

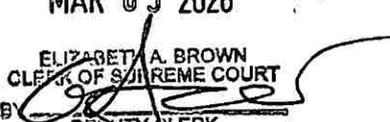
IN THE COURT OF APPEALS OF THE STATE OF NEVADA

IN THE MATTER OF: ESTATE OF  
LYNN SCHUYLER HERRON,  
DECEASED.

No. 89803-COA

FILED

MAR 05 2026

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

\_\_\_\_\_  
AVA COWAN,  
Appellant,

vs.

MICHAEL A. ROSENAUER, SPECIAL  
ADMINISTRATOR AND MARK  
COWAN,  
Respondents.

*ORDER OF AFFIRMANCE*

Ava Cowan appeals from a district court order granting a petition to contest a will. Second Judicial District Court, Washoe County; Barry L. Breslow, Judge.

This appeal presents a dispute between Ava and respondent Mark Cowan concerning the validity of decedent Lynn Schulyer Herron's 2021 will. Ava and Mark are Herron's stepchildren, and their father, Brian Cowan,<sup>1</sup> married Herron in 2011.

As relevant here, Herron's estate plan initially included a 2006 will naming Brian as the sole beneficiary of her estate. In 2017, Herron was diagnosed with dementia, and Ava moved in with Herron and Brian, acting as their full-time caretaker. Later, in 2018, Herron purportedly executed

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<sup>1</sup>Brian was a defendant in the action below but passed away in June 2024 prior to the filing of this appeal.

another will naming Brian as her primary beneficiary, but, for the first time, also naming Ava and Mark as remainder beneficiaries. At this time, Herron also executed a financial and a healthcare power of attorney, naming Ava as her attorney-in-fact in both.

In March 2021, Herron executed a will and named Ava as the executor. With the exception of certain specific bequests, the 2021 will left the entirety of Herron's estate to Ava. Shortly thereafter, Herron was hospitalized and remained in the hospital until her death in October 2021. Following Herron's death, Ava submitted the 2021 will to probate, and Mark and Brian filed their petition to contest the will and appoint a neutral personal representative.

In the petition, Mark and Brian alleged that the 2021 will should be declared void as Herron lacked testamentary capacity when she created it due to her dementia, which they asserted required her to be placed in a long-term care facility. Next, Mark and Brian argued that the bequest to Ava should be voided under NRS 155.097 (listing presumptively void transfers under Nevada law), as Ava was Herron's compensated caregiver and appeared to have drafted the 2021 will on Herron's behalf. Ava filed an objection, and later a cross-petition, wherein she alleged that the 2021 will was validly executed under NRS 136.160 (authorizing attesting witnesses to a will to prove the will by affidavits following the testator's death). In her cross-petition, Ava argued that Herron had testamentary capacity at the time of signing the 2021 will in spite of her dementia diagnosis, and that Herron was not in a long-term care facility because of her dementia, but rather, was hospitalized due to complications from COVID-19.

Following several failed attempts at mediation, the district court appointed respondent Michael A. Rosenauer as special administrator to manage the estate. After that time, Herron's home was eventually cleared out and sold, with the proceeds maintained in an estate account until the resolution of the will contest. Following the appointment of the special administrator and the sale of the home, the case proceeded to a bench trial.<sup>2</sup>

Following trial, the district court entered a "Summary Decision Granting Verified Petition to Contest Will," in which it found that the 2021 will was void because Herron lacked testamentary capacity when it was created and the gift to Ava was presumed void under the caregiver presumption of NRS 155.097.

In its separate findings of fact and conclusions of law, the district court concluded that any bequest to Ava was void, as the caregiver presumption under NRS 155.097(2)(b) (stating that "[a] transfer is presumed to be void if the transfer is to a transferee who is . . . [a] caregiver of the transferor who is a dependent adult") applied. In so doing, the district court found that Herron qualified as a dependent adult under NRS 155.0937

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<sup>2</sup>We note that the record does not contain the transcripts from the bench trial in this matter, which are necessary to properly examine several of Ava's assertions of error on appeal. While this appeal was pending before the supreme court, it issued a notice to Ava in which it instructed her that appellants who have not been granted in forma pauperis status and have requested a transcript "must file a copy of the transcript in this court" and cited specifically to NRAP 9(b)(1)(B). Although Ava filed a transcript request on January 18, 2025, this document was rejected, and Ava ultimately did not comply with the supreme court's latest order to file a corrected transcript request form within 7 days of April 4, 2025.

(defining a dependent adult as an adult who “[i]s unable, without assistance, to provide properly for his or her personal needs for physical health, food, clothing or shelter; or [h]as difficulty managing his or her own financial resources without assistance or resisting fraud or undue influence”), due to her inability to care for her own personal needs and manage her own finances.

The district court also determined Ava qualified as a caregiver under NRS 155.0935 (“Caregiver’ means a person who provides health or social services to a dependent adult for remuneration other than a donative transfer pursuant to this chapter or the reimbursement of expenses”), as she moved in with Herron and Brian and provided caregiving services to them to such an extent that they were “wholly dependent upon Ava Cowan and the social and personal services she was providing.” The court found that Ava was compensated for her time, as she quit her job to be a full-time caregiver, applied for and received a grant that provides aid to full-time caregivers, and did not pay rent or other living expenses while residing with Herron and Brian. Further, the court found that Ava had full access to Herron’s bank accounts due to her status as Herron’s attorney-in-fact and that certain expenses after Herron’s admission to the assisted living facility could not have been incurred for Herron or Brian’s benefit.

Additionally, the district court found that Herron lacked testamentary capacity at the time she executed the 2021 will. Supplementing its findings that Herron qualified as a dependent adult under NRS 155.0937, the court also found that Herron’s mental state had declined around the time the will was executed in March 2021, noting that in January 2021, Herron had reportedly forgotten who Brian was, and in May 2021, was hospitalized after a mental break and violent incidents.

In light of these findings, the district court concluded that although the 2021 will technically complied with NRS 133.040 (setting forth the requirements for a valid will in Nevada), the rebuttable presumption established in NRS 155.097(2)(b) applied, as Ava participated in the drafting of the instrument and served as a caretaker to Herron, who qualified as a dependent adult.

The district court next examined whether Ava overcame the presumption and found that during trial, Ava only called herself and Mark as witnesses, and that Mark “provided no testimony regarding facts to support Ava[s] position that the gift to her in the March[ ] 2021 Will was not produced by fraud, duress, or undue influence.” Accordingly, the court concluded that Ava failed to provide clear and convincing evidence to rebut the caregiver presumption under NRS 155.097 and that the 2021 will was void.

Consequently, the district court found that the 2021 will did not serve to revoke the terms of Herron’s previous will(s) because it was void and ineffective. In doing so, the court acknowledged that Herron had allegedly prepared a 2018 will but found that “no witness could testify that the 2018 document was executed by Lynn Herron and no copy of even a draft has been located, nor offered at trial.” Thus, the district court determined that the 2006 will, which left Herron’s estate to Brian, was never revoked and should be considered revived. Ava now appeals.

On appeal, Ava first argues that this court should reverse the district court’s order on grounds that the district court’s actions violated the Equal Protection and Due Process Clauses of the Fourteenth Amendment to the United States Constitution. Specifically, Ava argues that the district court discriminated against her on the basis of her gender by providing less

weight to her testimony and evidence than similarly situated litigants and that her due process rights were violated as she did not receive proper notice of court hearings or an opportunity to be heard.

“This court reviews constitutional challenges de novo. The rights to equal protection and due process of law are guaranteed by the Fourteenth Amendment of the United States Constitution and Article 1, Section 8(5) and Article 4, Section 21 of the Nevada Constitution.” *Rico v. Rodriguez*, 121 Nev. 695, 702-03, 120 P.3d 812, 817 (2005).

Ava asserts her due process rights were violated because she was deprived of notice and the opportunity to be heard. However, the record indicates that Ava received notice of all pertinent hearings via U.S. mail, and that she was able to participate and present objections during those hearings. Under these circumstances, we cannot conclude that Ava was deprived of due process during these proceedings. *See Flangas v. Perfekt Mktg., LLC*, 138 Nev. 224, 230, 507 P.3d 574, 580 (2022) (holding that due process requires “notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections before a party is deprived of a protected property or liberty interest” (internal quotation omitted)).

Ava next argues that her equal protection rights were violated by the district court’s rulings at trial. However, the record before this court on appeal reflects that the district court considered Ava’s testimony, and Ava’s arguments on appeal do not demonstrate that she received disparate treatment.<sup>3</sup> *See, e.g., Vickers v. Dzurenda*, 134 Nev. 747, 748, 433 P.3d 306,

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<sup>3</sup>We further note that, to the extent Ava challenges specific district court decisions below, she failed to provide this court with the transcript from those proceedings. Accordingly, we presume that the missing

308 (Ct. App. 2018) (“At the heart of the Equal Protection Clause is the idea that all people similarly situated are entitled to equal protection of the law.”).

Next, Ava argues that the district court abused its discretion when it granted Mark’s petition for a will contest, arguing that the 2021 will was valid under Nevada law and could only be invalidated by a finding of undue influence. She also argues that the district court abused its discretion when considering the evidence and testimony presented at trial and asserts that she presented sufficient evidence to demonstrate that Herron had testamentary capacity at the time the 2021 will was executed and that the 2021 will was not the product of fraud or undue influence.

This court will not disturb the district court’s findings in a will contest if they are supported by substantial evidence, *In re Peterson’s Estate*, 77 Nev. 87, 93, 360 P.2d 259, 263 (1961), and we review a district court’s decision to admit or exclude evidence for abuse of discretion, *M.C. Multi-Fam. Dev., L.L.C. v. Crestdale Assocs., Ltd.*, 124 Nev. 901, 913, 193 P.3d 536, 544 (2008); *see also* NRS 155.180 (“Except as specially provided in [Title 12 of the NRS, which governs wills and estates of deceased persons], all the provisions of law and the Nevada Rules of Civil Procedure regulating proceedings in civil cases apply in matters of probate.”).

Ava’s argument that the 2021 will may be voided *only* after a finding of undue influence is inapposite and ignores controlling Nevada statutes. Under NRS 155.097(2)(b), “a transfer is presumed to be void if the

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transcript(s) support the district court’s decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007) (observing that “[w]hen an appellant fails to include necessary documentation in the record, we necessarily presume that the missing portion supports the district court’s decision”).

transfer is to a transferee who is . . . [a] caregiver of the transferor who is a dependent adult.” “The presumption created by this section is a presumption concerning the burden of proof and may be rebutted by proving, by clear and convincing evidence that the donative transfer was not the product of fraud, duress or undue influence.” NRS 155.097(3).

Here, the district court found that although the 2021 will met the formal requirements of NRS 133.040, the presumption under NRS 155.097(2)(b) applied as Herron was a dependent adult and Ava served as Herron’s caretaker when the will was executed. In doing so, the district court evaluated the evidence and testimony presented and concluded that Ava failed to meet the burden of proof to demonstrate that the 2021 will was not the product of fraud, duress, or undue influence.

To the extent Ava challenges the weight of the evidence presented or the credibility of the witnesses, we do not reweigh the same on appeal. *See Ellis v. Carucci*, 123 Nev. 145, 152, 161 P.3d 239, 244 (2007) (refusing to reweigh credibility determinations on appeal); *Quintero v. McDonald*, 116 Nev. 1181, 1183, 14 P.3d 522, 523 (2000) (refusing to reweigh evidence on appeal). Moreover, because Ava did not file the transcript of the bench trial for this court’s consideration as the supreme court instructed, we necessarily presume that the contents of the transcript also support the district court’s decision. *See Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 603, 172 P.3d 131, 135 (2007). Accordingly, we affirm the order of the district court granting Mark’s petition to contest the 2021 will and declaring that the 2021 will was void.

Finally, Ava challenges the actions of the special administrator, arguing that his appointment was against Herron’s will and that he mismanaged estate property. However, Ava did not raise her arguments

regarding the acts of the special administrator prior to the filing of this appeal, and thus, we do not consider them here. *See Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been [forfeited] and will not be considered on appeal.”). Accordingly, we

ORDER the judgment of the district court AFFIRMED.<sup>4</sup>

  
\_\_\_\_\_, C.J.  
Bulla

  
\_\_\_\_\_, J.  
Gibbons

  
\_\_\_\_\_, J.  
Westbrook

cc: Hon. Barry L. Breslow, District Judge  
Ava Cowan  
Mark Cowan  
Michael A. Rosenauer Ltd.  
Washoe District Court Clerk

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<sup>4</sup>Insofar as Ava raises arguments that are not specifically addressed in this order, we have considered the same and conclude that they do not present a basis for relief.