

INTRODUCTION TO THE 2026 EDITION

The 2026 update to Ross & Reed, *Will Contests* reviews current cases, statutes and secondary materials that relate to challenges to post-death transfer of assets by wills, trusts, deeds, contracts and bank accounts during the year beginning in March 2025 and ending in March 2026.

The update reflects a large number of decisions affecting procedural issues such as parties and jurisdiction. Decedents continue to make more post-death distributions outside the probate system using a wide variety of instruments and disposition plans.

Here are some of the highlights:

Chapter 3 Parties

Standing to Sue

Three cases decided in 2025 deal with standing to sue in will contests. In *Herren v. George S.*, 109 Cal. App. 5th 410, 330 Cal. Rptr. 3d 458 (1st Dist. 2025), review denied, (June 11, 2025), the court held that the daughter of an octogenarian father had standing to raise a claim for elder abuse against her father's attorney. The court in *Winslow v. Poole*, 25 N.W.3d 1 (Iowa Ct. App. 2025), held that the alleged beneficiary of a trust lacks standing to contest the trust for lack of capacity of the settlor and tortious interference with legacy until the settlor dies and the trust is able to pay out benefits. In *Shippert v. Shippert*, 717 S.W.3d 609 (Mo. Ct. App. W.D. 2025), the court ruled that the contestant establishes standing by showing that the contestant has some legally protectable interest in the litigation so as to be directly and adversely affected by its outcome. A beneficiary of a trust does not have standing to sue to set aside the trust.

Chapter 4 Jurisdiction

Probate Exception to Diversity Jurisdiction

The court ruled in *JPMorgan Chase Bank, N.A. v. Houston*, 2025 WL 3852953 (S.D. Tex. 2025), report and recommendation adopted, 2026 WL 30844 (S.D. Tex. 2026), that an interpleader

action to determine ownership of a “payable on death” account between the executor of the decedent’s estate and the alleged account owner is not subject to the probate exception to diversity jurisdiction.

Chapter 5 Lack of Formalities

Signature

In *In re Estate of Carrier*, 2025 WL 3719471 (Neb. Ct. App. 2025), the court found that the decedent executed a document titled “Last Will and Testament of James Paul Carrier” signed by the decedent and one witness who also notarized the document. Nebraska law requires the signature of two witnesses to make a valid will. The document was formally invalid and not entitled to probate as decedent’s will.

In *Matter of Estate of Swing*, 85 Misc. 3d 1253(A), 231 N.Y.S.3d 383 (Sur. Ct. 2025), one of the purported attesting witnesses to the testator’s self-proving will signed as witness and later repudiated her signature in the presence of the testator. EPTL 3-2.1(a) requires two attesting witness signatures to the will. The surrogate ruled that the self-proving will was in substantial compliance with 3-2.1(a).

Improper Execution Attestation

In *Estate of Youngblood*, 2025 WL 2726062 (Tex. App. Amarillo 2025), one of two attesting witnesses testified that he did not know the document he was witnessing was the testator’s will. The trial court held his attestation was invalid and the will itself was invalid. The court of appeals disagreed, holding that an attesting witness need not know the nature of the document to be signed.

Chapter 6 Testamentary Capacity

Presumption of Capacity

The court in *In re Estate of Walker*, 320 Neb. 139, 26 N.W.3d 316 (2025), held that a self-proving will is prima facie evidence that the testator had testamentary capacity. See Neb. Rev. Stat. § 30-2329 (Reissue 2016).

Chapter 7 Undue Influence

Presumptions of undue influence

In *Woodson v. Randall*, 275 N.E.3d 47 (Ind. Ct. App. 2026), the court held the trial court correctly applied the common law presumption of undue influence to the respondent's use of a power of attorney to make deposits and transfers of the decedent's funds into her personal account. Certain "relationships 'raise a presumption of trust and confidence as to the subordinate party on the one side and a corresponding influence as to the dominant party on the other.'" When such a relationship exists and a transaction occurs between the parties that benefits the dominant party, "the law imposes a presumption that the transaction was the result of undue influence exerted by the dominant party, constructively fraudulent, and, thus void." Citing *Nichols v. Est. of Tyler*, 910 N.E.2d 221, 229 (Ind. Ct. App. 2009).

The court in *Daues v. Foster*, 2025 WL 1271720 (Ky. Ct. App. 2025), held that in Kentucky there is no presumption of undue influence arising from a bequest by a testator who has a confidential relationship with the beneficiary.

In *Matter of Will of Hobgood*, 299 N.C. App. 558, 916 S.E.2d 297 (2025), the court of appeals held that when the testator and the respondent are in certain fiduciary relationships, a transaction favoring the party wielding power over the other will be presumed the result of fraud or undue influence unless that presumption is rebutted with evidence that this was not the case.

Chapter 8. Other Grounds for Contest and Extra-Probate Remedies

Duress in General

Connecticut restated its test for duress in *Pagliarulo v. Samela-Sorrell*, 2025 WL 1937384 (Conn. Super. Ct. 2025), which held that the common law definition of duress is "any wrongful act of one person that compels a manifestation of apparent assent by another to a transaction without his volition." The party asserting duress must prove: "[1] a wrongful act or threat [2] that left the victim no reasonable alternative, and [3] to which the victim in fact acceded, and that [4] the resulting transaction was unfair to the victim."

Collateral Attack on Will

In *Shega v. American Bank of the North*, 2025 WL 2202721 (Minn. Ct. App. 2025), the court held that Minnesota does not recognize a separate tort right of action for undue influence.

The Vermont Supreme Court held in a case of first impression in *Dewdney v. Duncan*, 2025 VT 26, 342 A.3d 818 (Vt. 2025), that the Court recognizes the tort of intentional interference with expectation of inheritance and adopted the definition of intentional interference with expectation of inheritance set forth in Third Restatement 2nd of Torts.

Alternatives to Will Contests

In *Christakos v. Boyadjis*, 262 N.J. 447, 348 A.3d 966 (2026), in an action by a non-client vs. the attorney drafting the will for the decedent, the plaintiff claimed the attorney failed to include the plaintiff in the decedent's will. The court held that an attorney may owe a duty of due care to a non-client. Such a duty arises when the lawyer knows that one of the primary objectives of the representation is to benefit the non-client, the duty would not significantly impair the lawyer's obligations to the client, and the absence of the duty would make enforcement of those obligations unlikely.

Chapter 9 Challenging Post-death Distribution Plans Involving Lifetime Contracts, Deeds and Trust Instruments

Undue Influence and Lifetime Transfers—Elements

The court restated the elements of undue influence in *Matter of Estate of Rousey*, 568 P.3d 717 (Alaska 2025). The court said: "A grantor is unduly influenced when another person exercises such control over the grantor that the grantor 'is unable to exercise free and deliberate judgment' or is coerced 'into doing something that would not have been done absent the influence.'"

Undue influence and lifetime transfers—Presumption of undue influence

In *In re Estate of Stacy*, 20 N.W.3d 847 (Iowa Ct. App. 2025), the court held that the burden of proof of undue influence in a case asserting that a revocable inter vivos trust was established

INTRODUCTION

by undue influence is the same as the burden of proof of undue influence in a will contest because the settlor retains the power to alter or amend the trust during the settlor's lifetime.

Lifetime Gift Theory

In *Foster v. Ford*, 2025 Ark. App. 130, 708 S.W.3d 117 (2025), the donor delivered a quitclaim deed in March to one of her sons. The son died in a boating accident before recording the quitclaim deed. The donor executed a second quitclaim deed to her second son that was recorded before the March deed was recorded. Held: The March quitclaim was a valid gift to her son, trumping the earlier recording of the deed to the second son.

Gifts Causa Mortis

The court held in *Matter of Estate of Short*, 2025 Ark. App. 503, 725 S.W.3d 240 (2025), that the decedent's statement to his wife that after his death "all these guns will be yours" failed to qualify as a gift causa mortis because the guns were part of his family trust and decedent did not deliver the guns to his wife prior to his death. To establish a gift causa mortis, the donee must show that the person in extremis designated with proper distinctness the thing to be given and the person to receive it. The donee must also establish that the property was intended to pass to the donee and that this intent was carried into effect by an actual or effective delivery.

Chapter 15 Evidence

Hearsay Medical Records

The court held in *Matter of Estate of Laubach*, 346 A.3d 376 (Pa. Super. Ct. 2025), that medical records of decedent relating to his physical and mental condition at the time he executed his will were admissible as hearsay under Pa. R. Evid. 803(4) as business expressing no opinion on decedent's testamentary capacity.

Hearsay Spontaneous Utterances

The court held in *Matter of Estate of Snyder*, 2025 WL 1911852 (N.J. Super. Ct. App. Div. 2025), that a notebook journal allegedly kept by decedent with reference to respondent's activities should be excluded as hearsay because it failed to meet the reliability necessary to be admitted. The journal entries lack sufficient cor-

roboration or contextualization to assess if they were made in “good faith” or if they represented decedent’s “state of mind,” such as her most recent plan to devise her estate. The journal entries were largely undated and there was an insufficient nexus to the actual estate planning at issue as the only dated entries were from 2012 and 2013, many years before decedent’s death in 2020.

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