

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5482-13T1

IN THE MATTER OF THE ESTATE
OF KATHRYN PARKER BLAIR,
DECEASED.

Submitted November 2, 2015 – Decided February 1, 2016

Before Judges Accurso and O'Connor.

On appeal from Superior Court of New Jersey,
Chancery Division, Bergen County, Docket No.
P-300-13.

Lori Ann Parker, appellant pro se.

Frank T. Luciano, attorney for respondents
Harry Parker, Jr. and the estate of Kathryn
Parker Blair.

PER CURIAM

Petitioner Lori Ann Parker appeals an April 29, 2014 order that dismissed her verified complaint. In that complaint petitioner sought a declaration that a will executed by her aunt, Kathryn Parker Blair ("decedent"), and probated by the Surrogate Court be set aside because, among other reasons, decedent signed the will as the result of undue influence and also lacked the requisite testamentary capacity. Petitioner also appeals the June 24, 2014 order denying her motion for reconsideration. We affirm both orders.

On June 25, 1987, decedent executed a will that provided her estate would pass equally to her siblings but, if a sibling predeceased her, that sibling's share would pass to his or her surviving children. The petitioner's father was one of decedent's siblings. He died in 2002. On October 11, 2012, decedent executed a new will in which petitioner was not named as a beneficiary. Two days later, decedent, then eighty years of age, died of ovarian cancer.

The new will was probated on October 24, 2012. On July 17, 2013, petitioner filed a verified complaint seeking to have the executor, who is one of decedent's siblings, show cause why the probate of the new will should not be vacated. In the alternative, petitioner sought a declaration that, among other things, the probated will was the product of undue influence and decedent lacked the testamentary capacity to execute such will and, thus, the will should be set aside. The court denied the order to show cause, and discovery ensued on the remaining relief sought in the verified complaint.

Petitioner filed a motion for summary judgment seeking to have the court grant the remaining relief in her complaint. Petitioner failed to provide a copy of the notice of cross motion, but we discern from the record decedent's estate sought to have the complaint dismissed on the grounds the substantive

claims asserted in the verified complaint were devoid of merit but that, in any event, the complaint was time-barred under Rule 4:85-1. The court heard both motions after the time for discovery expired.

The court denied petitioner's motion and granted the estate's cross motion for summary judgment, and dismissed the complaint. In her motion petitioner had asserted decedent lacked the mental capacity to sign the will because at the time she was dying from cancer, in chronic pain, and on pain medication. The court found petitioner failed to set forth any evidence to support a claim of testamentary incapacity, see Matter of Will of Liebl, 260 N.J. Super. 519, 524-25 (App. Div. 1992), noting she failed to produce an expert's report to support the premise that either decedent's illness, the pain she was experiencing, or the effects of the pain medication affected decedent's cognition.

Moreover, the estate came forward with evidence decedent had the mental capacity to sign the will. One of decedent's close friends certified she visited decedent in the hospital on an almost daily basis after decedent was diagnosed with cancer in August 2012. The friend consistently found decedent – including the moment she signed the will – to be stable, strong willed, focused, and rational. Another close friend certified

decedent was his "best friend;" in fact they spoke daily during their twelve-year friendship before decedent's death. He stated that long before her death, decedent told him of her intentions to disinherit some of her nieces and nephews. He characterized her as a highly intelligent, practical, strong-willed, focused, and "no-nonsense" person. In September 2012 he visited decedent daily and observed that, although enervated due to her illness, she still possessed the aforementioned characteristics. The court also noted that neither one of these friends stood to gain anything under the new will. Finding petitioner failed to present any competent evidence decedent lacked the requisite testamentary capacity to execute the will, the court dismissed this claim.

Petitioner also contended the executor under the 2012 will exerted undue influence over decedent and wrongfully induced her to sign the will. The court found no evidence in support of such contention. The executor had never been in a confidential relationship with decedent and there were no suspicious circumstances surrounding the execution of the will, two elements that must be found to raise a presumption of undue influence. See In re Estate of Stockdale, 196 N.J. 275, 302-03 (2008). The petitioner's proof there was a confidential relationship between the executor and decedent was that the

executor had signed documents pertaining to decedent's medical treatment. However, not only did such fact fail to establish the existence of a confidential relationship, but also the executor testified at his deposition that he only signed such documents after decedent had read them and requested that he sign them on her behalf, a point petitioner did not refute.

The court rejected petitioner's contention of undue influence, characterizing petitioner's claim as nothing more than "non-corroborated conjecture." Moreover, the only change under the new will that affected the executor was that he was appointed to this position. In addition, there was unrefuted evidence petitioner had scant contact with decedent in the years preceding her death; in fact, petitioner had not had any contact with decedent during the last six years of her life. Accordingly, the trial court dismissed petitioner's claim of undue influence from the complaint.

Petitioner argued there were other deficiencies in the execution of the will, which included that the person who obtained the letters testamentary was an imposter and that there were grounds to remove the executor. The trial court rejected these remaining claims for the reasons set forth in a written opinion accompanying the April 29, 2014 order, which denied petitioner's motion for summary judgment, granted the estate's

cross motion for summary judgment, and affirmed the probate of the new will.

Petitioner filed a motion for reconsideration alleging, among other things, that the estate's cross motion for summary judgment merely sought to dismiss her complaint on the limited ground the complaint had not been timely filed pursuant to Rule 4:85-1 and was thus time-barred. The court denied that motion, finding the arguments raised in the estate's brief in support of its cross motion for summary judgment were not confined to whether the complaint was timely filed. The thrust of the estate's brief was not merely that summary judgment be denied but also that the entire complaint be dismissed because petitioner's substantive claims lacked merit. Further, during oral argument on the estate's cross motion for summary judgment, the estate argued reasons other than the timeliness of the filing of the complaint in support of its motion without objection by petitioner. Certainly nothing impaired petitioner from responding to each argument raised in the estate's brief in her reply to the cross motion.

On appeal, petitioner argues:

POINT I: THE TRIAL COURT ERRED IN DENYING THE
PLAINTIFF'S SUMMARY JUDGMENT MOTION AND
MOTION FOR RECONSIDERATION

A. KATHRYN DID NOT HAVE LEGAL
CAPACITY

B. HARRY PARKER, THE EXECUTOR, ENGAGED
IN UNDUE INFLUENCE

1. HARRY PARKER WAS IN A
CONFIDENTIAL RELATIONSHIP WITH
KATHRYN
2. KATHRYN WAS IN A WEAK, VULNERABLE,
AND DEPENDENT STATE
3. SUSPICIOUS CIRCUMSTANCES SURROUNDED
THE 2012 WILL

POINT II: THE TRIAL COURT ERRED IN NOT REMOVING HARRY
PARKER, SR. AS THE EXECUTOR

- A. HARRY EDWARD PARKER, SR. IS NOT HARRY
EDWARD PARK, JR.
- B. HARRY PARKER DID BREACH HIS FIDUCIARY
DUTY

POINT III: THE TRIAL COURT ERRED IN GRANTING THE
DEFENDANT'S SUMMARY JUDGMENT

- A. THE ONLY ISSUE THE DEFENDANTS RAISED
WAS THE TIME-BAR ISSUE
- B. THE DEFENDANTS' CROSS-MOTION FOR
SUMMARY JUDGMENT WAS UNTIMELY

When reviewing a trial court's decision on a motion for summary judgment, we apply the same standard of review as the trial court. W.J.A. v. D.A., 210 N.J. 229, 237-38 (2012). First, we determine whether the moving party has demonstrated there were no genuine disputes as to any material fact, and then we decide whether the court's application of the law was correct. Atl. Mut. Ins. Co. v. Hillside Bottling Co., 387 N.J.

Super. 224, 230-31 (App. Div.), certif. denied, 189 N.J. 104 (2006). In so doing, we view the facts in the light most favorable to the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). However, we accord no deference to the trial court's conclusions of law, Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 382-83 (2010), which we review de novo. Dep't of Env'tl. Prot. v. Kafil, 395 N.J. Super. 597 (App. Div. 2007).

Here, we find insufficient merit in the arguments petitioner raises to warrant further discussion in a written opinion. R. 2:11-3(e)(1)(E). After carefully reviewing the record and the applicable legal principles, we affirm both orders under review substantially for the reasons set forth in Judge Menelaos W. Toskos' written opinions dated April 29, 2014 and June 24, 2014.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION