STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Glenn Gunnells, Individually and as the Personal Representative of The Estate of Helen B. Gunnells, Appellant, v. Cathy G. Harkness, Respondent.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT 2016-CP-10-4566 **ORDER AFFIRMING PROBATE COURT ORDERS OF MAY 12, 2016 AND AUGUST 25, 2016** **2014-ES-10-00202-2**

FACTUAL / PROCEDURAL BACKGROUND

This matter came before this Court on March 3, 2017 on Appellant Glenn Gunnells' appeal from the Orders of the Honorable Irvin G. Condon, dated May 12, 2016 and August 25, 2016 in the probate action 2014-ES-10-00202-2. The May 12, 2016 probate court order held that the July 3, 2013 will was a product of undue influence and therefore null and void. R. at 49-50. The May order also held that the November 7, 2006 will is of full force and effect. R. at 50. The probate court's August 25, 2016 Order denied Appellant Glenn Gunnells' Motion to Alter, Amend, and/or Reconsider the May 12, 2016 order. R. at 57.

The Testatrix, Helen B. Gunnells, and her husband, Aiken Arden Gunnells, were married for many years and had three children: Cathy G. Harkness (Respondent), Belinda G. Davis, and Glenn A. Gunnells (Appellant). R. at 35. In April 2012, Mr. Aiken Gunnells was diagnosed with cancer and in approximately March 2013, Mr. Glenn Gunnells moved into his parents' home to help care for them. Id. On June 8, 2013, Mr. Arden Gunnells died. On July 3, 2013, the Testatrix executed a Will that revoked an earlier Will that was executed on November 7, 2006. R. at 34. The 2006 Will devised the Testatrix's entire estate to her husband if he survived her, and then to

her three children in equal shares. Id. The 2013 Will devised the entire estate to Mr. Glenn Gunnells. R. at 48.

STANDARD OF REVIEW

Appeals from the probate court are governed by the South Carolina Probate Code which provides that "a final order, sentence, or decree of a probate court" may be appealed to the circuit court. S.C. Code Ann. § 62-1-308 (Supp. 2016). The circuit court siting as an appellate court "shall hear and determine the appeal according to the rules of law[,]" and "[t]he hearing must be strictly on appeal and no new evidence may be presented." Id. § 62-1-308(i). "As used in this statute, the phrase 'according to the rules of law' means according to the rules governing appeals." *In re* Howard, 315 S.C. 356, 360; 434 S.E.2d 254, 256 (1993). Absent a statute or court rule, "expressly prescribing a different standard of review, the circuit court must apply the same standard that this Court or the Court of Appeals would apply were the appeal taken directly to either of them." Id. at 361; 434 S.E.2d at 257. "If the proceeding in the probate court is in the nature of an action at law, the circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." Id. "The standard of review at law is the same whether the facts are found by a jury or the judge sitting without a jury." Id. An appeal "in a contest as to the validity of a will is in the nature of a case at law rather than in equity . . . ." Harris v. Berry, 231 S.C. 201, 205; 98 S.E.2d 251, 253 (1957).

Furthermore, Rule 61 of the South Carolina Rules of Civil Procedure provides that:

> No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 61, SCRCP. The Supreme Court of South Carolina has explained that "[t]he admission or exclusion of evidence is within the sound discretion of the trial court and the trial court's decision will not be disturbed on appeal absent an abuse of discretion." Conner v. City of Forest Acres, 363 S.C. 460, 467; 611 S.E.2d 905, 908 (2005). "An abuse of discretion occurs when the ruling is based on an error of law or a factual conclusion without evidentiary support." Id. "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the resulting prejudice, i.e., there is a reasonable probability the jury's verdict was influenced by the wrongly admitted or excluded evidence." Id.

Finally, our appellate courts have held that in reviewing a verdict "the jury does not have to believe uncontradicted testimony" because "[t]he fact that testimony is not contradicted directly does not render it undisputed." Vinson v. Hartley, 324 S.C. 389, 409-410; 477 S.E.2d 715, 725-26 (Ct. App. 1996). It remains in the jury's province to determine "the inherent probability of the testimony and the credibility of the witness or the interests of the witness in the result of the litigation." Id. at 410. Furthermore, "[i]f there is any evidence to sustain the factual findings implicit in the jury's verdict, this court must affirm." Id. (quoting Hobgood v. Pennington, 300 S.C. 309, 313; 387 S.E.2d 690, 692 (Ct. App. 1989)).

DISCUSSION

I. Undue Influence

South Carolina Probate Code provides that "[p]roponents of a will have the burden of establishing prima facie proof of due execution in all cases" and "[c]ontestants of a will have the burden of establishing undue influence, fraud, duress, mistake, revocation, or lack of testamentary intent or capacity." S.C. Code Ann. § 62-3-407 (Supp. 2016). Additionally, "[p]arties have the

ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof." Id.

"[I]n order to void a will on the ground of undue influence, the undue influence must destroy free agency and prevent the maker's exercise of judgment and free choice." Wilson v. Dallas, 403 S.C. 411, 437; 743 S.E.2d 746, 760 (2013) (quoting *In re* Est. of Cumbee, 333 S.C. 664, 671; 511 S.E.2d 390, 394 (Ct. App. 1999) (internal quotations omitted)). "The influence necessary to void a will must amount to force and coercion." Id. "A mere showing of opportunity or motive does not create an issue of fact regarding undue influence." Id. "In cases where allegations of undue influence have been successful, there has been evidence of threats, force, restricted visitation, or an existing fiduciary relationship at the time of or before the will's execution." Id. "Although there is a presumption of undue influence in the making of a will involving fiduciaries, the ultimate burden always remains with the proponent." Id. Furthermore, South Carolina's Supreme Court has recognized

> that by the very nature of the case, the evidence of undue influence will be mainly circumstantial. It is not usually exercised openly so that it can be directly proved. However, the circumstances must point unmistakably and convincingly to the fact that the mind of the testator was subjected to that of some other person so that the will is that of the latter and not of the former.

Calhoun v. Calhoun, 277 S.C. 527, 530; 290 S.E.2d 415, 417 (1982) (citing Havird v. Schissell, 252 S.C. 404; 166 S.E.2d 801 (1969)).

II. Issues On Appeal[1]

(1) Whether the trial court by errors of law in its analysis of controlling authority erred in determining whether Testatrix's Will was the product of undue influence?

No. This Court finds that the probate court correctly stated, analyzed, and applied the controlling law of the State of South Carolina.

(2) Whether the trial court erred in finding that Testatrix's Will was the product of undue influence under the application of a "circumstances test" where such findings do not require Petitioner to meet her high burden of proof?

No. As discussed above, "by the very nature of the case, the evidence of undue influence will be mainly circumstantial." Calhoun at 530; 290 S.E.2d at 417. While the probate court's May 12, 2016 Order does enumerate four circumstances that have been considered in determining whether a will was a product of undue influence, the probate court specifically states that "when determining whether the testatrix was unduly influenced, all circumstantial evidence, meaning all circumstances surrounding the execution of the Will that indicate it is as though the Will was the product of another person rather than the product of the testatrix, is the critical component of evaluation." R. at 47 (citing Howard v. Nasser, 364 S.C. 279; 613 S.E.2d 64 (Ct. App. 2005)). Additionally, the order indicates that circumstances involving threats, force, and restricted visitation have been found to evince undue influence. R. at 48. Furthermore, the probate court stated that its May 12, 2016 Order "does not have the intent or effect of adopting an exclusive, formulaic four-pronged 'test'" but rather "recites a handful of the conditions often considered relevant in determining . . . whether a testamentary instrument may be the product of unlawful coercion." R. at 52. Applying the facts to the law, the probate court found, among other circumstances, that a fiduciary relationship existed between the appellant and testatrix; that on some occasions appellant prevented testatrix from talking on the phone or having friends visit; that appellant was living with

[1] Appellant's Statement of the Issues on Appeal (filed Oct. 11, 2016).

the testatrix, was the sole caretaker, controlled testatrix's finances, and was testatrix's power of attorney. R. at 48. Therefore, this Court finds that the probate court did not apply a "circumstances test," nor did its analysis alter the contestant's burden of proof.

(3) Whether the trial court erred in finding that Testatrix's Will was the product of undue influence in the face of uncontroverted evidence and testimony from Testatrix's attorney and her paralegal to the contrary, who were the only witnesses to the testamentary act itself?

No. The probate judge, sitting without a jury as fact-finder, is not required to believe uncontroverted testimony because it remains in the fact-finder's province to weigh the credibility and interests of a witness. Furthermore, the circuit court cannot disturb the probate court's findings of fact unless there is no evidence to support them. As discussed supra Part II. (2), this Court finds there is evidence supporting the probate court's findings of fact.

(4) Whether the trial court erred in considering facts and testimony of events that occurred in time after the testamentary act as probative of a finding that Testatrix's Will was the product of undue influence?

No. See supra Part II. (2). However, the probate court is correct in acknowledging that "circumstances and events affecting the Testatrix following the execution of the 2013 Will until her death in February 2014" are probative of whether the testatrix had an "unhampered opportunity . . . to change the will after the operation of undue influence" which would rebut the presumption of undue influence in the making of a will involving fiduciaries. R. at 56.

(5) Whether the trial court relied on irrelevant facts and/or made factual findings not reasonably supported in the record in making its determination that Testatrix's Will was the product of undue influence?

No. This Court finds that the probate court's orders are supported by the evidence and testimony admitted during trial and therefore this Court cannot disturb the probate court's findings of fact.

(6) Whether the trial court erred in finding the Testatrix's Will was the product of undue influence when there was no showing of threats, force, or restricted visitation?

No. See supra Part II. (2).

(7) Whether the trial court erred by giving great weight to the Petitioner's misstated and misrepresented testimony of Testatrix's physician Dr. Rhonda Chanson, when the medical conclusions found by the probate court are not reasonably supported in the record?

No. See supra Part II. (3).

(8) Whether the trial court erred in admitting and giving great weight to unsubstantiated, unsupported, and unauthenticated medical records from one of Testatrix's pharmacies?

No. See supra Part II. (3).

(9) Whether the trial court erred in accepting the testimony of Ms. Helen Carroll regarding Testatrix's statement "I had no choice" when Ms. Carroll testified several times she did not remember ever having a conversation with Testatrix about a will, nor knew the circumstances of the statement from which she read?

No. See supra Part II. (3).

(10) Whether the trial court erred in disregarding the testimony of two (2) independent home health physical therapists who provided treatment to Testatrix at the end of her life and whom Testatrix confided her thoughts regarding her daughters?

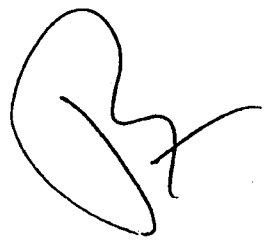
No. See supra Part II. (3).

(11) Whether the trial court erred in giving great weight to Petitioner's testimony that she sought DSS, Probate Court and/or Legal Aid with no evidence, independent witness or supporting testimony to prove the same?

No. See supra Part II. (3).

(12) Whether the trial court's order denying the Motion to Reconsider addressed any of the legal and factual errors of the probate court's original order?

This Court does not find any legal or factual errors contained in the Probate Court's May 12, 2016 Order.



CONCLUSION

IT IS THEREFORE ORDERED that the Probate Court Orders of May 12, 2016 and August 25, 2016 are hereby AFFIRMED.

IT IS SO ORDERED!

April 7, 2017
Charleston, South Carolina

Roger M. Young Sr.
Presiding Judge

EXHIBIT B

STATE OF SOUTH CAROLINA	**IN THE PROBATE COURT**
COUNTY OF CHARLESTON	**CASE NUMBER 2014-ES-10-2022**
IN THE MATTER OF: THE ESTATE OF HELEN B. GUNNELLS	**ORDER DENYING MOTION TO ALTER, AMEND, and/or RECONSIDER**
Cathy G. Harkness, Petitioner, -vs.- **Glenn A. Gunnells, Individually and as Personal Representative of the Estate of Helen B. Gunnells,** Respondent.	

THIS MATTER comes before the Court by way of a Motion to Alter, Amend and/or Reconsider filed by Respondent Glenn A. Gunnells, by and through his counsel, Alexis M. Wimberly, Esq. The Motion was filed on June 2, 2016, in response to this Court's Order dated May 12, 2016, voiding the Last Will and Testament of Decedent and Testatrix Helen B. Gunnells dated July 3, 2013. Upon consideration of the pleadings, the file, and the record, Respondent's Motion to Alter, Amend and/or Reconsider is respectfully **denied**.

Respondent's Motion contends that this Court made reversible error by improperly applying South Carolina law. In particular, Respondent alleges that the Court inadequately expresses controlling authority and improperly adopts and applies a "four circumstances test." Respondent further alleges that the Court committed reversible error by "ignoring" testimony supporting his position, accepting other evidence favorable to Petitioner, and otherwise making improper or unsupported findings of fact. The Court now considers these arguments.

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In the first instance, Respondent argues that the Court failed to consider the full body of South Carolina jurisprudence and improperly adopts what Respondent deems a "four circumstances test." The Court does not dispute Respondent's recitation of the elements of undue influence (however, those passages of Respondent's Motion that examine testamentary capacity are largely irrelevant, as this was not the basis for the Court's ruling). Resp't's Mot. 1–5. However, Respondent's assessment of the "four circumstances test" mischaracterizes the Court's evaluation of certain factors long considered relevant in establishing the existence of undue influence. Id. at 5–8.

At the outset, Respondent faults the Court for applying a "test" not recognized by South Carolina case law. More particularly, Respondent alleges that by considering the dispositions made under the contested Will, Respondent's motive and opportunity to exert undue influence, the existence of a confidential or fiduciary relationship, and the testator's susceptibility to such influence, the Court adopted a "four circumstances test" not previously contemplated by South Carolina courts. The Order, however, does not have the intent or effect of adopting an exclusive, formulaic four-pronged "test" that can be rigidly and systematically applied to establish the existence or non-existence of undue influence. To the contrary, the Court recites a handful of the conditions often considered relevant in determining, in light of the facts and circumstances of each case, whether a testamentary instrument may be the product of unlawful coercion. Indeed, contrary to Respondent's assertion, the Order explicitly affirms that the Court is evaluating "all circumstantial evidence" rather than producing an exclusive list of determinative factors. Order 14. This Court's Order merely identifies four circumstances that may be pertinent to such an inquiry; it does not adopt a "four circumstances test."

Respondent then seeks to establish that none of the factors or circumstances referenced by the Court in its so-called "test" has any basis in South Carolina jurisprudence. Resp't's Mot. 6–8. This contention is without merit. First, Respondent asserts that the distribution of property under the

contested testamentary instrument has no bearing on an inquiry as to undue influence, and that such a consideration directly conflicts with established law. Id. at 6. Admittedly, the Respondent is correct in affirming a testator's right to dispose of her property in her own discretion. Id. South Carolina law has long upheld the principle that a testator's will may direct her property "according to the testator's pleasure and in [her] absolute discretion, whether judiciously or capriciously, justly or unjustly, subject only to the restrains upon the power of disposition that the law has imposed." Wilson v. Dallas, 403 S.C. 411, 445, 743 S.E.2d 746, 765 (2013). This is not to say, however, that the dispositions made by an allegedly invalid Will are wholly irrelevant in considering whether the testator may have been unlawfully forced or coerced into disinheriting certain persons, for whom she expressed fondness and affection, in favor of the influencer. See In re Last Will and Testament of Smoak, 286 S.C. 419, 422, 334 S.E.2d 806, 808 (1985) (noting that "the one who is alleged to have exerted undue influence normally gains if the Will is sustained"); Howard v. Nasser, 364 S.C. 279, 289–90, 613 S.E.2d 64, 69 (Ct. App. 2005) (referencing the existence of an "unnatural disposition making the person charged with the undue influence chief beneficiary" and considering significant changes in disposition as relevant in supporting a claim of undue influence); In re Estate of Cumbee, 333 S.C. 664, 673, 511 S.E.2d 390, 395 (Ct. App. 1999) (considering that the contested instrument made dispositions drastically different from those in prior wills and contrary to the testator's expressed intentions); Hembree v. Estate of Hembree, 311 S.C. 192, 196, 428 S.E.2d 3, 5 (Ct. App. 1993) (noting that the consistency between the dispositions made in a contested instrument and a will executed nearly ten years earlier tended to indicate that the testator "recognized who his loved ones were and to whom he wished the majority of his estate to go"). In its May 12, 2016 Order, this Court noted that the contested Will dated July 3, 2013, deviates considerably from the Decedent's earlier Will by devising her entire estate to the alleged influencer rather than equally among her three children, and took testimony that the Decedent had maintained a

generally positive relationship with Petitioner prior to Respondent's interference. The Court agrees that these findings, taken alone, would fall well short of sufficient to support a finding of undue influence. However, Respondent contends that considering the history and context of the Decedent's testamentary scheme is at odds with settled law, even as one of many elements or circumstances tending to establish undue influence. This contention is rejected.

Second, Respondent argues that "[t]he second circumstance ['motive and opportunity'] is simply non-dispositive in and of itself." Resp't's Mot. 6. The Court agrees. However, the existence or non-existence of a particular fact or circumstance need not be singularly dispositive of an entire legal issue in order to be properly considered.

Respondent then charges that this Court made an error of law by considering the Testator's susceptibility to influence, claiming that South Carolina courts have not recognized this factor in undue influence cases for some seventy years. Id. To the contrary, our Courts frequently consider whether a testator's mental health or disposition may have rendered her more or less vulnerable to such influence. See Byrd v. Byrd, 279 S.C. 425, 427, 308 S.E.2d 788, 789 (1983) ("[T]he evidence establishes the testator was infirm . . . and, consequently, particularly susceptible to influence"); Smith v. Whetstone, 209 S.C. 78, 90, 39 S.E.2d 127, 132 (1946) ("The testator was a man of strongly marked characteristics, of sound mind and determined will, abundantly able to protect himself, which should not be overlooked in a case of this kind."); In re Estate of Anderson, 381 S.C. 568, 575, 674 S.E.2d 176, 180 (Ct. App. 2009) (upholding will and noting testimony that Mrs. Anderson was "the one giving orders and not likely to be influenced by anyone else"); Smoak, 286 S.C. at 426; 334 S.E.2d at 810 (affirming the validity of will and recognizing that "the testator was an intelligent, strong-willed man"); see also Bullard v. Crawley, 294 S.C. 276, 280, 363 S.E.2d 897, 899 (1987) (noting that the grantor was known to be an "independent, strong-willed . . . outspoken person" in declining to set aside a deed for undue

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influence); Resp't's Mot. 16 (noting testimony that the Testatrix in this action was "strong willed, independent, intelligent and opinionated"). This inquiry is entirely independent of an examination of the testator's testamentary capacity, and does not require the same analysis or findings of fact. This Court's Order of May 12, 2016, finds that Mrs. Gunnells was isolated, dependent, and emotionally distraught when she executed the July 3, 2013 Will, and concludes that these circumstances rendered her particularly susceptible to unlawful coercion and manipulation. Our cases instruct that undue influence exists when the will of the testator is overcome by another. Russell v. Wachovia Bank, 353 S.C. 208, 217, 578 S.E.2d 329, 333 (2003). The relative strength or malleability of the testator's will is necessarily relevant to that analysis.

Finally, Respondent admits that the existence of a confidential or fiduciary relationship has direct bearing under South Carolina law, but nevertheless protests that the Court did not specifically state or apply the appropriate burden of proof. Resp't's Mot. 8. Once again, Respondent's position is directly undermined by the language of the Order itself, which expressly notes that the Petitioner bears the burden of establishing undue influence by clear and convincing evidence and ultimately concludes that she has. Order 14, 16. The contestant of a will bears the burden of proving the existence of undue influence by clear, unmistaken and convincing evidence. Dallas, 403 S.C. at 437, 743 S.E.2d at 760. "Although there is a presumption of undue influence in the making of a will involving fiduciaries, the ultimate burden always remains with the proponent." Id. (citing Gordon v. Busbee, 397 S.C. 119, 723 S.E.2d 822 (Ct. App. 2012). This Court concluded that a confidential, fiduciary relationship existed between the Testatrix and the Respondent, a conclusion amply supported by the record. Respondent failed to rebut the presumption created by this relationship, and this Court found clear and convincing evidence that the Testatrix's July 3, 2013 Will was the product of undue influence. This does not constitute improper allocation of the burden of proof.

Additional contentions raised by Respondent's Motion mischaracterize this Court's Order and underlying reasoning. The Motion faults the Court for considering evidence of events taking place after the testamentary act, and in the same breath concedes that such events are probative as to whether the Testatrix had an opportunity to later revoke or change her Will. Resp't's Mot. 14–15. "[E]ven if a contestant does establish an inference of undue influence, the unhampered opportunity of the testator to change the will after the operation of undue influence destroys this conclusion." Hembree v. Estate of Hembree, 311 S.C. 192, 197, 428 S.E.2d 3, 5 (Ct. App. 1993). Certainly, circumstances and events affecting the Testatrix following the execution of the 2013 Will until her death in February of 2014 are pertinent to that analysis. Respondent further complains that the Court erred by failing to find that the Testatrix was competent to execute a Will. Resp't's Mot. 18–20. In fact, the Court made no finding of incompetence or lack of capacity; Respondent's objections are misplaced.

Respondent's other objections primarily relate to the Court's evaluation of various testimony and evidence presented in the case. Respondent contends, for example, that the Court "fail[ed] to consider" the testimony of attorney Suzanne Klok and her paralegal. Resp't's Mot. 8–9. To the contrary, this Court's Order expressly acknowledges and contemplates the testimony of Attorney Klok and Ms. Voytko. Order 13. In addition, Respondent not only concludes that the Court erred by failing to consider evidence that he was not in the room when the instrument was executed, but also that the Court erred again by considering all other circumstances surrounding the visit. Resp't's Mot. 12–14. Respondent asks the Court to isolate as "conclusive" a single detail regarding execution of the Will, to the exclusion of all other circumstances leading up to and immediately following the visit to Attorney Klok's office. The Court can identify no controlling law indicating that an examination of the events surrounding the drawing and execution of a contested document must be limited solely to whether the alleged influencer was physically present when the testatrix put pen to paper and signed her name.

Respondent's remaining objections allege, in sum, that the Court gave inadequate weight to evidence favorable to him and erroneously accepted testimony offered by Petitioner. For instance, Respondent purports that there is "no evidence" that anyone was prohibited or restricted from visiting the Testatrix, or that her medication was not properly administered. Resp't's Mot. 15–18, 22–23. Here, the record speaks for itself; Respondent simply objects to the Court's evaluation of the testimony received. See Pet'r's Mem. In Opp'n to Mot. to Recons. 2–4. Other purported grounds for reconsideration fault the Court for "accepting" or "being persuaded" by testimony and inferences unfavorable to Respondent. To this, the Court can only restate that in view and upon consideration of all evidence and testimony properly presented, it nevertheless concluded that the July 3, 2013 Will was the product of undue influence.

Based upon the foregoing, it is hereby

ORDERED, ADJUDGED AND DECREED that Respondent Glenn A. Gunnells' Motion to Alter, Amend and/or Reconsider filed June 2, 2016, is respectfully **denied**.

IT IS SO ORDERED.

Irvin G. Condon
Judge of Probate, Charleston County

This the 22nd day of August, 2016.
Charleston, South Carolina

Attest: A True Copy
Clerk Probate Court
Charleston County, South Carolina

EXHIBIT C

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON IN RE: ESTATE OF HELEN B. GUNNELLS Cathy G. Harkness, Petitioner, v. Glenn A. Gunnells, individually and as Personal Representative of the Estate of Helen B. Gunnells, Respondent.	)	IN THE PROBATE COURT Case No.: 2014-ES-10-202-2 ORDER VOIDING THE LAST WILL & TESTAMENT DATED JULY 3, 2013 AND ADMITTING THE LAST WILL & TESTAMENT DATED NOVEMBER 7, 2006 TO PROBATE

Trial Dates:	**March 1st – 3rd, 2016**
Presiding Judge:	**Irvin G. Condon**
Petitioner:	**Cathy G. Harkness**
Petitioner's Attorneys:	**Donald H. Howe, Esq., Julie C. Jackson-Bailey, Esq., and Michelle J. Weil, Esq.**
Respondent:	**Glenn A. Gunnells**
Respondent's Attorneys:	**Alexis M. Wimberly, Esq. and Robert B. Varnado, Esq.**
Court Reporters:	**Trisha Rarick and Judy W. Galuppo Magna Legal Services**

THIS MATTER came before the Court on Petition filed by Petitioner, Cathy G. Harkness, alleging that Respondent, Glenn A. Gunnells, exercised undue influence over his mother, Helen B. Gunnells (the "Testatrix"), when she executed a Last Will & Testament on July 3, 2013 that left her entire estate to the Respondent. The July 3, 2013 Will revoked a former Last Will and Testament dated November 7, 2006, by which the Testatrix devised her estate to her husband if he survived her, and then to her three (3) children in equal shares.

Present at the trial was Petitioner, along with her attorneys, Donald H. Howe, Esq., Julie C. Jackson-Bailey, Esq., and Michelle J. Weil, Esq. Respondent was also present, along with his

attorneys, Alexis M. Wimberly, Esq. and Robert B. Varnado, Esq. The Court heard opening and closing arguments and testimony from several witnesses. Based on the file, the exhibits entered into evidence during the trial, the testimony, and the arguments presented by counsel, the Court finds by clear and convincing evidence that the Testatrix was under undue influence when she made and executed the July 3, 2013 Will.

FACTS

The Testatrix, Helen B. Gunnells and her husband, Aiken Arden Gunnells, were married for many years. There were three (3) children born of their union, namely: Cathy G. Harkness, Belinda G. Davis, and Glenn A. Gunnells. In approximately April of 2012, Mr. Arden Gunnells was diagnosed with cancer. In approximately March of 2013, the Respondent moved in to Helen and Arden Gunnells' home to help care for them. Mr. Arden Gunnells died on June 8, 2013.

On July 3, 2013, the Testatrix executed the Will, which is the subject of this action. The lawyer who prepared the July 3, 2013 Will was Susanne Klok, Esq. Attorney Klok was Respondent's attorney, having served as his closing attorney in connection with the sale of his home on June 7, 2013 (only 22 days prior to the execution of the Will in dispute). The testimony revealed that the Testatrix only met with Attorney Klok on the one (1) occasion on July 3, 2013. The Respondent made the appointment with Attorney Klok, and he drove the Testatrix to and from the appointment. The Respondent left the building while Attorney Klok met with the Testatrix for approximately one and one-half (1½) to three (3) hours in total. The Testatrix also saw her primary care physician, Dr. Rhonda Chanson, on July 3, 2013, within a short time of her appointment with Attorney Klok.

The Respondent continued to live with his mother until she died on February 7, 2014.

8/26/17

SUMMARY OF THE DISPUTE

Petitioner contends that she had an active and loving relationship with her parents for many years, but this changed after Respondent moved in with them. Respondent began asserting more and more control over their parents, but most especially over the Testatrix after the death of her husband, Mr. Arden Gunnells. Petitioner alleges that Respondent told her not to call or visit her mother and that if she did, he would have her arrested for harassment. According to Petitioner, her mother remained isolated and controlled by Respondent thereafter, including her act of changing her will on July 3, 2013.

Respondent alleges that he cared for his mother, but did not exercise control over her. He contends that both parents became disenchanted with their daughters because they failed to help during their final illnesses and declines. He points out that Belinda Davis moved to Hawaii for a substantial period of time and returned to Charleston only a week before Mr. Arden Gunnells died. According to Respondent, the Testatrix resented the girls' lack of care and concern, so she changed/executed the July 3, 2013 Will of her own free will.

THE EVIDENCE PRESENTED

Petitioner's first witness was the Testatrix's brother, Jack Brantley. Mr. Brantley is a retired Lieutenant Colonel who served as City Administrator for Waynesboro, Georgia for 23 years. He is now 83 years old and continues to serve on the Board of Elections in Waynesboro, Georgia. (Tr. Vol. I, p. 12, lines 11-21).

Mr. Brantley testified that he and his sister had a very close relationship throughout their lives. They visited several times each year and talked often/several times weekly. Mr. Brantley said he experienced a noticeable change in the openness and substance of communication he had

with his sister after her husband died and while Respondent was caring for her. (Tr. Vol. I, p. 18, lines 2-11; p. 41, lines 8-21; p. 45, lines 12-13). Because of his concern, he made himself available to be contacted by the Department of Social Services ("DSS") when Petitioner expressed to him she was consulting DSS about her concerns for her mother. This assertion was confirmed by his email dated July 22, 2013 (Petitioner's Exhibit 2).

Mr. Brantley confirmed that from his perspective, Petitioner and Ms. Davis both had good relationships with their parents, especially Cathy. (Tr. Vol. I, p. 24, lines 4-23). He identified Petitioner as being particularly active in the care of her parents over the years. He also testified about the following factors that were relevant to the Court's analysis of the overall dispute:

1) After Arden Gunnells died, Mr. Brantley noticed that his sister "...was very hesitant to talk to me", which was a dramatic change in the way that they had formerly communicated. (Tr. Vol. I, p. 18, lines 8-9).

2) Testatrix Helen Gunnells told Mr. Brantley "...that Glenn did not like for her to talk to Cathy." (Tr. Vol. I, p. 33, lines 18-19).

3) That he (Mr. Brantley) spoke to Respondent Glenn Gunnells about Cathy and Belinda visiting and helping Testatrix and that Respondent made it clear (on more than one occasion), "he didn't want them there." (Tr. Vol. I, p. 38, line 17).

4) Sometime after Mr. Arden Gunnells' death, he spoke to the Testatrix by phone and suggested she call Petitioner about a surgery that the Petitioner had on her leg to remove a cancerous growth. The Testatrix's response was, "I'll ask Glenn." (Tr. Vol. I, p. 41, lines 5-7).

5) Shortly after Mr. Arden Gunnells' cancer diagnosis, Mr. Brantley spoke with Respondent about the demands of caring for his parents. Mr. Brantley pointed out to the

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Respondent that he would have the help of his sisters. Respondent's response was "that will never happen." (Tr. Vol. I, p. 27, lines 18-19).

6) Mr. Brantley directly contradicted Respondent's assertion that Mr. Brantley heard the Testatrix discuss changing her Will because of her disappointment with the care and affection shown by the girls. (Tr. Vol. I, p. 46, lines 18-22).

7) Mr. Brantley was familiar with the contents of Testatrix's earlier Will which divided the estate equally among the 3 children but was never aware of the July 3, 2013 Will until after his sister died. (Tr. Vol. I, p. 23, lines 1-4; p. 47, lines 18-22).

Petitioner's second witness Helen Carroll appeared by way of video deposition. Helen Carroll was one of the Testatrix's best friends and knew her for over forty (40) years. They spent lots of time together over the years, communicated often, and had a very close relationship. The nature of this relationship was confirmed by the Respondent.

Ms. Carroll confirmed that Petitioner had an active and close relationship with her mother for many years. Most importantly, Ms. Carroll's testimony concerned a visit she had with the Testatrix sometime after Mr. Arden Gunnells passed away. According to Ms. Carroll, she dropped by unannounced to visit the Testatrix, and the Respondent was not home. Ms. Carroll testified that during this visit without the Respondent's presence, the Testatrix confirmed that she had changed her Will, but that she had not wanted to do so. The Testatrix confided in Ms. Carroll that the Respondent made her change her Will. Helen said to Ms. Carroll, "I had no choice." (D. p. 18, lines 8-25). Ms. Carroll also testified that when Respondent returned home, the Testatrix "clammed up." (D. p. 20, lines 1-2).

Contrary to Respondent's testimony, Ms. Carroll testified that she was never left alone with the Testatrix to visit except for the one unannounced visit when the Respondent was not

home. She also related that she stopped visiting because she felt that her reception had become "cold" and unwelcoming, which contradicted Respondent's assertion that Ms. Carroll stopped visiting the Testatrix because of her own health concerns and inability to drive. (Tr. Vol. III, p. 20, lines 1-11). It also contradicted his testimony on direct examination about what good terms he and Ms. Carroll were on. (Tr. Vol. II, p. 119, lines 7-11).

Lastly, Ms. Carroll testified that she knew Glenn to have an alcohol problem because she noticed that he would "slur his words" when talking. (D. p. 30, lines 17-23).

Petitioner next offered excerpts from the deposition of the Respondent, Glenn A. Gunnells. The excerpts confirmed that he had a "confidential relationship" with the Testatrix; that he agreed that Helen Carroll was a very close, personal friend of the Testatrix; and that he had been living on social security disability payments since the year 2000.

Petitioner's third witness was the Testatrix's oldest child, Belinda G. Davis. Ms. Davis is a high school graduate. She has worked in her former husband's construction business, at the Medical University of South Carolina for the head of neurosurgery department, and as an assistant to the North Charleston Mayors, Bobby Kinard and Keith Summey for 13 years. (Tr. Vol. I, p. 55, lines 1-3; p. 57, lines 1-17).

Ms. Davis testified that all of the siblings had generally good relationships with their parents throughout the years. Once her father was diagnosed with cancer in the spring of 2012, all three children worked as a "team" to help with various needs of the parents. (Tr. Vol. I, p. 59, lines 6-16). She stated that the Petitioner was living in Myrtle Beach at the time of the cancer diagnosis, but that Petitioner quickly moved back to Charleston to help with her parents. (Tr. Vol. I, p. 60, lines 4-21). Petitioner also sold her car, a Corvette, and purchased another vehicle that was easier for her mother to get in and out of.

Ms. Davis described her brother, the Respondent, as a "control freak," an alcoholic, substance abuser, and a "user of people." She produced an email from Respondent authored in May of 2012, which was introduced as Petitioner's Exhibit 4 which stated: "Let it be known nothing will be signed or initialized till I look at it, exclamation point three times. Let it be written so let it be done, two exclamation points. All has been done and notified, several exclamation points." According to Ms. Davis, this email originated when she tried to add her name and Petitioner's name to a visitation and information access list at the hospital where her father was receiving chemotherapy. (Tr. Vol. I, p. 66, lines 1-17; p. 67, lines 1-17).

(Respondent later testified the email was for both Petitioner and Ms. Davis to advise them to stay out of the parents' financial affairs and not to do anything without his input because he had power of attorney. Of note, and contrary to his assertion, is that the email is addressed solely to Belinda.)

Ms. Davis testified that of the three children, the Petitioner had generally been the most active in terms of helping their parents over the years. For example, she stated that Petitioner had painted the house, often took their mother to the doctor, cooked, cleaned, bought groceries, etc. (Tr. Vol. I, p. 62, lines 3-17).

Ms. Davis herself had not been as active in her parents' lives and, indeed, left Charleston in October of 2012 to live with her son and daughter-in-law in Hawaii upon the birth of their first child. Ms. Davis provided day care to the newborn so her daughter-in-law could continue working as a schoolteacher. She returned to Charleston approximately one week before the children's father passed away. Ms. Davis related that while at the airport in Hawaii about to return to Charleston, she got a call from Petitioner saying she thought "something was going on" because she could not reach the Respondent or her parents. Ms. Davis called "Uncle Jack"

Brantley and discovered the children's father, Mr. Arden Gunnells, was in the hospital. (Tr. Vol. I, p. 64, lines 1-18; p. 65, lines 1-6). Respondent later testified that their father was in the hospital for approximately two (2) weeks prior to his death. (Tr. Vol. II, p. 165, lines 21-23). As such, Mr. Arden Gunnells was in the hospital for approximately one (1) week without either of his daughters being notified.

On June 26, 2013, Belinda Davis went by her mother's home to pick up her father's death certificate. The Respondent had told her it would be taped on the front of the house, which it was. Ms. Davis nevertheless knocked and rang the doorbell in an attempt to see her mother. At first, a home health nurse answered saying she could not come in. She attempted to push past the home health nurse, but Respondent intervened and she was denied entry. There is some dispute about how physical Respondent's intervention was, but all involved heard him threaten to call the police. (Tr. Vol. I, p. 68, lines 1-16; p. 69, lines 1-22).

Soon thereafter Petitioner and Ms. Davis sought guidance from the Charleston County Probate Court, DSS, and a local attorney regarding their mother's care. (Tr. Vol. I, p. 70, lines 8-17; p. 71, lines 4-17). Petitioner also sought help from Legal Aid. No legal actions were filed, however, primarily because of cost. (Tr. Vol. I, p. 71, lines 21-25).

Petitioner, Cathy G. Harkness, testified that she had a long and loving relationship with both her parents until this was thwarted by her brother, Glenn. She confirmed Ms. Davis' testimony that she quickly moved back to Charleston from Myrtle Beach, South Carolina when she heard that Mr. Arden Gunnells had been diagnosed with cancer, and that she sold her Corvette to better accommodate her mother when she took her to various doctors. (Tr. Vol. I, p. 102, lines 7-22).

Petitioner detailed a variety of projects she had performed for her parents over the years. She was clearly familiar with her mother's physicians. She also detailed several trips she took her mother and Helen Carroll on. (Tr. Vol. I, p. 97, lines 1-14; p. 98, lines 1-15; p. 101, lines 1-6).

Like Ms. Davis, the Petitioner asserted that she and Ms. Davis focused more on the care of their mother while Respondent helped transport Mr. Arden Gunnells to his chemotherapy appointments. However, things took a dramatic turn on June 11, 2013 when Respondent told the Petitioner not to call or visit their mother anymore and that he would have her arrested for "harassment" if she attempted contact. (Tr. Vol. I, p. 107, lines 9-12).

Petitioner confirmed Ms. Davis' testimony regarding the incident at the Gunnells' home on June 26, 2013. She was present for the incident, but she was in the car and was not an active participant. After the confrontation, she and Ms. Davis accompanied each other to the Probate Court, DSS, and a local attorney's office to discuss what could be done to gain access to their mother. As stated previously, Petitioner also sought help from Legal Aid. (Tr. Vol. I, p. 108, lines 9-24).

In June 2013, Petitioner made several attempts to have returned to her a variety of personal items that had been at her mother's home. Apparently unsuccessful, she wrote a letter on June 27, 2013 threatening legal action. In July 2013, Jack Brantley tried to mediate a peaceful exchange with the Petitioner and the Respondent. However, this attempt failed, and Petitioner was forced to file a claim and delivery action in Small Claims Court. She ultimately prevailed on this action. (Tr. Vol. I, p. 114).

On cross-examination, Respondent's attorneys introduced two (2) letters written by the Petitioner. The first was a letter dated 2010 to her father. The second was a birthday card

(undated, but written approximately on or about October 8, 2013) to her mother. (Tr. Vol. I, p. 133, lines 4-5).

The letter to her father evidences a rift about an incident in which their father called the Petitioner a "disgrace." Petitioner responded with a long list of accusations about Respondent. While the evidence shows there was certainly a rift of sorts between the Petitioner and her father, there is nothing to suggest that it was anything but a temporary blow up. The letter was written in 2010, approximately two and one-half (2½) years before the death of Mr. Arden Gunnells. There is no other evidence of bad blood between Petitioner and Mr. Arden Gunnells until his death. Significantly, Mr. Arden Gunnells never changed his Last Will & Testament to exclude the Petitioner, and there was no evidence offered that he ever even considered doing so over the next two and one-half to three (2½-3) years before his death.

Read as a whole, Petitioner's letter to her mother reflects her desire to reach out and renew contact with her mother. This letter, coupled with the contacts made to the Probate Court, DSS, and the local attorney, pointedly contradict Respondent's assertion that the Petitioner essentially abandoned her mother.

With the testimony of Cathy Harkness, the Petitioner rests her case.

Although the Respondent testified last on rebuttal, the Court will begin with evaluating his testimony. Respondent went through the eighth grade, but dropped out in the ninth. He later obtained his GED and attended some courses at Trident Technical College. He has worked as a heavy equipment operator and also as a car salesman, but he began receiving social security disability benefits in approximately the year 2000. He testified that he receives approximately $1,350-$1,500 per month on disability, depending on whether or not prescription insurance is deducted. (Tr. Vol. II, p. 97, line 5; p. 99, lines 1-22).

Respondent's position is that the Petitioner and Ms. Davis essentially deserted their parents and refused to provide aid despite Respondent's request for help. (Tr. Vol. II, p. 133, lines 20-24; p. 153, lines 16-25). According to Respondent, this status was well-known within the family and openly discussed as a motive for their mother wanting to change her Will. He identified Jack Brantley as one of the people present for such discussion. Mr. Brantley would certainly seem to be a natural choice because of his close relationship with his sister, Helen Gunnells. Mr. Brantley, however, did not testify that any such discussion ever took place. Respondent identified other potential witnesses to that or similar discussions, but no one testified to that fact. On cross-examination, Respondent admitted he had no emails, notes, etc., in which he requested help from either sister.

Respondent acknowledged that Susanne Klok had been his closing attorney on June 6, 2013, and that Attorney Klok had no relationship with Helen Gunnells prior to the Testatrix changing her Will. Notably, at his deposition Respondent testified that the Testatrix met with Attorney Klok two (2) or three (3) times for thirty to forty (30-40) minutes each time prior to executing the new Will. Yet at trial, after Attorney Klok testified that she only met with Helen Gunnells one (1) time, Respondent changed his testimony to be in accordance with Attorney Klok. He confirmed that he made the appointment for his mother and drove her to and from the appointment. He waited outside the building while discussions about the new Will took place.

Respondent denied limiting access to his mother, and to the contrary, stated he asked other family members to encourage his sisters to step up and help. Although identified by Respondent, Mr. Brantley denied any such conversation. The only conversation along similar lines, according to Mr. Brantley, was when Mr. Brantley suggested the girls would be resources for help and Glenn responded, "that will never happen."

On the whole, it is undeniable that on those facts subject to corroboration or verification, Respondent's assertions fall short. The following examples are illustrative:

1) Respondent testified at his deposition that he took his mother to Susanne Klok two (2) or three (3) times for thirty to forty (30-40) minutes each time prior to the Testatrix executing the new Will. However, Attorney Klok testified there was only one (1) visit for two to three (2-3) hours. At trial, Respondent changed his testimony in accordance with Attorney Klok's testimony.

2) Respondent specifically testified that he asked Jack Brantley to ask the Petitioner and Ms. Davis for help with their mother. Mr. Brantley denied that conversation. Petitioner's Exhibit 2 generated on July 22, 2013 (well before this dispute) by Mr. Brantley contradicts Respondent's assertion as well.

3) Although currently still pending before this Court is a ruling on the Petition for Removal of the Respondent as Personal Representative. Petitioner has shown that the Respondent has breached his fiduciary duty as Personal Representative in as much as the Inventory and Appraisement was not adequately prepared; proceeds from estate "yard sales" were pocketed by the Respondent, and as such, are unaccounted for; Respondent sold the Gunnells' home and used the proceeds for his own benefit after this action to void the Will was filed; and he did not pay the creditors' claims in a timely manner as required by the statute. (Tr. Vol. II, p. 165, lines 1-12). In short, he has not administered the estate in an honest and forthright manner.

4) Respondent apparently told Dr. Rhonda Chanson he was having a hard time getting his mother in for appointments because of his "ongoing work schedule" when he was, in fact, out of work on full disability and had been since 2000. (Tr. Vol. II, p. 99, lines 10-25).

5) Additionally troubling is Respondent's failure to provide prescribed medications as directed to his mother, particularly Remeron, which was to improve Helen Gunnells' dementia. It appears this medication was not properly administered for the last several months of Mrs. Gunnells life. If the Testatrix was "weak minded", her ability to change or alter the Will, had she so desired, would have been hampered.

Although Respondent brought forward a number of witnesses to theoretically support his version of the facts, all of these witnesses knew the Testatrix only on a professional basis for a limited amount of time. Most notably, two (2) of the witnesses, Susanne Klok and her paralegal, Annmarie Voytko, only had contact with the Testatrix for a couple of hours. Respondent called two (2) home healthcare workers. One of the healthcare workers did not meet the Testatrix until five (5) months after the Will was changed. The healthcare workers confirmed that from their perspective, Glenn was an engaged and effective caregiver. They also confirmed that the Testatrix expressed resentment towards her daughters for failing to be available or help during her husband's final days. Jill Susan Costa testified about the confrontation with Ms. Davis in June 2013 when she tried to visit and Sharon Lee Wechter testified that the Testatrix expressed resentment in December 2013 about the Petitioner suing her. Lastly, the deposition of Dr. Rhonda Chanson was introduced without objection. Dr. Chanson became Helen Gunnells primary care physician in July 2012. Ms. Davis accompanied her to that first visit. Dr. Chanson saw the Testatrix on July 3, 2013, the same day she executed the disputed Will. While Dr. Chanson opined that the Testatrix was competent, she also described her as "visibly upset," "crying," and "distraught." (D. p. 35, lines 12-24). This visit would have been within hours of the execution of the Will. She had no opinion as to whether the Testatrix was emotionally stable enough to consummate the Will on July 3, 2013. (D. p. 25, lines 21: "...I have no knowledge of

that"; p. 38, lines 1-4). Under cross-examination, she confirmed that a prescription for potassium was never filled (D. p. 57, line 14 - p. 59, line 3) and that there was a long delay between the first time she prescribed Remeron, a drug for dementia, and when it was ultimately filled (D. p. 48, lines 9-12; p. 50, line 14 – p.54, line 2; p. 61, lines 6-10).

DISCUSSION

Generally, when the formal execution of a Will is admitted or proved a *prima facie* case in favor of the Will is made out. Calhoun v. Calhoun, 277 S.C. 527, 290 S.E.2d 415 (1982). The burden is on the contestant to prove undue influence by clear and convincing evidence. Havird v. Schissell, 166 S.E.2d 801, 804 (S.C. 1969). To prove undue influence, the contestant must show that the person's influence over the testatrix must have been so great that it prevented the testatrix's free judgment and choice. In re Estate of Anderson, 674 S.E.2d 176, 179 (S.C. Ct. App. 1976).

Courts often look to see if any of the following circumstances apply when deciding whether a testatrix was unduly influenced at the time her Will was executed: (1) an unjust distribution made to a beneficiary; (2) motive and opportunity by the beneficiary to influence the testatrix; (3) a confidential or fiduciary relationship between the testatrix and the beneficiary; and (4) the susceptibility of the testatrix to be unduly influenced. See e.g., Dixon v. Dixon, 608 S.E.2d 849 (S.C. 2005); Russell v. Wachovia Bank, N.A., 578 S.E.2d 329 (S.C. 2003); Hairston v. McMillan, 692 S.E.2d 549 (S.C. Ct. App. 2010); Howard v. Nasser, 613 S.E.2d 64 (S.C. Ct. App. 2005). However, when determining whether the testatrix was unduly influenced, all circumstantial evidence, meaning all circumstances surrounding the execution of the Will that indicate it is as though the Will was the product of another person rather than the product of the testatrix, is the critical component of evaluation. Howard, 613 S.E.2d at 67. In cases where

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allegations of undue influence have been successful, there has been evidence of threats, force, restricted visitation, or an existing fiduciary relationship at the time or before the Will's execution. See Moorer v. Bull, 212 S.C. 146, 46 S.E.2d 681 (1948); Byrd v. Byrd, 279 S.C. 425, 308 S.E.2d 788 (1983). The existence of a fiduciary relationship between a testatrix and beneficiary raises a presumption of undue influence. Howard, 613 S.E.2d at 68-69.

The Petitioner asserts that the Respondent unduly influenced the Testatrix to leave her estate to him. She bases this allegation on the facts set out above. The circumstantial evidence in this case shows that the Respondent unduly influenced the Testatrix in the execution of the July 3, 2013 Will. It is undisputed that an unjust distribution was made to the Respondent, which is evidenced by Respondent receiving the entire estate in contrast to Testatrix's previous Will leaving her estate to her three (3) children in equal shares. There was ample motive and opportunity for the Respondent to unduly influence his mother. Respondent has a very limited income and money undoubtedly provides a motive. Further, the evidence shows that Respondent was living with Testatrix and made himself the sole caretaker of the Testatrix, which provided him ample opportunity to unduly influence his mother. Various instances were identified where the other children and friends of the Testatrix were not permitted to speak to her on the telephone or to be alone with her in the home. Similar to Byrd, the Testatrix's conversations were monitored by the Respondent and he prevented her from seeing family members and friends; the Respondent controlled the Testatrix's finances; and instrumented the making of the new Will. Id. The evidence further shows there was both a confidential and fiduciary relationship between the Respondent and the Testatrix, which raises the presumption of undue influence. Respondent was not only his mother's Power of Attorney, he also had a fiduciary relationship with his mother, as evidenced by his living in the home, handling her affairs, and having his name added

to his mother's bank account. Finally, the Testatrix was susceptible to influence as she was isolated and completely reliant on Respondent based upon his refusal to allow her other children to assist in her care or her finances. Further, Respondent took her to change her Will days after her husband died and the evidence shows that the Testatrix was physically and mentally distraught immediately prior to the execution of the new Will.

Although the evidence shows the Respondent was not physically present in the room with the Testatrix and Attorney Klok during the execution of the new Will, the circumstances surrounding the execution clearly indicate the Will was the product of the Respondent and that the Testatrix felt that she "had no choice" but to execute a new Will. The new Will was not sealed when the Testatrix left the attorney's office and the Respondent had unfettered access to this Will after its execution. Further, the Testatrix was not provided with an opportunity to change the July 3, 2013 Will after its execution. The undisputed evidence shows that she was reliant on the Respondent for everything, including her transportation.

CONCLUSION

Based on the file, the exhibits entered into evidence during the trial, the testimony, and the arguments presented by counsel, the Court finds by clear and convincing evidence that the Testatrix was under undue influence when she made and executed the July 3, 2013 Will, and it is therefore invalid.

Based upon the foregoing, it is now, hereby:

ORDERED, ADJUDGED, AND DECREED that the evidence in this case is sufficient to prove that Helen B. Gunnells' Last Will & Testament dated July 3, 2013 was the product of undue influence exerted upon the Testatrix by the Respondent, Glenn A. Gunnells; and it is further

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ORDERED, ADJUDGED, AND DECREED that the Last Will & Testament dated July 3, 2013 is null and void; and it is further

ORDERED, ADJUDGED, AND DECREED that Helen B. Gunnells' Last Will & Testament dated November 7, 2006 is of full force and effect; and it is further

ORDERED, ADJUDGED, AND DECREED that Glenn A. Gunnells has ten (10) days from his receipt of this Order to contest this Order by notifying the Court in writing, with proper filings, indicating his intent to appeal.

AND IT IS SO ORDERED!

IRVIN G. CONDON
Judge of Probate
County of Charleston

Attest: A True Copy

Clerk Probate Court
Charleston County, South Carolina

This 12th day of May, 2016
Charleston, South Carolina.