2015 IL App (1st) 133059-U

FOURTH DIVISION
March 19, 2015

No. 1-13-3059

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ROSE IKPELUE, as guardian of the Estate of FLOREE COLLINS, a disabled person,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	
v.	)	No. 10 CR 21702
MAURICE J. COLLINS,	)	Honorable Rodolfo Garcia,
Defendant-Appellee.	)	Judge Presiding.

JUSTICE ELLIS delivered the judgment of the court.
Justices Howse and Cobbs concurred in the judgment.

O R D E R

¶ 1 *Held*: Where plaintiff failed to provide adequate record to review trial court's judgment, we must presume that court's finding was sufficiently supported by evidence; trial court's judgment affirmed.

¶ 2 Plaintiff Rose Ikpelue appeals from the judgment of the trial court which, after a bench trial, found in favor of defendant Maurice Collins and refused to grant rescission of a quit-claim deed signed by defendant's (and plaintiff's) mother, Floree Collins, conveying her personal residence to defendant and herself as joint tenants. Plaintiff now contends that the trial court

erred in finding insufficient evidence that defendant exerted undue influence over Floree. Defendant has not filed a brief in response; however, we may proceed under the principles set forth in *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976). We affirm.

¶ 3 On May 19, 2008, a quit-claim deed prepared by defendant indicated that Floree conveyed her personal residence located at 7831 South Ada Street in Chicago to defendant and herself as joint tenants for $10. Both Floree and defendant signed the notarized deed.

¶ 4 On May 20, 2010, plaintiff filed a verified complaint for rescission of the quit-claim deed. In the complaint, plaintiff asserted that she was appointed guardian of Floree's estate based on Floree's diagnosis of dementia. Due to her condition, plaintiff maintained that Floree lacked sufficient capacity to execute the quit-claim deed. Alternatively, plaintiff contended that defendant exerted undue influence over Floree where he assisted in the preparation and recording of the deed to his benefit and the detriment of Floree. As relief, plaintiff requested that the trial court enter an order rescinding the quit-claim deed, restoring title in the property to Floree, awarding nominal and punitive damages, and granting such other relief as the court deemed just. In his answer to the complaint, defendant alleged that at the time of the filing of the quit-claim deed, Floree was not disabled and she conveyed her property knowingly and voluntarily. Defendant noted that the doctor's "diagnosis" of Floree's dementia occurred about six months after the deed was executed.

¶ 5 On July 13, 2011, plaintiff moved for summary judgment, alleging that a presumption of undue influence arose in this case because a fiduciary relationship existed between Floree and defendant as a matter of law. The trial court denied the motion on January 27, 2012, finding that

plaintiff had not proven that, as a matter of law, a fiduciary relationship existed between defendant and Floree, and thus no presumption of undue influence would automatically attach to the conveyance of the quit-claim deed. The case was tried before the bench on May 6, 2013. At the close of trial, the court entered a written order finding in favor of defendant and against plaintiff. Plaintiff filed a motion for reconsideration, which the trial court denied. Plaintiff appeals from that judgment.

¶ 6 In challenging the conveyance of the quit-claim deed, plaintiff bears the burden of proving that the conveyance was the product of undue influence warranting rescission. *Apple v. Apple*, 407 Ill. 464, 469 (1950); In *re Estate of Stahling*, 2013 IL App (4th) 120271, ¶ 18. "The word 'undue,' when used to qualify influence, has the legal meaning of 'wrongful'"—that is, influence that is "excessive, improper, or illegal." *In re Estate of Glogovsek*, 248 Ill. App. 3d 784, 792 (1993).

¶ 7 A rebuttable presumption of undue influence is raised, however, where a fiduciary relationship exists between the parties, and the fiduciary has benefitted by virtue of that status. *Stahling*, 2013 IL App (4th) 120271, ¶ 18. A fiduciary or confidential relationship exists where one individual places trust and confidence in another, who thereby gains a superiority, domination, or control. *Apple*, 407 Ill. at 468-69; *Glogovsek*, 248 Ill. App. 3d at 797; *In re Estate of Henke*, 203 Ill. App. 3d 975, 981-82 (1990). A fiduciary relationship may exist as a matter of law based on the legal relationship between the parties—for example, as between attorney and client or agent and principal—or as a matter of fact, if the particular facts of a given case suggest domination or control by one individual over another. *Apple*, 407 Ill. at 469; *Stahling*, 2013 IL App (4th) 120271, ¶ 18. The mere existence of a familial relationship between two individuals,

without more, does not create a fiduciary relationship as a matter of law. *Apple*, 407 Ill. at 469; *Henke*, 203 Ill. App. 3d at 981. Where the alleged relationship does not exist as a matter of law, plaintiff must prove the existence of that fiduciary or confidential relationship as a matter of fact by clear and convincing evidence. *Apple*, 407 Ill. at 469; *Stahling*, 2013 IL App (4th) 120271, ¶ 18.

¶ 8 If plaintiff cannot carry her initial burden of establishing a fiduciary relationship, no presumption of undue influence can arise, and judgment in favor of defendant is warranted. *Belfield v. Coop*, 8 Ill. 2d 293, 309 (1956); *Apple*, 407 Ill. at 470 (affirming judgment finding no undue influence in conveyance of property and finding lack of fiduciary relationship to be dispositive). Where, however, plaintiff succeeds in creating the presumption of undue influence based on the existence of a fiduciary or confidential relationship between defendant and another individual, the burden of production shifts to the defendant—the fiduciary—to rebut this presumption by clear and convincing evidence. *Henke*, 203 Ill. App. 3d at 981.

¶ 9 In this case, the trial court found that plaintiff failed to carry her initial burden of proving, by clear and convincing evidence, the existence of a fiduciary or confidential relationship and thus failed to prove that the conveyance at issue was the product of undue influence. In reviewing the trial court's decision following a bench trial, we consider whether the judgment is against the manifest weight of the evidence. *Apple*, 407 Ill. at 470; *Martinez v. River Park Place, LLC*, 2012 IL App (1st) 111478, ¶ 14. A judgment is against the manifest weight of the evidence only if the opposite conclusion is apparent or if the judgment appears to be arbitrary, unreasonable, or not based on the evidence. *Martinez*, 2012 IL App (1st) 111478, ¶ 14.

¶ 10 The record contains the trial court's written, final order entered on June 28, 2013, awarding judgment in favor of defendant. The court first noted that, in its previous denial of summary judgment, it had found that no fiduciary relationship existed as a matter of law, but that plaintiff could still attempt to prove such a relationship as a matter of fact at trial. The court found, however, that plaintiff had failed to do so. In fact, the court found that "[n]o direct evidence was ever presented that Floree Collins was subject to any influence or superiority by defendant as of or prior to the signing of the quit[-]claim deed on May 19, 2008." To the contrary, the court found that as of May 2008, when the conveyance at issue took place, Floree:

> "lived as independently as one might hope for an 83-year-old person: she continued to drive her car; she continued to attend church on her own; and as late as August 2008, she signed papers extending a loan to her son, Ralph Collins, for $4,000. The evidence does not support the inference of a confidential relationship between Floree Collins and [defendant] as of May 2008."

¶ 11 Thus, the trial court found, "[n]o clear and convincing evidence was adduced during the course of the trial to establish undue influence for plaintiff to prevail on her rescission claim."

¶ 12 Plaintiff contends that the trial court erred in finding that no fiduciary relationship existed between defendant and Floree, and in finding that the conveyance of the quit-claim was not the product of undue influence. But plaintiff has not provided this court with a transcript of proceedings of the bench trial. Plaintiff acknowledges in her brief on appeal that there was no court reporter present at the trial. In the trial court, plaintiff filed a "Motion to approve bystander's report," along with a 13-page "Plaintiff's report of proceedings," containing purported testimony from the witnesses at trial. This "report of proceedings" also contained purported

argument on plaintiff's subsequent motion to reconsider. On November 20, 2013, the trial court entered an order stating that it did not approve "Plaintiff's report of proceedings" due to the court's lack of recollection of the proceedings. We thus cannot consider the purported testimony contained in that report of proceedings.

¶ 13 Plaintiff, as appellant, bears the responsibility to provide a complete record on review. *Tekansky v. Pearson*, 263 Ill. App. 3d 759, 764 (1994). Absent a complete record, a reviewing court will presume that the trial court had a sufficient factual basis for its decision, and any doubts arising from the incompleteness of the record will be resolved against the appellant. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). We are left without an agreed statement of facts, a trial transcript, or an acceptable alternative to the trial court's written findings of fact and conclusions of law in the record. The trial court's written order properly identified the prevailing law and assigned the appropriate burden of proof, and plaintiff has provided us with no basis on which to find that the trial court's interpretation or weighing of the evidence was flawed in any way whatsoever. We cannot find that the court's judgment was against the manifest weight of the evidence. We affirm the trial court's judgment.

¶ 14 Affirmed.