Will Contests: Litigating the Trillion Dollar Inheritance of the Baby Boomers

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Will contests should create a significant increase in demand for the services of Georgia's trial lawyers over the next ten years. The generation of Americans who fought World War II and who presided over the last fifty years of American prosperity are collectively at or near the end of their life spans. The probate of the World War II generation's estates will constitute the largest transfer of wealth in the history of this country. Experts estimate that over the next two to three years, at least a trillion dollars will be transferred from the World War II generation to the generation popularly known as the baby boomers.[1] Carl J. Stinchcomb, an attorney and former manager of trust services for U.S. Trust Company of New York, reports that industry analysts take it as an article of faith that wealth in the trillions of dollars will be transferred over the next ten years.[2]

The prosperity of this generation of testators has been accompanied by changes in the American family that are likely to be sources of conflict among their heirs. The growth in the numbers of divorces, second and third marriages, and children of second and third marriages presents complications and potential sources of conflict over the distribution of this wealth that were largely unknown to previous generations. Even if one ignores changes in the family, the prosperity of the baby boom generation itself will give this generation of heirs and potential beneficiaries greater access to lawyers and the courts. The amount of wealth at stake will give them a greater incentive to pursue litigation. When the baby boomers are disappointed by their inheritance, and substantial wealth is at stake, litigation is a predictable result.

There is reason to believe that Georgia will be effected by these trends. The growth of Atlanta and other Georgia cities as centers of commerce

has dramatically increased the number of wealthy Georgians. This growth is not limited to the cities, as many formerly rural counties in the North Georgia mountains and along the coast have become popular retirement areas. Accordingly, Georgia's trial bar needs to be prepared to deal with the prosecution and defense of the will contests that will accompany this unprecedented transfer of wealth.

The remainder of this article is intended to provide a brief introduction to Georgia's substantive law governing will contests. We will describe the most frequently used grounds for will contests in Georgia and, where possible, make some observations about the trends in outcome and judicial prejudice presented in the case law.[3]

I. UNDUE INFLUENCE

To initiate a challenge to a will, relatives contesting the will ("caveators") file a complaint (a "caveat") against the person or persons attempting to probate a will ("propounders"). The Georgia Supreme Court has exclusive jurisdiction over all cases "in which the validity or construction of the will is the main issue on appeal."[4]

Perhaps the most popular ground for contesting a will is the assertion that someone exercised "undue influence" over the testator, causing him or her to disfavor the caveators in favor of others.[5] The propounder is often accused of undue influence, but another person may unduly influence the testator's will.[6] Undue influence invalidates a will when "the will of another is substituted for the wishes of the testator."[7] The fact that the propounder possessed the opportunity to influence the testator and received a substantial benefit under the will is not sufficient to create an inference of undue influence.[8] Instead, the caveator must prove that the propounder employed influence that "amounts either to deception or to force and coercion, destroying free agency" of the testator.[9]

The amount of persuasion necessary to unduly influence the testator varies in each case, but less influence is required to "dominate a mind impaired by age or disease."[10] As stated in *Morgan v. Ivey*,[11]

> [h]onest persuasion to make a will of a certain kind, though constant and importunate and though accompanied by tears and entreaties, does not constitute undue influence, in the absence of fraud or duress . . . provided the testator is in a mental condition to make a choice between following his original intent or yielding his view in favor of the wishes of the other person.

The testator must actually rely on or be deceived by any of the influencer's misrepresentations.[12]

As indications of undue influence are often subtle, a "wide range of evidence, such as a confidential relationship between the parties; the reasonableness or unreasonableness of the disposition of the testator's estate; [or] diseases of the mind of the testator" is relevant.[13] Although evidence concerning events before and after the creation of the will may be admissible to demonstrate undue influence, the influence must operate upon the testator at the time the will is executed.[14] In fact, a key factor suggesting undue influence is the propounder's presence at the drafting of the will, unless the testator expressly requested the propounder to appear.[15]

The influencer's undue influence may even reach out from the grave. In *Ivey v. Trust Co. of Georgia*,[16] the testator changed his will to conform to his wife's wishes eight days after her

death. The caveat alleged that due to "the shock of the recent death of his said wife, [the testator] was peculiarly susceptible to be influenced by said undue influence, wishes, persuasion, importunities and threats made by her before her death."[17] The Court upheld the trial court's decision to overrule the demurrer, finding that the petition stated a claim of undue influence.

Undue influence cases may be best organized according to the relationship between the parties contesting or propounding the will and the testator.[18] These relationships are often more predictive of the obstacles the parties challenging the will may face and the likelihood of success than any particular feature of the substantive law. Although there are always exceptions, certain trends in outcomes appear in the reported decisions based upon the identity or relationship of the parties to the testator.

A. Children v. Children

Many cases deal with wills disinheriting one child or children in favor of a sibling or siblings. In these cases, claims of undue influence are difficult to sustain if the propounder can point to a rational basis for the disinheritance.[19] For example, in *Brumbelow v. Hopkins*,[20] all the testator's children, except for his son, signed a petition to prevent the testator from selling his home. The testator believed that his children had treated him cruelly by preventing this sale, and thus the testator left his entire estate to the one son who did not sign the petition. The Court observed that although the children may have acted dutifully in the testator's best interest, the son did not exercise undue influence.

Caveats have been successful, however, where the propounder caused discord between his or her parent and siblings by misrepresenting the disinherited siblings' affections and actions to the testator. One court stated that "[i]n all history nothing has so wrung the parental heart with grief as the belief that a child is undutiful, unworthy, and unloving."[21] In addition, courts disapprove of propounders who prevented the testator from spending time alone with the disinherited siblings. In *Adler v. Adler*,[22] the court upheld a jury verdict for the caveators when a daughter convinced the testator, her father, that her brother caused her mother's death by volunteering to serve in World War II. The daughter lived with her father and prevented him from seeing her brothers socially. She also urged her father to oust the brothers from the family company, of which she gained control.

A recurring factor in these cases is whether the favored child lived with or cared for the elderly or ill testator. Courts tend to reward these propounders by upholding the will.[23]

B. Siblings and Nephews and Nieces

When collateral relatives, brothers and sisters or nephews and nieces, contest the distribution of a will against other collateral relatives, the propounders often win. Again, courts allow a relative who cares for an ailing testator to be rewarded by the will.[24]

Collateral propounders have sometimes been successful even against the testator's own children.[25] In these cases, the disinherited children were born to women that the testators later divorced. These decisions are not recent, however, and this trend may not continue considering the proliferation of divorce.

C. Propounder in a Confidential Relationship with Testator

Caveators often claim that the propounder exercised undue influence by misusing a confidential relationship with the testator. If the propounder occupies a traditional fiduciary role,

such as priest,[26] lawyer,[27] doctor,[28] or guardian,[29] claims of undue influence are usually sustained. On the other hand, a propounder may successfully probate the will although he or she advised the testator or conducted the testator's business affairs. For example, *Marlin v. Hill*[30] held that a nephew-in-law who conducted a testator's business affairs and mismanaged the testator's deceased husband's estate did not engage in undue influence although the testator relied on him for advice.

The cases demonstrate that there is a great deal of confusion regarding whether a presumption exists against non-family members who have a confidential relationship with the testator and request that the testator make a will in their favor.[31] Several cases state that caveators must allege specific facts constituting undue influence,[32] and at least one case asserts that such a presumption does not exist.[33] A 1994 case, *McGee v. Ingram*,[34] emphasizes the need to allege specific facts:

> [I]t is insufficient to show merely that the persons receiving substantial benefit under the instrument sought to be propounded occupied a confidential relationship to the testator and had an opportunity to exert undue influence. The indulgence of mere suspicion of undue influence cannot be allowed.[35]

On the other hand, in *Bryan v. Norton*,[36] decided in 1980, the Court relied on an evidentiary presumption against persons in a confidential relationship with the testator in overrruling a directed verdict in favor of the propounder. The *Bryan* Court stated the presumption as follows:

> [w]here a person obtaining a substantial benefit under a will occupies a confidential relationship toward the maker of the will and is not a natural object of the maker's bounty, a presumption of undue influence arises if it is shown that the will was made at the request of such person.[37]

In *Bryan*, a priest assured the testator that if she executed a will in his favor, he would always take care of her. The case cited as authority by the Bryan court, *White v. Irvin*,[38] actually declares the opposite rule to be true:

> the authorities are uniform that no such presumption arises merely because one occupying a confidential relationship with the testator drafts, or causes another to draft, a will in which he is named executor and is make a large beneficiary.[39]

In *White*, the nephew of the testator, who was an attorney, conducted the testator's business affairs, and wrote her will leaving him her property. The Court held that the propounder had not taken undue advantage of the testator.[40]

Bryan has been followed by *Hudson v. Abercrombie*,[41] in which a lawyer drafted the testator's will under which the lawyer was a substantial beneficiary. *Bryan* was also cited in *Andrews v. Rentz*.[42] In *Andrews*, a friend who took care of the testator's financial and personal affairs for $500 a month admitted that she occupied a confidential relationship to the testator. The Court stated the presumption found in *Bryan*, but then went on to say that "a person standing in a confidential relation to another is not prohibited from exercising any influence whatever to obtain a benefit,"[43] which would appear to detract from the presumption. In fact, the *Andrews* decision appears to be based on the fact that the propounder did not exercise undue

influence rather than upon an evaluation of the applicability of the presumption.[44]

Perhaps the *Bryan* case may be reconciled with other cases by construing its holding as stating that a presumption exists when the propounder plays a traditional fiduciary role, such as a priest, doctor, lawyer, or guardian. Such a presumption would be consistent with both older and more recent cases. For example, in *Morris v. Stokes*,[45] Justice Lumpkin held that the conduct of a guardian who gave expensive presents to his sickly young ward to induce a feeling of indebtedness in order to inherit his estate exhibited undue influence. Justice Lumpkin asserted that in will contest cases, "courts will guard all persons occupying these fiduciary relations from the abuse of that influence which must necessarily result from it" with "particular jealousy and anxiety."[46]

This view is also well illustrated in *Northwestern University v. Crisp*,[47] where the probate of a will and codicil was reversed due to a doctor's undue influence. The doctor brought a purported copy of a will to the terminally ill testator who was heavily sedated and had fasted for four days. The doctor and his lawyer held a pen in the testator's hand and moved her wrist to sign her name to a codicil favoring the doctor.

D. Friends

Despite the legal presumption against disinheriting a testator's children and spouse, non-family member friends often succeed when a relative challenges their inheritance under the testator's will.[48] A presumption favoring the inclusion of the testator's children and spouse in his or her will has existed in the Georgia Code since 1863.[49] Any will in which the testator bequeaths his entire estate to strangers to the exclusion of his spouse and children "should be closely scrutinized; and upon the slightest evidence of aberration of intellect, collusion, fraud, undue influence, or unfair dealing, probate should be refused."[50] The presumption is not often activated, because the testator can avoid it by leaving his or her heirs small bequests. For example, in *Andrews v. Rentz*,[51] the testator left his daughter $200.

In most of these cases, the friend has nursed the aging or ailing testator, a factor that contributes to the propounder's success.[52] An exception to this rule is found in *Sauls v. Avant*,[53] where the Court of Appeals found that a propounder, who had previously lost a caveat to the will by the testator's son, could not claim a fee for acting as executor of the estate because he exerted undue influence on the testator. The court appeared to possess much sympathy for the testator, who was vulnerable to undue influence due to her illness and past history. The testator was born with an immune system deficiency. Her mother was struck by lightning when she was a child, and her father died when she was twenty. Her stepmother disowned her and she began living a life of excess and debauchery. She gave birth to a son who inherited her disease. In her early twenties, she developed a prolonged and fatal illness. While she was in the hospital, the propounder, the elderly father of a former boyfriend, ingratiated himself by visiting her every day and paying her medical bills.

E. Spouses

There are two types of cases involving spouses. First, the testator may devise his or her estate to a second spouse to the exclusion of his or her children from a prior marriage. Second, the testator may disinherit the spouse in favor of the testator's friends or family members.

When the testator disinherits children in favor

of a second wife, the wife often prevails. A court reasoned that "it is entirely proper that husbands and wives should consult each other and endeavor to meet each other's wishes in the making of their wills."[54] Furthermore, a propounder's resort to begging and tears does not constitute undue influence.[55] Courts often state that the testator's agreement to execute a will in favor of the propounder to preserve peace in the household usually does not amount to undue influence.[56] An exception to this rule is found in *Levens v. Levens*,[57] where the caveating children survived a demurrer when they claimed that the alcoholic testator executed a will "in order to escape from [the] constant shouting, haranguing and screaming of his wife and from her persistent threats and annoyance."[58]

There are few cases in which the testator disinherits his wife. At least one wife was not successful in her caveat when she and her husband were separated.[59] Wives have succeeded in demonstrating undue influence when strong circumstantial evidence indicated the presence of undue influence, such as when the propounder isolated the testator during his last illness.[60] For example, in *Bowman v. Bowman*,[61] the husband's twin brother brought the husband to his house and refused to allow the wife to visit. He then told the husband that the wife did not wish to care for him and had tried to poison him. The trial court issued a direct verdict in favor of the propounder and refused to grant a new trial.[62] The Supreme Court reversed the trial court's decision to deny the caveator a new trial.[63]

There seems to be some difference in the treatment of husbands and wives. There are not many cases in which husbands inherited to the exclusion of the testator's children, whereas there are a number in which second wives did so.[64] Courts often find undue influence lacking when a husband is excluded from a will,[65] even when the husband is elderly and unable to provide for himself.[66] In *Green v. Jones*,[67] the court held that the trial court correctly refused to charge on undue influence when the testator left her estate to her parents and siblings. In *Dobbs v. Burnette*,[68] the Court overturned a verdict for the husband, despite the fact that the propounder had the opportunity to influence the testator.

Exceptions exist, however. A husband was allowed to submit his undue influence claim to a jury when his wife was insane and confined to an institution.[69] In another case in which the husband prevailed, the testator was "exceedingly close" to her sister, the propounder.[70] The testator and her sister saw each other every day, ate dinner together, and talked on the telephone at midnight every night. The sister encouraged the testator's suspicions of the husband's infidelity, which was the basis for his exclusion from the will.[71]

II. TESTAMENTARY CAPACITY

Caveators often couple a claim of undue influence with a claim that the testator lacked testamentary capacity. To create a valid will, the testator must possess testamentary capacity, which is a decided and rational desire as to the disposition of his or her property.[72] The will must not be a product of "the wavering, vacillating fancies of a distempered intellect," or "the ravings of a madman, the silly pratings of an idiot, the childish whims of imbecility, or the excited vagaries of the drunkard."[73] The testator should be able to understand the nature of a will, remember his or her property, recognize the people related to him or her by ties of blood and affection, and communicate a rational plan for distribution of his or her estate.[74]

The capacity required to establish a will is less than that necessary to enter into a contract.[75] An 1872 case suggested that the "precious right" to make a will must be "guarded with jealous care" so that "the age and infirm, the weak minded and eccentric" may ensure that someone will care for them in their last illness; "[a]nd it may be truly said, without any harsh criticism on human nature, that many a fired brain has been cooled by gentle hands, and many a death bed cheered and watched over with kind care, which, but for this tender care of the law for this testamentary right, would have been neglected and deserted." [76]

An insane person may make a will during a lucid interval.[77] Yet, if the testator has been previously adjudged incompetent, his or her disability is presumed to continue.[78]

The testator must possess testamentary capacity at the time he or she executes the will.[79] Testimony regarding the testator's capacity at other points in time will not overcome direct evidence regarding the testator's capacity when he or she signed the will.[80] The caveator may demonstrate that a mental condition affected the testator at the time of the will's execution by proving that the condition existed before and after the execution of the will.[81] In *Dean v. Morsman*,[82] the fact that the testator was an alcoholic and drug abuser did not necessitate the conclusion that he was under the influence of alcohol or drugs on the date he wrote his will, however.

Caveators often assert that the testator's physical infirmities indicate a corresponding loss of mental capacity. Although courts have held that a testator's capacity was effected when the testator was an alcoholic[83] or was required to exercise her full concentration on breathing,[84] the deterioration of the testator's health alone is usually not sufficient to indicate a lack of testamentary capacity.[85] A testator's failing health may weaken his or her will,[86] or drugs may make the testator potentially more susceptible to suggestions,[87] but testamentary capacity is not necessarily destroyed.

"Old age and weakness of intellect resulting therefrom" are also insufficient to destroy the testator's capacity.[88] The testator's actions that allegedly display a lack of capacity must amount to more than mere eccentricities of thought or habit.[89] One court found a lack of capacity when the testator locked his tools in the refrigerator, believed that gangsters from Chicago sought to execute him, and slept with a fox.[90] On the other hand, in *Brumbelow v. Hopkins*,[91] the testator was found to be capable of executing a will although he ceased attending church, talked incessantly about women, and insisted that his candy have stripes of a certain size.

Courts have held that testamentary capacity exists when the testator handled his or her own business affairs.[92] When the will was written and executed by impartial people who knew the testator, a court has assumed that they would notice any lack of testamentary capacity.[93]

When the testamentary capacity of the testator is questionable, the reasonable disposition of the estate, that is, the distribution of the estate to the testator's relatives, should carry "much weight" in the factfinder's decision.[94] The testator may choose to bequeath his or her estate to one family member over another, however.[95]

III. MONOMANIA

A third popular ground for a will contest is the theory of monomania. Monomania exists when a testator, who is sane generally, possesses an insane delusion about a specific subject.[96] The

delusion is not required to concern the caveator,[97] but it must influence the distribution detailed in the will.[98] Monomania is not present when "a person takes a narrow, or prejudiced, or utterly illogical view of a particular subject,"[99] or when the alleged delusion is merely an incorrect conclusion.[100] A testator subject to insane delusions may make a will "if the will is in no way the result of or connected with his monomania."[101]

The insane delusion asserted must not arise from "a mistaken conclusion from a given state of facts, nor a mistaken belief of a sane mind as to the existence of facts."[102] A mistaken belief as to the existence of facts will constitute monomania when the testator "conceives something extravagant to exist which has no existence whatever, and he is incapable of being permanently reasoned out of that conception."[103] When a testator merely makes an erroneous conclusion, "his belief may show want of discernment, or that he lacks ordinary power of discrimination, and is consequently easily duped, but not that his mind is unsound."[104]

In a recent example, the testator's son decided to dine at another relative's house rather than his father's house.[105] The testator mistakenly concluded that the son intended to insult his second wife's cooking and refused to speak with him for the remainder of his life. The court asserted that the testator's belief was "based upon an illogical deduction drawn from facts as they really exist," and thus did not amount to an insane delusion.[106]

Wills based upon the testator's prejudices are not necessarily the product of an insane delusion.[107] In drafting a will, the testator may "entertain his animosities, cherish his prejudices, and nurse his wrath against heirs at law of his estate."[108] As Justice Lumpkin queried in *Dibble v. Currier*,[109] "[b]ut if mistakes, prejudices or dislikes, though unjust, would suffice to show insanity, how many men could make a will?" A testator's hatred of the caveator may amount to monomania, however, when it occurs suddenly and for no discernible reason. For example, in *Duncan-Rose v. First State Bank & Trust Co. of Valdosta*,[110] the trial court granted summary judgment to the propounder when the testator made statements indicating his intense dislike of his adopted daughter, calling her an incorrigible drunk and a thief. The Supreme Court reversed the trial court and allowed the daughter to challenge the will, noting the sudden and unexplained change in the testator's attitude toward the daughter.

The courts' evaluation of monomania sometimes reflects biases towards certain types of caveators. In *Irvin v. Askew*,[111] the court upheld the testator's disinheritance of her husband, although the testator locked her valuables in a cupboard to protect them from the caveator and slept with the key under her pillow, and glued her knickknacks to the shelves. The court made much of the parties' ages, noting that the testator was 62 when she married the caveator, who was 37. Monomania is alleged less often then lack of testamentary capacity or undue influence, however, and it is difficult to ascertain definite trends in the cases based upon the classes of claimants. Certain claims of monomania appear more often than others, however.

Very bizarre claims of monomania may be more likely to succeed. In *Dibble v. Currier*,[112] the testator disinherited her relatives when they refused to kill--or at least maim--her ex-husband. In another case, the testator stated that his sister cast a spell on him to steal his property.[113] In several cases, the testator believed that when a

child married, he or she abandoned the testator.[114]

Courts have found monomania when the testator is convinced that the caveator is attempting to steal his or her property.[115] In *Johnson v. Dodgen*,[116] the court found evidence of monomania when the testator believed that her nephew caused her to be sent to a nursing home in order to steal her belongings. The fear of theft must be directed towards the caveator instead of at the world in general.[117] For example, in *Cobb v. Thompson*,[118] the heirs contended that the testator had an insane delusion regarding the theft of her property because she padlocked and nailed shut her doors. The court held that although the testator was subject to an "exaggerated fear of being robbed," her belief did not effect the provisions of her will which left her estate to charity.[119]

Courts expect testators to be aware of their family members, and rarely find that the testator did not recognize the existence of a relative.[120] In *Cook v. Cook*,[121] the testator refused to acknowledge his cousins, not because he was deluded as to their existence, but because he disliked them.

Monomania does not exist when the testator believes that his or her spouse is unfaithful in the absence of other factors, even if such belief is not based on fact.[122] "Mere jealous suspicion, however groundless," does not constitute monomania.[123]

IV. CONCLUSION

In will contests, the relationships of the parties to the testator and to each other have been an important factor in predicting the outcome of the cases. In prosecuting and defending will contests, trial lawyers should keep a careful eye on the effect that the prejudices reflected in the Georgia cases will have on the jury, the trial court, and especially the appellate court. The will contests presented by the baby boom generation are likely to raise a host of new issues. These challenges will require the bench and bar alike to re-examine traditional rules and prejudices in light of the changes in our society. Much is at stake as our clients compete for the trillions of dollars left behind by the wealthiest generation in our history.

ENDNOTES

1 C. Paul Tyborowski, Managing Director, Columbus Circle Trust Company, quoted in Trusts & Estates, August 1996, p. 80.

2 Carl J. Stinchcomb, Esq. c/o U.S. Trust Company of Florida, 132 Palm Way, Palm Beach, Florida 33480

3 For a lively and comprehensive discussion of the history, theory, and experience of will contests in American law, see Eunice L. Ross and Thomas J. Reed, Will Contests, published by Clark Boardman Callaghan (1992).

4 In re Estate of Lott, 251 Ga. 461, 306 S.E.2d 920 (1983); See also Georgia Constitution, Article VI, Section VI, Paragraph III.

5 O.C.G.A. § 53-2-6.

6 See Trust Co. of Georgia v. Ivey, 178 Ga. 629 (1933).

7 O.C.G.A. § 53-2-6.

8 Orr v. Blalock, 195 Ga. 863, 866, 25 S.E.2d 668 (1943); Brumbelow v. Hopkins, 197 Ga. 247, 29 S.E.2d 42 (1944).

9 Bohler v. Hicks, 120 Ga. 800 (1904); Galloway v. Hogg, 167 Ga. 502 (1928).

10 Perkins v. Edwards, 228 Ga. 470, 186 S.E.2d 109 (1971).

11 Morgan v. Ivey, 222 Ga. 850, 852, 152 S.E.2d 833 (1967).

12 Crawford v. Crawford, 218 Ga. 369, 128 S.E.2d 53 (1962); Butler v. Lashley, 197 Ga. 461, 29 S.E.2d 508 (1944).

13 Bowman v. Bowman, 205 Ga. 796, 55 S.E.2d 298 (1949).

14 Boland v. Aycock, 191 Ga. 327, 329, 12 S.E.2d 319 (1940).

15 Bishop v. Kenny, 266 Ga. 231, 466 S.E.2d 581 (1996).

16 Trust Co. of Georgia v. Ivey, 178 Ga. 629 (1933).

17 Id. at

18 Eunice L. Ross and Thomas J. Reed, Will Contests, §§ 7.1

- 7.21, published by Clark Boardman Callaghan (1992).

19 Brumbelow v. Hopkins, 197 Ga. 247, 29 S.E.2d 42 (1944).

20 Id.

21 Penniston v. Kerrigan, 159 Ga. 345 (1924); "How sharper than a serpent's tooth it is to have a thankless child." Shakespeare, King Lear, Act I, Scene IV.

22 Adler v. Adler, 207 Ga. 394, 61 S.E.2d 824 (1950).

23 Russell v. Fulton Nat. Bank of Atlanta, 248 Ga. 421, 283 S.E.2d 879 (1981); Bailey v. Bailey, 204 Ga. 556, 50 S.E.2d 617 (1948); Hill v. Deal, 185 Ga. 42, 193 S.E. 858 (1937).

24 Russell v. Fulton Nat. Bank of Atlanta, 248 Ga. 421, 283 S.E.2d 879 (1981); Bailey v. Bailey, 204 Ga. 556 (1948); Hill v. Deal, 185 Ga. 42, 193 S.E. 858 (1937).

25 Crawford v. Crawford, 218 Ga. 369, 128 S.E.2d 53 (1962); Culpepper v. Bower, 203 Ga. 784, 48 S.E.2d 369 (1948).

26 Bryan v. Norton, 245 Ga. 347, 265 S.E.2d 282 (1980); Galloway v. Hogg, 167 Ga. 502 (1928).

27 Hudson v. Abercrombie, 225 Ga. 376, 338 S.E.2d 667(1986).

28 Northwestern University v. Crisp, 211 Ga. 636, 88 S.E.2d 26 (1955).

29 Morris v. Stokes, 20 Ga. 552 (1856).

30 Marlin v. Hill, 192 Ga. 434, 15 S.E.2d 473 (1941).

31 When the Testator gives property to a person before his or her death, courts do state that a presumption of undue influence arises. Mathis v. Hammond, Case No. S97A0470 (Supreme Court, June 30, 1997); Myers v. Myers, 195 Ga.App. 529, 394 S.E.2d 374 (1990). In Mathis, the Supreme Court approved a jury charge stating "a presumption of undue influence arises as a matter of law where the grantee of a gift of real property stands in a confidential relationship with the grantor of real property, and the grantor is of a weak mentality."

32 Id.; Crews v. Crews, 219 Ga. 459, 134 S.E.2d 27 (1963).

33 White v. Irwin, 220 Ga. 836, 142 S.E.2d 255 (1965).

34 McGee v. Ingram, 264 Ga. 649, 448 S.E.2d 439 (1994).

35 Id. at 650.

36 Bryan v. Norton, 245 Ga. 347, 265 S.E.2d 282 (1980).

37 Id. at 348.

38 White v. Irwin, 220 Ga. 836, 142 S.E.2d 255 (1965).

39 Id. at 841.

40 Id.

41 Hudson v. Abercrombie, 255 Ga. 376, 338 S.E.2d 667 (1986).

42 Andrews v. Rentz, 266 Ga. 782, 470 S.E.2d 667 (1996).

43 Id. at 784 citing Ehlers v. Rheinberger, 204 Ga. 226, 49 S.E.2d 535 (1948).

44 The presumption may have applied in Andrews because there was evidence that the propounder had participated in the drafting of one of the testator's wills. Id. (Carley, J., dissenting).

45 Morris v. Stokes, 20 Ga. 552 (1856).

46 Id.

47 Northwestern University v. Crisp, 211 Ga. 636, 88 S.E.2d 26 (1955).

48 McConnell v. Moore, Case No. S97A0344 (Ga. S. Ct. April 14, 1997); Mitchell v. Hillman, 241 Ga. 289, 244 S.E.2d 871 (1978); Brown v. Bryant, 220 Ga. 80, 137 S.E.2d 36 (1964).

49 O.C.G.A. § 53-2-9.

50 O.C.G.A. § 53-2-9.

51 Andrews v. Rentz, 266 Ga. 782, 470 S.E.2d 667 (1996).

52 Mitchell v. Hillman, 241 Ga. 289, 244 S.E.2d 871 (1978); Hawkins v. Hodges, 213 Ga. 837, 102 S.E.2d 16 (1958); Norman v. Hubbard, 203 Ga. 530, 47 S.E.2d 574 (1948).

53 Sauls v. Avant, 143 Ga.App. 469, 238 S.E.2d 564 (1977).

54 Boland v. Aycock, 191 Ga. 327, 329, 12 S.E.2d 319 (1940).

55 Id.

56 Id.

57 Levens v. Levens, 203 Ga. 646, 650, 475 S.E.2d 748 (1948).

58 Id. at 650.

59 Martin v. Baldwin, 215 Ga. 293, 110 S.E.2d 344 (1959).

60 Bowman v. Bowman, 205 Ga. 796, 55 S.E.2d 298 (1949); Gaither v. Gaither, 20 Ga. 709 (1856).

61 Bowman v. Bowman, 205 Ga. 796, 55 S.E.2d 298 (1949).

62 Id. at 807, 808.

63 Id. at 814.

64 Occasionally, however, this does occur. See Worrell v. Ganns, 214 Ga. 708, 107 S.E.2d 186 (1959) (verdict in favor of husband reversed). But see Boland v. Aycock, 191 Ga. 327 (1940) (verdict against husband reversed).

65 Green v. Jones, 254 Ga. 35, 326 S.E.2d 448 (1985); Dobbs v. Burnette, 250 Ga. 47, 295 S.E.2d 836 (1982).

66 Whitfield v. Pitts, 205 Ga. 259, 53 S.E.2d 549 (1949).

67 Green v. Jones, 254 Ga. 35, 326 S.E.2d 448 (1985).

68 Dobbs v. Burnette, 250 Ga. 47, 295 S.E.2d 836 (1982).

69 Scott v. Wimberly, 185 Ga. 561, 195 S.E.2d 865 (1938).

70 Stevens v. Brady, 200 Ga. 428, 73 S.E.2d 182 (1952).

71 Id. at 435.

72 O.C.G.A. § 53-2-21(b); Hall v. Burpee, 176 Ga. 270.

73 O.C.G.A. § 53-2-21(b); Hall v. Burpee, 176 Ga. 270.

74 Hall v. Burpee, 176 Ga. 270; Davis v. Aultman, 199 Ga. 129, 33 S.E.2d 317 (1945); Fowler v. Fowler, 197 Ga. 53, 28 S.E.2d 458 (1943).

75 O.C.G.A. § 53-2-21(a); Smith v. Davis, 203 Ga. 175, 45 S.E.2d 609 (1947).

76 Gardner v. Lamback, 47 Ga. 133 (1872).

77 O.C.G.A. § 53-2-23.

78 English v. Shivers, 219 Ga. 515, 133 S.E.2d 867 (1963).

79 Bailey v. Bailey, 204 Ga. 556, 50 S.E.2d 617 (1948).

80 Crews v. Crews, 219 Ga. 459, 134 S.E.2d 27 (1963); Gornto v. Gornto, 217 Ga. 136, 121 S.E.2d 139 (1961).

81 Dean v. Morsman, 254 Ga. 169, 327 S.E.2d 212 (1985).

82 Id.

83 Bohler v. Hicks, 120 Ga. 800 (1904).

84 Hawkins v. Hodges, 213 Ga. 837, 102 S.E.2d 16 (1958).

85 Joseph v. Grisham, Case No. S96A1338 (Ga. S. Ct. March 3, 1997).

86 Fowler v. Fowler, 197 Ga. 53, 28 S.E.2d 458 (1943).

87 Gornto v. Gornto, 217 Ga. 136, 121 S.E.2d 139 (1961).

88 Bailey v. Bailey, 204 Ga. 556, 50 S.E.2d 617 (1948); O.C.G.A. § 53-2-25(b).

89 Cobb v. Thompson, 236 Ga. 261, 223 S.E.2d 658 (1976); O.C.G.A. § 53-2-25(a).

90 Cook v. Sheats, 222 Ga. 70, 148 S.E.2d 382 (1966).

91 Brumbelow v. Hopkins, 197 Ga. 247, 29 S.E.2d 42 (1944).

92 White v. Irvin, 220 Ga. 836, 142 S.E.2d 255 (1963); Morgan v. Ivey, 222 Ga. 850, 152 S.E.2d 833 (1967).

93 Waldrep v. Goodwin, 227 Ga. 560, 181 S.E.2d 837 (1971).

94 Peretzman v. Simon, 185 Ga. 681, 196 S.E. 471 (1938); Knox v. Knox, 213 Ga. 677, 101 S.E.2d 89 (1957). Galloway v. Hogg, 167 Ga. 502 (1928); O.C.G.A. § 53-2-25(b)

95 Bianchini v. Wilson, 220 Ga. 816, 141 S.E.2d 889 (1965).

96 Boney v. Boney, 265 Ga. 839, 462 S.E.2d 725 (1995); Bohler v. Hicks, 120 Ga. 800 (1904).

97 Gardner v. Lamback, 47 Ga. 133 (1872); Yarbrough v. Yarbrough, 202 Ga. 391, 43 S.E.2d 329 (1947).

98 Cobb v. Thompson, 236 Ga. 261, 223 S.E.2d 658 (1976).

99 Bohler v. Hicks, 120 Ga. 800 (1904).

100 Brumbelow v. Hopkins, 197 Ga. 247, 29 S.E.2d 42 (1944); Thornton v. Hulme, 218 Ga. 480, 128 S.E.2d 744 (1962).

101 O.C.G.A. § 53-2-23.

102 Dibble v. Currier, 142 Ga. 855 (1914); English v. Shivers, 219 Ga. 515, 133 S.E.2d 867 (1963) (testator believed her children had treated her unfairly by not giving her a share of their inheritance from their father); Thornton v. Hulme, 218 Ga. 480, 128 S.E.2d 744 (1962) (testator believed her brother had challenged her right to their mother's property).

103 Dyar v. Dyar, 161 Ga. 615 (1925).

104 Brumbelow v. Hopkins, 197 Ga. 247, 29 S.E.2d 42 (1944).

105 Boney v. Boney, 265 Ga. 839, 462 S.E.2d 725 (1995).

106 Id.

107 Russell v. Fulton Nat. Bank of Atlanta, 248 Ga. 421, 283 S.E.2d 879 (1981).

108 Carter v. Dixon, 69 Ga. 82 (1882); Moreland v. Word, 209 Ga. 463, 74 S.E.2d 82 (1953).

109 Dibble v. Currier, 142 Ga. 855 (1914).

110 Duncan-Rose v. First State Bank & Trust Co. of Valdosta, 225 Ga. 225, 335 S.E.2d 552 (1985).

111 Irvin v. Askew, 241 Ga. 565, 246 S.E.2d 682 (1978).

112 Dibble v. Currier, 142 Ga. 855 (1914).

113 Powell v. Thigpen, 230 Ga. 760, 199 S.E.2d 251 (1973).

114 Anderson v. Jarriel, 224 Ga. 495, 162 S.E.2d 322 (1968); Dyar v. Dyar, 161 Ga. 615 (1925).

115 Johnson v. Dodgen, 244 Ga. 422, 260 S.E.2d 332 (1979); Cobb v. Thompson, 236 Ga. 261, 223 S.E.2d 658 (1976); Yarbrough v. Yarbrough, 202 Ga. 391, 43 S.E.2d 317 (1947); Moreland v. Word, 209 Ga. 463, 74 S.E.2d 82 (1953).

116 Johnson v. Dodgen, 244 Ga. 422, 260 S.E. 2d 332 (1979)

117 Cobb v. Thompson, 236 Ga. 261, 223 S.E.2d 658 (1976).

118 Id.

119 Id.

120 Cook v. Sheats, 222 Ga. 70, 148 S.E.2d 382 (1966); Russell v. Fulton Nat. Bank of Atlanta, 248 Ga. 421, 283 S.E.2d 879 (1981); Smith v. Davis, 203 Ga. 175 , 45 S.E.2d 609 (1947).

121 Cook v. Sheats, 222 Ga. 70, 148 S.E.2d 382 (1966).

122 Bohler v. Hicks, 120 Ga. 800 (1904); Irvin v. Askew, 241 Ga. 565, 246 S.E.2d 682 (1978); Hammett v. Reynolds, 243 Ga. 669, 256 S.E.2d 354 (1979).

123 Bohler v. Hicks, 120 Ga. 800 (1904); Hammett v. Reynolds, 243 Ga. 669, 256 S.E.2d 354 (1979).