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SUPREME COURT OF NEW JERSEY
Docket No. 091316

IN THE MATTER OF THE ESTATE OF FRANK D. CARONE

Submitted: November 12, 2025
Civil Action

IN THE MATTER OF THE ESTATE OF ROSEANN CARONE

In Response To A Petition For Certification From The Final Judgment of the Superior Court of New Jersey, Appellate Division, dated September 25, 2025

Appellate Docket Nos. A-000858-24; A-000860-24
Sat Below: Hon. Hany A. Mawla, J.A.D.,
Hon. Joseph L. Marczyk, J.A.D.

Trial Court Docket Nos. P227937;
P228307
Sat Below: Hon. Frank Covello, P.J. Ch.

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**BRIEF ON BEHALF OF DEFENDANTS-RESPONDENTS
ANTON MAYER AND GENOVEFFA MAYER IN OPPOSITION TO
PETITION FOR CERTIFICATION**

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PRELIMINARY STATEMENT

Plaintiffs-Petitioners Francisco Mayer (“Francisco”) and Anton Mayer’s (“Anton Jr.”) (collectively, “Plaintiffs”) Petition for Certification (the “Petition”) should be swiftly denied because they cannot come close to meeting the standard for granting Certification under Rule 2:12-4. The Petition does not identify any matter of general public importance or “special reasons” that this Court should hear this matter. To the contrary, this case presents a unique set of facts, which were carefully considered by the trial court and the Appellate Division—not unsettled issues of law warranting this Court’s review.

Moreover, the Appellate Division’s opinion affirming the trial court’s decision was proper and not in conflict with any prior precedent, nor was it “palpably wrong, unfair or unjust,” as would permit Certification in the interest of justice. During the litigation of this matter, Plaintiffs made a strategic decision to rely upon conformed copies of Wills purportedly signed in 2006 (the “2006 Wills”) as the basis for their alleged standing to pursue their claims in this action, and repeatedly identified the 2006 Wills as the Wills Plaintiffs sought to probate were they successful in proving their claims. After the close of discovery, at the time of trial, the trial court rejected Plaintiffs’ attempt to backtrack from this strategic decision, and concluded that Plaintiffs were estopped from relying on any other Wills, given their past singular focus on the

2006 Wills and contentions that no other Wills could be probated. After considering the factual context of this case, the Appellate Division properly affirmed this decision.

Plaintiffs' present position should be viewed in context for what it is: a last-ditch, third-bite-at-the-apple attempt to prolong their unfounded claims against their parents, Defendants Genoveffa Mayer and Anton Mayer ("Defendants"). Plaintiffs' reframed arguments in their Petition should be rejected, just as the Appellate Division and trial court rejected Plaintiffs' prior arguments. This is not a matter of general public importance—it is simply a case in which grandchildren alienated themselves from their family and are disappointed by the fact that they were similarly alienated from their grandparents' estate planning.

As set forth below, the Appellate Division correctly affirmed the trial court's dismissal of this action, and Certification is not appropriate here.

CONCISE PROCEDURAL HISTORY AND STATEMENT OF FACTS

This case arises as a result of a long-standing family dispute, during which Decedents Frank Carone ("Frank") and Roseann Carone ("Roseann") (collectively, "Decedents") excluded Anton Jr. and Francisco as beneficiaries of Wills they signed in 2021 and that Frank signed in 2022 (the "2021 and 2022

Wills”). (See 4T 71:14-72:3).¹ Following Roseann’s and Frank’s respective deaths, on January 6, 2022, Plaintiffs filed a Verified Complaint to invalidate Frank’s 2022 Will, alleging undue influence, lack of capacity and forgery, and shortly thereafter, filed another Verified Complaint in a separate action to invalidate Roseann’s 2021 Will, alleging undue influence. (Pa0226; Pa0246).² In response to both Verified Complaints, Defendants filed motions to dismiss, in part based upon Plaintiffs’ lack of standing to pursue their claims in this action, as Plaintiffs were Decedents’ grandchildren and would not take under the intestacy statute if the 2021 and 2022 Wills were invalidated. (See, e.g., Pa0266; Pa0274; Pa0286).

In response to the motions, the trial court entered an Order on April 6, 2023, permitting Plaintiffs to conduct limited discovery as to Plaintiffs’ standing to pursue to their claims. (Pa0286-Pa0287). During that discovery period, Plaintiffs identified the 2006 Wills, prepared by Decedents’ prior estate-planning attorney, which identified Plaintiffs as beneficiaries; Plaintiffs argued

¹ As used herein, “1T” refers to the transcript of the first portion of the August 23, 2024 oral argument. “2T” refers to the transcript of the second portion of the August 23, 2024 oral argument. “3T” refers to the transcript of the September 16, 2024 pretrial conference. “4T” refers to the transcript of the October 15, 2024 trial.

² The references to “Pa” herein refer to the Appendix submitted by Plaintiffs to the Appellate Division in support of their appeal.

to the trial court that these 2006 Wills demonstrated that Plaintiffs had standing to pursue their claims. (See 1T 7:15-18; Pa0836). Plaintiffs also obtained discovery from Michael Zimmerman, Decedents' long-standing estate-planning attorney, as well as took Mr. Zimmerman's deposition, during which he testified that he drafted numerous Wills for Decedents between 2007 and 2022. (Pa0485). Mr. Zimmerman's practice was to destroy the originals and any photocopies of wills prepared for clients when they executed new wills. (4T 32:21-33:7). Mr. Zimmerman produced his entire estate-planning file, which contained multiple unsigned Word versions of Wills that he had prepared for Frank and Roseann between 2007 and 2021—including Wills dated 2007, 2011, 2013, 2014, 2015, and 2017. (See Pa0001; Pa0029; Pa0057; Pa0085; Pa0107; Pa0129; Pa0147; Pa0167; Pa0186; Pa0206). Each of these Wills contained a provision stating that in signing the Will, the testator was revoking all prior Wills and codicils. (Id.). Mr. Zimmerman's file also included invoices reflecting estate-planning work he performed on behalf of Frank and Roseann, which identified his appearance at multiple Will signings with Frank and Roseann over the years. (Pa0498-Pa0499).

Notwithstanding the discovery they obtained from Mr. Zimmerman regarding these Wills drafted after 2006, Plaintiffs nonetheless continued to pursue their claims based upon their alleged ability to probate the 2006 Wills,

and filed an Amended Verified Complaint, referencing and appending copies of the 2006 Wills. (See Pa0290; Pa0360-0401). As the case proceeded through discovery—during which Plaintiffs served over twenty subpoenas and conducted fifteen party and non-party depositions (Pa428)—Plaintiffs repeatedly confirmed their reliance on the 2006 Wills, including in response to interrogatories (which they never sought to amend) and when they were questioned about the issue during their depositions. (Pa0785-Pa0786; Pa0814-Pa0815; Pa0428; Pa0850; Pa1242).

Plaintiffs strangely (and for the first time) comment in their Petition that “they did not request that the 2006 Wills be probated.” (Pb7).³ Not only is that not accurate (see, e.g., Pa0785), but it makes no sense. Without another will to probate, if the 2021 and 2022 Wills were invalidated, the intestacy statute would apply, and Plaintiffs would have no standing to pursue their claims. As explained herein, the decision to rely on the 2006 Wills was intentional and strategic. Thus, as the trial court and Appellate Division properly concluded, Plaintiffs sought to probate the 2006 Wills throughout the entire litigation until they lost at the limited-issue trial.

³ “Pb” as used herein refers to Plaintiffs’ Petition for Certification filed with this Court.

At the close of discovery, Defendants moved for summary judgment, arguing, in part, that the evidence disclosed in discovery demonstrated that Frank and Roseann revoked the 2006 Wills by signing subsequent Wills, and therefore Plaintiffs were unable to obtain the relief being sought in this action, warranting the dismissal of their claims. (See 1T 3:25-5:16). Defendants emphasized that Plaintiffs had not presented any evidence to suggest that any of the unsigned Wills represented Frank's and Roseann's intent or that such Wills could be probated; in fact, Plaintiffs had repeatedly taken the **opposite** position, claiming that there was no evidence that any Wills post-dating 2006 were even signed. (1T 6:13-7:12, 20:18-20). Plaintiffs thereafter filed a cross-motion to shift the burden of proof to Defendants to disprove that they exerted undue influence over Frank and Roseann in connection with the 2021 and 2022 Wills. (Pa0842).

At oral argument on the motions, the trial court properly concluded that whether the 2006 Wills were revoked was a threshold issue that would determine whether Plaintiffs could proceed with their claims in this action, and scheduled a trial limited to the issue of revocation of the 2006 Wills. (1T 25:4-10, 26:7-11). The trial court therefore never considered the merits of Plaintiffs' undue influence claims. While the trial court considered Plaintiffs' argument that the evidence supported a finding of a confidential relationship and suspicious

circumstances—the factors necessary to shift the burden of proof—and commented that were the issue of undue influence to be tried, “the burden would shift,” this conclusion was never reduced to an Order because the trial court scheduled a hearing as to the threshold issue of revocation. (See 1T 16:7-17, 21:9-13, 24:5-8, 26:7-11). Throughout their Petition, Plaintiffs nonetheless repeat their wholly fabricated phrase that the trial court concluded that the 2021 and 2022 Wills were “presumptively invalid”—a phrase **never used by the trial court**, as “presuming invalidity” is not the same as shifting a burden of proof, nor was this issue one that was part of the trial of this matter. (See, e.g., id.; Pb4). Plaintiffs’ self-serving references to the so-called “undisputed facts” in the record relating to Plaintiffs’ undue influence claims therefore have no bearing on this Court’s consideration of Plaintiffs’ request that this Court grant Certification.⁴

After the trial court scheduled the limited-issue hearing, Plaintiffs attempted to argue that they may also have standing under the unsigned Wills produced by Mr. Zimmerman—Wills which Plaintiffs had repeatedly sought to

⁴ In support of their summary judgment motion, Defendants presented overwhelming facts developed in discovery that directly undercut Plaintiffs’ claims of undue influence, including Mr. Zimmerman’s extensive deposition testimony that Frank and Roseann’s decision to write Plaintiffs out of their respective Wills was independent and intentional. (See, e.g., Pa0510-Pa0514; Pa0587-Pa0588; Pa0614).

discredit throughout the case. The trial court saw this for what it was and rejected Plaintiffs' attempt to completely change their position at the eleventh hour, stating, "your position is that the 2006 will is the will that can be probated," and "we're not going to change that at trial and basically throw it at the wall and figure out which one can be. No." (2T 12:11-16).

Prior to the hearing, on September 16, 2024, the trial court held a pretrial conference, during which the trial court confirmed that Plaintiffs could not pursue their newly raised argument that other Wills could provide a basis for standing. (See 3T 7:5-13) (stating "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"). On Plaintiffs' inquiry, the trial court then confirmed that it was making a finding that Plaintiffs were estopped from arguing that any Will other than the 2006 Wills could provide a basis for Plaintiffs' standing. (3T 7:20-8:5).

Thereafter, on October 15, 2024, the trial court conducted a trial, at which it heard lengthy testimony from Mr. Zimmerman as to the Wills he drafted for Frank and Roseann between 2007 and 2021. (4T). In Plaintiffs' opening statement and on cross-examination, Plaintiffs repeatedly and relentlessly attacked Mr. Zimmerman arguing that his testimony that other wills were executed after 2006 was not credible. In addition, after Mr. Zimmerman's

testimony, Plaintiffs moved for a directed verdict, arguing that Mr. Zimmerman was not credible and characterized the documents from Mr. Zimmerman's file as "draft Wills that are filled with mistakes that were supposedly signed." (4T 161:21-167:7). When the trial court denied that motion, Plaintiffs pivoted their position, moving for reconsideration of the trial court's decision that "plaintiffs don't have standing if the 2006 Will is deemed to have been revoked." (4T 167:8-11). In connection with that motion, Plaintiffs claimed for the first time that because Mr. Zimmerman had testified that Frank and Roseann signed Wills in 2007, Plaintiffs could rely on those Wills as the basis for their standing. (4T 168:13-24). When the trial court rejected this argument because the testimony demonstrated that the 2007 Will was also revoked, Plaintiffs then argued that they were also identified in the 2011 Will, which the trial court then also concluded was revoked. (4T 168:13-24). The trial court then dismissed Plaintiffs' claims. (4T 169:7; Pa1256).

On appeal, Plaintiffs reframed their yet argument again, claiming that the trial court erred by concluding that Plaintiffs did not have standing under a 2011 Will, and that the trial court improperly estopped Plaintiff from pursuing claims at trial under any Wills other than the 2006 Wills. (PCm17-19). The Appellate Division properly affirmed the trial court's dismissal of Plaintiffs' claims. (Id.).

LEGAL ARGUMENT

I. NO GROUNDS FOR CERTIFICATION EXIST

Rule 2:12-4, which sets forth the grounds for Certification provides:

Certification will be granted only if the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any other decision of the same or a higher court or calls for the exercise of the Supreme Court’s supervision and in other matters if the interest of justice requires. Certification will not be allowed on final judgments of the Appellate Division except for special reasons

The comments to the Court Rules state that this final sentence of Rule 2:12-4 is meant, in part, to “signal that certification will not be granted lightly.” Pressler & Verniero, Rules Governing the Courts of the State of New Jersey, cmt. on R. 2:12-4 (2026 ed.).

Strikingly missing from Plaintiffs’ brief is any effort to identify any “special reasons” warranting this Court’s review of the narrow, if not idiosyncratic factual issues considered by the Appellate Division. That is because the questions raised in the appeal in this matter are not ones of “general public importance” that warrant a grant of Certification. The fact-specific nature of the Appellate Division’s decision is highlighted in even the way Plaintiffs have framed the “questions presented” in their Petition: namely, whether these specific Plaintiffs possess standing under the particular Wills produced in

discovery in this matter, and whether these specific Plaintiffs' litigation conduct warranted the application of estoppel. (See Pb10-11). These issues are not of "general public importance"; the Appellate Division and trial court opinions do not contradict prior applicable case law, nor do they stand to have any effect on any litigant beyond the parties to this case. See Bandel v. Friedrich, 122 N.J. 235, 237 (1991) (vacating certification as to an issue relating to proximate cause because "[t]he judgments below reflect the application of established principles of proximate cause to an intensely-factual situation, in no way implicating 'an unsettled question of general public importance'").

Likewise, Certification is not appropriate "in the interest of justice" because the "result reached below 'is not palpably wrong, unfair or unjust.'" Id. (quoting Mahony v. Danis, 95 N.J. 50, 52 (1983)). Plaintiffs litigated the entire case on the premise that the 2006 Wills should be probated in place of the challenged 2021 and 2022 Wills; when the trial court correctly concluded that the evidence demonstrated that the 2006 Wills had been revoked and therefore could not be probated, Plaintiffs abruptly switched course to claim that because their names appeared in certain Wills they had, moments earlier, claimed were merely "draft wills" and were "filled with mistakes," Plaintiffs should nonetheless be able rely on these Wills as the basis for their alleged standing to assert their claims. (See 4T 162:10-163:20, 168:13-24). The Appellate Division

correctly concluded that to allow Plaintiffs to engage in such conduct would be unfair to Defendants, not the other way around. (See PCm18-19). This decision was supported by evidence in the record, and therefore was not “palpably wrong, unfair or unjust.”

This dispute is simply not one that warrants a grant of Certification. Accordingly, Defendants respectfully request that this Court dismiss Plaintiffs’ Petition and deny Certification.

II. THE APPELLATE DIVISION PROPERLY AFFIRMED THE TRIAL COURT’S DECISION DISMISSING PLAINTIFFS’ AMENDED VERIFIED COMPLAINT

In its nineteen-page opinion, the Appellate Division thoroughly reviewed the record on appeal and appropriately applied a deferential standard as to the trial court’s factual findings reached and credibility determinations made following the bench trial conducted in this matter. (See PCm14-15). With these standards in mind, the Appellate Division (1) rejected Plaintiffs’ claim that “the trial court should have considered the entire gamut of wills decedents had prepared over the years,” and (2) concluded that the trial court “neither abused its discretion nor misapplied the law” in applying equitable and judicial estoppel to preclude Plaintiffs’ attempted abrupt about-face to claim entitlement to probate any of the post-2006 Wills they had previously disavowed. (See PCm17-19). These fact-specific determinations are not “palpably wrong, unfair or

unjust,” nor do they represent a “grievous misapplication of New Jersey’s liberal standing jurisprudence” as Plaintiffs outlandishly claim. (See Pb12). As such, the issues raised in this appeal do not warrant this Court’s review.

A. The Appellate Division Properly Concluded That The Trial Court Was Not Required To Consider “The Entire Gamut Of Wills” Produced In Discovery

As set forth in the Appellate Division’s decision, Plaintiffs argued on appeal that “they have standing to contest decedents’ wills because the 2011 wills can be probated,” and claimed that “the trial court abused its discretion when it ruled they lacked standing under any wills other than the 2006 wills.” (See PCm15-16). Notably, Plaintiffs’ focus of their appeal was **not** whether the 2006 Wills had actually been revoked—which was the entire focus of the trial. In fact, Plaintiffs did not even attempt to argue on appeal that the trial court erred in its conclusion that the 2006 Wills were revoked, apparently recognizing that such conclusion was well-supported by both the facts and the law. Instead, as the Appellate Division recognized in its opinion, Plaintiffs shifted gears to focus on a Will purportedly signed by Decedents in 2011. Prior to their loss at trial, Plaintiffs never once attempted to assert that the 2011 Will could or should be probated, because their entire focus had been on the 2006 Wills. (See, e.g., 2T 17:1-18:4).

Plaintiffs’ undivided focus on the 2006 Wills was strategic. Had Plaintiffs acknowledged that any of the Word versions of Wills produced by Mr. Zimmerman could be probated, they would have been confronted with the fact that Decedents intentionally excluded Anton Jr. from Wills they signed in 2015 and 2017 (see Pa0512-Pa0514)—a fact that would wholly undercut their litigation position, as it would then demonstrate Decedents’ readiness to exclude Plaintiffs as beneficiaries as the family feud dragged on through the years, undermining their supposed “undue influence” theory.

Yet, after the trial court properly concluded that the evidence established that the 2006 Wills had been revoked, Plaintiffs halfheartedly claimed that they could have standing under the 2011 Will, which argument the trial court rejected on the basis that the evidence also showed that the 2011 Will had been revoked. (See 4T 168:13-24). The Appellate Division properly affirmed the trial court’s decision as to this issue. (PCm17-18).

Now, Plaintiffs make yet another argument to this Court, focusing on a contention that “[n]o matter what the Trial Court might determine on remand about whether Draft Wills after 2011 were executed, Francisco has standing.” (See Pb13). That Plaintiffs have, once again, reframed their argument in light of a second court’s rejection of their prior arguments, demonstrates the exact concern Defendants raised at the outset of the case: that the parties should be

litigating the case with an understanding from the beginning as to the relief Plaintiffs were seeking. Until trial, that proposed relief was unquestionably the probate of the 2006 Wills. Following the trial court's conclusion that such Wills were revoked, as set forth in Plaintiffs' motion for reconsideration and subsequent appeal, Plaintiffs' new proposed relief involved the probate of a 2011 Will. And, now that the Appellate Division has rejected that relief, as well, Plaintiffs now suggest that this Court should allow Plaintiffs to pursue the probate of some other Will because Francisco supposedly has standing to pursue claims under later Wills purportedly executed by Frank and Roseann.

Plaintiffs' Petition does not identify any basis on which this Court should allow such nebulous, ever-changing, and undefined claims to proceed. Plaintiffs' contention that In re Hand's Will, 95 N.J. Super. 182 (App. Div. 1967) apparently permits such relief is flatly wrong, and Plaintiffs misconstrue its holding in the first "Question Presented" in their Petition. Indeed, what Plaintiffs omit from their Petition is that the language Plaintiffs quote, which states, "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," (Pb14), **explicitly cites cases outside of New Jersey**—it was not an expression of the law of New

Jersey—and, in any event, the issue in Hand's Will involved an analysis of two executed wills, not multiple unsigned wills. See 95 N.J. Super. at 186, 190.

Plaintiffs correctly recognize that it is Defendants' position that there is no evidence that any of the unsigned Wills produced in discovery reflect Decedents' testamentary intent, and therefore Plaintiffs cannot probate any such Wills, which means they can obtain no relief from the Court, even were the 2021 and 2022 Wills invalidated. (See Pb15). The parties litigated the entire case, through summary judgment and trial, and Plaintiffs have yet to identify the so-called "evidence" demonstrating any Wills predating the 2021 Wills could be probated. As such, the trial court and Appellate Division correctly determined that Plaintiffs' claims should be dismissed.

B. The Appellate Division Properly Affirmed The Trial Court's Conclusion That Plaintiffs Were Estopped From Relying On Any Will Other Than The 2006 Wills

The Appellate Division properly affirmed the trial court's application of estoppel, as the trial court's invocation of estoppel was not an abuse of discretion. Plaintiffs' arguments otherwise in their Petition are legally flawed and factually incorrect, and this Court should reject them.

1. The Appellate Division Properly Concluded That Judicial Estoppel Was Appropriately Applied

As an initial matter, Plaintiffs are flatly incorrect that the trial court was "barred" from applying judicial estoppel because judicial estoppel is allegedly

“only permitted based on a change in position from a ‘prior legal proceeding . . . in subsequent litigation.’” (Pb16 (citing Adams v. Yang, 475 N.J. Super. 1, 8-9 (App. Div. 2023))). In fact, cases decided both before and after Adams have confirmed that judicial estoppel “is an equitable doctrine precluding a party from asserting a position in a case that **contradicts or is inconsistent with a position previously asserted by the party in the case or a related legal proceeding.**” See Hacker v. Jaime-Valdez, 482 N.J. Super. 169, 181 (App. Div. 2025) (emphasis added) (quoting Tamburelli Properties Ass’n v. Borough of Cresskill, 308 N.J. 326, 335 (App. Div. 1998))).

Unsurprisingly, Plaintiffs do not even attempt to argue that they did not assert a contradictory or inconsistent position at trial—because the record presented to the Appellate Division unquestionably demonstrates that they did. Indeed, the court in Hacker confirmed that the application of judicial estoppel was wholly appropriate in a situation in which a plaintiff made certain representations during motion practice early in the case regarding the relief he sought, which representations guided the subsequent litigation, and then attempted to change his position to seek additional relief following a jury verdict. Id. at 182-83. Likewise, here, Plaintiffs made numerous representations regarding their desire to probate the 2006 Wills—expressly challenging that Decedents signed any other Wills produced in discovery—and when it became

evident that they would not prevail in their desired relief, Plaintiffs attempted to switch gears and tried to claim entitlement to relief based on other alleged Wills. Beyond claiming that “[t]here was no prior legal proceeding here” and therefore that judicial estoppel could not be applied, Plaintiffs’ Petition makes no effort to argue that their conduct does not warrant the application of judicial estoppel. The Appellate Division properly concluded that “[j]udicial estoppel was appropriately applied here” because “[t]here is no credible argument that the claims, motion practice, and discovery preceding the trial revolved around anything other than whether the 2006 will controlled.” (PCm19).

2. The Appellate Division Correctly Determined That Plaintiffs Are Equitably Estopped From Changing Their Position At The Eleventh Hour

The Appellate Division likewise properly concluded that the trial court did not abuse its discretion in applying equitable estoppel to prohibit Plaintiffs’ shifting position. New Jersey courts will apply the doctrine of equitable estoppel “where the interests of justice, morality and common fairness clearly dictate that course”—in other words, “[t]he doctrine of estoppel is invoked to do equity.” Davin, L.L.C. v. Daham, 329 N.J. Super. 54, 67 (App. Div. 2000) (internal quotation omitted).

In their Petition, Plaintiffs claim that, in this case, equitable estoppel “would not be responsive to the demands of justice and good conscience”

because it would elevate “Defendants’ procedural concerns rather than Decedents’ testamentary intent.” (Pb17). In reality, Plaintiffs spent the entire litigation contending that only the 2006 Wills represented the Decedents’ intent, because, according to Plaintiffs, there was no evidence in the record to demonstrate that Decedents ever signed any of the other Wills produced in discovery, which—even during the trial of this matter—Plaintiffs referred to as “draft wills.” (See 4T 162:10-163:20). It was only after the trial court properly concluded that the 2006 Wills were revoked—which was Defendants’ position from the outset of the case—that Plaintiffs changed gears completely, and claimed that they possessed standing under subsequent Wills—putting aside the fact that there was absolutely no evidence in the record that any such subsequent Wills could be probated. (See 4T 168:13-24).

The Appellate Division’s opinion properly reflected that up until trial, “plaintiffs had based their entire claim on the 2006 will, including in their complaints, discovery, and responses to defendants’ motion to dismiss.” (PCm18). Defendants properly relied on Plaintiffs’ representations regarding the relief they were seeking in this case, and litigated the case accordingly, including through the preparation of a summary judgment motion arguing that the 2006 Wills were revoked and through trial. Essentially, Plaintiffs are requesting that although they have litigated the entire case based upon the

premise that the 2006 Wills could be probated—a premise that was rejected when the trial court concluded those Wills were revoked—Plaintiffs should still nonetheless be permitted to conduct an entire (presumably lengthy) trial on the issue of undue influence, with the very real possibility that the trial court could ultimately conclude after such lengthy trial that no Wills predating 2021 can be probated. The application of equitable estoppel properly avoided such a wasteful and unsupported undertaking, and the Appellate Division properly affirmed its application here.

CONCLUSION

For all of the foregoing reasons, Defendants respectfully request that the Court dismiss Plaintiffs’ Petition and deny Certification.

Respectfully submitted,

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By /s/ Adam K. Derman
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Dated: November 12, 2025