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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

In the Matter of the Estate of)	1 CA-CV 07-0841
PENELOPE E. BUCK, Deceased.)	
<hr/>		DEPARTMENT B
PATRICK PRICKETT, as former Personal)	
Representative of the Estate of)	MEMORANDUM DECISION
PENELOPE E. BUCK, Deceased,)	(Not for Publication -
)	Rule 28, Arizona Rules
Plaintiff/Appellant,)	of Civil Appellate
)	Procedure)
v.)	
)	FILED 10-21-08
MANUEL SALAZAR, as Successor Personal)	
Representative of the Estate of)	
PENELOPE E. BUCK, Deceased,)	
)	
)	
Defendant/Appellee.)	

Appeal from the Superior Court in Yavapai County

Cause No. PB 82006-0022

The Honorable Ralph Matthew Hess, Judge *Pro Tempore*

AFFIRMED

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B U R K E, Judge*

¶1 Patrick Prickett, brother of Penelope Buck, appeals the trial court's order finding a handwritten notebook entry to be Buck's holographic will and the subsequent order denying his motion for a new trial. For the following reasons, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

¶2 Manuel Salazar and Buck were married in 1996 and divorced in 2000. Buck died on January 1, 2006. On March 2, Scott A. Miskiel, an attorney representing Buck at the time of her death, petitioned the court to have either himself or R. Michael Baker appointed as Personal Representative of Buck's estate. The court appointed Baker as Personal Representative the same day. A hearing was held on March 20, wherein the following three exhibits were marked: (1) Last Will and Testament of Penelope Elbertine Buck, dated April 15, 1993 (the "1993 Will"); (2) Last Will and Testament of Penelope E. Buck (Huerta Salazar), dated July 24, 2005; and (3) a small notebook, later determined to be Buck's holographic will (the "Holographic Will").

¶3 The Holographic Will reads as follows:

07/24/05
To Whom it May Concern -
I Penelope E Buck do hereby give all
properties belongs [sic] + money including all
investments to Manuel Salzar [sic]. It should
also be made clear - he must take care of my

* Pursuant to Article VI, Section 3 of the Arizona Constitution, the Arizona Supreme Court designated the Honorable Edward O. Burke, Judge of the Arizona Superior Court, to sit in this matter.

sister Pamela Elisabeth [sic] Prickett Goodwin until her death - I hope he will be kind to my relatives it is my wish that my brother Patrick Thomas Prickett receive nothing . . he know [sic] why.
Signed//Penelope E Prickett Buck

¶14 Salazar was notified of the March 20 hearing as Buck's "purported husband," but he did not attend the hearing. At that hearing, the court ordered Baker to continue serving as Personal Representative. A second hearing was held on April 19. Salazar was not notified of that hearing because it was determined that Salazar and Buck were divorced and that Salazar was not entitled to a share of Buck's estate. At the April 19 hearing, the court substituted Prickett as Personal Representative in place of Baker, and found the 1993 Will to be the operative document for Buck's estate.

¶15 Salazar claimed he was entitled to Buck's estate pursuant to the Holographic Will and/or a will dated December 25, 2002 (the "2002 Will"),¹ submitted with his Reply to Petition for Formal Probate of Will. On June 22, Salazar filed a motion to (1) reverse finding recognizing 1993 Will as testamentary instrument; (2) change jurisdiction, domicile and venue; (3) require bond and freeze assets; and (4) change Personal Representative due to fraud and breach of fiduciary duties.

¹ This 2002 Will is not at issue on appeal, although it served in the evidentiary hearing to impeach Sabrina Herbst.

¶16 Salazar's motion only addressed the 2002 Will, not the Holographic Will. In his response, Prickett acknowledged that the Holographic Will, which Salazar claimed to be Buck's most current will, was submitted to the court on March 20. Prickett did not mention the 2002 Will. On August 10, Salazar requested formal probate of either the Holographic Will or the 2002 Will and petitioned to set aside informal probate of the 1993 Will. In response to Salazar's claim purporting the Holographic Will to be the valid operative document for the estate, Prickett asserted that at the April 19 hearing, the court determined the 1993 Will would govern distribution of Buck's estate. Prickett also contended that Salazar has no interest in the estate because of his divorce from Buck.

¶17 At oral argument on October 2, Herbst, Salazar's friend and Buck's former caretaker, testified specifically about the three documents submitted to the court on March 20.² The court continued the matter to November 9 and again to January 9, 2007 to address Salazar's motion, his request for formal probate, and his request to set aside informal probate.

¶18 At the January 9 hearing, both Herbst and Salazar testified that they were familiar with Buck's handwriting and that the Holographic Will was in her handwriting and signed by her. Prickett produced evidence of a volatile and abusive relationship

² Only two pages of the October 2, hearing are part of the record, and neither page deals with Herbst's testimony.

between Salazar and Buck. The hearing concluded with a cross examination of Miskiel. The court permitted counsel to make closing arguments in the form of simultaneous post-trial memoranda, without responses.

¶9 In his post-trial memorandum, Prickett argued that because the Holographic Will is in the present tense it does not have testamentary significance and that it is questionable whether Buck authored it due to numerous misspellings and grammatical errors. Prickett argued that Herbst and Salazar's credibility was questionable due to their potential monetary gain by the Holographic Will,³ inconsistent statements and Salazar's attempt to "fraudulently and/or unduly influence the creation of a Will" that left Buck's estate entirely to him. Prickett also contended that Salazar had the burden of proof to counter the evidence depicting his relationship with Buck and the pressure he placed on her to create a will.

¶10 In Salazar's post-trial memorandum, he argued that although Prickett was contesting the validity of the Holographic Will, Prickett asserted no specific grounds. Salazar contended that the evidence established the testamentary intent of the Holographic Will and that Prickett had neither raised nor proven any recognized grounds to find the Holographic Will invalid,

³ Although Herbst is not a beneficiary under the Holographic Will, Prickett alleges her primary motive in supporting Salazar is that she believes she is owed money from Buck's estate.

including undue influence. Prickett did not present any material issues regarding the validity of the Holographic Will. Salazar specifically pointed out that the Holographic Will had been prepared and executed by Buck, and that she was mentally competent and not under duress or undue influence.

¶11 The court issued a ruling on February 22, 2007, finding:

[T]he credibility of the testimony of Sebrina [sic] M. Herbst and Manuel Salazar is suspect due to inconsistencies, selective memory, and self-interest; yet, their testimony identifying the handwriting in the small notebook (Exhibit 3) as that of Penelope Buck is uncontroverted by any other evidence. . . .

[T]hat the handwriting in the small notebook (Exhibit 3) is the handwriting of Penelope Buck. . . .

[A] holographic will is valid if the signature and material provisions expressing the testator's testamentary intent are in the handwriting of the testator. . . .

[T]hat the handwritten entry to the notebook signed by Penelope Buck and dated 07/24/05 ("notebook entry") expresses her testamentary intent and provides for the complete distribution of her estate. . . .

[T]hat the notebook entry constitutes the holographic will of Penelope Buck. . . .

[T]hat evidence of the subsequent discord in the relationship between Penelope Buck and Manuel Salazar, the primary beneficiary of Penelope Buck's notebook entry, does not invalidate the notebook entry in the absence of a superceding [sic] testamentary document. . . .

[T]hat the holographic will of Penelope Buck, dated 07/24/05 revokes all preceding testamentary documents, including the Last Will

Will and Testament of Penelope Elbertine Buck,
dated April 15, 1993.

¶12 Prickett moved for a new trial on grounds that he was deprived of a fair trial and that the decisions and findings of fact were not justified by the evidence or were contrary to law. Specifically, Prickett argued that he did not have the opportunity for re-direct examination of Miskiel, that the court failed to make any specific findings of fact or conclusions of law pertaining to the issue of undue influence, and that the record did not contain substantial evidence to support the credibility of Herbst or Salazar sufficient to find the notebook entry a valid Holographic Will. In his response, Salazar argued that Prickett waived his objection to any irregularity in the proceeding relating to re-direct examination of Miskiel. Additionally, Salazar argued that Prickett first raised the issue of undue influence in his post-trial memorandum and did not mention it prior to or at the hearing. The court denied Prickett's motion for a new trial.

¶13 The court entered two separate appealable orders based on the above rulings. Prickett timely filed a notice of appeal. We have jurisdiction pursuant to Arizona Revised Statutes ("A.R.S.") section 12-2101(F)(1) and (J) (2003).

DISCUSSION

¶14 Preliminarily, Salazar requests that we disregard Prickett's statement of facts contained in the opening brief because Prickett fails to cite the record and state the basis for

our jurisdiction as required under the Arizona Rule of Civil Appellate Procedure 13(a)(3) and (4). In our discretion, we disregard Prickett's statement of facts, but review the record for the appropriate facts. Salazar further contends that we should disregard Prickett's references to the tape-recorded conversations between Salazar and Buck because no transcription of the tape was offered or received in evidence. Because the actual tape was received into evidence at the January 9 hearing and provided to this court, we decline to disregard those portions of Prickett's brief. Additionally, Salazar asks us to strike any references to his deposition testimony that were not referenced and not transcribed during the January 9 hearing because his objection to admission of the deposition transcript was sustained. Because the deposition transcript is not in the record before us, we will disregard any such references.

A. Standard of Review

¶15 "We will not set aside the [trial] court's findings of fact unless clearly erroneous, giving due regard to the opportunity of the court to judge the credibility of witnesses." *In re Estate of Zaritsky*, 198 Ariz. 599, 601, ¶ 5, 12 P.3d 1203, 1205 (App. 2000); *see also State v. Berryman*, 178 Ariz. 617, 620, 875 P.2d 850, 853 (App. 1994) (noting that a trial court's findings of fact after an evidentiary hearing are examined on a clearly erroneous standard). "A finding of fact is not clearly erroneous if

substantial evidence supports it, even if substantial conflicting evidence exists." *Kocher v. Dep't of Revenue*, 206 Ariz. 480, 482, ¶ 9, 80 P.3d 287, 289 (App. 2003). We review the trial court's legal conclusions de novo. *Zaritsky*, 198 Ariz. at 601, ¶ 5, 12 P.3d at 1205. In reviewing the trial court's denial of Prickett's motion for a new trial, we only review for an abuse of discretion. *Mullin v. Brown*, 210 Ariz. 545, 547, ¶ 2, 115 P.3d 139, 141 (App. 2005).

B. Validity of the Holographic Will

¶16 The primary focus of the January 9 hearing was to determine the validity of the Holographic Will.⁴ Prickett argues that the trial court erred when it relied on Herbst's and Salazar's testimony as a basis for finding the Holographic Will had testamentary intent. Arizona recognizes the validity of holographic wills "if the signature and the material provisions are in the handwriting of the testator[,]" whether or not the will is witnessed. A.R.S. § 14-2503 (2005). A holographic will "must demonstrate that the testator had testamentary intent." *In re Estate of Blake v. Benza*, 120 Ariz. 552, 553, 587 P.2d 271, 272 (App. 1978).

⁴ See *In re Hesse's Estate*, 62 Ariz. 273, 277-78, 157 P.2d 347, 349 (1945) (discussing the differences between a will contest proceeding and a probate proceeding). Because the current proceeding deals with both the validity of the contents of the Holographic Will and its eligibility for probate, any grounds to contest the Holographic Will were properly brought in this proceeding.

¶17 Prickett argues that the Holographic Will lacks testamentary intent. To establish testamentary intent, it is necessary that the writing and any extrinsic evidence establish that the decedent intended such writing to dispose of her property upon her death. *Id.* In *Blake*, the court held that a postscript to a letter stating "You can have my entire estate . . . (SAVE THIS)" from a decedent to his niece was a valid holographic will. *Id.* at 553-54, 587 P.2d at 272-73. Prickett asserts that this case differs from *Blake* because in *Blake* the court based its decision on the affectionate relationship between the decedent and his niece and because the writing contained the words "estate" and "SAVE THIS," neither of which is present here. While we agree that the facts of this case differ from *Blake*, we find the same principles applicable.

¶18 A subsequent discord in the parties' relationship does not invalidate the Holographic Will in absence of a superseding testamentary document. Thus, whether Buck and Salazar had a good or bad relationship is irrelevant for this inquiry. Additionally, the writing contained the provisions "I Penelope E Buck do hereby give" and "it is my wish that my brother . . . receive nothing." Unless Buck intended to give all of her property away the day she made the Holographic Will, which is not argued here, the writing was intended to have future significance and thus contained testamentary language. The Holographic Will provides for the

complete distribution of Buck's property. The fact that Buck was educated and bright does not necessitate that her Holographic Will contain the word "Will," or be grammatically correct, as Prickett argued. "[A] holographic will is a proper method for disposing of one's property and revoking a previous will." *Id.* at 554, 587 P.2d at 273.

¶19 It does not appear from the court's ruling that it relied on Herbst's and Salazar's testimony as a basis for finding the Holographic Will had testamentary intent. The court said that the writing "expresses [Buck's] testamentary intent and provides for the complete distribution of her estate." There is evidence of testamentary intent on the face of the document. Accordingly, we conclude that based on the evidence, it was not clearly erroneous for the court to find that the writing expressed Buck's testamentary intent and that the writing was in fact Buck's Holographic Will.

¶20 Prickett does not argue that the Holographic Will is not in Buck's handwriting. The only place Prickett alludes to Buck's handwriting is when he points out that the Holographic Will contains misspellings and grammatical errors. Conceivably, this is where Prickett believes the trial court erred in relying on Herbst's and Salazar's testimony, which the court found not credible. Both Herbst and Salazar testified about their familiarity with Buck's handwriting and stated that the Holographic

Will was in her handwriting. Prickett did not produce any evidence concerning Buck's handwriting, nor is there anything in the record before us indicating the handwriting was not Buck's. Therefore, we accept the trial court's finding that the Holographic Will is in Buck's handwriting, signed by her, and has testamentary intent, thus constituting a valid holographic will.

C. Undue Influence

¶21 Prickett argues that the presumption of undue influence shifted the burden of persuasion to Salazar, "and the trial judge erred by not considering the totality of the evidence and by ignoring the issue of undue influence." Salazar asserts that the Holographic Will is a valid testamentary document and no evidence of undue influence was presented. Will contestants "have the burden of establishing lack of testamentary intent or capacity, undue influence, fraud, duress, mistake or revocation." A.R.S. § 14-3407 (2005).

¶22 A person unduly influences a testator in executing a will when that person, through his power over the mind of the testator, makes the testator's desires conform to his own, thereby overmastering the testator's volition. *In re Estate of McCauley*, 101 Ariz. 8, 10, 415 P.2d 431, 433 (1966). Whether undue influence has been exerted is a question of fact. *Id.* "The burden of proving that a will has been procured by undue influence is on the

contestant." *Id.* Here, the burden of proving undue influence is on Prickett.

¶23 The first issue presented is whether Prickett waived this argument by not raising the issue of undue influence prior to his post-trial memorandum. Initially, the 1993 Will was determined to be the operative document for Buck's estate. Salazar subsequently sought to reverse the finding recognizing the 1993 Will as the testamentary instrument, requested formal probate of the Holographic Will, and asked to set aside the informal probate of the 1993 Will. Prickett produced evidence of Buck and Salazar's volatile relationship, noting that "Ms. Buck had been threatened and intimidated by Mr. Salazar for years. . . . The tape also reveals how Mr. Salazar tried to intimidate and pressure Ms. Buck into providing for his financial needs." Prickett's list of witnesses and exhibits named eleven witnesses to testify at the hearing, many of whom were to testify about Buck and Salazar's relationship. Prickett raised the undue influence issue in his post-trial memorandum.

¶24 Salazar conceded that undue influence is a recognized ground to challenge the validity of a will, but argued that Prickett neither raised nor proved this ground to challenge the Holographic Will. However, Salazar did argue that Buck made the Holographic Will of her own free will and was not under duress or undue influence. Salazar was not prejudiced by the assertion of

undue influence in Prickett's post-trial memorandum. Because both post-trial memoranda submitted to the trial court contained arguments concerning undue influence, the issue was properly before the trial court and not waived.⁵

¶125 The next issue concerns the failure of the trial court to make findings relative to undue influence in its ruling. Neither party requested findings of fact. We must determine whether the court actually considered the issue of undue influence when making its determinations and, if not, whether there is sufficient evidence to warrant reversal.

¶126 "[A]n omission of the findings to cover a particular fact or issue is to be deemed a finding on that fact or issue against the party having the burden of proof." *Ariz. Commercial Mining Co., v. Iron Cap Copper Co.*, 29 Ariz. 23, 37, 239 P. 290, 294 (1925). When a judgment is rendered without express findings of fact, and there is reasonable evidence in the record from which findings could be made to support the judgment, it is presumed the trial court did make such findings, and this court will not reverse the judgment on the facts. *Fed. Mut. Liab. Ins. Co. v. Indus. Comm'n of Ariz.*, 31 Ariz. 224, 228, 252 P. 512, 513 (1926). "In

⁵ See, e.g., *In re Kyle M.*, 200 Ariz. 447, 450 n.3, ¶ 16, 27 P.3d 804, 807 n.3 (App. 2001) (noting that an issue was sufficiently raised in a closing argument); *State v. Moody*, 208 Ariz. 424, 464, ¶ 180, 94 P.3d 1119, 1159 (2004) (mentioning that "[c]ounsel is given wide latitude in closing argument to comment on the evidence and argue all reasonable inferences from it") (quotation and citation omitted).

order to warrant . . . reversal . . . for failure to find on an issue, it must be shown by the record on appeal that evidence sufficient to sustain a finding for the complaining party was introduced." *Keystone Copper Mining Co. v. Miller*, 63 Ariz. 544, 555, 164 P.2d 603, 609 (1945). It is therefore proper to assume that had a finding been made on the issue, it would have been adverse to the complaining party. *Id.*

¶27 "A presumption of undue influence arises when one occupies a confidential relationship with the testator and is active in preparing or procuring the execution of a will in which he or she is a principal beneficiary." *Mullin*, 210 Ariz. at 547, ¶ 4, 115 P.3d at 141. A presumption is not evidence and "is a rule of law that in the absence of any evidence to the contrary the trier of fact is compelled to reach." *Id.* at 548, ¶ 7, 115 P.3d at 142 (quoting *In re Westfall's Estate*, 74 Ariz. 181, 186, 245 P.2d 951, 955 (1952)). Once the presumption of undue influence arises, the burden of persuasion shifts to the will's proponent. *Id.* at 550, ¶ 17, 115 P.3d at 144.

¶28 Salazar is a principal beneficiary under the Holographic Will. We must determine whether Salazar and Buck had a confidential relationship and whether Salazar was active in preparing or procuring the Holographic Will to establish the presumption of undue influence. A confidential relationship is one in which one party "is bound to act for the benefit of the other

and can take no advantage to himself from his acts relating to the interest of the other." *Taeger v. Catholic Family & Cmty. Servs.*, 196 Ariz. 285, 290, ¶ 11, 995 P.2d 721, 726 (App. 1999) (quoting *In re McDonnell's Estate*, 65 Ariz. 248, 252-53, 179 P.2d 238, 241 (1947)). A confidential relationship can be found in relationships of "great intimacy, disclosure of secrets, intrusting of power, and superiority of position in the case of the representative." *Id.* (quoting *Condos v. Felder*, 92 Ariz. 366, 371, 377 P.2d 305, 308 (1962)). For purposes of establishing undue influence, a confidential relationship exists when a decedent has placed trust and confidence in the integrity and fidelity of another. 79 Am. Jur. 2d *Wills* § 414 (2008). A marital relationship is not one of the confidential relationships which give rise to the presumption of undue influence. *In re Estate of Vermeersch*, 109 Ariz. 125, 129, 506 P.2d 256, 260 (1973). The same is true of an illicit relationship. *Parrisella v. Fotopulos*, 111 Ariz. 4, 6-7, 522 P.2d 1081, 1083-84 (1974).

¶129 Prickett asserts that Buck and Salazar had a confidential relationship because they were in business together, they lived together, and Salazar had access to Buck's credit cards and/or ATM cards, checks,⁶ and vehicle. Salazar argues that although he and Buck were legally divorced, they continued to live and work together, and this type of confidential relationship does not give

⁶ In the tape recording, Salazar denies having access to Buck's checks.

rise to the presumption of undue influence. There is evidence to support that this was a relationship of great intimacy, because Buck and Salazar lived and worked together. Salazar's use of Buck's credit cards, checks, and vehicle suggests that Buck placed confidence in Salazar and trusted him with power. Based on the record before us, a court could properly conclude that Buck and Salazar were in a confidential relationship.

¶130 It is not clear that Salazar was active in procuring the Holographic Will. Prickett relies on the tape-recorded conversation between Salazar and Buck and Salazar's testimony that he was supposed to proofread the Will in arguing that Salazar was active in procuring the Holographic Will. Specifically, in the tape-recorded conversation, Salazar asked Buck, "When are you going to give me the will then?" and "Are you going to work on the will so I can get something for my time down here working for free?" Salazar testified that he was supposed to proofread the Holographic Will to correct misspellings and grammar, and either Buck or Herbst were supposed to type it out after he proofread it. However, Salazar neither proofread the Holographic Will nor typed it up. Salazar further testified that he and Buck frequently argued about the Holographic Will not getting typed up. The tape-recorded conversations were made within three months of Buck's death. The tapes referencing any will were thus made, at the earliest, two to three months after Buck had already created the Holographic Will.

The testimony at the hearing was that Buck created the Holographic Will on her own initiative. The conversations and arguments about typing the Holographic Will took place after Buck voluntarily created the Holographic Will. Therefore, the tapes are not sufficient evidence to show that Salazar procured the Holographic Will.

¶31 Herbst testified that she was present when Buck created the Holographic Will and that it came about because Buck "felt like making [Salazar] a will . . . in case anything would ever happen to her. . . ." She further testified that Salazar and Jose Rivera witnessed Buck sign the Holographic Will and that after it was signed, Salazar tossed the Holographic Will into the corner and left the room because he did not want to deal with Buck dying. According to Herbst and Salazar, Buck subsequently carried the notebook in her purse or kept it in the office and had access to it at all times. Although the court commented that these two witnesses' credibility was suspect, there is no controverting evidence showing that Salazar actually procured the Holographic Will and forced Buck to make a will naming him as the beneficiary. We conclude that the presumption of undue influence did not arise here.

¶32 Even if we could find that the presumption of undue influence arose here, and thus shifted the burden to Salazar, that presumption was rebutted when Salazar testified sufficiently for a

trier of fact to conclude that the presumption was overcome. "[O]nce a person as to whom the undue influence is presumed takes the stand and negates such presumption by his testimony, the presumption disappears." *In re Estate of Slater*, 6 Ariz. App. 486, 489, 433 P.2d 666, 669 (App. 1967). The simple answer of "no," when asked whether a person used influence to tell a decedent what to put in her will, was sufficient in one case to rebut the presumption of undue influence. *Id.* During the hearing, Salazar testified as follows:

Q [by Salazar's attorney]: Did you do anything to intimidate or coerce [Buck] into providing for you in a will?

A: The only thing that we did is try to get the will in the little tablet typed up and never got it done. It was just, basically, our argument that it never got done.

Q: She never destroyed that tablet will, did she?

A: No, she had access to her notepad at all times.

Q: Was there anything that impaired her ability to do exactly what she wanted to do on July 24th, 2005, . . . in drafting and executing that holographic will?

A: No, sir, I don't think so.

¶133 Even if there was a presumption of undue influence, that presumption disappeared as a result of Salazar's testimony. To determine whether a contestant has established that a will was procured through undue influence, the existence of certain factors

have been used to indicate the presence or absence of such influence. *McCauley*, 101 Ariz. at 10-11, 415 P.2d at 433-34.

These factors include the following: Whether the alleged influencer has made fraudulent representations to the testatrix; whether the execution of the will was the product of hasty action; whether the execution of the will was concealed from others; whether the person benefited by the will was active in securing its drafting and execution; whether the will as drawn was consistent or inconsistent with prior declarations and plannings of the testatrix; whether the will was reasonable rather than unnatural in view of the testatrix' circumstances, attitudes, and family; whether the testatrix was a person susceptible to undue influence; and whether the testatrix and the beneficiary have been in a confidential relationship.

Id. (footnotes omitted).

¶34 We have already discussed that although Salazar was in a confidential relationship with Buck, he was not active in procuring the Holographic Will. *See supra* ¶¶ 28-30. Prickett argues that (1) the Holographic Will was inconsistent with the 1993 Will; (2) Buck's relatives were not made aware that she executed a will; (3) the Holographic Will does not represent the type of will one would expect Buck to execute; and (4) Buck was susceptible to undue influence. Prickett does not address or urge the other factors, and the evidence does not indicate any other factors. Thus, we will only address the factors that Prickett argues.

1. *Inconsistency with the 1993 Will*

¶135 Prickett sets forth three inconsistencies between the Holographic Will and the 1993 Will. First, the Holographic Will was not prepared with the same formalities as the 1993 Will, such as being signed by two witnesses and self-proved, or being labeled a "Will." A holographic will is valid "if the signature and the material provisions are in the handwriting of the testator[,]" whether or not the will is witnessed, and is a proper method for revoking a previous will. A.R.S. § 14-2503; *Blake*, 120 Ariz. at 554, 587 P.2d at 273. Buck's Holographic Will is in her handwriting and signed by her. Although it was not prepared with the same formalities as the 1993 Will, it does qualify as a valid holographic will under Arizona law, and the lack of formalities are not fatal to the validity of the Holographic Will.

¶136 The second difference Prickett points out is that the 1993 Will clearly identifies Buck's immediate family members as the beneficiaries of her estate, whereas the Holographic Will names Salazar as her beneficiary. This argument does not sway us. Buck and Salazar were married in 1996, after the creation of the 1993 Will, and divorced in 2000. However, Buck and Salazar continued to live and work together until Buck died. Between the creation of the 1993 Will and the Holographic Will, Buck's parents died. The Holographic Will identifies both of Buck's siblings and requests that Salazar care for Buck's sister. Buck specifically wrote that

she was not leaving anything to her brother for reasons he knew. Nothing in the record before us indicates the relationship Buck had with Prickett prior to her death. Apparently, the important people in Buck's life were mentioned in the Holographic Will, so the fact that she named Salazar as the beneficiary of her estate is not suspect.

¶137 Finally, Prickett argues that Buck's 1993 Will nominates an executor to administer her estate and the Holographic Will does not. This is not a persuasive argument as we have already determined the Holographic Will is valid and the nomination of an executor (or personal representative) is not necessary for a valid holographic will. The distribution in the Holographic Will, though different from the 1993 Will, is supported by Buck's lifestyle and situation as indicated in the record.

2. Concealment of Execution of the Holographic Will

¶138 Prickett next argues that testimony regarding the execution of the Holographic Will is inconsistent and that none of Buck's family members or friends were aware that she executed a Holographic Will. There was an inconsistency between Herbst's affidavit and her testimony that only she, Salazar, and Rivera witnessed the signing of the Holographic Will. Specifically, in her affidavit, Herbst stated that Buck signed the Holographic Will in the presence of four witnesses, not three as she later testified. However, inconsistent testimony of facts surrounding

the execution, though suspect, is not a factor of undue influence. Prickett never discredited Herbst's or Salazar's testimony that the Holographic Will was in Buck's handwriting, which would be one way to attack the validity of the Holographic Will.

¶139 Prickett argues that Salazar did not mention the existence of the Holographic Will to Baker when they first met at Buck's home where Baker was posting and collecting Buck's property. Baker did testify that two days later, Salazar contacted him and said he had located Buck's Holographic Will and subsequently gave the Holographic Will to Prickett's counsel. These facts are not persuasive that the Holographic Will was concealed. Although Salazar failed to mention the Holographic Will the first time he met Baker, he did produce the original two days later. Even though Prickett was not informed about the Holographic Will, the fact that it was executed in the presence of three witnesses is evidence that it was not concealed.

3. Reasonableness or Unreasonableness of the Holographic Will

¶140 "[A] will is unnatural only when contrary to what could be expected of the particular individual in question" *McCauley*, 101 Ariz. at 16, 415 P.2d at 439 (citation omitted). Whether a will is unnatural is a subjective test based upon what is known of the particular testatrix. *Id.* Buck died leaving a brother and sister who were not ignored in her Holographic Will. She specifically requested that Salazar care for her sister and

stated that she was not leaving anything to Prickett for reasons he knew. Prickett mainly relies on the tape-recorded conversation between Buck and Salazar in arguing that the Holographic Will is unnatural. Specifically, Buck said:

I want some of my money back and you're not getting shit.

. . . .

I'll give you some money to get out of here.

. . . .

I want you out of my life. I want you away from me.

. . . .

You have beat up on me physically and emotionally. . . . I am tired of it.

. . . .

Well, you've treated me like shit for fourteen years.

We agree that solely based on these statements, it seems unnatural that Buck would leave her entire estate to Salazar. However, as discussed previously, this tape was made within the last three months of Buck's life and the Holographic Will was made before the tape. Buck could have destroyed the Holographic Will or made a new will giving her estate to a person of her choosing, but she did neither.

¶41 Prickett notes that both Herbst and Salazar testified that Buck was a bright and educated person, yet the Holographic

Will contains numerous grammatical and spelling mistakes. Salazar testified that he was supposed to proofread the Will before it was typed up, but that never occurred. He further stated that Buck always misspelled words. Reviewing the evidence presented, it is not clear that the Holographic Will constitutes an unnatural disposition based on what is known about Buck. Salazar and Buck lived together and, although they had a volatile relationship, there was testimony indicating that they loved each other.

4. Susceptibility to Undue Influence

¶42 Prickett argues that Buck was susceptible to undue influence because she took medication for posttraumatic stress, drank alcohol, lost her parents, and was abused by Salazar. These factors do indicate that Buck was a person susceptible to undue influence. Salazar presents no arguments that Buck was not susceptible to undue influence. Accordingly, we believe Prickett has sufficiently shown that Buck was susceptible to undue influence.

¶43 None of the factors establishing undue influence standing alone, or even in combination with some others, may be sufficient to sustain a finding of undue influence. *Id.* at 11, 415 P.2d at 434. The force of the combination of all these factors can be sufficient to raise a question as to the existence of undue influence. *Id.* Although some of the factors were present, namely susceptibility to undue influence and a confidential relationship,

there was sufficient evidence to the contrary that Buck made the Holographic Will voluntarily and in accordance with how she wished her estate to be distributed. It was not clearly erroneous for the trial court to determine that the Holographic Will was a valid document. The factual findings support the conclusion that the Holographic Will was valid. Prickett did not meet his burden of proving undue influence and there is insufficient evidence to warrant reversal.

D. Motion for New Trial

¶44 In his motion for a new trial, Prickett first argues that his inability to examine Miskiel on re-direct deprived him of a fair trial. The motion does not identify what the re-direct examination would have covered regarding the Holographic Will and how any findings would have changed. When asked at the conclusion of the hearing if there was anything additional that he wanted to present as evidence, Prickett's counsel stated only that he would like to make a closing argument. The court also asked if there was anything else counsel felt they needed to have additional time on, to which Prickett's counsel replied "I don't believe I do." We are not persuaded that Prickett was deprived of a fair trial because of his inability to examine Miskiel on re-direct. Further, counsel waived this issue because he did not object to any irregularity in the proceeding or make an offer of proof.

¶145 Prickett also argues that the court's failure to make findings as to undue influence is not justified by the evidence and is contrary to law. Undue influence was a factor in this case. Even if the presumption of undue influence arose, Salazar rebutted any such presumption. Prickett did not meet his burden of proving undue influence. Thus, although undue influence is not addressed in the ruling, it was not clearly erroneous for the court to find the Holographic Will valid.

¶146 Finally, Prickett contends that the court's ruling on the validity of the Holographic Will is not justified by the evidence. We disagree. The Holographic Will was proven to be in Buck's handwriting and signed by her. Prickett did not present evidence to the contrary. It was not an abuse of discretion for the court to deny Prickett's motion for a new trial, request to reopen the judgment to take additional testimony, and request to amend the findings of fact and conclusions of law.

CONCLUSION

¶147 For the foregoing reasons, we affirm the trial court's orders.

Edward O. Burke, Judge

CONCURRING:

Maurice Portley, Presiding Judge

Jon W. Thompson, Judge