

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2087-21**

**IN THE MATTER OF THE
ESTATE OF MICHAEL
LAURY, JR., deceased, a/k/a
MICHAEL DARNELL
LAURY, JR.**

Submitted February 14, 2023 – Decided April 25, 2023

Before Judges Messano and Gilson.

On appeal from the Superior Court of New Jersey,
Chancery Division, Essex County, Docket No.
CP-330-2020.

Michael Laury, Sr., appellant pro se.

The Durkin Firm, LLC, attorneys for respondent
Michelle Laury (Elizabeth M. Durkin, on the brief).

PER CURIAM

In this appeal, a father challenges the validity of his son's last will and testament (the Will). Plaintiff Michael Laury, Sr. filed an action contending that his son's Will was the product of undue influence by defendant Michelle Laury (Michelle or defendant), the decedent's aunt, who was named as executor and

sole beneficiary of the Will.¹ Following a bench trial, the chancery court entered a final judgment in favor of defendant and dismissed plaintiff's complaint.

Plaintiff argues that the chancery court erred in finding that defendant did not have a confidential relationship with decedent and that there were not suspicious circumstances surrounding the execution of the Will. Because the trial court's factual and credibility findings were based on substantial credible evidence and its legal conclusions were correct, we affirm.

I.

Michael Laury, Jr. (Michael or decedent) was born in 1988, and passed away on June 11, 2020, at the age of thirty-two. He had been a talented professional dancer, who toured nationally and internationally with various groups and entertainers.

Plaintiff and Thais Duval were Michael's parents, and they were both teenagers when he was born. Michael's mother was not involved in raising him. Instead, Michael grew up in the home of his paternal grandparents, Thomas and Janet Laury. Plaintiff and defendant also lived in that home. After Michael was approximately six years old, plaintiff spent numerous years in prison. Plaintiff

¹ Because the parties share the same last name, we use first names but mean no disrespect in doing so.

was first sent to prison in 1996 for one year. He was again sent to prison in 1999 and was not released until October 2007. By that time, Michael was nineteen years old and living on his own in Philadelphia.

In 2019, Michael was diagnosed with cancer. In February of that year, he moved back to live with his paternal grandparents in East Orange, New Jersey. At that time, plaintiff was incarcerated again, and he was not released until October 2020, after Michael passed away.

In 2019 and 2020, Michelle was living in Camden County. She testified that she had a close relationship with Michael and during the last year of his life she would often visit him. Michelle also claimed that both her parents suffered from significant substance abuse problems during the period that Michael lived with them in 2019 and 2020.

Michelle testified that on May 31, 2020, Michael contacted her and informed her that he had prepared his Will. He asked her to arrange for witnesses and a notary so that he could sign his Will the following day. Michelle then explained that when she arrived the next day on June 1, 2020, Michael opened the door and let her into the apartment. She saw her mother, Janet, whom she believed was high on drugs, passed out on a bed. Michael told her that his grandfather was not home.

Michelle called Jermaine Davis and Derek Davis and asked them to come to the apartment to witness the signing of Michael's Will. Jermaine and Michelle had a son together, and Derek was Jermaine's brother. Michelle also contacted Jedwan Blanc, a notary public, who she found on the internet. The two witnesses and the notary came to the apartment later in the afternoon of June 1, 2020.

Jermaine and Derek both testified that when they arrived, Michael was alert and sitting up in bed. Jermaine explained that Michael recognized him and they "laughed," "joked," and "talked about dancing." The notary arrived shortly after the two witnesses. They all testified that Michael appeared to be alert and that he understood what he was doing.

In the presence of the two witnesses, Michael pulled out from a backpack a document he identified as his Will. Michael then signed the Will in the presence of the two witnesses and the notary. The notary asked the two witnesses to sign a logbook certifying that they had witnessed Michael sign his Will. The notary also signed the Will and gave Michael the original.

In his Will, Michael named Michelle as the executor and sole beneficiary. Michelle testified that she did not know she was the sole beneficiary until after the Will had been signed.

On June 4, 2020, Michael was taken to the emergency room at St. Michael's Hospital in Newark. One week later, on June 11, 2020, Michael passed away. Michelle arranged for Michael's funeral and memorial services. She also took care of Michael's debts and obligations, including arranging for the care of his dog.

In July 2020, Michelle submitted Michael's Will to be probated. The assets of Michael's estate were estimated to be worth approximately \$130,000.

In October 2020, plaintiff filed a verified complaint challenging the validity of Michael's Will. Following discovery, the court conducted a two-day trial on January 25 and 26, 2022. Six witnesses testified at trial: Michelle, plaintiff, Janet, Jermaine Davis, Derek Davis, and Jedwan Blanc.

On February 11, 2022, the chancery court issued a judgment and written opinion. The court found that the notary, the two witnesses, and Michelle were all credible witnesses. Although the court believed some of plaintiff's testimony, the court did not credit plaintiff's testimony challenging the legitimacy of the Will and found that plaintiff's testimony in that regard was not supported by any other evidence. The court also found that plaintiff's testimony challenging the Will was directly contradicted by the four witnesses the court

found credible. In addition, the court found that the grandmother's testimony was not credible and was not supported by any other evidence.

The court then found that there was no confidential relationship between Michelle and Michael, and there had not been any suspicious circumstances surrounding the execution of the Will. Instead, the court found that there was no evidence to rebut the presumption that Michael was of sound mind when he executed his Will. Therefore, the court entered judgment in favor of defendant and dismissed with prejudice plaintiff's contentions challenging the validity of the Will.

II.

Plaintiff now appeals from the judgment. He contends that the chancery court failed to properly weigh the evidence and failed to shift the burden on undue influence. We are not persuaded by these arguments.

Appellate courts apply a deferential standard in reviewing factual findings by a trial judge. Balducci v. Cige, 240 N.J. 574, 594 (2020). "Deference is especially appropriate 'when the evidence is largely testimonial and involves questions of credibility.'" Ibid. (quoting Cesare v. Cesare, 154 N.J. 394, 412 (1998)). A trial court's factual findings "are binding on appeal [if] supported by adequate, substantial, credible evidence." In re Gloria T. Mann Revocable Tr.,

468 N.J. Super. 160, 165 (App. Div. 2021) (quoting Cesare, 154 N.J. at 411-12). In addition, appellate courts accord deference to a trial court's credibility determinations given the trial judge's opportunity to evaluate the veracity of witnesses. C.R. v. M.T., 248 N.J. 428, 440 (2021). In contrast, appellate courts review de novo the trial court's interpretation of the law. Rowe v. Bell & Gossett Co., 239 N.J. 531, 552 (2019).

Our Supreme Court has explained that "undue influence is a mental, moral, or physical exertion of a kind and quality that destroys the free will of the testator by preventing that person from following the dictates of his or her own mind as it relates to the disposition of assets[.]" In re Estate of Stockdale, 196 N.J. 275, 302-03 (2008) (citing Haynes v. First Nat'l State Bank, 87 N.J. 163, 176 (1981)). Undue influence "denotes conduct that causes the testator to accept the 'dominance and influence of another' rather than follow his or her own wishes." Id. at 303 (quoting Haynes, 87 N.J. at 176). The undue influence must exist at the time that the will was executed. Ibid.

"Ordinarily, the burden of proving undue influence falls on the will contestant." Ibid. Nevertheless, "if the will benefits one who stood in a confidential relationship to the testator and if there are additional 'suspicious' circumstances, the burden shifts to the party who stood in that relationship to

the testator." Ibid. (citing In re Rittenhouse's Will, 19 N.J. 376, 378-79 (1955)).

"In general, there is a confidential relationship if the testator, 'by reason of . . . weakness or dependence,' reposes trust in a particular beneficiary, or if the parties occupy a 'relation[ship] in which reliance [was] naturally inspired or in fact exist[ed].'" Ibid. (quoting In re Hopper, 9 N.J. 280, 282 (1952)).

Suspicious circumstances may arise from a "drastic change in the testamentary dispositions" of the testator. Haynes, 87 N.J. at 177. Although evidence of suspicious circumstances can be "slight," the contestant of a will must present some evidence establishing suspicious circumstances. Stockdale, 196 N.J. at 303 (citing Rittenhouse, 19 N.J. at 379).

After hearing testimony from six witnesses, the chancery court found that Michael and Michelle shared an "aunt and nephew relationship . . . but not a confidential relationship." The judge made that finding based on the credibility of the witnesses. In particular, the chancery judge relied on the testimony of Derek and Jermaine Davis, and the notary, who each witnessed the execution of the Will. Those witnesses all testified that Michael was alert, understood what he was doing, and identified the Will as a document he had prepared. That testimony amply supports the chancery judge's factual finding that there was no confidential relationship between Michael and Michelle.

The chancery judge also found that there was nothing suspicious about the timing or circumstances of Michael's execution of his Will. The judge noted that Michael was battling cancer and appropriately made estate plans. Again, the judge assessed the credibility of the witnesses and found credible all the witnesses who were present when Michael signed his Will. The testimony of Michelle, the notary, Jermaine Davis, and Derek Davis provided substantial credible evidence supporting the chancery judge's factual finding. Plaintiff's challenge to the credibility of those witnesses is simply a challenge to the trial judge's credibility findings, but plaintiff has presented nothing that gives us a basis to reject those findings.

After the chancery judge found that there was no evidence that Michael's Will was the product of undue influence, he correctly rejected plaintiff's challenge to the Will under the governing law. See id. at 302-03. Accordingly, we affirm the final judgment entered in favor of defendant and dismissing plaintiff's complaint with prejudice.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION