IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In the Matter of the Estate of: THERESA M. BRADFORD, Deceased. JEFFREY A. BOULAIS; WENDY L. CONDRA, Appellees, v. RAYMOND O. BRADFORD, JR., as personal representative of the Estate of Theresa M. Bradford, Appellant.	1 CA-CV 04-0513 DEPARTMENT E **MEMORANDUM DECISION** (Not for Publication - Rule 28, Arizona Rules of Civil Appellate Procedure)

FILED 3-31-05

Appeal from the Superior Court of Maricopa County

Cause No. PB2001-002662

The Honorable Barbara R. Mundell, Judge

AFFIRMED

Blunt & Associates PC — Scottsdale
By A. Paul Blunt
and Amy Sun
Attorneys for Appellant

Curley & Allison, LLP — Phoenix
By Sondri Allison
and Roger D. Curley
Attorneys for Appellees

T H O M P S O N, Judge

¶1 The adult children of Theresa M. Bradford (decedent) challenged her will and trust, alleging that, at the time she

executed her estate plan, decedent lacked testamentary capacity and was subject to the undue influence of others. The trial court found that decedent suffered from insane delusions concerning her children that affected her will and trust. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Decedent died on April 26, 2001 at the age of fifty-one. Appellant Raymond Oliver Bradford, decedent's brother, filed an application to admit her will to probate. By the will and trust, both dated May 10, 2000, decedent left nominal amounts to her children, appellees Jeff Boulais and Wendy Condra, as well as to Bradford and decedent's other brother, and placed most of her estate in trust for her grandchildren. She devised sixty percent of the remainder of her estate to Healing Hands International (HHI), d/b/a for a woman named Sharon West, and twenty percent each to two charities.

¶3 Appellees filed a petition for adjudication of intestacy, determination of heirs, denial of formal probate of will and removal of personal representative. They alleged that the will was invalid on the grounds of decedent's lack of testamentary capacity and the undue influence of others.

¶4 Following a five-day bench trial, the trial court concluded that decedent lacked testamentary capacity and determined the will to be invalid. The trial court noted that it was

unnecessary to reach the issue of undue influence in light of its ruling on testamentary capacity. The trial court based its decision on the following findings of fact.

¶5 Decedent had a lifelong struggle with depression and was preoccupied with her weight. At times, she was treated for those conditions with medication and counseling. She believed that her father had abused her when she was an infant, although she had no memory of the alleged abuse.

¶6 In 1993, decedent became friends with West. During a period of about seven years, decedent supported West, giving her more than $600,000 and four credit cards and co-signing for a car for her. Decedent believed that West was a "prophetess of God," who could pass the word of God to decedent, and that West had a special gift of discernment of spirits and detection of demons. If West told decedent to do something, she would do it. In fact, if West had told decedent to burn her house down, she would have done it if all of her family members were out of the house. Decedent believed in West's powers even though in 1994 a Minnesota district court found that West had committed fraud upon the court and her ex-husband in the amount of $300,000, West had committed bigamy, and West had registered the name "Healing Hands International" and attempted to give it the appearance of a charitable organization when it in fact was a d/b/a from which West personally profited.

¶7 Decedent and West spent large amounts of time on the

telephone, speaking several times a day for hours.[1] Decedent used a pager to receive messages because she believed that her telephone was tapped. She would then return calls by using various pay phones around the Valley.

¶8 In 1994, after decedent initiated divorce proceedings, she ended all contact with her family after they sought to have a conservator appointed for her to prevent her from depleting all of her assets in gifts to West. Decedent believed that her children had chosen to take her husband's side and that all of them were demons. She refused to attend the wedding of her son and to see her newborn grandchildren. However, decedent told others that her children were ostracizing her and preventing her from knowing her grandchildren. In fact, decedent's children tried to reunite with her on several occasions, to no avail. Decedent also terminated her relationships with friends who expressed concerns about the role West played in her life.

¶9 In evaluations for conservatorship proceedings to determine whether decedent was capable of managing her own assets, both Dr. Pamela Willson and Dr. Kimberly Obitz found her to be capable. However, in a later deposition, Dr. Willson acknowledged that she did not consider important extrinsic facts in formulating her decision because the only extrinsic information she considered

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[1] Although the decedent and West met in the Phoenix area, West later moved to Minnesota and then to Colorado, so their contact was largely by telephone.

was given to her by decedent's attorney. Specifically, she would have wanted to review decedent's past medical reports, to have known about the intensity of decedent's depression, and to have spoken to West. The entire situation gave Dr. Willson cause for concern.

¶10 As part of her report in 1996, Dr. Willson referred decedent to Dr. Alex B. Caldwell to administer and interpret the results of the Minnesota Multiphasic Personality Inventory-2. Concerning decedent, Dr. Caldwell reported under "Diagnostic Impression" as follows:

> The most common diagnoses with this pattern are of paranoid states and of more chronic paranoid psychoses. A few of these cases were diagnosed as paranoia and still others as partially recovered from paranoid schizophrenic episodes. Some of these patients had passive-aggressive and paranoid personality disorder histories.

¶11 Approximately one year before her death, decedent met with an attorney, Roberta Berger, to prepare a will and trust. Berger testified in a deposition that, if she had been aware of decedent's lifelong struggle with depression, the conservatorship proceedings, decedent's relationship with West, and the nature of HHI, she would have had decedent psychologically evaluated to protect the validity of the will and trust.

¶12 In applying the law concerning the requisite mental capacity to execute a will, the trial court found that substantial evidence was adduced at trial to support the fact that decedent

"suffered from insane delusions that had no basis in reason and which could not be dispelled by rational argument when she executed her will and trust on May 10, 2000." The trial court further determined that decedent's "insane delusions interfered with her ability to know her relationship to her children who are the natural objects of her bounty" and thus that decedent "lacked testamentary capacity due to her insane delusions that influenced the creation and terms of the will and trust." The trial court thus withdrew the will from probate and found that decedent died intestate. Appellant timely appealed from the order granting appellees' petition.

DISCUSSION

¶13 Appellant first argues that one's religious and spiritual beliefs, standing alone, cannot form the basis for an insane delusion. He asserts that decedent's belief that West was a prophet of God was her sincere religious conviction and thus that the trial court erred in finding that her religious beliefs constituted an insane delusion.

¶14 We first note that the trial court did not specifically find that decedent suffered from an insane delusion concerning her beliefs about West or that such beliefs affected decedent's devises to her children. Rather, the trial court found "substantial evidence" to support the fact that decedent "suffered from insane delusions that had no basis in reason and which could not be

dispelled by rational argument when she executed her will and trust" and that these insane delusions "interfered with her ability to know her relationship to her children who are the natural objects of her bounty." The trial court found that those delusions included decedent's belief that her children were demons and that they were ostracizing her.[2]

¶15 As appellant notes, "insane delusion" is defined in Arizona as "the conception of a disordered mind which imagines facts to exist of which there is no evidence and the belief in which is adhered to against all evidence and argument to the contrary, and which cannot be accounted for on any reasonable hypothesis." *In re Cook's Estate,* 63 Ariz. 78, 89, 159 P.2d 797, 802 (1945) (citing *In re Putnam's Estate,* 34 P.2d 148, 153 (Cal. 1934)). From this definition, appellant argues that all religious beliefs technically satisfy the elements of an insane delusion because they are faith-based and cannot be irrefutably proven or disproved, they are held despite contrary evidence and argument, and no reasonable or practical reason accounts for the belief. Appellant thus maintains that decedent's beliefs that her children were demons and that West was a prophet of God were her sincere

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[2] "We defer to the trial court with respect to any factual findings explicitly or implicitly made, affirming them so long as they are not clearly erroneous, even if substantial conflicting evidence exists." *John C. Lincoln Hosp. and Health Corp. v. Maricopa County*, 208 Ariz. 532, 537, ¶ 10, 96 P.3d 530, 535 (App. 2004).

religious beliefs and therefore could not qualify as insane delusions that would show testamentary incapacity.

¶16 Appellant relies heavily on *Whipple v. Eddy*, 43 N.E. 789 (Ill. 1896), to support his argument that a religious belief cannot be characterized as an insane delusion for purposes of determining testamentary capacity. The *Whipple* court stated:

> The fact that a person is affected with insanity, or labors under some delusion, believes in witchcraft, clairvoyance, spiritual influences, presentiments of the occurrence of future events, dreams, mind reading, etc., will not affect the validity of his will, on the ground of insanity. Manifestly, a man's belief can never be made a test of sanity. When we leave the domain of knowledge, and enter upon the field of belief, the range is limitless, extending from the highest degree of rationality to the wildest dream of superstitution [sic]; and no standard of mental soundness can be based on one belief, rather than another. What to one man is a reasonable belief is to another wholly unreasonable. And while it is true that beliefs in what we generally understand to be supernatural things may tend to prove insanity, under certain circumstances, it is a well-known fact that many of the clearest and brightest intellects have sincerely and honestly believed in Spiritualism, mind reading, etc.

Id. at 792 (citations omitted).

¶17 This broad language from *Whipple*, however, does not necessarily support appellant's argument in this case. In *Whipple*, the testator left his estate in trust for his only child, an adopted daughter; she was to receive the funds in the trust once she reached the age of 21. *Id.* at 790. Attempting to gain

immediate access to the funds, the daughter tried to invalidate the will on grounds of mental incapacity and undue influence. *Id.* The primary argument was that the testator's strong belief in Spiritualism showed that he was of unsound mind. *Id.* at 791. The court rejected that argument, noting that the testator fully understood what he was doing when he drafted his will and that the record contained no evidence that "the subject of Spiritualism ever entered his mind in connection with his will." *Id.* at 792. Thus, the above-quoted language from *Whipple* was intended to indicate that a person's religious belief, however unusual, does not show lack of capacity to make a will, especially when the provisions of the will are not the result of the belief.

¶18 Here, provisions of decedent's will and trust resulted from her beliefs about her children that arguably were related to her religious beliefs. However, the trial court did not find that decedent's religious belief in demons was an insane delusion. Rather, the trial court found that her belief that her children were demons was an insane delusion that affected the creation and terms of her will and trust. The trial court correctly determined that the dispositive question was whether decedent had an insane delusion regarding her children and, if so, whether her will and estate plan was a product of that delusion. *See Kirkpatrick v. Union Bank of Benton*, 601 S.W. 2d 607, 609 (Ark. Ct. App. 1980) (a person may possess the requisite testamentary capacity while at the

same time labor under one or more insane delusions that may make the person's purported will a nullity).

¶19 To prevail in a challenge to the validity of a will on grounds of lack of testamentary capacity, the contestant must show that the testator lacked at least one of these elements:

> (1) the ability to know the nature and extent of his property; (2) the ability to know his relation to the persons who are the natural objects of his bounty and whose interests are affected by the terms of the instrument; or (3) the ability to understand the nature of the testamentary act.

Matter of Estate of Killen, 188 Ariz. 562, 565, 937 P.2d 1368, 1371 (App. 1996). For a court to invalidate a will, the will must be a product of hallucinations or delusions that "influenced the creation and terms of the will such that the testator devised his property in a way that would not have been done except for the delusions." *Id.* at 566, 937 P.2d at 1372.

¶20 The trial court found that decedent lacked the second of the elements in that her delusions "interfered with her ability to know her relationship to her children who are the natural objects of her bounty." Appellant argues that, to satisfy this element, decedent only had to know who her children were, which she did. We note, however, that in *Killen*, the testator knew the identities of her nieces and nephews who cared for her, but she left them only one dollar each because, due to her delusions, she believed they were trying to harm her. 188 Ariz. at 563-64, 937 P.2d at 1369-70.

Despite this knowledge of who her relatives were, the *Killen* court concluded that the testator did not have testamentary capacity because she suffered from insane delusions that affected her perception of her family members and the terms of the will. *Id.* at 568, 937 P.2d at 1374. Likewise, here, decedent knew who her children were, but, as found by the trial court, her insane delusions affected her perception of them and, as a result, affected the terms of her will. *See Kirkpatrick*, 601 S.W. 2d at 609.

¶21 For his second issue, appellant argues that, even if the trial court correctly concluded that decedent suffered from insane delusions, the evidence at trial failed to establish that decedent's will and trust were the product of her delusions. In reviewing this issue, we keep in mind that a will contestant has the burden of showing by a preponderance of the evidence that the testator lacked testamentary capacity at the time she executed her will. *Killen*, 188 Ariz. at 565, 937 P.2d at 1371. We "carefully scrutinize a probate court ruling that a will is invalid and . . . set aside the ruling if the evidence is not sufficient to support it." *Id.*

¶22 Our review of the testimony and evidence presented at trial is hampered by the fact that the transcript of the trial is not in the record. When the transcript is not provided for an appeal, we assume that the evidence supports the trial court's

findings and conclusions. *Johnson v. Elson,* 192 Ariz. 486, 489, ¶ 11, 967 P.2d 1022, 1025 (App. 1998); *Baker v. Baker,* 183 Ariz. 70, 73, 900 P.2d 764, 767 (App. 1995). The trial court found that decedent "lacked testamentary capacity due to her insane delusions that influenced the creation and terms of the will and trust." Thus, the trial court specifically found that the will and trust were the product of decedent's delusions. Without the transcript of the trial, we must assume that the evidence supported this conclusion. Appellant's counsel conceded that he could not dispute causation on appeal because no transcript was filed.

¶23 Appellant argues that, even if decedent suffered from insane delusions, absent the delusions she might have rejected the children for rational reasons that would have justified her nominal bequests to them. Accepting this argument, however, would require us to speculate on what might have been if decedent had not been suffering from delusions about her children, and such speculation apparently would conflict with the trial court's findings. Implied in the trial court findings is the conclusion that there was no evidence that decedent's children abandoned or ostracized her. To the contrary, the trial court found that they tried to re-establish a relationship with her, but, as the result of her delusions, decedent rejected those attempts. Absent a transcript to show otherwise, we must assume that those findings of the trial court were correct.

¶24 Finally, appellant argues that the trial court erred in admitting transcripts of depositions taken in the divorce proceedings between decedent and Richard Boulais and in the conservatorship proceeding. He asserts that, under Arizona Rules of Civil Procedure 32(a), depositions from prior proceedings may be used in a subsequent action only when the two actions involve the same subject matter and the same parties or their representatives or successors in interest. Appellant argues that, in this case, the subject matter was not the same in the prior proceedings, which involved the dissolution of a marriage and a petition for conservatorship, and the subsequent action, which involves allegations of lack of testamentary capacity and undue influence. He also maintains that the two actions do not involve the same parties because Jeffrey Boulais and Wendy Contra were not parties in the prior proceedings.

¶25 In response, appellees note that, on the second day of trial, the parties stipulated that the trial court take judicial notice of the entire file in PB 1996-003933, which was the conservatorship action. Appellant argues, however, that he did not intend the stipulation to include the deposition transcripts from the conservatorship proceeding because they were not made part of the record in that proceeding. Therefore, we do not consider this issue to be rendered moot by the parties' stipulation concerning the record in the conservatorship proceeding.

¶26 We note that, according to the minute entry of January 26, 2004, the first day of trial, designated portions of the December 18, 1996, videotaped deposition of West and portions of Dr. Willson's June 20, 1997 videotaped deposition were played into the record. The minute entry does not record any objection by appellant to the entry into the record of those depositions from the conservatorship proceeding. Therefore, appellant waived his argument on appeal as to those two depositions.

¶27 However, the same minute entry does show that appellant objected to the presentation of portions of decedent's videotaped depositions of October 10, 1995 and February 4, 1997. Therefore, we consider whether the trial court abused its discretion in admitting the previous depositions of decedent and whether prejudice resulted. *See Gonzalez v. Satrustegui*, 178 Ariz. 92, 96, 870 P.2d 1188, 1192 (App. 1993) (stating that appellate court will not disturb trial court rulings on exclusion or admission of evidence unless court clearly abused its discretion and prejudice resulted).

¶28 We conclude that the trial court did not abuse its discretion in admitting the depositions of decedent. Attorney A. Paul Blunt, who represents appellant in this case, was decedent's attorney in the conservatorship proceeding, and he was present at her depositions. We believe the "same party" language of Rule 32(a) is intended to protect a party in a second action from the

use of a deposition from a prior action where that party was not a party in the first action. Here, however, it is appellees who were not parties in the conservatorship proceedings, yet they are the ones who wish to use the depositions. Therefore, the protective effect of Rule 32(a) is unnecessary here.

¶29 In addition, even though the subject matter of the prior and current actions are not identical, they are closely related. The fact that different elements of proof exist for a conservatorship petition and a will contest does not make evidence gathered in one to be irrelevant for the other. Thus, the trial court did not clearly abuse its discretion in admitting the two depositions of decedent.

¶30 As to the question of prejudice, without a transcript we are unable to determine whether the portions of the depositions that were admitted at trial prejudiced appellant or, as appellees argue, merely presented evidence that was also available from other sources. Therefore, we do not disturb the trial court's admission of the depositions.

CONCLUSION

¶31 For the foregoing reasons, we affirm the June 21, 2004 order of the trial court in its entirety, including the orders determining decedent's will to be invalid and withdrawing it from probate, removing appellant as personal representative of decedent's estate, and determining that decedent died intestate.

¶32 Appellant, "irrespective of this [c]ourt's decision," requests reasonable attorneys' fees and expenses under Arizona Revised Statutes § 14-3720 (2004) (personal representative who defends or prosecutes any proceeding in good faith, whether successful or not, entitled to received from the estate necessary expenses and reasonable attorneys' fees). As personal representative of decedent's estate, appellant had a duty to defend the will, regardless of whether doing so would benefit him personally. *See Killen*, 188 Ariz. at 575-76, 937 P.2d at 1381-82. Therefore, appellant is entitled to reasonable attorneys' fees and costs from the estate upon compliance with ARCAP 21.

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JON W. THOMPSON, Judge

CONCURRING:

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DONN KESSLER, Presiding Judge

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PATRICK IRVINE, Judge

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In the Matter of the Estate of: THERESA M. BRADFORD, Deceased.	1 CA-CV 04-0513 DEPARTMENT E MARICOPA COUNTY Superior Court No. PB2001-002662
JEFFREY A. BOULAIS; WENDY L. CONDRA, Appellees, v. RAYMOND O. BRADFORD, JR., as personal representative of the Estate of Theresa M. Bradford, Appellant.	O R D E R

The above-entitled matter was duly submitted to the Court. The Court has this day rendered its memorandum decision.

IT IS ORDERED that the memorandum decision be filed by the Clerk.

IT IS FURTHER ORDERED that a copy of this order together with a copy of the memorandum decision be sent to each party appearing herein or the attorney for such party and to The Honorable Barbara R. Mundell, Judge.

DATED this day of _____, 2005.

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JON W. THOMPSON, Judge