

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

IN THE MATTER OF: )  
 ) C.A. No. 2831-MA  
THE PURPORTED LAST WILL )  
TESTAMENT OF )  
JOHN M. WALLS, SR. )

MASTER'S REPORT

Date Submitted: April 17, 2009  
Draft Report: November 24, 2009  
Final Report: December 9, 2009

James F. Waehler, Esquire, Steen Waehler & Schrider-Fox, LLC  
32892 Coastal Highway, Unit 1, P.O. Box 417, Bethany Beach, DE 19930  
Attorney for the Petitioner

And

David C. Hutt, Esquire, Wilson Halbrook & Bayard, P.A.  
107 West Market Street, P.O. Box 690, Georgetown, DE 19947  
Attorney for the Respondent

AYVAZIAN, Master

## Introduction

On September 13, 2006, John M. Walls, Sr. (“Mr. Walls” or “decedent”) executed his Last Will and Testament, in which he left his entire residuary estate to his biological son, Respondent John M. Walls, Jr. (“John”). Having been adopted by a stepfather many years previously, John was not then a legal child of Mr. Walls. On September 21, 2006, Mr. Walls died of cancer. He was survived by two legally adopted children, Petitioner Patricia Dawn Gibson (“Dawn”), and her brother Kim Walls (“Kim”). Dawn filed a petition for review of proof of will against John, alleging lack of testamentary capacity and undue influence. A trial was held over two days in February 2009. Post-trial legal memoranda were then submitted. This is my draft report in which I conclude that Dawn has failed to meet her burden of demonstrating by the preponderance of the evidence either lack of testamentary capacity or undue influence.

## Factual Background

The undisputed facts reveal that Mr. Walls was the biological father of only one child, John. Sometime when John was a young boy, his parents divorced, and petitioner’s mother, Ruth, married Daniel K. Card. When he was about 11 years old, in the early 1970s, John was adopted by his stepfather, and Mr. Walls gave up his parental rights in exchange for not

having to pay child support. Mr. Walls married a second time, to woman named Joan who had two children of her own. In about 1973, Mr. Walls legally adopted his two stepchildren, one of whom, Dawn, was then 13 years old. Dawn lived with Mr. Walls and her mother until she was 20 years old, at which time her parents divorced. Joan then married a man named Forbes, but Dawn and her brother Kim remained close to their father, who gave them vacant parcels of land adjacent to his own property on Hopkins Road near Lewes, Delaware. Dawn eventually built a house on this property and lived next to her father until 2003, when she and her first husband divorced. After the divorce, Dawn's ex-husband got title to the property, and Dawn moved about five miles away.

After his second divorce, Mr. Walls married a woman named Shirley who had several children of her own. Mr. Walls did not adopt any of these stepchildren, but he enjoyed a very good relationship with one of Shirley's sons, Michael Mazzeo ("Michael"), who eventually came to live in a house across the street from Mr. Walls. Sometime in the 1980s or 1990s, an uncle of Mr. Walls named Winston Walls ("Uncle Winston") built a house on land across the street from his nephew. He was elderly, and Shirley took care of Uncle Winston until he died in 1995 or 1996. Mr. Walls inherited all of his property.

John had minimal contact with his biological father when he was growing up, but he occasionally saw Uncle Winston, and when he turned sixteen and got his driver's license, he would occasionally visit his biological father on his way from school or work. After graduating high school, John joined the Navy, and spent most of the next four years at sea. He did not see his biological father very often until the early 1990s. After Ruth Card died in 1992 or 1993, John felt that he no longer had to appease his mother. Prompted by his wife Melissa and Uncle Winston, John's relationship with his biological father became closer.

According to Dawn, John did not enter Mr. Walls' life until Uncle Winston's funeral. Dawn testified that Mr. Walls had let everyone know that he had inherited a lot of money, and John had announced, "All kids should get equal value in a will." Dawn retorted, "Not if they have not been here for 25 years." After that exchange, Dawn testified that her "guards were up." She initially saw John at her father's house a few times a month for about a year, and then his visits became more frequent. John and his wife Melissa would bring their children to visit Mr. Walls as well. Shirley considered John as family, and she took care of their children when John and Melissa were at work. Even Dawn appeared to concede at trial that Mr. Walls treated John as if he was his actual son.

John testified that after Uncle Winston died, his father said to him, “Son, I’d really like it if you change your name back to Walls.” Mr. Walls also told John that if he changed his name, he would give John a piece of property. In 1996, John petitioned to change his surname, and the surnames of his wife and daughter from Card to Walls. In early 2000, Mr. Walls deeded a piece of property to John. In 2002, John and his family built a house on this property, which was within walking distance of Mr. Walls’ house.

At some point, Kim purchased a double-wide trailer for the property that he had been given adjacent to his father’s house. Kim was involved in a relationship that upset Mr. Walls, and when the relationship ended, Mr. Walls had to help his son with his mortgage payments. One day, while Kim was at work, the trailer was destroyed in a fire. Kim went to live with his mother, Joan Forbes. Fearing that the land would be lost to foreclosure, Mr. Walls hired a lawyer to regain title to the land. The property dispute with Kim was still pending when Mr. Walls died on September 21, 2006.

In May 2005, Shirley passed away. Mr. Walls was depressed and lonely for several months, but he then returned to his normal life. Mr. Walls liked to drive his truck places, attend auctions, chat with people, watch television, and take care of his animals. He also liked whiskey and good

food. Joan Mazzeo, Michael's wife, testified that Mr. Walls taught her to can tomatoes the summer before he died. Several months before then, Mr. Walls had asked Melissa, who is a registered nurse, to look at the underside of his tongue where he had noticed a spot. She recommended that he have the spot examined by a doctor, and a biopsy revealed tongue cancer. Mr. Walls subsequently underwent radiation treatment, but he refused chemotherapy or other treatment. The radiation had made it painful for him to swallow. As a result, Mr. Walls ate and drank very little and lost a lot of weight. Nevertheless, he continued to drive himself to doctor's appointments and other places until sometime in the middle of August 2006 when his physical condition began to decline. About three weeks before he died, Mr. Walls asked William Lofland, who was his old friend, ex-brother-in-law, and John's maternal uncle, to drive him to a doctor's appointment in Milford. Lofland testified that he did not know where the doctor's office was located, but Mr. Walls gave him explicit directions. When they arrived, Mr. Walls needed a wheelchair to enter the office because he was unable to walk. Lofland waited outside while Mr. Walls was seen by his doctor.

Michael testified that he helped his stepfather with heavy tasks around the house ever since Mr. Walls had had heart surgery in 1999. As Mr. Walls continued to decline during the late summer of 2006, Michael went to Mr.

Walls' house whenever possible to help his stepfather with his television, his pets and, at night, to tuck him into bed. Sometimes, Michael would visit the house in the middle of the night and find Mr. Walls sprawled on the floor, having fallen when he had attempted to walk to the bathroom. Melissa would stop by whenever she got home from work, usually around six or seven in the evening. John, who worked on a barge transporting gasoline around the East Coast, had a rotating work schedule that took him to sea for 21 days, followed by 21 days at home. During this time period, Melissa was responsible for handling Mr. Walls' checkbook and his medications. In addition to having two teenaged children, Melissa had a three-month old infant and a full-time job as a nurse in a medical practice. When John was not at sea, he would also help with his father's care and upkeep. In addition to their efforts, other individuals, including Joan Mazzeo, Dawn and her mother, and Mr. Walls' sister, granddaughter, niece, visited Mr. Walls, and helped to clean his house, take care of his animals, or bring him food.

Dawn testified that she had felt "squeezed out" by John and Melissa when they first started visiting Mr. Walls. Whenever Dawn would visit her father, either the phone would ring or John would stop by, and she felt intimidated by him. She testified that she started to park her car at her ex-husband's house and walk through the trees so she could visit her father

without being seen. However, Dawn had no objection to Melissa or John handling Mr. Walls' finances in 2005 and 2006 because she lived 35 minutes away near Seaford at that time. As Mr. Walls' cancer progressed and his physical condition deteriorated, Dawn and her mother became concerned that he was not being adequately cared for. They inquired about assisted living even though they knew Mr. Walls would not like it and wanted to die in his own home. Mr. Walls had also told Joan Mazzeo that he wanted to die in his own home.

John testified that when he was home in August 2006, he visited his father on a daily basis in the morning. During those last few weeks, he saw his father reading the newspaper with a magnifying glass while wearing an old pair of prescription glasses. Mr. Walls had broken his most recent pair of glasses, and had taken them to be repaired. John testified that he took his father to pick up his new glasses, which he needed for reading. On September 6, 2006, John was scheduled to return to work. He testified that he visited his father early that morning, as was his custom on the days he went to sea, for a cup of coffee and to say good-bye. His father had lost a lot of weight because he was not eating or drinking, but was otherwise normal. Mr. Walls had an unsteady gait due to vertigo, and John worried about him falling, but his father insisted that he was fine while driving. John did not



create any care plan for his father during his absence because Mr. Walls did not want one. He was still mobile, and John knew that Michael would check on him.

On September 8, 2006, Melissa contacted the Law Office of William E. Wright, Esquire, and indicated that her father-in-law needed a will, power of attorney, and medical directive. On September 11, 2006, Melissa again contacted Wright's office, and requested that the lawyer visit Mr. Walls to sign the documents because Mr. Walls was not doing well. On September 12, 2006, Michelle Powell, a nurse with Delaware Hospice, visited Mr. Walls in his home in the late afternoon to conduct an admissions interview. Delaware Hospice had been called by Dr. Walls' physician to offer hospice care. Although Powell had no recollection of this particular patient, based on her notes and other Hospice documents, Powell testified that she explained the entire hospice program to Mr. Walls, that Mr. Walls was alert and oriented to person, place, and time, and after signed an informed consent Mr. Walls had decided that he wanted hospice care. On September 12, 2006, Mr. Walls signed a handwritten document listing various items of his personal property, including cash, stocks and bonds, next to the names of several individuals. At trial, John identified the signature on this document as his father's, and the handwriting as belonging to his wife Melissa.

On the morning of September 13, 2006, Lofland and Dannie Card, who is John's stepbrother, arrived at Mr. Walls' home. Melissa was present, and Mr. Wright soon joined them in Mr. Walls' bedroom. Michael, who had observed the visitors from his home across the street, came over to the house, but was kept out of the bedroom by Lofland, who said that they were signing a will. Mr. Walls was sitting in his bed, leaning up against the headboard, and the attorney was seated in a chair by the side of the bed. Dannie Card was on the other side of the bed, and Lofland by the door. After about 30 minutes, the signing ceremony was over. Walls had executed a power of attorney naming John his attorney-in-fact and Melissa as alternate, an advanced health care directive naming Melissa as his agent, and a will leaving his residuary estate to John, and naming John as executor. After everyone left, Michael went into the bedroom and talked to his stepfather. Mr. Walls did not respond to Michael; he just wanted to lie back in bed. Michael's wife came over later that morning and asked if Mr. Walls wanted anything. He fell asleep and she could see that he was fine. Dawn testified that she visited her father in the late afternoon of September 13. Her father was lying in bed, and tried to sit up. He wanted to use the commode, and Dawn had to call her ex-husband to assist her. Dawn testified that her father was very confused at that time. Another hospice

nurse noted in the hospice documents that on September 14, 2006, Mr. Walls was alert and confused.

On September 15<sup>th</sup>, Lofland called John and told him that his father was “really going downhill.” Melissa started repeatedly calling her husband about his father’s health and, on September 18, she told John that he needed to come home. After midnight on September 20, 2006, John arrived home. He saw his father before Mr. Walls died, but could not speak with him because Mr. Walls was incoherent.

Mr. Walls died on September 21, 2006. He had wanted to be cremated and his ashes spread behind his property where Shirley’s ashes had been spread. John called family members to invite them to the ceremony. When he called Dawn, she asked him about the will. He told her that she was getting one dollar. Her last words to him were, “I’ll see you in court.”

### Legal Analysis

In attempting to set aside the Last Will and Testament of the decedent, Dawn argues that Mr. Walls was depressed, confused, and of unsound mind when he signed the will. In addition, or alternatively, Dawn argues that Mr. Walls was under the undue influence of John, who was acting on his own behalf and through his wife, Melissa. Dawn further argues the burden of proof should shift to John to demonstrate the absence of undue influence by

the preponderance of evidence because his wife wrote the September 12<sup>th</sup> document, and procured the attorney who drafted the will and the two witnesses who were John's close relatives.

#### A. Testamentary Capacity

In Delaware, the law presumes that a duly executed will is valid and that the testator had the requisite capacity to execute it. *In re Wiltbank*, 2005 WL 2810725, at \*5 (Del. Ch. Oct. 18, 2005). Therefore, the person challenging the validity of such a will has the burden to show by the preponderance of the evidence that the testator either lacked the requisite testamentary capacity or was unduly influenced at the time of the will's execution. Testamentary capacity means, that at the time of execution, the person making a will must be capable of exercising thought, reflection and judgment, and must know what he is doing and how he is disposing of his property. *In re Estate of West*, 522 A.2d 1256, 1263 (Del. 1987). In other words, Mr. Walls had to have known that he was disposing of his estate by will and to whom. *See id.* Only a modest level of competence is required to execute a will.

Dawn has failed to demonstrate that her father lacked the testamentary capacity necessary to execute his will on September 13. Her evidence consists of testimony from several witnesses that Mr. Walls was confused or

acted bizarrely around the time the will was executed, and of Delaware Hospice documents containing notations that Mr. Walls was “alert/confused” on September 12, September 14, and September 15.

Joan Mazzeo testified that in September 2006, the decedent’s speech was garbled and he “grunted” so that she could not understand what he was saying. However, Mr. Walls was dying of tongue cancer which, according to Powell’s testimony, typically impairs speech. Joan Mazzeo also testified that toward the end of his life, Mr. Walls lost his ability to change the television channel with the remote or dial the telephone. However, she also testified that Mr. Walls was able to call her husband and ask him to come over to help him with the television. Michael testified that around the first week in September, Mr. Walls was “going quick.” He would not eat or drink, and said that he just wanted to pass away. The television would be on, but there was not much conversation, just Michael talking to Mr. Walls. Around September 10, according to Michael, Mr. Walls drove his truck to the home of his former wife to deliver spoiled food. On the way back, Mr. Walls nearly ran into Michael’s house and almost hit Michael’s wife because he was in no condition to drive. Forbes testified by deposition that three or four days before he died, Mr. Walls drove to her house. Forbes was not home at the time, but she returned to the decedent’s home when her husband

and son told her that Mr. Walls had wanted to tell her something. She returned before Mr. Walls arrived at his home, and she observed Mr. Walls drive up and hit the brakes in front of Joan Mazzeo. He was “talking really funny” and had to be helped back in the house. Mr. Walls then told Forbes that he had cooked a chicken for her and it was in a pot in the refrigerator. Forbes looked inside his refrigerator and found the cooked chicken. Forbes testified that Mr. Walls knew that she liked chicken salad, and he used to love the chicken salad she made. Forbes took the pot home with her, but threw out the chicken because she did not know how long it had been in the refrigerator. Dawn testified that about a week before the will was executed, she visited her father and tried to explain to him about a job interview she had just had, but he would “space out.” On September 12, she visited her father again and tried to explain to him about a medical test she was about to undergo, but he did not know what she was talking about. Several hours after the will was executed on September 13, Dawn described her father as very confused.

Hospice records indicate that on September 12, at 9:30 a.m., a nurse named Lynn Garrahan prepared a clinical summary describing Mr. Walls’ mental status as “compromised.” Later that same day, after an admissions assessment, Powell noted that Mr. Walls was “alert, oriented x 3.” An IDT

Review Checklist dated September 14, 2006 listed his mental status as “alert/confused.” Similarly, another physical assessment performed by Susan Tipton, LPN, on September 15 described Mr. Walls’ mental status as “alert, confused.” Powell was the only nurse from Delaware Hospice to testify at the trial. Powell testified that she had explained the hospice program to Mr. Walls and, after determining that he was aware of his name, his location, and the time, she obtained his informed consent to the program. Powell was unaware that any other nurse had seen Mr. Walls on the 12<sup>th</sup>, and testified that most clinical summaries were done at the office. Powell testified that she did not know which categories of questions Mr. Walls would have been confused about when he was noted to have been confused, but presumably he had been unable to answer correctly the three questions as to person, place and time.

None of Dawn’s evidence is sufficient to overcome the presumption that Mr. Walls had the requisite testamentary capacity to execute a will on September 13. Dawn’s witnesses accurately described a man who was physically failing and having difficulty speaking, but their testimony also depicts a man otherwise independent and capable of thought and action. Dawn’s own testimony regarding her father’s apparent states of confusion or incomprehension around this time is both self-interested and too vague to

justify invalidating the decedent's will. Hospice records, at best, show a man who was alert and oriented, and alert and confused at different times bracketing the signing of the will.

There is other evidence in the record indicating that Mr. Walls knew exactly what he was doing on September 13. Both witnesses to the will signing testified that Mr. Walls was alert, recognized them, talked to them, and answered all of the questions posed to him by the attorney correctly. Lofland described Mr. Walls as appearing to know that he was participating in a will signing. Card testified that Mr. Walls specifically asked him if he would be a witness to his will. Unfortunately, the attorney who drafted Mr. Walls' will was not available to testify because he had passed away some time previously, but both witnesses testified that after asking Mr. Walls some questions, the attorney handed him the documents consisting of the will, power of attorney, and advanced health care directive. Mr. Walls held the documents and appeared to read them, and then signed them willingly. Although Dawn argues that both of these witnesses were selected by Melissa because of their relationship to John, the evidence shows that Lofland had been friends with Mr. Walls since they were both 11 years old. Their friendship had even survived Mr. Walls' divorce from Ruth, who was Lofland's sister. Card, although much younger, had become friends with



Mr. Walls during the previous six or seven years. They would meet at Lofland's machine shop in Nassau, and go to auctions together, and Card would visit Mr. Walls at his home.

In addition, Michael provided important testimony supporting the presumption of testamentary capacity, i.e., that Mr. Walls knew that he was disposing of his estate and to whom. Although Michael criticized Melissa and John for not caring adequately for Mr. Walls, and felt that his own efforts in helping his stepfather had not been sufficiently acknowledged by them, his testimony revealed how much Mr. Walls apparently cared for biological son. John was at sea during the last weeks of Mr. Walls' life, and did not return home until shortly before his father died. Michael testified that during those last weeks, John "was out on the boat and the excuse was that he couldn't come home. All John, Sr. said was he wanted to see his son."

Dawn nonetheless argues that she is entitled to a missing witness inference in her favor on the issue of testamentary capacity because Melissa did not testify. As a nurse and the primary caregiver of Mr. Walls, Dawn argues that Melissa should have been John's most effective witness as to Mr. Walls' testamentary capacity. Therefore, the argument goes, Melissa's failure to testify should lead the Court to conclude that her testimony would

not have been favorable to her husband. John, however, had no burden to establish Mr. Walls' testamentary capacity. John's failure to call his wife as a witness during the trial should not result in any inference being drawn against him in the absence of a showing of a discovery violation. Dawn, however, has not alleged that Melissa was not made available to her either to depose during discovery or to testify as a witness at trial. Dawn's own failure to subpoena Melissa as a witness therefore does not justify any inference being drawn in Dawn's favor on the issue of testamentary capacity.

#### B. Undue Influence

Dawn claims that John, on his own and through his wife, unduly influenced Mr. Walls to change his will. Dawn testified at trial that her father had told her that he would always take care of her. After Shirley died, her father also told her that he was going to update his will to make sure that his property was divided among his children. In addition, Dawn argues that the burden of proof of undue influence should be shifted to John to demonstrate the absence of undue influence pursuant to *In re Will of Melson*, 711 A.2d 783 (Del. 1998), because Melissa was in a confidential relationship with Mr. Walls as his caregiver, and she was in control by having the will drafted as well as in creating the handwritten document

signed by Mr. Walls on September 12. An analysis of the elements of undue influence and the evidence required to shift the burden of proof demonstrates that Dawn's claim must fail.

Undue influence is defined as “an excessive or inordinate influence considering the circumstances of the particular case.” *In re Estate of Justison*, 2005 WL 217035, at \*9 (Del. Ch. Jan. 24, 2005). The influence was must be “such as to subjugate [the testator's] mind to the will of another, to overcome [his] free agency and independent volition, and to compel [him] to make a will that speaks the mind of another and not [his] own.” *Id.* (citing *In re Langmeier*, 466 A.2d 386, 403 (Del. Ch. 1983)). There are five essential elements of undue influence: (1) a susceptible testator; (2) the opportunity to exert influence; (3) a disposition to do so for improper purpose; (4) the actual exertion of such influence; and (5) a result demonstrating its effect. *West*, 522 A.2d at 1264. The challenger usually bears the burden of proving that the will was the product of undue influence, as well as the burden of proving lack of requisite testamentary capacity, but the burdens may shift in circumstances that lack the “implicit ethical safeguards” which exist when the drafter of the will is a lawyer acting in a lawyer-client relationship. *Sloan v. Segal*, 2009 WL 1204494, at \*13 (Del. Ch. April 24, 2009) (quoting *Melson*, 711 A.2d at 787). Thus, according to

the standards laid out in *Melson*, the burden of proof shifts to the proponent of the will where the challenger demonstrates by clear and convincing evidence that: (1) the will was executed by a testator who was of “weakened intellect”; (2) the will was drafted by a person in a confidential relationship with the testator; and (3) the drafter received a substantial benefit under the will. 711 A.2d at 788.

There are at least two major flaws in Dawn’s argument that the burden of proof should be shifted in this case. First, the will was drafted by an attorney, not by Melissa, who arguably was in a confidential relationship with Mr. Walls as his primary caregiver. Dawn nonetheless argues that Melissa was responsible for procuring the attorney, and there is no indication that the attorney ever met with Mr. Walls before the drafting and execution of the will. While the evidence shows that only a few days elapsed between Melissa’s initial contact with the law firm on September 8, and the execution of the will on September 13, Dawn cites to no Delaware cases holding that these factual circumstances alone are sufficient to shift the burden of proof of undue influence. There is simply no evidence in the record to support a conclusion that the relationship between Mr. Wright and Mr. Walls was anything other than the normal attorney-client relationship. Furthermore, to conclude that there was something untoward or unethical

about their attorney-client relationship, I would have to disregard Lofland's testimony that during the will signing ceremony, Mr. Walls responded to a question from Mr. Wright about the contents of will by stating, "that is exactly what I want."

On the other hand, it is uncontested that Melissa drafted the handwritten document signed by Mr. Walls on September 12. This document lists some of his personal property, including trucks, guns, furniture, rings, cash, stocks and bonds, against the names of several individuals, and was subsequently attached to the will that was filed in the Register of Wills Office in Sussex County. Assuming without deciding that the *Melson* standards apply to a personal property memorandum such as this, there remains the second question whether Melissa received a substantial benefit under this handwritten document. Her husband John was to receive an 870 Remington, class rings and initial rings, and stocks and bonds, according to the list. Melissa's three children were to receive all of the remaining guns, and her daughter Sarah was to receive a red Ford truck. Michael was to receive a cabinet in the kitchen and a green truck, while Kim and Dawn each were to receive \$1 and their mother (Forbes) was to receive \$5. Melissa herself was to receive nothing.

Dawn argues that the actions of the wife must be imputed to the husband, and therefore Melissa benefited from a will that left everything to her husband. Even if I were to accept this argument as applied to the handwritten document, the document left personal property to Melissa's children and other individuals who were not even related to Melissa. Regardless of whether the attempted disposition of money, securities or trucks were legal under 12 Del. C. § 212, the purported bequests to individuals other than John when the will itself would have left the entire estate to John if there had been no personal property memorandum is clear and convincing evidence that Melissa did not receive a substantial benefit under this document. If she was responsible for creating this document in the way that Dawn suggests, then Melissa would have been acting in a manner contrary to her husband's interests.

I conclude that Dawn has not satisfied the *Melson* standards for shifting the burden of proof to John to show the absence of undue influence as to either the will or the handwritten document. Therefore, the burden remains on Dawn to demonstrate that the will was the product of undue influence. She has failed to do so.

I will assume without deciding that Mr. Walls was a susceptible testator for the purpose of the remaining analysis. The evidence shows that

Melissa had an opportunity to exert influence over Mr. Walls as his primary caregiver, but the evidence also reveals that Mr. Walls was often alone in his residence. Michael, his wife Joan Mazzeo, Dawn and her mother Joan Forbes, and other family members had as much access to Mr. Walls, and as much opportunity to exert influence over him as did Melissa or John. Dawn cites John's statement at Uncle Winston's funeral to the effect that all children should share in an estate to support her argument that John and Melissa had the disposition to exert influence for an improper purpose. His statement, however, does not demonstrate an improper motive to disinherit anyone. While one person's desire to share in an estate may appear greedy to another who thinks that person does not deserve a share, greed of itself does not establish undue influence.

Most importantly, there is no evidence that John or Melissa actually exerted undue influence. What took place in Mr. Walls' bedroom when the will was executed was witnessed by two friends of Mr. Walls who also happened to be related to John. John had been at sea for a week. Melissa was present but did not participate other than, perhaps, to hand some paperwork to Mr. Walls, according to Michael who was listening beyond the open door of the bedroom. Michael, who was critical of both Melissa and John in some respects, also provided direct evidence that the handwritten

document was not the result of the exertion of any undue influence on John or Melissa's part. Michael testified that his stepfather had told him about certain property he wanted Michael to have after his death. Mr. Walls had wanted Michael to have his green truck because he had taken another truck from Michael and had given it to John. Mr. Walls told Michael that he wanted to do the best he could for Michael, that is, to leave him the green truck and a piece of furniture that Michael had made. Presumably, the green truck and piece of furniture Michael had made were the same two items listed next to Michael's name in the handwritten document drafted by Melissa and signed by Mr. Walls on September 12, 2006.

In addition, Dawn fails to prove a result demonstrating the effect of undue influence because the will is not illogical or irrational. John was Mr. Walls' biological son. John had three children who were presumably Mr. Walls' biological grandchildren. Thus, John and his children were Mr. Walls' only issue. Although Dawn and Kim were Mr. Walls' legal children, they were not blood relatives. The evidence demonstrates that the Walls family was proud of their surname. Mr. Walls asked John to change his name back to Walls, and Dawn testified that she retained Walls as her surname until her second marriage. The evidence also reveals that Mr. Walls had respect for his land, gave parcels of land as gifts to family



members, and was upset at the prospect of his land passing outside of the family. Although Dawn denied that her father harbored any ill-will toward her after she had lost the property he had given her during her divorce, and she downplayed the property dispute between Mr. Walls and her brother which was likely to result in the loss of more land formerly owned by Mr. Walls, the evidence supports the equally plausible explanation that Mr. Walls was disappointed with his two children because of their actions, and had changed his will accordingly. It is also equally plausible that the changed will reflected Mr. Walls' growing attachment to his biological son, the son who had changed his name back to Walls, and who had built a home on nearby property given to him by Mr. Walls, a home in which he was raising a family. There is no evidence that either Dawn or Kim had any children. Since the evidence supports two equally and/or more plausible explanations for the will change other than undue influence, *see Justison*, mem. op. at \*\*9-10, *supra*, Dawn has failed to satisfy her burden of proving undue influence in the execution of the will.

### Conclusion

For the reasons set forth above, I find that the petitioner has not demonstrated by the preponderance of the evidence any lack of testamentary capacity or undue influence in the execution of the Last Will and Testament

of John M. Walls, Sr. Her challenge to the decedent's will, therefore, must fail.