

Shifting the Burden of Proof During a Will Contest

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In virtually all litigation, the party that commences the lawsuit, typically referred to as the plaintiff, bears the burden of proof to establish his/her claims for which they seek relief from the Court. A defendant's role is essentially to defend against a plaintiff's allegations without an affirmative obligation to prove the merits of their defense. In the context of probate litigation, however, the plaintiff may actually succeed in shifting the burden of proof to a defendant which would then require the defendant to prove the merits of its defense. This is referred to as shifting the burden of proof.

The circumstances under which the burden of proof might be shifted during a Will contest are discussed in the precedential case of D. Haynes vs. First National State Bank of New Jersey. In this matter, the New Jersey Supreme Court explained that the burden of proving undue influence during a Will contest lies with the contestant, unless the Will benefits one who stood in a confidential relationship with the decedent, and there are additional circumstances of a suspicious character that require explanation. In such

cases the law creates a presumption of undue influence, and the burden of proof is shifted to the proponent which is typically the defendant.

The first necessary element to establish a presumption of undue influence is the existence of a confidential relationship between the Testator and the beneficiary. A confidential relationship exists when trust is reposed by reason of the Testator's weakness or dependence, or when the parties are engaged in a relationship in which reliance is naturally inspired or does in fact exist. The second necessary element involves the presence of suspicious circumstances surrounding either the creation or execution of the Will, which in combination with a confidential relationship would shift the burden of proof to the proponent of the Will. These suspicious circumstances, however, need only be slight in nature. Once a presumption of undue influence has been established, the burden of proof shifts to the proponent of the Will, who must, under normal circumstances, overcome that presumption by the preponderance of evidence. Should they fail to overcome the presumption, the Will will be invalidated by the Court.

The definition of what constitutes a confidential relationship has also been carefully reviewed by the New Jersey courts. Although the nature of a confidential relationship is difficult to define, it encompasses all relationships whether legal, natural, or conventional in their origin in which confidence is naturally inspired or in fact reasonably exists. A confidential relationship encompasses situations where the relations between the parties appear to be of such a character so as to render it certain that they did not deal on

terms of equality, but that either on the one side from superior knowledge of the matter derived from a fiduciary relation, or from overmastering influence; or on the other from weakness, dependence, or trust justifiably reposed, unfair advantage is thereby rendered probable. Where the parties enjoy a relationship in which confidence is naturally inspired or reasonably exists, the person who has gained an advantage due to that confidence has the burden of proving that no undue influence was used to gain such an advantage. This burden shifting will come into play when a claim of undue influence is being pursued, and the plaintiff has established the existence of a confidential relationship, and moreover, the presence of suspicious circumstances surrounding either the creation or execution of the Will.

As such, during a Will contest it is important for both a contestant, as well as a proponent of a Will, to understand the possibility of the burden of proof being shifted. In the absence of proper preparation, it could be fatal to a party's claims if they are unprepared. The retention of competent legal counsel to review and prepare for this issue is essential to a well-reasoned litigation plan, as the landscape during a trial may quickly change under such circumstances.

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