

**THE STATE OF NEW HAMPSHIRE**  
**JUDICIAL BRANCH**  
**NH CIRCUIT COURT**

ROCKINGHAM COUNTY

10<sup>th</sup> CIRCUIT - PROBATE DIVISION - BRENTWOOD

**Ralph Furino, Jr. Donna M. Furino and Anthony Furina**

v

**Arthur Hoover, Jennifer Hoover, David P. Dupont Individually  
and as Trustee, Rita Laurion and St. Jude Children's Research Hospital**

**Case No. 319-2013-EQ-00176**

**ORDER**

This matter came before the Court for trial over 10 days, commencing on July 16, 2014, with the final trial day completed on March 26, 2015. The final evidentiary issue was resolved by Order dated April 29, 2015. Thereafter, requests for findings and rulings were received by the Court on May 12, 2015. As of the commencement of trial, the respondents consisted of David P. Dupont, individually and as Trustee, and St. Jude Children's Research Hospital, Inc., both of whom appeared with counsel. Petitioners also appeared with their counsel. After a review of the testimony and demeanor of the witnesses, the exhibits admitted at trial, and the arguments of the parties, this Court denies the petitioners' requests for relief. The findings and rulings of the Court are set forth below.

**Procedural Background**

This equity action was filed after the Estate of Ann Jane Furina was opened (Docket No. 319-2012-ET-00636). By Order dated February 19, 2013, the will of Ann J. Furina was allowed and the administration of the Estate was granted to David Dupont as the executor/administrator of the Estate. An inventory was filed, and the petitioners in this action filed an objection to the inventory. After the petitioners filed the within petition, this Court consolidated the two actions for discovery, but not for trial (See Structuring Order for the Estate of Ann Jane J. Furina at Court Index No. #39). By Further Structuring Order dated February 11, 2014, the Court ordered that any final hearing in the Estate would be

deferred until after the final order was issued in this equity action. Therefore, the Estate remains open and will be the subject of subsequent orders as a result of this Order.

The within petition in equity was filed on March 19, 2013. Originally it contained 13 Counts, naming 5 respondents. As of the trial, the only remaining respondents were David P. Dupont, individually and as trustee, and St. Jude Children's Research Hospital, Inc..<sup>1</sup> The remaining claims were as follows:

- Count I: Requirement of Valid Will;
- Count III: Undue Influence;
- Count IV: Duress;
- Count VI: Revocation; and
- Count VII: Revival.

However, at the close of the petitioner's evidence, this Court dismissed Count VII and also dismissed Count VI as to the wills of Ann J. Furina. The claims in Count VI relating to a revocation of the trusts remained. As a result, the issues before this Court deal with the validity of the wills of Ann J. Furina, specifically a will dated October 4, 2012, and an earlier will signed in January, 2011, and whether those wills were obtained by undue influence and/or duress. In addition, this Court must determine if the documents the petitioners assert were executed by Ann J. Furina on October 6, 2012, taken together with her statements to various witnesses, revoked either or both of her trusts.

## **History**

This proceeding arises from a family relationship between Ann J. Furina ("Ann"), and her niece and nephews by her marriage to Joe Furina ("Joe"). Her niece is Donna M. Furino ("Donna"), and her nephews are Donna's brother, Ralph Furino, Jr. ("Ralph") and their cousin Anthony Furina ("Anthony"). Ann and her husband Joe were unable to have children of their own. However, when Ralph and Donna lost their father, they took Ralph in for several years as his mother was having problems dealing with the death and having the two children. Ralph was 2 ½ years old. His older sister, Donna, stayed with their mother.

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<sup>1</sup> Although the appearance for David Dupont does not state his capacity, throughout these proceedings, the parties have all proceeded as if Mr. Dupont was appearing individually, and in his capacity as Trustee and as the Executor of the Estate of Ann J. Furina.

Ralph lived with Ann and Joe for several years, and later went back to live with his mother and Donna when he was about to start school.

In 1960, Ann and Joe moved to New Hampshire and opened Antonio's Drive-In. When he was old enough, Ralph started to come to New Hampshire in the summer to work at the restaurant. Ann and Joe lived in a camp behind the restaurant, which was located at the Lee traffic circle. Anthony and Donna would also come up at various times during the summer.

After moving to New Hampshire, Ann became very close with Gertrude Ainslee. Her relationship was so close that Gertrude (whom they referred to as "Mother A" or "Mother Ainslee") named Ann in her will to receive her home in Rochester, which came with significant acreage. She also bequeathed a diamond ring and other jewelry to Ann. In addition, Mrs. Ainslee named Ann as a lifetime beneficiary of the Ainslee Memorial Trust. Joe did not receive anything from "Mother A". Joe and Ann moved into the house in the late 1970's, and Ann had a deed prepared so that the house was deeded in both of their names. That deed was dated July 6, 1979.

Ann and Joe continued their relationship with Ralph, Donna and Anthony. When Ralph got married, Ann danced with Ralph for the mother-son dance since Ralph's mother had passed in 1981. Ralph testified that Ann was like a mother to him.

After leaving the restaurant business, Joe and Ann continued to own a parcel of land on the traffic circle in Lee. Joe had also managed a nearby gasoline station so that when the Duponts took over a gas station at the Lee traffic circle, they hired Joe to manage it. Dave Dupont testified that as he grew up, he became very close with Joe and Ann. David and his parents lived next door to the house that Ann inherited from Mrs. Ainslee. He testified that Joe was like a father to him.

As a result of their work operating gasoline stations, Joe and David Dupont's father made trips to conventions in Las Vegas and other locations for the petroleum industry. Ralph sometimes accompanied Joe on his trips, as did Joe's friend Richard Picard. Richard testified that he remembered that on at least one of their trips to Las Vegas, Joe insisted that they stop at the St. Jude Children's Hospital on their way home, which he understood had a special place in Joe's heart. The Hospital is located in Memphis, Tennessee.

Joe died in 1995. However, the land that he and Ann owned on the Lee traffic circle was leased to McDonald's, and later sold. The funds from that lease and sale were placed in a limited partnership created in 1999. The limited partnership was established so that Ralph, Donna and Anthony could receive annual gifts from Ann of the proceeds of the sale without significant tax liability to them. Ralph assisted Ann with the sale and setting up the limited partnership.

After Joe's death, Ann suffered a heart attack and a minor stroke. In 2005 she was scheduled to have heart surgery. Given the medical procedure, she executed a general power of attorney, living will and advanced directive on January 8, 2005. Ralph and Donna were named as the agents in all of the documents. After the surgery in 2005, Ralph, Donna and Anthony would try to visit as often as they could, but it was not as much as they wanted. Ralph testified that in any case they would visit once in the Spring and once in the Fall. He said that for the last 2 years of her life, it was different. He said that "Ann wanted everyone to agree with Ann."

Leading up to this time, in 2009, there had been some burglaries in the area and Ralph wanted her to upgrade her alarm system. However, Ann would not do it, citing the cost of \$2,600.00 and her feeling that the system she had was good enough. Other friction developed between Ann and Donna regarding the handling of Ann's finances. Ann also began to feel that Ralph, Donna and Anthony did not care about her as much as they did in the past. When she asked them about coming to see her more, they suggested that she sell her house and move to New Jersey. She firmly rejected any idea of leaving the home that "Mother A" had left to her.

### **Estate Planning Documents**

Over the years, Ann and Joe had a number of wills. On July 21, 1979, Ann and Joe signed wills drafted by Arthur Hoover, an attorney practicing in Rochester, New Hampshire at the time. Joe and Ann left their estates to each other. However, if they died together or if one predeceased the other, then the household contents would be left to Ralph, and all other property would be divided with a 2/3 share to Ralph and 1/3 share to Anthony.

Approximately 13 years later, Ann and Joe again used Arthur Hoover to draft new wills. They executed the wills on January 29, 1992. Ann's will left her property to Joe, but if Joe predeceased her, her personal belongings were left to Donna Furino, with the residue of the estate given 2/3 to Donna and 1/3 to Anthony. Joe's will also left all of his property to Ann, but if she predeceased him, he left his estate 1/2 to Donna, 1/4 to Ralph and 1/4 to Anthony.

Just days before Joe died, Ann executed a new will on October 19, 1995, again prepared by Attorney Hoover. Ann's will left all of her property to Joe, but if he did not survive her, then Donna Furino would inherit her personal belongings and the residue would be left 1/2 to Donna, 1/4 to Ralph and 1/4 to Anthony.

Nearly 5 years after Joe's death, Ralph had Ann work with attorneys in New Jersey to form a trust as a part of her estate plan. As a result, on September 18, 2000, Ann executed the Ann J. Furina Trust Agreement (the "2000 Trust"). The 2000 Trust was created as a lifetime trust to hold assets to be used and managed by Ann, and as a pour over trust to accept the residuary estate from her new will signed at the same time.<sup>2</sup>

Under the 2000 Trust and the new will, Donna was to receive any personal property that was not in the trust. The remaining estate would go into the 2000 Trust, and upon Ann's death all trust property would be distributed 1/2 to Donna, 1/4 to Ralph, and 1/4 to Anthony. If any of those bequests were to lapse, then 1/2 would go to the St. Jude Children's Research Hospital ("St. Jude's" and legally known as the St. Jude Children's Research Hospital, Inc.) and 1/2 would go to St. Anthony's Orphanage. The Trust was governed by New Hampshire law and provided that it could be "altered, amended, revoked or terminated by the Grantor." (See Petitioners' Exhibit 4 at Article 15).<sup>3</sup>

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<sup>2</sup> Although drafted in New Jersey, the will and the 2000 Trust were executed in New Hampshire. One of the witnesses to the will was Rita Laurion who was initially named as a defendant in this action, but has since been dismissed. She was named as a legatee under the 2011 and 2012 wills.

<sup>3</sup> Prior to executing these documents, Ann had informed Attorney Hoover's office that he "confused" her, and that he had not returned several of her calls, and that she was not doing well physically. Attorney Hoover was not aware of any calls that he did not return to Ann, or how he ever confused her. Regardless, he delivered the files to her and was not involved with her signing them. The Court notes that at the time, Attorney Hoover was reviewing with Ann the limited partnership documents drafted by a New Jersey law firm so Ann could gift the money from the Lee traffic circle property to Ralph, Donna and Anthony. The petitioners want the Court to imply from this situation that Ann did not like Attorney Hoover. However, the confusion was just as likely from the nature of the limited partnership documents drafted by the New Jersey lawyers. Therefore, it should not be surprising that she would ask for him nearly 10 years later when she wanted to work on her estate plan and did not want Ralph, Donna and Anthony in New Jersey to know.

As exhibited by these estate planning documents, the petitioners were treated differently at various times and in various estate documents. However, they were the primary beneficiaries of Ann and Joe's estates. It was not until the 2000 Trust and will that St. Jude's was first mentioned as a legatee or beneficiary. This estate plan was signed after Ann executed the limited partnership documents that created the limited partnership for the monies generated by the lease and sale of Joe and Ann's land in Lee to McDonald's. The limited partnership was funded nearly entirely by Ann with an initial capital contribution of approximately \$275,000.00 with the intent that she would gift her partnership interests to Ralph, Donna and Anthony to allow them to receive the money from the Lee property with limited tax consequences.

The next estate planning document executed by Ann was The Ann J. Furina Revocable Living Trust Dated August 10, 2010 (the "2010 Trust"). The 2010 Trust was part of a new estate plan that Ann had initiated through Attorney Arthur Hoover in late 2009. It was signed shortly before Ann signed a new will in January, 2011. The 2010 Trust was created to hold Ann's home and all of her personal property in the home. At the time the 2010 Trust was executed, Ann also signed a bill of sale transferring the contents of her home into the 2010 Trust, and a quitclaim deed to the house transferring it into the 2010 Trust as well.

Section Four, paragraph 2 of the 2010 Trust, provided that Ann had the "absolute right, at any time and from time to time, to amend, restate, revoke any term or provision of this agreement in whole or in part." However, "[a]ny amendment, restatement, or revocation must be in a written instrument signed by the Trustee." See Petitioners' Exhibit 5, at Section Four. Ann was the initial Trustee of the 2010 Trust.

The 2010 Trust also required that after Ann's death, the real and personal property in the 2010 Trust would be sold with the net proceeds to be held as a part of the 2010 Trust estate. Under Section Seven of the 2010 Trust, the trust estate was to be distributed to St. Jude's. The 2010 Trust and all related documents were drafted by Arthur Hoover. Although the petitioners claim that Ann believed her property was going to be used for St. Jude's to build a children's hospital in Rochester, there are numerous letters from Attorney Hoover to Ann specifically stating that the property would be sold and the

proceeds would pass to St. Jude's. The notes of the meetings that Arthur had with Ann also reflect that they discussed the issue and Ann knew the property would be sold.

Several months later, on January 7, 2011, Ann executed a new will, also drafted by Attorney Hoover. This will devised the remainder of Ann's personal property to a number of legatees. It specifically bequeathed the diamond ring and watch she inherited from Gertrude Ainslee to the Notre Dame Church in Adams, Massachusetts. It also provides for bequests of 14.3% of her gross estate to the Grace Community Church of Rochester, 14.3% to St. Charles Children's Home in Rochester, 14.3% to Rita Laurion, 4.3% to her niece Joanne Iannaccone, 4.3% to her nephew Ralph Strizelli, .014% to Luanne Holnan her friend and hairdresser. All of the bequests could not exceed \$100,000.00, excepting only the bequest to Ms. Holnan which could not exceed \$10,000.00. The balance of the Estate would pour over into the 2000 Trust as amended. The will named David Dupont as the executor, with Arthur Hoover as the alternate executor.

At the same time, Ann amended the 2000 Trust. The amendment removed Ralph, Donna and Anthony as beneficiaries, and stated that the balance of the 2000 Trust's funds should be paid to St. Jude's. The documents specifically stated that naming St. Jude's as the beneficiary was "consistent with my previous history of contributing to Saint Jude's Children's Research Hospital, Inc. as a favorite charity of mine." See Petitioners' Exhibit 8 at paragraph 3 c. The amendment also added a clause that stated that any party that legally challenged any part of the 2000 Trust would forfeit any interest in the trust. David Dupont and Arthur Hoover were named as successor Trustees. They would receive reasonable compensation as Trustees, but only if that compensation was approved by St. Jude's and the Court.

At the same time that she executed the new January 2011 will and the amendment to the 2000 Trust, Ann signed two additional documents. The first was an Authorization directing the New Jersey law firm of Drinker, Biddle and Shanley to deliver the original copies of the September 18, 2000 will and the 2000 Trust to Attorney Hoover. The second was an Acknowledgment memorializing that she had requested that "my friend, David P. Dupont" be the Executor of her will, as well as her Agent under her new

Health Care Power of Attorney and a Durable Power of Attorney, in addition to being the successor Trustee to the 2000 Trust.

The Acknowledgment Ann signed at that time states that she approached Attorney Hoover to draft the documents, and that neither David Dupont nor Attorney Hoover requested or attempted to persuade her to name them in their various roles in the new documents. That document also recognizes that she first met with Attorney Hoover and David Dupont on September 20, 2010, over three months before the documents were signed. As will be discussed in further detail below, Ann was clear with both Arthur Hoover and David Dupont when she had her new estate plan prepared that they were to never discuss or mention the estate plan to Ralph, Donna or Anthony. She told them that she feared that if they knew of the changes, they would be angry and that she would not be able to resist their efforts to have her change the new estate plan.

Ann's final will was executed on October 4, 2012 while Ann was hospitalized. That will directed the executor to sell the diamond ring and watch from Gertrude Ainslee and distribute the proceeds to the Notre Dame Church in Adams, MA.

She also bequeathed \$50,000.00 to Grace Community Church, Rochester, \$50,000.00 to St. Charles Children's Home, Rochester, \$25,000.00 to the Basilica of Sainte-Anne-de-Beaupre in Quebec, Canada, \$17,000.00 to her niece Joanne Iannacone, \$16,500.00 to her niece Nancy Romano, \$16,500.00 to her niece Vivian Murawski, \$100,000.00 to her godson Raphael Strizelli, \$100,000.00 to her friend Rita Laurion, \$25,000.00 to her friend and hairdresser, Luanne Holman, \$100,000.00 to her caregiver Cecilia Cinfo, \$25,000.00 to her friend Heather Denton Arlin who helped care for her home after Joe died. The residue of the estate was to pass to the 2000 Trust as amended. As with the prior will, David Dupont was named as the Executor.

### **FACTS LEADING TO PETITIONERS' CLAIMS**

The estate planning documents challenged by the petitioners were drafted and signed from 2010 to 2012. They were the result of Ann contacting Arthur Hoover and requesting that he draft new estate planning documents for her. She told him that she was upset with Ralph and Donna, and that they had already received money from her as the



result of the lease and sale of the property she and Joe owned on the Lee Traffic Circle to McDonald's. That money was in a limited partnership that gradually gifted her limited partnership interest to Ralph, Donna and Anthony to minimize their tax consequences from the transfer and the distributions they received.

Ann started her estate plan revisions when she contacted Arthur Hoover after she was speaking with David Dupont in 2009. She asked David, who often visited with her, if he knew if Attorney Hoover was still in practice. In response, David provided her with Attorney Hoover's contact information. Ann then called and met with Attorney Hoover. She asked him to draft a will that would leave her property to St. Jude's. She told him that he must not communicate any of this information to Ralph, Donna or Anthony because she believed that if they found out about her estate plan, that they would be very upset and that she would not be able to resist them and would have to change her will back to the way it was before she decided to leave it to St. Jude's.

Ann told Attorney Hoover that she was not happy with them because they were not communicating with her as much as she thought they should, and she believed that Donna was keeping financial information from her. She also stated that she was worried that they wanted to move her to New Jersey. She said that she wanted to die in her house in New Hampshire, and did not want to move to New Jersey.

The Picards, both long-time friends of Ann and Joe, testified that they saw a change in Ann around 2010. They felt she was anxious, and she complained that Ralph and Donna never called. However, they thought that Ralph called every week. She also told Mr. Picard that Ralph, Donna and Anthony wanted to move her to New Jersey. Despite her anxiety, however, Mr. Picard felt that she handled her affairs pretty well. Moreover, as she required more help, he observed that Cecilia Cinfro (often referred to by the witnesses as "C") took pretty good care of her.

Mr. Picard also said that Ann was very "tight lipped" about her estate plans, and that she had mentioned St. Jude's once to him. Mr. Picard also recalled the trips he took with Joe to petroleum conventions in Las Vegas. He remembered that on at least one of those trips Joe made a special trip to St. Jude's as a part of the trip home. Mr. Picard always thought that made a lot of sense because both Ann and Joe loved children, and St. Jude's was a children's hospital.

Continuing with her wishes to not communicate certain information to Ralph, Donna and Anthony, Ann told Mr. Picard when she was hospitalized for surgery in January, 2012, that he must promise not to call Ralph, Donna and Anthony to tell them about her surgery.

His wife, Susan Picard, testified that Ralph, Donna and Anthony had told Ann that she would have to move to New Jersey. She said that Ann often raised the issue, and she and her husband told Ann that no one would force her to move there. She believes that Ann was angry with Ralph, Donna and Anthony because they were not there to help her every day.

This testimony is also consistent with the testimony of David Dupont. He was a long-time friend of Ann and her husband Joe, who had worked at the Duponts' gas station. David grew up living next door to Ann. David testified that he was at Ann and Joe's house the day Joe died. He also stated that after Joe was diagnosed with brain cancer, he made a promise to Joe that after Joe died he would take care of Ann.

David's mother had lived next door to Ann until she died. Starting in 2005, after his mother's death, David would stop by his mother's house on most weekends, and would also stop in and see Ann. She was always making food and she would dote over him. He recalled that as early as 2008 Ann had mentioned to him that she was not happy with Ralph, Anthony and Donna (whom she referred to as "New Jersey").

David recalled comments Ann made about being upset with Ralph because he wanted her to upgrade her alarm system, and she did not want to spend that much money. David thought that Ralph did not call her for 6 weeks after that. Ann told him that she wanted to change her estate plans because she did not want "New Jersey" to get the house or its contents. David told the Court that he offered to take her to New Jersey to talk with Ralph, Donna and Anthony about how she felt, but she refused. She told him that she did not want him to say anything to New Jersey about what she was going to do.

Ann also told David that she felt that Donna was keeping information about Ann's finances from her. She said that Donna had told her that she was not to go into a certain box at her house that had the bills and papers in it, and that she was not to go into certain drawers in the filing cabinet. Ann said she felt that Ralph, Donna and Anthony did not think she was very smart.

Sometime after Ann first told David that she wanted to change her estate plan, she brought the subject up again. When she did, she asked David if he knew whether Arthur Hoover was still practicing law. David knew of Arthur from a board that they had briefly been on together so he told Ann how to get in touch with the attorney.

After Ann met with the Attorney Hoover, she asked David to be the trustee of a trust as a part of her new estate plan. When he tried to tell her that he thought it would be problematic for him to do that, she reminded him that he had promised Joe that he would take care of her. David agreed and later understood he was the successor trustee after Ann. He refused any compensation when Ann offered it, and never received anything under any of her estate planning documents.

David also testified that Ann asked him to work on the list of beneficiaries for the 2011 will. He wrote down the names and asked questions about them. Ann said, for example, that Rita Laurian was included because she had helped Ann balance her checkbook for years and was a good friend. She also mentioned that one of the people on her list had a sick husband and needed the money. David reviewed the list with her and the fact that she had approximately \$600,000.00 in an account where the checks went from her lifetime beneficial interest in "Mother A's" trust.

After the documents were signed in 2010 and 2011, Ann asked David if Ralph, Donna and Anthony could find out about her new estate plan. He told her that they could see the deed at the registry of deeds transferring the house to the 2010 Trust. David testified that at that time Ann was very afraid that if they found out they would make her change her estate plan back.

Also testifying at trial was the philanthropic advisor for St. Jude's, Maureen Mallon. Ms. Mallon visited with Ann on five occasions. She testified that she recalled her meetings and conversations with Ann because Ann was one of the first donors she met as a part of her job, and that they would have long meetings at Ann's house where Ann would cook for her. She testified that part of her job was to visit donors in the New England area to provide them with information about St. Jude's and to discuss their wishes for any gifts to St. Jude's.

She first contacted Ann after St. Jude's had been told that Ann had set up a trust for the children's hospital. She understood that Ann had placed her real estate in the trust.

She knew that someone from Ann's attorneys' office had already called to make sure they had the correct language in the documents. Attorney Hoover's office subsequently sent the documents to St. Jude's.

In her first telephone conversation with Ann in September, 2010, Ms. Mallon called Ann to thank her for including St. Jude's in her estate plan and to let Ann know she got a copy of a deed and the trust document. Ann told her about an annuity that she had after Joe died, and that it was set up to go to St. Jude's when she passed away. Ann said she had done this on her own through a bank. Ms. Mallon said that St. Jude's records showed that 2002 was the first time Ann told St. Jude's that they were in her estate plan.

Ms. Mallon also testified that she reviewed the history of Ann's relationship with St. Jude's prior to 2010. Ann's first gift of about \$150.00 was in 1996. After that, through 2002-2007, Ann made small gifts of \$10 to \$30, but in 2009 she gave a \$1,500 gift. Ms. Mallon also indicated that St. Jude's records showed that in 2004, when St. Jude's called Ann to thank her for past gifts, Ann said she could not give any money at that time, but she also said that St. Jude's would get something nice later on through her estate.

Ms. Mallon went to meet with Ann at her house in November, 2010. Ann was there with David Dupont, and they all sat at the kitchen table.<sup>4</sup> She recalled that they discussed Ann's trust and that Ann had transferred her real estate into the trust and that the proceeds from the sale of the real estate were to go to St. Jude's. Ann also spoke of how she really wanted St. Jude's to build a hospital on her property.

Ms. Mallon responded by telling Ann that they could not build a hospital on her property as there is only one St. Jude Children's Hospital which is located in Memphis, Tennessee. Ms. Mallon further explained to Ann that St. Jude's could better treat the children by having just the one location.

Ms. Mallon recalled that after she told Ann that St. Jude's would not build a hospital on her property that Ann said that even if St. Jude's would not build a hospital there, she was still committed to St. Jude's and the kids at St. Jude's. She never discussed any conditions being attached to her gift to St. Jude's.

Ms. Mallon also recalled Ann explaining that she and Joe got the property from Mrs. Ainslee. Ann said that she thought that the Ainslees would both be pleased that she was

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<sup>4</sup> This was the only time that David Dupont was present for a meeting between Ms. Mallon and Ann.

leaving the property to St. Jude's. Ann showed Ms. Mallon pictures she had of kids at St. Jude's that she kept in a box on the counter – old photos that she and Joe had gotten of the kids at St. Jude's. Ann said that she and Joe loved the kids at St. Jude's, and that they thought of those kids as their own kids because they did not have children.

Ms. Mallon next visited Ann at her home in March, 2011. At that time, Ann confirmed that her house and its contents were to go to St. Jude's. She told Ms. Mallon of a niece and two nephews who lived in New Jersey. Over several visits with Ann, Ann told Ms. Mallon stories about the niece and nephews (specifically including Ralph and Donna) and that they wanted her to sell her house and to move to New Jersey. Ann said that she loved her house and did not want to move.

Ann also told Ms. Mallon that the niece and nephews in New Jersey would not be happy about what she was leaving to St. Jude's. Ann said she had left them the Lee Circle property proceeds. Ann mentioned that there was some kind of income from that property and that the income was going to her niece and nephews from New Jersey. She said they were Joe's niece and nephews.

Ann described to her how she had taken care of Ralph when he was younger and spoke of Donna and how Donna had a power of attorney for her. However, Ann also told her that she had given her power of attorney to David Dupont but did not tell Donna. Ann said she did not want to tell her niece and nephews because she did not think they would be happy. Ann said that she thought they were waiting for her to die to get her money. Ann also told Ms. Mallon that she hid all of her information from St. Jude's in a box under her bed as she did not want them to find it.

Ms. Mallon met with Ann again in January, 2012. Ann talked again about the property in trust for St. Jude's and how it would pass to them when she died. Ms. Mallon recalled that at least one other time she and Ann discussed the issue of building a hospital on Ann's property. She testified that when Ann raised the issue, Ms. Mallon told her again that they could not build a hospital there. She told Ann that everything would be sold and the money would go to help the kids at St. Jude's. Ann acknowledged that she understood, and said she loved the kids at St. Jude's. Ann mentioned that when she was sick she would talk about the kids being sick at St. Jude's and what they would have to go through as it made her feel better.

Ms. Mallon again met with Ann in March, 2012. At that time Ms. Mallon asked Ann to share her St. Jude's story – how she came to St. Jude's – with another person that was traveling with Ms. Mallon. Ann told them how she and Joe loved St. Jude's and how they prayed to St. Jude. She again took out the pictures she had of St. Jude's children and showed them to her two guests.

Ms. Mallon specifically testified that she told Ann that they would sell her property and the contents of her house because they could not take them to St. Jude's.

The last contact with Ann was in May, 2012. At that time, Ms. Mallon stopped by to see Ann because she was up in the area. Most of the discussion was about Ann's health. Ann was not feeling well and had an appointment with her doctor. She said she had a friend who takes her to doctors and shopping – but again she was thinking about the kids at St. Jude's and their treatment and what they went through. Ann said nothing of any second thoughts about leaving her home and its contents to St. Jude's.

In mid-August, 2012, Ann reached out to David Dupont and Arthur Hoover about making further changes to her will. Arthur Hoover asked his daughter, Jennifer Hoover, who had started to practice law with her father, to meet with David Dupont to have a conversation about Ann's estate plan. Arthur Hoover also directly contacted Ann to discuss the possible changes to the estate plan.

Jennifer Hoover met with David Dupont on August 27, 2012 about the possible changes. David provided her with a number of account statements that Ann had provided to him so that the Hoovers could get a clear picture of Ann's current assets. During the meeting, they called Ann and made a further appointment to discuss how Ann would like to change the disposition of her assets.

On September 6, 2012, Jennifer Hoover met with Ann at her home to review the list of changes that she wanted to make to her will. Jennifer Hoover went over the list with her, name by name, to make sure it was accurate. The process took approximately two hours. Ann was very friendly and conversational throughout the meeting, and she appeared spry, alert, and oriented. Jennifer observed that Ann understood the breadth of her property, and that she knew how she wanted to divide it up.

Ann told Jennifer that she did not include Ralph, Donna, and Anthony in her will because their relationship had soured over the years. Ann said that they tried to control

her, and they wanted to move her to New Jersey. She also said that they had received money from outside of the will already, and Ann did not want to give them any more. She also reiterated that she did not want Ralph, Donna and Anthony to know that she was changing her will.

Five days later, on September 11, 2012, Ann was brought by ambulance to Frisbee Memorial Hospital. She had collapsed and was found by "C" Cinfro who helped Ann with her shopping, doctor's appointments and housekeeping. After her initial assessment at the Hospital she was transferred to the Kindred Transitional Care and Rehabilitation – Dover facility ("Kindred") on September 17, 2012. The idea was for her to get her strength back. The records show the primary admitting diagnosis included an altered mental status and hypoglycemia, among many other health issues. Part of the treatment included Ativan and Zoloft for anxiety and depression.

Dr. Donovan's discharge summary from Frisbee reflects that that Ann was under "a significant amount of stress at home." He reported a conflict among family members regarding an attempt to move her to New Jersey – or at the very least, a perceived attempt to move her to New Jersey. He indicated that she was "clearly significantly depressed", and that she was started on Zoloft, with Ativan as needed. He also noted that he had spoken with Ralph who said that he was trying to keep Ann in her home, but that Ralph understood that it was "her perception that he was trying to have her moved to New Jersey." The Doctor finally noted that Ann seemed to be more accepting that her New Jersey relatives were not trying to move her to New Jersey.

Ralph testified that he found out that Ann had been admitted to the Hospital from her neighbor the day after her admission. The neighbor had called because she thought Ann was dying. No one had called Ralph before as Ann had instructed them not to contact Ralph, Donna or Anthony. When he found out, Ralph called Anthony, who was in Portland, and much closer to the hospital, so Anthony could go to see Ann. Ralph and Donna came up from New Jersey at the end of the week after they learned that she was not dying.

When Ralph and Donna arrived at the hospital, the first thing they recall Ann saying was "don't put me in a nursing home." Ralph told the Court that he replied that they

would not do that. Over the next few weeks they visited with Ann as she was ultimately moved to Kindred for rehabilitation.

At some point, Ann mentioned to Ralph that she had changed her estate plan, and mentioned St. Jude's building a hospital on her property. Ralph went back to Ann's house and looked through a box of documents he found that included a deed placing the house in the 2010 Trust. He saw several documents with David Dupont's name. He then consulted with Donna, who had a key to Ann's safe deposit box at Citizen's Bank. They went to that box and found that it was mostly empty. Ralph testified that he recalled that there should have been approximately \$100,000.00 cash in the box from money he thought was there from when Joe died and money put in the box in 2004 or 2005.

Unknown to Ralph was the fact that some time before, Ann had asked David Dupont to take her to Citizens Bank where she went into the safe deposit box. She then had him take her to Federal Savings Bank where she opened a new box. David did not see exactly what she took out of the Citizen's box, nor what she placed in the box at Federal Savings Bank. At the time, Rita Laurien worked at Federal Savings Bank. She had worked with Ann at Citizen's Bank and she and Ann had become friends.

After seeing the safe deposit box at Citizen's, Ralph tried to contact David Dupont. He believes it was around September 22, 2012, a weekend. He left messages on David's phone. When he did not hear from David over the weekend, Ralph sent a letter to David that was marked as Respondent's Exhibit 34 and was dated September 24, 2012. Ralph says that he overnight mailed the letter to David.

The letter "directs" David to do a number of things, including providing copies of trust documents and bank statements to Ralph, as well as the key to the Federal Savings Bank safe deposit box that Ann had opened. The letter tells him "You have put yourself in harm's way as you are involved in Furina family business, where you have no business being." It ends with the statement: "Let's just settle this like men, otherwise it will get very ugly." The letter makes no reference to Ann wanting to change her estate plans back to how they were with Joe, although Ralph does say he wants to confirm that Ann is getting what "she bargained for".

As this was happening, Jennifer Hoover had finished the revised will as requested by Ann. She mailed a copy of the new will to David Dupont on September 21, 2012 for



review by Ann. Ann had told Jennifer that she wanted to sign the will as soon as possible. Jennifer sent the documents through David because as a part of Ann's meetings with Arthur Hoover in 2010, Ann had told Arthur that he was to send any documents about the estate plan to David Dupont. She told Arthur that she was afraid that if the documents were sent to her home, Donna, Ralph or Anthony would see or find them.

When David Dupont received Ralph's threatening letter, he provided it to the Hoovers. After they saw it, Jennifer and Arthur went to Ann's room at Kindred on September 26, 2012, and discussed the contents of the letter with her. Given Ann's hospitalization and the involvement of Ralph, Donna and Anthony, Arthur Hoover believed he needed something from Ann allowing him to tell Ralph, Donna or Anthony about the powers of attorney Ann executed as a part of her new estate plan naming David Dupont as her agent. Without that, Arthur knew there could be some confusion as he understood that Ralph and Donna thought they could still act under the 2005 powers of attorney naming them as Ann's agents. Therefore, Attorney Hoover wanted Ann to clarify which documents she wanted to control, and they drafted an acknowledgment and authorization for to review with her.

Ann confirmed to them that she still wanted David Dupont to serve as her agent under the power of attorney. She authorized them to provide the power of attorney to Kindred, and said that they could give a copy to Ralph. Ann also stated that she did not want the Furinos to stay in her home (Anthony had been staying there, and Ralph and Donna did as well when they came up).

Ann told the Hoovers that she was concerned that Donna and Ralph would try to undo her estate planning. She said that she did not want that to happen. Jennifer Hoover's notes reflect that Ann said several times "don't leave me Hoover." She also noted that Ann "was quite clear in her desire that she does not want Donna and Ralph to have any ability to set aside the estate planning she did in 2010 and 2011." See Respondent's Exhibit 37.

As a result, Arthur and Jennifer reviewed with Ann the "Acknowledgment and Authorization" dated September, 26, 2012. This document, prepared by Jennifer Hoover, confirms that David Dupont was to be the power of attorney for Ann, and it authorized Arthur Hoover to contact Ralph and provide him with the information about the powers of

attorney and her instructions under the document. Ann agreed to and signed the document.

Arthur spoke with Ralph on September 28, 2012, and then wrote a letter to Ralph that same day providing him with copies of Ann's durable power of attorney, living will and healthcare power of attorney, all naming David Dupont as her agent. Arthur suggested that he, David and Ralph work together to help Ann return to her home and that they not involve her in the discussions about the powers of attorney due to her weakened state.

After speaking with Arthur, Ralph met with Ann again and told her that there would not be a hospital built on her property. He told her that St. Jude's only wanted her money. He explained what he thought would happen with her estate, and he testified that she was not happy. He claims that she said that she did not want St. Jude's to get the land, but that she would give them money instead. He testified that later she said that she would give them \$50,000.00.

Ann was readmitted to Frisbee Memorial Hospital on the following Tuesday, October 2, 2012 due to jaundice and other issues. Her initial review by Dr. Ruben reflected that she was a "delightful 86 year-old female", who had no significant memory loss, but that she did get anxious and depressed. She was thin and reported having lost 50 pounds and that she had been suffering from diarrhea since an operation in January, 2012, although that had abated. David Dupont reported to Jennifer Hoover at the time that Ann still wanted to execute her new will that week.

Initial tests at the Hospital were run on October 2 and 3, 2012. As of October 4, 2012, the notes from Dr. Baquero reflect that she was in bed "in no apparent distress." A procedure on October 5, 2012 revealed that she had pancreatic cancer through the use of a duodenoscope placed down her esophagus.

Ultimately the Hoovers scheduled the will signing for October 4, 2012. The signing was witnessed by Susan Hoover, the wife of Arthur Hoover, and Kaitlin Sweet, a nurse from Frisbee Hospital. Jennifer Hoover and Arthur Hoover were also in attendance and Jennifer Hoover notarized the documents.

At the time of the will signing, Arthur Hoover testified that he did not have knowledge of a procedure that Ann underwent on October 2, 2012. Jennifer Hoover testified that Ann appeared in be in a weakened state. Jennifer said that she barely

recognized Ann due to physical changes that Ann had undergone. She also testified that Ann was confused at times. However, she also testified that Ann was prepared for them to arrive, and that she was oriented as to time and place, and she participated actively in the will signing. The nurse, Kaitlin Sweet, testified that during the will signing Ann was engaged, and appeared to understand everything that was going on. Kaitlin had examined her earlier that morning, and she had found her fully oriented to time and place.

During the signing, Jennifer Hoover went over the bequests from the new will three times with Ann. The first time just Ann, Jennifer Hoover, and Susan Hoover were in the room. Arthur Hoover had left to find a witness, and he ultimately asked Kaitlin Sweet if she would agree to be a witness. Once Arthur Hoover and Kaitlin arrived, Jennifer Hoover went over all of the documents prior to Ann signing them. Ann was quite clear with Jennifer Hoover about how she wanted her various accounts handled, and Ann acknowledged that there were some Citizen's Bank certificates of deposit that would pass to her nieces and nephews outside of the new will.

During the review of the documents, Ann decided that she wanted to amend the \$50,000.00 bequest to "C" Cinfro because C's husband was sick and she needed the money. Jennifer Hoover crossed out the \$50,000.00 text and replaced it with \$100,000.00 as orally requested by Ann at the time. The change was then initialed by Ann and the witnesses. Ann initialed each page and was engaged in conversation with both lawyers throughout the will signing. Arthur Hoover confirmed at the end that Ann understood the will, she signed it voluntarily, and she was under no disability. At this point, Ann and the witnesses signed the document in each other's presence.

In addition to signing the will, Ann also signed a copy of an acknowledgement confirming that this will stated her intentions. Jennifer Hoover testified that she had also gone over this document with Ann as she did with the will. Jennifer Hoover had included a provision in the acknowledgment that authorized David Dupont and Arthur Hoover to bar Ralph, Donna, and Anthony from Ann's home and to change the locks. Jennifer Hoover stated this was in accordance with Ann's wishes that the "New Jersey crowd" not stay in her home.

Neither David Dupont, nor Arthur Hoover were named as beneficiaries in the October 4, 2012 will. The evidence is that Ann named the beneficiaries, many of whom

were the same ones from her January, 2011 will. The 2012 will did not change the general disposition of Ann's assets, although certain bequests were changed. The Court finds it significant that of all the documents purportedly signed by Ann on October 4 and 6, 2012, her will was the only one reflecting a change that Ann requested when the document was read to her. That change shows that at the time she was reviewing the will, she was clear about what her estate plans should be and was specifically thinking about the bequests to be made from her estate.

The Court notes that neither the petitioners nor the respondents raised any issue of Ann's capacity to sign the October 4, 2012 will. Therefore, the Court will not address that issue as a part of this Order other than to say that the testimony of the witnesses supports a finding that she had the legal capacity to execute the will and the acknowledgment on October 4, 2012.

Two days later, on Saturday, October 6, 2012, Ralph met with Ann at the hospital. He brought with him a number of documents. He claims he drafted the documents because Ann had told him that Attorney Hoover was not doing what she wanted, and that if St. Jude's was not going to build a hospital on her property, she wanted the trust terminated. It appears the documents were drafted when Ralph was in New Jersey during the prior week, the same week when Ann met with Attorney Hoover and told him that she wanted to keep her estate plan as she had discussed it with him and signed her new will.

At the hospital with Ralph on October 6, 2012, were Donna and Anthony. When they arrived at Ann's room, Ann's friend Richard Picard was visiting with her. Ralph said that they needed a notary and he left the hospital to get his wife, who was a notary public. When they returned, he says he saw Ralph read all of the documents to Ann and that she was alert and said she agreed with the documents. He testified that he saw her sign the documents.

The documents signed by Ann that day consisted of what Ralph called a letter to Attorney Hoover that Ralph says Ann requested he draft. Ralph testified that the letter was to tell Attorney Hoover that he was not doing what Ann wanted (the "Revocation Letter"). Also included was a living will, advanced directive for healthcare and power of attorney. The documents were in forms used in New Jersey where Ralph had practiced law prior to his suspension from the New Jersey bar earlier in 2012.

Two days later, Ralph faxed the documents to Arthur Hoover with a letter dated October 8, 2012. The letter, marked as Respondent's Exhibit 42, attempts to terminate the prior powers of attorney signed by Ann in 2011, remove David Dupont as trustee of Ann's trust, demands the key to the safe deposit box at Federal Savings Bank, and says that "David DuPont [sic] is not permitted near my Aunt under any conditions." It accuses David of being verbally abusive to Ann and intimidating and indicates that Ralph will seek a restraining order if Dupont does not comply.<sup>5</sup>

The letter also demands a copy of the Ann J. Furina Revocable Living Trust and the last will prepared by Attorney Hoover's office, and tells Attorney Hoover to terminate the Trust immediately. Ralph also tells Attorney Hoover that any necessary documents to do this are to be faxed to him immediately. The balance of the letter implies that David was trying to take advantage of Ann, and says that Ann can do what she wants with her property. However, Ralph then states that Ann and "Uncle Joe always had a plan and that plan was discarded several years ago under some very unusual circumstances." The letter makes no mention of Ann wanting to go back to her last will when Joe was alive, although it does instruct Attorney Hoover to revoke the trust holding her house.

The letter faxed to Attorney Hoover (Respondent's Exhibit 42), had a number of attachments, including the Revocation Letter, which was a one page undated document that was addressed "To Arthur Hoover", directing him to "terminate/revoke the Ann J Furina Revocable Trust", among other things. Three versions of the Revocation Letter were included, with one appearing to have Ann's signature on it, another having no signature, and a third having a signature with a partial jurat for a notary to sign the document.

The documents came as a part of a single faxed document, yet at trial, Ralph testified that there was only one version of the Revocation Letter addressed to Attorney Hoover and not three. He claimed that he had no idea where the other documents came from. In addition, he claims that he could not produce the original of the Revocation Letter as he had mailed it to Attorney Hoover. Attorney Hoover, however, testified that he never

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<sup>5</sup> The Court notes that in part of the DVD that the petitioners submitted purporting to show Ann's wishes, Ann seems upset with the fact that David Dupont had not come to see her more often, and Ralph encourages her in this feeling despite the fact that he had instructed David to stay away from her under threat of a restraining Order. However, Dupont testified that he had been visiting her regularly up until the last week or two of her life.

received any originals. The Revocation Letter is important as it is the only document signed by Ann indicating that she wants the "Ann J Furina Revocable Trust immediately" terminated, and the deed to her house to be returned to her individual name.

Ralph testified that pretty much every time he was in New Hampshire he discussed the estate issues with Ann. He claims that she told him that she was unhappy with the trust and she wanted it to back to the way it was when Joe had died. He was not specific about when these conversations occurred, but based on the fact that Ralph learned of most of the estate plan in late September, and early October, it is fair to conclude that it was at the time of or after he had Ann sign the documents he drafted attempting to revoke the trust.

After receiving Ralph's October 8, 2012 letter and the documents, Attorney Hoover communicated with Ralph about a meeting for the two of them to discuss how to move forward. That meeting was held in New Hampshire on October 11, 2012. Prior to that meeting, on October 10, 2012, Arthur and Jennifer Hoover filed an ex parte petition to set aside power of attorney and for temporary stay on financial affairs and estate planning with the Probate Division of the 7<sup>th</sup> Circuit Court.

The petition stated Attorney Hoover's concerns that the documents presented to him by Ralph were contradictory to the documents that Ann had just signed and confirmed with Arthur and Jennifer Hoover just two days before. It also raised issues about the invalidity of the notary acknowledgment for the powers of attorney, and stated Attorney Hoover's belief that it would be best to have a guardian over Ann's Estate, and that there be a stay on all activity regarding Ann's financial affairs and estate planning until a formal guardianship could be established. It names Donna and Ralph as respondents based on the fact that they were named as the agents under the October 6, 2012 powers of attorney that Ralph had drafted.<sup>6</sup>

The petition was given to Ralph at the time of the meeting with Arthur on October 11, 2012. There was a hearing scheduled on the ex parte requests that afternoon and both Arthur and Ralph attended. At the hearing, Ralph and Arthur agreed to certain terms for a temporary order. Those terms included an agreement to have a guardian ad litem

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<sup>6</sup> Again, on the DVD presented to the Court of Ann's meeting with Ralph, Donna and Anthony in November, 2012, Ralph tells Ann that Attorney Hoover sued he and Donna as if they had been sued personally for something. In fact they were parties only because of their status as Ann's agents under the powers of attorney he drafted and had Ann execute on October 6, 2012.

appointed to determine what Ann's wishes were regarding her estate, and that there was to be no action taken under the various powers of attorney except as allowed by the Court.

The Court issued an Order adopting Ralph and Arthur's agreement. The Order appointed Linda Mayrand as the guardian ad litem to advocate for Ann, and to investigate the circumstances related to the execution of the documents described in the petition. In addition, those named in the various powers of attorney were prohibited from exercising their powers (except that Ralph and Donna could make health care decisions if they consulted with Attorney Hoover in advance and obtained his agreement).

Also, under the agreement and the Order, none of the parties would take any actions to change the documents or to make other use of them. However, Donna could continue to pay Ann's normal and regularly occurring bills conditioned on her providing Attorney Hoover with a written accounting of the transactions. The agreement not to make use of any of the documents or to change them was important since the power of attorney Ann signed naming Ralph as her agent contained a provision allowing him to terminate any of her trusts. As for the financial issues, the Order sought to keep the status quo regarding the payment of Ann's normal bills.

The evidence at trial showed that Donna violated this Order by failing to provide any accounting to Attorney Hoover for the payment of any bills for Ann. Donna also distributed \$115,000.00 from the limited partnership by having Ann sign checks from the limited partnership to Ann, Ralph, Donna and Anthony on November 9, 2012. This was the remainder of funds then in the limited partnership account from the Lee Circle property. It was also part of the money Ann had referred to as having been given to the petitioners when she spoke about not including them in her wills or trusts.<sup>7</sup> Ralph, Donna and Anthony received approximately \$104,000.00 from that distribution.

There was testimony by Attorney Hoover, as well as from Attorney Mayrand, that after the issuance of the Order, Ralph attempted to contact attorneys to meet with Ann and effectuate changes to her estate planning without notifying Attorney Mayrand. Although Ralph initially said he could not remember calling any attorneys, he did admit on cross examination that he may have called an attorney about estate planning for Ann. Attorney

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<sup>7</sup> The exhibits show that the limited partnership had at least \$275,000.00 in it at its creation, nearly all of it contributed by Ann, with Ann owning 99.6%. By the time of this distribution, Ann's interest was reduced to 10%, with 90% held by Ralph, Donna and Anthony as reflected by the checks Donna distributed. Over the years, Ann had gifted nearly all of her limited partnership interests to them.

Mayrand stated that she became aware of the attempts at estate planning when she was contacted by an estate planning attorney asking questions about Ann.

In addition, Ralph tried to get Attorney Hoover to meet with him at Ann's room to discuss her estate plan right after the Order was issued. He denies that he was trying to get Attorney Hoover to change the estate plan, but he wanted Arthur Hoover to find out what Ann wanted to do, and then to do it. It is clear from the evidence that after the Court Order was issued by agreement, Ralph continued to try to get Attorney Hoover and at least one other attorney to meet with Ann to change her estate plan even though the GAL was supposed to meet with Ann to determine Ann's wishes.

Attorney Mayrand also testified that she understood that Ralph believed that Dupont and Hoover had pushed Ann into her original estate planning documents, having her create an estate plan that she did not want to do.

As the GAL, she met with Ann on two occasions. The first was on October 16, 2012, and the second was on October 19, 2012. Attorney Mayrand noted at trial that there was a typographical error in her report as it indicated that the first meeting was on November 16<sup>th</sup>, but the report was filed on October 24, 2012, so the November date is incorrect. She indicated that she attempted to speak with Ann two other times, but Ann was sleeping.

As for her two meetings with Ann, Attorney Mayrand found Ann to be much clearer and more detailed on October 16, 2012. On that day, Ann told Attorney Mayrand the background about how Ann and her husband came to New Hampshire and their history here. Although Attorney Mayrand later understood that the medical records indicated that Ann was depressed, she did not find her to be depressed when she spoke with her.

When Linda Mayrand met with her, Ann did not have a lot of strength, and appeared frail and weak. Ann told Attorney Mayrand the story of how she ended up caring for Ralph when he was a young child. Ann seemed to be in the past during this conversation, as she asked if she had done the right thing in returning Ralph to his mother, and she asked if she could get Ralph back. She never referred to Donna by name, she simply called her "the little girl." Ann understood she had a hernia, and she asked if she could live with the lump that was in her chest.



During the second meeting, Ann asked Linda Mayrand if she was "winning her court case." Although she knew of a Court case, Ann was not able to describe what the court case was about. Ann told Attorney Mayrand that she had made a mistake, but when she was asked what the mistake was, Ann did not answer. Linda asked her if someone told her that she made a mistake, and Ann nodded her head yes. Linda then asked her if Ralph had told her she made a mistake, and again Ann nodded her head yes. Ann asked Linda if she could fix the mistake, and Linda asked her what the mistake was. Ann still could not answer that question.

Linda asked Ann about the documents that she signed at the hospital. Ann stated she did not believe it was fair for her to sign those documents because she did not feel well. However, she was unable to describe what she signed and what it was that she did not understand.

Linda then asked her if she could describe her current assets, but Ann was unable to do that. She was also unable to describe her current estate plan. She did not know if she had any trusts in place at that time. Ann was unable to stay in the present throughout both interviews, and frequently made references that led Linda Mayrand to believe she thought Ralph was still a child. She never mentioned Anthony or Donna by name. Considering her mental state and her inability to define her assets, Linda Mayrand made a finding that Ann was no longer competent for the purposes of drafting new estate documents.

At the one meeting when she saw Attorney Hoover with Ann, Attorney Mayrand did not see any particular emotion from Ann. She did see a little bantering and laughing by both of them about cooking. They were both joking, and Arthur made her smile several times.

Attorney Mayrand's report reflects that during her investigation, she never got any sense there was any kind of reconciliation or change of heart by Ann as to a change to her estate plan as drafted by the Hoovers. In addition, she did not see any way that David Dupont or Attorney Hoover would benefit from Ann's estate other than possible trustee or executor fees.

In her report, Attorney Mayrand found that Ann was too ill to do any estate planning. She was aware that Ralph indicated that he did not agree. She understood from Ralph that he felt Ann was fine to do estate planning then.

In short, Attorney Mayrand testified that everything in October from the beginning of the month gave her pause. However, she felt that there was a difference between what Attorney Hoover had done on October 4 and what Ralph, Donna and Anthony had done on October 6<sup>th</sup>. The difference was that there was evidence that the will Ann signed on October 4<sup>th</sup> was something she had requested well before that date. However, Attorney Mayrand never understood that Ann ever asked Ralph to come in with the documents that she signed on the 6<sup>th</sup>. From what she could tell from Ann, Ann could not even say what she signed on October 6<sup>th</sup>. Attorney Mayrand cited the fact that there was consistent estate planning from 2010 through October 4, 2012. It was not until October 6<sup>th</sup> that there was a statement saying something completely different, which of course was just two days after she had signed a new will consistent with her estate plans since 2010, a will that she had asked for some time before her hospitalization.

Attorney Mayrand recommended that the powers of attorney signed on October 6<sup>th</sup> should not be effective. She saw this in Ann's best interest as Attorney Mayrand saw nothing from Ann confirming that what was signed on October 6<sup>th</sup> was what she wanted to do. The only evidence to support that change was what was being said by the family members who were benefitting from the change. She also noted that there was evidence that someone told Ann she had made a mistake and the family members involved were the ones benefitting from fixing that "mistake".

One of Ann's nurses at Kindred reported that after her second admission there, Ann had many tearful days. She said Ann mentioned making a "terrible mistake" and she wanted to make things right. She also testified that Ann also mentioned that she needed to fix some paperwork – although she never specified what she was referring to for paperwork. During that second stay, Ann had increased weakness and pain, and sometimes was on morphine, leading to being disoriented and confused at times. The nurse stated that Ann did mention wanting to take care of her family. She also reported that she saw a woman go into Ann's room near the end of her stay, and Ann told her that it was her Guardian, and that the Guardian was going to make everything right.

The night nurse at Kindred during Ann's second stay there testified that in late October, sometime after October 22, 2012, Ann was very upset one night crying in her bed stating that there were papers she had signed and she was not happy with them. The nurse stated that Ann "felt coerced" into signing the papers and she wanted her family to get what she wanted them to get from her belongings. The nurse called Ralph that night at approximately 1:00 AM, and Ralph spoke to Ann and she calmed down. The nurse could not recall hearing anything that Ann said to Ralph. That was the one occasion that stuck out in the nurse's memory.<sup>8</sup>

### **WITNESS CREDIBILITY**

Much of the petitioners' case relies upon the Revocation Letter, and statements made by Ann to the petitioners. Moreover, Ralph Furino's testimony is crucial as he claims to have drafted the documents and was in charge of having them signed. Therefore, his credibility is very important.

The Court notes that of the primary witnesses in this case, Ralph, Donna, Anthony, David Dupont and Arthur Hoover, it is only Ralph, Donna and Anthony that have a financial stake in having Ann's will revert to what it was when Joe was alive. Aside from the money that would come to them through Ann's estate, the Court finds that there was evidence that Ralph had been suspended from the practice of law in May, 2012, and he filed bankruptcy in August, 2012, just prior to Ann's hospitalization. He certainly had a financial need to have the estate plan changed. Anthony, who was living in Ann's house after she died, could not even afford to pay the \$650.00 per month he was ordered to pay after an eviction action was brought to have him removed from the home. Therefore, he apparently was in financial need at that time as well.

The primary documents relied upon by the petitioners were signed on October 6, 2012, and are deficient. Aside from the Revocation Letter, the other included documents are clearly New Jersey forms drafted by Ralph, who claimed at his deposition that he just took the forms off of his computer from the 2005 powers of attorney that he drafted and

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<sup>8</sup> The Court notes that there was evidence that this nurse also accepted a gift of a crystal bowl from Donna and Anthony's wife, which was in violation of Kindred's policies.

Ann signed. However, the October 6, 2012 power of attorney has language that is different from the prior power of attorney Ralph drafted, specifically including new powers to amend or revoke any trust agreements, and specifically revoking the power of attorney granted to David DuPont on January 7, 2011. Therefore, Ralph's testimony was not true as he specifically modified the forms prior to October 6, 2012.

Based on these facts, Ralph's testimony is simply not credible about how and why the documents were drafted. There is no question that he drafted the documents with the specific intent to obtain the power to revoke one of Ann's trusts and the power of attorney held by David Dupont, even though he gave deposition testimony that they were the same as the 2005 documents.

More importantly, relating to the Revocation Letter, Ralph testified that there was only one version of the document. However, it is clear that there were 3 versions of the Revocation Letter. Ralph sent all three to Attorney Hoover's office by facsimile as a part of the same group of documents. Therefore, given that two of the Revocation Letters are signed, one with an incomplete jurat, and one without, and that there is a third unsigned version, this Court can only conclude that the Revocation Letter was altered after it was signed, or may not have been signed at all. Given the lack of any original, which was last in the control of Ralph, this Court cannot find that his testimony is credible about the document.

The balance of the petitioners' case follows from testimony about things Ann said after the October 6, 2012 meeting with Ralph, Donna and Anthony. Indeed, many of the statements appear to be from when Ann went back to Kindred after she was diagnosed with cancer.

For example, both Picards reported that when Ann was at Kindred, she mentioned that she had "messed up", and that she had signed papers she should not have signed and she wanted things to go back to the way they were with Joe. Mrs. Picard reported that Ann said she had been told that St. Jude's would build a hospital on her property if she left it to them, but she now knew it was a "lie". Mrs. Picard also stated that Ann told her that she knew the property would be sold and the money would go to St. Jude's so she wanted things to go back to the way she and Joe wanted it.

However, Mrs. Picard also admitted that she previously testified that the October 6, 2012 documents were all signed at the rehabilitation facility when Ann was actually at Frisbee Memorial Hospital when the documents were signed. In addition, both of the Picards thought that David Dupont was motivated to pursue the litigation because he would financially gain from Ann's will. They could not explain why they thought that except for Mr. Picard stating that he could think of no other reason that David would "go against the kids", and Mrs. Picard saying that Joe would not have gone outside of the family with the money. These assumptions and preconceptions by the Picards colored their testimony.

Moreover, although they were not always specific about when and where certain conversations took place, the evidence shows that their conversations with Ann about things "going back" or what St. Jude's would do with Ann's house occurred after Ann went to Kindred for the second time – which was after she signed the documents that Ralph had prepared. If the petitioners are correct in their interpretation of Ann's comments, the comments would have been at a time when Ann knew that she had already taken care of the necessary changes by telling Attorney Hoover to revoke her Trust and put the house back in her name. Further weakening the testimony about Ann's comments is the credible testimony of Attorney Mayrand that when Ann said she had made a mistake, she then nodded in agreement when Attorney Mayrand asked her if Ralph had told her to say that.

Finally, the petitioners attempted to produce evidence that David Dupont or the Hoovers had some incentive to have Ann execute and maintain an estate plan that called for her property to be sold and the proceeds provided to St. Jude's. Many questions were asked of David Dupont about property from his mother's estate that was located next door to Ann's home, and how it was sold. Questions were also asked about David's brother being a former State Senator, and active in real estate. However, there was never any credible evidence that showed that David Dupont had anything to gain from Ann's estate plan other than fulfilling his promises to Joe and Ann.

Likewise, there was nothing for the Hoovers to gain through Ann's estate plans. Their detailed notes about Ann's wishes and their actions are all consistent with a desire to fulfill Ann's wishes to have her home and its contents sold with the proceeds to be provided to St. Jude's.

## **RULINGS OF LAW**

The issues before this Court deal with the validity of the October 4, 2012 will, and whether it was obtained by undue influence and/or duress, and whether the October 6, 2012 documents revoked either or both of the trusts. The claims are set forth in Counts I, III and VI (this last Count is limited to a claimed revocation of the trusts). In its most simple form, this case comes down to the issue of whether Ann revoked her prior trusts, and whether there was undue influence on her when she signed the 2010 Trust, the amendment to the 2000 Trust, and her 2010 and 2012 wills.

The petitioners argue that David Dupont exerted undue influence on Ann, and that he held a position of confidence and abused that position. In addition, they argue that it was clear from the statements made by Ann during the last few months of her life that she wanted to put her estate plan back to the way it had been before her husband died. Therefore, they argue that this Court should reform the estate plan to meet the wishes Ann expressed shortly before her death.

### **COUNT I – VALIDITY OF THE WILLS**

Pursuant to RSA 551:2, to be valid, a will must be in writing, signed by the testator, and be signed by two or more credible witnesses, who shall, at the request of the testator and in the testator's presence, attest to the testator's signature. See RSA 551: 2. The October 4, 2012 will was executed as a self-proving will under RSA 551:2-a. The testimony established that it was properly witnessed and notarized. The same applies to the 2011 will.

The witnesses and the notary to the 2011 and 2012 wills credibly testified that they witnessed Ann sign the wills in their presence, and that they attested to her execution of the wills in her presence and in the presence of each other. In addition, their testimony, and the testimony of the others present, establishes that they acted at the actual or implied request of the testator in attesting to her signature. Given this credible testimony, the

Court finds that the wills of 2011 and 2012 were properly executed and witnessed and are valid wills both under RSA 551:2 and 551:2-a.

### **COUNT III – UNDUE INFLUENCE**

The Petitioners argue that Ann Furina was subject to the undue influence of David Dupont and Attorney Arthur Hoover when she signed her 2011 and 2012 wills, as well as when she executed the amendment to 2000 Trust, and created the 2010 Trust.

Whether or not there was undue influence in the creation of a will or trust is a question of fact. *Archer v. Dow*, 126 N.H. 24, 28 (1985). The court may look at the relationship between the parties, the condition of the donor, the reasonableness and nature of the disposition, and the personalities of the parties in making their determination. *In re Estate of Cass*, 143 N.H. 57, 61 (1998). This influence must “amount to force or coercion that alters the donor’s will and must be more than the mere influence of affection.” *Id.*

#### *Relationship between the parties*

In this case, Ann Furina reached out to Attorney Hoover to get his help in updating her estate planning documents after not speaking to him for about ten years. Attorney Hoover had previously represented both Ann and Joe regarding prior wills and other work related to their businesses. Although there was an attorney-client relationship, there is no credible evidence that either of the Hoovers ever used their positions as attorneys to influence Ann regarding the terms of her will or the operation of her trusts. Indeed, the evidence shows that Ann was the one seeking the help of the Hoovers to initiate and implement a new estate plan in 2010, one that she had decided was proper for the disposition of her assets.

In many conversations, Ann informed the Hoovers that they were not to discuss any of her estate plan changes with the petitioners. She was clear and logical in her requests. The Hoovers interacted with Ann when it was necessary to draft and execute the estate planning documents, and there is no evidence of any other attempts by them to create a relationship whereby they could control or influence Ann’s decisions in any way. Therefore, the petitioners have failed to meet their burden to show that there was any undue influence exerted by either of the Hoovers.

As for David Dupont, the testimony shows that he was a neighbor of the Furinas and specifically that he was a friend of Joe's – and close enough to Joe that he promised Joe that he would take care of Ann after Joe died. Mr. Dupont was even present at the Furinas' home when Joe died. Although he was present for some of the meetings that Ann had with either the Hoovers or the representative from St. Jude's Hospital, he was not present for all of the meetings – meetings where Ann consistently stated her wishes regarding her estate plan. Indeed, Mr. Dupont credibly testified that when he learned that Ann wanted to leave her home and property to St. Jude's he attempted to talk her out of it and offered to drive her to see the petitioners, but she refused. In another conversation when he questioned her about not leaving anything to the petitioners, Ann told him to stop defending them.

In addition, the evidence clearly established that neither David Dupont nor the Hoovers received any financial gain from Ann's estate plan. Although David testified that Ann wanted to have provisions for him to be paid, he refused, and the documents show that he was not a beneficiary of the estate or the trusts. Aside from innuendo, the petitioners were unable to provide any basis for their claim of undue influence on the part of David. The evidence was that although David Dupont had access to accounts, assets and other property of Ann, he received nothing and took no actions regarding the assets and accounts unless directed to do so by Ann.

In their trial memorandum, the petitioners argue that David had a confidential relationship with Ann and, as a result, had heightened duties regarding that relationship. Although the Court finds that the petitioners failed to establish that there was a confidential relationship that would have created heightened duties, even if such a relationship existed there is no evidence that David Dupont took any action that would have violated those duties.

#### *Personality of the Parties*

As for the issue of the personality of the parties, the evidence established that Ann was a very headstrong individual. The only evidence that she might yield to the wishes of another person contrary to her own wishes was in relation to her fears that should the petitioners discover the change in her estate plan, she would not be able to resist them and their efforts to undo the estate plan she was seeking to implement. There is no



evidence that her personality might create a situation where she would be unduly influenced by David Dupont or the Hoovers. Indeed, her statements were that she feared some kind of undue influence from the petitioners.

#### *Reasonableness of Distribution of Assets*

The new disposition of assets laid out in Ann's estate planning documents was a substantial change from her previous estate planning. However, Ann and Joe both had a fondness for St. Jude's. Joe had gone well out of his way to visit St. Jude's in the past, there had been a number of small donations to St. Jude's, and Ann had an annuity that paid over \$8,000.00 to St. Jude's. As early as 2004, Ann had told St. Jude's that she was going to give them something. Over the years, she made several similar comments.

In addition, Ann said many times that the petitioners had already received the money from the property she had sold at the Lee Traffic Circle. The house, cash and much of the personal property that remained were mainly the result of gifts to Ann from Gertrude Ainslee. Ann's efforts to leave those gifts to a charity is certainly a reasonable distribution of her assets. Her specific bequests to individuals may be more than some people would leave, but this Court cannot find the bequests unreasonable based on the evidence before it.

#### *Condition of the Donor*

The Petitioners have alleged that at the time of the signing of the 2011 will, Ann was depressed and anxious. The Court notes that although a number of medical records were admitted into evidence, there was no testimony about the nature and depth of the depression experienced by Ann at the time of the execution of the wills and how that may have affected her. There was no expert testimony about how her depression may have influenced any of her decisions, and, in fact, the evidence was that at the time she was working on her estate plan and then executing her wills, those present did not observe her to be suffering from any type of depression or other malady that would have affected her ability to make decisions.

In cases where this factor has been raised, Courts require more than the mere suspicion that a particular condition could have had some effect on the testator's mental capacities. For example, *In re Estate of Cass*, 143 N.H. *supra*, at 61-62, the donor was suffering from memory loss and had an inability to read at times that made her particularly

vulnerable to the influence of a third party. *Id.* Here, there was no evidence that Ann's condition made her vulnerable to any kind of undue influence from the Hoovers or David Dupont in 2010 and January, 2011 or in October, 2012.

The Court also notes that the petitioners argue that Ann's condition in October, 2012 might make her especially vulnerable. However, the changes to her will at that time were minimal and were in keeping with her estate plan that was put in place nearly two years before and consistently reaffirmed including through conversations with the representative from St. Jude's, the Hoovers and David Dupont.

The alleged actions to change these plans were taken by Ann just two days later when she was surrounded by the petitioners, all standing to benefit from a change in her estate plan to leave everything to them. If there was anything about her condition that made her susceptible to undue influence in October, 2012, the evidence shows that it is more likely that the undue influence was exerted by the petitioners, not by David Dupont or the Hoovers.

These findings apply with equal force to the trusts and Ann's actions from 2010 through 2012 regarding the trusts. There simply is no credible evidence that any actions she took regarding the trusts during that time period was the product of undue influence.

#### **COUNT IV – DURESS**

The petitioners also argue that Ann was under duress at the time of the execution of her wills and the 2010 Trust and the 2011 amendment to the 2000 Trust. Duress traditionally involves one party using either physical force, economic pressure, or a threat to convince another party to make a choice they would not have made otherwise. Restatement (Second) of Contracts §§ 174-175 (1981); *see also Morrill v. Amoskeag Sav. Bank*, 90 N.H. 358, 363-65 (1939).

Again, as with the claim of undue influence, there was no credible evidence of any duress in this case regarding the documents challenged by the petitioners. All of the findings of fact made by the Court in this Order point to there being no duress whatsoever. The only situation where there is even a hint of possible duress is when Ann was

surrounded by the petitioners. She had previously worried about this situation, and it appears that her worries were not unfounded.

### **COUNT VI – REVOCATION OF TRUSTS**

The final claim of the petitioners is that the Revocation Letter allegedly signed by Ann on October 6, 2012, revoked the amendment to her 2000 Trust and revoked the 2010 Trust. The petitioners argue that this Court should look past the specific language in the Revocation Letter, and consider all of Ann's statements of wanting to make things "the way they were before". Therefore, according to the petitioners, the Court should overlook any insufficiency in the documents and reform Ann's estate plan to be the way it was at the time Joe died. Therefore, the property would be left to the petitioners.

In analyzing this claim, the Court first notes that the petitioners have provided no legal basis for the Court to take such action other than this Court's general equitable powers. The petitioners ignore the statutory provisions for the revocation of a will, and ask this Court to reform the wills and the trusts even without a valid revocation of the will. This Court refuses to adopt this policy.

The Court also notes that Ralph testified that he recalled Ann stating that she wanted \$50,000.00 to go to St. Jude's if it was not going to build a hospital on her property. She made similar statements to others. These statements would be inconsistent with the petitioners' argument that Ann was clear that she wanted the estate plan to go back to the way it was with Joe, since it was not until five years after Joe's death that St. Jude's was even mentioned in an estate planning document as a contingent beneficiary.

Even more troubling is the fact that the statements about changes to Ann's estate plan all come about after the petitioners start to have contact with her at the hospital, and are never repeated when Ann is specifically questioned by either the Hoovers or the Guardian Ad Litem. Indeed, the GAL found that Ann was unable to express her wishes regarding her Estate and that she was confused about many facts.

Although the petitioners have offered a video taken in early November that purportedly shows Ann stating her wishes, the GAL's discussions occurred several weeks before the video taken by the petitioners. Attorney Mayrand had already questioned Ann

about what she meant about a mistake with her will, and Ann had indicated that Ralph had told her to say that. On the other hand, the video shows Ralph suggesting answers to Ann, who often sounded confused, and it was made without notice to the GAL after Ralph had unsuccessfully tried to hire an attorney to prepare a new estate plan for Ann.

Ann's consistent statements about her fears of what would happen if Ralph, Donna and Anthony found out about her new estate plan came true when the petitioners came to see her in the hospital and at Kindred. She told the Hoovers, David Dupont and even the representative from St. Jude's that she did not want the petitioners to know of her estate plans as she feared she would not be able to resist them wanting the estate plans changed back to the way they were.

It is in this context that the Court must consider the claimed revocation of the 2010 Trust and the amendment to the 2000 Trust. The petitioners rely on the Revocation Letter, a document this Court has found to be unreliable given the lack of credible testimony provided by Ralph about the letter. The petitioners were unable to produce an original copy of the Revocation Letter, and there was credible evidence that there were three versions of the revocation sent to Attorney Hoover by fax on October 8, 2012. Each version was slightly different, but Ralph claims there was never more than one version and it was the one submitted to the Court.

Given the findings above about Ann's condition and her intentions, the Court finds that the Revocation Letter was not effective to revoke either the 2010 Trust or the 2011 amendment to the 2000 Trust. Ralph's testimony is not credible, and the evidence shows that the Revocation Letter is most likely an altered document. Moreover, the GAL found that the other documents signed on October 6, 2012 should be set aside due to the uncertainty of Ann's intentions.

Notwithstanding this finding, the Court will also consider the issues that arise if the Court were to accept the Revocation Letter as a document that was signed by Ann and intended to be instructions to Attorney Hoover.

## **The Effect of Revocation**

The Uniform Trust Code, as adopted in New Hampshire, addresses the issue of revocation at RSA 564-B:6-602. Subsection (a) provides:

(a) Unless the terms of a trust expressly provide that the trust is irrevocable, the settlor may revoke or amend the trust. This subsection does not apply to a trust created under an instrument executed before the effective date of this chapter.

In addition, subsection (c) of that statute also provides:

- (c) The settlor may revoke or amend a revocable trust:
- (1) by substantial compliance with a method provided in the terms of the trust; or
  - (2) by any other method manifesting clear and convincing evidence of the settlor's intent if the terms of the trust do not provide a method or do not expressly prohibit methods other than methods provided in the terms of the trust.

The petitioners have made two different arguments as to why the 2010 Trust and the amendment to the 2000 Trust were revoked. First they argue that the writing signed by Ann with the other documents signed on October 6, 2012 substantially complies with the method provided for in the 2010 Trust. Alternatively they argue that verbal statements made by Ann to members of her family satisfy the requirements of RSA 564-B:6-602(c)(2), as an oral revocation that was not clearly prohibited by either trust.

## **The 2010 Trust**

The relevant section of the 2010 Trust is Section Four, Paragraph 2, which states as follows:

The Trustor has the absolute right, at any time and from time to time, to amend, restate, revoke any term or provision of this agreement in whole or in part. Any amendment, restatement, or revocation must be in a written instrument signed by the testator. (Respondent's Exhibit 6, at p. 3)

According to the 2010 Trust, Ann Furina had the authority to revoke the trust in whole via written instrument. In addition, the 2010 Trust does not explicitly exclude oral revocation, and therefore it also may be revoked orally. Therefore, the Revocation Letter and Ann's oral statements may both be considered on the issue of revocation.

The Respondents, however, challenge the language of the Revocation Letter. They argue that it does not specifically state which trust is to be revoked, and it directs the attorney to revoke the document, instead of Ann exercising her authority to revoke the trust. Moreover, the name of the trust used is not the name of either the 2000 Trust or the 2010 Trust.

The language is certainly ambiguous, but there is clear reference to the deed to Ann's house, which was owned by the 2010 Trust. A review of the document as a whole provides enough context to establish that to the extent that it could be relied upon to show Ann's intent, and that Ann's intent was to revoke a trust, it was the 2010 Trust. To hold otherwise would make the reference to the deed meaningless since the deed and ownership of the house had nothing to do with the 2000 Trust as amended.

The more difficult question is how to interpret this document. A plain language reading of the first paragraph shows that Ann Furina was not explicitly exercising her authority as trustee, but instead she is directing her attorney to terminate the trust. Attorney Hoover did not have the ability to terminate the 2010 Trust, and asked the Court to intervene regarding the estate planning issues, which resulted in the report of the Guardian Ad Litem finding that the October 6<sup>th</sup> documents should not be effective because Ann could not explain her intentions to the GAL.

RSA 564-B:6-602, however, provides that with clear and convincing evidence of the settlor's intent this Court may grant a revocation that may be otherwise defective. As noted above, Ann's intent to revoke the 2010 Trust is certainly implied, but is not clear given the circumstances of the signing of the document (assuming it was validly signed).

For the purposes of this analysis, the Court will assume that the petitioners have shown clear and convincing evidence that the document signed by Ann revokes the 2010 Trust. The question then becomes whether they can show the same for the 2011 Amendment to the 2000 Trust. This is important since without the revocation of that document, Ann's estate plan effectively remains the same because the residuary from her estate will still go to St. Jude's.<sup>9</sup>

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<sup>9</sup> Because there was no revocation of the wills, the October 4, 2012 will is a valid will. The residuary clause of that will provides that the property will pass to the 2000 Trust as amended. However, if that Trust is not in existence, then the will provides that the property should be distributed in "substantially the same manner as it would have been under the 2000 Trust as amended." Therefore, even assuming that the 2000 Trust as amended was revoked, the will provides for the same disposition of the property. However, since

### **The 2000 Trust as Amended**

The applicable language of the 2000 Trust is: "This Agreement may be altered, amended, revoked, or terminated by the Grantor." See Article 15. In absence of exclusionary language, Ann Furina had the authority to revoke or amend the trust in any manner that she chose. The problem is that the Revocation Letter makes no reference to the 2000 Trust as amended. At best, the petitioners argue that Ann's intentions from her statements show that she wanted everything to go back to the way it was with Joe, and that a revocation of the 2010 Trust, without a revocation of the amendment to the 2000 Trust would make no sense.

The problem with this argument, aside from the fact that it relies on statements that were made after Ann had signed both the 2012 will and the October 6, 2012 documents, is that they were never made to the Hoovers, and, more importantly, to the Guardian Ad Litem when she met with Ann. Ralph also testified that Ann said that she wanted to leave \$50,000.00 to St. Jude's if the hospital was not going to be built on her land. That statement by Ann is inconsistent with a wholesale revocation of all estate planning leaving only the last wills that Joe and Ann executed which did not include any bequest to St. Jude's.

Moreover, the last section of the Revocation Letter, which refers to Ann's will, simply states that it should return to her "prior will." At the time of the execution of this document, her prior will was the 2011 will, which directed the residue of her assets to be sent to the 2000 Trust, as amended. Therefore, the Revocation Letter itself is not clear and convincing evidence that she intended to revoke the 2000 Trust as amended.

### **Reformation of the 2000 Trust as Amended**

The petitioners argue that the 2000 Trust as amended should be reformed. Trust reformation is an equitable remedy that "correct[s] a defective or erroneous instrument so

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the Court finds that there was no valid revocation of the 2000 Trust as amended, the Court need not reach that issue.

that it reflects the true agreement of the parties.” 11 N.H. PRACTICE PROBATE §69.2; see also N.H. RSA 564-B:4-415. According to the N.H. Supreme Court, “reformation will only be granted when the evidence is *clear and convincing* that (1) there was an actual agreement between the parties, (2) there was an agreement to put the agreement into writing and (3) there is a variance between the prior agreement and the writing.” *Erin Food Servs., Inc. v. 688 Props.*, 119 N.H. 232, 237 (1979); see also *Midway Excavators v. Chandler*, 128 N.H. 654, 657-58 (1986). Absent fraud, reformation requires mutual mistake. *Midway Excavators*, 128 N.H. *supra*, at 658; *Franklin Nat. Bank v. Austin*, 99 N.H. 59, 62 (1954).

The Petitioners argue that reformation is appropriate because Ann Furina was mistaken about how her real estate would be distributed after her death, and she was mistaken about her relatives' affection for her.

In this case, the Petitioners' argument for mistake has no merit. There is significant evidence that Ann knew that no hospital would be built on her property. She acknowledged that fact to a number of witnesses. It was not until after Ralph told her that St. Jude's only wanted her money that she allegedly told him that she wanted her wills back to the way they were. Moreover, in none of her estate planning documents does she mention the building of a hospital on the land. The claim of mistake by the petitioners is not supported by the evidence.

Additionally, the claim that the documents should be reformed because she was mistaken about the affections of the Petitioners is likewise without merit. There is no debate that at the time she signed the documents she believed that the Petitioners no longer cared for her and respected her, and the 2011 amendment to the 2000 Trust reflected that belief by excluding them as beneficiaries. However, Ann also told several witnesses that she had already provided for the petitioners through the proceeds of the sale of the land that she and Joe owned in Lee.

Finally, Ann's perceptions of how she was treated by the petitioners have not been shown to be without merit. She had several arguments with the petitioners about everything from her records, to her alarm system, to them not coming to see her frequently enough. Simply because the Petitioners now state that she was incorrect in her



perceptions, and that they always loved and respected her, is not grounds for the reformation of 2000 Trust as amended.

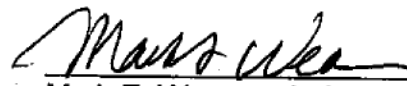
Given the above findings, the Court holds that the evidence supports the finding that the 2012 will was validly executed, and that there was no undue influence or duress in the execution of that will, the amendment to the 2000 Trust, or the 2010 Trust. Finally, the Court finds that the petitioners have failed to meet their burden to show that any of Ann's estate planning documents were revoked, and have failed to establish that reformation would be proper under the facts of this case.

### FINDINGS AND RULINGS

The Court has reviewed the requests for findings and rulings submitted by the parties. First, the Court declines to rule on the requests for findings of fact submitted by the petitioners for a number of reasons, including that the format used by the petitioners essentially seeks to have this Court rule on single statements made by certain witnesses, instead of making a finding of fact based upon various evidence before the Court. Second, as to both parties' requests for rulings of law and the respondents' requests for findings of fact, the Court declines to either grant or deny the requests because the Court's has already issued a detailed order that fully addresses all of the issues and findings the Court finds are necessary for its decision.

**So Ordered**

Dated: 7/17/15

  
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Mark F. Weaver, Judge