

Docket No.: 15-P-714

Case Name: IN THE MATTER OF THE ESTATE OF WILLIAM E. WEAVER

Date: March 2, 2016

Panel: Green, Wolohojian & Henry, JJ.[1]

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Siblings Lisa Elizabeth Amedeo, Christopher Rosa Weaver, and William Erdsley Weaver, Jr., appeal from an order of a judge of the Probate and Family Court striking their affidavits of objection to the will of their father, William E. Weaver (testator). Substantially for the reasons stated by the judge, we affirm.

We accept as true the allegations in the affidavits of objection and review them de novo to determine whether they set forth specific facts that, if proved by a preponderance of the evidence, state grounds for contesting the will. See *Baxter v. Grasso*, [50 Mass. App. Ct. 692](#), 694, 740 N.E.2d 1048 (2001). In this case, where the siblings claim their father's will was the product of undue influence by his second wife, Gilda Cappelari, and her daughter, Meredith J. McDermott, the affidavits would have to raise a triable issue that "an (1) unnatural disposition has been made (2) by a person susceptible to undue influence to the advantage of someone (3) with an opportunity to exercise undue influence and (4) who in fact has used that opportunity to procure the contested disposition through improper means." *O'Rourke v. Hunter*, [446 Mass. 814](#), 828, 848 N.E.2d 382 (2006) (citation omitted).

The testator and his first wife, the siblings' mother, divorced in 1981. He married Cappelari in 1984. The affidavits paint a picture of the testator as a man with alcohol and drug use issues that were enabled or encouraged by Cappelari. When Cappelari was diagnosed with cancer in 2010, she and the testator created reciprocal wills that left their estates to each other or in the alternative to McDermott, the proponent of the will. Cappelari died in June of 2010 and the testator died in February of 2012.

The affidavits indicate that the siblings had a good relationship with their father throughout his life. For example, William lived with and assisted his father in the last year of his life. In contrast, the testator's relationship with McDermott declined after Cappelari's death, in part as a result of the testator's discovery that McDermott had stolen money from him. The testator told his children that he was aware of the contents of his will but that Cappelari and McDermott had pressured him to leave his estate to McDermott in the event Cappelari predeceased him. He expressed his desire to leave his estate to his children.

The affidavits, however, are barren of any facts surrounding the actual execution of the will. Although the affidavits generally allege that the testator had serious and long-term drug and alcohol issues, and that Cappelari encouraged him to abuse alcohol and drugs, the affidavits do not allege that he was under the influence of drugs or alcohol at the time he executed his will, or that he did not understand the contents of the will he executed. See *O'Brien v. Collins*, [315 Mass. 429](#), 435, 438-439, 53 N.E.2d 222 (1944).

Rather, the siblings allege that Cappelari, the testator's wife of more than twenty-five years, told him that she would have "peace of mind" if her daughter were to receive everything after both of their deaths. Even if Cappelari's wishes or badgering were the dominant force behind the terms of the testator's will, twenty months intervened between her death and the testator's death and he was estranged from McDermott (and, accordingly, free from her influence) for most of that time. Moreover, the testator was in communication with his children from the time of Cappelari's death until his own. He told his children that he was aware of the terms of the will, and he

had ample opportunity to change those terms if that had been his desire. See *id.* at 439. See also *Old Colony Trust Co. v. Whitney*, [269 Mass. 519](#), 524, 169 N.E. 513 (1930). In these circumstances, we discern no error in the judge's decision to strike the affidavits of objection.

Order allowing motion to strike affidavits of objection affirmed.

By the Court
Green, Wolohojian & Henry, JJ.[1]
March 2, 2016

[1] The panelists are listed in order of seniority.