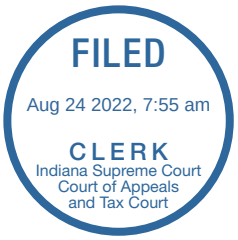
MEMORANDUM DECISION



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IN THE COURT OF APPEALS OF INDIANA

Brian L. Meyer,
Appellant-Petitioner,

v.

The Laverne R. and Nancy P. Meyer Revocable Living Trust Dated June 6, 2006, Thomas Meyer, and Jan DeWees,
Appellees-Respondents.

August 24, 2022

Court of Appeals Case No. 22A-PL-893

Appeal from the Jasper Superior Court

The Honorable Russell D. Bailey, Judge

Trial Court Case Nos. 37D01-1803-PL-169 37D01-1806-PL-514

Shepard, Senior Judge.

[1] Laverne R. Meyer and Nancy P. Meyer created a trust to manage their assets and to govern the disposition of their estate after they died. They later amended the trust to exclude their youngest child, Brian L. Meyer, as a beneficiary. After Laverne and Nancy died, Brian sued the trust and his two siblings, claiming he had been excluded from the trust proceeds due to undue influence. After a bench trial, the trial court rejected Brian's claim, and we affirm.

[2] Laverne[1] and Nancy lived in Jasper County, Indiana their entire lives, and they had three children: Jan DeWees,[2] Thomas Meyer (born in 1957), and Brian (born in 1967). Laverne was a farmer, and Thomas joined him in farming the family's 400 acres of land and other rented properties after graduating from high school. Jan and Brian chose other occupations. Thomas and Brian had a difficult relationship, which Thomas attributed to jealousy on the part of Brian, and which Brian stated was caused by Thomas' bullying.

[3] Laverne was proud of his farm and wanted to see it passed down through the family, intact. In 2005, with Laverne and Nancy's approval, Thomas and his wife took out a life insurance policy on Laverne and Nancy, with the intent that Thomas could use the proceeds to offer to purchase his siblings' interests in the

[1] We refer to the parties by their first names because most of them share a last name.

[2] Jan is not participating in this appeal, but she is named on the case caption because a party of record in the trial court remains a party on appeal. Ind. Appellate Rule 17(A).

farm after their parents died. Thomas paid the policy premiums. He gave Jan and Brian an opportunity to buy interests in the policy, but they both refused.

[4] As Laverne and Nancy continued to discuss succession plans for the farm with Thomas and his wife, Laverne contacted attorney Ned Tonner and asked him to prepare a trust. On June 13, 2006, Laverne and Nancy executed The Laverne T. Meyer and Nancy P. Meyer Revocable Living Trust ("the Trust"). They named themselves the co-trustees. The document provided that after Laverne and Nancy passed away, the Trust would terminate and the estate would be divided equally among Jan, Thomas, and Brian. Laverne and Nancy further named Thomas as a successor trustee if they later became unable to serve. On that same day, Laverne and Nancy executed pour-over wills, devising to the Trust the entire estate of the second-to-die spouse.

[5] Later, Brian developed severe financial problems due to several criminal and civil matters, including nonpayment of federal and state taxes, and he went through a divorce. His relationship with his parents deteriorated at the same time. Laverne contacted Tonner and asked him to amend the trust to exclude Brian. On November 10, 2009, Laverne and Nancy executed a First Amendment to the Laverne R. Meyer and Nancy P. Meyer Revocable Living Trust, stating that Brian Meyer was removed as a beneficiary and would "take nothing by way of our Revocable Living Trust." Tr, Vol. 4, p. 40. Thomas was not present for the execution of the First Amendment and did not find out his parents had cut Brian out of the Trust until March or April of 2010.

[6] Nancy died on August 18, 2016. Laverne, Thomas, and Thomas's wife soon met with Tonner to amend the trust again. On August 25, 2016, Laverne executed a Second Amendment to the Trust, which contained two notable changes: (1) Thomas was named co-trustee; and (2) Laverne granted Thomas a right of first refusal to purchase Jan's interest in the family farm after his death. Laverne died in October 2017.

[7] On March 8, 2018, Brian filed a petition to docket and determine beneficiaries of the Trust, which the Jasper Superior Court's Probate Division ("the Probate Division") docketed under Cause Number 37D01-1803-PL-169. On June 11, 2018, he filed a verified complaint to contest Laverne's will, which the Probate Division docketed under Cause Number 37D01-1806-PL-514. Brian claimed in both documents that he had unfairly been excluded from the Trust's proceeds due to Thomas' undue influence over their father.

[8] The trial court presided over a two-day bench trial addressing both cases. Prior to trial, Brian asked in writing for findings of fact and conclusions thereon. On October 12, 2021, the trial court issued findings and conclusions, entering judgment in favor of the Estate, Thomas, and Jan. The court stated, among other conclusions, that Thomas did not exert undue influence over Laverne and Nancy when they removed Brian as a beneficiary of the Trust in 2009. Brian filed a motion to correct error, which the trial court denied. This appeal followed.

[9] Brian argues the trial court erred in failing to place the burden of proof on Thomas to demonstrate Brian's removal as a trust beneficiary in 2009 was not the result of undue influence. When a trial court issues findings of fact and conclusions thereon at a party's request, we apply a two-tiered standard of review: we first determine whether the evidence supports the trial court's findings, and second, we determine whether the findings support the conclusions and judgment. *Briles v. Wausau Ins. Cos.*, 858 N.E.2d 208 (Ind. Ct App. 2006). We may not set aside the findings or judgment unless they are clearly erroneous. *In re Est. of Compton*, 919 N.E.2d 1181 (Ind. Ct. App. 2010), *trans. denied*. Findings are clearly erroneous when the record contains no facts to support them either directly or by inference. *Morgan v. White*, 56 N.E.3d 109 (Ind. Ct. App. 2016). A judgment is erroneous if it applies the wrong legal standard to properly found facts. *Id.*

[10] We do not reweigh the evidence; rather, we consider the evidence most favorable to the judgment with all reasonable inferences drawn in favor of the judgment. *Est. of Compton*, 919 N.E.2d 1181. We give due regard to the trial court's ability to assess the credibility of witnesses. *Id*. By contrast, we review questions of law de novo, with no deference given to the trial court's determinations. *In re Guardianship of Phillips*, 926 N.E.2d 1103 (Ind. Ct. App. 2010).

[11] The Appellate Court of Indiana's often-repeated definition of undue influence is as follows: "the exercise of sufficient control over the person, the validity of whose act is brought in question, to destroy his free agency and constrain him

to do what he would not have done if such control had not been exercised." *Folsom v. Buttolph*, 82 Ind. App. 283, 295, 143 N.E. 258, 262 (1924). With respect to estate documents, the Court has stated: "Undue influence sufficient to void a will must be directly connected with and operate at the time of its execution with such force that the supposed will is in reality that of another and not of the testator." *McCartney v. Rex*, 127 Ind. App. 702, 705, 145 N.E.2d 400, 401 (1957). Undue influence may be proven by circumstantial evidence, and the only positive and direct proof required is of facts and circumstances from which undue influence may reasonably be inferred. *Gast v. Hall*, 858 N.E.2d 154 (Ind. Ct. App. 2006), *trans, denied*.

[12] Certain legal and domestic relationships raise a presumption of trust and confidence as to the subordinate party on the one side and a corresponding influence as to the dominant party on the other. *Lucas v. Frazee*, 471 N.E.2d 1163 (Ind. Ct. App. 1984). These relationships include attorney and client, guardian and ward, principal and agent, pastor and parishioner, husband and wife, parent and child, and there may be others. *Id.* If the plaintiff's evidence establishes: (a) the existence of such a relationship; and (b) the questioned transaction between those parties resulted in an advantage to the dominant person in whom trust and confidence was reposed by the subordinate, then the law imposes a presumption that the transaction was the result of undue influence exerted by the dominant party, constructively fraudulent, and thus void. *Id.* At that point, the burden of proof shifts to the dominant party, who

then must demonstrate by clear and unequivocal proof the transaction was in fact one had at arm's length and thus valid. *Id*.

[13] With respect to parent-child relationships, the parent generally is considered the dominant party. *Scribner v. Gibbs*, 953 N.E.2d 475 (Ind. Ct. App. 2011). Previous opinions of this Court have determined a child can become a dominant party in a relationship, and raise a presumption of undue influence in transactions between the child and parent, where (1) the child is the sole caretaker of an ailing parent; or (2) the parent has named the child as the parent's attorney-in-fact. *See, e.g.*, *Supervised Est. of Allender v. Allender*, 833 N.E.2d 529 (Ind. Ct. App. 2005) (son was in a position of dominance over unwell mother because he was her caretaker and attorney-in-fact), *trans. denied*; *see also Matter of Est. of Blair*, 177 N.E.3d 84 (Ind. Ct. App. 2021) (granddaughter was the dominant party in relationship with unwell grandfather because she was his caretaker).

[14] In this case, the trial court concluded: "Tom and his father dealt with each other in terms of equality." Appellant's App. Vol. 2, p. 34. There are ample findings of fact to support the conclusion. Tom was never his parents' caretaker. Instead, it appears Laverne and Nancy were looking after themselves when they first amended the Trust in 2009. Beginning in 2014, Virginia Markle, a friend of Laverne and Nancy, visited their house approximately three times a week to help Nancy with her personal care and doctor's appointments. She also provided personal care to Laverne after Nancy died. Further, Thomas was never his parents' attorney in fact, and he did not become a co-trustee with

his father until 2015, well after Laverne and Nancy amended their trust in 2009 to exclude Brian as a beneficiary.

[15] Brian claims Thomas' long-term partnership with Laverne in working on the family farm, coupled with Laverne's stated desire to pass on the farm and Thomas' initiation of farm succession planning with his parents in 2005, establishes Thomas was in the dominant party in their relationship. We disagree. The trial court's findings thoroughly demonstrate Laverne remained mentally competent throughout his life, and he was described by several witnesses as stubborn and hard to persuade. He had always intended to pass on the farm to his family intact, and there is no evidence he had any intent to pass on the farm to Brian but had his free will overruled by Thomas.

[16] Further, although Thomas first approached his parents to discuss their future plans for the farm, Laverne and Nancy contacted their attorney by themselves in 2006 (to create the Trust) and in 2009 (to amend it by removing Brian). Their attorney never saw any sign of Thomas controlling their decisions. And based on Brian's numerous criminal and civil entanglements, including owing large sums to the Internal Revenue Service, Laverne and Nancy had ample grounds to seek to disinherit Brian, independent of Thomas' animosity toward his brother. Brian's arguments are, at their core, a request to reweigh the evidence, which we cannot do. The trial court did not err in rejecting Brian's claim that it should presume Thomas unduly influenced their parents. See *Barkwill v. Cornelia H. Barkwill Revocable Trust*, 902 N.E.2d 836 (Ind. Ct. App. 2009) (trial court did not err in rejecting presumption of son's undue influence

over mother; mother lived alone and managed her own daily needs, and son had no role in mother's amendment of trust to exclude other son from proceeds), *trans. denied*.

[17] When a presumption of undue influence does not apply as a matter of law, a plaintiff may still establish undue influence by showing the imposition of power by one party to deprive the other party of the exercise of free will. *Est. of Compton*, 919 N.E.2d 1181. After reviewing the trial court's findings of fact and the evidence set forth in the record, we conclude the trial court did not err in determining Laverne and Nancy acted of their own free will in removing Brian as a Trust beneficiary. Thomas was not aware his parents had amended the Trust to exclude Brian as a beneficiary until several months after the fact. Further, Laverne and Nancy were mentally competent to manage their property, and witnesses described them as dismayed and embarrassed by Brian's criminal and civil entanglements. In addition, Thomas' dealings with his father do not demonstrate an unequal exercise of power over Laverne or Nancy. To the contrary, until his retirement from farming, all evidence showed Laverne was an equal partner with Thomas.

[18] Finally, Brian argues the trial court erroneously imposed upon him an unnecessarily high burden of proof to demonstrate Thomas was the dominant party over Laverne. The court, while citing a case discussing the shifting burdens of proof when undue influence is involved, stated that a relationship where a child is dominant over a parent "must be clearly proven by the party asserting it." Appellant's App. Vol. 2, p. 33 (citing *Westphal v. Hickman*, 185

Ind. 88, 113 N.E. 299 (1916)). Brian interprets this statement to mean the trial court expected him to present clear and convincing evidence to prevail, rather than meeting the usual standard of the preponderance of the evidence. We disagree, because the trial court did not state anywhere else in the decision that Brian was subject to a higher burden of proof. In this context, we do not consider the trial court's use of the word "clearly" to set a higher standard of proof.

[19] For the reasons stated above, we affirm the judgment of the trial court.

[20] Affirmed.

Mathias, J., and Pyle, J., concur.