

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

In Re Guardianship of: Eugenia
P. Galanos,
Niki P. Galanos,
Appellant,

v.

George P. Galanos,
Appellee.

June 22, 2022

Court of Appeals Case No.
21A-GU-1909

Appeal from the Lake Circuit
Court

The Honorable Marissa J.
McDermott, Judge

The Honorable Jewell Harris, Jr.,
Probate Commissioner

Trial Court Cause No.
45C01-2009-GU-199

Brown, Judge.

- [1] Niki P. Galanos (“Niki”) appeals the trial court’s protective order and order regarding certain real property. We affirm.

Facts and Procedural History

- [2] Niki and George Galanos (“George”) are the children of Eugenia P. Galanos (“Eugenia”). Eugenia is the trustee of the Galanos Living Trust dated August 12, 1997, and restated on March 18, 1999, and July 25, 2007 (the “Galanos Trust”).¹ Two real properties in Lake County, one on 28th Avenue and the other on DeKalb Street in Lake Station, were transferred to the Galanos Trust. On September 26, 2018, Eugenia signed a Termination of the Galanos Living Trust,² and a Power of Attorney which designated Niki as her attorney in fact.³
- [3] Eugenia underwent a hip replacement surgery and was in the hospital from November 19, 2019, until December 4, 2019, when she was transferred to a rehabilitation facility.

¹ Attorney John O’Drobinak assisted Eugenia with the trust documents in 1997, 1999, and 2007.

² The document states that it was prepared by Gasparis & Zembillas, Attorneys at Law, and notarized by Harry Zembillas. According to Attorney O’Drobinak, Niki contacted his office in 2018 and wanted to know how to make a quitclaim deed, his office staff told her that she was not the client, and Niki later called back “and said that they were on their way to the county to make a quit-claim deed, and that she would not be denied her right to that property.” Transcript Volume II at 171.

³ The Power of Attorney was notarized by Harry Zembillas. Attorney Irene Gasparis indicated that she prepared the Power of Attorney document.

[4] On December 12, 2019, Eugenia signed two quitclaim deeds.⁴ In particular, with respect to real property on 28th Avenue, Lake Station, Eugenia signed a quitclaim deed dated December 12, 2019, naming Eugenia as the grantor and Niki as the grantee, and the deed was recorded on December 18, 2019, with the Lake County Recorder. With respect to real property on DeKalb Street, Lake Station, Eugenia signed a quitclaim deed dated December 12, 2019, naming Eugenia as the grantor and Niki as the grantee, and the deed was recorded on December 18, 2019, with the Lake County Recorder. On December 21, 2019, Eugenia was discharged from the rehabilitation facility.

[5] On December 30, 2019, Eugenia signed two additional quitclaim deeds related to the properties.⁵ As to the 28th Avenue property, Eugenia signed a quitclaim deed dated December 30, 2019, naming the Galanos Trust as the grantor and Niki as the grantee, and the deed was recorded on January 6, 2020, with the Lake County Recorder. As to the Dekalb Street property, Eugenia signed a quitclaim deed dated December 30, 2019, naming the Galanos Trust as the grantor and Niki as the grantee, and the deed was recorded on January 6, 2020, with the Lake County Recorder. Also on December 30, 2019, Eugenia signed a Revocation of Power of Attorney stating: “I, Eugenia P. Galanos, do hereby

⁴ Attorney Gasparis indicated that she prepared the deeds, that Eugenia had called her on Niki’s phone, and that she thought Eugenia executed the deeds while at the rehabilitation facility.

⁵ Attorney Gasparis indicated that she prepared the second set of deeds because the properties had to be removed from the Trust.

REMOVE George P. Galanos, as my attorney in fact, or agent with the settling of affairs and property of Eugenia P. Galanos.” Exhibits Volume I at 47.⁶

[6] On September 10, 2020, George filed a petition for the appointment of a guardian which alleged that Eugenia was an incapacitated adult who was ninety-four years old and unable to maintain her financial affairs. The petition requested that George be appointed as Eugenia’s guardian. That same day, George filed a Petition to Revoke Power of Attorney stating that Eugenia had previously granted a power of attorney to Niki and alleging that, upon information and belief, Niki had abused the authority of the power of attorney and had been self-serving and self-dealing to Eugenia’s detriment. Niki filed responses to George’s petitions.

[7] On November 9, 2020, the court issued an order which stated that it had held a hearing, revoked the power of attorney previously granted to Niki, and appointed George as Eugenia’s temporary guardian. On November 15, 2020, George filed a Petition for Recovery of Assets and Declare Quit Claim Deeds Void. On December 3, 2020, the court issued an order which provided in part that Niki was required to establish a restricted escrow account for the purpose of depositing all rental income from the properties described in the petition to

⁶ The revocation document does not refer to a specific previously-executed power of attorney. Attorney Gasparis testified that she prepared the revocation document and that Eugenia told her: “I want George not to be my Power of Attorney. I don’t want him to have any authority as to my care.” Transcript Volume II at 228. The record also contains an attestation for Eugenia’s last will and testament which was dated December 8, 2019.

recover assets filed by George. On January 14, 2021, the court issued an order which stated it had held a hearing and affirmed the November 9, 2020 appointment of George as Eugenia’s temporary guardian. The order provided:

The testimony provided by Eugenia P. Galanos, in camera, served as the primary basis for the appointment of the Temporary Guardian. [Eugenia’s] testimony unequivocally demonstrated that an emergency existed and that there was no one individual who was acting on her behalf to protect her interests. The enumerated powers of the Temporary Guardian shall consist of the authority to make medical decisions and financial decisions for the Protected Person. Any decisions made by the Temporary Guardian should be intended to maintain the status quo until such time that the temporary guardianship expires or a decision is made with respect to a permanent guardianship. The Temporary Guardian shall take no action with respect to the property at issue in his Petition to Recover Assets, unless solely necessary to preserve the asset(s).

Appellant’s Appendix Volume II at 66. On January 19, 2021, Eugenia by counsel filed a motion to terminate the temporary guardianship stating “[Eugenia’s] native, first language is Greek, and she struggles with comprehension and expression with English as a second language” and arguing Eugenia was not incapacitated. *Id.* at 68.

[8] The court held hearings on March 25, April 29, and May 13, 2021.⁷ It heard testimony from, among others, Eugenia, Attorney Gasparis, Dr. Milton Gasparis, Attorney O’Drobinak, and George. Dr. Gasparis testified that he had

⁷ On March 30, 2021, the court issued an order stating the temporary guardianship had expired.

known Eugenia for at least twenty-five years and was a family friend. He indicated that he had written a letter dated September 26, 2018, stating that he had examined Eugenia on that day and found her to be physically healthy and of sound mind and that she was mentally competent to execute legal affairs.⁸ He also indicated that he had written a letter dated January 9, 2020, stating that he had examined Eugenia on December 4, 2019, and found her to be of sound mind and body and that she was capable of making her own financial decisions. With respect to the 2018 letter, the court asked “is it typical for you to have your correspondence like this notarized,” Dr. Gasparis replied affirmatively, the court asked “[o]ut of the blue you just thought it was a good idea to write this letter,” and he replied “I, on patients, yeah, I get cases like this unfortunately. I’ve had several cases where things were going, I just had one, you know, just, yeah, it happens.” Transcript Volume II at 156-157. The court asked what led him to write the letter, and Dr. Gasparis answered “I’ve known what’s going on, you know, for a long time; things that have happened, you know, when, you know. For both sides, [] George, and Niki, are friends for years. Okay. Patients get older, things happen.” *Id.* at 158. On cross-examination, when asked if he was aware of the deeds that Eugenia executed on December 30, 2020, Dr. Gasparis stated that he was not aware of them. When asked “I hand you what’s marked September 26th of 2018” and “[w]ere you aware that your wife who’s an attorney executed probate documents,” he answered “[s]he is the

⁸ Attorney Gasparis notarized the letter.

CIA with me; she never talked to me about anybody, because, you know, I tend to talk, you know, so she does not tell me anything.” *Id.* He indicated that he was not instructed by Niki or Attorney Gasparis to write the letters.

[9] Attorney Gasparis testified that she had known Eugenia for fifty years and that Niki brought Eugenia to her office many times. She indicated that in 2018 she talked to Eugenia alone while Niki waited in another room, that Eugenia wanted to terminate the trust, and that she created the power of attorney. She also indicated she created a will for Eugenia and the date of the will was September 26, 2018. Attorney Gasparis further testified that Eugenia used Niki’s phone to call her and request that she prepare the quitclaim deeds. She indicated that she was not present when the deeds were executed. She testified that she went to the rehabilitation facility, talked to Eugenia, and told her what the deeds were. Attorney Gasparis testified that she prepared the second set of deeds because the properties had to be removed from the Galanos Trust and she was not present when the deeds were executed. She indicated that she and Niki have taken trips. On cross-examination, Attorney Gasparis testified that she had been family friends with Eugenia, Niki, and George for years. She testified that Eugenia called her in December 2019 and was upset and said that George had taken her money and cars. She indicated Eugenia called twice and then she took the paperwork to the rehabilitation facility. She did not remember how she delivered the second set of deeds to Eugenia but said Niki might have picked them up. On redirect examination, she indicated that, every time Eugenia called her, she called using Niki’s phone.

[10] Eugenia testified with the assistance of an interpreter. At one point during Eugenia's testimony, Niki stated "[t]hat is such a lie," and the court said "[w]e can't have any outbursts" and "if you can't control yourself you can get out of the courtroom." *Id.* at 97. Eugenia stated "I'm by myself" and "things are being said that are against her." *Id.* at 78. She said she "was so worried she didn't know what . . . she was doing" and "how am I going to live if I don't collect my rents." *Id.* at 81. When asked if Niki took all of her real estate, "[s]he said, yeah." *Id.* at 82. Niki's counsel objected and stated "[i]t doesn't appear based on my client who is fluent in Greek that this is being interpreted correctly," and the court indicated she would have an opportunity to cross-examine. *Id.* at 83. Niki's counsel cross-examined Eugenia. When shown the deeds and asked if they contained her signature, Eugenia said she signed them, she did not read them, and she does not read English. Niki's counsel asked if she remembered giving her properties to Niki, and Eugenia said "[y]eah, but nothing good" and "I think she took care of me, she watched me. She begged me to (inaudible). Go sleep Chicago, I go in Lake Station. . . . She can't take care of me." *Id.* at 89. The court asked Eugenia what she would like to see happen with her properties, and she replied "[s]he wants it back to her." *Id.* at 136.

[11] Nilsa Esfakis testified that she had a barber shop in Eugenia's building, she had seen Eugenia about one and one-half months earlier in front of the building, Eugenia was confused and crying, and Eugenia stated that she wanted to see George and that Niki would not let her see George.

[12] George testified that Niki took Eugenia to Attorney Gasparis in 2018 to have her trust terminated and that, about a week later, Eugenia contacted him and indicated that she had terminated the trust and that Niki was creating a lot of pressure. He testified that Attorney Gasparis was a friend of the family and went on vacations with Niki and that he thought that created a conflict. He testified that, for thirty-eight years, he had handled all of Eugenia's legal affairs with the exception of her estate planning. George testified that he learned that Eugenia had transferred two properties to Niki when he went to Eugenia's home in February 2020 to do her taxes. He testified that Eugenia told him that she wanted her properties back, that she had been rehabbing and had been on medications, that Niki had been forcing and pressuring her to sign documents, and that she did not know what she signed. He testified that Eugenia felt like she was tricked and that she realized after the fact that she did not own anything. He indicated that he visited Eugenia three times at the rehabilitation facility and that she was in pain and had difficulties there. George testified regarding his relationship with Eugenia, that Eugenia was arrested for driving without a license and at that point he took her vehicle away from her, and that he received money from Eugenia to purchase his son a vehicle. He testified that Eugenia spoke to him differently on the phone when Niki was in her presence, that on one occasion Eugenia called him crying and asked him to pick her up, and Eugenia has said that Niki will yell at her and not allow her to leave certain rooms when she has company. He stated that Eugenia received about \$700 from Social Security, and Niki's attorney noted Eugenia had a checking account with over \$5,000.

[13] On August 3, 2021, the trial court issued a protective order. The order stated “[t]he Court, having had the opportunity to speak with and observe [Eugenia] during several court hearings, including one in camera interview, [] finds that [Eugenia] is an incapacitated person as defined by I.C. 29-3-1-7.5” and that Eugenia’s “inability to consistently communicate to the Court her desires with respect to her personal care and the handling of her property made it abundantly clear to the Court that she is unable to manage, in whole or in part, her self-care and her property.” Appellant’s Appendix Volume II at 20. The court stated it was issuing the protective order in lieu of a guardianship. The court also found “that the real property that was purportedly transferred via Quit Claim Deed on December 18, 2019 and January 6, 2020 to [Niki] is hereby rendered null and void” and “[t]he Court finds that these transactions were not made of [Eugenia’s] own free will and that these properties shall be transferred back into the name of the Galanos Living Trust, *instantly*, along with any of the proceeds/income generated from these properties since the date of the purported transfer of ownership.” *Id.* at 21 (footnote omitted). The court ordered George to prepare and file deeds with the court and that upon approval the deeds would be recorded with the Lake County Recorder. On August 17, 2021, the court issued orders which stated that deeds recorded on December 18, 2019, and January 6, 2020, related to the DeKalb Street and the 28th Avenue properties were null and void and that the properties shall revert back to the Galanos Trust and that the termination of the Galanos Trust was null and void.

Discussion

[14] When a trial court has made findings of fact, we apply the following two-step standard of review: whether the evidence supports the findings of fact and whether the findings of fact support the conclusions. *Yanoff v. Muncy*, 688 N.E.2d 1259, 1262 (Ind. 1997). Findings will be set aside if they are clearly erroneous. *Id.* Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference. *Id.* To determine that a finding or conclusion is clearly erroneous, our review of the evidence must leave us with the firm conviction that a mistake has been made. *Id.*

[15] The Indiana Supreme Court has expressed a preference for granting latitude and deference to our trial judges in family law matters and explained:

While we are not able to say the trial judge could not have found otherwise than he did upon the evidence introduced below, this Court as a court of review has heretofore held by a long line of decisions that we are in a poor position to look at a cold transcript of the record, and conclude that the trial judge, who saw the witnesses, observed their demeanor, and scrutinized their testimony as it came from the witness stand, did not properly understand the significance of the evidence, or that he should have found its preponderance or the inferences therefrom to be different from what he did.

Kirk v. Kirk, 770 N.E.2d 304, 307 (Ind. 2002) (quoting *Brickley v. Brickley*, 247 Ind. 201, 204, 210 N.E.2d 850, 852 (1965)).

[16] Niki asserts the protective order is clearly erroneous. She contends there is no evidence that Eugenia was incapacitated. She argues that Dr. Gasparis found

Eugenia to be of sound mind and capable of making her own financial decisions. George maintains that ample evidence supports the trial court's judgment.

[17] Ind. Code § 29-3-4-1 provides:

- (a) Upon petition by any person and after a hearing . . . , the court may issue, without the appointment of a guardian, any protective order for the benefit of a person who has been adjudicated an incapacitated person

* * * * *

- (d) The court may issue a protective order concerning an incapacitated person if the court finds that:
 - (1) the incapacitated person:
 - (A) owns property or has income requiring management or protection that cannot otherwise be provided;
 - (B) has or may have financial or business affairs that may be jeopardized or impaired; or
 - (C) has property that needs to be managed to provide for the support or protection of the incapacitated person;
 - (2) the incapacitated person is unable to manage the incapacitated person's property and financial or business affairs effectively; and
 - (3) the protection sought is necessary.

The court shall make the orders that it considers proper and appropriate to protect the person, business affairs, and property of the incapacitated person.

[18] Ind. Code § 29-3-1-7.5 provides in part that “incapacitated person” means an individual who “is unable: (A) to manage in whole or in part the individual’s property; (B) to provide self-care; or (C) both” because “of insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity.”

[19] With respect to undue influence, we have observed:

Undue influence is defined as the exercise of sufficient control over the person, the validity of whose act is brought into question, to destroy his free agency and constrain him to do what he would not have done if such control had not been exercised. Undue influence may be proven by circumstantial evidence; the only positive and direct proof required is of facts and circumstances from which undue influence may be reasonably inferred. Courts may also take into account the fact that the subordinate party suffers from great mental weakness in its determination that undue influence contributed to the transaction. Complete unsoundness of mind is not necessary to support a finding of undue influence; rather, weakness of mind when combined with other factors is sufficient. In judging whether or not undue influence existed, it is proper to consider the character of the proponents and beneficiaries, and interest or motive on their part to unduly influence the other party, and facts and surroundings giving them an opportunity to exercise such influence.

Nichols v. Est. of Tyler, 910 N.E.2d 221, 228-229 (Ind. Ct. App. 2009) (citations, quotations, and brackets omitted).

[20] The record reveals that Eugenia executed two quitclaim deeds on December 12, 2019, while at a rehabilitation facility, and two additional quitclaim deeds on

December 30, 2019, approximately nine days after she was discharged from the rehabilitation facility, all of which named Niki as the grantee. The trial court conducted an *in camera* interview of Eugenia. The court held a hearing over several days and heard testimony from, among others, Eugenia, Attorney Gasparis, Dr. Gasparis, Attorney O'Drobinak, and George. The trial court found that Eugenia's "inability to consistently communicate to the Court her desires with respect to her personal care and the handling of her property made it abundantly clear to the Court that she is unable to manage, in whole or in part, her self-care and her property." Appellant's Appendix Volume II at 20. The transcript reveals that the proceedings were contentious and that Eugenia made numerous comments throughout the hearings.⁹ The court heard extensive testimony related to Eugenia's hospitalization and stay at a rehabilitation facility, Dr. Gasparis's evaluation of Eugenia and the timing of his evaluations relative to Eugenia's execution of the instruments, the Galanos Trust, Eugenia's resources and income, Eugenia's communications with Attorney Gasparis and the timing of the communications, the timing of the delivery and execution of the deeds and other documents relative to Eugenia's health care, and Eugenia's relationships with the various members of her family. The court was able to hear and observe Eugenia as well as the other witnesses and consider their explanations, demeanors, and interactions throughout the course of the proceedings. The trial court was in the best

⁹ The court noted "we've had commentary all day." Transcript Volume II at 186.

position to judge the facts, and we will not reweigh evidence or assess the credibility of the witnesses. It is apparent from our review of the record that the court carefully considered the parties' evidence and testimony.

[21] Based upon our review of the evidence as set forth above and in the record, we cannot say the record contains no facts which support the court's findings and conclusion. Our review of the evidence does not leave us with the firm conviction that a mistake has been made or that reversal is warranted. *See Nichols*, 910 N.E.2d at 230 (affirming the trial court's finding the appellant exerted undue influence over Tyler related to a real property transfer and finding the appellant's arguments were an invitation to reweigh the evidence where two different images of Tyler were depicted and the trial court found the depiction presented by Tyler's estate was the more accurate depiction).

[22] For the foregoing reasons, we affirm the judgment of the trial court.

[23] Affirmed.

Mathias, J., and Molter, J., concur.