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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

MARK S. TRACKMAN,)	Appeal from the Circuit Court
)	of Lake County.
Plaintiff-Appellant,)	
)	
v.)	No. 13-CH-2066
)	
LAUREL S. MICHELA, Individ. and as Trustee)	
of the Marcella Trackman Living Trust and as)	
Beneficiary of the Marcella Trackman Living)	
Trust, and DANIEL MICHELA, BRITTANI)	
MICHELA, SCOTT TRACKMAN, and)	
NICOLE TRACKMAN, as Contingent)	
Beneficiaries of the Marcella Trackman)	
Living Trust,)	Honorable
)	Luis A. Berrones,
Defendants-Appellees.)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court erred in dismissing plaintiff's claims for tortious interference with an expectation of an inheritance and for undue influence: plaintiff's allegations were sufficiently specific to support a proper inference that defendant intentionally engaged in tortuous conduct (including undue influence) that induced the decedent to remove plaintiff as a beneficiary of her trust.

¶ 2 Plaintiff, Mark S. Trackman, and Laurel S. Michela (defendant) are the children of Robert Trackman, who died in 2007, and Marcella Trackman, who died in 2009. Plaintiff filed this action against defendant, defendant's children Daniel and Brittani, and his own children Scott and Nicole, all of the children being contingent beneficiaries of a trust that Marcella had created. The trial court dismissed the action under section 2-615 of the Code of Civil Procedure (735 ILCS 5/2-615 (West 2012)). Plaintiff appeals. We affirm in part, reverse in part, and remand.

¶ 3 Plaintiff's three-count fourth amended complaint asserted claims of tortious interference with an expectation of an inheritance; undue influence; and rescission. The complaint alleged generally as follows. As of 1987, plaintiff and defendant were each to receive half of their parents' estate after both parents passed away. Defendant, however, acted wrongfully, with the intention and effect of depriving plaintiff of his inheritance. Over many years, she deceived and manipulated her parents into executing documents that excluded plaintiff, Scott, and Nicole from any inheritance and left defendant as the sole heir.

¶ 4 Count I alleged specifically as follows. Plaintiff and defendant are their parents' sole heirs. On or about July 31, 1984, Marcella signed a trust document (1984 Trust) stating that, if Robert did not survive her, then, upon her death, plaintiff and defendant would be her primary beneficiaries, and Scott and Nicole would be the contingent beneficiaries.

¶ 5 A copy of the 1984 Trust was attached to plaintiff's first amended complaint and incorporated by reference into the fourth amended complaint. In pertinent part, it stated as follows. Article VI, section 1, provided that, upon Marcella's death, if Robert did not survive her, then the remaining assets would be divided into two equal shares. Section 2 stated that, if, at that time, plaintiff were no longer married to Kathy Trackman, then each share would be held as

a separate trust, with plaintiff and defendant the respective primary beneficiaries. If, however, plaintiff and Kathy were married when Marcella died and Robert did not survive her, then the share that plaintiff would otherwise have received would be divided into equal sub-shares for his children then living, each sub-share to be held as a separate trust for the benefit of that child and also for the benefit of plaintiff. The second share would belong to defendant. Article VIII provided that, upon Marcella's incapacity, Robert would become the sole trustee; after that, the order of succession was defendant, Robert Kiesler, Marvin Berman, and plaintiff.

¶ 6 A document (1993 Restatement) that Marcella signed on November 1, 1993, was attached to plaintiff's first amended complaint and incorporated by reference into the fourth amended complaint. Article II read, in pertinent part, "Although she loves [plaintiff and defendant] dearly, for various personal reasons, the Grantor intends to exclude MARK and his descendants as beneficiaries of this Agreement, except as specifically provided in Article X." Article IX, section 5, addressed the distribution of the trust proceeds in the event that Robert survived Marcella (which, as noted, did not happen). It gave Robert a "limited power of appointment" to distribute the residuary trust as he chose by a will or otherwise. Article X, provided:

"To the extent that the power of appointment granted in [Article IX, section 5,] is not effectively exercised upon the death of the Grantor's husband subsequent to the Grantor's death, or upon the Grantor's death if the Grantor's husband predeceases the Grantor, the Residuary Trust shall be held for the benefit of LAUREL ("**Laurel's Trust**"), to be administered and distributed by the Trustee as hereinafter provided. If LAUREL is not then living, the Trustee shall distribute the balance of the Residuary Trust in equal shares to such persons from among SCOTT C. TRACKMAN, DANIEL R.

MICHELA and BRITTANI L. MICHELA who shall be living on the date of the death of the survivor of the Grantor and the Grantor's husband ***."

Also, Article X, section 5, provided that, if any portion of any trust remained undistributed for lack of a beneficiary, it would be distributed to plaintiff if he were alive and, if he were not, equally to Marcella's heirs-at-law and Robert's heirs-at-law.

¶ 7 Also incorporated into the fourth amended complaint was a document dated November 22, 1993 (1993 Amendment). As pertinent here, it did the following. First, Article II, section 2, was rewritten to state that, "for various personal reasons," Marcella intended to exclude plaintiff and his descendants as beneficiaries of the trust, "except as specifically provided in Articles X and XI." Article X stated that, upon Marcella's death, if Robert did not survive her, the residuary trust would be added to the trust created for defendant; if defendant were not then living, however, the balance would be distributed among Scott Trackman, Daniel Michela, and Brittani Michela. Article XI, section 4, stated that, upon defendant's death, if she had not provided otherwise in her will, the balance of her trust would be distributed equally among Scott, Daniel, and Brittani. Article XII stated that, if any portion of any trust remained undistributed for lack of a beneficiary, it would be distributed to plaintiff, if he were still living; otherwise to Nicole Trackman, if she were still living; and otherwise equally to Robert's heirs-in-law and Marcella's heirs-in-law, per Florida law.

¶ 8 Count I incorporated a document that Marcella signed on November 10, 2004 (2004 Amendment) and an amendment that she signed on October 5, 2006 (2006 Amendment). The 2004 Amendment deleted Article IX, section 5 of the 1993 Restatement and substituted the following language:

“If any portion of any trust created hereunder *** remains undistributed for lack of a beneficiary ***, then such trust shall be distributed by the Trustee as follows: (a) Fifty percent (50%) thereof the [*sic*] those persons who would then be the Grantor’s heirs-at-law (excluding my son Mark S. Trackman and his children and spouse) and excluding any of my in-laws and (b) Fifty percent (50%) thereof to those persons who would then be heirs-at-law of my husband (excluding my son Mark S. Trackman and his children and spouse) and excluding any of his in-laws. *** Again, heirs-at-law shall exclude Mark S. Trackman as an heir.” (Emphasis in original.)

The 2006 Amendment kept this language, except that the final sentence now read, “Again[,] heirs-at-law shall exclude Mark S. Trackman as an heir, his spouse, their children and grandchildren.”

¶ 9 Count I alleged further that, on March 29, 2007, Robert died. A document that Marcella signed on June 10, 2007 (2007 Trust), a copy of which was incorporated by reference into the fourth amended complaint, stated that defendant and Marcella were now co-trustees of Marcella’s trust, with equal powers. Also, Article II of the 2007 Trust provided that plaintiff and his descendants would be excluded as beneficiaries, except that, under Article VIII, any allocation to contingent beneficiaries would be distributed one-third to Barbara Bloom (Marcella’s sister-in-law) if still living, and two-thirds to plaintiff’s then-living descendants.

¶ 10 Count I alleged further that, immediately after Robert died, defendant told plaintiff that he was to receive nothing and that she would inherit all their parents’ assets. On September 13, 2009, Marcella died.

¶ 11 Count I continued as follows. Robert had opposed plaintiff’s marriage to Kathy Trackman, and he caused the 1984 Trust to provide that plaintiff would take nothing as long as

he remained married to Kathy. In April 1983, plaintiff petitioned to dissolve his marriage, and, on November 6, 1986, the dissolution became final. As of that date, plaintiff reasonably expected that he would received half of his parents' property, as evinced by the 1984 Trust. Further, from his many discussions with Marcella, plaintiff "was assured, and had a strong and reasonable expectation that he or his children would participate in any estate or inheritance" that she left. However, defendant, "through fraud, deceit and undue influence intentionally interfered" with this expectation.

¶ 12 Count I next alleged the following as to the relationship among plaintiff, defendant, and her husband, Greg Michela. Greg was a partner with two other men in Alert Alarm (Alert), which sold and serviced security systems. In 1984, his partners offered to buy him out for \$15,000. Plaintiff, who was experienced in the industry, advised Greg to offer to buy them out for \$30,000 that plaintiff would provide. The proposed buyout went through, and Greg now owned Alert.

¶ 13 Count I alleged that, in 1992, plaintiff was offered a share in Alarms Unlimited, another security-system partnership. Marcella told plaintiff that Alert needed help. With permission from Greg and defendant, plaintiff, for no charge, examined Alert's books and learned that the company was deeply in debt and undercapitalized. He and Greg agreed that plaintiff would buy half the company and assume a management role. Plaintiff and Greg agreed to split Greg's salary, and plaintiff would assume certain expenses until Alert could reimburse him. In 1993, plaintiff was again offered a share in Alarms Unlimited, but Greg asked him to stay on with Alert, even though Greg had rejected his attempt to "document" their partnership. Marcella advised plaintiff to remain with Alert until he and Greg could iron out the details, and plaintiff

followed her advice. However, in September 1993, after plaintiff presented him with a proposed agreement, Greg decided not to honor his commitment to become partners.

¶ 14 Count I alleged further that plaintiff and Greg could never reach a formal partnership agreement. Greg eventually told plaintiff that, although plaintiff could stay on as a salesman, Greg would not make him his partner. Plaintiff agreed to dissolve the relationship, but Greg refused to repay the money that plaintiff had lent the partnership. Plaintiff vacated Alert's office and decided to go into business with Alarms Unlimited. At this point, "[a]s a part of her intention to deprive [plaintiff] of his reasonable expectations, *** [defendant] deliberately told their mother that [plaintiff] attempted to steal clients from Greg's business," which defendant knew was untrue. Defendant told this lie to her parents for no conceivable reason other than "to convince them to give all of their estate to her." Moreover, defendant told her parents that plaintiff "tried to dominate Greg and steal Greg's business from him," another lie that could have had no intent other than to convince them to give all of their estate to her. She also told her parents the following lies: that plaintiff had stolen business files from Greg when he left Alert; that Greg and Alert did not owe plaintiff any money and that plaintiff was angry only because he had not been made a partner; that plaintiff had not worked diligently for Alert; and that plaintiff had lied to his family about how much business he had generated for Alert.

¶ 15 Count I alleged that, when Robert and Marcella told plaintiff what defendant had said, he suggested that the family discuss the matter. Defendant refused, "[b]ecause she wanted to destroy the relationship between [plaintiff] and his parents." Plaintiff had several long conversations with his parents about these matters, but, because of defendant's "constant contact" with her parents, he could not convince them that she was lying. Robert took

defendant's side to the point that he "became irrational" about these matters, in part because of defendant's "confidential relationship" with him.

¶ 16 Count I alleged next that, after plaintiff decided to leave Alert, he asked Marcella to return about \$20,000 that she was holding for safekeeping in an account in her name. Marcella discovered that her checkbook was missing; defendant admitted to her that she had taken it and withdrawn the money. She explained to Marcella that she was holding the money to offset what she would owe plaintiff if he sued her for what Alert owed him. Although plaintiff told Marcella that he did not want her money, she paid him. Because defendant was managing Marcella's finances, she mailed Marcella's check to plaintiff's attorney. She attached her note reading, " 'I hope your family was worth \$8672.50.' " A copy of the note, which was undated, was attached to the first amended complaint and incorporated by reference into the fourth amended complaint.

¶ 17 Count I continued as follows. Twice, when Scott was in high school (the fourth amended complaint did not allege the specific times), defendant spoke to him about plaintiff. She said that plaintiff had taken her money and had never helped Greg's business; that she was closer to her parents than was plaintiff; and that she would make sure that they understood. Defendant told Scott that she was angry with plaintiff and would "make him pay." Later, Marcella told Scott to be more respectful to defendant, or Robert might change his will. During this same general period, defendant also spoke to Nicole, who was in high school and had lived with Kathy during plaintiff's divorce. Defendant told Nicole that plaintiff was selfish and not a good part of the family. Defendant repeatedly made such remarks to her parents and to plaintiff's children as part of her plan to secure the full inheritance.

¶ 18 Count I also alleged that, as Robert and Marcella neared their 50th wedding anniversary (the date of which is not clear from the complaint), defendant organized a party but deliberately

concealed it from plaintiff and his children, as part of her plan to alienate Robert and Marcella from him. As a result, plaintiff did not learn about the party until afterward. Defendant held other parties from which she deliberately excluded plaintiff and his family, also intending to convince Robert and Marcella to disinherit him.

¶ 19 Count I alleged further that “[t]he trust amendments made after 1987 [*sic*] all focused on increasing [defendant’s] share of her parent’s [*sic*] estate by accelerating the date on which she should would [*sic*] come into control of the inheritance.” As Marcella was a housewife and relied first on Robert and second on defendant to make financial decisions, it was “highly unlikely” that she had initiated the post-1984 modifications. Defendant’s “deliberate behavior” that caused her parents to execute the 1993 Restatement was “fraudulent.” The 1993 Restatement, the 2007 Trust, and its amendments all were executed “as a direct result of the undue influence exercised by [defendant]” and “as a direct result of intentional tortious interference” with plaintiff’s reasonable expectation of being a beneficiary of his parents’ estate.

¶ 20 Count I alleged that, before Robert died and even more so afterward, Marcella depended on defendant for assistance, food, and medical care. After Robert died, defendant handled Marcella’s financial affairs, “depositing checks and writing out checks for [her] to sign.” On numerous occasions, Marcella told plaintiff that she would “take care of [him] when she passed away.” Several times, she said so after plaintiff declined immediate gifts of money.

¶ 21 Count I alleged that, after Robert died, defendant’s behavior “further demonstrated her desire to prevent [plaintiff] from inheriting anything from either of his parents.” Immediately after Robert’s death, plaintiff visited Marcella, and she told him to take Robert’s motorcycle. When he returned the next day, Marcella told him that he could not take the motorcycle, because defendant had told her that Robert had not wanted plaintiff to receive anything. A few weeks

after Robert's death, Marcella "raised the idea of [plaintiff] taking [Robert's] Mercedes automobile." A few days later, however, she told him that he could not have the car, because defendant had told her that Robert did not want him to get anything. In April 2007, plaintiff told Marcella that he would like to have Robert's Rolex wristwatch. She told him that he could not have it, because defendant had told her that Robert did not want him to get anything. At all these times, Marcella owned all the aforementioned property.

¶ 22 Count I continued as follows. Sometime in 2002 or 2003, while Scott was living in London, he sent Marcella flowers for her birthday and called her. She thanked him for the flowers but intimated that he had been instructed to send them. When Scott inquired, Marcella admitted that defendant had suggested to her that plaintiff had instructed Scott to send the flowers, so as to garner favor with Marcella and Robert; Marcella even suggested that Scott had not paid for the flowers. Scott was so angered that he mailed the receipt to Marcella. They did not discuss the matter again. During 2006, when Robert hoped to have Scott move back to the United States and told him by phone that he and Marcella were eager to help, Scott requested a loan of \$5,000. Robert called back and said that " 'we [had] all talked here' " and decided that it would not be a good idea for him to take on more debt. Scott responded that the loan could be managed; he asked Robert who "we all" were, and Robert admitted that it was defendant who had advised against lending Scott money. Marcella chimed in to suggest that she was a "dissenting voice," but Robert cut her off and said that the decision had already been made.

¶ 23 Count I also alleged that, in summer of 2006, when Scott and Robert were conversing, Robert blurted out, " '[D]o you know if your father is on drugs?! We think he might be on drugs.' " Scott asked why Robert thought this. Robert admitted that defendant had suggested the idea, because " 'she [knew] a lot of people *** and people talk to [her] and tell her things.' "

Plaintiff did not use drugs, but defendant was trying to influence their parents to deny him any inheritance. Also, Scott recalled that, in April 2007, at a family gathering, defendant kept saying that Robert had never been upset with her but had always been upset with plaintiff; her tone was joking, but she repeatedly pushed Marcella to agree with her. In 2010, while Marcella was in an assisted-living facility and Scott was visiting her, he said that plaintiff had visited her the night before; Marcella, who sounded confused, replied, “ ‘Oh, no, he never comes to visit.’ ” Scott denied this, because he knew that plaintiff visited regularly. Marcella replied that defendant was the only one who visited her. Scott knew that this was false, and he pointed out a container of leftover food in the refrigerator, with plaintiff’s handwriting on it. Marcella became flustered and confused. Scott recalled that “this happened every time he and his wife visited Marcella”; she repeatedly said that plaintiff never visited her.

¶ 24 Count I alleged further that defendant’s dominance of Marcella was reflected in how she pushed Marcella into selling her home. By 2008, Marcella had become increasingly unable to handle her day-to-day affairs and increasingly dependent on defendant to keep up the home, shop, pay the bills, and take her to medical appointments. Marcella wanted to continue living in the home, and she repeatedly said so to plaintiff. He suggested having his housekeeper move in with Marcella. At first, Marcella liked the idea, but then she told plaintiff that she had changed her mind and wanted to move into the assisted-living facility, as defendant “had directed her to do.” In 2008, despite the housing crash, defendant insisted on selling the home and moving Marcella into assisted living. Because she “dominated” Marcella, defendant sold the home in 2009 for a price far below those for similar homes both before and after. Count I concluded that, as a direct result of defendant’s tortious conduct, plaintiff was denied any inheritance.

¶ 25 Count II, titled “Undue Influence,” repeated the allegations of count I. Count III, titled “Rescission for Lack of Capacity,” repeated those allegations and added the following. By 2007, Marcella “suffered from dementia and depression”: she would forget to eat and depended on defendant more than ever. On numerous occasions, she told plaintiff that she would take care of him when she passed away. After Robert died, defendant “dominated her mother with respect to all financial affairs” and told plaintiff that Marcella’s finances were “none of his business.” Defendant “completely dominated” Marcella and thus became “a trustee owing fiduciary duties of a trustee” to Marcella. When Nicole visited in 2007, she and Marcella engaged in various reminiscences. Defendant repeatedly interjected that these things never happened; Marcella always agreed, deferring to defendant as she did “in everything by this time.” As a result of her diminished mental condition and defendant’s control, Marcella did not appreciate the effect of the 2007 Trust; at the time, she was 81 years old. Apparently, she was unaware of what she had done, as afterward she said that plaintiff would be taken care of when she died. Count III requested that the trial court rescind the 2007 Trust.

¶ 26 Defendant moved to dismiss the fourth amended complaint for failure to state a cause of action. She argued as follows. Count I, which contained most of the complaint’s factual allegations, did not plead facts with specificity. The initial allegations relating to plaintiff’s “unrealistic expectations that he would be named a beneficiary of his mother’s trust” did not relate to any specific conduct by defendant. Plaintiff’s alleged business dispute with Greg did not, in itself, involve defendant, and the allegations that defendant lied about this dispute to Robert and Marcella were vague and did not connect the events at issue to Marcella’s decision to disinherit plaintiff.

¶ 27 Defendant's motion argued further that the allegations relating to defendant's conversations with plaintiff's children were irrelevant to the claim of tortious interference with his expectation of an inheritance. The complaint did not allege any facts to establish that defendant was involved in preparing or executing any restatements or amendments that Marcella signed after 1984. Further, none of the remaining allegations in count I bore on the preparation of any trust documents; what Marcella's intentions had been; or how defendant had influenced her decision to exclude plaintiff as a beneficiary.

¶ 28 Defendant's motion contended next that count II alleged no specific facts from which undue influence could be inferred. Finally, the motion contended that plaintiff lacked standing to bring count III, as he was not a beneficiary of either the 2007 Trust or the other trust instruments that Marcella had signed after 1984. Further, plaintiff had not alleged that Marcella was incapacitated before 2007, by which time she had already excluded plaintiff from her estate.

¶ 29 In reply, plaintiff argued that the first two counts of the fourth amended complaint stated causes of action based on the same facts. He asserted that, although defendant had had the legal right to deny him any information about their parents' trusts, her conduct still supported claims based on principles that Illinois courts had recognized. Further, the complaint should be read to allow reasonable inferences about defendant's intentions and motivation, matters that in general are not easily subject to direct proof.

¶ 30 Plaintiff contended that the complaint, read as a whole and construed liberally, pleaded facts to establish that defendant pursued a course of conduct that had the purpose and effect of depriving him of the inheritance that he reasonably expected as Marcella's son; the complaint did not need to allege a specific act by defendant immediately preceding Marcella's execution of the document(s) that excluded plaintiff from any share in her estate. Plaintiff explained that "[t]he

story began” when defendant told plaintiff that “she was kicking him out of the family”; that it continued when, by 1993, after plaintiff’s falling-out with Greg, defendant assumed control over Marcella’s finances, just before the first trust disinheriting plaintiff was signed. Plaintiff noted the allegations that defendant had admitted taking her mother’s checkbook and writing a \$20,000 check to herself; that she lied about whether Greg owed plaintiff any money; and that, at about this time, defendant caused the creation of a new trust that effectively disinherited plaintiff. Also, it was at this time that defendant wrote him, “ ‘I hope your family was worth \$8762.50’ ”

¶ 31 Plaintiff argued further that defendant told Scott that, if he alienated her, he would share plaintiff’s fate and lose any place in his family; that before 1993 Robert and Marcella never told plaintiff that they would disinherit him; that defendant repeatedly told Robert and Marcella untruths about plaintiff, such as that he was using drugs; and that she deliberately caused him to miss their parents’ 50th anniversary party. Plaintiff also referenced the allegations that, after Robert died, Marcella wanted to give plaintiff his motorcycle, car, and watch, but defendant overbore her will; that, after Marcella entered assisted living, defendant lied to her about whether plaintiff visited; and that, in Marcella’s presence, defendant repeatedly disparaged plaintiff.

¶ 32 Plaintiff contended that he had alleged facts with sufficient specificity, given the inherent difficulty of proving intent and “secret influences.” See *In re Estate of Hoover*, 155 Ill. 2d 402, 411-14 (1993). Thus, as a cause of action based on undue influence or an abuse of trust may be based on inference and not on direct proof, the fourth amended complaint had pleaded sufficient facts to state claims for tortious interference with an inheritance and undue influence (counts I and II). Plaintiff did not argue specifically that count III (rescission) stated a cause of action.

¶ 33 The trial court dismissed the fourth amended complaint. Plaintiff timely appealed. He contends that the fourth amended complaint stated claims of intentional interference with an

expectation of an inheritance and undue influence. (He does not pursue the third claim, for rescission.) For the following reasons, we agree with plaintiff.

¶ 34 A section 2-615 motion to dismiss attacks the legal sufficiency of the complaint. *DeHart v. DeHart*, 2013 IL 114137, ¶ 18. A court must accept as true the complaint's well-pleaded facts and any reasonable inferences that may arise from them. *Id.* The crucial inquiry is whether the complaint's allegations, construed in the light most favorable to the plaintiff, are sufficient to establish a cause of action on which relief may be granted. *Id.* Our review is *de novo*. *Id.*

¶ 35 Because the two torts that plaintiff alleges closely resemble each other and are often asserted in the same action, based upon similar facts, we discuss them together. The elements of intentional interference with an inheritance—also known as tortious interference with a (testamentary) expectancy—are (1) the existence of the expectancy; (2) the defendant's intentional interference with it; (3) tortious conduct, such as undue influence, fraud, or duress; (4) a reasonable certainty that, but for the interference, the expectancy would have been realized; and (5) damages. *Id.* ¶ 39; *Nemeth v. Banhalmi*, 99 Ill. App. 3d 491, 499 (1981). The elements of undue influence are (1) a fiduciary relationship between the testator and a beneficiary; (2) the testator was “dependent” and the beneficiary was “dominant”; (3) the testator placed trust and confidence in the beneficiary; and (4) the will was prepared or executed in circumstances where the beneficiary was instrumental or participated. *In re Estate of Baumgarten*, 2012 IL App (1st) 112155, ¶ 14. The complaint must recite specifically how the testator's free will was impaired when the instrument was executed. *Id.*

¶ 36 Although Illinois case law on both torts is not voluminous, several opinions offer us guidance here. In *Nemeth*, the plaintiff alleged “malicious interference with [an] expectancy” and “abuse of a confidential relationship,” the defendants being her stepsister Kornelia (the

daughter of the plaintiff's mother and stepfather) and Kornelia's husband, Banhalmi. *Nemeth*, 99 Ill. App. 3d at 494. The plaintiff alleged that her mother and stepfather had made reciprocal wills leaving each estate to the surviving spouse and, upon the death of the surviving spouse, in equal shares to her and Kornelia. After the mother died, the stepfather, who was in ill health, went to live with the defendants. Two years later, and one year after making a will that divided his estate equally between the plaintiff and Kornelia, he had a severe stroke; became dependent on the Banhalmis to attend to his personal needs and finances; and, shortly after, was induced by them to make a new will leaving almost all his property to Kornelia. The next year, he died. The defendants claimed that they could not locate the originals of any of his wills, so his entire estate passed by intestacy to Kornelia. *Id.* at 494-95.

¶ 37 The trial court dismissed the complaint for failure to state any cause of action. On appeal, the appellate court noted that, although Illinois law had not recognized the tort of intentional interference with an inheritance, other jurisdictions had done so. *Id.* at 497-98. Specifically, courts had recognized the cause of action for a person who had been a devisee under a will that was later revoked. *Id.* at 498. The plaintiff in *Nemeth* had stated a cause of action, as she had alleged that she had been a devisee under two previous wills of her stepfather, making her expectancy more than a “ ‘mere possibility.’ ” *Id.* at 499. The court also held that the second count sufficiently pleaded abuse of a confidential relationship, a cause of action substantially similar to undue influence. *Id.*

¶ 38 In *DeHart*, the plaintiff sought to recover against the decedent's widow, who was also the executor of his estate under his last will. According to the complaint, the decedent had long treated the plaintiff as his biological son and represented him as such. When he was 83 years old, the decedent married the defendant. She developed a confidential relationship with him and,

as a result, acquired considerable property in joint tenancy with him; obtained a power of attorney to act on his behalf; and exercised significant control over his finances. She also told the decedent that the plaintiff was not his son; did not tell him that the plaintiff and other family members had called and sent cards and letters to the decedent; destroyed those cards and letters; and did all of the foregoing in order to get the decedent to alter his will to provide exclusively for her. *DeHart*, 2013 IL 114137, ¶¶ 5-11.

¶ 39 The complaint alleged that the decedent had previously executed a will that provided bequests for the plaintiff and his children but, a year after marrying the defendant, he executed a will stating that he had no children. *Id.* ¶ 11. Two months later, he died. *Id.* ¶ 12. The plaintiff's complaint alleged, in part, tortious interference and undue influence. The trial court dismissed the claims under section 2-615, but the appellate court reversed. *Id.* ¶¶ 13-14. The supreme court agreed with the appellate court that the plaintiff had stated causes of action.

¶ 40 On the claim of undue influence, the court cited *Hoover*, in which the plaintiff had alleged that the defendant, a beneficiary of the decedent's will, had exerted undue influence over the decedent. *Hoover* had held that, in a case where the plaintiff had alleged that the decedent's agency had been "overpowered by 'secret influences,'" the plaintiff could introduce "circumstantial evidence to demonstrate that the influence was connected with and operative at the time of the execution of the will and that the influence was directed toward procuring the will in favor of the beneficiary." *Id.* ¶ 27; see *Hoover*, 155 Ill. 2d at 414.

¶ 41 The *DeHart* court held that the plaintiff had alleged sufficient facts in this regard. *DeHart*, 2013 IL 114137, ¶ 28. Moreover, he had alleged facts that, if proved, raised a rebuttable presumption of undue influence by establishing that the defendant had been the decedent's fiduciary; that he had been the "dependent" and she the "dominant" party; that she

had received a substantial benefit from his will; and that she had prepared, or procured the preparation of, his will. *Id.* ¶¶ 30-32. Thus, the plaintiff had stated a cause of action for undue influence. *Id.* ¶ 37.

¶ 42 The court held further that the plaintiff had stated a cause of action for intentional interference with an inheritance. The facts previously summarized were sufficient to establish all the elements of the tort other than damages, and the resolution of that issue was premature because the plaintiff's challenge to the will was still pending. *Id.* ¶¶ 40-41.

¶ 43 Finally, we examine *In re Estate of DiMatteo*, 2013 IL App (1st) 122948. There, the petitioner sought to recover, for undue influence and tortious interference, against the respondent, the executor of the decedent's estate under his 2011 will. In 2010, the decedent had executed a will that named the petitioner the executor of his estate and left the entire estate to him. The 2011 will substituted the respondent as executor and left the entire estate to him. The decedent died about two months later, and, in the probate proceedings, the petitioner petitioned to contest the will. *Id.* ¶¶ 1-5. The trial court dismissed the petition, and the petitioner appealed.

¶ 44 The appellate court reversed, noting the following allegations in the petition. The decedent, who lived in Illinois, had never married and had no children. *Id.* ¶ 9. In the early 2000s, he purchased Minnesota farmland adjacent to the petitioner's farm and rented it to the petitioner. *Id.* ¶¶ 10-13. They became friends; the decedent often stayed with the petitioner and his family. Several times, the decedent told the petitioner that he intended to include him in his will. *Id.* ¶¶ 14-15. The respondent worked on the petitioner's farm. *Id.* ¶ 11. Between March 2011 and June 2011, the decedent's health declined severely. In March 2011, he bought a house in Minnesota. The petitioner helped him move, assisted by the respondent, with whom the decedent was only casually acquainted. *Id.* ¶¶ 17-18.

¶ 45 The petition alleged that, at this point, the respondent pursued a course of conduct intended to exploit the decedent's vulnerability, obtain a position of trust, and undermine the decedent's confidence in the petitioner. *Id.* ¶¶ 19-20. He falsely stated that the petitioner had not paid him and that the petitioner did not need the decedent's money, but he did. *Id.* ¶ 20. Also, the respondent asked acquaintances, including one named in the petition, how to get another person's will changed. On two specified occasions, he told the decedent the aforementioned lies about the petitioner. One time he did so in the presence of the named person, and the decedent responded by saying that he would write the petitioner out of his will. *Id.* ¶ 27. A few days later, he executed the new will, mentioning the respondent for the first time in any will or other estate-planning document. *Id.* ¶ 28.

¶ 46 The trial court dismissed the petition for failure to state a cause of action. The appellate court reversed on both counts, first discussing undue influence. The court noted that, for the petitioner to recover, the alleged undue influence must have been "directly connected with the execution of the instrument" (*id.* ¶ 62) and " " "must be of such a nature as to destroy the testator's freedom concerning the disposition of his estate and render his will that of another." ' ' " *Id.* (quoting *DeHart*, 2013 IL 114137, ¶ 27, quoting *Hoover*, 155 Ill. 2d at 411).

¶ 47 The court held that the petition had met this standard and had sufficiently alleged the elements of undue influence. The court reiterated *DeHart*'s statement that a plaintiff may rely on circumstantial evidence to show that the influence operated when the challenged will was executed and that it was directed toward procuring the will in the beneficiary's favor. *Id.* ¶ 65. The timing of the misrepresentations or other improper conduct can be significant. *Id.* ¶ 66.

¶ 48 In the case before it, the court considered the allegations that the decedent was vulnerable to manipulation; that the respondent made his misrepresentations to the decedent shortly before

he executed the new will; and that, when he heard the respondent disparage the petitioner, the decedent became angry and said that he would write the petitioner out of his will. *Id.* ¶ 71. The logical inference was that the decedent “internalized these misrepresentations [, which] prompted him to act in accordance with [the respondent’s] intent, rather than his own.” *Id.* The court did not accept the respondent’s arguments that the alleged misrepresentations were too few to allow this inference; no set number was required. *Id.* Further, the petitioner was not required to plead that the respondent was present when the decedent executed the new will. *Id.* ¶ 74.

¶ 49 Turning to the tortious-interference count, the court stated that the existence of the prior will satisfied the element of an expectancy; the respondent’s knowledge of the earlier will, combined with the facts establishing undue influence, satisfied the elements of intentional interference and tortious conduct; and the decedent’s statements to the petitioner that he intended to leave his estate to him via the 2010 will satisfied the but-for element. *Id.* ¶ 80. The final element, damages, would be unknown until after the will contest, so it was not at issue. *Id.* ¶ 81.

¶ 50 We turn to plaintiff’s fourth amended complaint, keeping in mind that the well-pleaded factual allegations, but not the conclusions of fact or law, must be accepted as true and construed in favor of plaintiff. See *DeHart*, 2013 IL 114137, ¶ 18. The complaint is long, and we agree with defendant that it contains many conclusional allegations. Nonetheless, there are also many well-pleaded facts. Given the rule in favor of liberal construction, we hold that plaintiff has stated causes of action for tortious interference and undue influence. Much of our analysis applies to both torts, as, in part, they are alternative theories of recovery based on the same facts; to the extent that they differ, tortious interference is the more comprehensive one, as we explain.

¶ 51 The most crucial set of well-pleaded facts pertains to the changes that Marcella made in her trust in November 1993. They are as follows. Up to that time, the 1984 Trust treated

plaintiff and defendant, Robert and Marcella's two children, equally. On November 1, 1993, however, Marcella revised her trust so that, as she wrote in the 1993 Restatement, plaintiff would be excluded except under very limited circumstances—to defendant's direct benefit. No more than two months earlier, plaintiff's long-simmering business difficulties with defendant's husband Greg had boiled over; plaintiff left Greg's company on bad terms. Sometime earlier, defendant had withdrawn \$20,000 from Marcella's account, anticipating that she might need it to pay plaintiff's claims against Greg's company. When defendant wrote a check to plaintiff (the exact date being uncertain), she sent a note ominously implying that he had cut his ties with his family. She also told their parents malicious lies about his actions in connection with Greg's company. Their parents believed her. Within two months, Marcella all but wrote plaintiff out of her estate.

¶ 52 We acknowledge that both counts I and II require inferences as well as the “bare facts” in order to state a cause of action. But intent and motive are not always open to direct proof, especially in cases that turn on the abuse of a confidential relationship.

¶ 53 Without attempting to compare the strength of the facts alleged here to those alleged in *DeHart*, *DiMatteo*, or other opinions, we conclude that those relating to the 1993 Restatement and its amendment are sufficient to survive a section 2-615 motion. The drastic changes that the 1993 documents effected, along with the events that immediately preceded those changes, satisfy the elements of both tortious interference and undue influence. As Marcella's son, and a beneficiary of the 1984 Trust, plaintiff had a reasonable expectancy, which plaintiff has alleged defendant deliberately interfered with, by improper means (primarily the false disparagement of plaintiff's conduct in connection with Greg's business), thus leading Marcella to deny him the benefit that she had conferred nine years earlier. Defendant's actions included telling Robert and

Marcella that plaintiff had attempted to steal clients from Greg; that he had stolen business files; and that he had lied about how much business he had generated. Although these allegations are not as specific as they might have been, we do not agree with defendant that they are mere conclusions. Also, defendant exploited her closeness to Marcella, especially the trust that Marcella had reposed in her by allowing her to manage her finances (and use her checkbook), in order to induce Marcella to exclude plaintiff and enrich herself.

¶ 54 We acknowledge that the well-pleaded facts relating to events after 1993 are less plentiful and less tied by the complaint to specific actions by Marcella. Nonetheless, they are sufficient to support the first two counts of the complaint. Because the damages that plaintiff has alleged did not arise until Marcella actually died, the facts relating to post-1993 occurrences are crucial to prove that, after the 1993 Restatement excluded plaintiff almost entirely from his previous expected inheritance, defendant intentionally and successfully perpetuated that exclusion, if she did not indeed make it more severe. The complaint alleged that she did so by repeatedly disparaging plaintiff to both parents; lying to Marcella about whether plaintiff visited her in her later years; and prevailing on Marcella to deny plaintiff any of Robert's possessions.

¶ 55 In any event, any marginal insufficiency in the pleading of post-1993 occurrences is not fatal, as plaintiff established causes of action based upon the 1993 Restatement. We pass on the sufficiency of each count as a whole and shall not divide each count into subsections or consider the sufficiency of each subsection. Each of the first two counts is legally sufficient.

¶ 56 Plaintiff does not contend that count III is legally sufficient. Thus, that argument is forfeited (see Ill. S. Ct. R. 341(h)(7) (eff. Feb 6, 2013)), and we affirm the dismissal of count III.

¶ 57 For the foregoing reasons, we reverse the dismissal of counts I and II of the fourth amended complaint, and we affirm the dismissal of count III. Therefore, the judgment of the circuit court of Lake County is affirmed in part and reversed in part, and the cause is remanded.

¶ 58 Affirmed in part and reversed in part; cause remanded.