State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: March 12, 2026 CV-24-1819

In the Matter of the Estate of
DOUGLAS R. WORSELL,
Deceased.

SANDRA SWEAZEY, Individually
and as Executor of the
Estate of DOUGLAS R.
WORSELL, Deceased.
Appellant;

MEMORANDUM AND ORDER

ERIN WORSELL et al.,
Respondents.

Calendar Date: January 6, 2026

Before: Garry, P.J., Reynolds Fitzgerald, McShan, Powers and Mackey, JJ.

Edward E. Kopko, Lawyer, PC, Ithaca (*Edward E. Kopko* of counsel), for appellant.

Coughlin & Gerhart, LLP, Binghamton (*Thomas H. Bouman* of counsel), for respondents.

Mackey, J.

Appeal from an order of the Surrogate's Court of Tompkins County (Scott Miller, S.), entered October 4, 2024, which, in a proceeding pursuant to SCPA article 13, among other things, granted respondents' motion for partial summary judgment granting an objection to decedent's last will and testament.

In 2018, decedent executed his last will and testament wherein he named petitioner, his sister and then-primary caretaker, his sole beneficiary. Decedent, who was disabled and had long suffered from significant health conditions, later died in 2021. Following decedent's death, petitioner commenced this proceeding to probate the 2018 will and settle the estate. Respondents, who were decedent's children from whom he had been estranged, objected to the will, alleging that decedent was not of sound mind when it was executed and that it was written under the undue influence of petitioner. After depositions were taken, respondents moved for partial summary judgment declaring that a confidential and/or fiduciary relationship existed between petitioner and decedent, such that it was petitioner's burden to show that decedent's will was free from undue influence. Petitioner opposed respondents' motion and cross-moved for summary judgment, arguing that there was no proof of undue influence. Surrogate's Court found that petitioner had a confidential and/or fiduciary relationship with decedent and, accordingly, granted respondents' motion for partial summary judgment as to that issue. The court in turn denied petitioner's cross-motion, finding that material issues of fact were raised as to whether petitioner exercised undue influence over decedent. Petitioner appeals.

Initially, petitioner does not challenge Surrogate's Court's finding as to the existence of a confidential and/or fiduciary relationship. Indeed, by her own submissions and deposition testimony, petitioner demonstrated that decedent was disabled and dependent upon dialysis following cancer treatment and that, as a result, she cared for decedent's significant needs over the six years preceding his death, including assisting him with medical appointments, health care and legal matters, as well as providing him with clothing, groceries and financial support (*see generally Matter of Dibble*, 243 AD3d 993, 995 [3d Dept 2025]). Instead, petitioner argues that summary judgment on this issue must be reversed based upon respondents' failure to provide citations to evidentiary support in their motion papers, in violation of the requirements of 22 NYCRR former 202.8-g. As is pertinent here, 22 NYCRR former 202.8-g, which was subsequently repealed in its entirety, provided that "the court may direct that there shall be annexed to the notice of motion a separate, short and concise statement, in numbered paragraphs, of the material facts as to which the moving party contends there is no genuine issue to be tried" (22 NYCRR former 202.8-g [a]). Such statement of material facts should in turn include "citation to evidence submitted in support of or in opposition to the motion" (22 NYCRR former 202.8-g [d]). Although petitioner is correct that respondents failed to include such citations in their ascribed statement of material facts, the record reflects that the mirroring memorandum of law and attorney affirmation filed by respondents' attorney in support of summary judgment do include evidentiary citations for each fact alleged. In view of respondents' attorney's "functional[ly] equivalent" statement of material facts and

petitioner's failure to demonstrate any prejudice, we do not find that the court was compelled to deny respondents' motion (*Taveras v Incorporated Vil. of Freeport*, 225 AD3d 822, 823 [2d Dept 2024] [internal quotation marks and citation omitted]).

Turning to the merits, "[w]hether to dismiss a party's objections and admit the challenged will to probate is a matter committed to the sound discretion of Surrogate's Court and, absent an abuse of that discretion, the court's decision will not be disturbed" (*Matter of Ostrander*, 237 AD3d 1444, 1445 [3d Dept 2025] [internal quotation marks and citations omitted]). "Summary judgment, although rare in a contested probate proceeding, is appropriate where a petitioner establishes a prima facie case for probate and the objectant fails to raise any genuine issues of fact regarding testamentary capacity, execution of the will, undue influence or fraud" (*id.* at 1447 [citations omitted]). Having already established the existence of a confidential relationship between petitioner and decedent, the burden shifted to petitioner "to prove by clear and convincing evidence that a transaction from which . . . she benefitted was not occasioned by undue influence" (*Matter of Dibble*, 243 AD3d at 994 [internal quotation marks and citations omitted]; *see Matter of Ostrander*, 237 AD3d at 1447). Undue influence may be established by showing "that the influencing party's actions are so pervasive that the will is actually that of the influencer, not that of the decedent. The elements of undue influence are motive, opportunity, and the actual exercise of that undue influence" (*Matter of Linich*, 213 AD3d 1, 5 [3d Dept 2023] [internal quotation marks and citations omitted]). "[T]he existence of a family relationship does not, per se, create a presumption of undue influence; there must be evidence of other facts or circumstances showing inequality or controlling influence" (*Matter of Nealon*, 104 AD3d 1088, 1089 [3d Dept 2013] [internal quotation marks and citation omitted], *affd* 22 NY3d 1045 [2014]; *accord Matter of Ostrander*, 237 AD3d at 1447).

We agree that petitioner's submissions, taken together, met her initial burden to show that decedent's will did not result from undue influence. In particular, petitioner relied upon the deposition testimony of the will's drafting attorney, Paul Tavelli, who explained that he had discussed the implications of its terms with decedent at length, including what it meant to disinherit respondents, and that decedent understood and was adamant that such were his intentions. Tavelli further observed nothing of concern in decedent's demeanor. Accordingly, the presumption of regularity arising from proper execution was established (*see Matter of Dibble*, 243 AD3d at 995; *Matter of Dralle*, 192 AD3d 1239, 1240-1241 [3d Dept 2021]).

The burden thus shifted to respondents, who emphasized decedent's significant mental and physical health conditions and petitioner's resulting control over decedent's everyday life and medical care. Respondent Erin Worsell, decedent's daughter (hereinafter the daughter), testified at deposition that on numerous occasions decedent had purportedly expressed his intent to leave her his home to share with respondent Chad Worsell, her brother and decedent's son (hereinafter the son). According to the daughter, decedent repeated his intention in July 2018 but relied upon petitioner to make an appointment with an attorney for this purpose. Instead, the underlying will naming petitioner as decedent's sole beneficiary was executed a few months later – the appointment for which Tavelli testified had been made with urgency by petitioner due to "an emergency of some kind" amid decedent's reportedly declining health. Significantly, although Tavelli testified to having explained the terms of the will in detail and observed nothing in decedent's demeanor to indicate a lack of capacity or intent at the time the will was executed, he testified that he was unaware that decedent had previously sustained a traumatic brain injury, suffered from mental illness and habitually used marihuana.[1] In this regard, decedent's longtime friend testified that decedent had a history of delusions and substance abuse and that, in 2018, decedent at times appeared "confused." As to petitioner's relationship with decedent, petitioner admitted during her deposition that she was at times resentful toward respondents inasmuch as she had become decedent's primary caretaker and that, after decedent attempted suicide in 2021 and was incapacitated, she removed respondents from the hospital visitation list. The son in turn testified that, prior to being removed from visitation, decedent spoke poorly of petitioner in the hospital and told him that "[petitioner] was controlling his life." Upon this record, we agree with Surrogate's Court that respondents raised questions of fact concerning whether petitioner exercised undue influence over decedent in the execution of his will, thus precluding summary judgment on this issue (*see Matter of Linich*, 213 AD3d at 5-6; *Matter of Haley*, 189 AD3d 2000, 2003 [3d Dept 2020]; *compare Matter of Ostrander*, 237 AD3d at 1447).

Finally, we are unpersuaded by petitioner's contention that aspects of the son's deposition testimony should not have been considered on summary judgment, pursuant to the Dead Man's Statute (*see* CPLR 4519). Specifically, petitioner asserts that the son's testimony to the effect that decedent told him petitioner was controlling his life should have been excluded. "Although such prohibition may operate to prevent respondent from

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[1] Surrogate's Court made no express finding as to whether sufficient proof was proffered to establish decedent's testamentary competency, or potential lack thereof (*see generally Matter of Linich*, 213 AD3d at 5).

testifying at trial about specific communications with decedent, evidence excludable at trial under the Dead Man's Statute may be considered in opposition to a motion for summary judgment so long as it is not the sole evidence proffered" (*Matter of McNeil*, 233 AD3d 1231, 1235 [3d Dept 2024] [internal quotation marks and citations omitted]). Here, although Surrogate's Court noted the challenged testimony in rendering its ultimate determination, it was not the sole evidence proffered or considered. Rather, there was significant, undisputed testimony and evidence concerning the circumstances surrounding the execution of the 2018 will and petitioner's involvement in nearly every facet of decedent's life. Accordingly, we perceive no error (*see id*.).

Garry, P.J., Reynolds Fitzgerald, McShan and Powers, JJ., concur.

ORDERED that the order is affirmed, without costs.

ENTER:

Robert D. Mayberger
Clerk of the Court