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WILLS—The Receipt of Substantial Benefits Under a Will by One in Confidential Relationship With Testator Raises a Presumption of Undue Influence Which After Rebutting Evidence Is Introduced Remains as a Permissible Inference for the Jury—*In re Wood Estate**

Testator bequeathed to proponent, his private secretary, a substantial portion of his estate.[1] Contestant, testator's niece and sole heir, attacked the validity of the bequest on the grounds of proponent's alleged undue influence, and introduced evidence indicating the existence of a confidential relationship between proponent and testator. Proponent denied both the existence of a confidential relationship and the allegations of undue influence, and introduced evidence that independent counsel had advised testator in the making of his will. The trial court granted proponent's motion for a directed verdict.[2] On appeal, *held,* reversed, two justices dissenting. The receipt of substantial benefits under a will by one in a confidential relationship with testator raises a presumption of undue influence which remains as a permissible inference for the jury even after rebutting evidence has been introduced.

The operation of any presumption raises two related questions: first, what basic facts must be shown before the presumption arises, and second, what is the status of the presumption once rebutting evidence has been introduced. With respect to the presumption of undue influence, courts have given widely varying answers to these questions.[3] Disagreement as to the first stems from the significance attributed to a confidential or fiduciary relationship between testator and beneficiary. In several jurisdictions the confidential relationship alone is sufficient to raise the presumption of undue influence,[4]

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* *In re* Wood Estate, 374 Mich. 278, 132 N.W.2d 35 (1965), 5 A.L.R.3d 1 (1966) [hereinafter cited as principal case].

1. In 1956 testator executed a will which left the residue of his estate to the co-trustees of a previously created inter vivos trust, the National Bank of Detroit and May Flemming, his private secretary. According to the terms of the trust, the co-trustees were to pay contestant $300 per month, May Flemming $150 per month and Maud Wilkins, testator's housekeeper, $65 per month. These distributions were to begin after testator's death. On January 5, 1959, the trust was amended so as to increase Miss Flemming's share to $300 per month. On August 26, 1959, testator executed a codicil to the 1956 will, incorporating the amendments to the trust agreement. Testator died January 6, 1960 at the age of 91.

2. The trial court's reasoning was apparently that no fiduciary or confidential relationship had been established so that no presumption arose and, even if such a relationship had been shown, the resulting presumption of undue influence would have been completely rebutted by the evidence of independent counsel. Brief for Appellant, app. at 217a-23a.

3. See ATKINSON, WILLS § 101, at 550-52 (2d ed. 1953).

4. See, *e.g.*, Berkowitz v. Berkowitz, 147 Conn. 474, 162 A.2d 709 (1960); In the Matter of the Estate of Swan, 4 Utah 2d 277, 293 P.2d 682 (1956). However, the mean-

while the vast majority of states require some additional evidence—most commonly evidence that the beneficiary procured or participated actively in the execution of the questioned will—before the presumption may be invoked.[5] With respect to the second question, once credible rebutting evidence—such as evidence that testator consulted independent counsel in preparing his will—has been introduced by proponent, some jurisdictions completely eliminate the presumption from the case,[6] while in others it may remain as a permissible inference for the jury.[7] With these alternatives available, the Michigan Supreme Court decided both questions favorably to the contestant, holding, in accord with precedent,[8] that the presumption arises on the minimum showing of a confidential relationship, but, contrary to precedent,[9] that credible rebutting evidence does not eliminate the presumption from the case.[10] Thus, the result of the decision, which in effect shifts both the burden of going forward with evidence and the risk of non-persuasion to the proponent-beneficiary,[11] is that in Michigan the issue of undue influence must

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ing and scope of "confidential relations" differs widely from jurisdiction to jurisdiction. In Connecticut, the presumption arises only in specifically enumerated situations—attorney-client, physician-patient, and priest-parishioner. Berkowitz v. Berkowitz, *supra*. The principal case, on the other hand, holds that confidential relations "exist whenever one man trusts in and relies upon another." Principal case at 282, 132 N.W.2d at 39. *Accord*, In the Matter of the Estate of Swan, *supra*.

5. See, *e.g.*, Cook v. Morton, 241 Ala. 188, 1 So. 2d 890 (1941); Jones v. National Bank of Commerce, 220 Ark. 665, 249 S.W.2d 105 (1952); Estate of Wright, 219 Cal. App. 2d 164, 33 Cal. Rptr. 5 (1963); Gehm v. Brown, 125 Colo. 555, 245 P.2d 865 (1952); Zinnser v. Gregory, 77 So. 2d 611 (Fla. Sup. Ct. 1955); Swaringen v. Swanstrom, 67 Idaho 245, 175 P.2d 692 (1946); Ginsberg v. Ginsberg, 361 Ill. 499, 198 N.E. 432 (1935); Sweeney v. Vierbuchen, 224 Ind. 341, 66 N.E.2d 764 (1946); Olsen v. Corporation of New Melleray, 245 Iowa 407, 60 N.W.2d 832 (1953); Palmer v. Richardson, 311 Ky. 190, 223 S.W.2d 745 (1949); Sellers v. Qualls, 206 Md. 58, 110 A.2d 73 (1954); Tarricone v. Cummings, 340 Mass. 758, 166 N.E.2d 737 (1960); Buckner v. Tuggle, 356 Mo. 718, 203 S.W.2d 449 (1947); In the Matter of the Estate of Weeks, 29 N.J. Super. 533, 103 A.2d 43 (App. Div. 1954); *In re* Estate of Day, 198 Ore. 518, 257 P.2d 609 (1953); Gold Will, 408 Pa. 41, 182 A.2d 707 (1962); *Re* Metz Estate, 78 S.D. 212, 100 N.W.2d 393 (1960); Halle v. Summerfield, 199 Tenn. 445, 287 S.W.2d 57 (1956); In the Matter of the Estate of Nelson, 72 Wyo. 444, 266 P.2d 238 (1954). Compare Lake v. Seiffert, 410 Ill. 444, 102 N.E.2d 294 (1951).

6. See, *e.g.*, In the Matter of the Estate of Weeks, *supra* note 5; *Re* Metz Estate, *supra* note 5; MODEL CODE OF EVIDENCE rule 704(2) (1942).

7. See, *e.g.*, principal case; In the Matter of the Estate of Swan, 4 Utah 2d 277, 293 P.2d 682 (1956); UNIFORM RULE OF EVIDENCE 14(b).

8. See *In re* Hartlerode's Estate, 183 Mich. 51, 148 N.W. 774 (1914). The court dismissed the possibility that *Hartlerode* might represent the Connecticut view. See note 4 *supra*. *But see* Smith v. Cuddy, 96 Mich. 562, 56 N.W. 89 (1893).

9. See *In re* Teller's Estate, 288 Mich. 193, 284 N.W. 696 (1939); *In re* Haskell's Estate, 283 Mich. 513, 278 N.W. 668 (1938).

10. Principal case at 297, 132 N.W.2d at 47.

11. It is clear that the effect of the presumption in the principal case is to shift both the burden of producing evidence and the risk of non-persuasion. As to the former the court was explicit: "The immediate legal effect of a presumption is procedural—it shifts the burden of going forward with the evidence relating to the presumed fact." Principal case at 289, 132 N.W.2d at 43. However, the court dealt only

go to the jury in almost every case involving a beneficiary who was in a confidential relationship with testator, since a directed verdict for the proponent would be proper only when the presumption has been sufficiently rebutted that reasonable men could not differ.[12]

According to the theory of presumptions adopted by the Michigan Supreme Court in the principal case, the underlying reason for "almost" all presumptions is that they represent "the course of experience"—that is, experience establishes a factual probability that if certain basic facts are true, the presumed fact will very likely also be true.[13] It is this factual probability which, according to the court, justifies retaining the presumption as a permissible inference for the jury. The existence of this factual probability with reference to any given presumption would seem to be discoverable by either of two lines of inquiry. The first approach is essentially a logical one which would require an examination of the basic fact situation—in this case, a substantial bequest to one in a confidential relationship —to determine whether or not the presumed fact—that the bequest was procured by undue influence—is a highly probable inference. The second approach is historical and requires an examination of the veracity of "the course of experience" as revealed in relevant precedent. Neither of these examinations was made in the principal case; rather, the requisite factual probability was assumed. The court's willingness to make this assumption without analysis is subject to question, for if it is not factually probable that undue in-

tangentially with the presumption's effect on the risk of non-persuasion. Nevertheless, it is equally clear from the court's discussion of jury instructions that the risk of non-persuasion also shifts to the proponent: "[T]he jury should have been instructed . . . that in the event it could not decide upon which side the evidence for and against the presumed fact of undue influence preponderated, then as a matter of law it should find that undue influence had been proved." Principal case at 296-97, 132 N.W.2d at 47. No explanation was given for this conclusion, and it does not follow from the fact that the presumption remains in the case as a permissible inference for the jury. Wigmore accepts the view that the jury may be told of the presumption as representing "the course of experience," see 9 WIGMORE, EVIDENCE § 2498*a*, at 341 (3d ed. 1940) [hereinafter cited as WIGMORE], while emphatically rejecting the view that the risk of non-persuasion ever shifts. See 9 WIGMORE § 2489; *cf.* Laughlin, *In Support of the Thayer Theory of Presumptions*, 52 MICH. L. REV. 195, 224 (1953). In the absence of any explanation, it must be assumed that the shifting of the risk of non-persuasion stems from the difficulties involved in telling the jury that it must weigh the presumption against evidence, rather than from the court's general theory of presumptions. See Morgan, *Further Observations On Presumptions*, 16 SO. CAL. L. REV. 245, 265 (1943): "To instruct a jury that a presumption is evidence or is to be weighed with or against evidence is to state a proposition without any definite meaning, a proposition which will convey only vague ideas to all of the jurors and perhaps positively erroneous notions to some of them." Morgan's solution was "to remind the jury that they must begin their consideration of the question as to the existence of the presumed fact with the assumption that it does exist." *Id.* at 264. This "working hypothesis" approach is also suggested by the Uniform rules. UNIFORM RULE OF EVIDENCE 14, commissioners' note.

12. Principal case at 291, 132 N.W.2d at 44.
13. *Id.* at 288-89, 132 N.W.2d at 42-43.

fluence is indicated merely by the fact that a gift is bequeathed to one in a confidential relationship with testator, then the rule articulated in the principal case imposes an unjustifiable burden on a significant number of testamentary beneficiaries and may unreasonably frustrate testator's intent.

Had the court examined the basic factual situation to determine whether the presumed fact of undue influence was a highly probable inference, it would have found that the fact that a substantial benefit has been bequeathed to one in a confidential relationship with testator is completely neutral; while it is certainly possible that the bequest was the result of the beneficiary's undue influence, it would seem equally possible that the gift reflected testator's voluntary desire to benefit a trusted advisor. Indeed, if one were to indulge in a "presumption against wrongdoing," the later possibility would seem the more probable of the two.[14] However, even if undue influence is considered the more likely inference, such an inference would not seem to fulfill the court's requirement of "a strong practical likelihood."[15]

If it were possible to support by "the course of experience" a presumption of undue influence when there is only a minimum showing of a confidential relationship, then the foregoing logical analysis would be irrelevant, since experience might show that apparent factual probabilities do not accurately reflect reality. However, since the court acknowledges that all presumptions are not factual probabilities derived from experience,[16] an examination of the precedent supporting this particular presumption is necessary to determine whether such a presumption is, indeed, founded on factual probability. The court relies primarily on cases involving inter vivos, not testamentary, transfers.[17] While the theory of presumptions operative in these cases is not clearly articulated, it would seem to be derived from the law's traditional suspicion of transactions which are not at arm's length, rather than from a finding of a factual probability.[18] Obviously this suspicion is based on experi-

14. See Boardman v. Lorentzen, 155 Wis. 566, 145 N.W. 750 (1914). See also Goodbar v. Lidikey, 136 Ind. 1, 35 N.E. 691 (1893), holding that the confidential status of the beneficiary ought to increase the presumption in favor of the will.

15. Principal case at 289, 132 N.W.2d at 42.

16. Principal case at 288, 132 N.W.2d at 42. The court's assertion in the principal case that almost all presumptions are "crystallized inferences of fact" is open to some question. *Ibid.* Compare Morgan, *supra* note 11.

17. Ross v. Conway, 92 Cal. 632, 28 Pac. 785 (1892); Van't Hof v. Jemison, 291 Mich. 385, 289 N.W. 186 (1939). The Michigan cases involving testamentary dispositions are inconclusive on the issue of what basic facts give rise to the presumption of undue influence. See note 8 *supra*. As recently as 1939, the court found it unnecessary to decide whether or not the presumption arose on the mere showing of a confidential relationship, since it held that any presumption would have been rebutted by evidence of independent counsel. *In re* Teller's Estate, 288 Mich. 193, 284 N.W. 696 (1939).

18. See Note, *Undue Influence in Inter Vivos Transactions*, 41 COLUM. L. REV. 707 (1941).

ence, but the theory does not necessarily require that the suspicion rise to the level of probability; rather, the presumption has the effect of imposing on the inter vivos transferee in a confidential relationship the duty of justifying the transaction. The imposition of the duty can be explained by two considerations, neither of which depends on the existence of a factual probability: first, policy objections to the effectuation of transfers obtained by undue influence, and second, the fact that since inter vivos transactions, are necessarily face to face, the transferee will be in possession of the evidence necessary to rebut the presumption that he has acted improperly.[19] The personal confrontation is absent in the testamentary situation, unless there is additional evidence that the beneficiary procured the will or otherwise participated in its execution.[20] Thus, the operation of the presumption in the inter vivos cases relied on by the court may be explained without reference to an experience-based probability.

Even if the inter vivos presumption were based on experience, inter vivos cases would still be questionable authority for the proposition that the presumption of undue influence in the testamentary situation represented a factual probability. The majority of the courts have distinguished between these two situations and have accepted the rule that the presumption of undue influence arises on the showing of a confidential relationship in the inter vivos situation, whereas additional evidence is necessary to raise the presumption against the beneficiary of a testamentary disposition.[21] This requirement of additional evidence in the latter situation is logical, for the greater formality attending the execution of a will diminishes the opportunity for wrongdoing[22] while providing a cautionary force[23] often absent in inter vivos transactions. Moreover, since the testamentary act is technically a unilateral act rather than a transaction, the beneficiary may be entirely ignorant of the bequest to him during the life of the testator.[24] Finally, the inter vivos transfer of property to one in a confidential relationship seems inherently the more suspicious situation; people do not normally dispose of their property gratuitously during their lifetime, while, on the other hand, it is a normal occurrence for persons to dispose of

19. "[H]e, who bargains in matter of advantage with a person placing confidence in him is bound to show, that a reasonable use has been made of that confidence." Gibson v. Jeyes, 6 Ves. Jun. 266, 278, 31 Eng. Rep. 1044, 1050 (Ch. 1801).

20. See PALMER & WELLMAN, CASES ON TRUSTS AND SUCCESSION 609 (1960).

21. The leading case making this distinction is Parfitt v. Lawless, L.R. 2 P. & D. 462 (1872), often cited by American courts. See, *e.g.*, Sellers v. Qualls, 206 Md. 58, 110 A.2d 73 (1954).

22. "[A] solemn testament executed under the formalities required by law" should not be invalidated unless it is affirmatively shown that testator's will was coerced. Rothermel v. Duncan, 369 S.W.2d 917, 922-23 (Tex. Sup. Ct. 1963).

23. *Cf.* Fuller, *Consideration & Form*, 41 COLUM. L. REV. 799, 800 (1941).

24. See note 20 *supra* and accompanying text.

their property gratuitously by testamentary devise—the only questionable aspect of such a gift to one in a confidential relationship is the selection of beneficiaries.[25] For these reasons, the court's assumption in the principal case that experience establishes a strong probability that any bequest to one in a confidential relationship is procured by undue influence is open to serious doubts.

Since an examination of both the factual situation and the precedent fails to establish the probability of undue influence given merely a bequest to one in a confidential relationship with testator, the rule adopted in the principal case may well result in the submission of many contested wills to the jury on inadequate evidence. However, if the jury is allowed to speculate about testator's intent, the basic function of the Statute of Wills—providing certainty that if specified formalities are observed testamentary intent will be effectuated—will be greatly impaired. Under the rule of the principal case, there are apparently no precautions which, in the event of contest, will assure a directed verdict upholding a bequest to one in a confidential relationship.[26] Moreover, the risk, delay, and expense inherent in any jury trial may force settlements which disregard what were, in fact, testator's freely expressed wishes. To the beneficiary facing a will contest, the possibility of an adverse verdict may seem great regardless of the voluntariness of the will, since, in the absence of any convincing evidence, the jury might regard an "unnatural" will—one which is unfavorable to "the natural objects of testator's affection"—as an involuntary one.[27] Finally, the primary purpose of the probate system is the speedy disposition of the estate in accordance with the will;[28] any rule which encourages dilatory will contestants without increasing the likelihood of discovering testator's true intent leaves much to be desired.

In light of these policy considerations and the doubtful nature of the assumed factual probability, it would seem that the holding in the principal case should be modified to the extent of requiring a greater evidentiary showing by the contestant before the presumption is raised and the case sent to the jury. However, the question of what this additional showing ought to include is a difficult one. The most common additional requirement is evidence that the bene-

25. See Sellers v. Qualls, 206 Md. 58, 110 A.2d 73 (1954).

26. One possibility might be to notify likely contestants at the time of execution and allow them to examine testator. However, this is highly unrealistic since wills are often executed on very short notice and testators are not usually anxious to publicize the contents of them. See Cavers, *Ante Mortem Probate: An Essay in Preventive Law*, 1 U. CHI. L. REV. 440 (1934).

27. There is some confusion about the significance of the actual terms of the will as evidence of undue influence. It seems clear that the bequests actually made are indicative of undue influence *only* insofar as they deviate from testator's actual intentions as established by evidence. See In the Matter of the Estate of Nelson, 72 Wyo. 444, 266 P.2d 238 (1954). No a priori standard should be used to determine the naturalness of the bequests. Compare Cook v. Morton, 241 Ala. 188, 1 So. 2d 890 (1941).

28. See ATKINSON, WILLS § 93 (2d ed. 1953).

ficiary procured the will, but such a requirement might well be said to be too restrictive. Furthermore, such evidence is probably so similar to evidence which directly establishes undue influence as to render any presumption superfluous.[29] Aside from this requirement, there is a wide range of circumstantial evidence which could be considered,[30] although there is apparently no one factor which always accompanies the exercise of undue influence and which is always discoverable by the contestant.[31] In response to this situation, at least one jurisdiction has adopted a flexible standard which seems to be a reasonable solution to a vexing problem. New Jersey requires, in conjunction with proof of a confidential relationship, "additional circumstances of a suspicious character," in order to raise the presumption of undue influence.[32] The "additional suspicious circumstances" rule would supply the probability, which is lacking when only a confidential relationship is shown, that is necessary to justify permitting the jury to decide the issue of undue influence. The obvious disadvantage of such a flexible rule is that it offers no concrete standards to the trial judge, and on appeal, the appellate court would be forced either to conduct what would amount to a de novo review,[33] or to allow the trial court wide discretion.[34] Undesirable as these alternatives might appear, they seem unavoidable in view of the problems created by the rule of the principal case. Moreover, since the "additional suspicious circumstances" rule insures the requisite factual probability, such a rule is within the Michigan Supreme Court's general theory that all presumptions should be based on the "course of experience."

If additional protection against the possibility of undue influ-

29. *Cf.* King, *Undue Influence in Wills in Illinois*, 2 U. CHI. L. REV. 457, 469 (1935): "If a red-haired man writes or procures a will in which he is a substantial beneficiary, a presumption of undue influence arises. Obviously the fiduciary relation is as immaterial as the red hair. The Supreme Court of Illinois has in effect so held, but the words 'fiduciary relationship' still remain in the opinions and instructions to plague the courts and confuse the juries."

30. See 3 PAGE, WILLS § 29.78 (3d ed. Bowe & Parker 1961).

31. "[I]t is not possible to say that any single circumstance or group of facts is the invariable mark of such a presumption [of undue influence], or that there is any uniform rule capable of application apart from the facts of each case." 9 WIGMORE § 2503, at 364-66.

32. See In the Matter of the Will of Blake, 21 N.J. 50, 120 A.2d 745 (1956); In the Matter of the Will of Rittenhouse, 19 N.J. 376, 117 A.2d 401 (1955).

33. Appellate courts often conduct extensive factual reviews on the issue of undue influence. See, *e.g.*, In the Matter of the Estate of Nelson, 72 Wyo. 444, 266 P.2d 238 (1954).

34. Some extra latitude for the trial judge seems required by the very nature of the experience-based presumption. Clearly, where such a presumption is operative, artificial probative force is given to evidentiary facts A and B, in establishing the presumed fact C. This artificial force is justified as embodying the lesson of experience. However, if the relevant *experience* were the jury's, there would be no need for the artificial force, since the jury could be left to draw the proper inferences from facts A and B based on its own experience. Thus the very existence of the presumption indicates that the judge's experience is more important than the jury's. *Cf.* Morgan, *Instructing the Jury upon Presumptions and Burden of Proof*, 47 HARV. L. REV. 59, 74-77 (1933).

ence is necessary, it might be found outside the court's general theory. The need for a probative relationship between the basic facts and the presumed fact is created by the court's conclusion that the presumption must have the effect of carrying the case to the jury, despite the introduction of credible rebutting evidence. If the effect of the presumption were limited to the shifting of only the burden of producing evidence, and not the risk of non-persuasion,[35] then the need for a probative relationship between the basic facts and the presumed fact would be obviated. The minimal fact of a confidential relationship might legitimately give rise to a presumption of law which shifts only the burden of producing evidence, even though the same facts could not justify a presumption of fact which shifts the risk of non-persuasion.[36] Although the theories underlying these two types of presumptions are usually thought to be at odds with one another, there is no apparent reason why they could not operate in the alternative;[37] nor would such an operation be unnecessarily complicated in practice. If contestant produces evidence of a confidential relationship, thus raising a presumption of law, the effect of such a presumption would be to impose a duty of explanation on the beneficiary.[38] Once the explanation was introduced, the beneficiary would be entitled to a directed verdict, unless his disclosure was less than candid.[39] The question of contestant's evidence of "additional suspicious circumstances" which would necessitate sending the case to the jury need not be decided until both sides have presented their evidence. Furthermore, the requisite "additional suspicious circumstances" might be drawn either from the

35. See MODEL CODE OF EVIDENCE rule 704 (1942); Morgan, *Further Observations on Presumptions*, 16 So. CAL. L. REV. 245, 265 (1943).

36. For a criticism of the distinction between presumptions of law and fact, see 9 WIGMORE § 2491.

37. Compare UNIFORM RULE OF EVIDENCE 14, which clearly adopts the view that there are two kinds of presumptions—with and without a basis in experience—which require separate treatment.

The presumption of law, in the situation where only a confidential relationship has been introduced, serves the primary function of shifting the burden of producing evidence to the party who is likely to have unique knowledge of crucial facts. See 9 WIGMORE § 2486, at 275. The beneficiary will *always* know if he has exercised undue influence. The difficulty is that he may not be able to prove it. Arguably, the utility of this type of presumption is diminished by modern discovery procedures. See Laughlin, *supra* note 11, at 220. However, it would have served an important function in the principal case, since the beneficiary, May Flemming, did not testify despite the efforts of contestant to subpeona her. Brief for Appellant, app. at 74a-75a. Compare *In re* Haskell's Estate, 283 Mich. 513, 518, 278 N.W. 668, 670 (1938) (dissenting opinion).

38. For an analysis of the beneficiary's duty to explain, see In the Matter of the Will of Blake, 21 N.J. 50, 120 A.2d 745 (1956).

39. Compare Jaffe, *Res Ipsa Loquitur Vindicated*, 1 BUFFALO L. REV. 1, 11 (1951). "The occasion calls for explanation . . . . If it appears that the defendant has not taken the pains to find out what lies in his power, or if he evades explanation at a crucial point, or if his evidence itself suggests mendacity, he has not destroyed the inference or the presumption and must submit to the jury or to a directed verdict." Jaffe was speaking of negligence law, but his analysis seems applicable to the proponent who must bear the burden of producing evidence in a will contest.

contestant's proofs or from the inadequacy of the proponent's rebuttal.[40]

The Michigan Supreme Court's decision in the principal case is the result of an attempt to incorporate the operation of the presumption of undue influence within the court's general theory of presumptions, not an examination of the specific requirements of the law of wills. The court did not consider the special problems presented by the fact situation of a bequest to one in a confidential relationship, the solutions adopted by courts in other jurisdictions, nor the practical impact of its treatment of the presumption. It may be hoped that the holding of the principal case will be modified in light of these factors. While a uniform rule of presumptions might be desirable, the natural inclination of people to favor those close to them in old age ought not be sacrificed to the requirements of legal symmetry.

40. Another possible modification is the adoption of the Connecticut rule that the presumption does not arise when the beneficiary in a confidential relationship is a "natural object of testator's affection." Berkowitz v. Berkowitz, 147 Conn. 474, 162 A.2d 709 (1960); see 40 NOTRE DAME LAW. 676, 680 (1965). However, it would seem that relative-beneficiaries are as capable of exercising undue influence as are strangers. If the basic facts, which give rise to the presumption, generate the requisite probability, then the case should go to the jury.