

STATE OF RHODE ISLAND

PROVIDENCE, SC.

SUPERIOR COURT

(FILED: November 10, 2023)

In re: Estate of NANJI PARENTI, and BURT :
JAGOLINZER in his Capacity as Executor of : C.A. No. PP-2021-04603
the Estate of Nanci Parenti :

DECISION

LANPHEAR, J. This matter is before the Court for decision following a non-jury trial on August 22, 2023. The trial is completed, and each party has submitted post-trial memoranda. For the reasons that follow, this Court finds for the Appellee, Mr. Herb Jagolinzer.

I

FINDINGS OF FACT

The matter before the Court is Appellants' appeal from the Cranston Probate Court's decision to grant Appellee's (Mr. Jagolinzer) Petition for Probate of Ms. Nanci Parenti's will, dated June 27, 2019. Am. Compl. ¶¶ 4, 8.

Nanci Parenti lived in Cranston, Rhode Island. For almost sixteen years she lived with Mr. Jagolinzer, who had a close friendship with her. In March 2019, Ms. Parenti learned that she had a cancerous brain tumor. Thereafter, treatment did not appear to be successful. In May 2019, she moved to a nursing home and later moved to another nursing home. In October 2011, Ms. Parenti wrote a will (2011 Will), apparently without the assistance of an attorney.

In June 2019, Mr. Jagolinzer took the 2011 Will to Attorney John Reis. Attorney Reis, who is also a certified public accountant, had prepared Ms. Parenti's taxes for many years. Attorney Reis determined that the will was likely to be found invalid, at least in part. Attorney Reis promptly

set out to prepare new estate planning documents for Ms. Parenti and scheduled an appointment for her on June 25, 2019.

Attorney Reis met with Ms. Parenti about the potential deficiencies with the 2011 Will. Able to converse with Ms. Parenti in the nursing home, they agreed that Attorney Reis should prepare new estate planning documents. Attorney Reis and Ms. Parenti discussed how she wished to divide her estate, and she described her assets to him. On June 27, Attorney Reis, his office assistant Ms. Cannata, and Mr. Jagolinzer met at the nursing home for Ms. Parenti to sign a new will (June 2019 Will). Ms. Parenti was less communicative and physically drained but understood who Attorney Reis was and that she was signing a new will.

At the signing of the will, Attorney Reis found Ms. Parenti to be competent and understanding of what Attorney Reis was saying but less able to express herself. Ms. Parenti acknowledged that she was signing the will freely.

Ms. Parenti also executed a Health Care Power of Attorney on June 25, 2019, which Mr. Reis and Ms. Cannata witnessed.

On July 17, 2019, Ms. Parenti passed away.

The June 2019 Will included the same general terms as the 2011 purported will. Mr. Jagolinzer was listed as the executor in the new will. The notary clause indicates that the will was executed in Cranston, although it was executed and notarized at a nursing home in Warwick. Of course, Ms. Parenti did not sign the notary clause. Both witnesses, Attorney Reis and Ms. Cannata, executed affidavits in proof of the will on June 27, 2019. (Ex. 3.)

Ms. Parenti had several cousins, including Michael Westerman and Kerry a/k/a Kerri (Westerman) Rodriguez. Michael Westerman is married to Amy Westerman. They would each see Ms. Parenti occasionally at family gatherings. In May 2019, Mr. Jagolinzer told Kerri that Ms.

Parenti was ill and in a nursing home. Amy Westerman also was told of Ms. Parenti's illness. On July 2, 2019, Kerri Rodriguez visited Ms. Parenti in the nursing home and found her to be sad, confused, agitated, yelling, and uncomfortable. Michael and Amy Westerman visited Ms. Parenti in the nursing home on July 8 or July 9, 2019. Ms. Parenti was in bed in a near fetal position and unresponsive, mumbling only unintelligible words.

A

Presentation of Witnesses

Mr. Jagolinzer, Appellee's first witness, was emotional in describing his relationship with Ms. Parenti and in detailing her illness. He was unsure of the dates of the nursing home meetings but was clear that Ms. Parenti wanted the will to be correct. He also testified concerning the signing ceremony. Mr. Jagolinzer was courteous, cooperative, and would calmly correct himself when he was shown to be inaccurate concerning a date or meeting.

Attorney Reis was cooperative, consistent, and highly credible. He was extremely formal as a witness and anxious to be accurate. He freely admitted when Ms. Parenti was less communicative, that her health had "gone downhill in a few days," and in a "diminished state." This solidified his credibility. His conclusion that she was competent was very clear.

Ms. Tressa Cannata, the assistant to Attorney Reis, was well spoken and consistent. She was able to describe the entire witnessing ceremony of the will and did not deviate on cross-examination. She was firm, consistent, courteous to all questioners, descriptive, and highly credible. She volunteered, quite credibly, that Ms. Parenti "expressed understanding" but did not recall her exact words. She saw Ms. Parenti sign the will and concluded that Ms. Parenti knew what it was.

Ms. Westerman and Ms. Rodriguez were courteous to all counsel and the Court, consistent, and credible. Unfortunately, they did not see Ms. Parenti until after the will was signed and the illness had progressed, but clearly Ms. Parenti was deteriorating quickly.

II

ANALYSIS

A

Testamentary Capacity

Appellants contend that Ms. Parenti lacked the testamentary capacity required to execute her will in June 2019. “It is well-settled that in a will contest, the proponent of the will bears the burden of proof of testamentary capacity by a fair preponderance of the evidence.” *Pollard v. Hastings*, 862 A.2d 770, 777 (R.I. 2004) (citing *Nelson v. Blake*, 173 A. 625, 626 (R.I. 1934)). The proponent must establish that the testator: (1) had sufficient mind and memory to understand the nature of the business she was engaged in when making her will; (2) had a recollection of the property she wished to dispose of thereby; (3) knew and recalled the natural objects of her bounty, their deserts with reference to their conduct and treatment of her and their necessities; and (4) the manner in which she wishes to distribute her property among them. *Pollard*, 862 A.2d at 777 (citing *Rynn v. Rynn*, 181 A. 289, 294 (1935)).

In *In re Estate of Picillo*, 99 A.3d 975, 984 (R.I. 2014), our Supreme Court upheld the trial justice’s finding that the testatrix possessed testamentary capacity, despite conflicting evidence of medical records and witness testimony. In that case, in addition to arguing that the testatrix signed her will by undue influence, the contestant presented multiple witnesses who testified that she lacked capacity on the evening she signed the will and medical records suggested the testatrix was given morphine while she was in hospice. *Id.* at 983-84. The Rhode Island Supreme Court upheld

the trial court's ruling, finding that the justice acted reasonably in placing more weight on the evidence that supported that the testatrix was of a sound mind and capable of executing her will. *Id.* at 984.

Here, Appellee has established that Ms. Parenti possessed testamentary capacity when she signed her will in June 2019. Mr. Reis testified that, despite being less communicative and physically drained, Ms. Parenti understood what she was doing when signing her will. Mr. Jagolinzer testified that it was clear Ms. Parenti wanted her will to be correct, and Ms. Cannata stated Ms. Parenti "expressed understanding" what she was signing when executing the will. Mr. Westerman and Ms. Rodriguez, in contrast, testified that Ms. Parenti was in a deteriorating state; however, they did not see her until after the will was signed and her illness had progressed. Considering the testimony of all five witnesses, the Court concludes that Ms. Parenti had sufficient mind and memory to understand the nature of what she was doing when executing the will. The only testimony questioning Ms. Parenti's sound mind was based on an interaction days after she signed the will, with a progressive illness.

The Court finds that Ms. Parenti recalled her property and how she wanted the property distributed, based on the fact that she was able to describe her assets to Mr. Reis and discuss her intentions for her estate. Testimony from Mr. Reis describing his discussions with Ms. Parenti regarding how to distribute her property suggests that she understood how she wanted the property distributed and to whom, she knew and recalled the objects of her bounty and she understood the manner in which the property would be distributed.

Each independent witness to the will testified consistently with their affidavits. It is clear that Attorney Reis spoke with Ms. Parenti before the will was executed. It is likely that this meeting was just four days before the signing of the will, as the power of attorney is dated June

25, 2019. Ms. Cannata and Mr. Reis witnessed the execution of both the Health Care Power of Attorney and the June 2019 Will. There was no question in Attorney Reis's mind that she was clear and communicative concerning what she wanted done with the estate. Ms. Cannata was just as firm, even on cross, when she testified in her own words that Ms. Parenti "expressed understanding" at the signing of the will. While the Court does not rely solely on the affidavits, it is noteworthy that on the same day as the execution of the will, the witnesses attested to all terms set forth by statute, including that Ms. Parenti "appeared to be of sane mind and eighteen years of age or older." G.L. 1956 § 33-5-2. These affidavits were signed in 2019 under oath.¹ The Court finds that Ms. Parenti remembered Attorney Reis, the need for her will, and understood what she was doing.

By contrast, Appellants have not provided any evidence of Ms. Parenti's mental state when she signed the will or the days leading up to it, such as medical records or testimony that she lacked capacity on the day of signing. The Court cannot rely only on testimony that describes Ms. Parenti's condition after she executed her will, even if the witness's statement describes an interaction with Ms. Parenti only days after she signed the June 2019 Will. Rather, the Court was presented with credible testimony from multiple witnesses that support she was of sound mind on the day she signed her will.

After signing the will, Ms. Parenti's health may have declined significantly; she may have been prescribed stronger medication or undergone new treatment that affected her health. The Court cannot place as much weight on the testimony from Mr. Westerman and Ms. Rodriguez,

¹ Of note, the 2011 Will provided for the same bequests and was executed by Ms. Parenti before a notary. This Court does not pass upon the validity of the 2011 Will, as that issue is not before it.

who visited Ms. Parenti nearly a week after she signed the will, when compared to testimony from witnesses of the will, and in light of Ms. Parenti's quickly deteriorating health.

There is no evidence to show that Ms. Parenti lacked testamentary capacity at the time the June 2019 Will was signed, but only Appellants' impression of her condition days later. In light of the strong showing of evidence to support that Ms. Parenti was of sound mind when she signed her will, the Court finds that Appellee has established by a fair preponderance of the evidence that Ms. Parenti had the requisite testamentary capacity to execute the June 2019 Will.

B

Statutory Requirements

Appellants further assert that Appellee has failed to establish that Ms. Parenti thoroughly reviewed the contents of her will and acknowledged that she understood the document in front of the witnesses. Section 33-5-5 provides that a valid will "shall be in writing and signed by the testator . . . in the presence of two (2) or more witnesses present at the same time, and the witnesses shall attest and shall subscribe the will in the presence of the testator." The statute does not require that a testatrix review the individual bequests in the document, acknowledge that she understands them, or describe each bequest in front of witnesses, nor would such requirements make sense from a practical standpoint. Ms. Parenti recalled her assets, knew who she wished to devise them to when she passed away, and understood the nature of what she was doing when she signed the June 2019 Will.

The Court also finds that § 33-5-2, which sets forth the testamentary capacity to devise property, is not at issue in this case. The statute provides in pertinent part that "[e]very person of *sane mind* and eighteen (18) years or older in age, may devise, bequeath, or dispose of, by his or her will . . . all real estate and all personal estate, which he or she shall be entitled to either at law

or in equity at the time of his or her death.” Section 33-5-2 (emphasis added). While the statute does use the term “sane mind,” the statute in its entirety clearly focuses on the requirement that the testatrix have the necessary property interest in the items listed in her will at the time she passes. Section 33-5-2 does not describe the testator’s necessary *mental* capacity to execute a will. The Court finds “[t]here is nothing in the record . . . that casts any doubt that the requirements set forth in § 33-5-5 were not met. No witness or piece of documentary evidence even suggests that the will was not executed according to the formalities of the statute.” *Picillo*, 99 A.3d at 981.

Ms. Parenti sought help from Attorney Reis when she realized her purported October 2011 Will, which she believed was properly executed, had defects that called into question its validity. In an attempt to correct this potential problem, she executed a will in June 2019 with the same general terms as the 2011 Will. She acted so that her wishes would be clear, as to how she desired her property distributed when she passed. Unlike the testatrix in *Picillo*, there is no claim or evidence here to support that Ms. Parenti was subject to undue influence, and little evidence to suggest that she lacked capacity. Rather, the evidence here tells the story of a seriously ill client seeking help from an attorney to correct a nearly decade-old will that she previously had believed was properly executed, and an attorney who promptly responded to that need.

III

CONCLUSION

For the foregoing reasons, Appellants’ appeal of the probate court’s decision is denied. Ms. Parenti possessed the testamentary capacity to sign the June 2019 Will, which was executed fully in accordance with statutory requirements.



RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE: In re Estate of Nanci Parenti, and Burt Jagolinzer in his capacity as Executor of the Estate of Nanci Parenti

CASE NO: PP-2021-04603

COURT: Providence County Superior Court

DATE DECISION FILED: November 10, 2023

JUSTICE/MAGISTRATE: Lanphear, J.

ATTORNEYS:

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For Defendant: Michael W. Garland, Esq.