

No. 1-25-1314

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

<i>In re</i> ESTATE OF MICHAEL MILLER, Deceased	)	
	)	
(Michelle Zwerling,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County
	)	
v.	)	21 P 2360
	)	
Patricia Kahn, Executor,	)	Honorable
	)	Terrence J. McGuire,
Defendant-Appellee)	)	Judge Presiding

PRESIDING JUSTICE ELLIS delivered the judgment of the court, with opinion.
Justices Howse and Cobbs concurred in the judgment and opinion.

OPINION

¶ 1 This is an appeal of a will contest. After the decedent Michael Miller died, his niece and sole living heir, Michelle Zwerling, opened an estate on the belief that the decedent had left no will. Two months later, a friend of the decedent and his purported caregiver, Patricia Kahn, produced a will that had been drafted by the decedent with the help of his best friend. That will left virtually the entire estate to Patricia.

¶ 2 Michelle demanded “formal proof” of the will under the Probate Act. The court admitted the will to probate over Michelle’s objection. Michelle then filed a will contest.

¶ 3 Several years later, before trial on the will contest, Michelle moved for substitution of judge as a matter of right, claiming the court had not yet ruled on a substantial issue. The court

denied the motion as untimely, finding that its admission of the will to probate was a ruling on a substantial issue that long preceded her motion for substitution. The case proceeded to trial; the court reaffirmed its preliminary conclusion that the will was valid.

¶ 4 Michelle now appeals that judgment, along with the court’s denial of her motion for substitution of judge. We agree that the admission of the will to probate was a ruling on a substantial issue, and thus Michelle’s motion for substitution was untimely. And we find no error in the court’s ruling upholding the will’s validity. We affirm the court’s judgment in all respects.

¶ 5 BACKGROUND

¶ 6 As it is necessary to our disposition, we will briefly note how portions of the Probate Act operate as we recount the case’s background. See generally 755 ILCS 5/1-1 *et seq.* (West 2024).

¶ 7 I. Decedent’s Death and Initial Probate Proceedings

¶ 8 Michael Miller died in March 2021; we will call him the “decedent” for ease. At the time of his death, his only heir was plaintiff Michelle Zwerling, his niece. Because she was unaware that any will existed, thus believing that decedent died “intestate” (without a will), Michelle filed a petition to administer the estate under Article 9 of the Probate Act. See *id.* art. IX. On April 12, 2021, the court named Michelle as the independent administrator of the estate.

¶ 9 II. Discovery of the Will and Article 6 Proceedings

¶ 10 About two months after the decedent’s death, defendant Patricia Kahn first claimed that the decedent did not, in fact, die intestate; he had executed a will in January 2021 (the “Will”). The Will was discovered in the possession of the decedent’s closest friend, a man named Michael Patoff, who had prepared it for the decedent. The Will named Patricia as executor and left her the entire estate, besides a single gift of plumbing tools. Most of the Will is typed, though it contains a few handwritten dates and initials.

¶ 11 Given this evidence of a will, Patricia filed a petition to admit the Will to probate under section 6-2 of the Probate Act. See *id.* § 6-2. When undisputed, these proceedings are typically routine ones where the court makes a *prima facie* finding that the will is valid and thus admits the will to probate. See *id.* § 6-4; *In re Estate of Alfaro*, 301 Ill. App. 3d 500, 503 (1998); *In re Estate of Gaglione*, 109 Ill. App. 3d 748, 753 (1982), *aff'd*, 97 Ill. 2d 408 (1983). The proponent of the will must prove by sufficient evidence that the will is valid; proof may be made by affidavits, if not live testimony. See 755 ILCS 5/6-4(b) (West 2020).

¶ 12 But this matter was not undisputed. Michelle exercised her right to petition for “[f]ormal proof” of the will’s validity. See *id.* § 6-21. Her petition found it “miraculous[]” that Patricia just happened to discover the Will. Michelle claimed that it was a “do it yourself” will that contained a signature that “does not appear to be that of the decedent’s.”

¶ 13 A petition for formal proof demands nothing less than live testimony or testimony from evidence depositions. See *id.* The court granted Michelle’s petition, so we assume the trial court conducted a hearing consisting of sworn testimony from live witnesses or evidence depositions. We assume that, as opposed to *knowing* that, because (1) we have no transcript of this hearing; (2) neither the record nor the parties’ briefs elaborate on this hearing; and (3) Michelle, the appellant, does not raise any procedural objection to this hearing on appeal.

¶ 14 In any event, after this hearing, the court found that Patricia had submitted sufficient evidence to admit the will to probate. The court named Patricia as the independent executor.

¶ 15 III. Will Contest Under Article 8

¶ 16 As already noted, though proceedings under Article 6 to admit the will to probate are often routine and not contentious, an interested party unsatisfied with the outcome is free to file a will contest under Article 8. See *id.* art. VIII. Unlike proceedings under Article 6, which usually

occur without much (or any) discovery, a will contest is a full-blown lawsuit with pleadings, discovery, and trial. See *Alfaro*, 301 Ill. App. 3d at 503-04.

¶ 17 There are two important substantive differences between proceedings to admit the will under Article 6 and an Article 8 will contest. For one, “[t]he question presented in a will contest is not whether the will was properly admitted but whether the will is to be declared valid or invalid.” *Id.* at 503. And second, the burden of proof shifts. During admission proceedings under Article 6, the proponent of the will has the burden of proof by sufficient evidence. 755 ILCS 5/6-4(a) (West 2020). But under an Article 8 will contest, “the burden is on the contestant to provide proof sufficient to overcome the *prima facie* validity of the previously admitted will.” *Alfaro*, 301 Ill. App. 3d at 503-04.

¶ 18 Unsurprisingly, the findings in Article 6 proceedings are “not *res judicata* as to issues that may be raised in a later will contest.” *Id.* at 503. A will contest, in other words, “allows the relitigation of the same issues raised in the [Article 6] admission proceeding.” *Id.*

¶ 19 On September 13, 2021, Michelle filed her petition to contest the will. She challenged the Will as (1) a forgery and (2) the product of undue influence, given that the Will left almost the entire estate to his “caregiver” and excluded “the decedent’s sole living heir, Michelle.”

¶ 20 A. Citation to Discover Assets

¶ 21 After Patricia took over as executor, a controversy arose over Michelle’s previous administration of the estate. Though not directly relevant to the issues on appeal, it does provide some context, at least in Patricia’s mind, so we will cover it briefly.

¶ 22 In a nutshell, Patricia claimed that, during Michelle’s brief tenure as administrator before the Will was discovered and even thereafter, Michelle “looted” the estate “and then failed to account for that looting over the long months, and then years, that followed.”

¶ 23 More specifically, in November 2021, the court ordered Michelle to produce an accounting of the estate from the date of the decedent's death through the date Michelle stopped being administrator. In July 2022, the court issued a rule to show cause against Michelle for failing to provide that accounting. Michelle provided the accounting in October 2022.

¶ 24 In May 2023, Patricia filed her objection to Michelle's accounting. The objection argued that charges "totaling at least \$313,393.58, are excessive at best *** and are acts of outright pillaging of the Estate at worst." She then issued a "Verified Citation to Discover and Recover" assets of Michelle, seeking to recoup over \$300,000 Michelle had allegedly taken from the estate as well as nearly \$150,000 Michelle allegedly received from selling estate property at auction.

¶ 25 The court ordered Michelle to respond to the citation by November 2, 2023, a date the court continued to November 30, then January 10, 2024. That date was later continued to February 16 to accommodate a conflict for Michelle's attorney.

¶ 26 B. Michelle's Motion for Substitution of Judge

¶ 27 On February 5, 2024, 11 days before the hearing on the citation, Michelle moved for substitution of judge as a matter of right. On February 16, the court denied that motion "due to the Court having previously ruled on an action on the authenticity of the will in this case."

¶ 28 IV. Trial

¶ 29 The court held the trial on the will contest over three hearings in January, March, and April 2025. Michelle argued that (1) the Will was a forgery; (2) if the Will existed, it was revoked by the decedent, as no original or copy was found in the decedent's possession; and (3) because the person inheriting nearly the entire estate, Patricia, was the decedent's "caregiver," the transfer of the estate was the product of undue influence and thus void.

¶ 30 Besides Patricia and Michelle, the only other live witness was Mrs. Patoff. By the time of trial, Mr. Patoff had passed away. His evidence deposition was admitted, as was the evidence deposition of the decedent's aunt, Rita Plenner.

¶ 31 A. The Patoffs

¶ 32 Both Mr. and Mrs. Patoff testified that Mr. Patoff and the decedent were as close as brothers. The two had been friends for over 50 years. Around Christmas 2020, the decedent asked Mr. Patoff to help him create a will. Mrs. Patoff was not part of the discussion but remembered that the two talked "for a week or two" while Mr. Patoff created what became the Will. The Will was created on Mr. Patoff's home computer using a home will-creation program. Mr. Patoff would ask the decedent questions based on prompts from the program and then input the answers. (Shortly after the Will was created, the Patoffs replaced the "old" computer they used and had not backed up any data to prove the date the Will was created.)

¶ 33 The Patoffs explained that they were finally able to deliver the Will to the decedent in January 2021. Mr. Patoff remembered the decedent explicitly reminding him to bring the Will during the January visit. Mr. and Mrs. Patoff both re-confirmed that they personally witnessed the decedent sign the Will in January 2021.

¶ 34 Neither had any doubt that the decedent was competent when he signed it. Mrs. Patoff went so far as to say the decedent was "100 percent" competent. Mrs. Patoff testified that the decedent "was leaving everything to Pat because she was helping him take care of stuff, and she was a good person." Mrs. Patoff couldn't remember who made the handwritten corrections to the Will, but Mr. Patoff thought he, not the decedent, had done so. Mrs. Patoff did not have any concerns that the Will was the product of duress or that the decedent was in any way forced to

sign it. Both Patoffs testified that two duplicate wills were created that same day, one they left with the decedent and the other he insisted they keep.

¶ 35 While the Patoffs knew of Patricia, they did not actually meet her until the day of the decedent's funeral. While Mr. Patoff had stored his copy of the Will, he did not even consider mentioning it because he was confident that someone would find the other original in the decedent's home. At some point in May, Mr. Patoff called Patricia to commiserate over the decedent's death. It was at this point he realized that she had no clue the Will existed. He explained to her that the decedent had created a will naming her the executor and giving her the majority of the estate. The two met in person, and Mr. Patoff handed over the Will to Patricia.

¶ 36 B. Patricia

¶ 37 Patricia testified that she had known the decedent for 35 years. They first met as neighbors, but he eventually became like part of the family. The decedent was invited to family functions and maintained a good relationship with Patricia's children and husband. She admitted that, as the decedent's health deteriorated, she "cared for him," but she did not believe she qualified as a "caregiver" in any literal or legal meaning of that word.

¶ 38 Patricia was the decedent's healthcare power of attorney and would help him with errands such as driving him to the bank, buying groceries, and picking up his medicine. She claimed she did these things out of friendship because the diabetic wounds on the decedent's legs made it difficult for him to drive or run errands. She explained that the decedent had nurses who would come to the house to attend to his wounds and provide medical care. Because she "lived quite a distance away," she helped the decedent about twice a month, though she agreed that the pace picked up as the decedent became increasingly disabled. The decedent sometimes paid her for the help, but she denied that it was a pay-for-services relationship.

¶ 39 At the time of the decedent's death, she had no idea that the Will existed. Shortly after the funeral, she turned over the keys to the decedent's home because she assumed that his aunt, Rita Plenner, and his sole living heir, Michelle, would be taking care of things. She did not look for a will after the decedent died.

¶ 40 Consistent with the Patoffs' testimony, Patricia testified that she first learned of the Will during the May phone call with Mr. Patoff. She claimed she had never discussed the estate with the decedent and was not involved in any way with the creation of the Will.

¶ 41 C. Michelle

¶ 42 Michelle was the decedent's sole surviving heir and did not locate any will in his home after his death. Growing up, she would see "Uncle Michael" several times a week. She was familiar with his handwriting in two ways: first, the decedent handwrote "most documents" and regularly sent handwritten greeting cards, and second, she was able to review his recent financial documents during her time as administrator. She believed "the purported signature of [her] uncle" on the Will "wouldn't have been his signature on that date. His hand was much shakier at that point." She formed that opinion based on his recent financial documents. She believed that the signature on the Will "looks like it did maybe five to eight years earlier. It also looks a lot lighter than anything else written on the paper, like maybe it was lifted off of another document."

¶ 43 She also had issues with the various corrections and initials on the Will. Specifically, the names of Patricia and Javier (the gentleman who got the plumbing tools) were misspelled in the Will. She claimed the decedent was "meticulous" and would initial documents with "either [a] MJM or MM, not a single M." She also found the corrections on the Will odd because "[i]f it was incorrect, he would typically tear it up. It would make him upset. If it was something he couldn't tear up, he would have initialed where he corrected it and made the initialing very

clear.” She thus found it suspicious that there was no attempt to correct the misspellings of Patricia’s and Javier’s names.

¶ 44 Finally, Michelle took issue with the supposed execution date of the Will. Superficially, the Will contains an execution date of January 30, 2021. But this date was one of the handwritten *corrections*. According to Michelle, “it looks like they wrote April and then wrote over it for January and did not initial the correction. It also looks like it originally said 20 instead of 30, also not initialed.” An April execution date would obviously be a problem “because [the decedent] would have been dead for a month.”

¶ 45 She also found it suspicious that certain documents appeared to be missing from the decedent’s home, most notably the Will itself. She also noted that “[t]he 24-months preceding his death were all missing in the financial folders,” though she was able to recover some of the documents, including a checkbook, from Patricia.

¶ 46 D. Rita Plenner

¶ 47 Like Mr. Patoff, Rita’s deposition was read into evidence. She was the decedent’s aunt, the sister of his father. She claimed she did not know Mr. Patoff; she was “not familiar with [him] at all” and “did not know who that is.” She knew of Patricia as “just a friend who lived across the alley.” She recalled that, when the decedent “was not driving and he wasn’t feeling very well” that “[h]e used to hire her. He would pay her in cash and he would have her take him to the bank, [she] would take [him] grocery shopping. She would take him to doctors.”

¶ 48 Rita was fairly certain that Michelle and the decedent had not seen each other recently. In her words: “They were on the outs. *** They had a petty spat, and it had something to do with the mother and the father at that—I don’t know what happened.”

¶ 49 Rita was certain that the decedent would never have created a will. According to her, both the decedent’s father (her brother) and the decedent did not “believe” in wills. According to her, the decedent had said he did not want a will and would “ ‘[l]et them fight it out.’ ”

¶ 50 V. Judgment

¶ 51 On April 17, 2025, after closing arguments, the court announced its decision, ruling in favor of Patricia and the Will’s validity.

¶ 52 First, the court did not find the Will to be a forgery. The court considered Michelle “a biased incredible witness” who stood to inherit the entire estate if the Will were invalidated. The court placed “great weight and credibility” on the Patoffs, as neither inherited anything in the Will and had no motive to lie. The court also reviewed the decedent’s signatures on many documents in the record and found them “similar” to the decedent’s signature on the Will.

¶ 53 On Michelle’s claim that the “Will was revoked or cancelled,” the court ruled that Michelle forfeited the issue by not pleading that claim in the will contest. The court also rejected the claim on the merits, noting that there was an “original Will in pristine condition.” The court was not moved by the fact that a duplicate of the Will (a second original, as Mr. Patoff said) was not found in the decedent’s possession.

¶ 54 Finally, the court determined that Michelle “did not properly plead the presumptively void transfer claim pursuant to the Probate Act in the Will contest.” As it did with the revocation claim, the court ruled on its merits, anyway, and rejected it. The court concluded that, while Patricia cared for the decedent in some senses of that word, she was not a “caregiver” within the meaning of the Probate Act provision governing undue influence. And even if she was, thus triggering a presumption of undue influence, Patricia successfully rebutted that presumption. The evidence “clearly establishe[d]” that Patricia “was not instrumental in procuring a Will” and, in

fact, “credible testimony by Michael Patoff and Patricia Kahn supports a finding she [did] not know of the Will[’]s existence until after the funeral.”

¶ 55 The court reduced its ruling to a written order on June 18. Michelle appealed on July 7.

¶ 56 ANALYSIS

¶ 57 On appeal, Michelle claims the court erred in validating the Will in several respects. She says the evidence showed the Will was altered and a forgery. She also claims the court made legal errors in its rulings on the issues of revocation and the presumption of undue influence.

¶ 58 But first, she argues that the court improperly denied her February 2025 motion for substitution of judge as of right. If she is correct, then everything that followed—most notably the judgment after trial—must be vacated. See *Palos Community Hospital v. Humana Insurance Co.*, 2021 IL 126008, ¶ 34. So we begin there.

¶ 59 I. Substitution of Judge

¶ 60 Each party is entitled to one substitution of judge as of right. 735 ILCS 5/2-1001(a)(2)(i) (West 2024). If properly made, a motion for substitution of judge as of right is absolute; the circuit court has no discretion to deny it. *Bowman v. Ottney*, 2015 IL 119000, ¶ 17.

¶ 61 But a party must “timely exercise” the right. 735 ILCS 5/2-1001(a)(2) (West 2024). A motion is “timely” if it is “filed before trial *** and before the judge has ruled on a substantial issue in the case.” *Palos*, 2021 IL 126008, ¶ 30; 735 ILCS 5/2-1001(a)(2)(ii) (West 2024).

¶ 62 That is where the issue joins here. Michelle’s February 2024 motion for substitution was filed long before the trial on the will contest. The question is whether the court had ruled on a “substantial issue” by February 2024. Because substitution as of right involves no discretion by the trial court, and the only question is whether a ruling fits within a statutory definition, our review is *de novo*. *Chavis v. Woodworker’s Shop, Inc.*, 2018 IL App (3d) 170729, ¶ 12; *Village*

of *East Dundee v. Village of Carpentersville*, 2016 IL App (2d) 151084, ¶ 10.

¶ 63 The trial court concluded that its admission of the Will to probate, following the formal-proof hearing under Article 6, constituted a ruling on a substantial issue well before Michelle’s motion for substitution was filed, and thus her motion was untimely. We agree.

¶ 64 There is no formal definition of a “substantial issue.” We interpret that phrase narrowly to promote rather than defeat the right of substitution. *Bowman*, 2015 IL 119000, ¶ 17; *Gohari v. McDonald’s Corp.*, 2022 IL App (1st) 201086, ¶ 18. We have repeatedly noted, however, that a substantial ruling is one that “directly relates to the merits of the case.” *Chavis*, 2018 IL App (3d) 170729, ¶ 13; see *Schnepf v. Schnepf*, 2013 IL App (4th) 121142, ¶ 26; *Rodisch v. Commacho-Esparza*, 309 Ill. App. 3d 346, 350-51 (1999).

¶ 65 That last point becomes evident when we consider what kinds of rulings have and have not qualified under the case law as rulings on “substantial issues.” Examples of rulings that have made the cut include:

“rulings on (1) motions to dismiss, (2) motions for summary judgment, (3) motions to dissolve a temporary injunction, (4) motions *in limine*, (5) motions to appoint a guardian *ad litem*, (6) motions involving allegations in the complaint, (7) pretrial rulings of law, and (8) other matters relating to the merits of the case.”

Gohari, 2022 IL App (1st) 201086, ¶ 16.

See *In re Marriage of Birt*, 157 Ill. App. 3d 363, 368 (1987) (collecting cases)).

¶ 66 Contrast that with rulings that have been found *not* to be substantial, including rulings on “(1) motions for continuances, (2) rulings on a notice to admit facts, (3) situations concerning a pretrial conference where no decisions were made affecting the merits of the case, (4) the grant of a motion to amend a complaint to which there was no objection,

(5) rulings on discovery motions, and (6) motions for severance of issues.” *Gohari*, 2022

IL App (1st) 201086, ¶ 17 (citing *Birt*, 157 Ill. App. 3d at 368 (collecting cases)).

¶ 67 Without question, the controlling theme separating “substantial” from insubstantial rulings is their focus on the merits of the case. Rulings on motions for leave to amend the complaint are not addressed to the merits and are not substantial. *Id.* ¶ 18. Nor are rulings on scheduling or continuances, *Schnepf*, 2013 IL App (4th) 121142, ¶ 58, or procedural rulings on discovery issues. *Stoller v. Paul Revere Life Insurance Co.*, 163 Ill. App. 3d 438, 441 (1987).

¶ 68 A ruling to admit a will to probate, on the other hand, is a ruling on the merits. True, it is not necessarily a *conclusive* ruling, as a party may initiate a will contest like Michelle did here. But conclusive or not, it is the judge’s determination that the proponent has carried her burden of proving that a will is valid by sufficient evidence. Indeed, in other contexts, courts have found preliminary rulings on the merits to constitute rulings on substantial issues.

¶ 69 Most notably, this court has stated as a foregone conclusion that “[c]learly, a ruling on a motion for a preliminary injunction is a ruling on a ‘substantial issue’ within the meaning of section 2-1001 of the Code.” *Sarah Bush Lincoln Health Center v. Berlin*, 268 Ill. App. 3d 184, 188 (1994); see also *Chavis*, 2018 IL App (3d) 170729, ¶ 13.

¶ 70 If a ruling on a preliminary injunction is clearly substantial, then it is clearer still that a ruling on the admission of a will to probate is a ruling on a substantial issue. A preliminary injunction is only partially based on the merits; it also involves considerations of irreparable harm and adequate legal remedies. See *Mohanty v. St. John Heart Clinic, S.C.*, 225 Ill. 2d 52, 62 (2006). A ruling on the admission of a will to probate, in contrast, is based purely on the merits.

¶ 71 And remember that rulings on the admission of a will to probate under Article 6, while *not necessarily* conclusive, in practice are often the final word on the question. Will contests are

not required and are actually rare. Indeed, the supreme court rules permit an immediate appeal of a decision to admit or refuse to admit a will to probate. See Ill. S. Ct. R. 304(b)(1) (eff. Mar. 8, 2016) (allowing immediate appeal of “[a] judgment or order entered in the administration of an estate *** which finally determines a right or status of a party”); see *id.*, Committee Comments (rev. Sept. 1988) (noting that paragraph (b)(1) “applies to orders that are final in character” and citing as example “an order admitting or refusing to admit a will to probate”).

¶ 72 The ruling to admit the Will to probate was thus a ruling on a “substantial issue” under section 2-1001. 735 ILCS 5/2-1001(a)(2)(ii) (West 2024). The motion for substitution of judge as of right, coming long after that substantial ruling, was thus untimely. In light of our holding, we need not consider Patricia’s alternative argument, or at least her strong suggestion, that the court’s order to Michelle to provide an accounting and its rule to show cause for failure to timely do so were, themselves, rulings on “substantial issue[s]” that predated Michelle’s motion for substitution. See *In re Estate of Hoellen*, 367 Ill. App. 3d 240, 246-47 (2006).

¶ 73 II. Trial Judgment

¶ 74 That leaves Michelle’s claims that the court erred in its trial judgment by rejecting her arguments that (1) the Will was a forgery, (2) the decedent revoked his will, and (3) the transfer was presumptively void because Patricia was the decedent’s “caregiver.”

¶ 75 A. Forgery

¶ 76 Michelle argues that the Will is a forgery or otherwise invalid. The trial court’s finding that the Will was genuine is entitled to deference; we will reverse it only if it is against the manifest weight of the evidence, meaning the opposite conclusion is evident. *Eychaner v. Gross*, 202 Ill. 2d 228, 251-52 (2002). The manifest-error standard applies equally to estate cases and

will contests. See *In re Estate of Burren*, 2013 IL App (1st) 120996, ¶ 20 (finding of undue influence); *In re Estate of Smith*, 282 Ill. App. 3d 389, 393 (1996) (admission of will to probate).

¶ 77 To be sure, Michelle supports her position with evidence. Patricia did not discover the Will until “64 days” after the decedent’s death. Mr. Patoff could not produce the computer used to type the Will. The second original was never found. The Will was clearly edited in handwriting. Names were misspelled. And Michelle claimed the initials of the decedent on the Will did not look like his handwriting.

¶ 78 But the existence of some evidence that supports the appellant’s position does not mean that the opposite conclusion is clearly apparent. *Eychaner*, 202 Ill. 2d at 270. The evidence fully supported the trial court’s finding. The court gave “great weight and credibility” to the testimony of both Mr. and Mrs. Patoff. The court found both Mr. and Mrs. Patoff’s testimony credible that Mr. Patoff drafted the Will with the decedent’s assistance, and the decedent signed both originals in the Patoffs’ presence. The court credited Mr. Patoff’s testimony that he could not recall who made the handwritten edits to the Will, that he replaced his “old” computer after drafting the Will, and that he contacted Patricia with the news of the Will.

¶ 79 And as noted above, the court did not find Michelle credible. The court did not specifically address the missing second original of the Will, but it could have reasonably believed that it was inadvertently discarded or buried among one of the piles in a cluttered house. And Patricia has consistently suggested that Michelle found the duplicate of the Will and discarded it, hoping to conceal its existence. The fact that any of these theories is plausible means that the evidence does not conclusively show the Will to be a forgery.

¶ 80 Finally, the court did its own comparisons of the decedent’s signature on various documents in the record against the signature on the Will and was satisfied of their resemblance. We cannot say that its conclusion was erroneous on that count, either.

¶ 81 It is not our place to reweigh the testimony and pick our own winner. We only ask whether the opposite conclusion—that the Will was a forgery—is clearly apparent from this record. It is not. We thus uphold the trial court’s findings.

¶ 82 B. Revocation

¶ 83 Michelle next claims the court erred in finding that the decedent did not revoke the Will. Recall, however, that before reaching the merits, the circuit court ruled that Michelle had forfeited this argument by failing to raise it in her petition for will contest. Michelle does not challenge that ruling in either her opening or reply brief. By not addressing the trial court’s principal basis for rejecting this claim, Michelle has forfeited this claim of error. See Ill. S. Ct. R. 341(h)(7) (eff. Oct. 1, 2020) (points not argued on appeal are forfeited); *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010); *Trilisky v. City of Chicago*, 2019 IL App (1st) 182189, ¶ 54.

¶ 84 In any event, the trial court was correct that the pleadings in a will contest matter. Our supreme court has been blunt: “In a will contest the contestant will be allowed to contest the validity of the will only upon the particular grounds that are alleged in the bill.” *Heideman v. Kelsey*, 7 Ill. 2d 601, 604 (1956). As early as 1906, the court recognized that a party is limited to the allegations in the pleading. See *Waters v. Waters*, 222 Ill. 26, 40 (1906) (*per curiam*) (contestant could not obtain relief on theory that “testatrix did not know the contents of the will” when the “only charges in the bill are those of unsound mind and memory, and undue influence”).

¶ 85 Michelle did not come close to pleading revocation in the petition for will contest. She alleged that the duplicate of the Will in the decedent’s house could not be located, but that could have been relevant to any number of claims, including forgery, as discussed above. No version of the word “revocation” appears anywhere in the pleading. The court’s finding of trial forfeiture was correct.

¶ 86 C. Presumption of Undue Influence

¶ 87 Finally, Michelle argues that the Will is presumptively void, as the law rebuttably presumes undue influence when a decedent leaves a sizeable inheritance to a “caregiver.” 755 ILCS 5/4a-10(a) (West 2020). And at trial, she says, Patricia did not rebut that presumption.

¶ 88 The trial court ruled that Michelle forfeited that claim, too, by failing to plead it in her petition for will contest. This time, however, Michelle addressed the forfeiture issue in her brief, however sparsely. So we will first address that question.

¶ 89 The claim Michelle raised at trial was that the Will was presumptively void under section 4a-10(a) of the Probate Act, which provides:

“In any civil action in which a transfer instrument is being challenged, there is a rebuttable presumption, except as provided in Section 4a-15, that the transfer instrument is void if the transferee is a caregiver and the fair market value of the transferred property exceeds \$20,000.” *Id.*

¶ 90 A “[t]ransfer instrument” includes a will. *Id.* § 4a-5(3). A transferee includes a legatee—someone who was given a testamentary disposition of property. *Id.* § 4a-5(4); see *id.* § 1-2.12 (defining legatee). A “[c]aregiver” is “a person who voluntarily, or in exchange for compensation, has assumed responsibility for all or a portion of the care of another person who needs assistance with activities of daily living.” *Id.* § 4a-5(1). Finally, the exception in the statute

(“except as provided in Section 4a-15”) provides that “[t]he rebuttable presumption established by Section 4a-10” may be overcome “by clear and convincing evidence that the transfer was not the product of fraud, duress, or undue influence.” *Id.* § 4a-15(2).

¶ 91 Recall that Michelle pleaded two theories in her petition to contest the will. The first was forgery, an argument she raised clear as day. Her second claim was this:

“The Decedent was ill at the time of the execution of the Purported Will. The Purported Will fails to mention the decedent’s sole living heir, Michelle, leaves the decedent’s entire estate, other than plumbing tools, to his care giver, Patricia, and on information and belief, appears to be the product of undue influence.”

¶ 92 Though the petition did not cite the statute, we think it sufficiently pled the statutory presumption of undue influence. The petition specifically mentioned “undue influence” and the fact that Patricia had been the decedent’s “caregiver.” And the estate’s value easily exceeded \$20,000. Michelle was entitled to a ruling on the merits.

¶ 93 To its credit, the court covered its bases. Though it found forfeiture on the undue-influence claim, it considered and ruled on the merits of this claim as well, out of an abundance of caution. The trial court should be commended for its belt-and-suspenders approach, which makes appellate review much more effective and efficient.

¶ 94 The court ruled that Michelle was not entitled to the statutory presumption of undue influence, as Patricia did not qualify as the decedent’s “caregiver.” The court further ruled that, even if the statute applied, the evidence clearly rebutted any presumption of undue influence.

¶ 95 The definition of “caregiver” is not particularly well settled, and its application here is not the easiest of questions. But we may affirm the trial court’s judgment on any basis in the record. *People v. Ferrell*, 2023 IL App (3d) 220292, ¶ 39. And we agree with the trial court that,

even if the Will was presumed to be the product of undue influence, Patricia presented sufficient evidence to rebut that presumption.

¶ 96 We have already explained why. The court credited the Patoffs' testimony that creating the Will was the decedent's idea and that, with a clear mind during multiple discussions over several days, he detailed to Mr. Patoff to whom he wished to leave his estate. Mr. Patoff testified that he contacted Patricia about the Will, not the other way around, some two months after the decedent's death. The court found no basis whatsoever to conclude that Patricia influenced the decedent, unduly or otherwise, in creating the Will.

¶ 97 And though the court may not have articulated verbatim that Patricia had overcome the presumption of undue influence by clear and convincing evidence, see 755 ILCS 5/4a-15(2) (West 2020), there is no doubt that the court made the requisite findings when it ruled that

“the evidence clearly establishes that Patricia Kahn was not instrumental in procuring a Will which would be a requirement of showing undue influence, one of the claims under the act. In fact, credible testimony by Michael Patoff and Patricia Kahn supports a finding she does not know of the Will[']s existence until after the funeral.”

¶ 98 As we have already explained, the court's finding in this regard was not manifestly erroneous. We uphold it. The court properly rejected the undue-influence claim.

¶ 99 CONCLUSION

¶ 100 The judgment of the circuit court is affirmed.

¶ 101 Affirmed.

In re Estate of Miller, 2026 IL App (1st) 251314

Decision Under Review: Appeal from the Circuit Court of Cook County, No. 21-P-2360;
the Hon. Terrence J. McGuire, Judge, presiding.

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