VOL. 104
NO. 43

104
ERIE

OCTOBER 22
2021

ERIE COUNTY LEGAL JOURNAL

OPINION
INSIDE

104 ERIE 243-271
NADINE LEACH, individually and as duly appointed executrix of the Estate of Nealy Leach-Ruff, a/k/a Neallie Mae Leach-Ruff, deceased v. WILLIE RAY PARKER

INDEX

ON THE COVER

SEMINAR, Bridge the Gap

SPECIAL EVENT, Red Mass

CLINIC, Flu Shots administered by LifeWorks

ERIE COUNTY LEGAL JOURNAL

Reporting Decisions of the Courts of Erie County
The Sixth Judicial District of Pennsylvania

Managing Editor: Megan E. Anthony

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ERIE COUNTY BAR ASSOCIATION CALENDAR OF EVENTS AND SEMINARS

MONDAY, OCTOBER 25, 2021
ECBA Board of Directors Meeting
Noon
ECBA Headquarters in-person (must RSVP) or via Zoom

TUESDAY, OCTOBER 26, 2021
Solo/Small Firms Division Meeting
Noon
ECBA Headquarters in-person (must RSVP) or via Zoom

WEDNESDAY, OCTOBER 27, 2021
Live ECBA Seminar
Authority to Sign Binding Documents
4:00 - 5:00 p.m.
The Will J. Schaaf & Mary B. Schaaf Education Center in-person or via Zoom
Click link for details
https://www.eriebar.com/events/public-registration/1743

THURSDAY, OCTOBER 28, 2021
Defense Bar Section Meeting
4:00 p.m.
ECBA Headquarters in-person (must RSVP) or via Zoom

THURSDAY, OCTOBER 28, 2021
The Pennsylvania Institute of Certified Public Accountants and the Erie County Bar Association present
Dinner and Discussion with Rep. Bizzarro and Sen. Laughlin
5:30 - 8:00 p.m.
Calamari's Squid Row, 1317 State Street
Click link for details
https://www.eriebar.com/events/member-registration/1741

FRIDAY, OCTOBER 29, 2021
Policy and Guidelines on Position Statements Committee Meeting
Noon
ECBA Headquarters in-person (must RSVP) or via Zoom

MONDAY, NOVEMBER 1, 2021
Budget and Finance Committee Meeting
Noon
The Will J. Schaaf & Mary B. Schaaf Education Center in-person or via Zoom

WEDNESDAY, NOVEMBER 3, 2021
Live ECBA Lunch-n-Learn Seminar
Economic Development Tools and Resources in Erie County: A Guide for Local Practitioners
Noon - 1:30 p.m.
The Will J. Schaaf & Mary B. Schaaf Education Center in-person or via Zoom
Click link for details
https://www.eriebar.com/events/public-registration/1746

To view PBI seminars visit the events calendar on the ECBA website
https://www.eriebar.com/public-calendar

Erie County Bar Association

@eriepabar

NOMINATIONS TO THE ECBA BOARD OF DIRECTORS

Pursuant to Article V, Section 4 of the Erie County Bar Association By laws, the Nominating Committee intends to propose the following for nominations at the Annual Membership Meeting on Thursday, December 9, 2021:

Second Vice President (1 yr. term):	William S. Speros
Treasurer (1 yr. term):	S. Craig Shamburg
Board Members (3 yr. terms):	John M. Bartlett
	Gregory J. Grasinger
	Rachel A. George
	William B. Helbling

Oct. 15, 22

NOTICE – POSITIONS AVAILABLE 2022

The Erie County Court of Common Pleas has contract positions available for attorneys to provide representation for indigent criminal defendants (adult & juvenile), indigent criminal defendants in PCRA's, homicide defendants, parents and/or children in dependency and IVT cases, as well as Guardian Ad Litems.

The breakdown of available positions for 2022 is as follows:

Indigent criminal defendants – Adult	**5 positions**
Indigent criminal defendants – Juvenile	**3 positions**
Dependency/IVT Hearings	**7 positions**
PCRAs	**1 position**
Guardian Ad Litem	**5 positions**
Coordinating Guardian Ad Litem	**1 position**
Indigent criminal defendants – Homicide	

All contracts may be reviewed in the Court Administrators Office. Please direct all letters of interest and/or resume to Robert J. Catalde, Esquire, District Court Administrator. Please specify each position or positions for which you are applying.

DEADLINE: October 29, 2021

In order to be considered for the 2022 contract year, **all** Attorneys currently under contract must reapply by the deadline date above.

Oct. 1, 8, 15, 22

NADINE LEACH, individually and as duly appointed executrix of the Estate of Nealy Leach-Ruff, a/k/a Neallie Mae Leach Ruff, deceased v. WILLIE RAY PARKER

INDIVIDUAL RETIREMENT ACCOUNTS / CHANGE OF BENEFICIARY DESIGNATIONS / VALIDITY

The law presumes a person may leave her property to whomever she wishes.

INDIVIDUAL RETIREMENT ACCOUNTS / CHANGE OF BENEFICIARY DESIGNATIONS / UNDUE INFLUENCE

Under the burden shifting framework for analyzing testamentary claims of undue influence, once the proponent of the instrument establishes its proper execution, the burden shifts to the contestant to prove by clear and convincing evidence: (1) the testator suffered from a weakened intellect; (2) the testator was in a confidential relationship with the proponent of the instrument; and (3) the proponent receives a substantial benefit from the instrument in question; if the contestant sufficiently establishes each prong, then the burden shifts again to the proponent to produce clear and convincing evidence which affirmatively demonstrates the absence of undue influence.

INDIVIDUAL RETIREMENT ACCOUNTS / CHANGE OF BENEFICIARY DESIGNATIONS /CAPACITY

Testamentary capacity exists when the testator has intelligent knowledge of the natural objects of her bounty, the general composition of her estate, and what she wants done with it.

INDIVIDUAL RETIREMENT ACCOUNTS / CHANGE OF BENEFICIARY DESIGNATIONS / CAPACITY

While not an onerous standard, determining whether an individual possess or lacks the requisite testamentary capacity is more than an empty ritual.

INDIVIDUAL RETIREMENT ACCOUNTS / CHANGE OF BENEFICIARY DESIGNATIONS / CAPACITY

Where mental capacity to execute an instrument is at issue, the real question is the condition of the person at the very time she executed the instrument.

INDIVIDUAL RETIREMENT ACCOUNTS / CHANGE OF BENEFICIARY DESIGNATIONS / CAPACITY / EVIDENCE

A person's mental capacity is best determined by her spoken words and her conduct, and the testimony of persons who observed such conduct on the date in question outranks testimony as to observations made prior to and subsequent to that date, although evidence of capacity or incapacity for a reasonable time before and after execution can nonetheless be indicative of capacity; evidence of the decedent's state of mind can be supplied by lay witnesses as well as experts.

INDIVIDUAL RETIREMENT ACCOUNTS / CHANGE OF BENEFICIARY DESIGNATIONS / CAPACITY

Pennsylvania law has long recognized that individuals normally incapacitated by reason of mental illness may nonetheless be subject to so-called "lucid intervals," wherein they temporarily return to full possession of their powers of mind, enabling them to understand and transact their affairs as usual.

EVIDENCE / CREDIBILITY AND PERSUASIVENESS

Although credibility and persuasiveness are closely bound concepts, and sometimes treated interchangeably, they are technically distinct.

CAPACITY / EVIDENCE / CREDIBILITY AND PERSUASIVENESS

A trier of fact's unwillingness to give weight to the testimony of persons who witness events may not always be a matter of disbelieving them; the factfinder may also be influenced by the realization that the witnesses may not have been in a position to properly evaluate the testatrix's testamentary capacity because they were either not adequately aware of her mental condition or were totally ignorant of it.

IN THE COURT OF COMMON PLEAS OF ERIE COUNTY, PENNSYLVANIA
TRIAL DIVISION – CIVIL
No. 12499 of 2019

Appearances: Andrew J. Sisinni, Esq., for the Plaintiff, Nadine Leach
Gregory L. Heidt, Esq., for the Defendant, Willie Ray Parker

OPINION OF THE COURT

Piccinini, J., August 27, 2021

The law presumes a person may leave her property to whomever she wishes. *In re Estate of Angle*, 777 A.2d 114, 125 (Pa. Super. 2001). Cases where the person suffers from dementia — an umbrella term encompassing a broad array of degenerative brain conditions characterized by a steady deterioration in memory and cognitive functioning — test the limits of that presumption. This is one such case.

Plaintiff, Nadine Leach, brings this action to challenge the validity of a change of beneficiary designation to an Individual Retirement Account (IRA) executed by her mother, Nealy Leach-Ruff, shortly before her death. In that transaction, Nealy named her husband, Defendant, Willie Ray ("Ray") Parker, as a co-beneficiary to the IRA along with Nadine, who, prior to the amendment, had been designated as the sole beneficiary on the account. At the time of the change, however, Nealy was in the midst of a severe mental and physical decline precipitated by rapid-onset dementia. Nadine claims that, as a result of her mother's condition, she lacked the legal capacity to alter the beneficiary designation on her IRA. Nadine further claims the change in beneficiary designation was the product of Ray's undue influence over Nealy.

In assessing these claims, the Court is bound by the evidence of record presented at trial, including the expert and lay witness testimony, as well as those exhibits admitted for the Court's consideration. After careful review of this evidence, and for the following reasons, the Court finds that, while the evidence of record does not reveal a confidential relationship necessary for a finding of undue influence, it does indicate that Nealy lacked the legal capacity required to change the beneficiary designation on her IRA on July 19, 2019, and as such, the designation is legally invalid.

I. BACKGROUND

By all accounts, Nealy Leach-Ruff was a remarkable person. She grew up in the South, putting herself through college at Mississippi Valley State University by cleaning houses

and working as an agricultural laborer. Transcript (Tr.) Day 1, pp. 62, 64. She eventually moved to Erie, Pennsylvania, working her entire career at the Housing Authority of the City of Erie, where she became the Section 8 program coordinator before retiring in 2009. Tr., Day 1, pp. 64, 117. Nealy was active in her church, participating in the choir, and just as religiously attended her grandson's high school basketball games. Tr., Day 1, p. 65. She had a vivacious personality, dressed "sharp as a tack," and emanated a "big presence" that could not go unnoticed in a room. Tr., Day 1, p. 66. More than anything else, she was devoted to her family, especially her grandchildren. Tr., Day 1, pp. 65-66, 69, 113-14.

For many years, Nealy was married to the Reverend Charles Julius Ruff, III. Tr., Day 1, pp. 66-67. Charles passed away in 2014, and his death took a toll on Nealy, causing her to become uncharacteristically withdrawn for a time. Tr., Day 1, pp. 67-68. Nealy ultimately recovered and eventually remarried Ray Parker on May 11, 2016. Tr., Day 2, p. 21. Six days prior to their marriage, on May 5, 2016, the two signed a prenuptial agreement, in which Ray waived and renounced "any and all rights of any nature whatsoever which he may have as a surviving spouse in the property or the estate of Nealy[.]" Tr., Day 2, p. 95; Plaintiffs' Exhibit (Pls.' Ex.) 22, p. 5, ¶ 13 (emphasis omitted).

In the spring of 2019, Nealy's family grew concerned after she began exhibiting some troubling behaviors. Tr., Day 1, p. 69. The once-active Nealy, who often enjoyed activities like gardening or exercising at Planet Fitness, and who normally walked with "a pep in her step," became sluggish, shuffling her feet, and responding more slowly than usual. Tr., Day 1, p. 73. On an annual visit to Texas in May, her sister observed that Nealy, who was typically "the life of the party" on these trips, slept nearly the entire vacation, barely ate, was often caught staring into space, was persistently cold despite the hot weather, and had such difficulty walking through the airport that she required the assistance of a wheelchair. Tr., Day 1, pp. 226-30. The characteristically "jolly" Nealy had, quite suddenly, ceased to be herself. Tr., Day 1, pp. 66, 234.

Then, on one occasion in late June of 2019, her daughter, Nadine Leach, noticed Nealy greet Nadine's partner, Alfonso Pickens, over and over again as he would exit and re-enter the house while doing yard work as if it were the first time she had seen him that day. Tr., Day 1, pp. 69-70, 72, 216. On another occasion in early July, while visiting Nadine and Alfonso, Nealy was unable to drive the two miles back to her house, and required assistance getting out of the car, into her home, and ready for bed. Tr., Day 1, pp. 75-76, 217, 220-22. Then, shortly after that incident, on July 5th, Nealy was unable to drive home after servicing her car at a dealership in Waterford, Pennsylvania; when Nadine arrived, Nealy was mostly quiet and aloof to the world around her, sitting in her hot car in long sleeves with the windows rolled up, and without having completed the necessary paperwork or paid for the inspection. Tr., Day 1, pp. 76-80, 217-22; Pls.' Ex. 5. Once again, Nealy required physical assistance in getting out of the vehicle. Tr., Day 1, pp. 221-22.

Nadine scheduled her mother for a medical consultation with her family physician where she saw a physician's assistant on July 2nd. Nealy's doctors were so concerned by Nealy's "confusional state" that they sent her directly to the emergency room at Hamot Hospital. Tr., Day 1, pp. 74, 163. There, a CAT scan, blood work, and other diagnostic tests were performed in an effort to discover potential reversible causes of Nealy's behavior, but those tests did not reveal any abnormalities other than mild anemia and low potassium levels. Tr.,

Day 1, pp. 164-66. After the incident at the car dealership on July 5th, however, Nadine immediately sought another appointment with her family physician, which was scheduled for July 15th. Tr., Day 1, pp. 74-75, 80-81, 162-67. Nealy subsequently suffered a fall on July 9th, for which she was treated at the emergency room, leaving her with a fractured finger that doctors placed in a splint. Tr., Day 1, pp. 167-68.

At the July 15th appointment, Dr. James Gade, Nealy's primary care physician, personally examined Nealy, reviewed the July 2nd diagnostic test results, ruled out an infection or other reversible causes, and ultimately concluded that she was suffering from "progressive cognitive impairment." Tr., Day 1, p. 148, 159, 166, 169-72. Dr. Gade ordered an MRI, prescribed a dementia medication called Aricept (also known as donepezil), and also made a referral for a neuropsychological evaluation. Tr., Day 1, pp. 23, 84-84; 170, 171-72, 178-79. Dr. Gade also spoke privately with Ray and Nadine concerning Nealy's condition, offering emotional support and providing them more information about dementia. Tr., Day 1, pp. 168-69. Nealy's family was understandably distraught by the diagnosis, and Nadine sought a second opinion from the Cleveland Clinic, taking the first available appointment for August 1st. Tr., Day 1, pp. 85-86, 134.

The events at the heart of this lawsuit transpired in the midst of Nealy's rapidly deteriorating health. As Nealy's condition worsened, Nadine and Alfonso had canceled all long-distance trips related to their son's travel basketball team, but they decided to attend his final basketball tournament from July 17th to July 21st in Atlanta, Georgia. Tr., Day 1, pp. 87-89. Nadine arranged for Ray to be Nealy's primary caregiver while she was away, and Ray took time off of work to do so. Tr., Day 1, pp. 90-91.

What exactly happened while Nadine was away, and the state of Nealy's mind during this time, particularly on Friday, July 19, 2019, is hotly contested by the parties. What is known is that, on July 19th, Nealy, accompanied by Ray, entered the Erie Federal Credit Union at 3503 Peach Street in Erie and changed the beneficiary designation on her IRA to include Ray as a co-beneficiary on that account. Def.'s Ex. A. According to Ray, Nealy awoke that day able to bathe and feed herself, and then asked to go to the bank, where, to his surprise, she proceeded to add him as beneficiary on her IRA, attempting to add her son Matthew to the account as well, although Matthew could not be added because she did not have his social security number. Tr., Day 2, pp. 11, 40-42. Ray never informed Nadine of the change in beneficiary designation either in his phone conversations with her while she was in Atlanta nor when she returned. Tr., Day 1, pp. 91-100, 105-06.

In the days after the change in beneficiary designation, Nealy's mental and physical condition continued to worsen. Four days after the beneficiary designation, on July 23rd, home healthcare nurse, Robin Post, visited Nealy to assess her condition and compiled a report documenting the visit, noting that Nealy was able to respond to some basic questions, but nonetheless suffered from short-term memory deficits and required daily supervision. Tr., Day 1, pp. 245-50; Def.'s Ex. C. Nealy then underwent a geriatric assessment at the Cleveland Clinic on August 1st and a brain MRI on August 2nd. Tr., Day 1, p. 26, Pl.'s Ex. 4. Nadine noted to the physician at the Clinic that her mother had lost 17 pounds since June and had undergone an exceptional decline just in the last week. Tr., Day 1, pp. 48, 50-51; Ex. 4, p. 7.

On August 12th, Dr. Susan Troutner, a licensed psychologist specializing in dementia

evaluations, was scheduled to conduct a neuropsychological examination of Nealy. Tr., Day 1, pp. 20, 22-23. In reviewing the results of Nealy's August 1st MRI, Dr. Troutner observed significant and irreversible levels of cerebral atrophy or volume loss (in layman's terms, brain deterioration). Tr., Day 1, pp. 26-27; Pl.'s Ex. 3. According to Dr. Troutner, although the symptoms may not have been evident until April or May, the cerebral volume loss would have begun well before that time. Tr., Day 1, pp. 30-31. She also determined that Nealy's particular form of dementia was atypical in that its progression was "very rapid." Tr., Day 1, p. 45. Specifically, Dr. Troutner described Nealy's condition as a "prion," a rare category of rapid-onset dementia that results in a significant degree of neural loss over a period of six to twelve months rather than the more familiar Alzheimer's process, which occurs over seven to nine years. Tr., Day 1, pp. 54-55. By the time of Dr. Troutner's evaluation on August 12th, Nealy was already in the advanced stages of her disease, so much so that Dr. Trounter determined that conducting a neuropsychological examination would be neither beneficial nor appropriate. Tr., Day 1, p. 36. Nealy passed away less than three weeks later, on August 31, 2019. Tr., Day 1, pp. 108, 159.

Shortly after Nealy's death, Nadine discovered that her mother had amended the beneficiary designation on the IRA to include Ray. Tr., Day 1, pp. 105-06. She was shocked. Tr., Day 1, p. 106. According to Nadine, when she confronted Ray about the designation, he told her it was done because Nealy had been angry with her over her desire to move Nealy into a one-story house, which she had thought might be a safer housing option as Nealy's health declined. Tr., Day 1, pp. 107-08, 111. Nadine believed this was a lie. Tr., Day 1, p. 111.

Nadine commenced this action by writ of summons on September 16, 2019, and later filed her Complaint on December 11, 2019. Complaint, p. 1. Over the course of two days, from April 13 to April 14, 2021, this Court held a bench trial where lay and expert testimony was heard from eight witnesses and 24 exhibits[1] were admitted. After careful review of this evidence, this case is now ripe for adjudication.

II. APPLICABLE LAW

Before turning to the merits of Leach's claims, the Court must address a threshold question of law. In Pennsylvania, the respective tests for capacity and undue influence differ depending on the particular type of legal transaction at issue. Those transactions include testamentary dispositions (such as through a will), *inter vivos* transfers (such as gifts given during one's lifetime), and contractual agreements. The Court must determine which of these legal standards apply to a beneficiary designation on an IRA.[2]

[1] Although numbered and catalogued for purposes of the record, Plaintiff's Exhibit 13 was not admitted into evidence after this Court sustained Defendant's objection to its admission, and it was not considered by the Court in reaching its decision. Tr., Day 1, pp. 111-12, 240.

[2] The Court notes that both parties appear to assume that an IRA is testamentary in nature, but they have made no stipulation to that effect. *See Northbrook Life Insurance Co. v. Commonwealth*, 949 A.2d 333, 337 (Pa. 2008) (noting, generally, parties may by stipulation limit the legal issues in controversy, which become the law of the case) (citation omitted); but *see* Pa.R.C.P. 201 ("Agreements of attorneys relating to the business of the court shall be in writing, except such agreements at bar as are noted by the prothonotary upon the minutes or by the stenographer on the stenographer's notes."); *Sosa v. Rodriguez*, 2019 WL 3738621, *3 (Pa. Super. 2019) (unpublished) (noting "the trial court did not commit an error of law or abuse its discretion when it limited the parties' stipulation to the terms the parties agreed to on the record."). In the absence of a stipulation that Leach's claims are to be analyzed under testamentary principles, the issue technically remains in controversy. Moreover, at the close of trial, the Court noted the possibility that it may be "compelled by the case law" to apply a different standard "between now and issuing an opinion[,]" but the parties declined the invitation to file post-trial briefing on this issue. Tr., Day 2, p. 154. Accordingly, the Court undertakes an independent analysis concerning the applicable legal standard in this case.

A. Tests for Capacity and Undue Influence

In the mine-run of cases there is no question what kind of legal instrument a court is dealing with, be it a will, a contract, or a gift, and thus, it is not particularly difficult to ascertain the test to determine whether an individual lacked capacity or was unduly influenced in executing it. But in a case such as this, the Court must first determine how to categorize the particular transaction whose validity is in dispute in order to determine the test that applies. Before turning to that analysis, however, it is helpful to review these tests and how they vary between the three legal standards.

1. Capacity

"The required degree of legal capacity can be thought of as existing on a spectrum so that the legal capacity sufficient to perform certain acts may be considered insufficient to perform others." LAWRENCE A. FROLIK & MARY F. RADFORD, *"Sufficient" Capacity: The Contrasting Capacity Requirements for Different Documents*, 2 NAELA J. 303, 304 (2006). "It is hornbook law that less mental capacity is required to execute a will than any other legal instrument." *In re Will of Goldberg*, 582 N.Y.S.2d 617, 620 (Sur. Ct. 1992).

Anglo-American courts have long held that testamentary capacity exists when the testatrix knows those who are the natural objects of her bounty,[3] the composition of her estate, and what she wants done with it, even if her memory is impaired by age or disease. *In re Estate of Nalaschi*, 90 A.3d 8, 12 (Pa. Super. 2014) (citation omitted); *In re Estate of Vanoni*, 798 A.2d 203, 207 (Pa. Super. 2002); *see also Greenwood v. Greenwood*, 163 Eng. Rep. 930, 943 (K.B. 1790) (Lord Kenyon) ("I take it, mind and memory competent to dispose of his property, when it is a little explained, perhaps may stand thus: having that degree of recollection about him that would enable him to look about the property he had to dispose of, and the persons to whom he wishes to dispose of it; if he had the power of summoning up in his mind so as to know what his property was, and who those persons were, that then were the objects of his bounty, then he was competent to make his will."). "In determining testamentary capacity, a greater degree of proof of mental incapacity is required than would be necessary to show the inability to conduct one's business affairs." *In re Estate of Smaling*, 80 A.3d 485, 494 (Pa. Super. 2013) (citation omitted).

Slightly more demanding than testamentary capacity is the capacity to make an *inter vivos* transfer, often in the form of a gift.[4] The donor of an *inter vivos* gift must have "an intelligent perception and understanding of the dispositions made of property and the persons and objects one desires shall be the recipients of one's bounty." *In re Null's Estate*, 153 A. 137, 139 (Pa. 1931). This is quite similar to testamentary capacity, but the standard is slightly higher, for "generally speaking, it requires more business judgment to make a gift than to make a will, as the former is immediately active while the latter is prospective[.]" *Horner by Peoples National Bank of Central Pennsylvania v. Horner*, 719 A.2d 1101, 1104-05 (Pa. Super. 1998) (quoting *Null's Estate*, 153 A. at 139).

Above the capacity to make *inter vivos* gifts lies the capacity to contract. This requires

[3] The "natural objects" of a testator's bounty are her family, that is, those related to her by blood, marriage, or adoption. JULIA COWAN SPEAR, *Undue Influence in Louisiana: What It Is, What It Was, What It Might Be*, 43 LOY. L. REV. 443, 451 (1997).

[4] "Inter vivos," Latin for "between the living," means "[o]f or relating to property conveyed not by will or in contemplation of an imminent death, but during the conveyor's lifetime." Black's Law Dictionary (9th ed. 2009).

"the strength and vigor…to digest all the parts of a contract[.]" *In re Lawrence's Estate*, 132 A. 786, 789 (Pa. 1926) (citations omitted).

2. Undue Influence

As for undue influence, the relevant standard affects the substantive elements a contestant of an instrument must prove to support her claim. In the testamentary context, the contestant of a will must establish three elements by clear and convincing evidence: (1) the testator suffered from a weakened intellect; (2) the testator was in a confidential relationship with the proponent of the will; and (3) the proponent received a substantial benefit from the will. *Estate of Smaling*, 80 A.3d at 493. Once the contestant proves each of these prongs by clear and convincing evidence, the burden shifts to the proponent of the will to demonstrate the absence of undue influence by clear and convincing evidence. *Id.*

The test for undue influence in the context of an *inter vivos* transfer is different. There "[t]he challenger need only establish, by clear and convincing evidence, a single thing: that the donor and donee were in a confidential relationship[.]" *In re Balogh*, 2021 WL 3206111, *4 (Pa. Super. 2021) (unpublished). "If the challenger carries that burden, the burden then shifts to the donee to prove affirmatively that it is unaffected by any taint of undue influence, imposition, or deception." *Id.* (quoting *McCown v. Fraser*, 192 A. 674, 676 (Pa. 1937)) (internal quotation marks omitted).

Similarly, a contract may be set aside where the parties to the contract did not deal at arms' length at the time of its formation. *Biddle v. Johnsonbaugh*, 664 A.2d 159, 161 (Pa. Super. 1995). This, in turn, may be demonstrated by showing the parties were in a confidential relationship at the time the agreement was executed. *Id.* Once a confidential relationship is established, the burden shifts to the proponent to show by clear and convincing evidence "that the contract was free, voluntary and an independent act of the other party, entered into with an understanding and knowledge of its nature, terms and consequences" *Id.* (quoting *Kees v. Green*, 75 A.2d 602, 605 (Pa. 1950)).

B. Relevant Factors to Consider in Categorizing an IRA Beneficiary Designation

The question remains: how should an IRA beneficiary designation be categorized for purposes of capacity and undue influence? Is it more analogous to a will, an *inter vivos* transfer, or a contract?[5] In answering this question, the Court finds four factors especially pertinent to its consideration: the defining features and characteristics an IRA beneficiary designation, applicable Pennsylvania statutory law, relevant Pennsylvania case law, and case law from other jurisdictions. The Court addresses each factor in turn.

1. The Defining Features and Characteristics of an IRA Beneficiary Designation

An IRA is a creature of federal statutory innovation, first established in the Employee Retirement Income Security Act of 1974 (ERISA). 26 U.S.C. § 401 et seq.; *Grund v. Delaware Charter Guarantee & Trust*, 788 F. Supp. 2d 226, 237 (S.D.N.Y. 2011) (noting "Title II of 'ERISA' consists of various amendments made to the Internal Revenue Code at the time of

[5] Although arguably the party with an interest in applying a less deferential standard, Leach suggests that an IRA should be considered testamentary because that standard "applies to wills, but it also applies to an asset that has its own dispositive provision, such as an IRA, because you're still…disposing of an asset." Tr., Day 2, p. 153. But *inter vivos* transfers are undeniably disposals of assets from one party to another. And no one doubts that an individual can dispose of an asset through contractual agreement either. As such, Leach's "disposal theory" does not resolve the question.

ERISA's passage, including § 408's provision of IRA guidelines."). Some have described an IRA as a "private contractual arrangement between the individual accountholder and the account custodian she chooses[,]" *i.e.* a bank. STEWART E. STERK & MELANIE B. LESLIE, *Accidental Inheritance: Retirement Accounts and the Hidden Law of Succession*, 89 N.Y.U.L. REV. 165, 177-78, 181 (2014) (noting "[t]he critical components of the contract are the beneficiary designation form filled out by the accountholder and the default provisions that apply when the accountholder has made no effective designation."). ERISA itself, however, describes an IRA as a trust, wherein a bank acts as trustee over the contributions made by the employee for her benefit in old age. 26 U.S.C. § 408(a); *see also* 26 U.S.C. § 408A(a) (noting "a Roth IRA shall be treated for purposes of this title in the same manner as an individual retirement plan.").

Whichever way one characterizes an IRA generally, it is ultimately not particularly relevant to this factor. This is because the operative question here is not whether the IRA itself is valid, but whether the amendment to its beneficiary designation made on July 19, 2019, is valid. As such, the question becomes what are the defining features of a payable-on-death beneficiary designation specifically.

By narrowing the question in this way, the similarities between a payable-on-death beneficiary designation and a testamentary disposition are brought into sharper focus:

> Like a will, the owner of a non-probate financial asset may revoke the beneficiary designation until the owner's death or incapacitation. Similarly, like a will and unlike a contract, the designation does not need to be supported by consideration. [Nor can designees] argue that they are entitled to the [proceeds from an] IRA in the absence of a beneficiary designation. Further, like a will, under most circumstances, the beneficiary does not receive any benefits until after the decedent's death and has only an expectancy of the benefit.

Wisconsin Province of the Society of Jesus v. Cassem, 486 F. Supp. 3d 527, 533-44 (D. Conn. 2020). These similarities are striking, and they significantly undermine the contention that payable-on-death beneficiary designations on retirement accounts should be analogized to contracts or *inter vivos* transfers. This Court agrees that the inherent features and characteristics of an IRA beneficiary designation are most akin to a testamentary disposition, such as will. This factor weighs in favor of applying a testamentary standard to Leach's claims.

2. Statutory Law

There is one Pennsylvania statute that arguably speaks directly on this question. Section 6108 of the Probates, Estates and Fiduciaries Code states in relevant part:

> The designation of beneficiaries of life insurance, annuity or endowment contracts, or of any agreement entered into by an insurance company in connection therewith, supplemental thereto or in settlement thereof, and the designation of beneficiaries of benefits payable upon or after the death of a participant under any pension, bonus, profit-sharing, retirement annuity, or other employee-benefit plan, **shall not be considered testamentary and shall not be subject to any law governing the transfer of property by will.**

20 Pa.C.S. § 6108 (emphasis added). Although not mentioned by name, IRAs share many similarities with the kinds of instruments delineated in Section 6108, particularly retirement annuities. Moreover, Section 6108 was last amended in 1972, two years before IRAs were first established by ERISA, and so it is not surprising that the provision would not mention IRAs by name. It is therefore highly likely that IRAs, along with all payable-on-death beneficiary designations in retirement accounts, fall within the scope of Section 6108's mandate. There remains a question of what that mandate precisely entails.

"The object of all interpretation and construction of statutes is to ascertain and effectuate the intention of the General Assembly." 1 Pa.C.S. § 1921(a). The legislative history suggests that the General Assembly may not have intended to displace the law of capacity and undue influence as they would have otherwise applied to such beneficiary designations, but rather, may have had a more limited purpose in mind.

The Pennsylvania Supreme Court has previously expounded upon the legislative purpose behind Section 6108. *In In re Henderson's Estate*, 149 A.2d 892 (Pa. 1959), the Court relied on a report of the Joint State Government Commission to ascertain Section 6108's legislative intent. That report explained that "[Section 6108] has two purposes. The most important is to make it clear that unfunded insurance trusts are not testamentary and to that extent the law as stated in *Re Brown's Estate*, 384 Pa. 99, 119 A.2d 513 is changed…" *Id.* at 898.[6] *Brown's Estate* had held that a widow was entitled to take her spousal election from the proceeds of a trust into which certain life insurance policies had been deposited by her late husband. *Id.* at 897. Displeased with this decision, the General Assembly made several amendments to the Estates Act of 1947 in an effort to legislatively overturn it, including the enactment of Section 6108. *Id.* at 897-98. As endorsed by our Supreme Court, it thus appears that the primary legislative purpose of Section 6108 was to make abundantly clear that a spouse's elective share of a decedent's estate may not be applied to non-probate assets such as life insurance policies or retirement annuities, not to displace the application of testamentary principles as they apply to claims of lack of capacity and undue influence.

Nevertheless, "[t]he first and best indication of legislative intent is the language used by the General Assembly in the statute." *Matter of Private Sale of Property by Millcreek Township School District*, 185 A.3d 282, 290-91 (Pa. 2018) (citation omitted). Even accepting our Supreme Court's determination in *Henderson's Estate* that primary intent of the General Assembly in passing Section 6108 was to reject the application of the spousal election rule to non-probate assets, the text of Section 6108 is not so circumscribed to limit itself to this area.

Notably, Section 6108 provides two separate mandates. It first directs that "the designation of beneficiaries… shall not be considered testamentary" and it then further states that such designations "shall not be subject to any law governing the transfer of property by will." 20 Pa.C.S. § 6108. Here, the former command is much broader. It not only rejects application of specific rules unique to the law of wills (like spousal election), but separately mandates that beneficiary designations on such instruments "shall not be considered testamentary[.]" 20 Pa.C.S. § 6108. It would run against elementary principles of statutory interpretation to interpret the second instruction as simply reiterating the first, or vice versa, for "in construing a statute, the courts must attempt to give meaning to every word in a statute, as we cannot

[6] The case does not reference what the second, less important purpose might be.

assume that the legislature intended any words to be mere surplusage." *Schock v. City of Lebanon*, 210 A.3d 945, 964-65 (Pa. 2019). While the latter mandate may reasonably be interpreted as negating the application of certain doctrines and formalities specific to wills and estates, the former mandate arguably alters the substantive nature of non-probate beneficiary designations altogether.

Moreover, Section 6108 is unequivocal in its command that "the designation of beneficiaries of benefits payable upon or after the death… shall not be considered testamentary and shall not be subject to any law governing the transfer of property by will." 20 Pa.C.S. § 6108 (emphases added). Typically, "[t]he word 'shall' carries an imperative or mandatory meaning" and "[a]lthough some contexts may leave the precise meaning of the word 'shall' in doubt… [the Pennsylvania Supreme Court] has repeatedly recognized the unambiguous meaning of the word in most contexts." *In re Canvass of Absentee Ballots of November 4, 2003 General Election*, 843 A.2d 1223, 1231-32 (Pa. 2004).

Finally, even assuming the General Assembly did not specifically have capacity or undue influence in mind when it enacted Section 6108, "the limits of the drafters' imagination supply no reason to ignore the law's demands. When the express terms of a statute give us one answer and extratextual considerations suggest another, it's no contest. Only the written word is the law[.]" *Bostock v. Clayton County, Georgia*, 140 S. Ct. 1731, 1737 (2020). Indeed, as our General Assembly has itself instructed, the intent of the General Assembly may be ascertained through reference to "contemporaneous legislative history," but only "[w]hen the words of the statute are not explicit." 1 Pa.C.S. § 1921(c)(7).

Here, the explicit words of the statute preclude application of testamentary principles to payable-on-death beneficiary designations in retirement accounts without exception. Therefore, this factor, while neutral as to application of either *inter vivos* or contract principles to the case at bar, weighs against application of a testamentary standard.

3. Pennsylvania Case Law

There does not appear to be any precedential appellate decision from this Commonwealth directly on point, but the Court has identified three cases that arguably bear on the question.

i. Fiumara v. Fiumara

Fiumara v. Fiumara, 427 A.2d 667 (Pa. Super. 1981) involved a change to a beneficiary designation on a pension plan. The Superior Court upheld the trial court's determination that the designation was invalid on the basis that the evidence supported a finding of undue influence. *Id.* at 672. In doing so, the Court declined to apply the test for testamentary undue influence, noting "in Pennsylvania the designation of beneficiaries of pension plans is deemed to be an *inter vivos* transaction[,]" citing Section 6108. *Id.* at 671 n.6.

Footnote 6 of *Fiumara* did not explain why *inter vivos* principles should apply even assuming beneficiary designations on non-probate assets are not testamentary. Section 6108 does not direct that these beneficiary designations be deemed *inter vivos*, but only that they not be deemed testamentary. As the United States District Court for the Eastern District of Pennsylvania has noted, Section 6108, "standing alone, does not clearly dictate that *inter vivos* transfer law applies to this case" because "[u]nder Pennsylvania law, a valid *inter vivos* gift requires donative intent and delivery, which divests the donor of all dominion and control over the property and invests the donee with complete control over the subject

matter. *Jackson National Life Insurance Co. v. Heyser*, 2013 WL 5278240, *4 (E.D. Pa. 2013) (citing *Hera v. McCormick*, 625 A.2d 682, 686 (Pa. Super. 1993)).

Nevertheless, in reliance on *Fiumara*, later courts have applied the *inter vivos* test for undue influence to transfers of real property by deed, *Shupp v. Brown*, 439 A.2d 178 (Pa. Super. 1981), and, relevant for our purposes, retirement accounts. *Snizaski v. Public School Employees' Retirement Board*, 2014 WL 3943915 (Pa. Cmwlth. 2014) (unpublished). In *Snizaski*, a non-precedential Commonwealth Court decision, the principal beneficiary argued that the challenger of the designation had not provided sufficient evidence that the decedent suffered from a weakened intellect in proving his case of undue influence. *Id.* at *12. Citing *Fiumara*, the Court noted "[i]n Pennsylvania, the designation of a beneficiary of [a] pension or retirement plan is deemed to be an *inter vivos* transaction." *Id.* at *8. Because the designation of a beneficiary on a retirement account was an *inter vivos* and not testamentary, the Court reasoned that the testamentary test for undue influence was inapplicable and the party claiming undue influence was not required to make a showing of weakened intellect to succeed on its claim. *Id.* at *12.

ii. Fulkroad v. Ofak

Fulkroad v. Ofak, 463 A.2d 1155 (Pa. Super. 1983) involved a change of beneficiary designation to a life insurance policy. Appellants argued that a life insurance policy should not be analogized to a will in light of Section 6108, and relied on *Fiumara* for the proposition that *inter vivos* principles applied instead. *Id.* at 1157. The Court disagreed, holding:

> While the designation must be deemed an *inter vivos* transaction…the lower court correctly equated the requirements for testamentary capacity with that capacity to designate a beneficiary for life insurance benefits. This analysis of the required capacity in no way contravenes the intent of § 6108 and, needless to say, the similarities underlying both instruments are readily apparent.

Fulkroad, 463 A.2d at 1157. At least one Court of Common Pleas has relied on *Fulkroad* in holding that testamentary principles apply to claims of lack of capacity and undue influence in the context of IRA beneficiary designations. *See In re Estate of LaVeglia*, 31 Pa. D. & C. 5th 190, n.5 (Carbon Co. 2013) (Nanovic, J.).

iii. Goodwin v. Goodwin

Most recently, in *Goodwin v. Goodwin*, 244 A.3d 453 (Pa. Super. 2020), the Superior Court considered whether designations on a decedent's various life insurance policies and an IRA — all naming his mother as sole beneficiary to those accounts — were considered *inter vivos* gifts for purposes of the Divorce Code, which excepts gifts from its definition of marital property, and consequently, whether those accounts were subject to equitable distribution as part of the mother's subsequent divorce proceedings. 244 A.3d at 455-57; *see also* 23 Pa. C.S. §3501(a)(3). The Court concluded that:

> By listing someone as the sole beneficiary on an insurance policy or IRA, the giver makes the proceeds into a gift which vests at the time of death. Moreover, because such policies allow for the designation of co-beneficiaries and contingent beneficiaries, the failure to list any makes the intent of the giver clear.

Id. at 459. The Court noted that "[w]e are aware both the [Probates, Estates and Fiduciaries] Code and our Supreme Court have held life insurance is not testamentary in nature[,]" presumably in a nod to Section 6108. *Id.* at 461. It then determined that sole beneficiary designations on life insurance policies and IRAs were *inter vivos* transactions after looking to decisions from other jurisdictions, noting "[w]hile there is minimal case law in the individual states regarding the treatment of non-testamentary inheritances in divorce, those courts which have faced the issue have honored the intent of the giver and treated the property as non-marital" and "[t]hus, our finding the life insurance and IRA funds at issue in the instant matter constitute a gift and thus fall within the exceptions delineated in Section 3501(a)(3) is consistent and in alignment with the holdings of courts in our sister states." *Id.*

Judge McCaffery authored a concurring and dissenting opinion. He held that Section 6108 compelled the result that a beneficiary designation on a life insurance policy was not testamentary. *Id.* at 467. But unlike the majority, he found that the designation was not a gift either because under Pennsylvania law "[i]t is clear that the naming of a beneficiary on a life insurance policy vests nothing in that person during the lifetime of the insured; the beneficiary has but a mere expectancy" and "the naming of a beneficiary on a life insurance policy is *sui generis*; it is not a conveyance of the insured's assets." *Id.* at 467-68 (quoting *Lindsey v. Lindsey*, 492 A.2d 396, 398 (Pa. Super. 1985)). In other words, a life insurance beneficiary designation is unique and cannot be analogized to either a testamentary devise or an *inter vivos* gift, and as such, does not fit into the gift exception to the definition of marital property. Judge McCaffery then addressed the IRA separately, noting the majority had considered "these proceeds together with the life insurance proceeds." *Id.* at 468. He ultimately declined to express an opinion on the nature of the IRA beneficiary designation because, in his view, the trial court failed to articulate a finding as to whether the mother was named as a beneficiary on the son's IRA.[7] *Id.*

These cases do not provide a coherent expression of Pennsylvania law that would strongly favor any approach, although they seem to weigh against the application of contractual principles. As between testamentary and inter vivos standards, this factor is weighted relatively equally.

4. Case Law from Other Jurisdictions

The Court briefly surveys those cases from other jurisdictions to have considered the issue in order to discern if any consensus has developed among our sister states. Many jurisdictions apply testamentary principles to IRA change of beneficiary designations. *See Webb v. Anderson Children Trust*, 160 N.E. 3d 804, 811 (Ohio Ct. App. 1st Dist. 2020) (noting "[e]ven though the transfer on death of IRA proceeds to a designated beneficiary is contractual and not testamentary, Ohio courts have held that the test of testamentary capacity can also be used as a standard for mental capacity to execute a beneficiary designation.") (citation and internal quotation marks omitted); *In re Estate of Langeland*, 312 P.3d 657, 665 (Wash. Ct. App. 2013) (noting "because the designation is merely a means of transmitting property at death and the beneficiary has no rights before the insured's death…naming the beneficiary of an IRA is not an *inter vivos* gift" applying testamentary principles instead)

[7] The majority proceeded to consider the question presented as it applied to the IRA because the parties agreed that the mother was named as sole beneficiary on that account. *Goodwin*, 244 A.3d at 456.

(footnote and internal quotation marks omitted); *McCullough v. McCullough*, 2018 WL 6015841 (W.V. 2018) (unpublished) (applying testamentary standard to claim of undue influence over IRA change of beneficiary designation); *In re Albert*, 30 N.Y.S.3d 121 (N.Y. App. Div. 2016) (same); *Newcomb v. Sweeney*, 2014 WL 1193323, *12 (Conn. Super. 2014) (applying testamentary capacity but noting "[i]t is not clear that lack of testamentary capacity is a valid special defense in this action, since the challenge is not to the execution of a will, but rather to the designation of beneficiary for IRAs.") (internal quotation marks omitted).

Several other jurisdictions have rejected the testamentary approach, typically applying contractual principles instead. *See Ivie v. Smith*, 439 S.W. 3d 189, 203-05 (Mo. 2014) (rejecting testamentary capacity and applying the standard for capacity to contract to a change in beneficiary designation of an IRA); *In re Estate of Wellshear*, 142 P.3d 994, 997 (Ok. Civ. App. 2006) (same); *Alexander v. McEwen*, 239 S.W. 3d 519, 522 (Ark. 2006) (same); *SunTrust Bank, Middle Georgia N.A. v. Harper*, 551 S.E. 2d 419, 425 (Ga. 2001) (rejecting the testamentary capacity standard because an IRA is a non-probate asset and applying the standard for capacity to contract).

At least one jurisdiction seems to apply *inter vivos* principles generally to challenges to beneficiary designations on IRAs on the basis that IRAs are *inter vivos* trusts. *See Ciampa v. Bank of America*, 35 N.E.3d 765, 768 (Mass. App. Ct. 2015) (concerning a scrivener's error on an IRA beneficiary designation). As Goodwin points out, still others appear to treat sole beneficiary designations on life insurance policies as *inter vivos* gifts. *See Angell v. Angell*, 777 N.W.2d 32, 34-37 (Minn. Ct. App. 2009); *In re Marriage of Goodwin*, 606 N.W.2d 315, 318-19 (Iowa 2000); *Sharp v. Sharp*, 823 P.2d 1387, 1388 (Colo. Ct. App. 1991); *Fields v. Fields*, 643 S.W.2d 611, 613-615 (Mo. Ct. App. 1982); *Brunson v. Brunson*, 569 S.W.2d 173, 176-177 (Ky. Ct. App. 1978).

Because it appears there is no consensus among the states on the issue, and cases can be found to support any of the three possible standards that could apply, this factor weighs equally in favor of all three options and is effectively neutral.

C. Balancing of Factors

On balance, the defining features and characteristics of an IRA beneficiary designation suggest it is most analogous to a will. Section 6108, on the other hand, weighs equally against application of testamentary principles. Although there is some out-of-state case law to suggest contract principles may apply, that factor does not figure substantially into the calculus, and there appears to be no Pennsylvania authority to support its application.

Pennsylvania case law is an especially weighty factor since this Court is bound by the precedential pronouncements of our appellate courts. *Walnut Street Associates, Inc. v. Brokerage Concepts, Inc.*, 20 A.3d 468, 480 (Pa. 2011) (holding a lower court is "duty-bound" to effectuate law from a higher court); *Commonwealth v. Randolph*, 718 A.2d 1242, 1245 (Pa. 1998) ("It is a fundamental precept of our judicial system that a lower tribunal may not disregard the standards articulated by a higher court."); *Lowery v. Pittsburgh Coal Co.*, 268 A.2d 212, 215 (Pa. Super. 1970) (holding courts of common pleas are not authorized to contradict established appellate court rulings).

Precedential case law from this Commonwealth sometimes favors a testamentary standard for beneficiary designations (*Fulkroad*) and at other times favors an *inter vivos* standard

(*Fiumara* and *Goodwin*). Of these cases, *Goodwin* is arguably most on point, as that case dealt, at least in part, with an IRA beneficiary designation. Yet, its analysis relied heavily on the fact that the designated party was sole beneficiary and it is unclear to what extent the Court's decision was premised upon "the difficulties which occur when the Probates, Estates and Fiduciaries Code…and the Divorce Code collide." *Goodwin*, 244 A.3d at 460-61. If *Goodwin* really does stand for the proposition that all beneficiary designations on non-probate assets are *inter vivos*, including on life insurance policies, then one would have expected the Court to address the continuing validity of *Fulkroad*, and this Court is hesitant to read *Goodwin* as sweeping so broadly, especially given the presumption against *sub silentio* abrogation. *See Commonwealth v. Jamison*, 652 A.2d 862, 865 (Pa. Super. 1995) (citing *Commonwealth v. Cragle*, 422 A.2d 547, 549 (Pa. Super. 1980)).

The only case directly on point appears to be *Snizaski*, but that decision does not constitute binding precedent. Nevertheless, to the extent it is persuasive, coupled with *Fiumara*'s treatment of pensions, and in light of 6108's command that payable-on-death beneficiary designations are not testamentary, the marginally better synthesis of these precedents may be that *inter vivos* principles apply, at least by default. Yet the Court agrees with Judge McCaffery's observation in *Goodwin* that, even granting that beneficiary designations of non-probate assets are not testamentary, there are fundamental problems with analogizing IRA beneficiary designations to *inter vivos* transfers. That is because *inter vivos* transfers are, by definition, transfers between the living. A payable-on-death beneficiary designation, on the other hand, merely creates an expectancy of a benefit during the settlor's lifetime that does not definitively vest in the beneficiary until the settlor's death.

Whatever the best reconciliation of these authorities may be, the Court is hesitant to make a pronouncement as to the legal standard applicable to IRA beneficiary designations without further guidance from our appellate courts, or better yet, the General Assembly. For now, the more prudent approach is to begin by analyzing the facts of this case under basic testamentary principles, for if Leach can succeed on either her undue influence or lack of capacity claims applying that standard, she would inevitably prevail under any other.[8] With this in mind, the Court proceeds to its analysis of the merits of the two issues raised by Leach, beginning with her claim of undue influence.

III. UNDUE INFLUENCE

Leach argues that Ray exerted undue influence over Nealy's decision to designate him as a co-beneficiary of her IRA. A person's disposition of his or her property should "be what it professes to be, literally his or her will." *In re Paul's Estate*, 180 A.2d 254, 258 (Pa. 1962) (emphases in original). Under the doctrine of undue influence, if "a person causes a disposition of the property of another according to his will rather than the will of the owner of the property, then the law steps in and declares such disposition ineffective." *Id.* Undue influence is a "subtle," "intangible," and "illusive thing" that is "generally accomplished by a gradual, progressive inculcation of a receptive mind." *In re Estate of Clark*, 334 A.2d 628, 634, 635 (Pa. 1975) (quoting *In re Quein's Estate*, 62 A.2d 909, 915 (Pa. 1949)). "[T]he exercise of undue influence, at its core, indicates that an individual so influenced has lost the ability to make an

[8] If Nealy lacked testamentary capacity, then she necessarily lacked the higher level of capacity required for making an inter vivos transfer or entering into a contract.

independent decision." *Yenchi v. American Enterprise, Inc.*, 161 A.3d 811, 822 (Pa. 2017).

As "undue influence is so often obscured by both circumstance and design, our Courts have recognized that its existence is best measured by its ultimate effect." *Owens v. Mazzei*, 847 A.2d 700, 706 (Pa. Super. 2004). "The resolution of a question as to the existence of undue influence is inextricably linked to the assignment of the burden of proof." *Estate of Clark*, 334 A.2d at 632. In the testamentary context, our courts have established the following burden-shifting framework for analyzing claims of undue influence:

> Once the proponent of the [instrument] in question establishes the proper execution of the [instrument], a presumption of lack of undue influence arises; thereafter, the risk of non-persuasion and the burden of coming forward with evidence of undue influence shift to the contestant. The contestant must then establish, by clear and convincing evidence, a *prima facie* showing of undue influence by demonstrating that: (1) the testator suffered from a weakened intellect; (2) the testator was in a confidential relationship with the proponent of the [instrument]; and (3) the proponent receives a substantial benefit from the [instrument] in question. Once the contestant has established each prong of this tripartite test, the burden shifts again to the proponent to produce clear and convincing evidence which affirmatively demonstrates the absence of undue influence.

Estate of Smaling, 80 A.3d at 493 (footnote omitted).[9]

Here, the beneficiary designation appears properly executed on its face; it is signed and dated July 19, 2019, by "Nealy Leach-Ruff" and a witness, "Cait McKinney." Def.'s Ex. A. A presumption of lack of undue influence thus arises and the burden shifts to Leach make a *prima facie* showing of undue influence by demonstrating through clear and convincing evidence each of the elements of undue influence, namely, that Nealy suffered from a weakened intellect, that Nealy was in a confidential relationship with Ray, and that Ray received a substantial benefit from the beneficiary designation.

Leach easily satisfies her burden to prove two of the elements of her *prima facie* case. First, Nealy undoubtedly suffered from a weakened intellect as a result of her dementia. "The weakened intellect necessary to establish undue influence need not amount to testamentary incapacity." *Id.* at 498. Moreover, the hallmarks of weakened intellect for purposes of undue influence are "persistent confusion, forgetfulness and disorientation." *In re Estate of Fritts*, 906 A.2d 601, 607 (Pa. Super. 2006). Nealy exhibited these symptoms in the months leading up to the change of beneficiary designation, for instance, on her trip to Texas in May, her

[9] There is some older case law which may be read to suggest that a showing of a confidential relationship merely shifts the burden to the proponent to prove an absence of fraud and that it is not a necessary element to a claim of undue influence. *See In re Treitinger's Estate*, 269 A.2d 497, 500 (Pa. 1970) (noting "[o]ne can be in a confidential relationship without exerting undue influence, just as undue influence can be exerted by one not in a confidential relationship."). Later cases, however, described the existence of a confidential relationship as one of the "minimum requirements" of a claim of undue influence. *Clark's Estate*, 334 A.2d at 60. To the extent there is a conflict between these cases, this Court is bound to accept the more recent iteration of the law as expressed by the Supreme Court in *Clark's Estate*. *See Hammons v. Ethicon, Inc.*, 240 A.3d 537, 564 (Pa. 2020) (Saylor, C.J., dissenting) (noting "controlling precedent is to be discerned from developmental accretions in the decisional law, attributing due and substantial weight to pronouncements made in the most recent decision."); *D'Alessandro v. Berk*, 46 Pa. D. & C. 588, 601 (Phila. Co. 1943) ("Being thus confronted by apparently conflicting decisions by our appellate courts, we have no choice but to follow that which is both last in time and supreme in point of ultimate authority.").

interaction with Alfonso in June, and during the incident at the Waterford car dealership in early July. Tr., Day 1, pp. 69-70, 72, 76-80, 216-22, 226-30. By mid-July, Nealy required aid and supervision to carry on most, if not all, basic daily needs, including waking up, getting out of bed, using the bathroom, brushing her teeth, combing her hair, bathing, dressing, and walking down stairs. Tr., Day 1, pp. 102-103. Moreover, the brain atrophy causing this behavior was described by Dr. Troutner as "very grave, very serious, and not at a point where it [was] reversible." Tr., Day 1, p. 27. Thus, Nealy undoubtedly suffered from a weakened intellect during the timeframe that Ray would have exercised any influence over Nealy.

Second, to prove Ray received a substantial benefit from the IRA, Leach need only show he "benefited in a legal sense" from the beneficiary designation. *In re Estate of Stout*, 746 A.2d 645, 648 (Pa. Super. 2000). The Court has no trouble in concluding that the more than $45,000 Ray stands to receive from the IRA constitutes a substantial financial and legal benefit. Tr., Day 1, pp. 114-15; Pl.'s Ex. 14.

The existence of a confidential relationship between Ray and Nealy is more difficult for Leach to prove. "[A] confidential relationship exists when the circumstances make it certain that the parties did not deal on equal terms, but on the one side there is an overmastering influence, or, on the other, weakness, dependence or trust, justifiably reposed." *Estate of Smaling*, 80 A.3d at 499 (quoting *Clark*, 334 A.2d at 633). For influence to be "undue" in this context, there must be imprisonment of the body or mind...fraud, or threats, or misrepresentations, or circumvention, or inordinate flattery or physical or moral coercion, to such a degree" that it destroys the testator's free agency. *In re Ziel's Estate*, 359 A.2d 728, 733 (Pa. 1976).

"Undue influence may be, and often can only be, proved by circumstantial evidence." *Id.* at 734. Nevertheless, proof of opportunity to exercise undue influence, without more, is insufficient, *In re Estate of Luongo*, 823 A.2d 942, 964 (Pa. Super. 2003), so, as Ray correctly points out, "[a] spousal relationship does not automatically translate into a confidential relationship for purposes of determining the presence of undue influence." *In re Staico*, 143 A.3d 983, 991 (Pa. Super. 2016) (quoting *Smaling*, 80 A.3d at 498-99) (brackets omitted). Rather, "[i]n any given case it is a question of fact whether the marital relationship is such as to give one spouse dominance over the other or to put that spouse in a position where words of persuasion have undue weight." *Id.*

Here, there is certainly circumstantial evidence that Ray had ulterior motives in accompanying Nealy to the Credit Union on July 19th. For example, Nadine testified that, throughout Nealy's funeral, Ray was eager to obtain a death certificate, presumably so he could present proof of Nealy's death to the Credit Union, enabling it to release his share of the funds. Tr., Day 1, p. 108. But proof of motive to exert undue influence is not the same as proof of the kind of overmastering influence necessary for a confidential relationship.

There is also circumstantial evidence that Ray waited for the perfect opportunity to exert his influence, leveraging Nadine's absence to persuade Nealy to amend the beneficiary designation without interference. As alleged by Ray, the change in beneficiary designation (as well an astonishingly "good day" for Nealy in terms of her cognitive abilities) happened to coincide with the short period when Nadine, Nealy's primary caregiver, was out of town. Happenstance can only stretch so far, however, and the set of circumstances surrounding the

change in beneficiary designation — Nealy's rapidly declining health, Nadine's trip to Atlanta, Ray's prior pre-nuptial agreement with Nealy — all suggest something more pernicious at play than Ray's version of events would offer. But once again, proof of opportunity to exercise undue influence, alone, does not suffice. *Estate of Luongo*, 823 A.2d at 964. Leach is still required to show by clear and convincing evidence that the relationship between Nealy and Ray was a confidential one, that is, that Nealy's free agency was compromised by Ray's overmastering influence. *Ziel's Estate*, 359 A.2d at 733.

Leach did develop some proof of a confidential relationship. For instance, on July 21, 2019, just two days after the change in beneficiary designation, Ray wrote out a check for Nealy, suggesting control over her finances. Tr., Day 2, pp. 63-70; Pl.'s Ex. 19. On the other hand, Nealy's prior checks seem to have been written and signed by her, so there is little evidence of a "gradual, progressive inculcation" that is typically the hallmark of undue influence. *Estate of Clark*, 334 A.2d at 634; Pl.'s Ex. 19.

Nealy's sister Lula testified that Nealy often referred to Ray as "Charles," the name of her former husband. Tr, Day 1, p. 233. There is also evidence to suggest that she referred to Ray as "the love of her life" on the day of the beneficiary designation, despite previously stating that Charles was her true love. Tr., Day 1, pp. 232-33, Day 2, 59-60, 135-36. The obvious inference is that Nealy believed she designated her beloved husband Charles as a co-beneficiary to the IRA, not Ray, and that Ray may have preyed upon Nealy's confusion in order to be named as a co-beneficiary. This claim is further supported circumstantially by the fact that Ray had previously disclaimed "any and all rights of any nature whatsoever which he may have as a surviving spouse in the property or the estate of Nealy" as part of their prenuptial agreement. Pls.' Ex. 22, p. 5; Tr., Day 2, p. 95.

In the end, although there is enough evidence here to give the Court pause as to whether a confidential relationship existed, it is not enough to prove a confidential relationship by clear and convincing evidence. "Clear and convincing evidence is defined as testimony that is so clear, direct, weighty, and convincing as to enable the trier of fact to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." *In re Adoption of L.J.B.*, 18 A.3d 1098, 1107 (Pa. 2011) (quoting *Matter of Sylvester*, 555 A.2d 1202, 1203-04 (Pa. 1989)) (internal quotation marks omitted).

While there is certainly some circumstantial evidence of Ray's overmastering influence, some of Leach's other evidence cuts in the other direction. According to Nadine, if anyone had a confidential relationship with her mother during this time, it was her. Nadine testified that she primarily took care of all of her mother's needs, including waking her up, bathing and dressing her, administering her daily medications. Tr., Day 1, pp. 101-02. Nadine characterized Ray as somewhat aloof to her mother's situation, indicating that while she was away in Atlanta she hoped "he would step up." Tr., Day 1, pp. 101-02. Thus, while the Court cannot say that Ray is completely innocent in this regard, it also cannot say that it has "come to a clear conviction, without hesitancy, of the truth of" these accusations. *Adoption of L.J.B.*, 18 A.3d at 1107. Indeed, even applying the more lenient preponderance of the evidence standard, although a closer question, the Court cannot say that it was more likely than not that Ray was in a confidential relationship with Nealy.

Because Leach cannot prove a confidential relationship, she cannot make out a *prima*

facie case of undue influence. Moreover, she cannot prove undue influence regardless of how an IRA is characterized because a confidential relationship is a necessary element of a claim of under influence challenging any instrument, be it a will, an *inter vivos* transaction, or a contract. *See Balogh*, 2021 WL 3206111, at *4 (concerning the test for undue influence for *inter vivos* gifts); *Biddle*, 664 A.2d at 161 (concerning the test for undue influence for contracts). Accordingly, Leach cannot succeed on her claim of undue influence, irrespective of the legal standard that applies.

IV. CAPACITY

Distinct from her undue influence claim, Leach argues that Nealy lacked the legal capacity to designate Ray as a co-beneficiary to her IRA. Every adult is presumed to possess testamentary capacity. *Estate of Angle*, 777 A.2d at 125. Neither old age, sickness, nor bodily debility are sufficient to rebut this presumption, "[n]or will inability to transact business, physical weakness, or peculiar beliefs and opinions." *Lawrence's Estate*, 132 A. at 789. Indeed, a person with testamentary capacity "may not be able at all times to recollect the names of persons or families of those with whom he has been intimately acquainted" and he "may ask idle questions, and repeat himself, and yet his understanding of the ordinary transactions of his life may be sound." *Id.* As such, "[f]ailure of memory does not prove incapacity, unless it is total or so extended as to make incapacity practically certain." *Id.*

"The law's liberal definition of testamentary capacity is central to the concept of 'freedom of testation,' which means simply that testators should be free to dispose of their property however and to whomever they wish." FROLIK & RADFORD, 2 NAELA J. at 305. As Professor Frolik has explained, the rationale underpinning this low standard is simple:

> Courts are reluctant to rely solely on a finding of incapacity for fear that to do so would gradually raise the standard of the degree of testamentary capacity needed to execute a valid will. Were that to happen, many older persons of marginal capacity would be barred from writing a will or revising a preexisting will, thereby causing more estates to pass by intestacy or preventing some individuals from changing their testamentary bequests. Either of these outcomes would conflict with the societal goals of avoidance of intestacy and protection of the rights of individuals to leave their estates to whomsoever they please…[and thus] the doctrine permits testators with very low levels of capacity, too low even for them to manage their own property during life, nevertheless to direct its passage at their deaths.

LAWRENCE A. FROLIK, *The Biological Roots of the Undue Influence Doctrine: What's Love Got to Do With It?*, 57 U. PITT. L. REV. 841, 868 (1996).

Testamentary capacity exists when the testator has intelligent knowledge of the natural objects of her bounty, the general composition of her estate, and what she wants done with it. *In re Bosley*, 26 A.3d 1104, 1111-12 (Pa. Super. 2011). While not an onerous standard, determining whether an individual possess or lacks the requisite testamentary capacity is more than an empty ritual. Particularly where the testator's cognitive abilities are compromised, either by internal or external forces, testamentary capacity may very well be lacking. *See In re Hunter's Estate*, 205 A.2d 97, 100 (Pa. 1964) (upholding finding that testator lacked

testamentary capacity where "the [trial] court concluded that the stroke she suffered affected the frontal lobe of her brain and permanently impaired her judgment, reasoning and thinking processes."); *In re Estate of Long*, 2016 WL 5417701 (Pa. Super. 2016) (unpublished) (upholding trial court's determination that decedent's lacked testamentary capacity where her cognitive abilities were impaired by high doses of medication). Dementia diagnoses present unique challenges to courts tasked with determining the capacity of testators suffering from these diseases, but even so, as in all cases, judges "are not required to exhibit a naiveté from which ordinary citizens are free." *Department of Commerce v. New York*, 139 S. Ct. 2551, 2575 (2019) (applying the deferential "arbitrary and capricious" standard of review) (quoting *United States v. Stanchich*, 550 F.2d 1294, 1300 (2d Cir. 1977)).

"Where mental capacity to execute an instrument is at issue, the real question is the condition of the person at the very time [she] executed the instrument[.]" *Cardinal v. Kindred Healthcare, Inc.*, 155 A.3d 46, 50 (Pa. Super. 2017) (quoting *Evans v. Marks*, 218 A.2d 802, 804 (Pa. 1966)) (bracket omitted). To that end, a "person's mental capacity is best determined by [her] spoken words and [her] conduct, and the testimony of persons who observed such conduct on the date in question outranks testimony as to observations made prior to and subsequent to that date." *Id.* (bracket omitted); *Bosley*, 26 A.3d at 1112 (noting "impressions of the Decedent on the very date he executed his will are more probative of the Decedent's testamentary capacity than those of someone...who never met the decedent and formulated an opinion of Decedent's mental state based solely on medical records."). Nevertheless, "evidence of capacity or incapacity for a reasonable time before and after execution" can be "indicative of capacity." *In re Kuzma's Estate*, 408 A.2d 1369, 1371 (Pa. 1979). Moreover, evidence of the decedent's state of mind "can be supplied by lay witnesses as well as experts." *In re Agostini's Estate*, 457 A.2d 861, 867 (Pa. Super. 1983).

Here, Leach presents strong, corroborated, and credible evidence that Nealy was incapacitated in the days immediately before and after the execution of the change in beneficiary designation. Nadine credibly testified that by July 19th Nealy could not physically dress herself, bathe herself, or brush her teeth; she was incontinent, could not change her own adult diaper, and required assistance walking and eating. Tr., Day 1, pp. 100-01. Nealy's "appetite had declined severely" and Nadine managed and administered her mother's medications, feeding them to Nealy in applesauce. Tr., Day 1, p. 101. Nealy would not get out of bed until Nadine physically would get her out on her lunch break between 11 a.m. and noon, at which time Nadine would take her to the bathroom and help her shower. Tr. Day 1, pp. 102-03. Assisting her mother down the stairway was a particularly arduous task, and sometimes Nealy would have to "scoot down the stairs" with Nadine's help. Tr., Day 1, p. 103. By August, it was necessary to install a stairlift. Tr., Day 1, pp. 103-04.

Lula Mickel, Nealy's sister, who helped care for Nealy while Nadine was away in Atlanta, confirmed much of the same. Although Lula noted that Nealy did not need help in the shower "all the time" and "could feed herself[,]" with supervision, Lula did consistently help bathe Nealy, brush her teeth, and brush her hair. Tr., Day 1, p. 231. Lula also observed that Nealy, who was normally "very talkative," barely spoke and "wouldn't eat much." Tr., Day 1, p. 231. Nealy's condition was so progressed by the time of the beneficiary designation that Lula recalls having to ask Nealy if she even knew who Lula was, and although Nealy was

able to recognize Lula eventually, she stared with a blank expression for a long while before doing so. Tr., Day 1, pp. 236, 238.[10]

The Court credits the testimony of Nadine and Lula indicating that Nealy was substantially mentally and physically debilitated on or about July 19, 2019. Indeed, this testimony is further corroborated by Parker's own witness, home healthcare nurse, Robin Post, who indicated in the report based off of her July 23rd visit, and confirmed in her testimony at trial, that Nealy failed to recognize familiar persons and places, lacked the ability to recall events of the past 24 hours, and suffered from significant memory loss such that daily supervision was required. Def.'s Ex. C, p. 16; Tr., Day 1, pp. 197, 249.

Even more telling was the expert testimony offered by Leach as to Nealy's mental condition. On July 15th, just four days before the beneficiary designation, Dr. James Gade personally examined Nealy and diagnosed her with "progressive cognitive impairment" and prescribed her a typical starting dose of the dementia medication Aricept. Tr, Day 1, pp. 168-69, 171-72, 179. The results of the MRI he ordered that day later confirmed that Nealy had "profound volume loss" in her brain, particularly in her hippocampus region, responsible for "executive functioning thought processes." Tr., Day 1, p. 173. He testified that this involved not so much her basic "orientation," but rather, her "decision making capability" and "higher level functioning," in other words, her "ability to take information, process it, and be able to make a decision or be able to process that information," such as processing a "complex question." Tr. Day 1, pp. 173-74, 191.

Based upon this information, as well as the report of Dr. Troutner, he would later conclude in a July 29, 2020, letter, within a reasonable degree of medical certainty, Nealy was "completely impaired" at the time of her visit with him on July 15, 2019. Tr., Day 1, pp. 174-75. In that opinion and at trial he further stated that Nealy would have been cognitively impaired on July 19, 2019, the day of the beneficiary designation, and that she would not have had the capacity to understand the significance of a beneficiary designation on that date. Tr., Day 1, pp. 175-76.

Parker resists Dr. Gade's description of Nealy being "completely" impaired, noting that Dr. Gade himself observed at times in his letter that Nealy was both "impaired" and "completely impaired." Parker, however, makes too much of this distinction. When questioned about the discrepancy, Dr. Gade testified that there was not "much difference" between the two. Tr., Day 1, p. 176. When asked what the term "completely cognitively impaired" meant to him, he explained that "[t]o me, that means a patient cannot process information appropriately and come up with an intelligent answer to problems. They can't manage their own finances; they can't make end-of-life decisions; they can't manage their own medications; they need to have supervision." Tr., Day 1, p. 177.

Parker attempted to impeach Dr. Gade by noting he himself observed Nealy could undoubtedly process *some* information. Specifically, he testified that she was alert, meaning her eyes were open and she could speak. Tr., Day 1, p. 177. She was oriented to person,

[10] On cross-examination, Parker attempted to impeach Lula with her prior deposition testimony based on medical records stating that Nealy's condition "changed significantly" in August, sometime after the change in beneficiary designation, to which Lula responded that it did, but regardless of whether Nealy's condition worsened in August, that does not detract from the credible testimony of Nadine and Lula concerning the severity of the symptoms as they existed in the days immediately preceding the beneficiary designation. Tr., Day 1, pp. 236-37.

place, and time, meaning she could answer who she was, where, she was, and generally what month and year it was, although Dr. Gade did note it took her a significant amount of time to realize where she was. Tr., Day 1, pp. 32, 177-78. Nealy also evinced some basic recognition that she was "slowing down." Tr., Day 1, pp. 179-80. When asked who the President of the United States was, Nealy responded that it was "Trump" but "he's not my president." Tr., Day 1, pp. 127, 178.

First of all, it is clear that Dr. Gade did not mean "completely" in a literal sense. As he later clarified, someone who was, as he put it, "completely cognitively impaired" could nonetheless process some information, even though she could not process a "more complex question." Tr., Day 1, pp. 180, 191. This is entirely consistent with Dr. Gade's direct testimony that Nealy's executive functioning was compromised due to the significant cerebral atrophy in her hippocampus region. Tr. Day 1, p. 173. This affected her decision making capabilities and "higher level functioning[,]" but not "so much orientation." Tr. Day 1, pp. 173-74. Thus, while Nealy could process basic information, albeit with "significant difficulty," Tr. Day 1, p. 191, in Dr. Gade's opinion, she could not adequately appreciate the significance of her IRA beneficiary designation, a more complex challenge than mere orientation to time, place, or person. Tr. Day 1, pp. 175-76, 191.

Parker makes much of Dr. Gade's testimony that Nealy "did admit to some cognitive decline" and recognized she was "slowing" at the July 15th appointment. Tr., Day 1, pp. 179-80. Parker's argument suggests that if she was able to recognize that she was slowing down, she possessed the requisite testamentary capacity to amend the beneficiary designation on her IRA. Upon closer consideration, however, this testimony is not the smoking gun that Parker would make it out to be. It is not apparent from Dr. Gade's notes the degree to which Nealy comprehended her decline. Had Dr. Gade asked her an open-ended question, then her response would be more probative of her mental state because it would require Nealy herself to articulate the answer using more complex words and thoughts. On the other hand, a mere "yes or no" question does not reveal whether Nealy fully comprehended the severity of her decline or even fully understood the question for that matter. The Court cannot glean from Dr. Gade's notes the precise nature of Nealy's response nor how it was solicited. It also is unclear the extent to which Nealy would have been more aware than usual of her condition in that moment given the conversations taking place around her at the appointment, which would naturally have been focused on her declining health.

Parker's argument is also undercut by Plaintiff's Exhibit 20, the notes from Nealy's July 2nd emergency room visit, Tr., Day 2, p. 77, which indicate that "[t]he patient does not feel she's been confused, but the husband does. He said she'll repeat questions seems to be more confused and this is worsening." Pl.'s Ex. 20. Not only does this indicate that Nealy was unaware of her decline nearly two weeks before the visit with Dr. Gade, it also shows that Ray himself was well aware of this fact, substantially discrediting his argument to the contrary.

It is worth recalling that, while testamentary capacity is a low standard, it is not without teeth. A testator must still possess "an intelligent knowledge" of their family, their property, and what they want done with it. *Bosley*, 26 A.3d at 1111-12. That Nealy may have had a basic understanding that she was slowing down does not automatically translate into

evidence that she had an intelligent understanding of her IRA, the identities of her loved ones, and how she wished to divide the proceeds from her IRA amongst them upon her death. Dr. Gade's notes from July 15th that Nealy admitted to some cognitive decline are thus of limited persuasive value and do not particularly tip the scales in Parker's favor.

Perhaps Parker's best evidence is Nealy's statement that President Trump was "not my president." Tr., Day 1, pp. 127, 178. On the one hand, this suggests the ability to appreciate more complex thought and emotion than merely identity. On the other hand, her response might be considered a mere visceral reaction to a polarized and ubiquitous figure. But in any event, this statement alone does not necessarily discredit Dr. Gade's testimony nor does it sufficiently rebut Leach's overarching claim of lack of capacity. Dr. Gade was entitled to his opinion as a qualified expert in the field of geriatrics, specifically with regard to the treatment of dementia, Tr., Day 1, 156, and his professional opinion was that, within a reasonable degree of medical certainly, Nealy's mind was inferior to normal minds when he examined her and that she lacked adequate freedom of thought and decision. Tr., Day 1, pp. 203-04. And while at times he waivered on whether he could opine with a reasonable degree of medical certainty as to her condition on July 19th, he was confident that Nealy would likely not have been able to fully recognize the nature of the property she possessed on that day, nor would she have been able to make a disposition of her property consistent with her desires, based upon his assessment of her four days earlier. Tr. Day 1, pp. 203-05, 208. The Court credits the testimony of Dr. Gade.

Parker also attempts to cast doubt upon Dr. Gade's (and by implication, Dr. Troutner's) assessment by highlighting a portion of the report of home healthcare nurse Robin Post. Post's report suggests that Nealy's principal diagnosis was hypotension with "mild cognitive impairment" listed as another pertinent diagnoses. Tr., Day 1, pp. 183-84.[11] She testified, however, that she had no control over the prioritization of the diagnoses, and that the order is determined by Medicare coding. Tr., Day 1, pp. 277-78. Moreover, Post's report based off of her July 23rd visit is consistent with the testimony of Nadine and Lula, and Dr. Gade himself testified it was consistent with his earlier assessment of Nealy on July 15th. Tr., Day 1, p. 197. In particular, Post observed that Nealy's coordination and balance were compromised, that she required help dressing, bathing, walking, and being transferred to the toilet, that her medication could not be administered on her own, and that her cognitive deficits were occurring on a daily basis. Tr., Day 1, pp. 197-201. Post's report, therefore, confirms, rather than undermines, the lay and expert evidence that Nealy was suffering from significant cognitive and physical impairment between July 15th and July 23rd.

Dr. Susan Troutner also testified as to Nealy's mental state during this time. Based upon the MRI, she noted that Nealy's cerebral volume loss was in the fourth percentile, meaning that only 4% of people suffer from a greater degree of brain atrophy, and that her hippocampus region fell within the tenth percentile. Tr., Day 1, pp. 27-28. She indicated that this constitutes a "very substantial" and "very significant" degree of brain volume loss. Like Dr. Gade,

[11] Whether Nealy's dementia on July 19th was properly categorized as clinically mild, moderate, or severe is of critical importance as testators in the early stages of dementia will typically be found to possess testamentary capacity. *See* WARREN F. GORMAN, M.D., *Testamentary Capacity in Alzheimer's Disease*, 4 ELDER L.J. 225, 234-35 (1996); LESLIE PICKERING FRANCIS, *Decisionmaking at the End of Life: Patients with Alzheimer's or Other Dementias*, 35 GA. L. REV. 539, 548-49 (2001).

she testified that this kind and level of cerebral atrophy would translate to deterioration in memory, ability to access information, and "deterioration in higher-order skills, the ability to think, reason, problem solve, organize." Tr., Day 1, pp. 42-43. That Nealy was oriented to person, place, and time at Dr. Gade's appointment was not necessarily inconsistent or surprising given that answering these questions do not involve "high levels" of awareness. Tr., Day 1, pp. 32-33.

She also opined that by the time of her examination on August 12th Nealy's condition had further deteriorated since Dr. Gade had assessed her nearly one month earlier. Tr., Day 1, p. 36. Indeed, by August 12th Nealy "was not able to verbalize any responses that would indicate that she was oriented to self, location, or time" and the clearest verbal response she was able to vocalize was her daughter's name and her relationship to Nealy. Tr., Day 1, p. 35. This unusually rapid decline was due to the precise nature of her dementia, a "prion," which Dr. Troutner defined as a form of rapid-onset dementia occurring over a six to twelve-month period, as opposed to an Alzheimer's process, which would occur over seven to nine years. Tr., Day 1, pp. 54-55. All of this corroborates the testimony of Dr. Gade as well as the observations of Nadine and Lula.

Dr. Troutner's understanding of capacity did appear to differ somewhat from the legal definition of testamentary capacity. In evaluating capacity, she noted:

> I'm looking for what their overall general cognitive functioning is, because…if you're basing it on the moment of presentation, that decision can vary. And in my opinion, that does not represent capacity. It has to be an ability to make consistent decisions. And that's really representative of comprehending information, being able to weigh the pros and cons and communicate a choice.

Tr., Day 1, p. 42. This is not completely congruent with the legal concept of capacity, which is determined by the condition of the individual at the very time she executes the instrument in question. *Estate of Vanoni*, 798 A.2d at 210. In this regard, the Court must be mindful that "[c]redibility is not a substitute for competency." *In re Adoption of C.M.*, --- A.3d ---, 2021 WL 3073624, *17 (Pa. 2021). While Dr. Troutner is qualified to provide an opinion as to psychological matters, it is for the Court to determine, based on the evidence, including Dr. Troutner's clinical assessment, whether Nealy had the requisite capacity to change the beneficiary designation on her IRA on July 19, 2019.

That being said, Dr. Troutner's testimony is not only relevant, but probative, of the question of Nealy's state of mind on July 19th because, as previously explained, "evidence of capacity or incapacity for a reasonable time before and after execution" can be "indicative of capacity." *Kuzma's Estate*, 408 A.2d at 1371. Dr. Troutner recognized the limits of her ability to render an opinion, noting that she would have no way of knowing whether Nealy, on July 19th, understood the nature of her estate and to whom she wanted her IRA funds to go precisely because she had no occasion to interact with her on that day. Tr., Day 1, pp. 44, 57. Yet, she was able to confidently opine that Nealy "certainly did not" have the capacity on August 12, 2019, and likely did not have capacity on August 1, 2019, based upon the geriatric assessment and Mini-Mental Status examination conducted at the Cleveland Clinic

on that day. Tr., Day 1, pp. 43-44. In light of the progressive nature of Nealy's condition and the level of cerebral atrophy documented on August 1st and 2nd, she was also able to testify that "there's enough here that you would have to seriously question what someone's capacity was" on July 19th. Tr., Day 1, p. 45. All things considered, the Court finds Dr. Troutner to be credible and finds her testimony to be based on observations sufficiently close in time to July 19th to be probative of Nealy's state of mind on that date.

Additionally, check No.1168 included in Plaintiff's Exhibit 19, also provides further evidence that Nealy was not of sound mind, at least as of July 21st. While the body of the check was written by Ray, the signature's is in Nealy's hand, as is apparent from a comparison to the signature on Check No. 1167, written on July 7th. Pl.'s Ex. 19. However, the signature on Check No. 1168 reads "Nealy Leach-Parker" not her actual name of Nealy Leach-Ruff, as she signed on Check No. 1167. Pl.'s Ex. 19. Ray admitted that Nealy had never gone by the name "Nealy Leach-Parker" and appeared to the Court to have just realized this fact when it was brought to his attention at trial. Tr. Day 2, p. 65. This evidence establishes that on July 21, 2019, just two days after the change of beneficiary designation, Nealy did not even know her own name.

Taking into account the testimony of Dr. Gade, Dr. Troutner, Nadine, Lula, and even Parker's own witness, Robin Post, all of which is based on personal observations of Nealy reasonably close in time to July 19th, as well as the Plaintiff's various exhibits, the evidence establishes that Nealy could not intelligently appreciate the objects of her bounty, the nature of her property, including her IRA, and what she wished to do with it on the day the change of beneficiary designation was executed.

While Parker may question the degree of Nealy's cognitive impairment as of July 19th, he cannot dispute that Nealy was in the midst of a rapid mental and physical decline by that time. *See* Tr., Day 1, p. 14 ("I don't think there's any question that Miss Leach-Ruff was cognitively impaired."). Unsurprisingly then, Parker's argument is more nuanced. He contends that in the course of a mental decline "there are going to be days that are better than other days" and that Nealy was experiencing one of these so-called "good days" when she added him as a co-beneficiary to the IRA. Tr., Day 1, p. 17.

To Parker's credit, Dr. Troutner did testify that such occurrences are not uncommon in dementia patients. She explained "[y]ou will see that with any type of a dementia. Any type of progressive dementia, you will have days someone is doing better and days where they're struggling more." Tr., Day 1, p. 40. She further opined that a dementia patient's capacity can vary depending on "the moment of presentation." Tr., Day 1, p. 42.[12] The Court thus accepts that such "good days" or "moments of clarity" were a medical possibility in this case.

Pennsylvania law has long recognized that individuals normally incapacitated by reason of illness may nonetheless be subject to so-called "lucid intervals." A lucid interval is defined as "a full return of the mind to a state where a party is in possession of the powers

[12] At first glance, Dr. Gade's testimony may appear to conflict with Dr. Troutner on this point. When asked whether he would disagree if another witness testified to Nealy's decline "not being a consistent downward decline in cognitive abilities[,]" he stated that he would disagree with that conclusion, Tr., Day 1, p. 209, but Dr. Troutner made no such conclusion. Rather, her testimony was that it was progressive, so much so that she determined further neuropsychological testing would have been inappropriate. Tr., Day 1, pp. 30, 36. As such, Dr. Troutner's conclusion that an individual will have "good days and bad days" in "any form of progressive dementia" is not inconsistent with Dr. Gade's conclusion that the progression was a "downward decline." Tr., Day 1, pp. 40, 209.

of his mind enabling him to understand and transact his affairs as usual." *In re Meyers*, 189 A.2d 852, 863, n.17 (Pa. 1963) (citation and internal quotation marks omitted). "The lucid interval…has been likened to an interval of sunshine during a storm." WARREN F. GORMAN, M.D., *Testamentary Capacity in Alzheimer's Disease*, 4 ELDER L.J. 225, 234 (1996) (citing the Oxford English Dictionary). Throughout the 19th and early-to-mid 20th centuries, Pennsylvania courts routinely upheld the legal validity of instruments signed by individuals experiencing lucid intervals. *See, e.g, In re Gangwere's Estate*, 14 Pa. 417, 417 (Pa. 1850) (noting "[a]n act done in a lucid interval by one who has been found to be a lunatic, is binding on him, but the proof of the lucid interval in which it was done, must be clear."); *Thompson v. Kyner*, 65 Pa. 368, 381 (Pa. 1870) (holding "[t]here was no evidence whatever of previous dementia, and consequently…the necessity of proving a lucid interval was not therefore in the case."); *Aggas v. Munnell*, 152 A. 840, 844 (Pa. 1930) (holding "[t]here was in the instant case no such proof of general insanity as to cast upon proponent the burden of showing a lucid interval when the will was executed.").

For instance, in *Meyers*, the principal beneficiary of an *inter vivos* trust, who also happened to be the settlor of the trust, and who had been institutionalized for four years prior to the trust's creation on account of paranoid schizophrenia, brought an action to rescind the trust on the grounds that she lacked the capacity to execute the original trust deed in the first place. 189 A.2d at 853-55. The Court explained that "[o]rdinarily, the mental competency of a person who executes an instrument is presumed and the burden of proof is upon the person who alleges incompetency[,]" but after that initial burden was satisfied, the burden then shifted to the party alleging competency to show by clear and convincing evidence that they retained "the ability to understand and appreciate the nature and effect of the trust agreement" by virtue of a lucid interval. *Id.* at 858-59 (emphasis omitted).

Noting that evidence of capacity or incapacity from a reasonable time before and after the date of execution was "admissible as indicative of capacity or lack of it on the particular day" the Court noted "[a] review of this record clearly indicates, as found by the court below, that shortly before and after [the date of execution] appellant was mentally incompetent." *Id.* at 860, 862. Nonetheless, noting oral testimony credited by the trial court that the settlor appeared of sound mind when she executed the trust deed, the Court upheld the trial court's finding that the proponent of the trust had proven a lucid interval by clear and convincing evidence, despite a finding of mental incompetency in the time shortly before and after the execution date. *Id.* at 863.

Although the term "lucid interval" appears less frequently in contemporary cases, it has not been repudiated. As recently as the 1980s, our Supreme Court has stated in the context of a dementia case:

> The ultimate issue was not whether Weir was suffering from Alzheimer's disease at the time of the conveyances as testified to by the expert. Neither was it whether Weir had previously engaged in bizarre behavior, as testified by other lay witnesses. One may accept those as facts and still conclude, as the trial court did, that Weir was competent at the time of the conveyances, based on the evidence that although the disease caused him to be confused at times, it left him lucid at others. There is no necessary conflict in the positions.

Weir by Gasper v. Estate of Ciao, 556 A.2d 819, 825 (Pa. 1989). The operative question is whether the individual possess capacity at the "very time" of the instrument's execution. *In re Hasting's Estate*, 387 A.2d 865, 867 (Pa. 1978). Implicit in this focus on the moment of execution is the concept of the lucid interval. The Court will therefore consider any evidence that Nealy was experiencing a "good day" on July 19, 2019.

Parker offers two witnesses to support his claim of a lucid interval. First, he offers his own testimony. He testified that on the morning of July 19th he woke her up, and to his astonishment, Nealy showered (and presumably dressed) by herself, came downstairs by herself, and fed herself breakfast without any assistance. Tr., Day 2, pp. 40, 89-90. She then told Ray, "I want you to take me somewhere" and Ray acquiesced without initially inquiring where exactly she wanted to go. Tr., Day 2, p. 41. Once they were in the car, Ray asked where they were going and Nealy told him to go to the Credit Union, where he assumed she would be going to the ATM. Tr., Day 2, p. 41. But when they arrived at the bank, Nealy wanted to go inside. Tr., Day 2, p. 41. Nealy proceeded to tell the receptionist that she wanted to speak to them about her IRA "or something like that" although he "seriously paid no attention to what she was there for." Tr., Day 2, p. 42. When Nealy explained that she wished to add Ray and her son Matt as beneficiaries of her IRA, Ray was "shocked." Tr., Day 2, p. 42. On the way home from the bank, Ray asked Nealy "why you putting me on there?" to which she responded "because I want you to have something." Tr. Day 2, p. 43. Ray warned her that Nadine was "going to fly off" but Nealy responded "that's my money, not Nadine's." Tr., Day 2, p. 43.

Ray claims Nealy started to significantly deteriorate by the end of July, although "she kept her mind" until close to the very end. Tr. Day 2, p. 43. As the end drew near, however, Ray claims that Nealy stated on "several occasions" that she wanted Ray to stay in the house, and that Nadine reassured her mother that she would never force him to leave; nonetheless, Nadine informed Ray via text message three days after Nealy's burial that he had thirty days to vacate the residence. Tr., Day 2, pp. 44-45.

The Court finds, however, that Ray's version of events is incredible, uncorroborated, and self-serving. First of all, his testimony regarding Nealy's mental state on the weekend of July 19th is inconsistent with Lula's observations of Nealy during the time Nadine and Alfonso were away in Atlanta from July 17th to July 21st. Lula testified that when she went to see her sister while Nadine and Alfonso were in Atlanta, she questioned whether Nealy even knew who she was and asked her to identify her by name; in response, Nealy stared for a long while "like she was in space" before finally saying her name. Tr., Day 2, pp. 236, 238. Of course, Lula could not identify whether this visit occurred July 19th or some other day that week, so this alone does not preclude a finding of a lucid interval on that day; however, other aspects of Ray's testimony are inconsistent as well. For example, Ray claims Nealy "kept her mind almost to the end, till she went into intensive care[,]" and that Nealy stated several times to Nadine that she wished for Ray to stay in the residence after her death, Tr., Day 2, pp. 44-45, 99, but Dr. Troutner opined that Nealy was no longer oriented to person, place, or time when she examined her on August 12th and could barely verbalize any responses by that point. Tr., Day 1, p. 35. It belies the medical reality of the situation to assume that Nealy experienced several lucid intervals during the late stages of

her dementia, moments of "sunshine during a storm" in which, apparently (and conveniently for Ray), the most pressing issue on Nealy's mind was Ray's future living arrangements.

Ray was also forced to double back on some of his original testimony. For instance, he first claimed that Nealy was able to walk into the bank. Tr., Day 2, p. 41. Yet, when confronted with his deposition testimony stating that he assisted her walking into the bank, his response was inconsistent, stating "I didn't have to assist her. I was with her. No. I'd assist her, hold her hand, and stuff." Tr., Day 2, p. 90. After reviewing his prior deposition testimony, he then admitted "Okay. Yes; I assisted her. Yeah; I assisted her…I assisted her walking into the bank. I opened the car door." Tr., Day 2, p. 93; Pl.'s Ex. 21, p. 24.

Most damning to Ray's credibility, however, is the fact that he was less than honest about a material aspect of his testimony. Ray testified that Nealy was capable of writing a check on July 19, 2019. Tr. Day 2, pp. 62-63. Ray was then confronted with Check No. 1168, dated July 21, 2019, and made out to "Saint James" for "tith," which he admitted was in his handwriting and meant "tithe." Tr., Day 2, pp. 64, 106; Pl.'s Ex. 19. He explained "this is what we did a lot of the times. We both paid tithes. We paid tithes together. And I write the check out, at times, and then she sign it." Tr., Day 2, p. 69. When confronted with the fact that, up until the date of her death, Check No. 1168 was the only check not in Nealy's handwriting, he could suddenly not recall whether he had ever written a check for Nealy in the past. Tr., Day 2, pp. 69-70. Although perhaps not reflected in the transcript of the proceedings, the Court observed that during the tense few minutes of cross-examination on this subject, Ray appeared taken off-guard by the questions related to Check 1168 and took long pauses in answering certain questions, and it was visible to the Court that Mr. Parker realized he had been caught in a lie. Finding that Ray was disingenuous with the Court on this question, the Court questions the credibility of his entire testimony, including his testimony that Nealy was lucid and had capacity to designate him as a co-beneficiary on July 19, 2019. *See McMichael v. McMichael*, 241 A.3d 582, 589 n.5 (Pa. 2020) (noting that under the legal precept *Falsus in uno, falsus in omnibus*, which translates to 'false in one, false in all,' where a witness testifies falsely to any material fact, the factfinder may disregard all the witness's testimony).

But Parker also presented another witness in support of his lucid interval argument. He offered Katelyn McKinney, the member service officer at the Credit Union who witnessed the change of beneficiary designation. Tr., Day 2, p. 5; Def.'s Ex. A. McKinney testified that she assisted Nealy in amending her IRA beneficiary designation to include Ray, and that she also desired to add her son, but that he could not be added because Nealy did not have his social security number. Tr., Day 2, p. 11. She further testified that Nealy appeared physically normal to her, she recalled no change in her behavior from what she had seen before, and if she had any concerns, she would have brought them to the attention of her manager. Tr., Day 2, p. 14. If credible, McKinney's testimony would be entitled to great weight as evidence of Nealy's state of mind at the very moment she executed the beneficiary designation.

However, various considerations lead the Court to find the testimony of Ms. McKinney unreliable. First, McKinney testified that she was with Nealy for only about 15 to 20 minutes in total. Tr., Day 2, p. 13. She could not clearly remember certain aspects of the transaction, particularly the initial greeting, and whether she met Nealy and Ray outside of her office

or whether they came to her. Tr., Day 2, p. 9. When asked when Nealy arrived at the bank, she first responded "I don't remember the time." Tr., Day 2, pp. 8-9. Then when prompted "Morning, afternoon?" she responded "Afternoon, maybe?" Tr., Day 2, p. 9. The Court recalls that, in responding, McKinney looked to Parker's counsel as if for confirmation that she was correct. She seemed less than sure of other answers too. *See* Tr., Day 2, p. 10 (stating "[f]rom what I recall, she walked."). At one point, she admitted her recollection of events was foggy due to the passage of time, noting "[w]hen we first talked it was soon after the transaction, and then because of Covid, it's been a while[.]" Tr., Day 2, p. 16.

McKinney may also have been distracted due to her recent enrollment in nursing school; her last day working at the Credit Union was only one week later on July 26, 2019. Tr., Day 2, p. 18. Moreover, she lacked the proper perspective and knowledge concerning Nealy's medical situation that would have alerted her to be on the lookout for suspicious behavior. For example, she testified that she noticed Nealy had broken her finger because it was in a splint, however, McKinney simply asked her what happened and, as far as she can remember, did not pursue the issue further. Tr., Day 2, p. 19. Had McKinney known about Nealy's dementia diagnosis, perhaps she would have inquired deeper into Nealy's mental state, which likely contributed to Nealy breaking her finger, and then consulted with her manager before proceeding with the transaction.

McKinney also testified that Nealy introduced her husband as "Willie." Tr. Day 2, pp. 10, 16. But no one, especially Nealy, ever referred to Mr. Parker by the name Willie; rather, he is commonly known as "Ray," and almost certainly would have been introduced as such. Tr., Day 2, p. 101. In fact, it was suggested that the rest of Nealy's family did not even know Mr. Parker's first name was actually Willie until they saw the change of beneficiary form, and even Ray was forced to concede on cross-examination that if Nealy were to introduce him to someone else "[s]he going to say Ray." Tr., Day 2, pp. 102-03. McKinney obviously lacked the fore-knowledge and proper perspective that would have raised a red flag by Nealy introducing Ray by another name. These concerns render McKinney's testimony unreliable.

As our Supreme Court explained in the context of another challenge to testamentary capacity:

> This court's unwillingness to give controlling weight to the testimony of persons who witnessed the events…was not entirely a matter of disbelieving them. The court was undoubtedly influenced also by the realization that some of these witnesses were not in a position to evaluate properly testatrix's testamentary capacity because they were either not adequately aware of her mental condition or were totally ignorant of it.

Hunter's Estate, 205 A.2d at 102-03. Although "credibility and persuasiveness are closely bound concepts" and "sometimes treated interchangeably," they are technically distinct:

> Suppose a plaintiff is doing her best to recount a car accident to prove her case for damages. She testifies earnestly that she thought the traffic light was green when she entered an intersection. The plaintiff says she was then broadsided by the defendant who was traveling on a cross street and ran a red light. Later in the proceedings, however,

the defendant presents video footage and the testimony of other witnesses, all of which show that it was really the plaintiff who drove through a red light and the defendant who had the right of way. It's easy enough to imagine that a factfinder might not describe the plaintiff as lacking credibility — in the sense that she was lying or not "worthy of belief," Black's Law Dictionary 448 (10th ed. 2014) (defining "credibility") — yet find that her testimony on a key fact was outweighed by other evidence and thus unpersuasive or insufficient to prove the defendant's liability. It's not always the case that credibility equals factual accuracy, nor does it guarantee a legal victory.

Garland v. Ming Dai, 141 S. Ct. 1669, 1680-81 (2021). Such is the case with McKinney's testimony. Although one could say McKinney's testimony was credible in the sense that it was her subjectively honest recollection of events, the Court finds she nevertheless lacked the proper knowledge and perspective concerning Nealy's condition to make a reliable assessment of Nealy's mental state and capacity to execute the change of beneficiary designation on July 19th or whether she was experiencing a lucid interval on that day.

Without the benefit of the testimony of Mr. Parker or Ms. McKinney, there is a complete lack of evidence — let alone clear and convincing evidence — of a lucid interval on July 19, 2019. Moreover, without sufficient proof that Nealy was experiencing a lucid interval, the Court is left with the overwhelming evidence from the days immediately preceding and following the change in beneficiary designation that Nealy was mentally incapacitated to the point she could not intelligently appreciate the objects of her bounty, her property, including her IRA, and how she wished to dispose of it on upon her death. As such, Leach has proven Nealy's lack of capacity on July 19, 2019, by clear and convincing evidence, evidence which Parker fails to rebut.

The Court does not reach this conclusion lightly. Reticent to disturb the presumptively valid final wishes of this decedent, the Court nonetheless concludes that the reliable evidence presented at trial established that Nealy lacked testamentary capacity to amend the beneficiary designation on her IRA that day. Consequently, the Court is constrained to hold that the designation of Willie Ray Parker as a co-beneficiary to that instrument was null and void under the law and that Nadine Leach remains the only legally valid beneficiary named to that account. She is thus entitled to the entirety of the proceeds from the IRA. Pl.'s Ex. 14.

V. CONCLUSION

Freedom of testation is of paramount concern, but it is not without limits. While Plaintiff has not offered sufficient evidence to make out her *prima facie* case of undue influence, she has nevertheless provided clear and convincing evidence that Nealy Leach-Ruff could not intelligently appreciate the natural objects of her bounty, the composition of her property, particularly her IRA, nor what she wished to do with it on July 19, 2019, as a result of rapid-onset dementia. For his part, Defendant offers no reliable evidence to the contrary. Therefore, the Court finds Nealy lacked the capacity to change the beneficiary designation on the IRA on the day in question, and as a result, the designation of Willie Ray Parker as a co-beneficiary on the account was legally invalid.

It is so ordered.

BY THE COURT
/s/ **Marshall J. Piccinini, Judge**

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania 11753-21
Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Elijah Korde Davis-Williams to Elijah Korde Davis.
The Court has fixed the 29th day of October, 2021 at 9:00 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Oct. 22

CHANGE OF NAME NOTICE

In the Court of Common Pleas of Erie County, Pennsylvania 11950-21
Notice is hereby given that a Petition was filed in the above named court requesting an Order to change the name of Madison Grace Newport to Miles Lee Newport.
The Court has fixed the 28th day of October, 2021 at 9:00 a.m. in Court Room G, Room 222, of the Erie County Court House, 140 West 6th Street, Erie, Pennsylvania 16501 as the time and place for the Hearing on said Petition, when and where all interested parties may appear and show cause, if any they have, why the prayer of the Petitioner should not be granted.

Oct. 22

INCORPORATION NOTICE

Notice is given that Articles of Incorporation of JayT Anesthesia Services Professional Corporation have been filed with the Pennsylvania Department of State, and the corporation has been incorporated under the provisions of the Business Corporation Law of 1988.

Oct. 22

LEGAL NOTICE

NOTICE OF SUBMISSION AND REQUEST FOR PUBLIC COMMENT:
Notice of Submission for Approval of Proposed Sale and Transfer of Operations of LIFE-NWPA and related changes to and distributions of nonprofit corporation assets
Submitted by The Lutheran Home for the Aged of Erie, Pennsylvania d/b/a LIFE-Northwestern Pennsylvania
To the Office of the Attorney General of the Commonwealth of Pennsylvania and Request for Public Comment
The Lutheran Home for the Aged of Erie, Pennsylvania, a Pennsylvania nonprofit, charitable corporation, pursuant to the "Review Protocol for Fundamental Change Transactions Affecting Health Care Non-profits," has submitted a request to the Office of Attorney General ("OAG") for review and approval of: (a) the sale and transfer of operations of its LIFE-NWPA operations in Erie, Elk, Clarion, Clearfield, Crawford, Forest, Jefferson, Mercer, Venango and Warren Counties, Pennsylvania to FFL Pace Buyer, Inc., a Delaware for-profit corporation; (b) the transfer of charitable trusts for the benefit of The Lutheran Home for the Aged of Erie, Pennsylvania to The Lutheran Foundation for Long-Term Living, a Pennsylvania nonprofit corporation; (c) the conversion of The Lutheran Home for the Aged of Erie, Pennsylvania into a for-profit LLC, Lutheran Home for the Aged, LLC, whose sole member is The Lutheran Foundation for Long-Term Living; (d) the sale of the Foundation's membership interests in Lutheran Home for the Aged, LLC to FFL Pace Buyer, Inc.; and (e) payment of the Purchase Price for the entire sale transaction by FFL Pace Buyer, Inc. to The Lutheran Foundation for Long-Term Living for use for its charitable purposes.
The OAG must review this transaction to ensure that the public interest in the charitable assets of the nonprofit organizations are fully protected and used for their proper charitable purpose and also to determine whether the proposed transaction will adversely affect the availability or accessibility of health care in the affected community or region. The OAG will review all public comments prior to making a final decision on the Submission.
Comments to the Submission must be received on or before November 10, 2021 and should be directed to the following:
Gene J. Herne, Esquire
Senior Deputy
Attorney General-in-Charge
Charitable Trusts and
Organizations Section
Office of Attorney General
Commonwealth of Pennsylvania
1251 Waterfront Plaza,
Mezzanine Level
Pittsburgh, PA 15222
eherne@attorneygeneral.gov
Daniel K. Natirboff, Esquire
CAPOZZI ADLER, P.C.
2933 North Front Street
Harrisburg, PA 17110-1250
Phone: 717-233-4101
Facsimile: 717-233-4103
Dann@CapozziAdler.com

Oct. 15, 22, 29

AUDIT LIST
NOTICE BY
KENNETH J. GAMBLE
Clerk of Records
Register of Wills and Ex-Officio Clerk of the Orphans' Court Division, of the Court of Common Pleas of Erie County, Pennsylvania

The following Executors, Administrators, Guardians and Trustees have filed their Accounts in the Office of the Clerk of Records, Register of Wills and Orphans' Court Division and the same will be presented to the Orphans' Court of Erie County at the Court House, City of Erie, on **Wednesday, October 6, 2021** and confirmed Nisi.

November 17, 2021 is the last day on which Objections may be filed to any of these accounts.

Accounts in proper form and to which no Objections are filed will be audited and confirmed absolutely. A time will be fixed for auditing and taking of testimony where necessary in all other accounts.

2021	ESTATE	ACCOUNTANT	ATTORNEY
264	Paul Michael Newell a/k/a Paul M. Newell a/k/a Paul M. Newell, M.D.	Thomas M. Newell Executor	Melissa L. Larese, Esq.

KENNETH J. GAMBLE
Clerk of Records
Register of Wills &
Orphans' Court Division

Oct. 15, 22

ESTATE NOTICES

Notice is hereby given that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same and all persons indebted to said estates are requested to make payment without delay to the executors or their attorneys named below.

FIRST PUBLICATION

EBERT, BERTELLE J., a/k/a BERTELLE EBERT, deceased
Late of the City of Erie, Commonwealth of Pennsylvania
Executor: Glenn D. Ebert, c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509
Attorney: Richard A. Vendetti, Esquire, Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509

JOINT, WILLIAM ELLSWORTH, a/k/a WILLIAM E. JOINT, a/k/a WILLIAM JOINT, deceased
Late of the City of Erie, Commonwealth of Pennsylvania
Administrator: Robert J. Joint, Jr., c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509
Attorney: Richard A. Vendetti, Esquire, Vendetti & Vendetti, 3820 Liberty Street, Erie, PA 16509

KREGER, PAUL E., a/k/a PAUL ELMER KREGER, deceased
Late of the Township of Lawrence Park, County of Erie, Commonwealth of Pennsylvania
Executor: Stephen T. Kreger, P.O. Box 11658, Blacksburg, VA 24063
Attorney: Valerie H. Kuntz, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

LEWIS, BERTHA M., a/k/a BERTHA LEWIS, a/k/a BERTHA MAE LEWIS, deceased
Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executrix: Janet M. Kinney
Attorney: David R. Rhodes, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

LEWKOWICZ, JOAN R., deceased
Late of Fairview Township, County of Erie, and State of Pennsylvania
Administrator: Robert Lewkowicz, 75 N. Plymouth Ave., Rochester, NY 14614
Attorney: Tina Fryling, Esq., 4402 Peach Street, Suite 3, Erie, PA 16509

LOMBARDO, RICHARD ANTHONY, a/k/a RICHARD A. LOMBARDO, deceased
Late of the Township of Millcreek, County of Erie, Commonwealth of Pennsylvania
Co-Executrices: Antoinette M. Emanuel and Lia E. Peterson, c/o Marnen, Mioduszewski, Bordonaro, Wagner & Sinnott, LLC, 516 West Tenth Street, Erie, PA 16502
Attorney: Joseph E. Sinnott, Esq., Marnen, Mioduszewski, Bordonaro, Wagner & Sinnott, LLC, 516 West Tenth Street, Erie, PA 16502

NIHLL, JESSICCALYNN, a/k/a JESSICALYNN NIHLL, a/k/a JESSICA NIHILL, deceased
Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Administrator: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

PERSONS, JAMES H., deceased
Late of Waterford Borough, County of Erie and Commonwealth of Pennsylvania
Executrix: Vickie L. Babcock, c/o W. Atchley Holmes, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: W. Atchley Holmes, Esq., MARSH, SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

STEINHAUSER, CHARLES A., deceased
Late of Fairview Township, County of Erie and Commonwealth of Pennsylvania
Administrator: Charles E. Steinhauser, c/o 504 State Street, Suite 300, Erie, PA 16501
Attorney: Alan Natalie, Esquire, 504 State Street, Suite 300, Erie, PA 16501

WHITEHILL, DONA J., deceased
Late of the Township of Fairview, County of Erie and Commonwealth of Pennsylvania
Executor: Keith C. Gourley, c/o Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508
Attorney: Darlene M. Vlahos, Esq., Vlahos Law Firm, P.C., 3305 Pittsburgh Avenue, Erie, PA 16508

SECOND PUBLICATION

BRACE, CRAIG A., deceased
Late of Waterford Borough, County of Erie and Commonwealth of Pennsylvania
Executor: Darrell L. Brace, c/o James E. Marsh, Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: James E. Marsh, Jr., Esq., MARSH SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

CORAPI, MARGARET,
deceased
Late of Summit Township, County of Erie and Commonwealth of Pennsylvania
Co-executors: Thomas Paul Corapi, Jr., 5510 Bondy Drive, Erie, PA 16509 and Dina Marie White, c/o Thomas Paul Corapi, Jr., 5510 Bondy Drive, Erie, PA 16509
Attorney: None

FOGLE, WILLIAM E., a/k/a WILLIAM EDWARD FOGLE,
deceased
Late of the Township of Edinboro, County of Erie, Commonwealth of Pennsylvania
Executrix: Catherine L. Stemmler, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506
Attorney: Colleen R. Stumpf, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506

HILL, VIOLET C.,
deceased
Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Administratrix: Dawn Denning, 930 West 20th Street, Erie, PA 16502
Attorney: None

MAGUIRE, ELMER J., JR., a/k/a ELMER JOSEPH MAGUIRE, JR.,
deceased
Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Administrator: Kevin M. Monahan, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Kevin M. Monahan, Esq., MARSH SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

MARCY, FLOYD J.,
deceased
Late of East Haven, Connecticut
Administrator CTA: Donald Marcy, c/o Jeffrey D. Scibetta, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jeffrey D. Scibetta, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

MORGAN, DAVID M.,
deceased
Late of the City of Erie, County of Erie and Commonwealth of Pennsylvania
Executrix: Garrett D. Morgan
Attorney: James H. Richardson, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

ORTON, BOBBIE L.,
deceased
Late of the Township of North East, County of Erie, Commonwealth of Pennsylvania
Executrix: Michelle Harper, c/o Leigh Ann Orton, Esquire, Orton & Orton, 68 East Main Street, North East, PA 16428
Attorney: Leigh Ann Orton, Esquire, Orton & Orton, 68 East Main Street, North East, PA 16428

PASSAMONTE, EDWARD J., JR., a/k/a EDWARD J. PASSAMONTE,
deceased
Late of the Township of Greene, Commonwealth of Pennsylvania
Executrix: Virginia J. Passamonte, c/o Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509
Attorney: Richard A. Vendetti, Esquire, Vendetti & Vendetti, 3820 Liberty Street, Erie, Pennsylvania 16509

POSTLEWAITE, ETHEL MARIE, a/k/a ETHEL MARIE PIFER POSTLEWAITE, a/k/a MARIE POSTLEWAITE,
deceased
Late of Erie County
Administrator: Gary R. Postlewaite, 2058 Strong Road, Waterford, PA 16442
Attorney: Jay R. Hagerman, Esquire, Abernethy & Hagerman, LLC, 4499 Mt. Royal Blvd., Allison Park, PA 15101

ROBINSON, EDWARD A.,
deceased
Late of the City of Erie, County of Erie, Commonwealth of Pennsylvania
Executrix: Brittianie Jimenez-Canet, c/o John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507
Attorney: John J. Shimek, III, Esquire, Sterrett Mott Breski & Shimek, 345 West 6th Street, Erie, PA 16507

SENGER, MARIE T.,
deceased
Late of the City of Erie, Erie County, Commonwealth of Pennsylvania
Co-executors: John L. Senger and Gregory M. Senger, c/o Thomas C. Hoffman, II, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Thomas C. Hoffman, II, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

SMITH, WILLIAM H.,
deceased
Late of the Township of Fairview, County of Erie, Commonwealth of Pennsylvania
Executor: George T. Smith, Jr., 7316 Water Street, Fairview, PA 16415
Attorney: Brian M. McGowan, Esq., 8220 Old French Road, Erie, PA 16509

STEFANELLI, LEONARD A.,
deceased
Late of Fairview Township, County of Erie, Commonwealth of Pennsylvania
Executor: Charles Devine, c/o Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508
Attorney: Colleen R. Stumpf, Esq., Quinn, Buseck, Leemhuis, Toohey & Kroto, Inc., 2222 West Grandview Blvd., Erie, PA 16506-4508

SUTTO, LINDA JEAN,
deceased
Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Administratrix: Carol Sutto-Pugliese, c/o Kevin M. Monahan, Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: Kevin M. Monahan, Esq., MARSH SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

TROHOSKE, MYRTLE M., a/k/a MYRTLE M. SMITH, a/k/a MYRTLE MARIE TROHOSKE,
deceased
Late of the Township of Millcreek, County of Erie and Commonwealth of Pennsylvania
Executrix: Judy A. Kraus
Attorney: James H. Richardson, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

VROMAN, HUGH E.,
deceased
Late of Millcreek Township, Erie County, Pennsylvania
Co-executors: Kirk E. Vroman & Lori Sala, c/o Peter J. Sala, Esquire, 731 French Street, Erie, PA 16501
Attorney: Peter J. Sala, Esquire, 731 French Street, Erie, PA 16501

WASSINK, MICHAEL J.,
deceased
Late of Fairview Township, County of Erie and Commonwealth of Pennsylvania
Administratrix: Susan Hetz, 7000 Kreider Road, Fairview, PA 16415-2508
Attorneys: MacDonald, Illig, Jones & Britton LLP, 100 State Street, Suite 700, Erie, Pennsylvania 16507-1459

WICKWIRE, RANDY ALLAN,
deceased
Late of Millcreek Township, County of Erie and Commonwealth of Pennsylvania
Administratrix: Deborah A. Stripay, c/o 519 Court Place, Pittsburgh, PA 15219
Attorney: Michele McPeak Cromer, Esquire, Gaitens, Tucceri & Nicholas, P.C., 519 Court Place, Pittsburgh, PA 15219

THIRD PUBLICATION

CHURCHILL, REBECCA JEAN,
deceased
Late of the Borough of Wesleyville, County of Erie, Commonwealth of Pennsylvania
Administratrix: Desiree Palmer, c/o Steven Srnka, Esquire, Orton & Orton, LLC, 68 East Main Street, North East, PA 16428
Attorney: Steven Srnka, Esquire, Orton & Orton, LLC, 68 East Main Street, North East, PA 16428

COOK, LINDA J.,
deceased
Late of the City of Erie, County of Erie, and State of Pennsylvania
Executor: George M. Schroeck, c/o 117 West Seventh Street, Erie, Pennsylvania 16501
Attorneys: Schroeck & Associates, P.C., 117 West Seventh Street, Erie, Pennsylvania 16501

DISBROW, FRANCES M., a/k/a FRANCES DISBROW,
deceased
Late of the City of Erie, Erie County
Executor: Shawn M. Disbrow
Attorney: Steven E. George, Esq., Marsh Schaaf, LLP, 300 State Street, Suite 300, Erie, PA 16507

FOULK, JEAN ADELLA,
deceased
Late of the City of Erie
Executrix: Caroline Marie Foulk, 3613 Eliot Rd., Erie, PA 16508
Attorney: Michael A. Fetzner, Esquire, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

GERTZ, JOHN T.,
deceased
Late of Summit Township, County of Erie and Commonwealth of Pennsylvania
Executor: Joseph B. Gertz, c/o James E. Marsh Jr., Esq., Suite 300, 300 State Street, Erie, PA 16507
Attorney: James E. Marsh Jr., Esq., MARSH SCHAAF, LLP., Suite 300, 300 State Street, Erie, PA 16507

HUGHES, ERNEST W., a/k/a ERNEST HUGHES,
deceased
Late of the Township of Millcreek, Erie County, Commonwealth of Pennsylvania
Administrator C.T.A.: John Garrick, c/o Jerome C. Wegley, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

JASPER, JAMES H.,
deceased
Late of the Township of Girard, County of Erie and Commonwealth of Pennsylvania
Administrator: Andrew Jasper, c/o Anthony Angelone, Esquire, Law Office of Gery T. Nietupski, Esquire, LLC, 818 State Street, Suite A, Erie, PA 16501
Attorney: Anthony Angelone, Esquire, Law Office of Gery T. Nietupski, Esquire, LLC, 818 State Street, Suite A, Erie, PA 16501

LANE, CAROLYN A.,
deceased
Late of the Township of Harborcreek
Executrix: Katherine S. Delfino, 13 Wood Dr., Atkinson, NH 03811
Attorney: Michael A. Fetzner, Esquire, Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

LINDAHL, PHYLLIS,
deceased
Late of the Township of Millcreek, Erie County, Pennsylvania
Executrix: Kristine Balinski, c/o Martone & Peasley, 150 West Fifth Street, Erie, Pennsylvania 16507
Attorney: Joseph P. Martone, Esquire, Martone & Peasley, 150 West Fifth Street, Erie, Pennsylvania 16507

LONGO, CHRISTINE A.,
deceased
Late of the Township of Summit, County of Erie and Commonwealth of Pennsylvania
Executor: Vincent M. Mayer
Attorney: Thomas J. Minarcik, Esquire, ELDERKIN LAW FIRM, 456 West 6th Street, Erie, PA 16507

MILLER, DONALD L., a/k/a DONALD MILLER,
deceased
Late of the Township of Washington, County of Erie and State of Pennsylvania
Executor: David R. Devine, c/o David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412
Attorney: David R. Devine, Esq., 201 Erie Street, Edinboro, PA 16412

NELSON, SHIRLEY ANN, a/k/a SHIRLEY A. NELSON, a/k/a SHIRLEY NELSON,
deceased
Late of the Township of Springfield, County of Erie, Commonwealth of Pennsylvania
Executrix: Veronica Hershelman, 1211 Cherry Street, Lake City, PA 16423
Attorney: John M. Bartlett, Esq., 24 Main St. E., P.O. Box 87, Girard, PA 16417

SILVERTHORN, DANIEL S., a/k/a DANIEL STILWELL SILVERTHORN,
deceased
Late of Millcreek Township, Erie County, Pennsylvania
Executrix: Ann Marie Silverthorn, c/o Jerome C. Wegley, Esq., 120 West Tenth Street, Erie, PA 16501
Attorney: Jerome C. Wegley, Esq., Knox McLaughlin Gornall & Sennett, P.C., 120 West Tenth Street, Erie, PA 16501

CHANGES IN CONTACT INFORMATION OF ECBA MEMBERS

MICHELLE M. ALASKEY.....814-823-2223
P.O. Box 8966
Erie, PA 16506 ..... *michelle@alaskeylaw.com*

LIVE SEMINAR | ECBA ERIE COUNTY BAR ASSOCIATION

Authority to Sign Binding Documents

Wednesday, October 27, 2021

The Will J. Schaaf & Mary B. Schaaf Education Center at the ECBA, 429 West 6th Street, Erie, PA 16507

Registration: 3:45 p.m.

Seminar: 4:00 - 5:00 p.m.

Cost: $47 - ECBA Members (Judges & Attorneys) and their Non-attorney Staff
$60 - Non-members

Happy Hour to follow seminar.

1 Hour Substantive CLE Credit

Speakers:

Judy Nemeth started her title career in 1989 working at a large national title insurance and appraisal management company. She was the director of client relations at the time of her departure. Having opened and operated a successful title agency for others, Ms. Nemeth moved on to establish her own title insurance agency Timber Lake Recordings, which she owned and operated for more than 10 years. Currently, Ms. Nemeth is an agency manager sharing her years of extensive and varied experience in support of Old Republic Agents.

Eric J. Weinheimer, Esq. is an Assistant Vice President and Associate Underwriting Counsel for Old Republic National Title Insurance Company. Prior to joining Old Republic in 2013, he spent years searching residential titles in Allegheny and Butler counties. He also worked as an oil and gas abstractor in Butler County and wrote title opinions for a regional law firm in Pittsburgh. He graduated magna cum laude from the University of Dayton and went on to earn his JD from the Duquesne University School of Law. He is admitted to practice law in Pennsylvania. He is a member of PLTA and serves as a member of the Title Issues Committee and the Western PA Chapter. He is also a member of the Allegheny County Bar Association where he currently serves as secretary of the Real Property Section.

Seminar:

The program will explain who has the legal authority to sign binding documents when the parties are individuals, guardians, personal representatives, Trustees, Powers of Attorney and people with corporate officials. The correct parties must be identified in order to find the authorized signatories that can bind the parties.

REGISTER AT:
https://www.eriebar.com/events/public-registration/1743

LIVE
LUNCH-N-LEARN
SEMINAR

ECBA
ERIE COUNTY BAR ASSOCIATION

Economic Development Tools and Resources in Erie County: A Guide for Local Practitioners

Wednesday, November 3, 2021

The Will J. Schaaf & Mary B. Schaaf Education Center at the ECBA,
429 West 6th Street, Erie, PA 16507,
or **via Zoom**

Registration: 11:45 a.m.
Seminar: 12:00 - 1:30 p.m.
Cost: $70 - ECBA Members (Judges & Attorneys) and their Non-attorney Staff
$90 - Non-members

If attending in-person, a boxed lunch will be provided.

1.5 Hours Substantive CLE Credit

Seminar:

This seminar will provide attendees with information about what economic development tools and resources are available and provided by agencies tasked with helping grow business in the Erie community. This information will include information about state, federal, and local laws and regulations that could provide assistance to business clients of our local practitioners.

Speakers:

- **Del Birch**, Business Outreach Specialist - Economic Development, Erie Regional Chamber and Growth Partnership
- **Brad Gleason**, Director of Entrepreneurial Operations, Gannon University
- **Maggie Horne**, Director of Gannon University Small Business Development Center
- **Brian Slawin**, Director and Portfolio Manager, Ben Franklin Technology Partners, Central and Northern PA

Reservations due to the ECBA office by October 27, 2021.

REGISTER AT:
https://www.eriebar.com/events/public-registration/1746

WEEKLY WRAP-UP

October 22, 2021

Equipment rental espionage - When you think "construction equipment rental industry," you think "danger, intrigue and double-dealing," right? Brownstein Hyatt Farber Schreck filed an antitrust lawsuit Monday in Nevada District Court against Ahern Rentals. The suit accuses Ahern of sending four employees to competitor and plaintiff EquipmentShare.com in order to conduct a "sting" operation in which they purported to be willing to divulge Ahern's proprietary information in exchange for employment. Counsel have not yet appeared for the defendant. The case is 2:21-cv-01916, *Equipmentshare.com, Inc. v. Ahern Rentals Inc. et al.*

Typo in 1928 Supreme Court opinion created 'reign of error,' law prof says - A tiny typographical error in a 1928 U.S. Supreme Court opinion had a big impact after it was picked up in subsequent opinions and used to bolster arguments for property rights, a law professor has found. The initial slip opinion mistakenly substituted the word "property" for "properly." The sentence, as incorrectly published, read, "The right of the trustee to devote its land to any legitimate use is property within the protection of the Constitution." Read more ... https://www.abajournal.com/news/article/supreme-court-typo-in-1928-opinion-created-reign-of-error-law-prof-says

Arnold & Porter 'slipped' discovery documents into database without notice, referee says - Arnold & Porter Kaye Scholer "slipped" discovery documents into a federal multidistrict litigation database without notifying plaintiffs in a New York state opioid trial, according to a court referee who recommended monetary sanctions. Referee Joseph J. Maltese said the state plaintiffs had access to the database, but Arnold & Porter may have hoped that their lawyers were too preoccupied to notice them. As a result, Arnold & Porter was "deficient in not timely disclosing" the documents, which consisted of call notes by Endo Pharmaceuticals sales representatives, Maltese said. Read more ... https://www.abajournal.com/news/article/arnold-porter-slipped-discovery-documents-into-database-without-notice-referee-says

Something's fishy - It's time for a harrowing journey into the dark underbelly of the seafood distribution business. DLA Piper filed a fraud and conversion lawsuit Tuesday in California Central District Court on behalf of CJ Freshway America Corp., a food product distributor. The complaint accuses Meshquat International Trading Company and its president Ali Ownejazayeri of orchestrating a scheme to defraud CJ Freshway into paying more than $1 million for seafood products that the defendants never intended to deliver. Counsel have not yet appeared for the defendants. The case is 2:21-cv-08277, *CJ Freshway America Corporation v. Meshquat International Trading Company, LLC et al.*

BUSINESS PARTNERS

LAWPAY:
https://lawpay.com/member-programs/erie-county-bar

Velocity Network:
https://www.velocity.net/

NFP Structured Settlements:
https://nfpstructures.com/pdf/nfp-brochure.pdf

Northwest Bank:
https://www.northwest.bank/

Maloney, Reed, Scarpitti & Co.:
https://www.maloneyreedscarpittiandco.com/

Thomson Reuters:
https://www.thomsonreuters.com/en.html

ERIE COUNTY BAR ASSOCIATION
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Serving the people of Erie for over 145 years

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