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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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ANNE DAVIS,	)	Appeal from the Circuit Court
	)	of Du Page County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 10-CH-200
	)	
KEVIN A. SCHECK, Individually and as	)	
Trustee of the Patricia Scheck Irrevocable	)	
Trust Agreement, TIMOTHY E. SCHECK,	)	
CAROLYN SCHECK, and DAWN SCHECK,	)	Honorable
	)	Bonnie M. Wheaton,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE McLAREN delivered the judgment of the court.  
Justices Jorgensen and Spence concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court's finding that one version of an irrevocable life insurance trust predated another version such that it was the operative trust agreement was not against the manifest weight of the evidence. Trial court's declaratory judgment is affirmed.

¶ 2 Plaintiff, Anne Davis, filed a three-count complaint seeking declaratory judgment, injunctive relief, and an accounting against defendants, Kevin A. Scheck, individually and as trustee of the Patricia Scheck Irrevocable Trust Agreement, Timothy E. Scheck, Carolyn Scheck, and Dawn Scheck (Scheck defendants). At the close of Anne's case in chief during a bench trial

on the complaint, the trial court granted the Scheck defendants' motion for judgment pursuant to section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2016)). Anne now appeals from the trial court's judgment in favor of the Scheck defendants. We affirm.

¶ 3

### I. BACKGROUND

¶ 4 On April 22, 2002, Patricia Scheck applied for Lincoln Life Policy #4827346, which was issued on May 6, 2002. Patricia was the insured under the policy, which was originally issued in the amount of \$3,000,000.<sup>1</sup> The owner and beneficiary of the policy was "Kevin A. Scheck, Trustee of the Patricia M. Scheck Irrevocable Life Insurance Trust, Dated April 22, 2002, or the successor(s) in said trust." In May 2002, Patricia authorized the transfer of funds to an account for payment of the first premium on the policy, which was paid on May 10, 2002.

¶ 5 Patricia Scheck died on October 22, 2009. Her daughter, Anne Davis, is the executor of Patricia's estate. Kevin Scheck, Patricia's son, is the trustee of the Patricia M. Scheck Irrevocable Life Insurance Trust, Dated April 22, 2002.<sup>2</sup> On January 13, 2010, Anne filed a three-count complaint seeking: (1) declaratory judgment that her attached exhibits 1 and 2 comprised the "operative Irrevocable Trust Agreement as amended of Patricia Scheck" (ILIT) and that such trust owned Lincoln Life Policy #4827346, should be paid the proceeds of the policy, and should administer and distribute the proceeds pursuant to that trust agreement; (2) an injunction ordering Timothy to hold the proceeds in escrow; and (3) an accounting prior to any distributions to beneficiaries.

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<sup>1</sup> The face amount was increased to \$5,000,000 on July 6, 2003.

<sup>2</sup> Scheck defendant Timothy Scheck is also Patricia's son; defendants Dawn and Carolyn Scheck are spouses of Timothy and Kevin. Patricia's other son, Edward, is deceased.

¶ 6 Exhibit 1 attached to the complaint was a document entitled “PATRICIA SCHECK IRREVOCABLE TRUST AGREEMENT,” which was drafted by the law firm of Beerman, Swerdlove, Woloshin, Baretzky, Becker, Genin & London (Beerman). While the agreement stated that Patricia, as settlor, made the agreement with Kevin, as trustee, “this 22nd day of April, 2002,” and that they “signed this Agreement the day and year first above written,” the parties later stipulated that Beerman did not perform estate planning services for Patricia before February 2003 and that Exhibit 1 “was not signed before July 2003.” The last page contains the signatures of Patricia and Kevin but no date or notarization.

¶ 7 Exhibit 2 was entitled “EXERCISE OF RIGHT TO AMEND PATRICIA SCHECK IRREVOCABLE TRUST AGREEMENT” and was dated August 14, 2007. According to the document, “Article EIGHTH” of the trust granted Robert Singer the right, pursuant to various conditions, to amend the trust. In this document, Singer purported to amend Article THIRD of the trust relating to taxes. The references to the trust articles corresponded to the articles in the ILIT contained in Exhibit 1.

¶ 8 Exhibit 3 (referred to as the Huck Bouma ILIT) was a document entitled “PATRICIA SCHECK IRREVOCABLE TRUST” into which Patricia, as settler, and Kevin, as trustee, entered “this 22nd day of April, 2002.” The top of the first page included the legend “Draft 5/15/02.” Page 10 concluded with a paragraph entitled “SIXTH” and subtitled “Additions.” Page 11, the last page, began with a paragraph entitled “SEVENTH” and subtitled “Right to Amend.” Page 11 also contained the signatures of Patricia and Kevin beneath the typed line that stated that they had “signed this agreement the day and year first above written.” Joan Mae Courtright, a notary, also certified their signatures; the typewritten certification stated that the certification was given on April 22, 2002. The parties stipulated that the law firm of Huck

Bouma PC “produced what appears to be a copy of Exhibit 3” in the lawsuit. Huck Bouma provided estate planning services for Patricia in 2002. The greatest substantive difference between the two ILITs involved the distribution of the trust estate. The Huck Bouma ILIT required that trust property be used to equalize any difference in value between distributions from another trust before equally distributing the remainder of the ILIT property. The Beerman ILIT provided for equal distribution of the trust estate among the children.

¶ 9 Ralph Bouma and Charlotte Potucek of Huck Bouma testified that they began work on an ILIT for Patricia after a meeting on April 22, 2002. Potucek’s notes of her meeting with Bouma, outlining the structure of the proposed ILIT, aligned with the document attached as Exhibit 3, including the first use of trust assets to equalize the other trust distribution. According to Potucek’s notes, she was to “leave blank for now” the lines provided for the names of any authorized trust amenders. Bouma believed that the Huck Bouma ILIT was the document that was drafted by his firm because page 11 of the document contained a footer with his and Potucek’s initials, which were also identified by Potucek.

¶ 10 Kevin and Tim Scheck were unsure of the exact date that the document was signed but believed that it was in April or May 2002. Kevin based his belief on the fact that the Lincoln Life policy was applied for, issued, and paid for in that same time frame. However, Kevin was very unclear as to any of the circumstances surrounding the signing of the document, such as who was present at the signing, where the original was stored, and why it was signed so much later than the date on the document and the notary certification.

¶ 11 Lauren DeJong, a Beerman attorney who provided estate planning services to Patricia beginning in early 2003, testified that she remembered that she reviewed an existing irrevocable life insurance trust to which Patricia wanted to make some changes. In her notes, written

contemporaneously with her review of Patricia's existing estate plan documents, DeJong had written and underlined the phrase "irrevocable trust," followed by the parenthetical phrase "has been signed." She assumed that she meant that it had been signed by Patricia, but she could not remember if it had been signed by Kevin, as trustee.

¶ 12 By the end of her representation of Patricia, DeJong had prepared an irrevocable life insurance trust for her, which was eventually fully executed. It was possible that she would do that even if she had seen "a properly and fully executed ILIT of the same title dealing with the same [*res*]."

¶ 13 DeJong was shown Plaintiff's Exhibit 3, which was, by stipulation, the "most original" version of the Huck Bouma ILIT. Page 11 of the document contained both Patricia's and Kevin's signatures, along with the notary's signature. DeJong testified that, on that same page, she had handwritten the names of two authorized trust amenders in the provision dealing with the right to amend the agreement; those lines had been blank when she had first received the document. DeJong stated that she had written the names on the document "sometime in early 2003."

¶ 14 The trial court found that the Huck Bouma ILIT "was signed in April or was signed sometime in 2002 or at least sometime before Lauren DeJong saw it in 2003." Therefore the court found that it "was the first document that was signed that constituted the irrevocable life insurance trust." This appeal followed.

¶ 15 **II. ANALYSIS**

¶ 16 We first note that the trial court did not decide all issues in this case; it continued the case for status on issues beyond the declaratory judgment. However, "it is well established that a declaratory judgment has the force of a final judgment with respect to the rights of the parties

subject to that judgment.” *Pritza v. Village of Lansing*, 405 Ill. App. 3d 634, 639 (2010). Thus, even though the trial court did not provide language pursuant to Supreme Court Rule 304 (a), we have jurisdiction to address the trial court’s order, as it determined the operative version of the ILIT.

¶ 17 Anne now contends that the trial court erred in granting judgment to the Scheck defendants at the close of her case. In cases tried without a jury, the defendant may move for a directed finding in his or her favor at the close of the plaintiff’s case. 735 ILCS 5/2–1110 (West 2016); *Vician v. Vician*, 2016 IL App (2d) 160022, ¶ 35. In ruling on such a motion, a trial court must first determine, as a matter of law, whether the plaintiff has presented a *prima facie* case, meaning, whether the plaintiff presented some evidence on every element essential to the cause of action. *Vician*, 2016 IL App (2d) 160022, ¶ 35. Our review of such a determination is *de novo*. *North Spaulding Condominium Association v. Cavanaugh*, 2017 IL App (1st) 160871, ¶ 20. If the plaintiff has presented some evidence on every element, the court then must consider and weigh the totality of the evidence presented, including evidence that is favorable to the defendant. *Vician*, 2016 IL App (2d) 160022, ¶ 35. After weighing all the evidence, the court should apply the standard of proof required for the underlying cause and determine whether sufficient evidence remains to establish the plaintiff’s *prima facie* case. *Id.* If such evidence remains, the court should deny the defendant’s motion and continue with the trial. *Id.* We review these determinations under the manifest weight of the evidence standard. *North Spaulding Condominium Association*, 2017 IL App (1st) 160871, ¶ 20.

¶ 18 Anne first argues that the trial court did not analyze the evidence within this frame-work; according to Anne, the trial court’s ruling “makes no mention of Plaintiff’s *prima facie* [*sic*] case or what element(s) thereof where negated.” We disagree. In its oral ruling, the trial court stated

that it “must look at all of the testimony and evidence that has been introduced so far.” Where a trial court states that it has considered the evidence, it has engaged in the second step of its analysis and has necessarily found that the plaintiff has met the first step of the analysis by presenting a *prima facie* case. *Prodromas v. Everen Securities, Inc.*, 389 Ill. App. 3d 157, 170 (2009). Thus, we will review the trial court’s judgment under the manifest weight of the evidence standard.

¶ 19 Anne next contends that the trial court erred by failing to require defendants to prove the existence and validity of the Huck Bouma Trust. The burden of proof in a civil proceeding generally rests on the party seeking relief, and it is always borne by the plaintiff in an action for declaratory judgment. *In re Application of County Treasurer*, 373 Ill. App. 3d 679, 690 (2007), quoting *Muhammad v. Muhammad-Rahmah*, 363 Ill. App. 3d 407, 414 (2006). In her complaint for declaratory judgment, Anne attached as exhibits copies of two ILITs that were claimed to be controlling. She asked the court to declare that the Beerman ILIT and the purported amendment of August 14, 2007 comprised the operative irrevocable trust agreement that owned the Lincoln Life insurance contract. According to the joint trial stipulations dated January 9, 2018, the only issue before the trial court during this phase of the trial was “whether Exhibit 1 [Beerman ILIT] or Exhibit 3 [Huck Bouma ILIT] to the complaint is the controlling agreement that owns Lincoln Life Policy 4827346.” In this case, the onus was on Anne to prove to the trial court that she was entitled to the relief that she sought, *i.e.*, the declaration that the Beerman ILIT, as amended, was the operative trust agreement. Anne had to prove not only that the Beerman ILIT was enforceable, but also that the Huck Bouma ILIT, which was purportedly signed first, was unenforceable. There is no error here.

¶ 20 Citing inconsistencies in the Huck Bouma ILIT, Anne argues that it was not a valid trust agreement. The creation of an express trust requires: (1) intent of the parties to create a trust, which may be shown by a declaration of trust by the settlor or by circumstances that show that the settlor intended to create a trust; (2) a definite subject matter or trust property; (3) ascertainable beneficiaries; (4) a trustee; (5) specifications of a trust purpose and how the trust is to be performed; and (6) delivery of the trust property to the trustee. *Eychaner v. Gross*, 202 Ill. 2d 228, 253 (2002). Each of the requisite elements of an express trust must be established; if any one of the elements is not described with certainty, no trust is created. *Id.* at 253-54.

¶ 21 Anne points out differences in the physical characteristics of the printing (e.g., use of superscripts on some pages, different margins, fonts, and formatting on different pages, typographical errors) to argue that the document claimed to be the Huck Bouma ILIT was not the ILIT created by Huck Bouma in 2002 and that the ILIT presented by the Schenk defendants was not a valid trust. Anne points to evidence provided by her expert, a forensic document examiner, that the Defendant's ILIT was made up of 10 original printed pages with only the signature page being a photocopy. She also spends a great deal of time pointing out inconsistencies in Kevin's testimony and attacking his credibility regarding the circumstances surrounding the signing of the ILET and the location of the original signed copy.

¶ 22 However, Anne never addresses the testimony of Beerman attorney Lauren DeJong.<sup>3</sup> According to DeJong's notes made at the time of her representation of Patricia, Patricia already had an "irrevocable trust" that "has been signed." DeJong also had filled in the blanks regarding trust amenders that had been left open on the last page of the Huck Bouma ILIT "sometime in

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<sup>3</sup> Remarkably, Anne makes almost no mention of DeJong's testimony in either her statement of facts or her argument.



early 2003.” This same page also contained the signatures of Patricia and Kevin, along with that of a notary.

¶ 23 The trial court acknowledged that “there are a lot of unanswered questions,” especially as to different versions of the Huck Bouma ILIT containing minor inconsistencies, such as typographical differences, with each other. However, the court found these differences to be immaterial “to the main issue, which is which of the two trusts controls.” The court found most material the testimony of Lauren DeJong. The trial court noted that, when DeJong saw Patricia in 2003, Patricia provided her the signed and notarized version of the Huck Bouma ILIT. Clearly, Patricia did not lack belief in the existence and efficacy of that document. DeJong contemporaneously noted the existence of a signed ILIT and even wrote on the last page of the signed ILIT. As the trial court observed, “[i]t is logically and physically impossible for those signatures to have been placed on any document after the initial interview between Lauren DeJong and Patricia Scheck.” Having found that the original was signed before DeJong saw it in 2003, the trial court found “that that was the first document that was signed that constituted the irrevocable life insurance trust.” We can find no error in this logic.

¶ 24 Although the trial court did not mention it in its oral pronouncement, we see other evidence that supports the trial court’s conclusion. The Huck Bouma ILIT recited that the agreement was entered into on “this 22nd day of April, 2002.” It also included a notary certification containing the same date. The trial stipulations contain information consistent with the creation of an ILIT on or about that date. Patricia applied for the Lincoln Life Policy on April 22, 2002; the policy, which was issued on May 6, 2002, identified the owner and beneficiary of the policy as “Kevin A. Scheck, Trustee of the Patricia M. Scheck Irrevocable Life Insurance Trust, Dated April 22, 2002, or the successor(s) in said trust.” In May 2002, Patricia

authorized the transfer of funds to an account for payment of the first premium on the policy, which was paid on May 10, 2002. All of these actions are consistent with the formation of an ILIT in early spring 2002. The Beerman ILIT also recites that it was entered into on that date; however, that clearly could not be the case, as Beerman did not perform any services for Patricia before February 2003, and its ILIT was not signed before July 2003. The issuance of, payment for, and ownership of the life insurance policy so long before the creation of the Beerman ILIT is illogical.

¶ 25 We cannot conclude that the trial court's decision that Exhibit 3, the Huck Bouma ILIT, was the operative ILIT, was against the manifest weight of the evidence. For all of the questions raised about the Huck Bouma ILIT, clearly it existed before the Beerman ILIT, and the irrevocable insurance trust could not be revoked by the later document.

¶ 26

### III. CONCLUSION

¶ 27 For these reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 28 Affirmed.