STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: April 17, 2013)

WILLIAM A. BETTEZ	:	
	:	
V.	:	**C.A. No.: PP 12-4239**
	:	
ROBERT A. BETTEZ, RONALD BETTEZ, and DANIEL STONE	:	

DECISION

PROCACCINI, J. As this Court undertakes a review of the claims made by a son who now challenges the testamentary dispositions made in his father's last will, it remains mindful of the keen observation made by Niccolò Machiavelli: "A son sooner forgets the death of his father than the loss of his patrimony." Niccolò Machiavelli, Il Principe 99 (Giuseppe Lisio ed., 1933) (1515).[1]

I

Facts and Travel

Before this Court is Robert A. Bettez, Ronald Bettez, and Daniel Stone's (Defendants) Motion for Summary Judgment—pursuant to Super. R. Civ. P. 56—on the underlying appeal from Scituate Probate Court filed by William A. Bettez (Plaintiff) (Complaint). The Plaintiff appeals from the admission of the Last Will and Testament of Rudolph T. Bettez (Rudy) and the appointment of co-executors of that testamentary instrument. See Probate Court Order, ¶¶ 1-2. Following is a brief outline of the undisputed facts established in the record before this Court.

[1] From the Italian: "li uomini sdimenticano piú presto la morte del padre che la perdita del patrimonio."

On December 4, 2010, Rudy passed away, survived by his three sons—Robert, Ronald, and William—and his second wife, Joyce Bettez.[2] His three sons, and one daughter, Deborah, who predeceased her father, were all born of Rudy's first wife, Barbara, who passed away in 2003.

During the time Rudy and Barbara were married, they entered into a joint revocable trust agreement, dated February 13, 2003 (Bettez Trust). Rudy employed the services of Daniel Stone, Esq., a co-defendant in this matter, to draft this trust agreement. See Dep. of Daniel Stone (Stone Dep.), 14:9-14. However, upon Barbara's death, that instrument became irrevocable, and Rudy was entitled only to a life interest of the Bettez Trust assets. Contemporaneously with the creation of the Bettez Trust, and with the aid of Mr. Stone, Rudy drafted his will to act as a pour over will for the Bettez Trust.

Several years after Barbara's passing, in late February or early March of 2009, Rudy met Joyce Van Ness, and their relationship flourished. Rudy would eventually propose, and the two were to be wed. However, prior to the marriage, Rudy and Joyce entered into a premarital arrangement whereby Joyce disclaimed any right to the Bettez Trust assets upon Rudy's death. See Premarital Agreement (Agreement). Additionally, that Agreement precluded "either party to receive any alimony, whether pendente lite or permanent." Id. The couple again sought the representation and counsel of Daniel Stone, who prepared the document and acted as a witness to the parties' signatures. Id.; Aff. of Daniel Stone (Stone Aff.), ¶ 9.

At this time, Rudy also sought Mr. Stone's counsel as he prepared to update his will to reflect his impending marriage and to make certain changes that reflected his

[2] All of the Bettez family members will be referred to by their first names (i.e., Rudy, Joyce, Bob, Ron, and Bill).

changing sentiment towards particular family members since the creation of the Bettez Trust. Id., ¶¶ 3-6. In fact, Rudy had been planning to change his estate plan to forgive the various loans provided to Bill and the unpaid rents owed by Bill to the Bettez Trust for several years, and had intermittent discussions with Mr. Stone in this regard. Id.

Accordingly, Mr. Stone prepared an updated will (2009 Will), and on September 30, 2009, Rudy signed the document "revoking all previous wills and codicils." See 2009 Will. In that Will, which was made in anticipation of his marriage to Joyce, Rudy exercised his testamentary powers of appointment granted to him "under the second paragraph and under numbered paragraph 4 of Article THIRD, and under numbered paragraph 4 of Article FIFTH of the [Bettez Trust]." Id. Therein, Rudy directed his executor to release Bill from debts owed to him and owed to the Bettez Trust. Id. However, in recognition of the aforementioned release, the 2009 Will also provided:

> My omission to make any other provision herein for my said son [Bill], is due to my belief that funds heretofore advanced to him, as loans, as rents not paid by him for properties occupied by him personally and by his business interests, and otherwise, constitute adequate provision for him in respect of my estate, the estate of my late spouse, Barbara Bettez and the Bettez Trust.

Id., ¶ 5(A). This Will also split the remainder of the Bettez Trust assets among Bob, Ron, and Rudy's late daughter's two children, Sara Vernon and Jesse King. Id., ¶ 5(B). Finally, any residue of Rudy's estate was bequeathed to Joyce, as she had disclaimed any and all claim to the Bettez Trust assets through the premarital agreement. Id.

A

The Deteriorating Relationship Between Rudy and Bill

In deciding the present Motion, this Court is required to analyze the changing relationship between Rudy and Bill from the creation of the Bettez Trust, naming Bill as a co-trustee, to the drafting of the 2009 Will, from which Bill alleges he was "disinherited." During the time Bill's mother was alive, there is no dispute that Bill was closer with his mother than he was with his father. Dep. of Pl. (Bill Dep.), 43:18-21. Thus, it does not surprise the Court that upon an incident whereby Rudy struck Barbara, Bill had a falling out with his father. Id. Bill does not dispute this change between the two stating that, "if it wasn't for my mama, I would have beat the shit out of [Rudy]." Id. However, the downward spiraling relationship between Rudy and Bill did not revolve as much around Barbara's mistreatment as it did around Bill's finances and Rudy's growing agitation with Bill's financial irresponsibility.

The first, and undeniably the most striking, financial transaction between the two involved a loan in the amount of $130,200 made by Rudy to a company controlled by Bill, Global Industries & Technologies, Inc. (Global) (the "Loan"). See Promissory Note. That Loan was prepared by Daniel Stone and was entered into between the two parties on December 23, 2003, contemporaneous with the creation of the Bettez Trust. Id. In order to procure the funds necessary to make this Loan, Rudy was required to obtain a bank loan with a thirty (30) year term at an interest rate of 6.875 %, the same terms extended to Bill in the Loan. Id. Repayment, which was to be made in equal consecutive monthly installments, was personally guaranteed by Bill. Id.

However, neither Global nor Bill made the agreed to monthly payments. Stone Aff., ¶ 11. Consequently, and resulting from Bill's default, Rudy was forced to sell a general store he owned in order to retire the debt owed to the bank. Id.

A second financial relationship was created between the parties when Rudy leased both a residential property at 992 Knotty Oak Road in Coventry, Rhode Island and a commercial property at 1000 Knotty Oak Road in Hope, Rhode Island to his son. Id., ¶ 12. These leases came to fruition after Bill approached his father in search of a place for him and his family to live. In response to his son's plight, Rudy immediately employed Mr. Stone to prepare lease documents for the two properties to be leased by Bill in April of 2006. Id. Nonetheless, Bill failed to timely pay the rent for either property resulting in Rudy's request of Mr. Stone to transmit notice that untimely payment would no longer be tolerated by Bill. Id., ¶ 13. Although several veiled threats of eviction were sent by Rudy via Mr. Stone, notices of termination of tenancy for both properties were not sent until October 28, 2009. Id., ¶ 16. However, Rudy did not press the eviction and instead agreed to lease the properties at reduced rents of $150 per week for the residential property and $250 per week for the commercial property. Id., ¶ 17.

Beyond these financial transactions involving loans and leases, Rudy also became agitated with Bill for smaller financial indiscretions. To demonstrate, during his mother's life, Bill would regularly take items from the family's general store without paying for the items, effectively running up a generous tab. Bill Dep., 25:11-24. Although no firm amount has been provided by either party, it is Bill's contention that his mother "forgave" that debt "when she found out that they were selling the store." Id., 12:10-14.

Interestingly, the Plaintiff has not set forth any evidence establishing a mutuality of agreement between Barbara and Rudy to forgive his general store debt.

Finally, the record establishes that Rudy made certain disbursements to Bill that were not made to his other two sons or to either of his late daughter's children. For example, in early 2009, Rudy furnished Bill approximately $18,000 to refurbish a truck. Id. at 23:5-16. Additionally, when making payments of $10,000 to each of his sons, Rudy provided Bill with an extra $10,000 more than either of his other children. Dep. of Robert Bettez (Bob Dep.), 50:2-25, 51:1-5.

Consequently, the failure of Bill to repay certain debts and obligations and Rudy's other acts of generosity towards Bill led to growing friction and animosity between father and son. Actually, Bill and Rudy's tumultuous relationship is well documented by Bill's own recollections and those of the other family members. For example, Joyce recollected that Rudy was "obsessed" with Bill's financial failures, going so far as to call Bill "twinkle toes" and stating that, "[t]winkle toes ain't gonna get nothing. He thinks he gonna get it all," in reference to Rudy's estate. Dep. of Joyce Bettez (Joyce Dep.), 57:21-25.

B

Daniel Stone's Legal Representation

The Plaintiff's primary contention is that Attorney Daniel Stone exerted undue influence upon Rudy when he drafted and executed the 2009 Will. Prior to his representation of Rudy in the estate planning detailed above, Mr. Stone first became affiliated with the Bettez family through Bill. See Stone Dep., 11:14-18. Beginning in 1986, Mr. Stone represented both Bill and the entities that Bill managed or controlled.

Id. Their relationship consisted of corporate work, including Mr. Stone's preparation of annual minutes, and the filing of annual reports for those businesses, and on some occasions, Mr. Stone's advice was sought in relation to certain business transactions that Bill considered pursuing. Id. At this time, Bill was the only member of the Bettez family represented by Mr. Stone. Id., 13:11-15.

In 2003, Mr. Stone was introduced to Rudy and began work on Rudy's estate plan. Id., 14:9-14. Upon establishment of a legal relationship with Rudy, Mr. Stone substantially curtailed his representation of Bill, save for providing occasional assistance related to the preparation of a contract or related to some transaction, but he did continue to do corporate work for the various entities that Bill had established. Id., 14:2-14. Thus, between 1995 and 2003 when Rudy's estate planning began, Mr. Stone did not perform any legal services on behalf of Bill other than those previously detailed. Id., 14:15-19.

After Rudy's unfortunate passing, Mr. Stone remained affiliated with the Bettez family as co-executor of Rudy's 2009 Will, along with Bob and Ron. See 2009 Will, ¶ 10.

II

A

Standard of Review for Probate Court Appeals

This Court's review of a Probate Court decision is governed by Rhode Island General Laws 1956 § 33-23-1, which provides in relevant part:

> Any person aggrieved by an order or decree of a court of probate, unless provisions be made to the contrary, may appeal therefrom to the Superior Court for the county in which such probate court is established . . . .

Our Supreme Court has reiterated that the Superior Court is not limited to alleged errors of law made by the Probate Court, but may in practice hear the case de novo. In re Taylor's Estate, 114 R.I. 562, 337 A.2d 236, 238-39 (1975); Kenyon v. Hart, 38 R.I. 524, 96 A. 529, 531 (1916). A person is deemed to be "aggrieved" within the meaning of this section if a Probate Court order or decree adversely affects in a substantial manner some personal or property right of the one seeking review or imposes some burden or obligation upon him. Lind v. McSoley, 419 A.2d 247, 250 (R.I. 1980).

B

Standard of Review for Summary Judgment

Summary judgment is proper when "no genuine issue of material fact is evident from the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, and the motion justice finds that the moving party is entitled to prevail as a matter of law." Smiler v. Napolitano, 911 A.2d 1035, 1038 (R.I. 2006) (quoting Rule 56(c)). On consideration of a motion for summary judgment, this Court must draw "all reasonable inferences in the light most favorable to the nonmoving party." Hill v. Nat'l Grid, 11 A.3d 110, 113 (R.I. 2011) (quoting Fiorenzano v. Lima, 982 A.2d 585, 589 (R.I. 2009)). However, the burden lies on the nonmoving party to "prove the existence of a disputed issue of material fact by competent evidence," rather than resting on the pleadings or mere legal opinions and conclusions. Hill, 11 A.3d at 113.

When it is concluded "that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law," summary judgment shall properly enter. Malinou v. Miriam Hosp., 24 A.3d 497, 508 (R.I. 2011) (quoting Poulin

v. Custom Craft, Inc., 996 A.2d 654, 658 (R.I. 2010)); see also Holliston Mills, Inc. v. Citizens Trust Co., 604 A.2d 331, 334 (R.I. 1992) (stating "summary judgment is proper when there is no ambiguity as a matter of law"). Conversely, "if the record evinces a genuine issue of material fact, summary judgment is improper." Shelter Harbor Conservation Soc'y, Inc. v. Rogers, 21 A.3d 337, 343 (R.I. 2011) (citations omitted). Most important, "[s]ummary judgment is an extreme remedy that should be applied cautiously." Hill, 11 A.3d at 113 (quoting Plainfield Pike Gas & Convenience, LLC v. 1889 Plainfield Pike Realty Corp., 994 A.2d 54, 57 (R.I. 2010)). "Nevertheless, Rule 56 of the Superior Court Rules of Civil Procedure constitutes a procedural device that, in the proper circumstances, plays an appropriate role in separating the wheat from the chaff in the litigation process." Young v. Warwick Rollermagic Skating Center, Inc., 973 A.2d 553, 557 (R.I. 2009).

III

Analysis

A

Parties' Arguments

In support of their Motion, the Defendants contend that Rudy was of sound mind when he executed the 2009 Will and no undue influence was exerted over him by any party. Moreover, Defendants aver that the debt forgiveness provided to Bill in the 2009 Will is the result of clear, rational, and deliberate decision-making by their father.

In stark contrast, Bill argues that the 2009 Will is invalid as Daniel Stone exercised undue influence over Rudy during its drafting and Rudy lacked testamentary capacity. Essentially, Plaintiff suggests Mr. Stone's prior legal representation of Bill

conflicts with his later representation of Rudy and his current representation of Bob and Ron through his capacity as co-executor of the 2009 Will.

B

Discussion

The decedent's estate has remained in probate since December of 2009, and due to the Plaintiff's challenge of the 2009 Will's validity, the entire Bettez family awaits the 2009 Will's disposition. As it relates to testamentary documents, the Rhode Island Supreme Court has assessed the validity of such documents by applying the principle of finality of contract except where:

> ". . . acts and contracts of persons who are of weak understandings, and who are thereby liable to imposition, will be held void in courts of equity, if the nature of the act or contract justify the conclusion that the party has not exercised a deliberate judgment, but that he has been imposed upon, circumvented, or overcome by cunning or artifice, or undue influence."

Anthony v. Hutchins, 10 R.I. 165, 176 (1872) (quoting Story's Eq. Juris. § 238). In his Complaint, the Plaintiff has challenged the decision of the Scituate Probate Court admitting the 2009 Will into probate and naming Mr. Stone, Bob, and Ron as co-executors. See Probate Court Order, ¶¶ 1-2. Specifically, the Plaintiff challenges the 2009 Will as it relates both to Rudy's alleged lack of testamentary capacity and to the alleged undue influence exerted by Attorney Stone.

1

Undue Influence

For a finding of undue influence to have been exerted so as to invalidate a testamentary disposition, the Court must find the "free will and choice of the testator"

was substituted by the will of a third party. Caranci v. Howard, 708 A.2d 1321, 1324 (R.I. 1998) (citing Marcinko v. D'Antuono, 104 R.I. 172, 181, 243 A.2d 104, 109 (1968)). Such proof must be established by a preponderance of the evidence but need not be set forth with direct evidence as "one seeking to set aside such a will is often unable to produce direct evidence of the undue influence to the factfinder but rather must rely on circumstantial evidence." Caranci, 708 A.2d at 1324 (citing Apollonio v. Kenyon,101 R.I. 578, 593-94, 225 A.2d 778, 787 (1967)). Moreover, the Rhode Island Supreme Court has expressed that "mere suspicion, surmise, or 'conjecture' alone is insufficient to support a finding of undue influence." Id. "Nevertheless, the party seeking to avoid a will that he or she believes is due to undue influence must show more than mere evidence of an opportunity to exert such influence unaccompanied by evidence that the impermissible pressure was actually asserted." Id.

Determining whether undue influence was exerted over a testator is a fact-intensive inquiry, dependent on a consideration of the totality of the circumstances, and is often not well suited for summary adjudication. Filippi v. Filippi, 818 A.2d 608, 630 (R.I. 2003) (citing Tinney v. Tinney, 770 A.2d 440, 428, 438 (R.I. 2001)). This Court is mindful that direct evidence establishing the existence of undue influence is rare as such influence tends to be exerted in secret; therefore, this Court will look to circumstantial evidence, if any exists, in its analysis. Apollonio, 101 R.I. at 593, 225 A.2d at 787 (citing Smith v. Smith, 54 R.I. 402, 173 A. 539 (1934)). Moreover, the Court may infer undue influence from an unexplained or unnatural disposition of property through a testamentary bequest. Caranci, 708 A.2d at 1327. Specifically, the Court must assess "the relationship between the parties, the physical and mental condition of the grantor,

the opportunity and disposition of a person wielding influence, and his or her acts and declarations." Filippi, 818 A.2d at 630 (citing Tinney, 770 A.2d at 428).

The conflict of interest that Plaintiff alleges constitutes undue influence centers on certain knowledge acquired by Daniel Stone in his representation of Plaintiff that was then used to unduly influence Rudy's testamentary dispositions to Plaintiff. Not all influence is undue, and this claim is pure, unsubstantiated speculation that is wholly unsupported in the record.

What the record overwhelmingly supports, however, is that Rudy provided generous and substantial financial support to Plaintiff whenever needed. Nonetheless, the impetus for the dispute before the Court is Rudy's decision to forgive the debts owed by Bill to both Rudy and to the Bettez Trust and to treat said forgiveness as Bill's "share" of the Bettez Trust assets. Id. Specifically, the 2009 Will provides:

> I direct my Executor to release my son William A. Bettez from debts owed to me or to the then Trustees of Bettez Trust. My omission to make any other provision herein for my said son, is due to my belief that funds heretofore advanced to him, as loans, as rent not paid by him for properties occupied by him personally and by his business interests, and otherwise, constitute adequate provision for him in respect of my estate, the estate of my late spouse, Barbara Bettez and the Bettez Trust.

Id., ¶ 5(A). Furthermore, Bill's alleged "disinheritance" is noted elsewhere in the 2009 Will, as Rudy did not include Bill as co-executor and excluded debts owed by Bill to the Bettez Trust from the residue of the estate bequeathed to Joyce. See id.

The advanced monies referenced in paragraph 5(A) of the 2009 Will are not in dispute in this matter. The Plaintiff concedes that the Loan was made by his father to Global, was personally guaranteed by him in the amount of $130,200, and was procured

by Rudy through a bank loan. See Loan; Bill Dep., 18:4-7. In fact, Bill testified he was aware his share would be reduced if he was unable to pay back the Loan to his parents. Bill Dep., 18:4-7. Simply put, the Plaintiff did not make the required payments on this Loan and was unable to pay back the principal to his father.

Beyond the Loan, the Plaintiff has also admitted to receiving payments from his father to refurbish a truck (in the amount of $18,000) and has testified that he has resided in and occupied two of his father's properties nearly rent free for approximately a decade. Id., 23:5-16, 52:1-6. Additionally, the Plaintiff does not challenge an outstanding debt he accrued through continuous purchases at the family general store, although there is some dispute as to whether the debt was forgiven by his mother during her lifetime. Id., 26:1-14.

Through the years following the drafting of the Bettez Trust, there is also no dispute that the relationship between Rudy and Bill became more strained due to the financial tensions existing between father and son. Joyce Dep., 35:1-7. With an amount outstanding in the vicinity of $158,200 (prior to any interest accruing and viewing the evidence in the light most favorable to Bill) and no payments received on that debt, Rudy believed the debts forgiven more than compensated Bill for his interest in the Bettez Trust. Stone Aff., ¶ 5. Moreover, in Daniel Stone's estimation, the outstanding debt cited above is conservatively low as it does not account for any interest on the debt or any rents left unpaid over the years. Id., ¶ 11. In fact, Daniel Stone testified that Rudy approached him years prior seeking to forgive Bill's debts as his share of the Bettez Trust assets, and only made such a change in the 2009 Will as he was in the process of updating his will in preparation of his impending marriage. Id., ¶ 5.

Moreover, all parties agree that Rudy made several perceptive business decisions through his later years. However, what is most striking to the Court is Rudy's astute decision to enter into a premarital agreement with Joyce prior to their marriage, whereby Joyce was required to disclaim all interest in the Bettez Trust. See Agreement. Also evidencing a sound mind, Rudy included in his 2009 Will a "Special Needs Trust" for his disabled granddaughter. 2009 Will, ¶ 6. Rudy created this trust to be discretionary so that it would "never be a 'countable' resource of Jesse King for the purpose of measuring her income and assets," so as not to interfere with future financial assistance from government and outside private resources. Id. These decisions demonstrate Rudy's sharp acumen at the time the 2009 Will was drafted and executed.

Turning to Rudy's relationship with Attorney Daniel Stone, the Court does note that the Plaintiff has had ample time to perform discovery in this matter, which includes the depositions of Bill, Bob, Joyce, and Daniel Stone. What has been established is that Mr. Stone is named as co-executor of the 2009 Will only, and is not listed as a beneficiary. See id. Daniel Stone also provided legal representation to Rudy from 2003 until the time of Rudy's death, mostly focusing on estate planning issues. See Stone Dep., 27:2-6. However, nearly two decades prior, Daniel Stone provided business and corporate legal representation to Bill. Id., 11:14-18. Eventually, Rudy was introduced to Daniel Stone and he began working for Rudy along with occasional contract work for Bill. Id., 14:9-14. After Rudy's death, Mr. Stone remained involved with the Bettez family as a co-executor of the 2009 Will, and in that capacity Mr. Stone remained in contact with family members other than Bill. See 2009 Will. Interestingly, the knowledge Bill alleges Daniel Stone "used" to influence Rudy pertained to information

related to Bill's financial difficulties, which were well-known and readily apparent to his father throughout their relationship.

The Court finds that no evidence of undue influence has been set forth in opposition to the instant Motion. Therefore, the Court finds that there exist no genuine issues of material fact related to the existence of undue influence exerted by Daniel Stone in this matter. In so finding, the Court grants the Defendants' Motion for Summary Judgment as it relates to Plaintiff's claim of undue influence.

2

Testamentary Capacity

The Plaintiff's Complaint also challenges the 2009 Will based on Rudy's alleged lack of testamentary capacity. In the Motion before this Court, the Defendants "move for summary judgment" generally. See Defs.' Motion. The Court infers from the Motion that both Counts are currently before it.

The Rhode Island Supreme Court has firmly stated that to possess sufficient testamentary capacity at the time a will is executed, it must be established that the testator:

> [1] has sufficient mind and memory to understand the nature of the business he is engaged in when making his will[; 2] has a recollection of the property he wishes to dispose of thereby[; 3] knows and recalls the natural objects of his bounty, their deserts with reference to their conduct and treatment of him, [and] their necessities[;] and [4] the manner in which he wishes to distribute his property among them.

Pollard v. Hastings, 862 A.2d 770, 777 (R.I. 2004) (citing Rynn v. Rynn, 55 R.I. 310, 321, 181 A. 289, 294 (1935)). Additionally, the "proponent of the will bears the burden

of proof of testamentary capacity by a fair preponderance of the evidence." Id. (citing Nelson v. Blake, 173 A. 625, 626 (R.I. 1934)).

Here, there is ample evidence establishing sufficient testamentary capacity as Rudy's drafting of the 2009 Will was a thoughtful, deliberate, and rational response to the relationship existing between father and son. Specifically, the Court finds compelling evidence of testamentary capacity in Rudy's prudent legal decisions, including the drafting of a premarital agreement and the inclusion of a Special Needs Trust, among others. See 2009 Will; Agreement. In addition, Rudy's signing of the 2009 Will was witnessed by two parties, Daniel Stone and Tina Hagman, both testifying to Rudy's sound mind. See Aff. of Tina Hagman, ¶ 4; Stone Aff., ¶ 7.

Nonetheless, in attempting to refute Rudy's capacity to enter into a testamentary document, the Plaintiff has provided no evidence of a frail or clouded mind so as to negate testamentary capacity. Instead, the Plaintiff actually admits his father's decline did not begin until after Rudy's marriage to Joyce, more than one month after his drafting and execution of the 2009 Will. Bill Dep., 11:16-24, 12:1-14. In fact, the Plaintiff admits that prior to Rudy's marriage (and therefore, prior to the 2009 Will's execution), Rudy "was up and walking around constantly every day" and his physical decline did not come until after the marriage. Id., 10:2-5, 12:1-14. Moreover, when asked whether he believed his father had any mental impairment at the time, Bill answered, "I don't know." Id., 13:13-15.

Importantly, the challenged modifications to the 2009 Will were not a "spur of the moment" decision by Rudy, but a calculated and well-reasoned alteration that Rudy had intended to make for several years. Stone Aff. at ¶ 5. That decision was made by Rudy

two to three years prior to his engagement to Joyce, but was incorporated in the 2009 Will due to the necessity of that instrument's alteration to reflect Rudy's approaching marriage to Joyce. Id.

The Court concludes that Rudy had sufficient testamentary capacity as it relates to the drafting and execution of the 2009 Will and that the 2009 Will is a valid testamentary instrument. Therefore, the Court finds that there exist no genuine issues of material fact related to Rudy's testamentary capacity. In so finding, the Court grants the Defendants' Motion for Summary Judgment as it relates to Plaintiff's claim of a lack of testamentary capacity.

IV

Conclusion

Upon review of the memoranda and exhibits provided by the parties, this Court finds that there are no genuine issues of material fact and Defendants are entitled to judgment as a matter of law on Plaintiff's claims of undue influence and lack of testamentary capacity.

Accordingly, this Court grants Defendants' Motion for Summary Judgment. Counsel shall submit the appropriate order for entry.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: Bettez v. Bettez, et al.

CASE NO: PP 12-4239

COURT: Providence County Superior Court

DATE DECISION FILED: April 17, 2013

JUSTICE/MAGISTRATE: Procaccini, J.

ATTORNEYS:

For Plaintiff: Jonathan L. Stanzler, Esq.

For Defendant: Barry J. Kusinitz, Esq.
Jacqueline M. Bouchard, Esq.
Joseph C. Manera, Esq.