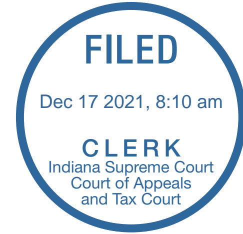

ATTORNEY FOR APPELLANT

Andrew Arnett
Indianapolis, Indiana

ATTORNEY FOR APPELLEE

Laurel R.K. Gilchrist
Applegate & Dillman Elder Law
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

In the Matter of the Power of Attorney of Darlene DeHart

Jeff DeHart,
Appellant-Plaintiff,

v.

Darlene DeHart,
Appellee-Intervenor.

December 17, 2021

Court of Appeals Case No. 21A-GM-1043

Appeal from the Johnson Superior Court

The Honorable Kevin M. Barton, Judge

Trial Court Cause No. 41D01-2102-GM-1

Shepard, Senior Judge.

[1] Jeff DeHart filed a petition for accounting, asking the trial court to order his sister Charlene DeHart, to share with him financial records belonging to their mother, Darlene DeHart. Darlene intervened in the case and objected to Jeff's petition. The court denied the petition, concluding that releasing an accounting

of Darlene's finances to Jeff was not in her best interests. We affirm the trial court's judgment.

Issues

[2] Jeff raises two issues, which we restate as:

> I. Whether the trial court applied an incorrect legal standard; and
>
> II. Whether the evidence supports the trial court's judgment.

Facts and Procedural History

[3] Darlene DeHart and her husband had two children, Jeff and Christine. On July 29, 2020, shortly before her husband's death, Darlene and Christine signed a document entitled "Indiana Durable Power of Attorney." Appellant's App. Vol. 2, p. 38. It named Christine as Darlene's attorney-in-fact. Darlene moved in with Christine after her husband passed away.

[4] Jeff later asked Christine to give him a copy of the Power of Attorney and to provide an accounting of Darlene's income and expenses. In response, Christine gave Jeff a list of Darlene's bank accounts and a history of recent transactions, which Christine signed under oath.

[5] On February 10, 2021, Jeff filed a Verified Petition for Accounting of Financial Transactions Under Power of Attorney, asserting: (1) he had not seen the Power of Attorney; and (2) he believed Christine was misappropriating Darlene's funds. The trial court issued an order directing Christine to produce the Power of Attorney and either: (1) an accounting of Darlene's finances; or

(2) an objection to Jeff's request, within thirty days. Christine later filed a copy of the Power of Attorney with the trial court.

[6] Next, Darlene filed a motion to intervene, along with an objection to Jeff's Verified Petition for Accounting. The court granted Darlene's request to intervene, and it held an evidentiary hearing. The court subsequently denied Jeff's request for an accounting, concluding that it was not "in the best interest of Darlene DeHart to require an account by her duly appointed Attorney In Fact in the absence of incapacity, undue influence, abuse, or misappropriation." *Id.* at 57. This appeal followed.

Discussion and Decision

[7] The trial court's final judgment contained sua sponte findings. Such findings control only the issues they cover, and a general judgment standard of review will control as to the issues on which there are no findings. *Farah, LLC v. Architura Corp.*, 952 N.E.2d 328 (Ind. Ct. App. 2011). We neither reweigh the evidence nor judge the credibility of witnesses. *Id.* We review questions of law de novo, with no deference to the court's legal conclusions. *In re Guardianship of Phillips*, 926 N.E.2d 1103 (Ind. Ct. App. 2010).

[8] Jeff first claims the court misapplied the governing statute by placing on him the burden of proving he was entitled to relief, rather than requiring Darlene to demonstrate that disclosure of her financial records was not in her best interests. Prior to 2019, Indiana Code section 30-5-6-4 (2014) provided in relevant part: "attorney in fact shall render a written accounting if an accounting is ordered by

a court . . . [or] requested by . . . a child of the principal." In 2019, the General Assembly amended that provision to state that the attorney in fact shall provide a written accounting to a child of the principal "unless a court finds that such a rendering is not in the best interests of the principal."[1] 2019 Ind. Acts 757.

[9] Jeff argues Indiana Code section 30-5-6-4, as amended in 2019, "creates a presumption in favor of requiring an accounting," and as a result Darlene bore the burden of showing that an accounting was not in her best interests. Appellant's Br. p. 10. A statute whose language is clear and unambiguous is not subject to judicial interpretation. *Romine v. Gagle*, 782 N.E.2d 369 (Ind. Ct. App. 2003), *trans. denied*. When the word "shall" appears in a statute, such as Indiana Code section 30-5-6-4, we construe it as mandatory rather than directory unless it appears clear from the context or the purpose of the statute that the legislature intended a different meaning. *Ind. Civil Rights Comm'n v. Indianapolis Newspapers, Inc.*, 716 N.E.2d 943 (Ind. 1991) (quotation omitted).

[10] Jeff, as the petitioner, bore the burden of proving only that he was Darlene's child. Upon doing so, he was entitled to an accounting under the plain

---

[1] The National Conference of Commissioners on Uniform State Laws has prepared a Uniform Power of Attorney Act (UPOAA). Uniform Power of Att'y Act, 8B U.L.A. 175 (2014). Indiana is not among the twenty-nine states that has adopted the UPOAA, whose provisions differ from Indiana Code section 30-5-6-4. 8B U.L.A. 2021 Cumulative Annual Pocket Part, p. 35 (listing states). But section 116 of the UPOAA is relevant to our analysis. That section provides that a principal's descendant "may petition a court to construe a power of attorney or review the agent's conduct, and grant appropriate relief . . . ." UPOAA § 116, 8B U.L.A. 209. Subsection (b) states, however, that "[u]pon motion by the principal, the court shall dismiss a petition filed under this section unless the court finds that the principal lacks capacity to revoke the agent's authority or the power of attorney." *Id.* The Comment to the section explains subsection (b) "protects the self-determination rights of principals." *Id.*

language of the statute, unless the "best interests of the principal" exception applied. It appears to us that Darlene should have borne the burden of demonstrating that the exception applied. It is unclear from the court's order where the court placed the burden of proof, but to the extent that it placed upon Jeff the burden of proving that the exception did not apply, that was error.

[11] Our analysis does not end there. Under the general judgment standard of review, we affirm the court's judgment on any basis supported by the record. *Millikan v Eifrid*, 968 N.E.2d 243 (Ind. Ct. App. 2012). We must examine the evidence presented by Darlene with respect to her best interests to determine whether it supports the court's judgment.

[12] Darlene provided the court with a letter from a nurse practitioner who examined Darlene for over an hour less than a month before the evidentiary hearing. In the letter, the nurse practitioner stated:

> Darlene was able to stay focused during the entire visit. Her ability to recall long term memory and events was impeccable and her ability to recall short term memory and events was intact as well. She is aware of her needs and wants as well as everything that is going on around her, including the current feuding between her children.

Tr. Vol. 3, p. 4.

[13] In addition, Darlene told the trial court she approved of Christine's efforts as her agent. She further stated Christine discussed Darlene's bills with her, and she had input on what bills got paid. Finally, Darlene explained she believed

Jeff was interested only in her money, and she opposed his request for an accounting because her finances were none of his business.

[14] Jeff points to evidence that Darlene did not know the details of all of her bank accounts. He also testified he was concerned that Christine was improperly using Darlene's money for her own personal needs and that he believed Darlene's mental state was deteriorating. Jeff's arguments are requests to reweigh the evidence, which our standard of review forbids.

[15] We conclude there is ample evidence to support a conclusion that Darlene proved an accounting was not in her best interests because: (1) she was competent to appoint and maintain Christine as her agent; and (2) she is entitled to privacy in the management of her finances. Any error in the trial court's allocation of the burden of proof was harmless.

Conclusion

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

[17] Affirmed.

Bailey, J., and Mathias, J., concur.