Rel: March 18, 2022

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2021-2022

1200814

Robert Louis Dill

v.

Douglas Dill

Appeal from Jefferson Circuit Court, Bessemer Division (CV-17-45)

BOLIN, Justice.

Robert Louis Dill appeals from a judgment entered by the Bessemer Division of the Jefferson Circuit Court ("the circuit court") on a jury

verdict in favor of Douglas Dill in Douglas's action contesting the purported will of Walter Dill, Jr.

Facts and Procedural History

Walter and his wife Alva purchased a house which was on Cottondale Drive in Hueytown, across the street from a house owned by their son, Douglas, to be close to Douglas, his wife Peggy, and their children.[1] Walter and Alva enjoyed a close and loving relationship with Douglas and his family for many years. Alva died in February 2002. After Alva died, Douglas and Peggy assisted Walter with such things as preparing his meals and taking him to his appointments. Peggy stated that, around 2006, she began noticing that Walter was getting a "little confused" and "frail" and did not like getting out of the house very often. After noticing those changes in Walter, Peggy assisted Walter with balancing his checkbook when he would get confused and make mistakes.

[1]Walter and Alva also had another son, Stanley Dill, who is deceased.

Robert, Walter's brother, did not visit with Walter much before Alva's death because Alva did not care for Robert. However, after Alva died, Robert started visiting Walter and spending time with him on a frequent basis. Robert began taking Walter to certain places and appointments, such as the barbershop and doctor appointments. Peggy testified that, by 2008, Walter did not really trust anyone but Robert and that Robert had "spread his wings over Walter." Peggy further stated that Robert had started turning Walter against Douglas by telling Walter, who was a deeply religious man, that Douglas was "no good," was "not a Christian," and did not go to church. Peggy testified that Walter's mental condition was "slipping" during that time and that Walter was "confused because he loved Douglas and wanted to trust him, but he loved Robert and wanted to trust him too."

Walter had approximately $80,000 in a joint checking account with Douglas that was intended to help pay for Walter's future care. Douglas and Peggy discovered that Walter had written approximately $40,000 worth of checks from the joint account to Robert, one of which had been used to purchase Robert a vehicle. Robert, Douglas, Peggy, and Walter

then met at Walter's house to discuss the money that Walter had given to Robert. Douglas testified that, when Robert learned that Walter had an additional $39,000 in the joint account, Robert exclaimed: "Walt, Walt, Walt, we got to get my money. We got to get money." Douglas stated that Walter responded by saying: "[J]ust calm down. We will get it sooner or later." Thereafter, Douglas removed the $39,000 from the joint account and placed the money in an account solely in his name to prevent Walter from giving more money to Robert.

In the meantime, Walter had some suffered medical setbacks, including being diagnosed with pneumonia, that required Walter to be hospitalized for a period. Following Walter's hospitalization, he was admitted to a nursing home for a rehabilitation stay. When Walter was discharged from the nursing home following the rehabilitation stay, Robert arranged for Walter to enter a retirement community. Douglas and Peggy regularly visited Walter while he was hospitalized, while he was in the nursing home, and while he was living in the retirement community. Walter walked with a pronounced stoop, and he began falling on a regular basis while living in the retirement community. Eventually,

in July 2012, Walter moved in with Robert and his wife Jean.[2] Robert, Jean, and their daughter, who was a nurse, became Walter's sole caregivers. Douglas and Peggy rarely visited with Walter once he moved into Robert's home. Douglas refused to visit more often, stating that Robert's home was not a "good place to be" because Robert would "sit right there on top of [Walter]" and monitor their conversations. Peggy described Robert's home as a "hostile environment."

In November 2012, Douglas petitioned the Bessemer Division of the Jefferson Probate Court ("the probate court"), seeking letters of guardianship and conservatorship as to Walter. Douglas stated that he had petitioned the probate court for a guardianship and conservatorship as to Walter to preserve the remaining $39,000 that had been intended to help pay for Walter's future care. Robert also filed a petition in the probate court for letters of guardianship and conservatorship as to Walter. In January 2013, Walter was referred to Dr. Rickey Fennell, Walter's

[2]There are several different dates referenced in the record regarding when Walter moved in with Robert, but the most frequent references in the record indicate that the move occurred in July 2012.

physician of 18 years, for a mental-status examination ordered as part of the guardianship and conservatorship proceedings. Dr. Fennell testified that, during that examination, Walter was oriented to person, place, and time. Dr. Fennell stated that Walter scored a 24 out of 30 on the examination, which, he said, indicated mild impairment. Dr. Fennell testified that he had never observed Robert attempting to influence Walter in an inappropriate manner. Dr. Fennell explained that, based on the occasions when he had seen Walter and Robert together, he had observed a loving and supportive relationship between the two. Dr. Fennell stated that Walter could be stubborn when it came to his medical care and that Robert could not influence him in that regard. Dr. Fennell further testified that if Walter had given Robert a large amount of money, "it would be a problem" and not indicative of Walter's behavior that he had observed over the years. On March 25, 2013, Sydney Summey was issued temporary letters of conservatorship regarding Walter.

It appears from the record that Walter once had a will that made Douglas the primary beneficiary of his estate. However, on December 11, 2013, Walter executed a new will ("the 2013 will") naming Robert as the

executor and sole beneficiary of his estate. The 2013 will provided, in relevant part:

> "I, Walter Jefferson Dill, Jr., am a single man at the time of the execution of this, my Last Will and Testament. I have no children. I have one (1) brother, Robert Louis Dill, one (1) sister-in-law, Jean Dill and one (1) stepson, Douglas Leon Dill."

It is undisputed that Walter had one living child at the time the 2013 will was executed, namely, Douglas, who was Walter's son and not his stepson. The attorney who prepared the 2013 will for Walter had previously represented Robert in another matter. The attorney testified that, at the time the 2013 will was executed, Walter spoke logically and rationally and seemed to know exactly what he wanted in the will; that she had no "qualms" about preparing the will and believed that the will was made free of undue influence; that she did not make a mistake in drafting the will provision quoted above; and that, in preparing the will, she relied on the information given to her by Walter. Robert drove Walter to the appointment to make the 2013 will, but he was not in the room with Walter and the attorney at the time the will was prepared and executed.

Following a hearing on the petitions for letters of guardianship and conservatorship, the probate court, on January 27, 2014, entered a permanent order appointing Summey as Walter's conservator and Robert as his guardian. Thereafter, Douglas tendered to Summey the remaining $39,000 that he had removed from the joint account that he had shared with Walter. Summey explained that a probate court will appoint a conservator for an individual upon determining that the individual lacks the mental capacity to handle his or her business affairs. Summey further testified that an individual that has been appointed a conservator still has the capacity to make a will so long as the individual knows the extent of his or her property and the natural objects of his or her bounty.

On April 11, 2017, Walter died at the age of 97. On April 28, 2017, Robert filed in the probate court a petition to admit for probate the 2013 will and an accompanying petition for the issuance of letters testamentary to himself, as the personal representative appointed in the 2013 will. On that same date, the probate court entered an order both admitting Walter's will to probate and granting letters testamentary to Robert. On May 16, 2017, Douglas filed in the probate court a withdrawal of the

waiver of notice of the filing of the petition to admit for probate the 2013 will, claiming that he had been misled into signing the waiver, and a complaint contesting the will. Douglas alleged in the complaint contesting the 2013 will that Walter had been mentally incompetent at the time the will was executed and that the will was procured as the result of undue influence by Robert. On May 22, 2017, Robert filed a response in opposition to Douglas's withdrawal of waiver of notice and Douglas's will-contest complaint, denying the allegations of each.

On May 23, 2017, Robert filed in the circuit court a verified petition to remove the administration of Walter's estate from the probate court to the circuit court. On June 16, 2017, the circuit court entered an order removing the administration of Walter's estate to the circuit court.

On October 30, 2018, Robert moved the circuit court to dismiss Douglas's will contest, arguing that the only way the circuit court could have obtained jurisdiction of the will contest is if the circuit court had issued an order removing the will contest from the probate court. Robert argued that the circuit court never entered an order removing the will contest from the probate court; therefore, he said, the circuit court never

properly obtained jurisdiction of the will contest. In response, Douglas noted that the will-contest complaint had been filed in the probate court before the circuit court granted Robert's petition to remove the administration of Walter's estate from the probate court to the circuit court and, therefore, contended that, when the circuit court granted the petition to remove the administration of Walter's estate, the circuit court removed all aspects of the administration of the estate necessary to reach a final settlement of the estate, including the will contest. On November 9, 2018, the circuit court entered an order denying the motion to dismiss filed by Robert.

On January 2, 2019, Robert again moved the circuit court to dismiss the will contest, arguing that the circuit court could assume jurisdiction over the will contest that was pending in the probate court without strict compliance with § 43-8-198, Ala. Code 1975. Robert argued that, pursuant to § 43-8-198, for a circuit court to obtain jurisdiction of a will contest that is pending in a probate court, the probate court in which the will contest is pending must enter an order transferring the will contest to the circuit court. On January 3, 2019, Douglas filed a response in

opposition to Robert's motion to dismiss, arguing that the prerequisites to the circuit court's obtaining jurisdiction over the administration of Walter's estate were met when Robert filed the petition for removal in the circuit court and the circuit court entered the order removing the entire administration of Walter's estate, including the will contest, to the circuit court. On April 14, 2021, the circuit court denied the motion to dismiss and set the will contest for trial.

The will contest proceeded to a jury trial on May 3, 2021. Robert moved for a judgment as a matter of law at the close of Douglas's case-in-chief, and he filed a motion for a judgment as a matter of law on May 6, 2021, neither of which the circuit court granted.[3] On May 6, 2021, the jury returned a verdict in favor of Douglas. On May 7, 2021, the circuit court entered a judgment in favor of Douglas on the jury's verdict. On May 14, 2012, Douglas moved the circuit court to correct its judgment and to tax costs and attorneys fees against Robert and to allow him to file a

[3]It does not appear that Robert renewed his request for a judgment as a matter of law on the record at the close of all the evidence. However, we treat the May 6 motion as a renewed motion for a judgment as a matter of law filed at the close of all the evidence.

submission of his fees and costs with the circuit court. On May 27, 2021, Robert moved the circuit court for a new trial. On July 8, 2021, the circuit court entered an order granting Douglas's motion to correct the judgment and denying Robert's motion for a new trial. Robert appeals.

Jurisdiction

Robert argues that the circuit court never obtained jurisdiction to consider the will contest because the probate court never entered an order transferring the will contest to the circuit court as required by § 43-8-198. We note that "[m]atters of subject-matter jurisdiction are subject to de novo review." DuBose v. Weaver, 68 So. 3d 814, 821 (Ala. 2011). If the circuit never properly acquired jurisdiction to consider the will contest, the judgment entered by the trial court on the jury's verdict on May 7, 2021, is void and will not support an appeal. See MPQ, Inc. v. Birmingham Realty Co., 78 So. 3d 391, 393 (Ala. 2011).

> "Alabama law pertaining to will contests is well settled and long-standing:
>
> > " 'In Alabama a will may be contested in two ways: (1) under § 43-8-190, Code of Alabama 1975, before probate, a contest may be instituted in the probate court or (2) under § 43-8-199, Code of

> Alabama 1975, after probate and within six months thereof, a contest may be instituted by filing a complaint in the circuit court of the county in which the will was probated.' "

Ex parte Floyd, 105 So. 3d 1193, 1195 (Ala. 2012) (quoting Stevens v. Gary, 565 So. 2d 73, 74 (Ala. 1990).

In Jones v. Brewster, 282 So. 3d 854 (Ala. 2019), Justice Stewart, writing for the Court, thoroughly explained the means by which a circuit court obtains subject-matter jurisdiction over a will contest or the administration of an estate:

> "Under Alabama law, a circuit court, under specified conditions delineated in the pertinent statute, can obtain subject-matter jurisdiction over a will contest or the administration of an estate. The probate court has general and original jurisdiction over matters involving the administration of estates and the probating of wills. See Ala. Const. 1901, § 144; and § 12-13-1, Ala. Code 1975. Pursuant to § 43-8-190, Ala. Code 1975, the probate court has jurisdiction over will contests where a will has not been admitted to probate. Section 43-8-190, Ala. Code 1975, states, in pertinent part:
>
> > " 'A will, before the probate thereof, may be contested by any person interested therein, or by any person, who, if the testator had died intestate, would have been an heir or distributee of his estate, by filing in the court where it is offered for probate allegations in writing that the will was not

> duly executed, or of the unsoundness of mind of the testator, or of any other valid objections thereto ....'

"A party, however, has the statutory right to seek a transfer of a will contest from the probate court to the circuit court pursuant to § 43-8-198, Ala. Code 1975, which reads:

> "'Upon the demand of any party to the contest, made in writing at the time of filing the initial pleading, the probate court, or the judge thereof, must enter an order transferring the contest to the circuit court of the county in which the contest is made, and must certify all papers and documents pertaining to the contest to the clerk of the circuit court, and the case shall be docketed by the clerk of the circuit court and a special session of said court may be called for the trial of said contest or, said contest may be tried by said circuit court at any special or regular session of said court. The issues must be made up in the circuit court as if the trial were to be had in the probate court, and the trial had in all other respects as trials in other civil cases in the circuit court ....'

"To comply with the statute, the following prerequisites must be met: (1) the will must not be admitted to probate, although it must be offered for probate before it can be contested, see Hooper v. Huey, 293 Ala. 63, 67, 300 So. 2d 100, 104 (1974), disapproved of on other grounds, Bardin v. Jones, 371 So. 2d 23 (Ala. 1979); (2) the party seeking the transfer must file a written demand for the transfer in the probate court; (3) the transfer demand must be filed at the time of the filing of the will-contest complaint or other initial pleading; (4) the probate court must enter a written order transferring the will contest

to the circuit court; (5) the probate court must certify the probate-court record pertaining to the will contest to the circuit-court clerk; (6) the circuit-court clerk shall docket the case in the circuit court; and (7) the circuit court must set the will contest for a trial at a regular or a special session of court.

"After a will has been admitted to probate in the probate court, jurisdiction in the circuit court cannot be invoked pursuant to a transfer under § 43-8-198. Within six months following the admission of the will to probate, however, a person with an interest in the will may file a will contest directly in the circuit court pursuant to § 43-8-199, Ala. Code 1975, which provides:

> " 'Any person interested in any will who has not contested the same under the provisions of this article, may, at any time within the six months after the admission of such will to probate in this state, contest the validity of the same by filing a complaint in the circuit court in the county in which such will was probated.'

"Under § 43-8-199, only two perquisites exist: (1) the will must have been admitted to probate no more than six months earlier; and (2) the complaint must be filed directly in the circuit court.

"Lastly, the administration of an estate in the probate court can be removed to the circuit court pursuant to § 12-11-41, Ala. Code 1975. Section § 12-11-41 reads:

> " 'The administration of any estate may be removed from the probate court to the circuit court at any time before a final settlement thereof, by any heir, devisee, legatee, distributee, executor,

> administrator or administrator with the will annexed of any such estate, without assigning any special equity; and an order of removal must be made by the court, upon the filing of a sworn petition by any such heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed of any such estate, reciting that the petitioner is such heir, devisee, legatee, distributee, executor, administrator or administrator with the will annexed and that, in the opinion of the petitioner, such estate can be better administered in the circuit court than in the probate court.'

"To invoke the circuit court's jurisdiction over the administration of an estate through removal, 'the filing of a petition for removal in the circuit court and the entry of an order of removal by that court are prerequisites to that court's acquisition of jurisdiction over the administration of the estate pursuant to § 12-11-41.' DuBose v. Weaver, 68 So. 3d 814, 822 (Ala. 2011)(emphasis omitted).

"In a will contest, the subject-matter jurisdiction of both the probate court and the circuit court is statutory and limited. Kaller v. Rigdon, 480 So. 2d 536, 539 (Ala. 1985). In a long line of cases, this Court has held that strict compliance with the statutory language pertaining to a will contest is required to invoke the jurisdiction of the appropriate court. Boshell v. Lay, 596 So. 2d 581, 583 (Ala. 1992)('In order to contest a will under either of these methods, the contestant must strictly comply with the statutory language in order to quicken jurisdiction of the appropriate court.'); Marshall v. Vreeland, 571 So. 2d 1037, 1038 (Ala. 1990)('The requirements of § 43-8-198 must be complied with exactly, because will contest jurisdiction is statutorily conferred upon the circuit court.');

> Bullen v. Brown, 535 So. 2d 76, 78 (Ala. 1988)('It is clear that will contest jurisdiction, being statutorily conferred, must comply with the statutory language strictly in order to quicken jurisdiction of the appropriate court.'); Kaller v. Rigdon, 480 So. 2d at 538 ('Because will contest jurisdiction is statutorily conferred, the procedural requirements of the applicable statute must be complied with exactly.'); Forrester v. Putman, 409 So. 2d 773, 775 (Ala. 1981)('There was neither a transfer of a contest to the circuit court according to Code 1975, § 43-1-78[, now § 43-8-198], nor a circuit court contest of a will admitted to probate according to Code 1975, § 43-1-79[, now § 43-8-199]. A circuit court's jurisdiction over a will contest is statutory and limited.'); Ex parte Stephens, 259 Ala. 361, 363, 66 So. 2d 901, 903 (1953)(concluding that the words 'must transfer the [will] contest' 'have been regarded as mandatory'); and Ex parte Pearson, 241 Ala. 467, 469, 3 So. 2d 5, 6 (1941)('It is familiar law in Alabama, the only way to quicken into exercise a statutory and limited jurisdiction is by pursuing the mode prescribed by the statute.')."

282 So. 3d at 857-59.

On April 28, 2017, the probate court entered an order admitting the 2013 will to probate and granting letters testamentary to Robert as the personal representative of Walter's estate, thereby judicially creating the administration of Walter's probate estate. On May 16, 2017, after Walter's will had been admitted to probate, Douglas filed in the probate court a will-contest complaint alleging that the 2013 will had been procured by the undue influence of Robert and that Walter was mentally incompetent

at the time the will was executed. On May 23, 2017, Robert filed in the circuit court a verified petition to remove the administration of Walter's estate from the probate court to the circuit court. On June 16, 2017, the circuit court entered an order removing the administration of Walter's estate to the circuit court.

Because the 2013 will was admitted to probate before Douglas filed his will-contest complaint in the probate court, the will contest could not have been properly transferred from the probate court to the circuit court upon order of the probate court pursuant to § 43-8-198. Section 43-8-198 must be read in conjunction with § 43-8-190. Bond v. Pylant, 3 So. 3d 852 (Ala. 2008). Accordingly, the circuit court could not have acquired subject-matter jurisdiction of the will contest pursuant to § 43-8-198. See Jones, 282 So. 3d at 858 (holding that, after a will has been admitted to probate in the probate court, the jurisdiction of the circuit court cannot be invoked pursuant to a transfer under § 43-8-198).

In a case in which a will has been admitted to probate before the commencement of a will contest, a person with an interest in the will may, within six months following the admission of the will to probate,

commence a will contest directly in the circuit court pursuant to § 43-8-199, Ala. Code 1975. The only requirements necessary to commence a will contest under § 43-8-199 are that (1) the will must have been admitted to probate no more than six months earlier and (2) the will-contest complaint must be filed directly in the circuit court. Jones, 282 So. 3d at 858. Generally, the will-contest complaint in this case would have been deemed improperly filed under § 43-8-199, because Douglas filed the will-contest complaint in the probate court rather than in the circuit court as required by § 43-8-199. See Bond v. Pylant, 3 So. 3d at 855 (holding that a will-contest complaint filed in the probate court after a will has been admitted to probate is a nullity).

However, although Douglas's will-contest complaint was filed in the probate court, that complaint is nevertheless deemed to have been properly filed pursuant to § 43-8-199, because, in Jefferson County, the probate court has concurrent equitable jurisdiction over estates with the circuit court, pursuant to Ala. Acts 1971, Act No. 1144, § 1. McElroy v. McElroy, 254 So. 3d 872 (Ala. 2017). This Court explained in McElroy:

> "In nearly identical circumstances, this Court has held that the Mobile Probate Court, which also shares general equity jurisdiction concurrent with that of the circuit courts of this State in the administration of the estates of deceased persons, see Act No. 974, Ala. Acts 1961, had jurisdiction to consider a will contest filed after the will was admitted for probate based on the concurrent jurisdiction imparted to the probate court by Act No. 974. See Coleman v. Richardson, 421 So. 2d 113 (Ala. 1982) (analyzing former § 43-1-79, Ala. Code 1975, which is now codified at § 43-8-199, and holding that the probate court had jurisdiction over the will contest even though it was filed in the probate court after the will was admitted for probate based on the conference of concurrent equity jurisdiction by Act No. 974). Accordingly, we conclude that the probate court had jurisdiction over the appellants' will contest at the time it was filed. See Daniel v. Moye, 224 So. 3d 115, 131 n.9 (Ala. 2016) (noting that 'there are currently four counties in Alabama -- Mobile, Jefferson, Shelby, and Pickens -- in which the probate courts have been vested with concurrent equitable estate jurisdiction with the circuit court to try will contests after a will has been admitted to probate' (emphasis added))."

254 So. 3d at 876.

After Douglas filed the will-contest complaint in the probate court, which possesses concurrent equity jurisdiction over estates with the circuit court, the circuit court's jurisdiction over the administration of Walter's estate -- the entirety of Walter's estate including the pending will contest -- was properly invoked pursuant to § 12-11-41 by Robert's filing, in the circuit court, the petition to remove the administration of Walter's

estate and the circuit court's entry of an order removing the administration of Walter's estate to the circuit court. Jones, 282 So. 3d at 858. See also DuBose v. Weaver, 68 So. 3d at 822. The " '[a]dministration of the estate is a broad concept involving all matters necessary to reach a final settlement of the estate. ... When the administration of the estate is removed, all aspects of the administration must be removed.' " McElroy, 254 So. 2d at 876 (quoting Ex parte Clayton, 514 So. 2d 1013, 1017 (Ala. 1987)). Generally, "[o]nce the administration and settlement of an estate are removed from the probate court, the probate court loses jurisdiction over the estate, and the circuit court obtains and maintains jurisdiction until the final settlement of the case." Oliver v. Johnson, 583 So. 2d 1331, 1332 (Ala. 1991). Accordingly, because the administration of Walter's estate was properly removed from the probate court to the circuit court pursuant to § 12-11-41, the circuit court acquired subject-matter jurisdiction over the administration of the estate, including the pending will contest.

The Merits

Robert argues that the circuit court erred in entering a judgment on the jury's verdict in favor of Douglas in the will contest.

Rule 28(a), Ala. R. App. P., requires that an appellant's brief contain, among other things, the following:

> "(5). Statement of the Case; Requirements for Civil Cases; Special Requirement for Briefs on Appeal to the Court of Criminal Appeals. A statement of the case, indicating briefly the nature of the case, the course of proceedings, and the disposition in the court below, with appropriate references to the record ....
>
> "....
>
> "(7). Statement of the Facts. A full statement of the facts relevant to the issues presented for review, with appropriate references to the record ..., except that no statement of the facts need be included in a brief in a case in which a writ of certiorari has issued and briefing has been ordered. Facts must be stated accurately and completely."

Robert's appellate brief fails to satisfy the minimum requirements of Rule 28(a). Although Robert's brief contains a statement of the case, it fails to contain appropriate citations to the record. Further, although the brief contains a section entitled "Statement of Facts," the statement of the facts presented is woefully inadequate relative to the issues presented for review. There are no relevant background or contextual facts presented

necessary for a clear understanding of the issues presented, including no mention of Walter's mental capabilities; no mention of Dr. Fennell's findings; no mention of the petitions for guardianship and conservatorship; no mention of the familial relationships between Walter, Douglas, and Robert; no mention of the relevant provision of the 2013 will quoted earlier in this opinion; and no discussion of the time line relative to Walter's living situation and his ultimately moving in with Robert. The statement of facts contained in Robert's brief essentially contains a shortened statement of the case and some quotes from the testimony of Dr. Fennell indicating that Walter was stubborn, that Walter and Robert had a loving relationship, and that Dr. Fennell never witnessed Robert influencing Walter in an in appropriate manner. Those statements of Dr. Fennell reproduced in Robert's brief are not a complete statement of facts relevant to the issues presented for review as required by Rule 28(a)(7). When an appellant fails to comply with the minimum requirements of Rule 28(a), this Court will affirm the judgment of the trial court. See University of So. Alabama v. Progressive Ins. Co., 904 So. 2d 1242 (Ala. 2004).

However, even if Robert had satisfied the minimum requirements of Rule 28(a), the record evidence supports the trial court's submission of Douglas's claims to the jury. This Court has stated:

> "'"When reviewing a ruling on a motion for a JML [judgment as a matter of law], this Court uses the same standard the trial court used initially in deciding whether to grant or deny the motion for a JML. Regarding questions of fact, the ultimate question is whether the nonmovant has presented sufficient evidence to allow the case to be submitted to the jury for a factual resolution. The nonmovant must have presented substantial evidence in order to withstand a motion for a JML. A reviewing court must determine whether the party who bears the burden of proof has produced substantial evidence creating a factual dispute requiring resolution by the jury. In reviewing a ruling on a motion for a JML, this Court views the evidence in the light most favorable to the nonmovant and entertains such reasonable inferences as the jury would have been free to draw. Regarding a question of law, however, this Court indulges no presumption of correctness as to the trial court's ruling."'
>
> "City of Birmingham v. Brown, 969 So. 2d 910, 915 (Ala. 2007) (quoting Waddell & Reed, Inc. v. United Investors Life Ins. Co., 875 So. 2d 1143, 1152 (Ala. 2003))."

Furrow v. Helton, 13 So. 3d 350, 353 (Ala. 2008).

Douglas, as the will contestant, had the burden of establishing, by substantial evidence, that Walter lacked testamentary capacity or that Robert exerted undue influence over Robert. To prove undue influence, Douglas was required to show

> " '(1) that a confidential relationship existed between a favored beneficiary and the testator; (2) that the influence of or for the beneficiary was dominant and controlling in that relationship; and (3) that there was undue activity on the part of the dominant party in procuring the execution of the will.' "

Furrow, 13 So. 3d at 353-54 (quoting Clifton v. Clifton, 529 So. 2d 980, 983 (Ala. 1988)).

Douglas presented evidence that, when viewed in a light most favorable to him, indicates the following: Walter and his wife Alva enjoyed a close and loving relationship with Douglas and his family for many years, and, after Alva died, Douglas and Peggy assisted Walter with his meals and took him to appointments. Peggy noticed that, around 2006, Walter began getting a "little confused," and she then began assisting him with balancing his checkbook when he would get confused and make mistakes.

Robert did not visit with Walter much before Alva's death because of Alva's dislike of Robert. However, after Alva's death, Robert started visiting Walter frequently and began taking Walter to certain places and appointments, such as the barbershop and doctor appointments. Peggy testified that, by 2008, Walter did not really trust anybody but Robert and that Robert had "spread his wings over Walter." Peggy further stated that Robert had started turning Walter against Douglas by telling Walter that Douglas was "no good" and "not a Christian." Peggy testified that Walter's mental condition was further "slipping" during this time.

Eventually Douglas and Peggy discovered that Walter had written approximately $40,000 worth of checks to Robert and that Robert was exuberant to learn that Walter had an additional $39,000 in the bank, allegedly exclaiming to Walter that "we got to get my money."

Walter had some medical setbacks and hospitalizations that ultimately led to Walter's moving in with Robert and his family in July 2012. Walter became totally dependant on Robert and his family for his care. Douglas and Peggy refused to visit Walter on a regular basis while he was living at Robert's home because, they asserted, the atmosphere at

Robert's home was "hostile" and it was not a "good place to be" because Robert would "sit right there on top of [Walter]" and monitor his conversations.

A mental examination conducted by Dr. Fennell as part of the guardianship and conservatorship proceedings indicated that Walter had a mild impairment. Walter was appointed a temporary conservator in March 2013. In December 2013, Walter executed the 2013 will, in which he stated that he had no children and that Douglas was his stepson when, in fact, Douglas is Walter's son. The 2013 will was prepared by an attorney who had previously represented Robert, and Robert accompanied Walter to the attorney's office on the day the will was executed. Approximately one month after the 2013 will was executed, the probate court, following a hearing, entered an order finding that Walter lacked the mental capacity to handle his affairs and appointed a permanent conservator for Walter. Based on the foregoing, we cannot say that the circuit court erred in entering a judgment on the jury's verdict in favor of Douglas in the will contest.

Conclusion

Based on the foregoing, we affirm the circuit court's judgment entered on the jury verdict in this case.

AFFIRMED.

Parker, C.J., and Shaw, Wise, Bryan, Mendheim, Stewart, and Mitchell, JJ., concur.

Sellers, J., concurs in the result.