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Disappointed heir

Suzanne's health was failing, so she gave a power of attorney to her sister, Linda. She also changed two of her bank accounts, making Linda a joint owner with right of survivorship. The move may have simplified Linda's job in taking care of the finances. Suzanne owned shares in two family trucking companies. She sold these shares to Linda for $100, probably a bargain sale, but the value of the shares is not stated in the opinion.

When Suzanne died in 2012, Linda was named personal representative of her estate. At this point, Rita, Suzanne's daughter and only child, enters the picture. As Suzanne died intestate, Rita was her sole heir. She received everything in the estate. However, Rita wanted the joint checking account and the shares in the business as well. In 2013, Rita filed a lawsuit for tortious interference with her inheritance, alleging that through undue influence her aunt Linda, had diverted these assets through lifetime actions.

Next, Rita sought to have Linda removed as personal representative in 2014. Instead, Linda voluntarily resigned. Her final accounting showed that the two bank accounts totaled $126,645, and that over $1 million in assets—everything in the probate estate—had been transferred from the estate to Rita. Rita was named successor personal representative.

In 2020, Rita tried to resurrect her tort claim, as the probate court had dismissed action by the estate. The trial court denied Linda's motion for summary judgment, but the appellate court now reverses, granting the motion and ordering judgment for Linda. Rita had adequate remedies for her claims under the probate code, and she failed to avail herself of them.

—Salmon v. Tafelski, 235 N.E.3d 867 (Ind. Ct. App. 2024)

Disappointed beneficiaries

Mother created a living trust in 2000, listing her four children as beneficiaries. After Father died in 2016, Mother retained Attorney Easley to amend the trust. At Mother's death, Child 1 was to receive $10,000, with the balance of the trust assets split equally among the other three children, "with each child's equal share distributed to that

child's living descendants should said child predecease Decedent [Mother]."

Child 2 died. Child 3 and Child 4 believed that it would be inappropriate for some grandchildren and not others to receive something from the trust, and they assert that Mother agreed. They felt that they should split Child 2's share between them. However, Mother never contacted her estate planner about the change, nor did the estate planner, Easley, reach out to her following the death of Child 2 about changes to her testamentary dispositions.

The two disappointed beneficiaries filed a malpractice claim against Easley for his failure to consult with the family, which led to the failure to execute an amendment to the trust.

The lawsuit failed. The children were not Easley's clients—Mother was. He had no duty to them. They did not meet the exception to this doctrine announced in *Donahue v. Shughart, Thomson and Kilroy, P.C.,* 900 S.W. 2d 624 (Mo. banc 1995). "Respondent [Easley] never met with or spoke with Decedent to ascertain her intentions and mental capacity to make decisions related to amending her trust for a third time." No one can know with confidence what Mother's intentions might have been. Summary judgment in favor of Easley was appropriate.

—Fallon v. Easley, 686 S.W.3d 287 (Mo. Ct. App. 2024)

Limits of a no-contest clause

C. E. Spurlock's trust, created in 1997, gave his son, David, the right to purchase certain real property from the trust at a discounted price. In 2016 the trustee notified David that he had a limited window for exercising his option, so he completed the purchase.

Unfortunately, someone had left the heat off, the pipes had frozen, and there was some $80,000 worth of damage to the property. David filed a lawsuit against his brother, Charlie, for the damage, but it emerged during discovery that at all relevant times the trustee had the sole responsibility for maintenance. David dropped that lawsuit, and filed against the trustee instead.

Unfortunately, the trust included a no-contest clause. David was careful to target the trustee, and not the trust itself, for the damages. His suit also demanded the removal of the trustee for failure to provide accountings and failing to comply with the trust's instructions for the division of assets.

The trustee argued that by filing the lawsuit, under the terms of the trust David ceased to be a beneficiary, and therefore had no standing to bring the lawsuit. This argument was accepted by the lower court but has been reversed on appeal.

"David's lawsuit was aimed at correcting improprieties allegedly committed by the Trustee. It did not seek to change or modify any portion of the Trust," the appellate court held. Accordingly, the no-contest clause was not triggered.

—Spurlock v. Wyo. Tr. Co., 542 P.3d 1071 (Wyo. 2024)

Enforcing a living will

Lynne Chesley signed a living will (sometimes called an advance medical directive) in 2013 that stated she did not want to have her life extended by artificial means. Among other things, that would mean no feeding tubes. Lynne designated her sister, Amy, as her proxy for making medical decisions should Lynne become incapacitated.

In 2021 Lynne was hospitalized with pneumonia, and a feeding tube was inserted. Her children asked that the tube be removed, consistent with the directive that Lynne had executed. Amy disagreed. Amy said, in a related case, "I don't believe in killing someone before they are ready to die." She claimed that when Lynne was told the removal of the tube would be painful, Lynne made movements, and these movements amounted to a revocation of the living will and a request to keep the feeding tube in place.

A *three-year* court fight followed. Ultimately, the Oklahoma Supreme Court sided with the children, held that the living will must be honored, and Lynne was allowed to die.

—The Wall Street Journal, November 24, 2024

COMMENT: Did Lynne ever discuss her living will with Amy? Did Amy candidly share her beliefs? What was Lynne's quality of life during the litigation? This case suggests that there was a real failure of communication.

Having a living will and designating someone for making medical decisions has become a normal element of estate planning. Some people will want to take all possible steps to extend their lives; others prefer to keep medical intervention at the end of life to a minimum. A living will is essential for providing guidance. Equally important, a serious conversation is necessary with the person who will be designated to make medical decisions. Does the person understand and agree with the wishes? Will the person be able to carry them out?

Undue influence?

Donald Crofut worked as a volunteer at the Allenbrook Home for Youths in South Burlington, Vermont. The facility provided care for kids who no longer lived with their parents and who were struggling emotionally or behaviorally. It was there that Crofut met Sean Hammond. The two developed a lifelong bond.

Crofut was a mentor to Hammond, visiting him when he attended college out of state. When Hammond was incarcerated, Crofut brought him care packages and funded a prison account for him. Upon Hammond's release from prison, Crofut helped him find a place to live and buy a car. The two spent time hiking and traveling together. In 2018, Hammond moved into Crofut's home.

That was the year Crofut was diagnosed with cancer. Hammond took an increasing role in the management of the household. Longtime neighbors also pitched in with grocery shopping and helping Crofut with his medical appointments. Neighbor Richard Kozlowski was an estate planning attorney, and handled Crofut's will.

Crofut's final will was executed February 7, 2021. He disinherited one daughter because he believed she never contacted him except when she wanted money. The will granted Hammond an option to purchase Crofut's home for $40,000, far below its fair market value. Crofut died in April 2021.

Hammond allowed a neighbor, Tracy Kozlowski, into the home to look for an urn to hold Crofut's ashes. She discovered a large amount of recently purchased consumer goods in Hammond's bedroom, as well as buckets of cash and receipts that showed Hammond had been making daily $400 ATM withdrawals from Crofut's bank account. The discovery led to a criminal investigation of elder abuse and a motion in the probate court to strike the bequest to Hammond due to his undue influence over Crofut.

At trial, neighbors testified that Hammond had discussed how the house would be bequeathed to him. He also wanted to inherit Crofut's car, but he did not, as Crofut believed he only wanted it to sell it. Nevertheless, Hammond claimed ownership of the car. When confronted by the neighbors, Hammond admitted he had stolen from Crofut.

However, when the final will was executed, Hammond was not in the room. He claimed he had no idea of the specific will provisions. The execution of the will was videotaped, and Crofut did not appear to be under any compulsion; he was competent. Where was the undue influence?

The trial court concluded that by stealing from Crofut over a period of months, Hammond was "[s]ubverting the sound judgment and genuine desire of the individual," which was enough to constitute undue influence." In other words, the court surmised that had Crofut known of the thefts, he would not have left the purchase option to Hammond. The problem of undue influence could be cured by striking that portion of the will, and leaving the rest intact.

The Vermont Supreme Court affirmed the decision, holding "beneficiary and testator were in a confidential relationship, shifting the burden to beneficiary to prove lack of undue influence. Here, the relationship between beneficiary and testator is 'suspect, such as those of guardian and ward, attorney and client,' etc., because it is a relationship 'of trust and confidence in which the temptation and opportunity for abuse would be too great' were the beneficiary not required to prove their worthiness."

— Matter of Crofut, 312 A.3d 1002 (Vt. 2024)

COMMENT: A vigorous dissent argued that the facts presented were not sufficient to sustain a finding of undue influence, and that the majority was wrong about the shifting of the burden of proof. "Even if, as the majority concludes and the trial court found, testator would have cut beneficiary out of his will if testator had known about beneficiary's conduct, that counterfactual fails to demonstrate that beneficiary's conduct destroyed testator's free agency and resulted in testator signing a will that expressed an intent other than his 'untrammeled desire.'" There was no evidence to suggest that Hammond even advised Crofut to make a will, let alone what the terms might be. What's more, the bequest to Hammond, requiring that he pay $40,000 for the house and exercise that option within nine months, was not as generous as it might have been, given that Hammond did not have the $40,000 to fund the purchase.

The dissent concluded: "I cannot conclude as a matter of law that testator's free will was destroyed by beneficiary's fraudulent conduct when he executed his final will on February 7, 2021. Without any evidence or factual findings connecting beneficiary's conduct to testator's free agency on February 7, 2021, mere conduct that the beneficiary wished to keep hidden is not the kind of volitional or coercive conduct that we have long held constitutes undue influence."

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