No. 128867

IN THE SUPREME COURT OF ILLINOIS

IN RE THE ESTATE OF MARK A. COFFMAN, Deceased. PEGGY LEMASTER and KATHLEEN MARTINEZ, Petitioners-Appellants, v. DOROTHY COFFMAN and COURTNEY CRENSHAW, Respondents-Appellees.	)	Rule 315 Appeal from the Second District Appellate Court, No. 2-21-0053 There Heard on Appeal from the Circuit Court of the Twenty-Third Judicial Circuit, Kendall County, Illinois, No. 18 P 065 The Honorable Melissa S. Barnhart, Judge Presiding

BRIEF OF PETITIONERS-APPELLANTS PEGGY LEMASTER AND KATHLEEN MARTINEZ

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ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

NATURE OF THE CASE

Petitioners Peggy LeMaster and Kathleen Martinez (Peggy and Kathleen) petitioned the probate court under Section 8-1 of the Probate Act of 1975 to invalidate the will of their brother, Mark Coffman. The petition alleged the will was the product of undue influence exercised by Mark's wife, Dorothy Coffman, who telephoned a lawyer to draft the will and dictated its terms as Mark lay bedridden and dying in his last hospitalization.

The case was tried to the probate court without a jury. At the close of petitioners' case, the probate court held that Peggy and Kathleen failed to establish a *prima facie* case for a presumption of undue influence and entered judgment under 735 ILCS 5/2-1110 sustaining the will. (C.3012; A.053; R.1881-1897; A.112-128.)[1] The appellate court affirmed. (A.018-052.) No questions are raised on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether petitioners established a *prima facie* case for a presumption of undue influence where:

    a. a fiduciary relationship existed as a matter of law between Mark and Dorothy, who held Mark's power of attorney for property; and

    b. Dorothy was a substantial a beneficiary under the will who participated in procuring its preparation and execution by enlisting the lawyer who prepared the will, told the lawyer what

[1] References to the Common Law Record are designated as "C.___," to the compiled Reports of Proceedings as "R.___," and to the compiled trial exhibits as "E.___." Pursuant to Supreme Court Rule 342, Petitioners-Appellants have prepared an attached Appendix that contains pertinent orders, pleadings and documents. References to the Appendix are designated as "A.___."

terms to include, arranged the lawyer's hospital visit for execution the next day, participated in the lawyer's only meeting with the testator, and paid the lawyer's fee.

2. Whether petitioners also established a *prima facie* case for a presumption of undue influence, irrespective of whether Dorothy was Mark's fiduciary, by uncontroverted evidence that Dorothy, the chief beneficiary under Mark's will, actively procured its preparation and execution while Mark was weakened and debilitated by his last illness.

3. Whether Dorothy was required to present clear and convincing evidence in order to rebut the presumption of undue influence.

JURISDICTION

The circuit court denied the will contest petition and finally determined the parties' rights in the administration of the testator's estate on January 11, 2021. (C.3012; A.053.) Appellants timely filed their notice of appeal on February 8, 2021. (C.3013-3018; A.056-061.) The appellate court affirmed the judgment on August 10, 2022. (A.018-052.)

This Court granted petitioners an extension of time to October 5, 2022, to file their petition for leave to appeal, and the petition was timely filed on that date. The petition for leave to appeal was allowed on November 30, 2022. This Court has jurisdiction pursuant to Supreme Court Rule 304(b)(1), as this is an appeal from a judgment entered in the administration of an estate that finally determined the rights of the petitioners. (A.018-052)

STATEMENT OF FACTS

Petitioners Peggy LeMaster and Kathleen Martinez brought this statutory will contest to challenge the validity of their brother Mark Coffman's will. The facts herein were not disputed.

On Saturday morning, March 17, 2018, Mark executed the contested "Last Will and Testament of Mark A. Coffman" as he lay dying of cancer in Rush University Medical Center in Chicago. Mark was bedridden, in excruciating pain, and being treated with opioids after experiencing three days of delirium. He was surrounded in his hospital bed by his wife Dorothy, the drafting attorney, Jack Hynds, and Hynds' legal assistant, Lisa Barkley. (C.2489 ¶ 46; A.101; R.916-917, 924, 945.)

Dorothy had engaged Hynds, an attorney located in Morris, Illinois, the afternoon before, urging Hynds to draft a new will for Mark on an emergency basis and to oversee its bedside execution in Chicago the next day. Mark had not seen or communicated with Hynds for roughly 25 years, had never consulted with Hynds concerning his estate planning, and had made no known effort over the 21-month course of his terminal cancer to consult with any lawyer concerning his estate plan or to make any change to his longstanding 2001 will. (R.506-508; R.618-620, 623-624, 633-634; R.1137-1138, 1169; R.1348; C.2485 ¶¶ 7, 12, and 2488 ¶¶ 40-42; A.097, 100; E.322-326, 330-331; E.348; E.245, 256; E.301, 303-304.)

Mark died six weeks later in hospice, on April 26, 2018, at age 68. (C.2484 ¶ 7, and 2487 ¶ 32; A.096, 099.) Dorothy then petitioned the probate court to admit the will to probate and to appoint her executor. (C.11-21; C.26; C.27.) *See also* 755 ILCS 5/6-2. Mark's sisters, Peggy and Kathleen, brought this will contest under Section 8-1 of the Probate Act seeking a declaration that the will resulted from Dorothy's undue influence and was therefore invalid. (C.60-93; A.062-095.) 755 ILCS 5/8-1.

1. The Testator, Mark Coffman, and His Longstanding Estate Plan.

Mark Coffman tirelessly devoted his working life to Coffman Truck Sales, Inc., a prosperous truck sales, service and parts business in Aurora founded in 1946 by Glenn Coffman, the father of Mark, Peggy and Kathleen. (C.2485 ¶ 9; A.097.) Mark worked nearly fifty years at Coffman Truck Sales, alongside his father, uncles, cousins and nephews. (C.2484-2485 ¶¶ 5, 9-13; A.096-097.) After Glenn died in 1991, Mark served as president for 26 years, until his own death in 2018. (C.2485 ¶¶ 15, 20; A.097.)

Mark and Dorothy married in 1994, when each was in their forties. (C.2484 ¶ 2; A.096.) Mark and Dorothy had no children together. (C.2486 ¶ 23; A.098.) Mark's sole descendant is Courtney Crenshaw, his adult daughter from a prior relationship, and Dorothy has no descendants. (C.2486 ¶¶ 24, 26; A.098.)

In July 2000, Mark engaged attorney John Rooks to advise him on his estate planning. (E.422-423; E.424-426; R.1227-1231.) Rooks testified that he worked with Mark over many months in 2000 and 2001 in a methodical process to

ascertain Mark's objectives, his intended beneficiaries, and the nature and extent of his business and other assets, and then to develop a corresponding estate plan tailored to the complexity of Mark's holdings and family circumstances. (R.1225-1226, 1230-1231, 1237-1239, 1276, 1278-1281.)

On August 4, 2001, Mark executed the will prepared by Rooks, as well as powers of attorney for property and health care under which he appointed Dorothy his agent. (C.2486 ¶¶ 21-22; A.098; E.457-460; E.461-466; R.1129.) Both powers remained in effect until Mark's death. (R.628; E.457-460; E.461-465.)

Rooks testified that throughout his engagement in 2000 and 2001, he dealt strictly with Mark as his client, not with Dorothy, adding that Mark made clear his wish "to maintain as much control as he could" over "his estate planning." (R.1250, 1280, 1283-1284.) Mark's desire to control his estate planning in 2001 was consistent with the control Mark exercised as company president at Coffman Truck Sales, where, according to his cousin and business partner, Michael Coffman, Mark made "pretty much all of" the company's business decisions, "took care of [almost] everything," and was "hands-on everything in our business." (R.1626-1629.)

2. The Critical Change Under the Contested 2018 Will.

Mark's 2001 and 2018 wills were largely similar. Under each, Mark granted Dorothy his entire estate after payment of taxes, expenses and a specific $100,000 bequest to his daughter Courtney. (*Compare* E.407-412 ¶¶ THIRD, FOURTH, FIFTH, SIXTH, SEVENTH and EIGHTH *with* E.448-449 ¶¶ THIRD,

FOURTH, FIFTH, SIXTH and SEVENTH.) The 2018 will, however, effected a critical change to the ultimate disposition, after Dorothy's death, of Mark's controlling interest in the Coffman family business and his other assets. (*Compare* E.408-410 ¶¶ SIXTH, SEVENTH and EIGHTH *with* E.448-449 ¶¶ SIXTH and SEVENTH.)

a. The 2001 Will.

Under his 2001 will, Mark bequeathed his entire residuary estate to Dorothy in trust for her exclusive benefit during her lifetime, and under her control as trustee. (E.408-412 ¶¶ SIXTH, SEVENTH and EIGHTH.) The governing trust terms allowed Dorothy, as trustee, to distribute all trust income to herself, as well as trust principal, except for a critical carve-out: Mark expressly denied Dorothy the right as trustee to distribute or dispose of his ownership interests in the legacy Coffman family businesses (or the associated proceeds under any buy-sell agreement). He thus provided:

> Principal Invasion. The trustee may also pay to my wife such sums from principal (excluding any shares of COFFMAN TRUCK SALES, INC. and any units in COFFMAN BROS. REAL ESTATE, LLC or the proceeds from the sale thereof pursuant to any operative buy and sell agreement in existence at my death relating thereto) as the trustee deems necessary or advisable . . . .

(E.409, 410-411 ¶¶ SEVENTH and EIGHTH.)

Mark also specifically retained the power to control the ultimate disposition of these and any other remaining trust assets, thereby preserving for his sisters, Peggy and Kathleen, after Dorothy's death, his Coffman family business interests

(as well as one-half of all other remaining trust assets). (E.411-412 ¶ EIGHTH.) Specifically, Mark directed that, after both his and Dorothy's deaths, remaining trust assets would be distributed as follows:

> a) All shares of stock in COFFMAN TRUCK SALES, INC. and all units in COFFMAN BROS. REAL ESTATE, LLC (or an amount equal to the proceeds from the sale thereof pursuant to any operative buy and sell agreement in existence at my death relative thereto) shall be distributed in equal shares to such of my sisters, KATHLEEN SUE MARTINEZ and PEGGY ANN LeMASTER, as shall then be living . . . .
>
> b) All the rest, residue, and remainder thereof . . . shall be distributed as follows: (i) 50% thereof in equal shares to such of my sisters . . . , as shall then be living, . . .; and (ii) 50% thereof in equal shares to such of my wife's [siblings], as shall then be living, ...

(E.411-412 ¶ EIGHTH.)

Mark's family business interests were substantial. At his death, he owned two-thirds of the outstanding shares of Coffman Truck Sales, half of which he had inherited from his father, Glenn, along with one-third of the membership interests in the affiliated real estate holding company, Coffman Real Estate LLC. (C.2485 ¶¶ 15-17; A.097.)

b. The 2018 Changes.

The principal change under the contested 2018 will was to eliminate these provisions and to grant Dorothy the power Mark had specifically reserved to himself since 2001 to determine the ultimate disposition of the residuary that remained at Dorothy's death, including Mark's controlling interest in the legacy Coffman family businesses (or resulting sale proceeds). (C.2489 ¶¶ 50-51; A.101;

compare E.408-410 ¶¶ SIXTH, SEVENTH and EIGHTH *with* E.448-449 ¶¶ SIXTH and SEVENTH.)

The 2018 will granted Dorothy this power by leaving her most of the residuary outright, free from any restrictions under a trust instrument (E.448 and 453-454 ¶¶ SIXTH and EIGHTH, sect. 13), and, as to the remainder, a certain "tax sheltered gift" in a trust for Dorothy's exclusive lifetime benefit, by granting her a power of appointment to choose who would receive the property at her death. (E.449 ¶ SEVENTH, sect. 2.)

Hynds, the drafting attorney, testified that it was Dorothy who directed him to make these changes. Dorothy told Hynds in their March 16, 2018, telephone call that she and Mark "did not want his sisters to inherit after [both Mark and Dorothy] were dead," and they wanted to change Mark's will to grant her this "total control over the disposition" of Mark's assets. (R.712-714; R.680; *see also* R.629-630 (same); R.1348-1349.)

3. Mark's Final Illness and Last Hospitalization.

As the probate court found, Mark was "very, very sick" when he executed the contested will on March 17, 2018. (R.1895; A.126.) "He was dying." (*Id.*) Mark's voluminous medical records and the associated explanatory testimony from his treating oncologist, Dr. John Showel, a Rush University professor of medicine and board-certified oncologist who cared for Mark throughout his illness, provide a detailed, uncontradicted chronicle of Mark's final illness. (*See* E.209-352 (Rush records); R.410-560, 817-870, 964-1036, and 1053-1110

(physician testimony).) Mark's hundreds of text message exchanges with Peggy and Kathleen further chronicle his "pain and suffering" in his illness, as the probate court noted, as well as his awareness his "outcome was not going to be good." (R.1877; A.108; *see also* E.3-133 and E.475-584 (text messages); R.1635-1643.) Mark had come to rely on text messages to communicate after removal of his larynx made it difficult for him to speak audibly by telephone. (R.1635-1638.) As the probate court also noted, Mark's text exchanges with Peggy and Kathleen made "clear" Mark's love for his sisters and the steadfast, unwavering encouragement they gave him. (R.1877-1878; A.108-109; E.3-133; E.475-584.)

4. June 2016 – March 11, 2018: Mark's First Diagnosis to Last Hospitalization.

Mark was first diagnosed with laryngeal cancer in June 2016. Over the next 20 months, he underwent radiation, chemotherapy, immunotherapy, a tracheostomy and other surgeries to remove his larynx, lymph nodes, and part of his lung, and to repair fractures in his cancerous arm. (C.2487 ¶¶ 30-34; A.099; R.1137-1138; *see also* R.465-467 (reviewing course of disease); E.231-232; E.243-244; E.345; E.347-349; E.259-261; E.292-293.)

Mark's cancer continued to metastasize, grievously, and by January 2018, was "widespread throughout his body," Dr. Showel testified, and "spreading rapidly." (C.2487 ¶ 34; A.099; R.444.) It was "[q]uite obvious" to Mark by then, Dr. Showel added, that his cancer "was getting worse" and that immunotherapy

and the many prior interventions "were not working." (R.455-456, 470; *see also* E.216; R.465-467; E.231-232; C.2488 ¶ 35; A.100.)

Dorothy testified that Mark, his illness notwithstanding, undertook no known steps to change his longstanding 2001 will before March 16, 2018, the day she telephoned attorney Hynds and urgently asked him to change Mark's will:

> Q. Between the time that your husband signed his will in 2001 and [his June 2016] diagnosis, to the best of your knowledge, he didn't take any steps to modify his 2001 will or his estate plan, did he?
>
> A. No.
>
> * * * *
>
> Q. Before March 2018, did your husband, to your knowledge, have any communications with any lawyers about changing his 2001 will?
>
> A. Not to my knowledge.

(R.1137-1138; *see also* R.1348 (same).)

A statement by Mark reported in the March 17, 2018, Rush hospital record was consistent. Mark told his doctor he was expecting a lawyer to visit concerning his will that day, adding: "[M]y wife is unhappy with me because I've been dragging my feet on this." (E.327.)

5. March 11, 2018: Mark Enters His Last Hospitalization and Soon Becomes Delirious.

By Sunday, March 11, 2018, six days before executing the contested will, Mark's pain became so severe that Dr. Showel referred him to Rush's emergency room where, hospital records report, Mark arrived "[c]hronically ill-appearing," and so weak he had "difficulty explaining" his pain. (E.270, 275; E.345-346;

E.348; E.259-261; E.275; E.300.) Mark was admitted and never returned home before dying six weeks later, on April 26, in hospice care. (E.259-261; E.289, 292; E.601; E.390; R.1169.)

On March 13, two days after admission, and just four days before executing the contested will, Mark became "withdrawn," alert only to himself, unwilling to eat and fell into a state of "acute delirium" and "confusion." (E.348; E.245; E.301, 303-304; R.491.) Mark remained "confused" and "delirious" the next day, March 14, still declined food, and remained so weak he had "trouble speaking" through his prosthesis. (E.305; R.493, 496.) Dorothy texted Mark's sister Kathleen that Mark did not know the date on March 14, or where he was. (R.1170-1173.) The day's hospital record describes Mark as "cachectic," meaning a "starved" appearance characteristic of "extensive" and prolonged cancer, a condition Dr. Showel testified can affect a patient's "decision-making" ability. (R.248, 496, 498, 503; E.305, 309.)

6. March 15, 2018: Mark's Cancer Treatment Ends.

On Thursday, March 15, two days before Mark executed the will, Dr. Showel advised that Mark's disease and condition had reached the point at which efforts to provide further anti-cancer treatment would be futile. Dr. Showel recommended hospice care to Mark and Dorothy to try to keep Mark comfortable during his remaining days and weeks. (*See* E.311-314; R.506-508; R.843-844; R.1180.) At this point, Dr. Showel testified, the 21-month effort to cure Mark's cancer was "essentially over." (R.1002.)

The March 15 Rush record reports Mark was in "significant," persistent pain that day, still could not eat, and remained "[c]hronically ill-appearing" and "cachectic," conditions Dr. Showel testified "were getting worse." (E.311; E.319; R.258-259.) The record states that Mark's "[p]erformance status" had "diminish[ed] over the past week" of his hospitalization, and, Dr. Showel added, Mark was "getting weaker," was mostly "bedridden," and was "less able to carry on the normal functions of daily living." (R.506-508; E.311.) A physical therapist's note that day reports that Mark could not sit up at the edge of his bed for even a minute, and was so impaired he would, upon discharge, require 24-hour assistance with activities of daily living. (R.311.)

7. March 16, 2018: Preparation of the Contested Will.

In a determination central to the claim of error in this appeal, the courts below found that Peggy and Kathleen failed to prove an essential predicate of the *prima facie* case required to establish a presumption of undue influence, namely that Dorothy participated in procuring the preparation or execution of the contested will. (R.1897; A.128; Op. ¶¶ 98-103; A.045-048.) (*See also* Argument II.B, below.)

The drafting attorney, Hynds, however, gave uncontroverted testimony that it was Dorothy, alone, who telephoned him March 16 and asked him to prepare a new will for Mark on an urgent basis for bedside execution the next day:

> Q. You had never talked to Mark Coffman before March 17, 2018, about his own will or estate planning, …[or] about helping him prepare a new will, right?

A. That is correct.

* * * *

Q. When was the first communication with Mark Coffman about the terms of the will that you drafted?

A. Saturday morning [March 17] at the hospital.

* * * *

Q. What prompted you to begin work on Mr. Coffman's will if you hadn't talked to him?

A. My office received a phone call on the previous day, on the 16th, asking for me, from Dorothy Coffman. And I . . . called her back and spoke with·her.

* * * *

Q. [D]id that phone message and phone call mark the beginning of any work that your firm did with respect to Mark Coffman's 2018 will?

A. Yes.

(R.620, 627, 633.)

Hynds gave uncontroverted testimony that it was not only Dorothy who asked him to change Mark's will that day, it was she who specified the changes to be made:

Q. Did Mrs. Coffman say to you in that [March 16] conversation that Mr. Coffman wanted to change his will?

A. Yes.

Q. Did she tell you what changes he wanted to make?

A. Yes.

* * * *

Q. [D]id you draft [the will] based on those statements you just recounted from Mrs. Coffman?

A. Yes.

(R.629, 633.) Specifically, Hynds recounted, Dorothy told Hynds she and Mark "did not want [Mark's] sisters to inherit after they both were dead," and "they

wanted Dorothy to have total control over all assets after Mark's death." (E.617; R.629-630.) Hynds also testified that he never asked Mark why he might want of his own volition to disinherit his sisters. (R.677.) Nothing in the record or elsewhere answers that question.

Hynds testified that he prepared new documents that afternoon and the next morning to bring to Mark's hospital room for execution, having had no communication with Mark, the testator, but based only on his "conversation with Dorothy," and using, as a template, Mark's prior will, prepared 17 years before by Hynds' former partner, John Rooks, since retired. (R.1583-1584.)

> Q. Did you agree during that phone call with Mrs. Coffman to prepare a will?
>
> A. Yes.
>
> * * * *
>
> Q. When did your firm actually prepare the will?. . .
>
> A. I worked on it that afternoon [Friday, March 16] and then worked with [a colleague] on it early Saturday morning.
>
> * * * *
>
> Q. At any time before the draft was complete, did you communicate with Mark Coffman?
>
> A. No.
>
> Q. Was the sole basis of your beginning to draft a new document for Mark Coffman the telephone call that you got from Mrs. Coffman?
>
> [technical interruption]
>
> A. Yes.

(R.627-629, 632; R.1168; R.1348.) Hynds testified that when Dorothy called him on March 16, 2018, he had not seen or communicated with Mark for decades, not

since the probate of the estate of Mark's father, Glenn, who died in 1991. (R.619; *see also* C.2485 ¶ 12; A.097.)

8. Mark's Medical Condition March 16, 2018.

The Rush hospital records from March 16, 2018, the day Dorothy telephoned Hynds to change Mark's will, described Mark as "very uncomfortable" with "unbearable" pain. (E.322, 330; *see also* E.287; E.315-317, 319; R.419-420, 528.) Mark's palliative care physician increased his morphine dosage that day, continued another opioid, Hydrocodone, and recommended an additional pain reliever, Neurontin, if Mark continued to "demonstrate no confusion," while his delirium was "slowly improving." (E.322, 330; E.256; E.323-325.) Dr. Showel testified that the increased opioid dosage as Mark's delirium waned might affect his "mental functioning." (R.533-534; *see also* R.1070 (the prescribed opiates likely affected Mark's "judgment on any given day"); R.1011-1012 (combination of opioids and other drugs likely caused Mark's delirium that week).)

By March 2018, Dr. Showel confirmed, "Mark was severely compromised, both physically and mentally." (R.1029-1030; R.830; R.835-836; *see also* R.1014-1016.) Mark also became anxious:

> [A]s it became obvious that the cancer was recurrent and metastatic, Mr. Coffman understandably grew increasingly concerned, and that concern or anxiety was intensified by the fact that he was having pain, and becoming weaker and becoming more dependent on the pain medicine.

(R.431; *see also* R.818-820.) These conditions became "progressively worse as time went on," Dr. Showel testified (R.439), and Dr. Showel therefore referred

Mark on March 16th to Rush's psychosocial oncology group, specialists in "the psychological aspects of cancer." (E.317; R.447-448, 452, 529.)

The March 16 Rush record described Mark's state that day as "generalized inanition," which Dr. Showel likened to a "prisoner of war syndrome," explaining that it is characterized by "weight loss, fatigue and diminished appetite," along with reduced "physical and mental prowess" or "ability to function." (E.287; E.315-317, 319, 322; R.419-420, 528.) Mark's condition and prognosis, Dr. Showel testified, would typically have "a negative impact on" a cancer patient's "ability to make decisions." (R.830.)

A Rush occupational therapist noted in that day's record several deficits in Mark's ability to perform basic activities of daily living. (E.321.) Dr. Showel testified Mark was, by then, "nearly completely dependent on others" for "help eating, dressing, using the bathroom, and getting from place to place in a single room," and he lacked "virtually [any] vigor." (R.411-412, 416-417, 531, 560.)

Dorothy, who was identified by a Rush case manager as Mark's "primary caregiver" (E.308), handled Mark's text messages and signed documents for him during his March 2018 hospitalization. (E. 333-334; R.672-673; R.1162-1163; R.1640-1643). Well before then, Mark had come to depend on Dorothy to drive him to work and to medical appointments (R.1140, 1146-1147), to help him dress (R.1157-1158), and to conduct business and medical telephone calls for him given his difficulty vocalizing audibly on the telephone. (R.1159-1174; *see also* E.590-591, answer to ¶ 23; R.1635-1643.)

9. March 17, 2018: Execution of the Contested Will.

On Saturday morning, March 17, the day after Dorothy's telephone call, Hynds and Barkley appeared in Mark's hospital room at Rush carrying two alternative versions of the new will Hynds had prepared overnight at Dorothy's request, along with a proposed codicil to Mark's existing will. (R.634-636; R.997.)

Mark, who had not seen or talked to Hynds for decades, lay in his hospital bed dressed in a gown. (R.619, 650; R.901.) Hospital records show Dorothy was at Mark's bedside most of that day and the night before. (R.1383; E.323, 326, 331.) She told family members Mark wanted no visitors that day. (R.1197-1198; R.1460-1461; R.620, 627-629, 632, 633.)

The March 17 hospital record stated that Mark's pain was so "significant" that day he was "[a]fraid to move much," and he was given significant doses of morphine, hydrocodone, and Neurontin. (E.323, 326, 330-331; R.462-463.) Dr. Showel testified that this reported drug combination had the potential to influence Mark's cognitive functioning. (R.537, 540.)

Hynds recounted Dorothy's presence and participation throughout his March 17 visit:

> Q. When you [and Barkley] entered into Mr. Coffman's room, who was present besides Mr. Coffman, if anyone?
>
> A. His wife was present.
>
> Q. Anyone else?
>
> A. No.

Q. Was Mrs. Coffman present in Mr. Coffman's room the entire time you visited with him that day?

A. Yes.

Q. Did you ask for an opportunity to speak privately to Mr. Coffman outside the presence of his wife that day?

A. No.

Q. When you entered the room, you brought with you Exhibit 1, the will that Mr. Coffman signed?

A. Yes.

Q. Did you afford him an opportunity to read the document privately without other people present?

A. No.

* * * *

Q. At any time on March 17th did you speak privately with Mr. Coffman outside the presence of other people?

A. No, I did not.

* * * *

Q. Did you discuss with Mr. Coffman the will that's Exhibit 1?

A. Yes.

Q. Did Mrs. Coffman participate in that discussion?

A. Yes, she did.

(R.650-651, 654-655.)

Dorothy sat four feet from Mark's bed, and reiterated her statements, made the afternoon before, specifying "what Mark [purportedly] wanted in his will." (R.1500-1501; R.662-663, 666.) Barkley testified that Dorothy seemed "excitable," and asked "a lot of questions." (R.905-906, 908-909, 911-912.) Hynds confirmed that Dorothy engaged with him and Mark in discussions concerning the new will terms and was "a party" to the "decision making process." (R.1549, 1554-1557; R.643-646; E.617-620.)

Hynds recounted, in particular, Dorothy's active participation in discussions that day concerning the two alternative will versions he prepared. One granted the entire residuary to Dorothy outright, as she had specified on March 16. The other, recommended by Hynds to reduce estate taxes, carved out a certain "tax sheltered" portion for Dorothy in trust rather than outright. (E.617-620; E.448 and 453-454 ¶¶ SIXTH and EIGHTH sect. 13.)

Hynds testified that Dorothy "acquiesced" to his recommended structure, but only after he explained its tax advantages and assured her that this version, too, would give her the power Mark had previously reserved to himself to control the ultimate disposition of all assets, including Mark's controlling interests in the legacy Coffman family businesses. (R.626-658, 665-666; *see also* R.1555-1557.) Hynds recounted in a memorandum:

> Dorothy acquiesced to the concept of the family trust. Mark indicated it met his objectives. The key was the fact Dorothy could, through her estate plan, direct the distribution of all assets. *She* recognized the [contemplated] restriction . . .was minimal and did not really affect her power.

(E.618-619 (emphasis added); R.657-663.) Hynds acknowledged that no term in the will as executed was "contrary to what Mrs. Coffman said that they wanted." (R.1549, 1554-1557; R.643-646; E.617-620.)

Hynds also testified to Dorothy's participation at the conclusion of their discussions as the will was signed. After Hynds finished reading the will terms to Mark, Dorothy stood up, and rolled a table across Mark's hospital bed, where Hynds then placed the will for execution. (R.912-917, 924, 945.) Mark asked to

have Dorothy sign, noting she "had been signing papers for him" because he could not use his right arm. (R.672-673.) When Hynds recommended against this, Mark signed with his left hand, while, Barkley testified, she, Hynds and Dorothy were "standing around" Mark's hospital bed. (R.673-674; E.619; R.945; E.618-620; E.616.)

Notwithstanding these uncontroverted facts, the courts below did not find that Dorothy participated in procuring the preparation or execution of the will.

Hynds also testified that he deemed and treated both Mark *and Dorothy* as his clients in the engagement:

> Q. When you undertook the work on Mr. Coffman's will, in 2018, . . . who was your client?
>
> A. Mark Coffman.
>
> * * * *
>
> Q. You were representing Mrs. Coffman, too, at that time, right?
>
> A. They were both in the room, and they were a couple, and to the extent that I would think when I work with couples together, that I'm representing and acting on behalf of both of them.
>
> Q. So you were representing Mrs. Coffman, too, right?
>
> A. I believe that would be a fair scope of my business.

(R.643; R.1554; *see also* R.645-646 (Hynds did not "distinguish between husband and wife" and treated them as "joint clients").)

Dorothy's participation as point person continued after the will execution. After March 17, Hynds dealt only with Dorothy, sending his firm's invoice for preparing the will to her, and telephoning her March 18 to ask whether "everything was okay" or if "*they* wanted any other changes." (R.695-700

(emphasis added); E.615-616; R.1411-1412.) Hynds never asked Mark those follow-up questions. He had no further communication whatsoever with Mark before Mark passed away on April 26, 2018. (R.694.)

STANDARD OF REVIEW

The Court "review[s] legal issues *de novo* and factual issues under a manifest weight of the evidence standard." *Samour, Inc. v. Bd. of Election Comm'rs*, 224 Ill. 2d 530, 542 (2007). "A factual finding is against the manifest weight of the evidence when the opposite conclusion is clearly evident or the finding is arbitrary, unreasonable, or not based in evidence." *Id.* at 544.

ARGUMENT

Illinois law has long protected the testamentary freedom of elderly, ill and other vulnerable testators by invalidating wills procured through undue influence and by mandating a presumption of undue influence in certain well-defined circumstances indicating that it likely occurred. *In re Est. of Hoover*, 155 Ill. 2d 402, 411 (1993); *DeHart v. DeHart*, 2013 IL 114137, ¶ 30. The decisions below materially undermine these essential protections by unjustifiably narrowing and weakening the presumptions of undue influence applied in Illinois for well over a century.

The uncontroverted facts and circumstances that led to the preparation and execution of Mark Coffman's will were conclusive, mandating a presumption of undue influence under either of two tests long applied in Illinois:

> It is well settled that a presumption of undue influence will arise under certain circumstances and one such circumstance is where: (1) a fiduciary relationship exists between the testator and a person who receives a substantial benefit from the will, (2) the testator is the dependent and the beneficiary the dominant party, (3) the testator reposes trust and confidence in the beneficiary, and (4) the will is prepared by or its preparation procured by such beneficiary.

DeHart, 2013 IL 114137, ¶ 30. "Proof of these facts standing alone and undisputed by other proof entitles the contestant of a will to a verdict." *Id.* This presumption, applied to fiduciaries, is longstanding. (Hereinafter, the **"fiduciary-relationship presumption"**) *See, e.g., Weston v. Teufel*, 213 Ill. 291, 299-300 (1904).

Under the second test:

> Even absent the existence of a fiduciary relationship, . . . [o]ne who procures the execution of a will largely benefiting him . . . of a testator who is enfeebled by age and disease is faced with the presumption that he exercised undue influence.

Swenson v. Wintercorn, 92 Ill. App. 2d 83, 101-02 (2d Dist. 1968); *accord In re Est. of DiMatteo*, 2013 IL App (1st) 122948, ¶ 63. (Hereinafter, the **"debilitated-testator presumption."**)

The uncontroverted evidence at trial conclusively established the *prima facie* case mandating a presumption of undue influence under both tests: (1) a fiduciary relationship existed between Mark and Dorothy as a matter of law as

principal and agent under Mark's power of attorney; (2) Dorothy benefited substantially under the contested will, receiving nearly all of Mark's sizeable estate; (3) Dorothy was instrumental in procuring preparation and execution of the will; while (4) Mark was bed-ridden and hospitalized, weakened and debilitated in the final weeks of his lengthy terminal illness.

The probate and appellate courts erred by finding that no presumption of undue influence applied under either test. Their holdings rest on three conclusions that contravene and change settled Illinois law.

First, they hold that the petitioners contesting the will, Mark's sisters Peggy and Kathleen, failed to establish a fiduciary relationship between Mark and Dorothy, a predicate to the fiduciary-relationship presumption. (R.1883-1885; A.114-116; Op. ¶¶ 90, 94; A.041, 043-044.) But this Court has consistently held that "[a]n individual *holding* a power of attorney," as Dorothy held here, "*is* a fiduciary as a matter of law." *In re Est. of Shelton*, 2017 IL 121199, ¶ 22 (emphases added); *DeHart*, 2013 IL 114137, ¶ 31.

Second, the probate court misapplied the test for this presumption by failing to separately determine whether Dorothy participated in procuring the preparation or execution of Mark's will, another essential predicate to the presumption. *DeHart*, 2013 IL 114137, ¶ 30. The court erroneously merged that test with its analysis of the ultimate issue in a will contest, whether the will reflects the decisions Mark would have made if left to act freely. *Id.* ¶ 27; *see* R.1890-1894; A.121-125.

The appellate court added to the probate court's error when it made a factual finding on review that Dorothy had *not* participated in the preparation and execution, even though the uncontroverted record conclusively established the opposite. (Op. ¶¶ 98-103; A.045-048.) Dorothy telephoned Hynds, urged him to prepare the will overnight, told him what changes to make to Mark's longstanding 2001 will, told him that Mark wanted to disinherit his sisters and give Dorothy "total control over all assets," asked Hynds to bring new documents to Mark's Chicago hospital room for execution the next day, participated in Hynds' discussions with Mark that following day over the choice of will terms, fielded Hynds' only follow-up call, and paid his fee.

Third, the probate court ignored, and the appellate court rejected as "no longer good law," the longstanding legal rule mandating a presumption of undue influence where "the chief beneficiary" was an active agent "in procuring a will" of a "testator whose mind is debilitated by age and illness." *Est. of DiMatteo*, 2013 IL App (1st) 122948, ¶ 63; s*ee* R.1881-1897; A.112-128; Op. ¶ 106; A.049. This debilitated-testator presumption is consistent with Illinois undue influence doctrine and policy, and should be reaffirmed and applied to the uncontroverted facts here.

As a whole, the decisions below significantly erode the presumption of undue influence. The holdings—by (i) failing to recognize a broad class of fiduciary relationships under powers of attorney recognized until now under settled law, (ii) failing to find that a beneficiary participated in procuring a self-

serving will when she had a hand in every step of the process, contrary to all precedent, and (iii) rejecting the debilitated-testator presumption applied by Illinois courts for over a century—profoundly weaken the protections undue influence doctrine has long afforded elderly, ill and other vulnerable testators and their intended beneficiaries. They should be reversed and the law's protections restored. Petitioners' will contest should be remanded to the probate court with a directive to apply the presumption of undue influence and to put Dorothy to her burden to rebut the presumption by clear and convincing evidence.

I. THE UNDUE INFLUENCE DOCTRINE PROTECTS FREEDOM OF DISPOSITION.

A. The Substantive Rule and Its Purposes.

A will resulting from undue influence is invalid as a matter of law:

> Undue influence which will invalidate a will is any improper * * * urgency of persuasion whereby the will of a person is over-powered and he is indeed induced to do or forbear an act which he would not do or would do if left to act freely.

DeHart, 2013 IL 114137, ¶ 27 (quoting *Est. of Hoover*, 155 Ill. 2d at 411-12).

This legal rule is longstanding in Illinois and nationwide. *See, e.g., Smith v. Henline*, 174 Ill. 184, 201 (1898) ("Undue influence" will "avoid a will" where it has "overcome the free agency of the testator" and "induced him to make the devise or confer the benefit contrary to his deliberate judgment and reason."); Restatement (Third) of Property: Wills and Other Donative Transfers ("**Restatement**") § 8.3 (Am. Law Inst. 1999) (donative transfer is invalid if "procured by undue influence" that "overcame the donor's free will"). The rule

dates back centuries under English common law, including in cases concerning spouses. *See, e.g., Hacker v. Newborn* (1654) 82 Eng. Rep. 834 ("If a Man make his Will in his Sickness, by the over importunity of his Wife, to the end that he may be quiet, this shall be said to be a will made by constraint, and shall not be a good Will.").

The undue influence doctrine provides an essential safeguard—substantially undermined by the decisions below—to the core purposes of American succession law, which are to enable and protect testamentary freedom. "The first principle of the law of wills is freedom of testation." John H. Langbein, Substantial Compliance with the Wills Act, 88 Harv. L. Rev. 489, 491 (1975); Restatement, at Introduction ("The organizing principle of the American law of donative transfers is freedom of disposition.")

This Court's undue influence doctrine expressly references and protects freedom of disposition, defining "undue influence" that will invalidate a will as influence that "destroy[s] the testator's *freedom concerning the disposition of his estate*." *Est. of Hoover*, 155 Ill. 2d at 411 (emphasis added and cleaned up).

Undue influence doctrine and its presumptions provide this essential protection, in particular, to the exercise of testamentary freedom by testators who are vulnerable, as Mark Coffman was here. *See, e.g.,* Restatement § 8.3 cmt. e (the doctrine protects against efforts "to take unfair advantage of a donor who is susceptible" to undue influence because of "age, inexperience, dependence, physical or mental weakness, or other factor[s]."); *Greathouse v. Vosburgh*, 19 Ill.

2d 555, 571 (1960) ("a mind wearied and debilitated by long-continued and serious illness is susceptible to undue influence" and "the feebler the mind of the testator . . . the less evidence will be required to invalidate the will") (cleaned up); Robert H. Sitkoff & Jesse Dukeminier, Wills, Trusts, and Estates, at 290 (Wolters Kluwer 11th ed. 2022) ("[A] vulnerable testator should be protected against imposition by cunning or domineering persons [and] [t]he undue influence doctrine is meant to protect a testator's freedom of disposition from impositions . . . .").[2]

B. The Essential Procedural Safeguards Weakened by the Decisions Below.

Courts have long recognized that because undue influence seldom occurs when third parties are present, and is litigated only after the key witness has died, the rule invalidating wills procured through undue influence is toothless without accompanying presumptions and other procedural rules necessary to effectuate enforcement, all now weakened in Illinois by the decisions below.

Courts have thus fashioned the longstanding rule that "Proof of undue influence may be wholly inferential and circumstantial." *Est. of Hoover*, 155 Ill. 2d at 411-12. *Accord, Blackhurst v. James*, 304 Ill. 586, 603 (1922) ("Undue influence may be proved by circumstances, and the feebler the mind the less evidence will be required."); *see also* Sitkoff & Dukeminier, *supra*, at 271, 290

[2] The legal rules and arguments herein apply equally to trust contests alleging undue influence. For simplicity, this argument refers throughout to wills in the context of this will contest action.

("direct evidence of undue influence is rare"; "the best witness is dead by the time the issue is litigated"; so the "contestant must typically rely on circumstantial evidence."); Restatement § 8.3 cmt. e. (same).

Undue influence doctrine accords circumstantial evidence such weight that courts have long mandated a *presumption* of undue influence in certain circumstances indicating it likely occurred. *DeHart*, 2013 IL 114137, ¶ 30 ("It is well settled that a presumption of undue influence will arise under certain circumstances."). *See also Est. of DiMatteo*, 2013 IL App (1st) 122948, ¶ 63 (beneficiary procuring will of debilitated testator is another "circumstance indicating the probable exercise of undue influence" giving rise to "presumptive undue influence"); Restatement § 8.3 cmt. e (circumstantial evidence "in certain cases, is aided by a presumption of undue influence.").

These presumptions and related procedural safeguards reflect the courts' "long experience with protecting the decedent's freedom of disposition against imposition by cunning or domineering persons." Robert H. Sitkoff, Trusts and Estates: Implementing Freedom of Disposition, 58 St. Louis U. L. J. 643, 650 (2014).

State legislatures, including ours, have also embraced this policy to use strong presumptions to protect vulnerable testators. They have codified certain statutory presumptions of undue influence that augment the common law presumptions. *See, e.g.,* 755 ILCS 5/4a-5, 4a-10 and 4a-15 (Presumptively Void Transfers Act) (requiring a mandatory presumption of "fraud, duress, or undue

influence," which can be overcome only "by clear and convincing evidence," where a non-family-member caregiver receives a substantial testamentary bequest from a debilitated donor).

The decisions below contravene and undermine this strong public policy to protect freedom of disposition by erroneously narrowing and weakening the longstanding common law protections that a robust presumption of influence has long afforded vulnerable Illinois testators and the cherished individuals and causes they intend to benefit. The decisions should be reversed and the law's protections restored.

II. THE COURTS BELOW ERRED BY CONCLUDING PETITIONERS HAD NOT ESTABLISHED THE FIDUCIARY-RELATIONSHIP PRESUMPTION.

The uncontroverted facts at trial conclusively established the *prima facie* case mandating a presumption of undue influence under the settled test applied where a fiduciary participates in procuring the preparation or execution of a will under which he or she substantially benefits. *DeHart*, 2013 IL 114137, ¶ 30; *Weston*, 213 Ill. at 299-300.

The probate court erred by misapplying this test. It correctly found that Mark reposed "trust and confidence" in Dorothy, and that Dorothy was a substantial beneficiary. (R.1886; A.082; R.1889-1890; A.085-086.) Dorothy received all of Mark's sizeable estate that remained after payment of taxes, expenses and the $100,000 bequest to Courtney. (E.448 ¶ FOURTH; R.1889-1890; A.0120-121.)

The probate court erred, however, in failing to find that petitioners had proved two additional, essential predicates of the *prima facie* case for the fiduciary-relationship presumption: (i) a fiduciary relationship; and (ii) that Dorothy participated in procuring preparation or execution of the will. (R.1884-1890, 1897; A.115-121, 128.)

The appellate court affirmed, but only by: (i) announcing a new legal rule that directly conflicts with this Court's settled precedent that an individual holding a power of attorney is a fiduciary as a matter of law (*see* Argument II.A, below); and (ii) holding, contrary to all precedent, that a beneficiary does not participate in procuring preparation or execution when she undisputedly enlisted the drafting lawyer to prepare the will, told him the terms to include, became his joint client in the engagement, joined in the lawyer's only discussion with the testator, and paid the fee. (S*ee* Argument II.B, below.) The probate and appellate courts' holdings finding the fiduciary-relationship presumption inapplicable are contrary to law and should be reversed.

A. The Decisions Below Contravene Settled Law that an Agent Under a Power of Attorney Is a Fiduciary as a Matter of Law.

The probate court's conclusion that no fiduciary relationship existed between Mark and Dorothy, and therefore no presumption applied, rests on an erroneous conclusion of law and is subject to *de novo* review. *Samour*, 224 Ill. 2d at 542.

The governing legal rule is clear. "An individual holding a power of attorney is a fiduciary as a matter of law." *Est. of Shelton*, 2017 IL 121199, ¶ 22. It was undisputed that Dorothy held Mark's power of attorney for property. (C.2486 ¶ 22; A.098; E.461-466; R.1129.)

The probate court erred by ignoring this clear legal rule and holding just the opposite, stating: "I don't find that it's automatically a fiduciary relationship because Dorothy had this Power of Attorney." (R.1884-1885; A.115-116; *see also* R.1883; A.114 (holding "just being a Power of Attorney doesn't give rise to a fiduciary relationship.").)

The appellate court affirmed the probate court's erroneous finding by announcing a new rule of law, contrary to this Court's precedent, under which no fiduciary relationship arises under a durable power of attorney for property unless the agent has "accepted or exercised the power." (Op. ¶¶ 90, 94; A.041, 043-044.) But *Estate of Shelton* expressly confirms that the fiduciary relationship between the agent and principal "*begins at the time the power of attorney document is signed*." 2017 IL 121199, ¶ 22 (emphasis added).

The appellate court's new rule conflicts not only with *Estate of Shelton,* but also with *DeHart*, where this Court applied this settled rule in a will contest, like this one, holding that a spouse who "held" the testator's property power, just as Dorothy did here, was a fiduciary subject to a presumption of undue influence. *See* 2013 IL 114137, ¶ 29; *id*., ¶ 31 ("As a matter of law, a power of attorney gives rise to a general fiduciary relationship between the grantor and the grantee.").

Contrary to the rule announced below, *DeHart* attached no relevance to whether the agent had "accepted or exercised the power," noting only that she "held" it. *Accord,* Restatement § 8.3 cmt. g ("agent under a power of attorney is in a fiduciary relationship with his or her principal").

Appellate court precedent is consistent, uniformly holding until this case that this fiduciary relationship arises under a property power of attorney as a matter of law *upon execution*. *See Simon v. Wilson*, 291 Ill. App. 3d 495, 500, 503 (1st Dist. 1997) (testator's husband "achieved [fiduciary] status as a matter of law upon execution of [testator's] power of attorney"); *In re Est. of Gerulis*, 2020 IL App (3d) 180734, ¶ 35 (fiduciary relationship begins at time power "is signed"); *In re Est. of DeJarnette*, 286 Ill. App. 3d 1082, 1088 (4th Dist. 1997) ("one who *holds* a power of attorney [] is a fiduciary") (emphasis added); *In re Est. of Miller*, 334 Ill. App. 3d 692, 697 (5th Dist. 1992) (fiduciary relationship established when power was "obtained").

The Power of Attorney Act is also consistent. It confirms that the agent's power "become[s] effective," absent express limitation, "*at the time th[e] power is signed.*" 755 ILCS 45/3-3(d) (emphasis added). The Act also specifies the vast scope of the fiduciary powers granted. Absent express limitation, they encompass:

> all of the principal's rights, powers and discretions . . . with respect to all . . . interests in every type of property or transaction covered by

> the granted power [including] authority to sign and deliver all instruments, [and to] negotiate and enter into all agreements . . . .

755 ILCS 45/3-4. Mark's power granted all of these plenary fiduciary powers to Dorothy at the time he executed the document, without limitation. (E.462 ¶ 4.) The sweeping scope of the powers, effective upon execution, underscores the degree of trust and confidence a principal reposes in an agent entrusted with his power of attorney. *See also Kolze v. Fordtran*, 412 Ill. 461, 468 (1952) ("fiduciary relationship exists where there is special confidence reposed.").

The holdings below that no fiduciary relationship existed not only conflict with unwavering precedent and the Power of Attorney Act, they contravene the policies that underlie undue influence doctrine by materially and unjustifiably narrowing the presumption of undue influence.

Courts and legislatures have fashioned presumptions of undue influence to protect testators when they are no longer present to speak for themselves, and who had been susceptible to undue influence because of a special relationship of trust and confidence, or because of age, illness or other debilitating circumstance. (*See* Argument I, *infra*.) Appointing an agent to hold the sweeping powers under a durable power of property bespeaks the profound trust and confidence reposed in the agent by the principal, irrespective of when the agent is called on to exercise those powers. It is this abiding trust and confidence, not the exercise of the power, that establishes a special relationship that—along with the agent's initiative in

procuring a self-serving will—evinces probable undue influence and the need for the protections of a presumption that it occurred.

By refusing to recognize fiduciary relationships long recognized to arise as a matter of law under property powers of attorney, the decisions below narrow the scope of these critical protections, needlessly exposing a broad class of individuals to exploitive conduct that a robust presumption has long served to deter and remediate. They should be reversed.

The probate and appellate courts erroneously relied on *In re Estate of Stahling*, 2013 IL App (4th) 120271 (*see* Op. ¶¶ 90-92; A.041-042), but *Estate of Stahling* concerned a different legal relationship, a power of attorney *for health care*, and a different issue: "whether a health care power of attorney creates a fiduciary relationship which, as a matter of law, raises a presumption of undue influence in the execution of a deed" or other "property or financial transactions." 2013 IL App (4th) 120271, ¶¶ 16, 25. *Estate of Stahling* distinguished the legal relationship at issue here, "powers of attorney dealing with property and financial matters," and expressly left undisturbed the settled precedent that property powers create "a fiduciary relationship as a matter of law." *Id.*, ¶ 19. *Estate of Stahling* does not support the new, contrary rule of law announced below.

The probate court, having erroneously determined the power of attorney established no fiduciary relationship, also concluded erroneously that Dorothy was not "the dominant person" in her relationship with Mark nor was he "in a dependent situation." (*See* R.1888-1889; A.119-120.) The appellate court's

opinion did not address this error. Dominance and dependence, however, was, by definition, inherent in the fiduciary relationship recognized to exist as a matter of law under settled precedent. *See Lagen v. Balcor Co.*, 274 Ill. App. 3d 11, 21 (2d Dist. 1995) ("The essence of a fiduciary relationship is that one party is dominated by the other."); *Benson v. Stafford*, 407 Ill. App. 3d 902, 913 (1st Dist. 2010) (same). *See also Anthony v. Anthony*, 20 Ill. 2d 584, 586 (1960) ("Where [a fiduciary] relationship is shown *in which the beneficiary is the dominant party*, proof that he was directly connected with the making of the will . . . establishes prima facie the charge that the will resulted from undue influence.") (emphasis added).

The appellate court also stressed that Mark's power of attorney did not authorize Dorothy to make a will for him (Op. ¶ 94; A.043-044), but power to make a will has never been a requirement to establish the existence of a fiduciary relationship warranting a presumption of undue influence. It is the trust and confidence inherent in the fiduciary relationship that implicates the concern and need for protection that gives rise to the presumption.

Even if the agent's conduct were relevant, moreover, Dorothy did exercise her fiduciary powers as agent under Mark's powers of attorney. In April, 2018, she signed, for Mark, amended operating agreements for two Coffman family limited liability companies, prepared by the companies' lawyer at her request. (E.151-191; R.757.) The holdings below are unfounded.

B. The Uncontroverted Record Conclusively Established Dorothy's Participation in Procuring the Will.

This Court has long stressed participation in procuring preparation or execution of a will as a critical factor to trigger the presumption:

> A presumption of undue influence . . . arises not from the fact of a fiduciary relationship, or [] the mental condition . . . of the testator, but from the participation by the fiduciary in actually procuring the execution of the will.

Greathouse, 19 Ill. 2d. at 572-73; *Lake v. Seiffert*, 410 Ill. 444, 448 (1951) (same); *DeHart*, 2013 IL 114137, ¶ 30. *See also Swenson*, 92 Ill. App. 2d at 100 (fiduciary "must have been instrumental in procuring the execution of the will, or participated in its preparation and execution"); Restatement § 8.3 cmt. h ("suspicious circumstances" warranting presumption include the extent to which the "alleged wrongdoer participated in the preparation or procurement of the will").

The probate court referenced this factor, but then made no explicit finding whether the record established that Dorothy so participated in procuring preparation or execution of Mark's contested will. Rather, it conflated analysis of this question concerning procurement with determination of the ultimate issue in a will contest: whether the will was in fact the will Mark would have made if left to act freely. (*See* R.1881, 1890-1894; A.112, 121-125.) The probate court thus misapplied the governing legal test, rendering its procurement analysis subject to *de novo* review. *Samour*, 224 Ill. 2d at 542. (*See* Argument II.B.1, below.)

To the extent the probate court's decision is deemed to have found, implicitly, that Dorothy did not participate in procuring preparation or execution of the will, any such finding should be reversed under a manifest-weight evidence standard. (*See* Argument II.B.2, below.)

1. The Probate Court Misapplied the Governing Legal Test.

The probate court's procurement analysis misapplied governing law. The court framed the correct question—whether "the will was prepared or executed in circumstances where the beneficiary was instrumental or participated" (R.1890; A.121)—but then failed to make any clear finding on this point and proceeded directly to the ultimate issue in an undue influence case, reasoning:

> The Court in [*In re Estate of Lemke*, 203 Ill. App. 3d 999 (5th Dist. 1990)] said, look, just because the beneficiary is there . . ., participated in all of these moves to get this will signed [and] has done all these things to effectuate the change of the will, that *doesn't indicate that the will is not the decision of the maker of that will.*

(R.1892-1894 (emphasis added); A.123-125.)

The probate court's analysis confused and conflated two distinct questions. The first, which it bypassed answering, was whether Dorothy was "directly connected with the making of the will by its preparation, or by participating in its preparation and execution," a critical criterion to establish a *prima facie* case for a presumption of undue influence. *Anthony*, 20 Ill. 2d at 586; *Greathouse*, 19 Ill. 2d at 572-73. The second was whether the will was one Mark would have made "if left to act freely," or, instead, his "freedom concerning the disposition of his estate" was "over-powered," i.e., the ultimate issue in a will contest based on

undue influence. *DeHart*, 2013 IL 114137, ¶ 27 (cleaned up). The probate court misunderstood the analytical framework of a will contest based on undue influence and failed to decide the requisite, threshold question necessary to determine whether the presumption of undue influence applied.

The probate court's reliance on *Estate of Lemke* underscores the error in its analysis. *Estate of Lemke* found the presumption inapplicable for reasons unrelated to the respondent's participating in procuring the will. Petitioners there failed to make the requisite showing that the respondent received "a substantial benefit under the will." 203 Ill. App. 3d at 1006. The court did not find that the respondent had not participated in preparation or execution of the will, although it stressed her involvement was minimal, *id*. at 1003-04, a marked contrast to the uncontroverted evidence establishing Dorothy's pervasive, integral role and conduct here.

In this case, the appellate court upheld the probate court's misapplication of law by concluding, erroneously, that the probate court did not bypass the requisite procurement determination, but, instead—faced with a motion for a directed finding under 735 ILCS 5/2-1110—simply "weighed the evidence," as required on such motion, "and determined that petitioners' *prima facie* case did not survive." (Op. ¶ 98; A.045.)

The appellate court's conclusion cannot be squared with the probate court's stated decision. The probate court did not hold that petitioners had established the *prima facie* case for the presumption, much less that the presumption had been

rebutted. On the contrary, the probate court expressly posed the required threshold question, "[w]as there a preponderance of evidence establishing that prima facie case of presumptive undue influence?" (R.1881; A.112), then squarely answered it in the negative, finding that "the evidence" did not establish the requisite "fiduciary relationship." (R.1886; A.117.) Contrary to the appellate court's recounting, the probate court never considered whether the *prima facie* case "did not survive." The probate court found, erroneously, it was never established, and proceed no further in its analysis. Its holding that petitioners failed to establish a *prima facie* case for the presumption should be reversed.

2. The Uncontroverted Record Conclusively Established Participation.

To the extent that the probate court is deemed to have found, implicitly, Dorothy did not participate in procuring the will, that finding is against the manifest weight of the evidence. So, too, is the appellate court's holding that the trial record supported such a finding. (Op. ¶ 103; A.047-048.) The opposite conclusion is clearly evident from the uncontroverted record, *Samour*, 224 Ill. 2d at 544, which conclusively established that Dorothy participated in procuring preparation and execution of Mark's will so as to require the presumption.

Attorney Hynds' post-execution memorandum, standing alone, confirms Dorothy's active participation. **(**E.617-620.) His uncontroverted trial testimony and Dorothy's admissions further confirm her instrumental participation. The record confirms that Dorothy, alone, telephoned Hynds March 16 asking him to

prepare a new will for Mark to sign in his hospital room the next day. (R.620, 627-629, 632, 633; E.617.) Mark was bed-ridden, 21-months into his terminal cancer, weakened, debilitated and severely compromised physically and mentally, and "nearly completely dependent on others" for his basic activities of daily living. (R.411-412, 416-417, 530-531, 560.)

Hynds obliged Dorothy's request, preparing two variations of a new will overnight, based strictly on Dorothy's instructions concerning what changes to make to Mark's prior will, drafted in 2001 by another lawyer, Rooks. (R.629, 633; R.1555.) Hynds testified that he prepared the new will, and oversaw execution the next day, as lawyer *for Dorothy*, not just for Mark. (R.643; R.1554; *see also* R.645-646.) Hynds could not recall ever previously representing Mark (R.618-620), had never discussed Mark's will or estate plan with him, and had had no interaction with Mark for roughly two decades. (*Id.*) Dorothy confirmed that she knew of no earlier steps by Mark during his 20-month terminal illness to communicate with any lawyer to change his will. (*Id*.) This record is conclusive that Dorothy participated in procuring preparation of the will. (*See also* Statement of Facts, section 7, *supra* (detailing preparation and procurement).)

The uncontroverted record also confirmed that Dorothy participated in procuring the execution on March 17 and in the discussions and decisions that day over the final will terms. Hynds brought both will versions to Mark's hospital room for execution that morning, at Dorothy's request, still having had no communication with Mark. (R.618-620, 623-624, 633-637; R.997.) Mark was

experiencing pain so severe that morning he was afraid to move, and given opioids to treat it at doses Dr. Showel testified had the potential to affect cognitive functioning. (R.843-844.)

Hynds never met privately with Mark, outside of Dorothy's presence. Dorothy remained present, engaged in the discussions, reiterating terms Mark purportedly "wanted" in his will, and demanding in her own right the power Mark had always reserved to himself to direct ultimate distribution of Mark's property after both she and Mark died, including his interests in the Coffman family business founded by his father, which Mark had previously preserved for Peggy and Kathleen or their descendants after Dorothy's death. (R.618-620, 623-624, 633-637; R.997.)

During discussions, Dorothy balked at Hynds' recommended, tax-beneficial version of the will, which would leave some property to Dorothy in trust, but Hynds worked to obtain her buy-in. Dorothy "acquiesced" after Hynds assured her that this version, too, would grant her the power she said she wanted to control the ultimate disposition of assets. (R.626-658, 665-666; *see also* R.1555-1557; E.618-619; R.657-663.) At the same time, Hynds made only limited inquiry with Mark concerning his own testamentary wishes. He never asked Mark, for example, what bequest he wished to leave his daughter, Courtney; whom he wished to appoint executor of his estate; or why he might wish to disinherit his

sisters, as Dorothy told Hynds he did. (R.1586; R.667-670, 677, 692-693; C.2485 ¶¶ 16, 17; A.097.)[3]

Dorothy's participation continued to the moment of execution, and beyond. After Hynds finished reading the will, Dorothy rolled a table across Mark's bed and stood over him with Hynds and his assistant as Hynds lay the will before Mark and Mark executed it. (R.916-917, 924, 945.) Mark lived another six weeks after executing the will, but Hynds dealt only with Dorothy. He telephoned her March 18 to ask about "other changes," and sent her the invoice for his work preparing the will and seeing to its execution. (R.965-700; E.645-646; R.1411-1412.)

These ample, uncontroverted facts permit just one conclusion: Dorothy was "directly connected with the making of the will . . . by participating in its preparation and execution," and was "instrumental in procuring [its] execution," giving rise to a presumption of undue influence. *Anthony,* 20 Ill. 2d at 586; *Swenson*, 92 Ill. App. 2d at 100. To the extent the courts below reached the contrary conclusion, their findings should be reversed as "not based in evidence." *Samour*, 224 Ill. 2d at 544. "[T]he opposite conclusion is clearly evident." *Id.*

[3] Hynds also never asked Mark "whether anyone was pressuring him in any way concerning his [] will" (R.670), notwithstanding the recognized warning signals. *See, e.g.,* 19 Ill. Prac., *Estate Planning & Admin.* § 201:2 (4th ed.) ("Warning signals for the contest-prone will" include "Someone else instructs the lawyer as to the testator's wishes"; "A substantial beneficiary insists on being present at the meetings with the lawyer, particularly if that person is aggressive in directing the preparation of the will"; the testator is "confined to bed," or "wants a will that cuts out, or greatly reduces the share of heirs below the share . . . they might have taken under an earlier will.").

3. The Findings Below Contravene All Relevant Precedent.

Illinois courts consistently hold that a beneficiary participated in procurement of the preparation or execution of a will on facts analogous to, or less compelling than, the uncontroverted facts presented here. *See, e.g., Tidholm v. Tidholm*, 391 Ill. 19, 24-25 (1945) (sufficient evidence daughter "procured" will where she brought father to attorney, "she and her father met [the] attorney," she "told the attorney that her father wanted to make a will," urged the attorney to prepare a will that day, and returned with father for execution); *Donnal v. Donnan*, 256 Ill. 244, 250-51 (1912) (procurement where son drove ill father to attorney's office and stayed "while a will was drawn that largely benefitted him and practically disinherited" his brother); *Swenson*, 92 Ill. App. 2d at 101 ("procurement" where dominant parties "were instrumental in procuring the services of their own attorney"; urged testator "to see that the matters of her estate were taken care of"; and one "was with her during all of the discussions regarding her will and estate" and when the will was "explained and executed").[4]

[4] *Accord In re Est. of Roeseler*, 287 Ill. App. 3d 1003, 1019-20 (1st Dist. 1997) (reasonable inference respondents "participated in the procurement and preparation" where drafting lawyer "only briefly spoke with the decedent before preparing that will"; respondent "engaged" drafting lawyer "to revise" decedent's prior will; "stood to inherit directly" under it; and sent drafting lawyer "a copy of the [prior] will, along with a letter outlining the contents of the decedent's new will."); *In re Est. of Jessman*, 197 Ill. App. 3d 414, 417-18, 420 (5th Dist. 1990) (evidence established will "procured and executed under circumstances wherein [respondent] participated," where testator "requested that [respondent] make an appointment with an attorney to draft a new will," respondent "contacted" attorney, twice drove testator to attorney, and remained present for one or both meetings); *Schmidt v. Schwear*, 98 Ill. App. 3d 336, 344-45 (5th Dist. 1981) (procurement established where defendants encouraged testator to make gifts to them,

The probate and appellate opinions below cited *In re Estate of Glogovsek*, (*see* R.1894; A.125; Op. ¶ 102; A.046), but *Estate of Glogovsek* stressed facts analogous to those here to affirm a finding that the testator's wife "was instrumental in procuring the preparation and execution" of his will. 248 Ill. App. 3d 784, 789 (5th Dist. 1993). The court reasoned:

> The facts that the attorney never discussed Frank's will outside of the presence of [his wife] Margaret, that Frank changed his mind as to whom he desired to leave his property, and that Margaret conveyed to the attorney the message of Frank's change of mind as to the contingent beneficiaries are all important, when considered together, and are sufficient to meet the fourth test . . . as to participation in procuring the will.

Id. at 798. The parallels are evident.

The courts below also cite to *In re Estate of Maher*, 237 Ill. App. 3d 1013 (1st Dist. 1992) (*see* R.1894; A.125; Op. ¶ 102; A.046-047), but this decision, too, is consistent. It holds that the petitioner sufficiently alleged procurement by stating: "respondent consulted with an attorney for the purpose of drafting a new will" for the testator; the attorney "drafted the will at issue in which respondent was named executor and sole beneficiary"; respondent "brought the will, and . . . witnesses, to the [testator's] nursing home"; and she "was present in the room when [the testator] signed the will." 237 Ill. App. 3d at 1018. The parallels to this case are again evident and the decision is further authority that the uncontroverted facts here conclusively established procurement.

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contacted attorney lacking prior contact with testator, directed attorney to prepare will, and brought will to testator to sign).

Other precedent cited by the probate court is to the same effect. *See, e.g., DeHart*, 2013 IL 114137, ¶ 32 (allegations testator's wife "procured preparation of the will" sufficient where son alleged wife "accompanied [testator] to the law office of the attorney that prepared the will"); *Est. of Hoover*, 155 Ill. 2d at 415 (affirming finding that circumstantial evidence showed conduct possibly "directed towards [] procurement" of the subject codicils).

The holdings below are contrary to precedent, cannot be squared with the uncontroverted facts, and render the procurement criterion virtually unprovable, gutting the presumption and the essential protections it has afforded vulnerable Illinois testators for over a century.

4. The Courts Below Relied on Immaterial Testimony.

The probate and appellate courts' procurement analyses also stressed Dorothy's testimony that she telephoned Hynds "at Mark's request," but this testimony neither negates nor diminishes the uncontroverted evidence conclusively establishing her participation. (*See* R.1890; A.121; Op. ¶ 99; A.045.) The "*prima facie*" case requiring the presumption is established upon "proof that the [fiduciary-beneficiary] was directly connected with the making of the will," *Anthony*, 20 Ill. 2d at 586, irrespective of her stated reasons or the testator's purported request.

The law recognizes no exception where the beneficiary states she merely acted at the testator's request, an exception that would surely swallow the presumption and that contravenes its core purposes and policies. Courts discredit

such testimony in all contexts as a matter of law. "It is well settled that courts lend an unwilling ear to testimony by interested persons as to what a dead person has or has not said." *Naden v. Naden*, 37 Ill. App. 3d 571, 574-75 (2d Dist. 1976); *In re Est. of Hackenbroch*, 35 Ill. App. 2d 155, 162 (1st Dist. 1962) (same). "Such evidence is subject to great abuse." *Id*.; *see also In re Est. of Trampenau*, 88 Ill. App. 3d 690, 695 (2d Dist. 1980) ("sole testimony of a donee as to what was done or said to him by a deceased donor is of questionable credibility [since] direct disproof of such declarations and conduct of the deceased donor is rarely possible") (cleaned up).

The courts' jaundiced eye toward such testimony is rooted in the same concerns that give rise to the special procedural safeguards integral to undue influence doctrine, such as mandating presumptions and according heightened weight to inferential and circumstantial evidence. The witness best able to speak to the testator's intent and the voluntariness of the will is dead. (*See* Argument I.B, *supra*.) To permit a procuring beneficiary to avoid the presumption by attributing their conduct to a request of a now-deceased testator would be to neuter the presumption and the essential protections it affords vulnerable testators.

The appellate court also referred to testimony by Hynds that Mark understood the process, directed decisions concerning the will, and overruled Dorothy's initial preference of an outright distribution (Op. ¶ 103; A.047-048), but any such testimony would in no sense negate the uncontroverted evidence establishing the *prima facie* case triggering the presumption. It is undeniable

Dorothy "was directly connected with the making of the will," and "participat[ed] in its preparation and execution." *Anthony*, 20 Ill. 2d at 586. The presumption thus applies. *Id.; Swenson*, 92 Ill. App. 2d at 100.

The contrary holdings below rest on a misapplication of law, are against the manifest weight of the evidence, and render this essential predicate of procurement for application of the presumption virtually unprovable, contrary to Illinois's strong public policy to employ a robust presumption essential to protecting vulnerable testators. They should be reversed.

III. THE DECISIONS BELOW ERRED IN FAILING TO APPLY THE DEBILITATED-TESTATOR PRESUMPTION.

The uncontroverted trial record also required a presumption of undue influence under the rule that:

> One who procures the execution of a will largely benefiting him, in the absence of others having an equal claim on the bounty of a testator who is enfeebled by age and disease, is faced with the presumption that he exercised undue influence.

Swenson, 92 Ill. App. 2d at 101-02. This presumption, applicable to debilitated testators, applies "[e]ven absent the existence of a fiduciary relationship." *Id.* at 101.

The uncontroverted record conclusively established that Dorothy procured preparation and execution of the will. (*See* Argument II.B, *supra*.) That the will largely benefited Dorothy is also undeniable and the probate court so found. (R.1886; A.117; *see also* E.448 ¶ FOURTH; R.1889-1890; A.120-121.) The specific changes made in 2018, moreover, benefited Dorothy exclusively, making

her bequest mostly outright, rather than in trust, and granting her the power she requested to dispose of Mark's family business interests and other assets as she wished. (C.2489 ¶¶ 50-51; A.101; R.1348-1349.)

The record was also conclusive that Mark was severely weakened and debilitated in the last weeks of his lengthy, terminal cancer. Mark was bed-ridden, had just emerged from three days' delirium, was severely compromised physically and mentally, and "nearly completely dependent on others" for his basic activities of daily living. (R.411-412, 416-417, 530-531, 560.) (*See also* Statement of Facts, sections 3-6, and 8-9, *supra*.)

The probate court disregarded the debilitated-testator presumption without explanation. (R.1881-1897; A.112-128.) The appellate court then affirmed that ruling by rejecting this presumption as "no longer good law." (Op. ¶ 106; A.049.) This Court reviews legal conclusions *de novo*. *Samour*, 224 Ill. 2d at 542.[5]

[5] *Swenson* indicates the debilitated-testator presumption also requires "the absence of others having an equal claim" on the estate, 92 Ill. App. 2d at 101-02, but most decisions refer to this factor as something other than an essential requirement. *See, e.g., Est. of DiMatteo*, 2013 IL App (1st) 122948, ¶ 63 (debilitated-testator presumption applies, "especially in the absence of those having an equal claim."). The latter formulation is a sounder rule, consistent with the policies underlying the presumption of undue influence. There is no policy reason for a requirement that another potential beneficiary with an equal claim be excluded.

Here, either formulation would require the presumption. Mark's daughter, Courtney, had at least a claim equal to Dorothy's, as the probate court recognized. (R.1885; A.116.) *See also DeHart*, 2013 IL 114137, ¶ 35 (child of testator "has *an equal or superior* claim to that of the spouse.") (emphasis in original).

A. The Court Should Reaffirm the Debilitated-Testator Presumption.

The appellate court rejected the debilitated-testator presumption based on *Belfield v. Coop*, 8 Ill. 2d 293 (1956), although the appellate court has uniformly applied it in the decades since. This Court has not addressed this presumption for nearly 70 years. In earlier cases, it applied it, reasoning:

> [T[he active agency of the chief beneficiary in procuring a will . . . of [a] testator, who was enfeebled by age and disease, is a circumstance indicating the probable exercise of undue influence. . . . [A] mind wearied and debilitated by long-continued and serious illness is susceptible to undue influence and . . . the feebler the mind of the testator, no matter from what cause, whether from sickness or otherwise, the less evidence will be required to invalidate the will of such person. . . . [U]nder such circumstances one who benefits largely from a will made through his agency, in the absence of others having an equal claim to testator's bounty, is faced with the presumption that he exercised undue influence . . . .

Mitchell v. Van Scoyk, 1 Ill. 2d 160, 172 (1953). *Accord Friberg v. Zeutschel*, 379 Ill. 480, 483 (1942); *Sulzberger v. Sulzberger*, 372 Ill. 240, 245-46 (1939).

In 1956, however, *Belfield* "repudiated" the language in *Mitchell* and other decisions confirming this presumption might arise "absent a fiduciary relationship." 8 Ill. 2d at 310-11. The *Belfield* Court reasoned that this language "was unnecessary to the result" in each such case, since, as it happened, "a fiduciary relationship" had also been present. *Id.* The Court stated no other reason for rejecting this presumption.

As the appellate court acknowledged below, however, just four years after *Belfield,* in 1960, the Court then expressly reaffirmed *Mitchell's* "proper

statement" of law that "the active agency of the chief beneficiary in procuring a will" of a testator "enfeebled by age and disease" indicates "the probable exercise of undue influence." *Greathouse*, 19 Ill. 2d at 571, 572. (*See* Op. ¶ 106, n.2; A.049.) This truism, reaffirmed by *Greathouse,* was the very basis for the debilitated-testator presumption applied in *Mitchell* and earlier cases, and is the reason this presumption is still warranted.

This Court has not addressed this presumption since, but the appellate court has continued to apply it uniformly, until this case, often citing *Mitchell* and *Sulzberger*, without reference to *Belfield*. *See, e.g., Est. of DiMatteo*, 2013 IL App (1st) 122948, ¶ 63 ("presumptive [undue] influence arises irrespective of the existence of a fiduciary relationship" upon the "active agency of the chief beneficiary in procuring a will" of a "testator whose mind is debilitated by age and illness"); *Schmidt*, 98 Ill. App. 3d at 345 ("[w]here one procures the execution of a will largely benefiting himself" of a testator "infirm due to age, sickness or disease, a presumption arises that he exercised undue influence."); *Est. of Roeseler*, 287 Ill. App. 3d at 1018; *Est. of Maher*, 237 Ill. App. 3d at 1018-19; *Swenson*, 92 Ill. App. 2d at 101-02.

The holding below breaks from this uniform precedent, creating a conflict among appellate divisions that now warrants resolution by this Court reaffirming the presumption.

The debilitated-testator presumption is consonant with Illinois undue influence doctrine and policy, which seeks to protect vulnerable testators by

allowing proof of undue influence—because the testator is no longer present to speak to his or her intent—that is "wholly inferential and circumstantial," *Est. of Hoover*, 155 Ill. 2d at 411-12, and by mandating presumptions "under certain circumstances" indicating such influence was probably exercised. *DeHart*, 2013 IL 114137, ¶ 30. The debilitated-testator presumption provides an important complement to the fiduciary-relationship presumption as another essential safeguard to freedom of disposition of testators that the law has long recognized are susceptible to undue influence because of a special relationship of trust and confidence, or because of age or illness.

Belfield notwithstanding, this Court has continued to reaffirm the essential premises of the debilitated-testator presumption, including the observations that "a mind wearied and debilitated by long-continued and serious illness is susceptible to undue influence," and that a principal beneficiary's "active agency . . . in procuring a will" of one "enfeebled by age and disease" indicates "the probable exercise of undue influence." *Greathouse*, 19 Ill. 2d at 571 (cleaned up); *see also id*. ("the feebler the mind of the testator. . . the less evidence will be required to invalidate the will."); *Nemeth v. Banhalmi*, 125 Ill. App. 3d 938, 960 (1st Dist. 1984) ("greater quantum of evidence" generally required to rebut presumption where testator "enfeebled by age or disease").

Neither *Belfield* nor the appellate court below identified a basis in law, policy or reason for a fiduciary relationship to constitute a *sine qua non* for a presumption of undue influence. Indeed, our General Assembly codified a

statutory presumption of undue influence that applies to caregiver relationships that need not be fiduciary in nature. 755 ILCS 5/4a-5, 4a-10 and 4a-15 (requiring presumption of "fraud, duress, or undue influence," rebutted only "by clear and convincing evidence," where caregiver receives substantial testamentary bequest from a debilitated donor).

Other jurisdictions do not limit the presumption of undue influence to fiduciary relationships. Under the Restatement, for example, the presumption may apply in the context of other, non-fiduciary "confidential relationships" that are also "based on special trust and confidence," or that render the donor subservient to the alleged influencer's "dominant influence." Restatement § 8.3 cmts. f and g (emphasis added). *See also Gestner v. Divine,* 519 P.3d 439, 449-50 (Idaho 2022) ("expressly adopt[ing] the presumption" as specified by the Restatement, including its expanded recognition of "types of confidential relationships which can give rise to the presumption."); *In re Est. of Kiefer*, 95 N.E.3d 687, 690-92 (Ohio Ct. App. 2017) (following Restatement presumption analysis). *See also, e.g., Rice v. Clark*, 28 Cal. 4th 89, 96-97 (Cal. 2002) (presumption applies where the procuring party had a "*confidential*" relationship with the testator).

The Restatement's presumption analysis, moreover, provides further support for the debilitated-testator presumption inasmuch as it requires the presence of "suspicious circumstances" that may be shown by the same factors that give rise to the debilitated-testator presumption long applied in Illinois. Under the Restatement, proof of such "suspicious circumstances" may include:

"(1) the extent to which the donor was in a weakened condition, physically, mentally, or both, and therefore susceptible to undue influence," and "(2) the extent to which the alleged wrongdoer participated in the preparation or procurement of the will or will substitute." Restatement § 8.3 cmt. h.

Reaffirming Illinois's debilitated-testator presumption is consistent with the Restatement, with this Court's undue influence doctrine, and with the policies undue influence doctrine has long served, now also embraced by the General Assembly. This Court should reaffirm the debilitated-testator presumption applied under *Mitchell* and modern appellate precedent.[6]

B. The Appellate Court's Fact Conclusions Are Refuted by the Uncontroverted Record.

Although the appellate court held the debilitated-testator presumption inapplicable as a matter of law, and the probate court, without comment, did not address it, the appellate court also reviewed this fact record concerning Mark's medical condition and concluded that it would not support this presumption in any event. The court reasoned: "[P]etitioners did not present a *prima facie* case that

[6] Other factors relevant to the Restatement's "suspicious circumstances" analysis are also implicated in this case, such as: "(3) whether the donor received independent advice from an attorney . . . in preparing the will . . .; (4) whether the will . . . was prepared in secrecy or in haste; [and] (6) whether there is a decided discrepancy between a new and previous wills . . . of the donor." Restatement § 8.3 cmt. h. Hynds jointly represented Dorothy, the principal beneficiary, and Mark. The will was prepared overnight, on an emergency basis, and shifted from Mark to Dorothy the power to control the ultimate disposition of Mark's interests in the Coffman family business and other assets. *Est. of DiMatteo*, 2013 IL App (1st) 122948, ¶ 63 (presumption applies "especially in the absence of those having an equal claim.").

Mark was so debilitated or infirm due to his illness that he was overpowered by Dorothy's alleged exercise of undue influence." (Op. ¶ 107; A.049-050.)

But that is not the test. Courts apply this presumption where "age, sickness or disease" rendered the testator "enfeebled" or "infirm, *Mitchell*, 1 Ill. 2d at 172; *Est. of Maher*, 237 Ill. App. 3d at 1018-19, or his mind "debilitated." *Est. of DiMatteo*, 2013 IL App (1st) 122948, ¶ 63. No case holds that a will contestant seeking to establish the *prima facie* case to establish this presumption must show that age or illness made the testator so debilitated "that he was overpowered" by undue influence. That, again, is the ultimate issue in a will contest, and the very fact presumed when the presumption applies, shifting the burden to the will proponent to rebut it with sufficient evidence. *DeHart*, 2013 IL 114137, ¶ 30.

The appellate court also made the fact finding that the record did not establish that Mark "was debilitated or infirm due to his illness." (Op. ¶¶ 107-110; A.049-051.) The probate court made no such finding. Rather, it found that Mark was "very, very sick. He was dying." (R.1895; A.126). This was undeniable on the uncontroverted medical record. The appellate court's contrary determination was refuted conclusively by the voluminous, uncontradicted medical record. (*See also* Statement of Facts, sections 3-6, and 8-9, *supra*.)

The appellate court's legal conclusion rejecting the debilitated-testator presumption as a matter of law and its factual finding that it would not apply on this record should be reversed. The action should be remanded to the probate

court directing it to apply the presumption of undue influence on this basis, too, and to put Dorothy to her heavy burden to rebut it.

IV. CLEAR AND CONVINCING EVIDENCE IS REQUIRED TO REBUT THE PRESUMPTION OF UNDUE INFLUENCE.

Should this Court remand this action directing the trial court to apply the presumption of undue influence, Dorothy will have the burden to rebut it. *DeHart*, 2013 IL 114137, ¶ 29 ("Once the presumption is established, the defendant would then have the burden to rebut it."); *Weston*, 213 Ill. at 299-300 (presumption "casts upon [the] proponent . . . the necessity of showing that the execution . . . was the result of free deliberation [by] the testator and . . . deliberate exercise of his judgment. . . .").

A. Clear and Convincing Evidence Is Required to Rebut the Strong Presumption Here.

The presumption that Mark's will was the product of undue influence should stand absent "clear and convincing" evidence to rebut it. "If a strong presumption arises, the weight of the evidence brought in to rebut it must be great." *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 463 (1983) (requiring "clear and convincing" evidence to rebut presumption in the subject will contest). Under this rule:

> courts have required clear and convincing evidence to rebut the presumption where a fiduciary relationship exists as a matter of law, as between attorney and client, and a greater quantum of evidence

> has generally been required where it is shown that the testator was enfeebled by age or disease.

Nemeth v. Banhalmi, 125 Ill. App. 3d 938, 960 (1st Dist. 1984) (internal citations and quotation marks omitted). *See also Franciscan Sisters*, 95 Ill. 2d at 464-65 (lawyer who prepares will for client and benefits thereunder required to provide "'clear and convincing' evidence to rebut the presumption of undue influence."). *See also Chaudhary v. Dep't of Human Servs.*, 2023 IL 127712, ¶ 74 ("Evidence is clear and convincing if it leaves no reasonable doubt in the mind of the trier of fact as to the truth of the proposition in question.").

Applying this principle, the appellate court has held that the "presumption of undue influence of a daughter over a mother" in a will contest is likewise "rebutted only by 'clear and convincing evidence.'" *In re Est. of Henke*, 203 Ill. App. 3d 975, 980-81 (5th Dist. 1990) (the "confidence reposed" in the "family relationship" between mother and daughter is such that the presumption "should be strong.").

Here, as in *Franciscan Sisters, Nemeth* and *Estate of Henke,* the presumption of undue influence is strong. Dorothy was Mark's fiduciary, the chief beneficiary, and was instrumental in, and integral to, every step in procuring preparation and execution of the will, including specification of its terms. Mark was weakened, debilitated and severely compromised in the final weeks of his last illness. (*See* Statement of Facts, sections 5-9, *supra*.) It is difficult to imagine a more compelling case requiring a presumption of undue influence. On remand, it

should be subject to rebuttal only upon *clear and convincing* evidence that the 2018 will reflects the testamentary decisions Mark would have made "if left to act freely," without imposition, consistent with "his deliberate judgment and reason." *DeHart*, 2013 IL 114137, ¶ 27 (cleaned up).

B. Clear and Convincing Evidence Should be Required to Rebut a Presumption of Undue Influence in All Will and Trust Contests.

While this case presents strong presumptions rebuttable only by clear and convincing evidence, *Franciscan Sisters*, 95 Ill. 2d at 463, this appeal presents an opportunity for this Court to consider whether clear and convincing evidence should be required to rebut the presumption of undue influence if it arises in all will or trust contests.

Our General Assembly applies this higher quantum of proof under the caregiver statute. 755 ILCS 5/4a-5, 4a-10 and 4a-15 (presumption of invalidity when debilitated individual makes substantial gift to caregiver under will or other transfer instrument, rebuttable only by "clear and convincing evidence" transfer did not result from "fraud, duress, or undue influence.").

Other state courts also require "clear and convincing evidence" to overcome presumptions of undue influence. *See, e.g., In re Est. of Button*, 328 A.2d 480, 484 (Pa. 1974) ("Once the burden shifted, it was incumbent on the appellees to demonstrate the absence of undue influence by clear and convincing evidence."); *In re Est. of Dabney*, 740 So. 2d 915, 920-921 (Miss. 1999) (where beneficiary was in "confidential relationship" with testatrix and "actively

concerned . . . with the preparation or execution of the will," presumption arises that beneficiary "exercised undue influence" and casts upon him "the burden of disproving undue influence by clear and convincing evidence.").

Franciscan Sisters, relying on this Court's decision long ago in *Wunderlich v. Buerger*, 287 Ill. 440, 445 (1919), stated that the amount of evidence required to meet the presumption "is not determined by any fixed rule," but depends "upon the circumstances of each case." 95 Ill. 2d at 463. In practice, this case-specific standard may be difficult for trial courts to apply, and lead to inconsistent results. A fixed rule requiring clear and convincing evidence to rebut the presumption will clarify the analysis required of trial courts and juries in will and trust contests, and it will further the policies that underlie undue influence doctrine, generally, and the presumption, in particular.

As the appellate court reasons, relying on *Franciscan Sisters:*

> In determining the strength of the presumption, and therefore, the quantum of proof necessary to rebut it, the policy underlying the creation of the presumption must be examined. If there are strong policy reasons for the creation of the presumption, it is logical to expect strong evidence to be required to destroy it.

In re Est. of Henke, 203 Ill. App. 3d 975, 980 (5th Dist. 1990).

Illinois courts and the General Assembly have recognized that effective protection against efforts to exploit vulnerable testators require application of a presumption of undue influence where circumstances indicate it likely occurred. A robust, strong presumption of undue influence, rebuttable only by clear and convincing evidence, will further protect against efforts by others to impose their

will on vulnerable testators who will not be present to testify to their intentions and the voluntariness of their wills. As the appellate court stated in *Estate of Henke*: "Reposal of great confidence can lead to great mischief. The higher the quantum of proof to rebut the presumption, the greater the protection against commitment of mischief." 203 Ill. App. 3d at 981. A rule requiring "clear and convincing" evidence to rebut the presumption, consistent with the standard under the caregiver statute, will further protect Illinois's vulnerable testators and the individuals and causes they wish to benefit.

CONCLUSION

Petitioners-Appellants Peggy LeMaster and Kathleen Martinez respectfully request that the Court reverse the Opinion of the Appellate Court, vacate the January 11, 2021 Judgment Order of the circuit court, reverse that court's order granting a directed finding in favor of Dorothy Coffman, and remand the case to the circuit court for further proceedings with the direction that a presumption of undue influence applies to the subject will, the will should be declared invalid absent clear and convincing evidence rebutting the presumption, and to try the action consistent with this Court's opinion and order of remand, and such other relief this Honorable Court shall deem just and appropriate under law.

Dated: February 8, 2023

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 14,746 words, including footnotes.

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NOTICE OF FILING / PROOF OF SERVICE

David E. Lieberman, an attorney, certifies that he caused the foregoing **Brief of Petitioners-Appellants Peggy LeMaster and Kathleen Martinez** to be filed with the Clerk of the Supreme Court through the electronic filing service provider, Green Filing, on **February 9, 2023**. The undersigned attorney of record further certifies that he caused a true and correct copy of the filing to be served by electronic mail on the following counsel of record:

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

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APPENDIX

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TABLE OF CONTENTS TO THE COMMON LAW RECORD ON APPEAL

***Peggy LeMaster, et al. v. Dorothy Coffman, et al. (In re Estate of Mark A. Coffman)*, Case No. 18 P 65 (Cir. Ct. 23rd Jud. Cir. – Kendall Cnty.)**

Date of Filing	Common Law Record Page(s)	Title / Description of Document Filed
06.27.2018	C 56	Order, continuance
07.02.2018	C 57	Order Approving Executor Action
10.03.2018	C 58 – C 59	Appearance, general appearance on behalf of Petitioners Peggy LeMaster and Kathleen Martinez
10.22.2018	C 60 – C 93	Verified Petition to Contest Validity of the Will and to Admit Prior Will to Probate
11.28.2018	C 94 – C 100	Notice of Subpoenas
12.04.2018	C 101	Appearance, additional counsel on behalf of Petitioners Peggy LeMaster and Kathleen Martinez
12.11.2018	C 102 – C 104	Proof of Service
12.20.2018	C 105	Certificate of Publication
12.21.2018	C 106 – C 116	Dorothy Coffman's Verified Answer to Verified Petition to Contest Validity of the Will and to Admit Prior Will to Probate
12.21.2018	C 117 – C 118	Appearance, on behalf of Respondent Dorothy Coffman
01.07.2019	C 119 – C 121	HIPAA Qualified Protective Order
01.08.2019	C 122 – C 123	Notice of Depositions
01.11.2019	C 124 – C 125	Notice of Deposition
01.17.2019	C 126	Notice of Petition
01.17.2019	C 127 – C 177	Verified Petition for Rule to Show Cause
01.18.2019	C 178 – C 247	Respondent Dorothy Coffman's Motion for a Protective Order
01.18.2019	C 248 – C 249	Notice of Motion
01.22.2019	C 250 – C 251	Amended Notice of Depositions

Date of Filing	Common Law Record Page(s)	Title / Description of Document Filed
01.23.2019	C 252	Order, for continuance
01.23.2019	C 253	Order, Rule to Show Cause
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02.01.2019	C 256 – C 287	Petitioners' Memorandum in Opposition to Motions for Protective Order and in Support of Their Motion to Compel
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02.08.2019	C 305 – C 306	Notice of Filing
02.11.2019	C 307 – C 308	Notice of Filing
02.11.2019	C 309 – C 310	Notice of Petition
02.11.2019	C 311 – C 322	Hynds, Yohnka, Bzdill & McInerney, LLC's Reply in Support of Motion for Protective Order
02.11.2019	C 323 – C 333	Respondent's Reply in Support of Motions for a Protective Order and Response in Opposition to Petitioners' Motion to Compel
02.13.2019	C 334	Order, case under advisement
02.14.2019	C 335 – C 336	Amended Notice of Depositions
03.04.2019	C 337 – C 364	Petitioners' Motion for Leave to Supplement Their Submission on the Pending Motions for Protective Order and Motion to Compel
03.04.2019	C 365	Motion for Leave to File Hynds, Yohnka, Bzdill & McInerney, LLC's Supplemental Filing

Date of Filing	Common Law Record Page(s)	Title / Description of Document Filed
03.04.2019	C 366 – C 367	Notice of Motion
03.04.2019	C 368 – C 369	Notice of Motion
03.04.2019	C 370 – C 381	Order, finding
03.06.2019	C 382 – C 383	Amended Notice of Motion
03.07.2019	C 384	Order, striking date
03.18.2019	C 385	Agreed Order, continuing case
03.27.2019	C 386	Agreed Order, continuing case
04.10.2019	C 387	Agreed Order, continuing case
04.17.2019	C 388	Agreed Order, continuing case
05.01.2019	C 389	Order, continuance
05.13.2019	C 390	Order, continuance
05.17.2019	C 391 – C 395	Petitioners' Motion to Continue Settlement Conference
05.17.2019	C 396 – C 397	Notice of Motion
05.29.2019	C 398	Order, denying motion
06.03.2019	C 399	Order, continuing case
07.08.2019	C 400	Order, continuance
08.16.2019	C 401	Agreed Order, pre-trial dates
08.21.2019	C 402 – C 405	Agreed Protective Order Governing Settlement Documents
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Date of Filing	Common Law Record Page(s)	Title / Description of Document Filed
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11.22.2019	C 1134 – C 1164	Respondent Dorothy Coffman's Motion for Leave to File Summary Judgment Brief in Excess of Ten Pages and to Set a Briefing Schedule
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11.22.2019	C 1167 – C 1168	Notice of Motion
12.02.2019	C 1169	Order, summary judgment briefing
12.26.2019	C 1170 – C 1171	Agreed Scheduling Order
01.15.2020	C 1172 – C 1214	Petitioners' Summary Judgment Brief
01.17.2020	C 1215 – C 1683	Appendix of Exhibits to Petitioners' Summary Judgment Brief, Volume 1 of 2 (Exhibits 1 through 20)
01.17.2020	C 1684 – C 2109	Appendix of Exhibits to Petitioners' Summary Judgment Brief, Volume 2 of 2 (Exhibits 21 through 29)
01.21.2020	C 2110 – C 2113	Petitioners' Motion for Summary Judgment
01.22.2020	C 2114 – C 2115	Notice of Motion
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Date of Filing	Common Law Record Page(s)	Title / Description of Document Filed
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07.29.2020	C 2276 – C 2277	Order, setting will contest
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11.06.2020	C 2301 – C 2310	Respondent, Dorothy Coffman's, Motion *in Limine* No. 2 to Bar Petitioners from Relying on a Hearsay Statement in the Rush Medical Records Attributed to Mark Coffman
11.06.2020	C 2311 – C 2332	Respondent, Dorothy Coffman's, Motion *in Limine* No. 1 to Bar Opinion Testimony from Dr. John Showel
11.06.2020	C 2333 – C 2342	Respondent, Dorothy Coffman's, Motion *in Limine* No. 3 to Bar Petitioners from Relying on Medical Records at Trial Without any Expert Testimony

Date of Filing	Common Law Record Page(s)	Title / Description of Document Filed
11.06.2020	C 2343 – C 2353	Respondent, Dorothy Coffman's, Motion *in Limine* No. 4 to Bar Testimony Regarding a Legal Standard of Care or the Preparation of the 2001 Will
11.06.2020	C 2354 – C 2385	Petitioners' Motion *in Limine* Declaring Exhibits Admissible at Trial
11.06.2020	C 2386 – C 2387	Notice of Motion
11.06.2020	C 2388 – C 2389	Notice of Motion
11.06.2020	C 2390 – C 2391	Notice of Motion
11.06.2020	C 2392 – C 2393	Notice of Motion
11.13.2020	C 2394	Notice of Motion
11.13.2020	C 2395 – C 2450	Respondent, Dorothy Coffman's, Response in Opposition to Petitioners' Motion *in Limine* Declaring Exhibits Admissible at Trial
11.13.2020	C 2451 – C 2479	Petitioners' Consolidated Response to Motions *in Limine*
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11.23.2020	C 2481 – C 2482	Order, ruling on motions *in limine*
11.30.2020	C 2483	Order, continuance
11.30.2020	C 2484 – C 2490	Joint Stipulated Facts
12.02.2020	C 2491	Order, continuance
12.02.2020	C 2492 – C 2499	Petitioners' Responses to Objections Concerning Pre-Trial Disclosure of Opinion Testimony
12.04.2020	C 2500 – C 2502	Petitioners' Offered Testimony of John L. Showel, M.D.
12.04.2020	C 2503 – C 2505	Petitioners' Amended Offered Testimony of John L. Showel, M.D.

Date of Filing	Common Law Record Page(s)	Title / Description of Document Filed
12.04.2020	C 2506 – C 2508	Petitioners' Supplemental Offered Testimony of John L. Showel, M.D.
12.04.2020	C 2509 – C 2511	Respondent's Offered Testimony of John L. Showel, M.D.
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12.09.2020	C 2537 – C 2553	Notice of Oral Motion (Petitioners' Oral Motion to Amend Exhibit List)
12.10.2020	C 2554 – C 2563	Petitioners' Motion for Leave to Supplement Trial Exhibit List
12.10.2020	C 2564 – C 2573	Petitioners' Motion to Reconsider Evidentiary Ruling
12.11.2020	C 2574	Order, continuance
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12.17.2020	C 2578	Order, continuance
12.18.2020	C 2579	Order, continuance
12.23.2020	C 2580 – C 2584	Respondent Dorothy Coffman's Brief in Support of Denying Petitioners' Motion to Strike Answer as Nonresponsive at Trial on December 18, 2020

Date of Filing	Common Law Record Page(s)	Title / Description of Document Filed
12.24.2020	C 2585 – C 2588	Petitioners' Supplemental Statement in Support of Motion *in Limine* Declaring Exhibits Admissible at Trial
12.24.2020	C 2589 – C 2592	Petitioners' Objection to Trial Testimony Concerning Coffman Truck Sales Business Agreements
12.28.2020	C 2593 – C 2598	Respondent Dorothy Coffman's Motion for Leave to File Response in Excess of Ten Pages (two copies)
12.28.2020	C 2599	Order, continuance
12.28.2020	C 2600 – C 2984	Respondent Dorothy Coffman's Response to Petitioners' Objection to Trial Testimony Regarding Buy and Sell Agreements Affecting Mark Coffman's Ownership Interests in Coffman Truck Sales, Inc.
01.04.2021	C 2985 – C 2996	Respondent Dorothy Coffman's Motion for Directed Judgment
01.04.2021	C 2997 – C 3000	Respondent Dorothy Coffman's Motion for Leave to Supplement Her Trial Exhibit List
01.04.2021	C 3001 – C 3006	Petitioners' Objection to Undisclosed or Irrelevant Testimony of Jacqueline Cameron, M.D.
01.04.2021	C 3007	Order, continuance
01.04.2021	C 3008	Order, setting date for ruling on motion for directed verdict
01.05.2021	C 3009	Order, striking pending dates
01.11.2021	C 3010 – C 3011	Order, ruling on Petitioners' Exhibit 85
01.11.2021	C 3012	Judgment Order, granting Respondent's motion for directed verdict
02.08.2021	C 3013 – C 3018	Petitioners' Notice of Appeal
02.18.2021	C 3019	Letter request for preparation of common law record
03.02.2021	C 3020 – C 3031	Court Docket

Date of Filing	Common Law Record Page(s)	Title / Description of Document Filed
Reports of Proceedings (one volume)		
04.13.2021	R 1	Report of Proceedings – Table of Contents
03.08.2021	R 2 – R 80	Report of Proceedings before the Honorable Melissa S. Barnhart on Nov. 23, 2020 • Final Pretrial Conference
03.08.2021	R 81	McCorkle Litigation Services, Inc.'s Rule 323(b) letter, dated Mar. 8, 2021
03.08.2021	R 82 – R 239	Report of Proceedings before the Honorable Melissa S. Barnhart on Nov. 30, 2020 • Peggy LeMaster Direct Examination by Attorney Lieberman (R 38)
03.08.2021	R 240 – R 387	Report of Proceedings before the Honorable Melissa S. Barnhart on Dec. 2, 2020 • Peggy LeMaster Direct Examination (Resumed) by Attorney Lieberman (R 245) • Peggy LeMaster Cross Examination by Attorney Wood (R 264)
03.08.2021	R 388 – R 574	Report of Proceedings before the Honorable Melissa S. Barnhart on Dec. 4, 2020 • Video clips of John L. Showel, M.D. evidence deposition either played or testimony read (R 410)
03.08.2021	R 575 – R 726	Report of Proceedings before the Honorable Melissa S. Barnhart on Dec. 7, 2020 • John W. Hynds Direct Examination by Attorney Lieberman (R 589)

Date of Filing	Common Law Record Page(s)	Title / Description of Document Filed
03.08.2021	R 727 – R 883	Report of Proceedings before the Honorable Melissa S. Barnhart on Dec. 9, 2020 • Peter K. Wilson, Jr. Direct Examination by Attorney Lieberman (R 746) • Peter K. Wilson, Jr. Direct Examination by Attorney Barrett (R 771) • Peter K. Wilson, Jr. Cross Examination by Attorney Lieberman (R 805) • Peter K. Wilson, Jr. Redirect Examination by Attorney Barrett (R 808) • Additional video clips of John L. Showel, M.D. evidence deposition either played or testimony read (R 817)
03.08.2021	R 884 – R 1047	Report of Proceedings before the Honorable Melissa S. Barnhart on Dec. 11, 2020 • Lisa Berkley Direct Examination by Attorney Lieberman (R 892) • Lisa Berkley Cross Examination by Attorney Barrett (R 920) • Lisa Berkley Redirect Examination by Attorney Lieberman (R 945) • Additional video clips of John L. Showel, M.D. evidence deposition either played or testimony read (R 964)
03.08.2021	R 1048 – R 1218	Report of Proceedings before the Honorable Melissa S. Barnhart on Dec. 14, 2020 • Additional video clips of John L. Showel, M.D. evidence deposition either played or testimony read (R 1053) • Dorothy Coffman Adverse Examination by Attorney Lieberman (R 1118)

Date of Filing	**Common Law Record Page(s)**	**Title / Description of Document Filed**
03.08.2021	R 1219 – R 1369	Report of Proceedings before the Honorable Melissa S. Barnhart on Dec. 16, 2020 • John N. Rooks, Sr. Direct Examination by Attorney Lieberman (R 1224) • John N. Rooks, Sr. Cross Examination by Attorney Wood (R 1287) • Dorothy Coffman Adverse Examination (Continued) by Attorney Lieberman (R 1330)
03.08.2021	R 1370 – R 1511	Report of Proceedings before the Honorable Melissa S. Barnhart on Dec. 17, 2020 • Dorothy Coffman Adverse Examination (Continued) by Attorney Lieberman (R 1381) • John W. Hynds Cross Examination by Attorney Wood (R 1469)
03.08.2021	R 1512 – R 1656	Report of Proceedings before the Honorable Melissa S. Barnhart on Dec. 18, 2020 • John W. Hynds Cross Examination (Continued) by Attorney Wood (R 1517) • John W. Hynds Redirect Examination by Attorney Lieberman (R 1549) • John W. Hynds Recross Examination by Attorney Wood (R 1599) • Michael Coffman Direct Examination by Attorney Lieberman (R 1626)

Date of Filing	Common Law Record Page(s)	Title / Description of Document Filed
03.08.2021	R 1657 – R 1814	Report of Proceedings before the Honorable Melissa S. Barnhart on Dec. 28, 2020 • Kathleen Martinez Direct Examination by Attorney Lieberman (R 1674) • Kathleen Martinez Cross Examination by Attorney Wood (R 1737) • Kathleen Martinez Redirect Examination by Attorney Lieberman (R 1799) • Kathleen Martinez Recross Examination by Attorney Wood (R 1802)
03.08.2021	R 1815 – R 1871	Report of Proceedings before the Honorable Melissa S. Barnhart on Jan. 4, 2021 • Argument on Respondent's motion for directed verdict
03.08.2021	R 1872 – R 1904	Report of Proceedings before the Honorable Melissa S. Barnhart on Jan. 5, 2021 • Ruling on Respondent's motion for directed verdict
Trial Exhibits (one volume)		
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11.30.2020	E 3 – E 130	Petitioners' Exhibit 33
11.30.2020	E 131 – E 148	Petitioners' Exhibit 32
12.09.2020	E 149	Court Exhibit Sheet (Petitioners 92, 94, 30, 31; Respondent 16)
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12.09.2020	E 151	Petitioners' Exhibit 94
12.09.2020	E 152 – E 171	Petitioners' Exhibit 30

Date of Filing	Common Law Record Page(s)	Title / Description of Document Filed
12.09.2020	E 172 – E 191	Petitioners' Exhibit 31
12.09.2020	E 192 – E 205	Respondent's Exhibit 16
12.14.2020	E 206 – E 208	Court Exhibit Sheet (Petitioners 33–44, 45-A, 46–75)
12.14.2020	E 209 – E 212	Petitioners' Exhibit 34
12.14.2020	E 213 – E 214	Petitioners' Exhibit 35
12.14.2020	E 215 – E 216	Petitioners' Exhibit 36
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12.14.2020	E 225 – E 230	Petitioners' Exhibit 39
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12.14.2020	E 243 – E 244	Petitioners' Exhibit 44
12.14.2020	E 245 – E 258	Petitioners' Exhibit 45-A
12.14.2020	E 259 – E 262	Petitioners' Exhibit 46
12.14.2020	E 263 – E 268	Petitioners' Exhibit 47
12.14.2020	E 269 – E 276	Petitioners' Exhibit 48
12.14.2020	E 277 – E 288	Petitioners' Exhibit 49
12.14.2020	E 289 – E 300	Petitioners' Exhibit 50
12.14.2020	E 301 – E 310	Petitioners' Exhibit 51
12.14.2020	E 311 – E 314	Petitioners' Exhibit 52

Date of Filing	Common Law Record Page(s)	Title / Description of Document Filed
12.14.2020	E 315 – E 332	Petitioners' Exhibit 53
12.14.2020	E 333 – E 334	Petitioners' Exhibit 54
12.14.2020	E 335 – E 336	Petitioners' Exhibit 55
12.14.2020	E 337 – E 338	Petitioners' Exhibit 56
12.14.2020	E 389 – E 340	Petitioners' Exhibit 57
12.14.2020	E 341 – E 342	Petitioners' Exhibit 58
12.14.2020	E 343 – E 344	Petitioners' Exhibit 59
12.14.2020	E 345 – E 346	Petitioners' Exhibit 60
12.14.2020	E 347 – E 350	Petitioners' Exhibit 61
12.14.2020	E 351 – E 352	Petitioners' Exhibit 62
12.14.2020	E 353 – E 354	Petitioners' Exhibit 63
12.14.2020	E 355 – E 360	Petitioners' Exhibit 64
12.14.2020	E 361 – E 364	Petitioners' Exhibit 65
12.14.2020	E 365 – E 368	Petitioners' Exhibit 66
12.14.2020	E 369 – E 374	Petitioners' Exhibit 67
12.14.2020	E 375 – E 376	Petitioners' Exhibit 68
12.14.2020	E 377 – E 378	Petitioners' Exhibit 69
12.14.2020	E 379 – E 380	Petitioners' Exhibit 70
12.14.2020	E 381 – E 390	Petitioners' Exhibit 71
12.14.2020	E 391 – E 398	Petitioners' Exhibit 72
12.14.2020	E 399 – E 404	Petitioners' Exhibit 73 *(missing last page, MONARCH 0021)*
12.16.2020	E 405	Court Exhibit Sheet (Petitioners 2, 11, 12, 10, 5, 6)

Date of Filing	Common Law Record Page(s)	Title / Description of Document Filed
12.16.2020	E 406 – E 421	Petitioners' Exhibit 2
12.16.2020	E 422 – E 423	Petitioners' Exhibit 11
12.16.2020	E 424 – E 425	Petitioners' Exhibit 12 *(missing last two pages, HYNDS YOHNKA 0073–74)*
12.16.2020	E 426 – E 433	Petitioners' Exhibit 10
12.16.2020	E 434 – E 441	Petitioners' Exhibit 5
12.16.2020	E 442 – E 443	Petitioners' Exhibit 6
12.17.2020	E 444 – E 446	Court Exhibit Sheet (Petitioners 1, 7, 9, 25, 26, 23, 76)
12.17.2020	E 447 – E 456	Petitioners' Exhibit 1
12.17.2020	E 457 – E 460	Petitioners' Exhibit 7
12.17.2020	E 461 – E 466	Petitioners' Exhibit 9
12.17.2020	E 467 – E 470	Petitioners' Exhibit 25
12.17.2020	E 471 – E 474	Petitioners' Exhibit 26
12.17.2020	E 475 – E 584	Petitioners' Exhibit 23
12.17.2020	E 585 – E 596	Petitioners' Exhibit 76
12.17.2020	E 597 – E 598	last page, MONARCH 0021, of Petitioners' Exhibit 73
12.17.2020	E 599 – E 600	Petitioners' Exhibit 74
12.17.2020	E 601 – E 606	Petitioners' Exhibit 75
12.18.2020	E 607	Court Exhibit Sheet (Petitioners 24)
12.18.2020	E 608 – E 613	Petitioners' Exhibit 24
12.28.2020	E 614	Court Exhibit Sheet (Petitioners 17, 18; Respondent 28)

Date of Filing	Common Law Record Page(s)	Title / Description of Document Filed
12.28.2020	E 615 – E 616	Petitioners' Exhibit 18
12.28.2020	E 617 – E 620	Petitioners' Exhibit 17
12.28.2020	E 621 – E 702	Respondent's Exhibit 28 *(missing last 109 pages, DC000703–811)*

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2022 IL App (2d) 210053
No. 2-21-0053
Opinion filed August 10, 2022

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re ESTATE OF MARK A. COFFMAN, Deceased	)	Appeal from the Circuit Court of Kendall County.
	)	No. 18-P-65
(Peggy LeMaster and Kathleen Martinez, Petitioners-Appellants v. Dorothy Coffman and Courtney Coffman Crenshaw, Respondents-Appellees).	)	Honorable Melissa S. Barnhart, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court, with opinion.
Justices McLaren and Schostok concurred in the judgment and opinion.

OPINION

¶ 1 Petitioners, Peggy LeMaster and Kathleen Martinez, contested the validity of the 2018 will of their deceased brother, Mark A. Coffman, which was executed six weeks before he died. See 755 ILCS 5/8-1 (West 2020). Petitioners named as respondents Dorothy Coffman, Mark's surviving spouse, and Courtney Coffman Crenshaw, Mark's daughter from a previous relationship. They alleged that Dorothy exerted undue influence over Mark to procure the will, rendering it invalid. Following the close of petitioners' case in a bench trial, the trial court granted Dorothy's motion for a directed finding (735 ILCS 5/2-1110 (West 2020)), determining that petitioners had failed to establish a *prima facie* case of either actual or presumptive undue influence. Petitioners appeal, arguing that the trial court erred in failing to apply (1) a presumption of undue influence where a fiduciary relationship existed, because it erroneously analyzed two elements required for

the presumption to apply—the existence of a fiduciary relationship and the fact that Dorothy procured the will—and (2) the alternative presumption allegedly required where, irrespective of a fiduciary relationship, the chief beneficiary procures the will of a debilitated testator. We affirm.

¶ 2 I. BACKGROUND

¶ 3 Mark and Dorothy married in 1994. Neither was previously married, and they had no children together.

¶ 4 Mark worked at Coffman Truck Sales, Inc. (Coffman Truck Sales), a family truck sales, services, and parts business founded in 1948 by Mark's father, Glenn Coffman. Mark began working full time at the company at age 20 and continued working there until his death, at age 68, on April 26, 2018. (Mark was president of Coffman Truck Sales from 1992 to his death.) At his death, Mark owned 66.7% of the company's outstanding shares and 33.3% of the membership interests in Coffman Real Estate, L.L.C. (Coffman Real Estate), the entity that owns the real estate on which Coffman Truck Sales operates. Petitioners have never been owners of Coffman Truck Sales.

¶ 5 On August 4, 2001, Mark executed a will (2001 will) drafted by attorney John N. Rooks, who was a partner at Hynds, Rooks, Yohnka, Mattingly & Bzdill. Also on that date, Mark appointed Dorothy as his agent under powers of attorney for health care and property. In the 2001 will, Mark left all residences and tangible property to Dorothy, as well as his entire residuary estate (in a marital or family trust). He made a $100,000 bequest to Courtney and left the remainder of his estate in a family trust or a marital trust, under Dorothy's management and control as trustee. The 2001 will directed Dorothy, as trustee, to distribute to herself—as she deemed necessary or advisable for her health and maintenance in reasonable comfort—all trust income from both the marital trust and the family trust along with any trust principal, with the exception of certain

excluded assets. The 2001 will classified as excluded assets Mark's ownership interests in Coffman Truck Sales and Coffman Real Estate (or the proceeds from their sale under any operative buy/sell agreement in existence upon his death). It also prohibited Dorothy or any successor trustee from distributing during her lifetime the portion of trust principal comprised of excluded assets, and it directed the distribution of excluded assets, after Dorothy's death, to *petitioners*, if living, or, if not living, then *per stirpes* to their descendants.

¶ 6 In June 2016, Mark was diagnosed with laryngeal cancer, and he underwent treatments that included multiple surgeries (including removal of his larynx and lymph nodes and a tracheostomy), radiation, and chemotherapy. In July 2016, he underwent surgery to remove cancer in his left lung and, in 2017, underwent multiple surgeries to repair fractures in his arm. Over the next 21 months, the cancer metastasized widely and, by late 2017 and early 2018, the cancer had spread to his hip and other locations.

¶ 7 On January 30, 2018, Mark was admitted to Rush University Medical Center (Rush) for control of increased pain in his arm, and he advised his physician that he was concerned that the metastasis in his groin was growing. On Sunday, March 11, 2018, Dr. John Showel, Mark's oncologist at Rush, referred Mark to the emergency room, and he was admitted to the hospital that day as an inpatient. Mark never returned home. He underwent an MRI for which he was sedated with anesthesia in order to be comfortable during the procedure. The anesthesia and his pain medications caused Mark to exhibit symptoms of delirium and confusion. On March 15, 2018, Dr. Showel advised Mark's family that Mark had only about six to eight weeks to live and recommended hospice care.

¶ 8 On March 16, 2018, after speaking to Dorothy on the telephone sometime after 3 p.m., attorney John Hynds and his partner H. Katie McInerney began drafting estate planning documents for Mark.

¶ 9 On Saturday, March 17, Hynds traveled to Chicago to meet with Mark at Rush about executing a new will. He arrived midday and brought estate planning documents. Hynds's legal assistant, Lisa Barkley, accompanied Hynds at his request so that she could serve as an attesting witness.

¶ 10 In his hospital bed, Mark executed the new will on March 17, 2018 (2018 will), with Hynds and Barkley serving as witnesses. Dorothy participated in the discussions with Mark and Hynds about the documents. The following day, Hynds telephoned Dorothy to ask whether she and Mark were satisfied with the new will and whether they had other questions or further changes. In July 2018, Hynds sent an invoice for his firm's work.

¶ 11 Both the 2001 and 2018 wills provide for a $100,000 bequest to Courtney and a bequest of all residences and tangible personal property to Dorothy. They differ, however, in their disposition of the residuary interest in Mark's estate after the later of his and or Dorothy's deaths. The 2018 will permits Dorothy, not petitioners, to designate the ultimate disposition of trust assets, if she survives Mark. In doing so, it provides that the residuary estate is to be partially distributed to a family trust and partially to Dorothy outright. Specifically, the family trust is to be funded in the amount of the tax-sheltered gift amount (about $4 million at the time of Mark's death) with a preference to include the shares of Coffman Truck Sales and Coffman Real Estate in the family trust funding. Dorothy, as trustee of the family trust, is permitted to distribute to herself all trust income, along with any trust principal, she deems "necessary or advisable" for her health and

maintenance in reasonable comfort. She is also permitted to direct the further distribution of the family trust upon her death through her exercise of a power of appointment.

¶ 12 On April 9, 2018, Mark was at the Springs at Monarch Landing Health Center, a rehabilitation facility. On April 15, 2018, Dorothy and Mark determined to commence end-of-life hospice care for Mark. Mark died on April 26, 2018, at age 68.

¶ 13 On May 9, 2018, Dorothy petitioned the court for probate of the 2018 will. On May 17, 2018, the 2018 will was admitted to probate.

¶ 14 A. Petition to Contest Validity of 2018 Will

¶ 15 On October 22, 2018, petitioners filed a verified petition to contest the validity of the 2018 will, seeking entry of an order declaring the 2018 will invalid and instead admitting the 2001 will to probate. Petitioners noted that the 2018 will revoked the 2001 will and made a material change in Mark's disposition of his interests in certain family businesses, to the detriment of petitioners and to the benefit of Dorothy. They asserted that the 2001 will contained provisions ensuring that the family business remained with Glenn's descendants. It left Mark's interest in Coffman Truck Sales and Coffman Real Estate in trust, for the benefit of Dorothy during her lifetime, to be distributed at her death to petitioners, if then living, or to their respective descendants. The 2018 will, petitioners noted, lacked any provisions ensuring that ownership of the family business interests remained with the founder's descendants. Instead, it granted complete power and discretion to Dorothy over the ultimate disposition of the interests. The 2018 will granted Mark's ownership interests partially to Dorothy outright and the rest to her as trustee of the family trust, also giving her the power to appoint under her own will the recipients of those interests held in trust at her death.

¶ 16 Petitioners argued that the 2018 will was invalid and resulted from undue influence Dorothy exerted over Mark. It was executed, they asserted, when Mark was physically and psychologically weakened and vulnerable to undue influence by, and dependent on, Dorothy. They noted that, during his last month, Mark took regular doses of morphine. During the week of March 11, 2018, a Rush staff oncologist advised the family that Mark likely had no more than one or two months to live. On March 17, 2018, he executed the 2018 will. He underwent another surgery on his right arm on March 19. Petitioners argued that Dorothy became the dominant party in a fiduciary relationship in which Mark grew heavily dependent on her, including for assistance with activities of daily living and financial matters, and reposed trust and confidence in her. By March 2018, Mark relied primarily on text messaging to communicate, and he depended on Dorothy to communicate with family members, business associates, and medical personnel. Petitioners asserted that Dorothy exercised her power of attorney for property in April 2018 to execute an amended limited liability company operating agreement for Coffman Real Estate.

¶ 17 B. Hearing

¶ 18 1. *Petitioner Peggy LeMaster*

¶ 19 The hearing commenced on November 30, 2020. LeMaster testified that she worked at the family business in high school and through her twenties. LeMaster has an interest in Coffman Real Estate, which owns two parcels.

¶ 20 Mark was a hands-on manager and very detail oriented. He worked from early morning to late at night and worked weekends, too. Mark built a home next to his parents' house in Plano, moved into it around age 40, and lived there until his death. Mark was still president of the company when he passed away.

¶ 21 Before Mark lost the ability to speak, LeMaster spoke to him on the telephone a couple of times per week. After he lost his ability to speak, they communicated via texts. LeMaster texted with Mark almost daily afterward. She received her last text from him on March 11, 2018, while he was on his way to Rush.

¶ 22 LeMaster went to Rush on March 15, 2018, and learned that Dr. Showel had stated that Mark was expected to live another six weeks and that the family should arrange for hospice care for him. LeMaster saw Mark in his room. He had been given anesthesia three days earlier in order to undergo an MRI. He was having difficulty coming out of the anesthesia, and he was "pretty out of it." The following day, Dorothy texted LeMaster that Mark was doing "much better. Sitting up on side of bed. Ate a little breakfast." On March 17, 2018, the day Mark executed his 2018 will, Dorothy texted that Mark was "doing good. Ate some breakfast. *** Pain is better." The following day, Mark had surgery. On March 19, 2018, Dorothy texted that Mark was "pretty dopey" and could not keep his eyes open. At the end of the day, he was still confused.

¶ 23 An April 7, 2018, text from Dorothy stated that Mark was "really tired. Just eats a little bit. Looks like he has lost more weight. I don't know what to think." Between April 7 and 26, 2018, LeMaster visited Mark in a rehabilitation facility in Naperville almost daily. His condition was "grave," and he was on heavy doses of medication for his pain. He would reach for something in the air, but nothing was there. He was "really out of it."

¶ 24 In April 2018, about one week before Mark died, LeMaster signed two partnership documents for Coffman Real Estate and Coffman Brothers, L.L.C. (Coffman Brothers). She was at the rehabilitation center, in Mark's room. Dorothy presented the documents to LeMaster, explaining that they were going to save them money in taxes and that she needed LeMaster to sign them. LeMaster asked if she could take them home to review them, but Dorothy "was in a hurry

for them." LeMaster did not take them home. Mark was in his bed and "out of it." He did not speak.

¶ 25 On cross-examination, LeMaster testified that she had a good relationship with Dorothy. They spent holidays together, and she was a good wife to Mark and took care of him when he became ill. She texted for him when he could not do so on his own, took him to his medical appointments, and stayed with him at the hospital. However, Dorothy overpowered Mark's will through undue influence relating to his 2018 will. LeMaster, however, was not present when the will was executed or for any conversations between Mark and Dorothy related to it. Mark never told LeMaster that Dorothy was pressuring him to make a will or to do anything concerning the disposition of his business.

¶ 26 In February 2018, Mark still went in to work, although not daily. Texts from March 2, 2018, reflected that Mark was involved in Coffman Truck Sales work related to a bid due to UPS, which represented over 50% of the company's sales, by March 8, 2018.

¶ 27 On March 15, 2018, at the hospital, Dorothy told LeMaster that lawyers were coming to see Mark and that they needed to work on their will. After March 17, LeMaster saw Mark and he did not express any concern about a will he had executed or state that he was pressured into something by Dorothy.

¶ 28 LeMaster never discussed with Mark his 2001 will or what was going to happen to Coffman Truck Sales. Glenn, who died in 1991, did not leave any shares of the company to LeMaster or her sister. LeMaster's sons worked at the company but quit before Mark passed away.

¶ 29 On April 22, 2018, while at the rehabilitation facility, LeMaster learned from Dorothy that in his 2018 will Mark was leaving his interests in the company to Dorothy. Mark was in his bed at the time and "completely out of it."

¶ 30 2. *Dr. John Showel*

¶ 31 Dr. Showel's videotaped evidence deposition was played. Dr. Showel, a board-certified oncologist and hematologist, is on staff at Rush. He testified that, between July 2016 through March 2018, Mark was his patient. He saw him every one or two months. However, while Mark was hospitalized at Rush, Dr. Showel saw him nearly every day through the end of March 2018.

¶ 32 On March 11, 2018, Mark went to the emergency room and then was admitted to the hospital. Dr. Showel sent Mark for an MRI on March 11, 2018. A March 12, 2018, examination note stated that Mark was alert and oriented. It did not note confusion. A March 13, 2018, note by Dr. Showel stated that Mark had fallen on the floor of his hospital room as he exited his bed and was very confused and sleepy. Mark exhibited signs of acute delirium. Around midnight, a nurse noted that Mark was oriented to person and place. A March 14, 2018, progress note by Dr. Butos noted that Mark would be treated for two to three days in an effort to clear his delirium. At this point, Dr. Showel expected that, upon discharge, Mark would require assistance in the pursuit of daily living. Also on that day, at 3:34 p.m., Dr. Showel noted that Mark remained somewhat confused but was better than the prior day.

¶ 33 On March 15, 2018, Mark was in bed most of the time. Dr. Showel recommended hospice care. He believed that specific treatment for Mark's cancer was likely to be futile and that the focus should be on comfort. At this time, Mark's pain level was at 8 or 9 out of 10, "unless he was confused or very somnolent because of opioids." Dr. Lin's note on that date stated that Mark was much more oriented to place and time. Gabapentin, IV morphine, Klonopin, and morphine "SR" were discontinued on March 14, though another note stated that morphine and Norco would be given again. Dr. Showel testified that morphine can potentially diminish cognitive functioning. A March 15, 2018, note by Dr. Showel did not note any confusion. Dr. Lin noted that Mark was

much more oriented to date, place, and time and was still weak but that his mental status seemed normal. Dr. Showel testified that, thus, any concerns about Mark's mental status would have subsided by March 15. The note stated that Mark had improved significantly, *i.e.*, his delirium "got better" after his narcotics were held (*i.e.*, discontinued on March 14. On March 15 and 16, Dr. Showel did not notice any more confusion. Also on those dates, he discussed Mark's care with Mark himself. A March 16 nurse's note stated that Mark remained oriented and alert and that his pain improved with resuming his morphine.

¶ 34 On March 17, 2018, Mark's attorney visited him. A March 17 hospital note stated that Mark noted that his attorney was coming in and that he had commented, " 'my wife is unhappy with me because I've been dragging my feet on this.' " A March 17, 2018, note by Dr. Lin stated that Mark remained oriented and alert and that his lawyers were coming that day to meet with him and Dorothy about his will. (Dr. Showel did not see Mark on the day Mark executed his 2018 will.) A March 18 note from Dr. Lin stated that Mark's acute delirium was "now resolved." Dr. Showel next saw Mark on Monday, March 19, 2018. A progress note stated that Mark was alert and obeyed commands. There was no notation concerning any confusion. Notes from the following two days also did not mention any confusion on Mark's part.

¶ 35 During the middle of March 2018, Mark was sometimes alert and other times he was not alert. Toward the end of March, Mark was not making any decisions concerning his care.

¶ 36 Dr. Showel further testified that Mark made the decisions concerning his care, except toward the end, when he was not making any decisions. When asked if Mark's pain medications (*i.e.*, morphine, gabapentin, and hydrocodone acetaminophen) allowed him to still make decisions on his own, Dr. Showel replied, "It's possible, yes." When asked if it necessarily reflected that he had diminished capacity, he replied, "Not necessarily."

¶ 37 3. *Attorney John Hynds*

¶ 38 Attorney Hynds testified that he has practiced at his firm, Hynds, Yohnka, Bzdill & McInerney, for over 50 years, focusing on estate planning and estate administration. He represents Dorothy as executor of Mark's estate. When Hynds works with couples, he represents and acts on behalf of both. Thus, he represented Mark and Dorothy. However, Mark's 2018 will reflected Mark's wishes.

¶ 39 Around 2000, Hynds handled Glenn's estate. Prior to the execution of the 2018 will, Hynds did not communicate with Mark about his will or estate plan.

¶ 40 On March 16, 2018, Hynds received a phone call from Dorothy. He called her back around 3 p.m. Dorothy stated that Mark wanted to change his will, including changes recommended in a 2009 letter from Hynds's partner John Rooks concerning the decoupling of the Illinois estate tax from the federal estate tax and leaving Mark's estate outright to Dorothy, "totally under her control." Dorothy also stated that, if she predeceased Mark, one-half of her estate was to go to Mark's nieces and nephews and one-half to her nieces and nephews. During this conversation, Hynds did not ask to speak to Mark. Dorothy indicated that Mark was able to communicate.

¶ 41 That afternoon and early the next morning, Hynds and McInerney started working on the will (actually, three options: two wills disinheriting Mark's sisters and one codicil; the draft codicil took advantage of the 2009 tax change and would not have changed the disposition of assets but would have left the beneficiaries the same as in the 2001 will). Neither Hynds nor anyone at his firm communicated with Mark before the drafts were completed.

¶ 42 On March 17, 2018, at 11 a.m., Hynds arrived at Rush with Barkley. Hynds, Mark, and Dorothy discussed the estate plan together. Barkley was also in the room. Mark stayed in bed. Hynds did not ask to speak privately to Mark, nor did he afford Mark the opportunity to read the

will privately. Hynds and Barkley witnessed the execution of Mark's will. Once the tax consequences were explained to Dorothy, she acquiesced to Mark's preference of the family trust over leaving the property to her outright. At the hospital, Dorothy initially stated as to the recommendation to use a family trust structure, "What difference does it make?" and "People are lucky they're getting the inheritance." However, she came to see the benefits of that recommendation due to the tax benefits. Thus, initially, she and Mark were in disagreement. Ultimately, "she acquiesced and *** [Mark] decided."

¶ 43 On March 18, 2018, after the will was executed, Hynds prepared a memo concerning the events leading to the will's execution. In the memo, he stated that Dorothy had indicated that she and Mark knew years ago that Mark should have changed his estate plan and were aware of Rooks's letter warning of additional estate taxes. She stated that they both wanted Dorothy to have total control of all assets after Mark's death. They did not want the marital trust and did not want petitioners to inherit after Mark and Dorothy both died. Hynds also wrote that a key was that Dorothy could, through her estate plan, direct the distribution of all assets.

¶ 44 He testified that this "was a key for Mark." When asked what Dorothy said about her power to direct the distribution of all assets through her estate plan, Hynds replied, "She made no specific comments about it. Mark was the one that was doing the talking." Hynds further testified that, once he explained to them how the limited power of appointment would work and how it would also save taxes, "Mark had indicated that that's what he wanted." Dorothy, according to Hynds, acquiesced to Mark's "decision that the use of the trust for the limited power of appointment would allow her to have the type of control that he was wanting her to have but also obtain the tax benefit."

¶ 45 Mark directed Hynds to cross out a section in the draft will that provided that petitioners would have a right of first refusal upon the sale or transfer of Mark's ownership interests in

Coffman Truck Sales and Coffman Real Estate. Mark "did not want there to be any legal restriction on how he viewed Dorothy's ability to make whatever decision she wanted regarding the disposition of it." Mark, Hynds, and Barkley initialed the change.

¶ 46 Hynds testified that "most of the conversation" was with Mark. Dorothy did not "identify specific things that Mark wanted. Mark told [Hynds] what he wanted." Dorothy did speak, "but Mark was the one that was—with whom [Hynds] was primarily engaged." When Dorothy spoke, one of the things she mentioned was what Mark wanted in his will. Hynds read the will to Mark. Hynds estimated that Mark's estate was worth about $10 million.

¶ 47 Mark read the document along with Hynds. Mark held it in front of him, looking, and they would discuss a paragraph. Mark stated that he did not have good use of his right arm to sign the document and that Dorothy had been signing documents on his behalf. Hynds explained that Mark could mark an "X," but Mark used his left hand to sign the document.

¶ 48 When asked if he inquired as to why Mark wanted to give Dorothy control over the ultimate disposition of assets after his death, Hynds stated that he did not. "I asked him what—how he wanted to distribute his estate and he told me. I didn't ask for his motives." Dorothy had initially stated that this was Mark's wish, but, later, Mark told Hynds what he wanted. "I thought he was perfectly competent and understood what he told me that he wanted."

¶ 49 After March 17, 2018, Hynds did not communicate with Mark. On March 18, Hynds spoke to Dorothy, asking if they wanted anything else done. There were no other changes.

¶ 50 Hynds further testified that he understood that, when Dorothy called him on March 16, she was calling on Mark's direction and, the following day, Hynds understood through conversations with Mark that Dorothy had called on his behalf. On March 17, Dorothy did not ask to speak to Hynds outside of Mark's presence. When Hynds walked into Mark's hospital room, Mark

recognized him as soon as he entered and even though they had not seen each other in 20 years. Mark also remembered that Hynds wore hearing aids. "It gave me more confidence that—of his mental ability, of his capability." Mark's voice was very weak, but it was understandable. Hynds believed that, during his conversation with Mark, Mark understood the issues. Dorothy did not attempt to intervene. "Yes, it was basically a conversation between him and me."

¶ 51 When asked if the conversations on March 17 led Hynds to believe that Dorothy was overpowering Mark in connection with the making of his will, Hynds replied that she did not appear to have any real impact on Mark because Mark insisted that they use the trust, whereas Dorothy would have picked the outright distribution. Hynds believed that "Mark was the more dominant of the two in terms of the decision making that was involved."

¶ 52 4. *Attorney Peter Wilson Jr.*

¶ 53 Peter Wilson Jr., an attorney with Mickey, Wilson, Weiler, Renzi, Lenert & Julien, testified that he has practiced law for over 53 years. He represents school districts and public bodies and does corporate work and some real estate work. Wilson's clients include Coffman Truck Sales, Coffman Real Estate, and Coffman Brothers. The parties stipulated that, in April 2018, Wilson prepared an amended operating agreement for Coffman Brothers and an amended operating agreement for Coffman Real Estate. Wilson e-mailed Jack Hienton, general manager for Coffman Truck Sales, and copied Diane Zimmerman, also at Coffman Truck Sales, stating that he had received a call from Dorothy that the limited liability company members had requested an amendment to take out the mandatory buyout from the two operating agreements. Wilson made the change to the operating agreements on April 9 and e-mailed the documents that day.

¶ 54 One week earlier, Wilson had spoken to Mark. They discussed the redemption of the shares of Coffman Truck Sales owned by Mark's uncle, Frank Coffman, and the termination of the

shareholder agreement that had the mandatory buyout language. Mark told Wilson that he did not want the mandatory buyout provisions in any of the documents. Next, he received a call from Dorothy, stating that the members wanted it removed from the two real estate limited liability companies.

¶ 55 The Coffman Truck Sales shareholder agreement (dated July 8, 2006) provided that, upon the death of a shareholder, all the shares shall be sold to and purchased by the company. Wilson or Hynds's firm drafted the termination-of-shareholder agreement, dated April 13, 2018. It was prepared to address the issue of the mandatory buyout language in the Coffman Truck Sales shareholder agreement.

¶ 56 In March or April 2018, Wilson spoke to Mark about the mandatory buyout and how it posed difficulties for Frank's estate. Mark, who had difficulty speaking, asked if the provision was necessary, and Wilson told him it was not. Mark stated that he wanted it removed from the entities' documents. Wilson understood that Mark was in a rehabilitation facility. During one conversation, Mark had his phone on speaker mode, and Dorothy repeated Mark's words and Mark would say "yes." Mark was engaged during the call. "[T]here was no question that he knew what he was asking me." During these conversations, it did not appear to Wilson that Mark was being pressured into making changes to the entities' documents.

¶ 57 5. *Lisa Barkley*

¶ 58 Barkley testified that she has worked for Hynds's firm for over 40 years. She is a legal assistant. She signed Mark's 2018 will as a witness. When Barkley and Hynds arrived at the hospital and before entering Mark's room, they spoke to a nurse and Hynds asked if Mark was lucid. The nurse stated that Mark was having a good day. When they entered the room, Barkley saw Mark in bed and Dorothy at the far side of the room in a chair. Mark recognized Hynds, and

they talked about how it had been a while since they had seen each other. Barkley sat with Dorothy, and Hynds stood by Mark's bed most of the time. Hynds went over the will with Mark and answered Mark's questions. It appeared to Barkley that Mark understood the issues Hynds discussed with him. He asked intelligent questions, as reflected in his questions about estate tax consequences.

¶ 59 When Mark spoke, his voice sounded raspy. Dorothy was present the entire time, and she participated in the discussion. She was curious, asked questions, and wanted to understand what was happening. She appeared calm. "Dorothy's personality is somewhat excitable, and I did not feel like she was overly wound up or overly excited." Barkley further testified that it did not appear that Dorothy pressured Mark in any way. Dorothy asked Hynds questions about the process. She did not ask Mark questions or tell Mark what he should do. Mark reviewed a copy of the will as Hynds read it to him. Hynds read the majority of the will to Mark. They discussed estate taxes. Also, there was a section of the will that Mark did not agree with, and it was deleted. The real estate entities (*i.e.*, Coffman Real Estate and Coffman Brothers) were also discussed.

¶ 60 Barkley believed that, at the time she signed as a witness to Mark's will, Mark was of sound mind and memory when he signed it. She had known Mark for a number of years from working at Hynds's firm. She had met him seven or eight times and they had lengthy phone conversations over the years. On March 17, 2018, based on what she knew about him and observing what occurred during the will execution, she believed that Mark knew what he was doing. He was more than competent to proceed with the execution of the will.

¶ 61 6. *Respondent Dorothy Coffman*

¶ 62 Dorothy testified that she was 42 years old when she married Mark and that he was 43 years old. Mark was president of Coffman Truck Sales during their marriage and until his death.

Dorothy did not work at the company. Mark worked there with Glenn and uncles, cousins, and nephews of Mark's. He worked long hours.

¶ 63 Mark executed his 2001 will when they had been married for six years. The 2018 will provides for the entire estate to go for Dorothy's benefit.

¶ 64 On March 13, 2018, Mark was in a state of delirium. The next day, he knew where he was. "[H]e still was communicating with me like he knew who I was and asking me questions and stuff." They worked on taxes. However, hospital staff told Dorothy that Mark did not know the time and date.

¶ 65 When Hynds arrived at the hospital on March 17, he indicated that Mark, not Dorothy, was his client and, when Dorothy tried to speak, he told her not to do so.

¶ 66 7. *Retired Attorney John Rooks*

¶ 67 Rooks, a retired attorney, testified that he practiced at Hynds, Rooks, Yohnka, Mattingly & Bzdill from 1976 to 2016. Over half of his practice was in estate planning, probate, and trust administration. Mark was his client, and he prepared his 2001 will, living will, and powers of attorney.

¶ 68 8. *Michael Coffman*

¶ 69 Michael Coffman, Mark's cousin and part owner and an officer of Coffman Truck Sales, testified that he worked daily with Mark at the company from 2006 to 2018. Michael was vice president and secretary of the company and worked closely with Mark. Mark worked long hours and was a hands-on manager and did not delegate work. He made the business decisions for the company. Reviewing text messages between himself and Mark from March 10 to April 26, 2018, Michael testified that some of the messages were sent by Dorothy.

¶ 70 9. *Petitioner Kathleen Martinez*

¶ 71 Martinez testified that she never discussed with Mark his estate plan and that Mark never told her anything about either his 2001 will or his 2018 will. Martinez worked at Coffman Truck Sales during high school, and her two sons worked there during high school and college. Her mother died in 2000. Between 2014 and 2017, Martinez saw Mark often. After Mark became ill, he texted more often and used the phone less. Martinez met Dorothy when they were both in high school. Dorothy was a good wife to Mark.

¶ 72 Martinez, LeMaster, and Mark had interests in Coffman Real Estate and Coffman Brothers, and Mark managed the properties.

¶ 73 On March 15, 2018, Dorothy texted Martinez that Mark was more alert, knew where he was and the date (which he did not know the prior day), and was more like himself that day. Martinez did not go to the hospital on March 17, because Dorothy asked her not to, because the lawyers were coming to work on Mark's will.

¶ 74 Dorothy was in Mark's hospital room whenever Martinez visited. Prior to March 2018, when family visited, Dorothy welcomed the opportunity to leave the room and go out to walk, have a cigarette, or get something to eat. However, after March 2018, she did not leave the room. "It was strange, you know, because she would not leave us [(*i.e.*, the family)] alone in the room with Mark." However, Martinez did not ask Dorothy to leave her alone with Mark. Prior to the filing of the will contest, Martinez did not see Dorothy urging or persuading Mark to execute the 2018 will and no one told her that they saw Dorothy doing so.

¶ 75 In the spring of 2018, Martinez signed documents relating to the real estate entities. The signing occurred at the Springs at Monarch Landing Health Center, while she was visiting Mark. "Mark was not coherent." Dorothy asked Martinez to sign the documents, explaining that there were going to be tax benefits as a result. She also stated that Martinez did not need to read them.

¶ 76 During Mark's final days or weeks (perhaps 1 week to 10 days before he died), there was a meeting between Martinez and her husband, LeMaster and her husband, and Dorothy concerning Coffman Truck Sales. The meeting occurred in the room next door to Mark's room. Petitioners asked Dorothy what was going to happen to the family business, and Dorothy was "very upset and nervous and defensive about us doing that. She felt that it wasn't the right time." Dorothy "got loud." She also stated that "she was going to be in control of everything" and "would have majority ownership." Mark was "comatose," meaning that he was not communicating with anyone. Martinez knew that Mark was near the end of his life. There was no reason that they could not wait to have the conversation until after Mark had passed away.

¶ 77 C. Dorothy's Motion for a Directed Finding

¶ 78 On January 4, 2021, after the close of petitioners' case-in-chief, Dorothy moved for a directed finding (735 ILCS 5/2-1110 (West 2020)). She argued that petitioners failed to present sufficient evidence (*i.e.*, a *prima facie* case, that is, at least some evidence on every element essential to the cause of action (*Kokinis v. Kotrich*, 81 Ill. 2d 151, 154-55 (1980))) that Dorothy unduly influenced Mark or that the court should presume that she did so; specifically, they failed to present a *prima facie* case of either actual undue influence or presumptive undue influence. As to the latter, Dorothy maintained that she was not a fiduciary, she was not a disproportionate beneficiary as compared to petitioners, she was not in a dominant role, Mark did not place extraordinary or unusual confidence in her, and Dorothy did not procure the 2018 will and was not instrumental in its procurement.

¶ 79 D. Trial Court's Ruling

¶ 80 On January 11, 2021, the trial court granted Dorothy's motion for a directed finding and found that the 2018 will was valid and admitted it to probate. It denied petitioners' verified petition

to contest the validity of the 2018 will. In announcing its ruling, the court noted that it determined that there was no evidence of actual undue influence. The court then considered factors that establish presumptive undue influence and found that no *prima facie* case was established. First, although Dorothy was appointed power of attorney, she was not a fiduciary, because no evidence showed that she acted under the powers of attorney for health care or property either to materially benefit herself or for a third party. Next, addressing the difference between substantial benefit and comparatively disproportionate benefit, the court found that Dorothy was a substantial beneficiary in both the 2001 and 2018 wills. Her benefits did not decrease, and her control over the property of appointment upon her death was the change in the 2018 will. As to the second factor—whether Mark was in a dependent situation where Dorothy was in a dominant role—the court found that it was not met where the marriage spanned 24 years and Mark made his own treatment decisions and instructed Dorothy to contact his longtime attorneys. "Mark controlled the scenario." As to the third factor—whether Mark placed extraordinary trust and confidence in Dorothy—the court determined that there was no evidence of unusual decisions concerning Mark's confidence in Dorothy. The fourth factor—whether the will was prepared or executed in circumstances where Dorothy was instrumental or participated—was also not met, the court found, because Mark was fully engaged in the discussions of the various estate planning options and disagreed with Dorothy's suggestion at one point that she be given an outright bequest and he decided in favor of a tax-saving vehicle. The court noted that Mark's competence was not in dispute. Petitioners, the court noted, were never in expectancy to own Coffman Truck Sales, referencing the shareholder agreement's buyout provisions that any deceased shareholder's shares had to be purchased back by the company. "So they would not have been in line to inherit the business to begin with." Petitioners appeal.

¶ 81 II. ANALYSIS

¶ 82 Petitioners argue that the trial court erred in failing to apply (1) a presumption of undue influence where a fiduciary relationship existed, because it erroneously analyzed two elements required for the presumption to apply—the existence of a fiduciary relationship and the fact that Dorothy procured the will and (2) the alternative presumption allegedly required where the chief beneficiary procures the will of a debilitated testator. For the following reasons, we reject petitioners' arguments.

¶ 83 Section 2-1110 of the Code of Civil Procedure (735 ILCS 5/2-1110 (West 2020)) permits a defendant to move for a directed finding at the close of the plaintiff's case in a bench trial. In ruling on such a motion, the trial court engages in a two-step analysis. *Minch v. George*, 395 Ill. App. 3d 390, 398 (2009). Initially, the court must determine whether the plaintiff presented a *prima facie* case as a matter of law. *Edward Atkins, M.D., S.C. v. Robbins, Salomon & Patt, Ltd.*, 2018 IL App (1st) 161961, ¶ 53. If the court finds that the plaintiff presented a *prima facie* case, it proceeds to the second step and weighs the evidence to determine whether the *prima facie* case survives. *Minch*, 395 Ill. App. 3d at 398. Where the trial court did not proceed beyond the first stage, we review *de novo* its determination. *In re Petition to Disconnect Certain Territory Commonly Known as the Foxfield Subdivision & Adjoining Properties From the Village of Campton Hills*, 396 Ill. App. 3d 989, 992 (2009) (*In re Foxfield Subdivision*). "Generally, in ruling on a section 2-1110 motion, evidence examined under the second prong must prove the plaintiff's case by a preponderance of the evidence." *Law Offices of Colleen M. McLaughlin v. First Star Financial Corp.*, 2011 IL App (1st) 101849, ¶ 40. We uphold the granting of a section 2-1110 motion, unless the judgment is against the manifest weight of the evidence. *Kokinis*, 81 Ill. 2d at

154. A judgment is against the manifest weight of the evidence where the court's findings are not reasonable. *Judgment Services Corp. v. Sullivan*, 321 Ill. App. 3d 151, 154 (2001).

¶ 84 Undue influence sufficient to invalidate a will is influence that prevents a testator from exercising his or her own free will in the disposition of his or her estate or that deprives the testator of free agency and renders the will more that of another than his or her own. *In re Estate of Julian*, 227 Ill. App. 3d 369, 376 (1991).[1] 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. *In re Estate of Maher*, 237 Ill. App. 3d 1013, 1017 (1992).

¶ 85 Generally, undue influence may be shown by either (1) proof of conduct that constitutes actual undue influence or (2) a fiduciary relationship and other conduct that raises a presumption of undue influence. See *Sears v. Vaughan*, 230 Ill. 572, 573 (1907) (distinguishing between actual undue influence and presumptive undue influence); *In re Estate of Kline*, 245 Ill. App. 3d 413, 424 (1993) (where there is no presumption, a plaintiff must produce specific evidence of actual undue influence (citing Illinois Pattern Jury Instructions, Civil, No. 200.03 (3d ed. 1992), Procedural Effect)). Here, petitioners challenge only the trial court's determination that no presumption applied in this case, not its determination that there was no actual undue influence.

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[1]Testamentary capacity—*i.e.*, soundness of mind and memory (*DeHart v. DeHart*, 2013 IL 114137, ¶ 20), the test of which is that "the testator must be capable of knowing what his [or her] property is, who are the natural objects of his [or her] bounty, and also be able to understand the nature, consequence, and effect of the act of executing a will" (*Dowie v. Sutton*, 227 Ill. 183, 196 (1907))—is not at issue in this case.

¶ 86 Turning to the presumption of undue influence, such a presumption will arise where (1) a fiduciary relationship exists between the testator and a substantial and comparatively disproportionate beneficiary under the will, (2) the testator is in a dependent situation in which the substantial and disproportionate beneficiary is in a dominant role, (3) the testator reposes trust and confidence in such beneficiary, and (4) the will is prepared or procured and executed in circumstances wherein such beneficiary is instrumental or participated. See *Kline*, 245 Ill. App. 3d at 422; *DeHart v. DeHart*, 2013 IL 114137, ¶ 30. Dorothy contends that the first and fourth elements were not shown. We agree, and because our determination on these two elements suffices to uphold the trial court's judgment, we do not address the remaining elements.

¶ 87 Here, the trial court determined that (1) Dorothy was not a fiduciary; (2) Mark made his own treatment decisions, instructed Dorothy to contact his longtime attorneys, and controlled the process; (3) there was no evidence of unusual decisions concerning Mark's confidence in Dorothy; and (4) Mark was fully engaged in the discussions of the various estate planning options and disagreed with Dorothy's suggestion at one point that she be given an outright bequest and decided in favor of a tax-saving vehicle. The court also noted that petitioners did not have an expectancy to own Coffman Truck Sales.

¶ 88 To establish a *prima facie* case of the elements necessary to raise a presumption of undue influence, a plaintiff must proffer at least some evidence on every essential element of the cause of action. *Nemeth v. Banhalmi*, 125 Ill. App. 3d 938, 960 (1984); *In re Foxfield Subdivision*, 396 Ill. App. 3d at 992. Once a *prima facie* case has been established, the burden is on the proponent of the will to present evidence tending to rebut the presumption. *Kline*, 245 Ill. App. 3d at 423. The amount of evidence required to rebut the presumption is not determined by a fixed rule, but where, for example, a strong presumption arises, a party may have to respond with substantial

evidence. *Nemeth*, 125 Ill. App. 3d at 960 (citing *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 463 (1983)). For example, where a fiduciary relationship exists as a matter of law, courts require clear and convincing evidence to rebut the presumption. *Id.* Thus, there is a three-part inquiry: (1) whether the plaintiff established a *prima facie* case of undue influence; (2) if the *prima facie* case was established, whether the defendants introduced evidence sufficient to rebut the resultant presumption; and, (3) if the rebuttal evidence was sufficient, whether the court's determination that the will was the product of undue influence is contrary to the manifest weight of the evidence. *Id.* at 961.

¶ 89 A. Presumption: First Element—Fiduciary Relationship

¶ 90 Turning to the first element—a fiduciary relationship between the testator and a comparatively disproportionate beneficiary under the will—petitioners argue first that the trial court erred in finding that no fiduciary relationship existed between Mark and Dorothy. They note that Dorothy was Mark's agent under his statutory short form power of attorney for property and, therefore, as a matter of law, she was a fiduciary. See *DeHart*, 2013 IL 114137, ¶ 31 ("As a matter of law, a power of attorney gives rise to a general fiduciary relationship between the grantor and the grantee."). Petitioners contend that the trial court erred in relying on *In re Estate of Stahling*, 2013 IL App (4th) 120271.

¶ 91 In *Stahling*, the court was presented with the certified question of whether the existence of a *health care* power of attorney created a fiduciary relationship that, as a matter of law, raised the presumption of undue influence in the execution of a deed that named the agent under the power of attorney as a joint tenant in the deed. *Id.* ¶ 1. The court answered the question in the negative. *Id.* It distinguished cases holding that a power of attorney creates a fiduciary relationship as a matter of law, determining that the case before it concerned a health care power of attorney and

that the case law involved powers of attorney involving "property and financial matters and their effect on property and financial transactions between the parties." *Id.* ¶ 19. Also, the cases did not address whether a health care power of attorney alone created a presumption of undue influence in property and financial transactions between the principal and the agent. *Id.* The court noted that the statutory short form power of attorney for health care does not require an agent to sign the document (*id.* ¶ 21 (citing 755 ILCS 45/4-10(a) (West 2004))) and that "it is only upon exercising granted powers that the agent is 'required to use due care to act for the benefit of the principal in accordance with the terms of the statutory health care power.' " *Id.* (quoting 755 ILCS 45/4-10(b) (West 2004)). Thus, to create a fiduciary relationship, the agent must accept the powers delegated by the principal, and the mere execution of a statutory power of attorney, "alone and without evidence of acceptance by the named agent," is not sufficient. *Id.* ¶ 22. The case law upon which the respondent relied involved the agent's acceptance of the relationship via his or her performance of authorized acts under the property powers of attorney. *Id.* Finally, the court held that, even when a health care power of attorney creates a fiduciary relationship, that relationship is limited to matters involving the principal's health care and does not extend to the control or management of property or financial matters *Id.* ¶¶ 23-26.

¶ 92 We disagree with petitioners that *Stahling* has no application here. The cases involving property and financial matters that *Stahling* distinguished, again, involved situations where the powers had been exercised and most did not involve statutory powers of attorney. See *In re Estate of DeJarnette*, 286 Ill. App. 3d 1082, 1088 (1997) (joint tenancy accounts, life insurance policy, and pension); *In re Estate of Miller*, 334 Ill. App. 3d 692, 697 (2002) (statutory power of attorney; transactions involved checking accounts and certificates of deposit); *In re Estate of Rybolt*, 258 Ill. App. 3d 886, 889 (1994) (joint tenancy accounts and payable on death certificates of deposit);

White v. Raines, 215 Ill. App. 3d 49, 59 (1991) (joint tenancy accounts and deed); *Lemp v. Hauptmann*, 170 Ill. App. 3d 753, 757 (1988) (check and deeds).

¶ 93 The statutory power of attorney document Mark executed in 2001, wherein he appointed Dorothy as his agent, provides,

> "NOTICE: THE PURPOSE OF THIS POWER OF ATTORNEY IS TO GIVE THE PERSON YOU DESIGNATE (YOUR 'AGENT') BROAD POWERS TO HANDLE YOUR PROPERTY, WHICH MAY INCLUDE POWERS TO PLEDGE, SELL OR OTHERWISE DISPOSE OF ANY REAL OR PERSONAL PROPERTY WITHOUT ADVANCE NOTICE TO YOU OR APPROVAL BY YOU. THIS FORM DOES NOT IMPOSE A DUTY ON YOUR AGENT TO EXERCISE GRANTED POWERS; BUT WHEN POWERS ARE EXERCISED, YOUR AGENT WILL HAVE TO USE DUE CARE TO ACT FOR YOUR BENEFIT AND IN ACCORDANCE WITH THIS FORM AND KEEP A RECORD OF RECEIPTS, DISBURSEMENTS AND SIGNIFICANT ACTIONS TAKEN AS AGENT."

Similarly, elsewhere, the document states,

> "The agent will be under no duty to exercise granted powers or to assume control of or responsibility for the principal's property or affairs; but when granted powers are exercised, the agent will be required to use due care to act for the benefit of the principal in accordance with the terms of the statutory property power and will be liable for negligent exercise."

Finally, the document provides that an agent "may not make or change a will."

¶ 94 At the time leading up to and including the execution of the 2018 will, Dorothy had not accepted or exercised the power of attorney for property that Mark granted her in 2001. Thus,

pursuant to the document, she was not a fiduciary who owed him a duty concerning his property. See also *In re Estate of Shelton*, 2017 IL 121199, ¶ 24 ("The [Illinois] Power of Attorney Act, which codifies an agent's fiduciary duty, recognizes that it is the agent's *exercise* of power pursuant to the authorizing document which triggers the agent's duty to the principal." (Emphasis added.)). Although Dorothy exercised the power of attorney to amend the real estate entities' documents around this time, she did so in April, about one month *after* Mark had executed his will, and these documents were not Mark's estate planning documents. Furthermore, as the final quoted provision makes clear, Dorothy had no power under the power of attorney Mark executed to make or change a will. Thus, petitioners' argument that Dorothy was a fiduciary as a matter of law also fails because Dorothy could not (via her alleged undue influence over him) have made or changed Mark's will thereunder.

¶ 95 B. Presumption: Fourth Element—Procuring of Will

¶ 96 Next, turning to the fourth element—that the will was prepared or procured and executed in circumstances wherein the beneficiary was instrumental or participated—petitioners argue that the trial court erred in determining that Dorothy did not participate in procuring Mark's will. They contend that *de novo* review applies because the court erred applying the law concerning the governing test, relied on irrelevant matters, and misread controlling precedent. They also argue that the court's findings were against the manifest weight of the evidence.

¶ 97 Petitioners initially contend that the trial court confused and conflated two distinct issues: (1) whether a beneficiary's initiative in the making of the will and its execution establishes that he or she participated in its procurement as required to raise the presumption of undue influence and (2) whether that initiative establishes the ultimate issue, *i.e.*, that the will resulted from undue influence. The court, they urge, was required to decide the narrow question whether Dorothy was

"instrumental in procuring the execution of the will, or participated in its preparation and execution." *Swenson v. Wintercorn*, 92 Ill. App. 2d 88, 100 (1968); *DeHart*, 2013 IL 114137, ¶ 30. Petitioners assert that the trial court erroneously merged the two issues and bypassed the threshold question.

¶ 98 Initially, we disagree with petitioners that *de novo* review applies, and we disagree that the trial court conflated two issues. The procedural posture of this case is an appeal from the granting of a directed finding. The trial court was required to first determine whether petitioners presented a *prima facie* case as a matter of law and, if so, to weigh the evidence and determine whether the case survived. *Minch*, 395 Ill. App. 3d at 398. Petitioners contend that *de novo* review applies because the trial court misconstrued the governing test, considered irrelevant matter, and misread controlling precedent. We reject those arguments below. The trial court weighed the evidence and determined that petitioners' *prima facie* case did not survive. Accordingly, the manifest-weight standard applies. *Kokinis*, 81 Ill. 2d at 154.

¶ 99 Petitioners take issue with the court's finding that Dorothy did not procure preparation of the will, which was premised, they contend, on the irrelevant assumption that she called Hynds at Mark's request. Even if true, petitioners argue, any contention that Mark made such a request is irrelevant because the issue is whether Dorothy, a substantial beneficiary, procured the will or participated in its preparation and execution. Additionally, petitioners argue that the court should not have relied on Dorothy's self-serving testimony that she called Hynds at Mark's request.

¶ 100 We reject petitioners' argument. The fact that Dorothy made the call to Hynds's firm was evidence the court could have considered as supporting petitioners' *prima facie* case. Weighed against this was the evidence that rebutted this interpretation of Dorothy's call, which we discuss

below. Thus, Dorothy's call was not irrelevant and did not constitute the application of an incorrect legal test.

¶ 101 The evidence showed that, on March 15, 2018, one day before Dorothy called Hynds, Dr. Showel recommended hospice care for Mark because additional cancer treatment would have been futile. Dorothy testified that she called Hynds on March 16, at Mark's direction. Hynds's firm had prepared Mark's 2001 will. Hynds's and Barkley's testimony reflected that it was Mark who decided to make a new will and directed its contents. Hynds testified that he went to the hospital on March 17 with three documents containing various estate planning options and that he discussed the options with Mark, who directed the discussion and the decision making. Mark's behavior was consistent with Dorothy's testimony that Mark desired to execute a new will. Further, Mark's issues with speaking (due to his tracheostomy) showed why it was necessary for Dorothy to make the call on Mark's behalf the day before.

¶ 102 Petitioners argue that the court misconstrued certain case law. Compare *In re Estate of Glogovsek*, 248 Ill. App. 3d 784, 790, 798 (1993) (holding that trial court erred in applying presumption of undue influence by testator's wife, causing him to designate his stepchildren as contingent beneficiaries if his wife predeceased him, instead of his sister and her children; however, addressing the fourth element, the court noted that the facts that the attorney never discussed the testator's will with him outside the wife's presence, that the testator changed his mind as to whom he desired to leave his property, and that the wife conveyed to the attorney this message were important to consider in assessing this element and sufficient to meet the fourth element), *Maher*, 237 Ill. App. 3d at 1018-19 (reversing dismissal of count alleging undue influence; petition adequately alleged existence of fiduciary relationship, and that relationship—along with allegations that the will was prepared by an attorney hired by the respondent and that

the respondent was the sole beneficiary under the new will—were sufficient to state a cause of action; the respondent, who was the testator's niece, had taken possession of the testator's papers and made decisions concerning her care; testator was physically and mentally incapacitated, as she was diagnosed with senile dementia and, several days prior to the execution of her new will, could not recall either long or short term events without coaching; will was executed in the presence of the respondent and two of her coworkers), and *Swenson*, 92 Ill. App. 2d at 97-98, 101 (affirming directed verdict of undue influence, the plaintiff nephew asserted that the defendant niece and her husband, who had helped the testator, who had begun having difficulty managing her financial affairs, move into their home; the defendant opened a joint checking account with the testator and shared a safe deposit box with her, made arrangements for the defendant's and her husband's attorney to come to the defendant's home, and, at the meeting, the testator, the attorney, and the defendant discussed her estate plans; the new will and trust gave the overwhelming balance—"a substantial benefit"—of her estate to the defendant, whereas, in an earlier will, she was due one half), with *In re Estate of Lemke*, 203 Ill. App. 3d 999, 1005-07 (1990) (affirming trial court's entry of directed verdict, holding that evidence did not establish undue influence by the testator's cousin; cousin retrieved old will from safe deposit box, made appointment with attorney, drove the testator there, and was present when the new will was discussed with the attorney; no evidence reflected that she suggested or persuaded the testator to revise her will; although the testator looked at the cousin on occasion during the consultation with the attorney, the cousin did not offer advice or comment, and the testator stated her desires to the attorney; also no substantial benefit was conferred upon the cousin—she was named executor and received a bequest of a china cabinet).

¶ 103 We disagree that the court misconstrued or misapplied the case law and disagree that its procurement finding was against the manifest weight of the evidence. The facts here are unlike

those in *Glogovsek*, *Maher*, and *Swenson*. Although Hynds did not speak to Mark before arriving at the hospital to present the three estate planning options and did not speak privately to Mark while at the hospital, Hynds testified that it was Mark, not Dorothy, who directed the decisions concerning his 2018 will, Mark understood the process, and Hynds's firm had prepared Mark's 2001 will. Further, Dorothy participated only briefly in the conversation, and Mark overruled her initial preference of an outright distribution, choosing instead the trust option that minimized tax liability. Barkley testified that it did not appear to her that Dorothy pressured Mark in any way or told him what to do. Also, Hynds testified that Mark read along with Hynds through the will and they discussed it. We also disagree with petitioners that postexecution events showed Dorothy's role in procuring the will. They note that, after the will was executed, Hynds's only communication was with Dorothy and that Hynds sent to Dorothy an invoice and she paid it. However, as we noted above, Mark's speech issues prevented him from using a telephone to speak to Hynds, and, given that he was hospitalized, it is reasonable that Hynds's invoice was sent to Dorothy. The trial court's procurement finding was not against the manifest weight of the evidence.

¶ 104 C. Alternative Presumption in Absence of Fiduciary Relationship

¶ 105 Petitioners' final argument is that the trial court erred in failing to apply the presumption allegedly required where the chief beneficiary procures a will of a debilitated testator. They rely on the concept that "[t]he active agency of the chief beneficiary in procuring a will, especially in the absence of those having an equal claim on the estate of the testator whose mind is debilitated by age and illness, is a circumstance indicating the probable exercise of undue influence." *In re Estate of DiMatteo*, 2013 IL App (1st) 122948, ¶ 63 (citing cases). The presumption of undue influence " 'arises irrespective of the existence of a fiduciary relationship between the testator and the beneficiary.' " *Id.* (quoting *Maher*, 237 Ill. App. 3d at 1018).

¶ 106 However, as Dorothy notes, the concept has its origin in *Mitchell v. Van Scoyk*, 1 Ill. 2d 160, 172 (1953), which was overruled on this point by *Belfield v. Coop*, 8 Ill. 2d 293, 311 (1956). In *Belfield*, the supreme court, discussing *Mitchell* and other cases, stated that "[a]ny language in those opinions indicating that such a presumption might arise absent a fiduciary relationship was unnecessary and is expressly repudiated." *Id.* Thus, we reject petitioners' contention that the trial court erred in failing to apply the presumption concerning a debilitated testator. The concept is no longer good law.[2]

¶ 107 Furthermore, even if the presumption was a viable option, it would not apply here because, at a minimum, petitioners did not present a *prima facie* case that Mark was so debilitated or infirm due to his illness that he was overpowered by Dorothy's alleged exercise of undue influence. Dr. Showel testified that, on March 15, 2018, he recommended hospice care for Mark, as further treatment for the cancer was likely to be futile. Dr. Lin's note from that day noted that Mark was much more oriented to place and time and that his mental status seemed normal. Although he noted that morphine potentially affects cognitive functioning, Dr. Showel's notes from that day did not mention that Mark exhibited any confusion. He testified that any concerns about Mark's mental status would have subsided by March 15. A nurse's March 16 notes stated that Mark remained oriented and alert, and Dr. Showel did not note any confusion on Mark's part. On March 15 and 16, Dr. Showel discussed Mark's care with Mark himself, and a March 17 note by Dr. Lin stated

[2]We acknowledge that, after it decided *Belfield*, the supreme court approvingly cited *Mitchell*. See *Greathouse v. Vosburgh*, 19 Ill. 2d 555, 571-72 (1960). However, in that subsequent decision, the court did not discuss *Belfield*.

that Mark remained oriented and alert and that his attorneys were coming that day to meet with him.

¶ 108 Hynds's testimony likewise reflected that Mark was able to make his own decisions and directed the process. Hynds drafted several documents based on Dorothy's directions the prior day, but, on March 17, when he saw Mark at the hospital, Mark made all the decisions, recognized Hynds after 20 years, and recalled that Hynds wore hearing aids. Hynds did not speak privately to Mark, but he testified that most of the conversation he had was with Mark, who "told me what he wanted." Mark read the will along with Hynds, holding it in front of him, and they would discuss a paragraph. Mark directed Hynds to cross out a paragraph concerning petitioners' right of first refusal upon the transfer or sale of Mark's ownership interests in Coffman Truck Sales and Coffman Real Estate. Also, it was "key" for Mark that Dorothy, through her estate plan, direct the distribution of all assets from his estate. Once Hynds explained the tax consequences of using the trust for the limited power of appointment, Mark decided that this is what he wanted, even though this was not initially a critical issue for Dorothy, who, ultimately, acquiesced. When asked if Dorothy appeared to be overpowering Mark, Hynds testified that this was not the case because "Mark was the more dominant of the two in terms of the decision making that was involved." Barkley also testified that Mark appeared to understand the issues Hynds discussed with him and asked intelligent questions, and she said that it did not appear that Dorothy pressured Mark in any way.

¶ 109 Similarly, attorney Wilson testified that, in March or April 2018, he spoke to Mark about the mandatory buyout language in the Coffman Truck Sales shareholder agreement and "Mark knew what he was asking me." During the conversations with Mark, it did not appear to Wilson that Mark was being pressured into making changes to the family entities' documents. LeMaster

testified that, after March 17, she saw Mark and he did not express any concern about a will he had executed or state that he was pressured into something by Dorothy.

¶ 110 In summary, even if the presumption concerning a debilitated testator was a viable option, petitioners failed to establish a *prima facie* case that Mark was debilitated or infirm due to his illness.

¶ 111 III. CONCLUSION

¶ 112 For the reasons stated, we affirm the judgment of the circuit court of Kendall County.

¶ 113 Affirmed.

2022 IL App (2d) 210053

In re Estate of Coffman, 2022 IL App (2d) 210053

Decision Under Review:	Appeal from the Circuit Court of Kendall County, No. 18-P-65; the Hon. Melissa S. Barnhart, Judge, presiding.
Attorneys for Appellant:	David E. Lieberman, of Levin Schreder & Carey Ltd., of Chicago, and Elizabeth A. McKillip, of Levin Schreder & Carey Ltd., of Lisle, for appellants.
Attorneys for Appellee:	Hal J. Wood, Matthew R. Barrett, and Michelle P. Lukic, of Horwood Marcus & Berk Chtrd., of Chicago, for appellee Dorothy Coffman. No brief filed for other appellee.

IN THE CIRCUIT COURT FOR
THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS – PROBATE DIVISION

In Re The Estate of MARK A. COFFMAN, Deceased.

PEGGY LeMASTER, and KATHLEEN MARTINEZ,

Petitioners.

vs.

DOROTHY COFFMAN and COURTNEY COFFMAN CRENSHAW,

Respondents.

Supplemental Proceeding

Case No. 2018 P 000065

FILED
JAN 11 2021
MATTHEW G. PROCHASKA
CIRCUIT CLERK KENDALL CO.

JUDGMENT ORDER

This matter before the Court on Respondent Dorothy Coffman's Motion for Directed Judgment pursuant to 735 ILCS 5/2-1110, the Court having heard oral argument and otherwise having been fully advised in the premises; IT IS HEREBY ORDERED THAT:

1. Respondent Dorothy Coffman's Motion for Directed Judgment is granted for the reasons stated on the record on January 5, 2021.

2. Judgment on Petitioners' Verified Petition to Contest Validity of the Will and to Admit Prior Will to Probate is hereby entered in favor of Respondent Dorothy Coffman and against Petitioners Peggy LeMaster and Kathleen Martinez.

3. The Court finds the Last Will and Testament of Mark Coffman dated March 17, 2018 that was admitted to probate is valid. Petitioners' petition to admit The Last Will and Testament of Mark Coffman dated August 4, 2001 to probate is denied.

Dated: January 11th, 2021

ENTERED _____
Hon. Melissa S. Barnhart
Circuit Judge

Prepared by:
Hal J. Wood
Matthew R. Barrett
Horwood Marcus & Berk Chartered
500 W. Madison St., Suite 3700
Chicago, IL 60661

IN THE CIRCUIT COURT FOR THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS – PROBATE DIVISION

In Re The Estate of MARK A. COFFMAN, Deceased.

PEGGY LeMASTER, and KATHLEEN MARTINEZ,

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Respondents.

Supplemental Proceeding

Case No. 2018 P 000065

FILED
JAN 11 2021
MATTHEW G. PROCHASKA
CIRCUIT CLERK KENDALL CO.

ORDER

This cause came before the Court on Petitioners' motion *in limine,* filed November 13, 2020, for entry of an order declaring, among other submissions, Petitioners' Exhibit 85, admissible at trial.

WHEREAS,

1. On November 13, 2020, petitioners filed a motion *in limine* declaring Exhibit 85, the transcript of the discovery deposition of Dorothy Coffman, admissible, over respondent's reservation of unspecified objections.

2. At the November 23, 2020, pretrial hearing, the Court reserved, with agreement of the parties, consideration of petitioners' motion *in limine* as to Exhibit 85..

3. On December 28, 2020, during their case-in-chief, petitioners submitted Petitioners' Supplemental Statement in Support of Motion *in Limine* Declaring Exhibits Admissible at Trial identifying specific transcript portions petitioners sought to have admitted into evidence pursuant to Supreme Court Rule 212 and Rule of Evidence 801(d)(2).

4. On December 28, 2020, and January 4, 2021, the Court deferred ruling on petitioners' request for admission of the cited excerpts of Exhibit 85.

5. Thereafter respondent moved for directed judgment on petitioners' pending will contest petition and the Court On January 5, 2021, issued an oral ruling granting the motion.

6. The Court has not yet entered judgment on the will contest petition.

IT IS HEREBY ORDERED:

The Petitioners' Motion to Admit Excerpts of Petitioners' Exhibit 85 identified in Petitioners' Supplemental Statement in Support of Motion *in Limine* Declaring Exhibits Admissible is denied.

ENTERED

Hon. Melissa S. Barnhart
Circuit Judge

Dated: January 11th, 2021

Prepared by:
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566437.1

FILED RL
KENDALL COUNTY ILLINOIS
2/8/2021 8:46 AM
MATTHEW G. PROCHASKA
CLERK OF THE CIRCUIT COURT

APPEAL TO THE APPELLATE COURT OF ILLINOIS
SECOND JUDICIAL DISTRICT
FROM THE CIRCUIT COURT FOR THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS – PROBATE DIVISION

In re The Estate of MARK A. COFFMAN, Deceased. PEGGY LeMASTER, and KATHLEEN MARTINEZ, Petitioners-Appellants. vs. DOROTHY COFFMAN and COURTNEY COFFMAN CRENSHAW, Respondents-Appellees.	*Supplemental Proceeding* Case No. 2018 P 000065 Hon. Melissa S. Barnhart, presiding

NOTICE OF APPEAL

Petitioners-appellants Peggy LeMaster and Kathleen Martinez hereby appeal to the Appellate Court of Illinois, Second Judicial District, pursuant to Supreme Court Rules 301 and 303, from the Judgment Order entered by the Circuit Court for the Twenty-third Judicial Circuit, Kendall County, Probate Division, on January 11, 2021, granting respondent Dorothy Coffman's Motion for Directed Judgment denying petitioner's Verified Petition to Contest Validity of the Will and to Admit Prior Will to Probate. (A copy of the Jan. 11, 2021 Judgment Order is attached hereto as **Exhibit A.**) Petitioners-appellants also appeal the Circuit Court's Order, entered on January 11, 2021, denying petitioners' Motion to Admit Excerpts of Petitioners' Exhibit 85, and all orders and rulings interlocutory to the foregoing orders. (A copy of the Jan. 11, 2021 Order is attached hereto as **Exhibit B.**)

By this appeal, petitioners-appellants request that the Appellate Court reverse the January 11, 2021 Judgment Order in its entirety, find the subject will is presumed the product of

undue influence as a matter of law, reverse the January 11, 2021 Order attached hereto as Exhibit B, and remand this action for will contest to the Circuit Court with instructions to try the action consistent with the Appellate Court's opinion and order of remand, and such other relief the Appellate Court shall deem just and appropriate under law.

Dated: February 8, 2021

Respectfully submitted,

PEGGY LeMASTER, and KATHLEEN MARTINEZ

By: */s/ David E. Lieberman*
One of their Attorneys

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CERTIFICATE OF SERVICE

David E. Lieberman, an attorney, hereby certifies that he caused the foregoing **NOTICE OF APPEAL** to be served by electronic mail on February 8, 2021, on the following persons, at the following addresses:

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/s/ David E. Lieberman

570819.1

IN THE CIRCUIT COURT FOR
THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS – PROBATE DIVISION

In Re The Estate of MARK A. COFFMAN, Deceased.

PEGGY LeMASTER, and KATHLEEN MARTINEZ,

Petitioners.

vs.

DOROTHY COFFMAN and COURTNEY COFFMAN CRENSHAW,

Respondents.

Supplemental Proceeding

Case No. 2018 P 000065

FILED
JAN 11 2021
MATTHEW G. PROCHASKA
CIRCUIT CLERK KENDALL CO.

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2. Judgment on Petitioners' Verified Petition to Contest Validity of the Will and to Admit Prior Will to Probate is hereby entered in favor of Respondent Dorothy Coffman and against Petitioners Peggy LeMaster and Kathleen Martinez.

3. The Court finds the Last Will and Testament of Mark Coffman dated March 17, 2018 that was admitted to probate is valid. Petitioners' petition to admit The Last Will and Testament of Mark Coffman dated August 4, 2001 to probate is denied.

Dated: January 11th, 2021

ENTERED _____
Hon. Melissa S. Barnhart
Circuit Judge

Prepared by:
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5639042/5/18736.000

A059 EXHIBIT A

IN THE CIRCUIT COURT FOR THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS – PROBATE DIVISION

In Re The Estate of MARK A. COFFMAN, Deceased.

PEGGY LeMASTER, and KATHLEEN MARTINEZ,

Petitioners.

vs.

DOROTHY COFFMAN and COURTNEY COFFMAN CRENSHAW,

Respondents.

Supplemental Proceeding

Case No. 2018 P 000065

FILED
JAN 11 2021
MATTHEW G. PROCHASKA
CIRCUIT CLERK KENDALL CO.

ORDER

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WHEREAS,

1. On November 13, 2020, petitioners filed a motion *in limine* declaring Exhibit 85, the transcript of the discovery deposition of Dorothy Coffman, admissible, over respondent's reservation of unspecified objections.

2. At the November 23, 2020, pretrial hearing, the Court reserved, with agreement of the parties, consideration of petitioners' motion *in limine* as to Exhibit 85..

3. On December 28, 2020, during their case-in-chief, petitioners submitted Petitioners' Supplemental Statement in Support of Motion *in Limine* Declaring Exhibits Admissible at Trial identifying specific transcript portions petitioners sought to have admitted into evidence pursuant to Supreme Court Rule 212 and Rule of Evidence 801(d)(2).

4. On December 28, 2020, and January 4, 2021, the Court deferred ruling on petitioners' request for admission of the cited excerpts of Exhibit 85.

5. Thereafter respondent moved for directed judgment on petitioners' pending will contest petition and the Court On January 5, 2021, issued an oral ruling granting the motion.

6. The Court has not yet entered judgment on the will contest petition.

IT IS HEREBY ORDERED:

The Petitioners' Motion to Admit Excerpts of Petitioners' Exhibit 85 identified in Petitioners' Supplemental Statement in Support of Motion *in Limine* Declaring Exhibits Admissible is denied.

ENTERED

Hon. Melissa S. Barnhart
Circuit Judge

Dated: January 11th, 2021

Prepared by:
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KENDALL COUNTY ILLINOIS
10/22/2018 4:08 PM
ROBYN INGEMUNSON
CLERK OF THE CIRCUIT COURT

IN THE CIRCUIT COURT FOR
THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS – PROBATE DIVISION

In Re The Estate of MARK A. COFFMAN, Deceased. PEGGY LeMASTER, and KATHLEEN MARTINEZ, Petitioners. vs. DOROTHY COFFMAN and COURTNEY COFFMAN CRENSHAW, Respondents.	*Supplemental Proceeding* Case No. 2018 P 000065 Hon. Melissa S. Barnhart, presiding

VERIFIED PETITION TO CONTEST VALIDITY OF THE WILL AND TO ADMIT PRIOR WILL TO PROBATE

Petitioners Peggy LeMaster and Kathleen Martinez, pursuant to 755 ILCS 5/8-1, respectfully petition for entry of an order: (1) declaring invalid the will admitted to probate by this Court's Order dated May 17, 2018 (**the "2018 Will"**); and (2) admitting to probate decedent's prior will, executed in 2001 (**the "2001 Will"**). Copies of the 2018 and 2001 Wills are attached hereto as **Exhibits A** and **B,** respectively, and their terms are incorporated herein.

In support of this petition, petitioners further allege as follows:

Parties

1. Mark Coffman died on April 26, 2018, at age 68, leaving the 2018 Will, executed less than six weeks earlier, on Saturday, March 17, 2018.

2. Petitioners Peggy LeMaster and Kathleen Martinez are Mr. Coffman's surviving sisters and interested persons under 755 ILCS 5/1-2.11.

3. Respondent Dorothy Coffman is Mr. Coffman's widow, a legatee under the 2018 Will individually and in her capacity as trustee of the "Family Trust" established thereunder, and is appointed Independent Executor of Mr. Coffman's estate.

4. Respondent Courtney Coffman Crenshaw is Mr. Coffman's daughter and a legatee under the 2018 Will.

Decedent's 2018 Will

5. On May 9, respondent Dorothy Coffman petitioned this Court for probate of the 2018 Will.

6. On May 17, 2018, the Court granted the petition, admitted the 2018 Will to probate and authorized Letters of Office to issue to Ms. Coffman as Independent Executor.

7. Under the 2018 Will, Mark Coffman revoked the 2001 Will and made a material change in his testamentary disposition of his interests in certain family businesses, to the detriment of petitioners, and to the benefit of respondent Dorothy Coffman.

8. Mr. Coffman owned at his death two-thirds of the outstanding shares of Coffman Truck Sales, Inc., an Illinois Corporation, founded in 1948 by his and petitioners' late father, Herman "Glenn" Coffman. Mark Coffman inherited Glenn Coffman's shares of Coffman Truck Sales after Glenn's death in 1991, and acquired certain additional shares in 2018 after an uncle, Franklin Coffman, died. Petitioners are informed and believe the value of Coffman Truck Sales is substantially in excess of $5 million.

9. Mark Coffman also owned at his death one-third of the membership interests in Coffman Real Estate, LLC, a related family business that owns, among other real estate, the Aurora property on which Coffman Truck Sales operates. Petitioners are informed and believe the value of the real estate owned by Coffman Real Estate exceeds $5 million.

10. Under the terms of the 2001 Will, Mr. Coffman made certain provisions to ensure that his disposition of his ownership interests in the aforementioned Coffman family businesses ultimately remained with his father's descendants. (*See* Ex. B, Art. Sixth, Seventh and Eighth.) Under the 2001 Will, Mr. Coffman left his interests in Coffman Truck Sales and Coffman Real Estate in trust, for the benefit of his widow, respondent Dorothy Coffman, during her lifetime, to be distributed at her death to Mr. Coffman's two sisters, petitioners Peggy LeMaster and Kathleen Martinez, if then living, or to their respective descendants, *per stirpes*. (*See* Ex. B, Art. Sixth, Seventh and Eighth.)

11. Mark Coffman's 2018 Will lacks any such special provisions ensuring that ownership of these Coffman family business interests ultimately remains with founder Glenn Coffman's descendants. Instead, it grants complete power and discretion over the ultimate disposition of these interests to Dorothy Coffman, granting certain of Mark Coffman's ownership interests in Coffman Truck Sales or Coffman Real Estate to Dorothy Coffman outright, and the rest to her as trustee of the Family Trust, also giving her the power to appoint under her own will the recipients of those interests held in trust at her death. (*See* Ex. A. Art. Sixth and Seventh.)

The 2018 Will is Invalid

12. The 2018 Will is invalid and resulted from undue influence exerted by Dorothy Coffman.

13. Petitioners are informed and believe that until March 17, 2018, for the 17-year period since executing his 2001 Will, Mark Coffman never changed his will or his estate plan. The 2018 Will was executed on Saturday, March 17, 2018, during the final stages of Mr.

Coffman's last illness, when he was physically and psychologically weakened and vulnerable to undue influence, and dependent on Dorothy Coffman.

14. From at least 2016 until his death, Mr. Coffman suffered from metastatic cancer, affecting his throat, lungs, arm, liver and other areas, and requiring him to endure a number of debilitating medical treatments and surgical procedures.

15. In or about July 2016, Mr. Coffman underwent a laryngectomy, tracheotomy, removal of part of his lung, and another procedure to insert a rod in his right, dominant arm to address bone degeneration. Mr. Coffman thereafter underwent radiation therapy, chemotherapy and other drug treatments, including, during his last months, regular doses of morphine.

16. Mr. Coffman's medical and psychological condition progressively worsened in 2017 and 2018. He underwent an additional arm surgery in 2017 to address further bone degeneration, and was rushed to the emergency room in or about December 2017, and again in January 2018, complaining of severe pain and difficulty breathing.

17. On March 11, 2018, Mr. Coffman was admitted to Rush University Medical Center (**"Rush"**), complaining of pain. That week, a Rush staff oncologist advised family members that Mr. Coffman likely had no more than one or two months to live. He never returned to live at his home thereafter.

18. On March 17, Mr. Coffman executed the 2018 Will. He underwent another surgery on his right arm on March 19. Mr. Coffman remained at Rush and other care facilities until his death approximately six weeks later.

19. Beginning in 2016, Mr. Coffman reported chronic lethargy and pain from his illness and treatments, and, petitioners are informed and believe, experienced depression and anxiety. After having consistently worked long, intensive hours throughout his adult life, Mr.

Coffman was no longer able by 2016 to continue to devote full-time efforts to his duties as president of Coffman Truck Sales.

20. Among other ill effects of his 2016 surgeries, Mr. Coffman lost much of his ability to speak and converse, and became increasingly reliant on text messaging to communicate with family members and others. By mid-March 2018, Mr. Coffman was often unable to engage in coherent or sustained communication with visiting family members, and often appeared distracted, withdrawn, and inattentive to people and events before him.

21. During Mark Coffman's last illness, Dorothy Coffman became the dominant party in a fiduciary relationship in which Mr. Coffman grew heavily dependent on her, and reposed trust and confidence in her.

22. The fiduciary relationship existed in fact and as a matter of law. Mr. Coffman became dependent on Ms. Coffman for help with, among other matters, various activities of daily living, which included driving him to and from work, helping him dress as he lost much of the function in his arm, and helping him with other personal needs. Petitioners are informed and believe that Ms. Coffman also assumed and exercised control over Mr. Coffman's financial matters throughout his last illness.

23. By at least the time of his final hospitalization in March 2018, and continuing until his death, Mark Coffman depended heavily on Dorothy Coffman. Mr. Coffman's ability to communicate continued to degenerate as his illness progressed. By early March 2018, after having relied principally on text messaging to communicate since his laryngectomy in 2016, Mr. Coffman lost the capability to do so. Ms. Coffman continued to send and respond to text messages on his behalf on his phone thereafter, and Mr. Coffman depended on Ms. Coffman to communicate with his family members, business associates and treating physicians and nurses.

During Mr. Coffman's final two months, Ms. Coffman did not leave him alone with petitioners or other family members.

24. Dorothy Coffman was a fiduciary as a matter of law as agent under Mark Coffman's power of attorney for property. Ms. Coffman exercised her power thereunder in April 2018 to execute an amended limited liability company operating agreement for Coffman Real Estate. Petitioners are informed and believe Ms. Coffman exercised the power to execute other business agreements or documents on behalf of Mark Coffman in March and April 2018.

25. Mr. Coffman executed the 2018 Will on Saturday, March 17, 2018, while hospitalized and physically and psychologically vulnerable to undue influence during the final stages of his terminal illness, having lost his ability to communicate, under the effects, plaintiffs are informed or believe, of morphine or other psychoactive medication, and during a period in which he often appeared withdrawn and inattentive to people and events before him.

26. Petitioners are informed and believe that preparation of the 2018 Will was procured by Dorothy Coffman.

27. The 2018 Will contains apparent mistakes and other indications it was prepared hurriedly. One provision is crossed out by hand, a provision that any conveyance of interests in Coffman Truck Sales or Coffman Brothers Real Estate "shall first be offered to my sisters . . . to purchase under the terms of any applicable buy-sell agreement, or if none, then at the value of such interests as determined for Illinois estate tax purposes." (*See* Ex. A, Art. Eighth, Sec. 6.) The only witnesses who attested to the 2018 Will are the drafting attorney and his legal assistant.

28. The 2018 Will resulted from undue influence exerted by Ms. Coffman, while she was the dominant party in a fiduciary relationship with Mr. Coffman, and while he was highly vulnerable to undue influence as a result of his medical and psychological conditions and

prescribed morphine or other psychoactive drugs. Mr. Coffman revoked his 2001 Will and executed his 2018 Will only because his condition in March 2018 left him so vulnerable that the influence destroyed his freedom concerning the disposition of his estate.

29. The 2018 Will reflects the will of Ms. Coffman, not Mr. Coffman, who would not have executed the 2018 Will if left to act freely, and but for his vulnerable condition and Ms. Coffman's overpowering his will through undue influence. Among other efforts, plaintiffs are informed and believe Ms. Coffman urged and persuaded Mr. Coffman to execute the 2018 Will, including making repeated disparaging remarks to Mr. Coffman concerning the capabilities of petitioner Peggy LeMaster's sons, who were employed at Coffman Truck Sales, assisted Mark Coffman in managing the business, and were among the descendants of Glenn Coffman who might ultimately have inherited Mark's interest in the company under his 2001 Will, which petitioners are informed and believe was in effect until the 2018 Will.

30. Petitioners believe the 2001 Will is the valid last will of Mark Coffman.

Prayer for Relief

WHEREFORE, petitioners Peggy LeMaster and Kathleen Martinez respectfully request entry of an order:

1. Declaring the 2018 Will invalid;

2. Admitting the 2001 Will to probate; and

3. Awarding petitioners such other and further relief as this Court deems fair, equitable and appropriate under Illinois law and principles of equity.

Dated: October 22, 2018

Respectfully submitted,

PEGGY LeMASTER, and KATHLEEN MARTINEZ

By: */s/ David E. Lieberman*
One of their Attorneys

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VERIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the following individual states that the allegations of the foregoing petition are true and correct to the best of her knowledge, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily is informed and believes the same to be true..

Peggy LeMaster

2018L161

Last Will and Testament of

FILED
MAY 07 2018
ROBYN INGEMUNSON
CIRCUIT CLERK KENDALL CO.

MARK A. COFFMAN

I, MARK A. COFFMAN, of Plano, Illinois, make this my will and revoke all prior wills and codicils.

FIRST
Taxes - Expenses

My executor shall pay all expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering legacies, and other proper charges against my estate (excluding debts secured by real property or life insurance). My executor shall also pay all estate and inheritance taxes assessed by reason of my death, except that the amount, if any, by which the estate and inheritance taxes shall be increased as a result of the inclusion of property in which I may have a qualifying income interest for life or over which I may have a power of appointment shall be paid by the person holding or receiving that property. Interest and penalties concerning any tax shall be paid and charged in the same manner as the tax. I waive for my estate all rights of apportionment or reimbursement for any payments made pursuant to this article.

My executor's selection of assets to be sold to make the foregoing payments or to satisfy any pecuniary legacies, and the tax effects thereof, shall not be subject to question by any beneficiary.

My executor shall make such elections and allocations under the tax laws as my executor deems advisable, without regard to the relative interests of the beneficiaries and without liability to any person. No adjustment shall be made between principal and income or in the relative interests of the beneficiaries to compensate for the effect of elections or allocations under the tax laws made by my executor or by the trustee.

The balance of my estate which remains after the foregoing payments have been made or provided for shall be disposed of as hereinafter provided.

SECOND
Family

My wife's name is DOROTHY L. COFFMAN, and she is herein referred to as "my wife." I have one child now living, namely: COURTNEY COFFMAN.

CIRCUIT COURT
True copy of the original on file in my office attested to this 11th day of May, 2018
Robyn Ingemunson
Clerk of the Circuit Court 23rd Judicial Circuit
Kendall County, IL
Justine Comeu

A071 EXHIBIT A

THIRD
Personal Effects

I give all my personal and household effects, automobiles, boats and collections, and any insurance policies thereon, to my wife if she survives me by 30 days, otherwise to my sisters, KATHLEEN SUE MARTINEZ and PEGGY ANN LeMASTER, and to my wife's sisters and brother, JANE ELLEN HYTE, BARBARA JEAN SCHIRADELLY, SUSAN KAY HARRIS, and ALVIN EUGENE BENSON, who so survive me to be divided equally among them as they agree. My executor shall sell any property as to which there is no agreement within 60 days after admission of this will to probate and shall add the proceeds to the residue of my estate.

FOURTH
Special Gift of Money

I give $100,000.00 to my daughter, COURTNEY COFFMAN, if she survives me.

FIFTH
Special Gift of Property

If my wife survives me by 30 days, I give to her all my interests in our residences, including seasonal and vacation homes, and the Lake Holiday lot, and any insurance policies thereon, subject to any mortgage indebtedness and unpaid taxes and assessments on the properties.

SIXTH
Residue

If my wife survives me, then I make the following gifts:

(a) Family Trust. I give the tax-sheltered gift to the trustee to hold as the Family Trust as hereinafter provided. To the extent possible, any shares of COFFMAN TRUCK SALES, INC., and any units in COFFMAN BROS. REAL ESTATE, LLC, shall be used to fund the Family Trust.

(b) Residue. I give the balance of my estate to my wife.

If my wife does not survive me, then I give the balance of my estate to my executor to hold as the Family Trust as hereinafter provided.

SEVENTH
Family Trust

The trustee as of my death shall set aside the balance of the trust estate, or all thereof if my wife does not survive me, as a separate trust. The trust shall be designated the "Family Trust" and shall be held and disposed of as follows:

SECTION 1: Income. If my wife survives me, then commencing with my death the trustee shall pay the income from the Family Trust in convenient installments, at least annually, to her during her lifetime.

Principal Invasion. The trustee may also pay to my wife such sums from principal as the trustee deems necessary or advisable from time to time for her health and maintenance in reasonable comfort, considering her income from all sources known to the trustee.

SECTION 2: Power of Appointment. On the death of my wife, if my wife has survived me, the trustee shall distribute the principal to any one or more persons or entities other than my wife, her estate, her creditors, or the creditors of her estate, as my wife appoints by will, specifically referring to this power of appointment.

SECTION 3: Distribution. Upon the death of my wife, or upon my death if my wife does not survive me, the Family Trust not effectively appointed shall be distributed as follows: (i) 50% thereof in equal shares to the descendants per stirpes of my sisters KATHLEEN SUE MARTINEZ and PEGGY ANN LeMASTER, subject to postponement of possession as provided below; and (ii) 50% thereof in equal shares to the descendants per stirpes of my wife's sisters and brother, JANE ELLEN HYTE, BARBARA JEAN SCHIRADELLY, SUSAN KAY HARRIS, and ALVIN EUGENE BENSON, subject to postponement of possession as provided below. In the event of a complete failure of descendants under (i) or (ii) of this Section, the failed 50% share shall be added to the other 50% share and distributed pursuant thereto.

SECTION 4: Postponement of Possession. Each share of the Family Trust which is distributable to a beneficiary who has not reached the age of 21 years shall immediately vest in the beneficiary, but the trustee shall (a) establish with the share a custodianship for the beneficiary under a Uniform Transfers or Gifts to Minors Act, or (b) retain possession of the share as a separate trust, paying to or for the benefit of the beneficiary so much or all of the income and principal of the share as the trustee deems necessary or advisable from time to time for his or her health, maintenance in reasonable comfort, education (including postgraduate) and best interests, adding to principal any income not so paid, and distributing the share to the beneficiary when he or she reaches the age of 21 years or to the estate of the beneficiary if he or she dies before receiving the share in full.

EIGHTH
Administrative Provisions

The following provisions shall apply to the trust estate and to each trust under this will:

SECTION 1: Facility of Payment. If income or discretionary amounts of principal become payable to a minor or to a person under legal disability or to a person not adjudicated disabled but who, by reason of illness or mental or physical disability, is in the opinion of the trustee unable properly to manage his or her affairs, then that income or principal shall be paid or expended only in such of the following ways as the trustee deems best: (a) directly to the beneficiary or his or her attorney in fact; (b) to the legally appointed guardian of the beneficiary;

(c) to a custodian for the beneficiary under a Uniform Transfers or Gifts to Minors Act; (d) by the trustee directly for the benefit of the beneficiary; (e) to an adult relative or friend in reimbursement for amounts properly advanced for the benefit of the beneficiary.

SECTION 2: Spendthrift. The interests of beneficiaries in principal or income shall not be subject to the claims of any creditor, any spouse for alimony or support, or others, or to legal process, and may not be voluntarily or involuntarily alienated or encumbered. This provision shall not limit the exercise of any power of appointment.

The rights of beneficiaries to withdraw trust property are personal and may not be exercised by a legal representative, attorney in fact or others.

SECTION 3: Accrued Income. Income received after the last income payment date and undistributed at the termination of any estate or interest shall, together with any accrued income, be paid by the trustee as income to the persons entitled to the next successive interest in the proportions in which they take that interest.

SECTION 4: Common Fund and Consolidation. For convenience of administration or investment, the trustee may hold separate trusts as a common fund, dividing the income proportionately among them, assign undivided interests to the separate trusts, and make joint investments of the funds belonging to them. The trustee may consolidate any separate trust with any other trust with similar provisions for the same beneficiary or beneficiaries.

SECTION 5: Powers. The trustee shall have the following powers in addition to those now or hereafter conferred by the statutes of Illinois upon the trustee of an Illinois trust:

(a) To retain any property (including stock of any corporate trustee hereunder or a parent or affiliate company) originally constituting the trust or subsequently added thereto, and to invest and reinvest the trust property in bonds, stocks, mortgages, notes, bank deposits, options, futures, limited partnership interests, shares of registered investment companies and real estate investment trusts, or other property of any kind, real or personal, domestic or foreign; the trustee may retain or make any investment without liability, even though it is not of a type, quality, marketability or diversification considered proper for trust investments;

(b) To sell at public or private sale, contract to sell, grant options to buy, convey, transfer, exchange, or partition any real or personal property of the trust for such price and on such terms as the trustee sees fit, subject to SECTION 6 herein;

(c) To deal with a corporate trustee hereunder individually or a parent or affiliate company;

(d) To distribute income and principal in cash or in kind, or partly in each, and to allocate or distribute undivided interests or different assets or disproportionate interests in assets, and no adjustment shall be made to compensate for a disproportionate allocation of unrealized gain for federal income tax purposes; to value the trust property and to sell any part or all thereof

in order to make allocation or distribution; no action taken by the trustee pursuant to this paragraph shall be subject to question by any beneficiary;

(e) To determine in cases not covered by statute the allocation of receipts and disbursements between income and principal, except that (i) if the trust is beneficiary or owner of an individual account in any employee benefit plan or individual retirement plan, income earned after death in the account shall be income of the trust, and if the trustee is required to pay all trust income to a beneficiary, the trustee shall collect and pay the income of the account to the beneficiary at least quarterly (and to the extent that all income cannot be collected from the account, the deficiency shall be paid from the principal of the trust), and (ii) reserves for depreciation shall be established out of income only to the extent that the trustee determines that readily marketable assets in the principal of the trust will be insufficient for any renovation, major repair, improvement or replacement of trust property which the trustee deems advisable;

(f) To elect, pursuant to the terms of any employee benefit plan, individual retirement account or insurance contract, the mode of distribution of the proceeds thereof, and no adjustment shall be made in the interests of the beneficiaries to compensate for the effect of the election; and

(g) To inspect and monitor businesses and real property (whether held directly or through a partnership, corporation, trust or other entity) for environmental conditions or possible violations of environmental laws; to remediate environmentally-damaged property or to take steps to prevent environmental damage in the future, even if no action by public or private parties is currently pending or threatened; to abandon or refuse to accept property which may have environmental damage; the trustee may expend trust property to do the foregoing, and no action or failure to act by the trustee pursuant to this paragraph shall be subject to question by any beneficiary; and

(h) Notwithstanding anything herein contained to the contrary, no trustee whenever acting may exercise any power or discretion which could cause a trust to be includable in her or his estate for federal estate tax purposes solely by virtue of a power or discretion granted to her or him as a trustee hereunder.

~~SECTION 6: Special Property. Notwithstanding anything herein contained to the contrary, any sale, transfer, liquidation, or exchange of any interests in COFFMAN TRUCK SALES, INC., or COFFMAN BROS. REAL ESTATE, LLC, shall first be offered to my sisters KATHLEEN SUE MARTINEZ and PEGGY ANN LeMASTER, as shall then be living, to purchase under the terms of any applicable buy-sell agreement, or if none, then at the value of such interests as determined for Illinois estate tax purposes.~~

SECTION 7: Accounts and Compensation. The trustee shall render an account of trust receipts and disbursements and a statement of assets at least annually to each adult beneficiary then entitled to receive or have the benefit of the income from the trust. An account is binding on each beneficiary who receives it and on all persons claiming by or through the beneficiary, and the trustee is released, as to all matters stated in the account or shown by it, unless the

beneficiary commences a judicial proceeding to assert a claim within five years after the mailing or other delivery of the account. The trustee shall be reimbursed for all reasonable expenses incurred in the management and protection of the trust and shall receive compensation for its services in accordance with its schedule of fees in effect from time to time. The trustee's regular compensation shall be charged half against income and half against principal, except that the trustee shall have full discretion at any time or times to charge a larger portion or all against income.

SECTION 8: Small Trust Termination and Perpetuities Savings. A corporate trustee in its discretion may terminate and distribute any trust thereunder if the corporate trustee determines that the costs of continuance thereof will substantially impair accomplishment of the purposes of the trust. The trustee shall terminate and forthwith distribute any trust created hereby, or by exercise of a power of appointment hereunder, and still held 21 years after the death of the last to die of myself and the beneficiaries in being at my death. Distribution under this section shall be made to the persons then entitled to receive or have the benefit of the income from the trust in the proportions in which they are entitled thereto, or if their interests are indefinite, then in equal shares.

SECTION 9: Trustee Succession. DOROTHY L. COFFMAN shall be the initial trustee. DOROTHY L. COFFMAN may, by signed instrument filed with the trust records, (a) designate one or more individuals or qualified corporations to act with or to succeed her, consecutively or concurrently in any stated combination and on any stated contingency, and (b) amend or revoke the designation before the designated trustee begins to act. In the event that DOROTHY L. COFFMAN should die, resign, or be unable or willing to act as trustee, and she has not designated a successor, I nominate KATHLEEN SUE MARTINEZ and PEGGY ANN LeMASTER, or the survivor of them, as trustee. Any trustee may resign at any time by written notice to the next named trustee or co-trustee, if any, otherwise to each beneficiary then entitled to receive or have the benefit of the income from the trust. In case of the resignation, refusal or inability to act of all of the foregoing named trustees acting or appointed to act hereunder, or any subsequent trustee for whom no successor is named herein, the beneficiary or a majority in interest of the beneficiaries then entitled to receive or have the benefit of the income from the trust shall appoint a successor trustee, but no beneficiary or person legally obligated to a beneficiary shall be such a successor trustee.

Every successor trustee shall have all the powers given the originally named trustee. No successor trustee shall be personally liable for any act or omission of any predecessor. With the approval of the beneficiary or a majority in interest of the beneficiaries then entitled to receive or have the benefit of the income from the trust, a successor trustee may accept the account rendered and the property received as a full and complete discharge to the predecessor trustee without incurring any liability for so doing.

The parent or legal representative of a beneficiary under disability shall receive notice and have authority to act for the beneficiary under this section.

No trustee wherever acting shall be required to give bond or surety or be appointed by or account for the administration of any trust to any court.

SECTION 10: Donee's Will. In disposing of any trust property subject to a power to appoint by will, the trustee may rely upon an instrument admitted to probate in any jurisdiction as the will of the donee or may assume that the power was not exercised if, within 3 months after the death of the donee, the trustee has no actual notice of a will which exercises the power. The trustee may rely on any document or other evidence in making payment under this will and shall not be liable for any payment made in good faith before it receives actual notice of a changed situation.

SECTION 11: Trustee for Out-of-State Property. If for any reason the trustee is unwilling or unable to act as to any property, such person or qualified corporation as the trustee shall from time to time designate in writing shall act as special trustee as to that property. Any person or corporation acting as special trustee may resign at any time by written notice to the trustee. Each special trustee shall have the powers granted to the trustee by this will, to be exercised only with the approval of the trustee, to which the net income and the proceeds from sale of any part or all of the property shall be remitted to be administered under this will.

SECTION 12: Generation-Skipping Tax. To enable trusts to be either completely exempt or nonexempt from generation-skipping tax, or for any other reason, the trustee may divide a trust into two or more separate trusts and may hold an addition to a trust as a separate trust. The rights of beneficiaries shall be determined as if the trusts were aggregated, but the trustee may pay principal to beneficiaries and taxing authorities disproportionately from the trusts. The trustee shall not be liable for deciding in its discretion to exercise or not exercise these powers.

Upon division or distribution of an exempt trust and a nonexempt trust held hereunder, the trustee in its discretion may allocate property from the exempt trust first to a share from which a generation-skipping transfer is more likely to occur.

If the trustee considers that any distribution from a trust hereunder other than pursuant to a power to withdraw or appoint is a taxable distribution subject to a generation-skipping tax payable by the distributee, the trustee shall augment the distribution by an amount which the trustee estimates to be sufficient to pay the tax and shall charge the same against the trust to which the tax relates.

If the trustee considers that any termination of an interest in trust property hereunder is a taxable termination subject to a generation-skipping tax, the trustee shall pay the tax from the portion of the trust property to which the tax relates, without adjustment of the relative interests of the beneficiaries.

SECTION 13: Tax-Sheltered Gift. "Tax-sheltered gift" means:

(a) Any assets that would not qualify for the federal estate tax marital deduction even if distributed outright to my spouse and that are not disposed of otherwise; and

(b) After considering other property passing at my death that does not qualify for the federal estate tax marital or charitable deductions in my estate, including the property described in (a), the largest pecuniary amount that results in no, or the least possible, Illinois estate tax payable by reason of my death.

I recognize that the tax-sheltered gift may be zero, may be reduced by certain state death taxes, and may be affected by any election not to deduct administration expenses for federal estate tax purposes.

NINTH
Contest of Will

It is further my will that if any legatee or devisee herein named shall object to the probate or contest the validity of this will or any provision or provisions thereof, such person shall be thereby deprived of any and all legacy, devise, or beneficial interest hereunder and of any legacy, devise or share in my estate, the legacy, devise or share of such person shall become a part of my residuary estate, such person shall be excluded from taking any part of such residuary estate, and the same shall be divided among or given to the other persons or person entitled to take such residuary estate.

TENTH

Executor Appointment. I appoint DOROTHY L. COFFMAN as executor of this will. If for any reason DOROTHY L. COFFMAN is unwilling or unable to act as executor, then I appoint KATHLEEN SUE MARTINEZ and PEGGY ANN LeMASTER, or the survivor of them, to act as executor.

Executor Powers. I give my executor the same powers as to the administration and investment of my estate which I have granted the trustee with respect to the trust property, to be exercised without authorization by any court and, as to property subject to administration outside the state of my domicile, only with the approval of my domiciliary executor. No bond or security shall be required of any executor wherever acting. If permitted by law and if not inconsistent with the best interests of the beneficiaries as determined by my executor, the administration of my estate shall be independent of the supervision of any court.

Executed Trusts. If at my death any trust under this will has become executed, my executor shall make distribution to the beneficiary without the intervention of the trustee.

Headings. The headings in this will are for convenience of reference only and shall not be considered in the interpretation of this will.

IN WITNESS WHEREOF I have signed this will, consisting of nine (9) pages, this 17th day of March, 2018.

MARK A. COFFMAN

We certify that the above instrument was on the date thereof signed and declared by MARK A. COFFMAN as his will in our presence and that we, at his request and in his presence and in the presence of each other, have signed our names as witnesses thereto, believing MARK A. COFFMAN to be of sound mind and memory at the time of signing.

Witnesses		Addresses
John W. Hyde	residing at	1325 Jerome Ave Morris, Illinois 60450
Lisa A. Barkley	residing at	433 West Avenue Marco, Illinois 60450

A079

Last Will and Testament
of

MARK A. COFFMAN

I, **MARK A. COFFMAN**, of Plano, Illinois, make this my will and revoke all prior wills and codicils.

FIRST

Taxes - Expenses

My executor shall pay all expenses of my last illness and funeral, costs of administration including ancillary, costs of safeguarding and delivering legacies, and other proper charges against my estate (excluding debts secured by real property or life insurance). My executor shall also pay all estate and inheritance taxes assessed by reason of my death, except that the amount, if any, by which the estate and inheritance taxes shall be increased as a result of the inclusion of property in which I may have a qualifying income interest for life or over which I may have a power of appointment shall be paid by the person holding or receiving that property. Interest and penalties concerning any tax shall be paid and charged in the same manner as the tax. I waive for my estate all rights of apportionment or reimbursement for any payments made pursuant to this article.

My executor's selection of assets to be sold to make the foregoing payments or to satisfy any pecuniary legacies, and the tax effects thereof, shall not be subject to question by any beneficiary.

My executor shall make such elections and allocations under the tax laws as my executor deems advisable, without regard to the relative interests of the beneficiaries and without liability to any person. No adjustment shall be made between principal and income or in the relative interests of the beneficiaries to compensate for the effect of elections or allocations under the tax laws made by my executor or by the trustee.

A080 EXHIBIT B

The balance of my estate which remains after the foregoing payments have been made or provided for shall be disposed of as hereinafter provided.

SECOND

Family

My wife's name is **DOROTHY L. COFFMAN**, and she is herein referred to as "my wife." I have one child now living, namely: **COURTNEY COFFMAN**.

THIRD

Personal Effects

I give all my personal and household effects, automobiles, boats and collections, and any insurance policies thereon, to my wife if she survives me by 30 days, otherwise to my sisters, **KATHLEEN SUE MARTINEZ** and **PEGGY ANN LeMASTER**, and to my wife's sisters and brother, **JANE ELLEN HYTE**, **BARBARA JEAN SCHIRADELLY**, **SUSAN KAY HARRIS**, and **ALVIN EUGENE BENSON**, who so survive me to be divided equally among them as they agree. My executor shall sell any property as to which there is no agreement within 60 days after admission of this will to probate and shall add the proceeds to the residue of my estate.

FOURTH

Special Gift of Money

I give $100,000.00 to my daughter, **COURTNEY COFFMAN**, if she survives me.

FIFTH

Special Gift of Property

If my wife survives me by 30 days, I give to her all my interests in our residences, including seasonal and vacation homes, and the Lake Holiday lot, and any insurance policies thereon, subject to any mortgage indebtedness and unpaid taxes and assessments on the properties.

SIXTH

Residue

All the residue of my estate, wherever situated, including lapsed legacies, but expressly excluding any property over which I may have power of appointment at my death, I give to ***DOROTHY L. COFFMAN****, as trustee, upon the trusts hereinafter provided.*

SEVENTH

Marital Trust

If my wife survives me, the trustee as of my death shall set aside out of the trust estate as a separate trust for her benefit (undiminished to the extent possible by any estate or inheritance taxes or other charges) a fraction of the trust property of which (i) the numerator is the smallest amount which, if allowed as a federal estate tax marital deduction, would result in the least possible federal estate tax payable by reason of my death, and (ii) the denominator is the federal estate tax value of the assets included in my gross estate which became (or the proceeds, investments or reinvestments of which became) trust property. In determining the amount of the numerator the trustee shall consider the credit for state death taxes only to the extent those taxes are not thereby incurred or increased and shall assume that none of the Family Trust hereinafter established qualifies for a federal estate tax deduction.

For purposes of the preceding paragraph, the trust property is all property in the trust estate which would qualify for the federal estate tax marital deduction if it were distributed outright to my wife, except that any shares of ***COFFMAN TRUCK SALES, INC.*** *and any units in* ***COFFMAN BROS. REAL ESTATE, LLC*** *shall be included only to the extent required to obtain a denominator in an amount equal to the numerator. For purposes of this will, my wife shall be deemed to have survived me if the order of our deaths cannot be proved.*

My wife shall have the right by written notice to require the trustee to convert unproductive property in the trust to productive property within a reasonable time.

The trust shall be designated the "Marital Trust" and shall be held and disposed of as follows:

SECTION 1: Income. Commencing with my death the trustee shall pay the income from the Marital Trust in convenient installments, at least quarterly, to my wife during her lifetime.

Principal Invasion. The trustee may also pay to my wife such sums from principal (excluding any shares of **COFFMAN TRUCK SALES, INC.** and any units in **COFFMAN BROS. REAL ESTATE, LLC** or the proceeds from the sale thereof pursuant to any operative buy and sell agreement in existence at my death relating thereto) as the trustee deems necessary or advisable from time to time for her health and maintenance in reasonable comfort, considering her income from all sources known to the trustee.

SECTION 2: Election. My executor may elect to have a specific portion or all of the Marital Trust, herein referred to as the "marital portion," treated as qualified terminable interest property for federal estate tax purposes. If an election is made as to less than all of the Marital Trust, the specific portion shall be expressed as a fraction or percentage of the Marital Trust and may be defined by means of a formula. I intend that the marital portion shall qualify for the federal estate tax marital deduction in my estate.

If the marital portion is less than all of the Marital Trust, at any time during the lifetime of my wife the trustee in its discretion may divide the Marital Trust into two separate trusts representing the marital and non-marital portions of the Marital Trust. The two separate trusts shall be held and disposed of on the same terms and conditions as the Marital Trust, except that the trustee

shall make no invasion of the principal of the non-marital portion trust so long as any readily marketable assets remain in the marital portion trust.

SECTION 3: Upon the death of my wife any part of the principal of the Marital Trust then remaining shall be added to or used to fund the Family Trust, except that, unless my wife directs otherwise by her will or revocable trust, the trustee shall first pay from the principal of the marital portion, directly or to the legal representative of my wife's estate as the trustee deems advisable, the amount by which the estate and inheritance taxes assessed by reason of the death of my wife shall be increased as a result of the inclusion of the marital portion in her estate for such tax purposes. The trustee's selection of assets to be sold to pay that amount, and the tax effects thereof, shall not be subject to question by any beneficiary.

Notwithstanding any other provision of this will, all income of the Marital Trust accrued or undistributed at the death of my wife shall be paid to her estate.

EIGHTH

Family Trust

The trustee as of my death shall set aside the balance of the trust estate, or all thereof if my wife does not survive me, as a separate trust. The trust shall be designated the "Family Trust" and shall be held and disposed of as follows:

SECTION 1: Income. If my wife survives me, then commencing with my death the trustee shall pay the income from the Family Trust in convenient installments, at least quarterly, to her during her lifetime.

Principal Invasion. The trustee may also pay to my wife such sums from principal (excluding any shares of COFFMAN TRUCK SALES,

INC. and any units in COFFMAN BROS. REAL ESTATE, LLC or the proceeds from the sale thereof pursuant to any operative buy and sell agreement in existence at my death relating thereto) as the trustee deems necessary or advisable from time to time for her health and maintenance in reasonable comfort, considering her income from all sources known to the trustee, but shall make no invasion of the Family Trust for my wife so long as any readily marketable assets remain in the Marital Trust.

Disclaimed Property. A disclaimer by my wife of any part or all of the Marital Trust shall not preclude her from receiving benefits from the disclaimed property in the Family Trust.

SECTION 2: Distribution. Upon the death of my wife, or upon my death if my wife does not survive me, the Family Trust, including any amounts added thereto from the Marital Trust, shall be distributed as follows:

(a) All shares of stock in COFFMAN TRUCK SALES, INC. and all units in COFFMAN BROS. REAL ESTATE, LLC (or an amount equal to the proceeds from the sale thereof pursuant to any operative buy and sell agreement in existence at my death relative thereto) shall be distributed in equal shares to such of my sisters, KATHLEEN SUE MARTINEZ and PEGGY ANN LeMASTER, as shall then be living, except that the then living descendants of a deceased sister of mine shall take per stirpes the share which the sister would have received if living, subject to postponement of possession as provided below.

(b) All the rest, residue, and remainder thereof, including any amounts resulting from a total lapse of the legacy in (a) immediately above, shall be distributed as follows: (i) 50% thereof in equal shares to such of my sisters KATHLEEN SUE MARTINEZ and PEGGY ANN LeMASTER, as shall then be living, except that the then living descendants of a deceased sister of mine shall take per stirpes the

share which the sister of mine would have received if living, subject to postponement of possession as provided below; and (ii) 50% thereof in equal shares to such of my wife's sisters and brother, **JANE ELLEN HYTE, BARBARA JEAN SCHIRADELLY, SUSAN KAY HARRIS**, and **ALVIN EUGENE BENSON**, as shall then be living, except that the then living descendants of a deceased sister or brother of my wife shall take per stirpes the share which the sister or brother of my wife would have received if living, subject to postponement of possession as provided below. In the event of a complete failure of descendants under (i) or (ii) of this Section 3(b), the failed 50% share shall be added to the other 50% share and distributed pursuant thereto.

SECTION 3: Postponement of Possession. Each share of the Family Trust which is distributable to a beneficiary who has not reached the age of 21 years shall immediately vest in the beneficiary, but the trustee shall (a) establish with the share a custodianship for the beneficiary under a Uniform Transfers or Gifts to Minors Act, or (b) retain possession of the share as a separate trust, paying to or for the benefit of the beneficiary so much or all of the income and principal of the share as the trustee deems necessary or advisable from time to time for his or her health, maintenance in reasonable comfort, education (including postgraduate) and best interests, adding to principal any income not so paid, and distributing the share to the beneficiary when he or she reaches the age of 21 years or to the estate of the beneficiary if he or she dies before receiving the share in full.

NINTH

Administrative Provisions

The following provisions shall apply to the trust estate and to each trust under this will:

SECTION 1: Facility of Payment. If income or discretionary amounts of principal become payable to a minor or to a person under legal disability or to a person not adjudicated disabled but who, by reason of illness or mental or physical disability, is in the opinion of the trustee unable properly to manage his or her affairs, then that income or principal shall be paid or expended only in such of the following ways as the trustee deems best: (a) directly to the beneficiary or his or her attorney in fact; (b) to the legally appointed guardian of the beneficiary; (c) to a custodian for the beneficiary under a Uniform Transfers or Gifts to Minors Act; (d) by the trustee directly for the benefit of the beneficiary; (e) to an adult relative or friend in reimbursement for amounts properly advanced for the benefit of the beneficiary.

SECTION 2: Spendthrift. The interests of beneficiaries in principal or income shall not be subject to the claims of any creditor, any spouse for alimony or support, or others, or to legal process, and may not be voluntarily or involuntarily alienated or encumbered. This provision shall not limit the exercise of any power of appointment.

The rights of beneficiaries to withdraw trust property are personal and may not be exercised by a legal representative, attorney in fact or others.

SECTION 3: Accrued Income. Income received after the last income payment date and undistributed at the termination of any estate or interest shall, together with any accrued income, be paid by the trustee as income to the persons entitled to the next successive interest in the proportions in which they take that interest.

SECTION 4: Common Fund and Consolidation. For convenience of administration or investment, the trustee may hold separate trusts as a common fund, dividing the income proportionately among them,

assign undivided interests to the separate trusts, and make joint investments of the funds belonging to them. The trustee may consolidate any separate trust with any other trust with similar provisions for the same beneficiary or beneficiaries.

SECTION 5: Powers. The trustee shall have the following powers in addition to those now or hereafter conferred by the statutes of Illinois upon the trustee of an Illinois trust:

(a) To retain any property (including stock of any corporate trustee hereunder or a parent or affiliate company) originally constituting the trust or subsequently added thereto, and to invest and reinvest the trust property in bonds, stocks, mortgages, notes, bank deposits, options, futures, limited partnership interests, shares of registered investment companies and real estate investment trusts, or other property of any kind, real or personal, domestic or foreign; the trustee may retain or make any investment without liability, even though it is not of a type, quality, marketability or diversification considered proper for trust investments;

(b) To deal with a corporate trustee hereunder individually or a parent or affiliate company;

(c) To distribute income and principal in cash or in kind, or partly in each, and to allocate or distribute undivided interests or different assets or disproportionate interests in assets, and no adjustment shall be made to compensate for a disproportionate allocation of unrealized gain for federal income tax purposes; to value the trust property and to sell any part or all thereof in order to make allocation or distribution; no action taken by the trustee pursuant to this paragraph shall be subject to question by any beneficiary;

(d) To determine in cases not covered by statute the allocation of receipts and disbursements between income and principal, except

that (i) if the trust is beneficiary or owner of an individual account in any employee benefit plan or individual retirement plan, income earned after death in the account shall be income of the trust, and if the trustee is required to pay all trust income to a beneficiary, the trustee shall collect and pay the income of the account to the beneficiary at least quarterly (and to the extent that all income cannot be collected from the account, the deficiency shall be paid from the principal of the trust), and (ii) reserves for depreciation shall be established out of income only to the extent that the trustee determines that readily marketable assets in the principal of the trust will be insufficient for any renovation, major repair, improvement or replacement of trust property which the trustee deems advisable;

(e) To elect, pursuant to the terms of any employee benefit plan, individual retirement account or insurance contract, the mode of distribution of the proceeds thereof, and no adjustment shall be made in the interests of the beneficiaries to compensate for the effect of the election; and

(f) To inspect and monitor businesses and real property (whether held directly or through a partnership, corporation, trust or other entity) for environmental conditions or possible violations of environmental laws; to remediate environmentally-damaged property or to take steps to prevent environmental damage in the future, even if no action by public or private parties is currently pending or threatened; to abandon or refuse to accept property which may have environmental damage; the trustee may expend trust property to do the foregoing, and no action or failure to act by the trustee pursuant to this paragraph shall be subject to question by any beneficiary; and

(g) Notwithstanding anything herein contained to the contrary, no trustee whenever acting may exercise any power or discretion which could cause a trust to be includable in her or his estate for federal estate tax purposes solely by virtue of a power or discretion granted to her or him as a trustee hereunder.

SECTION 6: Accounts and Compensation. The trustee shall render an account of trust receipts and disbursements and a statement of assets at least annually to each adult beneficiary then entitled to receive or have the benefit of the income from the trust. An account is binding on each beneficiary who receives it and on all persons claiming by or through the beneficiary, and the trustee is released, as to all matters stated in the account or shown by it, unless the beneficiary commences a judicial proceeding to assert a claim within five years after the mailing or other delivery of the account. The trustee shall be reimbursed for all reasonable expenses incurred in the management and protection of the trust and shall receive compensation for its services in accordance with its schedule of fees in effect from time to time. The trustee's regular compensation shall be charged half against income and half against principal, except that the trustee shall have full discretion at any time or times to charge a larger portion or all against income.

SECTION 7: Small Trust Termination and Perpetuities Savings. A corporate trustee in its discretion may terminate and distribute any trust thereunder if the corporate trustee determines that the costs of continuance thereof will substantially impair accomplishment of the purposes of the trust. The trustee shall terminate and forthwith distribute any trust created hereby, or by exercise of a power of appointment hereunder, and still held 21 years after the death of the last to die of myself and the beneficiaries in being at my death. Distribution under this section shall be made to the

persons then entitled to receive or have the benefit of the income from the trust in the proportions in which they are entitled thereto, or if their interests are indefinite, then in equal shares.

SECTION 8: Trustee Succession. In the event that DOROTHY L. COFFMAN should die, resign, or be unable or willing to act as trustee, I nominate KATHLEEN SUE MARTINEZ and PEGGY ANN LeMASTER, or the survivor of them, as trustee. Any trustee may resign at any time by written notice to the next named trustee or co-trustee, if any, otherwise to each beneficiary then entitled to receive or have the benefit of the income from the trust. In case of the resignation, refusal or inability to act of all of the foregoing named trustees acting or appointed to act hereunder, or any subsequent trustee for whom no successor is named herein, the beneficiary or a majority in interest of the beneficiaries then entitled to receive or have the benefit of the income from the trust shall appoint a successor trustee, but no beneficiary or person legally obligated to a beneficiary shall be such a successor trustee.

Every successor trustee shall have all the powers given the originally named trustee. No successor trustee shall be personally liable for any act or omission of any predecessor. With the approval of the beneficiary or a majority in interest of the beneficiaries then entitled to receive or have the benefit of the income from the trust, a successor trustee may accept the account rendered and the property received as a full and complete discharge to the predecessor trustee without incurring any liability for so doing.

The parent or legal representative of a beneficiary under disability shall receive notice and have authority to act for the beneficiary under this section.

No trustee wherever acting shall be required to give bond or surety or be appointed by or account for the administration of any trust to any court.

SECTION 9: Donee's Will. In disposing of any trust property subject to a power to appoint by will, the trustee may rely upon an instrument admitted to probate in any jurisdiction as the will of the donee or may assume that the power was not exercised if, within 3 months after the death of the donee, the trustee has no actual notice of a will which exercises the power. The trustee may rely on any document or other evidence in making payment under this will and shall not be liable for any payment made in good faith before it receives actual notice of a changed situation.

SECTION 10: Trustee for Out-of-State Property. If for any reason the trustee is unwilling or unable to act as to any property, such person or qualified corporation as the trustee shall from time to time designate in writing shall act as special trustee as to that property. Any person or corporation acting as special trustee may resign at any time by written notice to the trustee. Each special trustee shall have the powers granted to the trustee by this will, to be exercised only with the approval of the trustee, to which the net income and the proceeds from sale of any part or all of the property shall be remitted to be administered under this will.

SECTION 11: Generation-Skipping Tax. To enable trusts to be either completely exempt or nonexempt from generation-skipping tax, or for any other reason, the trustee may divide a trust into two or more separate trusts and may hold an addition to a trust as a separate trust. The rights of beneficiaries shall be determined as if the trusts were aggregated, but the trustee may pay principal to beneficiaries and taxing authorities disproportionately from the

trusts. The trustee shall not be liable for deciding in its discretion to exercise or not exercise these powers.

Upon division or distribution of an exempt trust and a nonexempt trust held hereunder, the trustee in its discretion may allocate property from the exempt trust first to a share from which a generation-skipping transfer is more likely to occur.

If the trustee considers that any distribution from a trust hereunder other than pursuant to a power to withdraw or appoint is a taxable distribution subject to a generation-skipping tax payable by the distributee, the trustee shall augment the distribution by an amount which the trustee estimates to be sufficient to pay the tax and shall charge the same against the trust to which the tax relates.

If the trustee considers that any termination of an interest in trust property hereunder is a taxable termination subject to a generation-skipping tax, the trustee shall pay the tax from the portion of the trust property to which the tax relates, without adjustment of the relative interests of the beneficiaries.

TENTH

Contest of Will

It is further my will that if any legatee or devisee herein named shall object to the probate or contest the validity of this will or any provision or provisions thereof, such person shall be thereby deprived of any and all legacy, devise, or beneficial interest hereunder and of any legacy, devise or share in my estate, the legacy, devise or share of such person shall become a part of my residuary estate, such person shall be excluded from taking any part of such residuary estate, and the same shall be divided among or given to the other persons or person entitled to take such residuary estate.

ELEVENTH

Executor Appointment. I appoint ***DOROTHY L. COFFMAN*** *as executor of this will. If for any reason* ***DOROTHY L. COFFMAN*** *is unwilling or unable to act as executor, then I appoint* ***KATHLEEN SUE MARTINEZ*** *and* ***PEGGY ANN LeMASTER****, or the survivor of them, to act as executor.*

Executor Powers. I give my executor the same powers as to the administration and investment of my estate which I have granted the trustee with respect to the trust property, to be exercised without authorization by any court and, as to property subject to administration outside the state of my domicile, only with the approval of my domiciliary executor. No bond or security shall be required of any executor wherever acting. If permitted by law and if not inconsistent with the best interests of the beneficiaries as determined by my executor, the administration of my estate shall be independent of the supervision of any court.

Executed Trusts. If at my death any trust under this will has become executed, my executor shall make distribution to the beneficiary without the intervention of the trustee.

Headings. The headings in this will are for convenience of reference only and shall not be considered in the interpretation of this will.

IN WITNESS WHEREOF I have signed this will, consisting of fifteen (15) pages, this 4 *day of* August, *2001.*

Mark A Coffman
MARK A. COFFMAN

We certify that the above instrument was on the date thereof signed and declared by ***MARK A. COFFMAN*** *as his will in our presence and that we, at his request and in his presence and in the presence of each other, have signed our names as witnesses thereto, believing* ***MARK A. COFFMAN*** *to be of sound mind and memory at the time of signing.*

John L. Roth Residing at 102 Briar Leaf
Monee, Illinois

Kenneth E Anderson Residing at 481 CA SAUCE DR
SOMONAUK IL

CERTIFICATE OF SERVICE

David E. Lieberman, an attorney, hereby certifies that he caused the attached **VERIFIED PETITION TO CONTEST VALIDITY OF THE WILL AND TO ADMIT PRIOR WILL TO PROBATE** to be served on October 22, 2018, before 5:00 p.m., on the following persons, at the following addresses:

John W. Hynds
Hynds, Yohnka, Bzdill & McInerney, LLC
105 W. Main Street
P.O. Box 685
Morris, IL 60450
jwh@hyndslawyers.com
By Electronic Mail

Mr. Jeffrey A. Zaluda
Horwood Marcus & Berk Chartered
500 W. Madison St.
Suite 3700
Chicago, IL 60661
jzaluda@hmblaw.com
By Electronic Mail

Courtney Coffman Crenshaw
647 Stoffa Avenue
Elburn, IL 60119
By United States Mail

/s/ David E. Lieberman

478086.3

IN THE CIRCUIT COURT FOR
THE TWENTY-THIRD JUDICIAL CIRCUIT
KENDALL COUNTY, ILLINOIS – PROBATE DIVISION

In re The Estate of MARK A. COFFMAN,

Deceased.

PEGGY LeMASTER, and KATHLEEN MARTINEZ,

Petitioners.

vs.

DOROTHY COFFMAN and COURTNEY COFFMAN CRENSHAW,

Respondents.

Supplemental Proceeding

Case No. 2018 P 000065

Hon. Melissa S. Barnhart, presiding

JOINT STIPULATED FACTS

1. Mark Coffman was born in 1950 to Glenn and Maxine Coffman.

2. Mark and respondent Dorothy Coffman married in 1994. At the time of their marriage, Mark was 42 years old, and Dorothy was 42 or 43 years old.

3. Mark and Dorothy remained married until Mark's death on April 26, 2018.

4. Petitioners Peggy LeMaster and Kathleen Martinez are Mark's siblings.

5. Peggy is married to Mike LeMaster, and they have two sons, Andrew LeMaster and Rob LeMaster.

6. Kathy is married to Roger Martinez, and they have two sons, Ryan Martinez and Roger Aaron Martinez.

7. Mark died April 26, 2018.

8. Both petitioners survived Mark.

9. In 1946, Glenn and his brother Erwin Coffman established the business that evolved into Coffman Truck Sales.

10. Coffman Truck Sales is a truck sales, service and parts business.

11. Mark worked at Coffman Truck Sales part time throughout high school and full time from age 20 until 2018.

12. At Coffman Truck Sales, Mark worked with Glenn until Glenn's death in 1991, and with Mark's uncles Erwin and Frank until their deaths.

13. At Coffman Truck Sales, Mark worked with his cousins Mike and Terrence Coffman.

14. Mark was an original one-quarter shareholder when Coffman Trucks Sales was incorporated in 1975.

15. When Glenn died in 1991, Mark succeeded Glenn as president and inherited Glenn's company stock. After inheriting Glenn's stock, Mark became the company's largest shareholder, owning 50 percent.

16. At his death in 2018, Mark owned 66.7 percent of the outstanding shares of Coffman Truck Sales.

17. At his death in 2018, Mark owned 33.3 percent of the membership interests in Coffman Real Estate, LLC.

18. Coffman Real Estate, LLC, owns the real estate at which Coffman Truck Sales operates.

19. Coffman Real Estate, LLC, owns additional real estate located in Channahon, Illinois.

20. Mark was president of Coffman Truck Sales from 1992 until his death.

21. On August 4, 2001, Mark executed a will drafted by attorney John N. Rooks, who was then a partner at the Hynds, Rooks, Yohnka, Mattingly & Bzdill law firm. Petitioners' Exhibit 2 is a true and correct copy of Mark's 2001 will.

22. Mark appointed Dorothy agent under powers of attorney for health care and property he executed on August 4, 2001. Petitioners' Exhibits 7 and 9 are true and correct copies of Mark's powers of attorney for health care and property, respectively.

23. Mark and Dorothy had no children together.

24. Dorothy has no descendants.

25. Mark's 2001 will left all residences and tangible personal property outright to Dorothy.

26. Mark's 2001 will left his entire residuary estate, after expenses, outright distributions to Dorothy, and a $100,000 bequest to his daughter Courtney, to a Family Trust and a Marital Trust, under Dorothy's management and control as trustee.

27. Mark's 2001 will further directed Dorothy as trustee to distribute, from both the Marital Trust and the Family Trust, all trust income to herself, along with any trust principal, except certain Excluded Assets, she deemed "necessary or advisable" for her health and maintenance in reasonable comfort.

28. Mark's 2001 will:

a. classified as "Excluded Assets" his ownership interests in Coffman Truck Sales and "Coffman Bros. Real Estate, LLC" (or the proceeds from their sale under any operative buy-sell agreement in existence upon Mark's death);

b. prohibited Dorothy or any successor trustee from distributing, during her lifetime, the portion of trust principal comprised of "Excluded Assets";

c. directed the distribution of Excluded Assets, after Dorothy's death, to Peggy LeMaster and Kathleen Martinez, if living, or if not living, then *per stirpes* to the deceased sister's descendants.

29. Mark's 2001 will directed the disposition of trust assets, other than Excluded Assets, remaining at Dorothy's death, in an equal distribution as between Mark's and Dorothy's respective families, 50% to the siblings of each, or if a sibling was not then living, then *per stirpes* to the deceased sibling's descendants.

30. In June 2016, Mark was diagnosed with laryngeal cancer. Mark thereafter underwent treatment for his cancer that included multiple surgeries, radiation, chemotherapy and other anticancer treatment.

31. After June 2016, Mark's cancer metastasized widely over the next 21 months, until his death on April 26, 2018.

32. Mark's anticancer treatments included multiple surgical procedures and treatments, including removal of his larynx and lymph nodes, a tracheostomy in 2016, and thereafter radiation and chemotherapy.

33. In July of 2016, Mark underwent surgery to remove cancer in his left lung and in 2017 underwent multiple surgeries to repair fractures in his arm.

34. By late 2017 and early 2018, Mark's cancer had spread to his hip and other locations.

35. On January 30, 2018, Mark was admitted to Rush University Medical Center for control of increased pain in his arm and he advised his physician that he was concerned that the metastasis in his groin was growing.

36. Mark received treatment at Rush University Medical Center throughout his illness.

37. On Sunday, March 11, Mark's oncologist, Dr. John Showel of Rush University Medical Center, referred Mark to the emergency room at Rush in Chicago.

38. Mark was admitted to the hospital on March 11, 2020 as an inpatient.

39. Mark never returned to his home after March 11, 2020.

40. On Friday March 16, after finishing a telephone call with Dorothy sometime after 3:00 p.m., John W. Hynds and his partner M. Katie McInerney began drafting estate planning documents for Mark.

41. On Saturday, March 17, Mr. Hynds, traveled to Chicago to meet with Mark concerning execution of a new will.

42. Mr. Hynds visited Mark's hospital room at Rush University Medical Center midday on March 17. Mr. Hynds brought pre-prepared estate planning documents to his March 17 visit with Mark.

43. Mr. Hynds' legal assistant, Lisa Barkley, accompanied Mr. Hynds on the March 17 visit to Mark's hospital room, at Mr. Hynds' request, so that Ms. Barkley could serve as an attesting witness.

44. When Mark signed the 2018 will on March 17, Mr. Hynds and Ms. Barkley served as witnesses.

45. Dorothy participated in the discussions with Mark and Mr. Hynds concerning the estate planning documents.

46. Mark executed the 2018 will on March 17, 2018, while in his hospital bed. Mark did not dress or leave his bed during the visit.

47. On Sunday, March 18, the day after the signing, Mr. Hynds telephoned Dorothy asking her whether she and Mark were satisfied with Mark's new will, or whether they had other questions or further changes.

48. Mr. Hynds sent an invoice for his firm's work concerning the 2018 will to Dorothy in July 2018.

49. The 2001 and 2018 wills each provides for a $100,000 bequest to Mark's daughter Courtney, and a bequest of all residences and tangible personal property to Dorothy.

50. The 2001 and 2018 wills differ in their disposition of the residuary interest in Mark's estate after the later of his and Dorothy's deaths. The 2018 will differs from Mark's 2001 will in that it permits Dorothy to designate the ultimate disposition of trust assets if she survives Mark.

51. Mark's 2018 will provides that the residuary estate was to be distributed partially to a Family Trust, and partially outright to Dorothy as follows:

- The Family Trust was to be funded in the amount of the "tax-sheltered gift" amount (defined as the largest pecuniary amount that results in the least possible Illinois estate tax, which was approximately $4 million at the time of Mark's death) with a preference to include the shares of Coffman Truck Sales, Inc. and Coffman Bros. Real Estate LLC in the Family Trust funding. Dorothy as trustee of the Family Trust, was permitted to distribute all trust income to herself, along with any trust principal she deemed "necessary or advisable" for her health and maintenance in reasonable comfort Dorothy was also permitted to direct the further distribution of the Family Trust upon her death through her exercise of a power of appointment.

- the balance to Dorothy outright and free of trust.

52. Attorney Peter K Wilson, Jr., prepared the following documents in April 2018:

A. Amended Operating Agreement of Coffman Brothers, L.L.C., which was misdated February 1, 2016;

B. Amended Operating Agreement of Coffman Real Estate, L.L.C. dated April 2018; and

C. Termination of Shareholder Agreement dated April 13, 2018 by and among Mark Coffman, Michael Coffman, and the Estate of Franklin B. Coffman.

53. On April 9, 2018, Mark was at the Springs of Monarch Landing Health Center.

54. On April 15, Dorothy and Mark determined to commence end-of-life hospice care for Mark.

55. On April 16, Dorothy signed the hospice consents and authorizations.

DOROTHY COFFMAN

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IN THE CIRCUIT COURT FOR

THE TWENTY-THIRD JUDICIAL CIRCUIT

KENDALL COUNTY, ILLINOIS - PROBATE DIVISION

In Re: The Estate of MARK COFFMAN,
Deceased,
PEGGY LeMASTER and KATHLEEN MARTINEZ,
Petitioners,
Vs.
DOROTHY COFFMAN and COURTNEY COFFMAN CRENSHAW,
Respondents.

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)No. 18 P 000065

REPORT OF PROCEEDINGS at the trial of the above-entitled cause before the Honorable MELISSA S. BARNHART, Judge of said Court, on the 5th day of January, 2021, at the hour of 2:30 p.m. via Zoom.

REPORTED BY: MARY KAY ANDRIOPOULOS, CSR

LICENSE NO.: 084-002248

APPEARANCES:

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On behalf of the Petitioners;

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On behalf of the Respondents.

THE COURT: This is 18 P 65, the Estate of Mark Coffman.

MR. LIEBERMAN: Good afternoon, your honor, David Lieberman from Levin Schreder and Carey for petitioners who are present by video, and my partner Elizabeth McKillip should be joining as soon as she returns to her office.

THE COURT: Thank you.

MR. WOOD: Good afternoon, your Honor. Hal Wood and Matt Barrett for respondent Dorothy Coffman. Ms. Coffman is also present as is our paralegal Nick Ciaccio.

THE COURT: Okay. Good afternoon.

This matter comes on for the Court's ruling on respondent's motion for a directed finding.

I will offer to both of you an opportunity, if you wish, to make any other argument that you deem necessary at this point.

Mr. Wood?

MR. WOOD: I don't believe so, your Honor.

THE COURT: Okay. Mr. Lieberman?

MR. LIEBERMAN: Thank you, your Honor.

No, we made our arguments yesterday.

THE COURT: Okay. Yesterday the petitioners rested their case, and the respondent made that motion for a directed finding pursuant to 735 ILCS 5/2-1110.

The questions for the Court are did the petitioners present a prima facie case by producing evidence on every element; and if so, the Court must weigh the evidence considering the credibility, the weight and quality of the evidence, and draw reasonable inferences therefrom.

I have to draw those reasonable inferences in favor of the non-moving party, but I do not have to draw inferences that are matters of speculation, surmise or conjecture.

The gravamen of undue influence is that the will of the one exerting the influence is substituted for the will of the testator.

What constitutes undue influence can't be defined by fixed words and will depend upon the circumstances of each case.

That's expressed in the Estate of Hoover.

And before I begin, I just want to say that these are the saddest cases I do.

A lot of people say to me, well, you did divorce for a long time, those are sad. Those are sad cases for sure.

You do cases where you terminate people's parental rights to their children. Those are sad, but the outcome is generally good with those cases, because children are being placed with people who love them and want them rather than with parents who don't want them or don't know how to care for them.

This is sad, because everybody has lost something and lost someone.

Dorothy's lost her husband. Kathy and Peggy have lost their brother.

Everybody's lost their friend in this case, and it's sad, because not only do you lose the person that you love, but you've lost the communion and the community of the extended family for both of you.

Peggy and Kathy have lost some of their family, I suppose, through this litigation; Dorothy being part of that family, and Dorothy

on the other hand, has lost Kathy and Peggy through this litigation.

And you always hope that when this litigation starts, there can be a resolution that's worked out between the parties, but that didn't work, and that's why I'm here.

But I will say that after having this case on my docket for a couple of years, it's clear that not only did all of you love your husband and your brother, but he loved all of you as well.

That's clear from his texts to you, clear from the testimony that I've heard, and you get a flavor in the texts that Mark sent out as to the type of person he is and was.

He was funny. He was sarcastic. He didn't think that he, himself, was so important that he couldn't joke around about different things even when he was going through the worst thing that I could imagine; the pain and suffering that he was enduring, and the fact that he knew that the outcome -- well, at a certain point he knew that the outcome was not going to be good.

It's clear from his texts that he was a fighter, that he wanted every opportunity that there was to beat cancer.

He was encouraged in that fight by his sisters and by his wife, and he chose to go on that fight. He chose to go into that battle with everybody's support and with their love.

So having said that, I want to go into my review of the cases and my review of the facts as I have them at this point.

Actual undue influence, the first thing I have to consider is was there a preponderance of evidence establishing a prima facie case of actual undue influence.

I don't find that there was actual undue influence.

I contrast this case with the other cases where undue influence was found, and some of those were summary judgment cases, some of those were on 2-615 and 2-619 motions, but the court still went through a pretty thorough review of what comprises undue influence.

One of those cases that I looked at was the Maher case, M-A-H-E-R, which is at 237 Ill.

App. 3d 1013.

In that case an aunt had dementia. A doctor had already diagnosed her with dementia, she was suffering at the last of her life. She had depression. She had all kinds of physical problems, and her niece swooped in, for lack of a better word, got a POA, a Power of Attorney, signed by the aunt with a friend of the niece witnessing it, had a will done by an attorney that was not Mrs. Maher's or Ms. Maher's attorney.

The attorney didn't even come to the hospital or to the nursing home where the niece had moved her, and the niece had two of her friends witness the signing of the will.

In that case it was clear that the niece used her undue influence, and used her authority to steal money, to transfer money to move the aunt to a different kind of a facility.

I even contrast it with the Mitchell case, M-I-T-C-H-E-L-L, versus Van Scoyk, S-C-O-Y-K, which is 1 Ill. 2d 160, where a sister got her brother to disinherit the brother's daughter through lies,

misrepresentation, hiding the brother. The brother was feeble, had been ill and feeble for many, many years, and the sister used these lies and misrepresentations to control the brother, and to convince him that he ought to redo his will and disinherit the daughter that he had.

Also, this is not like the Dehart case at all. In that case the dad was 83 years old. He had a person he held out as his son for over 60 years.

Dad at the age ripe age of 83 hooked up with some sales girl from a Costco or Sam's Club who was 30 years younger than him, himself.

They met in the spring of 2005. They were hurriedly married in December of 2005, and low and behold, in 2006 she takes him to a lawyer, she changes his will, took him to a lawyer that had never been his lawyer before, makes him change his will, makes him execute all kinds of Powers of Attorney, and immediately began selling off his assets, transferring and conveying property.

Again, that also involved the new wife badmouthing the son, telling Mr. Dehart that the

son wasn't really his kid, and so he didn't have any obligation to provide for him.

The facts that we have here, there's been no proof from anybody, no evidence from anyone that Dorothy did anything to establish actual undue influence.

There was never any cross-word that was testified to.

Dorothy was never accused of locking Mark away, of depriving him of contact and communication with his siblings, with his coworkers.

There is just no testimony that Dorothy lied to keep anyone away from Mark.

As a matter of fact, she told everyone the lawyers were coming to redo the will.

There's no facts presented that she denigrated or made invidious representations about Mark or Mark's family to Mark that would cause this to rise to an actual undue influence.

And the next question is, is there presumptive undue influence? Was there a preponderance of evidence establishing that prima facie case of presumptive undue influence?

The Courts may presume the existence of undue influence only when the facts that all of you have pointed out and have argued -- we went through this in the summary judgment motion, but I'll set those out -- that the fiduciary relationship between the testator and the comparatively disproportionate beneficiary under the will, now that language is used in several cases; the disproportionate beneficiary under a will.

It's used in Baumgarten, B-A-U-M-G-A-R-T-E-N, Kline, K-L-I-N-E, the Mitchell case, Glogovsek, G-L-O-G-O-V-S-E-K, Henke, H-E-N-K-E, and Gerulis, G-E-R-U-L-I-S, which is 20 Ill. App. 3d 180734.

It's also expressed in the Greathouse case, Greathouse which is 19 Ill. 2d 555.

Then there are cases that take that disproportionate language out, and just say that a fiduciary relationship between a testator and a person who receives substantial benefit from the will.

Those cases are Dehart, Maher, M-A-H-E-R, Dimatteo, D-I-M-A-T-T-E-O.

So the question to ask is was Dorothy a fiduciary, first of all, because she had a Power of Attorney; and then, if so, do I apply the comparatively disproportionate beneficiary under the will standard or the substantial benefit standard?

So first of all, was she a fiduciary, because she was Power of Attorney; in Estate of Stahling, the case that was cited by the respondents, and that's S-T-A-H-L-I-N-G, that Court said no, just being a Power of Attorney doesn't give rise to a fiduciary relationship.

However, in Gerulis, G-E-R-U-L-I-S, which is the 2020 case, and there's some language in Shelton, Estate of Shelton, that an individual holding Power of Attorney is a fiduciary as a matter of law, and has a fiduciary duty to the person who made that designation.

I do want to point out, though, that in those cases where the Courts held that the Power of Attorney automatically made somebody a fiduciary, all of those cases dealt with Powers of Attorney that were executed within days of an

agent transferring funds, conveying property, moving the principle to nursing homes or out of their home.

They were not Powers of Attorney that were some 17 years old.

What we have here with Mark and Dorothy is that Mark when he did his will back with Hynds firm or John Rooks in 2001 did standard Powers of Attorney for property and Powers of Attorney for health.

There's nothing to show that Dorothy acted under those Powers of Attorney either materially benefiting herself or for a third-party.

All of those other cases, especially Shelton and Gerulis, dealt with those Powers of Attorney that transferred things right initially upon executing the Power of Attorney.

That's very evident in that Maher case as well where the niece took advantage of the aunt's dementia and her other physical problems to basically steal from the aunt or steal from the aunt's estate.

So I don't find that it's automatically

a fiduciary relationship because Dorothy had this Power of Attorney.

There's nothing that indicates to me that she did anything to materially or fraudulently transfer anything.

Then I look at the difference between substantial benefit and comparatively disproportionate benefit, and it's interesting that a lot of these cases go back and forth using that -- I don't want to pronounce it wrong -- Glogovsek or Glogovsek language, and the Courts in several of those cases talked about how no one had a greater claim to a spouse's estate than a surviving spouse.

That's evident in also the statute under 755 ILCS 5/2-1 and 2-8.

A child has an equal claim, but not a superior or a greater claim, and Mark's sisters' claims are diminished from those of Dorothy's and Courtney's.

Courtney, it was brought up about how Courtney had an equal claim. That's true. Courtney was bequeathed the same amount of money in both wills. There was no diminution in her

bequest; and if anyone could have made a claim for a bigger bite of the apple, it could have been Courtney. Rather, she's named as a respondent in this cause challenging her father's will.

Dorothy was a substantial beneficiary of both wills.

I'm not saying that she was comparatively disproportionate, but she was a substantial beneficiary of both wills.

Her benefit didn't decrease outright, her control over the property of appointment upon her death was the change in the 2018 will.

So I find that the evidence that I heard doesn't establish the fiduciary relationship and anything that would give rise to a fraudulent transfer.

I'm going to go through the other factors as well.

The second factor is the testator who's in a dependent situation where the beneficiary is in a dominant role.

I looked to Glogovsek, Baumgarten and Greathouse.

All of those cases talk about how taking good care of a dying spouse or an ill spouse is at the heart of what marriage is about. The vows that we take when we get married at our wedding say to have and to hold, in good times and bad, in sickness and health until death do us part.

Just being ill and sick, even dying, doesn't equate to the relinquishment of all of the principals or all of the testator's faculties which cause a person to become overcome by another.

I think that this is not the Dehart case. As I said, the facts are so different. This is closer to the Glogovsek case or the Baumgarten case.

If you look at that Greathouse case, there was a case where the Courts could have said that this husband who was 30 years younger than his very much elderly wife should not have benefited from a will that was executed not too long before the wife died, however, the Court went through your obligations as a spouse, and that Mr. Vosberg who was a younger man, but

lived with his elderly wife, took care of her, promised to keep her out of a nursing home, gave her her medicine, I mean, the facts are similar, but dissimilar than this.

In our case Dorothy and Mark had been married for 24 years. They had been together for longer than 24 years.

Mark's reliance on Dorothy to take him to doctors, to care for him, and to stay by his side didn't make her the dominant person in that relationship.

Mark made his own treatment decisions. It was evident from his e-mails to his sisters that he was choosing to undergo every available therapy to beat this insidious disease, and, you know, he's the one that made those treatment decisions with his doctors.

Dr. Showel's evidence dep made that clear that it was the doctors and Mark who made the decisions about what Mark was going to do with his physical health.

Mark told Dorothy to call the lawyers who were the same lawyers with whom the Coffman family had dealt with decades both in their

estate planning and in their business dealings. Mark controlled the scenario.

If Dorothy had been so bent on getting access to things that Mark didn't want her to have, what an opportunity to call a lawyer that had no idea who the Coffmans were, what an opportunity to make a call to some lawyer out of the phonebook or somebody that maybe one of your friends knew about to come do a will, but it didn't happen that way.

It happened that Mark said, hey, these people have done our business, have done my mom and dad's, have done Coffman Truck Sales or Coffman Brothers, they've done work for us, give them a call, they're familiar with me.

So I don't find that Mark was in a dependent situation.

The third factor is the testator who placed trust and confidence in the beneficiary.

And again, when you've been married to somebody for that many years, of course, you're going to place confidence and trust in your spouse just as Dorothy would do to Mark.

She had been by his side through the

fight when he got diagnosed with cancer, and like in Glogovsek, Dorothy cared for Mark, she made sure his needs were met.

There was a dearth of evidence that she had done anything differently than Mark would have done in paying taxes, paying bills.

There was no evidence that there was an unusual or out of the ordinary business decisions with regard to Mark's confidence in his wife.

The fourth factor that the will was prepared or executed in circumstances where the beneficiary was instrumental or participated.

To be sure, Dorothy made the phone call to the Hynds Law Firm, and said, hey, you know, Mark wants to change his will, we need to make some changes to the will.

Again, the Hynds Law Firm had been the Coffman family lawyers for decades.

The call was made at Mark's request, and the day before, as we heard through testimony, he had been told that his cancer was terminal, and hospice was recommended to him.

There had been some argument that, you

know, here's a person who spent all these years not doing anything in his will.

Well, when you're told that you're not going to live, that the fight that you've undertaken is over, what an opportunity to make the change that you've been putting off.

He even told the nurse, hey, you know, I've got lawyers coming this afternoon, this morning or today, you know, my wife is mad at me for not getting this done.

Husbands and wives -- especially husbands -- tend to put things off, not always because they want to and because they can, but because husbands tend to do those kinds of things.

Again, I point to if Dorothy's intent had been to overcome Mark's will or to overcome Mark's choice of what his estate planning had been, here was the opportunity and the obvious ploy to get some lawyer that didn't know the Coffmans and didn't know Mark.

Rather, we had Jack Hynds testify that he got the call. He pulled up Mark's old estate plan. He prepared three different documents to

go over with Mark, that Mark was fully engaged in the discussions of the various options for the new will.

When Dorothy actually suggested that she be given an outright bequest, Mark was the one that put his foot down and said, hey, uh-uh, I want to use the vehicle that's going to save the most money and most taxes. I'm not going to be using some outright gift where taxes get plopped down on my estate and somebody's got to pay them.

Even after Dorothy had said, well, after I'm dead, what difference does it make, you know, everybody's going to be getting a windfall, Mark's wishes and Mark's insistence came through.

If you look at the Lemke case, that's a case where a will was upheld where a cousin drove her cousin, Ms. Lemke, Ms. Behnke was the cousin who drove the testator, Ms. Lemke, to the lawyer's office. She retrieved a will from the safe deposit box that belonged to the testator. She undertook to find the lawyer who she knew, she was familiar with the lawyer. Ms. Lemke was

not familiar with the lawyer, but Ms. Behnke, the beneficiary, was familiar with the lawyer through some social contact with children or something.

Ms. Behnke, the beneficiary, stayed with the testator at her home, drove her to some appointments, cooked food for her, took care of her for the last few months of her life.

The testator, when she went to sign or to talk to the lawyer about doing a will, the lawyer would ask questions to the testator. The testator would look over to the beneficiary who would just shrug her shoulders. The beneficiary said you do what you want to do with your will, but the testator never said, hey, what should I do or would give answers. She would just look over to the beneficiary.

When the testator was in the hospital, the lawyer went to the hospital. There was a mistake in the will, a spelling error that he had to correct, and it had to be retyped, but the beneficiary was there in the hospital the whole time while the testator was executing the will.

The Court in that case said, look, just because the beneficiary is there, just because the beneficiary participated in all of these moves to get this will signed -- and by the way, the will changed the beneficiaries. The beneficiaries had originally been neighbors, and now it became a cousin.

They said, look, just because a beneficiary has done all these things to effectuate the change of the will, that doesn't indicate that the will is not the decision of the maker of that will.

There has to be -- there has to be more, and I think that's clear in Glogovsek. I think that's clear in the Hoover cause, the Maher case, and the Dehart case.

They all have language in there that indicates that there has to be more than just that she's there, she made the phone call.

The Hoover case was an undue influence case, too, that involved the series of lies and representations by a new beneficiary against a testator's son, and that Court instructs us to look at the testator's age as well as health,

and as well as the condition of the testator.

There is no doubt that Mark was very, very sick. He was dying, and those decisions that he made in spite of the fact that he was dying, similar to the Logston (phonetic) case, doesn't mean that he didn't have the ability to exercise his own freewill.

Competency has never been a question. I've been told that from the beginning. Mark's competency was not questioned.

So we don't have that concern, although, Dr. Showel did try to weigh in on that. I found that that was irrelevant.

There were also some arguments made that when Mr. Hynds came to do the will, that Mark -- there was no provision for charitable gifts or charitable giving in his second will.

Well, there weren't any in his first will either.

Those bequests were never made in the first will nor in the second.

I also considered Mr. Wilson's testimony as to Mark's ability to understand what was happening with regard to any changes.

Mr. Wilson said he had two conversations with Mark about changing some of the corporate structure because of issues with his Uncle Frank's estate, which included issues on the buyout, the buy/sell agreements.

Pete Wilson said that he found Mark to be engaged in the discussions, that he understood why the changes were being made in that regard as well.

There were some implications that Peggy and Kathy's expectancy was affected.

For sure it was, but with regard to Coffman Truck Sales, there was a lot of testimony about how this was a family business, it had been in the family for 70 years, that their parents had worked hard, as did their uncles, worked very hard to keep this in the family and to make it as successful as it was, but under no circumstance based on the documents that were admitted into evidence were Peggy and Kathy ever in expectancy to own Coffman Truck Sales.

Under the buy/sell agreement that was in effect, any shares of the deceased

shareholder had to be purchased back by the company, by Coffman Truck Sales.

So they would not have been in line to inherit the business to begin with.

So, I think, that maybe the -- I understand that this was their dad's business, that this was their uncle's business, and that this was their brother's business, and it has been built into a very successful endeavor, but their expectancy as to that was mislaid.

Based upon everything that I've gone through, based upon my review of the testimony, assessing the testimony, I find that the respondent's motion for a directed finding is proper, and I will grant the motion for a directed finding today.

There's somebody coming into the waiting room, Daniel Eukich (phonetic).

Do you know if he's part of this litigation?

MR. WOOD: You know, he's -- I just e-mailed him.

He's counsel for Dr. Cameron who was going to be our first witness, and we told him

it would be about 3:00 we expected, so I just e-mailed him to sit tight.

THE COURT: Okay. Okay.

MR. WOOD: I'll e-mail him again that you're not going -- he saw that we're not going to let him in right now.

THE COURT: Okay. All right. Okay. So, Mr. Wood, if you would prepare an order, please.

MR. WOOD: Yes, your Honor.

THE COURT: And again, I really want to thank the attorneys for the job that you've done here.

I enjoy working with lawyers who know how to present a case, and I appreciate the hard work that you've all put in, because this is not an easy task or an undertaking. So I thank you all.

MR. WOOD: Thank you for your time, your Honor.

We appreciate it.

THE COURT: Good luck everybody. Good luck to everyone.

MR. WOOD: Thank you very much.

THE COURT: Thank you.

(Which were all the proceedings had in the above-entitled cause this date and time.)

(Proceedings concluded at 3:02 p.m.)

STATE OF ILLINOIS)
) SS:
COUNTY OF C O O K)

I Mary Kay Andriopoulos, CSR, being first duly sworn, on oath says that she is a court reporter doing business in the City of Chicago; and that she reported in shorthand the proceedings of said hearing, and that the foregoing is a true and correct transcript of her shorthand notes so taken as aforesaid, and contains the proceedings given at said hearing.

MARY KAY ANDRIOPOULOS, CSR
LICENSE NO. 084-002248