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OPINION OF THE CONNECTICUT PROBATE COURT

IN RE: THE ESTATE OF CHRISTOPHER BYRON, DECEASED

PROBATE COURT, WESTPORT/WESTON DISTRICT

FEBRUARY 28, 2018

EDITOR'S SUMMARY & HEADNOTES

Testator left his entire Estate, in equal shares, to his brother and Petitioner, a woman referred to in his Will as his “caregiver.” Testator’s only heirs at law were his three adult children, one of whom objected to the admission of the Will on the grounds of undue influence by Petitioner as well as incapacity caused by alcoholism. Petitioner initially came into Testator’s life as his dog walker, but she shortly became his “caregiver,” despite not having any medical training or expertise with addiction or alcoholism.

Petitioner argued that Testator bequeathed half of his Estate to her because he was grateful for her help. She also asserted that she did not have a fiduciary relationship with Testator in the traditional sense of the term. Petitioner argued that Testator was aware of what he was doing and decided on his own accord to disinherit his children because he was angry at them for abandoning him.

The Court found that though Petitioner and Testator did not have a fiduciary relationship, their relationship was special, and required the heightened standard of proof on the part of Petitioner to disprove by clear and convincing evidence that she exerted undue influence upon Testator. Ultimately, the Court found that Testator was of sound mind during the signing of the Will. Testator controlled his own agenda, continued to communicate with those close to him, and made the decision to disinherit his children on his own.

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1. Wills: Testamentary Capacity

Pursuant to Conn. Gen. Stat. § 45a-250, any person eighteen years of age or older, and of sound mind, may dispose of his estate by will.

2. Wills: Execution

Pursuant to Conn. Gen Stat. § 45a-251, a will or codicil shall not be valid to pass any property unless it is in writing, subscribed by the testator and attested by two witnesses, each of them subscribing in the testator's presence.

3. Wills: Testamentary Capacity

Testamentary capacity is a requirement that the testator have mind and memory sound enough to know and understand the business upon which he is engaged at the time of the execution of the will.

4. Testamentary Capacity: Burden of Proof

The proponent of the will must establish by a preponderance of the evidence the issues of due execution and testamentary capacity. The proponent is entitled to a presumption of capacity after available attesting witnesses have been produced and examined upon due execution and testamentary capacity, but, testamentary capacity being a statutory issue, the burden of proof remains on the proponent.

5. Wills: Contesting

Those contesting the admission of a will have the burden of proof in establishing issues of undue influence, fraud, or mistake as matters in avoidance of the will.

6. Undue Influence: Shifting of Burden of Proof

If a confidential or fiduciary relationship is proven, then the burden of proving fair dealing or the burden of showing the absence of undue influence shifts to the defendant or the fiduciary, and that burden must be sustained by clear and convincing evidence.

7. Fiduciary Relationship: Creation Of

The factors to be considered in determining whether a fiduciary relationship exists are characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill, or expertise and is under a duty to represent the other.

8. Undue Influence: Burden of Proof

Unlike in a confidential or fiduciary relationship, the burden of proof is upon the party seeking to establish undue influence or lack of capacity. If a confidential or fiduciary relationship has been established, the burden of proof shifts to the party who had the relationship and the party must show that there was no undue influence.

9. Undue Influence: Generally

The degree of influence necessary to be exerted over the mind of the testator to render it improper is such that it induces the testator to act contrary to his wishes, and to make a different will and disposition of his estate from what he would have done if left entirely to his own discretion and judgment.

10. Undue Influence: Circumstantial Evidence

The existence and exercise of such undue influence is not often susceptible of direct proof. It is shown by all the surrounding facts and circumstances. Undue influence may be inferred as a fact from all the facts and circumstances that are in evidence in the case, even if there be no direct and positive proof of the existence and exercise of such an influence.

11. Undue Influence: Elements Of

There are four elements of undue influence: (1) a person who is subject to influence; (2) an opportunity to exert undue influence; (3) a disposition to exert undue influence; and (4) a result indicating undue influence.

12. Undue Influence: Standards Of

The correct standard of proof is one of “clear and convincing evidence” once the court finds that a fiduciary or special, confidential relationship exists between the testator and the beneficiary.

13. Fiduciary: Representation

A fiduciary or confidential relationship is characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of the other.

Opinion

Christopher Byron’s Last Will and Testament (“Will”) dated July 29, 2016, was objected to on the grounds of incapacity and undue influence. The objector is his daughter, Janalexis Byron.

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Procedural History

Christopher Byron (“Chris” or “Testator”) died on January 7, 2017 at the age of seventy-two. On January 19, 2017, Marissa Santangelo (“Marissa” or “Petitioner”) filed a petition to probate his Will. The Will was dated July 29, 2016. The Will left Testator’s entire Estate to two people in equal shares: Kevin Byron, his brother, and Marissa, referred to in the Will as “my caregiver.” Marissa was named Executrix. Testator’s three adult children—his only heirs at law—are Janalexis Byron, Nicholas Byron, and Katherine Byron Poats. One daughter, Janalexis, objected to admission of the Will on the grounds of incapacity due to conditions caused by alcoholism, as well as undue influence.

A hearing was held on March 31, 2017. At the hearing, Petitioner and her counsel, Peter Somma, Jr., presented witnesses who testified to the formalities of the Will signing and introduced into evidence a videotape (“Video”) showing the signing. The Video was admitted without objection.

On April 5, 2017, the Court issued a decree finding that the requirements of Connecticut General Statutes section 45a-251 were met, since the Will was in writing, subscribed by Testator, and attested by two witnesses, each of them subscribing in Testator’s presence. However, the Court also found that there were indicia in the case which gave rise to the claim of undue influence and incapacity. Janalexis requested that the Court appoint a temporary administrator, other than Petitioner, and be afforded the opportunity to perform discovery in advance of a full trial on the admission of the Will.

On April 5, 2017, the Court appointed Robert Grant, Esq. as Temporary Administrator of the Estate to create an inventory, pay certain bills, and report back to the Court on whether there had been any inappropriate conduct on the part of Petitioner when she acted pursuant to a power of attorney granted by Testator.

On May 22, 2017, Mr. Grant submitted a status report to the Court. The Estate consisted of a house located at 22 Old Kings Highway, Weston, Connecticut (“House”), which was valued at \$749,000.00, less the value of a reverse mortgage of approximately \$151,000.00. There was a checking account in the approximate amount of \$30,000.00. Testator also had a retirement account valued at \$80,000.00, which named Petitioner and Kevin beneficiaries, as a non-probate asset. There were some debts totaling approximately \$30,000.00. Mr. Grant also contacted the IRS to resolve a \$10,000.00 liability on Testator’s 2015 tax return.

At a further hearing, Mr. Grant reported to the Court that he found no evidence of wrongdoing on the part of Petitioner as an agent pursuant to the power of attorney. By decree dated June 26, 2017, the Court removed Mr. Grant as Temporary Administrator and substituted him with Petitioner as Temporary Administratrix. Petitioner was required to post bond in the amount of \$25,000.00, and all Estate funds were to be placed in the Interest on Lawyers

Trust Account (“IOLTA”) of Mr. Somma.

A four-day trial on the matter of Janalexis’s claims of incapacity and undue influence was held in September of 2017. Each party received time to file post-closing briefs, which included case law. The trial was recorded by a stenographer as stipulated by the parties, and the record has been preserved for appeal.

Summary

Chris was a man of many contradictions. He was a brilliant writer and journalist, yet he never read his own Will. For years he professed to love his wife and children, yet allowed them to walk out of his life because of his addiction to alcohol. During the daytime, Chris was the consummate gentleman, considerate and mannered. At night, Chris was unable to resist his craving for alcohol, often falling down drunk or found in bed fully clothed with his shoes on.

Approximately nine months before Chris signed his Will, a woman named Marissa came into his life. First she was introduced as a dog walker. Within a short time, Marissa became his “caregiver,” bill payer, dog walker, file organizer, and purchasing agent. Marissa soon became a full-time employee, and although she did not sleep at the House, her daily services were greatly relied upon by Chris. Most importantly to Chris, Marissa facilitated the regular and continual delivery of vodka, delivered right to the front doorstep.

In this Will contest, a disinherited daughter, Janalexis, argues that her father was not of sound mind while executing his Will due to his alcoholism. She further argues that Marissa exercised undue influence over her father. Moreover, Janalexis asserts that the relationship between Marissa and Chris was a fiduciary one, which meant that Marissa owed Chris a much higher duty of care than that owed by an average person. This has significance in the law regarding the burden of proof to prove one’s case. Marissa argues that she was not a fiduciary, Chris knew exactly what he was doing, and she was the innocent beneficiary of Chris’s largesse, given his estrangement with his family and his anger at having been abandoned by them. She argues that Chris gave her his money because he was grateful to her.

The Video of the signing of the Will was reviewed again at trial.

Each side presented expert testimony and witnesses who had been friendly with Chris and who could attest to his state of mind and motive. Janalexis also offered testimony from another woman who had taken care of Chris.

The Court reviewed the trial transcript, the cases submitted, and the Video itself numerous times. We begin with the following salient facts.

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The Videotape

A videotape of a will signing allows a court, as well as experts and others, to view the event firsthand, or at least as best as a camera will allow. The Court finds relevant the following facts seen in the Video:

The Will was drafted by and the signing of the Will was supervised by Mr. Somma, an attorney with fifty-five years of experience. Mr. Somma testified that in all those years, having drafted hundreds of wills, he could count on one hand the number of times someone had disinherited his children. *See* Transcript of Trial Day 1 at 16, Christopher Byron, No. PD5017-0028 (September 2017). Therefore, Mr. Somma decided to videotape the signing, a technique he rarely used. He asked his paralegal to operate the camera.

Mr. Somma met Chris for the first time on the day of the Will signing. At no time did the attorney ever speak to his client alone, either by telephone or in person during the one day in which they met for the first time.

Chris had not read the Will before he was presented with it for signature. The Will had been emailed to Marissa on July 21, 2016 (Exhibit A), but she had not read it to Chris. Chris did not read the Will at the signing.

Mr. Somma completely and accurately summarized the contents of the Will to Chris during the signing. Chris nodded or voiced his assent throughout. He signed the Will without hesitation. Based on the Video, Chris appeared to this Judge to understand everything said to him.

During the entire Will signing Marissa was present. For most of the time she was standing at Chris's elbow, hovering. For a short time she left to fetch something Chris has asked for.

Looking at the Video, the relationship between Chris and Marissa was one of master and servant. He orders her around, not the opposite.

Chris had no apparent signs of intoxication. He did have a slight hand tremor but this Court is not inclined to infer an impaired state of mind from that. He did not slur any words. He sat up straight throughout the ceremony.

After the Will was signed, Chris was asked to sign a power of attorney, making Marissa his agent. He refused. Marissa then whispered to him, "What's the solution?" Chris ignored her. The power of attorney was not signed.

There did not appear to be any coercion of any kind during the ceremony.

Facts

Chris was a very accomplished writer and journalist. Highly educated, he had attended Columbia Law School and was known for his meticulous attention to detail in his work. He was married for approximately forty years to

Maria Byron (“Maria”) before he divorced her. They had three children together: Janalexis, Kate, and Nicholas. Janalexis is an attorney, Kate is a journalist, and Nicholas is an artist. Testimony revealed that Chris had always taken great pride in his children’s accomplishments.

Chris developed an addiction to alcohol, which greatly impaired his closest relationships. Janalexis testified, “When I was young, he drank socially [A]s it progressed along, he would drink too much Then he would drink and do things that were kind of embarrassing.” Transcript of Trial Day 1 at 67. Janalexis testified that her father had trouble keeping jobs, not only because of his drinking but because of what she believed was his narcissistic personality and his “combative relationships with his editors.” Transcript of Trial Day 1 at 67-68. Janalexis thought her father “was susceptible to influence from other people who made him feel important and made him feel appreciated and elevated.” Transcript of Trial Day 1 at 69. She stated that in the last two years of his life, her father was particularly susceptible to “anyone who wanted to be nice to him because his family had said, ‘[w]e can’t support the way you’re living anymore.’” Transcript of Trial Day 1 at 70.

On the night before Kate’s college graduation in 2005, Chris left the family, checked himself into a hotel, drank an entire bottle of bourbon, and showed up at graduation confused and crying. Janalexis said that Kate’s college graduation turned out to be one of the worst days of Kate’s life because of her father’s behavior. *See* Transcript of Trial Day 1 at 72.

When Kate became engaged in 2009, she had to specifically instruct her father not to speak at all in front of guests at the engagement party. And later, when Kate was getting married, Kate told her father that he was unwelcome to walk her down the aisle. That was a particularly devastating blow to Chris.

Janalexis testified that Chris’s relationship with his three children varied depending on their personalities. Janalexis herself believed that she was the strongest one of the three in standing up to what she deemed to be abusive behavior over the years. She testified that her brother Nick is “a very passive person . . . trying to figure out his career.” Transcript of Trial Day 1 at 75. Her sister Kate was eight months pregnant at the time of trial and chose not to “be an active participant because of the stress.” Transcript of Trial Day 1 at 76.

Chris’s alcoholism took a great toll on his marriage to Maria. Maria’s parents lived in Greece and when she would periodically visit them Chris would accuse her of abandoning him. Relevant to Chris’s overall state of mind, Maria’s parents had paid for all three children’s private school educations and their first marital home. Chris was under the impression that his in-laws were very rich and that his children would be provided for in the way of inheritance from their mother’s side of the family, no matter what he himself would leave them.

After tumultuous periods of ultimatums and stress, Maria consulted a divorce attorney. When Chris discovered that Maria had gone to an attorney, he

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went to his own divorce attorney and sued for divorce as the plaintiff. This was in 2015. On June 7, 2016, Maria and Chris were officially divorced. *See* Transcript of Trial Day 1 at 78.

David Rubin, Chris's divorce attorney, testified at trial as to Chris's intentions with respect to property he would retain after the divorce. Mr. Rubin produced a letter written to him in connection with the divorce, dated March 9, 2016, attached to which was an email written by Chris upon his receipt of the letter. Both the letter and email were admitted as Exhibit 2 ("Rubin Letter"). In the Rubin Letter, Maria's attorney outlines the terms of a divorce settlement that Maria would agree to. The pertinent provision states: "Chris agrees to create a Last Will and Testament by which he gives and devises his interest in the former marital home and the contents thereof to his three children in equal shares *per capita*."

When Chris received the Rubin Letter, he wrote an email to Mr. Rubin, which the Court finds to be material and highly relevant to this case. The email is as follows, with the emphasis as found in the email:

3/11/2016 Dave, hi. So that we are clear:

I will NEVER agree not to publish Fire & Rain, full-stop and period. I have two publishers who want to take it to market, and I'm wrapping it up day and night as we talk. There is not a single libelous thing in that book and it is going to be published.

I will NEVER deed to any of my three children any share of 22 Old Kings Highway, Weston, CT, period. They contributed NOTHING to the development of this place and generally they just complained.

Everything else we can talk about, CB.

Transcript of Trial Day 2 at 19.

Of significance is the fact that when Chris died, his only valuable probate asset was the House referred to in the Rubin Letter. This is the only asset that is the actual subject of this litigation, as the liquid funds have already been spent on debts.

Mr. Rubin testified that he knew that Chris was an alcoholic because Chris had told him he was. Yet Mr. Rubin never doubted that Chris was of sound mind during his divorce negotiations. Mr. Rubin also confirmed that Chris was under the impression that his wife's family was quite wealthy and that Mr. Rubin was under that impression as well. *See* Transcript of Trial Day 2 at 21. Mr. Rubin said that Chris was devastated that his children had abandoned him after their intervention to stop his drinking. He said that Chris was completely devastated when his daughter, Kate, got married at the Inn at Longshore and an

uncle from Greece walked her down the aisle instead of her father. Chris told his lawyer that he had been supportive of his children as adults, even giving one child \$300,000.00 to buy a condo. In Mr. Rubin's words, Chris felt both "abandoned and persecuted." Transcript of Trial Day 2 at 23. In fact, Chris was adamant with Mr. Rubin regarding the House, even telling him "if we need to go [to] trial over that, we'll go to trial over it, whatever." Transcript of Trial Day 2 at 29. With respect to his relationship with Marissa, Chris referred to her as "his assistant" in all dealings with Mr. Rubin. Transcript of Trial Day 2 at 47.

Mr. Rubin summed up the general state of mind of his client: "I mean, Chris wanted what Chris wanted, not what anybody else didn't want." Transcript of Trial Day 2 at 41. This was to be a recurrent theme throughout the trial, echoed by many friends of Chris.

By the time Chris had written this email to Mr. Rubin, it had been quite some time since any of his children had come to see him.

In late February of 2015, the family hired an interventionist, and all three children, Maria, and the interventionist went to the House to confront Chris about his alcohol use. On February 27, 2015, Chris reluctantly agreed to go to a thirty-day rehab in Pennsylvania. *See* Transcript of Trial Day 1 at 82. Each family member wrote Chris a letter ending with a threat that if he did not finish the thirty-day rehab, such member of the family would end contact with him. Janalexis testified that they were told by the interventionist that it was essential to choose a consequence they would carry out, because otherwise, that would undermine the treatment for the patient. *See* Transcript of Trial Day 1 at 87.

Chris stayed in Pennsylvania for only three days. He neither completed detoxification, nor entered rehabilitation. He called Janalexis, begging her to get him out of there. He was miserable and wanted to leave. He was furious with his family because he had no money, having inadvertently cancelled all his own credit cards. No one would take him home. Chris left anyway, hitchhiking home from Pennsylvania to Connecticut. Once home in Weston, the family again attempted to get him treatment, and Chris entered a local mental health hospital for a few days.

Janalexis visited Chris during his hospital stay in April of 2015. When she told her father that he needed to get help, he told her to "eff off." Whereupon, Janalexis testified, "I had some choice words to him, and I left." Transcript of Trial Day 1 at 115. Chris re-entered another hospital, this time for ten days. Then he left. This was during the beginning of divorce proceedings; Janalexis speculated her father was trying to stay sober to prove to Maria that he could. Unfortunately, after approximately three months, Chris began drinking again. Janalexis was told by her father's physicians, "you've got to stick with the tough love," which was interpreted by Janalexis and the family to mean that they were to refrain from contact until and unless Chris would re-engage in rehab treatment. *See* Transcript of Trial Day 1 at 118.

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Janalexis last saw her father on the day he died, after not having seen him for almost two years, from April of 2015 to January of 2017. Chris's Alcoholics Anonymous ("AA") sponsor had called and told her to hurry to the hospital. The family gathered there for a few days and were able to have some meaningful conversations before Chris drifted away.

Janalexis first became aware that Marissa had entered her father's life in November of 2015, when Marissa delivered court documents to her mother on her father's behalf. When all were gathered at the hospital, Marissa was identified as the "health care representative." This designation felt weird to the family, but as Janalexis said "we weren't really in a position to do anything about it." Transcript of Trial Day 1 at 127.

Janalexis testified that "it got difficult after he died, and [Marissa] started trying to exclude us from having anything to do with who would speak at the funeral . . . and she insisted on a priest [even though] we know he wouldn't want this." Transcript of Trial Day 1 at 125. Relations between the Byron family and Marissa deteriorated after Marissa sent them an email, which Janalexis recalled and paraphrased as "[y]ou lost the ability to have any say in what goes on with your father's funeral when you and the rest of the family abandoned him." Transcript of Trial Day 1 at 128.

Notably, at no time did Marissa herself ever block the children from coming to see their father. There was no testimony whatsoever that any attempt made by the children to contact their father was thwarted in any way. Apparently there were no such attempts. Contact was severed.

Upon cross-examination, Janalexis admitted that her father was particularly hurt when he was invited and then disinvited to Kate's wedding in 2015. *See* Transcript of Trial Day 1 at 143. Janalexis also said that she would not have contested the Will if it had merely disinherited the children in favor of her uncle Kevin, or even a close friend. She contested the Will because she found this bequest so uncharacteristic of her father, who was normally such a private man who did not open himself to strangers, and because based on testimony from Marissa's deposition, she believed that Marissa had orchestrated the entire Will process to benefit herself. *See* Transcript of Trial Day 1 at 147.

Testimony revealed that Chris was not merely angry at his children for abandoning him, but he was also very angry at his former wife for trying to impoverish him. Just prior to the divorce, Maria had taken out a home equity line on their marital residence and removed over four hundred thousand dollars in equity. Although Chris was successful in having that money returned to the bank, he was angry at his daughter Janalexis, the lawyer in the family, for assisting Maria in obtaining the money. He felt his former wife had turned his children against him. *See* Transcript of Trial Day 1 at 154.

When asked by the Court to speculate on the reason Chris bequeathed his money to Marissa, Janalexis answered that her best guess was that "I think it

was intended to hurt my mother.” Transcript of Trial Day 1 at 157.

Marissa admitted that she was not a caregiver in the sense of having any medical training. In fact, her background is in selling insurance and stocks, and as a compliance officer. Since 2007, when she had an auto accident, Marissa has been earning a living in canine care. Other than her CPR certification, Marissa had no formal medical training of any kind. Marissa claimed to not have had any particular expertise with addiction or alcoholism, but the Court finds it significant that her son had a history of drug addiction and that she often attended AA meetings. First she was hired as a dog walker for Love Your Pet, and within two months, Marissa was working for Chris full-time at a wage of \$30.00 per hour, earning approximately \$900.00 per week.

Marissa testified that she read Chris’s emails for him and that he had trouble reading with his own glasses, which were scratched. Later, his prescription changed. Chris came to rely on Marissa to pay his bills, get him his food, and do lots of other chores that he would assign to her. Marissa attended occasional AA meetings with Chris because he asked her to accompany him there. *See* Transcript of Trial Day 1 at 184.

Marissa never spent the night at Chris’s residence. Her testimony was that the relationship was one where “he was in control and the boss.” Transcript of Trial Day 1 at 185. If Marissa would suggest they go to the doctor, he would say, “[i]f you keep saying that, you can just go home.” Transcript of Trial 1 at 186. On one occasion, Marissa called police anyway, despite Chris threatening to fire her. On that occasion, he had fallen and hit his head. Marissa said that Chris would drink at night, and she would find him in the morning. On that particular morning, he explained that he had fallen the night before and was not getting up. Marissa testified that she never saw Chris drink in front of her, except one time, when he quickly hid the liquor and pretended that it never happened. It took her a few months to realize that Chris was an alcoholic who functioned as a secret drinker, always alone.

The divorce occurred on June 6, 2016. Marissa said that in connection with the divorce, Chris had to change designations to his Individual Retirement Account (“IRA”), and so he made his brother, Kevin, and Marissa, each fifty percent beneficiaries of approximately \$100,000.00. As far as the Will, Marissa testified that she did not bring up the subject, but that when Chris raised it, she responded:

I said that it was a pretty bold move. And that, you know, something to think about, and not take lightly. He was adamant about it. I can’t underscore the word ‘adamant’ enough. And he would relay to me his sense of hurt, abandonment. ‘They don’t care about me. They have no interest in me’ you know, ‘they never reply to my emails, they don’t reply to my phone calls. They don’t care, they don’t deserve it.’

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Transcript of Trial Day 1 at 195.

When questioned by the Court as to why she thought Chris left her the money, Marissa said “I think he felt grateful to me.” Transcript of Trial Day 1 at 197. She said that in rehab, he said “‘when we get out of here, I’m going to take you on vacation.’ Every day he’d hold my hand and say ‘thank you. I really appreciate your help.’” Transcript of Trial Day 1 at 198. She admitted that Chris had loved his wife very much, but stated that he had been deeply hurt by her. Marissa denied that she was in any particular financial peril herself, claiming that she had an eight hundred credit score, owned her own home, and was not indebted to anyone.

On the matter of the Will, Marissa admitted that she had contacted Mr. Somma. Marissa stated that she did not tell Mr. Somma that Chris was an alcoholic and she thought she would be fired if she did so. But she had made the phone call and she had been the one speaking on the phone. Marissa was the person to whom Mr. Somma sent the emailed documents, even though other evidence revealed that Chris did have his own email and used it frequently to communicate with friends. Marissa claimed that Chris was present in the room during the call but could not specifically recall whether Chris had participated. She said the printer was not working in Chris’s house, so she had the attorney email the Will to her, and she printed it and brought it to the Chris.

In testimony, Marissa claimed that she had read the Will and reviewed it with Chris and that he had said “‘[i]t’s you and Kevin, right? And I said, ‘Yeah.’ And he goes ‘not the kids?’ and I said ‘Yeah.’ And he said ‘All right.’ And that was it.” Transcript of Trial Day 1 at 205.

The Court notes that this testimony contradicts the Video, in which Marissa appears surprised when asked by Mr. Somma to confirm that Chris had reviewed the Will with her prior to the signing. In fact, Marissa said “No. I just reviewed it. Was I supposed to [show it to him]?” The Court finds the Video to be a more credible history of these facts than Marissa’s later testimony on this issue.

On the issue of Marissa’s role with respect to Chris’s alcoholism, the testimony was contradictory. Marissa admitted that she would have been fired if she told Chris that she would not assist him in any way to get his alcohol. Marissa stated that she felt maternal towards Chris at times, yet on the subject of his medical appointments and general health, she testified “I was not his parent. He was not my child.” Transcript of Trial Day 1 at 234. Marissa said Chris knew she supported sobriety, offering to take him to as many meetings as he would attend. She denied ordering any liquor for Chris. In her words “[h]e wouldn’t dare” ask her to do such a thing. Nonetheless, Marissa knew that he was buying liquor when she saw the American Express (“Amex”) credit card bills. She claims that she suggested cancelling the Amex card in order to make it harder for him to order liquor, but Chris refused. She continued to insist that “it wasn’t her place” to push the issue. Transcript of Trial Day 1 at 212.

Marissa's testimony that she refused to help Chris obtain his liquor was contradicted by testimony given by Robert Dilenschneider, Chris's friend. Mr. Dilenschneider testified that at the funeral Marissa told him, "[t]here was . . . vodka . . . on the front stoop. I took it in for him." Transcript of Trial Day 4 at 65. Mr. Dilenschneider thought "you just don't do that." Mr. Dilenschneider recalled Marissa stating, "I went and got the liquor for him." Transcript of Trial Day 4 at 70. He thought the entire conversation was "tasteless" and remembered being shocked by it, having immediately told his wife about it.

The Court is persuaded that Marissa did assist Chris in obtaining his liquor. She may not have ordered it, but she paid for it and carried it inside.

Marissa stated that she took the responsibility of being Chris's health care representative very seriously. *See* Transcript of Trial Day 1 at 210. She claimed that at various times she would make doctor appointments for Chris but he would cancel them. Marissa said

[w]e had visiting nurses in January and February, and he discharged them. After rehab -- after the Westport Rehab complex, they ordered 24-hour care [But] he wouldn't let them in the door. And I called a social worker . . . at Westport Rehab complex. 'What can we do now?'

Transcript of Trial Day 4 at 233-34. Marissa claims she was told to call adult protective services and did so. But Chris would not allow the 24-hour care. The Court notes that the Westport Rehab stay occurred in the fall of 2016, a few months after Chris signed the Will. *See* Transcript of Trial Day 4 at 234.

On the issue of Chris's marked deterioration during the spring of 2016, Marissa claimed that Chris's emotional state played a large role because he lost his wife in the divorce and his children had abandoned him. *See* Transcript of Trial Day 4 at 241. In addition to this, he had gastrointestinal problems that he ignored, and cancelled scheduled doctor appointments. Nonetheless, between April and August 2016, there were no falls or hospital incidents. Marissa said it was a period of relative sobriety, meaning Chris was a little more sober before he signed the Will than afterwards. *See* Transcript of Trial Day 4 at 257.

When Marissa was asked why she thought Chris gave her half the Estate, she said

I think he did it because he was appreciative of the care, the compassion and the company. He would call me at night, you know, to talk on the phone. Or when he got hurt at night, he'd call me and I'd get in my car and I'd go help him.

Transcript of Trial Day 4 at 273.

Petitioner presented Susan Antilla to testify to Chris's state of mind and motive for disinheriting his children. Ms. Antilla, a colleague in journalism, had

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great respect for Chris's abilities. She testified that she heard from Chris in May 2016, after he had read a piece of her work, and had emailed back to her, "[y]ou rock, girl." Transcript of Trial Day 2 at 145. In May, Chris wrote to Ms. Antilla, "[y]ou should meet Marissa Santangelo who is working for me" Transcript of Trial Day 2 at 147. Ms. Antilla thought that Chris was grateful to Marissa for taking care of him. When asked by the Court, "[d]id [Marissa] ever tell him what to do, do you think?" Susan Antilla responded: "I don't think that anybody ever told Chris what to do. But, I mean, it was more like he would tell her what he needed and then she would do it." Transcript of Trial Day 2 at 148. Later, she repeated in testimony "Chris didn't do things he didn't want to do." Transcript of Trial Day 2 at 153.

Ms. Antilla said that Chris would call her sobbing, saying, "[m]y children abandoned me." Transcript of Trial Day 2 at 150. She was not surprised that Chris left half his Estate to his brother and the other half to Marissa because "I think the only reason he had any dignity in his life in the last year or so was because of her; because she took care of him." Transcript of Trial Day 2 at 151.

Ms. Antilla testified that her correspondence with Chris continued through September of 2016, past the date of the Will signing, and that those were complex conversations. She last saw Chris at the hospital at the end of his life. Ms. Antilla had no doubt that Chris was of complete sound mind when he signed his Will, despite his alcoholism. Another friend of Chris's, who visited Chris and cooked for him regularly, also testified that Chris was completely capable of knowing his own mind in July of 2016.

Janalexis presented two of Chris's friends, Robert Dilenschneider and Susan Granger, who essentially confirmed Petitioner's testimony as to Chris's mental determination and motives.

Mr. Dilenschneider testified that he knew Chris for forty years and spoke to him more frequently as he neared the end of his life. In all that time, Mr. Dilenschneider did not believe Chris was ever intoxicated while they spoke. Mr. Dilenschneider testified that Chris was "bent out of shape" and "extremely upset" after he was asked not to attend his daughter's wedding. And he also testified that Chris had "a deep affection for his brother." Transcript of Trial Day 4 at 54. On the question of family, Mr. Dilenschneider testified that "it became an increasingly tortured experience where he used to say he could never understand why he broke up with the family or the family broke up with him." Transcript of Trial Day 4 at 59. He also testified that he was "very surprised" to learn the primary cause of death was alcoholism. The Court finds this testimony to be credible, buttressing Petitioner's argument that Chris was a skilled secret drinker with an enormous capacity to compensate for the deficits caused by alcoholism.

In describing Chris's personality, Mr. Dilenschneider said Chris was an "in your face" kind of guy; he "can be a pain in the keister." Transcript of Trial Day 4 at 66. Notably, Mr. Dilenschneider said Chris's personality never

changed, and he saw no diminishment in Chris's ability to talk politics throughout 2016, well after the Will was signed. *See* Transcript of Trial Day 4 at 66. Mr. Dilenschneider did not view the Videotape.

Susan Granger testified that she and her husband had been very close friends with Chris and Maria, but Chris never drank in their presence. She had not realized the extent of his alcoholism until Maria left him. In the summer of 2016, Chris was distraught, calling Ms. Granger at all hours of the day and night, until Ms. Granger felt a boundary had been crossed and severed contact with him. Ms. Granger reiterated how angry Chris was at being disinvited to Kate's wedding. After viewing the Video, Ms. Granger was shocked to see how severely Chris's health had deteriorated. *See* Transcript of Trial Day 4 at 113. The Court concludes that this testimony reinforces Petitioner's claim as to motive and state of mind.

Kevin Byron, Chris's brother, also testified. The last time Kevin saw Chris was in 2015, when Kevin came down for Kate's wedding and stopped in to see Chris. Kevin was unable to visit Chris in the hospital as there was a blizzard in Maine where he resides. Kevin said that on the matter of the Will, he was not taking a position pro or con. He said that he was there on behalf of the children.

One day Chris called Kevin on the phone and told him that half of the Estate was "'going to you,' meaning me, and 'half is going to the lady who's been helping me out here.'" Transcript of Trial Day 4 at 81. Kevin said that he heard from Chris that Maria was divorcing him because "she thinks I drink too much." Kevin told him "'I've never seen you drink for years.' So this thing was a complete shock, you know?" Transcript of Trial Day 4 at 83. Kevin believed that Chris made out his Will the way he did because Chris was so angry about being disinvited to Kate's wedding. Transcript of Trial Day 4 at 84. In Kevin's words, "[w]hen Chris got mad, he got mad. And . . . it didn't matter whether he was, you know, drinking or not." Transcript of Trial Day 4 at 84. Kevin also related to the Court the family's very sad history with alcoholism, which ruined both of their parents' lives.

The Court concludes from Kevin's testimony that Chris was familiar with the contents of the Will and intended for the Will to be written the way it was written. Based on what the Court gathered from all witnesses, if Chris was unhappy about something, he let everybody know. Marissa never prevented him from contacting his friends, and indeed he did so frequently. The fact that Chris never complained about his Will after it was signed is evidence to this Court that Chris was satisfied with it.

Mr. Somma testified. The Court asked Mr. Somma if he asked his client why he had disinherited his children. Mr. Somma's response was that he did not ask because he did not want to put it in the public record. When asked by this Judge why he did not meet with his client alone, Mr. Somma answered that he did not think it was necessary. In Mr. Somma's view, Chris was "absolutely fine." The Court reminded Mr. Somma that on the Video, when he asked

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Marissa whether Chris reviewed his Will, she replied: “Oh no. I didn’t think I was supposed to put it in front of him. I reviewed it.”

When this Court asked Mr. Somma why he then did not have any private conversation with Chris when he had not known his client beforehand, and was aware his client was disinheriting his children in favor of his caretaker, he answered that

I was very confident in what I did and how I prepared it in accordance with his instructions He was absolutely compos mentis. He was absolutely clear what his decisions and what his mind—how his mind was made up. I’ve later learned - - but that’s neither here nor there. At the time he put the pen to the paper, he was solid.

Transcript of Trial Day 1 at 42. “He had the words at his command. When I was telling him how to sign or where to sign, he says ‘wait a minute. I didn’t finish my question.’” Transcript of Trial Day 1 at 55. Mr. Somma further said that after the Will signing, Chris engaged him in conversation about some of his ancestors, his household furnishings, and his past.

After the Will was signed, Mr. Somma represented Marissa as her attorney. He prepared a will for her, and the law firm of Somma & Somma is defending her in this action and represents the Estate.

Angela Ramirez, a paralegal employed by Mr. Somma, witnessed the Will signing and operated the device that created the Video. She testified that there was no smell of alcohol on Chris’s breath. She said that after the signing, Chris walked around the House and gave her a tour, describing some of his home furnishings and art. Chris did not appear confused and kept normal eye contact. Furthermore, right after she left, she returned to use the bathroom, and Chris opened the door for her and said goodbye again.

Janalexis presented the testimony of Erica Reader, another person who helped care for Chris during the summer of 2016. The Court found her testimony to be passionate, credible, and occasionally disturbing. Ms. Reader testified that she “adored” Chris, who was “fascinating and brilliant . . . [but] an alcoholic.” Transcript of Trial Day 4 at 132. Ms. Reader had been introduced to Chris by Marissa, first as someone to assist with the dogs, during May of 2016. Ms. Reader had met Marissa at AA. Transcript of Trial Day 4 at 129. Marissa had told Ms. Reader that Chris was “an alcoholic, that he was wealthy . . . that he wasn’t taking care of himself physically . . . [not] paying his bills, eating . . . not in good shape at all . . . wasn’t really functioning.” Transcript of Trial Day 4 at 129.

Ms. Reader was not happy about Marissa’s behavior at all. She said that Marissa cared about the money she was earning more than she cared about Chris: “If she would have taken care of Chris as well as she took care of his

money, I think he would still be alive today.” Transcript of Trial Day 4 at 133. Ms. Reader stated that she was “repulsed” by Marissa’s attorney and repulsed that Marissa would take the money offered to her. She called it a “character flaw” and said if the money was offered to her, she wouldn’t take it, “[n]ot when a man had his own children.” Transcript of Trial Day 4 at 137.

Ms. Reader believed that Marissa was helping Chris to stay drunk when he desperately needed medical care. She testified that Marissa would describe herself as “a sober coach.” Transcript of Trial Day 4 at 147. And when confronted by Ms. Reader about helping Chris, Marissa would tell her friend that she could not afford to lose the job. In her words, Marissa “got paid well . . . she got to eat her Lindt chocolate, she did her work and did a good job of paying bills, okay.” Transcript of Trial Day 4 at 161. However, Ms. Reader did not believe Marissa deserved to get any other money from Chris, particularly because Chris was not being well cared for while under Marissa’s care. According to Ms. Reader, his skin had open wounds, and he would sleep in the same clothes, rarely bathing. Ms. Reader believed that Marissa should have had a doctor come visit Chris and some medical professionals there on a regular basis to take care of him. *See* Transcript of Trial Day 4 at 147. But, in her view, Marissa did not want to spend the money on Chris because that “would be money that wouldn’t end up in her pocket.” Transcript of Trial Day 4 at 199.

Ms. Reader said Marissa used to refer to Chris as having “wet brain” and that she herself observed that Chris had stopped eating, that he was “living on vodka.” Transcript of Trial Day 4 at 142. She testified that Chris fell twice in her presence in the summer of 2016, “just hit the ground.” Transcript of Trial Day 4 at 144. She said she saw vodka bottles in the bathroom under his sink, in his closet, and at the bar. However, Ms. Reader admitted that Chris was happy and grateful to Marissa that someone was “picking up the mess of his life” Transcript of Trial Day 4 at 150. And even Ms. Reader admitted there were two sides to Chris. Describing him as “really incredible,” she also admitted how angry he could become, for instance, when Marissa’s son took his car.

Ms. Reader took it upon herself to be a friend to Chris. She was unhappy that Chris was in Westport Rehab, so she picked him up herself and took him to his home. She cooked for him and would never think of charging him for that.

Ms. Reader knew that Chris adored his ex-wife, his children, and his brother, Kevin, and appreciated all the beautiful cards Kevin had sent. She knew the AA principles where the family says, “it’s either the vodka or us.” She believed that “that drug [alcohol] hijacked his brain.” Transcript of Trial Day 4 at 134.

Ms. Reader clearly believed that Marissa was not the caregiver she presented herself to be and could have done more to help Chris get healthy. But this Court is not persuaded that such a task could have been accomplished by anyone. If Chris’s own closest family could not help him, then this Court cannot

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assume anyone else could. Marissa testified that Chris cancelled appointments, refused to see doctors, and threatened to fire her if she would be too insistent. This Court believes that Chris showed his charming side to Ms. Reader because he truly appreciated her kindness and caring. But if Ms. Reader had actually been strong enough to remove alcohol, the Court believes she would have been banished from Chris's life.

It is clear that Marissa was not a caretaker in the professional sense of the word; she did not have the training, and a professional health care provider would presumably never have brought the vodka inside. Yet, Marissa held herself out as a caretaker in numerous medical records, and even Mr. Somma, who never himself spoke to Chris, gave her the title of "caretaker" as an adjective in the Will. Ms. Reader's testimony speaks to the character of Marissa, as to whether Marissa was a person disposed to take undue influence over someone else because of her own motives. Ms. Reader testified that Marissa had previously tried to integrate herself into another vulnerable family; Marissa strongly denied that. Ms. Reader insisted that Marissa was in need of money, explaining that she had once loaned \$10,000.00 to Marissa; Marissa denied that she was in any financial peril.

The relationship between Marissa and Chris is at the heart of this dispute. This Court concludes the relationship was complex. Both parties were grateful to each other. In this Court's opinion, both parties knew, in their deepest consciences, that what they were grateful for was not really something to be proud of.

The Experts

Petitioner presented Dr. Sundar Ramaswami as her expert witness. Dr. Ramaswami is a clinical psychologist and is the supervising psychologist at the Mobile Crisis Team for the State of Connecticut, Department of Mental Health Services. He has been working in this position for twenty-nine years. Throughout his career, he claimed to have evaluated three to four thousand alcoholics. He is not normally an expert witness, but was doing this as a favor since his friend who was supposed to have testified had recently passed away.

Dr. Ramaswami was of the firm opinion that Chris was not intoxicated when he signed the Will. When asked by the Court "if he was a habitual drinker who needed a certain amount of alcohol every day to like not have DTs or to not lead to withdrawal, does that still mean that within a period of time he can still be very lucid and clear?" Transcript of Trial Day 2 at 68. Dr. Ramaswami responded, "Absolutely. I think it speaks to a habitual drinker to develop certain tolerance and would not suffer the effects that we would. One famous example of somebody actually making good decisions was Winston Churchill." Transcript of Trial Day 2 at 68.

When asked about whether the expert found it significant that during the video, Chris refused to sign a power of attorney when it was placed in front of

him, Dr. Ramaswami said, “It is significant in that he knows what he wants, and he knows what he doesn’t want.” Transcript of Trial Day 2 at 70.

With respect to a diagnosis of narcissistic personality disorder, Dr. Ramaswami said that the “diagnosis from intake notes at Norwalk Hospital and Silver Hill Hospital speak to clinical incompetence, nothing else.” Transcript of Trial Day 2 at 82. Moreover, the expert testified that if Chris did have such a disorder, it would make him less likely to make this Will the way he did, because he “would not be in the company of a mad dog walker, let alone leave money to such person.” Transcript of Trial Day 2 at 83. With respect to Janalexis’s assertion that Chris had Wernicke/Korsakoff syndrome, Dr. Ramaswami denied it. Rather, he opined that the appropriate diagnosis here is alcohol use disorder, alcohol intoxication, and alcohol withdrawal. He found no evidence of psychosis. Furthermore, he found no evidence of medical treatment of Wernicke, which would have included Diamine, a vitamin B complex. Dr. Ramaswami stated that if the doctors really believed Chris had this diagnosis there would have been evidence of this treatment in the medical records. There was none. With respect to Korsakoff psychosis, Dr. Ramaswami denied that diagnosis because Chris was able to form new memories. Transcript of Trial Day 2 at 101.

Dr. Ramaswami did not deny that at times Chris suffered from confusion when he was acutely intoxicated. However, his opinion was that

the operative word is judgment Did he know what he was doing, especially at the time of writing the will? Absolutely in command of judgment. And for the lay people, judgment is the last to go, because the judgment of a seventy-year-old is the product of what we call ‘crystallized intelligence’ It’s a product of all our learning So judgment and our learning give us that ability to write a play at eighty, compose at eighty. Mr. Byron is certainly, insofar as alcoholic, like many that I have seen.

Transcript of Trial Day 2 at 106-07.

Dr. Ramaswami was convinced that Chris had capacity when he signed the Will. He distinguished

a diagnosis of alcohol intoxication, which is science, meaning, one knows the science of—the signs of intoxication, one can take a blood level . . . measure the withdrawal based on tremor When it comes to personality disorder, often I see the equivalence of voodoo because many of these are guesswork. What somebody—one professional may call a personality disorder, narcissistic, somebody else will say traits, and someone else will say borderline; but if you ask them to come up with a measurable objective test that is consistent. . . we can’t say it, because words like insecurity, words like safe,

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feelings of entitlement, inadequacy are not measurable

Transcript of Trial Day 2 at 128.

He concluded that even though medical evidence disclosed that Chris had neither bathed nor brushed his teeth in months, that did not affect his ability to exercise sound judgment on the day he signed his Will. The Court notes that the medical evidence of bad hygiene was belied by testimony from others that Chris did not smell.

Janalexis presented her own expert witness, Dr. Eric Frazier. Dr. Frazier received a Doctor of Psychology from the Miami Institute of Psychology, identified by the witness as a “professional school in Miami, Florida.” Dr. Frazier did not receive a Ph.D or an M.D. He testified that his degree is “tantamount to a Ph.D” with “greater emphasis on being a practitioner versus being a researcher in a career track.” Transcript of Trial Day 3 at 33. Dr. Frazier was admitted as an expert without objection.

Dr. Frazier explained that he was doing a forensic evaluation of the case, relying on multiple sources of data without assuming that any particular fact is true. He differentiated that approach from a clinical approach, which assumes that the underlying information given by a person is true. The expert then testified at length as to his sources of information, including a review of records and interviews. However, Dr. Frazier did not interview anyone on Petitioner’s side of the matter.

Dr. Frazier believed that because Chris was a daily drinker, his attorney should have known that fact. Further, Dr. Frazier believed that the attorney should have done a mental status exam to properly determine Chris’s competence. Dr. Frazier also believed that the attorney should have brought a breathalyzer with him to the Will signing to determine Chris’s intoxication. The Court finds that the expectations of the expert are unrealistic and reflect a poor understanding of the role of an attorney in this kind of matter.

On the subject of Marissa and her actions with respect to stopping Chris’s drinking, Dr. Frazier testified, “My opinion about that is she could have and she should have.” Transcript of Trial Day 3 at 67. The Court finds, however, that the expert knew that Chris’s own wife and family could not stop Chris from drinking. Therefore, the Court finds it highly unrealistic and presumptuous for an expert to have expected an employee to do this.

Dr. Frazier did an analysis of the criteria one would use to determine undue influence. He analyzed various risk factors and concluded that Marissa met enough of them to conclude that she had exerted undue influence over Chris. Among the factors he found were: (a) the fact that Marissa’s entire job description changed within a short time to a job for which she had no qualifications nor previous experience; (b) what the expert characterized as a “special relationship” in which he found it significant that Marissa was allowed

to swim in the pool; and (c) that Marissa's level of care for Chris was deficient and neglectful because her passive participation in his acute alcoholism prevented him from being healthy. Transcript of Trial Court Day 3 at 71. Dr. Frazier believed that Chris's addiction "hijacked his sound judgment." Transcript of Trial Day 3 at 73.

In a chart of risk factors for undue influence, Dr. Frazier checked a number of boxes. They included "anyone in a position of trust, where the testator is dependent on the person for emotional and physical needs." Transcript of Trial Day 3 at 78. Significant to this Court, the risk factor of "isolation and sequestration" was absent. Other checked factors included a change in family dynamics, recent bereavement as a result of divorce, family conflict, physical disability, personality disorder, and nonspecific psychological factors, such as serious medical illness with dependency and regression. Transcript of Trial Day 3 at 81. Absent were substance abuse, with alcoholism noted, and cognitive mood/paranoia disorders. Also included as present risk factors were "beneficiary instigates or procures the will," "contents of the will include unnatural provisions," "contents favor the beneficiary," "content not in keeping with previous wishes," and "other documents signed at same time." Transcript of Trial Day 3 at 82. In summary, Dr. Frazier concluded that "eighty percent of the psychological risk factors were present, indicating a high risk for undue influence being presented based on case data." The Court, quoting from the report, admitted as evidence the Transcript of Trial Day 3 at 83. *See* Exhibit J.

Dr. Frazier reaffirmed that anyone who tried to get Chris to stop drinking would likely be removed from his life. He also said that the slight hand tremor he observed on the Video was consistent with alcoholism. Dr. Frazier testified that "he was the poster person of a functional alcoholic and could maintain a conversation under the influence of alcohol and could appear as if not to be under the influence of alcohol." Transcript of Trial Day 3 at 95.

Upon cross examination, Dr. Frazier admitted that in all of the medical discharge papers he had read, he did not recall one instance where the hospital recommended a home healthcare aide after discharge. *See* Transcript of Trial Day 3 at 101. He also testified that there was no medical evidence of dementia.

After listening to Dr. Frazier, Dr. Ramaswami retook the stand in rebuttal. In Dr. Ramaswami's opinion, based on his review of the Video, Chris was able to withstand the influence of Marissa and was "emphatic, he has a calm and [is] gently dismiss[ive] of Marissa Santangelo." Transcript of Trial Day 4 at 21. He thought Dr. Frazier's testimony was "absurd" on the subject of whether a functional alcoholic had capacity to make a will. And he found it highly significant that Dr. Frazier did not interview any of Petitioner's witnesses in making his evaluation, because forensic reports are supposed to take in all viewpoints in making their conclusions. He took issue with the forensic report, stating that the conclusions were reached before the practitioner had found the evidence to support them. Transcript of Trial Day 4 at 27. Dr. Ramaswami said that he was a trained forensic psychologist, completed a fellowship in that area,

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and that the forensic report submitted by Dr. Frazier did not meet standard professional criteria in any respect, including the fact that it did not begin with the referral question and did not complete a section requiring identifying details.

Dr. Ramaswami concurred that there were risk factors for undue influence in this case. He explained that

the issue of undue influence has become salient in psychology and psychiatry, because the population is aging, they're living longer, there are multiple families, divorce, stepfamilies, etc. So some years ago, the International Psychogeriatric Association . . . convened a task force to look at guidelines . . . and the test they applied in forensic psychiatry was what they called- I think it's probably well known to legal scholars- is the will substitution test. [In other words], was the free will of the testator controlled, taken over by somebody else, through coercion, compulsion or restraint?

Transcript of Trial Day 4 at 33. Dr. Ramaswami continued:

So while the risk factors were present, a good forensic psychologist looks for the will substitution test. And that threshold was not met . . . I went over the video a hundred million times and statements made to the divorce attorney and all that, and I couldn't see it. Because once you reach those risk factors, then you need to be, as Dr. Frazier remarked, you need- you should have an index of suspicion . . . And then you look carefully at situation specific and you look at the will substitution test carefully.

Transcript of Trial Day 4 at 35.

Dr. Ramaswami acknowledged that it was a serious step for Chris to disinherit his children but was adamant that the entire process, particularly the Video, revealed that no one was forcing Chris to do anything he did not want to do. He believed that Chris did love his children, but also wanted to disinherit them "for reasons best known to them." Transcript of Trial Day 4 at 38. He also took issue with the word "enabling." "As a psychologist, [that word has] been misused and bandied around." He did not think Marissa herself tried to exert undue influence. Transcript of Trial Day 4 at 40.

The Court finds the expert testimony of Dr. Ramaswami persuasive. The risk factors introduced by Dr. Frazier are helpful to this analysis, and certainly many were present in this case. However, the risk factors alone are not determinative. The Court finds that Dr. Ramaswami's analysis, what he referred to as the "will substitution test," is relevant to the legal framework, which controls. The Court finds no evidence of coercion, compulsion, or restraint exercised by another individual on the mind or will of Chris. Indeed, every

witness testified to the complete opposite: no one could ever tell Chris what to do.

The Law

[1][2] Connecticut General Statutes section 45a-250 provides: “[a]ny person eighteen years of age or older, and of sound mind, may dispose of his estate by will.” Conn. Gen. Stat. § 45a-250 (2018). Connecticut General Statutes section 45a-251 provides, relevant in part, “[a] will or codicil shall not be valid to pass any property unless it is in writing, subscribed by the testator and attested by two witnesses, each of them subscribing in the testator’s presence” Conn. Gen. Stat. § 45a-251 (2018).

[3][4][5][6][7][8][9] In *Achin v. Pianka*, the court summarized the established case law as follows:

Testamentary capacity, the ‘sound mind’ of the statute, is a requirement that the testator have mind and memory sound enough to know and understand the business upon which he is engaged at the time of the execution of the will. The issue of testamentary capacity is focused on the moment of the execution of the will.

The proponent of the will must establish by a preponderance of the evidence the issues of due execution and testamentary capacity. The proponent is entitled to a presumption of capacity after available attesting witnesses have been produced and examined upon due execution and testamentary capacity, but testamentary capacity being a statutory issue the burden of proof remains on the proponent.

In Connecticut, those contesting the admission of a will have the burden of proof in establishing issues of undue influence, fraud or mistake as matters in avoidance of the will If, however, a confidential [fiduciary] relationship is proved, then the burden of proving fair dealing or the burden of showing the absence of undue influence shifts to the defendant or the fiduciary, and that burden must be sustained by clear and convincing evidence.

The factor[s] to be considered in determining whether a fiduciary relationship exists [are] ‘characterized by a unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the other.’ *Albuquerque v. Albuquerque*, 42 Conn. App. 284, 287, 679 A.2d 962 (1996); *Konover Development Corp. v. Zeller*, 228 Conn. 206, 219, 635 A.2d 798 (1994).

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Unlike a fiduciary relationship, the burden of proof is upon the party seeking to establish undue influence or lack of capacity even where there is a confidential relationship between parent and child.

Achin v. Pianka, No. CV054003726, 2010 WL 2573695, at *5-6 (Conn. Super. Ct. May 20, 2010) (some internal citations and quotations omitted). The *Achin* decision states:

Many years ago this court held the following to be a correct statement of what constituted undue influence sufficient to invalidate a will: ‘[T]he degree of influence necessary to be exerted over the mind of the testator to render it improper, must from some cause or by some means be such as to induce him to act contrary to his wishes, and to make a different will and disposition of his estate from what he would have done if left entirely to his own discretion and judgment. That his free agency and independence must have been overcome, and that he must, by some dominion or control exercised over his mind, have been constrained to do what was against his will, and what he was unable to refuse and too weak to resist. But that moderate and reasonable solicitation, entreaty or persuasion, though yielded to, if done intelligently and from a conviction of duty, would not vitiate a will in other respects valid.’

Id. at *6 (citing *St. Leger’s Appeal from Prob.*, 34 Conn. 434, 442, 449 (1867)).

[10] The *Achin* court elaborated as follows:

Importunity or threats, such as the testatrix has not the courage to resist, moral command asserted and yielded to for the sake of peace and quiet, or of escaping from distress of mind or social discomfort—these, if carried to a degree in which the free play of the testatrix’s judgment, discretion, or wish, is overborne, will constitute undue influence, though no force was either used or threatened. The existence and exercise of such undue influence is not often susceptible of direct proof. It is shown by all the facts and circumstances surrounding the testatrix, the family relations, the will, her condition of mind, and of body as affecting her mind, her condition of health, her independence upon and subjection to the control of the person influencing, and the opportunity of such person to wield such an influence. Such an undue influence may be inferred as a fact from all of the facts and circumstances aforesaid, and others of like nature that are in evidence of the case, even if there be no direct and positive proof of the existence and exercise of such an influence.

Id. (citing *In re Hobbes' Appeal*, 73 Conn. 462, 467, 470 (1900); *Dale's Appeal*, 57 Conn. 127, 134, 147 (1888)).

[11] As stated in *Tyler v. Tyler*:

It is stated generally that there are four elements of undue influence: (1) a person who is subject to influence; (2) an opportunity to exert undue influence; (3) a disposition to exert undue influence; and (4) a result indicating undue influence Relevant factors include age and physical and mental condition of the one alleged to have been influenced, whether he [or she] had independent or disinterested advice in the transaction . . . consideration or lack or inadequacy thereof for any contract made, necessities and distress of the person alleged to have been influenced, his [or her] predisposition to make the transfer in question, the extent of the transfer in relation to his [or her] whole worth . . . failure to provide for all of his [or her] children in case of a transfer to one of them, active solicitations and persuasions by the other party, and the relationship of the parties.

Tyler v. Tyler, 151 Conn. App. 98, 106 (2014) (internal citations and quotations omitted).

Ordinarily, the burden of proving undue influence is on the party asserting it, by a fair preponderance of the evidence. *See Stanton v. Grigley*, 177 Conn. 558, 565 (1979); *Berkowitz v. Berkowitz*, 147 Conn. 474, 476 (1960). However, the existence of a confidential, fiduciary, or other special relationship will cause the burden to shift to the beneficiary. The *Berkowitz* court explained:

In will contests, we recognize an exception to this principal when it appears that a stranger, holding toward the testator a relationship of trust and confidence, is a principal beneficiary under the will and that the natural objects of the testator's bounty are excluded. The burden of proof, in such a situation, is shifted, and there is imposed upon the beneficiary the obligation of disproving, by a clear preponderance of the evidence, the exertion of undue influence by him.

Id. at 476-77 (internal citations omitted).

In *Dunham v. Dunham*, the court explained:

Once a [fiduciary] relationship is found to exist, the burden of proving fair dealing properly shifts to the fiduciary. Furthermore, the standard of proof for establishing fair dealing is not the ordinary standard of fair preponderance of the evidence, but requires proof either by clear and convincing evidence, clear and satisfactory evidence or clear, convincing

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and unequivocal evidence.

Dunham v. Dunham, 204 Conn. 303, 322-23 (1987) (internal citations and quotations omitted).

Berkowitz uses the phrase “clear preponderance of evidence.” *Berkowitz*, 147 Conn. at 477. *Dunham* says the standard is “clear and convincing evidence, clear and satisfactory evidence[,] or clear, convincing[,] and unequivocal evidence.” *Dunham*, 204 Conn. at 322-23. The question is, is there a difference?

First, note that *Dunham* is not an undue influence case. The quoted portion deals with the requirement that a fiduciary prove “fair dealing” by the higher standard. *Id.* There was an undue influence aspect discussed in *Dunham*. However, the court did not decide the issue, as the trial court had never been asked to address it. *Id.* at 327-328.

Tait’s Handbook of Connecticut Evidence notes that various cases in different areas use a range of variations, such as “clear and satisfactory,” “clear and positive,” or “clear and definite.” Colin C. Tait & Hon. Eliot D. Prescott, *Tait’s Handbook of Connecticut Evidence*, § 3.5.2 (5th ed. 2014). Tait suggests that “[c]ommon sense strongly supports an interpretation that would construe these diverse modes of expression with reference to each other so that one uniform standard would apply to these varied situations.” *Id.*

This seems supported by *Alaimo v. Royer*, 188 Conn. 36 (1982). This was a case involving fraud in which it was noted that other cases had cited “clear and satisfactory evidence” or “clear, precise and unequivocal evidence” as the applicable standard. *Alaimo*, 188 Conn. at 39 (internal citations omitted). The court said: “Under either formulation, a plaintiff’s burden cannot be equated with the fair preponderance standard of proof for ordinary civil actions.” *Id.*

[12] In summation, the Court believes that the correct standard of proof in this case is one of “clear and convincing evidence” once the Court finds that a fiduciary or special, confidential relationship exists between the testator and the beneficiary.

Discussion

In applying the facts to the law, the first question for the Court is whether there existed a fiduciary relationship between Chris and Marissa, as the answer to that question determines who has the burden of proof and what standard of proof is applicable to this case.

A. Was Marissa in a fiduciary, confidential, or special relationship with Chris?

[13] In *Dunham*, the court stated,

[a] fiduciary or confidential relationship is characterized by a

unique degree of trust and confidence between the parties, one of whom has superior knowledge, skill or expertise and is under a duty to represent the interests of the other. The superior position of the fiduciary or dominant party affords him great opportunity for abuse of the confidence reposed in him.

Dunham, 204 Conn. at 322 (internal citations omitted).

Marissa came into Chris's life as a part-time dog walker in approximately November of 2016. Clearly, she did not begin as a fiduciary. Within a short amount of time, Chris realized that he could rely on her to do a myriad of things for him that would make his life easier. Therefore, he employed her on a full-time basis. Their relationship changed quickly and dramatically. During the spring of 2016, it was Marissa who brought Chris to Norwalk Hospital and identified herself as a caretaker, even though she was not qualified as a health care provider in any way.

Did Chris trust Marissa? Yes. Did he come to rely on her for his every wish and desire throughout the day? Yes. Did Marissa have superior skill or knowledge such that she had a duty to represent his interests above her own? In this Court's opinion, no. Although Marissa held herself out as a caretaker, in fact, she possessed no superior skill or knowledge, and there is no evidence to suggest that Chris believed she had such superior skill or knowledge. At the Will signing, Chris denied her request to make her his agent via power of attorney. In correspondence to his friend, Ms. Antilla, Chris referred to Marissa as "his assistant." In viewing the Video, this Court believes that Chris viewed Marissa as an employee to whom he was grateful, but not as a colleague, advisor, or someone who had more knowledge or control over his life than he did.

However, the Court does find evidence that a special relationship existed between Marissa and Chris because of his dependency on alcohol, which she facilitated. Testimony established that "but for" Marissa's willingness to provide him with liquor, she, like everyone else close to him, would have been excised from Chris's life. By July of 2016, Chris depended upon Marissa for virtually everything in his life, and she took on that burden by adopting the role of "caretaker" and presenting herself as such to medical personnel and others. Therefore, although the Court acknowledges that Marissa was never a fiduciary in the customary sense, because the facts fit those outlined in the *Berkowitz* case cited above, the Court will apply the higher standard of proof required for the proponent of the Will to prove its case. In other words, Marissa must disprove to the Court, by clear and convincing evidence, that she exerted undue influence upon Chris.

B. Was Chris of sound mind for the purposes of a legal standard to execute his Will?

The Court finds by clear and convincing evidence that Chris's mind and memory were sound enough to understand the business that he was doing at the

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time he was doing it. The Video shows that Chris clearly understood he was signing his will and comprehended the contents of the document when they were read to him. Chris understood enough about the nature of documents to refuse to sign a power of attorney when presented to him at the Will signing.

C. Did Marissa exert undue influence over Chris, such that, despite being of sound mind, the Will should fail?

As set forth in the *Tyler* case, “there are four elements of undue influence: (1) a person who is subject to influence; (2) an opportunity to exert undue influence; (3) a disposition to exert undue influence; and (4) a result indicating undue influence” *Tyler*, 151 Conn. App. at 106 (quoting *Pickman v. Pickman*, 6 Conn. App. 271, 275-76 (1986)).

Chris was subject to influence because he liked being flattered and appreciated it. He was lonely and abandoned at the time Marissa entered his life. Marissa had the opportunity to exert influence. In partaking in the process of Chris disinheriting his children in her favor, she engaged in behavior indicating undue influence. According to Ms. Reader, Marissa had the disposition to exert undue influence as well.

The Court believes that Marissa and Chris had a tacit, unspoken bargain that evolved over time and trust. Marissa would continue to turn a blind eye to Chris’s need to drink alcohol, and Chris would reward her for that help. The Court believes that Chris was grateful to Marissa for paying his bills and generally cleaning up after him and keeping a semblance of a functional life to outsiders. But internally, Chris was destroyed. He could not stop himself from drinking, and he saw no way to repair his tattered relationship with his family. He felt he was justifiably angry for their abandonment of him in his hour of need.

In analyzing the issue of undue influence, this Court seeks factors that are absent in this case. There was no isolation of Chris from anyone who wanted to see him; on the contrary, Chris controlled his own agenda and continued to communicate with the friends who would stay in his life. Chris disinherited his children, but he genuinely and reasonably believed that they had financial support from their mother and their grandparents, not to mention the fact that they were on their way to becoming competent adults, able to earn their own living in this world. Chris knew that he had given Maria money in the divorce and knew that Maria would bequeath that money to their children. Chris knew that his brother Kevin was not a rich man; the record is replete with evidence that Chris genuinely cared for his brother and was likely happy to bequeath him funds. The Court finds particular significance in the email Chris sent to his divorce attorney, Mr. Rubin, in which Chris specifically said that under no circumstances would his children ever inherit his House, and the House was essentially the sole asset of his Estate.

With respect to giving half of his Estate to Marissa, the Court

understands Ms. Reader's point of view that she believed it was simply wrong and immoral of Marissa to take the money under these circumstances. That is a matter for Marissa's conscience. However, this Court is persuaded that Chris's severe and chronic alcoholism did not prevent him from being capable to decide that he preferred for Marissa to have his money over his own children. His Will was ultimately consistent with the anger that he expressed to any friend who would listen, and to his own divorce lawyer. Chris had told his brother what he was doing. Significantly, Chris expressed no regret to anyone over having signed this Will.

Much was made of the fact that the robust, happy Chris would never have allowed himself to sign a will without reading it first. There is no question in this Court's mind that in July of 2016, Chris was an unhealthy, bitter man. But was Chris so sick as to be under the throes of Marissa's influence, to do something which he would be otherwise unwilling to do? This Court concludes the answer is no. This Court reaches an inescapable conclusion that Chris, embittered and angry, feeling abandoned and alone, and addicted to alcohol, deliberately intended to disinherit his three children. There was no evidence introduced at court to indicate he had remorse or regret or wished to reconsider his Will. The Court finds there is clear and convincing evidence to show that the beneficiary of the Will, Marissa, did not unduly influence Chris to give her half of his Estate.

The Court wishes it could assuage the hurt feelings and damage done to the children of Chris. But all of us are the sum of our choices. Chris chose to keep drinking. The children chose to sever contact with him while he did. This judge is glad that at the very end, the children were able to talk to their father in the hospital, and hopes they can attain some measure of peace.

WHEREFORE, the COURT ORDERS and DECREES the following:

The Will of Christopher Byron is duly proved, and the same is approved and admitted to probate as the LAST WILL AND TESTAMENT of the deceased, and the fiduciary named above is approved, and letters testamentary are hereby issued to the fiduciary.

The fiduciary is allowed twelve months within which to settle the Estate.

All claims against the above Estate be presented pursuant to the provisions of Connecticut General Statutes Chapter 802b.

SO ORDERED.

/s/

Lisa K. Wexler, Judge