

SUPREME COURT OF THE STATE OF NEW YORK
Appellate Division, Fourth Judicial Department

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CA 09-01965

PRESENT: SCUDDER, P.J., CENTRA, CARNI, SCONIERS, AND PINE, JJ.

IN THE MATTER OF THE ESTATE OF IRA ROBERT
RANDALL, DECEASED.

GEORGE MITRIS AND CINDY BAGLEY,
PETITIONERS-APPELLANTS;

MEMORANDUM AND ORDER

THOMAS RANDALL,
RESPONDENT-RESPONDENT.

CROUCHER AND JONES, CANANDAIGUA (WALTER W. JONES, JR., OF COUNSEL),
FOR PETITIONERS-APPELLANTS.

PHILLIPS LYTTLE LLP, ROCHESTER (CHAD W. FLANSBURG OF COUNSEL), FOR
RESPONDENT-RESPONDENT.

Appeal from an order of the Surrogate's Court, Ontario County
(Frederick G. Reed, S.), entered June 24, 2009. The order, insofar as
appealed from, denied in part petitioners' motion for summary
judgment.

It is hereby ORDERED that the order so appealed from is
unanimously affirmed without costs.

Memorandum: Petitioners appeal from an order denying that part
of their motion for summary judgment dismissing respondent's objection
to probate of decedent's will based on undue influence. We affirm.

Petitioners met their initial burden by establishing that the
will was the product of the personal relationship of petitioner Cindy
Bagley with decedent, including his affection for her and gratitude
for her having cared for him (*see generally Matter of Branovacki*, 278
AD2d 791, 792, *lv denied* 96 NY2d 708; PJI 7:55). Indeed, Bagley
served as the sole caretaker of decedent for approximately two years
prior to his death. In opposition to the motion, however, respondent
submitted circumstantial evidence of a substantial nature sufficient
to raise a triable issue of fact whether Bagley actually wielded undue
influence (*see Matter of Johnson*, 6 AD3d 859, 861; *see generally*
Branovacki, 278 AD2d at 792).

Entered: May 7, 2010

Patricia L. Morgan
Clerk of the Court