IN THE MATTER OF THE ESTATE OF FRANK D. CARONE	SUPREME COURT OF NEW JERSEY
	DOCKET NO. 091316
	Submission Date: October 27, 2025
	CIVIL ACTION
IN THE MATTER OF THE ESTATE OF ROSEANN CARONE	A 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: Honorable Frank Covello, P.J. Ch.

PETITION FOR CERTIFICATION OF APPELLANTS-PETITIONERS ANTON MAYER AND FRANCISCO MAYER

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PRELIMINARY STATEMENT

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 found 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 that they unduly influenced Decedents to change their wills after Defendants' own relationship with their sons deteriorated.

However, despite holding that the 2021 and 2022 Wills are presumptively invalid, and despite the fact that Francisco is a beneficiary of every single known prior will of Decedents, the Trial Court dismissed Plaintiffs' claims for lack of standing. The Trial Court did so after months of discovery on the merits of the undue influence claim, and after having previously concluded, on Defendants' motion to dismiss, *that Plaintiffs had standing*. The Trial Court as affirmed by the Appellate Division, ultimately ruled that because Plaintiffs did not identify the exact operative will that predated the presumptively invalid 2021 and 2022

Wills, they could not pursue their claims of undue influence, even though at least Francisco stood to inherit under any known prior will of Decedents.

The rulings below effectively greenlight the admission to probate of presumptively invalid wills based on an illogical and absurd interpretation of pleading and standing requirements. If a plaintiff in an undue influence case is named in all known prior wills of the decedent, that plaintiff has standing and should be permitted to pursue an undue influence claim. Instead, the rulings below make it difficult to vindicate the decedent's testamentary intent and disturbingly easy to get away with undue influence, as this case illustrates.

Plaintiffs asserted in their pleadings that they were beneficiaries under wills Decedents executed in 2006 ("2006 Wills"). Defendants argued on summary judgment that Plaintiffs lacked standing because the 2006 Wills had been revoked by a series of wills Decedents purportedly executed in 2007, 2011, 2013, 2014, 2015, and 2017 ("Draft Wills"), which were produced by Decedents' and Defendants' estate planning attorney, Michael Zimmerman, in unsigned draft form. Plaintiffs disputed that these wills had been validly executed, but argued that if they had been, Francisco was a beneficiary of all of them and Anton Jr. was a beneficiary of the Draft Wills through 2014. Thus, Plaintiffs argued that in any possible circumstance, they would have standing.

The Trial Court disagreed, ruling that because Plaintiffs initially identified the 2006 Wills in their pleadings, if any of the Draft Wills were validly executed by Decedents, then the 2006 Wills were revoked, and Plaintiffs would be estopped from relying on any of the Draft Wills for standing. Over Plaintiffs' objection, the Trial Court then held a limited issue trial on whether any of the Draft Wills were validly executed. The Trial Court found the 2007 and 2011 Wills were, and dismissed for lack of standing. The Appellate Division affirmed.

This is an absurd approach to standing that handcuffs a plaintiff to the limited facts they may know or reasonably believe at the pleading stage. Here, it resulted in dismissal on standing grounds of meritorious claims even though the Draft Wills merely support that under any possible set of facts, at least Francisco would have standing. And, it means that presumptively invalid wills—here and in other cases—can easily be probated by undue influencers. It is an unjust ruling that directly contradicts longstanding controlling decisions by this Court and the Appellate Division, and should not stand.

STATEMENT OF THE MATTER INVOLVED

The Appellate Division took a one-sided view of the facts in its Opinion. (PCm2-14.) While the Appellate Division purported to rely on the deference owed to findings made by a trial court in the context of a bench trial, the "facts" identified in the Appellate Division's decision were never found by the Trial

Court. Indeed, the Trial Court's findings at the limited issue trial were restricted to a determination that the 2007 and 2011 Draft Wills were executed. (4T165:21-167:6.)[1] At the summary judgment stage, however, the Trial Court held that the 2021 and 2022 Wills were *presumptively invalid* based on the extraordinarily suspicious circumstances surrounding their execution and shifted the burden to Defendants to *disprove undue influence by clear and convincing evidence.* (1T16:7-15; 1T21:9-10; 3T4:1-6.) That ruling was supported by the following undisputed facts:

- Mr. Zimmerman, the scrivener of the 2021 and 2022 Wills was also Defendants' attorney, and had prepared wills for Defendants disinheriting their sons, the Plaintiffs, in February 2020. (Pa0446 at ¶100-101.)

- Mere months before, in the fall of 2019, Mr. Zimmerman also prepared drafts of what would become Decedents' 2021 Wills, which disinherited Anton Jr. and Francisco. (Pa0449 at ¶119.)

- Decedents, however, did not sign those draft wills until December 2021 after Frank had a heart attack and Roseann had also suffered a fall. (Pa0449 at ¶120.)

- On December 22, 2021, defendant Anton Sr. drove Decedents to New York City to sign the 2021 Wills. (Pa0450 at ¶¶122-124.)

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[1] "1T" refers to the transcript of the August 23, 2024, morning hearing on the parties' motions for summary judgment. "2T" refers to the transcript of the August 23, 2024, afternoon hearing on the parties' motions for summary judgment. "3T" refers to the transcript of the September 16, 2024, pretrial conference hearing. "4T" refers to the transcript of the October 15, 2024, trial.

- Frank and Roseann executed those wills *in the car* outside of Mr. Zimmerman's office on Third Avenue in New York City; Defendant Anton Sr. was in the car for the entire signing. (Id.; Pa0518 at 191:8-18.)

- Likewise, the notary for Frank's 2022 Will testified that Anton Sr. and Jeanie were seated at the table with Frank at all times during the 2022 Will signing. (Pa0760-Pa0761 at 56:16-57:15; Pa0771 at 67:1-3.)

RELEVANT PROCEDURAL HISTORY

Plaintiffs brought this action in early January 2023, seeking to invalidate the 2021 and 2022 Wills. (See generally Pa0226-Pa0245.) 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, 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 as noted, is Defendants' estate planning attorney and also represents their business interests. (Pa0282-Pa0285.) Though Mr. Zimmerman certified that he had drafted prior wills (without attaching them), he did not disclose that any of those prior wills had been signed or, more

significantly, that all of those prior draft wills benefited Francisco and most of them also benefited Anton Jr. (Pa0282-Pa0285.)

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 were able to obtain conformed copies of wills executed by Decedents on December 31, 2006, under which Plaintiffs each received 10% of Decedents' estate from the office of Decedents' estate planning attorney prior to Mr. Zimmerman. (Id.; Pa0360-Pa0401.) 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 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.[2]

[2] Further, and as the Trial Court noted when it ultimately decided the motion to dismiss (Pa1237 at 24:25-25:23), the timing of the Draft Wills tracked the allegations in Plaintiffs' Complaint about the breakdown in their relationship with *Defendants*, further raising questions about their origin and whether the drafts were actually signed by Decedents.

Ultimately, the Trial Court concluded Plaintiffs had standing:

> 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. . . .
>
> 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).)

On June 21, 2023, Plaintiffs filed their Consolidated Amended Verified Complaint ("AVC"). Plaintiffs identified the 2006 Wills—the only prior wills bearing the Decedents' signatures—in the AVC, but they did not request that the 2006 Wills be probated. (Pa0290-Pa0312.) Rather, they requested that the 2021 and 2022 Wills be invalidated on grounds of, among other things, undue influence. (Pa0306-Pa0310.) The parties proceeded to discovery on the merits of the undue influence claims and then cross-moved for summary judgment.

Defendants sought summary judgment dismissing the case on several grounds, including that Plaintiffs lacked standing, because the 2006 Wills had been revoked by the Draft Wills. (Pa0422-Pa0426.) 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. (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.) The Trial Court also denied Defendants' motion seeking dismissal, but scheduled a limited-issue trial solely on the issue of whether the 2006 Will 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 resolve the standing issue—*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. (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.) Defendants responded that Plaintiffs could only assert standing under the 2006 Wills. (Pa1244-Pa1245.)

At the pre-trial Conference, the Trial Court made the estoppel 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.)

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.) 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.)

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. (Id. at 168:13-24.)

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 order on September 25, 2025, affirming the Trial Court's determination that Plaintiffs lacked standing because the 2006 Wills had been revoked.

QUESTIONS PRESENTED

1. Did the Trial Court and Appellate Division err by holding, in contravention of In re Hand's Will, 95 N.J. Super. 182 (App. Div. 1967) and In re Maxson's Will, 90 N.J. Super. 346 (App. Div. 1966), that Plaintiffs do not have standing to challenge Decedents' presumptively invalid 2021 and 2022 Wills, despite Francisco being named in all known prior wills of Decedents and both Plaintiffs being named in the two Draft Wills the Trial Court found had been executed?

2. Did the Trial Court and Appellate Division err by applying equitable or judicial estoppel to bar Plaintiffs' standing to challenge the 2021 and 2022 Wills, where application of either form of estoppel ran counter to basic

equitable principles and produced a manifestly unjust result—the admission to probate of presumptively invalid, unduly influenced wills?

REASONS FOR REVIEW/CERTIFICATION, ERRORS COMPLAINED OF, AND COMMENTS ON THE DECISION

Certification is warranted in this case because the lower courts' decisions conflict with binding Appellate Division and Supreme Court precedent on standing and estoppel, and because the interest of justice requires review so that presumptively invalid wills are not probated. R. 2:12-4.

The standing issue in this case should have been straightforward and easily resolved under basic principles. To have standing to challenge the probate of a will, a party must be "aggrieved" by the probate of that will. In re Hand's Will, 95 N.J. Super. 182, 185-87 (App. Div. 1967). Beneficiaries of a prior will that could be admitted to probate 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). Thus, where, as here, a decedent dies with multiple prior wills all naming the plaintiff, the plaintiff has standing, even if the parties dispute which specific prior wills were validly executed because the signed copies no longer exist. Id. The question of which specific will was the last one validly executed by the decedent bears on the remedy—*i.e.*, which prior will would be admitted to

probate if the plaintiff prevails—but standing to contest the will is established by virtue of the plaintiff being named as a beneficiary in all known prior wills.

The courts below departed from these principles. According to the Trial Court and Appellate Division, in the scenario described above, the plaintiff must somehow correctly identify at the outset of the case the *last* will validly executed by Decedent as the plaintiff's basis for standing, and if the plaintiff identifies the "wrong" will, the plaintiff lacks standing—or is estopped from asserting an alternative basis for it—even though the plaintiff is named in every possible will that could be probated other than the one challenged based on undue influence.

As a result of this ruling, plaintiffs with meritorious undue influence claims will inexplicably have their cases dismissed on *standing grounds* if they incorrectly identify the ultimate *relief* they want at the outset of the case. The harm is not just to plaintiffs, but to testators subjected to undue influence whose testamentary intent is effectively ignored based on arbitrary standing and pleading hurdles. See Jen Elec., Inc. v. Cnty. of Essex, 197 N.J. 627, 645 (2009). Indeed, it even provides a roadmap to would-be undue influencers on how to defeat meritorious claims. This Court should grant Certification to correct a grievous misapplication of New Jersey's liberal standing jurisprudence and reaffirm that this Court's liberal standing requirements apply in will contests, even if there is uncertainty on the ultimate remedy to be awarded.

I. A Plaintiff Who Is Named in All Known Prior Wills of a Decedent Plainly Has Standing to Challenge a Subsequent Will.

In holding that even Francisco does not have standing, the Appellate Division clearly erred in its application of New Jersey's standing requirements in probate actions. Francisco is aggrieved by the probate of the 2021 Wills and of his grandfather's 2022 Will, 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 185-87; Maxson's Will, 90 N.J. Super. at 348. Moreover, Anton Jr. has standing under the 2007 and 2011 Draft Wills, which were the only two Draft Wills the Trial Court actually determined at the limited issue trial were validly executed.

No matter what the Trial Court might determine on remand about whether Draft Wills after 2011 were executed, Francisco has standing. Indeed, because Francisco is named in every known prior will, his standing is irrefutable—similar to that of next-of-kin under the intestacy statute—because he would inherit under every conceivable circumstance if the 2021 and 2022 Wills were invalidated.[3] See In re Lent, 142 N.J. Eq. 21, 22-23 (Ct. Err. & App. 1948).

[3] The only scenario under which Francisco would not have standing is intestacy. Given the existence of the Draft Wills spanning the course of 13 years, 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).

Nonetheless, the Appellate Division dispensed with Plaintiffs' clear standing in a sentence: "We reject plaintiffs' claims the trial court should have considered the entire gamut of wills decedents had prepared over the years." (PCm17.) This statement is in direct conflict with existing New Jersey law on this precise issue. As the Appellate Division stated in Hand's Will, a case addressing the issue of standing in the multiple-will context: "There are also cases which hold, where the deceased made more than one will, *that it is for the court to say whether either or both were duly executed and which is the controlling testamentary instrument.*" 95 N.J. Super. at 190 (emphasis added) (adopting view of the cited cases). Thus, the Trial Court was, in fact, required to consider the "entire gamut" of wills and determine which would be the last validly executed will of Decedents absent Defendants' undue influence. See id. Moreover, under Maxson's Will, a plaintiff has standing if they are the beneficiary of a prior will, but there is no requirement in that case—or any other—that a particular prior will must be identified in an initial pleading to the exclusion of all other prior wills. 90 N.J. Super. at 348.

The Court of Errors and Appeals has also cautioned against the hyper-technical use of intermediate wills to deprive a plaintiff of standing:

> 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 . . .

Lent, 142 N.J. Eq. at 23. The result in this case is even more egregious than that envisioned by the Court in Lent because at least Francisco was never even removed from the "series of wills"—he is a beneficiary of every single one, yet the courts below ruled that he lacks standing because the 2006 Will was revoked by wills that also name him as a beneficiary. This is contrary to established law.

Defendants will likely argue, as they have below, that there is no evidence that any of the Draft Wills represent Decedents' testamentary intent, and thus there is no relief available to Plaintiffs even if they prevail on their claim of undue influence. This argument conflates standing with the merits of the undue influence claim. Decedents' intent and whether the 2021 and 2022 Wills align with that intent is the ultimate issue in this case. Asking Plaintiffs to prove Decedents' testamentary intent to have standing puts the cart before the horse.

Moreover, Defendants' premise is incorrect. If the evidence shows, for example, that Decedents validly executed the 2017 Draft Wills, which remained in place until Decedents were unduly influenced to execute the 2021 and 2022 Wills, that would be clear evidence that but for the undue influence, the 2017 Draft Wills, which benefit Francisco, reflected Decedents' testamentary intent. E.g., In re Smalley's Est., 131 N.J. Eq. 175, 179-80 (Prerog. Ct. 1942).

Ultimately, this Court's intervention is required to correct the lower courts' error and to reaffirm existing precedential case law from both this Court and the Appellate Division that a plaintiff has standing to contest a will if the plaintiff is a beneficiary of all known prior wills of the decedent. The Appellate Division decision imposes inexplicable procedural obstacles to meritorious undue influence claims, making it all the more likely that undue influencers will ultimately succeed in their efforts to take advantage of the elderly and feeble.

II. Estoppel Does Not Deprive Plaintiffs of Standing.

Both equitable estoppel and judicial estoppel are disfavored, rarely-applied equitable doctrines grounded in the ultimate goal of preventing injustice. Davin, L.L.C. v. Daham, 329 N.J. Super. 54, 67 (App. Div. 2000) (equitable estoppel); Adams v. Yang, 475 N.J. Super. 1, 8-9 (App. Div. 2023) (judicial estoppel). Neither should have been applied here. As a preliminary matter of law, the Trial Court was barred from finding Plaintiffs were judicially estopped because judicial estoppel is only permitted based on a change in position from a "prior legal proceeding . . . in subsequent litigation." Adams, 475 N.J. Super. at

8-9. There was no prior legal proceeding here; the supposed conduct triggering estoppel was part of this same litigation.[4]

Similarly, Defendants did not, and cannot, establish a claim of 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.'" Daham, 329 N.J. Super. at 67 (quoting Carlsen v. Masters, Mates & Pilots Pension Plan Tr., 80 N.J. 334, 339 (1979)). Equitable estoppel in this scenario would not be responsive to the demands of justice and good conscience—in fact, its erroneous application effectively gave Defendants a free pass on their presumptive undue influence. In probate matters, the paramount interest should be ensuring that the wills ultimately admitted to probate do justice to the testator's intent. In re Prob. of Will & Codicil of Macool, 416 N.J. Super. 298, 307 (App. Div. 2010). The Trial Court and Appellate Division mistakenly treated as paramount the Defendants' procedural concerns rather than Decedents' testamentary intent.

Moreover, Defendants did not reasonably and justifiably rely on anything Plaintiffs did, as necessary to support invocation of equitable estoppel. General

[4] Further, despite the Appellate Division's affirmance on judicial estoppel grounds (PCm19), it is completely unclear from the record that the Trial Court actually invoked this extraordinary doctrine.

Accident Ins. Co. v. N.Y. Marine & Gen. Ins. Co., 320 N.J. Super. 546, 557 (1999). Defendants argued below that "once Plaintiffs identified the 2006 Wills as the basis for their claimed relief in this action, those Wills became the focus of *Defendants' defense*." (Opp. at 41 (emphasis added).) Defendants' reliance argument should have failed on two fronts. First, Defendants adduced no evidence below as to *how* they actually relied upon Plaintiffs' identification of the 2006 Wills—*e.g.*, a deposition they would have taken, a motion they would have filed, or any other strategic decision they made beyond the blanket statement that the 2006 Wills became the focus of their defense. Second, even crediting Defendants' bald assertion regarding their case strategy, Plaintiffs cannot be estopped from having standing because Defendants *chose* to build their case strategy based on an incorrect view of standing requirements.

Further, the Appellate Division's purported factual basis for application of estoppel was incorrect. The Appellate Division stated: "There is no credible argument that the claims, motion practice, and discovery preceding the trial revolved around anything other than whether the 2006 will controlled." (PCm7.) Plaintiffs' claims, however, had nothing to do with the validity of the 2006 Wills—the claims pled were simply that the 2021 and 2022 Wills were, *inter alia*, the product of undue influence. (Pa0306-Pa0310.)

Notably, Plaintiffs referenced only the 2006 Wills in their AVC because they were justifiably skeptical of the Draft Wills. Defendants moved to dismiss because there was no prior will naming Plaintiffs as beneficiaries. In support, Mr. Zimmerman certified only that he had drafted wills for Decedents, but misleadingly omitted that these wills were executed and Francisco was named in all of them. (Pa0282-Pa0285.) It was not until Plaintiffs found the 2006 Wills from a prior attorney that Mr. Zimmerman came forward with the Draft Wills which he then claimed were executed. This smacks of gamesmanship and underscores the unenviable position Plaintiffs were placed in by Defendants, who had unfettered access to Mr. Zimmerman, the most critical witness on Decedents' prior wills.

As to discovery, neither Defendants nor the lower courts have pointed to a single discovery ruling suggesting that discovery was limited to the 2006 Wills. To the contrary, the discovery Plaintiffs sought largely concerned the validity and execution of the 2021 and 2022 Wills, as reflected in the undisputed facts recounted above. There is simply nothing in the record that supports that discovery revolved solely around whether the 2006 Wills controlled.

The validity of the 2006 Wills was only at issue on Defendants' motion for summary judgment because Defendants put it at issue. As noted, although Plaintiffs questioned the validity of the Draft Wills, they argued they had

standing under any of them. (2T8:11-16.) Moreover, the validity of the 2006 Wills was certainly not the sole focus of the parties' summary judgment motions. The parties focused extensively on the validity of the 2021 and 2022 Wills and Plaintiffs' allegations of undue influence and, the Trial Court agreed with Plaintiffs that those wills were presumptively invalid.

Ultimately, this case is not about the 2006 Wills. It is about whether the 2021 and 2022 Wills were the product of undue influence (presumptively, they were) and whether there is a will that could be probated in their place to give Plaintiffs standing (there is). Application of estoppel to prevent Plaintiffs' case from being tried on the merits was plainly inappropriate.

CONCLUSION

In view of the foregoing, Plaintiffs respectfully request that the Court grant their Petition for Certification, 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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