STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0555

Ronald G. Davis, Personal Representative of the Estate of Roger F. Davis and Trustee of the Toivo W. Carlson and Marcile V. Davis Carlson Trust Agreement,
Appellant,

vs.

Ameriprise Financial Inc, et al.,
Respondents,

Twin Cities Public Television, Inc.,
Respondent,

Great River Regional Library,
Respondent,

First Presbyterian Church of Hibbing,
Respondent,

Sharing and Caring Hands, Inc.,
Respondent,

Minnesota Department of Natural Resources,
Respondent,

Smile Train, Inc.,
Respondent,

Greenwood Cemetery Association Corp.,
Respondent,

School District of Superior Scholarship Fund, Inc.,
Respondent.

Filed January 30, 2023
Affirmed
Smith, Tracy M., Judge

Hennepin County District Court
File No. 27-CV-20-6335

Mark R. Bradford, Alan I. Silver, Jessica L. Kometz, Bassford Remele, P.A., Minneapolis, Minnesota (for appellant)

Bradley A. Kletscher, Tyler W. Eubank, Barna, Guzy & Steffen, Ltd. Minneapolis, Minnesota (for respondents Ameriprise Financial, Inc., and Mark Gabriel)

Zachary J. Crain, Nilan Johnson Lewis PA, Minneapolis, Minnesota (for respondent Twin Cities Public Television, Inc.)

Susan M. Dege, Jovanovich, Dege & Athmann, PA, St. Cloud, Minnesota (for respondent Great River Regional Library)

Hannah C. Forti, Prebich Law Offices P.C., Hibbing, Minnesota (for respondent First Presbyterian Church of Hibbing)

David R. Marshall, Ryan C. Young, Fredrikson & Byron, P.A., Minneapolis, Minnesota (for respondent Sharing and Caring Hands, Inc.)

Keith Ellison, Attorney General, Peter Farrell, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Natural Resources)

Leora Maccabee, Jevon Bindman, Mason LLP, Minneapolis, Minnesota (for respondent Smile Train, Inc.)

Stephen J. Olson, Ledin, Olson & Cockerham, S.C., Superior, Wisconsin (for respondent Greenwood Cemetery Association Corp.)

Kyle H. Torvinen, Torvinen, Jones, Routh & Saunders, S.C., Superior, Wisconsin (for respondent School District of Superior Scholarship Foundation, Inc.)

Considered and decided by Smith, Tracy M., Presiding Judge; Worke, Judge; and Wheelock, Judge.

NONPRECEDENTIAL OPINION

SMITH, TRACY M., Judge

Some eight months before her death at age 95, Marcile Davis Carlson[1] changed the beneficiaries of annuities that she held with respondent Ameriprise Financial, Inc., naming the eight respondent charities as beneficiaries.[2] Marcile's long-time financial planner, respondent Mark Gabriel of Ameriprise, assisted her in executing the beneficiary update. After Marcile's death, her nephew, appellant Ronald G. Davis, brought suit against respondents, seeking to invalidate Marcile's beneficiary update on the ground that she lacked capacity and was unduly influenced by Gabriel when she made the update.[3]

The district court granted respondents' motion for summary judgment, determining that appellant had failed to raise a genuine issue of material fact regarding Marcile's capacity or the claimed undue influence on her and that respondents were entitled to judgment as a matter of law. We affirm.

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[1] Because the opinion references multiple family members with the last name Carlson, we refer to Marcile by her first name.

[2] The designated charities are Twin Cities Public Television, Great River Regional Library, First Presbyterian Church of Hibbing, Sharing and Caring Hands, Minnesota Department of Natural Resources, Smile Train, Greenwood Cemetery Association, and the School District of Superior Scholarship Foundation. The Minnesota Department of Natural Resources deposited the funds it received from Ameriprise with the district court and takes no position on this appeal. The remaining charities filed an appellate brief that primarily adopts the arguments in Ameriprise and Mark Gabriel's brief.

[3] Appellant sued in his capacities as personal representative of the estate of Roger F. Davis (his father and Marcile's brother) and as trustee of the Toivo W. Carlson and Marcile V. Davis Carlson Trust.

FACTS

Marcile was married to Toivo Carlson. Toivo had two children from a previous marriage, and Marcile and Toivo had no joint children. Marcile and Toivo began working with Gabriel as their financial advisor in 1996.

2005 Trust

In 2005, Marcile and Toivo established the Toivo W. Carlson and Marcile V. Davis Carlson Trust (2005 Trust). The trust agreement provided that, upon the death of either spouse, the 2005 Trust assets would be divided into two sub-trusts: Trust A and Trust B. Trust A would receive assets up to the amount of the marital deduction, and Trust B would receive any overflow assets. The 2005 Trust agreement provided that, upon the death of the surviving spouse, Trust A and Trust B would be distributed in the following proportions: four percent to Kenneth Carlson (Toivo's son) and thirty two percent each to Henry Carlson (Toivo's son), Roger Davis (Marcile's brother), and Wayne Davis (Marcile's brother).

In 2006, Toivo died.

2013 Amendment to the 2005 Trust

Beginning in 2006 after Toivo's death, Marcile began expressing concerns to Gabriel about the trust beneficiaries being Toivo's sons and Marcile's brothers. Marcile also expressed concerns about too much of her money going towards taxes.

In 2013, Marcile met with Gabriel and Stephen Munstenteiger, her estate-planning attorney, to review her estate plan. Marcile indicated that she wanted her money to go to charity, which had preferable tax consequences. Munstenteiger recommended that she give

a portion of her estate to charity, which would have preferable tax consequences. Marcile agreed, and on June 20, 2013, she amended the 2005 Trust to include distributions to twelve charities (including some of the respondent charities) totaling $190,000. The remainder of Marcile's assets were to be distributed to the four family members as originally allocated.

According to Gabriel, he and Marcile continued to discuss her assets and where she would like them to go upon her death. Marcile expressed concern about money going to her family members and how they would use that money. Marcile also expressed concerns multiple times about appellant's spending habits and the pressure she felt from him. Appellant knew that Marcile was careful about money and did not approve of his spending habits.

Marcile's Annuities and the 2018 Amendment of Beneficiaries

Apart from the trust assets, Marcile also held annuities in her own name with Ameriprise. Under the original beneficiary designations for the annuities as designated in the 2005 Trust, the annuities would have flowed into the trusts or otherwise flowed to the four family-member beneficiaries of the trusts. At the time of Marcile's death, the annuities were worth more than $1.5 million.

In June 2017, Marcile met with Gabriel and raised the idea of changing the beneficiaries of at least one of her annuities to charity. But, although Marcile expressed concerns about taxes and not leaving too much of her estate to family, she did not change annuity beneficiaries at that time. In February 2018, Gabriel sent Marcile a financial

analysis of her current situation. It included a comment that said, "At this time you really don't have a desire to give your money to charity yet you know you can afford to do this."

On June 5, 2018, Gabriel met Marcile at her home. He noted that Marcile was having a hard time deciding where her money should go. Gabriel gave Marcile "homework" of making a list of preferred charities.

On June 13, 2018, Gabriel returned to Marcile's home. Marcile's neighbor and friend, Mary Wilson, was with Marcile that day, but Wilson did not join the meeting. Marcile had put together a list of charities. According to Gabriel, Marcile chose Smile Train because she knew someone with a cleft palate, Twin Cities Public Television because she liked its programming, Greenwood Cemetery because her husband was buried there, and some others because she was involved with them. Marcile signed a beneficiary update, designating respondent charities as beneficiaries to receive equal shares of the annuities that she held at Ameriprise. When appellant learned that Marcile had executed the beneficiary update, he questioned Marcile's estate lawyer, Mary Ebb, about the change. Ebb spoke with Gabriel, and Marcile did not make any further changes.

Other Actions by Marcile Before and After the Beneficiary Update

Marcile met with Ebb several times in the months before and after Marcile executed the June 13, 2018, update; Ebb represented Marcile prior to the June 13, 2018 update until January 2019, shortly before Marcile's death. On May 16, 2018, Marcile met with Ebb and signed documents accepting appointment as the personal representative of the estate of her recently deceased friend, Lois Ludwig. Ebb believed Marcile to have capacity to do so. After executing the beneficiary update in June 2018, Marcile suffered a fall, but she

recovered from it. In July 2018, she was appointed personal representative of the Ludwig estate. In August 2018, she went with appellant and Mary Wilson to Marcile's bank, where Marcile made appellant a joint owner of her bank account, meaning that the account (which held around $105,000 at the time) would pass to appellant if she died. In November 2018, Marcile signed a power of attorney for her Ameriprise accounts, listing appellant as her attorney in fact.[4] Appellant had no concerns about Marcile's capacity at that time.

2019 Attempted Beneficiary Update

On January 21, 2019, Marcile celebrated her 95th birthday. Two days later, she suffered a stroke and in the following weeks went into hospice care. On February 13, appellant called Gabriel and, according to Gabriel's notes, complained that Marcile's money should go to family and not to the charities that Marcile had chosen. On February 21, appellant requested a change-of-beneficiary form from Gabriel. When Gabriel asked him why, according to Gabriel's notes, appellant said that he and his uncle had decided that they were not going to let Marcile's money go to charities. Gabriel sent appellant the form as requested.

On February 22, appellant was informed by a home-health-care nurse that Marcile had taken a turn for the worse. Thereafter, appellant and his wife sent Mary Wilson, first, just a signature page and then a beneficiary form with no beneficiaries listed. Mary Wilson brought the document to Marcile's home, where Marcile was bedridden, and held Marcile's wrist while Marcile signed the signature page. The form was filled out to provide for

[4] The power of attorney did not give appellant the authority to change the annuity beneficiaries.

specific and substantially reduced dollar amounts to the charities and add her family members as the beneficiaries of the remainder. Gabriel later attempted to contact Marcile to confirm whether she wanted to change her beneficiary designations but was unable to speak with her.

Marcile died on February 28, 2019. Ameriprise did not accept the February 2019 beneficiary update.

Marcile's Health

Marcile suffered from several health problems in the years before her death in February 2019. Appellant claims that, due to health problems, Marcile lacked capacity to make the beneficiary update on June 13, 2018. He relies on medical records and home-health-care records. He also relies on a report and deposition testimony of his expert, Dr. Orr, who did not examine Marcile but who—after her death—reviewed her medical records, together with information from this lawsuit, and came to the conclusion that she lacked capacity. We address in further detail below the health-related evidence when determining whether appellant raised a genuine dispute of fact concerning Marcile's capacity.

Procedural Posture

Appellant originally filed a complaint seeking to have the district court declare the February 2019 beneficiary update valid. Following various motions and with the approval of the district court, Appellant amended his complaint. He dropped his claim that the February 2019 beneficiary update was valid and instead alleged that the June 2018 update was invalid because Marcile lacked capacity and was subject to undue influence by Gabriel

when she executed it. The amended complaint asserted four counts against Ameriprise, Gabriel, and the eight charities: (1) declaratory judgment that the June 2018 beneficiary update is not valid (against all respondents), (2) undue influence and lack of testamentary capacity (against Ameriprise), (3) conversion (against all respondents), and (4) unjust enrichment (against the eight charities). After discovery and on respondents' motion, the district court granted summary judgment for respondents and dismissed all four counts in the amended complaint.

This appeal follows.

DECISION

Summary judgment is appropriate only when "there is no genuine issue as to any material fact and the movant is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.01. "A material fact is one of such a nature as will affect the result or outcome of the case depending on its resolution." *Zappa v. Fahey*, 245 N.W.2d 258, 259-60 (Minn. 1976). Appellate courts "review the grant of summary judgment de novo to determine 'whether there are [any] genuine issues of material fact and whether the district court erred in its application of the law.'" *Montemayor v. Sebright Prods., Inc.*, 898 N.W.2d 623, 628 (Minn. 2017) (quoting *Stringer v. Minn. Vikings Football Club, LLC*, 705 N.W.2d 746, 754 (Minn. 2005)). In conducting this review, appellate courts "view the evidence in the light most favorable to the nonmoving party . . . and resolve all doubts and factual inferences against the moving parties." *Rochester City Lines, Co. v. City of Rochester*, 868 N.W.2d 655, 661 (Minn. 2015). The district court "may not weigh the evidence or make factual determinations." *Teffeteller v. Univ. of Minn.*, 645 N.W.2d 420, 432 (Minn. 2002).

Appellant argues that there are genuine disputes of fact regarding Marcile's capacity to execute the 2018 beneficiary update and regarding Gabriel's alleged undue influence over Marcile. If there are no genuine issues of material fact with respect to either issue, summary judgment is appropriate on all of appellant's claims, and we need not reach other arguments raised by the parties. We begin with the issue of Marcile's capacity.

I. Appellant failed to create a genuine dispute of fact regarding capacity.

The parties agree that the legal standard that applies to capacity to execute a beneficiary update is the standard applicable to capacity to contract. Capacity to contract presents a question of fact. *Nelson v. Holland*, 776 N.W.2d 446, 450 (Minn. App. 2009). A person is competent to enter a contract when, at the time of the contract's execution, the party was able to understand the "nature and effect" of what they were doing. *Macklett v. Temple*, 1 N.W.2d 415, 417 (Minn. 1941); *see Sullivan v. Joint Indep. Consol. Sch. Dist. No. 102*, 88 N.W.2d 1, 4-5 (Minn. 1958). "In the absence of fraud or undue influence, mere weakness of intellect, resulting from old age or sickness, is not a ground for setting aside an executed instrument." *Macklett*, 1 N.W.2d at 417. The party challenging the capacity of a party to enter into a contract bears the burden of proof. *Trimbo v. Trimbo*, 50 N.W. 350, 351 (Minn. 1891).

Appellant argues that he produced substantial evidence from which a reasonable fact-finder could conclude that Marcile lacked capacity to change her beneficiary designations on June 13, 2018. He contends that Marcile's medical records demonstrate that her cognitive health had declined in the 18 months preceding the June 2018 update and that the records create a genuine dispute as to whether she understood the effect of changing

the beneficiary designations. Appellant cites to specific notes from Marcile's caretakers in which they wrote that Marcile experienced various levels of confusion, memory impairment, and disorientation. He further argues that a report from his expert witness creates a genuine dispute of fact concerning Marcile's capacity.

The relevant issue is whether Marcile lacked capacity on June 13, 2018, to change the beneficiaries of her annuities. Appellant cites to medical records from several hospitalizations, transitional care, and home health care that Marcile received for falls or illnesses that Marcile experienced in 2017, reflecting instances of confusion and memory problems. After each of these incidents in 2017, however, Marcile returned to her home, and all of them occurred well before June 13, 2018, when she signed the beneficiary update.

Appellant also relies on medical records from January and February 2018, when Marcile was twice hospitalized, for pneumonia and for heart problems. Again, Marcile suffered some confusion, memory impairment, and lack of orientation during her hospitalizations. But two of her treating physicians in February testified to her competence to make medical decisions. Dr. Mark Trainor was impressed by Marcile's memory and believed that any confusion she was experiencing was due to her underlying health issues. Dr. Trainor was comfortable with Marcile's ability to make complex decisions about her treatment plan and did not see a need to appoint a decision maker. Dr. Elizabeth Peterson, the attending physician when Marcile entered the hospital, described her as a "spitfire," who "definitely verbalized very articulately what she wanted and what she didn't." She noted that Marcile was having trouble with her memory and for that reason had a family

care conference concerning Marcile, but she believed that Marcile had full capacity to make decisions. Dr. Peterson testified:

> So I believed that she had capacity, and I did throughout her hospital stay. And the reason is because even though she didn't remember the nuances of our conversation, every time we had the conversation, again, her decisions and her wishes and her desires were always the same. She was very clear with what she wanted. She was very clear with what her goals were. And given the exact same choices, she was able to tell me what the consequences would be for choosing what she chose, as well as that that was what she desired.

Upon her discharge, Marcile was required to sign a notice of rights, and no concerns were raised about her competency to do so.

Appellant also emphasizes several home-health-care notes made after Marcile returned to her home following these hospitalizations. He cites one note stating that Marcile had exhibited "[i]mpaired judgment or decision-making" and another noting "[p]oor short term memory/occasional confusion." But the nurses who cared for Marcile in 2018 until her death in 2019 testified that they believed that Marcile understood what she was doing. Marcile's case manager Denise Donais testified that Marcile could weigh the pros and cons of decisions and "knew exactly what she wanted and she understood what she was doing." Donais also explained that the "impaired judgment" note, which she authored, referred to Marcile's decision not to use her walker. Nurse Hannah Wilson testified that Marcile was donating to charity weekly and that Marcile discussed which charities she wanted to give money to upon her death. Based on this knowledge, Nurse Wilson testified that she thought Marcile was able to understand the "nature, situation, and extent of what she was doing" in June 2018 and that Marcile was able to execute legal and financial documents. Nurse

Megan Weinandt was with Marcile more than any other caregiver, spending 40 hours per week with her from March 2018 until Marcile's death in February of 2019. Nurse Weinandt testified that Marcile "was able to understand the nature, situation, and effect of what she was doing during June 2018." Nurse Alesha Burggraff, who cared for Marcile in the two months leading up to her death, testified that she "did not see any signs of dementia in Marcile up until the last weeks of Marcile's life." Additionally, Nurse Burggraff reported that Marcile told her that she knew and was confident about where her money was going when she died. Nurse Tammy Needham also testified that Marcile understood the "nature, situation, and extent of what she was doing" in June 2018.

Other persons in Marcile's life also testified regarding Marcile's abilities. Marcile's attorney Ebb had no concerns about Marcile's capacity. Additionally, Mary Wilson, who was with Marcile the day that Marcile signed the June 2018 beneficiary update, testified that Marcile could communicate clearly in June 2018.

In addition, in the months leading up to the June 2018 beneficiary update, Marcile signed several other legal documents. On May 16, 2018, Marcile met with Ebb and signed a document to accept appointment as the personal representative of her friend Lois Ludwig's estate, and in July 2018 Marcile was appointed the personal representative. Ebb had no concerns about Marcile's capacity to act as Ludwig's personal representative. On August 16, 2018, Marcile went with appellant to her bank and updated the ownership of her bank account to list appellant as a joint account owner. And on November 7, 2018, Marcile appointed appellant as her power of attorney for her Ameriprise accounts. Appellant had no concerns about Marcile's capacity at that time.

In this context, the medical records noting confusion or memory problems are insufficient to create a genuine dispute of material fact regarding Marcile's capacity to execute the 2018 beneficiary update. Marcile was an elderly woman who experienced health setbacks and had occasional confusion and memory problems. But that fact does not raise a genuine dispute about her capacity to understand the nature and effect of the June 13, 2018, beneficiary update. Indeed, mere weakness of intellect due to illness or age does not establish a lack of capacity. *See Macklett*, 1 N.W.2d at 417.

We are not persuaded by appellant's argument that, given Marcile's estate plan, the change in beneficiaries raised particularly complex issues challenging Marcile's capacity. The effect of changing the beneficiaries of annuities to charities is not difficult to understand. Moreover, Gabriel testified that, based on several conversations with Marcile, she understood the impact of the 2018 beneficiary update. She understood that Trust A and Trust B were still going to her family.[5]

Nor are we persuaded that appellant's report from his expert Dr. Orr creates a genuine dispute of fact. Dr. Orr was engaged by appellant for this litigation. He reviewed Marcile's medical records and litigation records but did not ever meet or examine Marcile. Although Marcile had never been diagnosed with dementia by any treating physician, Dr. Orr opined that the records that he reviewed showed that she suffered from "moderate vascular dementia." He concluded that Marcile "did not possess the necessary cognitive capacity to knowingly sign the beneficiary designations on or about" June 13, 2018. But,

[5] Even without the annuities, the family members received over $1 million from the trusts.

even viewing this report in the light most favorable to appellant, we conclude that it does not create a genuine dispute of material fact. In his deposition testimony, Dr. Orr agreed that people with moderate dementia can have good days and bad days, meaning they may have days where they have capacity to contract and days where they do not. Dr. Orr also agreed that Marcile may have had days of clarity. Importantly, he gave no explanation for why Marcile would not have had capacity specifically on June 13, 2018. Given the deposition testimony from caretakers and persons in Marcile's life regarding Marcile's condition before and after June 13, 2018, and Dr. Orr's recognition that a person with moderate dementia can have days where they have the capacity to contract, his report and deposition testimony do not create a genuine issue of fact regarding Marcile's capacity on that date.

In sum, even viewing the record in the light most favorable to appellant, we conclude that appellant failed to raise a genuine issue dispute of fact regarding Marcile's capacity to execute the June 13, 2018 beneficiary update. Thus, the district court did not err by granting summary judgment in favor of respondents on claims that turned on Marcile's capacity.[6]

[6] Given our ruling, we need not address the district court's alternative basis for granting summary judgment on these claims—specifically, that, even if Marcile lacked capacity on June 13, 2018, the beneficiary update could not be voided because, to void a contract, the contracting party must have had notice of the lack of capacity and appellant failed to provide any evidence to establish that Ameriprise or Gabriel had notice of Marcile's lack of capacity.

II. Appellant failed to raise a genuine issue of material fact regarding undue influence.

To establish undue influence in the probate context—the context that both parties invoke in this case—the will contestant must show that another person influenced the testator at the time the testator executed the will "to the degree that the will reflects the other person's intent instead of the testator's intent." *In re Est. of Torgersen*, 711 N.W.2d 545, 550 (Minn. App. 2006), *rev. denied* (Minn. June 20, 2006); *Teschendorf v. Strangeway (In re Wilson's Est.)*, 27 N.W.2d 429, 432 (Minn. 1947) ("Undue influence, as the term itself implies, is influence of such a degree exerted upon the testator by another that it destroys or overcomes the testator's free agency and substitutes the will of the person exercising the influence for that of the testator."). The crucial inquiry is whether the will of the person is completely dominated.

> Undue influence to invalidate a will must, at the very time the will is made, operate with such dominant and persuasive force that the will of the person exercising it is substituted for the will of the testator whereby the resulting written testament expresses the intent and purpose of that person and not that of the testator.

York v. Reay (In re Reay's Est.), 81 N.W.2d 277, 280 (Minn. 1957); *see also Torgersen*, 711 N.W.2d at 551 (explaining that the evidence must show that the influence exerted rendered the testator "a mere puppet" (quotation omitted)).

We have identified six nonexclusive factors that courts may consider when evaluating a claim of undue influence:

> (1) an opportunity to exercise influence; (2) the existence of a confidential relationship between the testator and the person claimed to have influenced the testator; (3) active participation

> by the alleged influencer in preparing the will; (4) an unexpected disinheritance or an unreasonable disposition; (5) the singularity of will provisions; and (6) inducement of the testator to make the will.

Torgersen, 711 N.W.2d at 551. The fact that certain factors are present does not establish that the testator has been unduly influenced. *See, e.g.*, *In re Est. of Anderson*, 379 N.W.2d 197, 201 (Minn. App. 1985) ("[O]pportunity alone cannot sustain a finding of undue influence."), *rev. denied* (Minn. Feb. 19, 1986); *In re Est. of Ristau*, 399 N.W.2d 101, 104 (Minn. App. 1987) (affirming summary judgment on undue-influence claim although evidence of opportunity to exercise influence was present). Undue influence must be proved by clear and convincing evidence. *Id.* at 103. Neither conjecture nor suspicion is sufficient to prove undue influence. *Torgersen*, 711 N.W.2d at 550-51.

1. Opportunity

Appellant argues that a disputed issue of fact exists regarding Gabriel's opportunity to influence Marcile because he was her long-time financial advisor, recommended that she consider giving some of her assets to charities, and met with her alone regarding her finances. Though Gabriel did have continual contact with Marcile leading up to and after the 2018 amendment, that contact does not amount to opportunity to exert undue influence in the context of this case. In *In re Est. of Ulrich*, in affirming summary judgment on an undue-influence claim, we concluded that the opportunity factor did not support undue influence when the testator was not isolated, dependent on the alleged influencer for care, or incompetent. No. A13-0368, 2013 WL 4404717, at *5 (Minn. App. Aug. 19, 2013), *rev.*

denied (Minn. Oct. 23, 2013).[7] Here, Marcile was not vulnerable to undue influence. She was represented by an attorney, Ebb, who had no concerns about her capacity; Ebb was aware of the change in beneficiaries; and, at appellant's request, Ebb even called Gabriel about the change but raised no concerns about it. Marcile was also surrounded by caretakers, friends, and family members, including appellant. Although Gabriel met with Marcile and worked with her as her financial advisor, appellant has failed to submit evidence creating a genuine factual dispute about whether he had the opportunity to unduly influence Marcile. In any event, even if the evidence created a factual dispute about the opportunity for undue influence, the existence of some factors does not conclusively establish undue influence, *Anderson*, 379 N.W.2d at 201; *Ristau*, 399 N.W.2d at 104, or necessarily defeat summary judgment, *Ulrich*, 2013 WL 4404717, at *5-6.

2. Confidential Relationship

Because the relationship between a financial advisor and a client is a confidential relationship, appellant has submitted sufficient evidence to support this factor. Again, however, the existence of some factors does not conclusively establish undue influence, *Anderson*, 379 N.W.2d at 201; *Ristau*, 399 N.W.2d at 104, or necessarily defeat summary judgment, *Ulrich*, 2013 WL 4404717, at *5-6.

[7] We find the reasoning in this case persuasive. *See* Minn. R. Civ. App. P. 136.01, subd. 1(c) ("Nonprecedential opinions and order opinions are not binding . . . , but nonprecedential opinions may be cited as persuasive authority.").

3. Active Participation

On this factor, too, appellant has submitted supporting evidence, since Gabriel met with Marcile, suggested she do "homework" on determining the charities she wished to designate, and assisted her in executing the June 13, 2018 beneficiary update. And, as stated above, the presence of any one factor is not dispositive.

4. Unexpected Disinheritance

Appellant argues that he has submitted evidence sufficient to show that the June 13, 2018 beneficiary update represented a "sharp departure" from Marcile's estate plan because it substantially increased the amount of assets going to charity instead of to family members. But the undisputed evidence shows that Marcile had long expressed interest in leaving money to charities for reasons including that she was concerned about taxes and leaving too much of her money to her family. In 2013, she made changes to her estate plan to include charities. And she continued to discuss concerns about the disposition of her wealth after 2013. It is true, as appellant notes, that the 2018 beneficiary update increased the share of Marcile's wealth that would go to charities instead of to family members. But "Inequality of distribution is not proof sufficient to support a finding of undue influence." *Mazanec v. Mazanec (In re Mazanec's Est.)*, 283 N.W. 745, 748 (Minn. 1939); *see also Ristau*, 399 N.W.2d at 104 (affirming summary judgment rejecting undue-influence claim despite inequality of distributions among family members). The undisputed evidence of Marcile's history of wishing to give to charity and her concerns about leaving her estate to family members, including because of tax consequences, demonstrates that the June 2018 beneficiary update was, at a minimum, not unexpected.

5. Singularity of the Provision

Appellant does not argue that this factor favors his undue-influence claim. Nor could he. The 2018 beneficiary update did not create a singular beneficiary provision but instead distributed Marcile's annuities broadly among eight charities, while the four original beneficiaries continued to get substantial distributions from the trusts.

6. Inducement

Finally, appellant failed to create a genuine issue of material fact that Gabriel induced Marcile to change the beneficiaries of her annuities. Appellant identifies no evidence of misconduct or corrupt intent on Gabriel's part. Gabriel served as financial advisor to Marcile and her husband, and then to Marcile alone, for over twenty years. The only undue influence that Gabriel allegedly exercised over that time was facilitating Marcile's beneficiary update in June 2018. But appellant has submitted insufficient evidence to raise a genuine dispute about whether Gabriel dominated or induced Marcile to take action to implement his will, rather than hers. Gabriel did not stand to benefit personally from the beneficiary update: he was not a beneficiary, and appellant has identified no other personal interest that would have motivated him to overcome Marcile's will so that she would decrease the allocations to her family members and increase the allocations to the charities. The undisputed evidence establishes that the June 2018 beneficiary update reflected Marcile's will to protect her money from taxes and donate to charity, while leaving money from her trusts to her family.

In sum, even when the evidence is viewed in the light most favorable to appellant, appellant's submissions did not create a genuinely disputed issue of material fact regarding

whether Gabriel unduly influenced Marcile. Appellant's evidence of undue influence amounts to pure speculation, which is insufficient to support a claim of undue influence. *See Torgersen*, 711 N.W.2d at 550-51. Gabriel had no motive to influence Marcile, let alone replace her will with his own, when he did not stand to benefit from the change in beneficiaries in any way. Though Gabriel may have had access to and a confidential relationship with Marcile as her financial advisor, there is no evidence that he exerted more influence over her than that of a normal financial advisor. In short, the undisputed evidence supports only the conclusion that the 2018 beneficiary update reflected Marcile's will to spread out her wealth by leaving money to family and to charities that she supported.

Because appellant has failed to create a genuine dispute of material fact regarding capacity or undue influence, the district court did not err in granting summary judgment in favor of respondents on all of appellant's claims.

Affirmed.