

COURT OF APPEALS OF OHIO, TENTH APPELLATE DISTRICT

Michael Scott Lower v. Donald Lee Lower et al.

2026-Ohio-2098 · No. No. 25AP-607 · Decided June 4, 2026

SUMMARY

The Ohio Tenth District Court of Appeals affirmed summary judgment in favor of Donald Lee Lower in a will contest involving allegations of undue influence and lack of testamentary capacity. The court held that the appellant failed to present admissible evidence creating a genuine issue of material fact and rejected his arguments concerning cumulative error, judicial bias, discovery, and the admissibility of affidavits. The court overruled all seven assignments of error.

CASE DETAILS

COURT	Court of Appeals of Ohio, Tenth Appellate District
WRITING FOR THE COURT	Beatty Blunt, J.; Jamison, J.; Dingus, J.
JURISDICTION	Ohio Court of Appeals, Tenth Appellate District
DECIDED	June 4, 2026
DOCKET	No. 25AP-607
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a Franklin County Court of Common Pleas, Probate Division, judgment adopting a magistrate's decision and granting Donald Lee Lower summary judgment in his individual and executor capacities in a will contest.
STANDARD OF REVIEW	The appellate court reviews adoption of a magistrate's decision for abuse of discretion, legal questions de novo, and summary judgment de novo. Summary judgment is proper when there is no genuine issue of material fact, the movant is entitled to judgment as a matter of law, and reasonable minds can reach only a conclusion adverse to the nonmoving party.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Michael Scott Lower v. Donald Lee Lower, James William Lower, Other defendants-appellees

TOPICS

will contests

testamentary capacity

undue influence

summary judgment

appellate procedure

PRACTICE AREAS

probate

estate planning

civil procedure

appellate procedure

evidence

QUESTIONS PRESENTED

1. Whether the trial court properly granted summary judgment in the will contest on the claims of undue influence and lack of testamentary capacity.
2. Whether a will contestant has an absolute right to a jury trial when the evidence presents no genuine issue of material fact.
3. Whether the trial court properly considered the physician's affidavit regarding the decedent's mental state and testamentary capacity.
4. Whether the affidavit of the attorney who prepared the will was inadmissible or should have been stricken.
5. Whether evidence concerning alleged loans to a nonbeneficiary was relevant to the will contest.
6. Whether cumulative error or structural error required reversal in this civil probate proceeding.
7. Whether the appellate court could grant relief based on alleged trial-judge bias or judicial misconduct.

HOLDINGS

1. Summary judgment was proper because the will contestant presented no admissible evidence creating a genuine issue of material fact that the decedent lacked testamentary capacity or executed the will as a result of undue influence.
2. There is no absolute legal right to a jury trial in a will contest action when the evidence establishes that no genuine issues of material fact remain.
3. A will contestant challenging testamentary capacity must establish that the testator lacked capacity on the date the will was executed.
4. A will contestant challenging a will for undue influence must demonstrate a susceptible testator, another person's opportunity to exert influence, the exertion or attempted exertion of improper influence, and a result showing the effect of that influence.
5. The trial court properly considered the physician's affidavit offering lay testimony about the decedent's mental state and testamentary capacity under Evid.R. 701.
6. Evidence concerning alleged loans from the decedent to James Lower was irrelevant to the will contest because James Lower was not a beneficiary under the will.
7. The cumulative-error doctrine is not generally applicable in civil actions, including probate actions, and cannot provide relief where no individual error has been established.
8. An appellate court lacks jurisdiction to vacate a trial court judgment based on alleged bias or prejudice of the common pleas judge; the exclusive remedy is an affidavit of disqualification filed with the clerk

of the Supreme Court of Ohio under R.C. 2701.03.

KEY QUOTATIONS

“there is no absolute legal right to a jury trial in a will contest action.” (¶ 25)

“Thus, Dr. Taddeo’s testimony as to decedent’s mental state as it related to testamentary capacity was entirely proper pursuant to Evid.R. 701.” (¶ 39)

“an appellate court is without authority to pass upon issues of disqualification or to void a judgment on the basis that a judge should be disqualified for bias or prejudice.” (¶ 47)

FACTUAL BACKGROUND

Nancy G. Lower retained attorney Colin R. Beach in April 2021 to prepare estate-planning documents, including a will and transfer-on-death designation affidavit. She executed the documents on April 20, 2021, after receiving a competency opinion from her physician; Beach and the will witness stated that she appeared to understand the transaction and was of sound mind and memory, and Beach observed no improper influence by Donald Lee Lower. Nancy died unexpectedly on October 26, 2021, and her 2021 will, which left her estate to Donald and excluded Michael and James from inheritance except for love and affection, was admitted to probate.

PROCEDURAL HISTORY

Nancy G. Lower's 2021 will was admitted to probate on December 15, 2021. Michael Scott Lower filed a will contest alleging undue influence and lack of testamentary capacity. After motions for summary judgment, renewed motions for summary judgment, discovery motions, and objections to the magistrate's rulings, the trial court adopted the magistrate's decision and entered judgment for Donald Lee Lower. Michael timely appealed, and the Tenth District affirmed.

DISPOSITION

affirmed

CASES CITED

- Rizzo-Lortz v. Erie Ins. Group., 2019-Ohio-2133, ¶ 18 (10th Dist.)
- In re Application of Black Fork Wind Energy, LLC, 2013-Ohio-5478, ¶ 22
- Suon v. Mong, 2018-Ohio-4187, ¶ 26 (10th Dist.)
- Huntington Natl. Bank v. Burda, 2009-Ohio-1752, ¶ 21 (10th Dist.)
- Williams v. Barrick, 2008-Ohio-4592, ¶ 28
- RRL Holding Co. of Ohio, LLC v. Stewart, 2020-Ohio-199, ¶ 37 (10th Dist.)
- Mtge. Bank Corp. v. WWIO, Ltd., 2016-Ohio-7069, ¶ 12 (10th Dist.)
- LRC Realty, Inc. v. B.E.B. Properties, 2020-Ohio-3196, ¶ 11
- Schumacher v. Patel, 2023-Ohio-4623, ¶ 16 (10th Dist.)
- Coppo v. Fixari Family Dental Practice, LLC, 2022-Ohio-1828, ¶ 9 (10th Dist.)

- Wiltshire Capital Partners v. Reflections II, Inc., 2020-Ohio-3468, ¶¶ 12-13
- State ex rel. Grady v. State Emp. Relations Bd., 78 Ohio St.3d 181, 183 (1997)
- Premiere Radio Networks, Inc. v. Sandblast, L.P., 2019-Ohio-4015, ¶ 6 (10th Dist.)
- Dresher v. Burt, 1996-Ohio-107, ¶ 18
- Martin v. Dew, 2004-Ohio-2520 (10th Dist.)
- Piecoro v. Fester, 1998 Ohio App. LEXIS 1636 (10th Dist. Apr. 16, 1998)
- Smith v. Lommerse, 1993 Ohio App. LEXIS 6423 (6th Dist. Dec. 30, 1993)
- Kennedy v. Walcutt, 118 Ohio St. 442 (1928)
- Krischbaum v. Dillon, 58 Ohio St.3d 58, 64, fn. 9 (1991)
- Bustinduy v. Bustinduy, 1998 Ohio App. LEXIS 6047, *4 (2d Dist. Dec. 18, 1998)
- Boley v. Kennedy, 2003-Ohio-1663, ¶ 21 (3d Dist.)
- Jenkins v. Grawe, 2019-Ohio-2013, ¶ 59 (10th Dist.)
- Stanley v. Ohio State Univ. Med. Ctr., 2013-Ohio-5140 (10th Dist.)
- Bogdas v. Ohio Dept. of Rehab. & Corr., 2009-Ohio-6327, ¶ 43
- State v. Filiaggi, 1999-Ohio-99, ¶ 70
- Paugh v. Hanks, 6 Ohio St.3d 72, 80 (1983)
- State v. Thomas, 70 Ohio St.2d 79, 80 (1982)
- Weis v. Weis, 147 Ohio St. 416 (1947), syllabus
- Baltimore & O.R. Co. v. Schultz, 43 Ohio St. 270, 281 (1885)
- State v. Sibert, 98 Ohio App.3d 412, 426 (4th Dist. 1994)
- State Farm Mut. Auto. Ins. Co. v. Gourley, 2012-Ohio-4909, ¶ 36 (10th Dist.)
- Stockdale v. Baba, 2003-Ohio-4366, ¶ 83 (10th Dist.)
- Hunt v. Crossroads Psychiatric & Psychological Ctr., 2001 Ohio App. LEXIS 5388, *4 (8th Dist. Dec. 6, 2001)
- Nationwide Mut. Fire Ins. Co. v. Turner, 29 Ohio App.3d 73, 75-76 (8th Dist. 1986)
- Westfield Ins. Co. v. Hunter, 2011-Ohio-1818
- State ex rel. Smith v. Akron, 2012-Ohio-6308, ¶ 10
- In re Disqualification of George, 2003-Ohio-5489, ¶ 5
- State v. Hussein, 2017-Ohio-5519, ¶ 9 (10th Dist.)
- State v. Scruggs, 2003-Ohio-2019, ¶ 15
- Jones v. Billingham, 105 Ohio App.3d 8, 11 (2d Dist. 1995)
- Corbin v. Dailey, 2009-Ohio-881, ¶ 14 (10th Dist.)
- State v. Payne, 2002-Ohio-5180, ¶ 8 (7th Dist.)
- Beer v. Griffith, 54 Ohio St.2d 440, 441-442 (1978)
- Cooke v. United Dairy Farmers, Inc., 2006-Ohio-4365, ¶ 45 (10th Dist.)

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