

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: February 2, 2015)

MARK QUILLEN

:

v.

:

C.A. No. PC-2013-5808

:

MARY MACERA

:

:

DECISION

PROCACCINI, J.

*Fra il dire e il fare c'è di mezzo il mare* – An ocean lies between what is said and what is done.

This Italian adage comes to mind as the Court is thrust into an unfortunate family dispute spurred by a change in beneficiary designation on an annuity contract owned by Domenic Zubiago (Mr. Zubiago) at the time of his death. The clash arises between Plaintiff Mark Quillen (Mr. Quillen), Mr. Zubiago's great-nephew, and Defendant Mary Macera (Mrs. Macera), Mr. Zubiago's sister. Mr. Quillen contends that Mrs. Macera exerted undue influence over Mr. Zubiago resulting in her being named as the beneficiary on the annuity account to Mr. Quillen's exclusion. Jurisdiction is pursuant to G.L. 1956 § 8-2-13.

I

**Facts and Travel**

The parties in this case have elected a non-jury trial. As such, the following narrative sets forth this Court's composite of the facts established from the evidence presented.

The decedent, Mr. Zubiago, worked for the Providence Police Department for twenty-five years. After reaching the rank of detective, he retired from the force and began a career as a security officer for Blue Cross/Blue Shield of Rhode Island (Blue Cross). In 2010, after working

at Blue Cross for another twenty-five years, Mr. Zubiago began his well-deserved retirement at the age of eighty-six. By all accounts, Mr. Zubiago was a very private man and remained independent even in his advanced age. During the course of his working life, he was able to amass a sizeable estate. Having no children of his own, Mr. Zubiago devised the majority of his estate, \$1.3 million, to his seventeen nieces and nephews under the provisions of his last will and testament.

The dispute before the Court involves two annuity accounts Mr. Zubiago opened with Amica Insurance Company (Amica), which passed to beneficiaries outside his will. The first account, Policy No. 1-200019591 (Smaller Annuity), was opened in 1983, listing Mr. Zubiago's oldest sister, Emilia Zubiago (Emilia), as the beneficiary. The second account, Policy No. 1-200019343 (Disputed Annuity), was created about a decade later, again with Emilia as the intended beneficiary. Upon Emilia's death in 2002, Mr. Zubiago changed the beneficiary of these two annuities to his youngest sister, Mrs. Macera. To effect this change, Mr. Zubiago executed two change of beneficiary forms, both of which were witnessed by yet another sister of the Zubiago family, Filomena Silvestri (Mrs. Silvestri).

Two years later, Mr. Zubiago changed the intended beneficiary of these two annuities once again, naming his great-nephew Mr. Quillen<sup>1</sup> as recipient of the funds. At trial, Mr. Quillen asserted that he had developed a "special relationship" with Mr. Zubiago while living with his grandfather, Mr. Zubiago's brother, Joseph,<sup>2</sup> in his youth. With regard to the circumstances of this change in beneficiary, Mr. Quillen testified that in May of 2004, Mr. Zubiago called him

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<sup>1</sup> Mr. Quillen works for Prudential Insurance selling insurance and estate planning products including annuity contracts. He holds certificates as a Chartered Life Underwriter (CLU), a Chartered Financial Consultant (CFC), a Chartered Financial Planner (CFP), and an Accredited Estate Planner (AEP).

<sup>2</sup> Joseph Zubiago passed away in 1998. In the time preceding his death, he and Domenic Zubiago were especially close.

“out of the blue” asking for his date of birth and social security number. He stated that Mr. Zubiago told him that he wanted to list Mr. Quillen as a beneficiary on one of his annuity accounts.

After this brief call, Mr. Quillen did not hear from Mr. Zubiago for another six months, until one day in November 2004, Mr. Zubiago called asking him to come over his house. Once Mr. Quillen arrived, they called Amica together to request change of beneficiary forms and verify the accounts. At the time, the Smaller Annuity contained \$28,382.43 while the Disputed Annuity had a balance of \$115,994.42. Mr. Quillen testified that Mr. Zubiago promised to add another \$60,000, to provide a total of approximately \$200,000. However, the bank from which Mr. Zubiago planned to withdraw the funds did not allow non-taxable partial transfers and, as a result, a transfer of \$60,000 would cause him to incur a tax obligation in excess of \$10,000. Faced with these tax ramifications, Mr. Zubiago apparently settled on transferring only \$30,000, costing him approximately \$5000 in taxes. The bank sent Mr. Zubiago the check, which he endorsed, and Mr. Quillen deposited in the Disputed Annuity. A few days later, the change of beneficiary forms arrived in the mail. Mr. Quillen dutifully assisted his great-uncle in filling these forms out.

Mr. Quillen also testified that at this time, Mr. Zubiago told him that he had a Certificate of Deposit (CD) account which would soon be due that he wished to add to the promised annuities. In January 2005, Mr. Quillen received a check for \$74,457.62, representing Mr. Zubiago’s withdrawal from the CD, as well as an additional check for \$20,000 from Mr. Zubiago’s checking account with Citizens Bank (Citizens). Both checks were added to the

balance of the Disputed Annuity.<sup>3</sup> According to Mr. Quillen, Mr. Zubiago stated that this sizeable gift stemmed from his close relationship with his brother Joseph, Mr. Quillen's grandfather, as well as his own bond with Mr. Quillen.

Once the transfer of over \$240,000 was accomplished, Mr. Quillen had limited contact with Mr. Zubiago, primarily seeing him only at large family gatherings such as weddings and holidays. In the summer of 2005, he helped his great-uncle fill out some forms in preparation for prostate surgery. Later, in 2007, Mr. Zubiago showed Mr. Quillen financial documents relating to the various annuities he set up for his other great-nephews, Stephen Zubiago and Joey Macera. Mr. Quillen also testified that at this time, Mr. Zubiago informed him that the remainder of the estate would be distributed among his seventeen nieces and nephews. After this visit, Mr. Quillen had only passing interactions with Mr. Zubiago at family events. Surprisingly, Mr. Quillen acknowledged limited contact with Mr. Zubiago after his designation as a beneficiary of the Disputed Annuity. From 2007 through the date of Mr. Zubiago's death on April 29, 2013, he never visited Mr. Zubiago's home nor did Mr. Zubiago visit his home.

In 2008, Mr. Zubiago called his nephew, Donald Zubiago (Donald), palpably bothered. He told Donald that he "screwed up [and] left [Mr. Quillen] too much money." (Tr. 75:5.) Mr. Zubiago explained that he had left Mr. Quillen about \$360,000 in one account and approximately \$30,000 in another. Donald responded that "that sounds like an awful lot of money[.]" advising Mr. Zubiago to speak to the lawyer that had done his estate planning, assuming the annuities fell within the purview of the will. (Tr. 75:20-21.) When they next spoke regarding the annuities, Mr. Zubiago assured Donald that he "took care of it[.]" (Tr. 76:25.)

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<sup>3</sup> Such an addition would bring the balance of the Disputed Annuity to \$240,452.04. No evidence was adduced at trial to explain how this amount rose to \$366,727.11.

On September 9, 2009, Maria Shurick of Amica (Ms. Shurick) received a call from a woman who, according to Ms. Shurick's notes on the call, identified herself as "Mary Zubiago."<sup>4</sup> She stated that this woman requested preprinted<sup>5</sup> change of beneficiary forms to be sent to Mr. Zubiago's home address. These forms related only to the Smaller Annuity, which is not contested here.

On September 17, 2009, another employee of Amica, Sara Driscoll (Mrs. Driscoll), spoke with Mr. Zubiago who stated that he had not yet received the requested change of beneficiary forms. He also requested the change of beneficiary form for the Disputed Annuity and a form authorizing Amica to communicate directly with Mrs. Macera, noting his speech impediment, described as a stutter, as the basis for such authorization. Mrs. Driscoll stated that during the course of this conversation she also spoke with Mrs. Macera. Several days later, on September 22, 2009, Mr. Zubiago and Mrs. Macera spoke to Mrs. Driscoll once again, requesting that the monthly payment from the now-matured annuity be deposited directly in Mr. Zubiago's bank account. On October 2, 2009, Mr. Zubiago called Mrs. Driscoll, this time independently, stating that he decided against receiving the monthly payment option. During the course of this conversation, he also noted that Mrs. Macera was in the process of sending in the appropriate authorization forms.

Mrs. Macera denied ever calling Amica outside Mr. Zubiago's presence. She testified that Mr. Zubiago frequently would have her call to get a live person on the line and then hand the

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<sup>4</sup> Mrs. Macera stated that she had been married over fifty years and never, since that time, used her maiden name, Zubiago. The Court finds that Ms. Shurick likely mistranscribed Mrs. Macera's name in light of the fact that the call was made regarding the Zubiago account.

<sup>5</sup> The term "preprinted" refers to the fact that the name of the new beneficiary appears typed in the form.

phone to him because he was very self-conscious about his stutter. Once he began the conversation, she stated that she would often leave the room.

On September 23, 2009, Mr. Zubiago approached the Assistant Vice-President of Finance at Blue Cross, Mr. James Kenney (Mr. Kenney), while on the job as a security guard. Mr. Kenney described Mr. Zubiago as an acquaintance, a friendly man who spoke little of his personal affairs. Mr. Zubiago asked if Mr. Kenney would witness his signature on two documents, and Mr. Kenney obliged. In his deposition, Mr. Kenney stated that while Mr. Zubiago apologized for the inconvenience imposed by his request, he was his “normal cheerful, pleasant self.” (Dep. James Kenney 15:25, Feb. 12, 2014.) These change of beneficiary forms, which bear the signatures of Mr. Kenney and Mr. Zubiago, relate only to the Smaller Annuity.<sup>6</sup> Additionally, under “Primary Beneficiary,” the name “Mary Macera” appears preprinted along with her date of birth. Mrs. Macera stated that she had filled in the remainder of the form by hand, relating her address and social security number.

In October 2009, Mr. Zubiago walked into the Citizens branch on Oaklawn Avenue in Cranston, where he held a number of accounts. There, he spoke with bank employee Nancy Bloch (Ms. Bloch). Ms. Bloch stated that “part of [her] job is [to] know [her] customers . . . and [ ] care about their lives outside of them coming in to do transactions at the bank[.]” (Tr. 86:12-15.) As such, she knew Mr. Zubiago well, noting that, from 2002 until his death in 2013, he would come into the bank several times a week to cash checks or make withdrawals. On that day in October, Mr. Zubiago spoke at length with Ms. Bloch, expressing his desire to add Mrs. Macera as a joint account holder on his checking account, which contained over \$50,000, and as beneficiary of his money market account. He informed Ms. Bloch that he “wasn’t concerned

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<sup>6</sup> In light of Mr. Kenney’s deposition testimony, Mr. Quillen concedes the validity of this beneficiary change.

with [Mrs. Macera] having access to his checking” because he “explicitly trusted” her. (Tr. 90:16-17, 24.) Mr. Zubiago explained that Mrs. Macera “was a good choice because she had been in banking previously and she would be able to help him with his banking transaction[s] if he needed help at some point.”<sup>7</sup> (Tr. 91:2-4.) After making such changes to his accounts, Mr. Zubiago continued to come into the bank to conduct regular transactions up until the time of his death.

Upon receiving the change in beneficiary form for the Disputed Annuity on January 20, 2010, Mr. Zubiago went alone to Mrs. Silvestri’s house several days later to have her sign the form as a witness. Mrs. Silvestri stated<sup>8</sup> that she signed the form at Mr. Zubiago’s request, attesting to the fact that Mr. Zubiago acted completely normal during his visit and did not appear to be in any distress or as if anyone was making him ask her to sign the document. Mrs. Silvestri noted that at the time she signed the form, it was blank—she did not sign as witness to Mr. Zubiago’s signature. Nevertheless, it is undisputed that Mr. Zubiago did indeed sign the change in beneficiary form for the Disputed Annuity.

Mrs. Macera, as she had done with the Smaller Annuity, filled in her social security number and address on the form. She testified that Mr. Zubiago often had her fill in her personal information on documents without telling her what such forms were regarding. Further, she attested, she never read the forms that he asked her to sign. As such, while she recognized the handwriting on the change in beneficiary form as her own, she asserts that she had written the

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<sup>7</sup> Mrs. Macera had a successful career in the banking industry, working for approximately thirty years at Rhode Island Hospital Trust and retiring as an Assistant Vice President.

<sup>8</sup> Unfortunately, due to her failing health, Mrs. Silvestri was unable to appear at trial, instead being deposed in relation to the instant matter. A video recording of her deposition was presented to the Court.

information without the knowledge that the document served to establish her as the beneficiary of the Disputed Annuity.

Amica received this change of beneficiary form for the Disputed Annuity and recorded it on February 2, 2010. This act of recording reflected that Mr. Zubiago's signature was verified and that the change was put in effect. Representatives of Amica explained at trial that while the form asks for a witness signature, a beneficiary change may be effected without a witness to the policyholder's signature as long as that signature matches its records. There is no dispute that the change of beneficiary forms do indeed bear Mr. Zubiago's signature.

Mr. Zubiago passed away on April 29, 2013. Shortly after, Mr. Quillen contacted Amica to notify it of his great-uncle's death, expecting to receive the funds from the Disputed Annuity. He was informed by Amica that he was not listed as a beneficiary on either the Disputed Annuity or the Smaller Annuity. The day after the funeral, Mr. Quillen visited Mrs. Macera at her home, clearly upset that he had been removed as beneficiary. Mrs. Macera, who at the time was unaware that Mr. Zubiago listed her as beneficiary for these annuities to the exclusion of Mr. Quillen, told Mr. Quillen that he might receive the proceeds of a different account.

At trial, Mrs. Macera, who this Court finds to be forthright and credible, noted that her brother, Mr. Zubiago, spoke little of his financial affairs, though stating that he informed her he would be leaving his estate to his nieces and nephews. She indicated that while she knew Mr. Zubiago named her as executor of his will, he did not discuss the particulars of his estate any further. Mrs. Macera also testified that Mr. Zubiago would frequently hand her a form and tell her to write down her personal information. She stated that she would not look at the form or ask any questions but would simply comply with the request out of trust. Mrs. Macera swore under oath that she did not know that Mr. Zubiago was leaving any money to her. She received

\$16,372.13 for the Smaller Annuity after relevant taxes were deducted and \$366,727.11 for the Disputed Annuity. Despite not being required to do so, Mrs. Macera testified that she intends to distribute the proceeds of these annuities among Mr. Zubiago's seventeen nieces and nephews in accordance with Mr. Zubiago's wishes regarding his estate.

In the wake of Mr. Zubiago's death, Mr. Quillen filed suit on November 14, 2013, seeking to enjoin Mrs. Macera from distributing the proceeds of both the Smaller Annuity and the Disputed Annuity. A preliminary injunction was granted, and the case proceeded to a non-jury trial on January 5, 2015. As the Verified Complaint sought only injunctive relief, the cause of action under which Mr. Quillen sought relief was unclear throughout most of the trial. On the third day of the proceedings, after repeated requests for clarification by the Court, Mr. Quillen filed an Amended Complaint incorporating a count for "Equitable Relief," stating that the change of beneficiary forms "were executed by mistake and or inadvertence." (Am. Compl. ¶ 22.) In a memorandum submitted by Mr. Quillen in lieu of final argument, this request for equitable relief specifically asserts that Mrs. Macera unduly influenced Mr. Zubiago by pressuring him to remove Mr. Quillen as the listed beneficiary of the Disputed Annuity.

## II

### Standard of Review

In a non-jury trial, the trial justice sits as both trier of fact and law. Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984). As such, the Court "weighs and considers the evidence, passes upon the credibility of the witnesses, and draws proper inferences. He [or she] need not view the evidence in a light most favorable to a plaintiff." Id. at 184-85. With respect to this role, the judge is "traditionally accord[ed] a great deal of respect to the factual determinations and credibility assessments [as he or she] has actually observed the human drama that is part and

parcel of every trial and [has] . . . take[n] into account other realities that cannot be grasped from a reading of a cold record.” In re Dissolution of Anderson, Zangari & Bossian, 888 A.2d 973, 975 (R.I. 2006). While this Court is required to make specific findings of fact as per Super. R. Civ. P. 52(a), it “need not engage in extensive analysis to comply with this requirement [as] [e]ven brief findings will suffice as long as they address and resolve the controlling factual and legal issues.” White v. LeClerc, 468 A.2d 289, 290 (R.I. 1983) (citing J.W.A. Realty, Inc. v. City of Cranston, 121 R.I. 374, 384, 399 A.2d 479, 484-85 (1979)).

### III

#### Discussion

Mr. Quillen contends that Mrs. Macera abused her close relationship with Mr. Zubiago in order to induce him to list her as the beneficiary of the Disputed Annuity to the exclusion of Mr. Quillen. He calls upon this Court to fashion a remedy based in equity, which would serve to reform the Disputed Annuity and award him the proceeds. Mrs. Macera responds that Mr. Zubiago deliberately changed the beneficiary of the Disputed Annuity without her or anyone else’s involvement. She asserts that not only did she not know that she was listed as beneficiary, but that she also plans to distribute the proceeds from the annuities in accordance with the directive of Mr. Zubiago’s estate; namely, by giving the money to his seventeen nieces and nephews.

The validity of a testamentary gift “is not affected by a mistake unless fraud or undue influence was perpetrated upon the testator or the mistake involves a want of testamentary intent.” Illinois State Trust Co. v. Conaty, 104 F. Supp. 729, 733 (D.R.I. 1952) (citing inter alia Gifford v. Dyer, 2 R.I. 99 (1852)). “Undue influence long has been recognized in equity as . . . a means of challenging the validity of a . . . contract.” Lavoie v. N. E. Knitting, Inc., 918 A.2d

225, 228 (R.I. 2007); see Stockett v. Penn Mut. Life Ins. Co., 82 R.I. 172, 174, 106 A.2d 741, 742 (1954) (regarding action to rescind annuity contract based on theory of undue influence). It is defined as “substitution of the will of a third party for the free will and choice of the testator in making a testamentary disposition.” Caranci v. Howard, 708 A.2d 1321, 1324 (R.I. 1998).

The party seeking to overturn a testamentary gift “must prove undue influence by a preponderance of the evidence.” Id. (citing Murphy v. O’Neill, 454 A.2d 248, 250 (R.I. 1983)); see also Marcinko v. D’Antuono, 104 R.I. 172, 182, 243 A.2d 104, 109 (1968) (holding that the “burden of proof of undue influence is on the contestant”) (internal citations omitted). Nevertheless, “the unexplained, unnatural disposition of a decedent’s property[,] . . . when considered along with other factors, can give rise to an inference of undue influence.” Caranci, 708 A.2d at 1324; see Murphy, 454 A.2d at 249. Indeed, such an inference may arise under circumstances where “the person accused of unduly influencing the testator enjoys a relationship of trust and confidence with the testator and was instrumental in the testator’s execution of the contested [testamentary gift.]” Id. (citing Apollonio v. Kenyon, 101 R.I. 578, 596, 225 A.2d 778, 788 (1967)). However, “evidence of opportunity, unaccompanied by evidence, direct or indirect, that such influence was exerted, . . . will [not] support a finding that the instrument was the result of undue influence.” Campbell v. R.I. Hosp. Trust Co., 125 A. 220, 221 (R.I. 1924). Additionally, “[i]nfluence gained by kindness and affection will not be regarded as undue[.]” Talbot v. Bridges, 54 R.I. 337, 173 A. 72, 76 (1934). Ultimately, to determine whether undue influence was truly exerted over a decedent, this Court must examine the “totality of [the] circumstances, including the relationship between the parties, the physical and mental condition of the [subservient party], the opportunity and disposition of [the] person wielding influence, and

his or her acts and declarations.” In re Estate of Picillo, 99 A.3d 975, 982 (R.I. 2014) (internal citations omitted).

Here, there is a dearth of evidence in the record before the Court to suggest that Mrs. Macera exploited her relationship of trust with Mr. Zubiago as a means by which to acquire the annuity at issue. While Mrs. Macera did help Mr. Zubiago in making phone calls to Amica and filling out various forms, this Court finds no evidence to suggest that Mrs. Macera did so in order to advance her own prerogatives. Indeed, she testified at trial that she plans to distribute the proceeds of the Disputed Annuity among Mr. Zubiago’s nieces and nephews in accordance with the remainder of his estate. There is nothing in the record to suggest that the trust Mr. Zubiago placed with Mrs. Macera was unfounded or exploited in any manner. See Hollingworth v. Kresge, 48 R.I. 341, 137 A. 908, 910 (1927) (holding that testamentary gifts made out of appreciation and affection do not constitute the product of undue influence).

Furthermore, there is nothing unnatural about an elderly bachelor, with no children of his own, leaving a testamentary gift to his younger sister with whom he was quite close. See Caranci, 708 A.2d at 1324 (holding that an “unnatural disposition of a decedent’s property . . . can give rise to an inference of undue influence”). Here, the testimony adduced at trial demonstrated the frequent contact and close familial relationship between Mr. Zubiago and Mrs. Macera. Additionally, there is no evidence that Mrs. Macera seized upon the opportunity of any weakened resolve on the part of Mr. Zubiago by seeking to direct his financial affairs to her benefit. See Stockett, 82 R.I. at 176, 106 A.2d at 743 (holding, in refusing to invalidate an annuity, that although “complainant’s intestate may have been advanced in years, infirm, illiterate and inexperienced in business matters,” there was no evidence of any undue influence). Indeed, Ms. Bloch—a Citizens employee wholly disinterested in the case at hand— testified that

Mr. Zubiago informed her that he fully trusted Mrs. Macera to help with his finances if circumstances arose where he would need assistance.

Additionally, nothing in the evidence before this Court suggests that Mr. Zubiago suffered from weakened mental capacity in his advanced age. See Caranci, 708 A.2d at 1324 n.3 (“Weakness of mind, [although] [ ] not an essential element to a finding of undue influence, . . . may be relevant.”) Indeed, the evidence before the Court shows the reverse—that Mr. Zubiago was independent until the time of his death. Ms. Bloch testified that Mr. Zubiago would come into the local branch of Citizens by himself several times a week to conduct regular transactions such as withdraw money and deposit checks until his passing in 2013. Additionally, the record demonstrates that he continued to work as a security guard until 2010, retiring after the relevant change in beneficiary to the Disputed Annuity was made. Further, there was no evidence adduced at trial suggesting that he retired due to poor health, either mental or physical.

Ultimately, Mr. Quillen has presented no evidence tending to suggest that Mrs. Macera pressured Mr. Zubiago to replace her as beneficiary to the exclusion of Mr. Quillen. When Mr. Quillen informed her that he was no longer the beneficiary of the Disputed Annuity, she responded in earnest that Mr. Zubiago might have arranged his finances such that Mr. Quillen would receive the proceeds of a different account. Mrs. Macera testified that she was unaware that she was designated as beneficiary for the Disputed Annuity. Even if Mrs. Macera did know that Mr. Zubiago changed the beneficiary on two of his annuity accounts so that she would receive the proceeds, there is nothing to indicate that she did anything to influence that decision. This Court fails to see any motive on the part of Mrs. Macera to, as Mr. Quillen alleges, swindle him out of a testamentary gift by forcing her brother to leave the money to her instead.

This Court declines to speculate as to why Mr. Zubiago chose to leave nothing to Mr. Quillen. There was simply no evidence put forth at trial that would explain his change of heart. What is clear, however, is that Mr. Zubiago was very deliberate in planning his estate and in changing the beneficiary designations on the two annuity contracts at issue. See Notarantonio v. Notarantonio, 941 A.2d 138, 147 (R.I. 2008) (affirming absence of undue influence where trial justice found grantor was a “strong-willed woman who was not vulnerable to [her son’s] influence”). Mr. Zubiago went alone to Mr. Kenney at Blue Cross and had him sign as witness to the change of beneficiary forms for the Smaller Annuity. Several months later, he went alone to Mrs. Silvestri’s home to have her sign the forms for the Disputed Annuity. He personally spoke to Amica several times before changing the listed beneficiary on these accounts. Even in the drafting of his will, he did not involve Mrs. Macera in the particulars of his estate planning despite naming her as executor. It is readily apparent that Mr. Zubiago felt that he “screwed up” in leaving Mr. Quillen the Disputed Annuity, sharing this belief with his nephew Donald, and acted of his own free will in seeking to rectify that disposition. (Tr. 75:5.)

Mr. Quillen cites Passarelli v. Passarelli for the proposition that “where a relationship of trust and confidence exists between a grantor and a grantee, . . . the burden is on the grantee to establish that the transfer was the deliberate and voluntary act of the grantor and that the transaction was fair, proper, and reasonable in all circumstances.” 94 R.I. 157, 159-60, 179 A.2d 330, 332 (1962). Such a rule is of no moment here. See Murphy, 454 A.2d at 249-50 (internal citations omitted) (“There is a body of case law . . . that an unexplained, unnatural disposition in a will . . . can give rise to the drawing of an inference of undue influence. Nowhere, however, do we find any reference to the shifting of the burden of proof.”) (emphasis added). Rather, the burden shift set forth in Passarelli arose in the context of an elderly woman bringing suit against

her son, alleging that when she conveyed her home to him, she did so without consideration and upon fraudulent misrepresentations. 94 R.I. at 159, 179 A.2d at 331. There is no mention of any claim regarding undue influence, to wit, that the son had substituted his will for that of his mother's in the conveyance. Id.

Accordingly, considering the “totality of [the] circumstances,” In re Estate of Picillo, 99 A.3d at 982, this Court finds that Mr. Quillen has failed to meet his burden of proving, by a preponderance of the evidence, that Mrs. Macera substituted her will “for the free will and choice of” Mr. Zubiago. Caranci, 708 A.2d at 1324. Simply put, helping with phone calls and filling out forms at the request of a decedent does not constitute undue influence. If it did, Mr. Quillen would, by his own admission, be guilty of the same.

#### **IV**

#### **Conclusion**

In light of the evidence on the record, this Court finds that Mr. Quillen has failed to show by a preponderance of the evidence that the change in beneficiary for the Disputed Annuity, excluding Mr. Quillen, was the result of undue influence. The record is barren of any words or conduct attributable to Mrs. Macera establishing any influence upon Mr. Zubiago's decision to remove his great-nephew, Mr. Quillen, as beneficiary of the Disputed Annuity. To the contrary, the evidence overwhelmingly demonstrates that Mr. Zubiago was an independent, hard-working, and kind-hearted man, who acted with great deliberation in planning his estate. Lost in the fray of this family feud is Mr. Zubiago's generosity towards his many family members. His final act,

instead of creating strife, should stand as a touching reminder that “death ends a life, not a relationship.”<sup>9</sup>

Mr. Quillen’s request for equitable relief is denied. Counsel shall submit the appropriate judgment for entry.

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<sup>9</sup> These are the words of Robert Benchley, American humorist, newspaper columnist and film actor.



**RHODE ISLAND SUPERIOR COURT**

*Decision Addendum Sheet*

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**TITLE OF CASE:** Quillen v. Macera

**CASE NO:** PC-2013-5808

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** February 2, 2015

**JUSTICE/MAGISTRATE:** Procaccini, J.

**ATTORNEYS:**

**For Plaintiff:** Gregory J. Acciardo, Esq.

**For Defendant:** Paul A. Anderson, Esq.  
                          Amato A. DeLuca, Esq.