

Offices in  
Elizabeth City, Portsmouth,  
and Virginia Beach  
Tel: 757-399-7506  
Tel: 252-722-2890  
Fax: 757-397-1267  
Web: [www.oasthook.com](http://www.oasthook.com)



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Special needs require special lawyers.

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Editor  
Sandra L. Smith,  
Certified Elder Law Attorney

## SPOUSES AND UNDUE INFLUENCE IN EXECUTING A WILL BY STEPHEN DEBOER

A previous issue of the *Oast & Hook News* addressed the concept of undue influence under Virginia law in the context of a confidential relationship and joint accounts. Undue influence can also exist with respect to drafting a will. Creating a will is an important process that significantly impacts family members, especially a spouse. A recent North Carolina Supreme Court case addressed the idea that it is possible for a person to exert undue influence over his or her spouse, regardless of the nature and extent of the marriage, and potentially render a will invalid.

In *In re Will of Jones* (N.C. Sup. Ct., No. 37A08, Dec. 12, 2008), the decedent, Mr. Jones, executed a will and trust agreement on March 3, 2005, (“March will”) in which he directed that his farming operations and all personal effects be distributed outright to his wife, Mrs. Jones, except for certain cattle which he devised to a friend. The will also directed that his shares of stock in Carolina Packers Inc., a meat packing business of which Mr. Jones was the president and majority shareholder, be placed in a trust for the benefit of Mrs. Jones for her life and then to three longtime Carolina Packers employees.

Although Mr. Jones had been diagnosed with cancer in 2004, he stayed strong until April 2005, when his health began a steady downhill course. By late July 2005, Mr. Jones was experiencing pain and confusion, CT scans showed multiple tumors in his brain, and his physicians noted that he was profoundly weak. In August 2005, Mr. Jones became a “total care” patient and relied heavily on others, especially Mrs. Jones, to assist him with daily living activities.

According to depositions and testimony from Mr. Jones's longtime friends and acquaintances, Mrs. Jones, who had been married to Mr. Jones for 47 years, thought she should receive more of Mr. Jones's estate, and she was upset about the contents of the March will. As Mr. Jones's health continued to deteriorate, Mrs. Jones repeatedly emphasized to him that everything should be left to her. She also screened calls to Mr. Jones from his attorney, and she dominated business conversations in which she previously took little part. By the end of August 2005, Mrs. Jones had convinced Mr. Jones to make another will leaving virtually everything outright to her. Mrs. Jones then found an attorney to draft this new will, and Mr. Jones executed it on September 1, 2005, ("September will").

Mr. Jones died on October 11, 2005, and the March will was submitted for probate three days later. Mrs. Jones challenged the March will on the grounds that the September will was valid and expressly revoked all previous wills. The trial court granted summary judgment to Mrs. Jones, concluding that there was no genuine issue of material fact as to whether Mrs. Jones unduly influenced Mr. Jones with respect to executing the September will, and the trial court found that the September will should control. The North Carolina Court of Appeals affirmed the decision of the trial court. This decision was appealed to the North Carolina Supreme Court.

The North Carolina Supreme Court acknowledged that prior will contest cases "demonstrated a strong respect for marriage and suggest that spouses are often accorded special consideration in undue influence cases in light of their close relationship with the testator." The Court said that in this case, there still remained the question of whether the wife's influence was "undue." The Court then analyzed the seven factors under North Carolina law to determine whether undue influence could have existed in this case. These factors are: 1) Old age and physical and mental weakness; 2) That the person signing the paper is in the home of the beneficiary and subject to his constant association and supervision; 3) That others have little or no opportunity to see him; 4) That the will is different from and revokes a prior will; 5) That it is made in favor of one with whom there are no ties of blood; 6) That it disinherits the natural objects of his bounty; 7) That the beneficiary has procured its execution. In analyzing these factors, the Court acknowledged that all seven factors need not be present, and that each factor should be carefully considered in light of the facts of each case. The Court did not reach any conclusion regarding the allegations, but discussed which evidence related to the seven factors might permit a jury to reasonably infer undue influence. As a result of its analysis, the North Carolina Supreme Court reversed the decision of the Court of Appeals, holding that there existed genuine issues of material fact related to the issue of undue influence, and that the trial court should have allowed a jury to consider those issues. The lesson to be learned from this case is that a testator may possibly be unduly influenced not just by children, strangers, or more distant relatives, but also by a spouse.

Oast & Hook recently opened an office in Elizabeth City, North Carolina, and will address other North Carolina law issues in future editions of the *Oast & Hook News*.

*Stephen DeBoer is a clerk at the law firm of Oast & Hook. Mr. DeBoer is studying law at the Regent University School of Law.*

### Ask Allie

O&H: Allie, we heard that a Virginia girl recently received a special award. Please tell us about it.

Allie: Sure! An 11-year-old Powhatan County girl will receive the People for the Ethical Treatment of Animals' Compassionate Kid Award for starting a website to raise money for oxygen masks designed for dogs, cats, and other companion animals. Monica Plumb, who wants to become a veterinarian, provided the masks to fire departments in central Virginia and four other states. The site has raised about \$3,000 and has donated 30 sets of masks. Each set costs \$55 and has three reusable masks (small, medium and large). Upon hearing of her award, Monica said, "I think this award is really awesome, and they are very nice to do that." The vice-president of PETA said in a statement that, "Monica is a kind soul who possesses a dedication and drive way beyond her years. Because of her compassion, countless animals that might have died from smoke inhalation will get a new lease on life." Monica's website is [www.petmask.com](http://www.petmask.com). I've heard that many of our local fire departments and rescue units have purchased mask kits for their personnel to use on animals. The mask kits can be found at [www.surgivet.com/catalog/rescue-resuscitation/recovery-oxygen-masks.html](http://www.surgivet.com/catalog/rescue-resuscitation/recovery-oxygen-masks.html). Congratulations to Monica on a job well done!



Please feel free to e-mail your pet- and animal-related questions to Allie at: [allie@oasthook.com](mailto:allie@oasthook.com).

### Announcements

The Chesapeake, Oast & Hook, Towne Investment Group, and TowneBank will co-present two seminars entitled "Long-term Care Planning in the Current Economy" at 6:30 p.m., Thursday, April 30th and at 1:00 p.m., Thursday, May 7th at The Chesapeake, 955 Harpersville Road, Newport News, Virginia. Seats are limited, so please register early. For more information or to register, please phone Jennifer Lantz at 757-399-7506.

Save the date for some spring cleaning. From 10:00 a.m. to 1:00 p.m., Saturday, May 9th, Stealth Shredding will have a truck at Oast & Hook's Portsmouth office so Oast & Hook's clients and friends can bring their papers to be shredded at no cost. (Stealth Shredding recycles the shredded material.)

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