



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**MARILYN KOKE SANDERS v. YVETTE ROSENBERG  
CV-22-0170-PR**

**PARTIES:**

*Petitioner:* Marilyn Koke Sanders

*Respondent:* Yvette Rosenberg

**FACTS:**

Plaintiff/Respondent Yvette Rosenberg (“Rosenberg”) filed this action to invalidate a beneficiary deed executed by her now-deceased uncle, Alex Brandt (“Alex”), in favor of his long-time companion, Defendant/Petitioner Marilyn Sanders (“Sanders”). Rosenberg’s claim was premised on the allegation that Alex executed the deed as a result of Sanders’s undue influence.

Alex and Sanders were first romantically involved in the early 1990s. They lived together in Alex’s home and, after Alex bought a pair of investment properties, he gifted an ownership interest to Sanders. After their relationship ended in 1997, Alex asked Sanders to transfer her ownership interest back to him, which she did.

In August 2001, Alex signed and notarized a beneficiary deed in favor of another woman to whom he was engaged at the time. Under that deed, he left his home and both investment properties to his then-fiancé on his death. After the relationship ended in 2005, Alex signed and notarized a second beneficiary deed (the “2005 deed”), this time leaving his home and one investment property to his niece, Rosenberg.

In 2008, Alex and Sanders reconnected. By 2014, Sanders returned to Arizona and moved into Alex’s home. In late 2016, Alex became sick, and Sanders began caring for him and taking him to doctor appointments. After a March 2017 hospitalization, he was diagnosed with “memory loss” and “cognitive impairment.” Later that month, at a different medical appointment, notes indicated that his conversation was “appropriate” and that his judgment and insight were “normal.”

In April 2017, Alex signed and notarized a third beneficiary deed (the “2017 deed”), in which he left Sanders his home and one investment property on his death. The 2017 deed was almost identical to the 2005 deed, except that the named beneficiary was changed from Rosenberg to Sanders. Alex told Sanders about the deed approximately two months after recording it, but he never told his family about the deed.

In May 2018, Alex was hospitalized again. According to the hospital records, Alex called the police and said he was trapped in the hospital. When Rosenberg learned of the hospitalization, she and her

mother, Alex's sister, traveled to Arizona to visit him. When they arrived, Alex told them he was afraid of Sanders and thought that she was trying to kill him and steal his assets. On June 3, while still hospitalized, Alex asked to appoint his sister power of attorney to make his medical decisions. When a hospital psychiatrist visited Alex to assess his mental capacity, the psychiatrist found Alex "alert, oriented, and pleasant and cooperative" and reported that Alex "no longer trusts his domestic partner with whom he has lived over the past 10 years."

Alex was discharged from the hospital on June 5. Sanders picked him up, and they returned home. He died less than three months later.

Rosenberg filed a probate action in Arizona and was appointed the personal representative of Alex's estate. She sued Sanders to void the 2017 deed, alleging that Sanders unduly influenced Alex to execute the deed. After oral argument, the superior court granted summary judgment for Sanders, holding that Rosenberg had not presented evidence from which a reasonable trier of fact could conclude that Sanders unduly influenced Alex into executing the 2017 deed. In reaching this conclusion, the trial court examined the evidence presented and considered the eight-factor test for undue influence set forth in *In re McCauley's Estate*, 101 Ariz. 8 (1966). These factors include: (1) whether the beneficiary made fraudulent representations; (2) whether the deed was the product of hasty action; (3) whether the deed was concealed; (4) whether the beneficiary was active in procuring the deed; (5) whether the deed was inconsistent with other planning and declarations; (6) the "reasonableness" or "unnaturalness" of the deed; (7) whether the decedent was susceptible to undue influence; and (8) existence of a confidential relationship.

On review, the court of appeals reversed. The court agreed that, based only on the eight existing *McCauley* factors, Rosenberg did not present enough evidence to defeat summary judgment. It noted, however, that the eight factors are not exclusive and are only "significant indicia of the presence or absence of [undue] influence." It then added a ninth factor, stating that "a grantor's alleged post-deed statements may provide relevant and admissible evidence of undue influence." Based on this additional factor, the court held that the trial court should have considered evidence of Alex's statements during his 2018 hospitalization. With the addition of this ninth factor, along with the conflicting evidence of Alex's mental state at the time he signed the 2017 deed, the court of appeals concluded that the record had "just enough evidence" to defeat summary judgment.

**ISSUE:** Should a ninth factor, based on statements reflecting a grantor's state of mind months after the execution of a deed, be added to the long-standing eight-factor test used in Arizona to determine whether a grantor acted under undue influence?

*This Summary was prepared by the Arizona Supreme Court Staff Attorneys' Office solely for educational purposes. It should not be considered official commentary by the Court or any member thereof or part of any brief, memorandum, or other pleading filed in this case.*