at 47. Because an order prohibiting pro se filings restricts a litigant's access to the courts, it must comply with due process and provide "notice and an opportunity to respond" to show cause why the sanction should not be imposed. *Id.* at 48.

Here, the record does not show that the trial court provided defendant with notice or an opportunity to be heard before it sanctioned him by barring him from filing any further pro se pleadings or communications. Although defendant was provided notice and an opportunity to be heard in a separate action before a different judge,[2] that notice does not satisfy the due process requirement in this case. *See Brinson v. State*, 215 So. 3d 1260, 1261 (Fla. 5th DCA 2017) (emphasizing that when the show cause order placed the defendant only on notice of a proposed ban limited to filings attacking his judgment and sentence in a particular case, the sanction could not exceed the provided notice). Because the trial court failed to provide defendant with notice and an opportunity to be heard before imposing this sanction, the trial court departed from the essential requirements of the law.

For this reason, we quash, without prejudice, the order barring defendant from pro se filings.[3] *See Lyons v. Steiner*, 356 So. 3d 898, 898 (Fla. 5th DCA 2023).

Petition granted; order quashed. (LEVINE, FORST and SHEPHERD, JJ., concur.)

[1]We find the other issues raised by defendant without merit.

[2]*See Johnson v. Muscella*, 4D2025-1088 (Fla. 4th DCA April 1, 2026) [51 Fla. L. Weekly D666a].

[3]The trial court may reconsider whether to bar defendant from future pro se filings; but if it does so, the court must comply with the procedural requirement of issuing an order to show cause that gives defendant both reasonable notice and an opportunity to be heard. We take no position on the merits of whether defendant should be barred from further pro se filings below in this particular case.

* * *

Criminal law—Sentencing—Credit for time served—Jail time—Trial court erroneously split pre-sentence jail credit between two counts ordered to run consecutively when credit should have been awarded only on one count

ANTHONY SMALL, JR., Appellant, v. STATE OF FLORIDA, Appellee. 4th District. Case No. 4D2025-3217. April 1, 2026. Appeal of order denying rule 3.801 motion from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; William Loy Roby, Judge; L.T. Case Nos. 432023000829CFAXMX, 432023001108CFAXMX, and 432024000047CFAXMX. Counsel: Anthony Small, Jr., Milton, pro se. James Uthmeier, Attorney General, Tallahassee, and Sabina Fernandez, Assistant Attorney General, West Palm Beach, for appellee.

ON CONFESSION OF ERROR

(PER CURIAM.) Defendant, Anthony Small, Jr., appeals a trial court's order on his Florida Rule of Criminal Procedure 3.801 motion for correction of jail credit. We find error as to only one of the three sentences at issue below.[1] As to lower court case number 432023CF000829A, the trial court erroneously split pre-sentence jail credit between two counts ordered to run consecutively, when credit should have been awarded only on count one. We therefore reverse and remand for correction of the judgment and sentence for case number 432023CF000829A. We affirm without comment the other two sentences.

In case number 432023CF000829A, the trial court sentenced Defendant to 60 months in prison for count one (possession of a substituted cathinone) and 365 days for count two (driving with license suspended with a prior conviction) to run consecutively. Although Defendant was entitled to 470 days' credit for time served, the trial court split the total credit by awarding 105 days for count one and 365 days for count two.

The State conceded error below, asserting that the trial court should have awarded Defendant 470 days' credit on count one.[2] This is correct. *See Canete v. Fla. Dep't of Corrs.*, 967 So. 2d 412, 415-16 (Fla. 1st DCA 2007) ("[A] defendant who is convicted of multiple offenses and sentenced to consecutive terms of imprisonment must be given presentence jail credit *only on the first of the consecutive sentences.*") (emphasis added) (citations omitted); *Steadman v. State*, 23 So. 3d 811, 813 (Fla. 2d DCA 2009) (determining that a defendant who receives consecutive sentences "must be given presentence jail credit *only on the first of the consecutive sentences*") (emphasis added) (citations omitted); *Kopson v. State*, 162 So. 3d 93, 96 (Fla. 4th DCA 2014) (acknowledging that a sentence applying jail credit to each consecutive sentence is not a valid sentence, rather, jail credit must be awarded to only the first of consecutive sentences).

Accordingly, we reverse and remand for correction of jail credit as to case number 432023CF000829A to reflect 470 days of credit on count one.

Affirmed in part, reversed in part and remanded. (MAY, FORST and KLINGENSMITH, JJ., concur.)

[1]We find no error as to the trial court's order on jail credit for lower court cases 432023CF001108A and 432024CF000047A.

[2]The State did not concede error on appeal in response to this Court's order to show cause.

* * *

Estates—Wills—Challenge—Standing—Interested person—Original will, which had decedent's son taking 75% of trust assets, allegedly superseded by second will, which provided that son would take 75% of Class B membership units of a holding company to which the trust assets had been transferred—Trial court erred by granting summary judgment in favor of decedent's siblings on issues of whether decedent's son had standing to contest decedent's second will and whether son was an "interested person" as defined by section 731.201(23) based on son's failure to present evidence of any alleged tax-related harm he would suffer through administration of second will—Although second will was substantively identical to prior will, son had standing to challenge second will where he has an injury-in-fact inasmuch as he would have a materially different legal status with disparate monetary consequences if he succeeds in his challenge, there is causation inasmuch as second will treats him differently than original will, and he has redressability inasmuch as challenge would allow son to set aside second will—Patently different tax treatment of what son would pay if he was a legatee in accordance with the tax terms dictated under second will versus what he would pay as a potential creditor of assets the siblings were to pay taxes on as the sole legatees under the original will obviates the need for expert testimony of the dollar figure which son expects to pay under each scenario—Son was an "interested person" where he would be affected by the outcome—There is no requirement that son prove his share of the estate would have been different if his revocation attempt succeeded in order to be considered an "interested person"—Testamentary capacity—Summary affirmance of trial court's grant of partial summary judgment on question of whether second will was executed in accordance with strictures of section 732.502 does not resolve issue of decedent's testamentary capacity—Question of testamentary capacity to be resolved on remand

RAMSEY C. FRANK, Appellant, v. PETER JOHN CONLAN, in his individual capacity and as personal representative of the ESTATE OF SUZANNE FRANK, JOHN CONLAN III, and JANICE BYRNE, Appellees. 4th District. Case Nos. 4D2024-1876 and 4D2024-2423. April 1, 2026. Consolidated appeals from the Circuit

Court for the Fifteenth Judicial Circuit, Palm Beach County; Charles E. Burton, Judge; L.T. Case No. 502022CP006727XXXXNB. Counsel: Bill Boyes of Boyes, Farina, Matwiczyk, Palm Beach Gardens, and Matthew Sarelson and Zachary Stoner of Dhillon Law Group, Inc., West Palm Beach, for appellant. Rebecca Mercier Vargas and Stephanie L. Serafin of Kreusler-Walsh, Vargas & Serafin, P.A., Palm Beach Gardens, and Theodore S. Kypreos and Alexander L. Brams of Jones Foster P.A., West Palm Beach, for appellees Peter John Conlan, individually, John Conlan III, and Janice Byrne. Nichole J. Segal of Burlington & Rockenbach, P.A., West Palm Beach, for appellee Peter John Conlan, as personal representative of the Estate of Suzanne Frank.

(LOTT, J.) This probate appeal, as is perhaps the case with many such appeals, arises from a rather unique set of facts.

From 10,000 feet: the Decedent executed a will in January 2022. In addition to some smaller bequests (not at issue here), the Decedent's estate plan utilized a separate trust containing the bulk of the estate to leave 75% to the Decedent's son (the "Son" or "Appellant") and 25% to the Decedent's three siblings (the "Siblings" or "Appellees").

The Decedent decided to modify that structure as a result of a contract with her former husband in June 2022 and transferred much of the trust assets to a new holding company, intending to execute a new will that passed her assets in that same proportion directly through the will instead of a trust. She executed that will in December 2022, two days before she passed away.

On appeal, the Son now challenges the December 2022 Will, raising questions about the Decedent's testamentary capacity to execute the will at that time. The Son also challenges the subsequent orders admitting the December 2022 Will to probate and appointing one of the Siblings as the personal representative (the "PR Sibling").

The Siblings, in an unusual twist, oppose the Son's challenge and argue that the Son lacks standing to contest the December 2022 Will because he would be much worse off—and they, in turn, would be much better off—if he succeeds in his challenge. If the January 2022 Will is reinstituted, they argue, the bulk of the estate assets would pass to *them*, because much of the trust assets contemplated by that will have been transferred. (Again, they oppose this outcome.)

The Son responds that he is actually better off if he succeeds in contesting the December 2022 Will, because if the January 2022 Will is reinstituted and the Siblings take more assets under it, he is left with a creditor claim against the Siblings arising from the June 2022 contract, which, if successful, would push more net tax burden onto the Siblings, and less tax burden onto him.

How that all plays out is neither here nor there, for now. The question is whether the Son has standing to contest the will—or, more aptly put, the two questions are (1) whether he has standing, and (2) whether he is an "interested person" as the term is defined in section 731.201(23), Florida Statutes (2022), with the statutory ability to contest the will.

We hold, under the very unique set of facts here, both that the Son has standing and that he is an "interested person" who may contest the December 2022 Will. We accordingly reverse the probate court's grant of summary judgment on that ground and remand for trial on the question of whether the Decedent lacked the testamentary capacity to execute the December 2022 Will.[1] We also reverse the orders admitting the December 2022 Will to probate and appointing the PR Sibling as the personal representative.

I. Background

A. Before the Petition

The Decedent and her former husband divorced in October 2021. Their marital settlement agreement required the former husband to create and fund an irrevocable trust with the Decedent as the sole lifetime beneficiary. The Trust provided that the Son would receive at least 75% of the Trust's net assets upon the Decedent's death, after payment of death taxes and administrative expenses. The Trust provided the Decedent with the power of appointment over the remaining 25% of the Trust's net assets. Any property not otherwise disposed of would pass equally to the Decedent's siblings.

In January 2022, the Decedent executed a will prepared by her estate planning attorney. We'll call this the "January 2022 Will." The will devised specific property to the Son and the Decedent's siblings and exercised the Decedent's power of appointment over the Trust's remaining 25% in favor of her residuary estate, which passed equally to her siblings. In other words, the Son would take 75%, and the Siblings would take 25%, of the Trust assets. The will provided death taxes "on property not passing under my Will shall be apportioned to and paid from such property by those succeeding to such property . . . ." The will further provided that distributions would be made "after the payment of Death Taxes and Administrative expenses."

In mid-2022, the Decedent and her former husband agreed to modify their separation agreement. Consistent with this agreement, they transferred the Trust assets to a newly-formed holding company. The holding company's Class B membership units were assigned to the Decedent outright. The contractual stipulation required the Decedent to provide, by will or otherwise, that the Son receive at least 75% of the holding company's Class B units of at the Decedent's death.[2]

From August through December 2022, the Decedent's physical and mental health deteriorated. She experienced repeated hospitalizations, and medical records and witness testimony described her as confused, disoriented, lethargic, and cognitively impaired. She was discharged to home hospice on December 4, 2022.

On December 5, 2022, the Decedent executed a new will, which we will call the "December 2022 Will." It was substantively identical to the January 2022 Will, with the exception that it devised 75% of the holding company's Class B membership interests in to the Son. In other words, 75% of the holding company assets would pass to the Son, and 25% to the Siblings. The new will also directed the death tax provision with respect to the Son's devise be apportioned and paid at the marginal rate, and added provisions governing the holding company's administration.

The evidence below raised substantial questions about the Decedent's testamentary capacity to execute the December 2022 Will, given the severely declined state of her mental and physical health.

The Decedent died two days after execution of the December 2022 Will.

B. Petition for Administration

The Decedent is survived by her Son and three Siblings. The Decedent's December 2022 Will nominated one of the Decedent's Siblings as personal representative consistent with her prior wills.

A petition for administration seeking admission of the December 2022 Will to probate and appointment as personal representative was filed. The Son filed a caveat four days later. The same day when the caveat was filed, the court admitted the December 2022 Will to probate and issued letters of administration appointing the PR Sibling as personal representative. The Son moved to vacate, asserting lack of formal notice, and the court vacated its prior order and revoked the

letters of administration.

Subsequently, the Son filed an answer and counter-petition challenging the December 2022 Will on grounds of improper execution, lack of testamentary capacity, and undue influence, and seeking appointment of a personal representative other than the personal representative initially appointed by the probate court. Thereafter, the court appointed the PR Sibling as curator.

C. Summary Judgment

The Siblings moved for summary judgment, arguing the Son lacked standing to contest the December 2022 Will, the will was validly executed, and was not the product of undue influence. The Son withdrew his undue influence claim but opposed summary judgment, asserting standing based on alleged adverse tax consequences under the December 2022 Will. The Son did not present expert testimony or record evidence quantifying any tax difference, arguing he did not need to show he would receive more assets under the December 2022 Will to prove standing. The Son also argued that the will's execution was invalid because the Decedent lacked testamentary capacity to sign the will, and contradictory testimony from the witnesses created a genuine dispute of fact as to whether they had signed the will and self-proving affidavit in each other's presence.

The probate court ultimately granted summary judgment for the Siblings and concluded the Son lacked standing because he would not benefit from invalidation of the December 2022 Will, which the court found to be substantially and functionally identical to the Decedent's January 2022 Will except for devising the Son 75% of the holding company's interests. The court further held that the Son failed to present record evidence of any tax-related harm sufficient to establish standing.

The probate court also found prima facie evidence of formal execution under section 732.503, Florida Statutes (2022), relying on a self-proving affidavit and unrebutted testimony of the witnesses present at execution. The court further rejected the Son's argument of lack of capacity, finding the Son "alleges improper execution pursuant Section 732.502, Florida Statutes, which does not contemplate Decedent's alleged incapacity" and that "[a] testator's capacity is contemplated by Section 732.501, Florida Statutes."

The Son appealed the summary judgment order. After the appeal was filed, the probate court admitted the December 2022 Will to probate and reappointed the PR Sibling as personal representative. The Son appealed that order as well. We consolidated those appeals.

II. Analysis

A. Standard of Review

Our standard of review of an order granting summary judgment is de novo. *See Patient Depot, LLC v. Acadia Enters., Inc.*, 360 So. 3d 399, 406 (Fla. 4th DCA 2023); *Gromann v. Avatar Prop. & Cas. Ins. Co.*, 345 So. 3d 298, 300 (Fla. 4th DCA 2022). Florida's summary judgment standard, applied in accordance with the federal standard, provides a court shall grant summary judgment if the movant shows "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(a).

"We also review de novo the interpretation of statutes." *Delbrouck v. Eberling*, 226 So. 3d 929, 932 (Fla. 4th DCA 2017) (citing *Duncombe v. Adderly*, 991 So. 2d 1013, 1015 (Fla. 4th DCA 2008)); *see also Westport Recovery Corp. v. Midas*, 954 So. 2d 750, 752 (Fla. 4th DCA 2007) ("Whether a party is the proper party with standing to bring an action is a question of law to be reviewed *de novo*."); *Bivins v. Rogers*, 147 So. 3d 549, 550 (Fla. 4th DCA 2014) ("A dismissal based on lack of standing raises a question of law that is reviewed *de novo*." (alteration in original) (citations omitted)); *GMAC Mortg., LLC v. Choengkroy*, 98 So. 3d 781, 781 (Fla. 4th DCA 2012) ("The review of a final order dismissing a cause of action for lack of standing is *de novo*." (alteration in original) (citations omitted)).

B. "Standing" to contest a will

"Standing is the legal doctrine that defines when a litigant has a stake in a controversy sufficient to obtain judicial resolution of that controversy." *Planned Parenthood of Sw. & Cent. Fla. v. State*, 384 So. 3d 67, 89 (Fla. 2024) (Sasso, J., concurring); *see also* Black's Law Dictionary (12th ed. 2024) (defining "standing" as "[a] party's right to make a legal claim or seek judicial enforcement of a duty or right based on the party's having a sufficient interest in a justiciable controversy.").

By statute, only a person who is an "interested person" is permitted to contest administration of a will. An "interested person" is "any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved . . . ." § 731.201(23), Fla. Stat. (2022).

Because the "interested person" inquiry is similar to, and draws upon, concepts from "standing," we and other courts have often referenced the concept of "standing to contest a will," or something to that effect. *See, e.g., Rudolph v. Rosecan*, 154 So. 3d 381, 385 (Fla. 4th DCA 2014) ("A person's status as an 'interested person' with standing in a guardianship proceeding is dependent upon whether the person would be affected by the outcome of the proceedings."); *Bivins*, 147 So. 3d at 551 ("We agree with the trial court that the son did not have standing to request the affirmative relief of changing the residence of the ward. Instead, the statutory scheme gives any interested person, which would include the son as next of kin, the right to petition for interim judicial review. . . ."); *Delbrouck*, 226 So. 3d at 935 ("As an interested person, appellant had standing to contest the will."); *Agee v. Brown*, 73 So. 3d 882, 886 (Fla. 4th DCA 2011) (discussing "standing to contest" and "standing to challenge" a will); *In re Lewis' Estate*, 411 So. 2d 368, 370 (Fla. 4th DCA 1982) ("Florida has adopted a statute which grants automatic standing to any personal representative. s 731.201(21), Florida Statutes (1979)."); *see also Smith v. DeParry*, 86 So. 3d 1228, 1235 (Fla. 2d DCA 2012) ("Under the Probate Code, the term 'interested person' refers to a person's or entity's standing, i.e., the right to notice and an opportunity to be heard in a particular proceeding pending in a probate or guardianship matter.").

But as set out below, "standing" and "interested person" are distinct inquiries. We set out each inquiry below and then apply each to the facts of this case.

1. Standing

"Standing is a legal concept that requires a would-be litigant to demonstrate that he or she reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly." *Shriberg v. Fla. Flooring, Inc.*, 2026 WL 60973, at *2 (Fla. 4th DCA Jan. 7, 2026) (quoting *Hayes v. Guardianship of Thompson*, 952 So. 2d 498, 505 (Fla. 2006)).

In *State v. J.P.*, 907 So. 2d 1101 (Fla. 2004), the Florida Supreme Court listed "three requirements that constitute the 'irreducible constitutional minimum' for standing":

> First, a plaintiff must demonstrate an "injury in fact," which is "concrete," "distinct and palpable," and "actual or imminent." Second, a plaintiff must establish "a causal connection between the injury and the conduct complained of." Third, a plaintiff must show "a 'substantial likelihood' that the requested relief will remedy the alleged injury in fact."

Id. at 1113 n.4 (citations omitted).[3]

2. The "interested person" who has the ability to contest a will

Pursuant to the Florida Probate Code, "[a]ny interested person, including a beneficiary under a prior will, unless barred under s. 733.212 or s. 733.2123, may commence [a proceeding to revoke the probate of a will] before final discharge of the personal representative." § 733.109(1), Fla. Stat. (2022). "A petition for revocation of probate shall state the interest of the petitioner in the estate and the facts constituting the grounds on which the revocation is demanded." Fla. Prob. R. 5.270.

Section 731.201(23) defines an interested person as "any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved" and "may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings." § 731.201(23), Fla. Stat. (2022); *see also Hayes*, 952 So. 2d at 507 (explaining that the definition of "interested person" requires the trial court to evaluate the nature of both the proceeding and the interest asserted).

"In a probate proceeding, a person 'may reasonably be expected to be affected by the outcome' of the proceeding if they are a beneficiary of the estate." *Christie v. Qualls*, 392 So. 3d 801, 802 (Fla. 1st DCA 2024); *see also Dean v. Bentley*, 848 So. 2d 487, 489 (Fla. 5th DCA 2003) (noting that "[i]f Bentley was the beneficiary of a valid will, he certainly would have been affected by the outcome of the probate proceedings"); *Rudolph*, 154 So. 3d at 385 (noting the "fluid nature" of who may be an "interested person"). "[W]hether a person is an 'interested person' is an element that must be established by the petitioner seeking revocation of probate." *Gordon v. Kleinman*, 120 So. 3d 120, 121 (Fla. 4th DCA 2013) (quoting *Wehrheim v. Golden Pond Assisted Living Facility*, 905 So. 2d 1002, 1006 (Fla. 5th DCA 2005)).

To be sure, the statutory "interested person" inquiry draws on concepts from standing jurisprudence. As our Supreme Court noted, "[i]n defining an 'interested person' as any person 'who may reasonably be expected to be affected by the outcome of the proceeding,' section 731.201(21) incorporates the general standing principles . . . ." *Hayes*, 952 So. 2d at 507-08; *see also Griffin v. Pearson*, 2025 WL 2088700, at *2 (Fla. 6th DCA July 25, 2025) ("[T]hough the trial court did not expressly refer to the statutory definition, its finding that Griffin lacks standing to challenge the 2012 will is tantamount to finding Griffin is not an 'interested person' under the Probate Code.").

But whether a person is an "interested person" is ultimately a merits question based on the definition set forth in the statutory text; it concerns who the legislature would permit to challenge a will in particular cases. *See Gordon*, 120 So. 3d at 121 ("whether a person is an 'interested person' is an element . . .") (quotation omitted). The "interested person" inquiry is distinct from the inquiry of whether a person has standing to appear in court—the "require[ment]" that "a would-be litigant . . . reasonably expects to be affected by the outcome of the proceedings, either directly or indirectly." *Shriberg*, 2026 WL 60973 at *2 (quotation omitted).

C. Application to these facts

Applying this framework here, we find the trial court erred in holding both that the Son lacked standing and that he was not an "interested person."

If the Son succeeds in his challenge to the December 2022 Will, the January 2022 Will would be reinstituted. The January 2022 Will contemplated that many assets would pass to the Son through a trust. However, that trust no longer governs disposition of the bulk of the estate assets. The assets that used to be in the trust would accordingly pass to the Siblings through the January 2022 Will's residuary clause. The Son, in turn, claims he, as a beneficiary of the June 2022 contract, would have a creditor claim against the Siblings for the assets that otherwise would have passed through the trust. He also claims he would pay less taxes as a creditor under the January 2022 Will than as a legatee[4] under the December 2022 Will.

As to standing—the Son has shown standing under these circumstances. He has an injury-in-fact inasmuch as he would have a materially different status (creditor versus legatee) with disparate monetary consequences if he succeeds in his challenge. The patently different tax treatment of what he would pay if his challenge fails—as legatee in accordance with the tax terms dictated under the December 2022 Will—and if his challenge succeeds—as a potential creditor of assets the Siblings were to pay taxes on as the sole legatees under the January 2022 Will—obviates the need for expert testimony of the dollar figure which he expects to pay under each scenario.[5] Further, the Son has redressability inasmuch as the challenge would allow him to set aside the will. And there is causation inasmuch as the challenged will treats him differently than the previous will.

As to whether the Son is an "interested person"—whether he is actually financially better off having a (not yet adjudicated) creditor claim than he would be simply taking the assets under the December 2022 Will is not dispositive of his "interested person" status. Those are two very different circumstances (potential creditor or legatee) for the Son to be in vis-a-vis the estate, and thus he is "affected" by the outcome. That makes him an "interested person" able to challenge the will. § 731.201(23), Fla. Stat. (2022).

In *Delbrouck*, we reached a similar result. 226 So. 3d at 930. There, the decedent's son petitioned for revocation of probate, alleging lack of testamentary capacity, undue influence, and overreaching of the personal representative. *Id.* The personal representative moved for summary judgment, which the court granted. *Id.* at 932. On appeal, the decedent's son argued summary judgment was improper because "he is a substantial beneficiary under the will and a putative heir under intestacy law, making him an 'interested person' in every sense of the term." *Id.* He also argued genuine issues of material fact existed as to undue influence and testamentary capacity. *Id.*

We held the *Delbrouck* appellant—the decedent's son—qualified as an "interested person" within the meaning of section 733.109(1) (and 733.201(23)), because he was both a beneficiary under the will and an heir at law, and because he would have been affected by the outcome of the revocation petition. Specifically, a successful revocation would have subjected the personal representative to removal under section 733.504(10). *Id.* at 933. We further explained "[t]here is no requirement in the plain language of the statute that appellant prove his share of the estate would have been different if his revocation attempt succeeded." *Id.*

Here, as in *Delbrouck*, although the Son did not present evidence quantifying the precise tax benefit which he might obtain, he was not required "to prove his share of the estate would have been different if his revocation attempt succeed[s]." *Id.* He was required to prove what section 731.201(23)'s plain language and our caselaw interpreting section 731.201(23) require—that he would be "affected" by the outcome. Under the unique facts here, he showed as much.

D. On remand, the testamentary capacity question should proceed to trial

The Son also raised a challenge to the Decedent's testamentary capacity to execute the December 2022 Will. The Siblings did not move for summary judgment on that question. At oral argument, both parties noted that if we reversed on the standing question, they would proceed to trial on the question of testamentary capacity.

We summarily affirm the trial court's grant of partial summary judgment on the question of whether the execution of the December 2022 Will complied with the strictures of section 732.502, Florida Statutes (2022). We write to explain the impact of this affirmance on the issues at trial on remand, and in particular the question of testamentary capacity.

The question of testamentary capacity, or a sound mind, is a separate question from whether a will is validly executed in accordance with the strictures of section 732.502. Section 732.501 provides "[a]ny person who is of sound mind and who is either 18 or more years of age or an emancipated minor may make a will." § 732.501, Fla. Stat. (2022).

> To execute a valid will, the testator need only have testamentary capacity (i.e. be of "sound mind") which has been described as having the ability to mentally understand in a general way (1) the nature and extent of the property to be disposed of, (2) the testator's relation to those who would naturally claim a substantial benefit from his will, and (3) a general understanding of the practical effect of the will as executed.

Raimi v. Furlong, 702 So. 2d 1273, 1286 (Fla. 3d DCA 1997); *see also In re Bailey's Estate*, 122 So. 2d 243, 245 (Fla. 2d DCA 1960) (holding the same); *In re Wilmott's Estate*, 66 So. 2d 465, 467 (Fla. 1953) ("The making of a will does not depend upon a sound body but upon a sound mind.").

"Testamentary capacity is determined only by the testator's mental capacity at the time he executed his will." *Jervis v. Tucker*, 82 So. 3d 126, 128 (Fla. 4th DCA 2012) (quoting *Hendershaw v. Estate of Hendershaw*, 763 So. 2d 482, 483 (Fla. 4th DCA 2000)); *see also Skelton v. Davis*, 133 So. 2d 432, 435 (Fla. 3d DCA 1961) ("The principle of law that testamentary capacity is to be judged solely at the time of the execution of the will is irrefragable and no authority need be cited.").

Valid execution, provided by section 732.502, is a separate concept that involves compliance with statutory procedural formalities for creating a legally enforceable will.[6] To properly execute a will, it must be signed at the end by the testator and in the presence of two witnesses who witness the execution (or an acknowledgement by the testator) in the presence of each other. *See* § 732.502(1), Fla. Stat. (2022); *see also Allen v. Dalk*, 826 So. 2d 245, 247 (Fla. 2002) ("A testator must strictly comply with these statutory requirements in order to create a valid will."); *Manson v. Hayes*, 539 So. 2d 27, 28 n.2 (Fla. 3d DCA 1989) (noting that "[t]he purpose of the statute is to assure not only that the signature on the will is that of the testator, but to provide reasonable assurance of the circumstances under which the signature was affixed to the document"); *In re Swanson's Estate*, 397 So. 2d 465, 466 (Fla. 2d DCA 1981) (explaining that "[e]ach of the subsections [of section 732.502] deals with some procedural formality required for a valid execution" and "does not purport to deal with substantive considerations such as mental capacity or undue influence").

Both requirements—testamentary capacity and proper execution—must be satisfied independently for a will to be valid, and a will can fail for lack of either element even if the other is present. *See, e.g., Tendler v. Johnson*, 332 So. 3d 521, 524 (Fla. 4th DCA 2021) ("The probate of a will signifies that a will was properly executed and witnessed, and that the testator had testamentary capacity when executing the will . . . [t]he use of the word 'validity' in chapter 733 pertains to the compliance with the technical requirements of execution—signatures and witnesses—and to the testamentary capacity of the testator—the required factors for a will to be probated."); *Blits v. Blits*, 468 So. 2d 320, 321 (Fla. 3d DCA 1985) (separately assessing issues of testamentary capacity and proper execution).

Because we summarily affirm on the issue of whether execution according to the strictures of Section 732.502 was valid, on remand, the parties should proceed to trial on the separate question of testamentary capacity.

III. Conclusion

We reverse the trial court's grant of summary judgment on the question of standing and "interested person" status. The Son meets the threshold for standing and is an "interested person" with the statutory ability to challenge the December 2022 Will. We summarily affirm the trial court's grant of partial summary judgment on the question of whether the December 2022 Will was executed in accordance with the strictures of section 732.502, and remand for trial on the question of whether the Decedent lacked the testamentary capacity to execute the December 2022 Will, and any other issues that may be appropriately raised by the parties that are not inconsistent with this opinion.

In the consolidated appeal, the Son argues that if we reverse the summary judgment order, we should also reverse the orders admitting the December 2022 Will to probate and appointing the personal representative. These orders were entered after summary judgment. In light of our reversal above, we also reverse the orders admitting the December 2022 Will to probate and appointing the PR Sibling as personal representative.

Affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. (MAY and CONNER, JJ., concur.)

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[1]As explained below, we summarily affirm as to the question of whether the will was validly executed under section 732.502, Florida Statutes (2022).

[2]Note that the January 2022 Will, in effect at the time of the mid-2022 contract, did not address the newly-created holding company interests, and so those interests would pass to the Siblings under that will's residuary clause, unless and until it was modified.

[3]Justice Sasso, in her *Planned Parenthood* concurrence, recently suggested that standing jurisprudence in Florida remains messy. 384 So. 3d at 89 (Sasso, J., concurring). She explains that although "the Florida Constitution is textually distinct from the Federal Constitution because it does not contain an explicit cases and controversies clause," the "[Florida Supreme] Court has at times reflexively adopted federal standing tests without examining whether the Florida Constitution demands similar requirements," and at other times "[has] concluded that standing in Florida is less restrictive than at the federal level." *Id.* at 89-90. Justice Sasso suggests, going forward, "we should consider from where our standing requirements are derived" and,

once decided, courts need to: "clarify the scope of any standing requirements, such as whether parties may assert both legal and factual injuries or whether only a legal injury will suffice;" "examine whether standing requirements are truly subject to waiver, or instead whether they are jurisdictional in nature"; and "provide a principled methodology to help litigants understand which tests to apply when." *Id.* at 93 (also stating "I encourage parties to critically assess these and other standing issues and present argument to this Court should the opportunity arise").

[4]"Legatee" means "someone who is named in a will to take personal property; one who has received a legacy or bequest." *Legatee*, Black's Law Dictionary (12th ed. 2024).

[5]That the Son's creditor status is contingent on a successful outcome in a subsequent creditor claim does not deprive him of standing. A trial-within-a-trial is unnecessary to determine that claim's actual viability of that claim; it is sufficiently colorable that he has at least the bare constitutional minimum to appear in court in this case. Indeed, if it were not so colorable and were instead frivolous, the Siblings could rest easy, knowing they would take the entirety of the holding company assets under the January 2022 Will if the Son succeeds in his challenge to the December 2022 Will.

[6]Again, this is the question on which the trial court granted partial summary judgment, which we summarily affirm.

* * *

Bonds—Public construction—Non-payment under bond—Notice—Action brought against general contractor and surety claiming entitlement to payment from public construction bond pursuant to section 255.05 after subcontractor failed to pay plaintiff materialman for materials it had provided—No error in granting summary judgment in favor of defendants on their fraudulent notice of non-payment defense—A notice of non-payment is fraudulent if the claimant prepared the notice with such willful and gross negligence as to amount to a willful exaggeration—It does not necessarily matter that claimant genuinely believed it was entitled to everything it claimed—Because materials plaintiff furnished were not specially fabricated, plaintiff could recover on bond only for qualifying materials actually incorporated into the project—No reasonable trier of fact could conclude that plaintiff did not prepare notice with such willful and gross negligence as to amount to willful exaggeration where, without conducting any investigation whatsoever into amount to which it was actually entitled, plaintiff claimed every dollar billed to subcontractor, including legal fees and materials not incorporated into project—Plaintiff's exaggerated claim did not constitute a minor mistake or error where claim contained more unauthorized items than authorized ones

K & M ELECTRIC SUPPLY, INC., Appellant, v. BROWN ELECTRICAL SOLUTIONS, LLC, et al., Appellees. 4th District. Case No. 4D2025-1740. April 1, 2026. Appeal from Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Bradley G. Harper, Judge; L.T. Case No. 50-2022-CA-012561-XXXX-MB. Counsel: James Scott Telepman of Cohen, Norris, Wolmer, Ray, Telepman, Berkowitz & Cohen, North Palm Beach, for appellant. Vincent F. Vaccarella and Zachary L. Auspitz of Vincent F. Vaccarella, P.A., Fort Lauderdale, for appellees.

(LOTT, J.) Appellant, K & M Electric Supply, Inc. ("K&M"), appeals the grant of partial summary judgment for Appellees, GlobalTech, Inc. ("GlobalTech") and Arch Insurance Company ("Arch Insurance") (collectively "Appellees"), on Count IV of its complaint for payment under a public construction bond, pursuant to section 255.05, Florida Statutes (2022). With the benefit of oral argument, we affirm.

I. Background and Proceedings Below

GlobalTech was the general contractor for a project to improve the Riviera Beach Water Treatment Plant, and as required by law, obtained a bond from surety Arch Insurance to secure payments for the project. GlobalTech subcontracted with Brown Electrical Solutions, LLC, ("Brown") for Brown to install certain electrical fixtures in the contract. The subcontract with Brown was for about $99,000.

K&M was a "materialman"—a supplier of materials that would eventually make their way into the project by way of the subcontractor. K&M provided electrical materials to the subcontractor, Brown, for use in the project. At Brown's request, K&M provided Brown with well over $100,000 in materials that Brown claimed were for use in the project.

After Brown failed to pay, K&M made a claim on the bond for about $123,000—all the materials that Brown claimed it ordered for the project, plus some legal fees and other charges.[1]

Based on K&M's $123,000 claim, Appellees moved for summary judgment, arguing that K&M's notice of nonpayment of the bond was "fraudulent." Appellees argued there was no dispute that the notice was "fraudulent" within the meaning of the statute because, among other things, (1) the notice contained legal fees and other charges that are specifically not allowed to be claimed; (2) the claim was significantly higher than Brown's total subcontract on the project of about $99,000; and (3) the claim contained items that were not covered by the subcontract or otherwise fell outside its scope, such as a claim for wire in a length that greatly exceeded the amount allowed under Brown's subcontract.

K&M did not file a response in opposition to the motion, but filed an (untimely) affidavit[2] setting out that it did not willfully exaggerate its claims, and instead merely relied on Brown's representations as to what was purchased for the project. The affidavit also noted that Brown was able to verify about $56,000 of the materials claimed on the bond were in fact delivered to the job site and thus actually incorporated into the project.

II. Analysis

A. Section 255.05 bond claims and the fraudulent lien defense

So, what was K&M actually allowed to claim on the bond? "[I]n order for one who has furnished materials to have a lien, the materials must either be 'specially fabricated' or actually incorporated into the improvement." *Aquatic Plant Mgmt., Inc. v. Paramount Eng'g, Inc.*, 977 So. 2d 600, 603 (Fla. 4th DCA 2007).[3] Here, the materials K&M furnished were not specially fabricated, so K&M could recover on the bond only for qualifying materials "actually incorporated" into the project.

"A claimant who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond," and "[t]he service of a fraudulent notice of nonpayment is a complete defense to the claimant's claim against the bond." § 255.05(2)(a)2., Fla. Stat. (2022). Section 255.05(2)(a)2. sets forth what makes a notice "fraudulent":

> A notice of nonpayment is fraudulent if the claimant has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond.

Id.

B. Standard of Review

"We review an order granting summary judgment de novo." *Kincaid v. Walmart, Inc.*, No. 4D2024-2245, 2026 WL 758378 (Fla. 4th DCA Mar. 18, 2026). Summary judgment is proper where "there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(a).