STATE OF MAINE

MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. LIN-24-235

Estate of Patricia M. Spofford

APPEAL
FROM THE LINCOLN COUNTY PROBATE COURT

BRIEF OF APPELLEE ST. JUDE CHILDREN'S RESEARCH HOSPITAL

Oliver M. Walton, Bar No. 6340
Amy K. Olfene, Bar No. 5467
DRUMMOND WOODSUM
84 Marginal Way, Suite 600
Portland, ME 04101
Tel: (207) 772-1941
owalton@dwmlaw.com
aolfene@dwmlaw.com
Counsel for Appellee St. Jude Children's Research Hospital

STATE OF MAINE

MAINE SUPREME JUDICIAL COURT
SITTING AS THE LAW COURT

Law Court Docket No. LIN-24-235

Estate of Patricia M. Spofford

APPEAL
FROM THE LINCOLN COUNTY PROBATE COURT

BRIEF OF APPELLEE ST. JUDE CHILDREN'S RESEARCH HOSPITAL

Oliver M. Walton, Bar No. 6340
Amy K. Olfene, Bar No. 5467
DRUMMOND WOODSUM
84 Marginal Way, Suite 600
Portland, ME 04101
Tel: (207) 772-1941
owalton@dwmlaw.com
aolfene@dwmlaw.com
Counsel for Appellee St. Jude Children's Research Hospital

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes and Public Laws

Court Rules

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. The Relationship between Patricia Spofford and the Zanis

Patricia Spofford had a distant relationship with her two sons, Michael and Peter Zani (collectively, the "Zanis"). *See* (A. 45-46, 70.) After high school, the Zanis moved from Waldoboro, Maine, to California, and had limited contact with their mother into adulthood (A. 45-46.) Michael did not contact his mother for nearly twelve years, and Peter did not see his mother between 2010 and 2017. (A. 46.) It wasn't until 2017, after Ms. Spofford's health began to fail, that Michael became more involved in his mother's care, organizing her in-home care and calling her regularly. (A. 46.) However, Ms. Spofford and Michael's relationship remained volatile, and their phone calls "often end[ed] with [Ms. Spofford] becoming upset and stressed to the point that she require[d] medication," *In re Guardianship of Patricia S.,* 2019 ME 23, ¶ 3, 202 A.3d 532; *see also* (A. 77) (noting that the Probate Court found that Ms. Spofford felt "that she is bullied and coerced by Michael and her phone calls with him often end with her being upset and stressed.")

In August 2017, 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. *See*

Guardianship of Patricia S., 2019 ME 23, ¶ 5, 202 A.3d 532. DHHS subsequently filed a petition in the Lincoln County Probate Court seeking appointment of Ms. Spofford's stepson, Dana Spofford, as her guardian and conservator. *See id.* The Zanis opposed DHHS's petition and sought guardianship of their mother. *Id.* ¶ 6. The Probate Court, however, found that, "for several reasons . . . it was not in [Ms. Spofford's] best interest to have Michael Zani or Peter Zani, either individually or jointly, appointed her guardian or co-guardians." *Id.* ¶ 9.

Dana Spofford later resigned from the role of as Ms. Spofford's guardian. (A.) At a hearing in December 2017 before the Lincoln County Probate Court, Ms. Spofford confirmed that she did not want Michael and Peter Zani to be appointed her guardians. (A. 16.) Rather, she advised the Court that she wished for two of her caregivers—Nancy Carter and Karin Beaster—to serve as co-guardians. (A. 69.) The Probate Court agreed to appoint Ms. Carter and Ms. Beaster as co-guardians of Ms. Spofford, noting that while Ms. Spofford's then-existing mental state qualified her for a guardian under the statute, "she is still sentient and has strong feelings that she does not want Michael to be her guardian."

(A. 16); *see also In re Patricia Spofford*, Lin. Cnty. Prob. Ct., Docket No. 2017-00223, Order at 3 (Jan. 3, 2018).

The 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. (A. 46.)

II. The 2018 Will

Ms. Spofford anticipated that her sons would contest her will. *See* (A. 47, 97.) In an effort to protect her testamentary wishes from being challenged, the day she planned to prepare and execute her new will, she met with her primary care physician, Dr. John M. Dickens, to evaluate whether she was competent to execute her will. (A. 47, 96.)[1] Dr. Dickens was aware of the purpose of Ms. Spofford's visit. *See* (A. 96.) Dr. Dickens noted that, during his assessment of her cognitive health on March 1, 2018, Ms. Spofford was alert and aware of her person, where she was,

[1] Dr. Dickens was aware that Ms. Spofford had been previously diagnosed with dementia and Alzheimer's disease. (A. 47, 96.) In fact, on August 3, 2017, he had filled out a PP-505 because it was his opinion, at that time, that she required a guardian and conservator. (A. 75-76.) However, during his examination on March 1, 2018, he noted that she was neither confused nor disoriented, and was not presenting with delusional thought or altered thinking. (A. 98.)

and the time of day. (A. 47, 132.) Dr. Dickens also reported that Ms. Spofford understood the nature of her testamentary will, the extent of her possessions, and the purpose and consequences of executing the will. (A. 96.) During the examination, Ms. Spofford did not give Dr. Dickens any reason to suspect that she was under duress, nor did it appear from his examination that she was under any duress. (A. 96-97.) While Ms. Spofford had some mild cognitive dysfunction and memory impairment, she completed a cognitive assessment "with little difficulty." (A. 97.) Dr. Dickens opined that, in his medical opinion, Ms. Spofford possessed the capacity and intention to execute a testamentary will that day. (A. 97.) He memorialized his opinion regarding her competency in a letter, which he directed to Ms. Spofford's attorney, Michele Hallowell. (A. 97-98.)

Later in the day on March 1, 2018, Attorney Hallowell met Ms. Spofford at her home. *See* (A. 103.) While Ms. Spofford's caregivers were in another room, Attorney Hallowell videotaped her one-on-one meeting with Ms. Spofford where they discussed her testamentary wishes. (A. 103-04.) Attorney Hallowell reviewed the letter Dr. Dickens had issued earlier that day regarding Ms. Spofford's competency, and Ms. Spofford answered Ms. Hallowell's questions regarding the property in her estate.

(A. 104.) Ms. Spofford described her residential property, a parcel across the street from her house, and real estate she owned along Route 1 which she predicted would be sold before her death to pay for her around-the-clock care. (A. 104.) She knew her residential lot could not be subdivided, and estimated that it was worth about $1 million. (A. 48.) She described other lots she owned in the Town of Waldoboro. (A. 48.) She identified her deceased husband as Parker Spofford (A. 48.) She stated that her bank accounts were at First National Bank and Camden National Bank, but that her court-appointed conservator controlled them. (A. 48.) She stated that she owned stock in First National Bank, but did not know its value. (A. 48.) She described her charitable remainder trust for the benefit of the ASPCA. (A. 48.)

When Attorney Hallowell asked Ms. Spofford whether she had thought about who she would like to give her assets to, Ms. Spofford emphatically responded, "I have!" (A. 104.)[2] She expressly stated that she wanted to exclude Dana Spofford, Todd Spofford, and Michael Zani. (A.

[2] During her meeting with Attorney Hallowell, Ms. Spofford identified her two sons, Michael and Peter, by name, and volunteered that "Michael isn't getting anything." (A. 47.) She also identified her two stepsons, Dana and Todd, and said that their father made arrangements for them when he died, so she was not going to provide for them in her will. (A. 73.)

49.) Ms. Spofford advised Attorney Hallowell that she wanted to leave $1,000 to Peter, but nothing to Michael. (A. 49.) She then explained that she wanted to leave $1,000 to her family members who posed for her paintings and $1,000 to each of her grandchildren.[3] (A. 49.) Ms. Spofford also express her intent to leave $50,000 to the animal shelter for the care of dogs, and the balance of her estate was to go to St. Jude Children's Research Hospital ("St. Jude"). (A. 49.) She also wanted to leave $500 to Jacquelyn Spofford. (A. 49.) Toward the end of their meeting, Ms. Spofford told Attorney Hallowell that she also wished to leave $5,000 to her long-time caregiver, Nancy Carter, and expected that Ms. Carter would "very strenuously object to" the gift. (A. 49.) Attorney Hallowell then repeated the list of bequests back to Ms. Spofford, and to each, Ms. Spofford confirmed that, "yes," they were consistent her testamentary wishes (A. 50.)

Attorney Hallowell returned to her office and drafted the will in conformity with Ms. Spofford's wishes. (A. 104.) She returned to Ms. Spofford's home later that afternoon with a copy of the draft will. (A. 104.)

---

[3] Ms. Spofford did not have a relationship with her four grandchildren by Michael or Peter, either, meeting each only once before her death. *See* (A. 76.)

During that second visit, which was also videotaped, Mr. Spofford read through the draft will on her own. (A. 104-05.) She asked clarifying questions of her attorney and discussed the contents and implications of executing the will. (A. 105.)

After Ms. Spofford confirmed that the draft last will and testament accurately reflected her testamentary wishes, she signed it in the presence of witnesses Kathryn Read and Sonya Hunt; Joan Vannah, Attorney Hallowell's paralegal, served as notary (the "2018 Will"). (A. 49, 105.)[4] After the will signing, Attorney Hallowell recorded a third video in which she asked Ms. Spofford to confirm whether she had reviewed the will and signed it as her "free act and deed," to which she confirmed, "Yes." (A. 105.)[5]

Consistent with Dr. Dickens's conclusions earlier that day, Attorney Hallowell believed that Ms. Spofford was competent to sign her

---

[4] Neither of the witnesses to the execution of the 2018 Will were beneficiaries of the will; nor were Attorney Hallowell and Joan Vannah. *See* (A. 72-74, 101, 105.)

[5] The 2018 Will tracks Ms. Spofford's express instructions, excluding Michael and her stepsons from distribution form her estate. (A. 72.) The 2018 Will also leaves $1,000 to Peter, each grandchild, and each relative who posed for a portrait for her paintings. (A. 72.) It leaves $500 to Jacqueline Spofford, and $5,000 to Nancy Carter. (A. 72.) Finally, it leaves $50,000 to the Lincoln County Animal Shelter for the benefit and treatment of dogs, and the remainder to St. Jude, (A. 72), which is consistent with Ms. Spofford's charitable giving during her lifetime, *see* (A. 50).

will on March 1, 2018. (A. 105) Ms. Spofford did not appear to be under duress, nor did Attorney Hallowell have any reason to believe Ms. Spofford was acting under the direction or influence of another person. (A. 105.) Kathryn Read, who served as a witness to the will signing, also attested that she had no reason to believe that Ms. Spofford was not acting of her own free will or that she lacked a "sound mind" during the will signing. (A. 101.)

III. Procedural History Following Ms. Spofford's Death

Ms. Spofford died on June 7, 2020, at the age of 83. (A. 44.) On June 10, 2020, Attorney Phillip Cohen filed Ms. Spofford's Last Will and Testament, executed on March 1, 2018 (the "2018 Will") with the Lincoln County Probate Court, along with an Application for Informal Probate of Will and Appointment of Personal Representative Under Will. (A. 2, 44.) On June 17, 2020, the 2018 Will was admitted to probate and the Court appointed Attorney Cohen[6] as Personal Representative. (A. 3, 44.) On June 24, 2020, the Zanis filed a Petition for Removal of Personal

[6] Attorney Cohen died in September 2020, and in December 2020, the parties agreed to have the Probate Court appoint Maryellen Sullivan as the temporary personal representative of Mr. Spofford's estate. *See* Order Following Conference of Counsel (Dec. 16. 2020).

Representative and Petition for Formal Probate of Will and Formal Appointment of Personal Representative. (A. 3, 44.) With these petitions, the Zanis sought appointment as co-personal representatives of Ms. Spofford's estate and to probate a holographic will they alleged was executed by Mrs. Spofford on June 4, 2017 (the "2017 Will"). (A. 3, 44.) The Zanis never filed an original of the alleged 2017 Will, nor have they produced an original as part of discovery. (A. 44-45.)

On July 27, 2020, the Zanis filed a Complaint and demand for jury trial with the Lincoln County Superior Court. (A. 8, 35.) In Count I of their Complaint, the Zanis named sought a declaratory judgment "that Patricia Spofford did not have testamentary capacity or legal authority to execute a will on March 1, 2018."[7] (Count I). (A. 35.) St. Jude and Ms. Read each moved to stay action by the Lincoln County Superior Court to allow the probating of the 2018 Will to proceed in the Lincoln County Probate Court. *See* (A. 5, 6.) That motion was denied, and the Superior Court and Probate Court cases each proceeded concurrently. *See* Order (Jan. 20, 2021).

[7] The Zanis brought separate claims against Nancy Carter for wrongful interference with an expectancy (Count II), and Kathryn Read for alleged fraud (Count IV). (A. 36-38.) Count III asserted the Zanis' request for the imposition of a constructive trust. (A. 37.)

After the close of the discovery period, St. Jude moved in the Superior Court for summary judgment on the Zanis' declaratory judgment and constructive trust claims. *See Zani v. Zani*, 2023 ME 42, ¶ 8, 299 A.3d 9. On February 3, 2022, the Lincoln County Superior Court (*Billings, J.*) granted summary judgment in favor of St. Jude, finding there was no genuine issue of material fact and that St. Jude was entitled to judgment as a matter of law. *See id.* The Superior Court issued a final partial judgment, which the Zanis subsequently appealed to this Court. *See id.*

On August 1, 2023, this Court issued a decision in the aforementioned appeal, finding, inter alia, that the Zanis' claim for declaratory judgment as to Ms. Spofford's testamentary capacity to execute her 2018 Will "was not properly before the Superior Court but rather was within the Probate Court's exclusive jurisdiction, . . . vacat[ing] that part of the judgment and remand[ing] for dismissal of that claim" from the Superior Court case. *Id.* ¶ 1.

On January 11, 2024, St. Jude filed a motion for summary judgment in the Probate Court on the sole issue of testamentary capacity. (A. 4, 27-42.) By order dated April 10, 2024, the Lincoln County Probate Court

(*Avantaggio, J.*) granted St. Jude's motion, finding that there was no genuine issue of material fact and that St. Jude was entitled to judgment as a matter of law. (A. 8-20.)

The Zanis appealed. (A. 7.)

SUMMARY OF THE ARGUMENT

Patricia Spofford was a strong-willed woman who was not afraid to express what she wanted. This is evident from the three videos attorney Michele Hallowell took of her meetings with Ms. Spofford on March 1, 2018. While she suffered from various medical ailments as she aged, Ms. Spofford was cognizant and aware of her assets, testamentary desires, and relationships when she elected to make a will on March 1, 2018. Neither Michael nor Peter Zani saw, let alone spoke with, their mother on March 1, 2018, or in the weeks preceding or following execution of the 2018 Will. In fact, the Zanis admit that they have "no direct evidence regarding the events that took place on March 1, 2018." (Blue Br. 13.) In contrast, her doctor, lawyer, and caregiver all presented sworn testimony that, on March 1, 2018, they had no reason to believe that Ms. Spofford lacked the testamentary capacity to sign her will.

Maine law presumes that the testatrix possessed the capacity to execute her will, and that presumption can only be rebutted by competent, admissible evidence. Here, the Zanis failed to present any evidence to generate a genuine issue of fact concerning Ms. Spofford's testamentary capacity to execute her will on March 1, 2018, nor have they identified a single expert medical witness willing to testify that Ms. Spofford lacked testamentary capacity that day. They offer no expert to dispute the opinions of Ms. Spofford's treating physician, Dr. Dickens, and lawyer, Michele Hallowell. Rather, they merely allege that "it is not enough" that Dr. Dickens and Attorney Hallowell concluded after meeting with her on March 1, 2018, that Ms. Spofford had testamentary capacity. Even if the Zanis were correct and those opinions were not enough on their own, they ignore the proof contained in the videos of Attorney Hallowell's meetings with Ms. Spofford on March 1, 2018, and the other evidence of her mental state that day.

As they did before the Probate Court, the Zanis are effectively asking this Court to accept their unfounded speculation regarding Ms. Spofford's testamentary capacity on March 1, 2018, as fact. The Zanis refer to inapposite medical diagnoses and observations made before and

after she signed her will, ignoring the breadth of uncontroverted evidence—including video of Ms. Spofford taken during the will signing, as well as the contemporaneous clinical records of the very physician on whose other records the Zanis seek to rely—demonstrating unequivocally that she had testamentary capacity when she executed the will. This is simply antithetical to the standards applicable here and advocates for an interpretation of the law that conflicts with the Court's precedent as well as the plain language of the applicable statute.

Ms. Spofford had the testamentary capacity to execute the 2018 Will, and no factfinder could reasonably find otherwise based on the actual evidence in this record. The Zanis have offered nothing more than their bald assertions, conjecture, and assumptions, which cannot support the Zanis' claim on which they bear the burden of proof. On appeal, the Zanis fail to point to any error in the Probate Court's analysis of the facts or the law. The Court should affirm the decision of the Probate Court, allowing it to proceed with the probate of the 2018 Will.

ARGUMENT

I. Standard of Review

A. Summary judgment standard

This Court reviews the Probate Court's grant of summary judgment *de novo*. *Estate of Hall*, 2014 ME 10, ¶ 10, 86 A.3d 596. 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; *see also* M.R. Civ. P. 56(c). "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). "[T]he defendant may succeed if it is clear that [t]he[y] would be entitled to a directed verdict at trial were the plaintiff to present nothing more than was before the court at the summary judgment hearing." *Estes v. Smith*, 521 A.2d 682, 683 (Me. 1987).

At the summary judgment phase, the nonmoving party may not rest on "bare allegations," in order to create an issue of material fact, *Onat v. Penobscot Bay Med. Ctr.*, 574 A.2d 872, 875 (Me. 1990), but, instead, must come forward with competent and admissible evidence to avoid summary judgment. *First Citizens Bank v. M.R. Doody, Inc.*, 669

A.2d 743, 744 (Me. 1995); *see also Dyer v. Dep't of Transp.,* 2008 ME 106, ¶ 14, 951 A.2d 821 (holding that the plaintiff may not rest on "'conclusory allegations, improbable inferences, and unsupported speculation" to avoid summary judgment in the defendant's favor).

B. Testamentary capacity standard

Under Maine law, "[t]estamentary capacity has a low threshold which is easily crossed by a person making a will." *In re Siebert*, 1999 ME 156, ¶ 5, 739 A.2d 365 (quotation marks omitted). The "law . . . requires only a modest level of competence ('the weakest class of sound minds')." *Estate of Rosen*, 447 A.2d 1220, 1222 (Me. 1982). Maine's testamentary capacity standard "give[s] the testator/testatrix a chance to do pretty much what he/she wants to do by way of testamentary devise, provided such person knows that it is a will that is being executed, knows the general nature and extent of the estate, and knows who the natural objects of bounty are." *Siebert*, 1999 ME 156, ¶ 5, 739 A.2d 365. In particular, this Court has repeatedly held that this standard only requires that

> A testator possesses sufficient testamentary capacity if [s]he has, *at the time when [s]he executes h[er] will*, a sound mind: that is, if [s]he has a knowledge, in a general way, without prompting, of h[er] estate, and an understanding of the

> disposition [s]he wished to make of it by h[er] will, and of the persons and objects [s]he desired to participate in h[er] bounty.

Estate of Mitchell, 443 A.2d 961, 963 (Me. 1982) (emphasis added) (citation omitted). [8]

II. The Zanis have the burden of demonstrating Ms. Spofford lacked testamentary capacity to execute the 2018 Will.

Under Maine law, there "is a presumption at law that a testatrix intended to die testate, and once *prima facie* evidence of due execution is presented, the will contestant bears the burden of proving that probate should not be ordered because of a 'lack of testamentary intent or capacity, undue influence, fraud, duress, mistake, or revocation.'" *Estate*

---

[8] As this Court stated, most recently, in *Estate of Washburn*:

> 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. *This standard requires only a modest level of competence and a general knowledge of one's assets.*

2020 ME 18, ¶ 10, 225 A.3d 761 (emphasis added) (quotation marks omitted).

of Beatty, 673 A.2d 1325, 1326–27 (Me. 1996); 18-C M.R.S.A. § 3-407 ("Contestants of a will have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation."). "Parties have the ultimate burden of persuasion as to matters with respect to which they have the initial burden of proof," *id.*, and "[a] *lack* of [testamentary] capacity must be proved by a preponderance of the evidence." *Estate of Washburn*, 2020 ME 18, ¶ 10, 225 A.3d 761 (citing *In re Estate of O'Brien-Hamel*, 2014 ME 75, ¶ 21, 93 A.3d 689) (emphasis added).

In their brief, the Zanis cite *In re Martin* for the proposition that "[p]roof of insanity prior [to the will's execution], permanent in kind and progressive, raises a presumption of continuity." 131 Me. 422, 434, 179 A. 655 (1935); *see* (Blue Br. 17). However, the Zanis fail to acknowledge that any such presumption did not survive the enactment of Maine's Probate Code in 1979. *See* P.L. 1979, ch. 540 (effective Jan. 1, 1981) (codified at 18-A M.R.S.A. § 3-407).

Before the Code, the burden of establishing a will's validity lay initially with the will's proponent, subject to a burden-shifting analysis based on particular categories of evidence. *See, e.g., Estate of Turf*, 435

A.2d 1087, 1089 (1981) (applying pre-Code rule that "the proponent of a will almost must prove by a preponderance of the evidence the testator's capacity," but that "testimony given by the subscribing witness . . . has been accorded prima facie effect in proving testamentary capacity"); *In re Leonard*, 321 A.2d 486, 488 n.1 (1974) (citing *In re Am. Bd. of Com'r. for Foreign Mission* for the proposition that the will's proponent bears the burden of proving testamentary capacity)).

The Probate Code entirely superseded that burden-shifting regime, replacing it with a statute that simply allocates the burdens between parties. Under the express language of the Code, "[c]ontestants of a will have the burden of establishing *lack* of testamentary intent or capacity." 18-C M.R.S.A. § 3-407 (emphasis added); *see In re Estate of O'Brien-Hamel*, 2014 ME 75, ¶ 27, 93 A.3d 689 ("a party contesting the validity of a will bears the burden of proving the *absence* of testamentary capacity" (emphasis added)); *Estate of Record*, 534 A.2d 1319, 1321 (Me. 1987); *Estate of Mitchell*, 443 A.2d 961, 963 & n.5 (1982). Therefore, under Maine law, the Zanis bear the burden of proving a lack of testamentary incapacity and rebutting the presumption in favor of following the decedent's executed testamentary wishes. Because they

have not submitted relevant evidence sufficient to allow a factfinder to conclude that they have met that burden, the Probate Court's judgment should be affirmed.

III. There is no genuine dispute of fact whether Ms. Spofford lacked the testamentary capacity to execute the 2018 Will.

A. The Zanis have failed to create a genuine dispute of material fact concerning Ms. Spofford's testamentary capacity on March 1, 2018.

The Zanis present one issue on appeal: Whether the Probate Court erred in concluding that the record does not generate any genuine issue of material fact as to whether Ms. Spofford had the testamentary capacity when she made the will on March 1, 2018—the only time that matters. *See, e.g., Martin,* 133 Me. 422, 179 A. 655, 659 ("The want of capacity, when urged as a ground for invalidating a testamentary act, *must relate to the time of the act*. Incompetency may exist before or after, and still the will be valid." (emphasis added)); *In re Moran's Will*, 139 Me. 178, 28 A.2d 239, 242 (1942) ("The general rule whether evidence tending to show the insanity of a testator is too remote from the time of the execution of the will is a matter resting very largely in the discretion of the trial court.")

On the summary judgment record now before this Court on appeal, no reasonable factfinder could conclude that Ms. Spofford lacked

testamentary capacity on March 1, 2018. *See Dyer v. Dep't of Transp.*, 2008 ME 106, ¶ 14 n.3, 951 A.2d 821 (noting that summary judgment is appropriate unless "the record taken as a whole could lead a rational trier of fact to find for the nonmoving party"). Rather than present expert testimony or rebuttal evidence, the Zanis contend that the evidence that Ms. Spofford's cognitive condition was fragile and that the fact that a court had previously appointed her a guardian is enough to generate a triable issue of fact. *See, e.g.,* (Blue Br. 20-21.) The Zanis' position—which seems to be that any evidence of cognitive impairment in the years surrounding a will's execution raises a triable issue of fact on testamentary capacity—is wrong. *See Appeal of Royal*, 152 Me. 242, 247, 127 A.2d 484, 487 (1956) (quoting *Appeal of Martin* and *In re Moran's Will*); *see also In re Friedman*, 809 N.Y.S.2d 667, 669 (App. Div. 2006) ("[T]he fact that decedent was diagnosed with progressive dementia does not, in and of itself, create a triable issue of fact as to his mental capacity."); *In re Estate of Ellis*, 616 N.W.2d 59, 65-66 (Neb. Ct. App. 2000) (concluding that contestants' submission of non-examining psychiatrist's affidavit that testator "suffered from a schizotypal personality disorder during her adult years . . . fail[ed] to raise an issue

as to [the testator's] testamentary capacity *at the time she made her will*, which is the critical issue" (emphasis in original)). Certainly, 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. But Ms. Spofford's capacity on March 1, 2018 is well-documented and confirmed by her treating physician's clinical assessment, her lawyer, a disinterested witness, and multiple videos of her discussing her assets, and reviewing and signing the will.[9] If that is not enough, it is hard to imagine what would be. *See Friedman*, 809 N.Y.S.2d at 669 ("Here, two professionals opined that decedent was competent to sign his will, and the attesting witnesses swore that decedent appeared competent at the time he executed his will. Accordingly, we find that there exists no material question of fact in that regard.").

The Zanis do not rebut any of this evidence; they simply assert that it is "inexplicabl[e]" that the same physician who diagnosed and treated Ms. Spofford, and knew her psychiatric condition better than anyone,

---

[9] For this reason, the Zanis' reliance on *Martin*, 133 Me. 422, 179 A. 655, is inapposite. In that case, there was no medical or documentary evidence that shed light on the testator's capacity at the time he executed the will, simply the recollections of the witnesses. Here, by contrast, the record is replete with the most probative evidence imaginable as to a person's capacity on a particular day. The Zanis' assertion that this case is "very similar to" *Martin* is disingenuous and bizarre.

could find that she had testamentary capacity on March 1, 2018. (Blue Br. 20.) But this is not inexplicable. In fact, Dr. Dickens himself explained it, and no factfinder could fail to understand it: Ms. Spofford's cognition varied, and on March 1, 2018, she was thinking clearly. (A. 96-98.) There is no genuine dispute about that.

Similarly, the Zanis attempt to create a dispute of fact by simply objecting to St. Jude's record-supported statements of material facts by reciting that they "do not admit the accuracy" of Dr. Dickens's opinion of Ms. Spofford's testamentary capacity on March 1, 2018. *See* (A. 84, ¶¶ 32-34.) These responses are procedurally improper, because they cite no evidence to rebut Dr. Dickens's opinion. *See* M.R. Civ. P. 56(h)(4). And, of course, the reason they cite no evidence is that there is none.[10] Their responses are based on nothing more than speculation and a seeming unwillingness to accept fact; thus, it does not create a genuine dispute of

[10] The Zanis assert that they cannot opine as to Ms. Spofford's capacity on March 1, 2018 because Ms. Spofford's caregivers impeded them from communicating with Ms. Spofford. (A. 87.) This is inconsistent with the Zanis' assertion that "Karin told Michael that he was allowed to speak to [Ms. Spofford] on the phone." (A. 87.) Additionally, the caregivers asked the Zanis to limit their communications with Ms. Spofford because *Ms. Spofford* found them upsetting. *See In re Guardianship of Patricia S.*, 2019 ME 23, ¶ 3, 202 A.3d 532. And most importantly, the Zanis do not explain how their lack of direct knowledge of Ms. Spofford's mental state on March 1, 2018 somehow rebuts the evidence St. Jude has produced that demonstrates she had testamentary capacity on March 1, 2018.

fact sufficient to avoid summary judgment. *See Dyer*, 2008 ME 106, ¶ 14, 951 A.2d 821 (noting that the nonmoving party cannot "rest[] merely upon conclusory allegations, improbable inferences, and unsupported speculation" to create a genuine dispute).

In sum, no reasonable factfinder could conclude that Ms. Spofford lacked testamentary capacity on March 1, 2018. Therefore, there is no genuine dispute as to this sole material fact, and the Probate Court did not err in granting summary judgment in St. Jude's favor.

B. The prior guardianship and conservatorship are not sufficient evidence to rebut the presumption that Ms. Spofford had the testamentary capacity to execute her will.

The Zanis repeatedly point to the fact that doctors previously opined, and the Probate Court previously found, that Ms. Spofford needed a guardian and a conservator to help manage her affairs the year before she signed her 2018 Will. However, this Court has held that a person with a guardianship may still have the requisite testamentary capacity:

> As we interpret the law, 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. The law recognizes that a person may require a guardian by reason of incapacity in one particular, while in other respects he may be entirely

> competent. It is well settled that a man may be of unsound mind in one respect and not in all respects; that there may be partial insanity of the testator, some unsoundness of mind, that does not in any way relate to his property or disposition of the same by will.

In re Am. Bd. of Com'rs for Foreign Missions, 102 Me. 72, 66 A. at 226; *see also, e.g., Estate of Turf*, 435 A.2d at 1089 (testator assigned guardian and conservator in unrelated conservatorship proceeding in another state found to have testamentary capacity to execute will; evidence from guardian's report used to support conclusion that testator had sufficient testamentary capacity). In this case, the Zanis' citation to Ms. Spofford's prior medical diagnoses and PP-505 form is especially meaningless, because the physician who rendered the diagnosis and signed the PP-505 form on which the Zanis rely is the very same physician who examined and assessed her condition on March 1, 2018. Dr. Dickens knew Ms. Spofford's cognitive condition better than anyone, and again, the Zanis have not offered any evidence to rebut his considered professional assessment.

Likewise, this Court has held that proof of a prior medical diagnosis, alone, is insufficient to overcome the presumption in favor of overturning the lower court's finding regarding testamentary capacity,

in the face of direct testimony from witnesses present on the day of the will signing. In *In re Siebert*, the testator's co-worker contested a petition for probate of a will that named the testator's daughters as co-personal representatives and sought to admit an earlier will into probate in which the co-worker was named personal representative. 1999 ME 156, ¶¶ 1-3, 739 A.2d 365. The co-worker argued "that the Probate Court failed to evaluate [the testator's] memory function, ignoring the medical records and testimony [concerning his cognition prior to the will signing]." *Id.* ¶ 10. While this Court found that "[c]ertain evidence suggested that the [testator] may have had difficulty remembering certain things and performing certain tasks at different times and that he may not have been as detail-oriented as he once had been," it ruled that "the Probate Court could have found, based on the evidence of the will itself and the attorney who prepared the will, as well as the testimony of the [testator's] neighbor and his financial advisor, that [the testator] at least knew the general nature and extent of his property and the natural objects of his bounty." *Id.* In short, merely presenting evidence of prior issues of memory and cognition, alone, especially when faced with ample evidence of the testator's mental faculties on the date she made and signed her

will, is not sufficient to "overc[o]me the presumption of testamentary capacity." *Id*.

The record fully demonstrates that Ms. Spofford met the "low threshold" for testamentary capacity and acted with willful intent when she executed the 2018 Will. *Id.* ¶ 5. On the day she signed her will, she sought and obtained a medical evaluation from her longtime physician to ensure she was deemed competent. She then met alone with her attorney in her home so that no one could coach or influence her. All of this was captured and preserved on camera. Ms. Spofford described the property she owned, identified her heirs, selected beneficiaries of her testamentary will, and gave clear direction and explanation for her choices. Not only did her caregivers, counsel, and physician find her competent to execute a will, Ms. Spofford intentionally left a well-documented record to prove she had the requisite mental state. The Zanis have not proffered evidence sufficient to allow a factfinder to reasonably conclude that Ms. Spofford lacked testamentary capacity on March 1, 2018, when she executed the 2018 Will.

CONCLUSION

For the reasons stated herein, Appellee St. Jude Children's Research Hospital respectfully requests this Court affirm the Probate Court's April 10, 2024 order granting St. Jude's motion for summary judgment.

Dated: October 7, 2024

/s/ Oliver Mac Walton
Oliver Mac Walton, Bar No. 6340
Amy K. Olfene, Bar No. 5467

DRUMMOND WOODSUM
84 Marginal Way, Suite 600
Portland, ME 04101
Tel: (207) 772-1941
owalton@dwmlaw.com
aolfene@dwmlaw.com
Counsel for Appellee St. Jude Children's Research Hospital

CERTIFICATE OF SERVICE

I, Oliver M. Walton, on October 7, 2024, caused two (2) copies of the foregoing Brief of Appellee St. Jude Children's Research Hospital to be served on the other parties (and for those represented, the counsel for those parties) to this appeal by first-class mail, postage prepaid upon, and provided a courtesy copy by electronic mail to the following, unless, pursuant to M.R. Civ. P. 5, that party expressly agreed to accept service by electronic means, in which case, they were served with an via email only.

Laura P. Shaw
Christopher K. MacLean
DIRIGO LAW GROUP LLP
20 Mechanic St.
Camden, Maine 04843
Counsel for Appellants Michael and Peter Zani

Andre Duchette
TAYLOR MCCORMACK & FRAME, LLC
267 Commercial Street
Portland ME 04101
Counsel for Appellee Midcoast Humane Society

Maryellen Sullivan
PORT CITY LEGAL
10 Moulton Street 4th Floor
Portland, ME 04101
Personal Representative to the Estate of Patricia M. Spofford

Patricia Shadis, Esq.
SHADIS & ROSENDO
PO Box 718
Newcastle, ME 04553
Counsel for Nancy Carter

Paul Dumas, Jr.
PO Box 155
Turner, ME 04282
Counsel for Dana Spofford

Dated: October 7, 2024

/s/Oliver Mac Walton

Oliver Mac Walton
Drummond Woodsum
84 Marginal Way, Suite 600
Portland, ME 04101
Tel: (207) 772-1941
owalton@dwmlaw.com
Counsel for Appellee St. Jude Children's Research Hospital