

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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In re Estate of DOLORIS B. RINKE.

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SUSAN RINKE,

Appellant,

v

LISA ENMARK,

Appellee.

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UNPUBLISHED

October 21, 2010

No. 293394

Wayne Probate Court

LC No. 2007-725535-DE

Before: WILDER, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Appellant Susan Rinke appeals as of right from a probate court order granting appellee Lisa Enmark’s motion for summary disposition pursuant to MCR 2.116(C)(10). The probate court determined that appellant had not shown a genuine issue of material fact with respect to whether the parties’ mother, Doloris Rinke (“Rinke”), lacked the testamentary capacity to disinherit appellant or whether Rinke was unduly influenced. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Summary disposition may be granted under MCR 2.116(C)(10) when “there is no genuine issue of material fact, and the moving party is entitled to judgment . . . as a matter of law.” This Court reviews a trial court’s decision on a motion for summary disposition de novo. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999).

Testamentary capacity requires that an individual be able “to comprehend the nature and extent of [her] property, to recall the natural objects of [her] bounty, and to determine and

understand the disposition of property which [s]he desires to make.” *Persinger v Holst*, 248 Mich App 499, 504; 639 NW2d 594 (2001) (citations and internal quotations omitted).<sup>1</sup> There is a presumption that a testator has the capacity to make a will. MCL 600.5152. The evidence in this case showed that Rinke had been diagnosed with dementia, but appellant did not present any evidence showing that Rinke’s cognitive impairments affected her testamentary capacity. There was no evidence suggesting that she was unable to comprehend the nature and extent of her property, recall “the natural objects of [her] bounty,” or determine and understand the disposition of her property that she wanted to make. “Weakness of mind and forgetfulness are insufficient to invalidate a will if it appears that the mind of the testator was capable of attention and exertion when aroused and he was not imposed upon.” *In re Paquin's Estate*, 328 Mich 293, 302; 43 NW2d 858 (1950). The probate court did not weigh the evidence or improperly evaluate credibility, as appellant contends. Rather, it properly determined that appellant failed to present evidence demonstrating a genuine issue of material fact with respect to Rinke’s testamentary capacity.

Appellant also argues that the probate court erred in dismissing her undue influence claim related to Rinke’s attorney, R. Keith Stark, and “failed to consider or rule upon there being undue influence totally aside from the presumption.” However, the probate court’s opinion indicates that it rejected appellant’s contention that a presumption of undue influence should arise with respect to Stark and further found that there was “no direct evidence of undue influence.” The record supports this conclusion. “Misrepresentations made for the purpose of influencing the testator may constitute undue influence if it is shown that the testator relied upon such misrepresentations in the disposition of his property.” *In re Sprenger's Estate*, 337 Mich 514, 522-523; 60 NW2d 436 (1953). Appellant claims that Stark “misrepresented his findings” when he told Rinke that appellant “had a sexual relationship with one Tom Luetz whom Doloris Rinke despised.” Stark testified that he conveyed to Rinke that based on the results of an investigation that Rinke had requested, it appeared that appellant and Luetz were having a relationship. Luetz denied telling Rinke that the relationship was sexual, and no evidence of any such representation was presented. Appellant admitted that Luetz sometimes spent the night at her house, and that she occasionally stayed at Luetz’s house. Appellant’s testimony indicated that she and Luetz were involved in a relationship, although appellant maintained that it was not and never had been sexual. Appellant did not show that the information provided by Stark to Rinke misrepresented the facts. Therefore, appellant’s contention that Stark exercised undue influence by his misrepresentations lacked factual support, and the probate court properly

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<sup>1</sup> MCL 700.2501, as amended effective April 1, 2010, sets forth four requirements for sufficient mental capacity to make a will. These requirements were not in effect at the time Rinke executed the will and codicils, or when the probate court decided this case.

granted summary disposition to appellee on that issue.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Deborah A. Servitto  
/s/ Douglas B. Shapiro