STATE OF MAINE

SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT
DOCKET NO. LIN-24-235

ESTATE OF PATRICIA M. SPOFFORD

BRIEF OF APPELLANTS

ON APPEAL BY MICHAEL ZANI AND PETER ZANI
FROM THE LINCOLN COUNTY PROBATE COURT

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STATEMENT OF FACT AND INCORPORATED PROCEDURAL HISTORY

Michael Zani and Peter Zani, the biological sons of Patricia Spofford, bring this appeal challenging the Probate Court's (Lincoln County, *Avantaggio, J.*) entry of summary judgment in favor of St. Jude Children's Research Hospital. (*See* A. 8.) At issue is the contested fact of Patricia Spofford's mental state when she executed a Last Will and Testament on March 1, 2018. (A. 27.) Ultimately, the Zanis ask that the probate court identify the Last Will and Testament dated June 4, 2017, as the Will of the Decedent, (*See* R. Petition for Formal Probate of Will 5), on the basis that Spofford lacked testamentary capacity to execute the Last Will and Testament dated March 1, 2018, (R. Opposition to St. Jude Children's Research Hospital's Motion for Summary Judgment 12). Viewed in the light most favorable to Michael Zani and Peter Zani, and drawing all reasonable inferences in their favor, the record supports the following facts. *Drilling & Blasting Rock Specialists, Inc. v. Rheaume*, 2016 ME 131, ¶ 29, 147 A.3d 824.

Patricia Spofford died on June 7, 2020, (A. 44), following a steady, steep, and well-documented decline in mental and physical health, (A. 59-63). She was diagnosed with dementia in 2012, 2015, and 2017. (A. 61.) She was ultimately diagnosed with Alzheimer's disease, among other physical and mental conditions. (A. 30.)

Michael Zani and Peter Zani are the biological sons of Patricia. (A. 44.) Both sons moved from Maine to California after they graduated from high school. (A. 45.) Michael Zani traveled to Maine regularly during and after college and spoke with his mother "all the time." (A. 54). While Michael and his mother did not speak more than once or twice per year for a period between around 1993 and 2003 due to a disagreement, they made amends beginning in roughly 2003 and resumed regular contact, sometimes by phone and sometimes in-person. (A. 54.) By 2016, Michael and his mother spoke 2-3 times a week, and by 2017 they spoke daily. (A. 54.) Peter visited his mother several times in the years after he moved to California for college, and he spoke with her regularly over the phone. (A. 54.)

Patricia's health took a turn for the worse in March 2017, when she was hospitalized following an incident in which she assaulted her caregivers with a cane, bit them, and then got into her car and drove erratically through the Waldoboro area. (A. 59-60.) Physically, she was suffering from "chronic pain . . ., severe constipation, frequent urinary tract infections, impaired ambulation, acute unstable atrial fibrillation." (A. 60) Mentally, she suffered from "severe cognitive impairment, dementia, mood and sleep disorders, anxiety, and depression, among other things." (*Id*.) There were also allegations that Patricia had a history of substance abuse, including an addiction to painkillers. *Id.*

At this time, her son Michael, went to work setting up at-home care for her. (A. 46.) The care that he set up for her would later be characterized as the "gold standard" of home care. (A. 46.)

In August 2017, Patricia's physician Dr. Dickens authored a PP-505 form based on several examinations of Patricia that he had undertaken in July of 2017. (A. 60-61.) In the PP-505, Dr. Dickens noted that Patricia had been diagnosed with dementia in 2012, 2015, and 2017, and that she also had a mood disorder with an unstable emotional state, anxiety, and depression. (A. 61.) He noted that her dementia was "likely progressive" and that her mood disorder was "persistent," and that "both limit her ability to make coherent and insightful decisions." (*Id*.) Dr. Dickens concluded that Patricia needed both a guardian and a conservator because she was "incapable" of "manag[ing], protect[ing] and expand[ing] [her] assets and income" and "dispos[ing] of her assets," among other limitations. (*Id*.)

On August 15, 2017, Harold Van Lonkhuyzen, M.D., authored an additional PP-505 form based on his examinations of Patricia in June and July of 2017. (A. 61.) He noted that Patricia suffered from "gradual and progressive cognitive impairment," and diagnosed her with "major neurocognitive disorder." (*Id*.) He agreed with Dr. Dickens that Patricia's "mental and functional condition . . . to manage [her] property and financial assets is limited," and that she was incapable of managing, protecting, expanding or disposing of her assets. (A. 61-62.)

Also in August 2017, the Maine Department of Health and Human Services filed a petition in the Lincoln County Probate Court seeking appointment of a guardian and conservator for Patricia. (A. 45.) The Zanis intervened and sought co-guardianship of their mother. (A. 45.)

Unfortunately, Patricia's caretakers were interfering between the Zanis and their mother. In roughly 2017, Michael and Karin had conversations in which Karin accused Michael of stealing money from his mother. (A. 63.) Karin would tell Patricia that her son Michael was stealing money from her, which would lead Patricia to call Michael screaming, when in fact no money had been taken. (A. 63.) Karin discouraged Michael from having daily phone conversations with his mother, and when he could get through, their calls were short and standoffish. (A. 64). In the past, generally speaking, Michael had had frequent, at times daily, conversations with his mother about her health, her schedule, her dog, her legal affairs, her art, the movies, and the weather. (A. 55.)

The court appointed a Guardian ad litem, John Healy, Esq., with regard to the guardianship and conservatorship proceedings. (A. 79.) The GAL noted that Patricia was "confused, unfocused, and often hostile," and that she would "sometimes contradict herself or change her position on certain issues . . . within minutes of making a diametrical opposed statement." (A. 60.) "At one moment she appears to be lucid and engaged, while in the next, she is totally confused and unable to make

appropriate decisions," he wrote. (*Id*.) He opined that she was unable "to understand or perceive the world around her." (*Id.*) In one telling anecdote, the GAL reported:

> [S]he actually called me in early September to request my assistance in getting The First National Bank to transfer $300,000 into her checking account so that she could pay her caregivers. When I asked why she needed such a large amount of money, the only explanation that she could offer was that she 'had a lot of bills to pay.'

(A. 83.)

In November 2017, Dr. Dickens examined Patricia and told her that she "needed a guardian to protect her interests" because she "needed assistance with . . . decision making and complex issues." (A. 68.)

A hearing took place in December 2017. (A. 45.) At that hearing, Patricia looked at Michael and said "Who is that? That's not my son." (A. 59.) Patricia also told the court that she did not want Michael Zani or Peter Zani appointed as her guardians. (A. 45.) Patricia advised the probate court that she wanted Karin Beaster and Nancy Carter, her current caretakers, to serve as her co-guardians. (A. 45.)

After a hearing, the probate court (*Avantaggio, J.*) ultimately found that it was not in Patricia's best interests to have the Zanis appointed as their mother's guardian or co-guardians, and appointed Karin Beaster and Nancy Carter as her guardians. (A. 45, 53.) In doing so, the court noted that Michael Zani had "done an admirable job of organizing and managing care for Patricia since March of 2017, and has demonstrated that he has the capacity to continue doing so." (A. 53.) Ultimately, the

court was "influenced by the clear and vehement preference of Ms. Spofford," but it noted that Patricia was "incompetent" and "prone to rapid changing of moods and opinion," and that that her objections may not be well-founded. (A. 53.)

After Nancy Carter and Karin Beaster were appointed as Patricia's guardians in December of 2017, Michael's regular communication with his mother was cut off. (A. 59.) After several months of no communication, Karin told Michael that he was allowed to speak to his mother on the phone. (A. 59.) However, often his phone calls would go unanswered. (A. 59.) As a result, Michael Zani had only a few conversations with his mother in 2018 and Peter Zani did not speak with his mother until the end of 2018. (A. 55.)

On January 15, 2018, Dr. Dickens again examined Patricia and noted that she was "emotionally distressed and labile with unclear objectives." (A. 62.) On February 15, 2018, Dr. Dickens examined Patricia and stated that she had "significant cognitive dysfunction," and that she had "cognitive and memory problems she does not really understand completely." (A. 62.)

On March 1, 2018, Patricia executed the Last Will and Testament that is at issue in this case. (A. 72-74). Michael and Peter were not present and did not speak to their mother on the day the will was executed. (A. 46.)

On the day that she signed the will, Patricia met with Dr. Dickens. (A. 47.) Patricia completed a cognitive assessment "with mild difficulty." (A. 98.) Dr.

Dickens opined that he believed that Patricia had capacity to execute a will. (A. 47.) Dr. Dickens authored a report in which he stated that Patricia was not confused or disoriented; did not have any delusional thought disorder or altered thinking; was alert and oriented to person, place, and time of day; did not give him any reason to suspect that she was under duress, nor did it appear from his examination of Patricia that she was under duress; and said that she understood the nature of her testamentary will, the extent of her possessions, and the purpose and consequences of executing the will. (A. 47.)

By the date that the will was executed—March 1, 2018—Patricia was taking up to seventeen prescriptions daily, including methadone, oxycodone, alprazolam, and cyclobenzaprine. (A. 62.) Moreover, despite Dr. Dickens's conclusions referenced above, she was noted on that same date as having "limitations of memory and computation" and impaired impulse control. (A. 62.) He also noted diagnoses of acquired cognitive dysfunction and "cognitive disorder." (R. Dr. Dickens Affidavit Exhibit A 139.)

Later in the day, Patricia met with Attorney Michele Hallowell at Patricia's home. (A. 48.) Attorney Hallowell conferred with Patricia, took notes on what Patricia said she wanted in the new will, left to draft the will, and returned the same afternoon with the draft for Patricia to review. (A. 48-49.) The meetings were videotaped. (A. 48-50.)

During the meeting, Patricia emphatically stated that she wanted to exclude Dana Spofford, Todd Spofford, and Michael Zani from her will. (A. 49.) She stated that Dana was after her house and trying to put her in a home, and that Todd had done everything he could to make Patricia unhappy when she and his father were married. (A. 58.) The will was signed that same day in the presence of witnesses Kathryn Read and Sonya Hunt. (A. 49.) The will omits Michael Zani, leaves $1000 to Peter Zani, each of Patricia's grandchildren, and each relative who posed for a portrait for her paintings, leaves $500 to Jacqueline Spofford, leaves $5000 to Nancy Carter, and leaves the majority of her estate to Lincoln County Animal Shelter and St. Jude Children's Research Hospital. (A. 50, 72-74.)

Patricia saw Dr. Dickens again on March 21, 2018—less than three weeks after the will was executed—and he reiterated that she suffered from "cognitive impairment, memory, and impulse control." (A. 63.) On June 4, 2018, he saw Patricia again and characterized Patricia as "angry," "uncooperative," "aggressive and reactive," and "not able to listen." (A. 63.)

On January 29, 2019, Dr. Dickens noted that Patricia "ha[d] mental health imbalance, perhaps mild cognitive impairment, and a long history of impulsive irrational appearing and aggressive behavior." (A. 63.) By January of 2020, Dr. Dickens wrote that Patricia was "not realistic" and could not "manage her affairs without assistance and guardianship." (A. 63.) On March 9, 2020, Dr. Dickens noted

that Patricia had "poor mental status with dementia, confusion, agitation currently not under good control." (A. 63.)

On June 10, 2020, three days after Patricia's death, Patricia's 2018 will was filed with the Lincoln County Probate Court. (A. 44.) The probate court issued notice to Michael Zani and Peter Zani. (*Id*.) A week later, Michael and Peter filed a Petition for Removal of Personal Representative and Petition for Formal Probate of Will and Formal Appointment of Personal Representative. (*Id*.) They sought appointment as co-personal representatives of the estate and to probate a 2017 holographic will. (*Id*.)

On July 23, 2020, Michael Zani and Peter Zani filed a complaint in the Lincoln County Superior Court against, among others, St. Jude Children's Research Hospital. (A. 8.) As to all defendants, the complaint sought a declaratory judgment that Patricia lacked the testamentary capacity to execute her will on March 1, 2018. (A. 8.)

St. Jude Children's Research Hospital moved for Partial Summary Judgment. (A. 10.) The court (Lincoln, *Billings, J.*) granted the motion, finding no genuine issue of material fact concerning Patricia's testamentary capacity on March 1, 2018, and concluding that as a result, St. Jude was entitled to judgment as a matter of law. (A. 19-20.) The court concluded that because the Zanis were not able to produce evidence to contradict the evidence that was set forth regarding Patricia Spofford's testamentary capacity on the actual date that she signed the will, there could be no

genuine dispute of material fact as to Patricia's testamentary capacity on that date. (A. 19.) The court issued this order despite the ample evidence pointed to by the Zanis contradicting her testamentary capacity before and after March 1, 2018, and the contradictions made by Dr. Dickens on March 1, 2018. (A. 19.)

The court certified the order as a final judgment pursuant to M.R. Civ. P. 54(b)(1), and the Zanis filed an appeal before this court, arguing that the court erred in granting the summary judgment motion because a genuine dispute exists regarding Spofford's testamentary capacity on March 1, 2018. *Zani v. Zani,* 2023 ME 42, 299 A.3d 9. In August 2023, this Court vacated the Superior Court's order granting summary judgment and remanded for dismissal of the declaratory judgment claim on the basis that the Superior Court did not have jurisdiction over the declaratory judgment claim. *Id.* ¶ 1.

Thereafter, in the present proceedings, a status conference was held on December 20, 2023, and the Probate Court set a deadline for the parties to file summary judgment motions. (R. Scheduling Order Following Conference of Counsel.) The parties filed substantially the same pleadings in the Probate Court that had been filed in the Superior Court. (A. 8.) The court (Lincoln, *Avantaggio, J.*) reviewed the Superior Court order that had been issued granting St. Jude's summary judgment motion, agreed with it, and, with the consent of the parties, adopted it,

granting the motion for summary judgment filed by St. Jude. (A. 8.) This appeal follows. (A. 7.)

STATEMENT OF ISSUES

I. Whether the Probate Court erred when it found no genuine dispute on the material issue of Patricia Spofford's testamentary capacity to execute her will on March 1, 2018.

SUMMARY OF ARGUMENT

Michael Zani and Peter Zani appeal the court's order entering summary judgment against them on the grounds that no genuine dispute exists regarding Patricia Spofford's testamentary capacity on March 1, 2018. Because the law is clear that evidence before and after the date a Will was executed is admissible to show that a testatrix lacks the requisite testamentary capacity, and because the evidence in the record is sufficient to establish a genuine dispute as to the material facts, this Court should reverse the Probate Court's decision and remand the case.

Testamentary capacity is an issue of fact, and this fact may be shown by evidence from a reasonable time period before and after the will was signed. Here, the Defendants have put forth evidence in the form of witness affidavits and video footage from which they would argue that Patricia had testamentary capacity on March 1, 2018. Because they were not present, Michael and Peter Zani have no direct evidence regarding the events that took place on March 1, 2018. Nonetheless, there is ample evidence from before and after the date the will was executed that puts Patricia's testamentary capacity on March 1, 2018, into serious doubt. To disregard all the evidence put forth by the Zanis at the summary judgment stage simply because they do not have evidence relating to March 1, 2018, itself would be contrary to this Court's prior holdings. It would also essentially act to bar any future party from contesting a will if he or she did not have contact with the testator on the

day the will was executed.

Furthermore, there are reasons to question some evidence proffered by the Appellees with their motions for summary judgment. For example, on the date that the will was executed, Patricia's own physician made conflicting statements concerning her testament capacity which undermines the credibility of his opinion. Moreover, it is not enough that Dr. Dickens states that it is his opinion that Patricia had testamentary capacity or that Michele Hallowell states that it is her opinion that Patricia had testamentary capacity—testamentary capacity is a finding made by courts, not doctors or lawyers. The credibility, biases, or reasonableness of witnesses attesting to Patricia's testamentary capacity on March 1, 2018, in light of all of the other evidence put forth by the Zanis, also creates a genuine dispute of material fact.

In short, the record is more than sufficient to create a genuine dispute of material fact as to Patricia's testamentary capacity, requiring a fact-finder to choose among competing versions of the truth. As the law is clear that evidence of an unsound mind need not be limited to the person's state of mind at the moment of execution, and in light of the conflicting evidence offered to the court by the parties on the issue of Patricia's testamentary capacity, the Probate Court erred when it found no genuine dispute and granted both summary judgment motions. This court should reverse the decision and remand to the Probate Court for further proceedings.

ARGUMENT

I. THE PROBATE COURT ERRED WHEN IT CONCLUDED THAT NO GENUINE DISPUTE OF MATERIAL FACT COULD EXIST REGARDING PATRICIA'S TESTAMENTARY CAPACITY ON THE DAY THE WILL WAS EXECUTED.

a. Standard of Review

Summary judgment is "not a substitute for trial. If material facts are disputed, the dispute must be resolved through fact-finding, even though the nonmoving party's likelihood of success may be small." *Niehoff v. Shankman & Assocs. Legal Ctr., P.A.*, 2000 ME 214, ¶ 10, 763 A.2d 121. "[A] genuine issue of material fact exists when a fact-finder must choose between competing versions of the truth, *even if one party's version appears more credible or persuasive*." *Angell v. Hallee*, 2014 ME 72, ¶ 17, 92 A.3d 1154 (quotation marks omitted) (emphasis added).

This Court "review[s] de novo whether, on a motion for summary judgment, a dispute of material facts exists." *Id.* ¶ 16. In doing so, this Court views "the evidence in the light most favorable to the nonprevailing party—in this case, [Michael Zani and Peter Zani]—to determine whether the record supports the conclusion that there is no genuine issue of material fact and that the prevailing party is entitled to a judgment as a matter of law." *Curtis v. Porter*, 2001 ME 158, ¶ 6, 784 A.2d 18. Moreover, the party opposing a summary judgment motion is given the benefit of "any reasonable inferences that a fact-finder could draw from the given

facts." *Id.* ¶ 9; *see also Jenness v. Nickerson*, 637 A.2d 1152, 1154 (Me. 1994). At the summary judgment stage, the nonmoving party need only provide "enough evidence to allow the fact-trier to infer the fact at issue and rule in the party's favor." *Nader v. Me. Democratic Party*, 2012 ME 57, P 34, 41 A.3d 551.

b. Testamentary Capacity

"Testamentary capacity is an issue of fact." *Estate of Siebert*, 1999 ME 156, ¶ 6, 739 A.2d 365. This Court has explained the standard for testamentary capacity as follows:

> A disposing mind involves the exercise of so much mind and memory as would enable a person to transact common and simple kinds of business with that intelligence which belongs to the weakest class of sound minds; and a disposing memory exists when one can recall the general nature, condition and extent of his property, and his relations to those to whom he gives, and also to those from whom he excludes, his bounty. He must have active memory enough to bring to his mind the nature and particulars of the business to be transacted, and mental power enough to appreciate them, and act with sense and judgment in regard to them. He must have sufficient capacity to comprehend the condition of his property, his relations to the persons who were or should have been the objects of his bounty, and the scope and bearing of the provisions of his will. He must have sufficient active memory to collect in his mind, without prompting, the particulars or elements of the business to be transacted, and to hold them in his mind a sufficient length of time to perceive at least their obvious relations to each other, and be able to form some rational judgment in relation to them.

Id. ¶ 5 (quotation marks omitted).

This court has clarified that evidence showing the testatrix's capacity at the moment of making the will is not limited to evidence on the day the will was

executed. Instead, this Court has stated:

> [Evidence] of testator's conduct, emotions, methods of thought, and the like, *for a very considerable period before and after the execution of the will*, is admissible to show his capacity at the moment of making the will. The evidence must be restricted to a reasonable time on either side of the execution of the will.

In re Leonard, 321 A.2d 486, 489 (Me. 1974).

"Except in rare instances, the appearance and conduct of the testator at the moment of executing the will does *not* furnish a sufficient basis for determining the mental condition at that time." *Appeal of Waning*, 151 Me. 239, 251, 117 A.2d 347, 354 (1955) (emphasis added). Instead, "[testamentary capacity] can often be determined only from a consideration of his conduct, behavior, methods of thinking, and the like, *extending over a long period of time*." *Id.* Put more clearly, "There may be no direct evidence that on the day and at the hour the will was signed, [the] testator was not sane, but it does not follow that proof of incapacity at the very moment must be made by eyewitnesses on that occasion. *Proof of insanity prior thereto, permanent in kind and progressive, raises a presumption of continuity*." *Martin, Appellant*, 131 Me. 422, 434, 179 A. 655 (1933) (emphasis added).

This case is very similar to a case that this Court considered in 1935, *Appeal of Martin*, 133 Me. 422, 179 A. 655 (1935). In that case, the will of John T. Martin was contested on the basis of testamentary capacity. *Id.* at 429. Mr. Martin had executed a will drafted by an attorney and witnessed by three individuals. *Id.* at 431.

The attorney and all three witnesses testified that the individual signing the will was of sound mind and that there were no issues with his mental condition at the time the will was signed. *Id.* No other evidence existed as to the testator's mental state on the day the will was actually executed. *Id.*

Nonetheless, ample evidence existed from before the date of the will signing that created significant doubt as to the testator's testamentary capacity. *Id.* at 432. For example, the court pointed out that a former long-time business associate of the testator testified that "though the testator had been a capable, prudent man, . . . in 1928 and 1929 he did not think consecutively, his speech was disconnected, during conversation 'he would talk about something else and then turn right on to something far from it.'" *Id.* There was testimony that he did not take care of his estate, was "changeable," was interested in "trifles" and his judgment was faulty. *Id.* The testator had been diagnosed with dementia. *Id.* Although there was no direct evidence to contradict the statements of the attorney and witnesses regarding the testator's state of mind on the day the will was executed, based on the totality of the evidence, the court concluded that there was "in this case, substantial evidence of the presence of senile dementia in a state so advanced as to justify saying, as a finding of fact, that the burden of proof as to soundness of mind, when the will was made, is not sustained." *Id.* at 434. This Court vacated a probate court's order on that basis. *Id.*

Similarly, in this case, despite the fact that there is no direct evidence to

contradict the statements of witnesses on the date Patricia executed her will, there is voluminous evidence that calls into question Patricia's ability to, among other things, transact simple business, act with sense and judgment, understand the nature and particulars of the business she was transacting, and grasp the scope and bearing of the provisions of her will during the time frame when the will was executed.

First, starting in March 2017, Patricia was hospitalized after she assaulted her caregivers with a cane, bit them, and then got into her car and drove erratically through the Waldoboro area. From this time, she required 24/7 at home care to function. Seven months prior to the 2018 Will signing, two physicians determined Patricia's cognitive impairment was so severe that she was incapable of managing her property and financial affairs.

Shortly thereafter, in September 2017, after meeting with Patricia, the guardian ad litem characterized Patricia as confused, unfocused, and hostile, and contradicting herself or changing her position on certain issues within minutes of making a diametrically opposed statement. He specifically stated that she was unable to understand or perceive the world around her. He continued to believe these things at the guardianship hearing in December 2017.

Moreover, at the guardianship hearing in December 2017, on the record, Patricia Spofford was so confused that she did not recognize her own son. At the end of that hearing, the court found that there was no question that Patricia was

incapacitated and that appointment of a guardian was necessary. The court also appointed a conservator.

In their motion for summary judgment, Defendants rely in large part on a statement authored by Dr. Dickens on the date that Patricia executed her will to argue that she had testamentary capacity. However, there is evidence that, throughout 2017 and 2018, Dr. Dickens characterized Patricia as emotionally distressed, labile, and in need of assistance with decision-making and complex issues. As late as February 15, 2018, less than a month before he signed off on her competency, he opined that Patricia had "significant cognitive dysfunction" that she did not fully grasp. When Patricia expressed that she was anxious to get her will completed, Dr. Dickens's opinion rapidly changed, and he determined inexplicably that she was competent to sign her will. However, within three months after he deemed Patricia competent to sign a will, he returned to the characterization of Patricia as reactive, unable to listen, aggressive, and uncooperative. On the date of the will-signing itself, his medical records note that Patricia has limitations of memory and computation and is quite impulsive. At trial, a fact-finder will have the opportunity to judge the credibility of the doctor's March 1, 2018 opinion in light of (1) the contradictory medical records that he generated before and after the will signing; and (2) the contradictory statements made in the medical records on the date of the will signing itself. The fact finder will also have the opportunity to determine what impact the 17 daily

prescriptions—including methadone, oxycodone, Xanax, and muscle relaxers—had on Patricia's mental state.

There is also evidence that Patricia's caregivers were isolating her from her sons in the months leading up to the 2018 Will signing, and that they convinced her Michael was stealing money. In the context of a woman who was labile, reactive, and in need of assistance with basic decision making, a fact-finder may determine that the influence of Patricia's caretakers negatively impacted her ability to comprehend her relationship with her sons, including the scope and bearing of the provisions excluding them from her will.

Moreover, the Appellees rely heavily on the fact that a doctor and lawyer both opined that Patricia had testamentary capacity on the date she executed the will. Nonetheless, it is not enough that Dr. Dickens states that it is his opinion that Patricia had testamentary capacity or that Michele Hallowell states that it is her opinion that Patricia had testamentary capacity—testamentary capacity is a finding made by courts, not doctors or lawyers. It may well be that after hearing the evidence put forth by the Zanis, and considering the biases of the witnesses, a fact-finder does not credit these opinions.

In sum, a genuine dispute exists as to Patricia's capacity to execute a will on March 1, 2018. In light of the ample evidence put forth by the Zanis, the mere fact that there is no direct evidence to contradict her state of mind on March 1, 2018,

does not cause the Zanis' claims to fail. As a result, the Probate Court erred in granting the motion for summary judgment, and this Court must reverse the Probate Court order.

c. Effect of Guardianship and Conservatorship on Testamentary Capacity

The Zanis have argued that one piece of evidence that demonstrates that Patricia did not have capacity at the time the will was executed is the fact that she had been found to not have capacity after a contested guardianship hearing only months before the will was executed and was under both a guardianship and conservatorship at the time the will was executed.

In a pre-Probate Code case, this Court stated that "The incapacity of guardianship is simply a fact which may be proven like any other fact tending to establish mental incapacity, but it does not work an estoppel upon the proponents." *In re Am. Bd. of Com'rs for Foreign Missions*, 102 Me. 72, 66 A. 215, 226 (1906). However, there is a "presumption of testamentary incapacity arising from a decree of unsound mind," and there is a "burden upon the proponents of a will to overcome the disability imposed by guardianship" by "prov[ing] by a preponderance of the evidence that the testator at the time of executing the will was of sound mind." *Id.* at 227. Although that case has been superseded by the Probate Code, the Court's approach at the time demonstrates that in determining testamentary capacity, the fact that the testatrix was under a guardianship order is a significant consideration.

Thus, although the fact that Patricia was under a guardianship and conservatorship at the time the will was executed is not dispositive in and of itself on the issue of testamentary capacity, it is certainly persuasive evidence that testamentary capacity did not exist. Here, it is certainly enough to generate a genuine dispute of material fact as to whether testamentary capacity existed at the time the will was executed.

CONCLUSION

For the reasons stated above, Michael and Peter Zani, Appellants, respectfully request that the Order of Summary Judgment for St. Jude Children's Research Hospital be vacated, that the matter be remanded to the Probate Court for further proceedings, and that this Court order any further relief it determines to be just.

Respectfully submitted,

Dated: August 14, 2024

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CERTIFICATE OF SERVICE

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