SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5181-14T4

IN THE MATTER OF THE ESTATE OF
NELLA TORNABEN, DECEASED.

Submitted September 14, 2016 – Decided September 27, 2016

Before Judges Fuentes and Carroll.

On appeal from the Superior Court of New Jersey, Chancery Division, Essex County, Docket No. C-P-354/2013.

Michael Perle, LLC, and Bruno Cilio (Cilio and Partners, P.C.) of the New York bar, admitted pro hac vice, attorneys for the appellants Clara Peduzzi, Giuliano Peduzzi and Luciano Peduzzi (Michael R. Perle and Mr. Cilio, on the briefs).

Varian Law LLC and Clemente Mueller, P.A., attorneys for the respondents Robert K. Bongiovanni and Robert J. Gangi (William C. Varian, Jr., of counsel; Mr. Varian and Mark A. Clemente, on the brief).

PER CURIAM

On June 28, 2013, the Surrogate of Essex County admitted the December 7, 2011 will of decedent Nella Tornaben (Nella) to probate. Plaintiffs, Clara Peduzzi, Giuliano Peduzzi, and Luciano Peduzzi, thereafter filed a complaint alleging that Nella lacked

testamentary capacity and that the will was the product of undue influence. Plaintiffs appeal from the June 10, 2015 order of the Chancery Division, Probate Part, dismissing their complaint on summary judgment.

On appeal, plaintiffs renew their contentions that decedent lacked testamentary capacity and was under undue influence when she executed her will. They argue that there were disputed issues of material fact as to decedent's competency and susceptibility to undue influence that rendered an award of summary judgment inappropriate. Plaintiffs also contend that the motion judge erred in applying N.J.R.E. 804(b)(6), and in discounting their expert report as a "net opinion." Having reviewed the record, we conclude that plaintiffs' arguments are without merit, and we affirm, substantially for the reasons stated in Judge Walter Koprowski, Jr.'s comprehensive oral opinion, issued June 10, 2015.

I.

The record on appeal reveals that Nella was born in Verona, Italy, and was a resident of Bloomfield when she died on June 17, 2013, at age ninety-six. Nella's husband, John Tornaben, with whom she had no children, predeceased her. Nella was born to Italian parents; she had one older brother, Aldo Peduzzi (Aldo). Nella's parents, who owned various residential and commercial properties, favored Nella. In 1979, upon the death of her father, Nella

inherited the bulk of his estate, which included a trattoria and adjacent property in Verona. Plaintiffs contend that at the time of her father's death, Nella recognized the unfairness of her father's Will to Aldo and thus "she made a promise to Aldo, in the presence of his children, that since she had no children she would make up for the disparity by leaving her estate, or at least part of her estate to Aldo's children."

Nella executed two wills in 2011, neither of which made provision for plaintiffs. Nella's first will was executed on November 8, 2011, while she was hospitalized for both physical and mental health issues, according to hospital records. Nella's second will was executed on December 7, 2011, along with a power of attorney and advance directive, each of which was drafted by William C. Varian, Esq.

On June 28, 2013, the Essex County Surrogate admitted the December 7, 2011 will to probate. The Surrogate also issued letters testamentary to Nella's "nephew," Robert J. Gangi, and her accountant, Robert K. Bongiovanni, who were appointed co-executors of the estate. The will distributed Nella's estate among six beneficiaries: Robert J. Gangi, William T. Gangi, Patricia A. Gangi, James Tornaben, Linda A. Decker, and Susan Nicola, in varying percentages.

Plaintiffs reside in Italy and are the children of Nella's late-brother Aldo. On December 20, 2013, they commenced an action challenging the will, from which they were excluded.[1] Pertinent to this appeal, they alleged that Nella lacked the requisite testamentary capacity to make the will. They also contended that the will was the product of undue influence exerted upon Nella by Robert Gangi.

Following the close of discovery, defendants moved for summary judgment. In support of the motion, Decker, Tornaben, Susan Nicola, and Robert Gangi submitted certifications attesting that, for several years prior to her death, Nella had expressed displeasure with her Italian relatives, who she believed had taken family property without her consent. Consequently, Nella for many years had expressed that she did not want her Italian relatives to share in her estate, which she instead wanted to pass to her Tornaben and Gangi family relatives. These witnesses described Nella as strong-willed, and indicated that she always appeared coherent and alert until a few months before she was admitted to a hospital and then a nursing home in 2013.

[1] Plaintiffs' amended complaint, filed on February 25, 2014, named Robert J. Gangi and Robert K. Bongiovanni as defendants, and William T. Gangi, Patricia A. Gangi, Susan Nicola, and Phillip J. Nicola, as interested parties.

Bongiovanni certified that he knew Nella and her late husband for some twenty-five years, and that he became Nella's accountant around 1998. Bongiovanni came to learn that Nella "had a very independent, commanding personality, which she maintained up through her death." Consequently, he labeled "[p]laintiffs' assertions that anyone could have unduly influenced Nella" as "absurd."

Bongiovanni stated he spoke with Nella on several occasions after her husband died and suggested to her that she execute a new will. During their discussions, Nella

> was always very consistent and very clear with one desire, which was that she absolutely did not want to leave anything to her Italian relatives because, as she put it, "I have no use for them." For nearly [fifteen] years, whenever Nella spoke of her Italian relatives she spoke with anger, disdain and distrust, and she frequently stated she did not want to include them in her [w]ill.

In late 2011, Nella told Bongiovanni "that she got sick and that motivated her" to prepare a will. Bongiovanni related the ensuing events as follows:

> When I jokingly asked her if she left everything to her Italian relatives, Nella emphatically responded "absolutely not." Nella then showed me her new [w]ill and I noticed that she had written on it. I thought her handwriting on the [w]ill may cause a problem in the future, so I suggested to her that an attorney specializing in [w]ills should review the [w]ill and clean it up if necessary. Nella agreed with my suggestion

> and asked me to take care of that which is when I sent a copy of the [w]ill to William C. Varian Jr., Esq. for review.
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> [] After Mr. Varian reviewed the [w]ill, he recommended that it be redone and that Nella also sign a [p]ower of [a]ttorney and [a]dvance [d]irective. When I told Nella what Mr. Varian had said, she agreed to have the [w]ill redone and the other documents prepared. Nella also confirmed with me that the [w]ill she showed me, as revised by her handwriting, was exactly how she wanted it to be. Nella then asked me to coordinate the preparation of her new documents with, as she called him, her nephew, Bob Gangi, and Mr. Varian. Prior to that time, I had no contact with Mr. Gangi. Pursuant to Nella's request, I coordinated with Mr. Varian and Mr. Gangi to get her new documents prepared.

Bongiovanni further certified that he was present when Nella signed the December 7, 2011 will, and that before Nella signed it, she and Varian "had a very lengthy private conversation." Bongiovanni also indicated that Nella "gave [him] very strict instructions not to notify her Italian relatives of her death."

In his certification, Robert Gangi corroborated Bongiovanni's account of the events that led to Varian's involvement. Gangi also indicated that during Nella's brief stay in the hospital in November 2011,

> my Aunt asked me to contact an attorney so that she could get her [w]ill done. I found an attorney in the immediate area of the hospital who came to the hospital to interview my Aunt regarding her wishes. The attorney then prepared my Aunt's [w]ill and returned to the hospital the next day (November 8,

> 2011) to have her sign it. During the signing, my Aunt indicated that she wanted to make some minor changes to the percentages being distributed to some of the people in her [w]ill, and some handwritten changes were made at that time. The [w]ill that my Aunt signed on November 8, 2011[,] left nothing to her family in Italy, and that was completely consistent with the desires that she told me for many years.
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> [] My Aunt was released from the hospital in a few days and she went back to her apartment. My Aunt was a very independent woman with a strong personality and at this point she was fully capable of living on her own.

Varian, the will scrivener, also submitted a lengthy certification. He averred that he has been a practicing attorney in New Jersey since 1989, and since 1997 has concentrated his practice in estate planning. He represented, "I am well aware of the prerequisites to a valid [w]ill, and I always ensure that my clients execute their estate planning documents while of sound mind and under no constraint or undue influence." Varian confirmed that he was initially contacted by Bongiovanni, at Nella's request, prior to which he never had any contact with Robert Gangi.

Varian prepared the will, power of attorney, and advance directive and sent them to Nella for her review. He then traveled to Nella's home on December 7, 2011, and met with her privately to (i) confirm/ascertain her intent and desires; (ii)

confirm/ascertain the size and composition of her estate; and (iii) assess her capacity to execute estate planning documents.

Varian explained that:

> Since I had previously been advised that the [d]ecedent had family that lived in Italy, and which she did not want to include as beneficiaries in her [w]ill, my first question to [her] was for her to tell me about her Italian relatives. [Her] initial response to my question . . . was that she did not even want to talk about them because, as she said, "**they are dead to me and they are not part of my [w]ill.**" After I explained to her that I still wanted to know about them, [she] conveyed to me that she had two nephews and a niece in Italy and that she has had very little, if any, contact with them for many years. The [d]ecedent stated that that side of her family "had stolen" from her many years ago, that they showed her "*no respect*" and that she wanted "*nothing to do with them*." While the [d]ecedent was explaining to me her past history with her Italian relatives and how they somehow managed to swindle some family property away from her many years ago, she got visibly upset and emotional and it was obvious to me that she had very strong feelings of anger and hatred toward her Italian relatives. At this point it became clear to me that the [d]ecedent's desire to exclude her Italian relatives from her [w]ill was a long[-]standing deep-seeded desire which derived from her own free-will. Throughout my conversation with the [d]ecedent, she reiterated several times that she did not want her Italian relatives to "*see a dime*" of her estate.

Varian added that, in response to his suggestion that she acknowledge the existence of her Italian relatives in her will, Nella "emotionally responded (with what I could only describe as

anger and hatred toward her Italian relatives) that she did not even want their names mentioned in her [w]ill."

In speaking with Nella, Varian ascertained that she knew exactly where her accounts were located, and she explained to him the nature of each account (e.g., bank accounts, brokerage accounts CDs, etc.). As a result, Varian certified "there was absolutely no doubt in my mind that [Nella] was well aware of the size and composition of her estate." Varian concluded:

> Throughout my private conversation with [Nella], it was absolutely clear to me that [she] had the mental capacity to execute the [w]ill, the [p]ower of [a]ttorney[,] and the [a]dvance [d]irective I had prepared for her. I have no doubt in my mind that at the time [she] executed [those documents] on December 7, 2011[,] that she was of sound mind, alert and lucid. Additionally, I was equally satisfied that [her] desires were accurately expressed in the documents that I prepared for her, and that she was not acting under duress or undue influence from anyone. In fact, at this point in time, [Nella] was a very strong[-]willed, mentally competent individual who had a very clear understanding of the size/composition of her assets and a very clearly established desire of to whom she wanted to leave her estate (and, equally important, to whom she did NOT want to leave her estate).

Plaintiffs opposed defendants' motion, relying upon their joint certification dated April 21, 2014, various deposition testimony, and decedent's medical records. Each side produced an

expert witness, who reached differing opinions regarding Nella's testamentary capacity at the time she executed the will.

In their joint certification, plaintiffs conceded "there was some disagreement between Aunt Nella and members of our family in Italy," which they attributed to Nella's strong dislike of their mother. Notwithstanding, plaintiffs described their own relationship with Nella as "warm and affectionate." They asserted that Nella learned that she would have to undergo major throat surgery sometime in or about 2011, which coincided with the period during which she executed her wills. Despite executing these wills, Nella continued to call them on a regular basis. Plaintiffs described that, "[i]n some of these calls she did seem lucid but in other phone calls she was in a state of distress, agitation and confusion." The phone calls from Nella ceased in January 2013, and for a time plaintiffs were unable to contact her. Eventually they ascertained that Nella was a patient at a nursing home in Cedar Grove. Plaintiffs retained an attorney, who visited Nella on January 23, and reported that she appeared to be "mentally alert[,] but does have some lapses, which could cause concern." A few weeks later, plaintiffs travelled to the United States and visited with Nella. During these visits, Nella "appeared coherent at times. But at other times she appeared confused — the same pattern exhibited in the many telephone conversations with her

going back to a period preceding November — December 2011." According to plaintiffs, during these visits Nella repeatedly indicated that she disliked and distrusted Robert Gangi. Plaintiffs surmised that Nella had become dependent on Robert Gangi, and that she "was beset by physical impairment, illness, and social isolation, making her particularly susceptible to manipulation" by him.

In addressing plaintiffs' undue influence claim, Judge Koprowski, citing Haynes v. First Nat'l State Bank, 87 N.J. 163 (1981), noted that the burden of proving undue influence would shift to the will's proponent if plaintiffs could prove that there was a confidential relationship between Nella and Mr. Gangi, and suspicious circumstances surrounding decedent's disposition of her estate existed.

Viewing the facts and inferences in the record most favorably to plaintiffs, Judge Koprowski found that plaintiffs produced sufficient evidence to support a finding of a confidential relationship and suspicious circumstances. Nonetheless, the judge concluded that defendants had successfully rebutted the presumption of undue influence. He explained that he found the certifications submitted on behalf of defendants to be trustworthy under the circumstances, and that "there are no facts in dispute,

and therefore, there is no undue influence in this case which would warrant the revocation of the will." The judge elaborated:

> The influence must be such that it destroys the testator's free agency, and must cause him or her to dispose of the property not by his or her own desires but instead by the will of another. So here there [is] no evidence that Mr. Gangi dominated [Nella]. In fact there's nothing to indicate that he overcame her free-will and caused her to do something that she didn't want to do. [T]here's no evidence that there was any mental or moral or physical exertion over [Nella]; in fact, the testimony is exactly the opposite, that there was none. In other words, when we look at the presumption, the presumption is here, I understand that, and overcoming the presumption these witnesses, all of them, established that there was no mental, moral or physical exertion over [Nella] as to her disposition of her assets, no destruction of her free-agency, no arm twisting, if you will. Look at the length of time that she's been expressing her desire . . . that she [did not] want her Italian family to benefit from her estate. Look at the persons to whom it was expressed: Mr. Bongiovanni, Mr. Varian, [they are] . . . professionals . . . [a] lawyer and accountant and [] they don't have any real interest . . . in the outcome.
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> . . . .
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> [F]urthermore [there is] evidence that [Nella] was a strong-willed person with a will that would not easily be overcome. That's testified to by Mr. Bongiovanni . . . [and] by Mr. Varian, and I believe that even the plaintiffs in their opposition to this motion, have indicated that she was a strong-willed person. The will is reasonable in terms of the benefit to the natural objects of her bounty. This is her husband's family, and she

> was close with them, in contact with them. In addition, Mr. Varian is an experienced attorney, independent, as I indicated, [with] no connection to Mr. Gangi . . . [or] [Nella], and his only connection was to Mr. Bongiovanni [who is] an accountant who refers him.
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> Finally you have to look at Mr. Bongiovanni's long-term relationship with [Nella] and her husband and all of that . . . buttresses the [] unrefuted testimony of these witnesses.

Next, Judge Koprowski rejected plaintiffs' claim that Nella lacked testamentary capacity in 2011 when she executed the wills. After reviewing relevant case law, the judge concluded:

> According to New Jersey case law there are cases, many of which [] I've cited already, which tell us that a testator can be feeble minded, . . . he or she can be drunk, a drug addict, can be old, can be eccentric, can even be suffering from lapse of memory. [] [A]bsent mindedness or forgetfulness does not disclose a lack of testamentary capacity.
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> . . . .
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> I find that no reasonable trier [of] fact could find that the plaintiffs [proved by clear and convincing evidence that Nella lacked testamentary capacity], and . . . so defendants' motion for summary judgment is granted.

This appeal followed.

II.

We review a grant of summary judgment de novo, observing the same standard as the trial court. Townsend v. Pierre, 221 N.J. 36, 59 (2015). Summary judgment should be granted only if the

record demonstrates there is "no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). We consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 406 (2014) (quoting Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995)). If no genuine issue of material fact exists, the inquiry then turns to "whether the trial court correctly interpreted the law." DepoLink Ct. Reporting & Litig. Servs. v. Rochman, 430 N.J. Super. 325, 333 (App. Div. 2013) (quoting Massachi v. AHL Servs., Inc., 396 N.J. Super. 486, 494 (App. Div. 2007), certif. denied, 195 N.J. 419 (2008)).

Our Court has cautioned that summary judgment ordinarily should not be granted where an action depends on a determination of a person's state of mind, including claims of fraud or duress. Lombardi v. Masso, 207 N.J. 517, 544 (2011) (citation and quotation omitted); see also Ruvolo v. Am. Cas. Co., 39 N.J. 490, 500 (1963) (stating a court should hesitate to grant summary judgment when it must "resolve questions of intent and mental capacity"); Marte v. Oliveras, 378 N.J. Super. 261, 276 (App. Div.) (stating that factual issues related to alleged undue influence are not

susceptible to resolution on motion for summary judgment), certif. denied, 185 N.J. 295 (2005); Shanley & Fisher, P.C. v. Sisselman, 215 N.J. Super. 200, 214 (App. Div. 1987) (reversing trial court's grant of summary judgment where non-movant claimed duress).

On the other hand, if the court determines there is no genuine issue of material fact, the court is not precluded from granting summary judgment, notwithstanding issues involving state of mind. Fielder v. Stonack, 141 N.J. 101, 129-30 (1995); Bower v. The Estaugh, 146 N.J. Super. 116, 121 (App. Div.) (affirming grant of summary judgment where court discerns "no evidence of undue influence"), certif. denied, 74 N.J. 252 (1977). Also, "when the evidence is so one-sided that one party must prevail as a matter of law, the trial court should not hesitate to grant summary judgment." Brill, supra, 142 N.J. at 540 (citation and quotation omitted).

In evaluating a motion for summary judgment to determine the presence of a genuine issue of material fact, the court must consider both the allocation of the burden of persuasion, and the standard of proof. "An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." R.

4:46-2(c). A court must be "guided by the same evidentiary standard of proof – by a preponderance of the evidence or clear and convincing evidence – that would apply at the trial on the merits[.]" Brill, supra, 142 N.J. at 533.

A.

The parties agree on the applicable legal principles concerning undue influence, which we briefly summarize as follows. In any attack upon the validity of a will, it is generally presumed that "the testator was of sound mind and competent when [she] executed the will." Gellert v. Livingston, 5 N.J. 65, 71 (1950). However, "[i]f a will is tainted by 'undue influence,' it may be overturned." Haynes, supra, 87 N.J. at 176.

"Undue influence" has been defined as "mental, moral or physical" exertion which has destroyed the "free agency of a testator" by preventing the testator "from following the dictates of his own mind and will and accepting instead the domination and influence of another." Ibid. (quoting In re Neuman, 133 N.J. Eq. 532, 534 (E. & A. 1943)).

> [T]he burden of proving undue influence lies upon the contestant unless the will benefits one who stood in a confidential relationship to the testatrix and there are additional circumstances of a suspicious character present which require explanation. In such case the law raises a presumption of undue influence and the burden of proof is shifted to the proponent.

> [In re Rittenhouse's Will, 19 N.J. 376, 378-79 (1955).]

The first element necessary to raise a presumption of "undue influence" is the existence of a "confidential relationship" between the testator and a beneficiary. Haynes, supra, 87 N.J. at 176. A confidential relationship exists where,

> the relations between the . . . parties appear to be of such a character as to render it certain that they do not deal on terms of equality, but that either on the one side from superior knowledge of the matter derived from a fiduciary relation, or from over-mastering influence; or on the other from weakness, dependence or trust justifiably reposed, unfair advantage is rendered probable.
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> [Pascale v. Pascale, 113 N.J. 20, 34 (1988).]

The second element necessary to create a presumption of "undue influence" is the presence of "suspicious circumstances." Haynes, supra, 87 N.J. at 176. While the contestant must prove suspicious circumstances, "[s]uch circumstances need be no more than 'slight.'" Ibid. (internal citation omitted).

Judging his decision by those legal standards, we find no basis to disturb Judge Koprowski's determination that plaintiffs failed to prove Nella's will was the product of undue influence. Significantly, viewing the evidence in the light most favorable to plaintiffs, Judge Koprowski found that even if plaintiffs carried their burden to prove a confidential relationship and suspicious circumstances, defendants produced ample unrefuted,

trustworthy evidence that Robert Gangi did not exercise undue influence over Nella in the preparation of the 2011 wills. Based on our review of the evidence, we find Judge Koprowski's decision is amply supported by the record.

B.

We next turn to plaintiffs' claim that Nella lacked testamentary capacity. "In any attack upon the validity of a will, it is generally presumed that 'the testator was of sound mind and competent when he [or she] executed the will.'" Haynes, supra, 87 N.J. at 175-76 (1981) (quoting Gellert, supra, 5 N.J. at 71).

> The gauge of testamentary capacity is whether the testator can comprehend the property he is about to dispose of; the natural objects of his bounty; the meaning of the business in which he is engaged; the relation of each of the factors to the others, and the distribution that is made by the will. Testamentary capacity is to be tested at the date of the execution of the will. Furthermore, [a]s a general principle, the law requires only a very low degree of mental capacity for one executing a will. [T]he burden of establishing a lack of testamentary capacity is upon the one who challenges its existence [and] [t]hat burden must be sustained by clear and convincing evidence. A testator's misconception of the exact nature or value of his assets will not invalidate a will where there is no evidence of incapacity. Even an actual mistake by a testator as to the extent of his property does not show as a matter of law that he was wanting in testamentary capacity.

> [In re Will of Liebl, 260 N.J. Super. 519, 524-25 (citations omitted) (alterations in original).]

Here, the certifications presented by each side clearly reveal that, while Nella may have suffered from some confusion around the time period when she executed the wills, generally she was lucid, and she continued to manage her own affairs until 2013. Varian's account, that Nella was fully cognizant of the nature and location of her assets, is likewise unrefuted. Moreover, Nella's records relating to her November 7 – 9, 2011 admission to Mountainside Hospital, upon which plaintiffs and their expert rely, fail to establish Nella's lack of capacity. Rather, they simply state:

> This is a [ninety-four]-year-old woman who has had increasing difficulty taking care of herself. There may have been some change in mental status. On exam, there is only mild confusion. She may have a mild underlying dementia and given her age mostly needs help to take care of herself.

Despite this mild dementia, Judge Koprowski determined Nella possessed the requisite testamentary capacity when she executed her 2011 wills. Evaluating the proofs in the aggregate, we agree with Judge Koprowski's conclusion that no reasonable trier of fact could find that plaintiffs established Nella's lack of testamentary capacity by clear and convincing evidence. Moreover, well prior to her mental decline, Nella evinced an unwavering

resolve to exclude her "Italian relatives" from her will. "It is well settled in this State that every citizen of full age and sound mind has the right to make such disposition of property by will or deed as he or she in the exercise of individual judgment may deem fit." Casternovia v. Casternovia, 82 N.J. Super. 251, 257 (App. Div. 1964).

C.

Plaintiffs' remaining appellate arguments merit little discussion. R. 2:11-3(e)(1)(E). Plaintiffs contend that the motion judge failed to properly assess the trustworthiness of the witness certifications under N.J.R.E. 804(b)(6). However, Judge Koprowski carefully analyzed the conditions for admissibility under the rule, and found the witnesses' accounts of Nella's statements regarding her testamentary wishes to be trustworthy. He reasoned:

> [N.J.R.E. 804(b)(6)] provides that statements made by a declarant who is unavailable to testify because of death are only admissible if you can [show] that: 1) the declarant is dead[;] 2) the statement must be made in good faith[;] 3) the statement must have been made upon the declarant's own personal knowledge, and 4) there must be a probability from the circumstances that the statement is trustworthy.
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> The court has to examine these conditions before admitting such testimony, and here it [] seems to me that we're not talking about an absolute standard of . . . trustworthiness - - that's not what has to be established.

> It's only necessary that the court find, in engaging in its objective analysis, that there's a probability that the statement is trustworthy from the flavor of the surrounding circumstances. So look what I have; I have an accountant, I have a lawyer who are talking to their clients respectively, tell me that she wants to dispose of her assets. She's a strong-willed person, that's an observation, that doesn't come from any statement that she made, but she wants to dispose of her assets and give [them] to her family here in the [United S]tates, and doesn't want to give [them] to the Italian side of the family based upon some disdain that she has for the Peduzzis.
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> Now I've got five or six certifications confirming the same. It seems to me that, subjectively speaking, based upon the circumstances surrounding the execution, the statements being made, that I can find and I do find, that those statements are trustworthy under these circumstances.
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> [(Emphasis added).]

"The general rule as to the admission or exclusion of evidence is that '[c]onsiderable latitude is afforded a trial court in determining whether to admit evidence, and that determination will be reversed only if it constitutes an abuse of discretion.'" State v. Kuropchak, 221 N.J. 368, 385 (2015) (citation omitted). "Under that standard, an appellate court should not substitute its own judgment for that of the trial court, unless 'the trial court's ruling "was so wide of the mark that a manifest denial of justice resulted."'" Ibid. (citation omitted). Applying this standard, we find that Judge Koprowski did not abuse his discretion in

accepting the various witness accounts of Nella's statements regarding the disposition of her assets to be trustworthy and hence admissible.

Finally, the following excerpt from the deposition testimony of plaintiffs' expert, Steven S. Simring, M.D., provides fertile ground to discount the factual basis underlying Dr. Simring's opinions:

> Q. When you mentioned before the elements of testamentary capacity, do you have any factual basis for a statement that she was not able to comprehend what property she had?
>
> A. Well - -
>
> Q. And I don't want vague generalities. I want specifics.
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> A. No, I could not. There's no information one way or another on that point.
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> Q. Do you have any factual basis for a statement that [Nella] did not understand that she was executing a will in November and again in December of 2011?
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> A. Only the circumstances of the will made during an acute illness in the emergency room.
>
> . . . .
>
> Q. . . . What I ask, is there any indication that she did not understand that she was executing a will?
>
> A. I have no information except her general mental state.

Additionally, the opinion expressed in Dr. Simring's report, that Nella's will was the product of undue influence, can best be described as conclusory:

> It appears to me that Nella Tornaben was in a vulnerable position when Mr. Gangi brought her to the hospital because of mental confusion, then presented her with a will to sign that he had drafted himself. It is highly probable that he used his power and his position of trust to overwhelm [Nella's] volition, and that he exercised undue influence over her decision-making process. It appears to me that Mr. Gangi abused his fiduciary duty by manipulating [Nella] into leaving her money to him and his relatives. Except for paying bills, he used his power of attorney not to help her, but to make gifts to himself and to other individuals.

The net opinion rule, which is a corollary of N.J.R.E. 703, "forbids the admission into evidence of an expert's conclusions that are not supported by factual evidence or other data." Townsend, supra, 221 N.J. at 53-54 (quoting Polzo v. Cty. of Essex, 196 N.J. 569, 583 (2008)). Under the net opinion rule, an expert is required to "'give the why and wherefore' that supports the opinion, 'rather than a mere conclusion.'" Ibid. (quoting Borough of Saddle River v. 66 E. Allendale, L.L.C., 216 N.J. 115, 144 (2013)). Furthermore, "[a] party's burden of proof on an element of a claim may not be satisfied by an expert opinion that is unsupported by the factual record or by an expert's speculation that contradicts that record." Townsend, supra, 221 N.J. at 55.

A trial court's order barring expert testimony is reviewed for abuse of discretion. Pomerantz Paper Corp. v. New Cmty. Corp., 207 N.J. 344, 371-72 (2011) (citing Kuehn v. Pub Zone, 364 N.J. Super. 301, 319-21 (App. Div. 2003)). Having reviewed the record, we conclude Judge Koprowski did not abuse his discretion in discounting Dr. Simring's opinion as a net opinion.

Affirmed.