilstein had prepared wills for Decedents prior to Mr. Zimmerman. (Pa0836-Pa0837.) Plaintiffs obtained conformed copies of wills executed by Decedents on December 31, 2006, prepared by Neil Kilstein, under which Plaintiffs each received 10% of Decedents' estate. (Id.; Pa0360-Pa0401.) Notably, the conformed copies are signed on the first page by Decedents, to indicate that Decedents received the originals. (Pa0361; Pa0382.)

Almost immediately after Plaintiffs produced the 2006 Wills to Defendants, Mr. Zimmerman produced a portion of his estate planning file, which contained the Draft Wills. (Pa0001-Pa0225.) He was also deposed and testified that all of the Draft Wills had been validly executed. (See generally Pa0470-Pa0653.) Plaintiffs were justifiably skeptical of the legitimacy of the Draft Wills given that Mr. Zimmerman had inexplicably omitted from his Certification that there were prior validly executed wills naming Plaintiffs (despite this being the premise of Defendants' motion to dismiss) until *after* Plaintiffs located the 2006 Wills.

Ultimately, following this standing discovery, the Trial Court concluded Plaintiffs had standing:

> I think that you know what my thought process was on this that [Plaintiffs] needed to show me that there is . . . some place where they would take under the estate of these individuals and they've done that. There's a 2006 will *and there are potentially wills that followed 2006 that . . . there's some evidence . . . that demonstrate there [were] some other wills that were signed. And from what I understand the facts to be, the grandchildren were included as beneficiaries under those wills up until 2015.* So that kind of bears out what the allegations of the complaint are. And the only thing I'm deciding today is whether or not they actually have standing to be able to pursue those claims. . . .
>
> Are they going to win? I don't know. It's – it's a very, very difficult road that they will have. I think they have standing. So I mean on that basis, I think the motion to dismiss for lack of standing is denied.

(Pa1237 at 24:25-25:23 (emphasis added).) Thus, at least at that point, the Trial Court determined Plaintiffs had standing on the basis of both the 2006 Wills and potentially under the Draft Wills if the evidence ultimately supported that they were signed. (Id.)

On June 21, 2023, Plaintiffs filed their Consolidated Amended Verified Complaint ("AVC"). In the AVC, Plaintiffs identified the 2006 Wills—the only prior wills bearing the Decedents' signatures—because Plaintiffs believed at the time those to be the last valid wills of Decedents before they were subjected to Defendants' undue influence. Plaintiffs did not specifically request that the 2006 Wills be probated, nor did they include *any* allegations regarding the Draft Wills, as there had been no finding at that point that the Draft Wills had actually been executed. (Pa0290-Pa0312; Pa1237 at 24:25-25:23 (noting only "some

evidence" supporting they were signed).) Rather, the focus of the AVC was undue influence and Plaintiffs' request that the 2021 and 2022 Wills be invalidated. (Pa0306-Pa0310.) Indeed, from Plaintiffs' perspective, the issue of standing had already been settled based on the Trial Court's ruling (Pa1237 at 24:25-25:23), and thus there was no need to plead or clarify a basis for standing.

Like Plaintiffs, Defendants seemed to operate during merits discovery on the assumption that Plaintiffs' standing had been settled, and that the remaining issues were whether the 2021 and 2022 Wills should be admitted to probate, and if not, which wills should be probated instead. For example, lead counsel for Defendants asked Francisco at his deposition:

> Q. And if – do you have any agreement or arrangement with your brother Anton as to what would happen if a court were to determine that the 2017 or 2015 Wills [*i.e.*, the Draft Wills that named Francisco as a beneficiary but not Anton Jr.] should be probated? . . .
>
> A. I don't recall any type of agreement that I have with my brother. . .
>
> Q. *You understand that in attempting to invalidate the 2021 Wills, in theory a court could determine that the next Will is 2017* [i.e., the 2017 Draft Will], right?
>
> A. I can't predict what the courts will determine.
>
> Q. *Do you understand that is a possibility*?
>
> A. I understand there is a lot of possibilities with the court.

(Pa1240-Pa1241 at 176:18-177:10 (emphasis added).) Defendants' counsel thus explicitly raised the possibility during discovery that wills other than the 2006 Wills could be admitted to probate if the 2021 and 2022 Wills were invalidated, contrary to their summary judgment position, discussed below.

B. *Following Discovery, the Parties Cross-Move for Summary Judgment and the Trial Court Rules that the 2021 and 2022 Wills Are Presumptively Invalid, but Revisits the Issue of Standing.*

Following discovery, the parties cross-moved for summary judgment. Defendants sought summary judgment dismissing the case on several grounds, including reviving the issue that Plaintiffs lacked standing, because the 2006 Wills had been revoked by the Draft Wills. (Pa0422-Pa0426.) This was the first time the standing issue had been raised—before the Court or between the parties—since the motion to dismiss stage, when it had been resolved in Plaintiffs' favor. Plaintiffs opposed Defendants' summary judgment motion and, relevant here, the standing argument, by pointing out that if the Draft Wills were validly executed (as required to revoke the 2006 Wills under N.J.S.A. 3B:3-13), then Francisco would have standing under any of the Draft Wills and Anton Jr. would have standing under the Draft Wills through 2014. (1T5, 9.) Plaintiffs also cross-moved for a summary judgment order shifting the burden of disproving undue influence to Defendants by clear and convincing evidence or, at a minimum, a preponderance of the evidence. (Pa0842-0847.)

The Trial Court issued its ruling on summary judgment on the record on August 23, 2024. (1T; 2T.) In view of the suspicious circumstances surrounding the execution of the 2021 and 2022 Wills, the Trial Court ruled that the burden would be shifted to Defendants to disprove undue influence by clear and convincing evidence. (1T16:7-15; 1T21:9-10; 3T4:1-6.) *Thus, the 2021 and 2022 Wills are presumptively invalid.* In re Est. of Stockdale, 196 N.J. 275, 303 (2008) (noting that when burden is shifted, "undue influence is presumed"). The Trial Court also denied Defendants' motion seeking dismissal, but scheduled a limited issue trial solely on the issue of whether the 2006 Wills had been revoked. (1T2-3.)

Before the pre-trial conference, Plaintiffs submitted a letter to the Trial Court objecting to the limited issue trial because the trial would not change the standing analysis—*i.e.*, if the Trial Court determined that the 2006 Wills had been revoked by one of the Draft Wills (the ostensible purpose of the trial), at least one of the Plaintiffs would still have standing and a full trial on the merits would be necessary. (Pa1231-Pa1234.) Plaintiffs also argued that, if the Trial Court decided to move forward with a limited issue trial, the proper question for the Trial Court to ask is whether Plaintiffs have standing as a result of *any* prior will that could be probated, rather than focusing solely on the 2006 Wills. (Pa1233-Pa1234.) Plaintiffs referenced the above-quoted deposition transcript

to show that the parties had clearly contemplated the possibility that one of the Draft Wills could be admitted to probate and thus serve as a source of standing. (Pa1233; Pa1238-Pa1242.) Defendants responded that Plaintiffs could only assert standing under the 2006 Wills. (Pa1244-Pa1245.)

At the pre-trial Conference, the Trial Court made the ruling that ultimately led to the dismissal of this case. Responding to the argument that Plaintiffs could only assert standing under the 2006 Wills, the Trial Court stated:

> Okay. I agree. That is what I had previously determined [referring to the summary judgment hearings]. I still stand by that because I don't think you really have the ability to take a position that there's only one Will that you're seeking to have probated and then come back and say well let's try all of them.
>
> So, we're going to stick with the 2006 Will and we'll go from there. So the October 15th hearing will be on that.

(3T7.) Plaintiffs' counsel noted its objection, and to clarify the record, asked:

> And can I just ask for clarity for the record, is Your Honor making a finding that [P]laintiffs are estopped from arguing that any Will other than the 2006 Will is – gives the [P]laintiffs standing?

(Id.) The Trial Court responded, "Yes." (Id.) The Trial Court provided no further legal or factual basis for its estoppel ruling. (3T7-8.)

C. *The Trial Court Holds a Limited Issue Trial and Finds that Plaintiffs Lack Standing Because the 2006 Wills Were Revoked by the 2007 and 2011 Draft Wills, Even Though Plaintiffs Are Beneficiaries Under Those Wills Too.*

The Trial Court held the limited issue trial in October 2024. That trial was focused solely on the question of whether the 2006 Wills were revoked. Mr. Zimmerman was the only witness. Following his testimony, the Trial Court concluded that two of the Draft Wills—from 2007 and 2011—had been signed, thereby revoking the 2006 Wills and defeating Plaintiffs' standing (4T165:21-167:6), despite the fact that both Plaintiffs are beneficiaries of the 2007 and 2011 Draft Wills too. The Trial Court did not find that any subsequent Draft Wills had been signed: "There are errors in the 2013 [Draft] Wills that I think carried forward into subsequent Wills. The testimony is that those Wills were executed as well. Maybe they were, maybe they weren't, but it doesn't matter. The 2006 Will was absolutely clearly revoked." (Id. at 167:2-6.) From the Trial Court's perspective, the only question for standing was whether the 2006 Wills were revoked, not whether Plaintiffs were also beneficiaries under other of the Draft Wills.

Because both Plaintiffs are named as beneficiaries in the 2007 and 2011 Wills, Plaintiffs moved for reconsideration, arguing they should not be estopped from asserting standing based upon Wills under which they would clearly

inherit. (Id. at 167:8-22.) The Trial Court denied that motion in the following exchange:

> MR. MARINO: Understood, Your Honor, and in light of the fact that you're crediting [Mr. Zimmerman's] testimony that this 2007 Will was signed, plaintiffs are plainly beneficiaries on the document and they have standing.
>
> THE COURT: Except that that was revoked.
>
> MR. MARINO: By the 2011 Will under which they're beneficiaries.
>
> THE COURT: Which was revoked.
>
> MR. MARINO: By the 2013 Will. Under which they were beneficiaries.
>
> THE COURT: They don't have standing. I'm not reconsidering that decision.

(Id. at 168:13-24.)[2]

D. *Plaintiffs Appeal and Lose Due to the Appellate Division's Erroneous Application of Standing and Estoppel Principles.*

Plaintiffs timely appealed the Trial Court's judgment dismissing their case. A two-judge panel of the Appellate Division heard oral argument on the appeal on September 18, 2025. The Appellate Division issued its opinion and

[2] The Trial Court's statement that the 2011 Will was revoked was inconsistent with its earlier statement that it was not deciding whether any of the Draft Wills beyond 2011 were validly executed. (Id. at 167:2-6.) It is unclear whether the Trial Court actually intended to rule that the 2013 Wills were also signed, but in any case, the 2013 Wills also benefit Plaintiffs.

order on September 25, 2025, affirming the Trial Court's determination that Plaintiffs lacked standing because the 2006 Wills had been revoked. (Pcm02.) The Appellate Division held that Plaintiffs lacked standing and that either judicial or equitable estoppel would have been appropriately applied against Plaintiffs. (PCm15-PCm19.)

On March 16, 2026, this Court granted Certification.

STATEMENT OF FACTS

Before addressing the substantive facts of this case, Plaintiffs address a point about the Appellate Division's Opinion. In that Opinion, the Appellate Division took a heavily one-sided approach to the facts that would lead a reader to believe that, even if not on standing grounds, Plaintiffs' claims were unlikely to succeed. To be clear, many of the facts included in the Appellate Division Opinion were not facts found by the Trial Court at any point, but rather, appear to have been drawn from Defendants' statement of material facts, which were disputed by Plaintiffs, in connection with the above-described summary judgment motion. (Compare PCm02-PCm05 with Pa0848-Pa0959.)

In fact, the Trial Court found the evidence of undue influence compelling enough to shift the burden to Defendants to disprove undue influence by clear and convincing evidence. (1T16:7-15; 1T21:9-10; 3T4:1-6.) To avoid any misconceptions created by the Appellate Division's Opinion, Plaintiffs recite

here in some detail the facts that were before the Trial Court on summary judgment, when it shifted the burden of proof to Defendants.

On January 31, 2006, Decedents each executed the 2006 Wills. (Pa0840 at ¶¶9, 12; Pa0360-Pa0401.) Plaintiffs inherit under the 2006 Wills. (Pa0370; Pa0391.) As noted above, the Trial Court determined that Decedents also executed wills in 2007 and 2011. (4T166:18-20; 4T166:22-167:1.) Plaintiffs inherit under both the 2007 and 2011 Wills. (Pa0010-Pa0013; Pa0038-Pa0041; Pa0066-Pa0069.) As noted above, due to errors in the 2013 Draft Wills that carried forward to the later Draft Wills, the Trial Court *did not* find that those Draft Wills were executed. (4T167:2-6.) Thus, both Plaintiffs stood to inherit under the only three wills actually determined by the Trial Court to be executed by Decedents—the 2006, 2007, and 2011 Wills—before being disinherited in the 2021 Wills and Frank's 2022 Will. In any case, as noted, Francisco is named as a beneficiary in all of the remaining Draft Wills and Anton Jr. is named as a beneficiary in all the Draft Wills through 2014. (Pa0013-Pa0014; Pa0069; Pa0071; Pa0095; Pa0097; Pa0117; Pa0019; Pa0143; Pa0162; Pa0182; Pa0187; Pa0193-Pa0194; Pa0201; Pa0213-Pa0214; Pa0221-Pa0222.)

Plaintiffs allege that Decedents disinherited Plaintiffs because they were unduly influenced to do so by Defendants. At the summary judgment stage, Defendants acknowledged that their relationship with Anton Jr. "deteriorated in

approximately 2015 as a result of an issue relating to Anton Jr.'s sister Joy's wedding date being scheduled six weeks after Anton Jr.'s wedding." (Pa0439-Pa0440 at ¶65.) Defendants also acknowledged that in 2019, just as Francisco "began to reconnect with Anton Jr.," Francisco's "relationship with his parents and sister broke down." (Pa0443 at ¶84.)

Following the breakdown of their relationship with their only two sons, Defendants had Mr. Zimmerman, the longtime tax attorney for the family business, which was run by Anton Sr. following Frank's retirement (Pa0483-Pa0484 at 53:8-54:5; Pa0873), prepare wills for Defendants disinheriting Plaintiffs. Defendants signed their own wills disinheriting their sons around February 2020. (Pa0446 at ¶100-101.)

Mr. Zimmerman also prepared drafts of what would become Decedents' 2021 Wills in the fall of 2019, which excluded Anton Jr. and Francisco as beneficiaries. (Pa0449 at ¶119.) Decedents, however, did not sign these wills for approximately two years, as Defendants acknowledge. (Pa0449 at ¶120.) During this two-year period, Decedents expressly acknowledged they were being pressured to change their wills. For example, Roseann told Francisco's wife Natalie at a dinner in late 2020: "Can you believe that my daughter told me to take my Frankie baby and Anton [Jr.] out of the will because your dad's a doctor so he'll be fine, he doesn't need the money?" (Pa1106 at 47:5-18.) Likewise,

Anton Jr.'s wife Nicole "vividly" remembered a conversation in early 2021 in which Roseann said to Anton Jr. and Nicole: "Your mother said you're going to get enough [without being in the will] with your percentage across the street, and your in-laws will be giving your kids enough in their Will." (Pa1097 at 86:4-88:8.)

Following these conversations, in October 2021, two months before the 2021 Wills were executed, Frank had a heart attack and was undergoing active treatment for shortness of breath through at least December 22, 2021, the day the 2021 Wills were signed. (Pa1114-Pa1115 (relying on Pa1143; Pa1145; Pa1162; Pa1200-Pa1208).) He was also suffering from dementia at the time. (Pa1114 (relying on Pa1140; Pa1159-Pa1160).) Roseann was also suffering from mild dementia by this time. (Id. (relying on Pa1150; Pa1153; Pa1154; Pa1155; Pa1156; Pa1158).) And, in October 2021, two months before the 2021 Wills were executed, Roseann fell and hurt her head and face. (Id. (relying on Pa1151).)

Almost immediately after these health setbacks, on November 1, 2021, Mr. Zimmerman re-sent to Frank and Roseann the drafts he had prepared of the 2021 Wills. (Pa0835.) Mr. Zimmerman purported to be responding to a request from Roseann, though there is no corresponding email from Roseann reflecting that she made such a request. (Id.)

On December 22, 2021, Anton Sr. drove Frank and Roseann into New York City to sign the 2021 Wills. (Pa0450 at ¶¶122-124.) Frank and Roseann executed the 2021 Wills *in the car* outside of Mr. Zimmerman's office on Third Avenue in New York City. (Id.) Anton Sr. was in the car for the entire signing. (Pa0518 at 191:8-18.)

Notably, the only witness to the 2021 Will signings besides Mr. Zimmerman, Catherine Figueroa, was outside the car the whole time, and three of the four car windows were rolled up. (Pa0450 at ¶126; Pa1036-Pa1041 at 216:221:4.) Indeed, Ms. Figueroa did not recall at her deposition anything that was said in the car, whether Mr. Zimmerman discussed provisions of the 2021 Wills, whether there was any general discussion of the Wills, what Frank looked like, what Roseann looked like, or where Frank and Roseann were sitting. (Pa0751-Pa0756 at 45:3-50:17.)

Roseann passed away in June 2022. (Pa0290.) When Frank's will was revised during July and August 2022 to incorporate a living trust, Anton Sr. and Defendants' daughter Gioiella ("Joy") controlled the process, working directly with Mr. Zimmerman, and with no ostensible involvement from Frank, to ensure that Plaintiffs remained disinherited. For example, the living trust and 2022 Will were emailed to Frank on July 27, with Joy and Anton Sr. copied. However, there is no indication that Frank ever opened the email or responded. (Pa1228.)

In fact, Frank was in the hospital at the time. (Pa1200.) Mr. Zimmerman then followed up with Anton Sr. and Joy (this time not even bothering to copy Frank) on August 2, 2022, asking if Anton Sr. and Joy had reviewed the living Trust and 2022 Will. (Pa1229.) Anton Sr. confirmed that he had reviewed the documents with Jeanie and Joy and that "everything seems to be in order." (Id.) Glaringly absent from these emails is any indication Frank had reviewed the documents. (Id.)

The 2022 Will was signed at Frank's home on August 4, 2022. (Pa0454 at ¶149.) Anton Sr. arranged for one of the witnesses and the notary to be present. (Pa0609 at 566:7-567:8; Pa0699 at 178:24-179:8.) The notary, Ms. Gallichio, testified that Anton Sr. and Jeanie were seated at the table where the signing occurred at all times, including when the 2022 Will was signed. (Pa0760-Pa0761 at 56:16-57:15; Pa0771 at 67:1-3.) The 2022 Will had substantially identical provisions as the 2021 Will, expressly disinheriting Anton Jr. and Francisco. (Pa0453 at ¶141.) The 2022 Will was thus signed with Defendants at the table, mere days after Frank had been released from the hospital.

Defendants did not tell Plaintiffs that Frank died in August 2022. (Pa1076-1077 at 263:22-264:9.) Defendants also pressured others not to tell Plaintiffs. On September 1, 2022, a family friend texted Francisco about Frank's passing and stated: "you didn't hear it from me. I don't want my mom getting in trouble

for anything." (Pa1230.) Defendants also did not tell Plaintiffs that Roseann died in June 2022. (Pa0303 at ¶95.)

This lawsuit followed after Roseann's 2021 Will and Frank's 2022 Will were admitted to probate.

LEGAL ARGUMENT

I. Standard of Review.

As framed by the Appellate Division's decision, there are two different standards of review applicable to this appeal. The Trial Court's conclusion, following the limited issue bench trial, that Plaintiffs lack standing because the 2006 Wills were revoked by the 2007 and 2011 Draft Wills presents a pure question of law that is subject to *de novo* review. D'Agostino v. Maldonado, 216 N.J. 168, 182-83 (2013). As discussed in detail below, Plaintiffs do not challenge the Trial Court's finding that the 2007 and 2011 Draft Wills were executed by Decedents, but dispute, as a matter of law, that this finding deprived Plaintiffs of standing, given that both Plaintiffs are named as beneficiaries of the 2007 and 2011 Draft Wills and Francisco is named as a beneficiary of every Draft Will.

The Trial Court's reliance on estoppel principles to dismiss Plaintiffs' case is subject to an abuse of discretion standard. Although the Trial Court never specified what form of estoppel it believed barred Plaintiffs from asserting

standing under the Draft Wills, the application of either equitable or judicial estoppel is reviewed for an abuse of discretion. In re Declaratory Judgment Actions Filed by Various Muns., Cnty. of Ocean, 446 N.J. Super. 259, 291 (App. Div. 2016) (holding judicial estoppel subject to abuse of discretion standard), aff'd as modified, 227 N.J. 508 (2017); see also Kaye v. Rosefielde, 223 N.J. 218, 231 (2015) (holding Chancery court generally has discretion in applying "accepted" equitable principles).

A court abuses its discretion when it "makes 'findings inconsistent with or unsupported by competent evidence,' utilizes 'irrelevant or inappropriate factors,' or 'fail[s] to consider controlling legal principles.'" Satz v. Satz, 476 N.J. Super. 536, 549 (App. Div. 2023) (alteration in original) (quoting Elrom v. Elrom, 439 N.J. Super. 424, 434 (App. Div. 2015)), cert. denied, 256 N.J. 352 (2024). An abuse of discretion may also be predicated on a court's failure to consider all relevant factors or where it has made "a clear error in judgment." Id. (quoting State v. C.W., 449 N.J. Super. 231, 255 (App. Div. 2017)). Notably, the abuse of discretion standard does not apply to questions of law, which are always reviewed de novo. Id.

II. The Trial Court and Appellate Division Erred in Concluding Plaintiffs Lack Standing.

A. *Standing Requirements Generally and in Will Contests.*

To have standing under New Jersey law, a plaintiff must have "a sufficient stake and real adverseness" with respect to the subject litigation. Crescent Park Tenants Ass'n v. Realty Equities Corp. of N.Y., 58 N.J. 98, 107-08 (1971). The purpose of the standing requirement is to ensure that courts resolve actual disputes and do "not render advisory opinions." Id. at 107. Because New Jersey's Constitution does not contain the same strictures on standing as the Federal Constitution, standing is more liberally construed under state law, and this Court has made clear that "throughout our law we have been sweepingly rejecting procedural frustrations in favor of 'just and expeditious determinations on the ultimate merits.'" Id. at 108 (quoting Tumarkin v. Friedman, 17 N.J. Super. 20, 21 (App. Div. 1951)); accord Jen Elec., Inc. v. Cty of Essex, 197 N.J. 627, 645 (2009) (same). Thus, courts should refrain from hearing hypothetical disputes and issuing advisory opinions, but should err on the side of hearing potentially meritorious disputes rather than dismissing them based on the "complexities and technicalities" often associated with federal court standing requirements. Crescent Park, 58 N.J. at 107-08.

Critically, "[s]tanding is a threshold requirement." Watkins v. Resorts Int'l Hotel & Casino, Inc., 124 N.J. 398, 421 (1991). "It neither depends on nor

determines the merits of a plaintiff's claim." Id. at 417. The question is not whether the plaintiff will prevail, but whether a court can hear the case without rendering an advisory opinion. See id. at 417-18. Consequently, the bar for standing is routinely described by New Jersey courts as "fairly low." People for Open Gov't v. Roberts, 397 N.J. Super. 502, 509 (App. Div. 2008) (quoting Triffin v. Somerset Valley Bank, 343 N.J. Super. 73, 81 (App. Div. 2001)). Indeed, even under the more stringent federal standing requirements, the bar is not exceptionally onerous. A plaintiff need only be able to answer the question: "What's it to you?" Diamond Alt. Energy, LLC v. EPA, 606 U.S. 100, 110 (2025) (citation modified).

To have standing to challenge the probate of a will, specifically, a party must be "aggrieved" by the probate of that will. In re Hand's Will, 95 N.J. Super. 182, 187 (App. Div. 1967) ("It is essential that a contestant demonstrate aggrievement by the judgment of probate."); R. 4:85-1 (allowing "any person aggrieved" by probate of a will to file suit). Beneficiaries of a prior will that could be admitted to probate instead of the contested will have standing, since they are aggrieved or injured by the probate of a subsequent will eliminating or reducing their inheritance. In re Maxson's Will, 90 N.J. Super. 346, 348 (App. Div. 1966). The requisite "stake" in the litigation exists because a court *could*

admit the prior will to probate. Whether the Court ultimately affords that relief is a merits question unrelated to standing. See Watkins, 124 N.J. at 417.

As with standing generally, standing in will contests should not be hyper-technically applied to deprive plaintiffs with meritorious cases of their day in court. See In re Lent, 142 N.J. Eq. 21, 23 (Err. & App. 1948). More than 75 years ago, the Court of Errors and Appeals cautioned lower courts specifically against absurd standing rulings in cases involving multiple prior wills, in a discussion remarkably apt for the present case:

> The rule applied by the court below if carried to an extreme case would certainly work an injustice. Suppose, for instance, an insane man made a series of wills cutting off his family and benefitting strangers, even unscrupulous fortune seekers, could it be that upon the last of these wills being offered for probate, the man's immediate family, perhaps his minor children, would have no standing to attack it because of the existence of earlier wills under which they were not beneficiaries? No such rule of law applies and appellants were entitled to file a caveat and to appeal from the adverse decree.

Id. at 23.

New Jersey's standing jurisprudence—generally and in will contests—has been clear and consistent: standing is a low, threshold requirement. It is liberally construed. And standing should be analyzed in a commonsense manner that avoids absurd results. Given the Trial Court's ruling that the 2021 and 2022 Wills are presumptively the product of undue influence, dismissal of this case on standing grounds was an absurd result. See Est. of Stockdale, 196 N.J. at 303

(noting that when burden is shifted to disprove undue influence, challenged will is presumptively invalid).

B. *Plaintiffs Have Standing.*

Under the basic principles described above, Plaintiffs have standing. Francisco is aggrieved by the probate of the 2021 and 2022 Wills, because: (1) those Wills expressly disinherit Francisco; and (2) if *any* other known will of Decedents were admitted to probate, Francisco would benefit. Hand's Will, 95 N.J. Super. at 187; Maxson's Will, 90 N.J. Super. at 348. Indeed, Francisco's standing is similar to that of a next-of-kin who would stand to inherit under New Jersey's intestacy statute, because he would inherit under almost every conceivable circumstance if the 2021 and 2022 Wills were invalidated.[3] See Lent, 142 N.J. Eq. at 22-23 (holding that next-of-kin who would inherit under the intestacy statute upon testator's death always have "standing to attack any and all wills of a decedent").

Anton Jr. also has standing because he is a beneficiary of all of the Draft Wills through 2014, including the 2007 and 2011 Draft Wills, which were the

[3] The only scenario under which Francisco would not have standing is intestacy. Given the existence of the 2006 Wills and Draft Wills spanning more than a decade, intestacy would be an extraordinary result that runs counter to New Jersey law. In re Est. of Gabrellian, 372 N.J. Super. 432, 442 (App. Div. 2004) (noting strong presumption against intestacy where decedent has made will).

only two Draft Wills the Trial Court determined to be validly executed by Decedents following the limited issue trial. Although the Trial Court might ultimately grant relief that does not benefit Anton Jr., this does not bear on Anton Jr.'s standing. He has standing because he *could* benefit if the Trial Court invalidates the 2021 and 2022 Wills, not because he invariably will. Watkins, 124 N.J. at 417 (distinguishing threshold standing requirement from ultimate merits).

For both Francisco and Anton Jr., the answer to the question of "what's it to you" is simple: if the 2021 and 2022 Wills are invalidated, then Francisco would benefit under any prior will of Decedents that could be admitted to probate, and Anton Jr. would benefit under the majority of them. See Diamond Alt. Energy, 606 U.S. at 110. They are not interlopers or strangers to the dispute. See Crescent Park, 58 N.J. at 107. They have a stake. See id.

C. This Court Should Remand for a Trial on the Merits of Plaintiffs' Undue Influence Claim.

Ultimately, this case should never have been derailed by concerns about standing. Plaintiffs have it. The focus should have been—and should be going forward—on Decedents' testamentary intent. Ascertaining testamentary intent is the paramount goal of all probate proceedings involving wills. In re Probate of Will & Codicil of Macool, 416 N.J. Super. 298, 307 (App. Div. 2010) ("[A] court's duty in probate matters is 'to ascertain and give effect to the probable

intention of the testator.'" (quoting Fid. Union Tr. v. Robert, 36 N.J. 561, 564 (1962))).

To determine Decedents' testamentary intent, this Court should remand for a trial on the merits of Plaintiffs' undue influence claims. Such a trial will answer the two critical questions posed by this case: (1) do the 2021 and 2022 Wills reflect Decedents' testamentary intent or were those wills the product of undue influence; and (2) if the 2021 and 2022 Wills do not reflect Decedents' testamentary intent, which wills do?

In cases like this one, where there are multiple wills purportedly executed by Decedents preceding the challenged 2021 and 2022 Wills, the only meaningful way for the Trial Court to determine which will to admit to probate is to hear the testimony on undue influence and testamentary intent and determine which prior will best comports with that intent. As the Appellate Division has explained: "[i]n many cases a better understanding of the situation can be had and much time can be saved by determining the validity or invalidity of all of the wills at one hearing." Hand's Will, 95 N.J. Super. at 190 (quoting 3 Page on Wills § 2643 (Bowe-Parker Revision 1961)). The Appellate Division also canvassed and cited approvingly the case law of other states holding that "where the deceased made more than one will . . . *it is for the court to say whether either or both were duly executed and which is the controlling*

testamentary instrument." Id. (emphasis added); accord In re Estate of Murphy, 184 So. 3d 1221, 1234-35 (Fla. Dist. Ct. App. 2d 2016) (holding, in undue influence case in which decedent had executed five prior wills, that the third-to-last will contained the "last untainted residuary disposition" and directing the trial court to admit that will to probate).

Thus, contrary to the Appellate Division's statement in this case, the Trial Court should have "considered the entire gamut of wills decedents had prepared over the years." (Cf. PCm17.) This Court should remand to the Trial Court to consider those prior wills in conjunction with Plaintiffs' undue influence claims so that it can admit to probate wills that actually reflect Decedents' testamentary intent.

III. Estoppel Does Not Deprive Plaintiffs of Standing.

The Trial Court, at least in part, framed its standing determination as a matter of estoppel, though it never clarified what form of estoppel it believed applied or why. (3T.) The Appellate Division held that equitable estoppel and judicial estoppel were alternative bases to affirm the Trial Court's decision that

Plaintiffs lacked standing. (PCm18-PCm-19.)[4] The Trial Court abused its discretion by applying either equitable estoppel or judicial estoppel under the circumstances of this case. Plaintiffs address equitable estoppel and judicial estoppel in turn.

A. *Equitable Estoppel.*

Equitable estoppel "prevents a party from repudiating prior conduct if such repudiation 'would not be responsive to the demands of justice and good conscience.'" Davin, L.L.C. v. Daham, 329 N.J. Super. 54, 67 (App. Div. 2000) (quoting Carlsen v. Masters, Mates & Pilots Pension Plan Tr., 80 N.J. 334, 339 (1979)). The doctrine is invoked sparingly and only in "very compelling circumstances." Id.; accord Hoelz v. Bowers, 473 N.J. Super. 42, 53 (App. Div. 2022) (noting "exacting" showing required to establish application of equitable estoppel).

The doctrine of equitable estoppel applies where a party: (1) engages in conduct or makes a representation; (2) "intentionally or under such circumstances that it was both natural and probable that it would induce

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[4] Because nothing in the Trial Court's extremely limited discussion of estoppel addressed what form of estoppel actually applied—*i.e.*, equitable or judicial estoppel—Plaintiffs addressed both in their briefing before the Appellate Division. (App. Div. Br. at 23-31.) The Appellate Division then found that both applied. (PCm18-PCm19.)

action[;]" and (3) the party asserting estoppel relies on such conduct or representation to its detriment. Davin, 329 N.J. Super. 67 (citation modified). As to the first and second elements, there must be "a misrepresentation or concealment of material facts, known to the party allegedly estopped and unknown to the party claiming estoppel, done with the intention or expectation that it will be acted upon." Foley Mach. Co. v. Amland Contractors, Inc., 209 N.J. Super. 70, 75-76 (App. Div. 1986) (quoting Carlsen, 80 N.J. at 339). As to the third element, any reliance must be "justified and reasonable." Gen. Accident Ins. Co. v. N.Y. Marine & Gen. Ins. Co., 320 N.J. Super. 546, 557 (1999) (citation modified).

It was an abuse of discretion and legal error to apply the doctrine of equitable estoppel here because: (1) Plaintiffs did not misrepresent or conceal any fact from Defendant related to standing or the Draft Wills; (2) Defendants did not reasonably rely on anything Plaintiffs did or said; and (3) application of equitable estoppel here is not responsive to the "demands of justice and good conscience." Indeed, the application of the doctrine permits Defendants to get away with misconduct in presumptively unduly influencing Decedents to execute the 2021 and 2022 Wills. It also results in the most extreme prejudice possible to Plaintiffs—dismissal of their case—even though the Trial Court recognized in denying the motion to dismiss that Plaintiffs might have standing

under the Draft Wills if they could not recover under the 2006 Wills. (Pa1237 at 24:25-25:23 .)

As noted, application of equitable estoppel fails at every element. First, Plaintiffs did not omit the existence of the Draft Wills or make any misrepresentation about them. See Foley Mach., 209 N.J. Super. at 76. To the contrary, it was Defendants that, despite their unfettered access to Mr. Zimmerman and his files, initially equivocated on the existence and substance of the Draft Wills. As recounted above, Defendants moved to dismiss Plaintiffs' original complaint because Defendants claimed Plaintiffs lacked standing absent a prior will naming them as beneficiaries. (Pa0266-Pa0267.) In support, Mr. Zimmerman certified only that he had *drafted* wills for Decedents other than the 2021 and 2022 Wills, but he misleadingly omitted his later assertion that these wills were executed, that Anton Jr. was named as a beneficiary in most of them, and that Francisco was named in all of them. (Pa0282-Pa0285.) It was not until *after* Plaintiffs found the 2006 Wills from a prior attorney that Mr. Zimmerman actually produced the Draft Wills, which he then claimed were executed. This smacks of gamesmanship, particularly since Defendants certainly knew or could have found out about the Draft Wills before filing a motion to dismiss claiming that Plaintiffs could not establish they would inherit under a prior will of Decedents. Whatever Defendants hoped to accomplish with their initial

obfuscation concerning the Draft Wills, Plaintiffs did not omit or misrepresent anything and cannot be estopped on that basis.

Nor did Plaintiffs do or say anything to create the impression that they were focused on anything other than proving that the 2021 and 2022 Wills were the product of undue influence. Plaintiffs' AVC referenced the 2006 Wills but principally focused on Defendants' years-long campaign to ostracize first Anton Jr., then Francisco, from the family and to drive a wedge between Plaintiffs and their grandparents. (*See generally* Pa0290-Pa0312.)[5] Similarly, Plaintiffs' own motion for summary judgment was directed solely to the issue of shifting the burden to Defendants to disprove undue influence in view of the suspicious circumstances surrounding the execution of the 2021 and 2022 Wills. (*See generally* Pa084-Pa0843; Pa0960-Pa0981.) Plaintiffs made brief mention of the 2006 Wills as part of the overarching story of Defendants' undue influence but

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[5] Notably, Plaintiffs never requested that the 2006 Wills, specifically, be probated in the AVC; rather, they asked that the Court invalidate the 2021 and 2022 Wills, award damages stemming from the undue influence, and award "such other and further relief as the Court determines just and equitable." (Pa0311-Pa0312.)

did not seek any specific relief based on those Wills—only burden-shifting on the issue of undue influence. (Id.)

Plaintiffs also never took the position that discovery on the Draft Wills was inappropriate, never refused to answer interrogatories or deposition questions regarding post-2006 wills or conduct, and never sought to limit Defendants or the case generally to the 2006 Wills. Plaintiffs expect that the most Defendants will muster on this point is the fact that Plaintiffs answered interrogatories about the relief they were seeking in this case by stating they were seeking probate of the 2006 Wills. (Pa0785-Pa0786; Pa0799; Pa0815; Pa0829.) However, Plaintiffs were careful to caveat their responses based on the early stage of discovery and undeveloped factual record. (Id.) Moreover, these interrogatories were not directed to standing, but rather ultimate relief, and did

not foreclose that Plaintiffs might be awarded different relief than they requested.[6]

Second, it was clear error to apply the doctrine of equitable estoppel because Defendants cannot establish that they reasonably relied on anything Plaintiffs said or did regarding the 2006 Wills. Before the Appellate Division, Defendants argued "once Plaintiffs identified the 2006 Wills as the basis for their claimed relief in this action, those Wills became the focus of *Defendants' defense*." (App. Div. Opp. Br. at 41 (emphasis added).) But, the record does not support that Defendants built a strategy solely, or even predominantly, around the 2006 Wills.

Defendants did not limit their discovery requests to the validity of the 2006 Wills. For example, they asked interrogatories, *inter alia*, about whether Decedents knew Francisco was expecting a child before they died (Pa0789, No. 20), for details on Plaintiffs' allegations that Defendants began pressuring Decedents to disinherit Anton Jr. in 2015 and Francisco in 2019 (Pa0790, No.

[6] This is, of course, a possibility in any case. To take a simple analogy, a plaintiff who answers an interrogatory about damages by stating they are seeking $1 million is not barred from collecting $500,000, $100,000, or any other relief the Court or a jury might find appropriate. Or, a plaintiff could plead that multiple co-defendants are liable for an injury, and the Court or jury might ultimately find only one of the co-defendants is actually liable. A plaintiff should not be required to identify and plead every theoretically possible outcome in a case.

21), whether Francisco visited his grandfather in the hospital after he had a heart attack in 2021 (Pa0795, No. 27), and whether Francisco called or visited Frank after Roseann died (Pa0798, No. 34).[7] None of these interrogatories has *anything* to do with the validity of the 2006 Wills; rather, they are directed at the merits of the undue influence claim. Moreover, as described above, Defendants' counsel asked Francisco whether Francisco had a plan to share any inheritance with Anton Jr. in the event the 2017 Draft Wills were admitted to probate. (Pa1240-Pa1241 at 176:18-177:10.) Defendants' discovery clearly extended well beyond the validity of the 2006 Wills.

Defendants' summary judgment motion was also not limited to the 2006 Wills. Defendants put forth a litany of *material* facts relating to, *inter alia*, Decedents' supposed resistance to undue influence (Pa0432-0439), Anton Jr.'s falling out with his parents in 2015 and how that supposedly impacted his relationship with Decedents (Pa0439-0443), Francisco's falling out with his parents in 2019 (Pa0443-0446), and the circumstances surrounding the execution of the 2021 and 2022 Wills (Pa0449-0457). It strains credulity for Defendants to claim the entire case was based on the 2006 Wills when they

[7] Defendants asked similar interrogatories of Anton Jr. (See Pa0805-Pa0834.)

asserted 205 facts as material to their summary judgment motion, only 19 of which meaningfully relate to the 2006 Wills. (Pa0427-0463.)

The focus of this case turned to the 2006 Wills only after all discovery had been completed and following summary judgment motion practice, when the Trial Court reversed course on its earlier determination that Plaintiffs had standing (Pa1237 at 24:25-25:23) and decided that a limited issue trial on the validity of the 2006 Wills would be case-dispositive. Before that point, there was no legal or factual basis for Defendants to limit their case strategy to the 2006 Wills, and the record does not reflect that Defendants did so.

Even if Defendants had limited their entire case strategy to the validity of the 2006 Wills (they did not), they could not claim they embarked on such a strategy in *reasonable* reliance on anything Plaintiffs did. Defendants' misapprehension of standing requirements in probate disputes—even if unfortunately adopted by the lower courts—cannot be a basis for a finding of reasonable reliance. Lizak v. Faria, 96 N.J. 482, 499-500 (1984) (holding that when a party makes a strategic or tactical choice based on a contested legal theory, the party "[takes] their chances" and cannot "be heard to complain" about equitable estoppel).

Finally, it was clear error to apply the doctrine of equitable estoppel in this case because it was not responsive to "justice and good conscience." Davin,

329 N.J. Super. at 67. As discussed above, in probate matters, the paramount focus is and should be on ensuring that the wills ultimately admitted to probate do justice to the testator's intent. Macool, 416 N.J. Super. at 307. Application of equitable estoppel in this case was counter to that goal. Despite the Trial Court finding that the 2021 and 2022 Wills were presumptively the product of undue influence, it dismissed the case and foreclosed any further consideration on the merits of whether Defendants unduly influenced Decedents to disinherit their only two grandsons. This result subverted the interests of "justice and good conscience," in favor of Defendants who presumptively prevented Decedents from carrying out Decedents' true testamentary intentions.

B. *Judicial Estoppel.*

Like equitable estoppel, "judicial estoppel is an extraordinary remedy." Bhagat v. Bhagat, 217 N.J. 22, 37 (2014). "It should be invoked only to prevent a miscarriage of justice." Id. The basic formulation of the doctrine is that "[a] party who advances a position in earlier litigation *that is accepted and permits the party to prevail in that litigation* is barred from advocating a contrary position in subsequent litigation to the prejudice of the adverse party." Id. at 36 (emphasis added). Thus, for judicial estoppel to apply, a court must have actually adopted the initial position of the party alleged to have changed course. Id. at 37; Adams v. Yang, 475 N.J. Super. 1, 8-9 (App. Div. 2023); Kimball

Int'l, Inc. v. Northfield Metal Prods., 334 N.J. Super. 596, 610 (App. Div. 2000) ("If a court has not accepted a litigant's prior position, there is no threat to the integrity of the judicial system in allowing the litigant to maintain an inconsistent position in subsequent litigation or at a later stage of the same litigation, and thus the doctrine of judicial estoppel does not apply.").

To the extent the Trial Court intended to rely on the doctrine of judicial estoppel, its ruling was based on a mistaken view of the law. The Appellate Division likewise erred in holding that judicial estoppel barred Plaintiffs from asserting standing under the Draft Wills. Indeed, a fundamental requirement for judicial estoppel is missing: Plaintiffs never took a conflicting position that was actually adopted by the Trial Court. Although Plaintiffs disputed that the Draft Wills were executed (as described above, the timing of their production by Mr. Zimmerman was extraordinarily suspicious), the Trial Court never adopted that position. In denying Defendants' motion to dismiss, the Trial Court expressly acknowledged the possibility that the Draft Wills were signed, and, at least at that time, seemed to consider that a factor that actually weighed in favor of Plaintiffs' standing:

> I think that you know what my thought process was on this that [Plaintiffs] needed to show me that there is . . . some place where they would take under the estate of these individuals and they've done that. There's a 2006 will *and there are potentially wills that followed 2006 that . . . there's some evidence . . . that demonstrate there [were] some other wills that were signed. And from what I*

> *understand the facts to be, the grandchildren were included as beneficiaries under those wills up until 2015.*

(Pa1237 at 24:25-25:23 (emphasis added).)

The Trial Court could not possibly have adopted Plaintiffs' position that the Draft Wills were not executed. If it had, then there would have been no need for a limited issue trial on that exact issue. Clearly, Plaintiffs never persuaded the Court that the Draft Wills were never executed, and, in fact, the Trial Court found that two of them—the 2007 and 2011 Draft Wills—were signed. (4T165:21-167:6.) Judicial estoppel cannot be applied against this factual backdrop.

Moreover, for the reasons discussed above in connection with equitable estoppel, application of judicial estoppel would not "prevent a miscarriage of justice." Bhagat, 217 N.J. at 37. It would cause one. Defendants' presumptive undue influence should not escape any further scrutiny on the basis of judicial estoppel, especially when the critical prerequisite for application of that extraordinary doctrine is missing.

CONCLUSION

In view of the foregoing, Plaintiffs respectfully request that the Court reverse the decision of the courts below and remand this matter to the Trial Court for a trial on the merits of Plaintiffs' undue influence claims.

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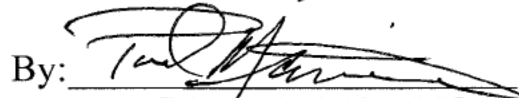
By: 
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Dated: April 27, 2026