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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-505

Filed 4 November 2026

Forsyth County, No. 23E000140-330

IN THE MATTER OF THE WILL OF MELVIN D. EUDY

Appeal by Propounders from order entered 28 February 2025 by Judge Troy J. Stafford in Forsyth County Superior Court. Heard in the Court of Appeals 13 January 2026.

Craige Jenkins Liipfert & Walker, LLP by William W. Walker, and Edmundson & Burnette, LLP by James T. Duckworth, III, for Propounder-Appellant Masonic Home for Children at Oxford, Inc.

Smith Law Group, PLLC, by Steven D. Smith and Brian A. Wooten, for Propounder-Appellant Ricky D. Armstrong.

Beacon Legal PLLC by Gavin J. Reardon, and Rossabi Law Partners, by Amiel J. Rossabi, for Caveators-Appellees Douglas Eudy and Ellen Middleton.

CARPENTER, Judge.

The Masonic Home for Children at Oxford (the "Children's Home") and Ricky D. Armstrong appeal from the trial court's order granting summary judgment in favor of Ellen Middleton and Douglas Eudy. After careful review, we reverse and remand.

I. Factual & Procedural Background

In October 2021, Melvin D. Eudy executed a will (the "2021 Will"), while estranged from his children, Ellen Middleton and Douglas Eudy. In the 2021 Will, Melvin largely disinherited Ellen and Douglas and devised most of his estate to the Children's Home.[1] Following Melvin's death in January 2023, Ellen applied for and received letters of administration, and the estate initially proceeded as an intestate estate. Thereafter, the Children's Home and Melvin's nephew, Ricky Armstrong, filed petitions seeking probate of a lost or destroyed will. The trial court aligned the parties, with Ellen and Douglas as caveators and Ricky Armstrong and the Children's Home as propounders. In February 2025, Ellen and Douglas moved for summary judgment, claiming Melvin intentionally destroyed the 2021 Will. On 28 February 2025, the trial court granted summary judgment in favor of Ellen and Douglas. Evidence from the record tended to show the following.

After executing the 2021 Will, Melvin told friends and family that he disinherited Ellen and Douglas and favored the Children's Home due to the estrangement. During this time, Melvin was closely involved with Darlene Stauffer, whom he named executrix and to whom he granted power of attorney and healthcare power of attorney.

In December 2022, Melvin was hospitalized with kidney failure, and doctors summoned Ellen and Douglas to the hospital. Soon after his hospitalization, Melvin

[1] In the 2021 Will, Melvin devised $20,000 each to Ellen, Douglas, and his nephew, Ricky Armstrong, with the remainder—more than two million dollars—to the Children's Home.

asked his neighbor and Ms. Stauffer to keep watch over his home because he thought Ellen or Douglas might steal from him. While hospitalized, however, Melvin reconciled with Ellen and Douglas. Melvin told his friends and his longtime attorney, Mr. Nelson, that he regretted the estrangement and intended to change the 2021 Will. Attorney Nelson and Melvin's friends testified that Melvin was alert and of sound mind.

Immediately after reconciling with Melvin, Douglas informed Melvin that Ms. Stauffer had changed the locks on Melvin's home and removed certain valuables. Melvin directed Attorney Nelson to revoke Ms. Stauffer's power of attorney and to prepare a new power of attorney in favor of Ellen and Douglas. Attorney Nelson met privately with Melvin, found him competent, and carried out those instructions. During that visit, Melvin indicated he also wished to address the 2021 Will, but the conversation was interrupted by a visit from Douglas.

Following Ms. Stauffer's removal as power of attorney, Douglas went to Melvin's home, changed the locks, documented Melvin's belongings, and retrieved Melvin's mail. While searching through Melvin's filing cabinet, Douglas found and photographed the 2021 Will and told Ellen of its contents.

Soon after, Ellen contacted Attorney Nelson and asked him to return to the hospital to draft a new will for Melvin. Attorney Nelson told Ellen that he did not have the staff to return to the hospital but informed Ellen, "[Y]our dad does not have to do a new will if he doesn't want to. He can tear it up. You and Doug are the only

children and if there's no will then it goes to you guys, and he doesn't have to do one."

Later that month, the hospital discharged Melvin, and Ellen drove him home where Douglas met them. According to Ellen and Douglas, immediately after returning Melvin home, Douglas retrieved the 2021 Will from Melvin's filing cabinet, handed the will to Melvin, and Melvin tore the will into pieces. Later that day, Melvin was readmitted to the hospital and died several days thereafter.

Before the summary judgment hearing, both parties submitted affidavits. The Children's Home provided affidavits from Melvin's neighbor and Ricky Armstrong. Both recounted Melvin's statements to them that Melvin intended to leave his estate to the Children's Home. The Children's Home also provided a report prepared by Dr. Gray, a psychologist. In his report, Dr. Gray opined that certain circumstances suggested that Melvin lacked intent to revoke the 2021 Will, including Melvin's illness and Ellen and Douglas's involvement in his affairs. Dr. Gray nevertheless acknowledged that Melvin possessed testamentary capacity before his death and was not isolated during his hospitalization.

The trial court granted summary judgment in favor of Ellen and Douglas, concluding that no genuine issue of material fact existed as to whether Melvin revoked the 2021 Will. The Children's Home timely appealed.

II. Jurisdiction

This Court has jurisdiction under N.C. Gen. Stat. § 7A-27(b)(1) (2025).

III. Issue

The issue is whether the trial court erred in granting summary judgment.

IV. Analysis

The Children's Home argues that the trial court erred in granting summary judgment. Specifically, the Children's Home contends that it presented competent evidence that a genuine issue of material fact existed as to whether Melvin intended to revoke his will. We agree.

A. Standard of Review

"Our standard of review of an appeal from summary judgment is *de novo*; such judgment is appropriate only when the record shows that 'there is no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law.' " *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008) (quoting *Forbis v. Neal*, 361 N.C. 519, 524, 649 S.E.2d 382, 385 (2007)). "Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the [trial court]." *In re Greens of Pine Glen, Ltd. P'ship*, 356 N.C. 642, 647, 576 S.E.2d 316, 319 (2003) (citing *Mann Media, Inc. v. Randolph Cty. Planning Bd.*, 356 N.C. 1, 13, 565 S.E.2d 9, 17 (2002)).

" 'When considering a motion for summary judgment, the trial judge must view the presented evidence in a light most favorable to the nonmoving party.' " *In re Will of Jones*, 362 N.C. at 573, 669 S.E.2d at 576 (quoting *Dalton v. Camp,* 353 N.C. 647, 651, 548 S.E.2d 704, 707 (2001)). "If the movant demonstrates the absence of a genuine issue of material fact, the burden shifts to the nonmovant to present specific

facts which establish the presence of a genuine factual dispute for trial." *Id.* at 573, 669 S.E.2d at 576 (citing *Lowe v. Bradford*, 305 N.C. 366, 369–70, 289 S.E.2d 363, 366 (1982)).

To raise a "genuine issue of material fact," the nonmovant must forecast "substantial evidence" that a " 'reasonable mind might accept as adequate to support a conclusion' and means 'more than a scintilla or a permissible inference.' " *United Cmty. Bank (Georgia) v. Wolfe*, 369 N.C. 555, 558, 799 S.E.2d 269, 271 (2017) (quoting *Ussery v. Branch Banking & Tr.*, 368 N.C. 325, 335, 777 S.E.2d 272, 278–79 (2015)). Yet, evidence raising only "speculation or conjecture is insufficient as a matter of law to withstand summary judgment." *Curlee v. Johnson*, 270 N.C. App. 657, 664, 842 S.E.2d 604, 609 (2020) (citing *Estate of Tipton v. Delta Sigma Phi*, 264 N.C. App. 313, 321–22, 826 S.E.2d 226, 233 (2019)). Nevertheless, "if there is any question as to the weight of [the] evidence, summary judgment should be denied." *Marcus Bros. Textiles, Inc. v. Price Waterhouse, LLP*, 350 N.C. 214, 220, 513 S.E.2d 320, 325 (1999) (citing *Kessing v. Nat'l Mortgage Corp.*, 278 N.C. 523, 535, 180 S.E.2d 823, 830 (1971)).

B. Will Revocation

"A written will . . . may be revoked . . . [b]y being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the testator himself or by another person in the testator's presence . . . ." N.C. Gen. Stat. § 31-5.1 (2025). " '[I]t is well established that when a will last seen in the testator's

possession cannot be found at death a rebuttable presumption arises that the will was revoked.' " *In re Will of McFayden*, 179 N.C. App. 595, 603, 635 S.E.2d 65, 70 (2006) (quoting *In re Will of Jolly*, 89 N.C. App. 576, 577, 366 S.E.2d 600, 601 (1988)).

"The same testamentary capacity and intent required to make a written will is also required for its revocation by destruction." *In re Will of Dunn*, 129 N.C. App. 321, 327, 500 S.E.2d 99, 103 (1998) (citation omitted); *see also In re Will of McFayden*, 179 N.C. App. at 603, 635 S.E.2d at 70 ("In order to revoke a will by destroying it, the destructive act must be done with the intent to revoke the will."). "Likewise, if a testator destroys his will while under undue influence, the will is not considered to have been revoked, and may be admitted to probate . . . ." *In re Will of Dunn*, 129 N.C. App. at 327, 500 S.E.2d at 103 (citing 79 AM. JUR. 2D *Wills* § 508).

Undue influence exists when another person's influence overcomes a testator's free agency and substitutes that person's wishes for the testator's own, causing the testator to revoke the will when the testator otherwise would not have done so. *See Hardee v. Hardee*, 309 N.C. 753, 756, 309 S.E.2d 243, 245 (1983). Undue influence is "difficult to prove because, after testator's death, only circumstantial evidence remains from which the trier of fact must decide whether the battle in fact occurred and whether testator was on the losing side." *In re Will of Andrews,* 299 N.C. 52, 54, 261 S.E.2d 198, 199 (1980). Factors suggesting undue influence include:

1. Old age and physical and mental weakness.

> 2. That the person signing the paper is in the home of the beneficiary and subject to his constant association and supervision.
> 3. That others have little or no opportunity to see him.
> 4. That the will is different from and revokes a prior will.
> 5. That it is made in favor of one with whom there are no ties of blood.
> 6. That it disinherits the natural objects of his bounty.
> 7. That the beneficiary has procured its execution.

Id. at 55, 261 S.E.2d at 200 (quoting *In re Will of Mueller*, 170 N.C. 28, 30, 86 S.E. 719, 720 (1915)).

The presumption that a testator revoked a will by destruction is "not one of law but of fact" and may therefore be rebutted by evidence showing that the will's loss or destruction was not caused by the testator, or by another person acting with the testator's "direction and consent." *In re Will of McFayden*, 179 N.C. App. at 603, 635 S.E.2d at 70 (quoting *In re Will of Wall*, 223 N.C. 591, 593, 27 S.E.2d 728, 730 (1943)). Yet, "where the facts are in dispute, issues with respect to the testator's capacity to revoke a will and whether the revocation occurred as a result of undue influence may not be decided by the trial judge, but must be decided by a jury." *In re Will of Dunn*, 129 N.C. App. at 327, 500 S.E.2d at 103; *see also In re Will of McFayden*, 179 N.C. App. at 603, 635 S.E.2d at 70 ("As soon as the circumstances attendant upon the disappearance of the paper are made to appear, the presumption loses its potency and the issue becomes one for the jury.").

As an initial matter, we note that the presumption that Melvin revoked his will by destruction is a presumption of fact, not of law. *See In re Will of McFayden*,

179 N.C. App. at 603, 635 S.E.2d at 70. As such, the trial court may decide whether the presumption initially arises but may not weigh competing evidence to decide whether the presumed fact actually occurred. *See Marcus Bros. Textiles*, *Inc.*, 350 N.C. at 220, 513 S.E.2d at 325.

Here, the Children's Home forecasted substantial evidence to establish that the facts were in dispute as to whether Melvin intended to revoke the 2021 Will. *See United Cmty. Bank (Georgia)*, 369 N.C. at 558, 799 S.E.2d at 271. The Children's Home provided evidence that Melvin desired to reconcile with Ellen and Douglas, and Ellen and Douglas may have taken advantage of Melvin's vulnerability. As Melvin's power of attorney, Ms. Stauffer was directed to watch over Melvin's home because Melvin thought Ellen and Douglas might steal from him. Immediately after reconciling with Melvin, Douglas told Melvin that Ms. Stauffer was removing his valuables, causing Melvin to replace Ms. Stauffer as his power of attorney. The following day, Douglas changed the locks on Melvin's home, searched through Melvin's belongings, and located the 2021 Will. Ellen also immediately called Attorney Nelson and directed him to return to the hospital to draft a new will.

Throughout these events, Melvin was elderly, hospitalized, and in serious condition. Despite the severity of Melvin's condition, Ellen and Douglas testified that they approached Melvin with the 2021 Will immediately after he returned home, telling Melvin that he could tear it up. A reasonable mind might accept this evidence as adequate to support the conclusion that Melvin did not intend to revoke the 2021

Will. *See id.* at 558, 799 S.E.2d at 271. Furthermore, the evidence raises genuine issues of material fact as to whether Douglas and Ellen unduly influenced Melvin. *See id.* at 558, 799 S.E.2d at 271. Because genuine issues of material fact remain, the jury must resolve those issues. *See In re Will of Dunn*, 129 N.C. App. at 327, 500 S.E.2d at 103.

V. Conclusion

The trial court erred in granting summary judgment because an issue of material fact existed as to whether Melvin intended to revoke the 2021 Will and, if so, whether Melvin was under undue influence. We reverse and remand.

REVERSED AND REMANDED.

Judges ZACHARY and COLLINS concur.

Report per Rule 30(e).