

IN THE SUPREME COURT OF THE STATE OF MONTANA

CASE NO.: DA 22-0588

ROBIN W. CARLSON, *Pro se*
Plaintiff/Appellant

vs.

ESTATE OF JACK W. NICKELS,
Defendant/Appellee

On Appeal from the Montana Seventh Judicial District Court,
County of McCone, Cause No. DV-22-3,
the Honorable Katherine M. Bidegaray Presiding

APPELLANT'S APPEAL BRIEF

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ISSUES PRESENTED FOR REVIEW

1. The District Court's Order Dismissing Robin's Complaints was "clearly erroneous" because not one of Robin's claims of circumstantial evidence (confirming Pearl's¹ undue influence of Jack to leave Robin no disposition of property in the 2008 Trust²), cited in the below named documents, was acknowledged³:
 - a. Robin's response to defendant's Motion to Dismiss. (Doc. 10, pp. 6-13), and
 - b. Robin's August 8, 2022, Lodge Document entitled, "Proposed Order Denying Defendant's Motion to Dismiss", hereinafter "Proposed Order", pp. 10-24. (See Case Register).
2. It was only because of Pearl's undue influence of Jack that Robin was not a named beneficiary in the 2008 Trust. Therefore, by not acknowledging the above referenced circumstantial evidence claims, the District Court erred when stating, "...Robin is not one who may petition the court, pursuant to §72-38-213(1), MCA, "concerning the internal affairs of the trust" because he is not a trustee or beneficiary of the trust".

Therefore, because these circumstantial evidence claims were not considered, the District Court's order should be reversed.

¹ Pearl Fisher Carlson Wagner Oschner Nickels is the spouse of Jack W. Nickels (decedent) and Robin's mother. (Doc. 1, p. 2, ¶ 2).

² "Second Amendment & Restatement of Jack W. Nickels Trust", executed January 24, 2008. (Doc. 1, Exhibit 2).

³ Acknowledge: 1) To accept, recognize, confirm, or admit the existence or truth of something. 2) To validate an identity or claim.

Legal recognition of a status or fact in a jurisdiction is formal acknowledgement of it as being true, valid, legal, or worthy of consideration, and may involve approval or the granting of rights.

STATEMENT OF THE CASE

On March 16, 2022, Robin filed a Complaint against the Estate of Jack W. Nickels. (Doc. 1). On April 6, 2022, Robin filed an Amended Complaint. (Doc. 4). In the estate's multiple Motions to Dismiss, the defendant argues that "...since Robin failed to claim or assert any specific facts in either the Complaint or Amended Complaint as to undue influence, Rule 12(b)(6) of MRCivP, it requires dismissal of both claims in the Complaint and Amended Complaint." (Doc. 5, p. 8).

Robin's reply brief to defendant's multiple Motion to Dismiss was due on May 5, 2022. On April 28, 2022, Robin filed a Motion to Join Jack's daughters because Pearl admitted⁴ in a phone conversation with Robin how she influenced Jack such that Holly and Sally would each receive \$30,000 from the 2008 Trust. (Doc. 6, pp. 1-3).

While Robin was waiting for a ruling on his Motion to Join, the estate filed Motions Requesting an Order of Dismissal and Attorney Fees and Costs. (Doc. 9).

On May 26, 2022, Robin filed a 3-prong response brief, and, per the last two criterial elements in In re Matter of Estate of Edwards, 2017 MT 93 (at ¶ 56), 393

⁴ See Exhibit 12-Affidavit of Darleen R. Hansen; Doc. 19, Exhibit 13-Affidavit of Robin W. Carlson

P.3d 639, p. 51, Robin demonstrated Pearl's undue influence of Jack to leave Robin no disposition of property in the 2008 Trust. (Doc. 10, pp. 6-13).

On July 26, 2022, a zoom hearing was held with an order to submit Proposed Orders.

On August 8, 2022, Robin filed a Proposed Order Denying Defendant's Motion to Dismiss, further demonstrating Pearl's undue influence of Jack. (Proposed Order).

A summary of the circumstantial evidence claims, presented in Robin's response to Defendant's Motion to Dismiss and Proposed Order, confirming Pearl's undue influence of Jack are as follows:

1. Unlike the "troubled" and "strained" relationship Jack had with his own biological children, Jack did not have a "troubled" and/or strained relationship with Robin (Proposed Order, pp. 11-12, ¶¶ 60-65),
2. Jack did not have any "heartburn" or animosity towards Robin (Proposed Order, p. 12, ¶ 66),
3. Based on the timing as to when Jack created and executed the 2008 Trust, Jack "could have cared less" about Robin's prior inheritance. (Doc. 10, p. 8, ¶ 29; Proposed Order, p. 13, ¶ 70),
4. Robin and his half-brother, Todd, each inherited Ranch property from their respective fathers (prior to Jack creating and executing his 2008 Trust) is circumstantial evidence that Jack "could have cared less" about Pearl's son's prior inheritances. (Doc. 10, p. 5, ¶¶ 19-20; Doc. 10, p. 8, ¶ 28; Doc. 10, p. 12, ¶ 47d; Proposed Order, p. 19, ¶ 94).
5. It was Pearl's idea, not Jack's, to leave Robin no disposition of property (Doc. 10, pp. 7-8, ¶¶ 25-26; Proposed Order, pp. 10-15),

6. Pearl had a motive (hatred towards Robin) to influence Jack to leave Robin no disposition of property (Doc. 1, Exhibit 3-Declaration of Robin W. Carlson; Doc. 10, p. 11, ¶¶ 42-44; Proposed Order, pp. 17-19, ¶¶ 85-96),
7. Pearl had opportunity to influence Jack (Doc. 10, p. 5, ¶ 15; Doc. 10, p. 7, ¶¶ 23-26); Proposed Order, p. 16, ¶ 82),
8. Jack was susceptible to Pearl's undue influence regarding Jack's daughters' disposition of 2008 Trust property. (Doc. 6-Mot. to Join, pp. 2-3, ¶¶ 4-16; Doc. 10, p. 6, ¶ 21; Proposed Order, pp. 13-14, ¶¶ 71-75), and
9. Jack was susceptible to Pearl's undue influence such that Jack denied Robin any disposition of property in his 2008 Trust. (Doc. 10, pp. 6-13; Doc. 10, p. 10, ¶¶ 36-40; Proposed Order, pp. 11-26; Proposed Order, pp. 13-14, ¶¶ 71-75).

On September 16, 2022, the court entered an Order Dismissing Complaint and Amended Complaint and Denying Request for Attorney Fees and Costs.

The District Court's Order Dismissing Robin's Complaints was:

- a. "Clearly erroneous" because not one of Robin's claims of circumstantial evidence proving Pearl's undue influence of Jack to leave Robin no disposition of property in the 2008 Trust was acknowledged in the Order, and
- b. In that Pearl's undue influence of Jack resulted in Robin not being named as a beneficiary of Jack's 2008 trust, then the lower court erred by stating, "Robin is not one who may petition the court, pursuant to §72-38-213(1), MCA, "concerning the internal affairs of the trust" because he is not a trustee or beneficiary of the trust".

On October 13, 2022, Robin filed a timely appeal.

STATEMENT OF FACTS

1st Lawsuit: Jack/Pearl vs. Jack, Jr.

On June 26, 2002, Jack and Pearl filed a complaint in the Montana 7th Judicial Court-McCone County, under Cause No.: DV-2002-5 against Jack Nickels, Jr. The last filing for this case was August 8, 2002. (Public Record) (Proposed Order, p. 9).

2nd Lawsuit: Jack, Jr. vs. Nickels Ranch Partnership/Jack

On September 12, 2002, Jack, Jr. filed a complaint in the Montana 7th Judicial Court-McCone County, under Cause No.: DV-2002-8 against Nickels Ranch Partnership and Jack. The last filing for this case was March 26, 2004. (Public Record). (Proposed Order, p. 9).

2003 Trust: Holly and Sally's Inherit Nickels Ranch; Jack, Jr. Excluded

Regarding the November 20, 2003, Amendment and Restatement of Jack W. Nickels Trust (hereinafter the "2003 Trust"), Jack states,

For purposes of this this trust, ... "my heirs" shall include my daughters, HOLLY and SALLY, but shall specifically exclude my son, JACK, JR.... (Doc. 1, Exhibit 1, p. 1, §1; Doc. 4, p. 7, ¶ 32; Proposed Order, p. 21, ¶ 103).

My exclusion of any provisions for JACK, JR. in this trust is intentional. (Id.).

I would like my children...other than JACK, JR...to receive the benefits of the trust assets after the death of my spouse. (Doc. 1, Exhibit 1, p. 4, §12; Proposed Order, p. 21, ¶ 103).

With respect to the property to be held in trust under this paragraph, the trustee: Shall distribute, upon my spouse's death, the remaining trust property including principal and accrued but undistributed income of the trust, to my descendants who are then living... (Exhibit 1, §13(d); Doc. 4, p. 7, ¶ 33).

Pearl's four sons (by prior marriages), Ernie, Robin, Brad and Todd, were not named in the 2003 Trust; there was no disposition of property to Ernie, Robin, Brad or Todd in the 2003 Trust. (Doc. 1, p. 2, ¶¶ 2-3; Proposed Order p. 10, ¶ 54).

3rd Lawsuit: Jack, Jr. vs. Pearl

On December 6, 2004, Jack Nickels, Jr. filed a complaint (for defamation) in the Montana 17th Judicial Court-Valley County under Cause No.: DV-2004-117 against Pearl. This case was dismissed on October 31, 2008. (Public Record). (Proposed Order, p. 9).

The 2008 Trust was Exclusively Jack's

Prior to their marriage, all of the Nickel's Ranch real estate property was owned by Jack. Jack and Pearl acquired no real estate property after they were married. (Proposed Order, p. 24, ¶ 120).

The Second Amendment & Restatement of Jack W. Nickels Trust (i.e., the 2008 Trust) states, "IN WITNESS WHEREOF, the parties have executed this Trust this 24 day of January 2008." The only party who signed the 2008 Trust as

“Grantor” and “Trustee” was Jack W. Nickels. (Doc. 1, Exhibit 2, pg. 11; Proposed Order, p. 24, ¶ 118).

Pearl did not sign the 2008 Trust because it was not her trust! (Doc. 1, Exhibit 2, pg. 11; Proposed Order, p. 24, ¶ 119).

Pearl’s Undue Influence: Holly and Sally’s Distribution

In a February 19, 2022, cell phone, speaker-activated, call, Pearl shared with Robin and Darleen, how she (Pearl) influenced Jack regarding Holly and Sally’s distribution of property. The conversation went like this:

1. Pearl says, “*He [Jack] says, ‘I’m not leaving those girls a thing. Not a thing. I educated them and that’s all they’re gonna get. They both got good jobs.’*”
2. Pearl says, “*Well Jack, I said, you know, I think you should leave them something. Leave them some cash.*”
3. Per Pearl, Jack says, “*Well I don’t know what I should give them,*” and Pearl says, “*Well, if you don’t give them at least \$30,000 apiece don’t give them anything.*”
4. Per Pearl, Jack says, “*Well, I guess that would be alright.*”
5. Pearl then says, “*So he wrote that in this letter that he gave to the attorneys.... And he signed it too, like it was...ah... basically it was a hand-written Will.*”

(Doc. 4, p. 9, ¶ 44-45; Doc. 6, pp. 2-3, ¶ 9-14; Doc. 10, p. 10, ¶ 37); Proposed Order, pp. 13-14, ¶¶ 71-72; Doc. 18, Exhibit 12-Affidavit of Darleen R. Hansen; Doc. 19, Exhibit 13-Affidavit of Robin W. Carlson).

2008 Trust; Holly/Sally Inherit \$30,000 Each; Jack, Jr., Excluded

On January 24, 2008, 10½ years after Jack and Pearl married, 87-year-old Jack created and executed the Second Amendment and Restatement of Jack W. Nickels Trust (hereinafter the “2008 Trust”). (Doc. 10, p. 5, ¶ 15; Proposed Order, p. 10, ¶ 55).

The 2008 Trust states,

JACK, JR. has filed separate lawsuits against me and my spouse over the last several years, which I believe were inappropriate and without merit. HOLLY and SALLY have not offered any support to my spouse [Pearl] and I respect these matters. My [Jack’s] relationship with JACK, JR., HOLLY and SALLY have deteriorated to the point that I do not have a father-child relationship with any of them. Because of these circumstances, it is my specific intent that JACK, JR...not receive any inheritance from me and HOLLY and SALLY...shall only receive the bequest provided for each of them under this Trust. (Doc. 1, Exhibit 2, p. 2, para. 1; Proposed Order, p. 11, ¶ 60).

Further, Jack states,

I give the sum of \$30,000 to HOLLY...

I give the sum of \$30,000 to SALLY...

(Doc. 1, Exhibit 2, p. 5; Doc. 4, p. 15, ¶ 73; Doc. 6, p. 3, ¶ 15; Doc. 10, p. 10, ¶ 38; Proposed Order, p. 23, ¶ 112).

Pearl’s Motive to Influence Jack to Leave Robin no Disposition of Property

Although Pearl and Jack had a confidential relationship, there were some skeletons in Pearl’s closet (i.e., Pearl’s past history of her child abuse of Robin)

that she did not want to share with Jack. (Doc. 1, Exhibit 3; Doc. 10, p. 11, ¶¶ 42-44; Proposed Order, pp. 17-19).

On May 4, 1992, when I [Robin] was 33-years old and a mechanical engineering student at the University of Wyoming, I voluntarily admitted myself to Mountain Crest, a psychiatric hospital, located on Harmony Road, Fort Collins, Colorado, where I spent 25 days. (Doc. 1, p. 5, ¶ 21; Doc. 1, Exhibit 3 - Declaration of Robin W. Carlson, ¶ 1; Doc. 4, pp. 3-4, ¶¶ 7-9; Proposed Order, p. 17, ¶ 86).

Further,

I [Robin] admitted myself to Mt. Crest because I was suffering from severe depression, and had suicidal, and homicidal ideations. During my hospital stay, I [Robin] learned that my depression was caused by suppressed anger. My [Robin's] anger was caused by the extensive childhood abuse I received at the hands of my mother, Pearl Nickels. Robin's Declaration includes excerpts taken from his journal and letter I [Robin] wrote in 1992, 1993 and 1994, and correspondences received from my dad, Bill Carlson..."

(Doc. 1, Exhibit 3, p. 1, ¶¶ 1-5; Proposed Order, pp. 17-18, ¶¶ 87-90).

Todd Inherits Wagner Ranch

On December 15, 1996, Richard [Wagner] died. (Doc. 1, p. 2, ¶ 3; Doc. 4, p. 7, ¶ 27). Pearl's other ex-husband, Richard Wagner, left their only child, Todd, his entire estate (i.e., the Wagner Ranch). (Doc. 1, p. 2, ¶ 3; Doc. 4, p. 7, ¶ 28; Doc., 10, p. 5, ¶ 19; Proposed Order, p. 15, ¶ 77).

Robin Inherits Carlson Ranch

Pearl Fisher Carlson Wagner Oschner Nickels (“Pearl”) and William E. Carlson (“Bill”) had three sons: Ernie, Robin, and Brad. (Doc. 1, p. 2, ¶ 2; Doc. 4, p. 3, ¶ 5; Proposed Order, p. 7, ¶ 28).

Robin’s father, Bill Carlson (“Bill”) died on June 25, 2004. (Doc. 1, p. 2, ¶ 5; Doc. 4, p. 5, ¶ 14; Doc., 10, p. 5, ¶ 14; Proposed Order, p. 7, ¶ 32).

The Deed of Distribution for Bill’s ranch property was distributed to Robin on May 31, 2005. (Proposed Order, p. 7, ¶ 33).

In today’s dollars, the value of the real estate property Todd received from the Wagner Estate was substantially greater in value than the combined value of real estate property and inheritance received by Robin, Brad and Ernie from the William E. Carlson Estate. (Doc. 1, p. 3, ¶ 11; Doc. 4, p. 7, ¶ 29; Doc. 10, p. 5, ¶ 20; Proposed Order, p. 8, ¶ 45).

2008 Trust: Ernie/ Brad/Todd Inherit Nickels Ranch; Robin Excluded

Regarding the 2008 Trust, Jack states,

With respect to my spouse’s children, ROBIN inherited assets from his dad’s (my spouse’s prior husband) estate, including his ranch, that were substantially greater in value than the inheritance received by ERNIE and BRAD. For this reason, my spouse and I have decided not to include a disposition to ROBIN under our Trusts. “...the balance of our trust estates shall be distributed to ERNIE, BRAD and TODD...”

(Doc. 1, Exhibit 2, p. 2, para. 2; Doc. 1, pp. 4-5, ¶ 20; Doc. 4, p. 8, ¶ 35; Doc., 10, p. 5, ¶ 17).

STANDARD OF REVIEW

This Court reviews factual findings under the clearly erroneous standard, discretionary ruling for an abuse of discretion, and legal conclusions and mixed questions of law and fact de novo. City of Kalispell v. Omyer, 2016 MT 63, ¶ 9, 383 MT 19, ¶ 9, 368 P.3d 1165, ¶ 9.

On appeal, in a nonjury trial, this Court will not disturb the district court's findings of fact unless they are clearly erroneous. Mont. R. Civ. Pro. 52(a);

Flikkema v. Kimm (1992), 255 Mont. 34, 37, 839 P.2d 1293, 1295.

In equity cases and in matters and proceedings of an equitable nature, the supreme court shall review all questions of fact arising upon the evidence presented in the record, whether the same be presented by specifications of particulars in which the evidence is alleged to be insufficient or not, and determine the same, as well as questions of law, unless for good cause a new trial or the taking of further evidence in the court below be ordered. Nothing herein shall be construed to abridge in any manner the powers of the supreme court in other cases. §3-2-204(5), MCA.

Cases using the "clearly erroneous" standard of review generally cite Mont.

R. Civ. Pro. 52(a), which provides in part:

(1) In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately.

...

(6) Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.

While nothing in §3-2-204(5), MCA, precludes the use of the "clearly erroneous" test, Mont. R. Civ. Pro. 52(a) by its terms, mandates that this more stringent test be applied to "all actions tried upon the facts without a jury or with an advisory jury," without regard for whether the case arises at law or in equity. For this reason, we conclude that the proper standard of review in estate cases at equity is whether the findings of the district court are clearly erroneous. Absent a determination that the findings are clearly erroneous, they will not be set aside. Flikkema v. Kimm, 1296.

In re Matter of Estate of Edwards, 2017 MT 93 (at ¶ 56), 393 P.3d 639, p.

51, the criteria to prove undue influence is as follows:

- a. "To establish undue influence, a party must present specific acts showing that undue influence actually was exercised upon the mind of the testator directly to procure execution of the will." In re Estate of Mead, 2014 MT 264, ¶ 27, 376 MT. 386, 336 P.3d 362 (citing In re Estate of Harmon, 2011 MT 84A, ¶¶ 21-22, 360 Mont. 150, 253 P.3d 821) (internal quotes and citation omitted).
- b. A trier of fact should consider "the opportunity for undue influence, including the testator's susceptibility to influence, and whether the disposition of property was natural." Mead, ¶ 27; In re Estate of Harms, 2006 MT 320, ¶ 21, 335 MT. 66, 149 P.3d 557).
- c. The mere "opportunity to exercise undue influence on the testator is not sufficient to prove undue influence and invalidate a will. Rather, the opportunity to exercise undue influence is to be considered and correlated with the alleged acts of influence to determine if the acts amount to undue influence." Harms, ¶ 36.
- d. Likewise, the existence of a confidential relationship, without evidence of a specific act of undue influence, is insufficient to show "that the relationship was used for the purpose of obtaining an unfair advantage." Harmon, ¶ 47 (emphasis in original).
- e. A finding of undue influence may be based on circumstantial evidence. In re Estate of Lightfield, 2009 MT 244, ¶¶ 40-42, 351 MT 426, 213 P.3d 468.

Circumstantial evidence is indirect evidence that does not, on its face, prove a fact in issue but gives rise to a logical inference that the fact exists.

Circumstantial evidence requires drawing additional reasonable inferences in order to support the claim.

SUMMARY OF ARGUMENT

The merits of this case show, based upon the 40⁺ years of anger, animosity, hatred, and spite Pearl had been harboring against Robin, Pearl had (a) a motive to influence Jack regarding Robin's disposition of property, (b) Pearl had the opportunity to influence Jack regarding Robin's disposition of property, (c) 87-year-old Jack was susceptible to Pearl's influence, and (d) Pearl's undue influence of Jack resulted in Robin receiving an unnatural disposition of property in Jack's 2008 Trust.

Further, pursuant to Edwards, the circumstantial evidence is clear:

1. Jack did not have a "troubled" and/or strained relationship with Robin.
2. Jack did not have any "heartburn" or animosity towards Robin.
3. Based on the timing as to when Jack updated his 2008 Trust (Jack now 87 years old, waited another 2 years and 8 months after Robin receive inheritance from his father), Jack "could have cared less" about Robin's prior inheritance.

4. Based upon the fact that both Robin and half-brother Todd had received prior inheritances from their respective fathers, Jack “could have cared less” about Robin’s prior inheritance.

5. Therefore, the circumstantial evidence shows, it was not Jack’s idea to leave Robin no disposition of property in his 2008 Trust.

6. Further, even though Robin and his half-brother Todd each inherited ranch property from their respective fathers prior to Jack creating and executing the 2008 Trust, then it would be reasonable to infer that Jack’s decision to leave Robin no disposition of property while leaving Todd a disposition of property was based on another factor.

7. That factor is, Pearl who had been harboring 40+ years of anger, animosity, hatred, and spite towards Robin, used those ugly emotions as her motive to influence Jack to leave Robin no disposition of property.

8. Since Jack was susceptible to Pearl’s undue influence regarding the disposition of property to his own biological daughters, then it would be reasonable to infer that Jack was susceptible to Pearl’s influence regarding the disposition of his property to Pearl’s own children, particularly Jack’s stepson, Robin.

9. Thus, the circumstantial evidence supports only one conclusion; it was not Jack’s decision to leave Robin no disposition of property, Pearl had the opportunity (and motive, based on her hatred towards Robin) to influence Jack

regarding Robin's disposition of property, 87-year-old Jack was susceptible to Pearl's influence, and Jack's disposition of property to Robin was unnatural.

Since no circumstantial evidence claims were acknowledged in the District Court's Order, then, this Court should reverse the lower court's decision and remand this case for further consideration.

Further, since Pearl unduly influenced Jack to leave Robin no disposition of property in the 2008 Trust, then, Pearl effectively "snuffed out" Robin's ability to claim "beneficiary" status. Therefore, this Court should reverse the lower court's decision and remand this case for further consideration.

ARGUMENT

I. Since Robin's circumstantial evidence claims (confirming Pearl's undue influence of Jack to leave Robin no disposition of property) were not acknowledged, the District Court's Order was "clearly erroneous"

The word "poison" and the phrase "poisoning of Jack's mind" only appear in:

1. The Complaint (Doc. 1, p. 8, ¶ 35; p. 9, ¶ 42; p. 11, ¶¶ 55-56; p. 12, ¶¶ 66-67, p. 15, ¶ 80),
2. Declaration of Robin W. Carlson (Doc. 1, Exhibit 3, p. 8, ¶ 41),
3. Amended Complaint (Doc. 4, p. 13, ¶ 64; p. 16, ¶ 82), and
4. Defendant's Motion to Dismiss (Doc. 5, p. 7, ll. 12-14).

The phrase, "poisoning of Jack's mind" is mentioned in the District Court's order (Doc. 20, p. 4, ll. 17-18), but the word "circumstantial evidence" (first cited in Robin's response to defendant's Motion to Dismiss), is not.

Therefore, Robin concludes that the District Court erred by not acknowledging Robin's circumstantial evidence claims of undue influence stated in his response to defendant's Motion to Dismiss and Proposed Order.

That is, all future filings pertaining to Robin's claims of circumstantial evidence were not acknowledged by the lower court. (Doc. 10, pp. 6-13; Proposed Order, pp. 10-24; Doc. 18, Exhibit 12-Affidavit of Darleen R. Hansen; Doc. 19, Exhibit 13-Affidavit of Robin W. Carlson).

A. 1st Circumstantial Evidence Claim: Multiple Lawsuits Excludes Jack, Jr.

The amount of time that elapsed from June 26, 2002 (when the first lawsuit between Pearl/Jack and Jack, Jr. was filed) until October 31, 2008, when the last lawsuit ended, was 6 years and 4 months (i.e., 76 months). Over this time span, Jack, Jr. was a litigant against Jack, Pearl and/or Nickels Ranch Partnership for 5½ years (66 months). (Proposed Order, p. 22, ¶ 106).

"A finding of undue influence may be based on circumstantial evidence." (Lightfield, ¶¶ 40-42; Edwards at ¶ 56).

Therefore, based upon the preceding, this circumstantial evidence indicates it would be reasonable to infer that Jack was very upset with his son, Jack, Jr. which is reflected in Jack Jr. receiving no disposition from either the 2003 Trust or the 2008 Trust. (Doc. 1, Exhibit 1, p. 1, §1; Doc. 1, Exhibit 2, p. 2, para. 1; Doc. 4, p. 7, ¶ 32; Proposed Order, p. 22, ¶ 107).

B. 2nd Circumstantial Evidence Claim: Jack Leaving Holly and Sally \$30,000 each demonstrates that Jack was Susceptible to Pearl's Undue Influence

“A trier of fact should consider the opportunity for undue influence, including the testator’s susceptibility to influence, and whether the disposition of property was natural.” (Mead, ¶ 27; Edwards, p. 56; Harms, ¶ 21).

Jack saying, ‘*I’m not leaving those girls a thing*’ (Doc. 10, p. 10; Proposed Order, pp. 13-14); Pearl saying, “*Well, if you [Jack] don’t give them at least \$30,000 apiece don’t give them anything.*” (Doc. 10, p. 10; Proposed Order, pp. 13-14, Doc. 18, Exhibit 12-Affidavit of Darleen R. Hansen; Doc. 19, Exhibit 13-Affidavit of Robin W. Carlson); and Holly and Sally each being bequeathed with \$30,000 in the 2008 Trust (Doc. 1, Exhibit 2, p. 5), is circumstantial evidence (per Edwards) indicating it would be reasonable to infer that (a) the back-and-forth conversation between Jack and Pearl is not hearsay (Proposed Order, p. 20, ¶¶ 99-100), (b) Jack and Pearl had a back-and-forth conversation regarding Holly and Sally’s distribution (Doc. 10, p. 10, ¶¶ 37-39; Proposed Order, p. 23, ¶ 113), and (c) Jack was susceptible to Pearl’s undue influence (Doc. 10, p. 10, ¶ 39; Proposed Order, p. 23, ¶ 115).

C. 3rd Circumstantial Evidence Claim: Jack Did Not Have a “Troubled/Strained” Relationship with Robin

Regarding the 2008 Trust, Jack did not hold back his reasoning (Doc. 1, Exhibit 2, p. 2, para. 1) as to why he left each of his own biological daughters,

Holly and Sally, only \$30,000 (Doc. 1, Exhibit 2, p. 5), and no disposition of trust property to Jack, Jr. (Doc. 1, Exhibit 2, p. 2, para. 1; Proposed Order, p. 12, ¶ 64).

Therefore, pursuant to Edwards, a finding of undue influence may be found based on the circumstantial evidence that if Jack had a “troubled or strained” relationship with his stepson Robin (i.e., like the “troubled” and “strained” relationship Jack had with his own biological children), then it would be reasonable to infer that Jack would have acknowledged this “troubled” and/or “strained” relationship in the 2008 Trust. However, Jack made no mention of a “troubled” and/or “strained” relationship with Robin in the 2008 Trust, because there was none. (Proposed Order, p. 12, ¶ 65).

D. 4th Circumstantial Evidence Claim: Jack Had No “Heartburn” and/or Animosity Towards Robin

Jack’s 2008 Trust statement, “Her [Pearl’s] children [including Robin] treated me [Jack] with respect throughout our marriage” (Doc. 1, Exhibit 2, p. 2, para. 2) is circumstantial evidence (per Edwards), indicating it would be reasonable to infer Jack had no “heartburn” or animosity towards Robin. (Doc. 10, p. 8, ¶ 27; Proposed Order, p. 12, ¶ 66).

E. 5th Circumstantial Evidence Claim: Based on the Timing as to When Jack Executed the 2008 Trust, Jack “Could Have Cared Less” About Robin’s Prior Inheritance

Robin’s father, Bill Carlson (“Bill”) died on June 25, 2004. (Doc. 1, p. 2, ¶ 5; Proposed Order, p. 7, ¶ 32). The Deed of Distribution for Bill’s ranch property was distributed to Robin on May 31, 2005 (Proposed Order, p. 7, ¶ 33).

If Robin’s prior inheritance was a “deal breaker”, such, that Jack needed a guarantee that Robin would receive no disposition of his \$16-million-dollar⁵ trust, then Jack, being nearly 85 years-old and at risk of dying himself, would have aggressively acted with extreme urgency (after Robin inherited the larger portion of the Carlson Estate on May 31, 2005) to immediately amend the 2003 Trust. However, that did not happen! That is, Jack waited another 2 years⁶ and 8 months (Jack now 87 years old) before he created and executed the 2008 Trust on January 24, 2008. (Doc. 10, p. 8, ¶ 28; Proposed Order, p. 13, ¶ 69).

Therefore, pursuant to the circumstantial evidence clause cited in Edwards, and based on the timing of when Jack created and executed the 2008 Trust, then it

⁵ During Robin and Pearl’s February 19, 2022, 69-minute phone conversation, Pearl told Robin that the approximate appraisal value of the Nickels ranch would be: \$12,000,000 for the agricultural and ranching industry and \$20,000,000 for recreational usage. The average approximate appraisal value would be \$16,000,000. (Doc. 4, p. 8, ¶¶ 38-42; Doc. 18-Affidavit of Darleen R. Hansen; Doc. 19-Affidavit of Robin W. Carlson).

⁶ Stated as 3½ years to correspond to date of Bill’s death. (Doc. 10, p. 8, ¶ 28).

would be reasonable to infer that Jack “could have cared less” about Robin’s prior inheritance. (Doc. 10, p. 8, ¶ 29; Proposed Order, p. 13, ¶ 70).

F. 6th Circumstantial Evidence Claim: In That Both Robin and Half-brother Todd Inherited Ranch Property from Their Fathers, Jack “Could Have Cared Less” About Robin’s Prior Inheritance

Further, had any of Pearl’s son’s prior inheritances truly been an issue with Jack, then Jack would have also left Robin’s half-brother, Todd (who also had inherited ranch property from his father, Richard Wagner, prior to Jack creating and executing his 2008 Trust), no disposition of property. However, Jack did leave Todd a disposition. Therefore, Per Edwards, the circumstantial evidence is clear; Jack “could have cared less” about Pearl’s son’s prior inheritances. (Proposed Order, p. 19, ¶ 94).

G. 7th Circumstantial Evidence Claim: It Was Not Jack’s Idea to Leave Robin No Disposition of Property

Therefore, per Edwards, based upon the preceding multiple circumstantial evidence claims, it would be reasonable to infer that the decision to leave Robin no disposition of property in the 2008 Trust was not Jack’s idea. (Doc. 10, p. 12, ¶47e; Proposed Order, pp. 15-16, ¶ 81; Proposed Order, p. 24, ¶ 116).

H. 8th Circumstantial Evidence Claim: Jack’s Decision to Leave Robin No Distribution of Property Was Based on Other Factors

In that Robin and his half-brother Todd each inherited ranch property from their respective fathers prior to Jack creating and executing the 2008 Trust, and the circumstantial evidence has previously shown that it was not Jack’s idea to leave

Robin no disposition of property (Doc. 10, p. 12, ¶ 47e; Proposed Order, pp. 15-16, ¶ 81; Proposed Order, p. 24, ¶ 116), then, pursuant to Edwards, it would be reasonable to infer that Jack’s decision to leave Robin no disposition of property while leaving Todd a disposition of property was based on other factors. (Proposed Order, p. 15, ¶ 80).

Those factors include:

1. Pearl and Jack Had a Confidential Relationship

Jack and Pearl had a confidential relationship at the time Jack created and executed the 2008 Trust as confirmed by the fact that (a) Jack and Pearl had been married for 10⁺ years (Doc. 1, p. 2, ¶ 7; Doc. 10, p. 5, ¶ 15; Proposed Order, p. 10, ¶ 55), and (b) Jack states in his 2008 Trust language, “*For this reason, my spouse and I have decided...*” [Emphasis added.] (Doc. 1, Exhibit 2, p. 2, para. 2; Doc. 1, pp. 4-5, ¶ 20; Doc. 4, p. 5, ¶ 17; Proposed Order, p. 12, ¶ 67). Therefore, with this confidential relationship, Pearl had an opportunity to influence Jack regarding the disposition of his 2008 Trust property. (Proposed Order, p. 16, ¶ 82).

2. Pearl had Skeletons in Her Closet: The Child Abuse of Robin

Although Pearl and Jack had a confidential relationship, there were some skeletons in Pearl’s closet (i.e., Pearl’s past history of her child abuse of Robin) that she did not want to share with Jack. (Doc. 1, Exhibit 3; Doc. 10, p. 11, ¶¶ 42-44; Proposed Order, pp. 17-19).

A review of Robin's Declaration (Doc. 1, Exhibit 3) confirms Pearl was a child abuser to Robin. (Id.).

I. 9th Circumstantial Evidence Claim: Pearl Initiated the Conversation Regarding Robin's Disinheritance

To establish Pearl's undue influence of Jack, the following \$5-million-dollar thought-provoking questions must be answered:

- a. Who initiated the conversation regarding Robin's inheritance?
- b. Who initiated the conversation that brought up the topic to leave Robin no disposition of property?
- c. Was it Jack himself who came up with the idea to leave Robin no disposition of property? For example, did Jack one night, while eating supper at the kitchen table say, 'Hey Pearl, what should I leave that Robin in my trust?'
- d. Or was it Pearl that said, 'Jack, Robin inherited his dad's place, so leave him nothing.'

Doc. 10, p. 8, ¶ 25

In that Jack "could have cared less" about Robin's prior inheritance (Doc. 10, p. 8, ¶ 29; Proposed Order, p. 13, ¶ 70; Proposed Order, p. 19, ¶ 94), then it is unlikely that Jack initiated the topic. It is unlikely that it was Jack's idea to leave Robin no disposition of property in his 2008 Trust. Therefore, that leaves Pearl as

the sole responsible party for initiating the conversation that influenced Jack to leave Robin no disposition of property (Doc. 10, p. 7, ¶¶ 25-26; Proposed Order, p. 17, ¶ 84).

J. 10th Circumstantial Evidence Claim: Regarding Robin's Disposition of Property, Jack Was Susceptible to Pearl's Undue Influence

“A trier of fact should consider “the opportunity for undue influence, including the testator's susceptibility to influence....” (Mead, ¶ 27; Edwards, p. 56; Harms, ¶ 21).

In that Jack was susceptible to Pearl's influence regarding the bequeathed amount of \$30,000 provided to Jack's own biological daughters, then it would be reasonable to infer that Jack would be susceptible to Pearl's undue influence regarding her own children's inheritance, particularly the disinheritance of Jack's stepson, Robin. (Doc. 10, p. 10, ¶¶ 37-40; Proposed Order, p. 23, ¶ 115).

K. 11th Circumstantial Evidence Claim: Pearl's Hatred Towards Robin was her Motive to Influence Jack to Leave Robin No Disposition of Property

A review of Robin's Declaration (Doc. 1, Exhibit 3; Doc. 1, pp. 13-14, ¶¶ 69-72; Doc. 4, pp. 3-4, ¶¶ 7-9) provides ample circumstantial evidence that confirms, (a) Pearl was a child abuser to Robin and (b) Pearl, who had been harboring 40⁺ years of anger, animosity, hatred, and spite towards Robin, used those ugly emotions as her motive to influence Jack to leave Robin no disposition of property. (Proposed Order, p. 19, ¶ 95).

Per Edwards, “Likewise, the existence of a confidential relationship, without evidence of a specific act of undue influence, is insufficient to show “that the relationship was used for the purpose of obtaining an unfair advantage.” Harmon, ¶ 47 (emphasis in original). In the present case, Pearl had a motive to treat Robin unfairly; Pearl and Jack had a confidential relationship; Jack was susceptible to Pearl’s undue influence; and Pearl used this relationship with Jack to negatively influence Jack to leave Robin an unnatural disposition of property.

L. Pearl’s Undue Influence of Jack Left Robin an Unnatural Disposition of Property

“A trier of fact should consider “the opportunity for undue influence, including the testator's susceptibility to influence, and whether the disposition of property was natural.” (Mead, ¶ 27; Harms, ¶ 21; Edwards, p. 56).

Therefore, based upon the prior cited circumstantial evidence claims, Edwards can be re-written specifically for Pearl and Jack as follows:

- a. The opportunity to exercise undue influence (previously proven that Jack and Pearl had confidential relationship for which Pearl had the opportunity to exercise undue influence over Jack regarding Robin’s disposition of property) (emphasis added.),
- b. Including the testator’s susceptibility to influence (previously proven that Jack was susceptible to Pearl’s influence regarding Holly and Sally’s \$30,000 inheritance; therefore, Jack was susceptible to Pearls’ influence regarding Jack’s disposition of property to Robin) (emphasis added.), and
- c. Whether the disposition of property was natural (Pearl’s 40+ years of anger, animosity, hatred, and spite towards Robin was the motive

behind her influencing Jack to leave Robin no disposition of property in the 2008 Trust, thereby resulting in Robin receiving an unnatural disposition of property) (emphasis added.).
(Proposed Order, p. 20).

Regarding the “trier of fact” (Harmon) and “circumstantial evidence” clauses in Edwards (also Lightfield) the facts of this case prove that Pearl committed acts of undue influence of Jack such that Jack left Robin an unnatural disposition of property (Proposed Order, p. 20, ¶ 98).

Absent a determination that the findings are clearly erroneous, they will not be set aside. (Flikkema, 1296). Here, in the present case, the findings of Robin’s circumstantial evidence claims are not “clearly erroneous”, and therefore, the District Court’s Order should be set aside.

Per Mont. R. Civ. Pro. 52(a),

All actions tried upon the facts without a jury or with an advisory jury," without regard for whether the case arises at law or in equity. For this reason, we conclude that the proper standard of review in estate cases at equity is whether the findings of the district court are clearly erroneous.

Again, in the present case, the District Court was “clearly erroneous” when the circumstantial evidence presented in (a) Robin’s response to defendant’s Motion to Dismiss. (Doc. 10, pp. 6-13), and (b) Robin’s August 8, 2022, “Proposed Order Denying Defendant’s Motion to Dismiss” (Proposed Order, pp. 10-24) was not acknowledged.

Therefore, this Court should reverse the lower court's decision and remand this case for further consideration.

II. Robin has Beneficiary Status

The District Court's Order stated, "...Robin is not one who may petition the court, pursuant to §72-38-213(1), MCA, "concerning the internal affairs of the trust" because he is not a trustee or beneficiary of the trust". .

Pursuant to the criteria stated in Edwards, Pearl had the opportunity to influence Jack, Jack was susceptible to Pearl's undue influence, and Pearl unduly influenced Jack to leave Robin no disposition of property. It was only because of Pearl's undue influence of Jack that Robin's ability to claim beneficiary, qualified beneficiary, heir, administrator or interested person status (all designators to have standing to file his Complaint) was extinguished. (Proposed Order, p. 2, ¶ 7).

Therefore, this Court should reverse the lower court's decision and remand this case for further consideration.

CONCLUSION

Based on the foregoing, Robin respectfully requests this Court to:

1. Reverse the District Court's Order Dismissing Robin's Complaint and Amended Complaint and remanded this case for further consideration.

Dated: 12/8/2022

Robin W. Carlson

Robin W. Carlson, *Pro Se*

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 11 of the Montana Rules of Appellate Procedure, I certify this Appellant's Appeal Brief is printed with proportionately spaces Times New Roman text typeface of 14 points; is double space; and the word count, calculated by Microsoft Word 10 is 6,350 words, excluding Table of Contents, Table of Authorities, and Certificate of Compliance.

Dated this 8th day of December 2022.



Robin W. Carlson, *Pro se* Appellant

CERTIFICATE OF SERVICE

I certify that on December 8, 2022, I mailed the foregoing Appellant's Appeal Brief to the Clerk of the Montana Supreme Court; and served a true and correct copy of the same upon all parties of record with a hardcopy mailing per the Rules via Priority Mail to:

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