

IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA
PROBATE DIVISION

IN RE: ESTATE OF

Case No.: 2023 CP 001450 NC

DAVID ALBERT SCHWARTZ

Deceased.

ALEXANDRA COE,

Adversary Proceeding

Petitioner,

v.

NANCY JENKINS,

Respondent.
_____ /

**FINAL JUDGMENT IN FAVOR OF NANCY A. JENKINS, AS PERSONAL
REPRESENTATIVE OF THE ESTATE OF DAVID ALBERT SCHWARTZ, AGAINST
ALEXANDRA COE DENYING ALEXANDRA COE'S AMENDED PETITION FOR
REVOCAION OF PROBATE OF WILL**

THIS CAUSE came before the Court for nonjury trial on September 3, 2025 and September 4, 2025 on Alexandra Coe's Amended Petition for Revocation of Probate of Will (DIN 74). Two theories were advanced in favor of revocation of the Last Will and Testament of David A. Schwartz dated June 11, 2018, to wit: lack of testamentary capacity and undue influence. After the Petitioner rested her case, the Petitioner, Alexandra Coe, stipulated to the involuntary dismissal of the claim of lack of testamentary capacity upon Respondent's *ore tenus* motion for same. The case proceeded on the issue of undue influence. For the reasons stated in open court as reflected in the transcript attached hereto as Exhibit "A", the Court finds that the Petitioner, Alexandra Coe, failed to establish undue influence by a preponderance of the evidence.

Accordingly, the Court denies the Amended Petition for Revocation of Probate of Will filed by Alexandra Coe and enters Final Judgment in favor of Nancy A. Jenkins, as

Personal Representative of the Estate of David A. Schwartz. The Petitioner, Alexandra Coe, shall take nothing from this action and the Respondent, Nancy A. Jenkins, as Personal Representative of the Estate of David A. Schwartz, shall go hence without day.

DONE AND ORDERED in Chambers in Sarasota County, Florida this _____ day of September, 2025.

 9/17/2025 9:28 AM 2023 CP
001450 NC

e-Signed 9/17/2025 9:28 AM 2023 CP 001450 NC

HONORABLE STEPHEN A. WALKER
Circuit Court Judge

cc: James L. Essenson, Esq., essenson@essensonlaw.com
Daniel A. McGowan, Esq., dmcgowan@aptpa.com

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IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL
CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA
PROBATE DIVISION

IN RE: ESTATE OF Case No. 2023-CP-001450-NC

DAVID ALBERT SCHWARTZ

Deceased.

ALEXANDRA COE,
Petitioner,

v.

NANCY JENKINS,

Respondent.

- - -

EXCERPT OF PROCEEDINGS

COURT'S RULING

- - -

BEFORE: Judge Stephen Walker
DATE: September 4, 2025
TIME: Commencing at 11:39 a.m.
PLACE: Silvertooth Judicial Center
2002 Ringling Boulevard
Sarasota, Florida 34237

REPORTER: Vivian S. Deveroux
Certified Verbatim Reporter
Certified Court Reporter
Notary Public, State of Florida
at Large

Ridenour Reporting
941-364-3390
Exhibit A

1 APPEARANCES:

2 DANIEL A. MCGOWAN, ESQUIRE

Adrian Philip Thomas, P.A.

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4 Fort Lauderdale, Florida 33301

954.764.7273

5 dmcgowan@aptpa.com

Appearing on behalf of the Petitioner

6 JAMES L. ESSENSON, ESQUIRE

7 Essenson Law Firm

100 Wallace Avenue

8 Suite 310

Sarasota, Florida 34237

9 941.954.0303

essenson@essensonlaw.com

10 Appearing on behalf of the Respondent

11
12 ALSO PRESENT:

13 Barbara J. Welch, Esquire

14 Darice Wallace, Paralegal

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EXCERPT OF PROCEEDINGS

COURT'S RULING

* * *

(Thereupon, the proceedings
continued as follows:)

THE COURT: Estate of Kester versus Rocco,
117 So.3d, 1196, which is a First District case
in 2013, reading from page 1199 of that
opinion.

"Undue influence must amount to over
persuasion, duress, force, coercion, or artful
or fraudulent contrivances to such an extent
that there is a destruction of free agency and
willpower of the testator."

Case goes on to cite Peacock v. DuBois,
which is the Supreme Court case from 1925.
"Undue influence present where a person is not
left to act intelligently, understandingly, and
voluntarily, and the influence operates to
dethrone the free agency of the person,
rendering his act a product of the will of
another instead of his own."

I'm also guided by how, as the trier of
fact, I am to weigh evidence, and I always go
to the jury instructions that we read to jurors

1 to tell them -- or tell them what the law is on
2 things that they can take into consideration
3 when evaluating testimony.

4 The civil instruction states that, "In
5 evaluating the believability of any witness,
6 and the weight I will give the testimony of any
7 witness, I may properly consider the demeanor
8 of the witness while testifying, the frankness
9 or lack of frankness of the witness. Did the
10 witness have some interest in how the case
11 should be decided? Does the witness's
12 testimony agree with the other testimony and
13 other evidence in the case?"

14 And there are other factors.

15 Mr. Essenson is correct that the
16 Petitioner's testimony is just that; it's her
17 testimony. There is no other evidence, no
18 other testimony that corroborates her version
19 of events and her suspicions.

20 She testified as to the relationship that
21 Nancy Jenkins had with her mom. She said,
22 "well, she was good friends with my mother's
23 roommates."

24 The evidence. In this case, the more
25 persuasive evidence, the greater weight of the

1 evidence stood -- as -- as fortified by
2 Exhibit 74, indicate that that is not at all an
3 accurate characterization of the role that
4 Nancy Jenkins played in the life of Janine, and
5 then the life of David.

6 The testimony from the evidence or the --
7 the witnesses that were presented by the
8 Respondent, all clearly established that David
9 had a motivation and a reason to make a
10 determination. It is a determination that this
11 court finds that he made of his own free will.

12 It was made at a time when there was
13 profound grief that was visited upon this
14 family by a monstrous disease that took Janine.
15 I am not in any way suggesting that David's
16 decision was the right decision, but it was his
17 decision.

18 There was consistency among the
19 Respondent's witnesses with regard to the
20 Petitioner's relationship with her mother, and
21 the way that the Petitioner responded to her
22 mother's final diagnosis.

23 I do not find that the Petitioner has
24 sufficiently established or met their burden to
25 show undue influence in this case.

1 Did Nancy Jenkins act perfectly? Not with
2 regard to the handling of getting Mr. Seidl
3 involved. That could have been done better.

4 Do I find her testimony to be reliable,
5 though, and consistent with regard to what she
6 did as far as passing on the information to the
7 lawyers was the decision -- or it was based on
8 the decisions and the will of David? I do. I
9 am persuaded that the evidence supports that.

10 With regard to the fact that she is not a
11 substantial beneficiary, I don't know. And I
12 agree with the Petitioner that there is -- I'm
13 persuaded by your argument that there's a way
14 to go forward with this cause of action without
15 showing that there is -- that the Respondent is
16 a substantial beneficiary.

17 But under the facts and circumstances of
18 this case, what we have is a dear friend, a
19 trusted friend who was put into a difficult
20 situation, in the heat of a complex family
21 dynamic, where she was called upon to keep the
22 trust of Janine. She was put in that situation
23 because Janine wanted to be in control of her
24 end-of-life events.

25 There were concerns that were discussed

1 about how Alex may respond to finding what
2 Janine's intent and what her decision was. I
3 do not fault Ms. Coe for wanting to explore
4 every option to help her mother.

5 The testimony about Thanksgiving in 2016
6 was unchallenged, and it dovetailed with some
7 of the testimony that was unchallenged
8 regarding David voicing to the people he cared
9 about his disappointment with what happened
10 with Janine.

11 Based on the totality of the
12 circumstances, and what was presented to me on
13 the remaining count in the petition, I find for
14 the Respondent and against the Petitioner.

15 That is the ruling of the Court, and the
16 Court is adjourned.

17 (Thereupon, the proceedings were
18 concluded at 11:48 a.m.)

CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF POLK

I, VIVIAN S. DEVEROUX, Court Reporter and Notary Public, do hereby certify that I was authorized to and did stenographically report the above-described proceedings; that my shorthand notes were thereafter reduced to typewriting by means of computer-aided transcription by me; and the transcript is a true and complete record of my stenographic notes.

I FURTHER CERTIFY that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the action.

Dated this 4th day of September, 2025.

Vivian Deveroux

VIVIAN S. DEVEROUX
CVR, CCR, Notary Public
State of Florida
My Commission No. HH 609509
EXPIRES: 11/04/28