

**Commonwealth of Massachusetts
The Trial Court
Probate and Family Court Department**

Essex Division

**Docket Nos. ES07P1268EP1 and
ES07P1268EP2**

**In Re:
Estate of Elizabeth B. Lacey**

FINDINGS OF FACT and CONCLUSIONS OF LAW

A. FINDINGS OF FACT

1. The decedent, Elizabeth Lacey was born on August 3, 1917 and was an only child.
2. Elizabeth Lacey married William Lacey in 1939 and they had two (2) children.
3. Both of Elizabeth's children died in a house fire on January 1, 1948.
4. Elizabeth Lacey and William Lacey divorced in 1953 and Elizabeth Lacey never re-married.
5. In approximately 1950, Elizabeth Lacey began dating George Hale, the father of William Hale who is the proponent of the May 8, 2001 Last Will and Testament of Elizabeth Lacey.
6. While Ms. Lacey and Mr. Hale never lived together, they had a dating relationship for approximately ten (10) years.
7. In the mid 1960s, Ms. Lacey began a relationship with William Crotty which continued until Mr. Crotty's death on April 11, 1993.
8. Ms. Lacey and Mr. Crotty lived together in Mr. Crotty's home at 418 Andover Street, Lawrence, Massachusetts from 1986 until Mr. Crotty's death on April 11, 1993.
9. Ms. Lacey continued to reside at 418 Andover Street, Lawrence, Massachusetts until her death on May 1, 2007.

10. At the time of her death, Elizabeth Lacey had no surviving spouse and no surviving children.
11. At the time of her death, Elizabeth Lacey had no heirs at law under M.G.L. Chapter 190, sections 1 and 3.
12. Joan McGuire is the proponent of the September 26, 2000 Last Will and Testament of Elizabeth Lacey.
13. Elizabeth Lacey and Joan McGuire's mother, Eleanor Sereigo lived next door to each other in Lawrence as children.
14. Ms. Lacey and Ms. Sereigo had a sister-like relationship with each other for sixty (60) years until Ms. Sereigo's death in 1977.
15. Joan McGuire was born on May 27, 1931.
16. When she was a child, Ms. McGuire would frequently see Ms. Lacey as she attended Ms. McGuire's birthday parties and other family functions. Ms. McGuire referred to Ms. Lacey as "Aunt Betty" from the time she was a child until the time of Ms. Lacey's death.
17. Over time, as Ms. McGuire got older, her relationship with Ms. Lacey became one of close friendship.
18. Ms. Lacey and Ms. McGuire would speak to each other many times each week. They socialized together and spent many family gatherings and holidays together.
19. After William Crotty died in 1993, Elizabeth Lacey's contact with Joan McGuire increased considerably.
20. After Mr. Crotty's death in 1993, Ms. Lacey became increasingly dependent upon Joan McGuire and her children, Denise Clegg and Diane Forrester to do her errands, shopping and for transportation.
21. Joan McGuire had seven (7) children.
22. Three (3) of Ms. McGuire's children, Denise Clegg, Diane Forrester and James Wareing all take under the September 26, 2000 Last Will and Testament.
23. Ms. Clegg, Ms. Forrester and Mr. Wareing all referred to Ms. Lacey as "Aunt Betty" and it was not until they reached adulthood that they realized that Ms. Lacey was not their biological aunt.

24. Ms. Lacey was an important part of Joan McGuire's family. She attended family birthday parties, family functions, weddings and holiday gatherings. At family weddings, she would sit at the "head table" together with Ms. McGuire.
25. As Denise Clegg, Diane Forrester and James Wareing got older, their relationship with Ms. Lacey remained strong. They continued to regularly visit with her at family events and they would communicate via telephone. Denise and Diane would periodically visit Ms. Lacey at her home.
26. After William Crotty's death in 1993, Denise Clegg regularly visited Ms. Lacey, drove her to appointments, did errands for her, assisted her around the house and went to Bingo with her.
27. On a few occasions, Ms. Clegg borrowed money from Ms. Lacey and always repaid the loans.
28. Diane Forrester, like her sister, Denise also regularly visited Ms. Lacey after Mr. Crotty's death. She assisted her with errands and went to Bingo with her.
29. Ms. Forrester borrowed money from Ms. Lacey on one occasion and repaid the loan.
30. Mr. Wareing regularly spoke with Ms. Lacey, visited her and socialized with her at family functions.
31. In September, 2000, Elizabeth B. Lacey was eighty-three (83) years of age.
32. In September, 2000, Ms. Lacey met with Attorney Robert Kelley and had him prepare a Last Will and Testament and Health Care Proxy.
33. On September 26, 2000, Ms. Lacey executed her Last Will and Testament. This was the first time she had ever executed a Will.
34. The September 26, 2000 Last Will and Testament bequeathed \$20,000.00 to both Denise Clegg and Diane Forrester, \$10,000.00 to James Wareing with the balance of the Estate passing to Joan McGuire.
35. Based on here lifelong relationship with Ms. McGuire and her children and the absence of any heirs at law, the dispositions in the September, 2000 Will were consistent with the natural objects of Ms. Lacey's bounty.
36. Also on September 26, 2000, Ms, Lacey executed a Health Care Proxy. In it, she named Joan McGuire as her Agent with Denise Clegg and Diane Forrester named as Alternate Agents.

37. After receiving her Will from Attorney Kelley, Ms. Lacey placed the original in Joan McGuire's home safe for safekeeping.
38. After she executed her Will on September 26, 2000, Ms. Lacey continued to socialize with Joan McGuire, Denise Clegg and Diane Forrester. They attended Bingo practically every night and they continued to assist her with errands, shopping and transportation.
39. William Hale, Sr. is the proponent of the May, 2001 Will.
40. Mr. Hale is a retired policeman for the City of Lawrence.
41. Mr. Hale's father, George and Ms. Lacey had a dating relationship for approximately ten (10) years back in the early 1950s.
42. Once George Hale and Elizabeth Lacey stopped their dating relationship, William Hale had very little contact with Ms. Lacey.
43. William Hale would occasionally stop his police cruiser if he saw Elizabeth Lacey and they would exchange pleasantries.
44. In November of 2000, William Hale stated that he received a telephone call from Elizabeth Lacey and that she requested his assistance in fixing her boiler.
45. Prior to this alleged telephone call in November, 2000, Elizabeth Lacey had never called William Hale.
46. As a result of this telephone call, William Hale and his son, George went to Ms. Lacey's house and fixed her boiler.
47. Shortly thereafter, William Hale began to visit with Ms. Lacey once or twice a week. He would bring her lunch and sometimes assist her with something she needed done.
48. Within a few months, Mr. Hale was bringing Ms. Lacey her lunch almost every day. He would take her out to lunch once a week.
49. For the most part, William Hale and Elizabeth Lacey were alone during these lunches.
50. Sometime between November, 2000 and May, 2001, Elizabeth Lacey met with Attorney Robert Kelley to discuss drafting a new Will. According to Attorney Kelley, Ms. Lacey indicated to him that she did not trust the "twins" (Denise Clegg and Diane Forrester) and all they wanted was money. According to Attorney Kelley, Ms. Lacey did not have anything negative to say about Joan McGuire or James Wareing. Nonetheless, a new Will was prepared and was executed by Ms. Lacey on May 8, 2001.

51. The May, 2001 Will leaves Ms. Lacey's entire Estate to William Hale.
52. The May, 2001 Will provided that if William Hale were to predecease Ms. Lacey, the entire Estate would go to William Hale's two (2) sons, George and William, Jr.
53. At the time the May, 2001 Will was executed, Ms. Lacey had approximately \$130,000.00 in a Sovereign Bank bank account as well as her unencumbered home.
54. At the time the May, 2001 Will was executed, Ms. Lacey had only met George Hale one (1) time in November, 2000 and she had never met William Hale, Jr.
55. After she executed the May 8, 2001 Will, Ms. Lacey's relationship with Joan McGuire, Denise Clegg and Diane Forrester remained the same. She continued to attend all of their family functions and spend most holidays with them.
56. After she executed the May 8, 2001 Will, Ms. Lacey continued to attend Bingo with Joan McGuire, Denise Clegg and Diane Forrester almost every night.
57. Attorney Robert Kelley was also the attorney for William Hale, Sr. He had represented him both before and after 2000. The two had known each other for approximately twenty (20) years and since at least 2000, Attorney Kelley and William Hale have met weekly for drinks.
58. Although William Hale was not in the room when Elizabeth Lacey executed the May, 2001 Will, he drove her to and from Attorney Robert Kelley's office.
59. On July 3, 2002, at the insistence of Elizabeth Lacey, she and Joan McGuire met with Attorney Anthony DiFruscia. Ms. Lacey informed Attorney DiFruscia that Ms. McGuire needed to prepare a Will to address how assets bequeathed to her by Ms. Lacey would be disposed of in the event Ms. Lacey predeceased Ms. McGuire.
60. Attorney DiFruscia testified that he requested Ms. Lacey provide him with a copy of her Last Will and Testament and Ms. Lacey provided him with a copy of the September, 2000 Will.
61. Ms. Lacey stated to Attorney DiFruscia that the September, 2000 Will was the only Will she had ever executed.
62. In May, 2004, James Wareing met with Elizabeth Lacey to offer her a place in his family's burial plot.
63. Although she declined his offer, indicating that she was going to be buried in her family's burial plot, she told him that this was the nicest thing anyone ever asked her.

64. Elizabeth Lacey expressed her fear and distrust of William Hale to several people.
65. Elizabeth Lacey complained to several people about William Hale seeking to borrow money from her.
66. Elizabeth Lacey died on May 1, 2007.
67. At the time of her death, Ms. Lacey owned her own home which was unencumbered and had two (2) Sovereign Bank bank accounts totaling approximately \$166,000.00.
68. The Bond of William Hale as Executor lists the value of the real estate as \$10,000.00 and the value of the personal estate at \$150,000.00.
69. Attorney Robert Kelley testified that the values were erroneously reversed.
70. William Hale knowingly misrepresented the value of Elizabeth Lacey's assets on his Bond.
71. After her retirement in 1983, Elizabeth Lacey received monthly pension checks in the approximate amount of \$475.00.
72. Occasionally, Ms. Lacey would receive additional checks from her prior employer in amounts between \$200.00 and \$300.00.
73. Between February 2, 2005 and September 5, 2007 (the latter date being four [4] months subsequent to Elizabeth Lacey's death), William Hale endorsed and cashed approximately twenty (20) of Elizabeth Lacey's pension checks.
74. During the period May 3, 2007 and September 5, 2007, William Hale forged Elizabeth Lacey's name to six (6) pension checks and cashed them.
75. At trial, William Hale invoked the Fifth Amendment when asked about Elizabeth Lacey's pension checks issued both before and after her death.
76. At the time of her death, Elizabeth Lacey had \$66,000.00 in a Sovereign Bank checking account.
77. During the period April 30, 2007 through November 20, 2007, William Hale signed Elizabeth Lacey's name to nineteen (19) checks issued from her Sovereign Bank checking account.

78. On April 30, 2007 (the day preceding Elizabeth Lacey's death), William Hale signed Elizabeth Lacey's name to check #463 payable to cash for \$2,500.00. He then endorsed the check and cashed it.
79. Also on April 30, 2007, William Hale signed Elizabeth Lacey's name to check #465 payable to William C. Hale for \$6,500.00. He then endorsed the check and deposited it into his own account.
80. From May 1, 2007 through November 20, 2007, William Hale forged Elizabeth Lacey's name to seventeen (17) other checks which were payable to or for the benefit of William Hale.
81. As of December 13, 2007, the funds remaining in Elizabeth Lacey's checking account were only \$52.94.
82. William Hale had no authority to sign Elizabeth Lacey's name to checks after her death.
83. At trial, William Hale invoked the Fifth Amendment when asked about these checks.

B. CONCLUSIONS OF LAW

1. "In a will contest involving allegations of undue influence, the burden of proof ordinarily rests with the party contesting the will." In The Matter of the Estate of Moretti, 69 Mass.App.Ct. 642, at 658 (2007).
2. "Four considerations are usually present in a case in which a supportable finding of undue influence has been made. These involve showings that an (1) unnatural disposition has been made (2) by a person susceptible to undue influence to the advantage of someone (3) with an opportunity to procure the contested disposition through improper means." Heinrich v. Silvermail, 23 Mass.App.Ct. 218, at 223 (1986). See also O'Rourke v. Hunter, 446 Mass. 814, 828 (2006); and Germain v. Girard, 72 Mass.App.Ct. 409, 414-415 (2008).
3. "Undue influence need not be exerted at the time a will is made; it is enough that it be operative at that time. Conn v. Starr, 335 Mass. 726, 728 (1957). The often imperceptible nature of undue influence would allow a finding that it existed at the time the will was executed even though an objective observer at the execution could detect no indication of it." Erb v. Lee, 13 Mass.App.Ct. 120, at 124 (1982).

4. "In a civil action, a reasonable inference adverse to a party may be drawn from the refusal of that party to testify on the grounds of self-incrimination." Wansong v. Wansong, 395 Mass. 154, 157 (1985) quoting Labor Relations Comm'n v. Fall River Educators' Ass'n, 382 Mass. 465, 471 (1981).

C. DISCUSSION

As pointed out by the Supreme Judicial Court in Neil v. Brackett, 234 Mass. 367, at 369 (1920), "The nature of fraud and undue influence is such that they often work in veiled and secret ways. The power of a strong will over an irresolute character or one weakened by disease, overindulgence or age may be manifest although not shown by gross or palpable instrumentalities. Undue influence may be inferred from the nature of the testamentary provisions accompanied questionable conditions, as for example when disproportionate gifts or benefactions to strangers are made under unusual circumstances."

In the instant action, Elizabeth Lacey was of advanced age when William Hale insinuated himself into her life. There was credible evidence adduced at trial that Ms. Lacey was fearful and distrustful of William Hale. There was also credible evidence at trial that Ms. Lacey complained about William Hale's attempts to borrow money from her.

It strains credulity to think that Elizabeth Lacey would so drastically change her estate plan within an eight (8) month period and include an individual whom she never even met as a contingent beneficiary.

Moreover, if Elizabeth Lacey so disliked Denise Clegg and Diane Forrester, why would she not have merely deleted them from her revised Will? If she so disliked these individuals, why would she continue to socialize with them and attend Bingo with them on practically a nightly basis? The Court does not find the evidence of Ms. Lacey's alleged dislike of Ms. Clegg and Ms. Forrester to be in the least credible.

There was no evidence at trial that Ms. Lacey had a falling out with Joan McGuire. In fact, the credible evidence at trial was that Elizabeth Lacey continued to socialize with Joan McGuire, attend family functions and holidays with her.

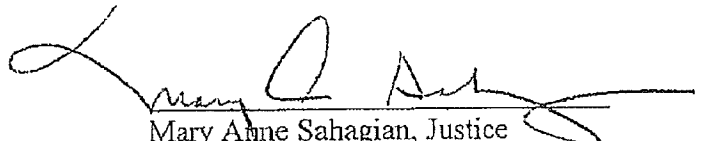
All of the above, coupled with the adverse inferences which the Court is allowed to draw from William Hale's invoking of his Fifth Amendment privilege against self-incrimination, result in the Court's conclusion that the contestants have met their burden of proof regarding the issue of undue influence.

Accordingly, the Court is approving and allowing the Last Will and Testament of Elizabeth B. Lacey dated September 26, 2000 and dismissing the Petition for Probate filed by William Hale.

Finally, the Court is forwarding a copy of these Findings and Conclusions of Law to the Honorable Jonathan W. Blodgett, District Attorney for Essex County to investigate, if he so wishes, the conduct of William Hale with respect to the conduct which led to his invoking of the Fifth Amendment.

July 07, 2011

Date



Mary Anne Sahagian, Justice
Probate and Family Court

In the matter of: In the matter of: Elizabeth B Lacey

Essex Probate and Family Court
36 Federal Street
Salem, MA 01970
(978)744-1020

This action came on for

- Trial
- Hearing

before the Court and

- was argued by counsel
- upon agreement of counsel/parties
- parties failed to appear

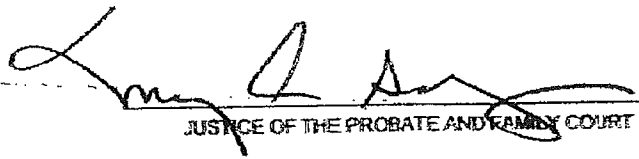
and thereupon, after consideration thereof, it is ordered and adjudged that the complaint for:

Probate of will with executor filed May 16, 2007

be and hereby is dismissed

- with prejudice
- without prejudice

Date: July 5, 2011



JUSTICE OF THE PROBATE AND FAMILY COURT