

NOTICE
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2015 IL App (5th) 150026-U

NO. 5-15-0026

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

<i>In re</i> ESTATE OF ROBERT CARL RAKERS,)	Appeal from the
Deceased)	Circuit Court of
)	Shelby County.
(Carol S. Hoehn,)	
)	
Plaintiff-Appellee,)	
)	
v.)	No. 11-P-15
)	
Patricia L. Zahradka,)	Honorable
)	Kimberly G. Koester,
Defendant-Appellant).)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court's determination that the defendant failed to overcome the plaintiff's established presumption of undue influence surrounding the creation of the decedent's last will was not against the manifest weight of the evidence.

¶ 2 The plaintiff, Carol S. Hoehn (Carol), brought this action in the circuit court of Shelby County against the defendant, the executor of the will, Patricia L. Zahradka (Patricia), asking the court to find that the will, executed by the decedent, Robert Carl Rakers (Rakers), was null and void as it was obtained through undue influence.

¶ 3 On May 15, 2009, Rakers signed a will that named his oldest daughter, Patricia, as executor and "owner of whatever estate remains intact." In the will, Rakers provided that Patricia would "decide how all of my property, of whatever kind of character, real or personal or mixed, shall be sold, leased, mortgaged, conveyed, or optioned either privately or publicly ***. Any sale of the farmland, house, barn, shop, sheds, or storage bins will be solely decided by the Executor." In addition, the will conveyed to Carol, Rakers' younger daughter, and Larry, Rakers' only son, to each "receive a money order for \$1.00, which will be delivered *** by certified mail." Further, the will directed Patricia to "legally acquire the monies that were unknowingly diverted from our estate by Carol and Steve Hoehn in the approximate amount of \$75,000.00."

¶ 4 On February 8, 2011, Rakers died. On July 11, 2011, Carol filed a complaint against Patricia to have the will set aside based on a lack of testamentary capacity and undue influence, with the thrust of the argument focused on undue influence. The circuit court held a three-day hearing from September 22, 2014, through September 24, 2014. Carol alleged that Patricia had a fiduciary relationship with Rakers when the will was written and finalized, and that Patricia took an active part in executing the will on May 15, 2009. Thus, Carol asserts that Patricia used her close relationship to garner a financial advantage for herself.

¶ 5 In 2009, Patricia, an experienced nurse, moved into her parents' home to provide physical care and administer medications as needed. Testimony revealed that Rakers was dependent on others, as he had a long list of health issues, including Parkinson's disease and mild cognitive impairment. Despite Rakers' aging, he continued to run the family

business and farming operation; however, evidence revealed that he had difficulty operating large farm equipment and had begun to make dangerous decisions on the farm.

¶ 6 The evidence also established that Patricia, on the same day her mother, Iona, was placed in hospice care, executed the disputed will with Rakers. Evidence presented at the hearing revealed that Rakers was in poor health and had a diminished mental capacity at the time the will was executed. On December 15, 2014, the circuit court found that Patricia had considerable influence over Rakers, that Rakers was dependent on others, and that he reposed trust and confidence in Patricia, the beneficiary of the will. The court held the will was null and void and declared it set aside. Patricia appeals.

¶ 7 At issue on appeal is whether the circuit court erred in setting aside the contested will. We find that the evidence raised a presumption that Patricia exercised undue influence over Rakers upon signing the will on May 15, 2009. We also find the evidence sufficient to support the circuit court's finding that Patricia failed to rebut the presumption of undue influence. Because we find no error and adequate support to invalidate the will, we affirm the circuit court's judgment.

¶ 8 Undue influence which will invalidate a will is that influence which prevents the testator from exercising his own free will in the disposition of his estate. *In re Estate of DiMatteo*, 2013 IL App (1st) 122948, ¶ 62. Undue influence must be directly connected with the execution of the instrument, operate at the time it was made, and be directed toward procuring the will in favor of a particular party or parties. *Id.* What constitutes undue influence cannot be defined by fixed words and will depend upon the circumstances of each case. *In re Estate of Hoover*, 155 Ill. 2d 402, 411 (1993). The

exercise of undue influence may be inferred in cases where the power of another has been so exercised upon the mind of the testator as to have induced him to make a devise or confer a benefit contrary to his deliberate judgment and reason. *In re Estate of Hoover*, 155 Ill. 2d at 411. Proof of undue influence may be wholly circumstantial. *Id.* The influence may be that of a beneficiary or that of a third person which will be imputed to the beneficiary. *Id.* at 412. We will reverse the finding of undue influence only if it is contrary to the manifest weight of the evidence. *In re Estate of Burren*, 2013 IL App (1st) 120996, ¶ 20.

¶ 9 In Illinois, the following can raise a presumption of undue influence: (1) a fiduciary relationship between the testator and a person who receives a substantial benefit under the will; (2) a testator in a dependent situation in which the substantial beneficiaries are in dominant roles; (3) a testator who reposed trust and confidence in such beneficiaries; and (4) a will prepared or procured and executed in circumstances wherein such undue influence has been established. *DeHart v. DeHart*, 2013 IL 114137, ¶ 30.

¶ 10 Through written closing argument, Patricia's counsel acknowledged that she stood in a fiduciary relationship with Rakers at the time of the execution of the will, and that he reposed trust and confidence in her, as uncontested evidence shows that Patricia cared for her parents after their health had declined to such a point that they needed assistance. Thus, we keep in mind that our analysis focuses on whether the presumption of undue influence was rebutted, and that the evidence in rebuttal is aimed at two elements: (1) a dependant situation in which the substantial beneficiary is in a dominant role; and (2) a

will prepared or procured and executed in circumstances wherein such undue influence has been established.

¶ 11 Aside from Rakers' physical and mental impairments stated above, evidence reveals that after moving into her parents' home, Patricia aggressively took control of her parents' finances and began making decisions regarding the family business, even questioning financial expenditures that had been made years prior to Patricia's increased involvement in 2009. Additionally, several witnesses testified that Rakers would first look to Patricia before speaking, and conflicting evidence exists as to whether or not Patricia was welcoming to Rakers' visitors, especially her brother, Larry. After a careful review of the record, the evidence supports the circuit court's decision that Patricia, as the substantial beneficiary, was situated in a dominant role in which she exerted control over Rakers, an aging man with clear mental and physical difficulties.

¶ 12 Further, we find that the will was prepared and executed in circumstances where such undue influence has been established. Even in the absence of a fiduciary relationship, one who procures the execution of a will largely benefiting him or herself, in the absence of others having an equal claim on the bounty of a testator who is enfeebled by age or illness, is faced with the presumption that the beneficiary exercised undue influence. *Swenson v. Wintercorn*, 92 Ill. App. 2d 88, 101-02 (1968). The strength of this presumption depends upon the condition of the testator's mind when the will was made. *Id.* at 102. We believe this presumption was sufficiently established regarding the circumstances in which the will was prepared and executed. This conclusion is supported by, first, evidence that Rakers suffered from a diminished mental capacity at the time of

the execution of the will, and second, that Patricia not only prepared the contested will on her home computer, in which she was essentially the sole beneficiary and her siblings received nothing, but also failed to obtain services from one or more competent attorneys.

¶ 13 The court concluded, and we agree, that Carol sufficiently showed that a presumption of undue influence existed regarding the above two prongs. A presumption shifts the burden of production, not the burden of persuasion. *In re Estate of Henke*, 203 Ill. App. 3d 975, 983 (1990). If the opponent fails to produce evidence, then the presumption will carry, and the beneficiary of the presumption will be entitled to a directed finding or a directed verdict or judgment, as the case may be. *Id.* at 979.

¶ 14 Based on the evidence presented at the hearing, we agree with the circuit court that Patricia failed to rebut the presumption of undue influence. To overcome a presumption of undue influence in a will contest, a fiduciary who benefits from a will must present clear and convincing evidence that in the will, the testator freely expressed his own wishes and not the wishes of the fiduciary. *In re Estate of Burren*, 2013 IL App (1st) 120996, ¶ 23. Although Patricia claims she "wrote the will according to [Rakers'] instructions and at his request," she failed to present any evidence before the court that Rakers obtained advice from independent counsel, or evidence that showed he read or understood the implications of the will.

¶ 15 Regardless of strong evidence supporting Patricia's time and compassion shown to her parents in their final years, as evidenced by hired caregivers who testified that Patricia never treated Rakers improperly, and two attesting witnesses who testified that there was nothing unusual about Rakers and Patricia's relationship on the date of

execution, Patricia failed to rebut evidence demonstrating her strong exertion of control over Rakers; control that provided her with a clear benefit. We cannot say that the circuit court's finding, that Patricia failed to present clear and convincing evidence to rebut the presumption of undue influence, is contrary to the manifest weight of the evidence. Accordingly, we affirm the order of the circuit court declaring the May 15, 2009, will null and void.

¶ 16 Affirmed.