

COURT OF APPEAL FOR ONTARIO

CITATION: Anroop v. Naqvi, 2026 ONCA 142

DATE: 20260226

DOCKET: COA-25-CV-0268

Gillese, Pepall and Zarnett JJ.A.

IN THE MATTER of the Estate of Reka Anroop, deceased

BETWEEN

Bryan Anroop and Amadai Hardayal

Applicants (Appellants)

and

Chandrawattie Naqvi*, Laxmi Anroop, Ramdat Anroop and Bisram Anroop

Respondents (Respondent*)

James Jagtoo, Frances Jagtoo and Michael Jagtoo, for the appellants

Kimberly Gale and Palak Mahajan, for the respondent

Heard: November 17, 2025

On appeal from the judgment of Justice Cory A. Gilmore of the Superior Court of Justice, dated January 10, 2025, with reasons reported at 2025 ONSC 160, and from the costs order dated February 4, 2025.

Gillese J.A.:

I. OVERVIEW

[1] Reka Anroop died on July 4, 2022, at age 87. Acting on Reka's¹ will dated October 20, 2021, which named him executor and trustee, his grandson Bryan Anroop began administering Reka's estate.

[2] Based on that will, Bryan applied for a certificate of appointment of estate trustee, pursuant to r. 74.04 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the "**Initial Application**"). Bryan also applied for, and received, a life insurance payout of some \$21,800 from the Royal Bank of Canada.

[3] Chandrawattie Naqvi ("**Chandra**" or the "**Respondent**") is one of Reka's four surviving children. Chandra objected to the Initial Application, claiming that a later will was Reka's valid will. Based on the later will, Chandra brought her own application for a certificate of appointment of estate trustee.

[4] Some two years later, Chandra started a Small Claims Court action (the "**SCC Action**") to recover the life insurance payout to Bryan.

[5] Bryan and his mother Amadai Hardayal (the "**Appellants**") responded to Chandra's application by bringing their own application in which they objected to Chandra's application and challenged the validity of the later will (the

¹ Because some of the family members in this proceeding have the same last name, for clarity and ease of reference, I use their first names throughout.

“Application”). Reka’s four surviving children are the named respondents to the Application. However, only Chandra participated in this proceeding.

[6] Bryan also moved to have the SCC Action dismissed.

[7] The application judge declared the will produced by Chandra to be Reka’s valid will and, by judgment dated January 10, 2025, dismissed the Application (the **“Judgment”**). By order dated February 4, 2025, the application judge ordered the parties to bear their own costs of the Application (the **“Costs Order”**).

[8] Bryan and Amadai appeal against the Judgment and, if they are unsuccessful on the appeal, seek leave to appeal against the Costs Order.

[9] For the reasons that follow, in my view, both the Judgment and the Costs Order reflect legal error and must be set aside. Accordingly, I would allow the appeal and award the Appellants costs of the Application and the appeal.

II. BACKGROUND

[10] Reka was predeceased by his wife, his child Phulmattie, and his child Narine, who died on December 30, 2021. Narine was Bryan’s father and Amadai’s common law spouse of over 30 years. Narine, Amadai, and Bryan lived with Reka for approximately 24 years. Bryan was only four years old when he and his parents began living with Reka, in Reka’s home. Bryan and Reka were very close. When Bryan was young, Reka would make him breakfast and lunch, accompany him to

school, and play with him. As Bryan got older, he began to both contribute to the household's finances and help Reka by doing his online banking for him.

[11] Caring for Reka was not a burden shared among his children. In the later years of Reka's life, and especially after Narine's death, Amadai was Reka's primary source of care and companionship. There was no dispute between the parties that Amadai was Reka's primary caregiver. Amadai and Bryan also paid \$75,600 for repairs and renovations to Reka's home between January and March 2022.

[12] Amadai provided daily care to Reka including, as his health declined, showering him, sleeping in his room at night to mitigate the risk of him falling, and feeding him. None of Reka's other children saw to his personal or medical needs.

[13] Amadai also took Reka to medical and legal appointments, ensured he received his insulin injections, and cooked for him. Reka viewed Amadai as a daughter. While Reka's daughter, Laxmi Anroop, also lived in Reka's house, Laxmi did not provide him with care. Instead, she relied on Amadai, Narine, and Bryan to provide that care.

[14] Chandra never lived at Reka's home and made no financial contributions to it. Her evidence on her interactions with her father was inconsistent. Once she claimed she went every day from January to July 2022 to see him but she later said she only visited Reka at home twice between January and March 2022.

Chandra acknowledged she had taken Reka to only “maybe one or two medical appointments during his lifetime.”

[15] It is undisputed that Reka made three wills. He may also have signed a fourth will, dated May 19, 2022 (the “**Fourth Will**”). It was the Fourth Will that Chandra produced in her application to be named, along with Laxmi, as estate trustees.

[16] Reka’s first three wills were made between February and October of 2021. The first will is dated February 28, 2021 (the “**First Will**”). The second will is dated March 3, 2021 (the “**Second Will**”) and the third will is dated October 20, 2021 (the “**Third Will**”). They are substantially similar in their treatment of Reka’s home, the principal asset of his estate. In the First and Second Wills, Reka left his home to his son Narine, with the provision that the residue of his estate would go to Bryan should Narine predecease Reka. The Third Will left Reka’s home to Narine and Amadai as joint tenants, with the provision that the home was to go to Bryan if both Narine and Amadai predeceased Reka. In all three wills, Laxmi was permitted to remain in the home for as long as she wanted.

[17] The First Will was prepared using a “Will Kit”. The Second and Third Wills were drafted by Ms. Katoch, a solicitor who specialized in wills and estates.

[18] On February 28, 2021, Amadai, Reka, and Mr. Kwame Lennon, a witness, attended at Ms. Katoch’s office where Reka executed the First Will. Ms. Katoch

was concerned about the “Will Kit” form and advised them that they should have a proper will drafted for Reka. Three days later, on March 3, 2021, Reka returned and executed the Second Will.

[19] In October 2021, Amadai contacted Ms. Katoch about possible changes to Reka’s Second Will and asked that Ms. Katoch draft wills for Narine and herself. After meeting with Narine and Amadai, Ms. Katoch declined to draft a will for Narine because of his apparent cognitive decline following a stroke earlier that year. However, Ms. Katoch agreed to draft a will for Amadai.

[20] Ms. Katoch also agreed to prepare a new will for Reka. She found that, at that time, Reka was aware of his assets and able to give her specific instructions. Reka told Ms. Katoch that he wanted to leave his home to Narine and Amadai with a gift over to Bryan in the event they died before him. When Ms. Katoch asked Reka why he did not want to give the house to any of his other children, he told her it was because the others lived on their own and already had homes except for Laxmi, who was still living with Reka and would be permitted to continue to live in the house.

[21] Reka executed the Third Will shortly afterwards, on October 20, 2021.

[22] On March 7, 2022, Amadai video-taped an interview in which Reka stated that he wanted Amadai and Bryan to have his home on his death (“**Reka’s video-taped statement**”). Though it is not clear Reka knew he was being recorded, Reka

spoke of bullying and infighting among his family and told Amadai to hang on to records and to not let anyone tell them they had to move out of the house. Reka told Amadai: "I don't want to leave you with nothing. When I gone, my son is gone, and I want to leave you with something, this house", and later told Bryan: "don't let nobody come and tell you say you have to move...This is your future".

[23] On March 16, 2022, Reka met again with Ms. Katoch and told her he wanted to transfer his home to Amadai and Bryan. Amadai was not present in the room during the meeting. On this occasion, Ms. Katoch, who had met with Reka "approximately six times" previously and found him to be "sharp" at each of these prior meetings, had concerns about Reka's capacity. Reka provided Ms. Katoch with written instructions to add Bryan and Amadai's names on title to his home. The application judge accepted this evidence as credible.

[24] However, Ms. Katoch believed that Reka's mental and physical state had significantly deteriorated. His speech was slurred, he appeared absent minded, and he had difficulty communicating his thoughts. When she asked him to provide written instructions, his handwriting was not clear and his intentions were not clearly communicated. Consequently, Ms. Katoch declined to carry out Reka's instructions until he could obtain a medical opinion confirming his capacity.

[25] Ms. Katoch wrote to Reka's family doctor following this meeting and, several weeks later, was informed that Reka had been referred to a specialist. Ms. Katoch never received a medical opinion on Reka's testamentary capacity.

The Fourth Will

[26] It will be recalled that the Fourth Will is dated May 19, 2022. It was drafted by Nabeel Naqvi, a solicitor who practiced primarily in the real estate field.² Mr. Naqvi met with Reka twice: first on March 14, 2022, to obtain instructions and second on May 19, 2022, to have the Fourth Will executed. The Fourth Will divides the residue of Reka's estate into four equal parts, one for each of Reka's surviving children. It makes no provision for Bryan or Amadai.

[27] At the time of Mr. Naqvi's interactions with Reka, he was renting office space from Chandra's husband, who owned a real estate brokerage and would refer clients to Mr. Naqvi.

[28] Mr. Naqvi drafted the Fourth Will for free. He did not complete a reporting letter. In his affidavit filed in this proceeding, Mr. Naqvi said that his notes from his two meetings with Reka reflect his view that Reka had testamentary capacity – that Reka understood the nature and extent of his property, was “frail but ‘sharp’”, and understood he was “dispossessing” Amadai and Bryan. Mr. Naqvi's perception

² Nabeel is not related to Chandra despite sharing a last name.

of Reka on March 14, 2022, stands in stark contrast to the observations made by Ms. Katoch just two days later, noted above.

[29] The Fourth Will contains a provision stating that if Reka was “still sky-diving and [had] made no fewer than 50 dives in the year immediately preceding [his] death” the estate was to pay for an “ash dive” (the “**Sky-Diving Provision**”). Reka had never sky-dived in his life. The Respondent conceded that this provision was a “mistake”.

Bryan and Amadai leave the family home

[30] On May 15, 2022, Amadai and Bryan left the family home they had shared with Reka for the previous approximately 24 years. Their evidence was they left because of abuse and harassment by three of Reka’s surviving children, one of whom was Chandra.

[31] In her affidavit, Amadai described that the harassment began shortly after Narine’s death. Bisram Anroop and Ramdat Anroop began going to Reka’s house where they would argue with and threaten Bryan and Amadai. According to Amadai, the harassment was rooted in Reka’s children’s belief that, following Narine’s death, Bryan and Amadai had no right to be in the house, notwithstanding Reka’s wishes and the constant care which Amadai provided to him.

[32] On April 1, 2022, Amadai went to a police station and filed a complaint about the threats Bisram and Ramdat made to her and Bryan. She told police that on the

31st of March, the two men went to Reka's home and threatened her and Bryan, telling them "they had no right to stay in the house." Police were involved and spoke to the offending parties but that did not cause the harassment to abate. While the brothers stopped going to the home after the police contact, according to Amadai, Chandra continued to harass her and Bryan.

[33] Chandra's evidence was that Bryan and Amadai left the family home of their own accord.

[34] As described above, prior to leaving the house they shared with Reka, Amadai was Reka's primary caregiver. After Amadai and Bryan moved out, Amadai arranged for a personal support worker to provide care for Reka because she was concerned that none of his children would step in to care for him.

[35] Reka died seven weeks after Bryan and Amadai moved out.

[36] Bryan and Amadai were unaware of the Fourth Will until Chandra opposed the Initial Application, produced the Fourth Will, and brought her own application for a certificate of appointment of estate trustee. Prior to this, Bryan took steps to administer Reka's estate, based on his shared understanding with Amadai that the Third Will, which named Bryan as executor and trustee, was Reka's final will.

[37] In the Application which is the subject of this appeal, Bryan and Amadai objected to Chandra's application and challenged the validity of the Fourth Will. Bryan also brought a motion to have the SCC Action dismissed (the "**Motion**").

[38] By order dated September 10, 2024, the Application and the SCC Action were joined.

[39] The Judgment under appeal dismissed the Application, declared the Fourth Will valid, and granted Chandra leave to amend her pleadings in the SCC Action.

III. THE DECISION BELOW

[40] The Application was not heard as a trial. Rather, counsel made submissions based on affidavit evidence and cross-examinations on the affidavits.

[41] The application judge found that Reka had capacity to execute the Fourth Will and that it was not the product of undue influence or duress. She also found that the signature on the Fourth Will was neither a forgery nor effected through unconscionable procurement by Chandra.

Capacity

[42] The application judge reviewed the medical evidence, evidence from the solicitors, and Reka's video-taped statement, in which he stated that Amadai and Bryan were to have his house upon his death. She said there was insufficient evidence to ground a finding that Reka did not have capacity to make the Fourth Will. The medical records did not clearly indicate any cognitive difficulties. She accepted Mr. Naqvi's evidence, based on his meeting notes, that steps had been taken to ascertain capacity and concluded Reka knew the extent of his assets and was aware that Amadai and Bryan were not included in the Fourth Will.

[43] Amadai and Bryan argued that Mr. Naqvi was in a conflict of interest because he was a business associate with Chandra's husband, Asgher, who referred real estate files to him. Mr. Naqvi did not charge Reka for having prepared his will nor did he prepare or send Reka a reporting letter. The application judge found that if there was a conflict of interest it was "overcome" by the fact there were no divided loyalties between Mr. Naqvi and Reka, they did not know each other prior to their meeting on March 14, 2022, and there was no evidence that Mr. Naqvi was influenced by Chandra and/or Asgher.

[44] The application judge found that the inclusion of the skydiving clause was careless will drafting but "did not displace Reka's understanding of the important, dispositive clauses in his Will."

Undue Influence

[45] The application judge concluded that Reka was not unduly influenced in the making of the Fourth Will, despite the presence of several of the factors listed in *John Gironda et al. v. Vito Gironda et al.*, 2013 ONSC 4133, 89 E.T.R. (3d) 224, at para. 77, namely, dependency and isolation; recent family conflict and bereavement; and the use of a different lawyer to draft a radically changed will. She found these matters were explicable in the circumstances, saying:

- Reka was “not as frail or dependent” as Amadai made him out to be, and while he needed some assistance, he was not entirely dependent on anyone for care;
- there was no evidence Reka was involved in the family conflict, which ended when Bryan and Amadai left the house, at the time he signed the Fourth Will;
- Reka’s grief over his son Narine’s death did not impact his capacity to sign the Fourth Will;
- according to Mr. Naqvi, at his meeting with Reka on March 14, 2022, he asked Reka about the “dispossession” of Amadai and Bryan and found that Reka was mentally sharp and gave instructions; and
- there was no evidence that Chandra was in the room when the Fourth Will was being reviewed or signed.

Signature Forgery

[46] The Appellants produced two reports by Dr. Kaur, a handwriting expert. Dr. Kaur’s initial report is dated January 9, 2022; her supplementary report is dated July 14, 2023. Dr. Kaur concluded that the signature on the Fourth Will was not that of the person who had signed the Second and Third Wills.

[47] The application judge rejected the Appellants’ theory that Chandra signed the Fourth Will, noting that it would require “a significant fraud” on the part of

Chandra, Mr. Naqvi, and Mr. Naqvi's assistant, Myra Mian, who witnessed the signing and testified to that effect. The application judge accepted the evidence of Mr. Naqvi and Ms. Mian that Reka attended at Mr. Naqvi's office on May 19, 2022, and signed the Fourth Will.

Unconscionable Procurement

[48] The application judge stated that unconscionable procurement requires both that a significant benefit be bestowed on the donee and that the donee had active involvement in obtaining the benefit. She found that the respondents received a significant benefit but they did not have an active involvement in procuring the benefit. Alternatively, if the respondents did actively procure the benefit, the application judge concluded it would not be unconscionable for the Fourth Will to stand because Reka had the capacity to change his will, had reason to do so, and fully understood the gravity of his decision.

The SCC Action

[49] The application judge declined to grant the Motion in which Bryan sought to have the SCC Action dismissed. She accepted that the SCC Action was improperly constituted but granted Chandra leave to amend the claim, failing which it would be deemed to have been dismissed.

The Costs Order

[50] The application judge rejected the Appellants' submission that public policy considerations dictated that their costs of the Application should be paid from Reka's estate. Instead, she said that the positions of the parties were "unreasonable" and ordered that they bear their own costs.

IV. THE ISSUES

[51] The Appellants raise the following issues on appeal. Did the application judge err in:

- (1) concluding there was insufficient evidence of suspicious circumstances to displace the presumption that the Fourth Will was properly executed;
- (2) misapprehending, disregarding, or failing to accept the uncontradicted conclusion of the Appellants' handwriting expert, Dr. Shabnam Kaur, that the signature on the Fourth Will was a forgery;
- (3) refusing or failing to consider that Mr. Naqvi was in a conflict of interest;
- (4) concluding that the Fourth Will was not the subject of unconscionable procurement;
- (5) concluding there was no undue influence exerted on Reka to sign the Fourth Will;

- (6) granting the Respondent leave to amend her claim in the SCC Action, which remedy had not been sought; and
- (7) refusing to grant costs of the Application to the Appellants.

V. ANALYSIS

[52] The essential question to be decided on this appeal is whether the Fourth Will is valid. I will address issues 1, 2, and 3 together in explaining why it is not. Thereafter, I will separately address issues 4 through 7.

Issues 1, 2, and 3 The Fourth Will is not Valid

Overview

[53] As the propounder of the Fourth Will, the Respondent had the burden of proving it was properly executed and that Reka knew and approved of its contents. The application judge found there were no suspicious circumstances in connection with the Fourth Will and, consequently, the presumption of validity prevailed. This finding is the result of both legal error and palpable and overriding errors of fact. Thus, it cannot stand.

[54] The most critical error the application judge made was her finding that Reka had good reason to make the Fourth Will and disinherit Bryan and Amadai. She made this finding based on the evidence of Mr. Naqvi. According to Mr. Naqvi, the notes of his meeting with Reka on March 14, 2022, showed that he asked Reka why he wanted to change his will and leave nothing to Bryan and Amadai and

Reka responded Amadai and Bryan had treated him “really badly after they left the house” (the “**Statement**”). In his cross-examination, Mr. Naqvi repeatedly confirmed that his notes were correct, contemporaneous, and verbatim.

[55] However, the Statement does not comport with reality. On March 14, 2022, Reka was still living in his home with Amadai and Bryan and they were his sole caregivers, doing an unquestionably fine job. Amadai and Bryan did not leave Reka’s house until May 15, 2022, which was over two months after the March 14, 2022 meeting. And, they never treated Reka badly.

[56] How, then, do we explain the Statement? There are at least four possibilities: Reka did not make the Statement; Reka made the Statement but was mistaken in what he said; Mr. Naqvi’s notes were altered and backdated; or Mr. Naqvi’s notes were fundamentally mistaken. No matter what the explanation, it is clear that the application judge did not appreciate that the purported reason for Reka wanting to enter into the Fourth Will could not be correct. Consequently, it was a palpable and overriding error for the application judge to find that Reka made the Fourth Will “for good reason”. It was palpable because the error was clear. It was overriding because, as the application judge stated, it was “central” to her finding that the Fourth Will was valid.

[57] This error alone rises to the level of a suspicious circumstance, thereby rebutting the presumption of validity. However, as I explain below, other legal

errors were also made. As those considerations are relevant to determining the validity of the Fourth Will and to the issue of costs, they must be addressed.

The relevant legal principles

[58] As the propounder of the Fourth Will, the Respondent had the onus of proving both that it was properly executed and that the testator knew and approved of its contents: *Vout v. Hay*, [1995] 2 S.C.R. 876, at para. 19; *Dujardin v. Dujardin Estate*, 2018 ONCA 597, 423 D.L.R. (4th) 731, at para. 44. There is a presumption of knowledge and approval, as well as testamentary capacity. However, this presumption is upended when there are suspicious circumstances (1) surrounding the preparation of the will, (2) calling into question the testator's capacity, or (3) tending to show that the testator's free will was compromised by acts of coercion or fraud: *Dujardin*, at para. 45. The burden of proving suspicious circumstances is not onerous. It is satisfied by adducing or pointing to some evidence which, if accepted, would tend to negative knowledge and approval or testamentary capacity: *Vout*, at para. 27. Where suspicious circumstances are present, the presumption is spent and the propounder reassumes the legal burden of establishing testamentary capacity: *Vout*, at para. 27.

Suspicious circumstances were established; knowledge and approval were not

[59] In addition to the application judge's foundational error in finding Reka had good reason to make the Fourth Will and disinherit Bryan and Amadai, there was

evidence of three other matters, each of which either amounted to a suspicious circumstance or negated knowledge and approval of the contents of the Fourth Will or both.

1. Mr. Naqvi's conflict of interest

[60] Mr. Naqvi rented space in the building owned by Chandra's husband, Asgher. Asgher referred real estate files to Mr. Naqvi. In so doing, he conferred a financial benefit on Mr. Naqvi.

[61] The application judge was aware of the foregoing and that Mr. Naqvi did not charge Reka for preparing the Fourth Will nor did he send Reka a reporting letter. The application judge stated that "[o]ne might consider that there was a conflict of interest in [Mr. Naqvi] acting for Reka given that Chandra was married to his landlord and that Asgher referred business to him." Despite this observation, the application judge concluded it was "overcome" by the fact that that there were no divided loyalties between Mr. Naqvi and Reka because they did not know each other prior to their meeting on March 14, 2022, and there was no evidence that Mr. Naqvi was influenced by Chandra and/or Asgher.

[62] This finding reflects clear legal error. A conflict of interest, by definition, results in divided loyalties. The fact that Mr. Naqvi and Reka had never met prior to March 14, 2022, is irrelevant to the question of whether Mr. Naqvi had divided loyalties by virtue of his relationship with Asgher. The application judge did not

apply the correct legal principles in determining whether Mr. Naqvi was in a conflict of interest in preparing Reka's will. As a consequence, she did not properly consider that matter. The evidence of an apparent conflict of interest was sufficient to satisfy the low burden associated with establishing a suspicious circumstance.

2. Evidence that Reka's signature on the Fourth Will was forged

[63] It is not necessary to decide whether Reka's signature on the Fourth Will was forged. It is sufficient to note the uncontradicted expert reports of Dr. Kaur that the signature on the Fourth Will was not Reka's, especially when considered in conjunction with the evidence that Chandra bragged about being able to replicate Reka's signature. This evidence should also have been considered in the context of Ms. Katoch's impression on March 16, 2022, that Reka's capacity had deteriorated to the extent that she would not act on his instructions without a capacity assessment. This amounts to a suspicious circumstance sufficient to rebut the presumption of validity and the application judge erred in failing to so find.

[64] Dr. Kaur was qualified as an expert. The Respondent maintained that Dr. Kaur's opinion should be rejected because it rested on her having analysed only a limited number of signatures, namely, those on the first three wills. The application judge rejected that contention, making it clear that Dr. Kaur had "reviewed 13 different signatures of the deceased which falls within the acceptable range of 10-20 [comparison] signatures in the related literature". Nonetheless, the application

judge rejected the Appellants' contention that Reka's signature on the Fourth Will was forged.

[65] Two points must be made in relation to this matter. First, it was not necessary to find that Reka's signature on the Fourth Will was forged. The question was whether Dr. Kaur's evidence met the burden of proving suspicious circumstances. The burden of proving suspicious circumstances is not onerous. It is satisfied by pointing to some evidence which, if accepted, would tend to negative knowledge and approval on the part of the testator: *Vout*, at para. 27. In my view, uncontradicted expert evidence that the signature on the Fourth Will was not Reka's satisfies that burden.

[66] Second, the reason given by the application judge for dismissing Dr. Kaur's evidence rests on legal error. The application judge relied on *Ward v. Anderson Estate*, 2021 ONSC 8337, for the proposition that a solicitor would not risk his reputation and professional status to engage in fraud. But this case is clearly distinguishable from *Ward*. In *Ward*, the solicitor had acted appropriately. The same cannot be said about Mr. Naqvi who had an undisclosed conflict of interest, drafted the will for free without apparent explanation other than the conflict of interest, did not send a reporting letter to his client, drafted the will in a sloppy manner, and failed to adequately review the will with his client.

3. No reliable evidence that Reka knew and approved of the contents of the Fourth Will

[67] Having found suspicious circumstances, the presumption of validity was rebutted. Consequently, the Respondent bore the burden of proving that Reka knew and approved of the contents of the Fourth Will. There was no reliable evidence to support such a finding. Indeed, the evidence is to the contrary. I say this for two reasons.

[68] First, the Sky-Diving Provision in the Fourth Will stated that if Reka were “still sky-diving and [had] made no fewer than 50 dives in the year immediately preceding [his] death, the estate was to pay for an ‘ash dive’”. Reka had never sky-dived in his life. While the application judge was aware of the Sky-Diving Provision and called it a “mistake”, she dismissed any concern arising from it on the basis that Reka understood the “important, dispositive clauses in his Will.” Nonetheless, it is evidence that Reka did not know and approve of, at least, that provision in the Fourth Will.

[69] Second, the application judge relied on Mr. Naqvi’s evidence that Reka was aware of the contents of the Fourth Will and approved of it. As I have explained, that reliance was misplaced. Mr. Naqvi himself admitted that the Fourth Will contained errors (recall the Sky-Diving Provision) and that he did not review the entire will with Reka prior to Reka purportedly signing it. Instead, Mr. Naqvi made “a judgment call” and only read the clauses he deemed to be “important”. One

would have thought that, as a dispositive provision, the Sky-Diving Provision would be considered important. In any event, however, the provision leaving Reka's estate to his four surviving children and disinheriting Amadai and Bryan was clearly important. But the source of the instructions for that provision were Mr. Naqvi's notes from the March 14 meeting and, as explained above, those notes could not be relied upon.

Conclusion on Issues 1, 2, and 3

[70] Had the application judge recognized these various instances of suspicious circumstances, the Fourth Will could not have benefitted from the presumption of validity. Without such a presumption, the Fourth Will cannot stand because there was no reliable evidence on which to find that Reka knew and approved of the contents of the Fourth Will.

[71] It follows that the Fourth Will must be declared invalid.

Issue 4 The questionable doctrine of unconscionable procurement

[72] I decline to decide the Appellants' assertion of unconscionable procurement because it is uncertain whether such a doctrine exists: see *Gefen Estate v. Gefen*, 2022 ONCA 174, 161 O.R. (3d) 267, at para. 61.

[73] While the application judge was referred to a first instance decision in which the doctrine was applied, I would reiterate the cautionary note which Pepall J.A. struck, on behalf of this court, at para. 61 of *Gefen*:

In the absence of full legal argument on the existence and desirability of any doctrine of unconscionable procurement, I do not propose to address the merits of any such doctrine and whether grounds to attack transactions beyond such traditional grounds as undue influence and incapacity should be endorsed. Thus, this decision should not be taken as approval or rejection of unconscionable procurement being part of the law of Ontario.

[74] I would leave a determination of whether the doctrine exists to a case in which that matter is squarely raised, and fully argued and decided at first instance.

Issue 5 The Fourth Will was the product of undue influence

[75] As noted above, the Fourth Will is invalid because, in light of the suspicious circumstances that existed (but were not properly appreciated by the application judge), the Respondent bore the burden of proving proper execution and knowledge and approval of the Fourth Will's contents. She did not meet her burden. Nonetheless, in the unusual circumstances of this case, it is appropriate to consider whether undue influence is an independent basis for the invalidity of the Fourth Will. The application judge made findings on this issue which, as discussed below, were the product of palpable and overriding errors of fact and legal errors. It therefore falls to this court to correct those errors and substitute the finding the application judge ought to have made.

[76] Undue influence exists when a testator is coerced into doing that which they do not wish to do: *Trotter Estate*, 2014 ONCA 841, 122 O.R. (3d) 625, at para. 58.

The burden of establishing undue influence, which is unaltered by a finding of suspicious circumstances, rests with the party asserting it, but it can be proved through circumstantial evidence: *Trotter Estate*, at para. 59; *Vout*, at para. 28.

[77] Indications of undue influence include:

- a testator's vulnerability, dependency, or social isolation;
- the presence of family conflict or recent bereavement;
- questions about the confidentiality and independence of legal advice;
- a substantial departure from previous wills and a lack of explanation for such a departure;
- changes to other legal documents such as powers of attorney made simultaneously with testamentary changes; and
- statements made by the testator which suggest that their wishes are not accurately reflected in the will.

(*Trotter Estate*, at para. 61; *Gironda*, at para. 77)

[78] All of these considerations point to undue influence in this case. Reka was an 87-year-old man with several debilitating medical conditions, including a persistent brain hemorrhage and diabetes. At times he was incontinent and, in the weeks leading up to his first meeting with Mr. Naqvi, he fell four times. Reka was also very affected by the death of his son Narine at the end of December 2021.

Medical notes indicated that he had lost the will to live. Reka was clearly in a vulnerable state and dependent on others for his care in the period March to May 2022, when the critical events took place.

[79] There was also clear evidence of family conflict. Reka's video-taped statement shows he was concerned about that conflict and about his other children pressuring Bryan and Amadai to leave the family home. The circumstances surrounding Bryan and Amadai's departure from their home, described above, show that Reka's concerns in this regard were fully justified.

[80] Although the application judge gave Reka's video-taped statement very little weight, she examined it through a lens that failed to consider, among other things, the arrangements made by Amadai for Reka on her and Bryan's departure from the home, the true circumstances of their departure, and the family conflict. In addition to the weight the application judge gave to the video statement on the issue of capacity, I would also give it weight insofar as it lends support to other acts that reflect Reka's intentions. This goes to the issue of undue influence.

[81] The application judge dismissed the presence of family conflict, saying that Bryan and Amadai left the home four days before the Fourth Will was signed. However, that statement loses sight of why family conflict can be a sign of undue influence. The fact that Bryan and Amadai left their home four days before Reka allegedly signed the Fourth Will does not mean that family conflict played no role

in the creation of the Fourth Will. On the contrary, it is equally suggestive that others may have influenced Reka to cut Bryan and Amadai out of his will. This concern is heightened given the caregiving role that Bryan and Amadai played in Reka's life because, as a result of Amadai and Bryan leaving the home, Reka's support system was removed, leaving him in a more vulnerable state.

[82] As discussed above, there were also serious concerns about Mr. Naqvi's ability to provide Reka with independent legal advice. It was an error in law to disregard those concerns because they were relevant to the question of undue influence.

[83] The substantial departure in the Fourth Will from the terms of the first three wills – recent in time – also cannot be ignored. The Fourth Will could hardly have been more different from the previous three. As explained above, there was no valid explanation for the departure. Bryan and Amadai remained in the home with Reka until May 15, 2022, despite threats and intimidation. Even then, they never abandoned Reka. Rather, Amadai arranged for Reka to be cared for by a personal support worker out of concern that otherwise he would not be properly cared for. The application judge gave insufficient attention to the Fourth Will's substantial departure from the terms of the previous three wills.

[84] Finally, there are several events contemporaneous with Reka's first meeting with Mr. Naqvi on March 14, 2022, in which Reka allegedly gave Mr. Naqvi

instructions for the Fourth Will. These events are clear evidence that the Fourth Will does not reflect Reka's true wishes, yet the application judge failed to give effect to them. The week before the meeting on March 14, in Reka's video-taped statement, he states that he wants to leave his home to Bryan and Amadai. He refers to bullying and infighting amongst his family and tells Amadai to hang on to records and not let anybody tell them they had to move. Two days after the initial meeting with Mr. Naqvi, Reka went to Ms. Katoch and asked her to add Bryan and Amadai to title to his home. He gave her handwritten instructions to the same effect. While Ms. Katoch did not act on those instructions because of concerns about Reka's capacity, it is evidence that must be considered when considering the validity of the Fourth Will which "dispossessed" Bryan and Amadai of their inheritance. All of these matters indicate that Reka's true intention was to ensure that, on his death, Bryan and Amadai would receive his home.

[85] Correcting the application judge's errors, and viewing the evidence collectively, through the appropriate legal lens, it is clear that if Reka did sign the Fourth Will, it was as a result of undue influence. This is an independent basis on which to find the Fourth Will invalid.

Issue 6 The SCC Action is dismissed

[86] There is no dispute that the SCC Action is contingent on the Fourth Will being found to be valid. I have concluded that it is not. It follows that I would grant the Motion and dismiss the SCC Action.

[87] Thus, there is no need to address the Appellants' contention that the application judge erred in granting the Respondent leave to amend the pleadings in the SCC Action on the basis that such a remedy had not been sought.

Issue 7 The Costs Order is set aside because of legal errors

[88] Where an appellant succeeds on appeal, the appellate court must reconsider the costs award made below. In this case, as I would allow the appeal, that general proposition would govern and require this court to reconsider the Costs Order. However, regardless of the outcome of the appeal, I would have granted the Appellants leave to appeal the Costs Order and ordered costs of the Application in their favour because the Costs Order is based on legal error.

A. The Legal Principles that Govern Costs in Estate Litigation

[89] Traditionally, in estate litigation, the estate bore the parties' costs on a full indemnity basis (the "**Traditional Rule**"). The modern approach to awarding costs in estate litigation differs in many significant ways. The starting point for the court must always be a careful scrutiny of the litigation to determine whether one or more of the following public policy considerations apply: *McDougald Estate v. Gooderham* (2005), 199 O.A.C, 203 (C.A.), 255 D.L.R. (4th) 435, at paras. 78-80; *Neuberger Estate v. York*, 2016 ONCA 303, 131 O.R. (3d) 143, at para. 25, leave to appeal refused, [2016] S.C.C.A. No. 207; *McGrath v. Joy*, 2022 ONCA 119, 471 D.L.R. (4th) 211, at paras. 91-94.

[90] The public policy considerations in this area of the law are based on the need for the court (1) to give effect only to valid wills that reflect the intention of competent testators and (2) to ensure the proper administration of the deceased's estate. If the difficulties or ambiguities that give rise to the litigation are caused, in whole or in part, by the testator, generally the costs of their resolution should be borne by the estate. Alternatively, if there are reasonable grounds on which to question the execution of the will or the testator's capacity in making the will, those questioning the validity of the will should not be faced with the prospect of costs: *McGrath*, at para. 91. The public interest is served by ensuring that estates are properly administered; parties should not have to bear the cost of reasonably conducted litigation that reflects these public policy considerations.

[91] The following five legal principles govern costs orders in estate litigation:

- (1) the crucial first step is for the court to determine whether the public policy considerations set out in the preceding paragraph are engaged: *McDougald Estate*, at para. 78;
- (2) if public policy considerations are engaged, departure from the Traditional Rule that reasonable full indemnity costs are payable from the estate requires justification: *McGrath*, at para. 95;
- (3) the failure to give reasons for concluding that public policy considerations are not engaged is an error in principle and no

deference is owed to the costs order at first instance: *Di Nunzio v. Di Nunzio*, 2022 ONCA 889, at para. 11;

- (4) in deciding whether to depart from the Traditional Rule, the court must consider whether a blended costs award is appropriate. In a blended costs award, the court orders that a portion of the costs of the successful party are to be paid by the losing party, with the balance of the successful party being payable out of the estate. Blended costs awards are available at first instance and on appeal, in the discretion of the court: *Neuberger*, at para. 25;
- (5) if the litigation does not arise as a result of the public policy considerations, the usual costs rules in civil litigation apply: *McDougald Estate*, at para. 80.

[92] A blended costs award may be appropriate as a sanction for the conduct of one or more of the parties to the litigation. Conduct worthy of sanction includes fraud or attempted fraud, and conduct that unnecessarily increases the costs of the litigation: *Sawdon Estate v. Sawdon*, 2014 ONCA 101, 119 O.R. (3d) 81, at para. 99; *Bayford v. Boese*, 2021 ONCA 533, 69 E.T.R. (4th) 216, at para. 4. To this list, I would add undue influence. Depending on the nature and severity of the conduct, costs awarded against the losing party may be ordered on a partial or substantial indemnity basis.

B. Application of the Governing Legal Principles

[93] Below, the Appellants submitted that public policy considerations underlay the Application and, consequently, their costs should be paid from the estate. They argued that the litigation arose because of Reka's actions; there were reasonable grounds to question Reka's capacity; there were reasonable grounds to question the validity of the Fourth Will; and, the litigation was necessary to ensure the proper administration of the estate.

[94] The application judge stated she "did not see this as a 'public policy' case". She gave no reasons for this determination. As noted above, the failure to give reasons on this matter is a legal error and results in the Costs Order being set aside: *Di Nunzio*, at para. 11. A costs order affects a party's interests. If a party to estate litigation seeks costs from the estate and that request is denied on the basis that the public policy considerations are not engaged, reasons for that determination must be given.

[95] Further, and in any event, on the application judge's own findings, relevant public policy considerations did underlie the Application. She found the Appellants had acted reasonably in bringing the Application and that the Application was "reasonably litigated", considering the significant change between the First, Second, and Third Wills in comparison to the Fourth Will. She also had before her Dr. Kaur's two expert reports in which Dr. Kaur concluded that the signature on the

Fourth Will was a forgery. In addition, there was mixed evidence on Reka's testamentary capacity at the time the Fourth Will was purportedly signed.

[96] In short, the evidence on the Application raised serious questions about the validity of the Fourth Will, whether it reflected Reka's intention, whether Reka had testamentary capacity at the relevant time, and whether Reka actually signed it. These matters had to be resolved to ensure the proper administration of Reka's estate. The application judge erred in law both in failing to recognize that the public policy considerations were engaged and in failing to follow the correct legal principles for deciding legal costs in estate litigation.

[97] In light of these legal errors, the Costs Order must be set aside and it falls to this court to decide costs of the Application.

C. Costs of the Application

[98] Because the relevant public policy considerations are engaged, generally the Traditional Rule would apply and costs of the parties would be ordered from the estate. However, application of the Traditional Rule is not automatic. Before applying it, the court must consider whether a blended cost award is more appropriate.

[99] In my view, a blended costs award is appropriate for the Application. I say this for two reasons.

[100] First, as I explain above, Chandra's conduct was the primary reason that the Application had to be brought. She attempted to propound a will, drafted by a solicitor of her choosing, that did not reflect Reka's intentions.

[101] Second, on the findings of the application judge, Chandra's conduct during the Application also warrants a sanction in costs. The application judge found Chandra's testimony was "problematic and contradictory" and reflective of her positions during the litigation that led to increased costs.

[102] Both of these considerations make it appropriate that the Respondent be required to pay a portion of the Appellants' costs of the Application. Given the egregious nature of the first consideration, I would make that costs order on a substantial indemnity basis.

[103] In terms of quantum, in my view, a reasonable quantum of the Appellants' full indemnity costs is \$175,000, all inclusive, with costs payable by the Respondent personally, on a substantial indemnity basis, fixed at \$105,000, all inclusive, and the balance payable from the estate.

[104] I see no basis for appellate intervention with the application judge's determination that the Respondent should bear her own costs of the Application. Typically when public policy considerations are engaged, the Traditional Rule applies and the parties have recourse to the estate for their costs. However, as I explain above, Chandra's conduct is the primary reason the Application had to be

brought. In such circumstances, that conduct should not be condoned by awarding Chandra costs of the Application from the estate.

D. Costs of the Appeal

[105] As the successful parties, the Appellants are entitled to reasonable costs of the appeal, on a full indemnity basis, from the estate. While they sought costs of \$66,325, in my view, a reasonable costs order based on full indemnity would be \$45,000, all inclusive.

[106] I would not make a blended costs award on appeal for two reasons. First, the Respondent succeeded at first instance and was entitled to respond to the appeal. Second, the Respondent's conduct that warranted sanction in the form of costs occurred before and during the Application process, not during the appeal process. The blended costs order I would make in respect of the Application dealt with that conduct. I see nothing in the Respondent's conduct in the appeal process that warrants further sanction by way of a costs award against her personally. However, as I have found that she was the primary reason the Application had to be brought, in my view, it is appropriate that she bear her costs of the appeal.

VI. DISPOSITION

[107] Accordingly, I would: allow the appeal; grant the Application; set aside the Judgment with the exception of para. 2; set aside the Costs Order; declare the Fourth Will to be invalid; and grant the Motion to dismiss the SCC Action.

[108] I would allow para. 2 of the Judgment to remain because its provisions were not appealed. Paragraph 2(a) governs the transition of the estate administration from Ms. Nagrani, who was serving as Reka's estate trustee at the time of the Application, to the new estate trustee. It provides that Ms. Nagrani is to remain as estate trustee until her reasonable accounts are paid from the estate. Paragraph 2(b) orders that the Appellants are to receive \$75,600 as compensation for the renovations they made to Reka's home, plus interest at the rate of 6% from the date of Reka's death, and that the principal sum plus interest form a first charge against the estate and be paid out along with Ms. Nagrani's fees after the payment of taxes and liabilities but before any distributions to beneficiaries. This provision was the subject of some debate between the parties and was resolved by the application judge in an endorsement dated March 3, 2025.

[109] I would make the following costs order:

- (1) costs of the Application and the Motion to the Appellants fixed at \$175,000, all inclusive, of which the Respondent shall pay substantial indemnity costs of \$105,000, all inclusive, with the balance of \$70,000 to be paid to the Appellants from the estate;
- (2) the Respondent shall bear her own costs of the Application and the Motion;

- (3) costs of the appeal to the Appellants fixed at \$45,000, all inclusive, payable from the estate; and
- (4) the Respondent shall bear her own costs of the appeal.

Released: February 26, 2026 "E.E.G."

"E.E. Gillese J.A."
"I agree. S.E. Pepall J.A."
"I agree. B. Zarnett J.A."