STATE OF MAINE

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

ESTATE OF PATRICIA M. SPOFFORD

REPLY BRIEF OF APPELLANTS

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

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REPLY TO ARGUMENTS OF APPELLEE

I. THIS COURT MUST CONSIDER THE FACTS IN THE LIGHT MOST FAVORABLE TO APPELLANTS

St. Jude misunderstands the standard this Court must apply when reviewing a summary judgment record and make numerous factual assertions that are not part of the factual record for this Court's review.

The law is clear that this Court considers the evidence in the summary judgment record in the light most favorable to the nonmoving party. *Ocean Cmtys. Fed. Credit Union v. Roberge*, 2016 ME 188, ¶ 4, 144 A.3d 1178. Although the appellee cites to record evidence in its brief, where summary judgment facts are disputed or clarified with additional averments, the appellee recites the facts viewed in the light most favorable to its case and disregard facts that are not helpful to its case. (*See, e.g.,* St. Jude Red Br. 1, 11-12.) This is contrary to the standard the court must apply. As such, St. Jude has painted a picture that is quite different from one supported by the facts that this Court must review.

In their statement of facts, St. Jude's characterizations of the relationship between Patricia Spofford and her sons, Michael and Peter Zani, are both inaccurate and not supported by the summary judgment record. Appellee St. Jude characterizes the relationship between Michael and Spofford and Peter and Spofford as "distant." (St. Jude Red Br. at 1.) St. Jude goes on to state that contact between Spofford and her sons was "limited" and to claim that Michael did not have contact with his

mother for twelve years. (St. Jude Red Br. at 1.) St. Jude insinuates that Peter did not have contact with his mother for seven years. (St. Jude Red Br. at 1.) St. Jude further characterizes the relationship between Spofford and Michael as "volatile." (St. Jude Red Br. at 1.)

The characterizations of the relationships as "distant," "limited," and "volatile" are not facts, and the record evidence, viewed in the light most favorable to Michael and Peter, does not support these characterizations. For example, when Patricia was in need in 2017, it was Michael who she turned to for assistance. (A. 46.) Furthermore, as Appellee pointed out, both Michael and Peter were named as beneficiaries of a holographic will signed in June 2017 which they offered to the probate court. (Red Br. 9, A. 11, R. 2017 Will.) These facts do not reflect a "distant," "limited," or "volatile" relationship.

Furthermore, the specific factual averments referenced above themselves are clearly inaccurate or misleading and were all properly denied by Michael and Peter in their opposing statement of material facts. (A. 54-55.) In fact, in their Reply to Plaintiff's Opposing Statement of Material Facts, St. Jude admits the same. (A. 40.) St. Jude only responds to three of Michael's and Peter's objections. In response to the denial to St. Jude statement that contact was "limited," St. Jude explains:

> In Michael Zani's deposition, he stated that, from about the time his grandfather passed away around 1993 "until about 2014 [he and Ms. Spofford] didn't talk much" meaning "once or twice a year." He also stated that there were years in that period in which he and Ms. Spofford

> would not talk at all. He also stated that, when he got married in 1998, he did not invite Ms. Spofford because he was not talking to her.

(A. 70 (citations omitted).) St. Jude does not respond directly to the objections regarding the allegations that Michael did not have contact with his mother for twelve years and that Peter did not see his mother for seven years. (A. 70.)

Regarding Michael, the actual deposition testimony that is being referenced states:

> A: I think somewhere around '93 my grandfather passed away. So from about that time until about 2014 we didn't talk that much.
> Q: When you say not that much, how often?
> A: Once or twice a year.
> Q: Was there a period of time like 10 years you didn't talk to her at all?
> A: I do not recall a stay that long that I did not talk to my mom.
> Q: Were there years where you didn't talk to her at all during the course of the year?
> A: Oh, yeah, yeah.

(R. St. Jude Statement of Material Facts, Olfene Aff., Exhibit A at 31.) Thus, the record in no way supports the statement that Michael Zani "did not contact his mother for nearly 12 years."

Regarding Peter, the actual testimony that is being referenced is:

> Q: Okay. So you didn't visit your mother at all between 2010 and 2017?
> A: We did all our correspondence on -- on the phone.

(R. St. Jude Statement of Material Facts, Olfene Aff. Exhibit B at 20.) Thus, while the statement itself that "Peter did not see his mother between 2010 and 2017" itself is correct, it leaves out the fact that Peter, who lived in California, kept in touch with

his mother during this time period by phone, an important fact when viewing the facts in the light most favorable to Michael and Peter.

Concerning the time period after 2017, in its recitation of the facts, St. Jude simply states that "[t]he December 2017 hearing was the last time that Michael and Peter Zani saw their mother, and—other than a brief phone call from Michael sometime in 2018—neither son had further contact with their mother prior to her death on June 7, 2020. (St. Jude Red. Br. at 3.) This statement is not accurate. The record actually reflects that "Michael may have had only one brief conversation with his mother [during this time period], but it may have been three or four conversations. Peter testified that he spoke with his mother towards the end of 2018. *Michael and Peter's other attempts to make phone calls to his mother went unanswered*." (A. 55 (emphasis added).) Furthermore, later in its brief, St. Jude admits that "*the caregivers asked the Zanis to limit their communications with Ms. Spofford* . . . .", acknowledging that the reason for this lapse in contact was not for lack of effort by Michael and Peter. (St. Jude Red Br. at 22 n. 10 (emphasis added).)

Moreover, the characterization that "it wasn't until" Spofford's health began to fail that Michael became more involved in her care is misleading. (St. Jude Red Br. at 1.) It would be accurate to say that Spofford *did not need* Michael to be involved in her care *until* her health began to fail, and that when it did, Michael was there for her unconditionally. (A. 46.) In fact, St. Jude's own factual averment that

St. Jude is citing to states "However, in 2017, when she began to fail, Michael organized her 24-hour care, which the Probate Court characterized as 'the gold standard' of in-home care." (A. 46.) Attempting to manipulate this sincere act by somehow suggesting that Michael was negligent before his mother's health began to fail is not presenting the facts in the light most favorable to Michael and Peter.

Additionally, St. Jude recites that "the Maine Department of Health and Human Services ('DHHS') received reports alleging Michael Zani had attempted to transfer money out of his mother's stock trading account." (St. Jude Red Br. at 1.) Notably, however, there is no mention in any factual averment that Michael stole any money from his mother or that there was not a legitimate explanation for the attempted transfer. (*See generally* A.) The reason there is no factual averment to this effect is that there are no findings in the record whatsoever that either Michael or Peter ever stole money from their mother or committed financial abuse concerning their mother. (*See generally* A.) Thus, mentioning that a report to this effect was made is done for no reason other than to attempt to prejudice Michael and Peter, which is clearly not viewing the facts in the light most favorable to Michael and Peter as is required here.

Appellee also speculates as to Spofford's thoughts and state of mind on the day she executed her will. (St. Jude Red Br. at 3.) St. Jude states that Spofford saw Dr. Dickens "[i]n an effort to protect her testamentary wishes from being

challenged," (St. Jude Red Br. at 3), which is not properly supported by record evidence. Spofford's thoughts leading to the events that took place on the day her will was executed are certainly not properly in evidence.

Finally, it is notable that Appellee's brief contains essentially no mention of the powerful combination of medication that Spofford was prescribed, her co-occurring diagnoses and general cognitive decline, her past history of erratic and violent behavior, Spofford's history with impulsivity, and the role of her caretakers in the isolation and estrangement of Spofford and her family members after the 2017 proceedings. (*See generally* Red Brief.) These facts were all set out in detail in Appellants' Blue Brief and will therefore not be set out in detail again here, but it is worth noting that these facts are highly relevant, especially when considering the facts in the light most favorable to Michael and Peter, and it's difficult to reconcile the arguments of St. Jude when properly considering these facts.

Lastly, St. Jude attempts to argue that Michael and Peter did not properly object to certain factual averments and that these statements are therefore undisputed. (Red Br. 22.) This argument is misguided. Several paragraphs of St. Jude's statement of material facts set out opinions stated by Dr. Dickens or statements made by Spofford and constitute legal conclusions. Thus, they cannot be relied on by the court on summary judgment to support St. Jude's legal argument. (*See* A. 47 "Spofford informed Dr. Dickens that she understood the nature of her

testamentary will, the extent of her possession, and the purpose and consequences of executing the will.") Contrary to St. Jude's argument, the fact that Michael and Peter did not designate an expert on the issue of testamentary capacity does not negate their valid dispute of these legal conclusions.

In sum, the Appellee's brief wholly ignores the standard this court must apply to review this case—to view the facts in the light most favorable to Michael and Peter. When viewing the facts in that light, the arguments made by Appellee fail.

II. ST. JUDE MISUNDERSTANDS APPELLANTS' BURDEN IN A SUMMARY JUDGMENT CONTEXT

St. Jude correctly states that this Court will "affirm a grant of summary judgment if the record reflects that there is no genuine issue of material fact and the movant is entitled to a judgment as a matter of law." *Burdzel v. Sobus,* 2000 ME 84, ¶ 6, 750 A.2d 573. "A material fact is one that can affect the outcome of the case, and there is a 'genuine issue' when there is sufficient evidence for a fact-finder to choose between competing versions of the fact." *Bibeau v. Concord Gen. Mut. Ins. Co.*, 2021 ME 4, ¶ 6, 244 A.3d 712 (quoting *Stewart-Dore v. Webber Hosp. Ass'n,* 2011 ME 26, ¶ 8, 13 A.3d 773*).*

Despite recognizing this, St. Jude then go on to discuss in detail Michael's and Peter's burden of proof on the issue of testamentary capacity if the case were to proceed to *trial*, and this Court's review of a testamentary capacity finding after a *trial*. Those standards may apply in the context of a trial, but they are not the

standards that apply in review of this case; as described above, in this case, summary judgment cannot be granted if there is sufficient evidence for a factfinder to choose between competing version of the fact and that fact could affect the outcome of the case.

In this case, a factfinder could choose between two competing versions of whether or not Spofford had testamentary capacity on the day the 2018 will was executed—a fact which would affect the outcome of the case. A factfinder could find that based on the ample evidence offered by Michael and Peter, including the PP-505's, medical records, guardian ad litem report, and deposition testimony, as well as their impeachment of Dr. Dickens' report and Attorney Hallowell's statements in consideration of this history, Spofford did not have capacity on the day her 2018 will was executed. Alternatively, a factfinder could find that despite the historical evidence and context offered by Michael and Peter, based on statements made by Dickens and Hallowell, Spofford did have testamentary capacity on the day the 2018 will was executed.

Furthermore, many of the cases cited to by Appellee were appeals from final orders on the issue of testamentary capacity and not summary judgment orders. As such, the cases cited by Appellee apply a completely different standard and are not analogous to the case at hand.

Because St. Jude misunderstand the relevant burdens in the context of an

appeal of a summary judgment motion, their arguments fail.

III. SUMMARY JUDGMENT IS INAPPROPRIATE BECAUSE A GENUINE DISPUTE OF FACT EXISTS

St. Jude continue to assert that there can be no genuine dispute of fact if Michael and Peter cannot produce direct evidence on the day Spofford signed her will and claim that Michael and Peter are resting on "bare allegations." Furthermore, St. Jude argues that "evidence of a testator's general cognitive condition can be probative of testamentary capacity *if* there is no direct evidence about the time she executed the will." (St. Jude Red Br. 21 (emphasis added).)

This is a clear misstatement of the law. It is well established that evidence of a testatrix before or after the day a will is executed is relevant to the question of testamentary capacity, and this has never been limited to situations where direct evidence of the day a will was executed does not exist. *See Appeal of Martin*, 133 Me. 422, 179 A. 655.

Instead of acknowledging this, the Appellee points in large part to *Estate of Seibert*, 1999 ME 156, 739 A.3d 365. In that case, an appeal was taken after a probate hearing where a court found that a testator had capacity at the time he executed his will, not after a summary judgment motion. *Id.* ¶ 1. The court had been presented with amply testimony of the testator's capacity both at the time the will was signed and during the time period leading up to the execution of the will. ¶¶ 7-9. The testator was not under a guardianship and, although very little facts are provided in the

opinion about the alleged "memory issues" that the testator suffered from, his mental condition seems to have been at a much higher level than that of Spofford in 2018. *See Id.* ¶ 10. *Estate of Siebert* is not analogous to the case at hand. *In re Est. of O'Brien-Hamel*, 2014 ME 75, ¶ 29, 93 A.3d 689 is inapplicable for the same reasons.

Finally, St. Jude relies heavily on the fact that Dr. Dickens stated that in his "medical opinion" Spofford possessed testamentary capacity and that Attorney Hallowell opined that Spofford was competent to sign her will. (A. 97, 105.) However, a "medical opinion" by a physician does not demonstrate testamentary capacity under the law. Similarly, Attorney Hallowell is not a factfinder in this case, has not been designated as an expert, and cannot opine on competency. In the context of a summary judgment motion, even if these facts could support one version of the story, but they do not rule out the other version that the factfinder could find.

Michael and Peter provided ample evidence of the period before and after the will was executed that could lead a factfinder to find that Spofford did not have capacity on the day she signed her will. Furthermore, the video of Attorney Hallowell's interaction with Spofford itself shows that Spofford did not understand the nature, condition, or extent of her property on the day that her will was executed. She was not aware of the value of her estate. (A. 48.) Although she identified a value for the bequest to various individuals, when it came to St. June, she simply stated that she would leave "the balance." (A. 49.) She did not know the value of her stock

holdings and had no idea what she was actually leaving to St. Jude. (A. 48.) Since she did not know what the value of her stock holdings was, she thought she was going to have to sell her land valued at over one million dollars to pay for her care. (A. 48.)[1]

In sum, it is clear that a genuine dispute of fact exists with regards to whether Patricia Spofford had testamentary capacity on the day the 2018 will was executed, and summary judgment was inappropriately granted in this case.

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[1] The pleadings filed with the probate court after Spofford's death show that her stocks were actually worth over $400,000 when she died. R. Lincoln County Probate Court 2017-0223 Conservator Account June 24, 2020.

CONCLUSION

For the reasons stated above, Michael and Peter Zani, Appellants, respectfully request that the Orders 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: October 22, 2024

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CERTIFICATE OF SERVICE

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