MEMORANDUM DECISION

ATTORNEY FOR APPELLANT

Michael H. Michmerhuizen
Barrett McNagny LLP
Fort Wayne, Indiana

ATTORNEYS FOR APPELLEES

Nathan S.J. Williams
Shambaugh Kast Beck
& Williams LLP
Fort Wayne, Indiana

Elden E. Stoops, Jr.
North Manchester, Indiana

IN THE
COURT OF APPEALS OF INDIANA

In the Matter of the Estate of Richard D. Stephan, Deceased

Daniel L. Stephan, Domiciliary Foreign Personal Representative,

Appellant-Plaintiff,

v.

Douglas Stephan and William H. Stephan,

Appellees-Defendants

March 15, 2021

Court of Appeals Case No. 20A-ES-1681

Appeal from the Huntington Circuit Court

The Honorable Kenton W. Kiracofe, Special Judge

Trial Court Cause No. 35C01-1805-ES-40

Vaidik, Judge.

Case Summary

This case arises out of a dispute between Daniel L. Stephan and his brothers, Douglas Stephan and William H. Stephan, over the estate of their father, Richard D. Stephan. Daniel asserted some of Richard's estate plan was the product of undue influence and, giving full faith and credit to the Florida court's determination that he died intestate, the assets should be distributed as such. The trial court found no undue influence and, notwithstanding the Florida court's intestacy determination, admitted Richard's will to probate. We affirm as to the undue-influence finding but reverse and remand on the issue of full faith and credit.

Facts and Procedural History

[1] Daniel, William, and Douglas are the children of Richard and Audrey Stephan. Richard and Audrey owned and lived on a farm in Huntington County, Indiana. Richard operated the farm and ran various farming-related businesses, often working with his children once they became adults. Around 1999, Richard and Audrey purchased a condominium in Florida, and they thereafter generally spent half the year there.

[2] In 2004, Richard and Audrey established the Revocable Living Trust of Richard D. Stephan and Audrey A. Stephan ("the Trust"). The terms of the Trust provided the Florida condominium was to be split equally among the three children and that each child was to receive specific Indiana property. This

distribution among the children was considered "approximately equal." Appellant's App. Vol. II p. 20. However, over the next few years, relationships within the family—particularly between Daniel and Richard—began to sour over disputes about the estate plan. By 2012, Daniel and his father had "little to no contact," and this continued until Richard's death. *Id*. at 26.

[3] In early 2012, Richard, then eighty-five years old, expressed concern to Douglas over the effect taxes and future nursing-home expenses may have on his finances. Douglas explained he had recently restructured his own farmland and placed it into a partnership, and he suggested Richard could do something similar to alleviate his concerns. Richard then "told Douglas to set up a meeting with John Wray," Douglas's attorney. *Id.* at 22. Douglas set up and drove Richard and Audrey to that meeting, although he did not attend.

[4] In April, Richard and Audrey met with Wray, established two partnerships, and executed several deeds, intending to transfer all their property out of the Trust and into the partnerships. Into the first—Richard & Audrey Stephan, LP (hereinafter "the general partnership")[1]—they transferred a thirteen-acre parcel of Indiana real estate. Ex. 81. In an "Agreement for Disbursement," Richard and Audrey, as general partners, stated the intent of the general partnership was to transfer the thirteen-acre parcel to Daniel upon their deaths. Ex. 62. Into the

[1] It appears Richard and Audrey intended Richard & Audrey Stephan, LP to be a limited partnership. However, the trial court found they did not register it with the Secretary of State as required for a limited partnership. Therefore, the trial court held it is a "common law general partnership." Appellant's App. Vol. II p. 29. This holding is not contested on appeal.

second—Dick & Audrey Stephan, LP (hereinafter "the limited partnership")—Richard and Audrey transferred the Florida condominium and the remaining Indiana real estate. Exs. 77, 80. Of the limited partnership, Richard and Audrey each maintained a 1% general interest and a 5% limited interest, while Douglas and William each maintained a 44% limited interest. The creation of these partnerships and transfer of property from the Trust substantially changed Richard and Audrey's estate plan. Under the Trust, each child would take an approximately equal amount. But with the partnerships, Daniel was set to receive only the thirteen-acre parcel from the general partnership, with the remainder of Richard and Audrey's property—the Florida condominium and the bulk of their Indiana real estate—going to Douglas and William through the limited partnership.

[5] The following month, Richard and Audrey each executed a Last Will and Testament. Richard's will, in the event Audrey predeceased him, appointed Douglas as his personal representative, devised his 1% general-partnership interest in the limited partnership to Douglas, and directed any remainder of his property be split equally between Douglas and William. Ex. 84. Audrey died in January 2016. For reasons unclear from the record, her will was not probated, and any assets she held transferred to Richard through intestacy, including her interest in the limited partnership. This left Richard with a 12% interest in the limited partnership—his original 6% and Audrey's 6%. Richard died in August 2016.

[6] On May 10, 2017, Douglas and William executed a deed transferring to Daniel the thirteen-acre parcel per the terms of the general partnership.[2] It appears Douglas and William believed all the other property would fall to them through the limited partnership and Richard's will. However, later that month Daniel filed suit against them and the limited partnership in Brevard County, Florida, asserting the Florida condominium was not property of the limited partnership because the deed conveying the condominium to the limited partnership was invalid. The Florida court agreed and declared the deed invalid. As a result of the invalid deed, the Florida condominium remained an asset of the Trust (as opposed to an asset of the limited partnership). Under the terms of the Trust, the Florida condominium would be split equally between Daniel, William, and Douglas. Ultimately, Douglas and Daniel came to an agreement wherein Daniel transferred by quitclaim deed his interest in the condominium to Douglas in exchange for $64,051.51 from the proceeds of the sale of the condominium (approximately one-third of the condominium's value).

[7] In July 2017, Daniel filed another action—a Petition for Administration—in a Florida court seeking to be named personal representative of Richard's estate. Daniel attached a copy of Richard's will to the petition but stated he had "concerns regarding the validity of the document." Ex. 122. Douglas and William were named as beneficiaries and received notice of the petition.

---

[2] While not argued by either party, the validity of this transfer is questionable. As the trial court found, the transfer was executed by Douglas and William "as part of the [limited partnership]" despite the fact the "parcel was titled in the [general partnership]." Appellant's App. Vol. II p. 25.

Neither challenged the petition, although Douglas later appeared to challenge another matter. In April 2018, the Florida court appointed Daniel personal representative of Richard's estate and directed him to issue letters of administration. In the order appointing Daniel personal representative, the Florida court indicated Richard's estate was "intestate."[3] Ex. 147.

[8] In May 2018, Daniel filed a Petition by Domiciliary Foreign Personal Representative in Huntington County, Indiana, (1) to place on file with the court evidence of his appointment as personal representative; (2) for issuance of Letters Testamentary; and (3) for supervised administration of estate proceedings. A few days later, the Indiana trial court granted the petition. In June, Douglas petitioned the Indiana trial court to set aside Daniel's appointment as personal representative, and in July, he moved the court to accept Richard's will into the record. Daniel replied, asserting if Douglas wanted "to challenge the Florida court's" decision appointing Daniel personal representative and determining Richard died intestate, he should do it in the Florida court. Domiciliary Foreign Personal Representative's Additional Response and Memorandum Concerning Petition to Set Aside Order Appointing Personal Representative, No. 35C01-1805-ES-40 (Sept. 18, 2018).[4] Daniel clarified estate proceedings were opened in Indiana as "ancillary" to the

[3] The basis for the Florida court's determination that Richard died intestate is not clear from the record.

[4] Daniel failed to provide for our review any of the documents filed by the parties in the Indiana trial court. We therefore cite to the documents found in the Odyssey Case Management System.

Florida proceedings only because he believed there were "assets in Indiana that needed to be determined and protected" and so he could obtain information concerning Douglas's potential "undue influence" over their parents. *Id.*

[9] Douglas's petition was still pending when, in March 2019, Daniel moved the Indiana trial court for declaratory relief, alleging "the formation of the [limited partnership] was a sham transaction; and that Douglas exerted undue influence over Richard and Audrey." Appellant's App. Vol. II p. 28. Daniel asked the court to dissolve the limited partnership and that its assets—the Indiana real estate—be returned to Richard's estate for administration. Daniel further responded to Douglas's request that the Indiana trial court admit Richard's will, arguing the Florida court had already determined Richard died intestate and the Indiana court was "required to give full faith and credit to [that] decision[.]" Reply to Douglas Stephan's Response to Documents Presented As Evidence On Behalf Of the Personal Representative, No. 35C01-1805-ES-40 (Sept. 23, 2019). A hearing on all pending matters was held in December 2019.

[10] Thereafter, the Indiana trial court issued findings of fact and legal conclusions under Indiana Trial Rule 52. The court found: (1) the formation of the limited partnership was not a sham transaction and (2) Douglas did not exert undue influence over Richard. The court then accepted Richard's will into the record and admitted it to probate. The court also granted Douglas's motion to set aside Daniel's appointment as personal representative. Finally, the court ordered the Indiana estate closed. In doing so, the court rejected Daniel's arguments regarding the admission of the will, noting Daniel was not harmed by the

admission of the will because "Daniel has, after the death of Richard Stephan, already received more of the assets in which Richard Stephan had an interest at his death than [Daniel] would be entitled to as his intestate share[.]" *Id.* at 34. In so concluding, the court stated that, had Richard's estate been distributed intestate, it would have included: (1) the 12% interest in the limited partnership; (2) the Florida condominium; and (3) the thirteen-acre parcel held by the general partnership. The court noted the value of Daniel's intestate share of these assets would be $147,541.76. Since Richard's death, Daniel had received $149,058.51—the value of the thirteen-acre parcel from the general partnership and approximately one-third of the value of the condominium from his agreement with Douglas. As such, the court concluded that, notwithstanding its admission of the will to probate, Daniel had already received more than he would have under intestacy.

[11] Daniel now appeals.

Discussion and Decision

[12] Daniel challenges a number of the trial court's findings and conclusions. On appellate review of judgments with findings and conclusions, we "shall not set aside the findings or judgment unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." Ind. Trial Rule 52(A). We do not reweigh the evidence or assess the credibility of witnesses, and the evidence should be viewed most favorably to the judgment. *Best v. Best*, 941 N.E.2d 499, 502 (Ind. 2011).

[13] The parties' arguments can be broken down into two issues: (1) what property of Richard's is held by, and therefore transferred through, the estate and (2) how is that property to be distributed—under the will or through intestacy.

I. Estate Property

[14] The first issue to determine is what property of Richard's transfers through the estate. The record indicates the only property held by Richard at his death—and not disposed of by non-probate means—is his 12% interest in the limited partnership. However, Daniel argues all the property held by the limited partnership, which held the bulk of Richard's Indiana property, should be transferred through the estate because the limited partnership "was the product of Douglas's undue influence over his father" and therefore should have been "set aside." Appellant's Br. pp. 46, 55.[5] The trial court found there was no undue influence and upheld the limited partnership, as do we.

[15] Undue influence is "the exercise of sufficient control over [a] person to destroy his free agency and constrain him to do what he would not have done if such control had not been exercised." *In re Knepper*, 856 N.E.2d 150, 154 (Ind. Ct. App. 2006) (quotation omitted), *reh'g granted on other grounds*, 861 N.E.2d 717 (Ind. Ct. App. 2007), *trans. denied*. It may flow from the abuse of a confidential relationship in which "confidence is reposed by one party in another with

[5] Daniel does not argue that the general partnership—the terms of which stated he would receive the thirteen-acre parcel—is the result of undue influence, despite the fact it was created at the same time and under the same circumstances as the limited partnership.

resulting superiority and influence exercised by the other." *In re Neu*, 588 N.E.2d 567, 570 (Ind. Ct. App. 1992). A confidential relationship sufficient to allow for a successful undue-influence claim may arise either as a matter of law or can be shown on the particular facts of a case. *Carlson v. Warren*, 878 N.E.2d 844, 851 (Ind. Ct. App. 2007). Confidential relationships as a matter of law include attorney and client, guardian and ward, principal and agent, and parent and child. *Id.* Where a confidential relationship as a matter of law exists and the questioned transaction benefits the dominant party, "the law imposes a presumption that the transaction was the result of undue influence exerted by the dominant party[.]" *Meyer v. Wright*, 854 N.E.2d 57, 60 (Ind. Ct. App. 2006), *trans. denied*. The burden then shifts to the dominant party to rebut the presumption. *Id.*

[16] Daniel argues Douglas was the dominant party and points to *Crider v. Crider*, 635 N.E.2d 204, 210 (Ind. Ct. App. 1994), *trans. denied.* In *Crider*, the father was experiencing serious mental decline, to the point he was unable to recognize his wife of over sixty years, as well as physical decline, with eyesight so poor he could barely read. The son, who lived on the same farm as the father and assisted him financially, asked his attorney to prepare a deed transferring his father's farm to him. The son then had the father sign the deed, although he did not discuss the contents with his father or read it to him. The trial court held the father and son were in a confidential relationship as a matter of law, with the son as the dominant party. We upheld the trial court, noting (1) over the years the son was able to overcome the will and desire of the father and (2) the son

took advantage of the father to obtain the transfer. Daniel asserts a similar situation occurred here. Specifically, he contends Douglas "influence[d] Richard in Richard's later years" as evidenced by Richard's use of Douglas's attorney to establish the limited partnership, and that Douglas was able to assert such influence because their elderly father "generally relied" on Douglas in his "personal and financial" matters. Appellant's Reply Br. pp. 13, 14.

[17] *Crider* is distinguishable. There, the father was physically and mentally "ailing." And the facts showed the son took advantage of those ailments and his position of caretaker over his father to assert influence. In that situation, the son was the dominant party. That is not the situation here. No evidence was presented that Richard was physically or mentally "ailing." Quite the opposite, the trial court found him "capable of making [his] own decisions," "rigid in his decisions and opinions," and "not easily influenced." Appellant's App. Vol. II pp. 26, 31. Furthermore, there was no evidence Douglas was in a caretaker position with which he could assert influence. Douglas did not regularly attend to Richard's needs, and in fact for at least half of every year the two lived several states away from each other. Daniel points to Richard's use of Douglas's attorney to establish the limited partnership, but the record reflects Richard asked for Douglas's advice, and upon hearing Douglas had structured his farm in that manner, told Douglas to set up a meeting so he could do something similar. And although Richard may have relied on Douglas for assistance with these matters, that is not sufficient to find him the dominant party in their relationship. *See Barkwill v. Cornelia H. Barkwill Revocable Trust*, 902 N.E.2d 836,

839 (Ind. Ct. App. 2009) (finding son was not dominant party in relationship with mother even where he exerted some financial control over her), *trans. denied*.

[18] Daniel has failed to establish Douglas was the dominant party in a confidential relationship with Richard. We therefore agree with the trial court there was no undue influence. As such, the limited partnership is valid, and the only property that transfers through the estate is Richard's 12% interest in the limited partnership.

II. Distribution of Estate Property

[19] We now must determine how the 12% interest in the limited partnership should be distributed. While the trial court did not expressly state how this property should be distributed, presumably it meant for it to be distributed pursuant to the terms of Richard's will, which it accepted into probate. Richard's will devised his 1% general interest to Douglas and stated the remainder was to be split between Douglas and William. So under the will, Daniel would receive none of the 12% interest. However, Daniel argues the property should be distributed according to intestacy law—where he would receive one-third of the interest—because the Florida court determined Richard died intestate and the trial court "was obligated to give this judgment full faith and credit." Appellant's Br. p. 35. Notably, Douglas and William respond to this argument only in a footnote, contending that while the trial court did not "err" in not giving full faith and credit, the issue is nonetheless "moot." We disagree, both

with the trial court's failure to give full faith and credit to the Florida court's judgments and with Douglas and William's contention the issue is moot.

A. Full Faith and Credit

[20] The Full Faith and Credit Clause of the U.S. Constitution requires that "[f]ull Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art. IV, § 1. Full faith and credit means that "the judgment of a state court should have the same credit, validity, and effect, in every other court of the United States, which it had in the state where it was pronounced." *Gardner v. Pierce*, 838 N.E.2d 546, 550 (Ind. Ct. App. 2005) (quotation omitted). Indiana has codified this notion at Indiana Code section 34-39-4-3, which establishes that records and judicial proceedings from courts in other states "shall have full faith and credit given to them in any court in Indiana as by law or usage they have in the courts in which they originated." Full faith and credit commands deference to the judgments of foreign courts, and "the judgment of a sister state, regular and complete upon its face, is prima facie valid." *Gardner*, 838 N.E.2d at 550 (quotation omitted).

[21] Here, despite the Florida court's determination that Richard died intestate, the Indiana court admitted his will to probate. Under full faith and credit, an Indiana court must give a foreign court's judgment the same effect it would have in that foreign court. *Id.* at 551. Under Florida law, challenges to a determination of intestacy must be done "before issuance of letters [of administration]." Fla. Stat. § 733.2123. No party challenged the Florida court's

determination of intestacy before the issuance of the letters of administration. Giving the intestacy determination the same effect it would have in the Florida court, the trial court should have found Richard to have died intestate.[6]

[22] The trial court erred in not giving full faith and credit to the Florida court's judgment that Richard died intestate.[7] As such, Richard's 12% interest in the limited partnership should be distributed according to intestacy law—one-third to each child—rather than under the terms of the will.

B. Mootness

[23] Douglas and William argue that even if the trial court erred in not giving the Florida court's judgment full faith and credit, Daniel "still [] received more than his intestate share of Richard's assets after his death." Appellees' Br. p. 21. Stated differently, they contend that—regardless of whether the property is

---

[6] We note the Florida court also appointed Daniel personal representative of Richard's estate. Based on provisions in Richard's will, the Indiana trial court removed him. While a personal representative, under both Indiana and Florida law, can be removed for a variety of reasons, *see* Fla. Stat. § 733.504; Ind. Code § 29-1-10-6, the trial court's reasoning here was the will did not provide for Daniel to be the personal representative. Because the will should not have been probated, this reasoning no longer applies. As such, the trial court erred in removing him for that reason.

[7] Daniel also argues the Indiana trial court erred in not giving full faith and credit to the Florida court's determination that Richard was domiciled in Florida at the time of his death. Daniel's petition for administration filed in the Florida court asserted Richard was a resident of Florida. The Florida court, in appointing Daniel personal representative and directing letters of administration be sent, stated Richard was a resident of Florida. However, the Indiana trial court found it need not given this determination full faith and credit and could decide domicile anew under *Riley v. New York Trust Co.*, 315 U.S. 343 (1942). In *Riley*, the United States Supreme Court held a state could "determine the question of domicile anew for any interested party **who is not bound by participation in the [sister state's] proceeding**." *Id.* at 349-50 (emphasis added). Here, all the parties participated in the Florida court proceedings and had the opportunity to challenge those judgments in that court. As such, *Riley* does not apply, and the Indiana court should have given full faith and credit to the Florida court's determination of domicile. Notably, however, Daniel does not tell us how this error harmed him.

distributed under the will or through intestacy—Daniel has already received more than his share and therefore the trial court's distribution of the property under the will (which excludes Daniel) and closure of the estate should be upheld. This is consistent with the trial court's finding Daniel had already received more than he would have under intestacy. But Daniel argues the trial court erred in this finding by "us[ing] *non-Estate* assets to offset the amount that [he] was to receive under the laws of intestacy *from the Estate*." Appellant's Br. p. 45. We agree.

[24] The trial court determined Daniel had already received more than his share of Richard's estate by calculating the value of (1) the thirteen-acre parcel transferred to Daniel from the general partnership after Richard's death and (2) the value of the money Daniel received from his one-third interest in the Florida condominium. The trial court found the value of these was more than the amount Daniel would have received under intestacy. But as Daniel points out, the thirteen-acre parcel and his interest in the Florida condominium were transferred to him **outside** of the estate. The Florida condominium was held in the Trust, which provides a "non-probate distribution of people's estates after their deaths[.]" *Fulp v. Gilliland*, 998 N.E.2d 204, 205 (Ind. 2013). And regarding the thirteen-acre property, this was transferred to Daniel per the terms of the general-partnership agreement. Again, this property was transferred to Daniel **outside** of probate. No matter how the estate is distributed, Daniel is always going to receive his one-third share of the condominium (from the Trust) and the thirteen-acre property (from the general partnership). The

question is whether he is entitled to any estate property—here the 12% of the limited property. The trial court erred in determining he was not entitled to estate property because of property he received outside of the estate.

[25] Notably, Douglas and William do not argue the trial court was right to include the Florida condominium in its determination of Daniel's intestate share. Instead, they argue Daniel is barred from challenging this under the "the theory of estoppel." Appellees' Br. p. 18. Specifically, Douglas and William point to (1) the agreement between Daniel and Douglas in which Daniel transferred his interest in the Florida condominium to Daniel in exchange for approximately one-third of the proceeds of its sale and (2) Daniel's argument in the Florida court that the deed conveying the Florida condominium from the Trust to the partnership was invalid—and assert these bar Daniel from now arguing the condominium should not be included in the intestacy determination under the theories of promissory and judicial estoppel.

[26] But all forms of estoppel are "based on the same underlying principle: one who by deed or conduct has induced another to act in a particular manner will not be permitted to adopt an **inconsistent** position, attitude, or course of conduct that causes injury to such other." *Town of New Chic. v. City of Lake Station ex rel. Lake Station Sanitary Dist.,* 939 N.E.2d 638, 653 (Ind. Ct. App. 2010) (emphasis added), *trans. denied*. Douglas and William have failed to explain how Daniel's current argument is inconsistent with his agreement with Douglas or his argument in the Florida court proceedings, nor do we see any inconsistency. In the agreement with Douglas, Daniel transferred his interest in the Florida

condominium—which he received from the Trust—to Douglas. He is not asking the Indiana trial court to invalidate that agreement or disregard that he received those proceeds. He is simply arguing this non-probate asset should not be considered in the intestate estate. That is not inconsistent with the agreement. Furthermore, even if he argued in the Florida court that the deed conveying the condominium to the limited partnership is invalid and should therefore be transferred through intestacy, the Florida court determined the condominium should be transferred under the Trust. Therefore, it is not inconsistent for him to now assert, on the basis of the Florida court's decision, that the Florida condominium is a non-probate asset. As such, Douglas and William's estoppel argument fails.

[27] The method of distribution of the estate property—under the will or through intestacy—is not moot. It determines whether Daniel receives none of the estate property (under the will) or one-third of the estate property (under intestacy). And the trial court's determination that Daniel received his share outside of the estate is irrelevant to his share within the estate.

[28] We affirm the trial court's finding the formation of the limited partnership was not caused by undue influence. But we reverse as to the trial court's failure to give full faith and credit to the Florida court's judgment and remand for intestate distribution of Richard's 12% interest in the limited partnership.

[29] Affirmed in part, reversed in part, and remanded.

Brown, J., and Pyle, J., concur.