FILED, Clerk of the Supreme Court, 24 Jul 2026, **091316**

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IN THE MATTER OF THE ESTATE OF FRANK D. CARONE, Deceased.	SUPREME COURT OF NEW JERSEY Docket No.: A-28-25 (091316) APPELLATE DIVISION Docket Nos.: A-0858-24, A-0860-24 SAT BELOW: Hon. Hany A. Mawla, J.A.D. Hon. Joseph L. Marczyk, J.A.D.
IN THE MATTER OF THE ESTATE OF ROSEANN CARONE, Deceased.	CIVIL ACTION ON APPEAL FROM: SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION: PASSAIC CTY. Docket Nos.: P227937; P228307 SAT BELOW: Hon. Frank Covello, P.J.Ch.

BRIEF OF *AMICUS CURIAE* NEW JERSEY STATE BAR ASSOCIATION

DATE SUBMITTED:
June 8, 2026

AMICUS POSITION:
For reversal

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PRELIMINARY STATEMENT

These appeals involve the fundamental notion of standing in probate matters. The main issue for consideration is whether prior, unprobated wills (the validity of which have not been established) can eliminate a party's standing to contest the final, probated will.

Seemingly dry legal concepts -- such as the "standing" to challenge a will -- jump to life when considered in real life settings. This Court has encountered many of them: Geraldine Dodge, Madeleine Stockdale, and Adrian Folcher, to name a few. In each of those encounters, this Court evaluated doctrines of undue influence, impaired capacity, and other factors in the context of elaborate schemes targeting vulnerable individuals, like Geraldine, Madeleine, and Adrian. Dodge devoted great detail to a protracted scheme of subtle deceptions practiced upon Geraldine to cause her to make a "gift" of her valuable art collection. In Stockdale, Madeleine's will that left her entire residuary estate to charity -- the Spring Lake First Aid Squad -- was almost defeated by a schemer who sought to defeat that bequest and divert the assets to himself. That is why, in such cases (all cited and discussed below), this Court has considered strong remedies to address the "pernicious" tort of undue influence.

A review of such cases -- and many others from this State and around the country -- confirms why this Court should reaffirm the concept of liberal and broad standing to challenge a will. In factual situations like Dodge, Stockdale, and Folcher, schemers who preyed upon elderly, impaired, or vulnerable testators certainly could have procured multiple wills, trusts, or gift instruments through their fraudulent plans.

If the schemers had done so, would their reliance on the last of several improperly procured instruments have blocked a probate challenge by disinherited family members, other takers under earlier valid instruments, or, in the case of Stockdale, a beloved charity? This Court should not condone that policy; instead, the Court should take steps to protect against elder abuse, fraud, and other insidious misconduct.

The New Jersey State Bar Association (NJSBA) does not know whether the facts underlying these appeals involve anything like the type of schemes in the foregoing cases, nor does NJSBA take a position on the disputes between or among the parties. But this case provides the platform to confirm the broad and liberal standing rights in probate matters, as that issue is capable of repetition yet could evade review.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

The NJSBA relies upon the Procedural History and Statement of Facts presented by the parties and drawn from the Appellate Division’s opinion, except as set forth below, to provide context for this submission.

LEGAL ARGUMENT

I. NEW JERSEY LAW CONFERS BROAD STANDING IN PROBATE MATTERS.

The NJSBA appears as *amicus curiae* in these appeals. From what we glean from the record, the trial court and Appellate Division ruled that plaintiff-appellants lacked standing to contest Frank Carone's 2022 will and Roseann Carone's 2021 will. The NJSBA submits that parties, under the circumstances presented, should have standing to contest the wills.

The record indicates that decedents created a series of wills leading up to their final wills in 2021 and 2022. Decedents named their grandsons (plaintiff-appellants) as beneficiaries under earlier wills (*e.g.*, in 2006 and 2011) and disinherited them under the final wills. Plaintiff-appellants filed verified complaints in the Superior Court, Chancery Division, Probate Part to invalidate the 2021 and 2022 wills (which had been probated).

The trial court found that decedents' execution of successive wills revoked the 2006 and 2011 wills and that plaintiff-appellants lacked standing to challenge the 2021 and 2022 wills. The Appellate Division affirmed the trial court's determination.

> We reject plaintiffs' claims the trial court should have considered the entire gamut of wills decedents had prepared over the years. Our review of the record convinces us plaintiffs' claims at trial rested on the validity of the 2006 and 2011 wills, which they asserted had not

> been properly revoked. In this regard, the court correctly found plaintiffs lacked standing. Zimmerman testified there were at least two other wills, executed in 2015 and 2017, which revoked the 2006 and 2011 wills and extinguished plaintiffs' claims.
>
> [In re Estate of Frank D. Carone, No. A-0858-24, A-0860-24 (App. Div. Sept. 25, 2025) (slip op. at 17-18).]

The NJSBA submits that, given the generous rule for standing in probate matters and the important policies involved, parties such as ones in the situation below, who are disinherited under successive, unprobated wills, should still have standing to contest the final, probated wills. Standing in probate matters must be determined by, and measured from, the final, probated will and not prior, unprobated wills.

A. Probate Part Proceedings.

Specific procedures apply to the litigation of matters in the Superior Court, Chancery Division, Probate Part. We begin here, because rules that govern Probate Part practice bear upon the issues before the Court in these appeals, namely, disputes in the context of the probate of a will and standing in probate matters.

Generally, uncontested probate matters proceed in the Surrogate's Court. R. 4:80-1 (unless a complaint for probate is filed in the Superior Court, probate matters proceed in the Surrogate's Court). There are matters, however, in which the Surrogate's Court cannot act. R. 4:82 (*e.g.*, when a party files a caveat against probate or a dispute arises as to any matter, such as a will contest). Such matters must instead proceed in the Probate Part, in a summary manner, by filing an order to show cause and verified complaint upon notice to interested parties. R. 4:83-1, 4:84-1.

If a party files a caveat against probate in the Surrogate's Court, the proponent must file an action in the Probate Part to discharge the caveat and probate the will. R. 4:82, 4:83-1, 4:84-1. "A caveat is the formal mechanism by which one gives notice of a challenge to a will that has been or is expected to be offered for probate." In re Estate of Stockdale, 196 N.J. 275, 302 (2008). If the Surrogate probated the will, a party may file an action in the Probate Part to set aside the will. R. 4:84-1, 4:85-1.

Whether the matter begins with a caveat before probate or complaint after probate to set aside the will, similar grounds exist to contest the will, the most common of which are lack of testamentary capacity and undue influence. In re Livingston's Will, 5 N.J. 65, 71-73 (1950); Haynes v. First Nat'l State Bank, 87 N.J. 163, 175-76 (1981); Stockdale, 196 N.J. at 302. This Court has addressed the presumptions and burdens of proof that apply in a will contest:

> In any attack upon the validity of a will, it is generally presumed that the testator was of sound mind and competent when he executed the will. If a will is tainted by undue influence, it may be overturned. Undue influence has been defined as mental, moral or physical exertion which has destroyed the free agency of a testator by preventing the testator from following the dictates of his own mind and will and accepting instead the

> domination and influence of another. When such a contention is made the burden of proving undue influence lies upon the contestant unless the will benefits one who stood in a confidential relationship to the testatrix and there are additional circumstances of a suspicious character present which require explanation. In such case the law raises a presumption of undue influence and the burden of proof is shifted to the proponent.
>
> [Haynes, 87 N.J. at 175-76 (internal citations and quotation marks omitted).]

If a party seeks to contest a will in the Probate Part, the personal representative must "show cause" why the probate should not be set aside or letters testamentary vacated. R. 4:85-1. Generally, the contestant must file the action within four months after the grant of probate or the issuance of letters, if such party resides within this State, or within six months thereafter if such party resides in another state at the time of the grant of probate or issuance of letters. Ibid.

B. Standing in Probate Matters.

Probate Part rules provide a specific test for standing in Probate Part matters. Not just any party, but a "person aggrieved" by probate of the will, may file an action to contest the will. R. 4:85-1. While the rule does not define "person aggrieved," our cases indicate that the test is the same as the standard to file a caveat, and includes anyone "who would be injured" by probate of the will.

> The test of appellant's standing under [the rule] is the same as that applied to one who seeks to contest probate prior to judgment; in other words, does appellant qualify as a caveatrix? . . . The rule in this State is that no one may

> interpose a Caveat unless she would be injured by the probate of the will propounded. This court said only recently in In re Holibaugh's Will, 18 N.J. 229, 232 (1955): 'The issue is thus one of interest and capacity to sue and invoke the judicial process to inquire into the testamentary sufficiency of the writing. A Caveat is not maintainable by a mere volunteer; it is available only to one 'who would be injured by the probate of the will' and as such is entitled to an opportunity to be heard on the question.'
>
> [In re Myers' Will, 20 N.J. 228, 235 (1955).]

Subsequent cases have expanded upon the definition of a "person aggrieved" in a will contest. In Maxson's Will, for example, the Appellate Division found that the beneficiaries under a prior will would have standing to contest the probate of a later will that did not include them as beneficiaries.

> As beneficiaries under a prior will of the testator they would be 'injured' by the probate of his later will which did not name them as such. In re Myers' Will, 20 N.J. 228, 235 (1955). They would be entitled to an opportunity to be heard on the proceeding then pending before the court. Ibid.
>
> [Maxson's Will, 90 N.J. Super. 346, 348 (App. Div. 1966).]

Other cases and authorities have indicated that to be aggrieved by probate of the will, one must be pecuniarily injured by the probate of the will. In re Probate of Alleged Will of Hughes, 244 N.J. Super. 322, 325-26 (App. Div. 1990) ("[a]n individual who would be injured by the will is one who would be pecuniarily prejudiced by it"); 5 New Jersey Practice, Wills and Administration § 120, at 300

(Alfred C. Clapp and Dorothy G. Black) (rev. 3d ed. 1982) ("Only the persons, who might be prejudiced pecuniarily by the admission of a will to probate, may caveat against, it.").

In a recent case, one court, after reviewing the "low and generous bar for standing in a will contest" and the liberal approach to standing in general, found that the next-of-kin of a decedent who would have benefitted if the testator's will were invalidated would have standing to contest the will. In re Estate of Foster, No. MON-P-422-24 (Ch. Div. Probate Part Feb. 27, 2026) (slip op. at 5-6) (Fisher, J.). Judge Fisher (P.J.A.D., retired and temporarily on recall) delivered the opinion of the court:

> There is no question Harold will suffer harm if Lois's Will is not set aside. While it is true that the harm to Harold is indirect – or, to be precise, that the benefits obtained from a successful challenge to the Will must first pass to Rose's estate before Harold may inherit from Rose – the harm is nevertheless real and in no way illusory. Harold is not an interloper, nor is he a stranger to this dispute. His mother Rose was Lois's only next-of-kin, and he is Rose's next-of-kin – that's enough of a stake to confer standing. Unless we are to turn the clock back to the pre-1947 days of 'procedural frustrations,' Harold's action shouldn't be barred because his entitlement to a portion of Lois's estate – if his action proves successful – must first pass through Rose's estate.
>
> [Id. at *5-6 (internal citations omitted).]

Moreover, our law in general adopts a liberal approach to standing. R. 4:26-1 (standing requires plaintiff to be "real" party in interest); Crescent Park Tenants

Ass'n v. Realty Equities, 58 N.J. 98, 107 (1971) ("we have appropriately confined litigation to those situations where the litigant's concern with the subject matter evidenced a sufficient stake and real adverseness"); In re Adoption of Baby T, 160 N.J. 332, 340 (1999) ("Entitlement to sue requires a sufficient stake and real adverseness with respect to the subject matter of the litigation."); In re New Jersey State Contract A71188, 422 N.J. Super. 275, 289 (App. Div. 2011) (our law takes "a generous view" of standing). In line with that approach, our courts "have been sweepingly rejecting procedural frustrations in favor of 'just and expeditious determinations on the ultimate merits.'" Crescent, 58 N.J. at 108 (internal citation omitted).

A personal representative may assert that a challenger lacks standing to contest the will in a motion to dismiss or an answer to the complaint. R. 4:6-2; Allstate New Jersey Ins. v. Cherry Hill Pain & Rehab Inst., 389 N.J. Super. 130, 136 (App. Div. 2006) ("Lack of standing may be raised as a failure to state a cause of action under R. 4:6-2(e)."). Standing is a threshold requirement for justiciability of a controversy. Watkins v. Resorts Int'l Hotel, 124 N.J. 398, 421 (1991). The defense of lack of standing cannot be waived. Petro v. Platkin, 472 N.J. Super. 536, 558 (App. Div. 2022).

C. Standing in Probate Matters in Other Jurisdictions.

While it does not appear that our courts have had the occasion to previously consider the issue -- whether successive, unprobated wills can eliminate standing to contest the final, probated will -- courts in other jurisdictions have considered and rejected such a rule.

The Tennessee Supreme Court, for example, declined to apply a "broad, bright-line rule that persons disinherited by facially valid successive wills lack standing." In re Estate of Brock, 536 S.W.3d 409, 417 (Tenn. 2017) (emphasis in original). Decedent there made a 2013 will that disinherited five of his children. Id. at 411. After his death, the executors probated the will and said children filed an action to contest the will. Ibid. In the litigation, the executors produced copies of four signed wills (including a 2012 will that also disinherited the five children) that predated the final, 2013 will. Id. at 412. The lower courts found that the 2012 will deprived the children of standing to contest the 2013 will. The Tennessee Supreme Court reversed, finding that while the 2012 will might have been facially valid, it had not been judicially established. Id. at 417.

> [W]e would not embrace such a broad, bright-line rule that would deprive litigants of any opportunity to litigate the validity of either will. As the trial court here explained, such a rule would be harsh, unfair, inequitable and promote 'the potential for fraud by simply creating two wills and [having] one insulate the other.' Not only does such a broad rule create a potential for fraud, it lacks a logical basis.

> [Id. at 417-18 (second alteration in original).]

The Kansas Supreme Court rejected a rule that a person disinherited under an earlier, unprobated will lacks standing to contest the final, probated will. Marr v. Barnes, 267 P. 9, 10 (Kan. 1928). In July 1922, decedent made a will that effectively disinherited two of her daughters, Laura Marr and Hattie Dewey. Id. at 9. Months later, in December 1922, decedent made a new will with the same provisions. Ibid. After decedent died, the executor probated the December 1922 will and the disinherited daughters filed an action to set aside the will. Id. at 10. On appeal, the executor argued that the daughters lacked standing to contest the final will. Ibid. The Kansas High Court disagreed:

> [I]t is argued that because the unprobated will of July 20, 1922, cut off the plaintiffs with a pittance, they have no concern with the validity or invalidity of the later will which is the subject matter of this lawsuit. But the will of July was never probated. Until that is done a will is merely 'a scrap of paper,' mayhap of some evidential significance--no more. A will neither confers rights on its named beneficiaries nor deprives heirs of their rights until it has passed the scrutiny of the probate court; and its presentation for probate and some action favorable or unfavorable thereon by that tribunal are prerequisites to a contest over its validity in a court of general jurisdiction. . . .
>
> [H]ow an unprobated will could be said to be a valid will and used in litigation as a valid will to the prejudice of an heir who has never had a chance to question its validity calls for a subtlety of reasoning which we would not care to follow.

[Ibid. (emphasis in original).]

The Georgia Supreme Court rejected a rule that an heir disinherited by an earlier valid, unprobated will cannot caveat or contest a later will. Stephens v. Brady, 73 S.E.2d 182, 184 (Ga. 1952). Decedent's husband objected to the probate of her final will. Ibid. The executor argued that decedent's prior, unprobated will, which disinherited the husband, stripped the husband of standing to contest the final will. Ibid. The Georgia High Court declined to accept that rule and explained:

> The interest of the husband in the estate of his deceased wife, as an heir, was not severed by the mere existence of a prior will, but would continue to exist until that former will was probated. If the former will had been offered for probate, unquestionably the husband would have been entitled to file a caveat. The execution of a second will by the testatrix could not affect the right of the husband to contest the probate of the first will. The mere existence of a prior unprobated will could have no affect on the interest of the husband, as an heir, to caveat the second will.
>
> [Ibid.]

Cases that we cite in this section are not the only cases that inform the issue in these appeals. However, the majority of reported cases have declined to adopt a rule that successive, unprobated wills can deprive a party of standing to contest the final, probated will. Brock, 536 S.W.3d at 418 (collecting cases).

D. Standing in Underlying Probate Matters.

Based upon the broad rule in our probate matters and the generous approach to standing in general, as well as guidance from courts in other jurisdictions, the NJSBA submits that a plaintiff, in a situation like that below, has standing to contest the final, probated will. If such a plaintiff is disinherited under the final will, the party is "aggrieved" by probate of the final will. Prior wills (which have not passed the scrutiny of any court) should not impact the plaintiff's right to contest the final, probated will.

If the mere existence of a prior, unprobated will could sever the plaintiff's right to contest the final will, procedural frustrations would trump fair and just determinations on the ultimate merits. (One could create an interim will to insulate the final will.) A better rule (albeit not expressed in our case law or Probate Part rules) would declare that successive, unprobated wills cannot prevent the plaintiff from contesting the final, probated will. The Court should adopt that rule or clarify the existing law.

Further, members of the bar and the public in general would benefit from guidance on the proper procedures for raising and adjudicating the standing issue in the context of a dispute over the validity of multiple wills. Although the record here is not entirely clear, it appears that the trial court may have made a determination on the merits of the validity of the decedents' prior wills to resolve the standing issue.

For cases such as this one, in which multiple wills are subject to challenge, it may be beneficial for this Court to clearly set forth how a trial court should approach any factual determinations and legal conclusions necessary to resolve standing issues in such matters.

II. IMPORTANT POLICIES WARRANT BROAD STANDING IN PROBATE MATTERS.

Important policies support the outcome that we urge the Court to reach -- a ruling that rejects the notion that a prior, unprobated will can deprive a party of standing to contest the final, probated will.

One policy is access to the courts and evaluation of the merits of the case. See, e.g., Crescent, 58 N.J. at 108 ("rejecting procedural frustrations in favor of just and expeditious determinations on the ultimate merits"); Baby T, 160 N.J. at 340 ("A lack of standing . . . precludes a court from entertaining any of the substantive issues presented for determination.").

> Standing is such a threshold issue. It neither depends on nor determines the merits of a plaintiff's claim. Allen v. Wright, 468 U.S. 737, 750-51, 104 S. Ct. 3315, 3324, 82 L. Ed. 2d 556, 569 (1984) ('In essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.'); Warth v. Seldin, 422 U.S. 490, 500, 95 S. Ct. 2197, 2206, 45 L. Ed. 2d 343, 355 (1975) ('standing in no way depends on the merits of the plaintiff's contention that particular conduct is illegal'); Coalition for Env't v. Volpe, 504 F.2d 156, 168 (8th Cir. 1974) (standing 'is a threshold inquiry' that 'eschews evaluation of the merits'). Standing, like jurisdiction, involves a threshold determination of the

> court's power to hear the case. Sherman v. British Leyland Motors, 601 F.2d 429, 439-40 (9th Cir. 1979) (standing issue is 'akin to that of jurisdiction').
>
> [Watkins, 124 N.J. at 417-18 (1991).]

Another is the prevention of fraud on the court and beneficiaries. See, e.g., Brock, 536 S.W.3d at 413; 417 ("a broad, bright-line rule that persons disinherited by facially valid, successive wills lack standing," would "promote the potential for fraud by simply creating two wills and [having] one insulate the other"); In re Estate of Malcolm, 602 N.E.2d 41, 44 (Ill. App. Ct. 1992) (plaintiffs may need to contest two or more wills to inherit from the estate, however, "fraud should never be insulated from the reach of the court because the court may have more work to do to detect and correct the fraud"). Malcolm noted the importance of broad standing in probate matters to prevent fraud.

> [B]y limiting the definition of an 'interested person' only to those who were named in the will immediately preceding the one sought to be probated, [a court] completely ignores the possibility that more than one will may be invalid. In so ruling, [a court] delineates a scheme for those who seek to defraud probate courts and beneficiaries named in a will. That is, if one is going to design a fraudulent will for probate, he should be sure to create two such documents, both of which are dated subsequent to the true will, and neither of which name the beneficiaries sought to be defrauded.
>
> [Malcolm, 602 N.E.2d at 44 (internal citation omitted).]

Indeed, the Court's own decisions speak of the "schemes" often present in these matters. The schemer holds the "inside track" with the testator. Over time, the schemer practices subtle deception to undermine the testator's free will and procure the testator's assets (often via a new will or wills) for themself. Such deception, insidious by nature, can work a fraud on the court and beneficiaries under prior wills.

This Court in the matter of Geraldine Dodge, for example, invalidated the alleged gift of a valuable art collection to Elmira College based upon a pattern of undue influence. In re Dodge, 50 N.J. 192 (1967). The saga of the "gift" began in 1954, when the college was in financial straits. Id. at 198. Over a period of years, as Geraldine declined in health and mind, the president and two directors set about to obtain substantial funds for the college. Id. at 198-203. The "gifts" at first were small, but the president and directors knew the "right track" was to "push her slowly," until she signed an alleged instrument to impart the $1.7 million collection to the college. Id. at 207-08, 218, 227.

> The evidence presented at the trial shows beyond question that a feeling of warm friendship, affection, respect, trust and confidence for [the president and directors] had developed in Mrs. Dodge. They promoted and cultivated it, not for its intrinsic value but in order to serve ulterior material purposes of their own. She was lonely and had few friends; she was aged and unquestionably deteriorating in mental vigor; she was without her long time advisor during the critical period, as they knew; she had an unusual family life and apparently little affection

> or companionship from relatives. As events proved, she was an open door to the superficial manifestations of friendship and blandishments of able men. She was alone against the persuasion of three such men who were determined to obtain financial aid for the College from her.
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> [Id. at 229-230.]

This Court in the matter of Madeleine Stockdale invalidated an alleged will and real estate documents as the products of undue influence. In re Estate of Stockdale, 196 N.J. 275 (2008). In 1998, Madeleine (who was then in her late 80s or early 90s, living alone, and failing in health) made a will that devised the residue of her estate (including the proceeds of the sale of her home) to the Spring Lake First Aid Squad. Id. at 285-86. Around that time, a neighbor took an interest in her home and, over the next three years, relentlessly pursued her. Ibid. In 2000, while Madeleine was in a rehab center after a fall and on pain medication, the neighbor sent his personal attorney to draw a new will (in which she gave the residue of her estate to the neighbor and disinherited the rescue squad) and real estate documents (in which she sold her home on terms favorable to him). Id. at 288-94.

> Unlike the usual formalities that accompany the execution of a will, in this case, each of the witnesses only entered the room briefly. They testified that they saw Stockdale, who was sitting up, with her eyes open; that they saw [the attorney] turn the pages of a document as Stockdale initialed each of them; and that they saw her sign the document, after which each of the witnesses added her own signature to the end of the document. According to each witness, although Stockdale might have

> acknowledged their presence in the room by saying hello, Stockdale did not utter a single word during the execution. One of the witnesses . . . testified that she did not read the language of the self-proving affidavit that she signed, and that she specifically told [the attorney] that by signing the document, she was only verifying that she observed Stockdale signing.
>
> Neither witness testified that she was aware of whether Stockdale had the requisite testamentary capacity at the time when she signed her [2000] will. [A doctor], the director of the rehabilitation facility, testified that had he been advised that Stockdale was about to execute a new will and other documents, he would have insisted that she undergo a thorough exam to establish that she had the requisite capacity to do so. Even without that evidence to support him, [the doctor] opined that Stockdale lacked the capacity to understand the documents she signed that day because she was taking pain killers and she was typically slightly confused during this time frame.
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> [Id. at 293.]

In the matter of Adrian Folcher, the testator signed a series of alleged documents in the final days of his life. In re Estate of Folcher, 224 N.J. 496, 498-99 (2016). While on hospice care and his wife administered pain medications, Adrian signed two codicils and a deed that increased the wife's beneficial interest in the estate. Id. at 501. Days before he died, his wife and her daughter took him to a bank. Id. at 502.

> [The wife] and her daughter . . . moved Folcher into a car and drove him to a local [bank]. . . . According to [the wife], the following transpired: [she] requested that a bank employee, who was also a notary, exit the bank building, go to Folcher seated in the car in the bank parking lot, and

> notarize documents that Folcher would sign in the car. [The wife] testified that the employee . . . came outside and notarized a document. [The daughter] testified that the witnesses to the signing remained inside the bank and observed Folcher sign the document while watching through the bank's window and that the witnesses' signatures were affixed when the document was taken inside the bank.
>
> [Ibid.]

The trial court found that the deeds and codicils were the products of undue influence, and that was affirmed on appeal. Id. at 504-05.

The plight of Geraldine, Madeleine, and Adrian illustrates the pernicious harm that can be inflicted in these matters. If successive wills could eliminate standing, fraud would be rampant. Schemers (like ones in such cases) could procure a series of wills (having one insulate the next) and escape judicial review. While the NJSBA has no information to suggest that is the case here, broad standing in probate matters will permit the courts to detect and correct fraud.

Though perhaps not the primary focus in these appeals, in a related context that implicates similar policy considerations, differences in our probate rules could lead to incongruous (or worse, fraudulent) results. Compare R. 4:80-1(a)(3) (probate application in surrogate's court must list "spouse, heirs, next of kin and other persons, if any, entitled to letters" as interested parties), and R. 4:80-6 ("[w]ithin 60 days after the date of the probate of a will, the personal representative shall cause to be mailed to all beneficiaries under the will and to all persons designated by R. 4:80-

1(a)(3)," notice of probate of the will), with R. 4:84-1 (in the Probate Part, "any person in interest may file a complaint" for probate "and apply for an order directed to all other interested parties to show cause why the relief sought should not be granted"), and R. 4:85-1 (in a will contest, "any person aggrieved" by the probate of the will "may, upon the filing of a complaint setting forth the basis for the relief sought, obtain an order requiring the personal representative, guardian or trustee to show cause why the probate should not be set aside or modified or the grant of letters of appointment vacated").

Careful review of these rules leads to several insights. Parties interested in common form probate (probate in Surrogate's Court) and solemn form probate (probate in Superior Court) may be different. R. 4:80-1(a)(3), 4:84-1. (One would think that "interested parties" would include "spouse, heirs, next of kin, and others, if any, entitled to letters," but that is not clear.) Schemers could delay notice of probate to cut down time to file a will contest. R. 4:80-6. Parties in interest in a will contest include a personal representative, guardian, or trustee. R. 4:85-1. (Other "persons in interest" may seek to intervene, but might not know the action exists. What parties are entitled to notice in such a proceeding?) Beneficiaries under prior wills are absent from all categories.

Literal compliance with these rules might mean, for example, that while plaintiff-appellants in the underlying matters should have standing to contest the probated wills, they would not be parties interested in solemn form probate or a will contest. It might also mean that the Spring Lake First Aid Squad, in the Stockdale matter, would not receive notice of probate of Madeleine's 2000 will (even though the rescue squad was the sole residuary beneficiary in the 1998 will and disinherited under the 2000 will).

Modest reform could harmonize the probate rules and prevent fraud. Parties interested in common form probate and Probate Part proceedings should be consistent. See, e.g., N.Y. SCPA 1403(1) (persons interested include heirs, parties named in the will as executor, beneficiaries and others named in the will whose interests are injured by probate, and beneficiaries and others named in any other will filed with the court whose interests are injured by probate). Time to contest a will could be expanded to mitigate the issue of late notice of probate. Cf. N.J.S.A. 3B:31-45 (time to contest revocable trust equal to earlier of a) three years after settlor's death or b) four months for a resident or six months for a nonresident after the trustee sends a copy of the trust and a notice of the trust's existence, the trustee's name and address, and the time to contest the trust). The "will registry" could be expanded. N.J.S.A. 3B:3-2.1 (designated beneficiaries could register to receive notice of wills offered for probate that would adversely affect their interests). The Court could task the Civil Practice Committee to review the probate rules for inconsistencies and make recommendations. While the immediate aid should come in the form of a broad rule of standing in probate matters, these issues also warrant the Court's consideration.

CONCLUSION

The NJSBA submits that parties, under the circumstances presented, should have standing to contest the wills. In particular, we urge the Court to reject a rule that successive, unprobated wills can deprive a party of standing to contest the final, probated wills. The NJSBA believes that such an outcome is supported by important policies, such as access to the courts and the prevention of fraud on the courts and beneficiaries. We submit that the Appellate Division's decision on standing should be reversed.

Respectfully submitted,
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