

**IN THE COURT OF APPEALS OF IOWA**

No. 0-116 / 09-0707

Filed April 8, 2010

**IN THE MATTER OF THE ESTATE OF  
HEDWIG A. MEYER**

**NADINE LENGELING,**  
Plaintiff-Appellant,

**vs.**

**ST. JOSEPH'S CATHOLIC CHURCH,  
ASIAN RELIEF, INC., COVENANT HOUSE,  
KUEMPER CATHOLIC SCHOOL FOUNDATION, INC.,  
EVELYN HAUBRICH, GENE MEYER, Individually  
and as Co-Executor of the Estate of Hedwig A. Meyer,  
LEON WERNIMONT, as Co-Executor of the  
Estate of Hedwig A. Meyer, and LAVONNE WERNIMONT,  
as Co-Executor of the Estate of Hedwig A. Meyer,  
Defendants-Appellees.**

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Appeal from the Iowa District Court for Carroll County, Gary L.  
McMinimee, Judge.

Nadine Lengeling appeals from the probate court's finding that Gene  
Meyer did not unduly influence the decedent in the making of her September 28,  
2006 will. **AFFIRMED.**

R. Scott Rhinehart and Matthew R. Metzgar of Rhinehart Law, P.C., Sioux  
City, for appellant.

Colin J. McCullough, of McCullough Law Firm, Sac City, for appellee  
Gene Meyer.

Jeffrey Minnich, Carroll, for appellees, Leon Wernimont and Lavonne Wernimont.

David Bruner, Carroll, for appellees St. Joseph's Catholic Church, Asian Relief, Covenant House, and Kuemper Catholic School Foundation.

Considered by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

**POTTERFIELD, J.**

Nadine Lengeling filed a petition to set aside probate of decedent Hedwig (“Haddie”) Meyer’s September 28, 2006 will. She alleged her brother, Gene Meyer, exerted undue influence in the making of that will.

The elements necessary to sustain a finding of undue influence in the execution of a will are: (1) the testator’s susceptibility to undue influence; (2) opportunity to exercise such influence and effect the wrongful purpose; (3) disposition to influence unduly for the purposes of procuring an improper favor; and (4) a result clearly the effect of undue influence.

*In re Estate of Todd*, 585 N.W.2d 273, 277 n.4 (Iowa 1998) (citations omitted).<sup>1</sup>

“[C]ontestants seeking to set aside a will based on undue influence carry the burden of proving the essential elements of the action by a preponderance of the evidence.” *Id.* at 277.

Following a trial to the court, as part of lengthy findings of fact and conclusions of law, the court wrote:

Notwithstanding Nadine’s observations regarding the deterioration of Hedwig’s mental and physical health in August 2006, this court finds that at the time Hedwig executed her will she had recovered from her August fall and was physically getting along reasonably well. This is supported by the medical testimony and medical records. This court finds that she was also mentally competent at the time she executed the will. This is support[ed] by the testimony of Dr. Carroll, who considered her mentally competent to make difficult decisions, as well as Dr. Perkins. Both doctors saw Hedwig within a month of the execution of her will. That she was in satisfactory physical and mental health is further supported by the facts that she was living alone in Dedham and . . . still driving an automobile. Moreover, at the time she executed the

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<sup>1</sup> In *Jackson v. Schrader*, 676 N.W.2d 599, 605 (Iowa 2003), the Iowa Supreme Court modified the standard articulated in *Todd* for rebutting a presumption of undue influence. However, the modified standard is inapplicable here, as the sole question before the court was whether Nadine met her burden of proving undue influence.

will she was only beginning to receive assistance from the Wernimonts.

This Court finds that Hedwig, at the time she executed her will, based on her statements, believed that Nadine and her family had received enough. There is no doubt that Hedwig, during her life, was generous to both her children and their families.

The probate court concluded that “Nadine failed to prove by a preponderance of the evidence that Hedwig was susceptible to undue influence at the time of the execution of the September 28, 2006 will.” The court also concluded that Nadine had failed to establish that Gene “had a disposition to unduly influence Hedwig to procure an improper favor.” The court thus dismissed the petition.

On appeal, Nadine Lengeling challenges the court’s finding that Gene Meyer did not exert undue influence. However, substantial evidence supports the probate court’s findings. See Iowa Rs. App. P. 6.904(3)(a) (“Findings of fact in a law action . . . are binding upon the appellate court if supported by substantial evidence.”); 6.907 (“[F]indings of fact in jury–waived cases shall have the effect of a special verdict.”). We therefore affirm. See Iowa Ct. R. 21.29(1)(b), (d).

**AFFIRMED.**