

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Peter J. Bakas

Appellant,

v.

Katherine Radinovic,

Appellee.

January 11, 2023

Court of Appeals Case No.
22A-EM-800

Appeal from the Lake Circuit
Court

The Honorable Marissa J.
McDermott, Judge

The Honorable Jewell Harris,
Jr., Probate Commissioner

Trial Court Cause No.
45C01-1809-EM-96

Bailey, Judge.

Case Summary

- [1] Appellant Peter J. Bakas (“Bakas”)¹ appeals, pro se, the trial court’s approval of the Accounting filed by his sister, Katherine Radinovic (“Radinovic”), who was the Attorney-in-Fact for their father, John Bakas (“Father”), before he died.
- [2] We affirm.

Issues

- [3] Bakas raises three issues on appeal, which we consolidate and restate as:
- I. Whether the trial court’s judgment for Radinovic, following a motion to correct error, was an abuse of its discretion.
 - II. Whether the actions of Radinovic’s legal counsel and/or the trial court caused a blatant violation of fundamental fairness.

Facts and Procedural History

- [4] Father’s adult children were Bakas, Nicholas, Andrew (collectively, “the Brothers”), and Radinovic. In the fall of 2017, Father began to experience medical issues and was admitted to St. Catherine’s Hospital in East Chicago for

¹ Bakas’s two brothers, Nicholas Bakas (“Nicholas”) and Andrew Bakas (“Andrew”), were also petitioners below. Andrew does not participate in this appeal. Nicholas died on September 20, 2020, and no estate representative ever appeared in this case on his behalf to assert his interests—which led the trial court to conclude that it could not enter a judgment as to Nicholas. Bakas does not contest that finding.

extreme back pain. Father was diagnosed with stage four lung cancer that had metastasized to his bones, and his prognosis was that he would live for four months to a year. While in St. Catherine's Hospital, Father executed an Appointment of Health Care Representative and appointed Radinovic as his health care representative.

[5] Father was subsequently admitted to St. Mary's Medical Center in Hobart. During Father's hospital admission, Radinovic stayed with him around the clock and attempted to work in the room. Andrew visited Father during the day. Radinovic kept a journal with notes regarding Father's medical condition and treatments for the family to reference when necessary, and the family was aware of the journal. Radinovic requested numerous times that the family meet to discuss Father's plan of care. Only one such meeting occurred, at which time the family voted to move forward with immunotherapy with possible radiation.

[6] Prior to entering the hospital, Father did not have an estate plan in place. During a conversation with Radinovic, Father asked her to set up an appointment with an attorney to draft a Last Will and Testament. However, such an appointment never took place because Nicholas talked Father out of it during a telephone conversation. Thereafter, Radinovic and the Brothers discussed the need for a power of attorney document for Father. In order to carry out Father's wishes, Radinovic downloaded a power of attorney form from the internet at the suggestion and direction of Father and Andrew. On

December 10, 2017, Father executed a Durable Power of Attorney (“POA”) in the presence of Radinovic and two other witnesses.

[7] With both Radinovic and Andrew present, Father discussed his intentions related to his house located at 4217 Ivy Street, East Chicago, Indiana 46312 (the “Residence”). During those discussions, Father also stated his intentions related to the following accounts, which were all payable on death (“POD”) to the Brothers and Radinovic: (1) First Midwest Bank CD Account No. XXXXXX1207 (“Account 1207”); (2) First Midwest Bank Savings Account No. XXXXXX0129 (“Account 0129”); and (3) Peoples Bank CD Account No. 5492 (“Account 5492”). Father also discussed the fact that he wanted to leave a small inheritance to his grandchildren.

[8] On December 10, 2017, Father executed a letter authorizing Peoples Bank to change the POD designation on Account 5492 to Radinovic so that she could carry out Father’s wishes. On December 21, 2017, Father executed a letter and new POD Designation authorizing Peoples Bank to change the POD designation on Account 5492 to Radinovic’s daughter, Christina M. Radinovic (“Christina”). Father wanted all three of his grandchildren listed as beneficiaries; however, Radinovic did not have the Social Security Numbers of the other two grandchildren, and she believed she needed them in order to name them as POD beneficiaries. Therefore, Father instructed Radinovic to ensure that Christina divided Account 5492 with her two cousins. Christina subsequently did so.

- [9] On December 21, 2017, per Father’s instructions during a conversation where both Radinovic and Andrew were present, Radinovic opened First Midwest Bank Checking Account No. XXXXXX3047 (“Account 3047”) in Father’s name, with Radinovic named as the Power of Attorney (“POA”). Per Father’s instructions and wishes during conversations where both Radinovic and Andrew were present, Radinovic transferred the interest from Account 1207 and the funds in Account 0129 to the new account, Account 3047. The funds in Account 3047 were to be used by Radinovic, so long as all of Father’s living expenses and death expenses were also paid from those funds.
- [10] Father also made it clear to Andrew and Radinovic that he wanted Radinovic to ensure that the Residence was transferred to Andrew and Nicholas upon Father’s death. Radinovic engaged an attorney to prepare a Transfer on Death Deed to carry out Father’s wishes, and Radinovic paid for all expenses related thereto. Father executed the Transfer on Death Deed on December 21, 2017, in the presence of a Notary Public.
- [11] On December 26, 2017, per Father’s instructions and wishes, Radinovic signed a Revocation in her capacity as POA and a new POD designation for Account 1207. As Father directed, the POD beneficiaries for that account were still the Brothers, but Radinovic was replaced with Christina as a beneficiary. All beneficiary designation changes were initiated by Father at his verbal and written direction/signed authorization.

[12] Radinovic disclosed to her family that she was in a bankruptcy reorganization due to an accident that took place in 2015, which left her out of work for some time and unable to maintain the medical bills and living expenses. She also disclosed that, as soon as she was healthy and back to work, she had caught up on all of her bills and that she would be “paying off the Bankruptcy” one year earlier than required, which she subsequently did. Appealed Order at 8.

[13] Shortly before Father died, he was to be transported to hospice, for which Radinovic was scheduled to pay with the monies that Father had directed her to transfer to Account 3047. At that time, Father was expected to live at least a few more months. The expected cost of hospice was approximately \$20,000 per month and would have exceeded the monies that were available in Account 3047. However, Radinovic was prepared to pay all costs during Father’s remaining time and after his death. Against the wishes of Father, Radinovic, and Andrew, and the professional medical advice of the physicians caring for Father, Peter and Nicholas made an abrupt decision to cancel the hospice reservations and transport Father to another hospital one hour away in Chicago. As predicted by his physicians, Father was not able to survive the drastic reduction in oxygen that the receiving hospital required during transport. As a result of the reduction in oxygen and the transport, Father’s health plummeted drastically, and he died on January 13, 2018.

[14] Immediately following Father’s death, the Brothers began “harassing” Radinovic regarding Father’s assets and made a request for an accounting of her activities as attorney-in-fact. Appealed Order at 10. Peter sent demand

letters to Radinovic's place of employment and posted threatening messages on Facebook and other social media platforms. Peter tried to make a "deal" with Radinovic and her employer in return for settling the case on his terms.

Appellant's App. v. II at 109. Peter threatened to contact Radinovic's creditors and the bankruptcy court if she did not settle the case.

- [15] Peter's actions led Radinovic to seek an Order of Protection against him. Radinovic was also in the process of grieving her father's death and attempting to repair her employer/employee relationship due to her prolonged absence taking care of Father. Radinovic did not respond to Peter's request for an accounting, and, on August 30, 2018, the Brothers filed a Petition for an Accounting.
- [16] Radinovic filed an accounting and amended accounting in January and March of 2019, respectively. The Brothers filed an objection to the accounting, in which they alleged Radinovic had breached her fiduciary duty to Father; acted in bad faith; and engaged in counterfeiting, forgery, and theft. They also sought treble damages and attorney fees. Radinovic filed a response to the objection.
- [17] On November 8, 2019, Radinovic's attorney, Benjamin Ballou ("Ballou"), filed a Notice of Actual Conflict of Interest and Request to Transfer the Case from the probate division of the Lake County Superior Court to the probate division of the Lake County Circuit Court on the grounds that Ballou had recently accepted an appointment as a probate commissioner in the Superior Court.

That request was granted without objection, and the case was transferred to the Circuit Court on November 13.

[18] The court held a hearing regarding the accounting and objection via Zoom on three separate days in May and June of 2021. The hearing was not recorded, and no transcript was created. The parties presented exhibits and witness testimony at the hearing, including the testimony of Robert W. Lesnevich (“Lesnevich”), an expert in handwriting analysis who testified for the Brothers regarding Father’s signatures on various documents. On September 29, 2021, the trial court entered Findings of Fact and Conclusions of Law and entered judgment in favor of the Brothers and against Radinovic in the sum of \$41,108.91, or \$13,702.97 for each of the Brothers.

[19] Although the September 29 judgment was favorable to the Brothers, on October 28, 2021, they filed a motion to correct error in which they sought an award of attorney fees and costs. On December 10, 2021, Radinovic filed her statement in opposition to the motion to correct error and cited “Additional Grounds Upon Which Katherine is Entitled to Relief from the Court’s Findings.” Appellant’s App. v. II at 63. On January 27, 2022, the trial court conducted a Zoom hearing on the Motion to Correct Error, Radinovic’s Statement in Opposition, and all related filings. The hearing, at which the court heard argument of both parties’ counsel, was recorded.

[20] In an order dated March 16, 2022, the trial court issued new findings, conclusions thereon, and a judgment regarding the motion to correct error and

related filings. The trial court specifically held that it had “erred when it entered its Findings of Fact and Conclusions of Law on September 29, 2021, and ... vacate[d] the same.” Appealed Order at 2. The court’s new findings, conclusion, and judgment were in Radinovic’s favor. The court specifically cited and considered the testimony of Lesnovich and determined that it was “not persuasive because it does not assist this Court in determining whether [Father’s] signature was forged on certain documents.” *Id.* at 14. The court found that “[t]he documents executed by [Father] are authentic.” *Id.* The court found that Radinovic had acted with due care for the benefit of Father and that all of her actions as the attorney-in-fact were taken at Father’s direction and with his permission. The court further found that Radinovic “acted in good faith” and at Father’s behest and authorization as to Account 3047. *Id.* at 16.

[21] Regarding Radinovic’s record-keeping, the trial court found:

During the very difficult time of her father’s illness, [Radinovic] spent days on end at the hospital by his side so she did not keep all of her receipts, nor did she keep a log of every transaction organized and in a central location. She was adhering to her father’s direction and did the best she could at the time to ensure that her father was cared for, her brothers were cared for, and her father was given the proper traditional memorial. This included freely giving monies to the Petitioners, when they requested it. ... [Radinovic] fulfilled her fiduciary duties as attorney-in-fact because that is what [Father] directed and would have done had he been able to do so.

Id. at 18.

[22] Regarding Radinovic’s failure to deliver an accounting to the Brothers within sixty days of their request as required by state law, the trial court noted that an award of attorney fees for such failure “may” be awarded by the trial court if the failure to render the accounting in a timely manner was “without just cause.” *Id.* at 21 (citing Ind. Code § 30-5-6-4(h)). The court concluded:

Due to the circumstances and timing of the [Brother’s] repeated requests for an accounting and the actions taken by Peter related to [Radinovic]’s place of employment, the “deal” he wanted to make with [Radinovic]’s employer, and the threats made by Peter to contact [Radinovic]’s creditors and the bankruptcy court, this Court finds that [Radinovic]’s failure to timely provide the accounting was justified.

Id.

[23] The trial court approved Radinovic’s Amended Accounting, denied and overruled the Brother’s objections thereto, and awarded Radinovic her attorney fees and costs. Bakas timely appealed. However, he was unable to file a transcript of the Zoom hearing conducted in May and June of 2021 as that hearing was not recorded. Therefore, this Court temporarily stayed the appeal and remanded the matter to the trial court for proceedings in accordance with Indiana Appellate Rule 31, Statement of Evidence when No Transcript is Available. Following Bakas’s submission of his proposed Statement of Evidence and Radinovic’s response thereto, the trial court entered an Order Certifying Statement of Evidence on September 15, 2022, and notified this Court of the same. This appeal ensued.

Discussion and Decision

Standard of Review

- [24] Bakas appeals the trial court’s denial of his motion to correct error and its grant of relief from the findings and judgment for Radinovic.²

A trial court is vested with broad discretion to determine whether it will grant or deny a motion to correct error. *Volunteers of America v. Premier Auto Acceptance Corp.*, 755 N.E.2d 656, 658 (Ind. Ct. App. 2001). A trial court has abused its discretion only if its decision is clearly against the logic and effect of the facts and circumstances before the court or the reasonable inferences therefrom. *Id.* The trial court’s decision comes to us cloaked in a presumption of correctness, and the appellant has the burden of proving that the trial court abused its discretion. *Id.* In making our determination, we may neither reweigh the evidence nor judge the credibility of witnesses. *Id.* Instead, we look at the record to determine if (a) the trial court abused its judicial discretion; (b) a flagrant injustice has been done to the appellant; or (c) a very strong case for relief has been made by the appellant. *Id.*

Jones v. Jones, 866 N.E.2d 812, 814 (Ind. Ct. App. 2007).

- [25] The trial court also entered specific findings of fact and conclusions thereon. When a trial court’s judgment contains special findings and conclusions, we

² Indiana Trial Rule 59(E) permits a “Statement in Opposition to Motion to Correct Error,” which “may present other grounds which show that the party filing the statement in opposition is entitled to other relief.” See also, *Hubbard v. Hubbard*, 690 N.E.2d 1219, 1221 (Ind. Ct. App. 1998) (“[A] motion requesting the court to revisit its final judgment must be considered a motion to correct error.”).

apply a two-tiered standard of review. *Bester v. Lake Cnty. Off. of Fam. & Child.*, 839 N.E.2d 143, 147 (Ind. 2005). First, we determine whether the evidence supports the findings³ and, second, we determine whether the findings support the judgment. *Id.* “Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference.” *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996). If the evidence and inferences support the trial court’s decision, we must affirm. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*.

Ruling on Motion to Correct Error

[26] Bakas appeals the trial court’s ruling on his motion to correct error and Radinovic’s response thereto. His argument, in essence, is that the trial court was not permitted to change its mind after it entered the judgment in Bakas’s favor. However, Trial Rule 59 permits just that. *See* T.R. 59(J) (“The court, if it determines that prejudicial or harmful error has been committed, shall take such action as will cure the error, including without limitation the following ... (3) Alter, amend, modify, or correct judgment; (4) Amend or correct the

³ We disregard Bakas’s Statement of the Facts for three reasons. First, he fails to provide a single citation to the record as required by Appellate Rule 46(6). Second, he states only “facts” taken from the September 29, 2021, Findings of Fact and Conclusions of Law which the trial court specifically vacated as erroneous. Third, he completely disregards as “patently insufficient,” Appellant’s Br. at 10, the trial court’s September 15, 2022, Order Certifying Statement of Evidence, which the trial court entered in accordance with Appellate Rule 31(C) and which became “part of the Clerk’s Record,” Appellate Rule 31(C); however, Bakas does not appeal the Order Certifying Statement of Evidence, and neither he, nor we, are at liberty to simply ignore it.

findings or judgment as provided in Rule 52(B).^[4]”); *see also Riggen v. Riggen*, 71 N.E.3d 420, 423 n.1 (Ind. Ct. App. 2017) (noting Trial Rule 59 authorizes a trial court to “change its mind after entry of judgment,” upon the filing of a motion to correct error).

[27] As a panel of this Court noted in *Hubbard v. Hubbard*,

After final judgment has been entered, the issuing court retains such continuing jurisdiction as is permitted by the judgment itself, or as is given the court by statute or rule. One such rule is Trial Rule 59 which provides the court, on its own motion to correct error or that of any party, the ability to alter, amend, modify or even vacate its decision following the entry of final judgment.

690 N.E.2d 1219, 1221 (Ind. Ct. App. 1998) (citation omitted); *see also, e.g., R. W.M. v. A. W.M.*, 926 N.E.2d 538, 541 (Ind. Ct. App. 2010) (internal quotation and citation omitted) (“Ample authority exists which permits a trial court, at least up to and including the ruling on the motion to correct error, to alter, amend or modify its judgment without limitation.”).

⁴ Trial Rule 52(B) provides:

Upon its own motion at any time before a motion to correct errors [sic] (Rule 59) is required to be made, or with or as part of a motion to correct errors [sic] by any party, the court, in the case of a claim tried without a jury or with an advisory jury, may open the judgment, if one has been entered, take additional testimony, amend or make new findings of fact and enter a new judgment or any combination thereof if:

(1) the judgment or findings are either against the weight of the evidence, or are not supported by or contrary to the evidence....

[28] Here, upon Bakas’s motion to correct error and Radinovic’s response, the trial court reconsidered its prior order and changed its mind, as the trial rules permitted it to do.⁵ There was ample evidence to support the trial court’s new findings—including its finding that Radinovic acted with “due care” for Father’s benefit—and those findings support its judgment.⁶ We may not reweigh the evidence or judge witness credibility, as Bakas would have us do. The trial court did not err when it denied Bakas’s motion to correct error and granted Radinovic the relief she requested.

Alleged Ethics Violations

[29] Bakas asserts that Radinovic’s attorney “violat[ed] ... Professional Ethics” and/or the Code of Judicial Conduct by representing Radinovic in the probate division of the Lake County Circuit Court. However, such a claim may not be brought in this Court; the Indiana Supreme Court “has exclusive jurisdiction of all cases in which an attorney is charged with misconduct” under the Rules of Professional Conduct or the Code of Judicial Conduct. Ind. Admission and

⁵ We decline Bakas’s invitation to consider federal law, including Federal Rule of Civil Procedure 59, “New Trial; Altering or Amending a Judgment.” Contrary to Bakas’s assertion, that federal rule is not “worded similarly” to our Trial Rule 59, and neither the federal rule nor the federal cases Bakas cites provide binding—or even persuasive—authority for Bakas’s assertions. Appellant’s Br. at 23.

⁶ Bakas cites no factual finding or applicable legal authority in support of his claim that Radinovic violated her fiduciary duty by “commingling” Father’s funds with her own. His assertion that Radinovic admitted to such commingling was based solely on the September 29, 2021, trial court findings that were vacated, and the trial court found no other evidence and/or facts supporting the commingling claim. Further, the legal authority Bakas cites relates to trustees rather than attorneys-in-fact. *See* I.C. § 30-4 (“Trust Code” applicable to trustees) and I.C. § 30-5 (article applicable to powers of attorney, including attorneys-in-fact); *see also*, I.C. § 30-5-9-2(a)(1) (providing that an attorney-in-fact who acts with due care for the benefit of the principal is not liable only because the attorney-in-fact also benefits from the act).

Discipline Rule 23(1)(a), (b). Grievances alleging such misconduct must be brought before the Supreme Court through the grievance procedures discussed in the Indiana Rules for Admission and Discipline. *Id.* at 23(III)(10).

[30] To the extent Bakas raises a due process claim that Attorney Ballou’s representation of Radinovic in the probate division of the Lake County Circuit Court denied him a fair trial,⁷ he waived that claim by failing to raise it in the trial court. *See, e.g., Plank v. Cmty. Hosp. of Ind., Inc.*, 981 N.E.2d 49, 53 (Ind. 2013) (“[A]ppellate review presupposes that a litigant’s arguments have been raised and considered in the trial court.”); *Carney v. Patino*, 114 N.E.3d 20, 29 n.6 (Ind. Ct. App. 2018) (“The trial court cannot be found to have erred as to an issue or argument that it never truly had an opportunity to consider.”), *trans. denied*. Rather, Bakas made no objection to the transfer of the case to the probate division of the circuit court upon Ballou’s notice of a conflict of interest in the superior court.

[31] Bakas seeks to avoid waiver on appeal only by asserting fundamental error. “Fundamental error is error which is a blatant violation of our concepts of fundamental fairness and in which the harm is substantial and apparent.” *M.E. v. V.A. Medical Center*, 957 N.E.2d 637, 638 (Ind. Ct. App. 2011) (internal quotation and citation omitted). In order to be deemed fundamental, an error

⁷ Bakas does not use the words “due process” or cite to any constitutional provision. However, he does refer to the lack of an “appearance of justice,” Appellant’s Br. at 29, “fundamental error,” *id.* at 30, and “the importance of a fair trial by an impartial judge,” Reply Br. at 13.

must be “so prejudicial to the rights of a defendant as to make a fair trial impossible.” *Hardley v. State*, 905 N.E.2d 399, 402 (Ind. 2009) (internal quotation and citation omitted). However, “[w]e have applied the fundamental error doctrine only in limited situations in civil cases.” *Johnson v. Wait*, 947 N.E.2d 951, 959 (Ind. Ct. App. 2011) (citing *S.M. v. Elkhart Cnty. Off. of Fam. & Child.*, 706 N.E.2d 596, 599 n. 3 (Ind.Ct.App.1999)), *trans. denied*.

[32] Even assuming this is one of the limited situations in which the fundamental error doctrine would apply to a civil matter, Bakas has failed to show such error. While he purports to challenge Ballous’s actions, his allegation is actually an assertion that the trial court was biased toward Radinovic because Ballous was a “colleague” of the trial court judge. Appellant’s Br. at 30. In his reply brief, Bakas asserts for the first time that Ballous engaged in “improper ex parte communication” with the trial court judge. Reply Br. at 13. However, Bakas provides no evidentiary support whatsoever for these claims; rather, he bases these claims on nothing more than the fact that the trial court reconsidered its prior judgment in his favor and entered judgment in favor of Radinovic on a motion to correct error.⁸ The bald-faced, factually unsupported assertions of “corruption” on the part of the trial court and Radinovic’s counsel do not show fundamental error. Appellant’s Br. at 30.

⁸ Bakas’s argument that bias is shown merely by the fact that the trial court made the same typographical error as that made by Radinovic’s counsel in her submission to the court is without merit.

Conclusion

[33] The trial court did not err in denying Bakas's Motion to Correct error and granting Radinovic's request for relief from the findings and judgment contained in her Statement in Opposition to Motion to Correct Error. And Bakas failed to show that the actions of Radinovic's counsel or the trial court judge resulted in fundamental error.

[34] Affirmed.

Riley, J., and Vaidik, J., concur.