2014 WL 6803563 (Ga.) (Appellate Brief)
Supreme Court of Georgia.

In Re: Estate of Angie C. SCROGGINS.
Wesley C. BATEMAN, Appellant,
v.
Margaret Denise SCROGGINS and Sheila D. Eichler, Appellees.

No. S15A0256.
November 24, 2014.

Brief of Appellees

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***2** Introduction

This case portrays dramatically different versions of fact depending on who is telling them. Appellant Wesley Bateman's version advocates he was merely a kind and benevolent man who offered caregiving assistance to a medically fragile **elderly** woman of means who had been abandoned by her family. But the version of Denise Scroggins and Sheila Eichler ("Appellees") shows a darker, more detailed scene involving Angie Scroggins's slow withdrawal from family, a downward spiral into the bizarre world of prescription drug abuse, episodes of mental confusion and a new (secret) Will that was not revealed until after 79 year-old Angie Scroggins was struck and killed by an automobile while crossing a six-lane highway at nine o'clock at night in order to buy some milk for her breakfast the next morning.

Based on the totality of the evidence presented, and assessing the credibility of the various witnesses called to testify, the Probate Court of Cobb County determined that the new Will was invalid and that Propounder Bateman unduly influenced Angie into making it. As the Probate Court of Cobb County acted well within its bounds in making its factual findings, and there are no objections or errors asserted as to any of the Probate Court's evidentiary rulings, the Probate Court's findings are due to be affirmed in this Appeal.

***3 Part One -- Facts Not Recited In Appellant's Brief**

In 2000, Appellant Wesley Bateman lived next door to Angie Scroggins and was working as a clerk in the convenience store across the street. (Probate Hr'g Tr. 12, Mar. 12, 2014.) Bateman did not know Angie until she came into the convenience store one day in 2002, crying to him after both her son and her husband of 53 years had recently died. (Id.) Bateman left work early that day to comfort her and talked to her for eight to nine hours. (Id.) He saw her a few more times thereafter until he moved away and started a new job with McClung Surveying. (Id.)

In May 2003, Bateman needed a new place to live and showed up on Angie's doorstep asking if he would rent the warehouse apartment located behind her residence. (Tr. 13.) Angie subsequently agreed and Bateman moved in the following week. (Tr. 14). At that time, Angie Scroggins told Bateman she had been hospitalized for three or four months and that her daughters had recently brought an involuntary guardianship proceeding against her, which had been denied. [1] (Tr. 15.) At the time, Bateman was 47 and Angie Scroggins was 69. (cf. R. at 520, 78.)

***4** On the night of her 70th birthday party in XX/XX/2003, Bateman had sexual relations with Angie Scroggins but claims this was a one-time mistake that caused him to move out a few months later when Angie became jealous and caused a scene during a company party. (Tr. 20-21.) Despite this, they continued talking and in March 2004, Bateman agreed to move back into the warehouse apartment located behind Angie's house. (Tr. 22.) At the hearing, Bateman testified that one Saturday in June 2005 when they were working in the garden, Angie Scroggins told him that a neighbor, Helen Holbert, whom Angie had cared for during a terminal illness, left her Estate to Angie in exchange for providing care and asked Bateman whether he would agree to a similar a similar arrangement. (Tr. 24.)[2] Bateman testified he "thought it was a great idea and so I agreed to it." (Id.)[3] Nobody in Angie's family was made aware of this arrangement.

Bateman started scheduling more time off from work to take Angie to doctor appointments and surgeries, and he set up on-line banking for Angie "so she could ***5** save stamps."[4] (Tr. 24.) He began paying her bills on line, checked her prescriptions, mowed her lawn, and cooked at least six meals a week. (*Id.*) Bateman also monitored her prescriptions to be sure she took the right medications. (*Id.* at 26.) According to Bateman, this "platonic" relationship was more akin to a mother-son relationship. (Tr. 151.) However, according to Angie's daughter, Denise, Bateman was "loving on her and making it look like he was in love with her." (Tr. 223.) They traveled extensively together, visiting Arizona, Mexico, California, North Carolina, and "all over" Georgia and Florida (Tr. 25), running up costs of approximately $20,000 that Angie Scroggins paid. (Tr. 84.)

In one of several confrontations, Bateman told Angie's daughter Denise she "had no business [in the warehouse] and that within two years [she] would not be welcome there..." (Tr. 224.) As it turned out, Bateman was right. During the next several years, Denise and Angie would argue constantly when they spoke on the phone, and their relationship became even more strained. (Id.) Eventually, Angie would not attend family events without Bateman in tow, and this caused Denise and Angie to argue more and visit together less frequently. As Denise explained, "[N]o one could get near my mother unless Wes was there. You couldn't go pick my mother up and take her anywhere unless Wes could go. You ***6** couldn't get near my mother." (Tr. 225.) The relationship was hostile because Bateman constantly caused problems between Denise and her mother. (Tr. 226). Whenever any family members went to visit something always went missing and someone in the family always got blamed. (Id.)

After the failed guardianship attempt by her daughters, in 2004, Angie went to her long-time attorney, Dan Scoggins, and revised her Will. (R. at 126-131, 467.) It provided the sum of $1,000 for Bateman and $1,000 to each of Angie's daughters. The remainder of her Estate was left equally to three grandchildren.[5] (R. at 127.) However, Angie's relationship with her grandchildren also became estranged soon after Bateman appeared on the scene.

Denise's daughter, Lauren Scroggins, was said to have had a physical altercation with her grandmother after Bateman and Angie allegedly locked her in a room and refused to let her call her mother. (Tr. 37, 291-92.) Angie's grandson, Jeremy Lutrell, supposedly fell out of Angie's favor because he defaulted on a car note that Angie had co-signed and only came around when he wanted something.[6] (Tr. 35.) Angie's other granddaughter, Nichole Wilson, testified that she began to ***7** distance herself in 2009 after she discovered that alcohol and prescription drugs were being abused at her grandmother's house and Nichole's husband was accused of selling Oxycontin and pain pills. (Tr. 322-23.) Indeed, after Bateman moved in, friends from Florida were visiting and camping in a tent in Angie's backyard when one of them died from a drug overdose. (Tr. 229; R. at 462.) When Denise threatened to bring another guardianship petition, everyone except Bateman moved out. (Id.)

In July 2010, with the estrangement of Angie's family and the remaining beneficiaries to the 2004 Will nearly completed, Bateman testified that at Angie's request, he drafted a Survivor's Deed giving him Angie's home upon her passing (Ex. P-3),

along with a new Will (Ex. P-1), making him the Executor and, except for a bedroom set for Denise, the sole beneficiary of Angie's Estate. The documents were not executed at that time (Tr. 41.), and Angie never told any of her family members that she wanted to change her Will to give everything to Bateman. (Tr. 253 (Scroggins), 308 (J. Lutrell), 329 (N. Wilson).) Denise testified it would have been unlike her mother to ask Bateman to draft the documents because for many years, Angie had used Dan Scoggins as her attorney for any and all legal and business affairs, including preparation and execution of the 2004 Will. (Tr. 280; R. 126-31.)

***8** The record is also clear that Angie Scroggins had consistently been taking Percocet, an opioid narcotic used to control pain. (R. at 736.) Bateman personally insured that Angie took her medications every day (Tr. 25.) and had previously observed instances of Angie's "unusual behavior" when she took too many Percocet pills. In fact, Bateman had seen it often enough to begin rotating pain medications as early as 2008 to adjust Angie's medications when this "unusual behavior" occurred. (Tr. 30.)

The record is undisputed that in the weeks preceding the signing of the new Will in October 2010, Angie was getting prescriptions and taking Percocet in massive quantities. For example, on September 15, 2010, Angie filled a prescription for 100 Percocet pills. (Tr. 86; R. at 727.) On October 11, 2010, Angie filled another prescription for another 100 Percocet pills. (Tr. 87; R. at 727.) Two days later, on October 13, 2010, Angie was found "out of her mind" in a mand" shirt, underwear, and socks, wearing no bra and was "out of her mind." (Tr. 237.) Though she was at home, she did not know where she was. (Id.) She was also confused and left messages for her daughters, calling them by the wrong names. (Tr. 238.)

On October 26, 2010, with Bateman present, Angie went to her primary care physician and asked for more Percocet. (Tr. 88; R. at 728.) "She was not that type of patient." (R. at 728.) At this visit, Dr. Jeffers observed Angie was "confused" ***9** and "diaphoretic and jerking and spontaneous movement of body" with a blood sugar level of thirty-eight. (R. at 725.) Dr. Jeffers was concerned about the number of pain pills Angie had been taking and thought she was taking too many. *(Id.)* Dr. Jeffers called Angie's daughter, Denise, as well as the pharmacy, to report Angie's condition and verify how many Percocet pills Angie had received. *(Id.)* Dr. Jeffers then called an ambulance to involuntarily transport Angie to Cobb Hospital for additional treatment and observation. *(Id.)*

With Bateman present at the hospital as her supposed caregiver, Angie refused treatment upon arrival and discharged herself against the hospital physician's medical advice. Bateman then took her out for a meal. (Tr. 46.) Bateman testified that Angie was livid that Dr. Jeffers had called Denise. Angie and Denise argued over the phone, and that fight purportedly prompted Angie to suddenly want to sign the Will and Survivor's Deed that Bateman had drafted in July, three months earlier. (Tr. 47.)

The very next day, Angie Scroggins asked some friends to meet them at the bank to sign some papers. Vera Nelson was a church friend of Angie's and Neal Radford owned a business next door.[7] (Tr. 43-44.) Bateman was present throughout the signing of the documents and none of the witnesses were ever told about the nature of the documents or what they contained. (Tr. 125-26.) Ms. ***10** Nelson testified that Angie was "in a hurry to get back home." (Tr. 123.) Ms. Nelson did not know that Angie had been hospitalized the day before, did not know how much or what kind of prescription medications Angie was taking, and did not know that Percocet sometimes made her confused. (Tr. 124.) At the Court's prompting, Ms. Nelson testified that she did not know she was being asked to witness Angie's Will and did not remember any language or statements by the Notary Public or Angie to this effect. (Tr. 128.) Apparently, Angie instructed Bateman not to file the Survivor's Deed until after her death. (Tr. 95-96.)

Several days later, Angie delivered a new Durable Power of Attorney for Healthcare to Dr. Jeffers and instructed her not to communicate anything about Angie's medical history to Angie's family. (R. at 729.) Three weeks later, Bateman decided Angie needed to find a different physician closer to her home. (Tr. 93.) Denise was aware that a new healthcare power of attorney had been executed but nobody told her about a new Will being executed at the same time. (Tr. 253.)

In November 2010, Angie started talking to Denise about a reverse mortgage on Angie's property, and Denise confronted Bateman about what he was doing with her mother's property. (Tr. 242.) Bateman told Denise "I've had something in the making for the last two years. You need to keep your nosy ass out of my business. I won't tell you anything about your mother's business." (Id.) Bateman ***11** hung up the phone, changed his phone number and did not speak to Denise again until after Angie was killed. (Id.)

Instances of Angie's confusion continued after execution of the 2010 Will. Angie's granddaughter Nichole, testified that after her mother died in 2009, Angie appeared disoriented, confused, and would frequently mix up names (Tr. 362.) Angie would confuse her grandson Jeremy for her son David who has passed away many years earlier. (Tr. 304.) In August 2011, Angie began seeing Dr. Karen Artress. (Tr. 130.) Neither Angie nor Bateman, her healthcare power of attorney, reported Angie's prior opiate use or the fact that it made her confused and caused her to exhibit unusual behavior. (Tr. 132) On October 28, 2011, Angie acknowledged to Dr. Artress that "[s]he was putting children to bed and lost them and [needed someone to] come help her." (Tr. 134.) Dr. Atress referred her to a neurologist and a psychiatrist to evaluate her medications and metabolic and brain issues. (Tr. 136.) However, Angie Scroggins never went to those evaluations. (Tr. 147.) Further, just two weeks before her death, Angie told Denise she was no longer attending church because her friend, Ms. Nelson, and another woman, Vivian, thought Angie was disoriented at church. (Tr. 252.) They took her keys, drove her home, and called the ambulance because her blood sugar was way down. (Id.).

***12** On April 1, 2013, Denise spoke to her mother at 3:00 p.m. Angie reported that she and Bateman had been fighting and arguing. (Tr. 252.) Bateman testified that on that same day, he and Angie had dinner "just like normal," finishing up about 7:30 to 7:45 p.m., and that Angie wanted him to go get some milk for cereal in the morning. (Tr. 49.) Bateman told her would do it later. (Tr. 50.) Bateman returned to the warehouse apartment to finish reading. (Id.)

At approximately 9:00 p.m., Bateman heard sirens and discovered that Angie was not at home. (Tr. 51.) He went to the scene and saw Angie lying in the road. (Tr. 52.) Crash investigation officers from Cobb County Police Department's STEP unit testified that on April 1, 2013 at approximately 9:45 p.m., Angie was struck and killed while she walking across the southbound lanes of a six-lane divided highway at Cumberland Parkway and South Cobb Drive in front of her home. (Tr. 338.) Angie had made it across the street to the Texaco station and was on her way back. (Tr. 216.) She crossed the first three lanes and was hit by oncoming traffic at some point in the next three lanes. (Tr. 340.) The first car missed her, but when she stepped into the next lane she was hit. (Id.)

Bateman identified himself to the investigating officers as her son, (Tr. 213.), so they did not attempt to notify Angie's next of kin. (Tr. 214.) Bateman asked the officers for a ride to the hospital and if they found Angie's keys or her bank card. (Tr. 52.) In the days following Angie's death, Bateman began pawning ***13** things because he needed money (R. at 595.) and had some of Angie's jewelry appraised for its value. (R. at 108.)

After Angie's death, Bateman never called the Social Security Administration to let it know Angie had passed and never called the cancelled her food stamps. (Tr. 265.) Bateman would not let Denise or the police into Angie's home. (Tr. 264.) Bateman told Denise that her mother had executed a new Will in 2010 but would not provide Denise with a copy. (Tr. 266.) Denise petitioned the Cobb County Probate Court for Temporary Letters of Administration (R. at 30-38), posted a $66,000 bond (R. at 42.), and was approved as the Temporary Administrator for Angie's Estate on April 24, 2013. (R. at 41.) Bateman objected to the appointment (R. at 48.) and only then produced a copy of the 2010 Will. (R. at 50-73.) Bateman's motion to set aside the Temporary Letters of Administration was denied (R. at 144.), and Denise Scroggins gained access to Angie's home to inventory and preserve the assets of the Estate.

Denise entered the home and took photos of Angie's home. (Ex. C-17.) Rats were everywhere, the refrigerator was not working, and the conditions in which Angie was living were deplorable. (Tr. 262.) Bateman testified that Angie did not need the refrigerator much because she only kept drinks and leftovers in it. (Tr. 83.) Denise also discovered a piece of paper where someone had been practicing Angie's signature. (Tr. 259, Ex. C-3.)

***14** The Probate Court's Findings and Order

On March 12 and 13, 2014, the Probate Court of Cobb County conducted a non-jury hearing on Bateman's petition to probate the 2010 Will. (Tr. 1-378.) Over the course of the two days, sixteen (16) witnesses were called to testify. *(Id.)* On April 22, 2014, after considering all the evidence, including two tape-recorded conversations between Denise, Angie and Angie's sister, Ethel, [8] Cobb County Probate Judge Kelli L. Wolk issued a Final Order making findings of fact and conclusions of law, and ultimately denied Bateman's Petition to Probate in Solemn Form the October 27, 2010 Will of Angie C. Scroggins. (R. at 2-10.). The Probate Court determined inter alia that the self-proving affidavit was invalid because Angie did not indicate that the document was her will (R. at 8.), that the Will was invalid due to Angie's lack of capacity (R. at 9.), that a presumption of undue influence existed based on the record facts (R. at 10.), and that Bateman unduly influenced Angie in the making of the 2010 Will. *(Id.)* This Appeal follows.

***15 Part Two - Response to Appellant's Enumeration of errors**

1. The Probate Court did not err in concluding the 2010 Will was invalid due to improper execution. The conclusions of law reached in this regard are supported by the evidence and case precedent and are due to be affirmed.

2. The Probate court did not err in holding that the evidence raised a presumption of undue influence and finding that Appellant unduly influenced the Testator to sign the will. These findings of fact are amply supported by the evidence and due to be affirmed.

***16 Part Three Argument and Citation of Authority**

Standard of Review

"A trial court's factual findings in a non-jury trial may not be set aside unless clearly erroneous. [Cits.] Where, as here, the findings of the probate court are supported by any evidence, they will not be disturbed on appeal." Glaze v. Lemaster, 279 Ga. 361, 362 (2005) (citations omitted). "Where a probate court's findings in a non-jury trial are supported by any evidence, this Court is bound to affirm them on appeal." Amerson v. Pahl, 292 Ga. 79, 79 (2012) (citing Tuttle v. Ryan, 282 Ga. 652 (2007)). Thus, review occurs under a "highly deferential standard." Id.

I. THE PROBATE COURT CORRECTLY HELD THAT APPELLANT DID NOT MEET ITS PRIMA FACIE BURDEN OF ESTABLISHING THE WILL'S VALIDITY.

Under Georgia law, the burden is on the propounder of a will to make out a prima facie case of its validity by showing the existence of the will, and that at the time of its execution the testator had sufficient mental capacity to make it, and, in making it, acted freely and voluntarily. *Skelton v. Skelton,* 251 Ga. 631, 632 (1983). The party offering a will for probate assumes the burden of persuasion as to its validity, including the burden of proving by a preponderance of the evidence that the document was executed freely and voluntarily and with the requisite formalities. *Parker v. Melican,* 286 Ga. 185, 187 (2009).

***17** In the probate of a will, the burden of proof is upon the propounder to show all the facts necessary to make a good will, and this includes not only the fact of execution, but that the will is the free act of a man competent, under the law, to make a will. The heirs of a deceased person take his estate, by virtue of the statute of distributions, and their rights can only be divested by proof that the deceased died, leaving a will, by him freely executing according to the forms of law, whilst he was of sound mind.

What shall be the extent of the proof of sanity and freedom, must depend upon the circumstances of each case; ordinarily, the opinion of the subscribing witnesses, from what they have seen and known, at the time of execution, that the testator was sane

and free, will make a prima facie case; but if from all the testimony the jury is not satisfied that the testator was of sound and disposing mind, and that the will is his free act, probate should be refused.

Evans v. Arnold, 52 Ga. 169 (1874).

A. The Self-Proving Affidavit was Invalid

The Probate Court correctly determined that the self-proving affidavit attached to the will in question was invalid because the testator never declared to any of the witnesses that this was her will, or that the Notary administered any oath of such. (R. at 10.) A self-proving affidavit is a sworn statement that the will has been duly executed and creates a rebuttable presumption that the requirements of signature and attestation were met without the need for live testimony or affidavits from the will's witnesses. *Duncan v. Moore,* 275 Ga. 656(1) (2002). However, to be complete, a self-proving affidavit must satisfy three essential elements: (a) include a written oath embodying the facts as sworn to by the affiant; (b) include the signature of the affiant; and (c) include the attestation by an officer authorized ***18** to administer the oath that the affidavit was actually sworn by the affiant before the officer. *Auito v. Auito,* 288 Ga. 443 (2011) (citations omitted).[9] Here, as told by the sole subscribing witness, the record is undisputed that the testator never told any of the witnesses she was signing a will and the Notary never gave the oath contained in the self-proving affidavit.

Q: Did [the testator] tell you what the purpose of the documents were for?
A: No, I didn't ask her because I just live right down the street and I had other things I had to do.

(Tr. 125.)
THE COURT: And, did [the testator] tell you that it was her will?

A: No. I didn't ask her what it was. She just wanted me to do her a favor and that's what I did.

THE COURT: Okay. There's a document here that is attached to the will that says: Each of the witnesses declared in the presence and hearing of the testator that the foregoing instrument was executed and acknowledged by the testator as the testator's will in their presence that day.

A: I don't remember that.

(Tr. 128.)

Without a self-proving affidavit, when a caveat is filed, the testimony of all witnesses is required. O.C.G.A. § 53-3-21(a). When one or more of the subscribing witnesses are dead or otherwise unavailable, a will may alternatively ***19** be proved on the testimony of at least "two credible **disinterested** witnesses that the signature to the will is in the handwriting of the person whose will it purports to be, or upon other sufficient proof of such handwriting." OCGA § 53-5-24; see also *Harvey v. Sullivan,* 272 Ga. 392(2) (2000).

Here, as the Probate Court noted, Vera Nelson was the only disinterested witness who testified that the signature on the Will was that of the testator. (R. at 10.) Although Bateman testified he was also present at the signing of the will, he is certainly not a disinterested party and his presence does not dispense with the requirements of Georgia law. Since the validity of a testator's signature is a necessary element of a propounder's case, the burden of persuasion in that regard remained on Bateman and did not shift to Caveators-Appellees to prove affirmatively that the signature was a forgery. Heard v. Lovett, 273 Ga. 111 (2000). Accordingly, the Probate Court correctly concluded that the Propounder did not satisfy the requirements of O.C.G.A. § 53-5-21.

(R. at 10.) See Mason v. Phillips, 290 Ga. 433, 434 (2012) (court did not err in refusing to probate a will in solemn form where only one disinterested witness testified that testator signed the will).

B. Propounder failed to Prove Testator Had Capacity At the Time the Will Was Executed

Downplaying the multiple significant episodes of Angie's mental confusion when taking Percocet, and also the involuntary transport to the hospital the day ***20** before Angie executed the Will because she was "incoherent" and "uunconscious," Appellant Bateman maintains the events of October 26, 2010 were attributed only to low blood sugar. (Br. of Appellant 16-25.) Appellant instead suggests that since he and Vera Nelson believed there were no signs of mental confusion the next day when the Will was signed, it was error for the Probate Court to hold that Angie Scroggins lacked testamentary capacity. (*Id.* at 14-16.) That is not the law in Georgia. "Evidence of incapacity at a reasonable time prior to and subsequent to a will's execution creates an issue of fact as to capacity at the time of execution." *Sullivan v. Sullivan*, 273 Ga. 130 (2000) (citing *Kievman v. Kievman*, 260 Ga. 853, 853-54(1) (1991)).

Although the controlling question is the condition of Testator's mind at the time of execution of each codicil, it is not essential to establish incapacity by the testimony of "someone who was present when the will was signed or who saw the testator the day the will was executed. ***Evidence as to the state of mind of the testator prior to and subsequent to the date of the execution of the will may illustrate the incompetency of the testator at the time of its execution.*** Where a condition of incapacity is shown to exist prior to the execution of a will, and it is further shown that this condition continues for a period of time subsequent to the date of execution, it is evidence showing incapacity at the time of execution, and controverts the positive evidence of the subscribing witnesses...." [Cit.]

Melican v. Parker, 283 Ga. 253, 257-58 (2008) (quoting *Dean v. Morsman*, 254 Ga. 169, 172(1) (1985)). Here, the Probate Court heard and considered significant and sufficient evidence of incapacity in the weeks and days preceding the execution of the new Will, including the day it was signed.

21** ***1. Evidence of Mental Confusion Prior to Execution of the Will

The undisputed evidence in this case is that in the weeks preceding signing of the new Will in October 2010, Angie was getting prescriptions and taking Percocet in massive quantities. (Tr. 86-87; R. at 727-28.) The record shows that in the six weeks before execution of the new Will, she had been prescribed and taken approximately 200 Percocet pain pills, and on October 26, 2010, was requesting even more. (Tr. 88; R. at 728.) The day before she signed the Will, her physician, Dr. Jasmine Jeffers, observed that she was "confused" and had "diaphoretic and jerking and spontaneous movement of the body." (R. at 725.) On October 13, 2010, just two weeks before her visit with Dr. Jeffers, Angie was found "out of her mind" wearing a man's shirt, underwear and socks, with no bra. She was at home, but did not know where she was. (Tr. 237.) She was so confused that Bateman could not handle her and called Angie's daughter to come sit with her. (Id.) Dr. Jeffers testified that either Percocet or low blood sugar could cause mental confusion. (R. at 723.)

But the events in October 2010 are not the only instances of Angie's mental confusion. Angie had a long history of mental confusion when she was taking Percocet. Her ingestion and abuse of pain pills and anti-depressants contributed to her daughters' petition for guardianship. (Tr. 230.) Bateman testified that in ***22** August 2008, Angie had been taking Percocet after foot surgery and was later discovered in her driveway walking around in the rain. (Tr. 30-31.)

> I observed her unusual behavior as a result of the constant use of the Percocet. When she stopped using it for two or three days her pain would go away [sic] but there's something about that, that is important as well.... when I recognized those behaviors, I knew that we had to find a different treatment mode for pain for her back's we made a rotation of pain control where one day she could use the Percocet, another day she would use the Gavopendin and another day she would use this lidocaine patches and once we started that rotation Angie had no more problems with reaction or behavior due to the use of Percocet.

(Tr. 30.) However, the record contains considerable evidence that Angie's unusual behavior did not stop after 2008. On October 26, 2010, Bateman admitted that Angie "was having problems with the Percocet. She was getting forgetful...." (Tr. 89.) She "sstarted being incoherent and then she moved to unconscious." (Tr. 90.) Bateman again acknowledged it took two or three days for her to get better after she quit using Percocet. (Tr. 91-92.) Two days after the incident, Angie and Bateman went back to Dr. Jeffers's office and presented the medical power of attorney, and Angie was not disoriented. (Id.) At this visit, Angie did not tell Dr. Jeffers that she had executed a new Will just two days earlier. (Id.)

But the Probate Court did not base its holding of lack of capacity solely on the events of October 26, 2010 and Angie's taking too much Percocet. Although Bateman presents snippets of six witnesses who testified on his behalf, generally as to Angie's mental competency over the years and specifically as to Angie's intent ***23** to give Bateman everything she owned upon her death, (See Br. of Appellant 21-25.), none of these witnesses testified that Angie ever told them she had executed a new will to actually carry this plan out. In fact, of the sixteen (16) witnesses called to testify in this case, there is no testimony from anyone who knew anything about the 2010 Will, except Bateman, the man who drafted it. [10] This is also true for Ms. Nelson who, even though serving as a witness to the Will's execution, did not know anything about it being a will because neither Angie nor Bateman told her what the documents were.

Simply put, there is no evidence in this case that before the new Will was executed in October 2010, Angie actually knew what it contained. Likewise, there is no evidence in this case that Angie told anyone she had done it, remembered that she had done it, or that she ever had any discussions with anyone about having doen it, including any subsequent discussions with Bateman. To this end, the Probate Court found:

> Decedent was nearly blind. She had poor eyesight and used a giant magnifying glass to read. Propounder stated he helped her fill out forms. Propounder stated that Decedent did not use the magnifying glass to read the Will. There was no evidence that Decedent read the Will or that it was read to her. Propounder stated that Decedent trusted him to draft the Will in accordance with her stated wishes.

***24** (R. at 6.) On this basis, the Probate Court concluded that Angie "did not know of the Will's contents and could not have made a rational decision if the contents of her Will were unknown to her." (R. at 10.) O.C.G.A. § 53-4-21 provides, "[k]nowledge of the contents of a will by the testator is necessary to the validity of the will." *Cf. Holland v. Holland*, 277 Ga. 792, 794 (2004) (finding capacity because there was direct evidence that the testator had worked on several drafts of the will and that the drafter read it to the testator).

2. Evidence of Mental Confusion After Execution of the Will

The periods of Angie's mental confusion certainly did not stop after October 26, 2010. Indeed, the record is undisputed that it got worse. Angie's granddaughter, Nichole, testified that Angie became more disoriented, confused and would frequently mix up names (Tr. 362.) Her grandson, Jeremy, testified that Angie would confuse him for her son David, who passed away years earlier. (Tr. 304.) In November 2010, Denise Scroggins testified that Angie told her someone called and spoke to Angie about getting a reverse mortgage. (Tr. 251.) Denise explained "No, a reverse mortgage does not call you, you have [to] contact them and let them know that you're interested." (Id.) After she confronted Bateman about what was going on with her mother's property, they had an argument and Bateman changed his phone number. They did not speak again until after Angie was killed in April 2013. (Tr. 242.)

***25** In August 2011, Angie began seeing Dr. Karen Artress. (Tr. 130.) Contrary to Bateman's testimony, neither she nor Bateman, her medical power of attorney, reported her prior opiate use or the fact that it made her confused and exhibit unusual behavior. (Tr. 132) On October 28, 2011, Angie went to Dr. Artress and reported another episode of severe mental confusion

to Dr. Artress. “She was putting children to bed and lost them and [needed someone to] come help her.” (Tr. 134.) And again, just two weeks before her death in 2013, Angie told Denise she was no longer attending church because her friend, Ms. Nelson, and another woman, Vivian, thought she was disoriented at church, took her keys, drove her home, and called the ambulance. (Tr. 252.)

As fact finders are permitted to consider instances of mental confusion prior to and after the day of executing a new will, and there was no evidence that Angie ever read the content of the new Will, the Probate Court did not err in holding that she lacked the capacity to make the Will on October 27, 2010.

II. EVIDENCE OF UNDUE INFLUENCE.

As he must, Bateman acknowledges the rule that “A presumption of undue influence arises when it is shown that the will was made at the request of a person who receives a substantial benefit, who is not a natural object of the maker's estate, and who held a confidential relationship with the testator.” (Br. of Appellant 25 (citing Andrews v. Rentz, 266 Ga. 782(3) (1996); Holland, 277 Ga. at 793).) This ***26** Court has long adhered to the rule that “[r]elevant evidence about the testatrix' [or testator's] state of mind at the time of the execution of the will includes testimony relating to a reasonable period of time before and after the execution of the will.” Dorsey v. Kennedy, 284 Ga. 464, 464 (2008). Thus, evidence of Bateman's **exploitation** of Angie and her money during the period of time shortly before and after execution of the new, secret, Will is indisputably relevant to the central issues of undue influence being claimed in this case. Id.

The law in Georgia regarding the jurisprudence of undue influence is well established and recognized in treatises and case law. For example, undue influence is usually not susceptible of direct proof and instead must be proved by circumstantial evidence. *Brumbelow v. Hopkins,* 197 Ga. 247 (1944); *Skelton,* 251 Ga. at 631; *Bailey v. Edmundson,* 280 Ga. 528 (2006). A wide range of evidence is admissible in undue influence cases and it is proper for a court to consider any fact that will throw light on the issue raised by the charge of undue influence. *Skelton,* 251 Ga. at 634; Cook v. Huff, 274 Ga. 186 (2001); *Trotman v. Forrester,* 279 Ga. 844 (2005). These include matters such as the testato's dealings and associations with the beneficiaries; habits, motives, and feelings; strength or weakness of character; confidential, family, social, and business relationships; mental and physical condition at the time the will was made; manner and conduct; and the reasonableness or unreasonableness of the terms of the will. See 1 Ga. Wills & ***27** Administration § 4:8 (7th ed.) (collecting cases). Generally, the question of whether undue influence has occurred is for the fact-finder. *Mathis v. Hammond,* 268 Ga. 158 (1997); *Chesser v. Chesser,* 284 Ga. App. 381 (2007). *See also Stephens v. Bonner,* 174 Ga. 128 (1932) (“Forces so subtle, so multiform, so variant in each case in which they may be disclosed, and in which the proof of their existence is so often dependent upon circumstances, present questions in which the court should properly leave any doubts which may arise from the evidence to the solution of ‘the doctors of doubt, the jury.”).

Although the relationship initially started out as a sexual one, shortly after Bateman appeared on the scene they began to refer to each other as mother and son. Bateman evidently believed it himself because upon her tragic death, he told the investigating officers he was her son. (Tr. 213.) As a result, the officers made no other efforts to notify her true next of kin about the events leading to Angie's death. (Id.) Shortly after Bateman started renting the warehouse apartment behind her mother's residence, “no one could get near my mother unless [Bateman] was there. You couldn't go pick my mother up and take her anywhere unless [Bateman] could go. You couldn't get near my mother.” (Tr. 225.)

For example, Denise Scroggins testified that one Thursday after Christmas in 2012, she was working and Angie planned to go with her. However, Angie told Denise, “You cannot come to my house and pick me up. You have to meet me ***28** down the street....[Bateman] can't know you're coming here to get me and he doesn't need know everything of my business.” (Tr. 288.) When Denise questioned her mother about why Bateman could not know where she was going, they fought and Angie decided not to go. (Id.) Similarly, when Angie started talking to Denise about selling what she had and moving into the Delmar Gardens nursing home, she was adamant that she did not want the house on the public market, with a realtor and a sign in the front yard. (Tr. 277.) Denise testified that Bateman constantly caused problems between her and her mother, (Tr. 226), and even told her there would be a period of time that she would not be welcome at her mother's home anymore (Tr. 224.).

And although it was not expressly noted in the Probate Court's final order, when Angie previously got angry at her daughters in 2002 for bringing a guardianship petition, several years later in 2002, she went to her long-time lawyer, Dan Scoggins, and made a new Will, making her grandchildren her beneficiaries and giving Bateman and her two daughters $1,000 each. (R. at 126-27.) When she made this Will, she told Denise what she had done. (R. at 280-81.) When she supposedly became displeased with her grandchildren and wanted to oust them from her will in favor of Bateman, she could have gone back to Mr. Scoggins but did not do so. Instead, she asked Bateman, who had no legal training or education, to draft her a new Will giving everything to him, which she then decided to kept ***29** secret, telling no one about it and apparently instructing Bateman not to file the survivorship deed until after her death. (Tr. 95-96.) Denise testified it was not like her mother to have someone besides Mr. Scroggins tend to her legal and business affairs. (Tr. 230, 280.) Thus, under the totality of all the facts and circumstances that came to light in the hearing, this case wreaks of undue influence and affords a significant evidentiary basis in support of such a conclusion.

The Probate Court concluded that Bateman and Angie had a confidential relationship. (R. at 11.) Angie was dependent on Bateman to feed her, take care of her home, take care of her **finances**, provide her medical care, and administer her medication. *(Id.)* He drafted the Will and documents, took her to the bank to execute them, and was present when the documents were signed. *(Id.)* Bateman was not the natural object of Angie's bounty and under the Will that he drafted, he stood to inherit the bulk of her estate upon her death (everything except a bedroom set), including Angie's residence. *(Id.)* Based on the evidence submitted in support of the undue influence claims, the Probate Court found that a presumption of undue influence existed and was not overcome. *(Id.)* Where a probate court's findings in a non-jury trial are supported by any evidence, this Court is bound to affirm them on appeal. Amerson, 292 Ga. at 79 (citing Tuttle, 282 Ga. at 652). This is particularly true where the Probate Court, as the non-jury fact finder, is called upon to assess the credibility of the witnesses who presented to testify. ***30** Thus, review of the Probate Court's factual findings occurs under a "highly deferential standard," and the Probate Court's factual findings in this respect are due to be affirmed. *Id.*

CONCLUSION

As is the case with most Will caveats, the facts of this case are highly individualized. As the non-jury finder of fact, the Probate Court listened carefully, was engaged in the proceedings and the witnesses, and had to assess the credibility of the testimony presented. The Probate Court's conclusions that Appellant-Propounder failed to make out his prima facie case in probating a will in solemn form and that Appellant- Propounder exercised undue influence in the making of the 2010 Will are soundly based in law and fact and, therefore, are due to be affirmed.

Footnotes

1 Although a court-appointed Independent Medical Evaluation ("IME") physician determined that Angie Scroggins "lacks sufficient understanding or capacity to make significant responsible decisions" and was "incapable of managing his/her estate" (R. at 27.), the record is unclear as to how or why the probate judge determined that the evidence was insufficient to grant the pro se guardianship requested by Angie's daughters. (R. at 29.)

2 Helen Holbert not a "neighbor" as Bateman described. She was the adoptive mother of Angie's husband, Phillip. (Tr. 291.)

3 In his deposition, Bateman told a different story. He said that in August 2004, Angie stopped him in the driveway as he was coming home from work, told him the story of Aunt Helen, and asked if he would care for her in exchange for her Estate when she died. (R. at 574.)

4 Angie Scroggins did not know how to use a computer (Tr. 73.), and could not even turn one on or off. (R. at 448.) Bateman took the computer out of Angie's house and kept it in his apartment. (R. at 452.)

5 Denise Scroggins was aware of the 2004 Will and did not have a problem with it. (Tr. 234.) Denise is quite well-off and does not need her mother's money. (Tr. 282.)

6 The car note was fully repaid. (Tr. 306.) Not only was Jeremy Lutrell a beneficiary under the 2004 Will but he also worked for McClung Surveying and reported that Bateman was smoking marijuana and driving company vehicles. Bateman was terminated as a result. (Tr. 313.)

7 Neither the witness Mr. Radford nor the Notary Public could be located and did not provide any testimony concerning the execution of the Will. (Tr. 58.)

8 The tape recordings were not transcribed and are not available in the appellate record. However, with the consent of the parties, the Probate Judge listened to them outside the courtroom. (Tr. 271-76.)

9 All emphasis added unless otherwise noted.

10 Also, none of these witnesses knew of Angie's propensity for confusion when she was taking Percocet.

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