IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

IN THE MATTER OF THE ESTATE OF **MAGDALENE MOSES**	)	Probate No. ST-99-PB-5
Decedent	)	Lack of Capacity, Improper Execution, Undue Influence, & Forgery

MEMORANDUM OPINION AND ORDER

This Will Contest action came on for trial on Monday, April 19, 2010, before the Honorable Alan D. Smith, Magistrate of the Superior Court of the Virgin Islands. The Petitioner, Vernon Monsanto, appeared personally with counsel, Joseph Caines, Esq. The Respondent, Ira Moses, Executor of the Estate of Magdalene Moses, appeared personally with counsel, Nycole A. Thompson, Esq. After hearing the sworn testimony, and admitting the evidence offered by the parties, the matter was taken under advisement.

I. Background

Magdalene Moses ("Testatrix") died on September 11, 1998, in St. Thomas, U.S. Virgin Islands. She was survived by her stepson, Ira Moses ("Respondent"), and several grandchildren and great grandchildren from her deceased son, Emile Monsanto. Ms. Moses left a Last Will And Testament, dated November 10, 1987, which the Respondent, executor and beneficiary of Ms. Moses's estate, seeks to have probated. The Respondent's original petition to probate the decedent's estate was filed on January 12, 1999, and an amended petition was filed on June 15, 2007.

On December 23, 2008, Vernon Monsanto ("Petitioner"), one of the decedent's grandsons, filed a Declaration of Will Contest challenging the 1987 Last Will And Testament on

the grounds that: (1) Ms. Moses lacked testamentary capacity at the time she executed the will; (2) the will was improperly executed; (3) the Last Will And Testament resulted from the Respondent's undue influence over Ms. Moses; and (4) Ms. Moses's signature on the will was forged.

II. Discussion

A. Capacity

Title 15 of the Virgin Islands Code, Section 2 provides:

> All persons, except idiots, persons of unsound mind and persons under eighteen years of age, may devise their real property, by last will and testament, duly executed, according to the provisions of this chapter.

15 V.I.C. § 2 (1996).

"As they pertain to the execution of wills, the words 'sound mind' mean 'the ability of the testator "to mentally understand in a general way the nature and extent of property to be disposed of, and the testator's relation to those who would naturally claim a substantial benefit from the will, as well as a general understanding of the practical effect of the will as executed.'" *In re Estate of Savain*, 39 V.I. 91, 100 (Terr. Ct. 1998) (citing *Skelton v. Davis*, 133 So. 2d 432, 435 (Fla. Dist. Ct. App. 1961)).

The Petitioner argues that the Testatrix did not know the natural objects of her bounty because she left question marks next to the words great grandson and great granddaughter in her will, and as a result, the will should be invalidated because the Testatrix lacked mental capacity to execute a valid will under the Virgin Islands Code. The Respondent argues that the Testatrix had the requisite mental capacity to execute a valid will, and the fact that the Testatrix did not specifically name her great grandchildren is an insufficient basis to invalidate the will.

In the instant case, the evidence revealed that, in November 1987, the Testatrix was alert, able to handle her affairs independently, knew her own name, knew her own grandchildren, and cared for her grandchildren after school. During this same period, the Testatrix had trouble walking and needed assistance with cooking, cleaning, and other household duties. Petitioner offered no direct evidence that the Testatrix lacked mental capacity. Despite her physical infirmities, the evidence in the record clearly indicates that the Testatrix was of sound mind in November 1987.

Furthermore, the fact that the Testatrix executed a will that had question marks next to the words great grandson and great granddaughter cannot prove that the Testatrix lacked capacity. "[T]he court does not require that the testator have actual knowledge of the objects of his bounty. Rather, the court requires that the testator have 'sufficient mind to know' the objects of his bounty." *Williams v. Vollman*, 738 S.W.2d 849, 850-851 (Ky. Ct. App. 1987). Accordingly, the Petitioner has failed to prove that the Testatrix lacked the requisite mental capacity to execute a last will and testament.

B. Improper Execution

"There is no requirement that a testator correctly spell each and every word in the Will . . . ." *In re Estate of Smith*, Probate No. ST-02-PB-52, 2006 WL 3042958, at *2 (V.I. Super. Ct. Oct. 13, 2006). A will is not invalidated by the misspelling of the testatrix's name in the signature, where it is clear that the testatrix intended to execute the instrument by the signature affixed. *See Boone v. Boone*, 169 S.W. 779, 783 (Ark. 1914); *Succession of Bradford*, 49 So. 972, 974 (La. 1909); 79 Am. Jur. 2d *Wills* § 204 (2010).

The Petitioner argues that the Testatrix's will was improperly executed because the Testatrix's name and signature were misspelled on the will. The Respondent argues that the manner in which the Testatrix spelled her name when she executed the will is of no importance.

In the instant case, the evidence revealed that, in 1987, the Testatrix wanted to draft a will and directed her stepson, the Respondent, to take her to meet with Attorney George Marshal Miller. After the meeting, Attorney Miller sent a draft will to the Testatrix for review. On November 10, 1987, the Respondent took the Testatrix to Attorney Miller's office and the Testatrix and three witnesses signed the draft will. Marie Belgrave, an attesting witness of the Testatrix's will, testified that Attorney Miller was present at the office on November 10, 1987, and directed the Testatrix and witnesses to sign the will. Marie Belgrave testified that she knew the document was the Testatrix's last will. The fact that the Testatrix signed the will as "Magdalane Moses" and not as her birth name, "Magdalene Moses" does not invalidate the will because Magdalene Moses intended to execute her Last Will And Testament by signing her name on the instrument. "There is no requirement that a testator correctly spell each and every word in the Will . . . ." *In re Estate of Smith* at *2. Accordingly, the Petitioner has failed to prove that the will was improperly executed in violation of 15 V.I.C. § 13.

C. Undue Influence

Petitioner must establish that testatrix was aged and infirm and had a confidential relationship with the beneficiary for the rebuttable presumption of undue influence to arise. *See In re Estate of Savain*, 39 V.I. 91, 105 (Terr. Ct. 1998). In determining whether the parties had a confidential relationship, the court must consider a number of factors including: "the amount of time the beneficiary spent with the testatrix; whether the beneficiary handled many of the testatrix's personal or business affairs; and whether the testatrix ever sought the advice of the

beneficiary." *Id.* at 106. "The proper inquiry for a court is 'not just whether the persuasion induced the transaction but whether the result was produced by the domination of the [other's] will . . . by the person exerting undue influence.'" *Id.* at 104 (citing *Francois v. Francois*, 599 F.2d 1286, 1292 (3d Cir. 1979)).

In the instant case, the evidence established that, in 1987, Ira Moses assisted the Testatrix, Magdalene Moses, in transporting her to conduct errands such as shopping, banking, church, and medical appointments. The witnesses testified that Magdalene Moses was able to handle her affairs independently, but needed assistance with cooking, cleaning, and other household duties. Sometime prior to drafting the will, Attorney George Marshal Miller performed litigation work for the Testatrix. Upon her direction in 1987, Ira Moses took the Testatrix to meet with Attorney Miller for the purpose of preparing a will. Ira Moses was present at the meeting with Attorney Miller, and participated in a limited fashion. Ira Moses was also present at the signing of the will on November 10, 1987, but did not participate in the process.

The Petitioner testified that, in 1987, he assisted the Testatrix, his grandmother, in transporting her to conduct errands such as shopping, cooking, and church. The Petitioner testified that on more than five occasions in 1987, Ira Moses prevented him from speaking to the Testatrix. There is no evidence that this action or any other conduct of Ira Moses was sufficient to prove that a confidential relationship existed between Ira Moses and the Testatrix. Ira Moses did not handle the business affairs of Magdalene Moses. Ira Moses did not advise Magdalene Moses. Rather, the record indicates that Ira Moses spent the bulk of his time transporting and assisting Magdalene Moses so that she could conduct personal errands. "Influences based solely on friendship, affection, and kindness between persons do not amount to undue influence." *In re Estate of Savain* at 107 (citing *Barry v. American Security and Trust Co.*, 135 F.2d 470 (D.C.

Cir. 1943)). Therefore, the Petitioner has failed to prove that a confidential relationship and undue influence existed between Ira Moses and the Testatrix.

D. Forgery

The Petitioner did not introduce any evidence on the issue of forgery. Therefore, the Petitioner has failed to prove that the Testatrix's will was the product of forgery.

III. Conclusion

Based on the facts as testified to during the hearing and the documents admitted, the Petitioner has failed to prove his claims by a preponderance of evidence. Accordingly, it is hereby

ORDERED, ADJUDGED AND DECREED that the Petitioner's Complaint is **DISMISSED** with prejudice; and it is further

ORDERED that a copy of this Memorandum Opinion and Order be served on the parties herein.

DATED: June 4, 2010

ALAN D. SMITH
Magistrate of the Superior Court
of the Virgin Islands

ATTEST:
VENETIA H. VELAZQUEZ, ESQ.
Clerk of the Court

BY: _____
JEWEL A. SPRAUVE
Court Clerk Supervisor 6/4/10