COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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Diane Baran Valentine
1000 Wilaka Lane
Richmond, VA 23227

Curtis J. Crowther
Young Conaway Stargatt & Taylor, LLP
1000 N. King Street
Wilmington, DE 19801

Re: *IMO the Last Will and Testament of Pearl Baran, deceased*
C.A. No. 10897-MZ

Dear Ms. Valentine and Mr. Crowther:

The petitioner in this will contest case was estranged from her mother, but was nonetheless dismayed to learn after her mother's death that the decedent left the petitioner only a nominal sum, and left nearly all of her estate to the decedent's son. The petitioner challenges the decedent's will as the product of undue influence or a lack of testamentary capacity. After trial, I conclude the decedent had testamentary capacity and was not under any undue influence. I conclude the decedent knew exactly what she was doing: her estate plan reflected the decedent's estrangement from her absent daughter and her close relationship with

her supportive son. For the reasons that follow, I recommend the Court deny the petition contesting the decedent's will.

I. Background

A. Factual Background[1]

Petitioner, Diane Baran Valentine, is the daughter of the decedent, Pearl Baran.[2] Diane grew up in Delaware with her mother Pearl, her stepfather Ed Baran (who adopted Diane), and her half brother James "Jim" Baran. Ed died in 1986. As a young adult, in 1970, Diane moved away to Virginia to train as an occupational therapist. Upon graduating, Diane returned to Delaware for a short time, but moved back to Virginia to marry a man Pearl "despised."[3] Diane testified that she moved away because she "needed to be with people who saw the good in [her]."[4]

As an adult, Diane focused on her husband, two children, home, and profession. She called Pearl on holidays, birthdays, and other significant days, but the calls were short and Pearl spoke to Diane's children only briefly. Diane and her family visited Pearl less than once a year, and the visits were always coupled with or inspired by another event such as a funeral, high school reunion, family

[1] These are the facts as I find them after trial.
[2] I use first names in this report in pursuit of clarity. I intend no disrespect.
[3] Trial Tr. 9:15-17.
[4] *Id.* 9:15-18.

party, or a class that Diane was taking. Diane and her family never visited Pearl without another event to draw them to Delaware. Diane's visits with Pearl were strained and a bit unpleasant, and Diane's children and Pearl were never close. Diane's children thought Pearl and her house smelled funny. Pearl believed Diane was motivated by money, and that Diane did not care about Pearl as a person.

Jim stayed in Delaware as an adult, residing thirty minutes away from Pearl. Jim testified that as the eldest male in the family, his role was to cater to Pearl. Diane described Jim's presence in Pearl's life as "really important" and "a comfort to" Pearl.[5] Jim cut Pearl's lawn, maintained her house, and entertained her with his friends at his home. He also assisted her with her investments, adjusting them as Pearl directed. He filled out all her forms, including Medicare forms and doctor's forms, as Pearl directed. For several years, Jim brought Pearl with him when he visited Diane's family in Virginia. These visits stopped in 1996 when Diane prohibited Jim and his partner, William "Bill" Edrington, from having unsupervised contact with Diane's children. This additional estrangement between Pearl and Diane saddened Pearl.

In 1999, Pearl had a chest x-ray that showed a spot on her lung. Doctors believed the spot was cancer and recommended lung surgery. Jim told Diane that

[5] *Id.* 38:8-11.

Pearl had lung cancer and was going to have surgery, but Diane did not come to visit. The surgery revealed Pearl did not have cancer after all. Nevertheless, Pearl required significant assistance after the surgery, and lived with Jim and Bill for three weeks while Jim and Bill took care of her. Pearl's niece, Yvonne Sinopoli, also helped care for Pearl. Diane concluded she could not go to Delaware to help Pearl because of Diane's children's exams and sports events, and Diane's job.[6] Pearl was upset by Diane's absence and the fact that Jim, rather than Diane, was helping Pearl bathe.[7]

After this episode, and after the family experienced difficulties settling another family member's estate, Pearl asked Jim to find her an estate planning attorney. A family friend referred Richard J. A. Popper, Esquire, of Young Conaway Stargatt & Taylor LLP. On November 6, 2000, per Jim's request, Mr. Popper sent Pearl an estate planning worksheet to complete in advance of a meeting on November 16, 2000.[8] Jim, acting as Pearl's scribe, completed the worksheet as Pearl directed, and listed his telephone number as the contact number for Pearl.[9]

[6] At trial, Diane speculated that Pearl's insurance would have paid for a skilled nurse to come instead.
[7] In this context, Pearl referred to Diane as "that bitch from Richmond." Trial Tr. 111:1-24.
[8] Pet'r Trial Ex. B.
[9] Resp't Trial Ex. A.

While completing the worksheet, Pearl told Jim that she did not want to leave Diane anything. Jim responded that he did not think that was fair, and that he hoped one day the two women would reconcile. After extensive argument, Pearl agreed to place $700 in an account of Jim's choosing to go to Diane. Jim chose a Vanguard account that he hoped would provide a return for Diane. Jim also urged Pearl to leave Diane's children something. Pearl told Jim she did not know them and that Jim could give them some of his inheritance if he desired.

The estate planning worksheet identifies Diane's two children as Pearl's grandchildren, and identifies Yvonne Sinopoli as Pearl's niece.[10] The worksheet contains the following question and answer:

> **GENERAL COMMENTS:** If you have any specific estate-planning objectives, if any of your intended beneficiaries have special needs or problems, or if there is anything else you feel we should be aware of, please discuss below:
>
> Diane Valentine – X # of Vanguard Life Strategy growth
> Yvonne Sinopoli – $10,000
> Remainder goes to James E Baran[11]

Pearl signed the worksheet on November 16, 2000.

Jim went with Pearl to meet with Mr. Popper that same day. Pearl made it clear early in the meeting that Jim was to receive substantially more than Diane.

[10] *Id.* at 2.
[11] *Id.* at 9.

Mr. Popper's normal practice in such situations was to meet with the testator by herself, to ensure the testator was not under undue influence. Indeed, Jim waited in a separate room while Pearl met with Mr. Popper. It was also Mr. Popper's normal practice when a testator leaves one child substantially less than another child to write a contemporary memorandum summarizing the conversation. Mr. Popper memorialized his meeting with Pearl in handwritten notes and in a file memorandum dated November 17, 2000:[12]

> It quickly became apparent that Diane was to receive very little under Pearl's estate plan, with the vast majority to pass to Jim. I sent Jim back to the lobby and continued the conference solely with Pearl.
>
> There is no question that Pearl is mentally competent and understood what she wanted to do. She indicated that when she was sick and in hospital about one year ago and had a lung operation, Jim, and her niece, Yvonne Sinopoli, took care of her but Diane did not offer to come up from Richmond and did not call.
>
> …
>
> I was convinced that Pearl's desire to leave Diane only the one particular investment account was her wish based upon her daughter's conduct and was not caused by undue influence on the part of Jim.[13]

Mr. Popper testified he would not proceed with representing a client if he thought she was under undue influence or not competent, and that in this case he concluded that Pearl's estate plan was what she wanted, and that she seemed "completely

[12] Pet'r Trial Exs. C, D.
[13] Pet'r Trial Ex. D.

competent."[14] Mr. Popper was not aware of Pearl being on any medications or having any health issues.

After the November 16 meeting, Mr. Popper continued to work on the mechanics of Pearl's estate plan through Jim, who was acting as Pearl's scribe and messenger.[15] For example, on December 12, 2000, Jim responded to Mr. Popper's question regarding what would happen to Pearl's estate if both Jim and Yvonne predeceased Pearl by telling Mr. Popper, "I will push [Pearl] on that."[16] Mr. Popper testified Pearl must have given him permission to work with Jim, and that it was not unusual for clients to seek help from family members to accomplish estate planning mechanics.

Jim and Bill had preliminary conversations with Mr. Popper about their own estate planning.[17] In a November 21, 2000, letter to Pearl highlighting the significant portions of her proposed estate plan, Mr. Popper noted that Jim had also asked Mr. Popper for help in estate planning, and indicated that there might be a potential conflict of interest in the event Pearl's will were challenged.[18] Jim and Bill did not complete their estate plan with Mr. Popper.

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[14] Trial Tr. 197:9-15.
[15] *E.g.*, Pet'r Trial Exs. E, F, G, H, I.
[16] Pet'r Trial Ex. I.
[17] *Id.*
[18] Resp't Trial Ex. H.

Pearl signed her estate planning documents at Mr. Popper's office on February 5, 2001.[19] Jim came with her but stayed in the lobby; Pearl signed her documents without Jim present.[20] Kathy Edwards and Bob Thomas of Young Conaway, who had never met Pearl before, acted as independent witnesses. They exchanged pleasantries with Pearl, observed Mr. Popper and Pearl review the provisions of Pearl's estate plan, concluded Pearl was competent and not under undue influence, and witnessed the signing. Mr. Popper testified he would never rely on witnesses provided by a testator if the signing occurred in his office. Again, due to the possibility of an undue influence claim, Mr. Popper memorialized the meeting in a February 6, 2001, memorandum to file:

> I went over the provisions of Pearl's will and revocable trust with her. In substance, she is leaving her daughter, Diane Valentine, a very small part of her estate and after a bequest to her niece, or her niece's husband if her niece does not survive her, is leaving the vast majority of the estate to Jim.
> …
> In Kathy and Bob's presence, I again went over the will and trust with Pearl and had her execute them using the normal formalities.
> I was convinced that Pearl is fully mentally competent and that the wishes set forth in the documents are her wishes and are not the product of undue influence. I am asking [the witnesses to the will] to sign off on this memo that they agree with this description as to the portion of the meeting at which they were present.[21]

[19] Pet'r Trial Ex. J.
[20] *Id.*
[21] *Id.*

The signatures of Kathy Edwards and Bob Thomas appear at the bottom of the memorandum.[22] Mr. Popper had no doubt that Pearl's estate plan was what she wanted, and that she was competent to execute them.

Pearl signed a will and a revocable trust.[23] The will provides: "I intentionally make provision for my daughter Diane L. Valentine only in a limited fashion in my revocable trust, and not directly under my will."[24] The trust provides: "I intentionally made only limited provisions for my daughter, Diane L. Valentine."[25] Upon Pearl's death, Pearl's trust named Jim as trustee, gave Pearl's Vanguard Growth Strategy Fund to Diane, gave $10,000 to Yvonne or her husband if Yvonne did not survive Pearl, and gave the residue to Jim.[26] The documents do not provide for an alternative in the event Jim and Yvonne predeceased Pearl. Pearl signed the will and dated it by filling in the month, day, and year, even though the will included the year, as follows: "Executed *02/05/01*, 2001."[27] She dated the trust "*02/05*, 2001."[28]

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[22] *Id.*
[23] Resp't Trial Exs. B (Will of Pearl Baran), C (Revocable Trust of Pearl Baran).
[24] Resp't Trial Ex. B Art. 1(E).
[25] Resp't Trial Ex. C Art. 1(E).
[26] *Id.* Art. 3, 4.
[27] Resp't Trial Ex. B at 7.
[28] Resp't Trial Ex. C at 1.

Pearl also signed two copies of a durable power of attorney: the first she dated "this __ day of *02/05/*, 2001," and the second she dated "this *5* day of *Feb.*, 2001."[29] According to Mr. Popper's usual practice, Pearl signed duplicate originals so that if one original was recorded or otherwise unavailable, Pearl would still have the other. Mr. Popper testified that clients date documents in different or erroneous ways "all the time" and that it does not mean they are not paying attention to the substance of their estate plan.[30]

Around the time Pearl was preparing and executing her estate plan, she was 74 years old. She drove, did her own shopping, took herself to her own doctor's appointments unless the doctor was a specialist, and maintained her own checkbook and budget. She had no health problems at that time. Jim testified Pearl was "sharp as a tack until she died."[31]

Around 2011, Pearl began suffering from back pain and required strong pain medication. Jim began doing even more for Pearl, including taking her to more appointments, unloading heavy shopping items from her car, and doing nearly all her laundry so that she would not have to go up and down the basement steps. Pearl would not allow Jim to wash her underwear, and navigated the steps to the

[29] Pet'r Trial Ex. K.
[30] Trial Tr. 190:9-11, 207:3-9, 13:22.
[31] *Id.* 118:23-24.

basement to wash them herself. Pearl refused to use a cane. Around 2013, Jim tried to convince Pearl to get hearing aids, but Pearl refused. At some point Diane also tried unsuccessfully to convince Pearl to use hearing aids.

In 2013, Pearl's physical health declined further. Jim cared for Pearl as well as Bill, who was suffering from a serious illness, while working a job that required substantial travel. Jim asked Diane for help; Diane never came. In August 2013, Jim realized Pearl had lost a lot of weight, and suggested that Diane should visit and resolve her issues with Pearl; Diane never came. Around Thanksgiving of 2013, Pearl went into the hospital, then hospice care. Jim told Diane that Pearl was very ill and was in hospice care; Diane never came. Diane testified that she was afraid to make the drive in the winter and that she was preoccupied with her husband's ongoing health issues.

In their conversations about Pearl's transition to hospice, Diane asked Jim if Diane's daughter Tory could have Pearl's car, as a nice gesture towards a grandchild before Pearl died. Jim was dumbfounded. But Pearl, on her deathbed, told Jim that Diane was going to ask for the car, and instructed him not to give it to her. Pearl also asked Jim to transfer all the money out of Diane's Vanguard account to leave Diane nothing. Jim did not comply. Pearl told Jim she did not want Diane to visit her. Pearl died on December 13, 2013.

B. Procedural Background

On November 26, 2014, Mr. Popper wrote Diane to tell her that the Vanguard Growth Strategy Fund had been liquidated and rounded up to $1,000.00, and requested Diane execute a release in order to receive the funds.[32] Instead, on April 10, 2015, Diane filed a *pro se* Petition Contesting Will of Pearl Baran ("Petition") in which she asserts Pearl lacked capacity to make the 2001 will, and that Jim and Mr. Popper exerted undue influence over Pearl to essentially disinherit Diane and her children. She requests the Court declare the 2001 will void and to order monetary gifts to Diane and her children. Jim, as trustee of Pearl's revocable trust, responded on May 29, 2015. The parties proceeded through discovery and prepared for trial.

In the pretrial stipulation, Diane listed herself as a witness who would "relate pertinent facts to this case and the timing of this process as it relates to events in Pearl Baran's life and Diane B. Valentine's life. Pearl Baran's medical record and medication issues are relevant to this case."[33] She also listed as exhibits "Pearl Baran's medical records and lists of medications."[34] Jim objected to such exhibits as hearsay and lacking foundation. I upheld his objection based on Del. R. Evid.

[32] Pet'r Trial Ex. L.
[33] Pretrial Stip. ¶ 6.
[34] *Id.* ¶ 7.

803(6).[35] I also directed Diane that her testimony about Pearl's medical condition at the time she made the will could only be based on personal knowledge; *i.e.*, Diane could not present Pearl's medical records in narrative form where Diane had no personal knowledge of Pearl's health. I left the record open for thirty days after trial to permit Diane time to obtain the foundational witness(es) necessary to introduce Pearl's medical records.

The parties participated in a one-day trial on November 22, 2016. On December 15, 2016, Diane informed the Court she had not obtained any foundational witness for Pearl's medical records. I reiterated that those records without such a witness were inadmissible, and deemed my ruling on the issue a draft report and stayed the exceptions period until the issuance of this report. The parties provided closing arguments on January 4, 2017. I issued a draft report on March 15, 2017, recommending the Court deny Diane's Petition.

Diane timely filed a notice of exceptions to my draft report on March 23, 2017, and filed an opening brief in support on April 7, 2017. Jim filed an

[35] *See Mills v. State*, 2007 WL 4245464, at *4 (Del. Dec. 3, 2007). Unlike in *Mills*, in which admission of medical records without meeting the foundational requirements of Rule 803(6) was deemed harmless error, the information in Pearl's medical records was essential for Diane to show Pearl was in any way incapacitated at the time she executed her estate plan; it was not merely corroborative. *See id.*

answering brief on April 19, 2017. Diane did not file a reply. This is my final report.

II. Analysis

Diane has failed to meet her burden to show Pearl lacked testamentary capacity or was under undue influence from Jim. The evidence shows Pearl executed her estate plan competently and independently. Delaware law disfavors invalidating a testamentary plan and this Court therefore presumes that a will is valid, that a testator possessed testamentary capacity at the time he executed a will, and that the will was not the product of undue influence.[36] For that reason, the party challenging a will ordinarily bears the burden of proof by a preponderance of the evidence.[37] Proof by a preponderance of the evidence "means that certain evidence, when compared to the evidence opposed to it, has the more convincing force and makes you believe that something is more likely true than not."[38]

A person who makes a will must, at the time the document is executed, be capable of exercising thought, reflection, and judgment, and must know what she is doing and how she is disposing of her property.[39] The testator also must have

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[36] *In re Estate of West*, 522 A.2d 1256, 1263, 1265 (Del. 1987).
[37] *Id.* at 1263; *In re Estate of Justison*, 2005 WL 217035, at *6-7 (Del. Ch. Jan. 24, 2005).
[38] *Mitchell Lane Publ'rs, Inc. v. Rasemas*, 2014 WL 4925150, at *3 (Del. Ch. Sept. 30, 2014) (quoting *Triton Constr. Co. v. E. Shore Elec. Servs., Inc.*, 2009 WL 1387115, at *6 (Del. Ch. May 18, 2009)).
[39] *In re Estate of West*, 522 A.2d at 1263.

sufficient memory and understanding to comprehend the nature and character of her act.[40] In other words, in order to possess the requisite capacity, the decedent must have known that she was disposing of her estate by will, and to whom.[41] Only a modest degree of competence is required for an individual to possess testamentary capacity.[42]

Diane has not overcome the presumption that Pearl possessed testamentary capacity at the time she executed the 2001 will and revocable trust.[43] To the contrary, the evidence presented at trial buttresses that presumption. Mr. Popper concluded Pearl had testamentary capacity, based on two meetings with her alone in which they discussed all the essential terms of her estate plan. Mr. Popper documented these meetings and his conclusion that Pearl had testamentary capacity in contemporaneous memoranda. Two independent witnesses spoke with Pearl and observed Pearl reviewing her estate plan with Mr. Popper, and also concluded she had testamentary capacity.

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[40] *Sloan v. Segal*, 2010 WL 2169496 (Del. May 10, 2010); *In re Estate of West*, 522 A.2d at 1263.
[41] *In re Langmeier*, 466 A.2d 386, 402 (Del. Ch.1983).
[42] *In re Estate of West*, 522 A.2d at 1263.
[43] While Diane's Petition attacks only Pearl's will and not her trust, I read Diane's *pro se* pleadings leniently as attacking the trust provisions disposing of Pearl's assets outside of probate following Pearl's death. *See Tucker v. Lawrie*, 2007 WL 2372616, at *6 (Del. Ch. Aug. 17, 2007) (defining a will substitute).

Jim's detailed testimony about Pearl also supports the presumption Pearl had testamentary capacity. In 2001 and thereafter, Pearl handled the substance of all her affairs, relying on Jim only as a personal assistant and scribe. Pearl developed her testamentary plan on her own, honing the details and accomplishing the mechanics through conversations with Jim. She recalled and stood by that testamentary plan even on her deathbed over a decade later, as she asked Jim to empty the Vanguard account the trust left to Diane and denied Diane's request for a gift for Diane's daughter. There is no evidence that Pearl suffered from any mental decline; rather, Jim testified Pearl was "sharp as a tack until she died."[44]

Diane attempts to rebut the presumption that Pearl had testamentary capacity by doubting the two witnesses' ability to evaluate Pearl, both because they did not know Pearl and because their interactions were brief. Diane also points to the irregular dates on the estate documents as a sign Pearl was distracted or worse, and asserts the will is faulty because it does not recite that Pearl was of "sound mind and body." The evidence stymies all of these attacks.

Mr. Popper and Mr. Thomas explained that the witnesses were independent per standard practice, and that the witnesses had ample opportunity to conclude Pearl was competent by chatting with her and observing her going over her

[44] Trial Tr. 118:23-24.

testamentary plan with Mr. Popper. Mr. Thomas, a Delaware attorney since 1971, testified that his signature on the estate documents indicated he concluded Pearl had testamentary capacity. Per Mr. Popper's contemporaneous memorandum, Kathy Edwards also believed Pearl was competent and independent. These witnesses' independence gives their conclusions about Pearl more weight, not less; there is no concern they were aligned with Jim or had any stake in Pearl's estate plan. I conclude the independent witnesses to the execution of the will corroborate Mr. Popper's assessment that Pearl had testamentary capacity and was not under any undue influence.[45]

Pearl's irregular dating of her estate documents does not disturb the presumption that she had testamentary capacity. Mr. Popper testified that in his many years of experience, many clients have filled in the blanks for dates in various ways that are technically incorrect, and that this does not mean the clients were not competent or were not paying attention to the substance of their estate plans. Finally, Mr. Popper also explained that in his thirty-five years of practicing law, there has been no requirement that a will provide the testator is "of sound mind and body." I could find no such requirement in Delaware law, and conclude

[45] *See In re Estate of Konopka*, 1988 WL 62915, at *3 (Del. Ch. June 17, 1988).

that the absence of this phrase in Pearl's will does not disturb the presumption and substantial evidence that she had testamentary capacity.

Diane has also failed to overcome the presumption that Pearl's 2001 will and trust were not the product of undue influence. Under Delaware law, undue influence is

> an excessive or inordinate influence considering the circumstances of the particular case. The degree of influence to be exerted over the mind of the testator, in order to be regarded as undue, must be such as to subjugate his mind to the will of another, to overcome his free agency and independent volition, and to compel him to make a will that speaks the mind of another and not his own. It is immaterial how this is done, whether by solicitation, importunity, flattery, putting in fear or some other manner. Whatever the means employed, however, the undue influence must have been in operation upon the mind of the testator at the time of the execution of the will.[46]

Unfair persuasion is the "hallmark" of undue influence.[47] A party challenging a will must prove the five elements of undue influence by a preponderance of the evidence. Those elements are: "(1) a susceptible testator; (2) the opportunity to exert influence; (3) a disposition to do so for an improper purpose; (4) the actual exertion of such influence; and, (5) a result demonstrating its effect."[48] The fact that the proponent of a will had an opportunity, at the date of its execution, to

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[46] *In re Estate of West*, 522 A.2d at 1264 (quoting *In re Will of Langmeier*, 466 A.2d 386, 403 (Del. Ch. 1983)).
[47] *Mitchell v. Reynolds*, 2009 WL 132881, at *8 (Del. Ch. Jan. 7, 2009).
[48] *In re Estate of West*, 522 A.2d at 1264; *In re Will of Cauffiel*, 2009 WL 5247495, at *7 (Del. Ch. Dec. 31, 2009); *In re Will of Langmeier*, 466 A.2d at 403.

exercise undue influence, raises no presumption that he did so.[49] Nor does any of the following factors: 1) the existence of confidential relations between the testator and beneficiary; 2) the alteration of an existing will arbitrarily and without reason; or 3) the mere fact that a testator disposes of his property unequally, or in a manner which may seem unreasonable.[50]

Pearl was far from a susceptible testator. The undisputed evidence shows Pearl was inherently a strong-willed woman who did precisely as she pleased. Diane testified, "With my mother, it was her way or no way. And no discussion, no compromise."[51] Jim testified that he was unable to change Pearl's mind because she was "a very tough woman. She was a domineering force. Fiercely independent. When she made up her mind, no matter how much I screamed – and God knows, there were enough times I screamed – I could not convince her to do otherwise."[52] The testimony about Pearl supports these conclusions. Pearl refused a cane and hearing aids over her children's requests, and refused to allow Jim to wash her underwear even though washing her own meant going up and down stairs while she was suffering from significant back pain. Pearl expected Jim to cater to

[49] *In re Purported Last Will & Testament of Wiltbank*, 2005 WL 2810725, at *8 (Del. Ch. Oct. 18, 2005)
[50] *In re Estate of West*, 522 A.2d at 1264-65.
[51] Trial Tr. 58:13-14.
[52] *Id.* 99:7-11.

her, and he did. There is no evidence that Pearl's inherent independence was diminished by any physical or mental problems in 2001 when she executed her estate plan.

Jim did have the opportunity to exert influence over Pearl. He assisted Pearl in the mechanics of her estate plan and in communicating with her estate planning attorney. He was invaluable to Pearl in good times and in bad. But Jim and Pearl's relationship was on Pearl's terms; Jim helped Pearl only as much as she would allow and no farther. Mr. Popper, Kathy Edwards, and Bob Thomas each also concluded Pearl was not under any undue influence by Jim.

Diane is suspicious of the fact that Mr. Popper communicated with Pearl through Jim about the mechanics of Pearl's estate plan. I do not share her suspicion. Mr. Popper testified that clients often give him permission to work with another family member, and that he would not have worked with Jim if Pearl had not given Mr. Popper permission to do so. The evidence shows Jim acted only as Pearl's assistant, at her direction, per their normal practice. Based on Pearl's steady pursuit of her specific estate planning goals, I conclude Jim's communications with Mr. Popper did not provide Jim any opportunity to influence the terms of Pearl's estate plan. I believe Pearl would have detected any changes by Jim and would have rejected them. And, at the crucial moments when Pearl drafted and executed her estate plan with Mr. Popper, Jim was not in the room. I

conclude that Jim had only a limited and general opportunity to influence Pearl, and that that opportunity existed only before Pearl executed her estate plan.

There is no evidence that Jim had a disposition to influence Pearl for an improper purpose, or that he actually exerted such influence. To the contrary, I conclude Jim had a remarkable disposition to encourage Pearl to act generously towards Diane. Pearl wished to disinherit Diane completely, but Jim convinced Pearl to leave Diane $700, and Jim chose an investment account for those funds that would generate a return for Diane. Jim preserved Diane's gift over Pearl's objection at the time of her estate plan and at her deathbed. Jim did so despite the fact that Diane had prohibited Jim and Bill from spending unsupervised time with her children. Jim's influence in Diane's favor stopped with the gift for Diane. Jim also tried to convince Pearl to leave her grandchildren a gift, but Pearl refused. Jim told Mr. Popper he would "push" Pearl on the issue of who would inherit in the event Jim and Yvonne both predeceased Pearl; ultimately, Pearl's estate documents did not identify any such beneficiary. I conclude Jim's disposition was to influence Pearl only for Diane's benefit.

The final element needed to prove undue influence is a result demonstrating the effect of the exertion of undue influence. The only evidence of any result demonstrating the effect of any influence by Jim on Pearl was that Diane received any gift at all.

Diane has failed to demonstrate by a preponderance of the evidence that Pearl's estate plan was the product of undue influence. Pearl's estate plan reflects the wishes of a stubborn and opinionated woman who was close to her supportive son and estranged from her daughter due to her daughter's choices and priorities, and who divided her estate accordingly.

III. Exceptions

Diane's exceptions elaborate on her perception of her family dynamics and Jim's influence over Pearl. To the extent they introduce evidence not submitted at trial, they are dismissed. Diane's exceptions fail to show she overcame the presumptions that Pearl possessed testamentary capacity and that the will was not the product of undue influence. Contrary to Diane's argument, Jim's efforts to convince Pearl to leave Diane anything at all do not support Diane's undue influence claim, but rather, show that Jim's disposition to influence Pearl was not for an improper purpose. Diane also expresses concern that Pearl did not document giving Jim permission to assist with her estate planning. Mr. Popper's testimony that he would not have worked with Jim if Pearl had not given permission for Mr. Popper to do so puts this concern to rest.

Finally, Diane takes exception to my ruling at trial that Diane could not call Bill Edrington as a witness to ask him about the 1996 family conflict surrounding

Jim and Bill's visitation with Diane's children. Bill was listed only on Jim's witness list, and Jim did not call Bill. Jim objected to Diane's intended line of questioning as not relevant. I sustained the objection, finding that Jim had already testified that a conflict between Diane and Jim stopped Pearl's visits to Virginia, that Diane had cross-examined Jim about that conflict, and that additional details about the genesis and contours of that conflict were not relevant to undue influence or testamentary capacity.[53] Permitting Diane to call Bill as a witness on an irrelevant and highly emotional topic would also have required the trial to extend into an otherwise unnecessary second day. I invited Diane to testify further about that conflict, and she declined to do so.[54] Diane's exceptions on my evidentiary ruling at trial are dismissed.

IV. Conclusion

For the foregoing reasons, I recommend the Court deny Diane Baran Valentine's Petition Contesting Will of Pearl Baran. This is a final report. Exceptions may be taken in accordance with Court of Chancery Rule 144.

Respectfully,

/s/ Morgan T. Zurn

Master in Chancery

[53] Trial Tr. 226:14-227:27.
[54] *Id.* at 224:10-13, 225:24-226:3.