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Commonwealth of Kentucky
Court of Appeals

NO. 2025-CA-0340-MR

ANNIE-KATHERINE MAGGIE
LEONE AND MICHAEL JOSEPH
LEONE

APPELLANTS

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE THOMAS D. WINGATE, JUDGE
ACTION NO. 22-CI-00300

RICKY LYNN SPAULDING, IN HIS
OFFICIAL CAPACITY AS
EXECUTOR OF THE ESTATE OF
JOSEPH PAUL LEONE, JR.;
FRANKLIN COUNTY HUMANE
SOCIETY; AND RICKY LYNN
SPAULDING

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: THOMPSON, CHIEF JUDGE; EASTON AND L. JONES, JUDGES.

JONES, L., JUDGE: Appellants, Annie-Katherine Maggie Leone (Annie-Katherine) and Michael Joseph Leone (Michael Joseph), challenge the February 26, 2025 order of summary judgment upholding the validity of a will against

Appellants' claims that the testator lacked sufficient mental capacity to execute the will and was subject to undue influence by the beneficiaries. We affirm.

BACKGROUND

The relevant facts are uncontroverted. The testator, Joseph Paul Leone, Jr. (Joe Paul), was seventy years old when he died on October 20, 2021, at the Frankfort Regional Medical Center. He had been admitted to the hospital on October 4, 2021, following a fall. Aside from a brief stay at a nursing home facility for rehabilitation services, he remained hospitalized until his death. While hospitalized, Joe Paul was found to be malnourished and was diagnosed with Parkinson's disease.

Joe Paul had never married and never had children. He was preceded in death by his brother Michael Leone and, later, his father, Joseph Paul Leone, Sr. (Joe, Sr.). His closest living relatives were his stepmother, Jo Brown Leone (Jo Brown), of Fayette County; a cousin, Carrie Darnaby (Darnaby), of Frankfort; and Appellants, who were his niece and nephew, the children of his deceased brother, who reside in North Carolina. Joe Paul was a CPA¹ who had retired from state government where he worked as an auditor. That was where he met Appellee, Ricky Spaulding (Spaulding), in 1990. The two worked together until 1998 and maintained close ties after Joe Paul's retirement. Joe Paul was an avid coin

¹ Certified public accountant.

collector and enjoyed investing as a hobby. He lived a modest life in the home he had inherited from his father. At the time of his passing, Joe Paul had amassed assets valued at over five million dollars.

At the time of his fall on October 4, 2021, Joe Paul lived alone and independently, drove himself, managed his own household and finances, and served as trustee managing and investing the inheritance Annie-Katherine had received from her grandfather, the testator's father, Joe, Sr.² When he fell, Joe Paul called Spaulding. Spaulding and his wife went to Joe Paul's home to check on him and subsequently convinced him to allow them to contact an ambulance which transported Joe Paul to the hospital. Spaulding remained at the hospital with Joe Paul that evening.

Knowing Darnaby and Joe Paul were related, Spaulding informed her of Joe Paul's hospitalization. At the request of Joe Paul, Spaulding also contacted Jo Brown, whom he had never met, though Joe Paul also reached out to her himself, asking her to visit. Spaulding, Darnaby, and Brown each frequently visited Joe Paul during his hospital stay and communicated to update each other on his condition. Neither Spaulding nor Darnaby knew Joe Paul's niece and nephew.

² Joe Paul had also served as trustee over Michael Joseph's inheritance from his grandfather until he reached the age of twenty-five at which time authority over the trust passed to Michael Joseph.

Joe Paul did not contact nor did he request anyone else contact his niece and nephew.

On or about October 5, but sometime prior to October 7, and after learning that Joe Paul had not made any arrangements for his own affairs, both Darnaby and Jo Brown encouraged Joe Paul to contact an attorney regarding a will, living will, or power of attorney. Spaulding was not part of these conversations.

Though another attorney may have been mentioned, Jo Brown recommended Ed Logan (Logan). Logan was not a stranger to Joe Paul. Logan had represented Joe, Sr. and handled his estate which led to Logan and Joe Paul developing a relationship as Joe Paul was his father's executor and trustee over the inheritance Joe, Sr. left to his two grandchildren. Knowing Joe Paul collected coins, Logan, an estate attorney, previously had referred clients to Joe Paul with questions about coins they had discovered in a loved one's estate. With Joe Paul's permission, Jo Brown contacted Logan.

On October 7, 2021, Logan called Joe Paul at Frankfort Regional Medical Center. He spoke directly to Joe Paul, and Joe Paul did not indicate a third party was in the room with him during the conversation, nor did any witnesses testify to having been there. Joe Paul asked Logan to prepare a will and

a power of attorney for him. Logan documented the phone call in an office memo dated that day:

At the request of Jo [Brown] Leone[,] I contacted Joe Paul who wanted a will and P.O.A.^[3] prepared. He advised by phone that he wanted a will prepared that left 75% of his estate to the Humane Society and 25% to his friend Ricky Spaulding of Frankfort. He wanted Ricky Spaulding to also have his P.O.A. He wanted me to do these documents and get [them] to him in the hospital.^[4]

Logan had never met Spaulding and had no prior relationship with him. And, though Appellants allege Logan's son once served on the board of the Frankfort Humane Society, Logan had no knowledge of whether this was true and no reason to suspect otherwise when he spoke to Joe Paul or prepared the will. Nor did Logan discuss Joe Paul's will or the bequests contained therein with his son, any representative of the Humane Society, or Spaulding.

On October 8, 2021, Logan contacted Spaulding to secure his agreement to act as Joe Paul's power of attorney. Logan documented the phone call with Spaulding by another office memo: "Mr. Spaulding agreed to serve as P.O.A. for Joe [Paul]. I prepared the documents to take to the hospital for

³ Power of attorney.

⁴ Record (R.) at 410.

signature.”⁵ That same day Logan prepared drafts of the documents and had his paralegal deliver them to Joe Paul at the hospital.

Separately, Joe Paul asked both Jo Brown and Spaulding to review the documents and asked if they were “okay.” Jo Brown testified that the disposition of assets contained in the will was consistent with her prior conversations with Joe Paul and that she asked Joe Paul about his decision to exclude his niece and nephew. Joe Paul responded that he saw no reason to include them as they were not close. Spaulding had never discussed the will with Joe Paul and did not know he was a beneficiary until he read the documents. Spaulding believed Jo Brown contacted Logan’s office after reading the will because he recalled the draft documents incorrectly describing Joe Paul as a resident of Fayette County, but Logan had no memos reflecting such a conversation occurred.

The trial court record contains portions of Joe Paul’s medical records from October 4, 2021, until his death. Those records are relied upon by both Appellants and Appellees, and we will refer to relevant portions herein. On October 8, 2021, at 8:43 p.m., Dr. David Muncy described a conversation with Joe Paul about a recent fall.⁶ Joe Paul advised Dr. Muncy that he had lost his balance

⁵ Deposition of Edwin A. Logan from November 17, 2022: Exhibit 2.

⁶ R. at 476.

and struck his head, but he denied any loss of consciousness.⁷ Dr. Muncy noted that Joe Paul was “[a]lert, awake, and oriented to person, place, and time” with “normal mood and appropriate affect with good attention span and thought process.”⁸ Imaging of his brain for injury was unremarkable.⁹

Following this, either later that same day or the next, Joe Paul was discharged from the hospital to a rehabilitation facility. He was transported by Spaulding. At some point, Jo Brown was contacted by either the facility or the hospital as Joe Paul’s next of kin. She was informed that there had been an incident and Joe Paul was being transferred back to the hospital. Medical records indicate that on or about October 10, 2021, Joe Paul had been given solid food while at the facility instead of a liquid diet and he had aspirated, causing respiratory failure.¹⁰

Upon his arrival back at the hospital, Joe Paul was on bag-valve-mask ventilation.¹¹ He could not speak or answer questions, but could follow basic

⁷ R. at 476.

⁸ R. at 478.

⁹ R. at 478, 483.

¹⁰ R. at 491.

¹¹ R. at 494.

commands.¹² He was placed on a ventilator and sedated.¹³ Another CT scan was performed which was “negative for any acute intracranial abnormalities.”¹⁴

According to his medical records, Joe Paul was weaned from the ventilator and extubated on October 12, 2021, at 5:40 p.m.¹⁵ On October 13, at 9:47 a.m., Dr. Kara Swafford noted Joe Paul was complaining of a sore throat, and repeatedly asking for help.¹⁶ She found he was “alert, oriented to person but not to place and time” with “normal speech/language,” able to follow commands, and recall the name of one of three objects correctly.¹⁷

Also on October 13, 2021, Dr. Mhd. Chaker noted that Joe Paul was on a fentanyl drip and sedated;¹⁸ however, medication records from that day show fentanyl had been discontinued on October 12,¹⁹ and Dr. Chaker’s narrative states that Joe Paul reported resting comfortably though he appeared to Dr. Chaker to be

¹² R. at 494.

¹³ R. at 494.

¹⁴ R. at 497.

¹⁵ R. at 508.

¹⁶ R. at 514.

¹⁷ R. at 514.

¹⁸ R. at 524.

¹⁹ R. at 518-21.

lethargic and confused.²⁰ On October 14, Dr. Chaker's records again state that Joe Paul was on a fentanyl drip and sedated²¹ though fentanyl remained on the list of discontinued medications, with October 12 being the last date fentanyl was administered.²² Additional notes from Dr. Chaker on October 14 indicate Joe Paul was awake and alert during his visit and that he again reported having rested well through the night.²³

On October 14, Dr. Swafford's notes from 9:28 a.m. indicate a conversation with Joe Paul who reported no problems had occurred during the previous night, that he had slept well, and he was requesting water and orange juice.²⁴ Dr. Abhishek Kalipa noted that Joe Paul had dysphagia, *i.e.*, difficulty swallowing.²⁵ That same day at approximately 11:08 a.m., Dr. Swafford again examined Joe Paul.²⁶ Her notes indicate Joe Paul was "alert, oriented to person,

²⁰ R. at 521.

²¹ R. at 531.

²² R. at 527-30.

²³ R. at 526, 530-32.

²⁴ R. at 543.

²⁵ R. at 540. *See dysphagia*, DORLAND'S ILLUSTRATED MEDICAL DICTIONARY (25th ed. 1965). Dysphagia refers to a patient's physical ability to swallow. It is not to be confused with dysphasia. *Dysphasia*, DORLAND'S ILLUSTRATED MEDICAL DICTIONARY (25th ed. 1965) ("Impairment of speech, consisting in lack of coordination and failure to arrange words in their proper order. It is due to a central lesion.").

²⁶ R. at 546.

place and month[,] but said year was 2002, normal attention span and concentration, normal speech/language, follows commands, names 3 objects correctly.”²⁷

Because Joe Paul was at high risk for aspiration, the hospital wanted to surgically place a feeding tube (PEG tube). Dr. Bryan Shouse was brought in for the surgical consult. The first note from Dr. Shouse is dated October 14, 2021, at 10:43 a.m.²⁸ He indicated Joe Paul has “difficulty communicating” and “can answer yes, no questions, but his answers are somewhat inconsistent.”²⁹ Both the medical records and witness testimony agree Joe Paul vacillated on whether to have the feeding tube placed. The afternoon of October 14, the hospital contacted Jo Brown as Joe Paul’s next of kin, and she was asked to give her consent to the PEG tube procedure.

On October 15, 2021, between 7:00 and 7:30 a.m., in the process of being prepped for the PEG tube procedure, Joe Paul halted the process.³⁰ A surgical representative, Janice Newton, made the following note:

[W]hen checking patient in and obtaining vitals and verifying everything, patient was oriented to self, time, day, month, year, birthday and what they were doing but

²⁷ R. at 546.

²⁸ R. at 549.

²⁹ R. at 549.

³⁰ R. at 432.

patient didn't want Dr. Shouse to do it. . . . Explained to patient why a PEG tube was necessary that he was aspirating into his lungs and not able to eat and take medications that the PEG will give him the nutrition that he needs to get stronger, better and allow him to be able to take his medications that is necessary. Explained that the xrays show that he is aspirating into his lungs and patient wanted to see the xrays. Explained to patient that I would have to have the doctors show him this and explain that to him. Patient would like for that to happen. Called his stepmom who stated that the patient makes his own decisions and has no POA. Patient adamant that he didn't want Dr. Shouse to perform the procedure. Explained that there are other doctors that do this type of procedure. Wanted to know their names and that was provided. [G]oing to take the patient back up to room and hold off on the PEG tube placement so that the doctors can talk to him about it better in detail. Patient was incontinent of urine, changed and clean patient and asked if he was [sic] let us put on condom cath on him so that he doesn't have urine on his skin. [A]greed for condom cath to be placed and EKG button put in the nurse call bell so that patient could better call out for assistance. . . .^[31]

This was followed by a note from a second surgical representative, Amanda Wade, at 7:32 a.m., who noted: "Patient interviewed and appears to be mentally intact, able to answer questions appropriately. Patient refuses to have this (PEG) procedure done and states that he does not want to prolong his life. Spoke to next of kin and she states that he is able to make his own decisions."³²

³¹ R. at 432.

³² R. at 433.

Dr. Shouse spoke to Joe Paul, at 7:36 a.m. that same morning.³³ Dr.

Shouse documented the conversation with this note:

The patient was scheduled for a PEG tube insertion this morning. I spoke briefly with him yesterday, and he did not express any objection to PEG placement. Due to his clinical condition and difficulty communicating with him, I also discussed consent with his step mother who is his only family. He does not have a living will or court designated guardian. She consented to placement of the feeding tube. However this morning the patient was able to communicate that he does not want a feeding tube placed. He is alert and oriented but has physical difficulty communicating due to his Parkinson's disease and failure to thrive. He made it clear multiple times that he does not want a feeding tube placed. He seems mentally competent to make the decision and there is no legal guardian or medical power of attorney to discuss the situation with. The hospital staff contacted his step mother again and she confirmed that he has legal authority to make his own medical decisions. The planned PEG placement is cancelled. Should he voice in the future that he desires a feeding tube, please contact me and I will be happy to assist.^[34]

Only three of eight pages of Dr. Chaker's report from October 15, 2021, are included in the trial court record. At 12:09 p.m. Dr. Chaker again records that Joe Paul is on a fentanyl drip and sedated.³⁵ As there is only a partial record, it is possible but unclear whether Joe Paul was administered fentanyl that

³³ R. at 555.

³⁴ R. at 555.

³⁵ R. at 559.

day; however, Chaker describes the patient as comfortable and able to communicate that he was not experiencing any cough or shortness of breath.³⁶

At 1:03 p.m. on October 15, 2021, Dr. Swafford again evaluated Joe Paul.³⁷ Her notes describe the visit as follows: “[A]lert, oriented to person, month and year, said he is at Kings Daughters,^[38] normal attention span and concentration, normal speech/language, follows commands, names 3 objects correctly.”³⁹ Dr. Swafford noted that “moderate dysarthria” is present, a condition in which the muscles used for speech are weakened or paralyzed, and that there was “unintelligible speech at times.”⁴⁰

At 2:58 p.m., yet another nurse spoke with Joe Paul regarding his wishes.⁴¹ Jennifer Brock entered the following notation in Joe Paul’s medical record: “POA completed after alert and oriented x4 patient expressed to myself and Corrine Rose that his wishes are for Ricky Spaulding to be his POA with [his]

³⁶ R. at 559.

³⁷ R. at 563-64.

³⁸ The address of Frankfort Regional Medical Center is 299 Kings Daughters Drive, Frankfort, Kentucky, 40601.

³⁹ R. at 563.

⁴⁰ R. at 563. *See dysarthria*, <https://my.clevelandclinic.org/health/diseases/17653-dysarthria> (last visited Jul. 23, 2026).

⁴¹ R. at 432.

Stepmother, Jo [Brown] Leone being the backup is (sic) Ricky unavailable.”⁴²

After the power of attorney was completed on a form provided by the hospital, the hospital contacted Spaulding to inform him of the situation. When Spaulding arrived at the hospital that day, he discussed the feeding tube and end-of-life plans with Joe Paul and was present in Joe Paul’s hospital room when Logan arrived with two of his staff members and the documents he had drafted. Spaulding left the room and did not speak with or introduce himself to Logan.

Logan testified that the only people present in the room when the will was signed besides himself and Joe Paul were the two members of Logan’s staff who accompanied him to witness and notarize the will. Logan testified that Joe Paul made him aware he had signed a power of attorney earlier that day so the power of attorney prepared by Logan wouldn’t be needed.

Logan testified that he reviewed the terms of the will with Joe Paul, but did not read the document to him. Logan also testified that Joe Paul confirmed there was no one else he wanted to include in the will. Logan did not discuss with Joe Paul the value of his estate, but he knew that Joe Paul had inherited approximately \$500,000 from Joe, Sr., that Joe Paul was a retired CPA, that Joe Paul handled his own investments, and that he was a frugal individual.

⁴² R. at 432.

Logan provided the will to Joe Paul, observed Joe Paul review the document, and directed Joe Paul where to initial and sign the document. Logan did advise Joe Paul that he could merely make a mark for his signature and noted that his signature on October 15, 2021, differed from its usual appearance. Logan described Joe Paul that day as soft-spoken and thin, and testified that this was consistent with how Joe Paul had always appeared to him. Logan was able to converse with Joe Paul at the hospital and prepared a memo when he returned to the office, noting as follows:

I took Polly and Sam with me to get Joe Paul's will and POA signed.

We all went to his room and in each other [sic] presence signed the will. I discussed the will with Joe Paul and he verbally acknowledged that he want [sic] the will to give 75% to Humane Society and 25% to Ricky Spaulding.

He thanked me as we left his room.^[43]

Logan signed the memo and subsequently made a separate notation which he also signed: "My POA was not used. The hospital had provided one which Joe Paul signed."⁴⁴

⁴³ Deposition of Edwin A. Logan, November 17, 2022: Exhibit 4.

⁴⁴ Deposition of Edwin A. Logan, November 17, 2022: Exhibit 4.

On October 16, 2021, after conversing with Spaulding and reviewing the list of alternative surgeons, Joe Paul again consented to the placement of the PEG tube, and surgery was scheduled for Monday, October 18, 2021. However, consent was again withdrawn. Joe Paul's condition worsened, and he passed away on October 20, 2021.

The Franklin District Court granted Spaulding's petition to probate the October 15, 2021 will and appointed him executor on November 9, 2021. On April 17, 2022, Appellants instituted an action in Franklin Circuit Court contesting the will by alleging Joe Paul lacked testamentary capacity and was subject to undue influence. Finding Appellants "failed to present conclusive evidence to overcome the presumption that Joe Paul had testamentary capacity" and failed "to allege any cognizable claims of undue influence," the circuit court granted summary judgment to Appellees by order entered February 26, 2025. This appeal followed.

STANDARD OF REVIEW

Appellants allege the circuit court erred in awarding summary judgment to Appellees by: (1) disregarding the opinions of Appellants' two expert medical witnesses on Joe Paul's testamentary capacity; (2) applying the lucid interval doctrine; and (3) denying there was sufficient evidence of undue influence to present the issue to a jury.

We begin our analysis by restating the well-established standard under which appellate courts review summary judgment. Pursuant to CR⁴⁵ 56.03, summary judgment shall be entered “if the pleadings, depositions, answers to interrogatories, stipulations, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” “The moving party bears the initial burden of showing that no genuine issue of material fact exists, and then the burden shifts to the party opposing summary judgment to present ‘at least some affirmative evidence showing that there is a genuine issue of material fact for trial.’” *Lewis v. B & R Corp.*, 56 S.W.3d 432, 436 (Ky. App. 2001) (citing *Steelvest, Inc. v. Scansteel Serv. Ctr., Inc.*, 807 S.W.2d 476, 482 (Ky. 1991)). Summary judgment can only occur “where the movant shows that the adverse party could not prevail under any circumstances.” *Steelvest*, 807 S.W.2d at 480. “The trial court must view the evidence in the light most favorable to the nonmoving party, and summary judgment should be granted only if it appears impossible that the nonmoving party will be able to produce evidence at trial warranting a judgment in his favor.” *Lewis*, 56 S.W.3d at 436 (citing *Steelvest*, 807 S.W.2d at 480-82). However, the word “impossible” is meant to be interpreted “in a practical sense, not in an absolute sense.” *Id.* (citations omitted).

⁴⁵ Kentucky Rules of Civil Procedure.

Furthermore, “speculation and supposition are insufficient to justify a submission of a case to the jury, and that the question should be taken from the jury when the evidence is so unsatisfactory as to require a resort to surmise and speculation.”

O’Bryan v. Cave, 202 S.W.3d 585, 588 (Ky. 2006) (quoting *Chesapeake & Ohio Ry. Co. v. Yates*, 239 S.W.2d 953, 955 (Ky. 1951)). Finally, because only legal issues are involved, “an appellate court need not defer to the trial court’s decision and will review the issue *de novo*.” *Lewis*, 56 S.W.3d at 436.

ANALYSIS

The Kentucky Supreme Court has set forth four basic prerequisites for the valid execution of a will. The “testator must: (1) know the natural objects of her bounty; (2) know her obligations to them; (3) know the character and value of her estate; and (4) dispose of her estate according to her own fixed purpose.” *Bye v. Mattingly*, 975 S.W.2d 451, 455 (Ky. 1998) (citations omitted). “The degree of mental capacity required to make a will is minimal” and “less than that necessary to make a deed, or a contract.” *Id.* (citations omitted). “Merely being an older person, possessing a failing memory, momentary forgetfulness, weakness of mental powers or lack of strict coherence in conversation does not render one incapable of validly executing a will.” *Id.* at 456 (citations omitted). Thus, “there is a strong presumption in favor of a testator possessing adequate testamentary capacity” which “can only be rebutted by the strongest showing of incapacity . . .

at the time of execution of [the] will.” *Id.* at 455 (citations omitted). In *Bye*, our Supreme Court went so far as to say that only evidence “which demonstrates *conclusively* that the testator lacked testamentary capacity at the time of the execution of the will results in nullifying that will.” *Id.* at 456 (emphasis added).

Often found hand-in-hand with allegations of a lack of testamentary capacity are accusations of undue influence. “Similar to a lack of testamentary capacity nullifying a will, undue influence over the testator in the testator’s execution of a will invalidates that will.” *Boone v. Hoskins*, 613 S.W.3d 45, 53 (Ky. App. 2020). The *Bye* Court provided its guidance on this topic as well:

Undue influence is a level of persuasion which destroys the testator’s free will and replaces it with the desires of the influencer. In discerning whether influence on a given testator is “undue,” courts must examine both the nature and the extent of the influence. First, the influence must be of a type which is inappropriate. Influence from acts of kindness, appeals to feeling, or arguments addressed to the understanding of the testator are permissible. Influence from threats, coercion and the like are improper and not permitted by the law. Second, the influence must be of a level that vitiates the testator’s own free will so that the testator is disposing of her property in a manner that she would otherwise refuse to do. The essence of this inquiry is whether the testator is exercising her own judgment.

In addition to demonstrating that undue influence was exercised upon the testator, a contestant must also show influence prior to or during the execution of the will. Undue influence exercised after the execution of the will has no bearing whatsoever upon whether the testator disposed of her property according to her own

wishes. The influence must operate upon the testator at the execution of the will. If the influence did not affect the testator, then such conduct is irrelevant. However, even if the influence occurred many years prior to the execution of the will, but operates upon the testator at the time of execution, it is improper and will render the will null and void.

To determine whether a will reflects the wishes of the testator, the court must examine the indicia or badges of undue influence. Such badges include [1] a physically weak and mentally impaired testator, [2] a will which is unnatural in its provisions, [3] a recently developed and comparatively short period of close relationship between the testator and principal beneficiary, [4] participation by the principal beneficiary in the preparation of the will, [5] possession of the will by the principal beneficiary after it was reduced to writing, [6] efforts by the principal beneficiary to restrict contacts between the testator and the natural objects of his bounty, and [7] absolute control of testator's business affairs.

...

When a contestant seeks to claim that undue influence was employed upon a testator, the burden is upon the contestant to demonstrate the existence and effect of the influence. Merely demonstrating that the opportunity [existed] to exert such influence is not sufficient to sustain the burden of proof. When undue influence and a mentally impaired testator are both alleged and the mental impairment of the testator is proven, the level of undue influence which must be shown is less than would normally be required since the testator is in a weakened state.

Bye, 975 S.W.2d at 457-58 (citations omitted). Appellants rely heavily upon that final statement to argue they have a reduced burden to overcome summary

judgment. However, a reduced burden does not open the door so wide as to allow mere speculation a permit to enter. Nullifying a will remains a steep hurdle, and we agree with the trial court's conclusion that Appellants have failed to surmount this obstacle.

On their behalf, Appellants proffered their own affidavits, two expert witnesses, and selected medical records. Because a prerequisite to testamentary capacity is knowledge of the natural objects of one's bounty and a will that is unnatural in its disposition is considered a badge of undue influence, we begin our analysis there.

Appellants admittedly did not have a close relationship with their uncle. Taking the facts in their virtually identical affidavits as true, Michael Joseph had not seen Joe Paul in the two years preceding his death, and Annie-Katherine did not even claim a recent visit. Neither Appellant claims to have been at Joe Paul's funeral. Their relationship with Joe Paul consisted of the occasional phone call and the exchange of cards for Christmas and birthdays. Joe Paul did not contact them from the hospital, nor did he ask Jo Brown, Spaulding, Logan, Darnaby, or any member of the hospital staff to do so. Joe Paul provided the hospital with the name and contact information of his stepmother as his next of kin. Neither Darnaby nor Jo Brown described the relationship between Appellants and Joe Paul as close.

Therefore, the merit of Appellants' claim that the disposition of Joe Paul's assets by will was unnatural rests solely on their status as heirs under the laws of intestacy.

The law recognizes as an element of capacity the appreciation of paternal or maternal love or instinct and an obligation to bestow one's property upon those bound by such natural ties. But it is simply the existence of such duty that the law recognizes. The mere failure to perform that natural obligation can never be held sufficient to invalidate the bestowal of property upon another.

Jackson's Ex'r v. Semones, 98 S.W.2d 505, 508 (Ky. 1936) (citations omitted).

Here, Appellants are not the disinherited children of the testator, but a niece and nephew with whom Joe Paul had a cordial, but not close, relationship. While Joe Paul likewise did not have a close relationship with the Franklin County Humane Society, multiple witnesses described his affection for animals. On the other hand, Spaulding had been a friend and co-worker for thirty years, was one of the few people invited into Joe Paul's home, helped Joe Paul with household repairs, welcomed Joe Paul into his home with his family during holidays, and was the one person Joe Paul chose to contact the night he fell.

The power of the owner to dispose of his property after his death is not by natural law, but positive statutory enactment. One of sound and disposing mind, gauged by a familiar standard, may exercise this valuable privilege and transmit his property by will to whomsoever he chooses, and in such manner as he pleases[.]

Jackson's Ex'r, 98 S.W.2d at 507. For these reasons, we do not find the disposition of Joe Paul's property to be unnatural. And,

[i]f a will is rational and consistent on its face, the burden rests upon him who questions it to establish want of mental capacity in the maker, or a subjection to such influence as induced him to dispose of his property other than according to his own purpose, or against that intention which he really wills to be performed after his death.

Id.

The only fact witnesses regarding Joe Paul's testamentary capacity are Jo Brown, Darnaby, Spaulding, and Logan. All four of these witnesses knew Joe Paul well and not one calls into question Joe Paul's mental capacity at the time he executed the will.

This brings us to Appellants' only proffer of evidence to defeat summary judgment, their two expert witnesses, Dr. John Gilbert (Gilbert) and Dr. Thomas Tobin (Tobin). Appellants' experts claim Joe Paul lacked the mental capacity to formulate his own plan to dispose of his assets which allowed him to fall victim to undue influence. Only Dr. Gilbert was deposed, and only excerpts from his deposition were provided to the trial court; however, it is uncontested that neither expert provided care to Joe Paul nor did they know him personally. Dr. Gilbert reviewed the medical records from Joe Paul's two hospital stays from October 4, 2021, to his death on October 20, 2021, and it is unclear whether Dr.

Tobin reviewed the entire record or was asked to provide his opinion on certain medications administered to Joe Paul during those last two weeks of his life. Both experts concluded that Joe Paul lacked testamentary capacity; however, the circuit court dismissed their opinions as speculative and insufficient to overcome the presumption that Joe Paul was competent to execute his will. We agree.

Because of Joe Paul's hospitalization, the case at hand is unique in that there is daily, and often even more frequent, documentation of the testator's health and mental status in the medical records for the days surrounding and including the execution of the will. Though the full medical record was not made part of the trial court record, what records there were before the circuit court clearly show a testator suffering from a severe physical disability, *i.e.*, advanced Parkinson's disease, that debilitated his body and affected his speech, but whose mind remained intact.

Nevertheless, solely as a result of his review of the medical records, Dr. Gilbert diagnosed Joe Paul with a variety of ailments, including encephalopathy, potential Alzheimer's disease, psychosis, congestive heart failure, myocardial infarction, and a concussion. When asked to describe what he meant by "encephalopathy," Dr. Gilbert stated it simply "[m]eans the brain ain't working right."⁴⁶ And, though there was no diagnosis of many of these conditions

⁴⁶ R. at 649.

contained in the medical records provided to the court, Dr. Gilbert argued they each individually or in combination “*could* account for [Joe Paul’s] encephalopathy.”⁴⁷ This is the language of speculation and is not based on the facts contained in the record.

When Dr. Gilbert was confronted with Dr. Shouse’s lengthy descriptions of the conversations he had with Joe Paul about the placement of the PEG tube, Gilbert responded by essentially accusing Dr. Shouse of falsifying the record: “He’s a busy surgeon. I’m sure he relies on nursing staff and hospital to do – do those things.”⁴⁸ Again, this is unsupported speculation.

When he was confronted with the notes of the nursing staff that supported Dr. Shouse’s observations, Gilbert also discredited their assessment: “Nothing against nurses, don’t, but the – you know, the preponderance of all the doctor notes show that this patient was either lethargic or confused or sedated.” This is a mischaracterization of the medical records, at least those provided to the

⁴⁷ “Anyone [sic] of the following conditions alone (much less in combination) *could* account for his encephalopathy: respiratory failure, hypoxemia, chronic malnutrition, concussion from fall, chronic overuse and misuse of Ensure, constipation, microvascular ischemic change, aspiration pneumonia, Type II myocardial infarction, IV Fentanyl, IV Versed, IV Zosyn, IV Ativan, IV Dilaudid, ICU Psychosis.” R. at 638 (emphasis added). *See also* R. at 633 (“The notes highlight a decreased blink rate which can be seen with both Parkinson’s and other encephalopathies. I suspect this patient would have had an increased blink rate on checking a Glabellar Reflex Test (which was not done) this is positive in patients with Alzheimer’s and numerous other encephalopathies”).

⁴⁸ R. at 656.

circuit court. *See Dossenbach v. Reidhar's Ex'x* (holding that “[a] decision may not be rested upon unreal or remote inferences. A pyramiding of inferences is not regarded as sound reasoning, and is not a permissible predicate for a conclusion”) 53 S.W.2d 731, 733 (Ky. 1932) (citations omitted).

Furthermore, Gilbert insisted the nursing staff noted Joe Paul was *not* alert and oriented on October 15, 2021; however, the records available to the circuit court indicate the exact opposite. In fact, not only do they state that Joe Paul was oriented to person, place, time, and situation, but they describe a very coherent patient who had the mental and physical capacity, as well as the assertiveness, to halt a scheduled surgery mid-prep, question the necessity of the procedure, demand the x-rays to confirm the information provided, request a list of alternate surgeons, and articulate his wishes.

Dr. Gilbert and Appellants place great emphasis on the few observations from Dr. Chaker which describe Joe Paul as sedated and on a fentanyl drip. However, Dr. Chaker's own notes call that into question as he simultaneously noted Joe Paul was awake and able to communicate, and fentanyl is not on Chaker's list of Joe Paul's current medications for the days those lists were provided in full into the record with Chaker's notes. Furthermore, even a testator under the influence of narcotics at the time the will was executed can possess testamentary capacity. *Nunn v. Williams*, 254 S.W.2d 698, 701 (Ky. 1953).

Finally, it is unclear whether Dr. Gilbert understood or articulated the correct definition of testamentary capacity. Dr. Gilbert repeatedly equated physical weakness with mental incapacity:

Question: At what point in time, at what date, in your opinion, did [Joe Paul] become unable to make executive decisions?

Answer: The day he quit driving and was admitted to the hospital, okay? Driving is, you know, come on. He didn't have enough brain power to drive.^[49]

...

Answer: If someone can't take care of themselves, they sure as hell can't do a will. I mean, come on.

Question: So a person who needs assistance with their activities of daily life and care, in your opinion . . . does not have the ability to make a will. Is that your testimony?

Answer: No. This patient can't take care of himself, he can't drive, can't function; he doesn't have the executive function to do a will. Period.^[50]

...

Answer: So I mean, I think his medical condition, his malnutrition was so bad, even if he didn't have the drugs, I don't think he'd be capable. He couldn't drive, he's

⁴⁹ R. at 646.

⁵⁰ R. at 650.

peeing and pooping on himself. He is – he was a mess. I mean he is – this was a dying man.^[51]

. . .

Question: And what would prevent that, in your opinion? . . . Him being able to formulate that kind of mental capacity?

Answer: Any one of these meds – as well as just the – the – the debilitated, cachectic wasting disease that he had. I mean, the guy is dying here, and without food and water, you die.^[52]

Similarly, Dr. Gilbert’s written report also falls short of stating the correct legal standard for testamentary capacity: “It is clear from review of all the records and associated records on [Joe Paul] that he had a multifactorial persistent encephalopathy or dysfunction of the brain, which, in my opinion, would make it impossible for him, or someone in his exact medical condition, to understand and give informed consent about anything[,] including his medical treatment as well as any definite understanding of will.”⁵³

Dr. Tobin’s opinion also fails to rise above mere speculation. Dr. Tobin, a veterinarian, is highly regarded in the racing and equine industry for his research relating to the effect of pharmaceuticals on horses. Though he obtained

⁵¹ R. at 663.

⁵² R. at 666.

⁵³ R. at 637-38.

his Ph.D. in general pharmacology in 1970, his curriculum vitae does not contain experience or study on human subjects since that time. There is no deposition of Dr. Tobin in the file and we are limited to our review of his written report.

Dr. Tobin does not claim to have reviewed Joe Paul's medical records in full and appears to have been asked solely to comment on certain medications administered to Joe Paul and their common effects on the general population. While this information might be useful in certain contexts, it cannot overcome Kentucky's strong presumption in favor of testamentary capacity. *See Bye*, 975 S.W.2d at 455.

In rejecting the opinions of Appellants' experts, Appellants allege the circuit court disregarded KRE⁵⁴ 703 which "allows expert witnesses to form opinions based on facts made known to them (such as by medical records), not just facts learned from observation." Appellants' Brief at 22. Appellants' claim is without merit as the circuit court's order of summary judgment repeatedly quoted Appellees' expert, Michael Ward, who also had not provided care to Joe Paul. We do, however, agree the trial court made several erroneous and overbroad statements of law pertaining to expert witnesses in will contest proceedings.

While we agree with the circuit court's statement that "[o]ffering speculative medical opinions in an attempt to rebut the presumption of

⁵⁴ Kentucky Rules of Evidence.

testamentary capacity or the lucid interval presumption is not sufficient,” we believe the circuit court goes too far in claiming generally that “[a]n opinion based only on a medical record review is speculation on the issue of testamentary capacity or lucidity, and cannot defeat summary judgment.” R. at 942.

Nevertheless, appellate courts have “affirmed a judgment or decision of the trial court even if that court reached the right result for the wrong reason.”

Commonwealth v. Fields, 194 S.W.3d 255, 257 (Ky. 2006) (citations omitted).

And, appellate courts “may affirm the trial court for any reason in the record.”

Peterson v. Foley, 559 S.W.3d 346, 349 (Ky. 2018) (citation omitted).

While we agree with the circuit court’s assessment that the opinions of Appellants’ experts were speculative in light of the facts of this case, no appellate court of the Commonwealth has gone so far as to declare as the circuit court has here that “under Kentucky law, a record-reviewing expert’s opinion is insufficient to rebut the normal presumption in favor of testamentary capacity or the lucid interval presumption.” R. at 943. It is not the review of medical records by Appellants’ experts that falls short, but the speculation required to reach their conclusion that Joe Paul lacked testamentary capacity because, in reaching such a conclusion, Drs. Gilbert and Tobin reject the very medical records they have reviewed and assume facts that are very much not in evidence. The opinions of witnesses, even expert witnesses, “will not be sufficient evidence to take a case to

the jury, unless the facts upon which the opinions are based are such as tend to establish a lack of testamentary capacity.” *Dossenbach*, 53 S.W.2d at 735 (citations omitted).

Appellants further argue the trial court incorrectly applied the lucid interval doctrine to this case. “When a testator is suffering from a mental illness which ebbs and flows in terms of its effect on the testator’s mental competence, it is presumed that the testator was mentally fit when the will was executed. This is commonly referred to as the lucid interval doctrine.” *Bye*, 975 S.W.2d at 456 (citations omitted). Here there is no assertion by the parties that Joe Paul suffered from a mental illness, nor did the circuit court make such a claim. The purpose of the circuit court’s mention of the lucid interval doctrine was simply to illustrate that the Commonwealth “has always taken the broadest possible view of who may execute a will no matter what their infirmity.” *Id.* As previously stated, in Kentucky there is a presumption of testamentary capacity. The lucid interval doctrine extends this presumption to a testator suffering from the effects of a mental illness, but even the *Bye* Court expanded the doctrine further to include Alzheimer’s disease. *Id.*

Nor is the expansion of the lucid interval doctrine beyond mental illness a recent creation. As early as 1829, Kentucky’s highest court acknowledged that the will of a physically paralyzed testator should be admitted to

probate though the man might have been incompetent to make a will in certain moments and his “mind was more feeble and passive than it had been when his body was in health and vigor.” *In re McDaniel’s Will*, 25 Ky. (2 J.J. Marsh.) 331, 336 (1829). Without the benefit of nearly two centuries of medical knowledge and after much philosophizing on the nature of mind and body and the effect a weakness of the body may have upon the mind, this predecessor to our Supreme Court concluded: “Therefore, the will must be established, unless the disease, with which the testator was afflicted, be of such a character, as to shew that it was impossible, [or] greatly improbable, that he could have had a disposing mind[.]” *Id.* at 338. Thus, we find the trial court has committed no error in reciting the lucid interval doctrine.

Whether the lucid interval doctrine applies, the burden of proof was upon Appellants to overcome the presumption of testamentary capacity at the time the will was executed. “[E]vidence of undue influence is relevant both in examining whether the testator lacked testamentary capacity to execute a will and whether another individual unduly influenced that testator in the execution of a will.” *Getty v. Getty*, 581 S.W.3d 548, 556 (Ky. 2019). And, though alleging six, and possibly all seven, badges of undue influence are present, we find Appellants have done nothing more than demonstrate the mere opportunity to exert such

influence which the previously cited language in *Bye* makes clear is insufficient to sustain Appellants' burden of proof. *Bye*, 975 S.W.2d at 458.

First, as explained above, while it is undisputed Joe Paul was physically weakened, Appellants have failed to show by more than mere speculation that he was mentally impaired to such a degree he lacked testamentary capacity. Nor, as we have previously explained, have Appellants shown the will to be unnatural in its disposition.

The third badge of undue influence points to “a recently developed and comparatively short period of close relationship between the testator and [the] principal beneficiary[.]” *Id.* at 457. While it is undisputed Joe Paul had no previous relationship with the Frankfort Humane Society, it is also undisputed that Joe Paul previously had pets, was considering obtaining another pet, and demonstrated an interest in and fondness for animals. Nor is there evidence of anyone from the Humane Society personally contacting Joe Paul to exert any influence over him.

Next, Appellants question the participation of the Humane Society and Spaulding in preparing the will. There is no evidence in the record to support this claim. Appellants allege Logan's son was on the Board of the Humane Society and assert Joe Paul had requested another attorney prepare the will. Whether Logan's son was affiliated with the Humane Society, it is undisputed that

Logan had no knowledge of this when he prepared the will, nor did Logan discuss the will with his son, nor did his son participate in drafting the will. And Logan did not solicit Joe Paul's business. It is undisputed that Jo Brown suggested Logan draft the will and Joe Paul agreed to this. Jo Brown is not a beneficiary of the will and, while she may have made the initial contact with Logan for Joe Paul, Logan then called Joe Paul and spoke directly to him about his wishes. Additionally, it is undisputed that Logan did not know Spaulding at the time he drafted the will, nor did he discuss the contents of the will with Spaulding or inform Spaulding he was to be a beneficiary.

While Spaulding is not the principal beneficiary, because he was bequeathed a significant portion of Joe Paul's assets, Appellants have also made allegations of undue influence against him. There is no evidence Spaulding encouraged Joe Paul to make a will or to include him as a beneficiary. The mere possibility that Spaulding was present when Jo Brown or Darnaby advised Joe Paul he needed to prepare a will does not equate to involvement in the preparation of a will, nor does the fact that Joe Paul asked Spaulding to review a draft of the will. Logan prepared the will in accordance with the directions he was given by Joe Paul. Logan did not discuss the will with Spaulding, and Spaulding did not advise Logan to make any changes to the draft. Spaulding was not present when Logan discussed the will with Joe Paul over the phone, nor was he present when the will

was signed. Thus, there is no evidence Spaulding participated in the preparation of the will.

Appellants concede the fifth badge of undue influence, possession of the will by the principal beneficiary, “may not be present,” but still argue the possibility exists because Spaulding read a draft of the document before it was executed. We again note that Spaulding is not the principal beneficiary. Nor is possession of one document accomplished by reading a separate document. Appellants’ assertion is nonsensical.

Appellants claim Spaulding restricted their access to Joe Paul by failing to notify them of his hospitalization. However, Appellants do not claim they tried to contact Joe Paul during this time and were turned away. Furthermore, it is undisputed that Spaulding did not know Appellants, nor was he under any obligation to inform Appellants of Joe Paul’s medical condition.

The final badge of undue influence is “absolute control of [the] testator’s business affairs.” *Bye*, 975 S.W.2d at 457. Appellants argue Spaulding had “the power of life and death” over Joe Paul because he was named Joe Paul’s power of attorney. Appellants’ Brief at 28. However, Spaulding became power of attorney no more than an hour or two before the will was executed. He did not ask for the position, and he was not present during the conversations between Joe Paul and Logan or Joe Paul and the hospital. There is no proof he directed the will or

the power of attorney to be prepared, dictated the terms, or threatened Joe Paul.

While Appellants make much of Spaulding's decision to implement a do-not-resuscitate order for Joe Paul, this was done days after the will was executed and the hospital records do not dispute that it was done in accordance with the wishes of Joe Paul.

Having reviewed all seven badges of undue influence, we find Appellants have failed to offer more than speculation. While there may have been an opportunity for the beneficiaries of the will to exercise undue influence over Joe Paul, there is no proffer of actual evidence that they did so.

[Kentucky's appellate courts] have frequently written that it is not sufficient to show that there was an opportunity to exercise undue influence, or that it was a possibility that it was exercised, but some evidence must be adduced showing that such influence was actually exercised. And by evidence is meant something of substance and relevant consequence, and not vague, uncertain, or irrelevant matter not carrying the quality of proof, or having fitness to induce conviction.

Whallen's Ex'rs v. Moore, 58 S.W.2d 601, 604 (Ky. 1933).

Appellants have presented nothing more than an invitation to the court to engage in speculation, and the circuit court rightly refused to extend that invitation to a jury. It follows that we affirm the decision of the Franklin Circuit Court granting summary judgment in favor of Appellees.

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