

A Recent Primer on Undue influence: Estate of Julia Elizabeth Taschereau

By Gary E. Bashian, Esq.*

On October 29, 2010 Surrogate Webber, of the N.Y. County Surrogate's Court, rendered a decision regarding the Will of Julia Elizabeth Taschereau (NYLJ 1202474902148 at *1) which offers a detailed illustration of how to meet the evidentiary burden of proving Undue Influence in a Will contest.

Objecting to a Will on the grounds of Undue Influence presents evidentiary challenges. The close relationships that often surround an allegation of Undue Influence make it difficult to prove by direct evidence. The burden is on the Objectant to prove motive, opportunity, and the actual exercise of Undue Influence.

As Surrogate Webber states: "motive and opportunity to exercise undue influence are generally easy to establish. However...exercise, is often difficult to prove."

Taschereau is a classic example of circumstantial evidence being used to establish Undue Influence. The case involved twin sisters battling over their mother's Estate, whose primary asset was a co-op in Manhattan valued at approximately \$475,000. Proponent lived near her mother, and Objectant resided in France. Both had a history of animus to each other well known amongst the testifying witnesses. Proponent, one day after her mother's death, petitioned the Court to probate a Will, leaving Testatrix's Estate to Proponent. This Will contained significant changes from her prior Will, which prior Will left her Estate to her daughters equally. The later Will was signed while recovering from ill health, at the insistence of Proponent, as described by certain witnesses.

The Court determined that shortly before her death, Testatrix had health problems that made her dependant on Proponent; Proponent had Power of Attorney; Proponent managed Testatrix's finances; and Proponent was increasingly dependant upon Testatrix for financial assistance. Additionally, testimony was admitted into evidence that showed Proponent would threaten to deny Testatrix visitation of Proponent's children, to whom Testatrix was devoted. When Testatrix would provide financial assistance to Objectant, or allow Objectant to stay at the co-op during visits from France, Proponent made similar threats to her mother.

The Court noted that Proponent repeatedly sought to discredit the testimony offered by witnesses about Testatrix's family and finances, and attempted to manipulate the record to her own ends - offering only contradictory testimony about key facts and relationships not facts of her own. Compounded, these factors, and many others, were balanced by the Court which resulted in a finding of Undue Influence which led to the propounded Will being denied probate.

* Gary E. Bashian is a partner in the law firm of Bashian & Farber, LLP with offices in White Plains, New York and Greenwich Connecticut. Mr. Bashian is a past President of the Westchester County Bar Association, he is presently on the Executive Committee of the New York State Bar Association's Trust and Estates Law Section as Vice Chair of the Estate Litigation Committee, and is a past Chair of the Westchester County Bar Association's Trusts & Estates Section.

Mr. Bashian gratefully acknowledges the contributions of Andrew Frisenda, an associate at Bashian & Farber, LLP for his assistance in the composition of this article.