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COMMONWEALTH OF MASSACHUSETTS
THE TRIAL COURT
PROBATE AND FAMILY COURT DEPARTMENT

NORFOLK DIVISION **DOCKET NO. 18P0215EA**

IN RE: ESTATE OF RALPH PARKER CHRISTIE

RELEVANT PROCEDURAL HISTORY, FINDINGS OF FACT, AND RATIONALE AND FURTHER FINDINGS
On Christopher J. Chetwynd's Petition for Formal Probate of a Will
(filed January 22, 2018)

This matter came before the Court (Peterson, J.) for trial on September 11, 12, 13, 18, and 19, 2019; and on October 2 and 31, 2019. Christopher J. Chetwynd ("the Petitioner") was represented by Timothy H. White, Esq. Donna Medore ("the Objector") was represented by India L. Minchoff, Esq. and Emma Funnell, Esq. The Intervenor, The Salvation Army, was represented by Sami Baghdady, Esq. Sixty[1] exhibits were admitted into evidence. Upon consideration of the evidence and after assessing the credibility of the witnesses, the Court enters the following Relevant Procedural History, Findings of Fact, and Rationale and Further Findings:

I. RELEVANT PROCEDURAL HISTORY

1. On January 22, 2018, the Petitioner filed a Petition for Formal Probate, requesting that the Court admit the January 30, 2017 will of Ralph Parker Christie ("the Decedent") to probate. The Bond filed with the Petition indicated that the estimated value of the estate was $370,000.

2. On February 28, 2018, Brian R. Cook, Esq. ("Attorney Cook"), on behalf of the Objector, filed a Notice of Appearance and Objection.

3. On the same date, the Objector filed an Affidavit stating that she is "challenging the validity of [the January 30, 2017] will for the following reasons[:] i. lack of testamentary capacity . . . and ii. Undue influence exercised by [the Petitioner] over [the Decedent]."

4. On January 7, 2019, the Petitioner filed a Motion to Strike Objection of the Objector, which the Court (Peterson, J.) allowed on the same date.

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[1] Fifty-nine exhibits were admitted into evidence during the trial. On the last day of trial, the Court (Peterson, J.) requested that the parties file with their post-trial submissions a complete copy of a G. L. c. 209A Abuse Prevention Order ("209A Order") issued by Quincy District Court against the Petitioner, which would then be admitted as Exhibit 60. Each party filed an identical attested copy of the 209A Order with his or her post-trial submission. The Petitioner additionally provided an attested copy of the Civil Case Summary for the 209A Order, which contains a list of all docket entries and docket text. Exhibit 60 shall be comprised of the 209A Order and Civil Case Summary together.

5. On the same date, the Court (Peterson, J.) entered a Decree and Order on Petition for Formal Adjudication, admitting the Decedent's January 30, 2017 will to formal probate, and appointing the Petitioner to serve as Personal Representative in an unsupervised administration without surety on the bond.

6. On January 8, 2019, Attorney Cook, on behalf of the Objector, filed a Motion to Vacate due to lack of notice, a Motion for Short Order of Notice, and an Affidavit of counsel. The Court (Peterson, J.) allowed the Motion for Short Order of Notice on January 9, 2019.

7. On or about January 15, 2019, the Petitioner filed an Opposition to the Objector's Motion to Vacate.

8. On January 22, 2019, the Court (Peterson, J.) vacated the Decree and Order on Petition for Formal Adjudication previously entered on January 7, 2019.[2]

9. On the same date, the Court (Peterson, J.) issued a Temporary/Scheduling Order which, *inter alia*, incorporated the parties' Stipulation of the same date. The Stipulation provided that the Petitioner shall retain his appointment as Personal Representative limited to paying taxes, bills, and collecting assets.

10. On March 28, 2019, the parties filed the Petitioner's Motion for Summary Judgment, the Petitioner's Memorandum in Support, the Objector's Opposition to the Petitioner's Motion for Summary Judgment, and a Consolidated Joint Statement of Material Facts.

11. On April 22, 2019, each party filed a Pretrial Memorandum. The Objector filed a Supplemental Pretrial Memorandum on April 25, 2019.

12. Also on April 22, 2019, the Court (Peterson, J.) issued a Memorandum and Decision on the Petitioner's Motion for Summary Judgment, denying the Petitioner's motion.

13. On or about September 4, 2019, The Salvation Army filed a Motion to Intervene, together with an Affidavit, which the Court (Peterson, J.) allowed on September 11, 2019.

14. On or about September 6, 2019, the Petitioner filed a Motion to Sequester all non-party witnesses, which the Court (Peterson, J.) allowed on September 11, 2019.

15. On or about September 11, 2019, the Petitioner filed a Motion to Strike Objections of the Objector.

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[2] Because the Decree and Order admitting the Decedent's January 30, 2017 Will to formal probate was vacated, this Court considers the Order allowing the Petitioner's Motion to Strike Objection of the Objector also to have been vacated.

16. Trial of this matter was held on September 11, 12, 13, 18, and 19, 2019; and on October 2 and 31, 2019. The Court (Peterson, J.) stated from the bench during the trial that she had determined that the burden of proof falls on the Petitioner to prove that there was no undue influence, because the Petitioner had a fiduciary relationship with respect to the Decedent and acted in his capacity as a fiduciary.

17. On December 5, 2019, the parties filed their post-trial submissions. Together with the Petitioner's post-trial submissions, his counsel filed an Objection to Exhibit 60.

II. FINDINGS OF FACT

A. Basic Information

1. The Decedent was born on November 2, 1927 and died on December 2, 2017, at the age of 90. The Decedent had no children and was divorced at the time of his death.

2. The Petitioner was a friend of the Decedent and the individual nominated as personal representative in the Decedent's January 30, 2017 will. The Petitioner is divorced and lives in Quincy, Massachusetts with his two children.

3. The Objector is the Decedent's niece and his next of kin pursuant to G. L. c. 190B, §2-203. The Objector's father is the Decedent's brother. The Objector and her husband, David Medore ("Mr. Medore") (collectively, "the Medores"), live in Vancouver, Washington.

4. The Objector challenges the validity of the Decedent's will executed on January 30, 2017 on the basis of testamentary capacity and undue influence.

B. *Findings of Fact*

5. The Medores have known the Decedent for more than 40 years.

6. The Decedent visited the Medores almost every year from 1990 to 2014, typically staying with the Medores. The Decedent's visits usually lasted between four and six weeks, but at times lasted up to 12 weeks. The visits typically began in the summer and ended in the fall.

7. The Decedent's brother / the Objector's father lived near the Medores in Washington until his death in 2007.

8. The two photo books in evidence reflect that the Decedent, the Medores, and their family members spent a significant amount of time together over the years. Mr. Medore testified credibly that he enjoyed watching movies with the Decedent.

9. The Medores rarely visited the Decedent in Boston. The Objector's last Boston visit prior to the Decedent's death was in 2009.

10. On April 12, 2011, the Decedent executed a Health Care Proxy ("HCP") appointing Mark A. Leahy, Esq. ("Attorney Leahy") as his health care agent and the Decedent's ex-wife, Doris Christie, as his alternate health care agent. Attorney Leahy drafted the HCP.

11. Also on April 12, 2011, the Decedent executed a Durable Power of Attorney ("POA"), appointing Attorney Leahy to serve as his agent and attorney-in-fact.

12. Also on April 12, 2011, the Decedent executed a Last Will and Testament that devised all of his property to the Quincy Memorial Church of Wollaston. The Decedent nominated Attorney Leahy to serve as executor.

13. Based on a letter in evidence from Attorney Leahy to the Decedent dated February 19, 2002 and the enclosed bill for tax return preparation, the Court draws the reasonable inference that Attorney Leahy had provided services to the Decedent dating back to at least 2002.

14. On March 22, 2012, the Decedent executed a new Last Will and Testament that devised his property as follows: one half (1/2) to the Quincy Community United Methodist Church of Wollaston for maintenance, care, repair and improvement of its building and grounds; one quarter (1/4) to his ex-wife, Doris Christie; one eighth (1/8) to The Salvation Army, and one eighth (1/8) to the Objector and Mr. Medore. The Decedent again nominated Attorney Leahy to serve as executor.

15. On April 26, 2012, the Decedent executed a new Last Will and Testament. The bequests contained in this will were identical to those contained in the March 22, 2012 will, with the exception that the bequest to Quincy Community United Methodist Church was changed to be unrestricted in its use. The Decedent again nominated Attorney Leahy to serve as personal representative.

16. Mr. Medore credibly testified that in 2012, the Decedent was in good health and active.

17. The Petitioner and the Decedent met in January of 2014 at the Petitioner's place of employment, Meineke Car Care ("Meineke"), when the Decedent brought in his car, a 1987 Chrysler New Yorker, for a tune-up. The Decedent was a pre-existing Meineke customer at the time the Petitioner met him.

18. The Petitioner had recently begun working at Meineke at the time he and the Decedent met. The Petitioner previously worked for Good Brothers Dodge in Weymouth ("Good Brothers") for 14 years.

19. At the time the Petitioner and the Decedent met, the Decedent lived by himself at the Clipper Apartments ("the Clipper") in Quincy, Massachusetts.

20. During the first half of 2014, the Petitioner saw the Decedent frequently at Meineke when the Decedent brought his car in for repairs.

21. The Petitioner advised the Decedent to purchase a different car rather than repeatedly repair his 1987 Chrysler.

22. During the spring of 2014, the Petitioner brought the Decedent to Good Brothers and introduced the Decedent to a sales representative.

23. The Decedent purchased a 2010 Chrysler Sebring ("the Sebring") from Good Brothers to replace his 1987 Chrysler.

24. On June 20, 2014, the Decedent was in a car crash while driving the Sebring. The Police Report relating to the accident indicated that the Decedent hit another car from behind and there was no evidence that the Decedent attempted to stop. The police officer observed that the Decedent was "not only confused about what happened but so unsteady on his feet he sometimes needed support to stand and walk." The police officer cited the Decedent as an "immediate threat."

25. The Sebring was totaled a result of the car crash.

26. The Decedent purchased a brand new fire engine red Dodge Challenger ("the Challenger") with a V6 engine from Good Brothers to replace the Sebring.

27. At approximately the same time the Decedent purchased the Challenger, his driver's license was suspended from the car crash involving the Sebring.

28. The Petitioner asked his former boss at Good Brothers to rescind the purchase of the Challenger because the Decedent's license had been suspended, but Good Brothers would not take the vehicle back.

29. The Petitioner and Mr. Medore discussed on the telephone the Decedent's purchase of the Challenger. Mr. Medore asked the Petitioner to help return the car, but the Petitioner explained that nothing could be done and that the Petitioner could put the car in his name so that it could be insured.

30. The Decedent was not successful in getting his driver's license reinstated.

31. Beginning in the summer of 2014, after the Decedent's license had been suspended, the Petitioner began driving the Decedent in the Petitioner's car to the grocery store approximately once per week.

32. The Court finds that following the loss of his driver's license, the Decedent became dependent on the Petitioner for transportation.

33. Upon the Decedent's arrival in Washington for his 2014 visit with the Medores, the Decedent got lost in the airport. The Decedent had used that airport in each prior visit to the Medores.

34. While the Decedent was visiting the Medores, Mr. Medore asked the Decedent if his estate was in order. The Decedent replied that everything was in order.

35. The last time the Medores saw the Decedent before his death was during the Decedent's 2014 visit to the Medores.

36. By early October 2014, the Decedent was suffering from dementia, confusion, poor judgment, decreased comprehension, impulsivity and memory deficits. He required considerable assistance in routine situations, was unable to shift attention and recall directions more than half of the time.

37. On October 3, 2014, the Decedent underwent an assessment with the VNA Care Network for a safety evaluation. The medical notes from this visit indicate that the Decedent was alert and oriented but that he had difficulty staying focused and was very forgetful and repetitive. On the assessment, the checkboxes next to "impaired decision-making," "memory loss to the extent that supervision required," and "[t]he patient is likely to remain in fragile health and have ongoing high risk(s) of serious complications and death" were checked as applying to the Decedent. No evidence was introduced or sought to be introduced contradicting these observations and conclusions regarding the Decedent; they are credited.

38. In addition to driving the Decedent on errands, the Petitioner also began driving the Decedent to medical appointments with the Decedent's primary care doctor and with his neurologist, Dr. Rizkalla Mouchati ("Dr. Mouchati").

39. Medical records in evidence credibly indicate that the Petitioner was present with the Decedent at neurology appointments on November 4, 2014; February 18, 2015; May 26, 2015; June 4, 2015; July 16, 2015; November 11, 2015; August 10, 2016; and December 8, 2016.

40. The Petitioner's testimony that he did not notice the Decedent having any memory problems is not credited.

41. In late 2014, the Petitioner and his family celebrated with the Decedent his birthday, Thanksgiving, and Christmas.

42. As the Petitioner and the Decedent got to know each other, they discussed various topics including baseball, cars, history, and both men's involvement with the Free Masons.

43. On January 11, 2015, the Petitioner sent the Objector a message through Facebook telling her that he had been helping the Decedent for about a year, telling her that the Decedent

lost his driver's license, and asking to speak with her regarding the Decedent's health care.

44. After not receiving a response to his Facebook message, the Petitioner obtained the Objector's telephone number from the Decedent and contacted her.

45. Dr. Mouchati opined on February 18, 2015 that the Decedent's "reflexes are very slow and he is at risk for having a car accident. Therefore, he should not drive."

46. In a VNA visit note dated March 23, 2015, the nurse described the Decedent as "very forgetful." No evidence was introduced or sought to be introduced contradicting this observation of the Decedent; it is credited.

47. According to a VNA visit note dated March 30, 2015, the Decedent had constant tremors, was very forgetful, was incontinent, and had impaired functional mobility. He was able to verbalize his understanding, but he was very forgetful and confused. No evidence was introduced or sought to be introduced contradicting these observations of the Decedent; they are credited.

48. During the spring of 2015, while driving the Decedent to a medical appointment in the Petitioner's car, a Dodge Durango SUV, the Petitioner crashed his car.

49. Shortly thereafter, the Petitioner contacted an attorney he knew, Eileen Lawlor ("Attorney Lawlor"), and asked her to draft an agreement whereby the Decedent would give the Petitioner his car in exchange for rides in the car, but permitting the Decedent to take back the car at any time. Attorney Lawlor drafted such an agreement.

50. On April 4, 2015, the Petitioner and the Decedent executed a contract ("the Car Agreement") stating that the Decedent "give[s] my automobile a 2014 Dodge Challenger . . . to [the Petitioner] . . . and in return he promises to provide me with rides in said car when I request and he is able. I hereby sign over the title to the vehicle . . . to [the Petitioner] so that he may register it under his name and insure it. I will remain responsible for all car payments, repairs, maintenance and any financial matters regarding the 2014 Dodge Challenger VIN [redacted] retain the option to revoke this gift at any time. In return for the gift of this car, [the Petitioner] agrees to drive when I need a ride, and I can demand that the vehicle be returned to my possession or sold or gifted to another at any time. Other than the times when he is providing me with a ride, [the Petitioner] is free to use this vehicle for his own personal, business, or professional use."

51. The Petitioner acknowledged at trial that neither Attorney Lawlor nor any other attorney went over the terms of the Car Agreement with the Decedent before the Decedent executed it.

52. The Petitioner did not give a copy of the Car Agreement to the Objector or to Mr. Medore.

53. The Challenger had only 200 miles on it at the time the Decedent transferred title to the Petitioner.

54. The Court does not credit the Petitioner's testimony that the Decedent told him that the car could not be registered to the Decedent because of his loss of driver's license.

55. The Petitioner acknowledged that the Decedent paid many expenses related to the Challenger including car insurance beginning in 2017 and excise taxes.

56. The Petitioner acknowledged at trial that he used the car for his own purposes, as opposed to giving the Decedent rides, approximately 90% of the time.

57. In a VNA visit note dated April 13, 2015, nine days after the execution of the Car Agreement, the nurse described the Decedent as follows: "Verbalizes understanding but is very forgetful, confused at baseline." No evidence was introduced or sought to be introduced contradicting this observation of the Decedent; it is credited.

58. The Petitioner originally testified that before early January 2017, he assisted the Decedent in writing only one check: a loan to the Petitioner's boss for tax payments. However, on a subsequent trial day, the Petitioner testified that he "misspoke." Checks in evidence indicate that the Petitioner was assisting the Decedent in writing checks at least as early as May of 2015.

59. With respect to a $302 check from the Decedent's Citizens account dated May 21, 2015 for a spoiler for the Challenger, the Decedent signed the check, but the Petitioner both filled in the "pay to the order of" blank space and wrote the amount of the check.

60. At the time the Petitioner began writing checks from the Decedent's Citizens account, the Decedent continued writing checks himself from that account for bills such as utilities and cable.

61. The Petitioner's testimony that the Decedent requested the installation of the spoiler on the Challenger is not credited.

62. On May 26, 2015, five days after the Petitioner wrote and the Decedent signed the check for the spoiler installation, the Decedent had a neurology appointment with Dr. Mouchati, which the Petitioner attended. Dr. Mouchati opined that the Decedent "has had progressive ataxia with associated memory decline. . . . His symptoms seem to have progressed over the past three months." No evidence was introduced or sought to be introduced contradicting these conclusions; they are credited.

63. According to a VNA visit note dated June 11, 2015, the Decedent had decreased strength, decreased balance and decreased endurance. The Decedent "also demonstrates declines in cognition which significantly impact his judgment . . . ." No evidence was introduced or sought to be introduced contradicting these observations of the Decedent; they are credited.

64. The Decedent did not visit the Medores in Washington during 2015. However, the Decedent spoke with Mr. Medore approximately once or twice per month, and with the Objector approximately two to four times per month.

65. Mr. Medore testified credibly that beginning in 2015, he and his wife noticed that during telephone conversations with the Decedent, the Decedent would not answer questions appropriately, ask the same question multiple times, and repeat himself.

66. On October 8, 2015, the Petitioner discussed with the Medores the subject of the Decedent executing an HCP and POA. The Medores had been advised by elder services to ensure that the Decedent had an HCP and a POA.

67. Also on October 8, 2015, Mr. Medore sent the Petitioner an email with contact information for an individual in elder services. The email also asked the Petitioner to let the Medores know if the Decedent would agree to put in place an HCP and POA. If so, the Objector would schedule an appointment with the Decedent's attorney Brian (Cook) ("Attorney Cook"), who had been helping the Decedent try to get his driver's license reinstated, and arrange to fly to Massachusetts between October 28 and November 3.

68. The Court does not credit the Petitioner's testimony that the Objector said it would not be "worth" the trip to Massachusetts if the Petitioner was not going to execute both an HCP and a POA. However, the Petitioner told the Decedent that the Objector was not willing to come to Massachusetts unless he signed both a POA and an HCP.

69. Ultimately, on November 15, 2015, the Decedent executed an HCP. The Petitioner obtained an HCP form from the internet and filled out the form himself, listing himself as the health care agent with no alternate health care agent. The Decedent then signed the form.

70. The Petitioner did not give a copy of the Decedent's HCP to the Objector or to Mr. Medore following its execution.

71. In late 2015, the Decedent celebrated his 88th birthday, Thanksgiving, and Christmas with the Petitioner.

72. During 2016 and 2017, the Petitioner sent text messages to the Objector to inform her about activities the Decedent was participating in and medical developments of the Decedent. The Petitioner also texted several pictures of the Decedent to the Objector. In her responsive text messages, the Objector frequently expressed her gratitude to the Petitioner for his friendship and help with the Decedent.

73. The Court does not credit the Petitioner's testimony that the Decedent asked him if he knew an attorney who could prepare a POA. Attorney Leahy had been the Decedent's longtime attorney and had prepared an HCP, a POA, and two wills for the Decedent.

74. The Petitioner knew that Attorney Cook had represented the Decedent in the past and he did not offer to contact Attorney Cook for the Decedent.

75. The Court finds that on January 28, 2016, the Petitioner on his own initiative called an attorney he knew, Rebecca McWilliams, Esq. ("Attorney McWilliams"), to ask her to prepare estate planning documents for the Decedent.

76. The Petitioner had met Attorney McWilliams in 2009 when Attorney McWilliams was running for school committee. Subsequently, they worked on several campaigns together and had remained in touch. The Petitioner acknowledged at trial that Attorney McWilliams had been to his home and the Petitioner knew Attorney McWilliams' husband.

77. Attorney McWilliams is licensed as an attorney and as an architect in Massachusetts and New Hampshire. She also has a Series 6 license to sell life insurance and a Series 63 license to sell mutual fund-based investments.

78. On January 28, 2016, the same day as the Petitioner's initial conversation with Attorney McWilliams, and before Attorney McWilliams had any contact with the Decedent, Attorney McWilliams sent the Petitioner an email attaching a draft POA for the Decedent and advising the Petitioner that the fee would be $275 for her services.

79. The Petitioner responded to Attorney McWilliams' email indicating that the Decedent was fine with the $275 fee. On February 2, 2016 Attorney McWilliams sent the Petitioner another draft POA document naming the Petitioner as the Decedent's agent/attorney in fact "for you two to review and discuss." Attorney McWilliams still at this point had not had any contact with the Decedent.

80. Although Attorney McWilliams testified that she, the Petitioner, and the Decedent met on February 2, 2016 at Attorney McWilliams' office, email correspondence in evidence between the Petitioner and Attorney McWilliams does not support Attorney McWilliams' testimony that this meeting occurred.

81. Attorney McWilliams' first meeting with the Decedent was on February 24, 2016. On that date, the Petitioner drove the Decedent to Attorney McWilliams' office and dropped him off.

82. During the meeting, Attorney McWilliams asked the Decedent if he had an existing POA. The Decedent said he did not. In fact, as indicated above, the Decedent had executed a Durable POA on April 12, 2011, which appointed Attorney Leahy to serve as his agent and attorney-in-fact.

83. While at Attorney McWilliams' office on February 24, 2016, the Decedent executed a Springing Durable POA appointing the Petitioner as attorney and stating that the POA "shall be effective only after one licensed physician shall have signed and caused to be attached to this [POA] his or her written statement indicating that I am incapable in his or

her judgment of attending effectively to my financial affairs by reason of mental or physical disability."

84. Also during the meeting, the Decedent and Attorney McWilliams discussed Attorney McWilliams assisting the Decedent with reviewing and organizing his finances.

85. The Petitioner signed the acceptance of the POA appointment when he came to pick the Decedent up from the meeting.

86. The Petitioner did not provide a copy of the POA to the Objector or to Mr. Medore. Mr. Medore credibly testified that he had learned of the Decedent's 2016 POA only days before he testified at the trial.

87. On March 3, 2016, Attorney McWilliams sent the Petitioner an email describing the services she could provide as a financial coach with Primerica.

88. Attorney McWilliams is an independent contractor with Primerica. She is paid at the time of the transaction and has the potential to receive commissions, depending on the product she sells.

89. On March 8, 2016, Attorney McWilliams went to the Decedent's apartment to discuss his finances. After discussion, the Decedent agreed to consolidate his money into a single income-producing investment. On that day and on another day that week, Attorney McWilliams drove the Decedent to the Registry of Motor Vehicles ("RMV") to get new government identification since his driver's license had been revoked. After the Decedent obtained new identification, Attorney McWilliams drove the Decedent to the financial institutions where he had accounts so that he could close the accounts.

90. The Decedent deposited all of his money, totaling more than $450,000, into his Citizens account. Later in March 2016, the Decedent wrote checks totaling approximately $465,000 to transfer his funds to Primerica.

91. Checks totaling $1,200 were written from the Decedent's Citizens account to Attorney McWilliams during the month of March 2016. The checks were not in the Decedent's handwriting, other than the signature line. The memos on these checks read: "financial advisor & bank transport" and "financial advisor & closing bank accounts." Attorney McWilliams testified credibly that the $1,200 the Decedent paid her was for ten hours of driving the Decedent to the RMV and financial institutions.

92. The Decedent signed a $150 check from the Decedent's Citizens account dated June 2, 2016 made out to the Petitioner for car detailing the Challenger after the Petitioner wrote the check out to himself and wrote in the amount of the check.

93. As of June of 2016, the Decedent continued writing checks himself from his Citizens account for bills such as utilities and cable.

94. Attorney McWilliams continued assisting the Decedent with his investments during the remainder of 2016.

95. At the Decedent's August 10, 2016 neurological appointment, Dr. Mouchati noted that the Decedent "has memory decline."

96. Twice during August of 2016, the Objector sent a text message to the Petitioner stating that the Decedent wanted to visit the Medore family on the west coast and asking for the Petitioner's opinion about that. During the Petitioner and the Objector's telephone conversation about the issue, the Petitioner told the Objector that he did not think that it would be safe for the Decedent to travel alone because he needed to utilize a walker for mobility.

97. In late August of 2016, the Decedent fell while the Petitioner was not with him. The fall resulted in the Decedent sustaining a black eye. The Petitioner texted to the Objector a picture of the Decedent's facial injuries following the fall.

98. The Decedent did not visit the Medores in 2016 or thereafter, but he continued speaking with Mr. Medore approximately once or twice per month and with the Objector approximately two to four times per month.

99. In November of 2016, the Objector's daughter Michele went to Massachusetts and visited the Decedent. Michele told Mr. Medore that the Decedent was doing well.

100. On November 29, 2016, the Petitioner wrote out a $5,695 check to Meineke Car Care from the Decedent's account. The Decedent signed the check's signature line. The Petitioner testified that this payment was a loan from the Decedent to the Petitioner's boss, Bob Kavanaugh; however, also in evidence was a signed statement in the Petitioner's handwriting below a photocopy of the check stating as follows: "I [Petitioner] will pay back to [the Decedent] the sum above in full in the form of checks from Meineke Car Care within 60 days." The Court therefore finds that the Petitioner at the very least agreed to serve as a guarantor to the loan.

101. The Decedent went to the office at the Clipper and asked employee Blanche Hurley ("Ms. Hurley") to photocopy the check. Ms. Hurley did so and advised the Decedent not to give anyone money. Ms. Hurley also put the date the repayment of the loan was due, January 29, 2017 on her calendar so that she would remember.

102. In late 2016, the Decedent celebrated Thanksgiving and Christmas with the Petitioner.

103. At the Decedent's December 8, 2016 neurological appointment, the Decedent reported experiencing memory decline. Dr. Mouchati noted that the Decedent "has difficulty following his own thoughts as he has difficulty formulating his thoughts." No evidence was introduced or sought to be introduced contradicting these conclusions regarding the Decedent; they are credited. Dr. Mouchati prescribed medication to the Decedent to improve his memory.

104. In early January of 2017, the Petitioner went to pick up the Decedent at his home and thought he looked pale and weak. The Petitioner therefore brought him to South Shore Hospital.

105. At the hospital, the Decedent was diagnosed with congestive heart failure and pneumonia. The Decedent sent a text message to the Objector with the Decedent's diagnoses.

106. South Shore Hospital medical records of the Decedent in evidence indicate that the Decedent's "pertinent past medical history" includes dementia.

107. A South Shore Hospital pulmonary consultation record of the Decedent in evidence dated January 4, 2017 indicates the following under "neurologic": "Awake, alert, oriented x2. He is superficial and tangential in his discussions and appears to have a poor memory for recent events, although his longer-term memory appears to be more intact." The "impression" indicated, *inter alia*, the following: "Dementia. This appears to be a significant issue and poses some significant safety concerns." No evidence was introduced or sought to be introduced contradicting these conclusions/observations of the Decedent; they are credited.

108. A South Shore Hospital occupational therapy evaluation of the Decedent in evidence indicates that on January 5, 2017, the Decedent was "[a]lert to self. He knew he was in a hospital but could not identify [South Shore Hospital]. He stated the year was '1976.'" In addition, a nurse's note from the same date indicates that the Decedent "thinks he has been here for 30 yrs and in Quincy. Despite attempts to reorient him he remains confused." No evidence was introduced or sought to be introduced contradicting the observations of the Decedent contained in these records; they are credited.

109. The Decedent was discharged from South Shore Hospital to The Bostonian Rehab & Nursing Center ("the Bostonian") on January 7, 2017, at the Petitioner's request. The Petitioner's sister worked at the Bostonian.

110. The Decedent remained at the Bostonian until February 10, 2017.

111. The Decedent's admission record at the Bostonian indicates that the Decedent had ten diagnoses, including "unspecified dementia without behavioral disturbance."

112. Sam Corey ("Mr. Corey"), administrator at the Bostonian, testified credibly that the Decedent was in a weakened state of health upon his admission to the Bostonian.

113. On January 7, 2017, upon his admission to the Bostonian, the Decedent underwent an "Initial Interdisciplinary Assessment," which resulted in the collection of various information about the Decedent.

114. The "level of consciousness/cognitive status" portion of the Initial Disciplinary Assessment indicated that the Decedent was oriented to person and place, but not to time. No evidence was introduced or sought to be introduced contradicting this portion of the assessment; it is credited.

115. In the spiritual assessment portion of the Initial Disciplinary Assessment, the Decedent indicated that his religious affiliation was Methodist, that the importance of religion to him was "medium," and rated as "important" the following religious beliefs: "God in Heaven"; "A personal relationship with God"; "The support of your Place of Worship"; and "The Support of your Place of Worship Religious Leader."

116. A form relating to a January 8, 2017 physical the Decedent underwent at the Bostonian indicated that the Decedent was oriented and alert x 3, but also described the Decedent as "forgetful – poor recall" and "poor recall for recent event." No evidence was introduced or sought to be introduced contradicting these observations of the Decedent; they are credited.

117. A physician's progress note from the Bostonian dated January 8, 2017 indicates that he was "forgetful" and was to continue to take Aricept, a medication given for dementia. No evidence was introduced or sought to be introduced contradicting this observation of the Decedent; it is credited.

118. An initial assessment the Decedent underwent for physical therapy at the Bostonian indicated that the Decedent had the following history and complexities: "is a poor historian; age, complicated medical [history], concomitant cognition deficits, decreased self-efficacy and exacerbation of impairments." No evidence was introduced or sought to be introduced contradicting these observations of the Decedent; they are credited.

119. The Petitioner frequently visited the Decedent at the Bostonian and brought him food.

120. While the Decedent was staying at the Bostonian, the Petitioner used the Decedent's ATM card at Wal-Mart, Dunkin, Wendy's, as well as at pharmacies and to make gas purchases. The Petitioner acknowledged that not every purchase he made was for the Decedent. The Court finds that the Petitioner made purchases for himself with the Decedent's ATM card.

121. During January 2017, the Decedent told the Petitioner that he wanted to "leave [him] something."

122. The Petitioner credibly testified that he told Attorney McWilliams that the Decedent wanted to put the Petitioner in a will. The Court does not credit Attorney McWilliams' testimony that it was the Decedent who called her.

123. The Petitioner testified that he did not discuss the will with Attorney McWilliams at any time. This testimony is not credited, as it is contradicted by the Petitioner's earlier

testimony that he told Attorney McWilliams that the Decedent wanted to include the Petitioner in his will.

124. As of 2017, Attorney McWilliams had drafted a total of 15 estate plans.

125. Between 9:00 am and 12:00 noon on January 16, 2017, Attorney McWilliams met with the Decedent alone in his room at the Bostonian. The Decedent told Attorney McWilliams he had a will and went over with Attorney McWilliams the changes the wanted to make.

126. Upon request either from Attorney McWilliams or from the Decedent, the Petitioner went to the Decedent's apartment and retrieved the Decedent's April 26, 2012 will from his foot locker box. On January 16, 2017, the Petitioner texted pictures of the April 26, 2012 will to Attorney McWilliams.

127. A nurse's progress note from the Bostonian dated January 16, 2017 at 10:23 pm indicates that the Decedent was "alert and oriented X2," meaning that he was oriented as to person and place but not oriented as to time. No evidence was introduced or sought to be introduced contradicting this observation of the Decedent; it is credited.

128. A nurse's progress note from the Bostonian dated January 20, 2017 at 5:59 am indicates that the Decedent was "alert with confusion." No evidence was introduced or sought to be introduced contradicting this observation of the Decedent; it is credited.

129. A physician's progress note from the Bostonian dated January 21, 2017 indicates reflects that the Decedent suffers from "mild dementia" but that he is "able to have insight on Aricept." No evidence was introduced or sought to be introduced contradicting this observation of the Decedent; it is credited.

130. On January 26, 2017, the Petitioner and Attorney McWilliams discussed and agreed upon January 30, 2017 for her to meet with the Decedent at the Bostonian. Attorney McWilliams asked the Petitioner to bring the Decedent's check book to the meeting and be prepared to sign the Decedent's new POA.

131. A nurse's progress note from the Bostonian dated January 29, 2017, the day before the execution of the will at issue in this case, indicates that the Decedent was in bed the entire shift. Mr. Corey testified credibly that shifts last an average of 7.5 hours.

132. On January 30, 2017, the day of the execution of the will at issue in this case, the Petitioner went to the Bostonian to drop off the Decedent's checkbook and sign the Decedent's new Springing Durable POA.

133. Between 2:00 and 3:30 pm on January 30, 2017, in his hospital room, the Decedent executed the will at issue in this case. The will execution was witnessed by two employees of the Bostonian: Rebecca Good ("Ms. Good"), a *per diem* nurse, and Mr. Corey.

134. Before executing the will, Attorney McWilliams met with the Decedent alone and went over the will broadly with him. The Decedent confirmed the specific bequests and the provisions for the residue estate as drafted by Attorney McWilliams.

135. The Decedent was not a patient of Ms. Good, but Ms. Good credibly testified that she remembered the Decedent from his time as a patient at the Bostonian.

136. Ms. Good credibly testified that she does not remember reviewing the Decedent's medical record before he executed his will.

137. Ms. Good credibly testified that she does not have a specific memory of the Decedent signing the will, but that when she witnesses documents, she makes sure the patient is oriented to time and place, that they know what they are signing, and that they're singing it freely and voluntarily and aren't feeling pressured.

138. Ms. Good credibly testified that she has declined to witness legal documents for patients more than five times, typically because she is not comfortable with the patient's cognitive status.

139. Mr. Corey credibly testified that he reviewed briefly information from the Decedent's admission to the Bostonian prior to witnessing the Decedent's will execution and determined that there was no activated HCP or POA for the Decedent. Mr. Corey did not review the Decedent's medical records or speak with any of his medical providers.

140. Mr. Corey credibly testified that he asked the Decedent if he understood he was signing a will and if he was comfortable with it. The Decedent said, "Yes."

141. Mr. Corey testified credibly that he does not recall any confusion or disorientation on the Decedent's part at the time of the will execution.

142. Present in the room when the Decedent executed his January 30, 2017 will were the following: the Decedent, Attorney McWilliams, Ms. Good, and Mr. Corey.

143. Around the time of the will execution, Ms. Good and Mr. Corey were each in the Decedent's hospital room for a total of approximately five minutes.

144. In the first line of the Decedent's January 30, 2017 will, his last name is spelled incorrectly as "Christy." In addition, on the third page, the will incorrectly states that the Decedent lives in Maynard. The Decedent did bring either of these errors to Attorney McWilliams' attention.

145. The Decedent's January 30, 2017 will appoints the Petitioner as Personal Representative. It contains the following specific bequests in Article 2:

> "1. I leave . . . $1,000 to the Quincy Community United Methodist Church of Wollaston, Massachusetts for use in any manner the church board of Trustees deems appropriate.
> 2. I leave my currency collection to [the Petitioner].
> 3. I leave any vehicles I may own to [the Petitioner].
> 4. I leave any real estate I may own, in full or in part, to [the Petitioner]."

and the following residue clause in Article 3:

> "1. I leave One Quarter (1/4) of my remainder estate to [the Objector and Mr. Medore], . . . or the survivor of them, otherwise to their children in equal shares.
> 2. I leave Three Quarters (3/4) of my remainder estate to [the Petitioner] . . . , otherwise to his natural born children in equal shares."

146. Article 4 of the Decedent's January 30, 2017 will provides, in part, as follows: "If any beneficiary to this Will is indebted to me at the time of my death, and the beneficiary evidences this debt by a valid Promissory Note payable to me, then such person's portion of my estate shall be diminished by the amount of such debt." Therefore, pursuant to the terms of the January 30, 2017 will, only if an indebted beneficiary proactively provided evidence of the debt following the Decedent's death would the beneficiary's share of the Decedent's estate have been reduced.

147. Article 4 of the Decedent's January 30, 2017 will also contains an *in terrorem* clause, providing as follows: "If any beneficiary under this will contests in any court any of the provisions of this will, then each and all such persons shall not be entitled to any devices [sic], legacies, bequests, or benefits under this will or any codicil hereto, and such interest or share in my estate shall be disposed of as if that contesting beneficiary had not survived me."

148. Also on January 30, 2017, the Decedent executed a Springing Durable POA identical to the Springing Durable POA he executed on February 24, 2016. The Decedent's January 30, 2017 POA again appointed the Petitioner as attorney and stating that the POA "shall be effective only after one licensed physician shall have signed and caused to be attached to this [POA] his or her written statement indicating that I am incapable in his or her judgment of attending effectively to my financial affairs by reason of mental or physical disability."

149. An $850 check dated January 30, 2017 was written from the Decedent's Citizens account to Attorney McWilliams. The check was not in the Decedent's handwriting, other than the signature line. The memo on this check read: "Will & POA."

150. A nurse's progress note from the Bostonian dated January 30, 2017 indicates that at 3:51 pm, shortly after the Decedent executed the will, the Decedent was "alert and oriented X2," meaning that he was not oriented as to time. By the time of the next progress note at 10:05 pm, the Decedent was "oriented as to self, place, and time."

151. The Petitioner did not tell the Objector or Mr. Medore that the Decedent had executed a new will primarily benefitting the Petitioner or provide to them a copy of the new will.

152. On February 3, 2017, Attorney McWilliams emailed to the Petitioner a copy of the will and POA executed by the Decedent on January 30, 2017.

153. Upon the Decedent's release from the Bostonian on February 10, 2017, the Petitioner began living with him. The Petitioner had recently filed for divorce and needed a place to live because he had been staying with his father.

154. The Petitioner did not pay any rent while he lived with the Decedent or contribute toward any utilities at their shared apartment.

155. Around the same time he moved in with the Decedent, the Petitioner purchased a pullout couch and recliner for the Decedent's apartment using the Decedent's ATM card.

156. Following the Decedent's discharge from the Bostonian, the Petitioner arranged for 24-hour care for the Decedent as recommended by the Bostonian. This care was provided through a combination of the Petitioner himself, the Petitioner's sister, the Petitioner's girlfriend, and health care aides provided by Cara Care, Inc. ("Cara Care"), an agency the Petitioner engaged.

157. The Petitioner also installed video cameras in the Decedent's apartment following the Decedent's discharge from the Bostonian. The Petitioner testified that he installed the cameras due to the presence of health care aides.

158. The Petitioner helped the Decedent use the bathroom, prepared meals for the Decedent, did the Decedent's laundry, and made sure the Decedent took his medication. The Petitioner did not help the Decedent with any of these tasks prior to the execution of the January 30, 2017 will.

159. Petitioner was not paid for the time he spent taking care of the Decedent.

160. The Cara Care aides assisted the Decedent with various activities of daily living including helping him get up in the morning, get dressed, use the bathroom, put his hearing aids in, take his medication, eat meals, and get into the shower.

161. The Petitioner did not send the Objector any text messages informing her that the Decedent required 24-hour care.

162. The Decedent used an in-home oxygen machine from his discharge from the Bostonian until his death. The Decedent also continued to require a walker.

163. One of the individuals whom the Petitioner hired to provide care for the Decedent was Cheryl Ripley ("Ms. Ripley"). The Court finds that Ms. Ripley was the Petitioner's

girlfriend at the time she provided care and does not credit her testimony that she began dating the Petitioner in the spring of 2018.

164. Although Ms. Ripley has some experience in the health care field, she acknowledged at trial that other than her care of the Decedent, she had last worked as a home health aide approximately ten years prior to trial. Ms. Ripley also completed one year of nursing school approximately 20 years prior to trial.

165. The Petitioner paid Ms. Ripley $22 per hour for daytime care of the Decedent, the same hourly rate he was paying to Cara Care. The health care aides themselves earned $18 per hour for their caretaking work.

166. Although Ms. Ripley initially testified that she received $12 per hour for providing overnight care for the Decedent, she later acknowledged that when she first started providing overnight care, she received $22 per hour for both daytime and overnight care, despite the fact that she was asleep for most of her overnight shifts.

167. The Petitioner also hired his sister, Dottie, who works as a teacher, to provide care for the Decedent. Dottie earned a total of approximately $3,000 for providing care for the Decedent.

168. The Decedent's funds paid for all care the Decedent received.

169. In February of 2017, Ms. Hurley went to the Decedent's apartment at the Clipper and asked him whether he had gotten the money back from the loan, in reference to the $5,695 check to Meineke Car Care she had photocopied for him a few months before. The Decedent said, "No."

170. Ms. Hurley credibly testified that a few days after her conversation with the Decedent, the Petitioner went to the office at the Clipper angry and screaming at Ms. Hurley that he was going to sue her for defamation, that she should mind her own business, that she was on video, and that he "knew everything."

171. Ms. Hurley credibly testified that although she was concerned about the Decedent because he appeared to be declining and getting more fragile, she did not check on the Decedent after the Petitioner confronted her because she was scared.

172. Bob Kavanaugh made payments toward the loan from the Decedent beginning in February 2017 and paid the loan in full in June 2017.

173. A record in evidence as an uncontested exhibit from South Shore Elder Services, Inc. indicates that on March 9, 2017, the Petitioner reported that the Decedent was refusing services from South Shore Elder Services, Inc. No evidence was introduced or sought to be introduced contradicting this exhibit; the Court therefore finds that the Petitioner refused elder services on the Decedent's behalf.

174. Lydia Madden ("Ms. Madden"), the company officer/director of Cara Care, was in charge of scheduling Cara Care aides for the Decedent and also went to the Decedent's apartment once per week to help him take his medication. Ms. Madden also cared for the Decedent on one occasion.

175. Ms. Madden credibly testified that the Decedent seemed to be familiar with and happy around the Petitioner. She also testified that she did not have any concerns about the Petitioner mistreating the Decedent.

176. A February 11, 2017 visiting nurse's note indicated the following regarding the Decedent under "neurological": "[patient] alert, confused to person other than self and friend [the Petitioner], states he is home, but states address is quincy shore drive and the year is 1970. [Patient] has [history] of dementia . . . ." No evidence was introduced or sought to be introduced contradicting these observations of the Decedent; they are credited.

177. The Decedent was admitted to South Shore Hospital again in March of 2017 for suspected urinary tract infection ("UTI") and discharged a few days later.

178. A South Shore Hospital nurse's note dated March 21, 2017 indicated the following under "neurological findings": "[history of] Dementia, alert and oriented x2-3. Stated that it is March 1st, 1948. Unable to recall the current or last president. [A]ware that he is in the hospital for 'my lungs' but forgetful that he will stay overnight." No evidence was introduced or sought to be introduced contradicting these observations of the Decedent; they are credited.

179. In the beginning of April of 2017, the Petitioner moved out of the Decedent's apartment and into his own apartment, where he continues to live.

180. The Petitioner's landlord is his friend, Dave Coletti ("Mr. Coletti").

181. In May of 2017, the Petitioner brought the Decedent to Milton Hospital. The Decedent was admitted for a UTI. Following his hospitalization, the Decedent was again discharged to the Bostonian.

182. Hospice nurses began coming to the Decedent's apartment a few times per week after his second discharge from the Bostonian. The Decedent's medical records from the Bostonian indicate that he agreed to hospice services.

183. The Petitioner did not send any text messages to the Objector indicating that the Decedent was receiving hospice care, and Mr. Medore testified credibly that he did not know that the Decedent was receiving hospice care.

184. Beginning in June of 2017, the Petitioner set up online transfers between the Decedent's investment account and the Decedent's Citizens account, in order to replenish the Citizens account as needed to pay for the Decedent's expenses, including his medical expenses and 24-hour care.

185. In July of 2017, the Petitioner requested that Attorney McWilliams prepare a personal loan agreement for him to borrow money from the Decedent. Attorney McWilliams prepared the document as requested by the Petitioner, leaving a blank for the loan amount.

186. The Petitioner wanted to borrow money from the Decedent to establish a new automotive business in the same location as Meineke, which Petitioner testified was "not doing so hot."

187. On August 7, 2017, the Petitioner and the Decedent executed the Personal Loan Agreement. The Personal Loan Agreement provided that the Petitioner was borrowing $40,000 from the Decedent, that the note was to be payable on or before January 1, 2019, and that the note was to bear 0.96% interest annually.

188. Attorney McWilliams acknowledged in her trial testimony that she did not review the Personal Loan Agreement with the Decedent.

189. The Petitioner did not tell the Objector that the Decedent had loaned the Petitioner money.

190. Meineke closed in September of 2017, resulting in the Petitioner becoming unemployed.

191. In late September 2017, the Decedent moved out of his apartment at the Clipper and into the Petitioner's home. The Decedent was paying $1,350 per month in rent at the Clipper at the time he moved out.

192. Prior to the Decedent moving into the Petitioner's apartment, the Petitioner paid to Mr. Coletti $800 per month in rent. The Petitioner's rent increased to $2,000 per month after the Decedent moved in. The Petitioner testified that he and the Decedent were going to equally split the $2,000 monthly rent, but that the Decedent agreed to help him out by paying his rent for a few months until the Petitioner went back to work.

193. The Petitioner and the Decedent's $2,000 monthly rent was paid from the Decedent's Citizens checking account for the months of October 2017, November 2017, and December 2017, with the checks signed by the Petitioner as POA.

194. The Petitioner's testimony that his rent was raised from $800 to $2,000 after the Decedent moved in because of the presence of aides, doctors, and hospice nurses is not credited. The Court finds that the Petitioner arranged with his landlord to increase the monthly rent to benefit his friend and landlord at the expense of the Decedent.

195. In November of 2017, the Petitioner and Mr. Medore spoke on the telephone. Mr. Medore asked the Petitioner several questions about the Decedent's expenses and estate plan.

196. The Petitioner told Mr. Medore regarding the Decedent's will the following: "We changed that up and you're in it."

197. Mr. Medore asked the Petitioner if he and his wife could learn more about the will, and the Petitioner responded that he would have to check with the Decedent.

198. Although the Petitioner told Mr. Medore that Mr. Medore was "in the will," the Petitioner did not tell Mr. Medore that the Petitioner was now the primary beneficiary of the Decedent's will.

199. Mr. Medore asked the Petitioner if he had taken any money from the Decedent, and the Petitioner replied, "No" even though the Petitioner did not repay the $40,000 that he borrowed from the Decedent several months earlier.

200. Mr. Medore learned during the conversation that care for the Decedent was costing the Decedent about $4,000 per month. Mr. Medore testified credibly that prior to this conversation, it was his understanding that care was being provided to the Decedent at no cost to the Decedent, and that the $4,000 monthly cost of care was concerning to him because the Decedent had always been frugal.

201. In November of 2017, the Petitioner held a 90th birthday party for the Decedent and celebrated Thanksgiving with the Decedent.

202. There are photographs in evidence of the following events/activities: the Decedent in front of his Challenger; the Decedent in front of his new television set; the Decedent attending a baseball event of the Petitioner's son; the Petitioner, his son, and the Decedent at Fenway Park; the Decedent attending a birthday celebration for the Petitioner's father; the Decedent attending a Masonic Lodge meeting; the Petitioner and the Decedent spending time on a boat owned by the Petitioner's former employer; and the Petitioner and the Decedent celebrating the Decedent's 50th Masonic anniversary.

203. There is also a photograph in evidence of the Petitioner bringing the Decedent to visit the Decedent's mother's gravesite in Canton during the summer of 2015, including a close-up photograph of the tombstone itself. It is unclear why the Petitioner thought that this private moment should have been photographed and his intended use for the photograph.

204. The Decedent died on December 2, 2017. Ms. Ripley was present when the Decedent passed away.

205. On December 13, 2017, Attorney McWilliams asked the Petitioner to provide a recommendation for her admission to the New Hampshire bar. The Petitioner did so.

206. The Petitioner did not repay prior to the Decedent's death the $40,000 he borrowed pursuant to the Personal Loan Agreement.

207. As of trial, the Petitioner still had not repaid to the Decedent's estate the $40,000 he borrowed pursuant to the Personal Loan Agreement, despite the fact that the loan was due and payable on or before January 1, 2019.

208. The Petitioner acknowledged that from the fall of 2017 until the Decedent's death, the Petitioner knew that he would not be establishing a new automotive business in the old Meineke site. As indicated above, the establishment of a new automotive business was the Petitioner's stated purpose for the $40,000 loan.

209. The Petitioner's claim that he was going to pay the $40,000 loan back but the Decedent passed away before he could do so is also not credible.

210. No written statement from a physician was attached to either of the Decedent's Springing Durable POAs indicating that the Decedent was incapable of attending effectively to his financial affairs due to mental or physical disability, which was a required prerequisite to the Petitioner exercising any authority under the Decedent's Springing Durable POA. Nevertheless, the Petitioner admitted using authority under the Decedent's Springing Durable POA beginning in March of 2017, less than two months after the Decedent executed the Springing Durable POA. In that instance, the Petitioner used authority under the Decedent's Springing Durable POA to replace a rug at the Decedent's apartment.

211. In the fall of 2017, the Petitioner signed as "Christopher Chetwynd POA" three $2,000 rent checks from the Decedent's Citizens account made out to his friend and landlord, Mr. Coletti.

212. Attorney McWilliams acknowledged in her testimony at trial that she does not have any notes from any of her meetings with the Decedent.

213. The Petitioner still owns the Decedent's Challenger and still has the Decedent's recliner and television.

C. Conclusion

214. The Court finds that the Decedent had testamentary capacity when he executed the January 30, 2017 will. However, the Court finds that the Decedent's January 30, 2017 will was the product of the undue influence of the Petitioner. Therefore, the Decedent's January 30, 2017 will is not admitted to probate.

III. RATIONALE AND FURTHER FINDINGS

The Objector's February 20, 2018 Affidavit of Objections challenges the validity of the Decedent's January 30, 2017 Will both on the basis of testamentary capacity and on the basis of undue influence.

A. Testamentary Capacity

"The proponent has the burden of proof on the issue of testamentary capacity." *O'Rourke v. Hunter*, 446 Mass. 814, 827 (2006). The burden of proof "is met by a showing that, it is more probable than not that, at the time of execution of the will, the decedent's condition comported with well-settled standards." *Palmer v. Palmer*, 23 Mass. App. Ct. 245, 250 (1986). "In sustaining that burden, [the proponent] is aided by a presumption that the testator had the requisite testamentary capacity. However, the presumption has effect only until evidence of want of capacity appears." *O'Rourke*, 446 Mass. at 827. "The legal standards that determine testamentary capacity are well established. At the time of executing a will, the testat[or] must be free from delusion and understand the purpose of the will, the nature of [his] property, and the persons who could claim it." *O'Rourke*, 446 Mass. at 826-827. "[A] person of pathologically unsound mind may possess testamentary capacity at any given time and lack it at all other times." *Daly v. Hussey*, 275 Mass. 28, 29 (1931).

The two witnesses to the January 30, 2017 will execution, both employees of the rehabilitation facility where the Decedent was then receiving treatment, did not make any observations of the Decedent causing them to question the Decedent's testamentary capacity. One of the will witnesses asked the Decedent if he understood he was signing a will and if he was comfortable with it, and the Decedent replied, "Yes."

The two nurse's progress notes from the date that the Decedent executed the will do not suggest that the Decedent would not have been unable to understand the purpose of his will, the nature of his property, and those taking under the will. No medical records or medical examination contemporaneous to the will execution exist. Because there is no evidence that the Decedent lacked testamentary capacity when he executed his January 30, 2017 will, the presumption that the Decedent had the requisite testamentary capacity applies.

Based on the credible evidence presented, the Court finds that the Decedent had testamentary capacity when he executed his January 30, 2017 will.

B. Undue Influence

a. Burden of Proof

As indicated above in the Relevant Procedural History, during the trial, the Court (Peterson, J.) stated from the bench during the trial that she had determined that the burden of proof falls on the Petitioner to prove that there was no undue influence, because there was a fiduciary relationship between the Petitioner and the Decedent, and the Petitioner acted in his capacity as a fiduciary.

"If there is a challenge to the will on the ground of undue influence exerted on an otherwise competent testat[or], the burden of proving that undue influence occurred is ordinarily allocated to the contestant. . . . The rule is, however, otherwise in certain circumstances where a person in a fiduciary relationship with a principal benefits by means of a transaction with that principal." *Rempelakis v. Russell*, 65 Mass. App. Ct. 557, 563 (2006) (citation omitted). In such cases, "the fiduciary who benefits in a transaction with the person for whom he is a fiduciary

bears the burden of establishing that the transaction did not violate his obligations." *Cleary v. Cleary*, 427 Mass. 286, 295 (1998).

The Decedent appointed the Petitioner as his attorney in a Springing Durable POA executed on February 24, 2016, almost one year before the Decedent executed the will at issue in this case on January 30, 2017. The appointment of the Petitioner as attorney in the POA created a fiduciary relationship between the Petitioner and the Decedent. The Petitioner unquestionably stands to benefit from the Decedent's new will, since the Decedent's prior will made no provisions for the Petitioner, and the Decedent's January 30, 2017 will grants to the Petitioner all of the Decedent's vehicles, currency collection, and three-quarters of the residue estate. Therefore, this Court determined and informed the parties that the burden of proof had shifted to the Petitioner to prove a lack of undue influence.

b. Undue Influence Analysis

The elements necessary to prove undue influence in a will contest are: "an (1) unnatural disposition has been made (2) by a person susceptible to undue influence to the advantage of someone (3) with an opportunity to excise undue influence and (4) who in fact has used that opportunity to procure the contested disposition through improper means." *Tetrault v. Mahoney, Hawkes & Goldings,* 425 Mass. 456, 464 (1997).

In an undue influence case, the Court looks to whether "the testa[tor]'s will was overpowered by the proponent or . . . []he became subservient to his wishes." *O'Rourke*, 446 Mass. at 828. "Any species of coercion, whether physical, mental or moral, which subverts the sound judgment and genuine desire of the individual, is enough to constitute undue influence. The nature of fraud and undue influence is such that they often work in veiled and secret ways. The power of a strong will over an irresolute character or one weakened by disease, over-indulgence or age may be manifest although not shown by gross or palpable instrumentalities." *Neill v. Brackett*, 234 Mass. 367, 369 (1920). "Undue influence need not be exerted at the time a will is made; it is enough that it be operative at that time." *Erb v. Lee*, 13 Mass. App. Ct. 120, 125 (1982).

"Undue influence may be inferred from the nature of the testamentary provisions accompanied by questionable conditions. . . . When the donor is enfeebled by age or disease, although not reaching to unsoundness of mind, and the relation between the parties is fiduciary or intimate, the transaction ordinarily is subject to careful scrutiny. In such an inquiry all the attributes, sensuous, intellectual, ethical and religious, of the individuals concerned are involved. Strength or infirmity of will, natural and cultivated tastes and temperament, and tendencies to passion, resentment, obstinacy, prejudice and calm, all are elements to be considered. A strong sense of justice, determination and stead-fastness of purpose are significant considerations, as are also a spirit of domination, persistent desire to rule, and deep-seated selfishness. Age, weakness and disease are always important factors. Relations of intimacy, confidence and affection in combination with other circumstances are entitled to weight." *Neill*, 234 Mass. at 369-370.

Although undue influence may be caused by threats or physical force, it may also "result from more subtle conduct designed to create an irresistible ascendancy by imperceptible means.

It may be exerted either by deceptive devices, or by material compulsion without actual fraud." *Neill*, 234 Mass. at 369. "[A] finding of undue influence often depends on circumstantial proof because acts which are meant to overmaster someone's free will are often done furtively." *Heinrich v. Silvernail*, 23 Mass. App. Ct. 218, 229 (1986).

In analyzing the Objector's claim of undue influence in this case, the first consideration is whether the Decedent's January 30, 2017 will, which granted to the Petitioner all of the Decedent's vehicles, currency collection, and three-quarters of the residue estate, is an "unnatural disposition." According to the bond the Petitioner filed with the Court, the Decedent's estate is worth a total of approximately $370,000. This would result in the Petitioner receiving more than $250,000 from the Decedent's estate, even after consideration of the fact that there likely will be some expenses relating to administering the Decedent's estate.

The Petitioner had been a friend to the Decedent and had assisted the Decedent with transportation in the few years prior to the will execution on January 30, 2017. However, the Decedent had already been generous toward the Petitioner proportionately to the amount of assistance the Petitioner had provided to him. The Petitioner had sole use of the Decedent's brand new vehicle for almost two years as of January 30, 2017 and the only expense that the Petitioner had to pay was the gas that he used himself.

When the Decedent executed the will, the Petitioner's assistance was limited to driving the Decedent on occasional errands and to medical appointments. The Petitioner's caretaking and logistical arrangements did not occur until after the Decedent's discharge from the Bostonian, which was after the January 30, 2017 will execution.

The Decedent's prior will, executed in 2012, bequeathed half of his property to the church that he attended at that time. As part of the Decedent's admission to the Bostonian less than one month prior to the January 30, 2017 will, the Decedent rated as "important" many aspects of his faith, even though by that point the Decedent had not been attending church regularly. It was unnatural for the Decedent suddenly to practically disinherit his church that had significant meaning to him, and instead leave more than $250,000 to a friend who had provided him transportation assistance for only a few years. The Court finds that the disposition of the Decedent's estate in favor of the Petitioner under the January 30, 2017 will was unnatural.

The second consideration in the undue influence analysis is whether the Decedent was susceptible to undue influence. A decedent's "age, weakened physical condition, and total dependency on others" may show susceptibility to undue influence. *Heinrich*, 23 Mass. App. Ct. at 223. When the Petitioner and the Decedent met, the Decedent was 86 years old; the Decedent was 89 years old at the time of the January 30, 2017 will execution. By that time, the Decedent's physical and mental health had been declining for the prior few years.

The Decedent became dependent upon the Petitioner for transportation after he lost his driver's license in the summer of 2014. Beginning in late 2014, the Decedent was experiencing memory problems and dementia. The Decedent's physical health deteriorated during 2015. The Decedent used a walker and experienced decreased strength, balance, and endurance. In 2016,

the Decedent's neurologist opined that the Decedent was experiencing memory decline and had difficulty following and formulating his own thoughts.

During the month preceding the January 30, 2017 will execution, the Decedent was hospitalized and in a rehabilitation facility. He was diagnosed with congestive heart failure and pneumonia and had poor memory and cognition deficits. The Court finds that the Decedent was susceptible to undue influence due to his age, deteriorating health and because he was dependent upon the Petitioner for transportation.

The third and fourth considerations in the undue influence analysis are whether the Petitioner had an opportunity to exercise undue influence and used that opportunity to procure the contested disposition through improper means. The Petitioner had several opportunities to exercise undue influence. The Petitioner saw the Decedent on a regular basis beginning in early 2014, initially as a customer at Meineke and then when he drove the Decedent to get groceries and to medical appointments. After the Decedent lost his driver's license approximately six months after meeting the Petitioner, the Decedent became dependent on the Petitioner for transportation assistance.

The Court also finds that the Petitioner used his opportunity to exercise undue influence to procure his status as the primary beneficiary of the Decedent's estate through improper means. In this case, the Petitioner did not overtly defraud or steal from the Decedent. However, case law teaches us that undue influence can "result from more subtle conduct," "often work[s] in veiled and secret ways," and "often depends on circumstantial proof because acts which are meant to overmaster someone's free will are often done furtively." *Heinrich*, 23 Mass. App. Ct. at 229; *Neill*, 234 Mass. at 369.

The Petitioner took notice of the Decedent, an elderly customer who came into the Petitioner's place of employment, and took proactive steps to insert himself into the Decedent's life. The Petitioner's role in the Decedent's life increased gradually over time. The Petitioner initiated contact with the Decedent's closest family members and gave them carefully curated updates about the Decedent, sharing health and outing related updates. Meanwhile, the Petitioner did not share with the Decedent's family members the Decedent's more than $5,000 loan to the Petitioner's boss, the contract in which the Decedent essentially gifted the Petitioner his brand new car while still paying most expenses, the $40,000 loan to the Petitioner, that the Decedent was paying all of the Petitioner's rent and utilities, that the Petitioner had become the Decedent's health care agent, attorney under a POA, and ultimately the primary beneficiary of the Decedent's estate.

The Petitioner reached out to his own attorney contacts to draft the Car Agreement, the Personal Loan Agreement, and the estate planning documents ultimately executed by the Decedent instead of contacting either the Decedent's former estate planning attorney or the attorney who had recently been assisting the Decedent to obtain his driver's license back. The Decedent did not have independent legal advice before signing either the Car Agreement or the Personal Loan Agreement.

The Petitioner selected Attorney McWilliams for the estate planning work because he knew that, due to their pre-existing relationship, she would not question the Petitioner's representations to her regarding the Decedent's desired estate plans. In fact, Attorney McWilliams prepared the initial POA draft for the Decedent before even speaking with him. The Petitioner carefully documented in photographs, including gravesite and gravestone photographs, all activities he arranged for the Decedent. These photographs were utilized to avoid arousing suspicion in the Medores and to defeat any future allegations that the Petitioner should not have been the primary beneficiary of the Decedent's estate. In addition, the Petitioner discouraged the Decedent from traveling to the west coast to see the Medores in 2016, a trip that the Decedent had taken almost every year for more than 15 years.

The extent to which the Petitioner took advantage of his friendship with the Decedent while the Decedent was still alive to benefit the Petitioner, his friends, and his family members demonstrates his nefarious intentions in procuring primary estate beneficiary status. The Petitioner lived with the Decedent for two months without contributing toward the Decedent's rent or utilities. However, when the Decedent began living with the Petitioner, the Petitioner arranged with his friend and landlord to more than double the monthly rent for the period of time that the Decedent lived with him. Although the Petitioner and the Decedent had arranged to share the rent equally, the Decedent paid the entire monthly rent from the time he moved in until his death.

The Petitioner hired his girlfriend and sister to provide care for the Decedent and decided to pay them the same amount as the agency the Petitioner engaged to provide caretakers for the Decedent, despite the fact that the Petitioner's sister and girlfriend did not have any recent home health care experience. The Petitioner also used the Decedent's funds to install a spoiler on the Challenger that he used himself, to get the Challenger detailed, and to make personal purchases. Perhaps most troublesome, on multiple occasions, the Petitioner acted as the Decedent's attorney under the Decedent's Springing Durable POA during the final six months of the Decedent's life, even though no physician had declared the Decedent "incapable . . . of attending effectively to [the Decedent's] financial affairs by reason of mental or physical disability" as required by the POA.

Factors that have been significant to Massachusetts appellate courts in upholding a Probate and Family Court's finding of undue influence include whether the individual alleged to have unduly influenced the decedent procured and/or communicated with the attorney drafting the decedent's new estate plan (see *Estate of Moretti*, 69 Mass. App. Ct. 642, 657 (2007); cf. *Maimonides School v. Coles*, 71 Mass. App. Ct. 240, 256 (2008) and *Heinrich*, 23 Mass. App. Ct. at 228); and whether a drastic change in the decedent's estate plan resulted (see *Erb*, 13 Mass. App. Ct. at 126). In this case, the Petitioner procured the Decedent's new attorney and was the person in primary communication with her. In addition, the Decedent's January 30, 2017 will represented a drastic change from the Decedent's first three wills, in which the Decedent's church received the largest bequest.

Based on the credible evidence presented, the Court finds that the Decedent's January 30, 2017 will was the product of undue influence and will therefore not be admitted to probate.

Dated: January 16, 2020

Lee M. Peterson, Associate Justice
Norfolk Probate and Family Court

01-16-2020