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ROBINSON, J., dissenting. I respectfully dissent from the majority's decision to reverse the trial court's judgment disallowing the admission of the will of the decedent, Edith Baron, dated July 3, 2002. I believe that because the court did not set forth the standard it applied in determining that the decedent lacked testamentary capacity and because it is not clear from the record as to which standard the court actually applied, we should presume that the court was cognizant of the appropriate standard and applied it correctly. I also conclude that the court's determination that the decedent lacked testamentary capacity when she executed a will on July 3, 2002, was not clearly erroneous. I would therefore affirm the judgment of the trial court.

"What constitutes testamentary capacity is a question of law." *City National Bank & Trust Co.'s Appeal*, 145 Conn. 518, 521, 144 A.2d 338 (1958). When a claim presents a question of law, our review is plenary. *State v. Brown*, 299 Conn. 640, 650, 11 A.3d 663 (2011).

I believe that we should presume that the trial court was cognizant of the proper standard to apply in determining whether the decedent had testamentary capacity when she executed her will on July 3, 2002. See *State v. Koslik*, 116 Conn. App. 693, 704, 977 A.2d 275, cert. denied, 293 Conn. 930, 980 A.2d 916 (2009). "Our Supreme Court has directed that where the factual or legal basis of a trial court's decision is unclear, the appellant should file a motion for articulation. In the absence of such action, the reviewing court should presume that the trial court considered all of the facts before it and applied the correct legal standard." *State v. Mathis*, 59 Conn. App. 416, 422 n.3, 757 A.2d 55, cert. denied, 254 Conn. 941, 761 A.2d 764 (2000).

The majority asserts that we should presume that the trial court was cognizant of the appropriate standard only where the trial court's reasoning was unclear or ambiguous, and concludes that no such ambiguity exists in this case. While I agree with this assertion in general, in this specific case, however, I believe that there was an ambiguity in the court's decision and, therefore, the presumption is not applicable. The court did not specifically set forth the standard it used in determining whether the decedent had testamentary capacity when executing her will. Rather, in its oral decision, the court simply noted elements of the testimony of Christopher Tolsdorf, a neuropsychologist, in reaching its conclusion that the decedent lacked testamentary capacity. Although the court did recite certain elements of Tolsdorf's testimony in its oral decision, this does not mean that it did not consider the remainder of the evidence presented and did not apply the correct testamentary capacity standard. On the basis of the

record presented, it is unclear what standard the court applied and how the court evaluated Tolsdorf's testimony in regard to such standard. Further, no motion for articulation or motion for reconsideration was filed after the court issued its decision.¹ In the absence of a motion for articulation, "the reviewing court should presume that the trial court considered all of the facts before it and applied the correct legal standard." *Id.*

Simply noting elements of Tolsdorf's testimony on the record is insufficient to demonstrate that the court applied the wrong standard for establishing testamentary capacity. The majority fails to note the other evidence presented to the court, namely, that the decedent was suffering from severe dementia, did not understand that she could not dispose of her property evenly while still giving her daughter, Jeanne Baron, the largest asset and that the will signing was brought to a halt when there was a question of the decedent's testamentary capacity. Simply because the court did not reference this evidence in its short oral decision does not mean that the court did not consider it and that it did not impact the court's determination. When the record does not reveal the basis of the Superior Court's decision, "[w]e do not presume error; the trial court's ruling is entitled to the reasonable presumption that it is correct unless the party challenging the ruling has satisfied its burden demonstrating the contrary." (Internal quotation marks omitted.) *State v. Baker*, 50 Conn. App. 268, 275 n.5, 718 A.2d 450, cert. denied, 247 Conn. 937, 722 A.2d 1216 (1998). Because I believe that the standard the court employed in reaching its decision is unclear, I would presume that the court was cognizant of the appropriate standard to be applied in determining testamentary capacity.

Because I conclude that the court was cognizant of the appropriate standard to apply, I next address Jeanne Baron's claim that the court's determination that the decedent lacked testamentary capacity when she executed a will on July 3, 2002, was clearly erroneous based on the evidence presented at trial. "To make a valid will, the testatrix must have had mind and memory sound enough to know and understand the business upon which she was engaged, that of the execution of a will, at the very time she executed it. . . . Whether she measured up to this test is a question of fact for the trier." (Citation omitted.) *City National Bank & Trust Co.'s Appeal*, supra, 145 Conn. 521. "Questions of fact are subject to the clearly erroneous standard of review. . . . A finding of fact is clearly erroneous when there is no evidence in the record to support it . . . or when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. . . . Because it is the trial court's function to weigh the evidence . . . we give great deference to its findings." (Internal quotation marks omitted.)

Reiner, Reiner & Bendett, P.C. v. Cadle Co., 278 Conn. 92, 107, 897 A.2d 58 (2006).

There is sufficient evidence in the record to support the court's determination that the decedent lacked testamentary capacity on July 3, 2002. Tolsdorf testified that the decedent suffered from "significant dementia" and that she could not manage her affairs or her bills on her own. Tolsdorf's testimony also indicated that the decedent seemed confused about the distribution of her estate. Specifically, Tolsdorf testified that he asked the decedent "what her plans were regarding her bounty, and she said, well, all her three children were going to share in it equally, and then she indicated that the farm was going to go to one of the children, and I said, well, is the farm the biggest thing you own? And she said, yes, and I said, well, how are you then going to divide things equally if you give it all to one child? She didn't see a problem with that. She didn't understand why that would be difficult or problematic." Further, when asked if an individual suffering from dementia would have some days that were different from others, Tolsdorf responded that "[t]hat degree of variability shrinks as the dementia progresses, and the further along you get in the dementia, the less variability you're going to see on that. . . . But at the stage she was in, I think she was approaching that stage where the degree of day-to-day variability was already shrinking. I would not expect to see a lot of day-to-day variability with that." Tolsdorf further testified that "[i]t's my professional opinion that given the degree of her cognitive impairment, she would have not been able to fully understand the implications of what she was doing in terms of signing something like a will." When asked by the court if the decedent was incompetent on the day he examined her, Tolsdorf responded in the affirmative. Tolsdorf also testified that the decedent was likely incompetent on July 3, 2002, as well, the day the second will was executed.

Furthermore, Louis Button, the attorney present at the will signing on July 3, 2002, also testified before the trial court. Button testified that he stopped the will signing "because I had an impression that there was some confusion on [the decedent's] part." Button testified that after halting the will signing, he spoke with another attorney in his firm to voice his concern about the decedent. The other attorney questioned the decedent about the will and apprised Button that he could have the decedent sign the will, which he did. On the basis of the foregoing, I cannot conclude that the court's determination, that the decedent lacked testamentary capacity when she executed a will on July 3, 2002, was clearly erroneous. I would therefore affirm the judgment of the trial court.

For the foregoing reasons, I respectfully dissent.

¹ The majority concludes that a motion for articulation was unnecessary because the decision was not ambiguous. I believe, however, that the deci-

sion was ambiguous, and that an articulation would have been beneficial in this case due to the claim that the trial court applied the wrong standard in determining testamentary capacity. I disagree with the majority's conclusion that the standard that the court used in making its determination is clear from the record presented, as the court issued an oral decision consisting of only a few sentences and at no point stated the standard to be applied.
