2014 IL App (1st) 131262-U

FIFTH DIVISION
September 5, 2014

No. 1-13-1262

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

In re ESTATE OF JOHN WATERS, Deceased	)	
	)	
(Marguerita Waters, Gerald M. Waters, Edmund P. Waters, and Daniel V. Waters,	)	Appeal from the Circuit Court of Cook County
	)	
Petitioners-Appellees,	)	
	)	11 P 006631
v.	)	
	)	Honorable
Paul R. Iverson, Individually and as Executor of the Estate of John Waters, Deceased,	)	James G. Riley, Judge Presiding
	)	
Respondent-Appellant).	)	

JUSTICE McBRIDE delivered the judgment of the court.
Presiding Justice Palmer and Justice Taylor concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's determination that decedent's purported will was a forgery was consistent with the manifest weight of evidence presented and Illinois law.

¶ 2 This is a will contest brought by the four siblings of the decedent, John Waters, in order to set aside a purported will that left Waters' multimillion dollar estate to a friend, Paul R. Iverson. After a bench trial, the circuit court declared the purported will to be a forgery. On appeal, Iverson contends (1) the presumption of the will's validity was particularly strong because there had been a

preliminary proof-of-will hearing, (2) the family did not put on sufficient clear and convincing evidence to overcome that enhanced presumption, and (3) the circuit court failed to follow Illinois law dictating that the will's attesting witnesses be deemed more credible than the family's handwriting expert.

¶ 3 The record indicates that Waters, whose last residence was at 900 Summit, in Barrington, Illinois, was born on January 1, 1932, and died on October 15, 2011, just shy of his eightieth birthday. Waters never married or had any children. On November, 14, 2011, one of Waters' lawyers, Michael Bercos, filed the will at issue in the circuit court of Cook County. The disputed will is dated March 8, 2010, which is about 19 months prior to Waters' death and it consists of three pages. The first page includes a short title; five, single-spaced, brief paragraphs in which Waters bequeaths his estate and any residue and remainder to Iverson and names Iverson as the executor of the estate; followed by an execution date and Waters' purported signature. The second page contains the signatures of the two attesting witnesses, Alex Gloeckler and Mohinder Rakalla. The third page is a notarized affidavit in which Gloeckler and Rakalla state they watched Waters sign the will and they believed him to be of sound mind and memory at the time.

¶ 4 As a routine matter, when the will was filed, it was admitted to probate. Iverson was acknowledged to be the estate's independent executor, and letters of office were issued to him.

¶ 5 Upon receiving notice of the will, Waters' four siblings, Marguerita, Gerald, Edmund, and Daniel, requested a formal proof-of-will hearing. We shall refer to the four surviving siblings together as the family. At the proof-of-will hearing on January 23, 2012, Gloeckler and Rakalla testified Waters appeared to be his normal, sane, and sound self when he asked them to witness his

will. After the will was executed at Gloeckler's home, the two attesting witnesses went to a currency exchange to notarize their signatures on the affidavit. At the conclusion of the hearing, the family and creditors did not object to the admission of the will, and the court confirmed its admission.

¶ 6 The family subsequently filed a petition to contest the will as a forgery and a bench trial on the petition was held in early 2013. Various family members; friends, including Iverson; two opposing handwriting experts; and Bercos testified. Although Iverson did not call the two attesting witnesses at the bench trial, he did move to admit into evidence the transcript of their testimony at the proof-of-will hearing. After considering the evidence and arguments, the court declared the will to be a forgery, vacated its admission to probate, and revoked Iverson's letters of office. Iverson appeals.

¶ 7 The two-step process followed in the circuit court for the routine admission and then substantive challenge to the validity of the will is provided for in the Probate Act of 1975 (755 ILCS 5/6-21, 8-1 (West 2010)) and settled law. Admission of a will to probate requires only a *prima facie* showing of (1) validity of the will and (2) the witnesses' belief of testamentary capacity (*In re Estate of Alfaro*, 301 Ill. App. 3d 500, 503, 703 N.E.2d 620, 623 (1998)) and is intended to "permit an administration to get underway as quickly as is reasonably possible" in order to minimize loss and inconvenience to the estate and others (*In re Estate of Carr*, 126 Ill. App. 2d 461, 471-73, 262 N.E.2d 54, 58-59 (1970)). See also *In re Estate of Jacobson*, 75 Ill. App. 3d 102, 107, 393 N.E.2d 1069, 1073 (1979) (because the law favors swift admission of a will to probate, a will containing a properly executed attestation clause is presumed valid).

¶ 8 The proponent of the will bears the burden of showing only these two elements and need not prove that the will is valid in every respect. *In re Estate of Ragen,* 96 Ill. App. 3d 1035, 1041, 422 N.E.2d 179, 184 (1981); *In re Estate of Smith*, 282 Ill. App. 3d 389, 393, 668 N.E.2d 102, 105 (1996) (proponent of a will has the burden of proving proper execution, and a *prima facie* case of proper execution is made when signatures are undisputed and will's attestation clause demonstrates on its face that the statutory formalities were followed); *In re Estate of Lynch*, 103 Ill. App. 3d 506, 509, 431 N.E.2d 734, 737 (1982) (will may be admitted to probate on mere *prima facie* showing of testamentary capacity and compliance with the statutory requirements of attestation; the quantum of proof required in an admission proceeding is quite different from the minimum required in a will contest). The court may make every reasonable presumption in favor of the will's validity in order to facilitate its admission to probate. *Estate of Ragen*, 96 Ill. App. 3d at 1042, 422 N.E.2d at 184; *Estate of Smith*, 282 Ill. App. 3d at 393, 668 N.E.2d at 105.

¶ 9 The designated administrator of the estate is then empowered to collect and account for rents, dividends, interest, and other income; dispose of depreciating assets; and investigate, pay, or resist debts so that the estate does not go to waste (*Estate of Lynch*, 103 Ill. App. 3d at 509, 431 N.E.2d at 737) while opponents to the admitted document investigate its creation, execution, and possible revocation (*Estate of Carr*, 126 Ill. App. 2d at 461, 262 N.E.2d at 54).

¶ 10 When a timely will contest is initiated, the order admitting the will to probate is not final as to the validity of the document. *Estate of Alfaro*, 301 Ill. App. 3d at 503, 703 N.E.2d at 622. If a will contest is initiated, then the question addressed is not whether the will was properly admitted, but whether the will should be declared invalid. *Estate of Alfaro*, 301 Ill. App. 3d at 503, 703

N.E.2d at 622. Any ground which if proved invalidates the document as the will of the decedent may be raised in a will contest. *Shelby Loan & Trust Co. v. Milligan*, 372 Ill. 397, 403, 24 N.E.2d 157, 160 (1939). Raising issues in the initial admission proceedings generally does not trigger the doctrine of *res judicata* and those issues may be relitigated on a *de novo* basis in a will contest. *Estate of Alfaro*, 301 Ill. App. 3d at 503, 703 N.E.2d at 622.

¶ 11 The following evidence was presented at this will contest. Bercos, the scrivener of the will, testified he practiced general litigation law from an office in Mundelein, Illinois, and was one of the lawyers Waters relied on during the last 10 years of his life. Bercos was unwilling to use the terms "eccentric" and "hoarder" to describe Waters and instead considered him to be an "avid collector" who used some of his residential properties to store what other people had thrown out. Waters claimed an interest in at least 20 single-family homes and a vacant lot in Chicago, and 4 or 5 vacant lots in suburban Du Page County which he had purchased or acquired through adverse possession. Waters first hired Bercos when the City of Chicago intended to demolish a house that Waters wanted to rehab. After that, Bercos defended Waters against an occasional housing court case, but in the summer of 2006, an alderman complained about the condition of many of Waters' houses and the housing court dates became so numerous that Bercos referred Waters to a Chicago lawyer who specialized in those actions. Bercos was aware of the extent of Waters' real estate holdings but not his other assets.

¶ 12 Bercos further testified that Waters verbally asked him on either February 16 or 22, 2010, to draft the will. This conversion took place in the Skokie courthouse cafeteria, right after Bercos defended Waters in a traffic court case. However, when Bercos testified about three years later on

March 11, 2013, he had no notes from that discussion and he no longer had his 2010 calendar or appointment book. Bercos also admitted that he did not have a copy of the will and he did not have a cover letter for the drafted document. Bercos had been working without a secretary for about 10 to 15 years and had typed the will himself. He had thrown out the computer he used to prepare the will and he never had any backup medium for his computer work. Bercos had no billing record for his work, because he hand-delivered the will to Waters on March 4, 2010, in the McDonald's restaurant on Madison Street in Oak Park, Illinois. At that meeting, Waters gave him a $100 bill and Bercos did not issue a receipt for the payment.

¶ 13 The next time Bercos saw the will was toward the end of March, when the two men met at the Burger King restaurant on Busse Highway in Park Ridge, Illinois. Waters handed him the document filled in with signatures and notarization. Bercos admitted that the notarization was for the witnesses' affidavit only and that there was no indication Waters appeared before the notary.

¶ 14 Bercos knew not only the sole beneficiary of the will, but also one of the witnesses, Gloeckler, because Bercos represented Iverson and Gloeckler on multiple occasions, including when they were sued for eviction from the house where the will was witnessed, 2025 Euclid Avenue in Arlington Heights. (Waters claimed ownership in that property but he was not the plaintiff in the eviction suit.) Nevertheless, it was not until about a week after Waters died that Bercos first told Iverson that he was the sole beneficiary and executor of Waters' estate. Bercos maintained possession of the executed will until about a month after Waters' passing, when Bercos took the document to the courthouse and filed it.

¶ 15 Iverson, the sole beneficiary, testified that he considered Waters to be a close friend who

was "sort of like [an] uncle or second father." In November 2011, shortly after Waters' death, his sister sent Iverson a $100 "gratitude" check and a card in which she referred to Iverson as "John's friend." Iverson considered Waters to be eccentric and said "[a] lot of people" would describe him as a hoarder, but Iverson was reluctant to use that term because Iverson himself "liked to save things." Iverson knew about Waters' financial interests, including that he had an heir locating service, was interested in owning real estate, and at one point said he was worth $20 million.

¶ 16 On a bail bond application that Iverson completed in April 2011, he told the Lake County court that for the previous three years he had been residing at the Euclid Avenue property (with Gloeckler as his roommate) and been employed by R. J. Delaney Company, which was Waters' real estate management company. These three years encompassed the date on the will. Iverson testified at the will contest that he did not actually reside in the Euclid Avenue house, but that he stopped by at least once a week and sometimes slept over. Iverson denied that anyone, including anyone at the Euclid Avenue house, told him before Waters' death that there was a will. Iverson had known Gloeckler, one of the witnesses, for decades and considered him to be a "good friend" and "good guy." Iverson had known Bercos for decades and considered Bercos to be his friend as well as an attorney who had been representing Iverson on real estate ventures since 2000. Iverson said he did not know there was a will until Bercos told him approximately a week after Waters died.

¶ 17 Iverson denied that around that time he said to Waters' nephew, Dan, that there was no will. According to Iverson, he and Dan did not talk about a will or lack of a will, and their conversation was limited to the redemption of property Waters owned in the Lincoln Park neighborhood at 1639

North Clark Street. Iverson had used his own $64,000 to redeem the property from a tax sale and he wanted to be reimbursed. Iverson also denied that in the month following Waters' death, he said to Dan, "I don't know anything about any will of John Waters," or words to that effect. According to Iverson, what he actually said to Dan was that there was "no reason" to file the will because Waters had placed all his assets in a trust with rights of survivorship. Iverson also denied saying to Waters' friend, Roger Howard, "I had to come up with a will or the family would have gotten everything."

¶ 18 Roger Howard testified that his friendship with Waters began in 2004. Howard thought of Waters as "different" because Waters hoarded garbage, such as all the cups and trays he got from eating at McDonald's restaurants. When Waters filled up one house with garbage, he would simply move to another house.

¶ 19 Howard further testified that Waters bought real estate through tax sales and also obtained properties by approaching people whose homes were poorly maintained, perhaps because they were having financial problems or because someone had died. In 2007, Waters said that he owned 92 properties, and although Howard would later become skeptical of that high property count, Howard knew that Waters "had a lot of them," "just because he was constantly on the phone with [property] troubles."

¶ 20 In 2006 or 2007, Howard, who made his living repairing coffee machines, began helping Waters fix and secure his properties, going with him to housing court, and helping him with court-ordered "cleanouts." Howard worked on about 20 of Waters' houses or lots and had a claim pending against the estate for compensation.

¶ 21 According to Howard, Waters was reluctant to spend money, such as when he was ordered to repair a fence near a school and disregarded the court's instruction to use new fencing. Howard urged Waters to buy new material for the fence repair because the neighbors disliked Waters and were likely to "call up on [him]." Waters "thought if you put some paint on it, nobody is going to know," and then "sure enough, *** he's putting up the fence *** and people are standing there taking pictures of him while he's doing it." Waters would not pay to properly license his cars or put his name on their titles. Waters would use other people's license plates from a junkyard. Instead of scrapping his old cars when they no longer ran, Waters would park them on a street. Waters and Howard would move old cars from one side of the street to the other to avoid parking tickets or towing. Waters went to second-hand stores "on half-price day" and spent hours changing price tags in order to get clothes at the lowest possible price. Waters would also "wear the clothes until they were absolutely dead," and, then, instead of throwing them out, would fold and stack them in one of his houses. At least 30 times between 2007 and 2010, Howard saw Waters with "large amounts of money." Howard knew that Waters might be carrying as much a $10,000 in his pockets but that when it was time to pay for a meal, Waters would say, "Oh, I forgot my money."

¶ 22 In 2007, a housing court judge ordered Waters to undergo a "mental evaluation." Waters was afraid "they were going to lock him up," so he and Howard went to three of the garbage-filled homes so that Waters could retrieve some cash. Howard was waiting in the van when Waters came out with a paper sack containing $130,000 and put the bills into a suitcase.

¶ 23 Around this same time, Waters also gathered up certificates of deposit and real estate titles from his debris-ridden houses, and Howard took Waters to several banks.

¶ 24 Waters also stashed his assets in four or five large storage bins that he rented near a car wash on Lawrence Avenue.

¶ 25 Howard met attorney Bercos in 2006 or so. Howard had a cordial relationship with the lawyer when they saw each other in housing court on seven or eight occasions. Howard sometimes talked with Bercos by phone about "the crazy things John [Waters] would do," such as in 2010 when Howard pressured Waters to settle up for some of the work Howard had done for Waters. Waters agreed to sell Howard property on Grace Street, sat down with Howard, but then "ran out the door" saying he had to get something out of his car. When Howard looked at the papers they had drawn up, he realized that Waters had written the name "Marilyn" instead of signing the document. After Howard filed liens against Waters' properties, Waters "became a lot scarcer."

¶ 26 Howard was also acquainted with Iverson and saw him three or four times a year when they were helping Waters in housing court. After Waters died, Iverson, Howard, and his friend Gus Froustis, met for breakfast about 15 or 20 times, usually at a McDonald's restaurant. At one such breakfast about three months after Waters died, Howard said he intended to exercise his liens against Waters' estate. Iverson said that he was the executor of the estate and that Howard "should get [the] money [he was owed]." Howard responded that if that was true, then Iverson should just pay Howard, but Iverson said doing that would open up the estate to too many other claims. Iverson then said he "had to come up with the will *** because otherwise the money would have gone to the family or the State." According to Iverson, if that had happened, then Howard would not be getting any money from the estate. Iverson said Waters "left nothing as far as for paperwork," "that there was nothing there," "so he [Iverson] had to come up with something *** to

protect the estate from the State." Howard and Iverson had two similar conversations in June or a bit later in the summer, at the same McDonald's, with Gus present.

¶ 27 Gus Froustis testified that he met Howard in 2007 when they worked together fixing espresso machines. The two of them subsequently helped Waters repair the 20 or so properties that Waters was defending in housing court. Froustis found out that Waters also owned property in Park Ridge, Illinois, and Palatine, Illinois, and Froustis was surprised that a man who appeared to be poor or homeless, was actually "real-estate rich." Waters did not carry through on his promise to pay Froustis for his repair work; nonetheless, Froustis was not seeking compensation from the estate.

¶ 28 Froustis thought of Waters as an eccentric hoarder – he ate out of Dumpsters and filled up his houses with things he found in other people's trash. Iverson had similar traits. Waters introduced Iverson as his friend but said Iverson was not trustworthy and had "screwed him out of money" when they partnered on some properties.

¶ 29 Froustis corroborated Howard's testimony that on three occasions, the first time being within a couple of months of Waters' death, Iverson said over breakfast at McDonald's that he "had to come up with the will" in order to prevent Waters' family or the State from taking the money. Iverson appeared to be angry about Howard's liens against the estate because Iverson did not want to "give up any money."

¶ 30 The second conversation was approximately one week later. During this discussion, Iverson complained about the Waters family and about being in jail for a week because he could not remember anyone's phone number who could bond him out of custody.

¶ 31 The third conversation was about three or four weeks later and Iverson again complained about the Waters family. The three men (Froustis, Howard, and Iverson) met for at least 20 meals together.

¶ 32 Waters' nephew, Dan Waters, a Californian, testified that he developed a relationship with his uncle while living in Chicago's Old Town neighborhood between 2004 or 2005 and 2008. His uncle telephoned after receiving an invitation to Dan's June 2005 wedding. Waters said he owned a building in Old Town at 1637 North North Park Avenue, which was very near where Dan was renting at 1660 North La Salle Street, and he invited Dan to meet at the property. The building turned out to be a Chicago landmarked two-flat that was vacant and in disrepair. Dan agreed to check on the place from time to time so that it looked lived in. During the next year, Dan occasionally met his uncle for breakfast.

¶ 33 Dan became much more involved in his uncle's life after April 2006, when a real estate broker asked him to contact Bercos and Iverson because Waters was not taking care of his properties. At the time, Waters was in good physical condition, but was hard of hearing, irritable, forgetful, and a collector of things that other people had thrown out. Waters accumulated so much at home that he would have to walk over piles of stuff that had fallen over.

¶ 34 Dan appeared in housing court and told the judge he would help his uncle. When the judge ordered Waters to clean up his properties, Dan hired contractors to haul off the trash and make repairs. Dan supervised the cleanout crews when his uncle "couldn't bear to watch" and had to "excuse himself while [Dan] continued to work." In order to keep his uncle one step ahead of the "City cleanout trucks," Dan became a project manager with "spreadsheets, and project timelines."

Dan devoted his evenings and vacation time in 2006 to resolving "his [uncle's] real estate problems."

¶ 35 As Waters, Dan, and other helpers were cleaning out the trash, they were also finding unrecorded deeds, cash, and other valuables in the houses that Waters had lived in. These four or five homes were like time capsules of Waters' life as he moved from place to place over the years and left behind piles of his belongings.

¶ 36 Dan researched the 20 properties that were in housing court, estimated they were worth $10 million, and told his uncle that he could have been earning another $1 to $2 million per year if he just "fix[ed] them up a little bit" and rented them out. Dan also estimated that the underlying land value of the Old Town property was $750,000 or $775,000 in 2007.

¶ 37 Waters needed the deeds for at least six of the properties that were in housing court in order to prove that he had the right to control the properties. These deeds, as well as the deed for the two-flat in Old Town, were found "buried under years of [accumulated] *** stuff."

¶ 38 Early on, $36,000 cash was uncovered in one of the houses, so Dan created a spreadsheet that he updated whenever they found cash, money orders, or cashier's checks. Some of the cashier's checks bore relatively recent dates but other checks were decades old. By the summer of 2007, the spreadsheet totaled about $250,000.

¶ 39 Waters complained that he was always losing his checkbooks and did not know when his certificates of deposit were maturing, so Dan used the financial records that surfaced in the houses to compile a list of his uncle's financial holdings. Some of the financial statements were quite old and out of date. Waters then followed up with his banks and, in some instances, confirmed that old

certificates of deposit were rolling over, but at "a number of banks," learned that his accounts were "dead and *** he had to go to battle" to get his money back.

¶ 40 Dan had "many" separate conversations with his uncle, Iverson, and Bercos about money that "Uncle John deposited with Paul Iverson" in order to avoid paying a judgment creditor. According to Waters, the judgment creditor owed money to Waters instead of the other way around. The judgment creditor won the judgment by default because Waters went *pro se* and mismanaged the case. (The record indicates Robert Pisano obtained a $548,500 judgment against Waters for breach of contract, based on evidence that the men agreed in 1997 that Pisano would help Waters find residential properties for purchase, that seven such properties were found and purchased, and that two of them were later resold.)

¶ 41 Dan observed his uncle and Iverson to be good friends who had known each other for many years and were "intricately aware of each other's properties." Iverson was also the trustee on a couple of Waters' properties. Bercos had a friendly, professional relationship with Waters and helped clear up title issues on 8 to 10 properties but Bercos was not representing Waters in the housing court actions.

¶ 42 In 2007 and 2008, Waters was in the hospital for long periods because he suffered a series of falls in which he cracked some ribs, broke his hip, and then finally broke his neck and was no longer independent.

¶ 43 After Dan moved back to California in June 2008, he began to have telephone conversations with Iverson about "the caretaking of [Uncle] John's money, paying the taxes for the properties, taking care of the properties, finding renters, those sorts of things." Dan had similar

conversations with Bercos between 2008 and 2011. Bercos and Iverson told Dan that Iverson had a power of attorney for Waters' financial matters, but Bercos refused to let Dan see the paper. Bercos, nonetheless, assured Dan that the properties were being managed well and that Bercos and Iverson were taking care of the tax redemption proceedings for the Old Town property that Waters intended to give to Dan.

¶ 44 When Waters passed away, Dan immediately telephoned Iverson with condolences and they had a pleasant chat about "the good old days." During this talk, they both said they did not have Waters' will and Dan said that without a will, the estate would be going to Waters' brothers and sister, but the family intended to distribute some of the assets to Iverson on account of his good friendship with Waters. Iverson responded that because they had a long friendship and neither of them had children, Iverson "had thought that the properties *** would maybe go to him."

¶ 45 Dan also tried to talk with Bercos that day, but Dan had to leave a voicemail message. When Bercos called back on October 16, 2011, Dan said that neither he nor Iverson had Waters' will. Bercos responded that he did not have the will either. Bercos mentioned that he had not been paid for all the legal work he did for Waters. Dan responded that because there was no will, the assets would be going to the family, and the family intended to compensate Bercos for the work he had done and would be doing. This was because Bercos had been "a very good friend" and they thought of him as part of the family.

¶ 46 Dan telephoned Bercos on October 19, 2011, to discuss the status of the Old Town property that his uncle intended to give to him. Dan realized that Iverson's power of attorney had lapsed and that Dan should probably exercise his powers as trustee of the Old Town property and ensure that

the taxes were paid. They talked again about there being no will, and Bercos specified that he had never seen or been aware of any will. Bercos expressed surprise when Dan mentioned that Waters had recorded his ownership of six of the properties that were in housing court and that because of this record, the properties would definitely go into the estate proceedings.

¶ 47 About 10 days after Waters' death, Dan telephoned Iverson to ask for the tax bill for the Old Town building. During this call, Iverson said that he paid the taxes and incurred other expenses getting the property ready for a tenant who was paying $1,000 a month. Dan responded that Iverson should take his reimbursement by keeping the next two months of rent for himself. Iverson agreed to this and also said he would send the tax bill out to Dan. This was the last conversation between Iverson and Dan.

¶ 48 On October 27, 2011, Dan had a third conversation with Bercos about the tax bill for the Old Town property. Dan told Bercos that Iverson seemed reluctant to forward the tax bill to Dan. Dan asked Bercos to assure Iverson that Dan was supposed to inherit the building and that Iverson should mail the bill to Dan. During this telephone call, Bercos said, "There may be a will." Dan replied that there was no will and that they had already discussed the fact that there was no will. Dan added that his uncle would never leave a will because of his paranoia that naming someone as a beneficiary would give them reason to prematurely end Waters' life. However, Bercos said again, "There may be a will."

¶ 49 Dan called Bercos on or about November 16, 2011, to talk about paying the tax bill, but Bercos' "demeanor toward [Dan] had changed." Bercos was "very brief, curt," and "didn't have time for [Dan]," and he told Dan not to pay the taxes. Although Dan left two other voicemails for

Bercos in November, Bercos never called back.

¶ 50 In December 2011, Dan learned that the purported will left everything to Iverson.

¶ 51 When recalled to the stand, Bercos testified that Dan telephoned after his uncle's death only because Dan was "obsessed" with owning the Old Town property and did not want to lose it to a delinquent tax buyer. They had two conversations only, in which Dan never asked Bercos about a will, and "the topic of the will never [actually] came up." Dan lied when he testified that Bercos said there was no will.

¶ 52 Lloyd Suggs testified that he and his wife, Maxine, were the tenants of Waters' house on South 11th Avenue in Maywood, Illinois, for 13 years. Waters would pick up the rent payments in person, a very close friendship developed, and the couple became his caretakers when Waters moved in with them for the last year of his life.

¶ 53 For at least six months prior to that, Suggs had noticed that Waters was declining physically and mentally. Waters would walk more slowly, would say he was tired, would need Suggs' help to get down the stairs, and was forgetful. Waters fell and broke his neck in September 2010, spent months recuperating in the Hines VA Hospital, and was in poor physical condition in a wheelchair when he moved in with the Suggs family.

¶ 54 Each time that Iverson came to visit Waters, they would argue about Waters' money and Iverson would deny committing forgery. Suggs was part of a conversation in which Waters found out that Iverson had access to Waters' post office box and was taking the mail. On two occasions, Bercos came by the house and asked Suggs, not Waters, for Waters' mail. Suggs relinquished the mail to Bercos because Bercos was an attorney.

¶ 55 When recalled to the stand, Bercos testified that Suggs asked Bercos to look through Waters' mail because Waters was incapable of doing it himself and there might be something "important that has to be addressed." According to Bercos, he responded, "Yes, that's a very good idea" and then asked Waters, "is that okay?"

¶ 56 Daniel V. Waters, a resident of Norridge, Illinois, testified he was Waters' youngest brother. Waters mentored Daniel and advised him throughout his life, with jobs, schooling, and a divorce. Waters also had good relationships with their oldest sibling, Marguerita, and their two brothers, and came to family events. Waters had always been "off-center" and "went his [own] way." Even as young man, he had a knack for making money, but he liked to accumulate money and he never gave any of it to anybody. Based on what he knew about his brother, Daniel did not believe the disputed will was authentic.

¶ 57 One of the signature exemplars that was admitted into evidence was a short form power of attorney from Waters to Iverson that had been notarized in Wisconsin by Bercos' friend, Helen R. Patenaude. Bercos testified that he, Iverson, and Waters went to Wisconsin in 2010 to close on Iverson's purchase of some real estate and then they met Patenaude for dinner at Wayne's Family Restaurant. According to Bercos, it would have cost $1 to get the document notarized at an Illinois currency exchange, but Waters announced after dinner that Patenaude was going to notarize his document because, "[he] knew she was a notary and he could save a dollar." Also, "Listen, John [Waters] was not about to spend a dollar at any currency exchange or anywhere else if he could get something notarized for free, that's for sure."

¶ 58 The petitioners' forensic document examiner was Jane Lewis, of Milwaukee, Wisconsin.

Lewis testified that she had 28 years experience in the field, including 23 years working in the Wisconsin state crime lab as a forensic examiner. Lewis' opinion was based on signature exemplars that were admitted into evidence including the short form power of attorney executed in Wisconsin, a deed, R.J. Delaney corporate documents, and the Illinois driver's licenses that were issued to Waters in 2006 and 2010. Lewis identified numerous differences, including "design differences, execution differences, [and] differences in line quality" between the undisputed signature exemplars and the signature on the will. The signature on the will was "simulated," "written much more slowly *** and deliberately" and was "actually too good" because it was "at a higher skill level than John Waters was writing." Lewis concluded the will was a forgery.

¶ 59 Iverson's forensic document examiner, Diane Marsh, of Westchester, Illinois, testified to numerous similarities she found between the signature on the will and the 46 exemplars she received from Bercos. However, most of the exemplars he gave to her were in dispute, were not admitted into evidence and, therefore, were not a proper basis for her to form an opinion. Marsh admitted there was a "big difference" between the will and the handful of exemplars that were admitted into evidence, and that when she limited her analysis to the admitted exemplars, she did not have enough information to form an opinion about the will's authenticity.

¶ 60 At the conclusion of the trial, Iverson moved to admit into evidence the transcript of the formal proof-of-will proceedings that took place in January 2012. (The same judge presided throughout this case.) At the initial proceedings, Gloeckler testified as follows. On March 8, 2010, Gloeckler had known Waters for two or three years and was at home at 2125 East Euclid Avenue, in Arlington Heights, editing a video with his work partner, Mohinder Rakalla, when Waters

dropped in for a social visit. Waters sometimes stayed over at the Euclid Avenue property. Waters "always used to come in and go for the food" and this time he took something from the refrigerator, sat down at the kitchen table, and asked Gloeckler and Rakalla to witness the will. After only glancing briefly at the document, Gloeckler signed it and passed it over to Rakalla, who also signed it. Waters then gave Gloeckler and Rakalla an affidavit and said they needed to take it to a notary. The two witnesses then went to a currency exchange in Arlington Heights for the notarization and then they brought the affidavit back to Waters.

¶ 61 On cross-examination, Gloeckler stated that he wrote his home address on the affidavit as 1346 West 64th Street, La Grange Highlands, Illinois, because that was the address on his driver's license. A mutual friend introduced Waters and Gloeckler when they were eating at a Wendy's restaurant in Arlington Heights. Waters owned the Euclid Avenue property and asked Gloeckler to move in because Gloeckler was separating from his wife. Gloeckler believed Waters to be of sound mind and memory because he was acting as he usually acted.

¶ 62 Rakalla testified that he lived in Orland Hills, Illinois, and was a self-employed videographer in 2010. He had been friends with Gloeckler for 20 years and was at his friend's house on Euclid Avenue, editing a video, when Waters walked in, greeted them, and asked for some food. Gloeckler and Waters went to the kitchen and then Gloeckler called Rakalla in to join them there. Rakalla had seen Waters two, three, or four other times at the Euclid Avenue property. Waters asked the two men to witness his will, they both signed it, and then Waters asked them to go to the notary.

¶ 63 On cross-examination, Rakalla said he did not read the will before signing it, but Waters

told him it was a will, and Rakalla considered Waters to be of sound mind and memory at the time because, "It was normal, nothing–nothing different." Waters would come to visit Gloeckler and sometimes stay overnight.

¶ 64 In this appeal from the order declaring the will to be a forgery, Iverson and the family disagree about the appropriate standard of review. Iverson contends we should address all the issues presented *de novo*. This contention would be correct if all the issues presented were questions of law. Questions of law are reviewed *de novo*. *In re Estate of Poole*, 207 Ill. 2d 393, 401, 799 N.E.2d 250, 255 (2003); *In re Estate of Phelan*, 375 Ill. App. 3d 875, 881, 874 N.E.2d. 185, 190 (2007). When we address issues *de novo*, we do not defer to the trial judge and are free to substitute our own conclusions about the law. *In re Estate of Boyar*, 2013 IL 113655, ¶ 27, 986 N.E.2d 1170 (2013). Questions of fact, such as the ones created by the conflicting evidence of forgery presented at the trial, are reviewed with deference to the trial judge under the manifest weight of the evidence standard. *Shelby Loan & Trust Co.,* 372 Ill. at 408, 24 N.E.2d at 162 (in a will contest where evidence about the document's authenticity is conflicting, reversal is warranted only when the verdict is contrary to the manifest weight of the evidence).

¶ 65 We begin by pointing out that the proceedings and arguments here are analogous to those depicted in *Estate of Ragen*. *Estate of Ragen,* 96 Ill. App. 3d 1035, 422 N.E.2d 179. In that case, a codicil which was advantageous to the proponent mysteriously appeared, there was conflicting witness testimony, and handwriting experts reached the conclusion that the signature on the will was genuine. *Estate of Ragen,* 96 Ill. App. 3d 1035, 422 N.E.2d 179. On appeal, the trial court's conclusion that the will was a forgery was reviewed under the manifest weight of the evidence

standard. *Estate of Ragen*, 96 Ill. App. 3d at 1042, 422 N.E.2d at 184.

¶ 66 Using the manifest weight standard is appropriate in part because only the trial court is able to observe and listen to the witnesses as they testify. See *In re Estate of Minsky*, 46 Ill. App. 394, 400, 360 N.E.2d 1317, 1322 (1977). A judgment is against the manifest weight of the evidence only when all reasonable people would reach the opposite conclusion or the findings appear to be arbitrary or not based on the evidence presented. *Bohne v. La Salle National Bank*, 399 Ill. App. 3d 485, 494, 926 N.E.2d 976, 984 (2010); *Judgment Services Corp. v. Sullivan*, 321 Ill. App. 3d 151, 154, 154 N.E.2d 827, 831 (2001).

¶ 67 Where forgery and fraud are charged in a will contest, courts permit evidence to take a wide range and may admit evidence of any fact and circumstance which throws any light on the issue. *Shelby Loan & Trust Co.*, 372 Ill. at 407, 24 N.E.2d at 162; *Estate of Ragen*, 96 Ill. App. 3d at 1042, 422 N.E.2d at 185 (in a will contest alleging forgery or fraud, the trial court is free to consider all facts about the validity of a document).

¶ 68 The two cases Iverson relies on for the *de novo* standard are not persuasive–one of them, *In re Marriage of Smith*, 265 Ill. App. 3d 249, 638 N.E.2d 384 (1994), is a divorce case and applies a section of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/503(b) (West 1992)), and the other case, *Lossman v. Lossman*, 274 Ill. App. 3d 1, 653 N.E.2d 1280 (1995), is an attorney's suit against his clients and applies a common law presumption about fiduciaries who enter into contracts with their clients. Iverson offers no rationale for us to follow divorce and fiduciary cases instead of the will contest cases cited above. This case is just like any other will contest and must be reviewed accordingly. Iverson's contention runs counter to the

well-established legal principle that a decision reached at the conclusion of a will contest trial is subject to the manifest weight of the evidence standard.

¶ 69 Iverson also contends that admitting the will to probate created a presumption of validity and that this presumption became "particularly strong" once a formal proof-of-will hearing was conducted and the admission of the will was then confirmed by the trial judge. As we outlined at the outset of this opinion, any will that is admitted to probate is *prima facie* valid until it is set aside (*Sternberg v. St. Louis Union Trust Co.*, 394 Ill. 452, 459, 68 N.E.2d 892, 896 (1946)), and the party or parties contesting a will bear the burden of proving its invalidity (*In re Estate of Rupinski*, 131 Ill. App. 2d 393, 398, 266 N.E.2d 190, 194 (1970)). But Iverson cites no authority indicating that a formal proof-of-will proceeding strengthens the presumption of validity or enhances the contestants' burden of proving invalidity of the will. The only issue that was decided at the proof-of-will hearing was that the will should be admitted.

¶ 70 Iverson's primary argument for reversal is that the trial judge gave undue weight to the opinion of the family's handwriting expert, Lewis, who concluded that Waters' signature on the will was a forgery. Iverson has singled out this expert's opinion testimony, even though nothing in the trial judge's oral remarks or judgment order indicates that the expert's criticism of the will was the tipping factor in the judge's decision. Nonetheless, we will address Iverson's argument about the appropriate weight to be given to the opinion of a handwriting expert.

¶ 71 Iverson contends, "Illinois law provides that absent substantial augmenting circumstances, expert testimony alone may not overcome the unimpeached testimony of disinterested attesting witnesses." He relies on *Jones*, in which a disinherited son challenged his mother's 1945 will as a

forgery. The two attesting witnesses appeared in court (*Jones v. Jones*, 406 Ill. 448, 449, 94 N.E.2d 314, 315 (1950)) and described circumstances that explained some variations between the woman's undisputed signature exemplars and the will, specifically that she was in her eighties, recuperating from a heart attack, sitting up in bed, without her eyeglasses, and writing on a very small, wooden table that was resting on her bed (*Jones*, 406 Ill. at 450, 94 N.E.2d at 316). In addition to their testimony, the woman's banker told the trial court that he recognized the woman's signature and if it had appeared on one of her checks, he would have paid the check. *Jones*, 406 Ill. at 449, 94 N.E.2d at 315. Although the son's two handwriting experts testified that variations between the will and the exemplars led them to think the will was a forgery, both experts admitted that the variations could be attributed to the woman's age and health, and the other conditions when she executed the will. *Jones*, 406 Ill. at 450, 94 N.E.2d at 316. In light of all this evidence, the trial court declared the signature to be genuine. *Jones*, 406 Ill. at 448, 94 N.E.2d at 315.

¶ 72 The disinherited son appealed and urged the reviewing court to conclude that the opinions of his two handwriting experts overcame the testimony of the two attesting witnesses. *Jones*, 406 Ill. at 451, 94 N.E.2d at 316. However, the court reasoned that the opinion of a handwriting expert is secondary to the "uncontradicted and unimpeached testimony" of an attesting witness regarding a fact capable of proof, given that there is room for error by an expert and temptation for him or her to form an opinion favorable to the party calling the expert. *Jones*, 406 Ill. at 451, 94 N.E.2d at 315. The court did not actually state, as Iverson contends, that there must be "substantial augmenting circumstances" to bolster an expert's opinion over the testimony of a disinterested attesting witness, but the court did express a preference for direct testimony:

> "Expert testimony has its useful place, but being an opinion, it has less weight than direct testimony on a controverted fact. It is not the policy of the law to permit facts positively established by eyewitnesses to be overcome by opinions, except possibly when the eyewitnesses have been discredited or impeached. To do so would put a premium upon secondary evidence, not justified by any known rule of law." *Jones*, 406 Ill. at 451, 94 N.E.2d at 316.

¶ 73 A treatise that analyzes evidence law nationwide, McCormick on Evidence, was critical of *Jones* because the Illinois court seemed to be advocating a general rule of priority without consideration of the surrounding facts. *First National Bank of Chicago v. Rovell*, 51 Ill. App. 2d 282, 286, 201 N.E.2d 140, 143 (1964) (citing Charles Tilford McCormick, McCormick on Evidence, § 173, at 368, n. 15 (1954)).

¶ 74 In an earlier case, *Oliver*, the same court set out additional considerations, noting that even when the testimony of attesting witnesses and other witnesses is not directly impeached, the testimony, nonetheless, may be "contradicted by circumstances" or the testimony may be so improbable that it is not believable. *Oliver v. Oliver*, 340 Ill. 445, 460-61, 172 N.E. 917, 923 (1930). Thus, an Illinois court or jury is not bound to accept the statements of a witness simply because no other witness has directly denied them or the witness was not impeached. *Oliver*, 340 Ill. at 460-61, 172 N.E. at 923. Furthermore, "[t]he testimony of [attesting] witnesses may be overcome by any competent evidence, and other evidence, circumstantial as well as direct, may *** tend to impeach and discredit the *** attesting witnesses." *Oliver*, 340 Ill. at 460-61, 172 N.E. at 923. Accord 80 Am. Jur. 2d *Wills* § 864 (indicating "testimony of the subscribing witnesses has

been described as the best evidence of the due execution of the will," but such testimony is not conclusive and may be overcome by competent direct or circumstantial evidence).

¶ 75 We consider *Oliver* to be a more accurate statement of the law. Even when a witness is not directly impeached in an Illinois courtroom, his or her statements may be disregarded as unbelievable or they may be discredited by circumstantial or direct evidence.

¶ 76 Furthermore, even if we did follow the *Jones* standard, it would not help appellant Iverson. This is because *Jones* concerned "the uncontradicted and unimpeached testimony of two *disinterested* witnesses, who testified they saw *** the signature in question [being written]." (Emphasis added.) *Jones*, 406 Ill. at 451, 94 N.E.2d at 316. In the current case, the individuals who attested to the Waters will cannot be fairly characterized as "disinterested" witnesses and their testimony was contradicted by the manifest weight of the fact testimony and the expert testimony.

¶ 77 We do not accept Iverson's theory that because the attesting witnesses are not "[i]nterested person[s]" as that phrase is defined by the Probate Act, those two individuals must be "disinterested persons" (and thus believed).

¶ 78 According to the Probate Act, an interested person "in relation to any particular action, power or proceeding under this Act means one who has or represents a financial interest, property right or fiduciary status *** which may be affected by the action, power or proceeding involved, including without limitation an heir, legatee, creditor, person entitled to a spouse's or child's award and the representative." 755 ILCS 5/1-2.11 (West 2010). This statutory definition obviously describes people whose interests will be affected by the administration of an estate and are, thus, entitled to notice and an opportunity to be heard regarding the validity of a purported will and the

disposition of the estate's assets. This definition has no relevance to the current appeal. The fact that an individual is not directly affected by a legal action does not mean that the person is disinterested in its outcome.

¶ 79 What is relevant is that Illinois courts have acknowledged that a relationship with a party may be an indication of partiality. For example, the court concluded that a 17-year friendship with the plaintiff in a personal injury suit "indicat[ed] possible bias" (*Albin v. Illinois Central R.R. Co.*, 277 Ill. App. 3d 50, 59, 660 N.E.2d 994, 1000 (1995)) and in a proceeding to admit a will to probate, where one of the attesting witnesses was a friend of the proponent and the other was employed by the proponent's attorney, the court expressly stated that it was appropriate for the trial judge to "have considered the *interest* these witnesses may have had" (emphasis added) (*In re Estate of Jacobson*, 75 Ill. App. 3d 102, 106-07, 393 N.E.2d 1069, 1072 (1979)). Thus, in the present case, the trial judge could properly take into account the relationships that the proponent of the will had with at least one of the attesting witnesses and even the scrivener.

¶ 80 The record indicates attesting witness Gloeckler had lived or was living with the proponent in the same house on Euclid Avenue. The scrivener of the will, Bercos, had represented the proponent in numerous real estate transactions and had represented the proponent and attesting witness Gloeckler in an eviction action. Furthermore, the other attesting witness, Rakalla, worked with and had a 20-year friendship with Gloeckler and would have no apparent loyalty to Waters, whom Rakalla said he had encountered on just a few occasions.

¶ 81 The record indicates the trial judge considered and correctly rejected Iverson's argument about *Jones* and then found in part that attesting witness Gloeckler and scrivener Bercos "are

hardly disinterested" and are "hardly independent." Thus, the record indicates that the principle of witness priority that Iverson relies upon, if such a rule actually existed, does not help Iverson and does not dictate that the fact testimony of these attesting witnesses be given priority over the opinion testimony of the family's handwriting expert.

¶ 82 We also agree with the family's contention that an adverse inference may be drawn against Iverson for his failure to call the attesting witnesses to testify at the will contest trial. The transcript of the initial proof-of-will proceeding indicates the judge curtailed the questioning of the attesting witnesses and that the family was not permitted to delve into the relationship between Gloeckler and Rakalla, or ask about their relationships with Iverson and Bercos.

¶ 83 The family contends their lawyer would have questioned those relationships in great detail at the will contest trial. Illinois law provides that an adverse inference may be drawn against a party who fails to produce a witness reasonably assumed to be favorably disposed to the party. *Simmons v. University of Chicago Hospitals & Clinics*, 162 Ill. 2d 1, 9, 642 N.E.2d 107, 111 (1994). The opposing party is under no obligation to subpoena or use other discovery methods to secure the witness for trial in order for the adverse inference to be appropriate. *Simmons*, 162 Ill. 2d at 9, 642 N.E.2d at 111.

¶ 84 In the present case, the family would not be likely to call Gloeckler or Rakalla because of their perceived bias to the proponent of the will. Due to Iverson's failure to call the attesting witnesses, it can be inferred that questions about their relationships with each other, Iverson, Bercos, and Waters would have elicited testimony that was unfavorable to Iverson and the will at issue. Instead of concluding that the trial judge gave inordinate weight to the opinion of

handwriting expert Lewis, we conclude that it was appropriate for the judge to discount the testimony of the attesting witnesses because Iverson failed to call them to the trial and expose them to further questioning.

¶ 85 These are more than sufficient reasons to reject Iverson's reliance on *Jones* and his citation to the opinion, but, as discussed more fully below, there were what Iverson calls "substantial augmenting circumstances" that bolstered the expert's opinion that the will was a forgery, and the trial court judge was justified in concluding the will was a forgery.

¶ 86 Iverson's final contention is that whether we review the record pursuant to the *de novo* standard or the manifest weight of the evidence, we should conclude that the judgment order was in error and must be reversed. We disagree.

¶ 87 More than one witness testified that Iverson and Bercos said Waters did not leave a will. Dan, the nephew, testified that he had multiple conversations with Iverson and Bercos shortly after Waters died in which both Iverson and Bercos affirmatively stated to Dan that Waters did not have a will. Bercos denied making these statements, but the trial court observed the witnesses and their demeanor and was in the best position to judge their credibility and the weight to be given to their testimony. *In re Estate of Lashmett*, 369 Ill. App. 3d 1013, 1021, 874 N.E.2d 65, 71 (2007).

¶ 88 The record also discloses that Bercos, Gloeckler, and Iverson gave the improbable testimony that despite their relationships and interactions in the 19 months between the will's purported execution and Waters' death, and despite the considerable size of Waters' estate, no one disclosed to Iverson that Waters had requested and executed a will naming Iverson as his sole beneficiary. The trial judge found this incredible:

> "And we are asked to believe that Iverson never knew about the will until after the death of John Waters, but yet it was signed in the kitchen of the house where the guy lived by a witness that lived in the house, by a testator who stayed there and apparently nobody ever told Iverson, his best buddy, close confidant, like an uncle about a will drawn by Mr. Bercos who was the attorney for Mr. Iverson and Bercos was holding on to the original *** and never told Mr. Iverson, his own client.
>
> All at the same time Waters is involved in, apparently, dozens of pieces of litigation throughout the City where Iverson is also apparently involved. Either he's helping Mr. Waters or he's the owner or he's the trustee or he's a claimant or he's an interested party. I can't believe *** that Iverson didn't know about his will until after the death of Mr. Waters."

¶ 89 In other words, the trial judge who observed the witnesses testifying and considered all the surrounding circumstances found that if Gloeckler and Rakalla had truly witnessed Waters' execution of the will, then Iverson would have heard about the will before Waters died.

¶ 90 Furthermore, Dan, whom the trial judge apparently found to be a credible witness, testified that his uncle did not want to have a will because he feared he would create an incentive for someone to end his life.

¶ 91 There was also considerable testimony about Waters' attitude toward his assets which suggests he was unlikely to have a will. Witnesses on both sides of this will contest, including Iverson and Bercos, described Waters as an overzealous collector and hoarder of things he

considered valuable. His brother Daniel indicated this tendency was apparent even in childhood and more than one person described collapsing piles of accumulations. For instance, his friend Froustis said Waters filled up his houses with other people's trash. His nephew Dan and friend Howard said Waters filled up more than one home with debris and then moved out instead of disposing of anything. Dan described Waters' former residences as time capsules of accumulated possessions and trash. Howard testified that instead of throwing out old clothes that were "absolutely dead," Waters would fold them and add them to one of his piles. Dan testified that his uncle could not bear to watch the court-ordered cleanout crews at work.

¶ 92 Several witnesses testified that despite his wealth, Waters avoided parting with any amount of money. Howard, for instance, testified that Waters bought his clothes at a thrift store on "half-price" day. Bercos, Froustis, and Howard described meals with Waters at inexpensive, fast-food restaurants. Froustis said Waters also ate food that had been thrown out. Bercos, Froustis, and Howard all testified that Waters underpaid them for their work. Bercos testified that Waters announced to one of his dinner companions in Wisconsin that she was going to notarize his power of attorney form right there, because Waters "was not about to spend a dollar at any currency exchange or anywhere else if he could get something notarized for free, that's for sure."

¶ 93 The extensive testimony that Waters unreasonably retained property and assets throughout his life suggests that he would be reluctant to contemplate ever giving away his possessions and real estate. The testimony indicates Waters would neither request nor execute a will.

¶ 94 In addition, Dan testified that he had more than one conversation with Iverson and Bercos about there being no will. When Dan told Iverson the assets would go to the family, Iverson replied

that he thought he would inherit his old friend's properties. Bercos' demeanor toward Dan changed around the time that Bercos was filing the will at issue. Although Dan's testimony would help his father in this will contest, two other witnesses who did not stand to benefit gave similar testimony. Howard and Froustis told the trial judge that after Waters died, Iverson repeatedly said he needed to "come up with the will."

¶ 95 Finally, there was the improbable testimony from Bercos that he no longer had his appointment book, meeting notes, or computer records showing that he prepared the will before Waters died. Bercos also denied having a copy of the will, or any cover letter, invoice, or payment receipt.

¶ 96 In light of this record, we find that there was sufficient evidence upon which the trial court could base its decision that the signature on the will was a forgery. This is a record of "substantial augmenting circumstances" which bolstered the expert's conclusion that the signature on the will was a slowly drawn simulation of Waters' signature. Based on the authority and evidence presented, it is abundantly clear that the record supports the trial judge's decision.

¶ 97 For the reasons stated, the judgment is affirmed.

¶ 98 Affirmed.