Circuit Court for Kent County
Case No. C-14-CV-20-000084

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1651

September Term, 2023

CONSTANCE AND CARL FERRIS CHARITABLE OPERATING FOUNDATION, INC., ET AL.

v.

CONSTANCE F. MEYER, ET AL.

Berger,
Albright,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: January 6, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms with Rule 1-104(a)(2)(B). Md. Rule 1-104.

This appeal arises out of a will contest in the Circuit Court for Kent County. The Constance and Carl Ferris Charitable Operating Foundation and Washington College ("the Foundation") contested the validity of Constance F. Ferris's ("Connie, Sr.") 2010 will. Constance F. Meyer ("Connie, Jr."), Connie, Sr.'s daughter, and Frederick Franke ("Franke"), Connie, Sr.'s estate attorney ("Defendants") defended the will.[1] At the close of the Foundation's case, the court denied the Defendants' motion for judgment on all the issues presented. At the close of all of the evidence, the Defendants renewed their motion for judgment and the court granted the motion on the issue of whether Connie, Sr. knew and understood the contents of her 2010 will. The court transmitted the remaining issues of testamentary capacity, undue influence, and fraud to the jury, which returned a verdict finding that at the time the will was executed, Connie, Sr. was of sound and disposing mind and legally competent to make a will. The jury further found that the will was not procured by undue influence or fraud exercised on the part of Connie, Jr. and Connie, Sr.'s grandson, Eric Meyer ("Eric").

On appeal, the Foundation presents one question for our review, which we rephrase slightly as follows:

> Whether the Circuit Court erred in granting a motion for judgment on the issue of Connie, Sr.'s knowledge and understanding of the contents of her 2010 will.

For the reasons herein, we shall affirm.

[1] We have chosen to use Connie, Sr. and Connie, Jr. to refer to the testatrix and her daughter both to avoid confusion and because this is how they are referred to by each other and their friends and associates throughout the record.

FACTUAL AND PROCEDURAL BACKGROUND

Constance Ferris died on December 18, 2018, at the age or ninety-two. On December 14, 2010, approximately one year following her husband's death, she executed the last will and testament that is the subject of this appeal. In this will, Connie, Sr. left $1.5 million of her residuary estate to the Foundation, a charitable organization she and her husband, Carl Ferris ("Carl") had established eight years earlier. The rest of Connie, Sr.'s residuary estate, totaling approximately $12.5 million, was left in trust to her daughter, Connie, Jr. and Connie, Jr.'s descendants (at the time three children -- Eric, Robyn McGrath, and Bethany Paves). Prior to 2010, Connie, Sr.'s estate plans had looked quite different. Having provided for their daughter and grandchildren through a series of long-established trusts, Connie, Sr. and Carl drafted wills in 2007 that left the entirety of their residuary estate to the Foundation.

The Foundation was conceived in 2002, when Connie, Sr. and Carl were looking to centralize their already robust charitable giving. In furtherance of this goal, Carl was introduced to John Poulton ("Poulton"), a strategic advisory at Brown Advisory Investment and Trust Company ("Brown Advisory"). While the Foundation was still in its planning phases, one of the Ferrises' daughters, Amy Lynn Ferris DiMarzio ("Amy"), died by suicide. Amy's death created an additional purpose for the Foundation -- a means of directing Amy's inheritance in a way that would not allow "the remaining part of the family to benefit from Amy's death." Instead of Amy's portion of the inheritance shifting to Connie, Jr.'s existing trust account, Amy's portion was moved into the Foundation.

Connie, Sr. and Carl were both founding members of the Foundation's board of directors and Connie, Sr. served as president of the Foundation until 2011.

To further fund the Foundation, the Ferrises established two charitable remainder trusts (CRUTs) designed to distribute to the Foundation at their deaths. Despite Eric's desire to keep the Ferrises' home in the family, they also transferred to the Foundation, ownership of their Rock Hall, Maryland home -- Kimbolton Farm ("Kimbolton") -- reserving a life estate in the property with the remainder interest going to the Foundation at their deaths. In 2010, the CRUTs were valued at $4,214,507, the remainder interest in Kimbolton was $3,900,000, and the existing value of the Foundation's endowment was $5,555,594. As of 2009, Connie, Jr. had received trust distributions totaling $725,816, with her total trust value exceeding $8 million. Connie, Sr.'s grandchildren each had a trust account with over $1 million and had received significant life-time distributions. With the disputed will in place, at the time of Connie, Sr.'s death, the Foundation received the CRUT distributions, the remainder interest in Kimbolton, and $1.5 million from Connie, Sr.'s residuary estate.

The Will Contest

The Foundation did not learn of the changes to Connie, Sr.'s will until her death in 2018. On June 19, 2019, the Foundation filed a petition to caveat Connie, Sr.'s will with the Orphan's Court for Kent County, Maryland, alleging that the paper writing dated December 14, 2010 was not her valid will. The Orphan's Court transmitted the following issues for trial in the Circuit Court for Kent County:

1. At the time the Purported will was executed, was the Decedent of sound and disposing mind, and legally competent to make a will?

2. Was the Decedent's execution of the Purported will procured by undue influence exercised and practiced upon the Decedent by Constance Ferris Meyer and others?

3. Were the contents of the Purported will read to or by the Decedent and known to her at or before the time of her execution of the Purported will?

4. Was the Purported will procured by fraud exercised and practiced upon the Decedent by Constance Ferris Meyer and others?

At trial, the Foundation focused on two primary issues concerning the validity of Connie, Sr.'s will -- her mental capacity at the time of execution and the role played by Connie, Jr. and Eric in allegedly driving the creation of the new will and its changes. They used both personal associates and medical testimony to build their case that Connie, Sr.'s memory problems and diagnosed dementia deprived her of the testamentary capacity necessary to execute a will in 2010 and rendered her susceptible to both fraud and undue influence at the hands of Connie, Jr. and Eric. It was Connie, Sr.'s daughter and grandson, they argued, who crafted the will to their own benefit, without Connie, Sr.'s true knowledge. They also argued that Connie, Sr.'s attorney, Frederick Franke ("Franke"), failed to inform Connie, Sr. of last-minute changes to the will regarding the total amount that was left to the Foundation. This failure, they argued, combined with Connie, Sr.'s memory problems, deprived her of knowledge and understanding of the contents of the will at the time it was executed.

Connie, Sr.'s Mental Decline and Testamentary Capacity

It was undisputed at trial that Connie, Sr. was suffering from diagnosed dementia in the lead up to her 2010 will execution. To underscore this fact and how it purportedly invalidated the will, the Foundation first called three of Connie, Sr.'s personal and professional associates: Patrick J. Byrne ("Byrne"), a long-time neighbor, friend, and trustee of some of the Ferrises' family trusts; Paul Alford ("Alford"), a business associate who had worked with Connie and Carl on investment opportunities throughout the years; and Poulton, who in addition to assisting in establishing the Foundation had formed a close personal relationship with the Ferrises and served as trustee of their CRUTs.

All three witnesses testified to the changes they observed in Connie, Sr.'s behavior and disposition leading up to the execution of the will. Prior to this period, Connie, Sr. was described as "vibrant, outgoing, bright." She had an Ivy League education from Cornell University and she often assisted her husband with his business ventures.[2] Byrne testified that this picture began to change between 2006 and 2008, when Connie Sr. was in her eighties. According to Byrne, Connie, Sr. stopped getting dressed, picking up the phone, or taking her usual trips to the mailbox, where Byrne once frequently stopped to speak with her. He also testified that she had some memory issues that caused her to forget

[2] From the 1960s to the 1980s, Carl Ferris owned and operated several Burger King franchises in Pennsylvania, which he sold in 1987 for approximately $23 million. The Ferrises were also involved in real estate investment during the 1980s and 1990s. Several witnesses testified at trial that, although Connie, Sr. was primarily a homemaker during these years, she was also actively involved in assisting Carl with these professional pursuits.

his children's names or appear, at times, not to recognize Byrne. Similarly, Alford testified to what he called a "sort of winding down," of his communications with Connie, Sr. during the same period. At a 2008 meeting, Alford testified that Connie, Sr. was less engaged and did not ask him about his family, as was her usual practice. Following Carl's death in November 2009, Poulton echoed the same concerns regarding Connie, Sr.'s mental decline. According to his testimony, at a meeting in December 2009, just one month after losing her husband, she did not recognize him by name and did not ask him about his daughters. He felt that Connie, Sr. appeared unfocused and disengaged from the conversation. Poulton testified that she got up from the table "a number of times and just kind of roamed into the kitchen."

The Foundation also presented evidence that Connie, Jr. was aware and concerned about Connie, Sr.'s memory issues during this period, introducing emails in which she wrote to friends about her concerns. In a 2008 email, for example, in discussing her father's health problems, she wrote, "I'm almost more worried about Mom than Dad. Her memory is soooo bad and it is a huge concern to me." In January 2010, she wrote that Connie, Sr. was "doing ok, but she is suffering from mild to 'medium' dementia . . . ." Deposition testimony by Eric also made note of Connie, Sr.'s memory problems. Eric testified that Connie, Sr. "had short-term memory loss or issues." Eric explained, however, that she still knew who he was and knew "the basics of her existence."

In addition to personal witnesses, three medical experts testified regarding Connie, Sr.'s testamentary capacity. Dr. Neil Blumberg, an expert in psychiatry and forensic

psychiatry testified for the Foundation. In writing his final report, he relied both on Connie, Sr.'s medical records and the deposition testimony of Byrne, Alford, and Paulson. Dr. Blumberg's original 2020 report, based on medical records alone, indicated inconclusive findings regarding Connie, Sr.'s testamentary capacity. Upon reviewing the deposition testimony in conjunction with her medical records, however, he ultimately concluded in a revised 2022 report that when Connie, Sr. signed the will, she "was suffering from the mental disorder, major neurocognitive disorder, due to Alzheimer's disease and vascular disease without behavior disturbances, that was severe." Due to these diagnoses, Dr. Blumberg reported that "she lacked testamentary capacity and that she was highly susceptible to undue influence," because "her neurocognitive disorder had significantly impaired her ability to express her wishes [and] to recall things, short-term as well as long-term . . . ."

During his testimony, Dr. Blumberg highlighted several events in Connie, Sr.'s medical history that were relevant to his report. According to her medical records, the first mention of her memory problems came in December 2007, when her primary care physician, Dr. Helen Noble, prescribed five milligrams of Aricept, "a medication that is prescribed for individuals who have mild to moderate cognitive impairment." By May 2009, Connie, Sr. was prescribed a second dementia-related medication, Namenda, to be taken in addition to the Aricept. Dr. Blumberg testified that the progress notes from Connie, Sr.'s visit with Dr. Noble that month stated that Connie, Sr, was "cheerful, more articulate, but clearly has memory/cognition problems."

On November 19, 2009, Connie, Sr. was admitted to the hospital for a suspected stroke, from which she recovered fully. Admission notes indicated "that [Connie, Sr.] was repeating conversations, that she was no longer driving, but she was talking about driving back and forth to the shopping center." Three months later, in February 2010, Connie, Sr. was again admitted to the hospital, this time following a fall. Dr. Blumberg testified that a "CT scan of her brain showed what's called defused cortical atrophy . . . a shrinking of the brain tissue . . . that can occur in the course of normal aging," and may have an "impact on one's cognitive abilities." Notes from this hospital stay indicated that Connie, Sr. "[t]ended to be confused and easily disoriented," and that she "[r]equires close supervision." On cross-examination, Dr. Blumberg confirmed that the February nursing notes also indicated that "Connie, Sr. is alert and communicative, that she has a history of dementia, yet has answered every question appropriately." Following her fall, Connie, Sr. was sent to Heron Point of Chestertown ("Heron Point") for rehabilitation. By April 2010, Connie, Sr. had permanently moved to Heron Point's assisted living wing, where she would remain until 2012, when she was moved to the facility's skilled nursing care.

Dr. Blumberg testified that in addition to relying heavily on deposition testimony recounting Connie, Sr.'s decline, there was one particular moment he felt spoke to her inability to understand the nature of her assets and her estate. This moment was recounted in notes taken by Connie, Sr.'s primary care physical, Dr. Noble, in September 2010. Speaking of her will, Dr. Noble noted that Connie, Sr. had indicated that she wanted to "leave a little more to her family." Dr. Blumberg testified:

> [O]ne of the criteria for understanding testamentary capacity is that the person has to be aware of the nature and extent of their assets. And so a comment like this, when she says leave a little more to her family, and what we're really talking about is $12 and a half million more to her family, that indicates to me a lack of awareness of the nature and extent of her assets.

In reply, the Defendants called Dr. Noble, who was recognized by the court as an expert in the fields of general internal medicine, geriatric medicine, the diagnosis and treatment of dementia, as well as the generally accepted standards for safeguarding vulnerable adults. Dr. Noble testified that she had served as Connie, Sr.'s primary care doctor for at least fifteen to twenty years. On September 22, 2010, she saw Connie, Sr. at Franke's request, because she wanted to make changes to her will. Dr. Noble's notes indicate that Connie, Sr. had few concerns that day, and "seems content." She wrote that she "[v]ery appropriately, asks about my 'boys' and remembers one is in Vermont. Describes the changes she wants to make in the estate in general terms -- appropriately and consistently." Dr. Noble testified that during this visit she "had the impression that [Connie, Sr.] had a basic understanding of what she was doing," and that "each time I had an encounter with her and the subject came up she said the same thing." Dr. Noble noted that Connie, Sr. spoke about the various caretakers and others working on her property. She found it significant that Connie, Sr. "could keep track of people's names and what they were hired for and which property they were doing what at . . . ." She explained, "when she talked about things, she wasn't just making it up . . . she knew what was happening."

Dr. Noble also testified to her observations regarding Connie, Sr.'s ability to recall her family and assets. She said, "it was a small family by then, and she was comfortable

with them and close to them." Dr. Noble believed that Connie, Sr. "understood that she owned . . . property that had value, but it wasn't something that she focused a lot of attention on," because "she was very family-oriented, she was more interested in people than property . . . ." When asked what she observed concerning Connie, Sr.'s ability to understand the function of a will, Dr. Noble testified that her "general impression looking back on it is that she knew what a will was and what it was for." She further testified that in September 2010, she believed that Connie, Sr. had the capacity to "recall her family members and other people she might consider as natural heirs." She had a specific memory of Connie, Sr. "trying to explain to [her] why she was changing somethings. And she used simple language and said that she wanted her daughter to have a little bit more." Dr. Noble explained further that although Connie, Sr. did not specify what she meant by "a little bit more," that "a little more for her would be a lot more for me, I mean, and for most of us."

Dr. Noble also spoke regarding Connie, Sr.'s broader medical history and how that history could have interacted with her mental acuity. For example, during the relevant period between 2008 and 2010, Connie, Sr. experienced several medical issues that can cause delirium – "a sudden . . . change in mental status," that is typically reversed once the underlying cause resolves. The first problem occurred in April 2008, when Connie, Sr. experienced extremely high levels of thyroid hormone and low sodium levels. Dr. Noble testified that patients in this situation can experience "brain dysfunction that would be considered reversible." Her thyroid issue resolved within a few months of treatment. Dr. Noble's notes further indicate that when Connie, Sr. was admitted to the hospital in early

February 2010 after her fall, she was diagnosed with a urinary tract infection. An expert for the defense, Dr. Guillermo Portillo, spoke in more detail about the effects of a urinary tract infection on older adults.[3] He testified that "the most common cause of delirium in . . . people over 65 is actually a urinary tract infection." He went on to say that "a simple infection can make a person confused, can make them hallucinate, can make them just not be oriented . . . ." Dr. Portillo prepared a report for the Defense in which he concluded that in December 2010, Connie, Sr. possessed the requisite testamentary capacity to execute a will.

All three doctors -- Dr. Blumberg, Dr. Noble, and Dr. Portillo -- discussed a series of mini-mental state exams (MMSEs) that Connie, Sr. took over the years prior to executing her will. As Dr. Noble explained:

> the person administering the exam asks a series of standard questions, . . . they're given five animals and then later on they're asked to try to remember those animals. There's a story and they're asked details about the story later on. There are some geometric shapes to copy and things like that.

These tests are often used to track the progress of a patient's dementia. A normal score on an MMSE is twenty-seven or higher out of a total of thirty possible points. Dr. Noble testified that someone with mild dementia would likely score somewhere between twenty-two and twenty-seven. The lower the score, the more severe the dementia. Between 2004 and 2010, Connie, Sr.'s scores ranged from twenty-nine to twenty out of

[3] Dr. Portillo is an adult psychiatrist with a subspecialty in forensic psychiatry and was accepted as an expert in these fields.

thirty.[4] All three doctors agreed that Connie, Sr.'s scores indicated mild to moderate dementia, but that such a diagnosis did not automatically destroy her testamentary capacity.

Changing the will

Carl Ferris died on Thanksgiving Day in 2009. Shortly after his death, in December 2009, Connie, Jr., Connie, Sr., Poulton, and Foundation attorney Mary Baker Edwards ("Edwards"), met to discuss Carl and Connie's estate plans. During this meeting, Poulton reviewed Connie, Sr.'s estate plans, including the family trusts set up for Connie, Jr. and her children. Poulton testified that he brought flow charts to the meeting that explained each trust, the amounts that had already been distributed to the beneficiaries and what they were expected to receive upon Connie, Sr.'s death. In 2008, Foundation attorney, Edwards, had expressed some concern that Connie, Sr. "may reverse everything that Carl has set up," with regard to their plans for the Foundation. Following this 2009 meeting, however, Edwards made a note stating, "Charitable Foundation -- assets sufficient to take care of family so excess to private operating foundation -- Connie, Sr. agreed then and agrees now."

[4] According to trial testimony, Connie senior received the following scores on her MMSEs through the years:

- 2004: 29 out of 30 (normal range)
- 2007: 27 out of 30 (normal range)
- March 2010: 20 out of 30 (moderate dementia)
- September 8, 2010: 28 out of 30 (normal range)
- September 22, 2010: 22 out of 30 (mild dementia)

During this meeting, the group also discussed Connie, Sr.'s tangible personal property ("TPP"). Under the terms of her 2007 will, all of Connie, Sr.'s TPP was to be sold and the proceeds given to the Foundation. Connie, Jr. testified that she was surprised upon learning this fact during the meeting and that Poulton suggested that she and her children make a list of items they would like to keep and speak to Connie, Sr. about them. Connie, Jr. testified that a few weeks after the meeting, she brought her mother a list of items. According to Connie, Jr., her mother replied, "oh, of course, you should have everything." When Connie, Jr. told her mother that this was not what her will provided for, Connie, Sr. reportedly "seemed very surprised and said it should all go to [Connie, Jr.], meaning not just the TPP, but everything in her estate." Connie, Jr. testified that over the next several weeks she came to her mother at least two more times to discuss her estate, wanting to ensure Connie, Sr. was certain about her wishes. The final time she spoke with her about it, Connie, Jr. testified that her mother said, "that damn Foundation has enough money."

In March 2010, Poulton and Edwards drafted a revocable trust agreement they intended to present to Connie, Sr. for her signature. Under this agreement, Connie, Sr.'s assets would be placed in trust and distributions made to her during her lifetime. At her death, in addition to the previously established CRUTs and the remainder interest in Kimbolton, this trust would terminate, and the remaining funds would transfer to the Foundation. Connie, Jr., Brown Advisory, and Byrne were listed as trustees.[5] Poulton

[5] This document was never signed.

shared a draft of this agreement with Connie, Jr. on March 19, 2010. In early June 2010, in preparation for a meeting with Poulton, Eric reached out to his attorney to request assistance in reviewing the draft of the revocable trust and other issues surrounding Connie, Sr.'s estate plans that were revealed following Carl's death. At the same time, Connie, Jr. contacted her attorney to similarly discuss how best to proceed.

On June 18, 2010, Poulton, Connie, Jr., Eric, and Connie, Sr. met to discuss Connie, Sr.'s estate plans. Poulton's contemporaneous notes indicate that they reviewed the revocable trust and that Connie, Jr. and Eric said that they "wanted to have [Connie, Sr.]'s will revised so that all assets would pass to [Connie, Jr.] free of trust and no additional assets would be given to the private operating foundation."[6] Eric also inquired about the possibility of using his trust fund to buy out the remainder interest in Kimbolton. Poulton explained Connie, Sr. and Carl's concerns about Eric managing the property from California but agreed to take it under consideration. Poulton indicated that he spoke with Eric and Connie, Jr. after the meeting and expressed his "concern about [Connie, Sr.]'s competence and strongly suggested that a doctor opine to her competency," should she seek to make "significant" changes to her estate planning documents. He also suggested that she be represented by legal counsel to make any changes and that Connie, Jr. and Eric "could not be present for these discussion as there would be the perception of 'undue influence.'"

[6] Several different accounts of this meeting exist. Both Connie, Jr. and Eric testified that they were never able to fully explain Connie, Sr.'s wishes concerning her will, but rather were cut off by Paulson as soon as they began to raise the issue.

In furtherance of these goals, Eric and Connie, Jr. were referred to Frederick Franke, an estate attorney located in Annapolis, Maryland. Franke first met with Connie, Jr. and Eric on August 18, 2010 to go over some of Connie, Sr.'s financial and estate planning documents. Franke then met with Connie, Sr. for the first time on August 26, 2010. Franke agreed that, because he "came in so late in the game," it would be prudent for Connie, Sr. to be evaluated by physicians to ensure testamentary capacity before they began drafting a revised will. On September 2, 2010, he contacted Dr. Noble about this, noting the details of this conversation in his records:

> I said that apparently [Connie, Sr.] had some memory issues but that I had a long discussion with her about things starting from her marriage going forward, she seemed to know where everybody was. Had a general idea of her property although it is apparently complicated -- the arrangements her husband set up. I think she understood what she wanted to do but I told her I wanted her examined. She said that was fine. I also said examined by a psychiatrist and [she] was somewhat startled by that and then joked with me did I think she was off her rocker. I said no and everything's fine.

On October 26, 2010, Franke and Connie, Sr. met for approximately thirty minutes. Franke remarked in his notes that she "seemed very alert and focused, she remembered me clearly." According to Franke, Connie, Sr. "joked about the psychiatrist that she saw and that apparently she's okay. Actually, what Connie, Sr. did was tapped her head with her finger and say apparently I passed -- or something to that effect."[7] On November 17, 2010,

[7] Franke was permitted to testify to Connie, Sr.'s joke regarding passing the exam to show that she understood and was aware of what was going on, not to prove the actual result of the exam. The full psychiatrist report was not admissible at trial because the

Franke received the report from Dr. Noble "affirming [Connie, Sr.]'s capacity to make changes in her estate." According to Dr. Noble, there appeared "to be no undue influence from family or friends, she is consistent, determined but not overly anxious about making changes." Franke's notes indicate that Connie, Sr. wanted to make these changes to her will "to move things from the foundation to Connie, Jr." They also "discussed how important Connie, Jr. was to her . . . she thought well maybe something to the foundation and the rest of it to [Connie, Jr.] but she really wanted most of it to go to her daughter."

On November 24, 2010, Connie, Sr. and Franke "talked about the numbers; she said she would like to leave something to the Foundation, maybe as much as 20% but 80% to [Connie, Jr.]." At their next meeting on December 1, 2010, Franke again went over the numbers with Connie, Sr., spoke about potential tax issues, and again discussed the 20%-80% split. Several working drafts of the will included a space to add these percentages once they were finalized. Franke's notes indicate that they reviewed the major components of the will several times. Connie, Sr. told Franke that she wanted to "study" the drafts and documents and get back to him. Franke left her with a copy of the will. He told her to call him once she decided what she wanted to do.

Franke's next notes concern a telephone conversation between himself and Connie, Sr. that purportedly occurred on Friday, December 10, 2010. In his notes, Franke wrote

doctor who prepared the report had not retained his files and did not independently recall the details of his examination of Connie, Sr. or his resulting report.

that he "got an email from [Connie, Jr.] regarding changes that her mother had discussed with her." In this email, Connie, Jr. wrote:

> I visited with my Mom this afternoon and we went over a few things in her will that I had concerns about and wanted to clarify with her and then with you. She shared the second draft with me, and she also said that I could share it with Eric. I asked for his help since he has an easier time understanding these things, and has been quite helpful over the past year.[8]

Connie, Jr. then went on to list four items she had spoken with Connie, Sr. about and wanted to review with Franke. Of these items, only one of them is relevant to this appeal:

> The amount that the Foundation would receive from Mom's estate is still an area of some uncertainty. I suspect that what is making it difficult for her to decide is that the amount is a percentage rather than a dollar amount. When I discussed it with her earlier today she was still undecided. We discussed what amount (instead of percentage) might feel right. She didn't reach an answer, but we left it that she would think more and I would return Friday morning to discuss it more. So perhaps it would make more sense for the will to state a specific dollar amount rather than a percentage. Also, Eric pointed out to me that a dollar amount would be simpler when it comes time to donate the funds since a full accounting of my mom's estate would not be requested by the foundation (to verify the calculation). I'll let you know how my conversations with mom go.

Neither Franke nor Connie, Jr. were able to independently recall the detail of a December 10 phone conversation regarding this matter. At trial, Connie, Jr. testified that

[8] At trial, the Foundation introduced evidence that Eric may have drafted this and other emails for Connie, Jr. before Connie, Jr. sent them to Franke. Connie, Jr. and Eric testified that they did not recall whether or not this occurred. They both testified that they had collaborated in hiring Franke and assisting Connie, Sr. with her estate plans and that Connie, Sr. had authorized Connie, Jr. to speak with Eric about these matters.

a phone call "would have been very difficult for [Connie, Sr.] with her hearing situation." Both Connie, Jr. and Eric had testified to Connie, Sr.'s hearing loss during this period of time. Despite this lack of memory, however, Franke's contemporaneous notes offered details regarding the call. He wrote:

> [Connie, Jr.] got off the phone and I spoke to [Connie, Sr.]. We went over it. I started with the specific bequest to the Operating Foundation. She said she wanted it a fixed amount -- she thought 1 ½ million was sufficient and the rest going into trust for her daughter. I discussed the other points and she agreed with all of those although obviously I was not present. So when I go back next week, I'll make the changes in the will to go over them to make sure that is what she wants to do.

Franke went on to write in his notes that,

> [t]he fixed amount to the Operating Foundation is actually a constant theme in the discussions we have had. Basically, she has been saying that she wanted to leave assets to her daughter and she's really not giving that much interest in leaving anymore to the Operating Foundation. And when I discussed how much the Operating Foundation already has, she sees that as a lot. The assets that she wants to leave to her daughter has always been framed by [Connie, Sr.] as to her daughter and then at her death to the grandchildren. I'll make the changes and take them to [Connie, Sr.] next week.

On Tuesday, December 14, 2010, Franke met with Connie, Sr. at Heron Point. He witnessed the will along with a Heron Point resident who was deceased by the time of trial. His notes from that date simply state, "met w/client and she executed will." The parties both conceded at trial that the will was duly executed and included an attestation clause that reads: "Signed, sealed, published and declared by Constance F. Ferris, the Testatrix above named, as and for her Last will and Testament, in our presence, and we, in her

presence, and in the presence of each other, have hereunto subscribed our names as witnesses."

Franke testified that he did not have any independent recollection of his meeting with Connie, Sr. or of reviewing the will with her that day before she signed it. However, he explained that his regular practice "if there's a change at the last minute, is to make sure we discuss it before there's a signing." Here, he made a note to himself "to make sure [to] check with [Connie, Sr.] that [the final will] comports with what she wants to do." Explaining his lack of detailed notes, Franke testified that he does not often make memos for meetings where wills are executed "because the will speaks for itself or it's supposed to speak for itself. So someone signs it, it ought to be a complete -- a complete thing."

Following the execution of the will, neither Connie, Sr., Connie, Jr., nor Eric informed the Foundation of the changes. Connie, Sr. continued to serve as president of the Foundation until June 2011, and she remained on the board of directors with Poulton, Alford, and Connie, Jr. until 2015. Between 2010 and 2014, she continued to execute unanimous consent authorizing charitable giving by the Foundation. In 2015, the Foundation bylaws were changed, reducing the number of directors to three and effectively removing Connie, Sr. from the board. Following Connie, Sr.'s death, Connie, Jr. was removed from the board of directors. Currently, no member of the Ferris family serves on the Foundation's board.

Motion for Judgment

At the close of trial, the Defendants filed a motion for judgment, arguing that the Foundation had presented facts insufficient to generate jury questions on the issues presented. On the issue of knowledge of the contents of the will, the Defense argued:

> [I]t's clear that what that issue is referring to is the same thing as testamentary capacity. There is no distinct grounds for setting aside a will on knowledge and reading of the will or knowledge and understanding of the will, it's a sub-issue of testamentary capacity. And to the extent that that issue is recognized as a separate grounds for setting aside a will, only in a very narrow case where there is some sort of a mistake or some sort of an abhorrent fact pattern that doesn't include fraud, doesn't include undue influence, and where the testator generally has capacity, but there's something weird that happens at the end of the day that somehow prevents the -- the maker from knowing what it is he or she is actually signing.

The Foundation urged the trial court to deny the motion. The Foundation's primary argument was that, even in the presence of testamentary capacity, a will can be set aside based on lack on knowledge and understanding of the contents if unusual circumstances exist the deprive the testator of that knowledge. In arguing that such circumstances existed did in this case, the Foundation pointed to the fact that changes were made to the will just days before its signing that altered the amount being granted to the Foundation from twenty percent of the residuary estate to a fixed amount of $1.5 million. Because of Connie, Sr.'s alleged difficulty with phone calls and Franke's inability to recall the details of the conversation discussing this change, the Foundation argued that there was a question as to who actually precipitated these changes, Connie, Sr. or Connie, Jr. Under these circumstances, the Foundation argued that it was just as likely that either the conversation

did not occur or that it took place between Franke and Connie, Jr, without Connie, Sr.'s participation.

To further add to the unusual circumstances, the Foundation cited the fact that the will was witnessed by Franke and a since deceased 89-year-old resident of Heron Point who could not testify. The Foundation also referenced a "big typo" in the final draft of the will as an indication that it was not reviewed with Connie, Sr. on the day of execution.[9] The Foundation concluded that, "[i]f [Connie, Sr.] had testamentary capacity and [the will is] not reviewed and she thinks it says something different than it is because it's never reviewed with her, that's not somebody's free will, that's not it at all."

The court denied the Defendants' motion for judgment as to the questions of testamentary capacity, undue influence, and fraud, but granted the motion as to the question of whether Connie, Sr. had knowledge and understanding of the contents of her will at the time of execution. The court explained that when a will is duly executed, "there is a presumption . . . with regard to the knowledge and understanding," and that in this case "there has been no evidence of an intervening event that would prevent her from understanding. Really no evidence that she didn't read it, just the suggestion that she might not have read it." The jury returned a verdict in favor of the Defendants, ruling that (1) at

[9] The typo that the Foundation was referring to, was the omission of the word "and" in Article XV, Section A of the will. As written, the clause stated: "Appointment of Trustee. I appoint CONSTANCE FERRIS MEYER BROWN INVESTMENT ADVISORY & TRUST COMPANY to serve as Trustees hereunder (collectively referred to in this instrument as the Trustee)." The trustees should have been listed as CONSTANCE FERRIS MEYER **AND** BROWN INVESTMENT ADVISORY & TRUST COMPANY.

the time the Purported will was executed, Connie, Sr. was of sound and disposing mind, and legally competent to make a will; (2) that Connie, Sr.'s execution of the Purported will was not procured by undue influence exercised and practiced by Connie, Jr. and others; and (3) Connie, Sr.'s Purported will was not procured by fraud exercised and practiced upon her by Connie, Jr. and others.

DISCUSSION

Standard of Review

We review the circuit court's ruling on a motion for judgment de novo, considering the evidence and reasonable inferences in the light most favorable to the non-moving party. *Address v. Millstone*, 208 Md. App. 62, 80 (2012). The trial court "must determine if there is any evidence, no matter how slight, that is legally sufficient to generate a jury question, and if there is, the motion must be denied and the case submitted to the jury." *Thomas v. Panco Management of Maryland, LLC*, 423 Md. 387, 394 (2011). Legally sufficient evidence requires more than "a mere scintilla of evidence, amounting to no more than a surmise, possibility, or conjecture." *Fowler v. State*, 240 Md. 240, 247 (1965). Instead, the evidence "must be of legal probative force and evidential value . . . ." *Id.* at 247 (citations omitted).

In a caveat case, "all conflicts in the evidence must be resolved in favor of the caveators and the Court must assume the truth of the evidence produced on their behalf as well as all reasonable inferences in favor of the caveators that may be drawn from the evidence." *Ingalls v. Trustees*, 244 Md. 243, 247 (1966). "The evidence advanced by the

caveatees, if uncontroverted, may also be taken into account." *Friedel v. Blechman*, 250 Md. 270, 286 (1968).

I. The trial court did not err in granting the motion for judgment as to the issue of Connie, Sr.'s knowledge and understanding of the will.

On appeal, the Foundation argues that the trial court erred in granting Connie., Jr.'s motion for judgment because there was ample evidence from which the jury could reasonably infer that Connie, Sr. did not know and understand the contents of the 2010 will. It is true that "[i]t is essential . . . to the validity of every will, that the party making it should know and understand its contents, otherwise it is not his will." *Taylor v. Creswell*, 45 Md. 422, 431 (1876). The necessity of submitting this question to the jury as an independent inquiry is not, however, automatic. This is because, "where a person of sound mind executes a will, and the same is his free and voluntary act, the law presumes knowledge on his part of the contents." *Taylor*, 45 Md. at 431. This presumption typically arises in one of two situations: when evidence shows the will was read to or by the testator, or from the due execution of the will itself. Philip L. Sykes, *Contest of Wills in Maryland* § 121 (1941); *see also Lyon v. Townsend*, 124 Md. 163, 191-92 (1914) (". . . it was shown that the will was drawn by the attorney for the testatrix . . . and was then read over to her . . . Under such circumstances, the jury was bound by the presumption of law in favor of knowledge of the contents of the will on her part."); *Griffith v. Diffenderffer*, 50 Md. 466, 486 (1879) (" . . . knowledge as a general rule will be inferred from the execution of the will itself.").

In most cases, the presumption of knowledge is conclusive, because wills "above all other written instruments must stand as written so long as they have been freely signed by competent testators." *Baker v. Baltimore Trust Co.*, 154 Md. 390, 391-92 (1928). There are, however, exceptional circumstances in which this presumption may be rebutted, and the question of knowledge must be submitted to the jury as an independent inquiry. *Lyon*, 124 Md. at 191. Maryland courts have explained that when there are "suspicious circumstances surrounding the preparation and execution of the will tending to rebut this presumption, it may be proper to require additional proof of some kind that the testator did in fact understand its contents." *Griffith*, 50 Md. at 486.

The question of knowledge and understanding is, however, not a simple one. Rather, it is closely tied to that of testamentary capacity, undue influence, and fraud. This makes sense. Where a testator lacks the requisite capacity to execute a will, it is unnecessary for a jury to make a separate finding that he also lacked knowledge and understanding on the contents. Similarly, this is true for a testator who has been the victim of fraud or undue influence in the crafting or execution of a will. Proper knowledge and understanding of the contents of a will could not exist, for example, when external forces have acted upon a testator to intentionally deprive him of such knowledge and understanding at the time of execution. Therefore, where a jury finds a lack of testamentary capacity, fraud, or undue influence, it is not necessary to reach the separate issue of knowledge and understanding of the will.

The Maryland Supreme Court explained this reasoning in *Baker v. Baltimore Trust Company*: "A question whether a testator knew or understood the contents of the paper which he executed is, of course, one submitted for consideration upon the supposition that the will *may not* be invalid because of mental incapacity, or in case the jury find the testator was capable." *Baker*, 154 Md. at 391 (emphasis added). Stated another way, the Court wrote, "[i]nvalidity upon the broad ground of mental incapacity would clear away any question of knowledge and understanding, and it is only the knowledge and understanding of a mentally capable testator that would ever be relevant." *Id.*

In *Taylor v. Creswell*, the Maryland Supreme Court addressed the issue of knowledge and understanding in this context. There, the trial court found that there was "no evidence from which the jury . . . could find either *fraud* or *undue influence*, or that the will was procured by persons standing in *a confidential relation to the testatrix*, or that the provisions of the will were the result of the suggestions or promptings of other person, which the testatrix was unable to resist." *Taylor*, 45 Md. at 429 (emphasis in the original). Therefore, the trial court instructed the jury that "if the will in question was properly executed, and the testatrix was of 'sound and disposing mind, memory and understanding, and capable of executing a valid deed or contract,' . . . and the same was her *free and voluntary act*, the jury were bound to find" the will is valid without considering a separate question of knowledge and understanding. *Id.* at 430 (emphasis in the original). This decision was upheld on appeal, because the caveator did not present sufficient proof to rebut the presumption of knowledge. *Id.* at 431.

In their reply brief, the Foundation argues that "there can be circumstances where the evidence of fraud, or undue influence, or incapacity are not, individually, sufficient to invalidate a will, but where the confluence of these suspicious circumstances nonetheless militates against presuming that the testator knew the contents of the will." In support of this point, the Foundation offers *Gillespie v. Gillespie*, 183 Ariz. 282 (1995), a case heard by the Supreme Court of Arizona. In *Gillespie*, the caveator appropriately argued that "wholly apart from issues of testamentary capacity and undue influence, a testator must know and understand the contents [of] a document before that document can be said to be that person's Will." *Gillespie*, 183 at 284. The trial court granted summary judgment in favor of the will's proponent based only on testamentary capacity and undue influence. *Id.* On appeal, the Court considered evidence that demonstrated that the testator did not request a new will, that her son had his own lawyer draw up the new will for his personal benefit, that he presented the will to the testator on her deathbed and did not disclose the contents to her, that she was intubated and could not speak or read the will, and that he lied to her regarding what it was she was signing. *Id.* at 285. The Court held that the evidence showing "lack of knowledge is so overwhelming that it is unnecessary to base our decision on any other ground." *Id.*

Fact patterns like these, of course, often speak to multiple issues that frequently overlap. We are not persuaded, however, that questions of fraud or undue influence generate a separate question of knowledge and understanding. Maryland case law, bears this out. In *Griffith v. Diffenderffer*, for example, the Maryland Supreme Court explained

that the "fact that a party is largely benefited by a will prepared by himself, or in the preparation of which he takes an active part . . ." are, indeed, suspicious circumstances. The Court held, however, that they are "but facts and circumstances to be considered by the jury in determining the question of fraud," not to rebut the presumption of knowledge and understanding of an otherwise competent testatrix. *Griffith*, 50 Md. at 484.[10]

This was also the case in *Rollwagon v. Rollwagon*, 63 N.Y. 504 (1875). There, the Court of Appeals of New York explained that "where the testator can neither read, write nor speak, there must be not only proof of the factum of the will, but . . . that he knew and understood the contents of the instrument and that it expressed his will." That case, however, rested not on an independent question of knowledge and understanding of the contents, but on undue influence. *Id.* The testator in *Rollwagon* was in extremely dire straights. By the time the will in question was drafted, leaving substantial property to his former housekeeper and third wife, "he could not utter a word or make an intelligible sound," and could "hold no communication whatever." *Rollwagon*, 63 N.Y. at 509. The

[10] Similarly, in *Kelly v. Settegast*, 68 Tex. 13 (1887), another out-of-state case cited by the Foundation, the Supreme Court of Texas held that the presumption of knowledge and understanding was rebutted under the circumstances that the deceased was in poor health, surrounded by those who benefited from the will, had never given instructions as to the contents of the will, and it was "an unnatural will in that it gives all of his estate to strangers to his blood." *Id.* at 20. In its holding that clear proof of knowledge was required to validate the will, however, the court indicated that such a question arose based on suspicion of fraud: "As has been well said, the law does not presume fraud, but when circumstances throw suspicion on a paper offered for probate, it does require clear proof." *Id.* at 21.

Court, held that, based on the facts and circumstances, the will was "the result of undue influence, imposition or fraud of some kind." *Id.* at 521.

Essentially, a close reading of this case law shows that the distinct question of knowledge and understanding of a will is only required when some suspicious circumstance *other* than testamentary capacity, fraud, or undue influence has been set forth to rebut the presumption of knowledge and understanding. What constitutes sufficiently suspicious circumstances is at the heart of this appeal.

As the case law makes clear, there is "no invariable and unyielding rule of law upon this subject." *Lyon*, 124 Md. at 190. In *Taylor*, the court indicated that suspicious circumstances could, perhaps, involve "a person suffering from extreme debility arising from old age or sickness, especially if he could neither read nor write; or where a will is prepared by a person standing in a confidential relation, or who is largely benefited by it, or even where the testator is of sound mind, if there be proof to show that he did not understand its contents." *Taylor*, 45 Md. at 431. Following *Taylor*, however, it became clear that such circumstances are typically not enough to rebut the presumption of knowledge when a will is either read to or by the testator or duly executed.

The Foundation presents, and we can confirm, only two cases in which the Maryland Supreme Court held that available evidence was sufficient to submit the independent question of the testators' knowledge and understanding of their will to the jury. The facts of these cases underscore the extreme circumstances required for such a finding. The first, *Lyon v. Townsend*, involved a situation in which the final will contained a substantive

mistake that went unnoticed due to the extreme effects of morphine on the testatrix. *Lyon*, 124 Md. at 186. There, the testatrix was competent to make her will, and no fraud or undue influence existed. *Id.* at 190. When she was handed the will to sign, however, she was under the influence of morphine following a failed surgery to treat a severe infection. *Id.* at 184-85. As she reached the portion of the will concerning the rest and residue of her estate, "she stopped and her eyes closed and she went backwards into a semi-conscious condition . . . ." *Id.* at 185. As a nurse present at the time testified, "she simply just fell . . . and I caught her. You see I had my arms around her and lifted her up again, and she went on and finished reading the will. It indicated to me that she was going under the influence of morphia." *Id.* at 186. It was later explained that there was a "grave mistake" to the residuary clause making it "evident that the persons who would take the larger portion of the estate under that clause [were] not the ones she intended to have it." *Id.* at 186.

The caveators argued that "notwithstanding the fact that [the testatrix] was competent to make the will and that she did, in fact, read it before she signed it, they have a right, under the facts and circumstances in evidence, to have the jury pass upon her knowledge of the contents of the whole will and the [residuary clause] as distinct and independent issues of fact." *Id.* at 190. The defendants argued to the contrary, that "assuming the capacity of the testatrix and that she read the will, the presumption of knowledge of contents, under the facts of this case, is conclusive." *Id.* The Court acknowledged the strength of the presumption of knowledge but found that this case was

"a most unusual and exceptional one," because "the greater part of her estate goes to persons who have no claim upon her bounty and to whom she never intended to give it." *Id.* at 192. Under the circumstances, the Court held that the trial court committed reversible error by not submitting to the jury the separate question of the testatrix's knowledge and understanding of the will. *Id.* at 192.

Friedel v. Blechman also deals with a gravely ill testatrix who prepared a will while hospitalized. *Friedel*, 250 Md. at 272. There, however, the question of knowledge and understanding arose from the testatrix's own assertions following execution. While hospitalized for an infection, the testatrix called an attorney to draft her will, reviewed the will, and signed it before two witnesses. Following her surgery, the testatrix began asking questions about what she had signed. *Id*. at 278. She asked her sister to "find out what kind of paper she had signed." *Id.* She said, "that they had gotten her to sign a paper. She didn't know what the paper was about and wasn't explained to her; they just got her to sign it." *Id.* at 279. Thereafter, the testatrix said to her niece, "I want you to see that my money is given to the people who deserve it." *Id.* at 280. By the time a new will was drawn up reflecting, as the testatrix said, "[w]ho should get my money," her "condition had deteriorated to the point where 'she was not rational' and could neither understand nor sign the will." *Id.* The Maryland Supreme Court explained that, under the circumstances of the will's drafting and execution, a rebuttable presumption of knowledge and understanding arose. *Id.* at 291. The Court held, however, that the circumstances of this case "would support the conclusion that she did not understand the contents of the . . . will at the time

is was executed . . . ." *Id.* Therefore, the question of whether she had knowledge and understanding of the will should have been submitted to the jury. *Id.*

By contrast, *Baugher v. Gesell*, 103 Md. 450 (1906), sheds light on how difficult it is to overcome this presumption. Unlike the testatrixes in the prior cases, the testator in *Baugher* was suffering from an illness so severe that his doctor testified that he was not "of sound and disposing mind and capable of executing a valid deed or contract at the time he executed the will." *Baugher*, 103 Md. at 455. Notwithstanding the question of testamentary capacity, the trial court instructed the jury that there was "no legally sufficient evidence in the case to sustain" the question of whether the testator knew the contents of his will at the time of execution. *Id.* at 452.

Regarding the execution of the will, evidence was produced showing that the testator had previously requested that the county clerk's office prepare a will for him and, at a later date, returned to the office and asked if they "had that paper ready." *Id.* at 458-59. The will was then executed, being witnessed by the clerk who prepared the document and the testator's doctor. *Id.* at 459. The caveators argued that the testator lacked knowledge and understanding of the contents of this will because he "could not read nor write, more than to write his name." *Id.* at 460. The Court, however, held that "the testator showed intelligent purpose, and intelligent pursuit of it, showed continuity of purpose, showed will power, showed memory and showed a comprehension of what he was about." *Id.* at 459. The "plain intendment," the Court wrote, "is that the testator knew that it was a paper carrying out the directions he had given for writing his will. If he did not know

this under the circumstances, it would be because a fraud was practiced upon him." *Id.* at 461.

Here, it is uncontested that Connie, Sr.'s 2010 will was duly executed. The will contains and attestation clause above which Connie, Sr. signed, and the document was witnessed by two individuals -- Franke and a resident of Heron Point. Therefore, a presumption of knowledge and understanding of the will was generated, and an independent jury question as to that issue was only required if the Foundation adequately rebutted this presumption. To do so, the Foundation was required to show that beyond the issues of testamentary capacity, undue influence, or fraud, some suspicious circumstances existed to call into question Connie, Sr.'s knowledge and understanding of the will at or before the time of execution. The Foundation has failed in its efforts to do so.

A. The issues of fraud and undue influence are not at issue in this appeal.

On appeal, the Foundation argues that "there is significant evidence of [Connie, Jr.]'s agency, and that of her son, in the creation of the new will." The Foundation points to the fact that Eric consulted his own attorney regarding changes to Connie, Sr.'s will, that Connie, Jr. hired Franke to serve as Connie, Sr.'s attorney, and that Connie, Jr. and Eric corresponded with each other regarding the contents of the will. The Foundation posits that Connie, Sr. was left "in the dark about the new will's genesis and purpose," because she did not initially indicate to Franke that she was certain about revising her will, and Franke did not disclose to her that he had already reviewed her estate documents.

The Foundation also argues that Connie, Jr. and Eric were the architects of the will's final revision, changing the residuary clause to leave the Foundation a flat $1.5 million dollars rather than the 20% of the residuary estate that had been discussed earlier in the planning phases. In making this argument, the Foundation presents an email that Connie, Jr. sent Franke related to this topic. The Foundation then argues that a purported phone call between Franke and Connie, Sr. to review this issue never occurred. In support of this contention, the Foundation elicited testimony from Franke that he could not independently recall the phone conversation and testimony from Connie, Jr. that a phone call of this nature "would have been very difficult" for Connie, Sr. because of her hearing problems. The Foundation concludes from this testimony that it is "equally plausible that Franke's call was really with [Connie, Jr.]." The Foundation further argues that no proof exists that Franke reviewed the final draft of the will with Connie, Sr. before she signed it, therefore leaving her unaware of these changes at the time of execution.

In response to these allegations, the defense presented Franke's contemporaneous notes regarding this phone call. Although he could not independently confirm the call, his notes indicate that a call was initiated between himself, Connie, Jr., and Connie, Sr. on December 10, 2010. Connie, Jr. then left the call, and he discussed the will at length with Connie, Sr. This discussion included a conversation about whether to leave the Foundation 20% of her residuary estate or a flat amount. According to his notes, Connie, Sr. settled on $1.5 million. Franke's notes also indicate that this was not the first time he and Connie,

Sr. had discussed this matter, as the issue of what to leave the Foundation had been an open question throughout the drafting process.

Assuming the Foundation's contentions are true, Connie, Sr.'s lack of knowledge and understanding "would be because a fraud was practiced upon" her by Franke, Connie, Jr., and Eric from the very origin of the will or in the final days of its drafting. *Baugher*, 103 Md. at 461. The claim that Franke, Connie, Jr., and Eric spoke privately about changing the amount Connie, Sr. would leave to the Foundation in her will and then intentionally failed to review these changes with her before she signed the final draft speak not to knowledge and understanding of the will as an independent inquiry, but to fraud and undue influence in its drafting and execution. These questions were submitted to the jury and are not at issue in this appeal. If the jury were to find that Connie, Sr. was subject to fraud or undue influence in the drafting and execution of her will, the independent question of knowledge would not be required. Alternatively, as the jury found in this case, if there was no undue influence or fraud in the creation of the 2010 will, only suspicious circumstances *beyond* those speaking to these issues would suffice to generate the independent question of knowledge and understanding of the will.

B. Testamentary capacity is not at issue in this appeal.

In support of its contention that the presumption of knowledge and understanding was rebutted, the Foundation also argues that "the new will represented a radical departure from the charitable intentions [Connie, Sr.] had implemented in the aftermath of her daughter's suicide, before her mental powers faded," and that for this reason, a "jury could

reasonably infer that [she] would not knowingly make such a dramatic shift absent compelling reasons, and without disclosing it to the charitable Foundation she founded and on whose board she sat." These arguments speak not to Connie, Sr.'s knowledge and understanding of the contents of the will, but to her testamentary capacity, a question that was submitted to the jury in this case. Were the jury to find that Connie, Sr. lacked testamentary capacity, the independent question of knowledge and understanding would be unnecessary, because invalidity "upon the broad ground of mental incapacity would clear away any question of knowledge and understanding." *Baker*, 154 Md. at 391. It follows, then, that were the jury to find that Connie, Sr. possessed the requisite testamentary capacity, as they did in this case, only suspicious circumstances *beyond* those speaking to this issue would suffice to rebut the presumption of knowledge and understanding and generate the independent jury question.

C. The Foundation's remaining argument is insufficient to rebut the presumption that Connie, Sr. had knowledge and understanding of the will.

The Foundation's remaining argument centers on the contention that due to Connie, Sr.'s "short-term memory loss, diminished cognitive ability, and difficulty with complex reasoning," she could not "know what was in the will unless it was read and explained to her immediately before execution." This argument rests on two contentions. First, that, notwithstanding her testamentary capacity, Connie, Sr.'s memory problems affected her ability to remember the contents of her will from day to day, and second, that the will was

not read to or by Connie, Sr. on the day of execution. The Foundation has failed to adequately support these claims.

As to the first claim, a lot of evidence was presented at trial regarding Connie, Sr.'s memory problems. The Foundation elicited testimony from Poulton, Byrne, and Alford that in the years before the will's execution Connie, Sr. had become less engaged with them, occasionally appeared not to recognize them, and stopped asking them about their families. The Foundation also introduced evidence that Connie, Jr. had expressed concern about Connie, Sr.'s memory problems to friends. Finally, medical testimony confirmed that Connie, Sr. suffered from mild to moderate dementia and memory loss. As in *Baugher*, however, the Foundation did not present any evidence to support the contention that Connie, Sr. was not able to understand or recall the conversations she had with Franke regarding her will. The defense presented uncontested evidence that Connie, Sr. met with Franke five times over a four-month period to draft the 2010 will. Notes from Franke's meetings with Connie, Sr. and his testimony indicate that during each of these meetings Connie, Sr. was an alert and active participant. She expressed a consistent desire to draft a will that left the majority of her estate to her daughter, Connie, Jr. and consistently indicated to both Connie, Jr. and Franke that she felt the Foundation had already received enough money at this point. The Foundation was unable to offer any evidence to suggest that Connie, Sr.'s memory problems interfered with her ability to recall what she was doing or what was included in the 2010 will from one meeting to the next.

Similarly, the Foundation has failed to present evidence sufficient to establish that Franke did not read the final draft of the will to Connie, Sr. on the day of execution. The most the Foundation was able to offer was that Connie, Sr. *might* not have reviewed the final draft before signing because Franke's notes do not provide specific details regarding a review of the document that day. To further support their contention, the Foundation points to the fact that the final draft of the will contained a "flagrant typographical error . . . that purports to name the 'Constance Ferris Meyer Brown Advisory & Trust Company' as trustee." The Foundation further argues that had she reviewed this draft, Connie, Sr. "would have had the opportunity to ask why the one thing she requested that Franke include in her Will, namely, the designation of Poulton as her trustee (as opposed to Franke's self-nomination), was conspicuously absent."

The Foundation is correct that no proof exists that Franke reviewed the final draft of the will with Connie, Sr. before she signed the will.[11] Franke's notes from the week before execution, however, indicate that he planned to review the final document with her

[11] The Foundation argues on appeal that the defendants admitted at trial that Connie, Sr. did not read the will. We disagree. At trial, the defense argued that based on the evidence a jury "possibly could infer that she didn't read it [but there'd be no legal consequence to that inference because we have the strong presumption that comes with the due execution of the will." We agree with the defense's characterization that, lack of evidence that Connie, Sr. read the will is insufficient, on its own, to rebut the presumption of knowledge. Affirmative evidence that such a reading occurred can certainly generate the presumption of knowledge and understanding. Nonetheless, the case law does not support a holding that such evidence is required to preserve a presumption of knowledge and understanding of the contents. We reach this question here only within the context of the Foundation's claims that memory problems precluded Connie, Sr. from knowing the contents of the will absent a contemporaneous reading of the document at the time of execution.

that day. His trial testimony also spoke to the fact that, although he could not independently recall the day the will was signed, it was his regular practice to review a will before a testator signed and that he believed, based on his notes and his regular practice, that he had done so with Connie, Sr. that day. The Foundation was unable to contest this testimony.

The Foundation is mistaken, however, that Franke named himself as trustee in the will. On the contrary, Franke's notes indicate that Connie, Sr. asked Franke about the possibility of naming him as a trustee and he declined, explaining that he did not, as a practice, serve in this role. Instead, as discussed in their meetings, the will names Connie, Jr. and Brown Advisory as trustees. Franke was named as a co-personal representative with Connie, Jr. as well as the trust protector. Both of these appointments, however, were discussed with Connie, Sr. per Franke's meeting notes.

Next, as in *Lyon*, the Foundation presents evidence that a mistake existed in the final draft of Connie, Sr.'s will. This mistake, however -- the omission of the word "and" in listing the trustees, is not analogous to the "grave mistake" made in *Lyon* that resulted in "the larger portion of the estate" not going to "the ones [the testatrix] intended to have it." Nothing about this error calls into question the substance of the will or changes its meaning in any way. Further, the omission of one word in a thirty-page document is not so "flagrant" as to suggest the document was not reviewed or to rebut the presumption that Connie, Sr. had knowledge and understanding of the contents of will.

Considering this evidence in the light most favorable to the Foundation, insufficient support exists to rebut the strong presumption that Connie, Sr. knew and understood the

contents of her will at the time of execution. Unlike the testator in *Lyon*, who because of the strong effects of morphine, was unable to review and discover a "grave mistake" in the contents of her will affecting the majority of her residuary estate, the Foundation has failed to show evidence sufficient to indicate that Connie, Sr. did not know or understand the document she was signing on December 14, 2010. On the contrary, it is undisputed that Connie, Sr. expressed a desire to change her will to leave more to her family and consistently considered these changes with Franke over the course of four months. In doing so, like the testator in *Baugher*, she showed "intelligent purpose, and intelligent pursuit," as well as "continuity of purpose" and "a comprehension of what [she] was about." *Baugher*, 459.

Further, notwithstanding her general memory problems, no evidence exists that Connie, Sr. had trouble recalling her discussions with Franke or understanding her estate plans. The Foundation has also failed to present evidence sufficient to show that Connie, Sr. did not read the final draft of the will. Finally, unlike the testatrix in *Friedel*, at no time during or after the drafting and execution of the will did Connie, Sr. express any concern or regret with her decision to change her will, nor did she question what she had done in executing the will.

CONCLUSION

For the forgoing reasons, we hold that insufficient evidence was produced at trial to rebut the strong presumption that Connie, Sr. knew and understood the contents of her duly executed will. The trial judge, therefore, did not err in granting a motion for judgment as

to the question of whether the testatrix had knowledge and understanding of the contents of her will at or before the time of execution.

JUDGMENT OF THE CIRCUIT COURT FOR KENT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.