

interest in the real property to the estate. The plaintiff thereafter filed this timely appeal.

¶ 3

BACKGROUND

¶ 4 The plaintiff, Thelma Wright (Thelma), and Monroe Johnson (Monroe) had been friends for over 50 years. Thelma worked for Bussman Fuse in St. Louis for many years, until she retired in 1989. Throughout their friendship, Thelma resided in Granite City, Illinois. Monroe resided in St. Louis, Missouri, where he operated his own automotive shop. Both friends were married; each survived his or her respective spouse. Both had children from their marriages. Thelma testified that throughout their friendship she helped Monroe by writing checks from his bank account to pay his bills. She also laundered his uniforms and performed various housekeeping tasks at his shop. In exchange, Johnson fixed her cars when they needed repair and, at one time, also did some work on her house.

¶ 5 When Monroe's wife passed away in 2000, he realized that their marital home in Hazelwood, Missouri, was located too far from his remaining family and friends. According to Thelma's testimony, Monroe wanted to move to the Granite City area to be closer to her. It further appears from her testimony that Thelma helped Monroe search for new homes by driving him around to look at various properties. During that time, her son, Gary Wright (Gary), who also lived in Granite City, told them that he knew of a house for sale which might be of interest to Monroe. Monroe thereafter made an offer to purchase the house.

¶ 6 After a final price was agreed upon with the seller, Monroe contracted to purchase the house, located at 4364 Elliot Road, Granite City, Illinois (the Property). From trial testimony, it appears Gary told Thelma and Monroe to make sure they used a reliable title company. It further appears that Gary called to set up an appointment for them to meet with the Theis Law Firm, P.C. (the law firm), to handle the closing paperwork for the real estate transaction. The law firm drafted a real estate sales contract (the contract), which, on its face, lists both Monroe and Thelma as the "buyers" of the Property and states that they will hold

title to the Property as joint tenants. Thelma testified during trial that she and Monroe met with employees at the law firm to review and sign the contract on July 24, 2003. She further maintains that it was Monroe's intent that they share title to the Property as joint tenants. This is where the stories diverge considerably.

¶ 7 Monroe, during his evidentiary deposition, taken on March 20, 2007, testified that it was never his intent to share title to the Property with Thelma. Monroe further testified that when he asked Thelma why she had signed the contract, she replied that she was signing because he was unable to get in touch with his daughter, Georgie, who held power of attorney for Monroe. According to Monroe, he would not have signed the contract if he knew he was agreeing to hold title with Thelma as joint tenants. Instead, he believed that Thelma had signed the contract in a power of attorney capacity for him.

¶ 8 Closing on the Property occurred at the offices of the law firm on August 13, 2003. Monroe testified that while reviewing the closing documents with the law firm personnel, when he reviewed the warranty deed, which conveyed title to the Property to both Monroe and Thelma, as joint tenants with the right of survivorship, he protested, telling them that Thelma should not be on the deed. However, he claims that the law firm told him it was too late for them to change things and that he would have to seek the aid of an attorney to get her name off of the deed.

¶ 9 However, according to Thelma's trial testimony, at closing, Monroe never objected to her name being on either the contract or the warranty deed. In fact, she maintained that at the time he purchased the Property, Monroe intended that they be joint owners in exchange for her promise to take care of him for the rest of his life, as he did not want to go to a nursing home. Thelma also claimed that after signing the contract to purchase the Property, she moved in with Monroe to take care of him and stayed there every night (sleeping in a separate bedroom) until December 2003. However, Monroe testified that he did not recall

whether she lived there then because he was working on a car and did not pay attention.

¶ 10 In addition to her agreement to take care of Monroe, Thelma had the utilities for the Property put in her name to save Monroe from having to post a deposit. She also claimed that her son, Gary, paid for the appraisal of the Property, did some demolition work on a shed on the Property, and hired a carpenter to do some repair work. Although Monroe paid for materials, Gary claimed that he was not reimbursed for paying the carpenter for his labor nor was he reimbursed for either the appraisal fees or his demolition work. Monroe claimed that he did not know the utilities were in Thelma's name until they were shut off and he had to call to get them turned on again.

¶ 11 Approximately four months after Monroe purchased the Property, he had Thelma served with an order of protection, and after a two-day hearing, the circuit court of Madison County issued a plenary order of protection on January 30, 2004. The plenary order, effective until January 30, 2006, listed Thelma as a "personal assistant or caregiver" to Monroe, and also stated that the two shared a common dwelling. During the plenary hearing, Monroe testified that Thelma had verbally and physically abused him. Thelma denied these allegations. The plenary order granted Monroe exclusive possession and use of the Property and ordered Thelma to stay at least 100 feet away from Monroe and the Property, prohibiting her from communicating with him in any way. Upon being served with the order of protection, Thelma left the Property on December 14, 2003, returning only once on December 18, 2003, to retrieve some of her belongings. Thelma never again resided at the Property or provided further care to Monroe.

¶ 12 On March 4, 2004, Monroe, through the help of an attorney, executed a quitclaim deed to the Property to himself, for the purpose of destroying the joint tenancy between himself and Thelma, thereby making them owners as tenants in common instead. Two months later, on May 11, 2004, Monroe executed his last will and testament with the same

attorney who prepared the quitclaim deed. Monroe made no further effort to try and obtain full title to the Property. In fact, it was not until over two years later, when Thelma filed a complaint for partition of the Property, that Monroe filed a cross-complaint for partition, seeking an award of 100% title ownership of the Property, and for the court to terminate any and all of Thelma's rights in the Property, based on her alleged fraud and undue influence.

¶ 13 A nonjury trial was held on the partition suit, with testimony from Thelma, Gary Wright, and Zella Rives. Because Monroe passed away several years before the trial, the circuit court did not have the benefit of hearing his live testimony, but instead, was able to consider his evidentiary deposition testimony, taken on March 20, 2007, as well as his testimony during the order of protection hearing in January 2004. The circuit court ultimately ruled in favor of Monroe's estate and against Thelma, in that it denied her complaint for partition and instead granted the estate's cross-complaint, awarding any and all interest in the Property to the estate.

¶ 14 The circuit court based its ruling on its finding that a fiduciary relationship had existed between Thelma and Monroe. In short, the circuit court believed that despite their friendship, Thelma operated in a fiduciary capacity with regards to Monroe, because he "had a very limited ability to read and write," and "was dependent upon [Thelma] to assist him with these matters," and Thelma "was aware of [Monroe's] condition." Therefore, because the circuit court found that Thelma was acting in a fiduciary capacity, the substantial benefit she received of becoming a joint tenant in the Property without putting any money towards its purchase created a presumption of her undue influence. Finding that Thelma had failed to rebut the presumption of her undue influence, the circuit court thereby imposed a constructive trust over Thelma's share of the Property to award full interest in the Property to Monroe's estate.

¶ 15

ANALYSIS

¶ 16 Thelma now appeals the circuit court's findings that a fiduciary relationship existed between herself and Monroe and that she exercised undue influence over him, which thereby allowed the circuit court to impose a constructive trust over her half interest in the Property to award it to Monroe's estate.

¶ 17 A fiduciary relationship can arise as a matter of law, present in "certain relationships such as attorney and client, principal and agent, trustee and beneficiary, or partners." *In re Estate of Wernick*, 151 Ill. App. 3d 234, 244 (1986), *aff'd in part & rev'd in part*, 127 Ill. 2d 61 (1989). Absent such traditional relationships, a fiduciary relationship can also be found to exist "as a matter of fact when one party reposes trust and confidence in another who thereby gains a resulting influence and superiority over the first." *Id.* "The origin of the confidence may be moral, social, domestic, or merely personal." *Warren v. Pfeil*, 346 Ill. 344, 360 (1931). The trier of fact may consider such factors as "degree of kinship, if any, disparity in age, health, mental condition, education and business experience between the parties, and the extent to which the allegedly subservient party entrusts the handling of his business and financial affairs to the other and reposes faith and confidence in [the dominant party]." *Estate of Wernick*, 151 Ill. App. 3d at 244. A fiduciary relationship which does not arise as a matter of law, but grows out of a special reposed confidence, must be proven by clear and convincing evidence (*Crawford v. Krebs*, 40 Ill. App. 3d 568, 574 (1976)) that unequivocally and unmistakably leads to but one conclusion (*Chicago Land Clearance Comm'n v. Yablong*, 20 Ill. 2d 204, 207 (1960)).

¶ 18 Once a fiduciary relationship has been shown to exist, then there will be a presumption of undue influence regarding any transaction between the parties in which the dominant party benefits. *In re Estate of Long*, 311 Ill. App. 3d 959, 964 (2000); see also *Crawford*, 40 Ill. App. 3d at 574. This presumption of undue influence may be rebutted by presenting clear and convincing evidence that the dominant party exercised good faith and

did not betray the confidence reposed by the subservient party. *Estate of Long*, 311 Ill. App. 3d at 964. In other words, it must be shown that the transaction called into question was fair and that the subservient party entered into it voluntarily. See *Crawford*, 40 Ill. App. 3d at 574; *Warren*, 346 Ill. at 361.

¶ 19 In the case at hand, the circuit court imposed a constructive trust over Thelma's half interest in the Property to award it to Monroe's estate. "A constructive trust is an equitable remedy imposed to rectify unjust enrichment." *Kurtz v. Solomon*, 275 Ill. App. 3d 643, 651 (1995). In order for a court to properly impose a constructive trust to set aside a conveyance in a case where it finds a breach of fiduciary duty, "the proof must be so clear, convincing, strong, and unequivocal as to lead to one conclusion." *Id.* at 652 (citing *Suttles v. Vogel*, 126 Ill. 2d 186, 194 (1988)).

¶ 20 The circuit court's finding that a fiduciary relationship existed, with Thelma being the dominant party and Monroe the subservient party, and that Thelma exercised undue influence over Monroe's purchase of the Property in that she was listed as a joint tenant on the deed, can only be overturned on appeal if we find it to be against the manifest weight of the evidence. *La Salle National Bank v. 53rd-Ellis Currency Exchange, Inc.*, 249 Ill. App. 3d 415, 427 (1993). "A finding is against the manifest weight of the evidence when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Vancura v. Katris*, 238 Ill. 2d 352, 374 (2010).

¶ 21 The circuit court found that Monroe "had a very limited ability to read and write" and therefore depended upon Thelma "to assist him with these matters." Further, the circuit court found that Thelma was fully aware of Monroe's condition. Regarding the purchase of the Property, the circuit court found that Monroe never had any intention to name Thelma as a joint tenant and was unaware this had even happened until *after* he signed the purchase contract and saw her name on the warranty deed at closing. Because the circuit court found

that Monroe trusted Thelma to arrange for the purchase of and closing on the Property, through her son, Gary, it also found that Thelma thereby abused his trust by "manipulat[ing] the sales contract and deed to ensure that Thelma['s] *** name was placed on the real estate."

¶ 22 Additionally, the circuit court found that Thelma's own trial testimony contradicted her assertion that Monroe intended to name her as a joint tenant as a friendly gift for all of the help she had given him in the past. Rather, Thelma's testimony made it appear as though the gift was intended to be in exchange for her prospective help in caring for Monroe for the remainder of his life. However, the circuit court observed that because the protective order prohibited Thelma from coming within 100 feet of the Property or Monroe himself, it was impossible for her to fulfill her end of the bargain.

¶ 23 The fact that Monroe paid for all of the utility bills, repairs, upkeep, taxes, and insurance for the Property further convinced the circuit court that "all of the transactions between the parties were a sham constructed by [Thelma] to circumvent [Monroe's] estate and heirs and gain the [Property] *** for herself pursuant to the contrived deed for joint tenancy." Lastly, trial testimony revealed that Thelma kept very few personal belongings at the Property, even though she asserted that it was her permanent residence for months before the protective order was obtained and she was forced to move out. Thus, the circuit court found that this evidence "belie[d] her claim of both permanent residence and round-the-clock care for [Monroe]."

¶ 24 Upon review, we believe the circuit court's ruling was not against the manifest weight of the evidence. Evidence on the record supported the finding that Monroe had limited reading abilities and that Thelma, as his longtime friend, knew this. Thelma does, however, argue that the record also reflects the fact that Monroe had previous experience dealing in business and legal matters. Testimony set forth the fact that Monroe ran his own automotive repair business for years and handled automobile sales transactions, as well as retained an

attorney to file a wrongful-death lawsuit on behalf of his wife, draft his will, and draft the quitclaim deed that severed the joint tenancy between Monroe and Thelma to create the tenancy in common. Yet, despite her argument, the evidence is also undisputed that Monroe entrusted Thelma to handle coordinating the purchase of and closing on the Property.

¶ 25 Although there was no evidence that Monroe had been declared legally incompetent or that he was suffering from impaired mental facilities (other than his poor reading skills), Monroe's testimony clearly stated that he never intended to own the Property with Thelma as joint tenants and would not have signed the purchase contract had he known this was the way it had been set up with the title company. Thelma raises the fact that Monroe testified that he intended to put her name on the deed "at one time." However, this does not dispute his further testimony that he later forgot about his intention to put her name on the deed and that at the time he purchased the Property, he expressly had no intention to give Thelma any ownership interest in the Property. While Thelma makes the argument that if Monroe's testimony were to be believed, then the law firm and title company would have been implicit in her alleged fraud, we do not find as such. An attorney would have likely drafted the real estate purchase contract in accordance with the instructions he received from the client or the person he was dealing with. In this instance, this was either Thelma personally or Thelma through her son, Gary. When the parties signed the real estate purchase contract, if Monroe believed Thelma was only signing in a power of attorney capacity, there would likely have been no protest from him at the time. Testimony reveals that Monroe did not voice an objection until the subsequent meeting at the title company to close on the Property. During closing, once Monroe saw Thelma's name listed on the warranty deed as a joint tenant, he testified that he told the title company that she was not supposed to be a joint tenant, but they informed him that it was "too late" to change the warranty deed. That does not constitute fraud on either the law firm or the title company's part. The real estate purchase contract had

already been signed and the warranty deed merely reflected the joint tenancy ownership of the Property as indicated by the contract.

¶ 26 The evidence paints a clear picture that Monroe did not want Thelma to own the Property with him as a joint tenant. However, because he trusted her to handle the purchase of and closing on the Property, she ensured that she was listed as a joint tenant on the purchase contract and the deed. The picture is fine-tuned by the fact that Thelma did not contribute to the purchase price for the Property, she did not pay for utilities or property taxes, and she also did not keep many of her personal belongings at the Property, even though she claimed it had been her permanent residence for months. Therefore, we believe the circuit court was correct in finding that a fiduciary relationship existed between Thelma and Monroe, with Monroe being the subservient party. It is clear that throughout their friendship, Monroe trusted Thelma to handle his financial affairs by allowing her to write out his checks to pay his bills. There was also a clear disparity in education, as Monroe had limited reading abilities. Certainly, their relationship evinced that Monroe had a "special reposed confidence" in Thelma, as his longtime friend, which is substantiated by the fact that he allowed her to also handle setting up the purchase of the Property. It is also indisputable that Thelma benefitted from the purchase of the Property; she was made a joint tenant without having to pay any of the purchase price. While this, in and of itself, does not indicate fraud or undue influence, the fact that she was the dominant party in her fiduciary relationship with Monroe and benefitted from this transaction creates the presumption of undue influence. The circuit court found that she was unable to rebut this presumption.

¶ 27 Thelma also argues that because Monroe severed the joint tenancy via quitclaim deed, thereby creating a tenancy in common between them, and did not mention the real estate issue in his subsequently drafted last will and testament, and that he did not initiate legal action against her based on any fraud, it is evident that he "was satisfied with the status quo

and with Thelma inheriting 50% of the [Property] as his tenant in common." He did, however, oppose Thelma's effort to obtain her interest in the Property, as is evident from Monroe's counterclaim to Thelma's partition suit, which alleged fraud and undue influence.

¶ 28 In sum, we find that the circuit court's decision was sufficiently based on the evidence, even with the heightened clear and convincing evidentiary burden. As such, it was not arbitrary or unreasonable for the circuit court to find that a fiduciary relationship existed between Monroe and Thelma and that Thelma benefitted from the purchase of the Property, which created a presumption of undue influence, thereby allowing the court to impose a constructive trust over Thelma's interest in the property to award that interest back to Monroe's estate.

¶ 29

CONCLUSION

¶ 30 For the foregoing reasons, the circuit court's judgment is affirmed.

¶ 31 Affirmed.