2015 IL App (5th) 140552-U

NO. 5-14-0552

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re ESTATE OF MARJORIE E. ENOCH, Deceased	)	Appeal from the
	)	Circuit Court of
(Sherry Swanson and Sheila Griffith,	)	Shelby County.
	)	
Petitioners-Appellants,	)	
	)	
v.	)	No. 11-P-5
	)	
Kathleen Waggoner,	)	Honorable
	)	J. Marc Kelly,
Respondent-Appellee).	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's denial of the petitioners' petition to contest the August 27, 2010, will of Marjorie E. Enoch is affirmed where the decedent was not subject to undue influence in her execution of the will.

¶ 2 The petitioners, Sheila E. Griffith (Sheila) and Sherry E. Swanson (Sherry), brought this action in the circuit court of Shelby County against their sister, respondent Kathleen Waggoner (Kathleen), asking the court to find that Kathleen unduly influenced their mother, Marjorie Enoch (Marjorie), into executing Marjorie's last will and testament dated August 27, 2010. A three-day bench trial was held from May 19, 2014, through

May 21, 2014. The trial court's October 2, 2014, order found that while the petitioners presented sufficient evidence to establish a presumption of undue influence, the respondent presented sufficient evidence to rebut the presumption. The court held that the will in question was not the product of Kathleen's undue influence and therefore denied the petition to contest the will. The petitioners seek reversal of the order on appeal. For the following reasons, we affirm.

¶ 3 Beginning in 1989 or 1990, attorney John Armstrong handled the estate planning for Marjorie and her husband, Woodrow Enoch (Woodrow). Armstrong prepared "mirror" wills for the couple, which they signed on December 16, 1991. Woodrow passed away 45 to 60 days later, and Armstrong was the attorney for the executor of Woodrow's will.

¶ 4 Armstrong testified that Woodrow's will established the Woodrow E. Enoch Family Trust (Woodrow trust) to hold title to all of Woodrow's interest in property and real property then jointly held with Marjorie. The trust provided Marjorie with testamentary power of appointment as to all property. It named their three children−Sheila, Sherry, and Kathleen−as trustees, and named Marjorie as beneficiary. Following Woodrow's death, substantially all of his assets passed through his estate into the trust that provided for the distribution of income to Marjorie for her life.

¶ 5 Armstrong testified that he met with Marjorie in February 1998. At this meeting, Marjorie instructed Armstrong to draft a will which would give more of her estate to Kathleen and less to Sheila and Sherry. He testified that this was because there was a conflict between Marjorie and Sheila and Sherry regarding the administration of the

Woodrow trust. Specifically, he noted that Marjorie was frustrated because Sheila and Sherry were trying to "step into Woodrow's shoes and tell her what she should and shouldn't do" and Armstrong understood that Marjorie wanted to "break out of that [restriction]." Armstrong noted that Marjorie was also upset by the fact that she had put up $20,000 to operate the trust initially and had received no response to the request that it be returned to her.

¶ 6 Marjorie continued to inform Armstrong of her wish for a new will that favored Kathleen over Sheila and Sherry, and on June 1, 1998, even requested a new will that would leave nothing to Sheila and Sherry. Armstrong's detailed notes from his meetings with Marjorie reflect her desire to move forward with an unequal distribution of her estate,[1] and he memorialized his conversations with Marjorie in a February 2, 1999, document stating that he was satisfied that Marjorie was not subject to third-party influences and that "[Marjorie] is competent to make her will as written and acting of her own volition in this regard." He agreed that he wrote the note because he had considered

[1]On February 2, 1999, Armstrong wrote that "Marjorie and I discussed her will at length because of its deviation from the plan she and Woodrow adopted." Armstrong noted that Marjorie became "very angry towards Sheila and Sherry" because of their actions regarding the Woodrow trust, but had opened communications with Sherry by June, 1998. However, "despite this social change [Marjorie] is unwilling to change her testamentary plan," and his March 4, 1999, notes indicate that Marjorie continued to desire the unequal distribution.

the possibility that the will would be challenged, and he testified that "Marjorie was a very strong woman, and a real pleasure to work with, but she made up her [own] mind." Armstrong recounted a situation where, because Marjorie actively resisted Sheila and Sherry's attempts to control the Woodrow trust, he felt obligated to remind Marjorie that under the terms of the trust and by law, she had to permit the trustees to run it. He noted that this was unwelcome advice, as Marjorie perceived the assets of the trust as hers.

¶ 7 On March 5, 1999, a will was signed that gave 40 acres as tenants in common to Sheila and Sherry and gave the rest, approximately 418 acres, to Kathleen. At Marjorie's request, the 1999 will contained a clause which provided that if the legality of the will was challenged, then the challenger-beneficiary's gift would be excluded (an *in terrorem* clause). Armstrong testified that Marjorie asked for the clause because she anticipated that Sheila and Sherry would challenge the will. Armstrong testified that Kathleen did not know of the changes to Marjorie's will.

¶ 8 A new will, which kept the unequal distributions, was signed on April 25, 2000; Armstrong's notes indicate that there was "no reconciliation with Sheila and Sherry." On January 13, 2006, Marjorie signed a codicil that made changes to the distribution, wherein Kathleen was to receive 358 acres, Sheila was to receive 80 acres, and Sherry was to receive 40 acres.

¶ 9 On April 20, 2007, Armstrong's notes reflect that he and Marjorie met to discuss a new will, where she "discussed lack of attention and any interest" from Todd and Jonathan Swanson, two of her grandsons. Armstrong noted that "Todd and Jonathan are to take nothing under the will." Another will signed on May 18, 2007, included a pour

over provision so that all of Marjorie's real property was placed into a trust; this will did not include direct bequests of real property to any descendants. Under its terms, Kathleen, Sheila, and Sherry were to receive income for life following Marjorie's death, and the distribution of the principal would occur upon the death of the last daughter and would be distributed to certain descendants. Armstrong testified that this was an effort to eliminate the conflicts between her and her daughters. A codicil to the 2007 will, and later, an amendment to the 2007 will, made changes benefitting Ashton Waggoner, Kathleen's son.

¶ 10 Armstrong was never asked to and never created another will or trust for Marjorie after his work on the 2007 will, and he testified that Marjorie never expressed dissatisfaction with his services. However, the record reflects that on March 18, 2009, Marjorie called Armstrong's office to speak with Armstrong's partner, David Eberspacher, requesting that he attend a meeting with her and Armstrong. The meeting never took place, and seven months later, Marjorie retained a new lawyer, Robert Elder, to write a new will. Armstrong testified that he learned of Marjorie's August 27, 2010, will when he received a telephone call from Elder after Marjorie's death.

¶ 11 Robert Elder testified that he received a telephone call from Kathleen on October 6, 2009, wherein she inquired about estate planning services for Marjorie. A few days later, Elder met with Marjorie, and the meeting was also attended by Kathleen and Ashton; he noted that this first meeting was social in nature, an attempt to get to know his prospective client, and no testamentary plans were discussed. A few days later, Ashton called Elder to advise that Marjorie wished to retain his services.

¶ 12 Elder prepared a will for Marjorie that was signed on November 2, 2009. This will gave 80 acres to Ashton, 156 acres to Kathleen, and placed the remainder of the property into a trust which benefitted the daughters in equal one-third parts. Elder testified that Marjorie told him that for the last several years, Sheila and Sherry very seldom came to visit or help her, and she wanted to favor Kathleen and Ashton because they had been good and helpful to her. She told Elder that Ashton visited her nearly every day, and she wanted Ashton to be able to farm her land for as long as he so desired. Elder stated that Marjorie was frustrated with the Woodrow trust and wanted it terminated, feeling that her daughters would never be able to get along and effectively administer the trust together. Marjorie again requested an *in terrorem* clause for this will; Elder testified that Marjorie believed that Sheila and Sherry would be dissatisfied with the will, and she wanted to discourage challenges to it.

¶ 13 Elder testified that he met with Marjorie multiple times over the next nine months, and he drafted four separate wills for her. Each of these wills provided for Kathleen and Ashton to take a larger share of Marjorie's estate than Sheila and Sherry.

¶ 14 Elder testified as to the preparation and execution of Marjorie's last will and testament, executed on August 27, 2010. Elder testified that Kathleen called and informed him that her mother wanted to make changes to her most recent will. Elder testified that he generally called Ashton to arrange this meeting, as Ashton frequently chauffeured Marjorie to appointments. However, because a provision was to be changed to Ashton's detriment, he instead called Kathleen to drive Marjorie to this will's signing. Under this will, Marjorie directed that the 80 acres previously bequeathed to Ashton be

given directly to Kathleen; Marjorie indicated to Elder that this was due to her frustration with Ashton for making what she felt were financially irresponsible decisions in regards to his farming of the land.

¶ 15 Elder testified that he asked Kathleen to leave the room before Marjorie signed the will. He stated that Marjorie read the will in front of him, but not in front of witnesses. The witnesses thereafter entered the room and Marjorie signed the will. Elder agreed that he did not ask any questions in front of the witnesses as to what was in the will or what changes had been made to this will from its predecessor.

¶ 16 Elder testified that he was never prevented from having one-on-one conversations with Marjorie regarding her estate plan. He stated that all correspondence went directly to her and that he could call her whenever he so desired. He did not believe that Marjorie's will was the result of undue influence, noting that Marjorie "had definite opinions about things" and that "she knew what she wanted and expressed it clearly."

¶ 17 Margaret Woodworth testified that she had known Marjorie since she was a child and that she had attended school with Sheila. Margaret was hired in 2010 to provide some domestic services for Marjorie. Margaret testified that Marjorie occasionally talked about her family, but never told Margaret that she believed that any of her children did not care for her or love her. However, she noted that in 2009 or 2010, Marjorie showed her a piece of paper indicating that "if anyone contested her will it [*sic*] would be left out." Marjorie informed Margaret that she intended to put this clause in her will.

¶ 18 Dr. Gregory Totel's deposition testimony reflects that he treated Marjorie from October 2004 to October 2010, and in those six years, he never observed any signs of

dementia. He found her to be "very gentle and reserved and reluctant to make decisions." He testified as to two of Marjorie's hospital admissions, the first in May 2010, and the second in October 2010, both the result of complications stemming from falls. Totel stated that after the May 2010 admission, he discussed the risks of living alone with Marjorie and recommended assisted living or sheltered care. She deferred this decision, and after her hospitalization for the October 2010 fall, Totel again urged Marjorie to consider sheltered care.

¶ 19 Totel described the encounter wherein he presented this recommendation to Marjorie and Kathleen, noting that Kathleen objected to the idea and "there was shouting and standing up and it was not a pretty scene." Totel testified that Marjorie "pleaded with [Kathleen] to give this treatment plan a chance." Totel agreed that Marjorie made her own decisions about her health care, and she decided to give Totel's recommended treatment plan a chance. Due to the "unnecessary tension," Totel withdrew as Marjorie's doctor on October 28, 2010.

¶ 20 Petitioner Sheila Griffith testified that during her childhood, Marjorie had been opinionated and vocal, but would back down from Kathleen and Woodrow. Sheila testified that Kathleen told her that she could get Marjorie to do whatever Kathleen told her to do, though she could not remember exactly when that statement was made or in what context. Sheila also stated that Kathleen had told her that she would yell and scream at their mother; Sheila believed Kathleen would do such a thing, as Sherry believed that Kathleen was volatile. Sheila recounted an incident during Thanksgiving 2007, when Marjorie had a hypoglycemic episode. Sheila testified that Kathleen said that

"Mother does not take care of herself, and I am not going to take care of her" and that Kathleen said "I just hope that I go into her house and find her dead."

¶ 21 Sheila testified that she told Kathleen that she believed Marjorie needed more care, but Kathleen disagreed and told Sheila that she could not hire a caregiver. Sheila noted that Kathleen did not want to spend money and complained about the money spent on Marjorie. Sheila also stated that Marjorie's home was dirty and contained health hazards, which Marjorie could not see due to her poor eyesight.

¶ 22 Sheila recounted several incidents where she felt that Kathleen intentionally kept her and Sherry from seeing their mother, but agreed that other than those instances, she was not denied access to her mother in person or by phone. Sheila testified that she did not visit her mother as often in the last several years of her life because she was dealing with her own medical issues, and that she did not do more to intervene in Marjorie's care because she had an arrangement whereby Kathleen took care of Marjorie and she took care of Marjorie's older sister.

¶ 23 Petitioner Sherry Swanson testified that she lived in Minnesota from 1997 to 2010, but she visited her mother two to three times a year and spoke with her once a week. She testified that Kathleen told her that Marjorie would not go to assisted living until Kathleen told her that she could, and that Kathleen told Marjorie that "I'm the only one who takes care of you. You have to be good to me." Sherry also testified as to certain events where she felt Kathleen interjected herself into Sherry's attempts to interact with their mother. Sherry agreed, however, that other than these events, she had unhindered

access to her mother by phone and in person. She also agreed that neither of her sons (Todd and Jonathan) had visited Marjorie in the last 10 years of her life.

¶ 24 The record reflects that a great deal of conflict surrounded the management and control of the Woodrow trust. Sherry testified that by 1996, she was concerned about the way the trust was being operated. She agreed that she and Sheila had hired a different accountant than Marjorie's personal accountant to give advice about the trust management, and also had elected to move the trust's bank account away from Shelby County State Bank, Marjorie's personal bank. In 1996 or 1997, Sheila and Sherry submitted a "trust management" plan to Marjorie, which outlined how the trust was to be managed and sought to limit Marjorie's day-to-day involvement.

¶ 25 Sheila's frustrations at not receiving the trust's financial information are reflected in multiple letters she sent to Armstrong in 1997 and 1998, who was then acting as bookkeeper. A letter from Sherry to Marjorie dated October 19, 1998, reiterated her desire to "lessen the burden" on Marjorie, and noted that her mother only involved her in the running of the trust when a signature was needed. Sherry expresses hurt over Marjorie's actions, stating that "[o]bviously, you continue to desire no help from me and in fact prefer to totally exclude me from this part of your life."

¶ 26 In 1999, Sheila and Sherry hired an attorney, John Elder (John, of no relation to Robert Elder), to try and help with the control issues regarding the trust. In a memo from Sheila, Sheila stated that she and Sherry felt that Marjorie had "misinterpreted [their] actions" and that they were "willing to compromise" with Marjorie and Kathleen. In a May 9, 1999, letter from John to Armstrong, John indicated that Shelia and Sherry

remained concerned about the operations of the trust and would not be held responsible for decisions for which they were not allowed to have input; however, due to the ongoing tension with their mother, Sheila and Sherry were willing to take a "passive role as trustees" in order to preserve their relationship with Marjorie.

¶ 27 Respondent Kathleen Waggoner testified that she called Robert Elder on her mother's behalf regarding estate planning services. She agreed that she drove her mother to Elder's office to sign the August 27, 2010, will, but that she did not know the reason Marjorie was meeting with Elder; she testified that the first time that she learned that Elder had prepared a will for her mother was when she died.[2] She testified that the trust dispute with her sisters was ongoing, with some times more contentious than others, and her mother remained upset about never receiving her $20,000 back from the trust.

¶ 28 Kathleen agreed that she became upset when Dr. Totel opined that Marjorie should move to sheltered living, because she wished to honor her mother's desire to continue to live in her own home and receive in-home care. She testified that Dr. Totel would not release Marjorie from the hospital unless she went to a nursing home, and that Shelia made the arrangements because Kathleen had promised Marjorie that she would never put her in a nursing home.

[2]Kathleen's inconsistent statements are somewhat clarified in later testimony, when Kathleen agreed that she understood "estate planning" and the drafting of a will to be two different services.

¶ 29 At the close of the petitioners' case in chief, the trial court found that the petitioners had met their presumption that Kathleen had unduly influenced Marjorie as to the execution of the August 27, 2010, will. Following this ruling, Kathleen presented her rebuttal case.

¶ 30 Two of Marjorie's friends, Cindy Denning and Sara Helton, testified that Marjorie was strong-willed and opinionated, and neither woman had doubts about Marjorie's mental capacity up until her death. Denning testified that Kathleen and Marjorie appeared to have a close relationship, and she never saw an indication that Kathleen had an ability to dominate her mother. Denning noted that Marjorie spoke about Kathleen fondly, but she could not recall Marjorie discussing Sheila or Sherry. Helton testified that, during a visit with Marjorie a few weeks before she died, Marjorie became emotional, stating that Sherry had never loved her and she felt that Sheila "was taking that same path." Helton stated that Marjorie discussed her intention to change her will "as a result of what happened at Thanksgiving [a dinner that Sheila and Sherry did not attend] and over a period of time." Helton noted that Marjorie felt that Kathleen was going to have a "rough road ahead of her" because "Sheila and Sherry were going to be very upset [by changes to the will]" and were in for a "rude awakening."

¶ 31 James Schwerman testified that he was an employee of Shelby County State Bank as a trust officer and farm manager, and he knew Marjorie from his time as a lending officer. In 2006, Schwerman was hired to manage the Enoch property, which was owned in undivided one-half interests by Marjorie and the Woodrow trust. He stated that in order to move forward with any improvements or repairs, he needed written authorization

from one of the trustees as well as from Marjorie; among them, he considered Marjorie to be in charge, because "the girls basically bowed to her will, and she also controlled half of the acres." He stated that the checks to Marjorie from the trust income at first were written by Armstrong while he was doing the bookkeeping, and later were written by Kathleen. Schwerman indicated that Marjorie was strong-willed, but if he gave her the facts, he could persuade her to follow his recommendation on expenditures for the farm.

¶ 32 Schwerman testified that he and Ashton kept Marjorie informed about the farm's operations, and he visited with her at her home approximately six times per year from 2008 to 2010. On these visits, he found the home to be "neat and tidy" and did not observe health hazards. He testified that he would visit with Marjorie for at least half an hour, and as their friendship developed, their conversations would include personal matters.

¶ 33 Schwerman testified that Marjorie often expressed sadness regarding her relationship with Sheila and Sherry, and she told Schwerman that Sheila, Sherry, and their children did not pay attention to her, but he noted that "the sun rose and set with [Ashton]" and she wished for him to be able to farm the family ground for as long as he wished. Schwerman understood that there were hard feelings created from her daughters having the legal power to operate the farm, and that Marjorie was worried that Sheila and Sherry would remove Ashton as a farmer if they obtained control of the farm. Schwerman testified to an instance where Sheila and Sherry orchestrated the removal of Ashton as the farmer of a tract of the Enoch land; Marjorie tried to get that change reversed, but was unsuccessful.

¶ 34 Schwerman testified that he and Marjorie did not discuss details of her will, but that Marjorie had said that she was interested in making changes to it and "Mr. Armstrong was not interested in helping her do that." Schwerman stated that he was not surprised to later learn that Marjorie's will gave Kathleen more than Sheila and Sherry, and in fact, he was "surprised [Marjorie] was as generous as she was [to Sheila and Sherry]."

¶ 35 Brent Lively, a CPA, testified that he inherited Marjorie as a client from his former partner and prepared her tax returns beginning in 1997 through the date of her death. He also prepared the tax returns for the Woodrow trust for the same period, other than a three-or four-year period beginning in 2003. In that role, he stated that he met with Marjorie regularly, and in her final years, he felt she desired to show some autonomy. He agreed that she knew her finances and assets in detail, and was strong-willed and assertive until her death.

¶ 36 Lively testified that Marjorie was frustrated by the constraints on her finances due to the Woodrow trust, and when Lively reminded her that the trust finances and her personal finances cannot be comingled, she would comment that "[i]t's my damn money. I'll do what I want."

¶ 37 Lively recounted an event in 2002 where Marjorie signed the trust's tax return for 2001, admitting that, albeit a small one, it was a professional mistake on his part because a trustee was supposed to sign that return. He testified that Sheila and Sherry were very angry about this mistake, and he was told that this was the reason that he was not hired to do the trust's returns for the various interim years between 1997 and 2010, though he did

not know if they were responsible for changing tax preparers. According to Lively, Marjorie felt that Sheila and Sherry were overreacting, and if they did not stop "the badgering or the complaining" that "she was gonna take care of 'em in her will." Lively confirmed that Marjorie was very fond of Kathleen and Ashton.

¶ 38 Kathleen was recalled as a witness and testified that she never stated that she wished to come home and find her mother dead. She stated that during Thanksgiving 2010, Marjorie was in the hospital. She testified that Sheila and Sherry were aware of Marjorie's Thanksgiving 2010 plans, because approximately a week before, Sheila called Kathleen to tell her that she was not coming. However, Sheila was recalled as a witness and testified that she was not invited to any function for her mother for Thanksgiving 2010, and in fact saw her mother in the hospital at that time.

¶ 39 In a detailed order entered on September 23, 2014, after consideration of all of the testimony, exhibits, and arguments, the trial court concluded that the petitioners had met their initial burden of establishing a *prima facie* case, noting that it had considered "a number of inconsistent statements made by Kathleen regarding her knowledge and involvement regarding the Will and the events leading up to its creation." Nevertheless, the trial court determined, "the Estate has clearly rebutted the presumption of undue influence."

¶ 40 The petitioners appeal, contending that the trial court erred by ignoring material facts, such as Kathleen's lack of credibility, Marjorie's inexplicable switch to Elder for her estate planning needs, and the estate's failure to rebut Sheila and Sherry's testimony

regarding Kathleen's ability to dominate Marjorie and the actions Kathleen allegedly took to isolate Marjorie from Sheila and Sherry.

¶ 41 Undue influence sufficient to invalidate a will is that influence which prevents the testator from exercising his own free will in the disposition of his estate. *In re Estate of Elias*, 408 Ill. App. 3d 301, 318-19 (2011). The influence must be directly connected with the execution of the will and operate at the time that the will was made. *Schmidt v. Schwear*, 98 Ill. App. 3d 336, 342 (1981).

¶ 42 A *prima facie* case of undue influence is established where (1) a fiduciary relationship existed between the testator and a person receiving a substantial benefit under the will (compared to others who have an equal claim to testator's bounty); (2) the testator was in a dependent situation in which the substantial beneficiaries were in dominant roles; (3) the testator reposed trust and confidence in such beneficiaries; and (4) a will was prepared or procured and executed in circumstances wherein such beneficiaries were instrumental or participated. *Elias*, 408 Ill. App. 3d at 319.

¶ 43 Once these elements are shown, the burden shifts to the proponent of the will to rebut the presumption of undue influence. *In re Estate of Mooney*, 117 Ill. App. 3d 993, 997 (1983). The amount of evidence required to rebut the presumption of undue influence is not determined by a fixed rule; a party may have to respond with some evidence or may have to respond with substantial evidence. *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 463 (1983). However, a fiduciary who benefits from a will must present clear and convincing evidence that in the will, the testator freely

expressed his own wishes and not the wishes of the fiduciary. *In re Estate of Burren*, 2013 IL App (1st) 120996, ¶ 23.

¶ 44 Where sufficient evidence has been presented to rebut the presumption, the trier of fact must weigh the evidence, consider any and all reasonable inferences that can be drawn from these facts, and decide the case. *Franciscan Sisters*, 95 Ill. 2d at 466. We may not reverse the trial court's determination unless the verdict was contrary to the manifest weight of the evidence. *In re Estate of Henke*, 203 Ill. App. 3d 975, 984 (1990).

¶ 45 In the rationale for its written order, the trial court meticulously cited the evidence presented to it at trial. Therefore, we will assume *arguendo* that the trial court correctly determined that the evidence raised a presumption that Kathleen exercised undue influence over Marjorie upon signing the will on August 27, 2010, because we nevertheless conclude that the evidence was sufficient to support the trial court's finding that Kathleen rebutted that presumption.

¶ 46 The trial court observed that Marjorie had a lengthy history of expressing her displeasure with others by making changes to her estate plan, and found the testimony of Armstrong and Elder particularly relevant and credible. The trial court took special consideration of Armstrong's testimony and his documentation of Marjorie's motivations, noting that Armstrong specifically memorialized that the unequal distribution was a direct result of the positions and actions of Sheila and Sherry regarding the Woodrow trust. The trial court also found relevant Sherry's statement in which she confirmed sending a letter to Ashton a few months prior to executing the will in question confirming her opinion that Marjorie was alert and capable of making decisions. Finally, the court

took notice of Schwerman's testimony regarding his personal conversations with Marjorie; namely, her disappointment with her lack of contact with Sheila and Sherry, her fear that Sheila and Sherry would replace Ashton as the farmer, and Schwerman's statement that he was surprised by Marjorie's generosity to Sheila and Sherry in her final will.

¶ 47 Conversely, the trial court noted that the petitioners' response to the estate's evidence "simply amounted to their belief that [Kathleen] was controlling the information being given to [Marjorie], with the information either being presented in a false or misleading fashion to show the Petitioners in an unfavorable light." The trial court found, however, that this "completely ignores the fact that at no time were the Petitioners physically prevented from having contact with [Marjorie] or had any other of their communication with [Marjorie] interfered with." The court found that Kathleen's actions did not amount to interference or control, and opined that after the parties' falling-out, the petitioners "simply chose to have the level of contact that existed over the last several years of [Marjorie's] life."

¶ 48 A presumption shifts the burden of production, not the burden of persuasion (*Henke*, 203 Ill. App. 3d at 983), and the credibility of the witnesses and the weight afforded their testimony are questions to be determined by the trial court. *In re Estate of Stuhlfauth*, 88 Ill. App. 3d 974, 980 (1980). Here, the trial court explicitly considered Kathleen's inconsistent statements, but nevertheless found that the evidence of Kathleen's actions did not amount to an assertion of undue influence over Marjorie's last will and testament.

¶ 49 Taken together, we find that the evidence at trial reflected that Marjorie was a strong-willed and determined woman who harbored many years of frustration and anger at Sheila and Sherry over the Woodrow trust, and that the animosity drove Marjorie's decisions as to the provisions of her will. Testimony at trial also revealed that Marjorie came to believe that Sheila and Sherry did not love her, but felt loved and cherished by Kathleen and Ashton. The record also reflects that no less than 10 of Marjorie's wills, codicils, and amendments over the 11-year period provided for an unequal distribution of her assets in favor of Kathleen, more than one of which included an *in terrorem* clause because Marjorie rightly believed that Sheila and Sherry would challenge the will. Finally, several witnesses testified that they did not believe the will was the result of undue influence, including the scrivener of the will. As such, we cannot say that the trial court's decision was against the manifest weight of the evidence, and we therefore affirm its ruling in the instant case.

¶ 50 Affirmed.