

DECODING PROBATE LITIGATION: INSIGHTS FROM A CENTURY OF TEXAS WILL CONTESTS*

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“There is an epidemic failure within the game to understand what is really happening. And this leads people who run Major League Baseball teams to misjudge their players and mismanage their teams.”¹

I. PURPOSE, METHODOLOGY, AND SCOPE OF OUR STUDY

A. Why Probate Litigation Demands Data Discipline

Probate and trust litigation rewards precision because winning turns on knowing not only the law, but the patterns—procedural, medical, and human—that drive outcomes.² Our research delivers the pattern component of that precision.³ Over the past two years, we undertook a comprehensive, first-of-its-kind empirical review of Texas’s will-contest jurisprudence, reading and coding probate appellate decisions from the inception of Texas case law through early 2023.⁴ Our dataset is novel in scope and granularity.⁵ To our knowledge, no Texas practitioner or academic has assembled an end-to-end, population-aware record of will-contest decisions at this level of detail.⁶ Our data is useful to answer the questions that matter to judges, trial lawyers, fiduciaries, and clients.⁷

1. MONEYBALL, at 19:22 (Columbia Pictures 2011).

2. Cliff Wheeler, *Common Mistakes In Texas Probate Executors Guide On How To Avoid Them*, MAZUREK, BELDEN & BURKE, P.C., <https://mbb-legal.com/executors-guide-to-avoid-common-mistakes-in-texas-probate/> [<https://perma.cc/5PTD-RMHG>] (last visited Oct. 16, 2025).

3. See discussion *infra* Parts IV–V.

4. See discussion *infra* Parts IV–V.

5. See discussion *infra* Parts IV–V.

6. See discussion *infra* Parts IV–V.

7. See discussion *infra* Parts IV–V.

The animating premise is simple: As the Oakland Athletics baseball team learned in the movie *Moneyball*, reliable decisions follow from reliable data.⁸ We apply that same premise to will contests, focusing on cases challenging testamentary capacity, undue influence, formalities and solemnities, forgery, and fraud.⁹ We extracted more than seventy-five variables from each case opinion (many with up to forty-five subentries) and constructed a purpose-built database designed for legal decision-making.¹⁰ Among other things, we tracked:

The claims pleaded in each case, and whether the trial court found for the contestant or the proponent;¹¹
 The method of disposition (jury trial, bench trial, summary judgment, motion to dismiss, or other);¹²
 The interval between execution and death;¹³
 The testator's age at execution;¹⁴
 The relationship of proponents and contestants to the testator (child, spouse, sibling, subsequent spouse, non-family, etc.);¹⁵
 The gender of proponents and contestants;¹⁶
 Whether the will was holographic or not;¹⁷
 Whether the drafting attorney testified;¹⁸
 Whether a treating or retained physician testified;¹⁹
 Whether and to which party attorney's fees were awarded;²⁰
 In capacity and undue influence cases, the testator's physical and mental ailments;²¹ and,
 In undue influence cases, the mechanisms by which influence was exerted.²²

The resulting tables and figures distill lessons that practicing lawyers can apply in future cases.²³ Estate planners and fiduciaries will also find

8. *MONEYBALL*, *supra* note 1.

9. *See* discussion *infra* Parts IV–V.

10. *See* discussion *infra* Parts IV–V.

11. *See* *infra* Figure 5, Table 9.

12. *See* *infra* Parts III, V.

13. *See* *infra* Section V.C.

14. *See* *infra* Figure 14.

15. *See* *infra* Tables 1, 2.

16. *See* *infra* Section II.C.

17. *See* *infra* Part III.

18. *See* *infra* Part III.

19. *See* *infra* Part III.

20. *See* *infra* Part III.

21. *See* *infra* Sections V.A–B.

22. *See* *infra* Part V.

23. *See* *infra* Tables 1–10, Figures 1–27.

concrete guidance in high-risk scenarios—for example, when an elderly client executes an instrument in a hospital while medicated and accompanied by a new spouse.²⁴ When common sense tells us to tread carefully, the data quantifies the risk to effectively reduce the chance of a successful later challenge.²⁵ Clients find these statistics clarifying and calming.²⁶ Instead of telling clients “in my experience,” we can give an evidence-based answer to the inevitable question: “What are my chances?”²⁷

Data sharpens judgment; it does not replace it.²⁸ The Oakland Athletics’ analytics produced a winning record but not a guaranteed pennant.²⁹ The same is true in probate: witness likeability, counsel’s skill, jury composition, and other intangibles still move the needle.³⁰ Our models identify the structural currents of the court, but the trial lawyer still has to row.³¹

We also use the data to interrogate the system itself.³² Why are reversal rates lower on appeals from statutory probate courts than from county courts?³³ Should specialization expand?³⁴ Why do 58% of opinions omit the testator’s age at execution, and why do 33.2% of dementia-related opinions fail to mention any type of dementia?³⁵ Would greater medical specificity make incapacity analyses more rigorous?³⁶ These are institutional questions that anecdotes cannot answer, but disciplined measurement and data can illuminate.³⁷

What follows are the visualizations and models with concise explanations drawn from our coded opinions.³⁸ The present versions cover appellate decisions, and are being expanded to include trial court level dispositions (subject to data availability).³⁹ While we focus primarily on incapacity and undue influence, we address many other common grounds for invalidating a will.⁴⁰

24. Author’s original thought.
25. *See infra* Sections III.B, IV.A, V.
26. Author’s original thought.
27. Author’s original thought.
28. Author’s original thought.
29. MONEYBALL, *supra* note 1.
30. *See* discussion *infra* Part V.
31. *See* *infra* Tables 1–10; *see also* *infra* Figures 1–27.
32. *See* discussion *infra* Section III.C.
33. *See* *infra* Figure 20.
34. *See* *infra* Section VI.B.
35. *See* *infra* Figure 17; *see also* *infra* Figure 23
36. *See* *infra* Table 4.
37. *See* *infra* Sections V.A, VI.B.
38. *See* *infra* Parts III–V.
39. *See* *infra* Part III.
40. *See* *infra* Table 8.

B. What This Article Covers and How to Read It

Cases are coded through calendar year 2023.⁴¹ When depicted, the 2020s decade is prorated so that 2020–2023 represents the full decade.⁴² The “will contests,” as used here, means appellate challenges of trial court will contests grounded in testamentary capacity, undue influence, formalities and solemnities, forgery, and fraud.⁴³ We employed broad search terms to maximize our coverage of appellate opinions—although our review was exhaustive, we do not guarantee that every single appellate opinion was covered by our research.⁴⁴

II. POPULATIONS AND BASELINES THAT SHAPE THE DATA

A. Texas Demography in Context: Growth, Migration, and the Pandemic’s Procedural Shadow

The population of Texas has changed tremendously over recent history, which we examine in detail in this section.⁴⁵

A statistical analysis of will contest appeals must include a basic understanding of the Texas population change over time.⁴⁶ The following figures explore the overall population growth of Texas since the 1900s (Figure 1) and the age breakdown of recent Texas net migration data (Figure 2).⁴⁷

41. *See infra* Figures 8, 13.

42. *See infra* Figure 8.

43. *See infra* Table 7.

44. *See infra* Part IV.

45. *Texas Population 1900–2024*, MACROTRENDS, <https://www.macrotrends.net/global-metrics/states/texas/population> [https://perma.cc/D8VL-T5SL] (last visited Sep. 9, 2025).

46. *See infra* Figure 1.

47. *See infra* Figure 1; *see generally* Steve White et al., *Introduction to Texas Domestic Migration*, THE OFF. OF THE STATE DEMOGRAPHER (Apr. 2016), https://txsdc.utsa.edu/Resources/TDC/Publications/2016/2465/20160413_IntroductionTexasDomesticMigration.pdf [https://perma.cc/SQ89-CWAG] (showing the growth and migration of Texas in each age demographic).

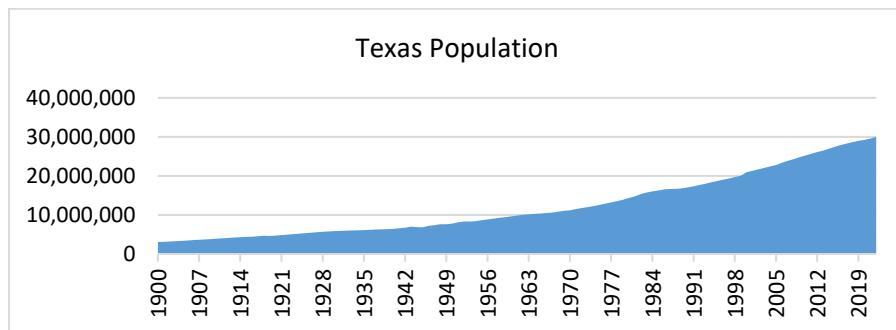


Figure 1. Texas Population Over Time.

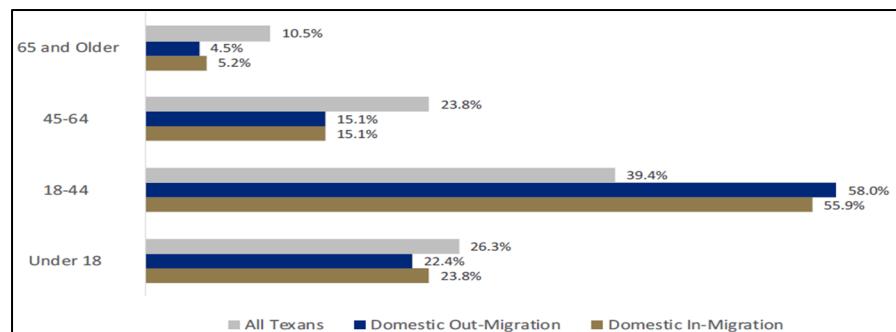


Figure 2. Texas Net Migration.

Figure 1 depicts the population growth in Texas from 1900 to 2020 using federal census data.⁴⁸ During that period, the population grew steadily by a factor of almost ten.⁴⁹ Despite the population growth, as this paper will analyze in greater detail, the impact on court filings does not necessarily directly correlate.⁵⁰

Significant events have impacted the courts, Texas's population and society since 1900.⁵¹ The COVID-19 pandemic looms large in recent memory.⁵² Nationally, the five-year trend from 2018 through 2023 indicates that incoming new cases filed in all courts had not recovered from pre-pandemic levels.⁵³ Interestingly, the Texas Judicial Branch wrote the following about probate filings overall: "Estate (probate) cases continued to grow but at a much slower rate than during the COVID pandemic."⁵⁴

48. MACROTRENDS, *supra* note 45.

49. *Id.*

50. See generally *Annual Statistical Report for the Texas Judiciary, FY 2022*, TEX. JUD. BRANCH, OFF. OF CT. ADMIN., <https://www.txcourts.gov/media/1456803/ar-statistical-fy-22-final.pdf> [https://perma.cc/3RM3-WHHC] (last visited Sep. 9, 2025) (giving an overview on court statistics in Texas).

51. See *infra* Section II.A.

52. See *infra* Section II.A.

53. *Annual Statistical Report for the Texas Judiciary, FY 2022*, *supra* note 50.

54. *Id.*

Figure 2 examines the mean age distributions for domestic migrants and the total Texas population from 2005 to 2013.⁵⁵ A Texan's life expectancy in 2020 was 76.5 years.⁵⁶ So, it may be reasonable to conclude that the majority of Texans who have not reached 76.5 years of age would not significantly factor into probate court data as a decedent.⁵⁷ This is because they have not reached the end of their statistical life expectancy.⁵⁸ Combining the 18–44 (39.4%) age group and the under 18 (26.3%) age group accounts for approximately 65.7% of the population in Texas.⁵⁹ It also seems reasonable to conclude that a significant portion of the 45–64 age group would not contribute to our data as a decedent.⁶⁰ The over 65 age group's net migration only slightly favored in-migration.⁶¹ All in all, domestic in-migrants to Texas (and most Texans, generally) during the last 20 years were not in the older age groups that predictably would see the most involvement as a decedent in will contests.⁶² Stated another way, the data suggests that the pool of those who have exceeded life expectancy has not grown nearly as fast as the younger categories and, as of 2016, currently accounts for just over 11% of the population.⁶³ Newer data released after 2022 revealed Texas as the second youngest state in the nation, with a median age of 35 years.⁶⁴

Because of the significant overall population growth, the data in this paper has, in most cases, controlled for the population numbers, and when indicated, has provided both raw data statistics and population-controlled figures.⁶⁵

B. The “Appellate Opinion Population” and Court Architecture

Texas has fourteen courts of appeal and a supreme court through which will contest appeals are handled.⁶⁶ Since the underlying research looked at all Texas will contest appeals, our data comes from all fifteen courts.⁶⁷

55. *See supra* Figure 2.

56. Jesus Vidales, *Life Expectancy Dropped Across the U.S. How Long Can Texas Residents Expect to Live?*, AUSTIN AM. STATESMAN (Dec. 21, 2023), <https://www.statesman.com/story/news/state/2023/12/21/texas-life-expectancy-state-ranking-how-long-expect-live/71986252007/> [https://perma.cc/QL3S-N2FW].

57. *See infra* Figure 8.

58. *Annual Statistical Report for the Texas Judiciary, FY 2022*, *supra* note 50.

59. *See supra* Figure 2.

60. *See supra* Figure 2.

61. *See supra* Figure 2.

62. *See supra* Figure 2.

63. *See supra* Figure 2.

64. Lauren Leining, *In an Aging Nation, Texas’ Population Remains One of the Youngest*, TEX. 2036, <https://texas2036.org/posts/in-an-aging-nation-texas-population-remains-one-of-the-youngest/> [https://perma.cc/54JG-6XXR] (last visited Sept. 10, 2025).

65. *See infra* Part IV.

66. *Court Structure of Texas*, TEX. CTS., (Jan. 2025) <https://texapedia.info/wp-content/uploads/2022/11/Texas-Judiciary-Structure-January-2025.webp> [https://perma.cc/ZGA4-UMY9].

67. *See infra* Figure 3.

Texas has twenty-four statutory probate courts in twelve counties (as of 2025), 260 statutory county courts, and 254 constitutional county courts.⁶⁸ The statutory probate courts did not become part of the Texas court system until around 1951 and continued to send trial work to the district courts until legislation beginning in the 1970s delegated that work to the probate courts.⁶⁹

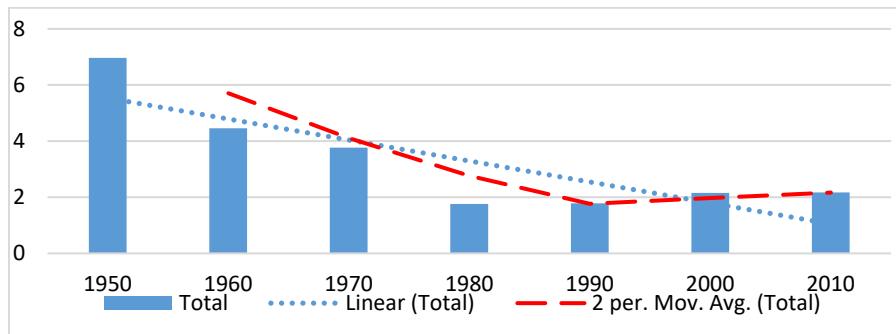


Figure 3. Frequency of Will Contest Appeals from a Testamentary Capacity Challenge.

Figure 3 depicts the total number of will contests in the appellate courts adjusted for population growth (*cf.* Figure 1).⁷⁰ The y-axis represents the number of will contest appeals per million of population.⁷¹ The dashed line uses an average of the prior two periods to create a trend line.⁷² The dotted line is a linear trend.⁷³

The raw numbers depict a growth of will contest appeals by just over 11% in the twenty years of the 2000s and 2010s.⁷⁴ According to federal census data, Texas's population grew from 20,944,499 in 2000 to 29,232,474 in 2020—an almost 40% increase (i.e., almost 30% more growth than the frequency of testamentary capacity appeals).⁷⁵ To consider the baby boomer phenomenon, we used various sources to track testator age at the time of the

68. *Court Structure of Texas*, *supra* note 66.

69. Boone Schwartzel & Doug Wilshusen, *Texas Probate Jurisdiction—There's a Will, Where's the Way?*, 53 TEX. L. REV. 323, 335–36 (1975).

70. *See supra* Figure 3.

71. *See supra* Figure 3.

72. *See supra* Figure 3.

73. *See supra* Figure 3.

74. *See infra* Figure 18.

75. *See State Intercensal Tables: 2000-2010*, U.S. CENSUS BUREAU (Sept. 2011), <https://www2.census.gov/programs-surveys/popest/tables/2000-2010/intercensal/state/st-est00int-01.xls> [https://perma.cc/Q5WK-XFE8]; *see also* *Annual Estimates of the Resident Population for the United States, Regions, States, District of Columbia, and Puerto Rico: Apr. 1, 2020 to July 1, 2022*, U.S. CENSUS BUREAU (Dec. 2022), <https://www2.census.gov/programs-surveys/popest/tables/2020-2022/state/totals/NST-EST2022-POP.xlsx> [https://perma.cc/5MS4-AG3H].

will execution ceremony.⁷⁶ The appellate court data we tracked reflects no significant deviations in average testator age during the same decades.⁷⁷

<u>Year</u>	<u>Testator Age at Execution (avg.)</u>
2000	81.26
2010	78.36
2020	79.90

Despite expectations, when analyzing these numbers, the frequency of will contests has not increased.⁷⁸ More data will be needed to reach an understanding of this strange anomaly.⁷⁹ However, one possibility is that those contributing to Texas's population growth are generally younger.⁸⁰ According to the Texas Office of the State Demographer (*see* Figure 2), 55.9% of domestic in-migration was in the 18–44 age range.⁸¹ Thus, of the more than eight million new residents, more than five million of these new Texans would not likely impact our data (and likely more, especially if you consider all the under 18 domestic in-migrants and the portion of the over forty-five year olds who are not in the life expectancy danger zone).⁸²

It appears reasonable to conclude that significant growth within the probate court system remains imminent—perhaps a perfect storm.⁸³ This growth is likely to come from a combination of the baby boomer phenomenon and the explosive growth of new domestic in-migrants to Texas who will inevitably become part of the statistical probate court pool.⁸⁴

76. Author's original thought. The Courts of Appeal did not universally provide this information within each opinion. To provide the most accurate data, when available, we scoured Ancestry.com for death certificates and birth certificates to find a testator's age. We also tracked the presence or absence of that information in the opinion.

77. *Id.*

78. Author's original thought.

79. *Id.*

80. *Id.*

81. White et al., *supra* note 47.

82. *See id.*

83. Author's original thought.

84. *Id.*

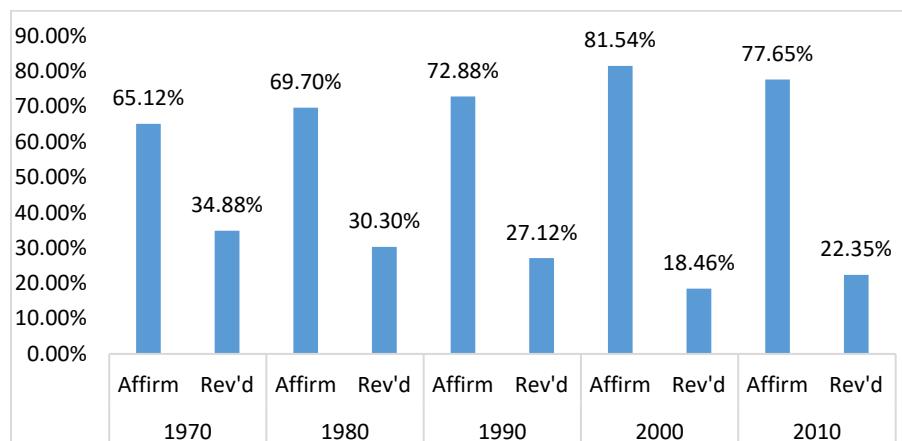


Figure 4. Courts of Appeal Will Contest Rulings, 1970–2019.

The above Figure shows the reversal rates of will contest cases in the courts of appeal over time.⁸⁵ The rates have mostly declined since the 1970s.⁸⁶ The courts of appeal have decreased reversals by a statistically significant margin of around 12% and increased affirmations by the same margin.⁸⁷ These changes appear to have occurred systematically over the preceding 40–50 year period.⁸⁸ Appellees should take solace in the fact that reversals have occurred in less than 23% of will contest cases since the turn of the century.⁸⁹

C. Who Litigates Will Contests? Contestants, Proponents, and Their Roles

The research underlying this paper examined the makeup of Texas will contest litigants using data compiled from the opinions.⁹⁰ Data often revealed the relationship between the contestant and proponent to the testator, whether the proponent served as a caregiver to the testator, and whether the will designated the proponent to serve as executor.⁹¹ The following figures provide an analysis of the typical parties involved in a will contest.⁹²

85. See *supra* Figure 4.

86. See *supra* Figure 4.

87. See *supra* Figure 4. This analysis excluded mixed rulings and mandamus to simplify the data.

88. See *supra* Figure 4.

89. See *supra* Figure 4.

90. See *infra* Table 1.

91. See *infra* Table 1.

92. See *infra* Table 1.

Rank	Who is the Contestant?	Percentage
1	Son	17%
2	Daughter	15%
3	Children	12%
4	Other family	7%
5	Grandchildren	6%
6	Brother	6%
7	Non-family	5%
8	Wife	5%
9	Niece	4%
10	Sister	4%

Table 1. Ranking the Typical Contestant.

As shown in Table 1, children of the testator are the most likely to challenge a will's validity. DeVises to children have been regarded as "natural" by the courts, so children may feel entitled to a parent's property even if they are excluded from the will. The Texas Supreme Court in 1856 explained:

One of the main objects of the acquisition of property by the parent, is to give it to his child; and that child in turn will give it to his, and in this way the debt of gratitude we owe to our parent is paid to our children. Each generation pays what it owes to the preceding one, to the succeeding one. This seems to be the natural law for the transmission of property.⁹³

Rank	Who is the Proponent?	Percentage
1	Non-family	16%
2	Unspecified	12%
3	Son	9%
4	Daughter	9%
5	Subsequent wife	9%
6	Executor	5%
7	Child	5%
8	Other family	5%
9	Sister	4%
10	Wife	4%

Table 2. Ranking the Typical Proponent.

93. *Saufley v. Jackson*, 16 Tex. 579, 581 (1856).

Any entitlement felt by children may also explain the likelihood of challenging a will in probate.⁹⁴ Table 2 reflects that a child served as the proponent in 23% of cases on appeal.⁹⁵ Another reason for the prevalence of children as parties could be that children are the most likely devisees under a will.⁹⁶

The most common proponent was a non-relative of the testator.⁹⁷ This includes caregivers, friends, and romantic, unmarried partners.⁹⁸ In a surprising 12% of cases reviewed, the proponent's identity was unspecified, suggesting that courts focus more on the identity of the contestant than the proponent in reaching their decisions.⁹⁹ Also notable is that a subsequent wife (such as a second or third wife) served as the proponent in 9% of appeal cases.

Our data reflects that a will executed by a male testator was slightly more likely to be challenged on appeal, but the female testators' wills were challenged at 47.46% and the male testators' wills were challenged at 52.54%.¹⁰⁰

94. *See, e.g.*, Stephenson v. Stephenson, 25 S.W. 649, 531 (Tex. App.—Houston 1894) (involving a child contesting a parent's will, which may suggest children's sense of entitlement in probate matters).

95. *See supra* Table 2. We broke the data down to gender of the child for added granularity, so careful study of the tables is recommended. The gender was not always obvious so there is a mix of references to child, son, and daughter.

96. TEX. EST. CODE ANN. § 255.153(b).

97. *See supra* Table 2.

98. *See supra* Table 2.

99. *See supra* Table 2.

100. *See supra* Table 1.

III. TRIAL-LEVEL DISPOSITIONS: WHAT WINS, WHAT DOESN'T, AND WHY

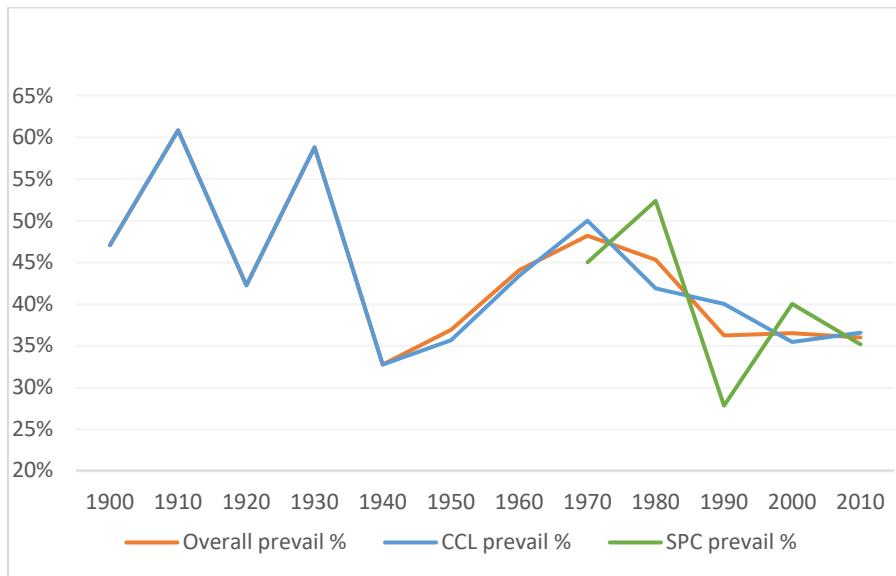
A. Outcomes by Forum and Over Time*Figure 5. Contestants' Performance Review—All Time.*

Figure 5 tracks the contestants' success rate by decade and further breaks down the success rate by trial court.¹⁰¹ The statutory probate courts (courts devoted to and specializing in probate and guardianship matters) did not become as widespread as trial courts until approximately the 1970s.¹⁰² Contestants in the statutory probate courts experienced varied success rates, but on average, prevailed only about 40% of the time.¹⁰³ Unfortunately, contestants' success rates have declined over time in both county courts and statutory probate courts.¹⁰⁴

Does the decline in wins for contestants indicate that society has generally grown distrustful of will contests?¹⁰⁵ After all, Texas has long been careful not to disturb a person's final wishes absent sufficient justification.¹⁰⁶ Consider the following passage, typical of probate-related opinions:

101. *See supra* Table 1.

102. Schwartzel & Wilshusen, *supra* note 69, at 335–36.

103. *See supra* Figure 5.

104. *See supra* Figure 5.

105. *See supra* Figure 2 (posing the question whether the decline in contestant wins indicates societal distrust of will contests).

106. *Farmer v. Dodson*, 326 S.W.2d 57, 61 (Tex. App.—Dallas 1959, no writ).

Though a testator may be aged, infirm, and sick he has the right to dispose of his property in any manner that he may desire if his mental ability meets the law's tests. It is not for courts, juries, relatives, or friends to say how property should be passed by will, or to rewrite a will for a testator because they do not believe he made a wise or fair distribution of his property.¹⁰⁷

Perhaps skilled litigators are fewer and further between than in the days of old (not because of the prevailing rate with juries, but because of the decline in overall frequency of the jury trial).¹⁰⁸ With the rise of dispositive motions, a contestant's attorney must often overcome both motions to dismiss and motions for summary judgment before ever seeing a trial.¹⁰⁹ Interestingly, the prevalence of jury trials has seen a declining trend line similar to the contestants' success rates.¹¹⁰

The decline in contestant wins may also be linked to the increasing popularity of mediations and the growing mandatory requirement for mediations by most courts.¹¹¹ Proponents might now be settling cases in which the contestant produces convincing evidence to support their claims.¹¹² The remaining claims that proceed to trial are likely to involve solid but disputed evidence.¹¹³ In such situations, the contestant, as the party bearing the burden of proof, appears statistically more likely to lose.¹¹⁴

107. *Id.*

108. *Preserving the Future of Juries & Jury Trials*, NAT'L CTR. FOR STATE CTS. 5 (Dec. 1, 2024), <https://www.ncsc.org/sites/default/files/media/document/Future-of-Juries-and-Jury-Trials.pdf> [https://perma.cc/TDR9-V7L9].

109. Bridget B. Zoltowski, *Restoring Investor Confidence: Providing Uniformity in Securities Arbitration by Offering Guidelines for Arbitration by Offering Guidelines for Arbitrators in Deciding Motions to Dismiss before a Hearing on the Merits*, 58 SYRACUSE L. REV. 375, 391 (2008) (discussing the increase in dispositive motions); TEX. R. CIV. P. 91(a); TEX. R. CIV. P. 166(c).

110. *See supra* Figure 5 (showing a declining trend that is similar to contestant success rates).

111. *See supra* Figure 2 (illustrating a downward trend that may be associated with greater mediation use).

112. *In re F.M.E.A.F.*, 572 S.W.3d 716, 722 (Tex. App.—Houston [14th Dist.] 2019) (reversing termination of parental rights where the evidence was legally insufficient to meet the clear-and-convincing standard, suggesting settlement might have avoided reversal).

113. TEX. R. CIV. P. 166a(i) (permitting summary judgment absent evidence, thereby reserving trial for issues with disputed proof).

114. *Joseph v. State*, 3 S.W.3d 627, 639 (Tex. App.—Houston [14th Dist.] 1999) (“Where the evidence is of equal weight, we cannot say a defendant has carried his burden of proof by a preponderance of the evidence.”).

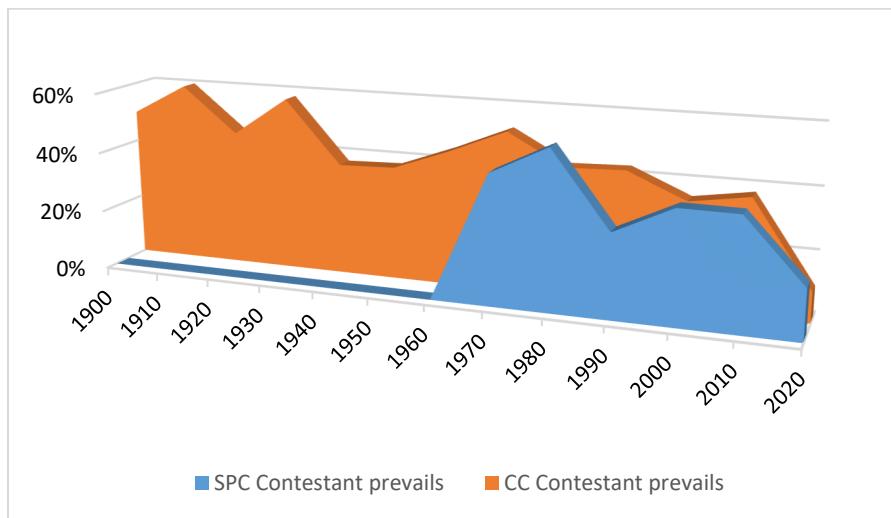


Figure 6. Statutory Probate Court vs. County Court—Judgments for Contestant.

Figure 6 indicates that the Texas court systems appear to be healthy: fair and even-handed.¹¹⁵ In short, there appears to be no inherent bias for or against any party between the statutory probate court and the county courts.¹¹⁶ Across all time, the dataset revealed that the proponent prevailed in 60% of will contests and the contestant in 40%.¹¹⁷

B. Timing Matters: “Age of Will” vs. Success by Factfinder

The next two illustrations address the impact of the age of the will on the prevailing party.¹¹⁸

115. *See supra* Figure 6.

116. *See supra* Figure 6.

117. *See supra* Figure 6.

118. *See infra* Figure 7; *see infra* Table 3.

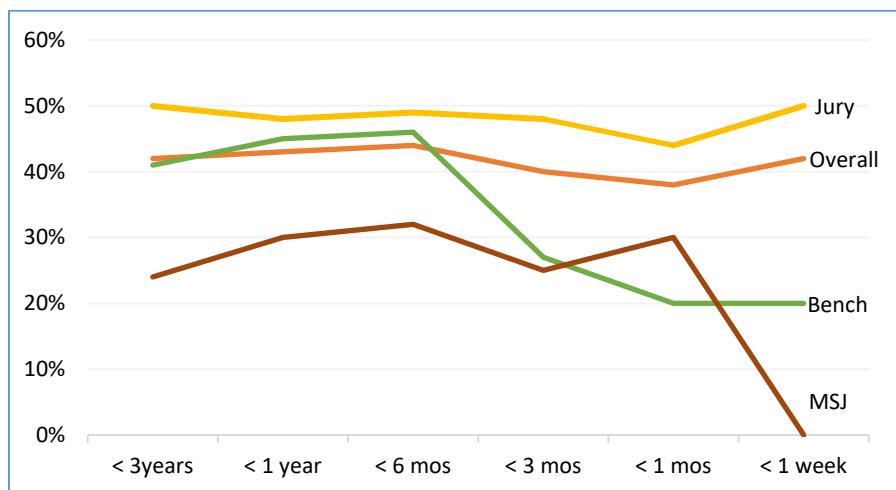


Figure 7. Judgment for Contestant—Age of Will and Factfinder.

Will age	Overall	Jury	Bench	MSJ
< 3 years	42%	50%	41%	24%
< 1 year	43%	48%	45%	30%
< 6 mos.	44%	49%	46%	32%
< 3 mos.	40%	48%	27%	25%
< 1 mo.	38%	44%	20%	30%
< 1 week	42%	50%	20%	0%

Table 3. Judgment for Contestant vs. Age of Will Statistics.

The appellate courts often identified the amount of time between the date the testator executed their will and the date of the testator's death.¹¹⁹ Statistically speaking, this fact—described in Figure 7 as the “Age of Will” on the x-axis—appears to be (and is logically) an important factor for the courts in reaching their decisions, regardless of whether the claim was for incapacity, undue influence, a lack of formalities and solemnities, forgery, or fraud.¹²⁰ Despite the frequent mention by the appellate courts and the apparent logic, the age of the will has not historically affected the overall outcome for contestants.¹²¹ The contestants' overall success rate remained

119. See generally *Ely v. Reiche*, 357 S.W.2d 461, 468 (Tex. App.—Texarkana 1962, writ ref'd n.r.e.) (explaining that age of decedent and her illness, coupled with the time the will was signed was proof of undue influence); see also *Jowers v. Smith*, 237 S.W.2d 805, 806 (Tex. App.—Amarillo 1950, no writ) (explaining that the decedent's age, illness, and timing of the will were insufficient alone to prove undue influence).

120. See *supra* Figure 7.

121. See *Ely*, 357 S.W.2d at 468; see also *Jowers*, 237 S.W.2d at 806.

around 40% regardless of whether the will was executed one week before death or more than three years prior to death.¹²²

The success rate for contestants on appeal varies widely depending on the factfinder of the case.¹²³ For example, contestants challenging a will less than one week old won approximately 50% of the time with juries.¹²⁴ By contrast, contestants challenging a will less than one week old won only 20% of the time in bench trials and a staggering 0% of the time with summary judgments.¹²⁵ Across the board, contestants tended to see considerably more favorable outcomes with juries than with the alternatives.¹²⁶

Presumably, many of the cases that made it to a jury trial had already overcome a dispositive motion.¹²⁷ Thus, the cases that made it to trial were likely stronger cases for the contestants than those that were resolved against them at an earlier phase.¹²⁸ Still, the same can be said for bench trials, and overall, contestants have consistently fared better with jury trials than with bench trials.¹²⁹

Should this information signal to contestants and their attorneys to push their cases to jury trials?¹³⁰ The research suggests the answer is probably yes.¹³¹ Conversely, proponents and their attorneys should consider these statistics when negotiating on the doorstep of a jury trial.¹³²

An interesting phenomenon is the correlation between the age of the will and a contestant's success rate in bench trials and summary judgment proceedings.¹³³ The data shows that contestants won less often with a will signed within six months of death than with a will signed more than six months before death.¹³⁴ A recurring fact pattern in the cases involved a testator stricken with a terminal illness who passed away shortly after executing the will.¹³⁵ Perhaps judges are more sympathetic to a testator planning for his or her imminent demise and more understanding of loved ones pushing for the execution of a will.¹³⁶ In the case of *Ely v. Reiche*, the Texarkana Court of Appeals affirmed a judgment notwithstanding the verdict

122. See *supra* Figure 7; see *supra* Table 3.

123. See *supra* Figure 7; see *supra* Table 3.

124. See *supra* Figure 7; see *supra* Table 3.

125. See *supra* Figure 7; see *supra* Table 3.

126. See *supra* Figure 7; see *supra* Table 3.

127. Author's original thought.

128. *Id.*

129. *Id.*

130. *Id.*

131. *Id.*

132. *Id.*

133. See *supra* Figure 7; see *supra* Table 3.

134. See *supra* Figure 7; see *supra* Table 3.

135. See *supra* Figure 7; see *supra* Table 3.

136. Author's original thought.

in favor of the proponent when the testator executed her will within one month of death following a terminal cancer diagnosis.¹³⁷

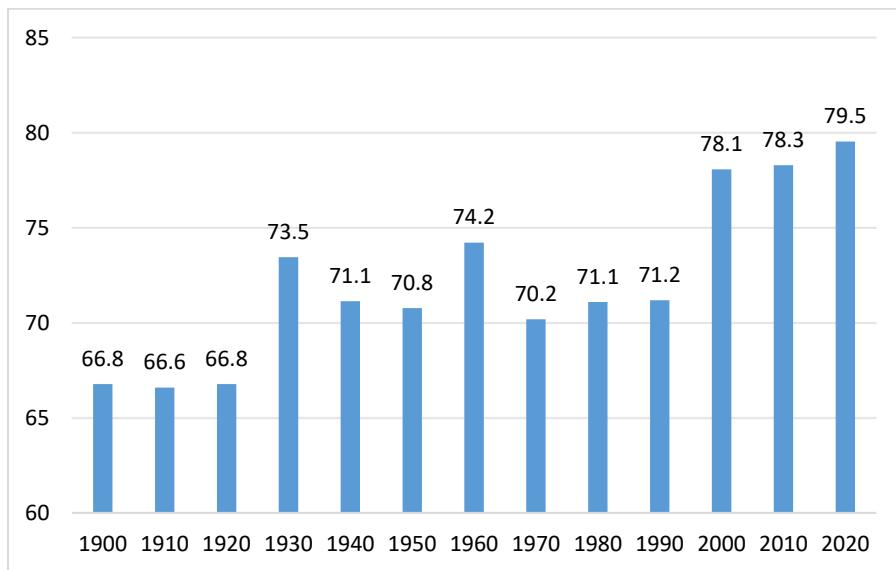


Figure 8. Testator's Age at Will Execution.

Figure 8, at least in part, reflects the increase in life expectancy since the early twentieth century.¹³⁸ The life expectancy in Texas was only 62.8 years in 1940 compared to 78.8 years in 2019.¹³⁹ Notably, since the 1930s, wills executed by septuagenarians have seen the most challenges on appeal.¹⁴⁰

137. *Ely v. Reiche*, 357 S.W.2d 461, 462 (Tex. App.—Texarkana 1962, writ ref'd n.r.e.).

138. *See supra* Figure 8.

139. Steven H. Woolf & Heidi Schoomaker, *Life Expectancy and Mortality Rates in the United States, 1959-2017*, JAMA NETWORK (Nov. 26, 2019) <https://jamanetwork.com/journals/jama/article-abstract/2756187> [<https://perma.cc/L62C-NTL4>].

140. *See supra* Figure 8.

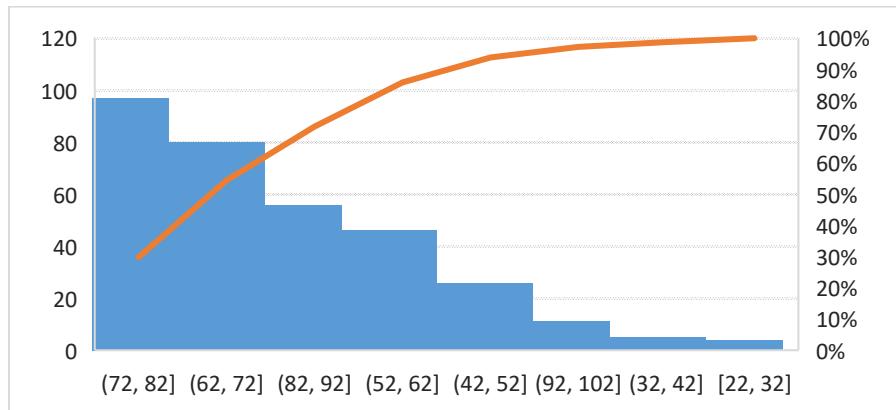


Figure 9. *Testator Age—Histogram of Prevalence, 10 yr. bin.*

Figure 9 depicts the age distribution of testators in will contests filed, regardless of the outcome.¹⁴¹ Wills executed by testators in the 73–82 age range resulted in the most will contests.¹⁴² Testators in this age range could be the most susceptible to cognitive decline and undue influence.¹⁴³ Testators in this age range may be the most likely to execute a will.¹⁴⁴ In other words, if this is the age range when most people engage in estate planning, then this age range would see the most will contests.¹⁴⁵

According to the World Health Organization, age is the “strongest known risk factor for dementia,” and people over the age of 65 are most at risk.¹⁴⁶ Estate planners would be prudent to advise clients that, based on the statistics included in this research, the earlier a will is executed, the less likely it is to be challenged.¹⁴⁷ This advice is often axiomatic, but with our data, it is now statistically demonstrable.¹⁴⁸

141. *See supra* Figure 9.

142. *See supra* Figure 9.

143. *See supra* Figure 9.

144. *See supra* Figure 9.

145. *See supra* Figure 9.

146. *Dementia*, WORLD HEALTH ORG. (Mar. 31, 2025), <https://www.who.int/news-room/factsheets/detail/dementia> [https://perma.cc/6NAV-EFRD].

147. Author’s original thought.

148. *See infra* Figure 10.

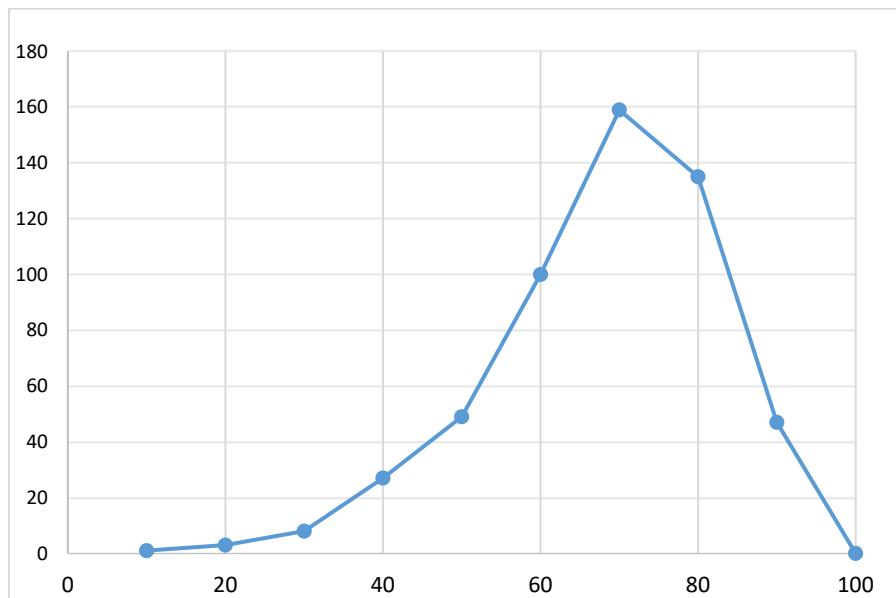


Figure 10. Will Contest Appeals by Testator Age (for Appeals Where Age Was Mentioned or Could be Located).

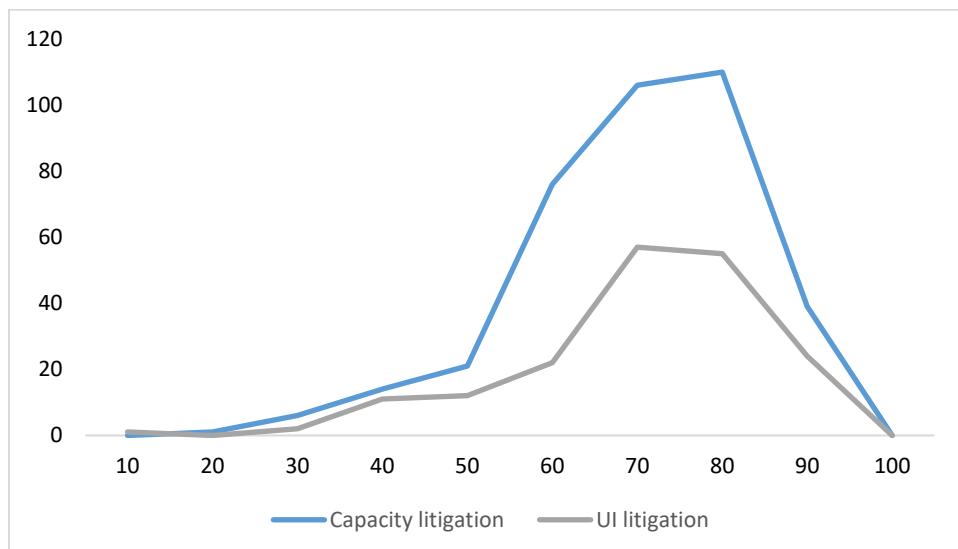


Figure 11. Filing Frequency by Cause of Action and Testator Age (for Appeals Where Age was Mentioned or Could be Located).

Figure 11 breaks down the filing frequency between challenges based on testamentary capacity and undue influence.¹⁴⁹ The shape of the graph lines

149. See *supra* Figure 11.

are similar, which we interpret to suggest that the age-related risk of an undue influence claim is similar to that of testamentary capacity.¹⁵⁰

C. The Declining Jury Trial and the Rise of Bench/MSJ Resolutions

Our research tracked considerable data from trial court outcomes.¹⁵¹ Our curiosity led us to track not only the trial court victor, but the manner in which that victory was achieved.¹⁵² The figures in this section depict some expected changes in how trial court cases are resolved.¹⁵³ However, we also see some beneficial paths for clients and the justice system.¹⁵⁴

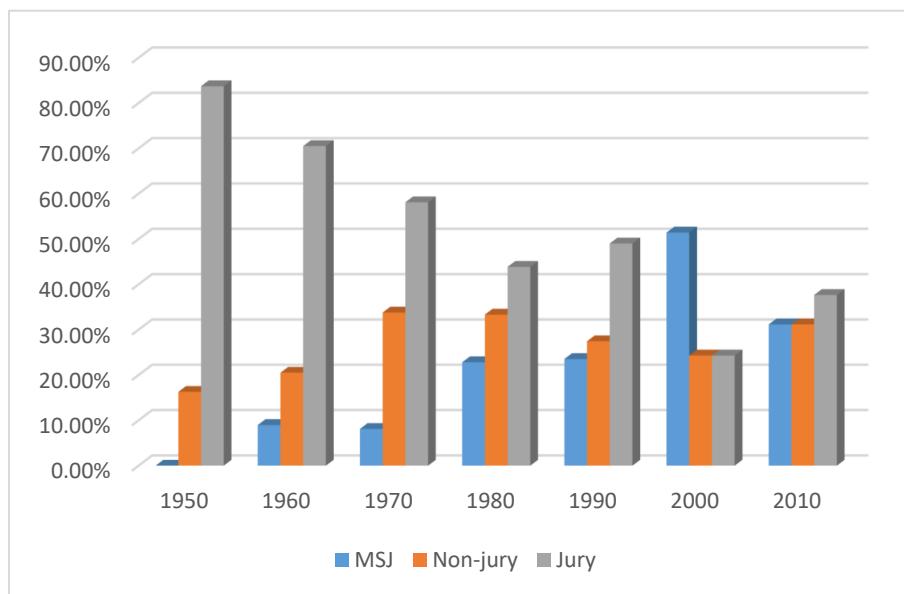


Figure 12. Will Contests—Viewed by Manner of Trial Court Disposition.

Figure 12 represents the breakdown of will contest dispositions in the trial court.¹⁵⁵ The manners of disposition examined in this figure are limited to the most frequent types: motions for summary judgment, non-jury trials, and jury trials.¹⁵⁶ The number of jury trials has always exceeded or matched the number of bench trials, but jury trials are no longer the predominant manner of resolution compared to combined bench trial and summary

150. *See supra* Figure 10; *see also supra* Figure 11.

151. *See infra* Figure 12.

152. Author's original thought.

153. *See infra* Figure 12.

154. Author's original thought.

155. *See supra* Figure 12.

156. *See supra* Figure 12.

judgment figures.¹⁵⁷ For example, 75% of will contests in the 2000s were resolved through either a bench trial or summary judgment, and 62% of will contests in the 2010s were resolved through either a bench trial or summary judgment.¹⁵⁸

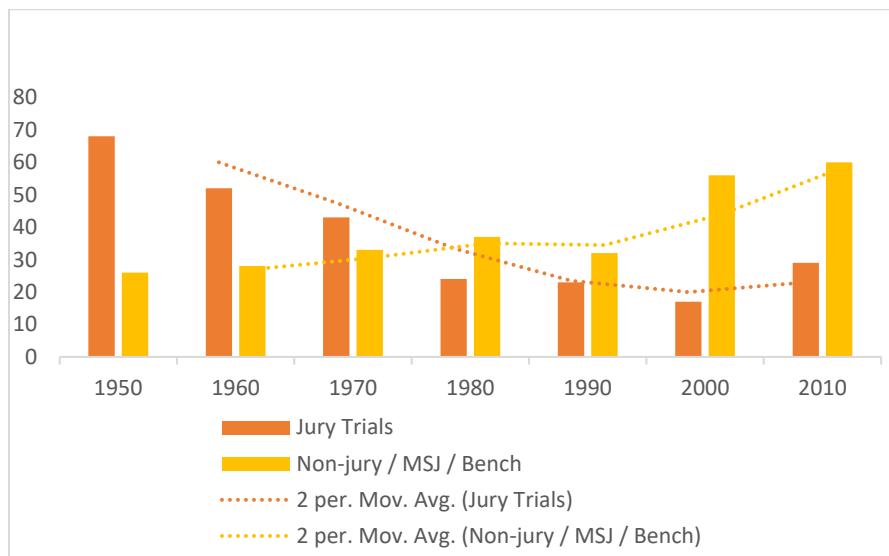


Figure 13. Contest Disposition Per Capita by Decade.

Figure 13 represents the manner of disposition for will contests that reached the appellate courts by decade.¹⁵⁹ Possible explanations for the decrease in jury trials compared to other methods of disposition include the increasing cost of litigation and the rise of dispositive motions and mediations.¹⁶⁰

If the trend lines continue to follow a similar trajectory, we will see a widening gap between the number of cases decided by jury trial versus other methods of disposition.¹⁶¹ The decline of the jury trial may be indicative of a leaner system that saves the courts, lawyers, clients, and jurors' time and resources.¹⁶² On the other hand, it may be indicative of a system bogged down by pretrial procedural hurdles that stand in the way of a litigant in need of justice.¹⁶³ And in any event, the trend may be concerning for contestants.¹⁶⁴

157. See *supra* Figure 12.

158. See *infra* Figure 13.

159. See *supra* Figure 13.

160. Tracy Walters McCormack & Christopher John Bodnar, *Honesty Is the Best Policy It's Time to Disclose Lack of Jury Trial Experience*, 23 GEO. J. LEGAL ETHICS. B.J. 155, 156–57 (2010).

161. Author's original thought.

162. *Id.*

163. *Id.*

164. *Id.*

IV. APPELLATE DYNAMICS: FREQUENCY, REVERSALS, AND THE TREATMENT OF AGE

A. Appeals Over Time: Raw Counts, Per Capita Views, and Trendlines

We derived our research from appellate opinions, and so it naturally contains a wealth of appellate statistics and data.¹⁶⁵ In this section, we examine a few highlights.¹⁶⁶

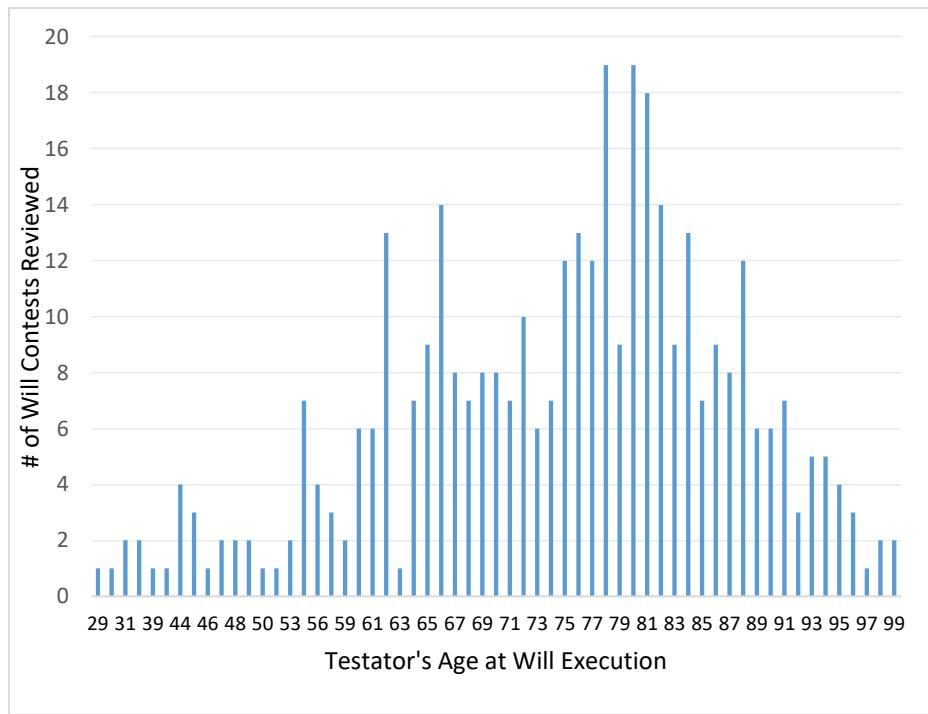


Figure 14. Will Contest Appeals—Testator Age at Execution vs. Frequency.

Figure 14 breaks down the frequency of will contest appeals by the age of the testator at the time of execution.¹⁶⁷ It reinforces that wills executed before the 70 to 80 age range may be less likely to face a challenge.¹⁶⁸

165. *See infra* Figure 14.

166. *See supra* Section IV.A.

167. *See supra* Figure 14.

168. *See supra* Figure 14.

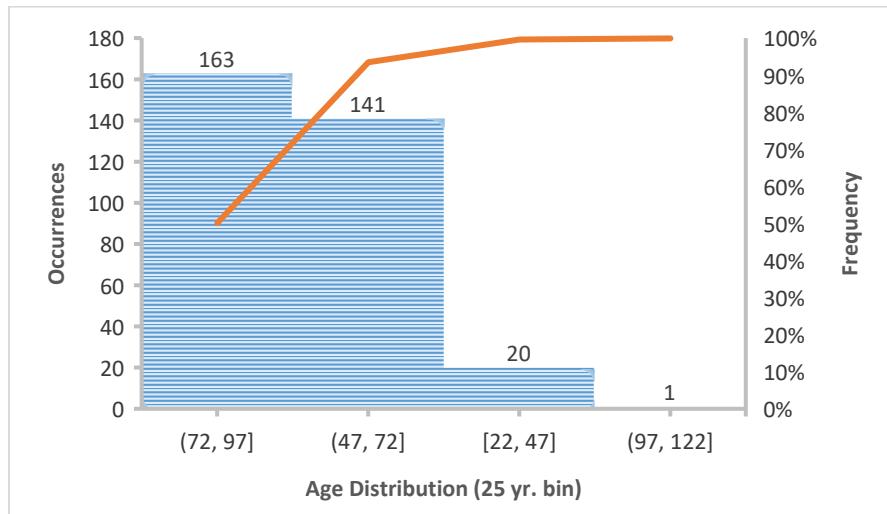


Figure 15. Testator Age Distribution—Age Reference Absent from Appellate Opinion.

Figure 15 is a histogram.¹⁶⁹ The x-axis contains “bins,” set for 25-year intervals.¹⁷⁰ The histogram then ranks the bins by frequency.¹⁷¹ Figure 15 considers the twenty-five-year testator age brackets by frequency of appeal.¹⁷² By way of further education, in the x-axis, numbers that are preceded or followed by parentheses are excluded from the bin, while those adjacent to a bracket are included.¹⁷³ For example, the label “[10, 20]” denotes that both 10 and 20 are within the bin range.¹⁷⁴ The label “(20, 40]” shows that 20 is not within the bin range, but 40 is included.¹⁷⁵

169. See *supra* Figure 15.

170. See *supra* Figure 15.

171. See *supra* Figure 15.

172. See *supra* Figure 15.

173. See *supra* Figure 15.

174. See *supra* Figure 15.

175. See *supra* Figure 15.

B. When Age Goes Unsaid: Omission Patterns and Their Implications

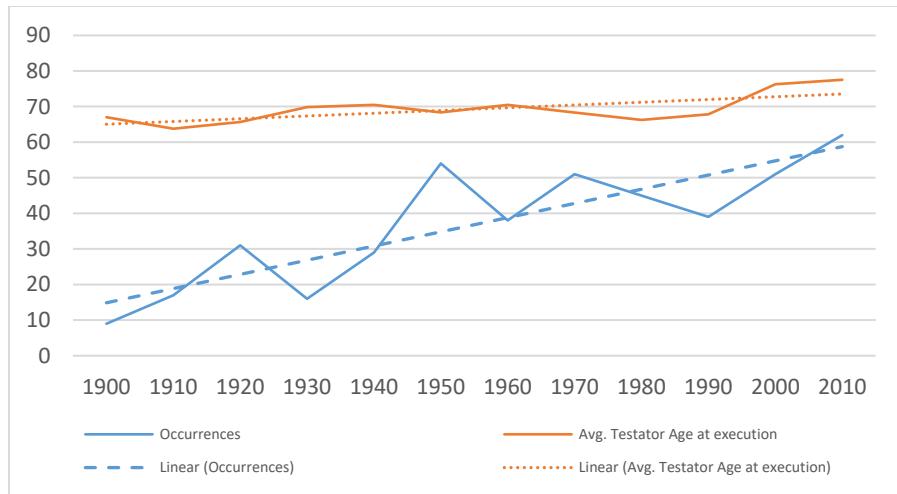


Figure 16. Age Omitted from Appellate Opinion—Age and Frequency.

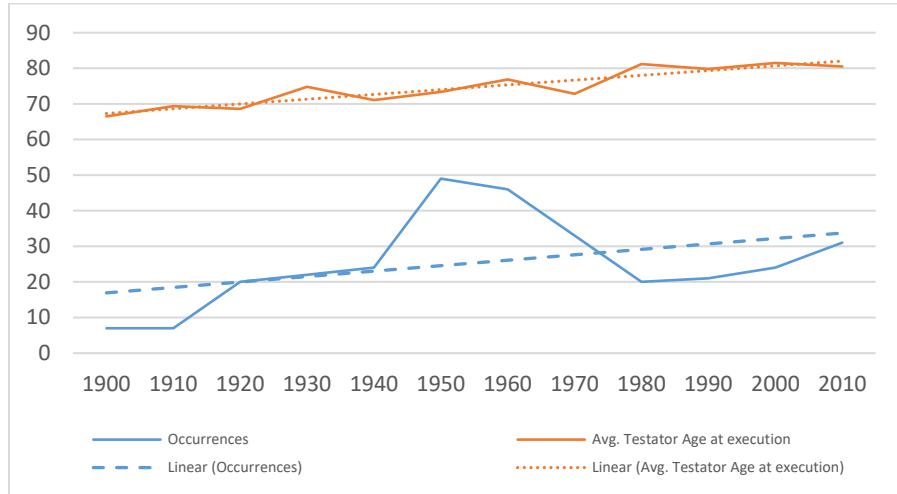


Figure 17. Age Included in Appellate Opinion—Age and Frequency.

According to the cases we reviewed, the appellate courts made no mention of the testator's age at the time of execution in approximately 58% of will contest cases on appeal.¹⁷⁶ For cases in which the courts omitted the testator's age, we determined their ages by utilizing birth dates and death dates from Ancestry.com when available.¹⁷⁷ Figure 16 shows the testator age

176. See *supra* Figures 16, 17.

177. See *supra* Figure 16.

distribution when the courts of appeal omitted the testator's age.¹⁷⁸ The most often omitted age range was 73–97.¹⁷⁹

One possible theory for why courts often exclude testator ages is to avoid establishing bright-line tests, such as age.¹⁸⁰ For example, the Seventh Court of Appeals stated the following:

The testimony in this case shows that the testator was uneducated, old, sick, had a bad memory, possibly eccentric and he was partially blind because of cataracts on his eyes, but the test is not whether he was educated or not, sick or well, had a strong or weak mind, but the question to be determined is whether or not he had testamentary capacity under the rules of law announced by our courts in such cases.¹⁸¹

And the San Antonio Court of Appeals also found that “[t]he fact that a testator is of an advanced age alone is not sufficient to deny probate of a will.”¹⁸²

Courts have also refused to allow age bias on the issue of age alone.¹⁸³ For example, in *Salinas v. Garcia*, the Court of Appeals wrote:

There can be no age limit prescribed at which it can be decreed that “a sound and disposing memory” has been lost because the mind of a man of 80 or 90, or even 100 years of age, may be bright, active, and brilliant, while the man of 50 or 60 may have entered the pitiable state of garrulous senility or brutal imbecility.¹⁸⁴

Although the elderly should not be presumed incapacitated, courts can and should consider the testator's age when evaluating cases of incapacity and undue influence.¹⁸⁵ To ignore the testator's age is to ignore clear medical findings that age is closely correlated with cognitive decline.¹⁸⁶ For instance, studies have shown that age is the greatest risk factor for cognitive impairment, and that approximately two out of three Americans experience some level of cognitive impairment at an average age of seventy years.¹⁸⁷ The

178. *See supra* Figure 16.

179. *See supra* Figure 16.

180. *Burk v. Mata*, 529 S.W.2d 591, 594–95 (Tex. App.—San Antonio 1975, writ ref'd n.r.e.).

181. *Jowers v. Smith*, 237 S.W.2d 805, 811 (Tex. App.—Amarillo 1950, no writ).

182. *Burk*, 529 S.W.2d at 594.

183. *Salinas v. Garcia*, 135 S.W. 588, 590 (Tex. Civ. App. 1911, writ ref'd).

184. *Id.*

185. Author's original thought.

186. *See, e.g., Rothermel v. Duncan*, 369 S.W.2d 917, 923–24 (Tex. 1963) (courts may consider “weakness of mind and body” from “infirmities of age” as a material circumstance; age-related maladies alone did not show the will was overborne).

187. R. S. Wilson et al., *Cognitive Decline in Incident Alzheimer Disease in a Community Population*, 74 NEUROLOGY 951, 952 (Mar. 23, 2010), <https://pmc.ncbi.nlm.nih.gov/articles/PMC2848102/> [<https://perma.cc/NP5S-6WUY>]; Jo Mhairi Hale et al., *Cognitive Impairment in the U.S.: Lifetime Risk, Age at Onset, and Years Impaired*, 11 SSM POPULATION HEALTH 1, 1–2 (Mar. 31, 2020) <https://pmc.ncbi>

following is a sound approach to the use of age as evidence in will contest cases:

While old age itself is not sufficient proof of mental incapacity to make a will, or even to raise an issue, yet old age is a fact which may be proved; and old age may be shown by evidence to have produced, or contributed to cause, an intellectual decline.¹⁸⁸

Figure 16 and Figure 17 further depict the trends with respect to appellate opinions and a direct examination of testator age.¹⁸⁹

C. Reversal Rates Across Decades and Courts

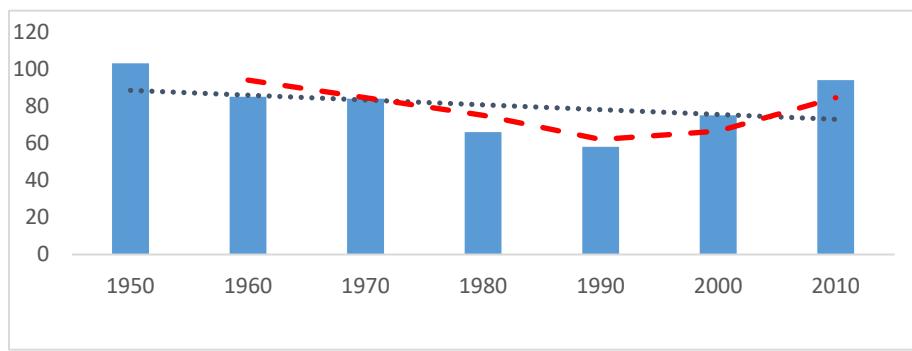


Figure 18. By the Numbers: Will Contest Appeals with Linear/Two Month Moving Average Trendlines.

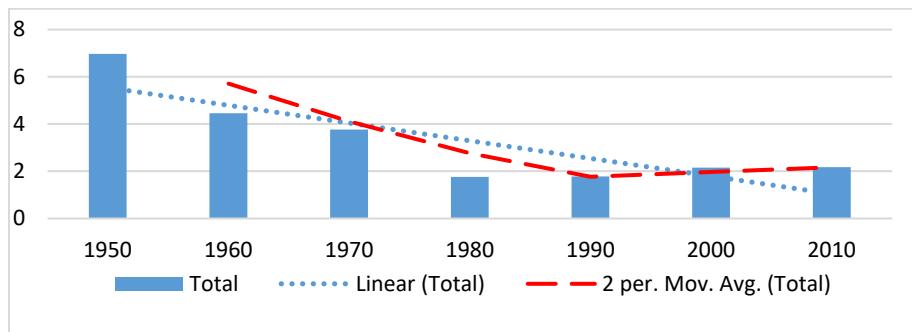


Figure 19. Per Capita: Will Contest Appeals with Linear/Two Month Moving Average Trendlines.

By the raw numbers, will contests have been gently increasing in frequency since 2010, although the linear trendline continues to show a

.nlm.nih.gov/articles/PMC7153285/ [https://perma.cc/V4NW-S5DV].

188. *Walston v. Mabry*, 225 S.W.2d 1014, 1016 (Tex. App.—Texarkana 1949, no writ).

189. *See supra* Figures 16, 17.

mathematical decline.¹⁹⁰ When we take the COVID-19 pandemic into account and prorate for the 2020 decade (not depicted here), there would seem to be another downturn when looking at the two-period moving average.¹⁹¹ In contrast, the data *without* the first three years of 2020 shows an increase.¹⁹² We suspect that, once normal litigation trends return (and more importantly, once Texas's extreme population growth factors itself into the probate statistics through natural mortality), the trendline that began in 1990 will resume, if not sharply increase (again, consistent with the segment of age groups that drove the population growth over the last 20 years reaching mortality).¹⁹³

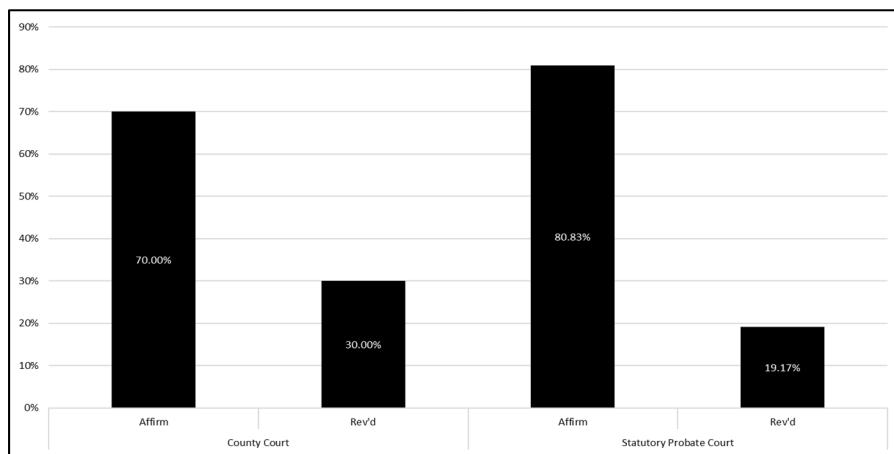


Figure 20. The Basic Reversal Rate Analysis, Comparing County Court and Statutory Probate Court (All Related Causes of Action).

190. See *supra* Figure 18.

191. See generally *Highlights from the 2020 Annual Statistical Report*, TEX. OFF. OF CT. ADMIN., <https://www.txcourts.gov/media/1452045/tjc-fy20-statistical-information-presentation.pdf> [https://perma.cc/VY5R-HKKN] (last visited Sept. 7, 2025) (showing the downturn in the moving average).

192. See *supra* Figure 18.

193. Author's original thought.

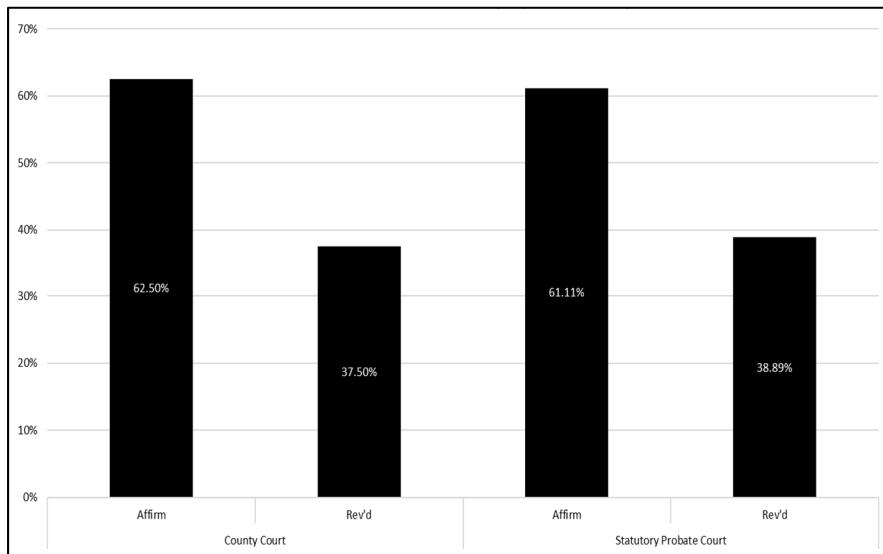


Figure 21. *The Basic Reversal Rate Analysis, Comparing County Court and Statutory Probate Court (Undue Influence).*

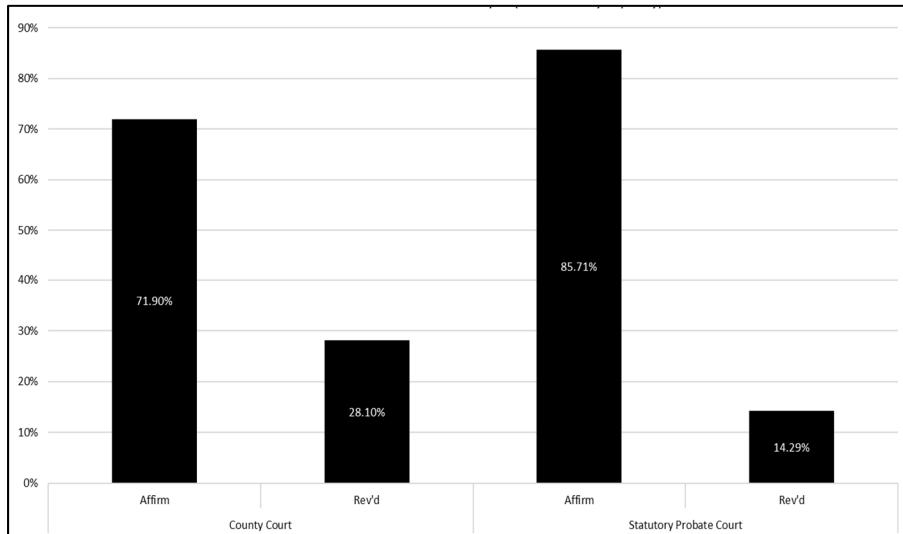


Figure 22. *The Basic Reversal Rate Analysis, Comparing County Court and Statutory Probate Court (Testamentary Capacity).*

The Figures 20, 21 and 22 above represent the reversal rates of will contest appeals.¹⁹⁴ Figure 20 shows that appeals from county courts are more likely to be reversed than appeals from statutory probate courts.¹⁹⁵ This

194. See *supra* Figures 20–22.

195. See *supra* Figure 20.

comparison reveals that the specialized nature of statutory probate courts might aid the courts in reaching the right decision.¹⁹⁶ The county court at law judges often preside over a wide range of disputes, including civil, probate, family, and criminal matters.¹⁹⁷ A discussion about providing more training and support to county court judges in certain areas of will contests may be warranted.¹⁹⁸ By way of comparison, time will tell if the reversal rates of the newly created business courts are similarly lower than those of the district courts.¹⁹⁹

Figure 21 and Figure 22 show that undue influence cases are significantly more likely to be reversed than capacity cases in both the county courts and statutory probate courts.²⁰⁰ This is likely due to the different types of evidence associated with each claim.²⁰¹ Undue influence claims typically require more circumstantial evidence than capacity cases.²⁰² As the Texas Supreme Court recognized long ago, it is “rarely possible to prove undue influence by what is generally known as direct testimony. Undue influence is usually a subtle thing, and by its very nature it usually involves an extended course of dealings and circumstances.”²⁰³

The circumstantial—fact intensive—nature of undue claims logically begets a highly complex fact analysis for the courts, as well as for a data project.²⁰⁴ Nonetheless, we find significant insight in the historical assessment of what has worked and what has not in the trial courts.²⁰⁵

Figure 22 may give pause to any party considering an appeal of a capacity case.²⁰⁶ The chances of victory are less than 30% if appealing from the county court at law and less than 15% when appealing from a statutory probate court.²⁰⁷ No appeal is impossible, but statistically, a sufficiency of the evidence challenge in an undue influence case is a tough hill to climb.²⁰⁸

196. *See supra* Figure 20.

197. *See* TEX. GOV’T. CODE ANN. § 25.0042.

198. Author’s original thought.

199. *Id.*

200. *See supra* Figure 20.

201. Author’s original thought.

202. *Long v. Long*, 125 S.W.2d 1034, 1036 (1939).

203. *Id.*

204. *Id.*

205. Author’s original thought.

206. *See supra* Figure 22.

207. *See supra* Figure 22.

208. *See supra* Figure 22.

V. RISK SIGNALS AND LITIGATION HEURISTICS (“RED FLAGS”)

A. Cognitive Conditions: Prevalence, Stage-Specific Patterns, and Trial Implications

Unspecified Dementia	12.35%
N/A	10.88%
Memory - short-term	9.54%
Confusion	9.05%
Pharmacological induced	5.01%
Communication	4.77%
Insane Delusion	4.28%
Vascular dementia	3.79%
Depression	3.67%
Progressive illness	3.06%
Insanity	2.93%
Memory - long-term	2.57%
Senile Dementia	2.44%
Recognizing familiar objects and persons	2.32%
Alzheimer's	2.20%
Hallucinations	2.08%
Psychiatric treatment / disorder	1.96%
Alcohol induced	1.71%
Paranoia	1.59%
Agitation	1.59%
Executive functioning	1.34%
Understanding	1.34%
Logical reasoning	1.34%
Memory - immediate recall	1.34%
Suicidal	1.22%
Permanent illness	1.10%
Problem solving	0.73%
Grasping abstract aspects of situation	0.73%
Temporary illness	0.61%
Non-dementia (bipolar or other psychological)	0.49%
Breaking down complex tasks to simple steps	0.49%
Organic Brain Syndrome	0.37%
Schizophrenia	0.37%
Parkinson's Dementia	0.37%
Creutzfeldt-Jakob Disease	0.24%
Mixed Dementia	0.12%

Table 4. Will Contest Cognitive Issues Sorted by Frequency of Occurrence in Will Contest Opinions.

Table 4 identifies the frequency with which various cognitive issues were referenced in will contest appellate opinions.²⁰⁹ The table accounts for cases involving claims of both incapacity and undue influence.²¹⁰ The most cited cognitive impairment was unspecified dementia.²¹¹ The Alzheimer's Association currently identifies eleven types of dementia that impact the brain in different and often overlapping ways.²¹² For example, dementia with Lewy bodies can cause spontaneous changes in attention and alertness, recurrent visual hallucinations, and REM sleep behavior disorder, whereas frontotemporal dementia can cause deterioration in behavior and personality and difficulty with producing or comprehending language.²¹³

“N/A” and “Unspecified Dementia”—a circumstance wherein the opinion did not reference any specific cognitive ailment—occurred in just over 23% of the opinions we reviewed, which may be important to keep in mind.²¹⁴ When there is a diminished capacity challenge to a will, the absence of a clear and specific discussion identifying the ailment could be problematic, depending on the nature of the appeal.²¹⁵

Is any particular type of dementia over or underrepresented in will contests versus the general population?²¹⁶ Below, Table 5 and Table 6 order the most common age-related dementias and symptoms from most to least common, followed by our explanation of why this could be important.²¹⁷

209. *See supra* Table 4.

210. Author's original thought.

211. *See supra* Table 4.

212. *See Types of Dementia*, ALZHEIMER'S ASS'N, <https://www.alz.org/alzheimers-dementia/what-is-dementia/types-of-dementia> [https://perma.cc/S6GU-SG2W] (last visited Sept. 9, 2025).

213. *Dementia With Lewy Bodies*, ALZHEIMER'S ASS'N, <https://www.alz.org/alzheimers-dementia/what-is-dementia/types-of-dementia/dementia-with-lewy-bodies> [https://perma.cc/WD7E-P9KQ] (last visited Sept. 9, 2025).

214. *See supra* Table 4.

215. Author's original thought.

216. *Id.*

217. *See infra* Tables 5, 6.

Dementia type	Estimated share of cases	Most distinctive symptoms	Typical disease progression
Alzheimer's disease (AD)	60–80% of dementia cases. ²¹⁸	Early prominent episodic memory impairment; disorientation; word-finding difficulty; gradual decline. ²¹⁹	Insidious onset with steady, gradual progression over years; late stages include loss of functional independence and communication. ²²⁰
Vascular dementia	5–10% of cases; second most common. ²²¹	Executive dysfunction; slowed processing; focal neurologic signs; history of stroke; stepwise changes are common. ²²²	Often stepwise or fluctuating decline tied to vascular events; progression may be slowed by vascular risk control. ²²³
Lewy body dementias	5–20% of cases; underdiagnosed. ²²⁴	Core features: cognitive fluctuations, recurrent visual hallucinations, REM sleep behavior disorder, and parkinsonism. ²²⁵	Can decline faster than AD with marked fluctuations; Parkinson's Disease Dementia defined when dementia develops >1 year after motor symptoms. ²²⁶

218. *About Alzheimer's Disease and Related Dementias*, CDC, <https://www.cdc.gov/alzheimers-dementia/about/alzheimers.html> [https://perma.cc/8QVW-S6Q9] (last visited Sept. 10, 2025) (noting that Alzheimer's accounts for about 60–80% of cases; vascular dementia about 5–10% and second most common; overview of symptoms and causes).

219. *What Is Alzheimer's Disease?*, Alzheimer's Ass'n, <https://www.alz.org/alzheimers-dementia/what-is-alzheimers> [https://perma.cc/YPC7-HAC3] (last visited Sept. 10, 2025); *What is Dementia?*, Alzheimer's Ass'n, <https://www.alz.org/alzheimers-dementia/what-is-dementia> [https://perma.cc/F82Z-8C8C] (last visited Sept. 10, 2025).

220. *What Is Alzheimer's Disease?*, Alzheimer's Ass'n, <https://www.alz.org/alzheimers-dementia/what-is-alzheimers> [https://perma.cc/YPC7-HAC3] (last visited Sept. 10, 2025).

221. *What is Dementia?*, Alzheimer's Ass'n, <https://www.alz.org/alzheimers-dementia/what-is-dementia> [https://perma.cc/F82Z-8C8C] (last visited Sept. 10, 2025).

222. *Id.*

223. *Id.*

224. *Alzheimer's Disease Facts and Figures* (2025), ALZHEIMER'S ASS'N, <https://www.alz.org/media/Documents/alzheimers-facts-and-figures-2025-r.pdf> [https://perma.cc/5UMN-ZY42] (last visited Sept. 10, 2025); see *Lewy-Body Dementia: Causes, Symptoms and Diagnosis*, NIA, <https://www.nia.nih.gov/health/lewy-body-dementia/lewy-body-dementia-causes-symptoms-and-diagnosis> [https://perma.cc/DZ6T-RSTH] (last visited Sept. 10, 2025) (noting that core features include cognitive fluctuations, recurrent visual hallucinations, REM sleep behavior disorder, and parkinsonism; DBL may progress faster than AD).

225. *Lewy Body Dementia, Symptoms & Causes*, MAYO CLINIC (June 21, 2025), <https://www.mayoclinic.org/diseases-conditions/lewy-body-dementia/symptoms-causes/syc-20352025> [https://perma.cc/7N6K-UTSD] (summarizing LBD symptoms as including visual hallucinations and parkinsonism).

226. Stephen N. Gomperts, *Lewy Body Dementias: Dementia With Lewy Bodies and Parkinson Disease Dementia*, 22 CONT. MINNEAP. MINN. 435–63 (Apr. 2016), <https://pmc.ncbi.nlm.nih.gov/articles/PMC5390937/pdf/20160400.0-0009.pdf> [https://perma.cc/ELG7-XTAR].

Frontotemporal dementia (FTD) spectrum	1.5–10% of cases overall; leading cause in younger-onset dementias. ²²⁷	Early behavioral / personality change (behavioral variant FTD or bvFTD) or primary language impairment (PPA); memory relatively spared early. ²²⁸	Frequently faster progression than typical AD, with early loss of judgment/social comportment. ²²⁹
Mixed dementia (AD + vascular and/or Lewy body pathology)	Very common in older adults; >50% in autopsy series at specialty centers; variable in community studies. ²³⁰	Features of multiple etiologies (e.g., memory-predominant from AD plus executive/stepwise changes from vascular disease). ²³¹	Often faster or more complex course than single-etiiology dementias due to additive pathologies. ²³²

Table 5. Common Age-Related Dementias Ordered by Prevalence.

Dementia type	Common early-stage features	Common late-stage features
Alzheimer's disease (AD)	Short-term memory loss, word-finding difficulty, apathy; impaired complex instrumental activities of daily living (IADLs) (finances, medications). ²³³	Severe memory loss, loss of speech, dependence in basic activities of daily living (ADLs), dysphagia; neuropsychiatric symptoms

227. *Frontotemporal Dementia and Other Frontotemporal Disorders*, NAT'L INST. OF NEUROLOGICAL DISORDERS AND STROKE (NINDS) (last visited Sept. 10, 2025), <https://www.ninds.nih.gov/health-information/disorders/frontotemporal-dementia-and-other-frontotemporal-disorders> [https://perma.cc/2RXD-CQX4] (noting that FTD often presents with early behavioral or language changes, with relatively spared memory initially; can progress faster than AD); Dag Aarsland & Martin Wilhelm Kurz, *The Epidemiology of Dementia Associated with Parkinson's Disease*, 20 BRAIN PATHOLOGY 633, 635–36, (2010) <https://pmc.ncbi.nlm.nih.gov/articles/PMC8094858/pdf/BPA-20-633.pdf> [https://perma.cc/T7FQ-SM42] (finding that 20–40% of people with Parkinson's develop dementia over time; high cumulative incidence).

228. Kane et al., *Clinical Prevalence of Lewy Body Dementia*, PUBMED (Feb. 15, 2018), <https://pubmed.ncbi.nlm.nih.gov/29448953/> [https://perma.cc/5GRA-C8CJ] (suggesting that Lewy Body Dementia comprises up to ~15–20% of dementia cases; underdiagnosed clinically).

229. *Lewy-Body Dementia: Causes, Symptoms and Diagnosis*, NIA, <https://www.nia.nih.gov/health/lewy-body-dementia/lewy-body-dementia-causes-symptoms-and-diagnosis> [https://perma.cc/DZ6T-RSTH] (last visited Sept. 10, 2025).

230. *What is Dementia?*, ALZHEIMER'S ASS'N, <https://www.alz.org/alzheimers-dementia/what-is-dementia> [https://perma.cc/F82Z-8C8C] (last visited Sept. 10, 2025).

231. *Id.*

232. *Id.*

233. Long v. Long, 133 Tex. 96, 99 (1939); *What is Dementia?*, ALZHEIMER'S ASS'N, <https://www.alz.org/alzheimers-dementia/what-is-dementia> [https://perma.cc/F82Z-8C8C] (last visited Sept. 10, 2025); *Lewy-Body Dementia: Causes, Symptoms and Diagnosis*, NIA, <https://www.nia.nih.gov/health/lewy-body-dementia/lewy-body-dementia-causes-symptoms-and-diagnosis> [https://perma.cc/DZ6T-RSTH] (last visited Sept. 10, 2025).

		common. ²³⁴
Vascular dementia (VaD)	Executive dysfunction (planning, organizing), slowed thinking, gait disturbance; focal deficits after stroke. ²³⁵	Worsening executive and global cognitive impairment; cumulative disability from recurrent vascular events. ²³⁶
Lewy body dementias (DLB/PDD)	Fluctuating attention/alertness, visual hallucinations, REM sleep behavior disorder, mild parkinsonism. ²³⁷	Prominent parkinsonism, falls, hallucinations / delusions, severe fluctuations, autonomic dysfunction. ²³⁸
Frontotemporal dementia (FTD) spectrum	Behavioral disinhibition, apathy/empathy loss, compulsions (bvFTD) or language deficits (Primary Progressive Aphasia). ²³⁹	Global cognitive/functional decline; mutism or severe aphasia; possible motor neuron/extrapyramidal features. ²⁴⁰
Mixed dementia	Combination of memory-predominant deficits with executive dysfunction and/or fluctuations. ²⁴¹	Accelerated global decline relative to single etiology; high functional dependency. ²⁴²

Table 6. Early vs. Late-Stage Symptom Patterns by Dementia Type.

With the different types of dementia and varied effects on the testator, perhaps it is time for attorneys to take a medical approach to the disease as opposed to the monolithic approach historically taken.²⁴³ The zealous attorney should take the time to understand the specific disease that afflicted the testator and the ways in which it manifested.²⁴⁴ By understanding the symptoms of different dementias, a skilled attorney will know how to uncover relevant evidence.²⁴⁵ For instance, a discerning attorney will know to obtain medical records from the treating cardiologist because the records could contain testing for APOE4 (a gene linked to increased risk of Alzheimer's and carried by 15–25% of the population).²⁴⁶

234. *See supra* note 233.

235. *See supra* note 233.

236. *See supra* note 233.

237. *See supra* note 233.

238. *See supra* note 233.

239. *See supra* note 233.

240. *See supra* note 233.

241. *See supra* note 233.

242. *See supra* note 233.

243. *See supra* Table 5 (revealing that the specific dementia was either not mentioned or unspecified 23.23% of the time in appellate opinions).

244. Author's original thought.

245. *See* *Allen v. Sconyers*, 669 So.2d 113, 116–17 (Ala. 1995).

246. *Alzheimer's Disease Genetics Fact Sheet*, NAT. INST. ON AGING (Mar. 1, 2023), www.nia.nih.gov/health/genetics-and-family-history/alzheimers-disease-genetics-fact-sheet [https://perma.cc/4247-9A2W].

If Alzheimer's disease is thought to comprise 60–80% of all cases, then why is it underrepresented in the appellate opinions?²⁴⁷ Expert medical opinions suggest that the disease is over diagnosed or misdiagnosed, but there is a broad gap between the medical statistics and the much smaller representation in the cases.²⁴⁸

The prevalence of memory loss and confusion in appellate opinions versus more technical diagnoses might indicate that contestants are not taking a particularly scientific approach to will contest cases.²⁴⁹ The prevalence could also be explained if memory loss and confusion are symptoms of a wide range of other diagnoses, like Parkinson's disease and strokes.²⁵⁰

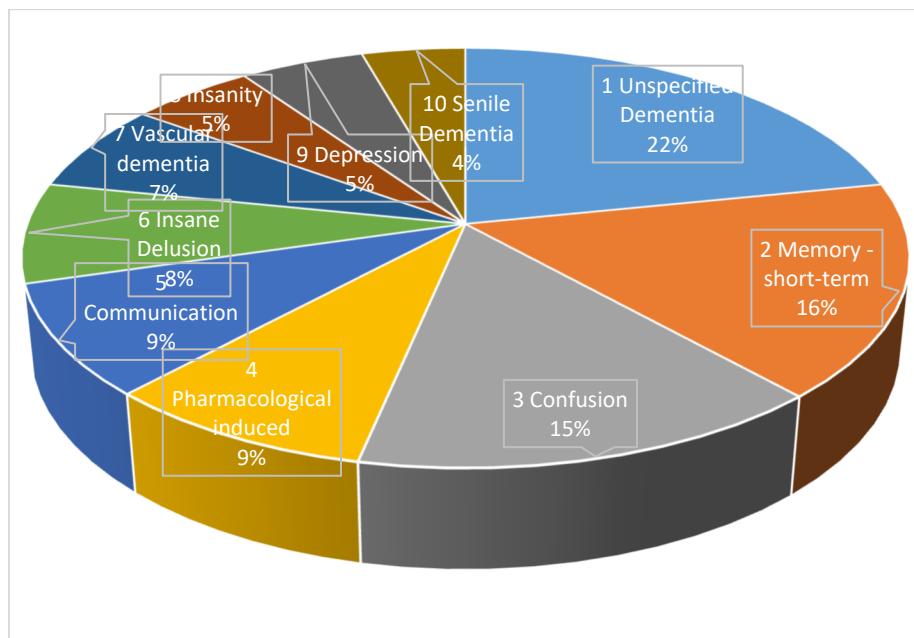


Figure 23. Top 10 Cognitive Deficits Expressed by Appellate Opinions in Texas.

Figure 23 shows the top ten cognitive deficits in order of appearance in appellate opinions.²⁵¹ The significance of this pie chart is self-explanatory,

247. Author's original thought.

248. See Serge Gauthier et al., *World Alzheimer Report 2021: Journey Through the Diagnosis of Dementia*, ALZHEIMER'S DISEASE INT'L (2021), <https://www.alzint.org/u/World-Alzheimer-Report-2021.pdf> [<https://perma.cc/6SXN-W2FV>].

249. Pamela J. Radcliffe & Lawrence Patahis, *Judges and Lawyers' Beliefs in Repression and Dissociative Amnesia May Imperil Justice: Further Guidance Required*, 32 MEMORY 1083, 1083–90 (2021).

250. See *Memory Loss: When to seek help*, MAYO CLINIC (Apr. 3, 2024), <https://www.mayoclinic.org/diseases-conditions/alzheimers-disease/in-depth/memory-loss/art-20046326> [<https://perma.cc/QM5Y-MEJX>].

251. See *supra* Figure 23.

but it is notable that depression has made an appearance at number nine.²⁵² We did not see any particular challenge to a will based solely on depression as the basis for a challenge to testamentary capacity.²⁵³ However, the fact that opinions have begun mentioning depression may be noteworthy.²⁵⁴

Cognitive Issue Raised	Overall share	Share of jury cases	Share of contestant jury wins	Share of proponent MSJs	Why it matters . . .
Unspecified Dementia	12.30%	15.30%	11.60%	5.70%	Top-10 in all columns
Memory – short-term	9.60%	10.70%	11.20%	8.00%	Top-10 in all; jury-win-leaning
Confusion	9.10%	8.40%	9.10%	11.40%	Top-10 in all; MSJ-heavy
Pharmacologically induced	5.00%	4.80%	5.50%	9.10%	Top-10 in all; MSJ-heavy
Communication	4.80%	5.60%	6.40%	3.40%	Top-10 in all; jury-win-leaning
Insane Delusion	4.30%	4.40%	4.30%	4.50%	Top-10 in all columns
N/A (no issue named)	10.70%	6.70%	3.30%	22.70%	Top-10 in all; MSJ-heavy
Vascular dementia	3.80%	4.40%	5.50%	1.10%	Jury-win-leaning
Progressive illness	3.10%	3.30%	4.30%	—	Jury-win-leaning
Insanity	3.00%	3.60%	3.30%	1.10%	—
Depression	3.70%	2.90%	3.00%	5.70%	MSJ-heavy
All other issues (25 categories)	30.70%	29.90%	32.50%	27.30%	Combined remainder

Table 7. Cognitive Issues Raised in Appellate Will Contests – Review of Frequency and Importance.

Table 7 shows the frequency of selected cognitive deficits that we reviewed in will contest opinions and the percentages with which the cases resulted in a trial by jury, a jury verdict for the contestant, and a motion for summary judgment in favor of the proponent.²⁵⁵ The data suggests that

252. *See supra* Figure 23.

253. Author's original thought.

254. *See supra* Figure 23.

255. *See supra* Table 7.

contestants tended to have more success when they alleged specific diagnoses of dementia instead of unspecified dementia.²⁵⁶

The allegations of vague deficits, such as memory loss, confusion, and difficulty understanding, were at issue in more jury trials than other deficits, suggesting that attorneys may be focusing more on non-medical evidence, such as witness testimony, rather than on scientific evidence, such as diagnostic testing.²⁵⁷

When armed with diagnostic evidence of incapacity, attorneys for contestants should be careful to tie the diagnoses to the elements of testamentary incapacity.²⁵⁸ In one case, a diagnosis of Alzheimer's alone was insufficient to raise a fact issue as to incapacity when the contestant failed to show that the disease rendered the testator "incapable of knowing her family or her estate or understanding the effect of her actions."²⁵⁹

Proponents secured a summary judgment victory in 9.1% of cases when the contestant alleged the testator was pharmacologically induced to execute the will.²⁶⁰ The typical fact pattern in these cases involved a testator in pain and on constant medication.²⁶¹ The data indicates that contestants should endeavor to educate judges on how pain medication affects the brain.²⁶² A medical expert may help the contestant tie the consumption of pain medication to diminished cognitive capacity and susceptibility to undue influence.²⁶³ At any rate, the data once again exposes important attributes of trial presentations and, possibly, jury preferences.²⁶⁴

B. Physical Ailments: Top Conditions and Success Rates by Diagnosis

Physical Ailment Frequency	
1	Age related deterioration
2	Feebleness / weakness
3	Cancer
4	Vascular disease
5	Stroke
6	Cardiac issues
7	Pain
8	Vision issues / blindness

256. See *supra* Table 7.

257. Radcliffe & Patahis, *supra* note 249.

258. Author's original thought.

259. *In re Hall*, No. 05-98-01929-CV, 2001 WL 753795, at *4 (Tex. App.—Dallas July 5, 2001, no pet.).

260. See *supra* Table 7.

261. Estate of Mahaffey, No. 04-19-00122-CV, 2019 WL 7196618, at *4 (Tex. App.—San Antonio Dec. 27, 2019, no pet.).

262. See *supra* Table 7.

263. See *Muzner v. Kusher*, 375 S.W.3d 647, 649–51 (Ark. Ct. App. 2010).

264. See *supra* Table 7.

9	Bedridden
10	Fatigue
11	Falls / unsteady gait
12	Alcoholism
13	Deafness
14	Diabetes
15	Pulmonary problems
16	Grief
17	Blood pressure / hypertension / hypotension
18	Kidney problems
19	Weight loss
20	Belligerent

Table 8. Top 20 Physical Ailments in Will Contests—Ranked.

While cases of incapacity concern a testator's mental soundness, "the physical condition of a human" can be "so directly and intimately related to the mental state that the physical condition is a circumstance entitled to consideration by the jury in its ascertainment of the mental condition."²⁶⁵ "A testator's physical ailments may inform the jury of the testator's mental status, if the evidence sufficiently links the two at the time of a will signing."²⁶⁶ Similarly, courts have frequently cited the testator's physical condition as a relevant factor in deciding undue influence cases.²⁶⁷

Table 8 identifies the top twenty physical ailments referenced in will contest opinions and ranks the ailments from most to least prevalent.²⁶⁸ Notably, the top two ailments and five of the top ten ailments are generalized conditions as opposed to specific diagnoses (age-related deterioration, feebleness, weakness, pain, bedridden, and fatigue).²⁶⁹ Also notable is the prevalence of vascular disease and cardiac issues, both of which have been identified as causes of dementia and other age-related cognitive illnesses.²⁷⁰

Although not obviously associated with diminished capacity, a history of falls could indicate that a testator has suffered cognitive decline.²⁷¹ Medical testimony admitted in one case explains how the same vascular issues that cause falls can also affect the brain:

Of significance to [the testifying doctor] were the entries of a history of atherosclerotic heart disease, high blood pressure, arthritis, and congestive heart failure. An entry indicating a history of frequent falling was also

265. *Walston v. Mabry*, 225 S.W.2d 1014, 1016 (Tex. App.—Texarkana 1949, no writ).

266. *In re Scott*, 601 S.W.3d 77, 96 (Tex. App.—El Paso 2020, no pet.) (considering the testator's physical condition in connection with both capacity and undue influence claims).

267. *Id.*; *Lowery v. Saunders*, 666 S.W.2d 226, 234 (Tex. App.—San Antonio 1984, writ ref'd n.r.e.); *Reynolds v. Park*, 485 S.W.2d 807, 813 (Tex. App.—Amarillo 1972, writ ref'd n.r.e.).

268. *See supra* Table 8.

269. *See supra* Table 8.

270. *See supra* Table 8.

271. *In re Robinson*, 140 S.W.3d 782, 791 (Tex. App.—Corpus Christi–Edinburg 2004, pet. denied).

important because, as [the doctor] explained, when elderly individuals start getting hardening of the arteries they begin falling due to insufficient blood supply to the cerebellar part of the brain that coordinates all voluntary movements.²⁷²

Similarly, while vision impairment is not commonly associated with cognitive decline, the medical community has linked the two.²⁷³ Vision impairment often co-occurs with cognitive decline, and adults with vision impairment are thought to have higher levels of difficulty with activities of daily living (eating and bathing) and instrumental activities (managing finances and using a telephone).²⁷⁴ A jury can infer that a testator is unable to understand the nature and extent of their property when they are unable to perform “rudimentary tasks of bathing and dressing.”²⁷⁵

Trial Court win rate comparison (most prevalent physical ailments from our study)		
Ailment	Contestant win%	Proponent win%
Stroke	67%	33%
Cardiac issues	65%	35%
Bedridden	63%	38%
Vascular disease	61%	39%
Vision issues / blindness	56%	44%
Feebleness / weakness	51%	49%
Age related deterioration	49%	51%
Pain	49%	51%
Cancer	48%	52%
Fatigue	40%	60%

Table 9. Trial Court Success Rates by Ailment.

Table 9 identifies the trial court winner (contestant versus proponent) in cases in which the court of appeals referenced the ten most common physical ailments.²⁷⁶ At the trial court, the contestant won more than 65% of the time when the alleged ailments included stroke and cardiac issues.²⁷⁷ This outcome may be explained by the sudden and dramatic nature of strokes and

272. *Id.*

273. Sharon Saydah et. al., *Vision Impairment and Subjective Cognitive Decline–Related Functional Limitations—United States, 2015–2017*, MORBIDITY AND MORTALITY WKLY. REP. 453, 456 (2019), <https://www.cdc.gov/mmwr/volumes/68/wr/mm6820a2.htm> [https://perma.cc/7UZM-PQAR].

274. *Id.* at 457.

275. *In re Durgin*, No. 12-18-00184-CV, 2019 WL 4126616, at *1, *4 (Tex. App.—Tyler Aug. 30, 2019, no pet.).

276. *See supra* Table 9.

277. *See supra* Table 9.

cardiac events (including heart attacks) when a change in the testator is more readily apparent to physicians and loved ones.²⁷⁸ These events may trigger diagnostic testing, the results of which may later become evidence for contestants.²⁷⁹ Contestants also saw success when the testator was bedridden at the time of execution.²⁸⁰ A bedridden testator is naturally dependent on others to meet their basic needs, and dependence on the alleged influencer is a factor courts examine when deciding undue influence claims.²⁸¹

Contestants and proponents fared almost equally in the trial court when cancer was alleged as a cause of incapacity or undue influence.²⁸² This outcome may be due to the varied types of cancer, treatment methods, and manners of progression.²⁸³

C. “Last-Minute” Instruments: Proximity to Death and Procedural Posture (Jury vs. Bench/MSJ Differentials)

By “last-minute” wills, we are referring to those drafted for a testator on their deathbed.²⁸⁴ These wills pose several problems: the drafting attorney faces various time pressures that may prevent a full understanding of the family dynamics and the testator’s health and cognitive condition.²⁸⁵ With these and other constraints, the old adage that the lack of prior planning promotes poor performance shines brightly.²⁸⁶

We analyzed the results of contests of last-minute wills in the trial and appellate courts over time.²⁸⁷ As noted, “will age” refers to the number of days, months, or years between the execution ceremony and the testator’s death.²⁸⁸

278. *See, e.g.*, Dominguez v. Duran, 540 S.W.2d 567, 568 (Tex. App.—Houston [1st Dist.] 1976, writ ref’d n.r.e.) (medical expert noting personality change in testator following stroke).

279. *Id.* at 569.

280. *See* Guthrie v. Suiter, 934 S.W.2d 820, 831 (Tex. App.—Houston [1st Dist.] 1996, no writ).

281. *Id.* at 831.

282. *See supra* Table 9.

283. *See supra* Table 9.

284. *See infra* Figure 25.

285. *See generally* Boyer v. Pool, 280 S.W.2d 564, 589 (Tex. 1955) (“Proof of the planning and preparation of the will . . . is the heart of an undue influence case.”)

286. *Id.*

287. *See infra* Table 10.

288. Author’s original thought.

Decade	Win %, Age > 6 mos	Win %, Age < 6 mos
1910	35%	50%
1920	16%	62%
1930	25%	53%
1940	26%	30%
1950	31%	33%
1960	32%	47%
1970	30%	52%
1980	30%	50%
1990	20%	60%
2000	19%	53%
2010	24%	33%

Table 10. Success Rates for Contestants and Will Age—Over Time.

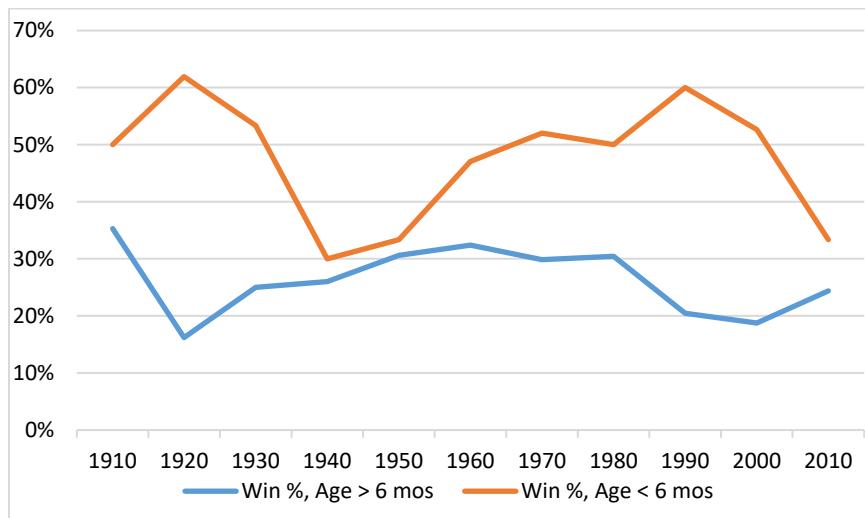


Figure 24. Correlation Between Will Age and Contestant Win.

The figures above depict the correlation between the age of the will and the percentage of wins for contestants.²⁸⁹

As expected, contestants historically prevailed more often when the will was executed within six months of the testator's death.²⁹⁰ Estate planners should use this information to encourage their clients to execute estate plans while healthy.²⁹¹ Prolonging execution until faced with a progressive illness

289. See *supra* Table 10; *see also* Figure 24.

290. See *supra* Table 10; *see also* Figure 24.

291. See *supra* Table 10; *see also* Figure 24.

increases the likelihood of the will's invalidation.²⁹² For example, in the 1990s, contestants successfully challenged wills that were less than six months old approximately 60% of the time whereas contestants successfully challenged wills more than six months old only 20% of the time.²⁹³

D. The Elderly Testator: Using Age as Evidence Without Bias (Doctrinal Guardrails; Medical Realities)

An elderly testator presents a different set of issues than those presented by the last-minute will.²⁹⁴ Though time is on the side of the drafting attorney, life experience and scientific consensus conclude that humans' cognitive processes naturally decline with age.²⁹⁵ Of course, the question is "to what degree?"²⁹⁶ In the following section, we consider how the trial and appellate court results appear to interpret age in light of wills executed by elderly testators.²⁹⁷ Note that, in a significant subset of opinions, we were not able to ascertain the age of the testator at the time of execution.²⁹⁸



Figure 25. Frequency of Testamentary Capacity Challenges Compared to Testator's Age at Execution Ceremony.

292. See *supra* Table 10; see also Figure 24.

293. See *supra* Table 10; see also Figure 24.

294. See *supra* Figures 25, 26.

295. See *supra* Table 4.

296. Author's original thought.

297. See discussion *infra* Section V.D.

298. Author's original thought.

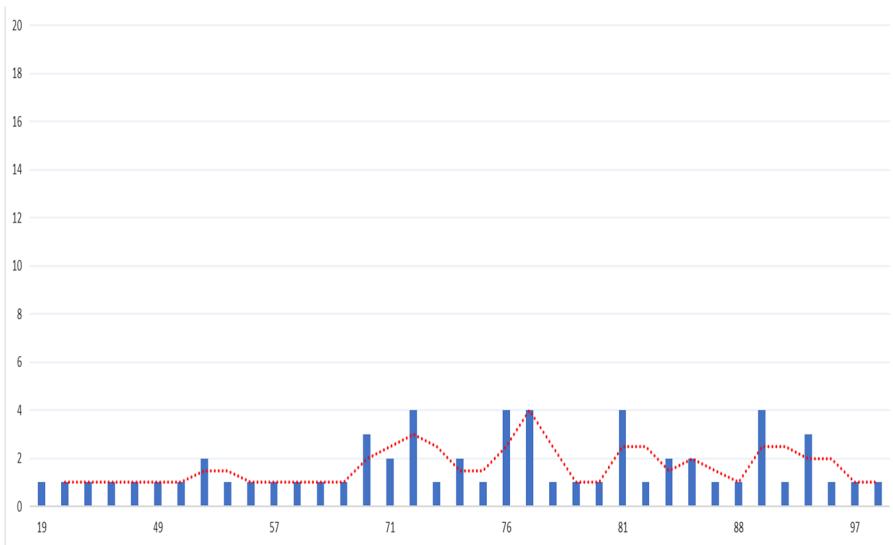


Figure 26. Frequency of Undue Influence Challenges (Without a Capacity Challenge) Compared to Testator's Age at Execution Ceremony.

Testamentary incapacity and undue influence are two of the most common challenges to a will.²⁹⁹ Undue influence requires proof of the existence and exertion of an influence, the effective operation of such influence so as to subvert or overpower the mind of the testator at the time of the execution of the testament, and the execution of a testament which the maker would not have executed but for such influence.³⁰⁰

To possess the required testamentary capacity requires sufficient evidence that the testator, at the time of execution (1) understood the effect of making the will and the general nature and extent of his property, (2) knew their next of kin and the natural objects of their bounty, (3) had sufficient memory to assimilate the elements of executing a will, (4) could hold those elements long enough to perceive their obvious relations to each other, and (5) formed a reasonable judgment as to them.³⁰¹

The testator's state of mind is a relevant factor under the elements of both incapacity and undue influence.³⁰² However, undue influence is a ground for contesting a will that is "separate and distinct from the ground of testamentary incapacity; for while testamentary incapacity implies the want of intelligent mental power, undue influence implies the existence of a

299. See *supra* Figure 26.

300. *Rothermel v. Duncan*, 369 S.W.2d 917, 922 (Tex. 1963).

301. *Prather v. McClelland*, 13 S.W. 543, 546 (Tex. 1890); *In re Danford*, 550 S.W.3d 275, 281 (Tex. App.—Houston [14th Dist.] 2018, no pet.).

302. *Prather*, 13 S.W. at 546; *In re Danford*, 550 S.W.3d at 281.

testamentary capacity subjected to and controlled by a dominant influence or power.”³⁰³

Figure 25 and Figure 26 indicate that the testator’s age—for those cases when we found the testator’s age either in the opinion or using outside sources—at the time of the will’s execution may be more impactful in a challenge for incapacity than a challenge for undue influence.³⁰⁴ Using Figure 25 and Figure 26, the reader may compare the frequency of capacity challenges by testator age with the frequency of undue influence challenges by testator age.³⁰⁵ Figure 25 shows that most capacity challenges occurred when the testator was between the ages of 62–89 at the time of the will’s execution with the most challenges occurring when the testator was aged 78.³⁰⁶ Undue influence cases, on the other hand, saw a wider disbursement of testator ages.³⁰⁷

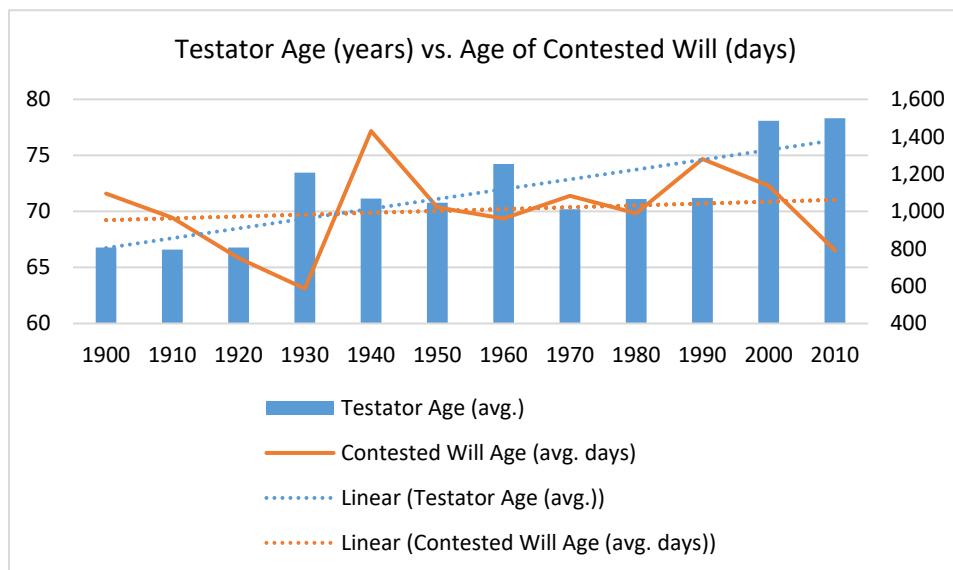


Figure 27. Testator Age vs. Contested Will Age.

Figure 27 depicts the average age of the testator at the time of execution and the average age of the will.³⁰⁸ Over time, the average age of the testator in will contest appeals increased, as shown by the Testator Age trend line.³⁰⁹ However, the trend line for the age of the will has stayed mostly flat.³¹⁰ We

303. *Prather*, 13 S.W. at 546; *In re Danford*, 550 S.W.3d at 281.

304. See *supra* Figures 25, 26.

305. See *supra* Figures 25, 26.

306. See *supra* Figure 25.

307. See *supra* Figure 26.

308. See *supra* Figure 27.

309. See *supra* Figure 27.

310. See *supra* Figure 27.

can abstract from this data that people are living longer but executing wills at about the same age.³¹¹ When a testator executes a will at an advanced age, the result is a greater likelihood of a will contest, and when a testator executes a will close to the date of death, the result is also a greater likelihood of a will contest.³¹²

VI. CONCLUSIONS AND NEXT STEPS

A. What the Numbers Do—and Don’t—Decide

The numbers do not replace judgment, but they sharpen it.³¹³ Just as the Oakland Athletics used data to challenge assumptions about baseball, Texas probate lawyers, judges, fiduciaries, and beneficiaries can use data to challenge assumptions about will contests.³¹⁴ Our study reveals patterns that give lawyers a firmer footing when advising clients, structuring transactions, and evaluating risks.³¹⁵

The lessons are twofold.³¹⁶ First, evidence-based practice improves client counseling.³¹⁷ When a client asks, “What are my chances?,” we can now respond with more than anecdote, grounding advice in the collective experience of hundreds of appellate decisions.³¹⁸ Second, a broader view of the case law helps uncover systemic trends.³¹⁹ Questions about judicial specialization, the treatment of medical evidence, or the level of detail that courts consider in analyzing dementia and capacity can no longer be answered by intuition alone; they can be informed by data.³²⁰

B. Proposed Extensions: Incorporating Trial-Court Data and Refining Medical Specificity

As our study expands to include trial court decisions and undergoes refinement, we hope the profession will recognize the value of marrying experience and knowledge with rigorous empirical review.³²¹ Baseball’s statistical revolution did not guarantee victory, but it gave ball clubs a clearer picture of the game.³²² In the same way, data cannot guarantee the outcome

311. See *supra* Figure 27.

312. See *supra* Figure 27.

313. Author’s original thought.

314. MONEYBALL, *supra* note 1.

315. Author’s original thought.

316. *Id.*

317. *Id.*

318. *Id.*

319. *Id.*

320. *Id.*

321. *Id.*

322. *Id.*

of any will contest, but it can help us play smarter, prepare better, and ultimately serve our clients and the courts with greater precision and confidence.³²³

323. *Id.*