

**SAINT REGIS MOHAWK TRIBAL COURT
IN AND FOR THE SAINT REGIS MOHAWK TRIBE**

**In the Matter of the ESTATE OF [REDACTED]
WHITE, Deceased.**

)

) **Case. No.: 17-CIV-00008**

)

) **FINAL DECISION ON OBJECTANT'S**

) **ALLEGATIONS OF LACK OF**

) **CAPACITY & UNDUE INFLUENCE**

)

)

**[REDACTED] Petitioner - Objectant
[REDACTED] Named Executrix**

Procedural Background

On June 8, 2017, [REDACTED] Petitioner-Objectant, filed an Intestate Probate Petition to probate the decedent/his brother, [REDACTED] White's, Estate. After filing the Petition, [REDACTED] Petitioner-Objectant, became aware of the existence of a writing purported to be the Last Will and Testament of [REDACTED] White, dated September 10, 2013, filed at the Saint Regis Mohawk Tribe Tribal Clerk's Office.

On July 10, 2017, a status conference was held at the Court. The Petitioner-Objectant, [REDACTED] was present.

On October 15, 2017, Petitioner-Objectant, [REDACTED] filed with the Court a document that outlined his arguments challenging the validity of the purported Last Will and Testament of [REDACTED] White, dated September 10, 2013, based on undue influence and the decedent's lack of capacity with the following attached documentation: medical documents, an invoice from [REDACTED] Funeral Home, and the decedent's Will and attached Witness Affidavit. The Court sent a notice to the named Executrix [REDACTED] and on November 13, 2017, a status conference was held.

On November 20, 2017, the Court granted the Petitioner-Objectant, [REDACTED] written request and subpoenaed medical documents from the [REDACTED] Nursing Home that are related to the physical and mental health of the decedent, [REDACTED] White. Due to confusion at the Records Office at the [REDACTED] Nursing Home, the Court had to subpoena the records again on December 28, 2017.

A hearing on the Last Will and Testament of [REDACTED] White, dated September 10, 2013, was scheduled for December 11, 2017, however, in order to ensure the Petitioner-Objectant, [REDACTED] had adequate time to review the 800+ pages of records received from the [REDACTED] Nursing Home, the Court rescheduled the hearing for January 16, 2018.

On January 11 or 12, 2017, [REDACTED] contacted the Court and asked to reschedule the matter stating she had work obligations. The Court denied her request.

A hearing on the writing purported to be the Last Will and Testament of [REDACTED] White, dated September 10, 2013, and the allegations of lack of capacity and undue influence raised by [REDACTED] took place on January 16, 2018. [REDACTED] and [REDACTED] were in attendance and self-represented.

As a preliminary matter, [REDACTED] expressed on the record to the Court that she would like to have an attorney to represent her in the matter. Furthermore, [REDACTED] stated her husband had spoken to an attorney that agreed to take her case. Prior to the hearing, the Court had not received a "Notice of Appearance" on her behalf from an attorney. [REDACTED] Petitioner-Objectant, objected to her request for a continuance and argued that she had enough time to prepare and hire an attorney. Ultimately, the Court denied her request based on the fact that she had ample time to hire an attorney and proceeded.

The Court heard testimony from: [REDACTED] the Petitioner-Objectant/decedent's brother; [REDACTED] named Executrix; [REDACTED] decedent's brother; and [REDACTED] decedent's brother. The Court also received exhibits into evidence.

On February 12, 2018, the Court issued an Order reopening the hearing on the Petitioner-Objectant, [REDACTED] allegation of the decedent, [REDACTED] White's, lack of capacity and undue influence.¹

A Notice of Appearance on behalf of Petitioner-Objectant, [REDACTED] was filed on March 13, 2018 by Elise Schlisser, Esq.

On March 27, 2018, the Court held a hearing on the Petitioner-Objectant, [REDACTED] allegations of lack of capacity and undue influence. Both parties appeared and were represented by legal counsel. Thomas B. Wheeler, Esq. appeared and stated on the record that he represented [REDACTED] named Executrix.

The Court heard testimony from: [REDACTED] the Petitioner-Objectant/decedent's brother; [REDACTED] named Executrix; [REDACTED] decedent's brother; [REDACTED] decedent's sister; [REDACTED] [REDACTED] at Saint Regis Mohawk Tribe Office of the Aging; [REDACTED] Vaughn Aldrich, Esq.; [REDACTED] Secretary/Paralegal; [REDACTED] subscribing witness; and [REDACTED] subscribing witness. The Court also received exhibits into evidence and heard closing arguments by the Petitioner-Objectant's Counsel, Elise Schlisser, Esq. and the Named Executrix's Counsel, Thomas B. Wheeler, Esq.

Jurisdiction

The Saint Regis Mohawk Tribal Court has original jurisdiction over cases, matters, or controversies arising under the laws, ordinances, regulations, customs and judicial decisions of the Tribe. The Court possesses civil jurisdiction over disputes arising in, connected with, or substantially affecting Mohawk Indian Country.² Given that the resolution of a person's estate is

¹ Estate of [REDACTED] White Order to Reopen Hearing on Objectant Allegation of Decedent's Lack of Capacity & Undue Influence, 17-CIV-00008 (Feb. 12, 2018).

² SRMT Civil Code § II. A.

a civil issue that substantially affects Mohawk Indian Country, there is no Saint Regis Mohawk Tribe law limiting the Court's jurisdiction, and the instant matter involves real property located within the Saint Regis Mohawk Indian Reservation, the Court assumes jurisdiction to resolve and probate this Estate.

Applicable Law

The Saint Regis Mohawk Tribe Civil Code directs the Court to apply all "written laws adopted by the recognized governmental system of the Mohawk Tribe."³ The present matter involves a deceased enrolled Saint Regis Mohawk Tribe Tribal Member's estate. At the time, the case was initially filed on June 8, 2017, the Saint Regis Mohawk Tribe Probate Law (SRMT Probate Law) was not enacted. The SRMT Probate Law was enacted on August 16, 2017. The SRMT Probate Law contains no provision to allow for retroactive application. Therefore, the Probate Law may not be applied to the instant case. The SRMT Land Laws and Land Dispute Ordinance (SRMT LL&LDO) was enacted by the Tribe in 2017 and specifically provides the Court with guidance in assessing the validity of wills. Thus, the present matter is governed by the SRMT LL&LDO.

Factual Findings

The Court has reviewed the testimony and exhibits admitted during the hearings and finds the following facts were proven by a preponderance of the evidence.⁴ Preponderance of the evidence is met "by providing superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."⁵

1. [REDACTED] White, the decedent, passed away on January 28, 2017.
2. [REDACTED] White, the decedent, was an enrolled tribal member of the Saint Regis Mohawk Tribe.
3. At the time of death, [REDACTED] White lived within the borders of the Saint Regis Mohawk Indian Reservation at [REDACTED]
4. [REDACTED] White, the decedent, never married and had no children.
5. At the time of death, [REDACTED] White, the decedent, was survived by eight (8) siblings:
[REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] and [REDACTED]

³ SRMT Civil Code § V. 2.

⁴ Typically, in civil cases the burden of proof rests on the Petitioner, however, in regards to will contests the burden is determinative on the allegation raised.

⁵ SRMT Rules of Civil Procedure § XX. B.

6. Starting in 1997, [REDACTED] White, the decedent, was diagnosed with a number of health ailments.
7. [REDACTED] White, the decedent, was prescribed a number of different medication to take for his various ailments.
8. In 2008, the decedent, [REDACTED] White's, leg was amputated due to complications from gangrene disease. As a result, the decedent became a wheelchair user and he was readmitted to the hospital due to complications from the amputation at the [REDACTED] Health Care Facility.
9. In March 2009, the decedent, [REDACTED] White, was admitted to the [REDACTED] Nursing Home located in [REDACTED] New York for rehabilitation purposes.
10. In May 2009, [REDACTED] White, the decedent, was released into the care of [REDACTED] the decedent's sister.
11. On March 13, 2009, the decedent, [REDACTED] White, was diagnosed with mild chronic dementia and the dementia later was diagnosed as chronic on June 25, 2012. The decedent also suffered from various eye illnesses.
12. From May 2009 – June 2009 the decedent, [REDACTED] White, was admitted to [REDACTED] Medical Center and discharged in June 2009.
13. In June 2009, [REDACTED] White, the decedent, was re-admitted to the [REDACTED] Nursing Home located in [REDACTED] New York.
14. On June 2009, an attending physician and concurring physician at the [REDACTED] Nursing Home located in [REDACTED] New York determined that the decedent, [REDACTED] White, did not possess the capacity to understand a nature and consequences of a "Do Not Resuscitate Order" and determined a proper Surrogate was necessary to be appointed as a health proxy. The Surrogate selected was [REDACTED] the decedent's sister.
15. During his stay at the [REDACTED] Nursing Home, the decedent, [REDACTED] White, was unresponsive to his siblings during conversation and was confused as to his surroundings.
16. During his stay at the [REDACTED] Nursing Home, the decedent, [REDACTED] White, expressed his wishes to return home and was unable to articulate facts such as which day of the week it was during routine checks by [REDACTED] Nursing Home staff.

17. While the decedent, [REDACTED] White, was a patient at the [REDACTED] Nursing Home his siblings, [REDACTED] and [REDACTED] attended assessment conferences to review the decedent's condition and care.
18. At the [REDACTED] Nursing Home, [REDACTED] White, the decedent, was visited by members of his family and taken out of the [REDACTED] Nursing Home by [REDACTED] for car rides.
19. [REDACTED] decedent's brother, knew that [REDACTED] was taking the decedent, [REDACTED] White, out for car rides.
20. [REDACTED] is not related to the decedent, [REDACTED] White.
21. [REDACTED] routinely signed as the decedent, [REDACTED] White's, niece on [REDACTED] Nursing Home paperwork in order to take the decedent on car rides.
22. [REDACTED] and [REDACTED] White, the decedent, had a longstanding relationship. The decedent was [REDACTED] father's best friend.
23. On June 4, 2012, [REDACTED] obtained Power of Attorney authority for [REDACTED] White, the decedent.
24. On June 20, 2012, [REDACTED] White, the decedent, was discharged from the [REDACTED] Nursing Home located in [REDACTED] New York into the care of [REDACTED]
25. The family members of [REDACTED] White, the decedent, were not immediately notified that the decedent, [REDACTED] White, was discharged into the care of [REDACTED] and were not immediately informed by [REDACTED] regarding the decedent's medical state or medical procedures undergone by the decedent while he was in the care of [REDACTED]
26. [REDACTED] moved into the decedent, [REDACTED] White's, residence located at [REDACTED] with the decedent as his live-in caregiver.
27. [REDACTED] routinely withdrew funds from the decedent, [REDACTED] White's, [REDACTED] Bank account.
28. [REDACTED] did not install the recommended land line telephone and personal emergency response system at the decedent, [REDACTED] White's, residence located at [REDACTED]
29. The only operable phone at the decedent, [REDACTED] White's, residence was [REDACTED] personal cell phone.

30. Family members visited the decedent, [REDACTED] White, while he was living at his residence located at [REDACTED] with [REDACTED] as his live-in caregiver.
31. [REDACTED] White, the decedent, had difficulty taking care of himself and was unable to do tasks such as getting out of bed on his own.
32. [REDACTED] had difficulty adequately completing health related tasks for the decedent, [REDACTED] White's, in her role as his live-in caregiver.
33. Prior to September 10, 2013, Vaughn Aldrich, Esq., was contacted to draft a Will for the decedent, [REDACTED] White.
34. Since 1980, Vaughn Aldrich's law practice involved the preparation of Last Will and Testaments, including the preparation of wills for Saint Regis Mohawk tribal members.
35. It is common practice for Vaughn Aldrich to send a paralegal/secretary to an elderly client's home for purposes of preparing Last Will and Testaments.
36. Prior to September 10, 2013, Vaughn Aldrich sent [REDACTED] to interview the decedent, [REDACTED] White, at his residence located at [REDACTED] for purposes of preparing a Last Will and Testament.
37. [REDACTED] worked as Vaughn Aldrich's secretary/paralegal on a per diem basis since 2003.
38. [REDACTED] has been involved in the preparation of wills as a secretary/paralegal for approximately twenty (20) years during her employment with Vaughn Aldrich, Esq.; [REDACTED] Esq.; and [REDACTED] Esq.
39. Prior to September 10, 2013, [REDACTED] secretary/paralegal, met with the decedent, [REDACTED] White, alone at his residence located at [REDACTED] for approximately an hour and a half to interview the decedent, explain the process in instances where he would not sign a will and what would happen, and discuss with him his general wishes as to what he wanted to include in his Will.
40. After the first meeting, [REDACTED] had a consultation with Vaughn Aldrich, Esq. about the decedent, [REDACTED] White's state of mind and related issues and to review the Last Will and Testament prepared for the decedent, [REDACTED] White.
41. On September 10, 2013, [REDACTED] met with the decedent, [REDACTED] White, the two (2) subscribing witnesses, [REDACTED] and [REDACTED] and [REDACTED] read the Will in its final form to the decedent and inquired whether the

decedent had any changes to the Will. During this time, [REDACTED] asked the decedent if he wanted the witnesses to leave. [REDACTED] asked whether he wanted the two (2) witnesses to appear for him as witnesses to his Last Will and Testament.

42. It was a common practice of [REDACTED] to have the testator ask the subscribing witnesses to be his/her witnesses to their Last Will and Testament.
43. [REDACTED] contacted [REDACTED] and [REDACTED] and asked them to be subscribing witnesses to the Last Will and Testament of [REDACTED] White.
44. On September 10, 2013, the decedent, [REDACTED] White, signed the Last Will and Testament of [REDACTED] White in the presence of [REDACTED] [REDACTED] [REDACTED] [REDACTED] and [REDACTED] at his residence at [REDACTED]
45. [REDACTED] and [REDACTED] subscribing witnesses, signed the Last Will and Testament of [REDACTED] White, dated September 10, 2013, in the presence of [REDACTED] White, the decedent; [REDACTED] named Executrix; and [REDACTED] secretary/paralegal.
46. The decedent, [REDACTED] White's, family members did not know about the writing purported to be the Last Will and Testament of [REDACTED] White.
47. At the time the decedent, [REDACTED] White, signed his Last Will and Testament, dated September 10, 2013, [REDACTED] was dating [REDACTED]
48. [REDACTED] subscribing witness, lived near the decedent, [REDACTED] White's, residence located at [REDACTED] and knew him prior to the signing of the will.
49. [REDACTED] subscribing witness, knew the decedent, [REDACTED] White, for a number of years and visited with the decedent on a daily basis when she was providing [REDACTED] at Tribal Health.
50. [REDACTED] Vaughn Aldrich, [REDACTED] and [REDACTED] were not aware that the decedent, [REDACTED] White, had been diagnosed with dementia prior to September 10, 2013.
51. The Last Will and Testament of [REDACTED] White includes attached an "Affidavit of Subscribing Witnesses" signed by [REDACTED] and [REDACTED] the Affidavit is notarized by [REDACTED] and includes a stamp by Vaughn Aldrich, Esq., attesting that the foregoing is a true and complete copy of the original.
52. The Last Will and Testament of [REDACTED] White revokes all former wills, appoints caregiver, [REDACTED] to be the Executrix, directs all debts to be paid by the

Executrix, and bequeaths all personal, real, and mixed property and the residue of the Estate to [REDACTED] named Executrix.

53. [REDACTED] Petitioner-Objectant/brother of the decedent, was employed by the Saint Regis Mohawk Tribe Office for the Aging and delivered meals to the decedent, [REDACTED] White, and others on the list for the program. [REDACTED] Petitioner-Objectant, saw the decedent daily from 2013 – 2017.
54. On or about July 29, 2014, [REDACTED] [REDACTED] at Saint Regis Mohawk Tribe Office of the Aging, met with the decedent, [REDACTED] White, and [REDACTED] [REDACTED] for the purposes of discussing benefits and an assessment.
55. On or about January 31, 2015, [REDACTED] registered [REDACTED] White, the decedent, with the Akwesasne Community Death Benefits Group. The primary purpose of the Akwesasne Community Death Benefits Group is to assist family members with funeral expenses.
56. On or about April 2015, following a suicide attempt, [REDACTED] was no longer able to assume the role of a live-in caregiver of the decedent, [REDACTED] White.
57. On or about November 10, 2017, the Akwesasne Death Benefits Committee issued a letter stating that [REDACTED] contacted the Committee and informed them that she did not intend to provide the benefit to the family because of a disagreement with the White family. The Committee reimbursed [REDACTED] for the amount she had paid at collection time.
58. The decedent, [REDACTED] White, was conveyed the ownership of the disputed property, Lot #44-B, by his Mother, [REDACTED] through a Saint Regis Mohawk Tribe Right to Use and Occupancy Deed dated September 24, 1989.

DISCUSSION

Before the Court is a proceeding in which the Petitioner-Objectant, [REDACTED] admitted the writing purported to be the Last Will and Testament of [REDACTED] White, dated September 10, 2013, in order to challenge the admission of the writing for probate.⁶ The Petitioner-Objectant, [REDACTED] challenges the admission of the writing on the basis that the decedent, [REDACTED] White, lacked testamentary capacity and that the writing was procured through undue influence perpetrated upon the decedent by [REDACTED] named Executrix.⁷

Before the Court addresses the objections raised by the Petitioner-Objectant, [REDACTED] the Court will first address whether the writing purported to be the Last Will and Testament of [REDACTED] White, dated September 10, 2013, is valid pursuant to the requirements of

⁶ Plaintiff (Petitioner-Objectant) Exhibit #1 R. 6 – 8.

⁷ Plaintiff (Petitioner-Objectant) Exhibit #1 R. 9 – 13.

the SRMT LL&LDO. Otherwise, the Court need not address the allegations raised by the Petitioner-Objectant, [REDACTED]

Validity of the Last Will and Testament of [REDACTED] White

The SRMT LL&LDO states that a valid will must be written and signed by the testator, or in other words, the person making the will.⁸ Further, it must be signed by two (2) witnesses that were present to witness the execution of the document by the maker and each witness must sign within thirty (30) days in the testator's presence.⁹ The witnesses should be "disinterested," and any gift by the will is void unless there are at least two other disinterested witnesses to the will.¹⁰

In the instant case, the writing purported to be the Last Will and Testament of [REDACTED] White, dated September 10, 2013, includes the decedent, [REDACTED] White's signature¹¹ and the signatures of the two subscribing witnesses, [REDACTED] and [REDACTED]. Moreover, the Will includes a notarized "Affidavit of Subscribing Witnesses" that is signed by [REDACTED] and [REDACTED] subscribing witnesses, dated September 10, 2013.¹² The writing purported to be the Last Will and Testament of [REDACTED] White does not devise or bequest any interest to [REDACTED] or [REDACTED] therefore both are "disinterested" under the SRMT LL&LDO.¹³ The Court is cognizant of the argument raised by the Petitioner-Objectant, [REDACTED] that [REDACTED] and [REDACTED] were dating at the time the writing was signed. Under the SRMT LL&LDO, "disinterested" means that the witness must not be a beneficiary.¹⁴ The express terms of the writing purported to be the Last Will and Testament of [REDACTED] White does not devise or bequeath any interest to [REDACTED] thus he is a disinterested witness pursuant to the SRMT LL&LDO. Furthermore, the testimony provided by [REDACTED] and [REDACTED] subscribing witnesses, demonstrates that the signing of the writing by the decedent, [REDACTED] White, was witnessed by them and that both of them signed in the testator/decedent, [REDACTED] White's, presence on September 10, 2013, the same day the writing was signed by the

⁸ SRMT LL&LDO § V. B. 1. (a) – (b).

⁹ SRMT LL&LDO § V. B. 1. (c) – (d).

¹⁰ SRMT LL&LDO § V. B. 1. (e) – (f).

¹¹ During the hearing, [REDACTED] testified that [REDACTED] White, the decedent, could not sign his name. Transcript in the Matter of the Estate of [REDACTED] White, [REDACTED] ([REDACTED] testimony) (March 27, 2018). However, the evidence before the Court includes a health care proxy that includes the decedent, [REDACTED] White's, signature. The health care proxy gives [REDACTED] sister of the decedent, the ability to make any and all health care decisions on the behalf of the decedent. This document's validity is not being contested by the Petitioner-Objectant, [REDACTED] Plaintiff Exhibit #2 R. 30 – 34. It is nonsensical that the decedent, [REDACTED] White, had the writing ability to sign this document, but not the Last Will and Testament dated September 10, 2013. Furthermore, the testimony provided by [REDACTED] secretary/paralegal; [REDACTED] subscribing witness; and [REDACTED] subscribing witness demonstrates that the decedent signed the writing purported to be his Last Will & Testament. Transcript in the Matter of the Estate of [REDACTED] White, 47 ([REDACTED] testimony), 14 ([REDACTED] testimony), 35 ([REDACTED] testimony) (March 27, 2018).

¹² Plaintiff Exhibit #1 R. 7 – 8.

¹³ Witnesses to the Will should be "disinterested," which means they must not be a beneficiary of the Will. SRMT LL&LDO § V. B. 1. (e).

¹⁴ SRMT LL&LDO § V. B. 1. (e).

decedent.¹⁵ Thus, the Court finds the writing satisfies the requirements to be considered a valid will under the SRMT LL&LDO.

The Court will now address the allegations of lack of testamentary capacity and undue influence raised by the Petitioner-Objectant, [REDACTED] in turn.

Testamentary Capacity

The burden to prove capacity rests with the proponent of the Will, specifically in this case, the burden is on [REDACTED] named Executrix to prove capacity.¹⁶ In the instant case, regarding the execution of the writing purported to be the Last Will and Testament of [REDACTED] White, dated September 10, 2013, the Court heard testimony from [REDACTED] secretary/paralegal; Vaughn Aldrich, Esq.; [REDACTED] subscribing witness; and [REDACTED] subscribing witness.

In the instant case, [REDACTED] Petitioner-Objectant, argues that the decedent, [REDACTED] White, suffered from various mental and physical ailments, including dementia, and, therefore, the decedent was not capable of understanding and signing a will on September 10, 2013. To substantiate his claim that the decedent, [REDACTED] White's, lacked capacity, the Petitioner-Objectant, [REDACTED] testified and entered into evidence portions of the decedent's medical records and called to testify [REDACTED] decedent's brother; [REDACTED] decedent's sister; and [REDACTED] [REDACTED] at the Saint Regis Mohawk Tribe's Office of the Aging.

[REDACTED] secretary/paralegal, testified that she started working with Vaughn Aldrich, Esq., in 2003 and has been involved in the preparation of wills for his clients. She testified that she met with the decedent, [REDACTED] White, twice for the purpose of preparing and executing the writing purported to be his Last Will and Testament. She testified that at the first meeting with the decedent, [REDACTED] White, she met with the decedent alone at his residence for approximately an hour/hour and a half. She testified that she explained the process in instances where the decedent would not sign a will and discussed with him his general wishes as to what he wanted to include in his will. She testified that following the initial meeting with the decedent, [REDACTED] White, she had a consultation with Vaughn Aldrich, Esq., to review the Last Will and Testament prepared for the decedent, [REDACTED] White. She testified on or about September 10, 2013, she met with [REDACTED] White, the decedent; [REDACTED] and [REDACTED] subscribing witnesses; and [REDACTED] at the decedent's residence. She testified that she asked the decedent, [REDACTED] White, whether he wanted anyone to leave the room while she read the will in its final form and inquired whether he had any changes. She testified that he did not request anyone to leave the room and testified that he did not state that he had any changes he wanted made to the writing purported to be his Last Will and Testament, dated September 10, 2013. She testified that she asked if he wanted the subscribing witnesses to appear for him as his witnesses

¹⁵ Transcript in the Matter of the Estate of [REDACTED] White, 42 - 48 ([REDACTED] testimony), 31 - 42 ([REDACTED] testimony) (March 27, 2018).

¹⁶ *Estate of [REDACTED] White Order to Reopen Hearing on Objectant Allegation of Decedent's Lack of Capacity & Undue Influence*, 17-CIV-00008, 8 (Feb. 12, 2018).

to his Last Will and Testament. She testified that the decedent, [REDACTED] White, wanted [REDACTED] and [REDACTED] to sign as his witnesses. She testified that it is her practice to have the testator, person executing the will, to ask the witnesses to be his/her witnesses. She testified that the decedent, [REDACTED] White, signed the writing purported to be his Last Will and Testament, dated September 10, 2013, in the subscribing witnesses, [REDACTED] and [REDACTED] presence and her presence. She testified that she did not know that the decedent, [REDACTED] White, had been previously diagnosed with dementia.¹⁷

Vaughn Aldrich, Esq., testified that his law practice has involved the preparation of wills since 1980, including the preparation of wills for Saint Regis Mohawk tribal members. He testified that it was common practice to send his paralegal/secretary to elderly individual's homes to prepare wills and interview the testator. He testified following a request, he sent [REDACTED] secretary/paralegal, to the decedent, [REDACTED] White's, home for the purposes of interviewing the decedent, [REDACTED] White, for the preparation of his Last Will and Testament. He testified he was not present at either of the two meetings that [REDACTED] had with the decedent, [REDACTED] White. He testified that following the first initial meeting between [REDACTED] and the decedent, [REDACTED] White, he had a consultation with [REDACTED]. He testified that he spoke to [REDACTED] about the testator/decedent, [REDACTED] White's, state of mind and related issues and to review the Last Will and Testament she had prepared for Mr. White. He testified that "if I didn't think she [REDACTED] could determine the capacity of someone, I wouldn't have sent her."¹⁸ He testified that the certification stamp at the end of the three (3) page writing dated September 10, 2013 is his stamp. He testified that he did not know that the decedent, [REDACTED] White, had been previously diagnosed with dementia.¹⁹

[REDACTED] subscribing witness, testified that he knew [REDACTED] White, the decedent, prior to the signing of the writing purported to be the decedent's Last Will and Testament and was his neighbor. He testified that he was in the room when [REDACTED] spoke to the decedent, [REDACTED] White, about the will. He testified that when [REDACTED] came to the house, "she went to [REDACTED] talked to [REDACTED]"²⁰ He testified that when [REDACTED] got everything ready he "got up and witnessed his signature."²¹ He testified that the decedent, [REDACTED] White, was asked if this was his Last Will and Testament. He testified that "he knew what was going on. And he said that all his sisters all had their own place, so therefore, he was going to leave it with [REDACTED]"²² He testified that the decedent, [REDACTED] White, signed the writing purported to be the Last Will and Testament of [REDACTED] White. He testified that he did not know the decedent, [REDACTED] White, had been previously diagnosed with dementia.²³

[REDACTED] subscribing witness, testified that she knew the decedent, [REDACTED] White, for a number of years and visited with the decedent, [REDACTED] White, on a daily basis when

¹⁷ Transcript in the Matter of the Estate of [REDACTED] White, 5 - 20 ([REDACTED] testimony) (March 27, 2018).

¹⁸ Transcript in the Matter of the Estate of [REDACTED] White, 30 (Vaughn Aldrich testimony) (March 27, 2018).

¹⁹ Transcript in the Matter of the Estate of [REDACTED] White, 21 - 30 (Vaughn Aldrich testimony) (March 27, 2018).

²⁰ Transcript in the Matter of the Estate of [REDACTED] White, 44 ([REDACTED] testimony) (March 27, 2018).

²¹ Transcript in the Matter of the Estate of [REDACTED] White, 44 ([REDACTED] testimony) (March 27, 2018).

²² Transcript in the Matter of the Estate of [REDACTED] White, 45 ([REDACTED] testimony) (March 27, 2018).

²³ Transcript in the Matter of the Estate of [REDACTED] White, 42 - 48 ([REDACTED] testimony) (March 27, 2018).

she was providing [REDACTED] at Tribal Health. She testified that on September 10, 2013, the signing of the writing purported to be the decedent's Last Will and Testament, [REDACTED] asked the decedent, [REDACTED] White, questions and the decedent responded to those questions. She testified that the decedent, [REDACTED] White's, responses to the questions posed were consistent with the questions asked by [REDACTED]. She testified that she watched the decedent, [REDACTED] White sign, and that she signed the writing purported to be the Last Will and Testament of [REDACTED] White. She testified that she did not know that the decedent, [REDACTED] White, had been previously diagnosed with dementia.²⁴

The testimony provided by [REDACTED] Vaughn Aldrich, [REDACTED] and [REDACTED] was not refuted by testimony or the exhibits offered by the Petitioner-Objectant [REDACTED]. Furthermore, the credibility of [REDACTED] [REDACTED] [REDACTED] and Vaughn Aldrich testimony was not challenged by evidence offered by the Petitioner-Objectant, [REDACTED]. The Petitioner-Objectant, [REDACTED] argued that the drafting of the writing purported to be the Last Will and Testament of the decedent, [REDACTED] White, was done without the family's knowledge. Thus, it is impossible for the Petitioner-Objectant, [REDACTED] to provide witness testimonial evidence as to the decedent, [REDACTED] White's, capacity at the exact time the writing was signed by the decedent. Rather, the Petitioner-Objectant, [REDACTED] argument primarily focused on the failing health of the decedent. The Court notes that the argument alleging the writing was done without family present is more relevant and appropriate to be taken under consideration in regards to the allegation of undue influence, thus it will be considered in a separate analysis.

For purposes of assessing the decedent, [REDACTED] White's, capacity the Court will start with the relevant testimony provided by [REDACTED] decedent's brother; [REDACTED] decedent's sister; [REDACTED] Petitioner-Objectant/decedent's brother; and [REDACTED] [REDACTED] at Saint Regis Mohawk Tribe Office of the Aging. Next, the Court will assess the medical records. Finally, the Court will determine whether the decedent/testator [REDACTED] White had the required capacity to execute a Last Will and Testament.

[REDACTED] [REDACTED] and [REDACTED] testified that the decedent, [REDACTED] White, was not the same person he was before he was sick and admitted to the [REDACTED] Nursing Home in 2009.²⁵ [REDACTED] and [REDACTED] decedent's siblings, testified that the decedent, [REDACTED] White, did not remember them and would not speak to them when they visited him at the [REDACTED] Nursing Home and when they visited at his home. They testified that the decedent, [REDACTED] White, would stare off into space when they tried to converse with him. [REDACTED] testified that while visiting the decedent at his second floor room at the [REDACTED] Nursing Home, the decedent told him that "a girl comes up to the window all the time" and that "she drives a white car and goes around the building."²⁶ Moreover, [REDACTED] [REDACTED] at Saint Regis Mohawk Tribe Office of the Aging, testified that on or about July 2014,

²⁴ Transcript in the Matter of the Estate of [REDACTED] White, 31 - 42 ([REDACTED] testimony) (March 27, 2018).

²⁵ Transcript in the Matter of the Estate of [REDACTED] White, 52 - 61 ([REDACTED] testimony), 68 - 72 ([REDACTED] testimony), 110 - 111 (March 27, 2018).

²⁶ Transcript in the Matter of the Estate of [REDACTED] White, 70 ([REDACTED] testimony) (March 27, 2018).

while conducting her assessment, the decedent, [REDACTED] White, was unable to advocate for himself.²⁷

The decedent, [REDACTED] White's, medical records document his medical history from 2009 – 2012 and state "[REDACTED] White] has hypertension, dementia, depression", "[o]ccasionally he talks about going home" and is "legally blind."²⁸ Notably, in June 2009, an attending physician and concurring physician at the [REDACTED] Nursing Home located in [REDACTED] New York determined that the decedent, [REDACTED] White, did not possess the capacity to understand the nature and consequences of a "Do Not Resuscitate Order" and determined a proper Surrogate was necessary to be appointed.²⁹ The Surrogate selected was [REDACTED] the decedent's sister.³⁰ Furthermore, the medical records state that it was unsafe for the decedent, [REDACTED] White, to live alone and that he was unable to care for himself and the records provide numerous incidents where the decedent, [REDACTED] White, was unable to converse with his medical doctors and their staff.³¹ Moreover, the medical records entered into evidence detail the decedent, [REDACTED] White's, home visits by nurses.³² The medical records state that on or about February 21, 2013 the decedent did not know the date or year it was when asked.³³ Furthermore, on or about May 1, 2013, the nurse report provides that the patient, the decedent [REDACTED] White, "mentioned that he is forgetful at times."³⁴ On or about August 21, 2013, the nurse noted the previous diagnoses of mild chronic dementia, depression with psychosis, glaucoma, eye blindness, and cataract.³⁵

It is important to understand that the standard for the requisite capacity to execute a will is not the same as other legal documents. It is a well-established principle that the capacity to execute a will is a minimal standard, it is lower than the requirement for other legal documents.³⁶ The SRMT LL&LDO defines "capacity" as any person eighteen (18) years of age or a minor lawfully married and of sound mind.³⁷ "Sound Mind" is defined in the SRMT LL&LDO as someone who has not been deemed incompetent in a prior legal proceeding.³⁸ There is no evidence demonstrating the decedent, [REDACTED] White, had been determined incompetent in a prior legal proceeding, thus the Court need not take this into consideration in the present matter.

This Court stated in the *Estate of [REDACTED] Swamp*, capacity means that "[a] person making a will must be of sound mind; he must understand what he is doing; must understand the contents of the will; and must intend to be making a will for the distribution of his property."³⁹ As stated in an earlier decision in this case, the Court will also utilize New York case law for

²⁷ Transcript in the Matter of the Estate of [REDACTED] White, 85 ([REDACTED] testimony) (March 27, 2018).

²⁸ Plaintiff (Petitioner-Objectant) Exhibit #1.

²⁹ Plaintiff (Petitioner-Objectant) Exhibit #2 R. 30 – 34.

³⁰ Plaintiff (Petitioner-Objectant) Exhibit #2 R. 33.

³¹ Plaintiff (Petitioner-Objectant) Exhibit #1, #2, and #3.

³² Plaintiff (Petitioner-Objectant) Exhibit #3 R. 2 – 31.

³³ Plaintiff (Petitioner-Objectant) Exhibit #3 R. 16.

³⁴ Plaintiff (Petitioner-Objectant) Exhibit #3 R. 23.

³⁵ Plaintiff (Petitioner-Objectant) Exhibit #3 R. 30.

³⁶ ROBERT H. SITKOFF & JESSE DUKEMINIER, WILLS, TRUSTS, AND ESTATES (2017).

³⁷ SRMT LL&LDO § V. B. 2.

³⁸ SRMT LL&LDO § V. B. 2.

³⁹ *Estate of [REDACTED] Swamp*, 16-CIV-00012, 10-11 (Aug. 17, 2017).

guidance in this case, as there are no controlling principles of Mohawk law and this Court has only addressed a single case on point.⁴⁰ In assessing a decedent's capacity, a New York Appellate Division Court noted, "[o]ld age and bad health, including dementia, when a will is executed are 'not necessarily inconsistent with testamentary capacity . . . as the appropriate inquiry is whether the decedent was lucid and rational at the time the will was made.'"⁴¹ Thus, the Court's focus in determining testamentary capacity is on the testator/decedent's capacity at the time of execution. It is important to understand that the Court is tasked with assessing the testator/decedent's *legal* capacity. Legal capacity is a legal status, not a health status. As a legal status; it cannot be determined by health practitioners. Health practitioners play an important role and the Court will take into account medical records in determining capacity, however, it is the Court that determines legal capacity. Furthermore, legal capacity is fluid, it is not static. The analysis used to determine testamentary capacity, is done on a case by case basis. A decedent/testator in a particular case is not identical to another.⁴²

During the hearing, the Petitioner-Objectant, ██████████ contended based on the medical records the testator/decedent, ██████████ White, was "incapable of understanding anything whatsoever from 2009 to 2012."⁴³ However, the question of testamentary capacity concerns a person's mental condition at the time of the signing of the will. Evidence relating to the condition of the testator before or after the execution is only significant as it bears upon the strength or weakness of the testator's mind at the exact hour of the day of execution.⁴⁴ However, as indicated, legal capacity is fluid and not static, thus, the medical records documenting a dementia diagnoses and the finding by a physician that the decedent did not possess the capacity

⁴⁰ The Court notes the SRMT Civil Code allows for the application of New York State law to be applied in instances there is no other controlling principle of Mohawk Law, the application of New York State law is consistent with principles of sovereignty, self-government, and self-determination, and the application is in the overall interest of justice and fairness to the parties. *SRMT Civil Code § V. B. (i) – (iii)*. New York law does not automatically apply to this Court, it must be requested. *Cook v. Cook*, 13-CIV-00006, 7 – 9 (Feb. 5, 2014). In the instant case, the Objectant-Petitioner, ██████████ cited and requested this Court to apply New York Courts' case law to the present matter, not New York written law or procedure. In the *Estate of ██████████ Swamp*, this Court applied a two-part test established in *Landgraf v. USI Film Products* to a probate matter before this Court. This Court noted that the *Landgraf* decision is not binding on this Court, but looked to it for guidance because this Court's case law is silent. The Court applied the analysis established by the United States Supreme Court and noted its application is consistent with the principles of tribal sovereignty, self-government, and self-determination as it ensures the Court is respectful of legislative intent. *See Estate of ██████████ Swamp*, 16-CIV-00017 (Jan. 31, 2018). In the instant case, the Objectant-Petitioner cited to New York case law in his arguments alleging undue influence and lack of capacity and this Court's case law is silent on the issue of undue influence. Furthermore, the application of the estates principles protects the ability of tribal members to freely dispose of their property, thus the Court will look to New York Courts' case law in this decision. *Estate of ██████████ White Order to Reopen Hearing on Objectant Allegation of Decedent's Lack of Capacity & Undue Influence*, 17-CIV-00008, n. 8 (Feb. 12, 2018).

⁴¹ *Estate of Steven Makitra*, 101 A.D. 3d 1579, 1580 (2012).

⁴² In closing arguments, Elise Schlisser, Esq. (Counsel for ██████████) stated "[o]n the surface there's some similar facts, but in the case of *Estate of ██████████ Swamp* decided in this Court, Mr. ██████████ Swamp was sharp as a tack." Transcript in the Matter of the Estate of ██████████ White, 145 - 146 (Elise Schlisser, Esq.) (March 27, 2018). The Court notes that no decedent/testator is identical to another in assessing for capacity. The decedent, ██████████ Swamp, did not set the standard for establishing capacity in this Court. The analysis for capacity is done on a case by case basis.

⁴³ Transcript in the Matter of the Estate of ██████████ White, 19 (██████████) (Jan. 22, 2018).

⁴⁴ *Matter of Hedges*, 100 A.D.2d 586, 588 (March 19, 1984).

to understand the nature and consequences of a “Do Not Resuscitate Order” does not automatically mean that the decedent, [REDACTED] White, was unable to possess the necessary testamentary capacity to execute the writing purported to be his Last Will and Testament dated September 10, 2013.⁴⁵ Rather, the Court must also assess the testimony provided by the witnesses. As noted, the Court is assessing legal capacity, not a testator’s health status. In turn, this brings the Court to the issue of whether the decedent, [REDACTED] White, possessed the requisite capacity to execute the writing purported to be his Last Will and Testament, dated September 10, 2013.

In the instant case, the witness testimony demonstrates that the decedent, [REDACTED] White, had an hour and a half conversation alone with [REDACTED] secretary/paralegal. During this conversation, he was interviewed by [REDACTED] explained the process in instances where he would not sign a will and what would happen, and he told her his general wishes as to what he wanted to be included in his Last Will and Testament. Vaughn Aldrich, Esq., attested to [REDACTED] ability and experience assessing a testator’s legal capacity in order to prepare and execute a will. Further, when the writing purported to be the decedent’s Last Will and Testament was signed, on September 10, 2013, [REDACTED] secretary/paralegal, spoke to the decedent, [REDACTED] White, about the will, read the will out loud to the Mr. White, and asked him if he had any changes he wanted to make. Supporting her testimony is that of [REDACTED] and [REDACTED] subscribing witnesses, who testified that [REDACTED] spoke to the decedent, [REDACTED] White, at the second meeting about his Last Will and Testament. [REDACTED] subscribing witness, further testified that the decedent, [REDACTED] White’s, answers to questions asked by [REDACTED] were consistent with the question posed by [REDACTED]

The medical records entered into evidence demonstrate that the decedent, [REDACTED] White, was in deteriorating health, taking a number of medications, and prior to the signing of the disputed writing on September 10, 2013, it was noted in the visiting nurse records that he was unable to answer questions and was often times confused. Notably, the decedent, [REDACTED] White, was also determined to not have the capacity to understand a “Do Not Resuscitate Order” by two (2) physicians and as a result his sister, [REDACTED] was appointed as a Surrogate. However, the testimony provided by [REDACTED] and [REDACTED] sufficiently shows that the decedent/testator, [REDACTED] White, was able to articulate his intentions on September 10, 2013. The Court does not dispute the diagnoses made by health practitioners and the observations found in the nurse medical notes, however, their findings do not bar the decedent from executing a will. As this Court noted, legal capacity is fluid, not static. And it must also be taken into account that the bar for executing a will is minimal. It is entirely possible that there were points in time that the decedent/testator, [REDACTED] White, did not possess the testamentary capacity to execute a will, however, the testimony provided by [REDACTED] and [REDACTED] demonstrates that the decedent/testator knew the contents of the will and knew exactly what he was doing on September 10, 2013.

Furthermore, the Court notes, the medical records state that the decedent, [REDACTED] White, suffered from glaucoma and was later diagnosed as legally blind. [REDACTED] brother of the

⁴⁵ *Will of Eleanor Martinico*, 2014 – 3403 Bronx County; Trusts and Estates, 8 (Sept. 26, 2016).

decedent, also testified that the decedent, [REDACTED] White, could not read well. [REDACTED] testified that she read the writing purported to be the Last Will and Testament of the decedent, [REDACTED] White, out loud in its final form to the decedent. Thus, the decedent/testator, [REDACTED] White, was not unaware of the nature of the instrument he was signing.

There is no evidence before the Court that indicates the decedent, [REDACTED] White, was not legally competent on September 10, 2013 when the writing purported to be his Last Will and Testament was signed by the decedent. On the contrary, the decedent, [REDACTED] White, knew what he was doing and went forward with signing the Will. The Court finds based upon the record that the decedent, [REDACTED] White, possessed the degree of competency to allow him to dispose of his estate by and through a Last Will and Testament. Thus, the Court finds that that the proponent of the Last Will and Testament of [REDACTED] White, [REDACTED] satisfied her burden in proving the testator/decedent possessed the required testamentary capacity in order to lawfully execute the will.

The Court will now address the allegation that the writing purported to be the Last Will and Testament of [REDACTED] White, dated September 10, 2013, was procured through undue influence perpetrated upon the decedent, [REDACTED] White, by [REDACTED] named Executrix.

Undue Influence

In the instant case, it is the burden of the Petitioner-Objectant, [REDACTED] to prove that the named Executrix, [REDACTED] perpetrated undue influence upon the testator/decedent, [REDACTED] White by establishing motive, opportunity, and the actual exercise of that undue influence. In regards to the case at bar, the Petitioner-Objectant, [REDACTED] contended that the writing dated September 10, 2013 does not represent the intentions of the decedent, [REDACTED] White, who, at the time of its execution, was deteriorating physically and mentally, but that the writing purported to be the Last Will and Testament of [REDACTED] White is the product of undue influence upon a vulnerable man.

In regards to the case at bar, the decedent, [REDACTED] White, was unmarried and did not have children. The decedent, [REDACTED] White, had a relationship with his siblings including the Petitioner-Objectant [REDACTED]. In 2009, the decedent, [REDACTED] White, had been diagnosed with dementia and had a number of other health ailments, including depression and alcoholism. Due to his health ailments, the decedent, [REDACTED] White, was prescribed a number of different medications and was a wheelchair user following a leg amputation surgery in 2008. The decedent, [REDACTED] White, had been in and out of the [REDACTED] Nursing Home in 2009. During his stay at the [REDACTED] Nursing Home, his siblings [REDACTED] and [REDACTED] were involved in his care and visited him. It was noted in his health records and the testimony provided by various witnesses that the decedent, [REDACTED] White, wanted to go home and did not want to be at the [REDACTED] Nursing Home. The medical records demonstrate that the decedent, [REDACTED] White, was confused at times and unable to answer questions regarding to the exact date and time.

The record before the Court indicates in 2012, [REDACTED] not related to the decedent, signed as the decedent, [REDACTED] White's, niece in order to take him out for car rides.⁴⁶ Members of the White family testified that they did not know about [REDACTED] prior to her involvement with the decedent, [REDACTED] White care. However, the record before the Court indicates [REDACTED] brother of the decedent, knew of at least one instance where [REDACTED] named Executrix took the decedent out on a car ride.⁴⁷ On June 4, 2012, [REDACTED] obtained Power of Attorney authority for [REDACTED] White and less than a month later the decedent, [REDACTED] White was discharged from the [REDACTED] Nursing Home on June 20, 2012 into [REDACTED] care. Family members of the decedent, [REDACTED] White, were not immediately notified that the decedent had been discharged and were not informed by her of his medical state. [REDACTED] the named Executrix, moved in with the decedent, [REDACTED] White, as his live-in care giver at his residence located at [REDACTED]. The Court was not provided any evidence that [REDACTED] is licensed or obtained any health care related training. While he was living at home, nurses visited him and documented instances of questionable care by [REDACTED].⁴⁸ Moreover, instances of where she failed to take adequate care of the decedent, [REDACTED] White, was testified to by [REDACTED] and the Petitioner-Objectant, [REDACTED].⁴⁹ The Petitioner-Objectant, [REDACTED] also entered Affidavits into evidence regarding instances observed where the named Executrix, [REDACTED] was absent from the house and instances where she did not take adequate care of the decedent, [REDACTED] White.⁵⁰

Further, the witnesses' testimony demonstrates that family members visited the decedent, [REDACTED] White, while he lived at his residence with his live-in caregiver, [REDACTED]. The bank records entered into evidence by the Petitioner-Objectant, [REDACTED] proves that [REDACTED] named Executrix, withdrew funds from the decedent, [REDACTED] White's, bank account at Community Bank from 2012 to 2013. Further, the testimony provided by witnesses demonstrates that the only operable phone at the decedent's residence was [REDACTED] named Executrix, personal cellphone. The medical records demonstrate the decedent, [REDACTED] White, had difficulty taking care of himself and was unable to do tasks such as getting out of bed on his own.

Before assessing the evidence and arguments provided by the Petitioner-Objectant, [REDACTED] the Court having found a confidential relationship existed between the decedent, [REDACTED] White, and the named Executrix, [REDACTED] requires her to demonstrate that the creation of the will was "fair and voluntary," provide an explanation for the bequest to

⁴⁶ Plaintiff (Petitioner-Objectant) Exhibit #2 R. 115.

⁴⁷ Transcript in the Matter of the Estate of [REDACTED] White, 47 - 51 ([REDACTED] testimony) (Jan. 22, 2018).

⁴⁸ Plaintiff (Petitioner-Objectant) Exhibit #3 R. 2 - 31.

⁴⁹ Transcript in the Matter of the Estate of [REDACTED] White, 56 ([REDACTED] testimony), Transcript in the Matter of the Estate of [REDACTED] White, 112 - 113 ([REDACTED] testimony) (March 27, 2018).

⁵⁰ Plaintiff (Petitioner-Objectant) Exhibit #1 R. 72 - 76.

her, and demonstrate it was free from undue influence.⁵¹ However, this does not shift the burden from the Petitioner-Objectant, [REDACTED] to prove undue influence.⁵²

It is important to understand that although a confidential relationship exists between a testator/decedent and another person and combined with other facts it may create an inference of undue influence that the proponent of the writing must explain, the relationship itself does not create a presumption of undue influence as a matter of law. Rather, the relationship itself calls for an explanation and the Court assesses whether the explanation provided is sufficient. Due to the fact that the Petitioner-Objectant, [REDACTED] has the burden to prove undue influence the Court will first assess the merits of his allegation and evidence provided.

The SRMT LL&LDO does not define “undue influence,” however, courts have carved out two different types of influence that is considered to be undue influence. The first type is “the gross, obvious and palpable type of undue influence which does not destroy the intent or will of the testator but prevents it from being exercised by force and threats of harm to the testator or those close to him.”⁵³ The other type “is the subtle and unpalpable kind which subverts the intent or will of the testator, and internalizes within the mind of the testator the desire to do that which is not his intent but the intent and of another.”⁵⁴ Undue influence “can be shown by all the facts and circumstances surrounding the testator, the nature of the will, his family relations, the condition of his health and mind, his dependence upon and subjection to the control of the person supposed to have wielded the influences, the opportunity and disposition of the person to wield it, and the acts and declarations of such person.”⁵⁵ In most cases, the Objectant is unable to point to direct evidence of undue influence. “Direct evidence” means documented proof of instances where the influencer engaged in harassing or threatening action with regard to the decedent. In the absence of direct proof, undue influence “may be provided by circumstantial evidence, but this evidence must be of substantial nature.”⁵⁶

In the instant case, it is undisputed that the decedent, [REDACTED] White, relied on the named Executrix, [REDACTED] for his care; the decedent was in poor health; that the writing at issue solely benefits [REDACTED] the decedent had a long standing relationship with his siblings; that [REDACTED] exercised control over the decedent’s finances; and that based on the state of his health the decedent was susceptible to being influenced by another. In assessing the evidence most favorable to the Petitioner-Objectant, [REDACTED] the evidence demonstrates that the named Executrix, [REDACTED] had a motive to influence, because the estate included real property and a house, and that [REDACTED] had the opportunity to influence because of the decedent, [REDACTED] White’s fragile mental and physical state and reliance on [REDACTED] for his care. However, the Petitioner-Objectant, [REDACTED] did not provide the Court with direct

⁵¹ *Estate of [REDACTED] White Order to Reopen Hearing on Objectant Allegation of Decedent’s Lack of Capacity & Undue Influence*, 17-CIV-00008, 6 - 7 (Feb. 12, 2018).

⁵² “Although the inference does not shift the burden of proof on the issue of undue influence, it places the burden on the beneficiary to explain the circumstances of the bequest.” *Matter of Neenan*, 35 A.D.3d 475, 476 (Dec. 5, 2006).

⁵³ *Matter of the Estate of Bertha Collins*, 124 A.D.2d 48, 54 (Jan. 23, 1987).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *In re Will of Moles*, 90 A.D.3d 473, 473 (2011).

evidence of instances where [REDACTED] named Executrix, took actions such as threatening or harassing the decedent, [REDACTED] White. Thus, in order for the Petitioner-Objectant, [REDACTED] to meet his burden of proving undue influence, he must demonstrate it through providing the Court with evidence of substantial nature that demonstrates an inference of undue influence.

In regards to the case at bar, the argument put forth by the Petitioner-Objectant [REDACTED] seems to imply that the undue influence perpetrated on the decedent, [REDACTED] White, by the named Executrix, [REDACTED] was done by the exploitation of the relationship by [REDACTED] that overwhelmed the decedent, [REDACTED] White's, will to the point where he was manipulated to the benefit of [REDACTED]. To prove undue influence the Petitioner-Objectant, [REDACTED] pointed a number of factors such as the decedent, [REDACTED] White's, medical condition at the time the writing was signed and that he wanted to go home while he was a patient at the [REDACTED] Nursing Home, that the writing solely benefits [REDACTED] that [REDACTED] was being paid for taking care of the decedent through the Maximizing Independent Living Choices (MILC) program run by New York State and the Saint Regis Mohawk Tribe Outreach Program from May 1, 2013 to April 18, 2015, the involvement of [REDACTED] in the creation of the writing and the underlying circumstances such as the size of the room, the control [REDACTED] exercised over the decedent's finances, the lack of a land line telephone at the decedent's residence, the questionable health related care of the decedent by [REDACTED] as his live-in caregiver, the Power of Attorney held by [REDACTED] and her breach of fiduciary responsibilities, that [REDACTED] had access to the decedent at all times, the fact [REDACTED] [REDACTED] is not related to the decedent, that [REDACTED] enrolled the decedent in the Akwesasne Death Benefits Group, and the departure of the decedent's belief that real property must stay in the family.

For a will to be invalidated, "it must be shown that the influence exercised amounted to a moral coercion, which restrained independent action and destroyed free agency, or which, by importunity which could not be resisted, constrained the testator to do that which was against his free will and desire, but which he was unable to refuse or too weak to resist."⁵⁷ In assessing for undue influence, the Court is tasked with determining whether the writing at issue is based on the testator/decedent, [REDACTED] White's, own conclusion to make such disposition without being subject, not merely to influence, but to undue influence.

In the instant case, the Petitioner-Objectant, [REDACTED] has put forth various arguments and provided evidence in order to meet his burden of proving undue influence. As noted, in an effort to prove undue influence the Petitioner-Objectant, [REDACTED] pointed to the questionable health related care of the decedent by [REDACTED] as his live-in caregiver, the breach of fiduciary duties as established by the Power of Attorney authority by [REDACTED] and the failure of [REDACTED] to install a land line telephone at the decedent's residence. The Court will first take up these specific arguments in turn.

⁵⁷ *Estate of [REDACTED] White Order to Reopen Hearing on Objectant Allegation of Decedent's Lack of Capacity & Undue Influence*, 17-CIV-00008, 6 (Feb. 12, 2018).

The argument offered by the Petitioner-Objectant, [REDACTED] involving the questionable health related care of the decedent, [REDACTED] White, by [REDACTED] seems to imply that the only reason the decedent would put up with inadequate care was because the decedent, [REDACTED] White, was being threatened by the named Executrix, [REDACTED].⁵⁸ At most this argument is speculative and does not rise to the specificity required to demonstrate undue influence. In fact, such argument is counter to proving undue influence. The Court is not making a finding that the care given by [REDACTED] was adequate, however, such argument is speculative and it is not substantiated by any evidence provided by the Petitioner-Objectant, [REDACTED] thus the Court need not take up this argument.

Furthermore, the Petitioner-Objectant, [REDACTED] argued that [REDACTED] named Executrix, breached her fiduciary responsibilities as granted by her Power of Attorney authority such as keeping her own and the decedent, [REDACTED] White's, finances. This argument is not relevant for the purposes of assessing undue influence. However, the Court will take into account the fact that [REDACTED] named Executrix, exercised control over the decedent's finances later in its analysis.

Finally, the Petitioner-Objectant, [REDACTED] proved that a land line telephone line was not installed at the residence after it was recommended by [REDACTED] [REDACTED] at Saint Regis Mohawk Tribe Office of the Aging. This argument implies the issue of isolation. Specifically, the argument raised alleges that by not installing a land line telephone line [REDACTED] named Executrix, isolated the decedent, [REDACTED] White, from his family. However, in the instant case, the Petitioner-Objectant, [REDACTED] through witness testimony, disproved this argument. The testimony provided proves that the decedent, [REDACTED] White's, family visited him at his residence and in fact the Petitioner-Objectant, [REDACTED] delivered meals to the decedent on a daily basis while he was employed by the Saint Regis Mohawk Tribe Office for the Aging. The testimony provided by [REDACTED] [REDACTED] at Saint Regis Mohawk Tribe Office of the Aging, and [REDACTED] Petitioner-Objectant, proves that the only telephone in the home at the time was the personal cellphone of [REDACTED] thus it may have been difficult for the decedent, [REDACTED] White, to make a phone call.⁵⁹ Nevertheless, the evidence before the Court demonstrates he was not isolated from his family by [REDACTED] named Executrix.

The primary argument put forth by the Petitioner-Objectant, [REDACTED] centers on the preparation and signing of the writing purported to be the decedent, [REDACTED] White's Last Will and Testament. To add support to the circumstances surrounding the signing of the decedent's will, the Petitioner-Objectant, [REDACTED] proved that the decedent's family was not present at the signing of the decedent's will and that the decedent was in poor health. The other arguments offered by the Petitioner-Objectant, [REDACTED] focuses on the departure from the decedent, [REDACTED] White's, alleged longstanding belief that property should remain in the family, the control [REDACTED] named Executrix, exercised over the decedent's finances,

⁵⁸ Transcript in the Matter of the Estate of [REDACTED] White, 147 - 148 (Elise Schlisser, Esq.) (March 27, 2018).

⁵⁹ Transcript in the Matter of the Estate of [REDACTED] White, 87 - 88 ([REDACTED] testimony), 119, ([REDACTED] testimony) (March 27, 2018).

that [REDACTED] was receiving pay from the MILC program run by New York State and the Saint Regis Mohawk Tribe Outreach Program to care for the decedent, and that [REDACTED] enrolled the decedent in the Akwesasne Death Group benefits. The Court will take up the aforementioned arguments.

The Creation of [REDACTED] White's Last Will and Testament

The record before the Court indicates that the decedent, [REDACTED] White, did not contact Vaughn Aldrich for the purposes of preparing a will; that the named Executrix, [REDACTED] contacted the two (2) subscribing witnesses, [REDACTED] and [REDACTED] for the purposes of being a witness to the writing purported to be the Last Will and Testament of [REDACTED] White; that [REDACTED] was present for the execution of the will on September 10, 2013; and that the family was not informed of the will. These arguments are supported by the evidence provided to the Court and demonstrates that [REDACTED] named Executrix, had a role in the preparation and execution of the will. As previously noted, the Court is tasked with determining whether the writing at issue is based on the testator/decedent, [REDACTED] White's, own conclusion to make such disposition without being subject, not merely to influence, but to undue influence.⁶⁰

The testimony provided indicates that the initial meeting between [REDACTED] secretary/paralegal, and the decedent, [REDACTED] White, was instrumental in the creation of the decedent's Last Will and Testament. The testimony proves that the decedent, [REDACTED] White, met with [REDACTED] secretary/paralegal alone prior to the signing of the writing where they discussed the process that would happen in the case the decedent did not have a will and his general wishes. [REDACTED] the named Executrix, was not present for the initial meeting between [REDACTED] and the decedent, [REDACTED] White. Even in taking into account that it is likely the named Executrix, [REDACTED] contacted Vaughn Aldrich's Law Office on the behalf of the decedent, [REDACTED] White, she was not present for the initial meeting between [REDACTED] and the decedent.⁶¹ Moreover, there was no evidence provided that Vaughn Aldrich, Esq., was or is the personal attorney of [REDACTED]. The sole purpose of the initial meeting was for [REDACTED] secretary/paralegal, to discuss the process and speak to the decedent, [REDACTED] White, about his general wishes. There was no evidence provided demonstrating that [REDACTED] named Executrix, had knowledge of the information conveyed to [REDACTED] following the initial meeting.

⁶⁰ *Matter of the Estate of Bertha Collins*, 124 A.D.2d 48, 49 (Jan. 23, 1987).

⁶¹ The Court notes Vaughn Aldrich, Esq. was asked by Thomas B. Wheeler, Esq. (Counsel for [REDACTED] named Executrix) "did there come a time that you had some contact in regard to preparation of the will for [REDACTED] White?" Vaughn answered by stating "[n]ot personally with [REDACTED] but I believe his daughter contacted me out of my office and asked if it could be prepared. And I said yes, it could." Thomas B. Wheeler, Esq. asked "...[a]nd when you say his daughter, who are you referring to?" Vaughn Aldrich answered to the question by stating "I believe it was that lady there, but I'm not positive. I know somebody got in touch with me about a will." Transcript in the Matter of the Estate of [REDACTED] White, 23 - 24 (Vaughn Aldrich testimony) (March 27, 2018). On cross, Elise Schlisser, Esq. (Counsel for [REDACTED] asked Vaughn Aldrich, Esq. "[w]hen [REDACTED] contacted you, she - you just testified that you thought this was [REDACTED] daughter. Is that how she presented herself to you when she made?" Vaughn Aldrich responded by stating "No. I don't really recall. I know somebody contacted me. I don't know if it was her, but I know she's not his daughter." Transcript in the Matter of the Estate of [REDACTED] White, 28 (Vaughn Aldrich testimony) (March 27, 2018).

In his arguments, the Petitioner-Objectant, [REDACTED] focused on the size of the room where the writing was executed on September 10, 2013 and the fact that the decedent, [REDACTED] White, was forced to speak about his personal business in front of the witnesses and [REDACTED] named Executrix. The witness testimony provided by [REDACTED] and [REDACTED] demonstrates [REDACTED] secretary/paralegal asked the decedent, if he wanted [REDACTED] [REDACTED] and [REDACTED] to leave while she spoke to him. Further, the testimony provided by [REDACTED] and [REDACTED] also supports the fact that [REDACTED] secretary/paralegal, spoke to the decedent, [REDACTED] White before signing the writing purported to be the Last Will and Testament of [REDACTED] White. There is also no requirement that conversations regarding an individual testator's will be done in a separate room. The Petitioner-Objectant, [REDACTED] did not provide evidence which indicates [REDACTED] named Executrix, was involved in this conversation between [REDACTED] secretary/paralegal, and [REDACTED] White, the decedent.

It is alleged that [REDACTED] named Executrix, seized the opportunity presented due to the poor health of decedent, [REDACTED] White, and that she kept the family out in order to engineer the creation of the will by making the appointment to create the will and gathering the witnesses.⁶² [REDACTED] and [REDACTED] subscribing witness, testified that they were contacted by [REDACTED] named Executrix, to be a witness to the writing purported to be the Last Will and Testament of [REDACTED] White. However, there is no evidence that the named Executrix, [REDACTED] threatened or influenced the decedent, [REDACTED] White, to bequeath his property to her. On the contrary, the testimony provided by the witnesses, demonstrates that the decedent, [REDACTED] White's, decision to bequeath his property to [REDACTED] named Executrix, was on his own conclusion to make such disposition.

As noted, the Petitioner-Objectant, [REDACTED] proved that the decedent's family was not present at the signing of the decedent's will, that [REDACTED] named Executrix, and that the decedent was in poor health.

Lack of Family Knowledge and the Decedent's Poor Health

In general, an individual has the right to dispose of their property in the manner they see fit, so long as it is based on their own conclusion absent undue influence or fraud. It does not matter if a testator/decedent's family is not there or part of the process. The decedent, [REDACTED] White's, medical records prove he was in poor health. Thus, it is clear the decedent, [REDACTED] White, was vulnerable and susceptible to being influenced by another, however, the Court finds no evidence offered by the Petitioner-Objectant, [REDACTED] that proves the named Executrix, [REDACTED] actually used the opportunity to influence the decedent, [REDACTED] White, to execute a will in her favor. Poor health, alone, is insufficient to demonstrate that there was an actual exercise of influence or lack of independent decision making.

As previously noted, the Petitioner-Objectant also alleged a departure from the decedent, [REDACTED] White's, alleged longstanding belief that property should remain in the family, the control [REDACTED] named Executrix, exercised over the decedent's finances, the fact that

⁶² Transcript in the Matter of the Estate of [REDACTED] White, 147 (Elise Schlisser, Esq.) (March 27, 2018).

██████████ named Executrix, enrolled the decedent in the Akwesasne Death Group benefits, and the overall health of the decedent. The Court will now take up these arguments.

Departure from Longstanding Belief

In the instant case, the Petitioner-Objectant, ██████████ testified that the decedent, ██████████ White, had a longstanding belief that real property must remain in the family. ██████████ decedent's brother, and ██████████ Petitioner-Objectant, testified to the significance the property has to their family.⁶³ This argument is solely based on testimony provided by the Petitioner-Objectant, ██████████ and ██████████ his/decedent's brother. There are no other wills, codicils, or other writings submitted as evidence to the Court documenting the decedent, ██████████ White, alleged known attitudes and beliefs. The named Executrix, ██████████ did not admit evidence disputing the testimony provided by the Petitioner-Objectant, ██████████ and ██████████ brother of the decedent.

In *Sunday v. Cree*, the Court assessed the role of oral testimony in regards to the conveyance of property.⁶⁴ In *Sunday*, the Complainant, alleged that her mother told her that she wished to convey the disputed property to the Complainant.⁶⁵ In that case, the Court did not dispute this argument in its decision and order, however, the Court determined in *Sunday* that oral testimony alone is not enough to demonstrate a decedent intended to transfer an interest to another.⁶⁶ In instances where the Objectant is making this argument, courts take into account the previous wills or codicils executed by a decedent or other writings in order to decipher the known attitude or beliefs of the decedent/testator.⁶⁷ Thus, the Court determines that oral testimony alone is also not sufficient to prove a longstanding belief held by a decedent. Therefore, there is no credible evidence supporting the argument that, ██████████ named Executrix, exercised undue influence over the decedent, ██████████ White, to induce him to depart from an alleged longstanding belief held by the decedent that property must remain in the family.

Control over Financial Affairs

The Petitioner-Objectant, ██████████ proved ██████████ named Executrix, exercised control over the decedent, ██████████ White's, finances.⁶⁸ The Petitioner-Objectant, ██████████ focused his argument on the withdrawals and location of withdrawals and the failure of ██████████ named Executrix, to keep her finances separate from the decedent, ██████████ White.⁶⁹ However, the Petitioner-Objectant, ██████████ offers the Court no evidence proving that the funds were used to benefit the named Executrix, ██████████ or that ██████████ used this as a means to influence the decedent, ██████████ White, to bequeath her his property.

⁶³ Transcript in the Matter of the Estate of ██████████ White, 106 - 107 (Lawrence White testimony) (March 27, 2018) and Transcript in the Matter of the Estate of ██████████ White, 56 (██████████ testimony) (January 22, 2018).

⁶⁴ *Sunday v. Cree*, 17-LND-00006, 10 (April 23, 2018).

⁶⁵ *Id.*

⁶⁶ *Sunday v. Cree*, 17-LND-00006, 10 (April 23, 2018).

⁶⁷ See generally, *Matter of Ruth Zirinsky*, 43 A.D.3d 946 (2007).

⁶⁸ Plaintiff (Petitioner-Objectant) Exhibit #1 R. 42 - 69.

⁶⁹ Transcript in the Matter of the Estate of ██████████ White, 138 - 139 (██████████ testimony) (March 27, 2018).

MILC Program and Akwesasne Death Group Benefits

Further, the Petitioner-Objectant, [REDACTED] alleged that the named Executrix, [REDACTED] was receiving pay for taking care of the decedent through the MILC program run by New York State and the Saint Regis Mohawk Outreach Program for taking care of the decedent, [REDACTED] White, and enrolled the decedent in the Akwesasne Death Group Benefits. Similar, to the previous arguments raised, there is simply no evidence demonstrating undue influence by [REDACTED] by her employment through the MILK Program of the Akwesasne Death Group Benefits.

After reviewing all the arguments presented by the Petitioner-Objectant, [REDACTED] the Court finds the Petitioner-Objectant offers no evidence that [REDACTED] named Executrix, did anything to actually influence the decedent, [REDACTED] White, to distribute his assets solely to her. At this point in its analysis, the Court will take up the confidential relationship between [REDACTED] named Executrix, and the decedent, [REDACTED] White.

Confidential Relationship

In a previous decision in this case, the Court determined that a confidential relationship existed between [REDACTED] named Executrix, and the decedent, [REDACTED] White.⁷⁰ This requires the person in the confidential relationship to explain the circumstances surrounding the relationship between them and the decedent in order to demonstrate that the bequest was fair and voluntary.⁷¹

Although a confidential relationship exists, which would require the beneficiary, [REDACTED] to explain the circumstances surrounding the relationship between her and the decedent, [REDACTED] White, and demonstrate that the bequest was fair and voluntary. This analysis is not required in this matter, because there is no evidence that [REDACTED] named Executrix, had any direct or indirect involvement in the preparation or execution of the testamentary instruments offered for probate.⁷² There has been no evidence offered by the Petitioner-Objectant, [REDACTED] which has been found by the Court that proves [REDACTED] named Executrix directly influenced the decedent, [REDACTED] White, to bequeath her his property. The Petitioner-Objectant, [REDACTED] has demonstrated that [REDACTED] named Executrix, had a role in the overall process of the decedent, [REDACTED] White, obtaining a will, through her involvement of allegedly contacting an attorney and notifying the subscribing witnesses, however, it does not rise to that of direct or indirect involvement based on the following reasoning.

As previously indicated in its decision, the initial meeting between [REDACTED] secretary/paralegal, and the decedent, [REDACTED] White, was instrumental in the creation of the decedent's Last Will and Testament. In the instant case, there is no evidence demonstrating that Vaughn Aldrich, Esq. or [REDACTED] secretary/paralegal, made available the information conveyed from the decedent, [REDACTED] White, to [REDACTED] with the named Executrix, [REDACTED]

⁷⁰ *Estate of [REDACTED] White, Order to Reopen Hearing*, 17-CIV-00008, 6 - 7 (Feb. 12, 2018).

⁷¹ *Matter of the Estate of Maria Mazak*, 288 A.D.2d 682, 683 (Nov. 15, 2001).

⁷² *Cordovi Objectants-Appellants v. Karnbad, Proponent-Respondent*, 214 A.D.2d 476, 476 (April 25, 1995).

██████████ There is also no evidence demonstrating that ██████████ named Executrix, influenced the conversation between ██████████ secretary/paralegal, and the decedent, ██████████ White. The only action taken by the named Executrix, ██████████ is that she is the one that more than likely contacted Vaughn Aldrich, Esq. for the decedent, ██████████ White. This is not an action that was instrumental in the creation of the will. Thus, ██████████ named Executrix, took no action, indirect or indirect, that had any impact to the overall drafting of the initial meeting between ██████████ secretary/paralegal, and the decedent, ██████████ White.

Further, there is no evidence demonstrating that the named Executrix, ██████████ had any direct or indirect involvement at the signing of the will on September 10, 2013. Similarly, to analysis above, the only action ██████████ named Executrix, did was contact the subscribing witnesses and advise them as to the date and time. There is no evidence demonstrating that ██████████ named Executrix, influenced the conversation between ██████████ secretary/paralegal, and the decedent, ██████████ White. Moreover, ██████████ secretary/paralegal testified that it was her practice for the last thirty (30) years to ask the testator to ask the witnesses to be their witnesses.⁷³ There is no evidence demonstrating that she did not ask the decedent, ██████████ White, to ask ██████████ and ██████████ to be his witnesses. Thus, ██████████ named Executrix, took no action, direct or indirect, that had any impact to the signing and execution of the will.

Moreover, the Petitioner-Objectant, ██████████ proved that the decedent, ██████████ White, did not have an operable phone available to him at his residence. Therefore, the decedent, ██████████ White, had no means to contact an attorney or individuals to be a subscribing witnesses on his own. ██████████ named Executrix, had a personal cellphone and was his live-in caregiver. It is reasonable to assume that the decedent, ██████████ White, would have had the person taking care of him contact an attorney and, following the meeting with ██████████ secretary/paralegal, contact subscribing witnesses on his behalf. Therefore, even in taking it into account that ██████████ named Executrix, most likely contacted Vaughn Aldrich, Esq. and the fact that she contacted the subscribing witness, ██████████ role in the process was slight and it does not rise to a level of direct or indirect involvement in regards to the creation or the execution of the will.

Thus, the Court need not take into consideration the issue regarding the existing confidential relationship between testator/decedent, ██████████ White, and the named Executrix, ██████████ or assess the explanation provided by ██████████

Conclusion

Viewing all of the evidence herein in the light most favorable of the Petitioner-Objectant, ██████████ and after according the Petitioner-Objectant the benefit of all inferences which can be reasonably be drawn from it, the Court determines that the Petitioner-Objectant has failed to establish that the named Executrix, ██████████ actually exercised any undue influence over the decedent, ██████████ White.

⁷³ Transcript in the Matter of the Estate of ██████████ White, 13 - 14 (██████████ testimony) (March 27, 2018).

Furthermore, the proponent of the writing purported to be the Last Will and Testament of [REDACTED] White, [REDACTED] sufficiently proved that the decedent, [REDACTED] White, possessed the requisite testamentary capacity to bequeath his property through a Last Will and Testament.

Based on the foregoing, it is the judgment of this Court that the Last Will and Testament of [REDACTED] White, dated September 10, 2013, is valid and shall be accepted by this Court as such.

ORDER

NOW, THEREFORE, it is ordered:

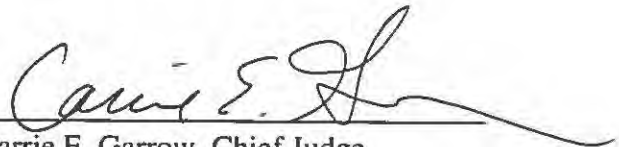
ORDERED AND ADJUDGED that the Last Will and Testament of [REDACTED] White dated September 10, 2013 is admitted to probate.

ORDERED AND ADJUDGED that Letters Testamentary be issued to [REDACTED] with all powers to administer and distribute the Estate of [REDACTED] White.

[REDACTED] is **ORDERED** to appear before the Court for a status conference on July 10, 2018 at 10:00 a.m.

The foregoing constitutes the Decision and Order of this Court.

Signed by my hand this 18th day of June, 2018.


Carrie E. Garrow, Chief Judge
Saint Regis Mohawk Tribal Court

The parties have thirty (30) days from the entry of this Order to file an appeal with the Saint Regis Mohawk Court of Appeals.