Illinois Official Reports

Supreme Court

***In re Estate of Coffman*, 2023 IL 128867**

Caption in Supreme Court:	*In re* ESTATE OF MARK A. COFFMAN, Deceased (Peggy LeMaster *et al.*, Appellants, v. Dorothy Coffman *et al.*, Appellees).
Docket No.	128867
Filed	November 30, 2023
Decision Under Review	Appeal from the Appellate Court for the Second District; heard in that court on appeal from the Circuit Court of Kendall County, the Hon. Melissa S. Barnhart, Judge, presiding.
Judgment	Judgments affirmed.
Counsel on Appeal	David E. Lieberman and Elizabeth A. McKillip, of Levin Schreder & Carey Ltd., of Chicago, for appellants. Hal J. Wood and Matthew R. Barrett, of Horwood Marcus & Berk, Chtrd., and Karen Kies DeGrand and Scott L. Howie, of Donohue Brown Mathewson & Smyth LLC, both of Chicago, for appellee Dorothy Coffman. No brief filed for other appellee.

Justices

JUSTICE ROCHFORD delivered the judgment of the court, with opinion.

Chief Justice Theis and Justices Neville, Overstreet, Holder White, Cunningham, and O'Brien concurred in the judgment and opinion.

OPINION

¶ 1 Mark Coffman executed powers of attorney appointing his spouse, respondent Dorothy Coffman, as his agent for health care and property. He also executed a will. Seventeen years later, Mark revoked the will and executed a new one as he was dying from cancer. Mark's sisters, petitioners Peggy LeMaster and Kathleen Martinez, contested the new will because it changed Mark's disposition of his interests in certain family businesses to the detriment of petitioners and to the benefit of Dorothy.

¶ 2 Petitioners allege that Dorothy, as the primary beneficiary, exerted undue influence over Mark to procure the preparation of the new will. The Kendall County circuit court entered a directed finding and judgment for Dorothy. The appellate court affirmed, and we allowed petitioners leave to appeal. Ill. S. Ct. R. 315(a) (eff. Oct. 1, 2021).

¶ 3 Petitioners contend the evidence supports the fiduciary-relationship presumption of undue influence. They argue the new will must be declared invalid unless Dorothy can rebut the presumption at a new hearing on remand to the circuit court. Petitioners argue they are entitled to the presumption because the powers of attorney created a fiduciary relationship between Dorothy and Mark and because Dorothy was "instrumental and participated in" procuring the contested will. Petitioners alternatively ask this court to readopt and apply the debilitated-testator presumption of undue influence, which would not require proof of a fiduciary relationship.

¶ 4 What constitutes undue influence depends on the circumstances of each case, and the fiduciary-relationship presumption must be applied with caution in the context of marital relationships. We hold that, although Mark's power of attorney for property created a fiduciary relationship with Dorothy as a matter of law, the circuit court's directed finding that Dorothy did not procure the preparation of the will was not against the manifest weight of the evidence. We also restate this court's repudiation of the debilitated-testator theory of presumptive undue influence. We disagree with the circuit court and the appellate court on certain aspects of the analysis but affirm the judgments.

¶ 5 ### I. BACKGROUND

¶ 6 Many facts are undisputed. Mark devoted his working life to Coffman Truck Sales, Inc. (Coffman Truck Sales), a prosperous truck sales, service, and parts business founded in 1946 by Glenn Coffman, the father of Mark, Peggy, and Kathleen. Mark worked at the business for 48 years, alongside his father and extended family. After Glenn died in 1991, Mark served as president for 26 years, until his own death.

¶ 7 At his death, Mark owned 66.7% of Coffman Truck Sales' 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 never had an ownership interest in Coffman Truck Sales, but they each had ownership interests in Coffman Real Estate.

¶ 8 Mark and Dorothy were married for the last 24 years of Mark's life but had no children together. In 2001, Mark executed a will. He also executed powers of attorney appointing Dorothy as his agent for health care and property. Mark named Kathleen and Peggy as successor coagents in the event Dorothy died, became incompetent, resigned, or refused to accept the office of agent. Dorothy did none of those things. But Dorothy also did not exercise her power of attorney for property while the 2001 will was in effect.

¶ 9 In June 2016, Mark was diagnosed with laryngeal cancer, and he underwent surgical procedures, radiation, and chemotherapy. Part of Mark's larynx was removed, and he underwent a tracheostomy, which made it difficult for him to speak.

¶ 10 By March 2018, Mark's cancer had metastasized widely, including to his hip, which required heavy doses of pain medication. Mark relied primarily on text messaging to communicate when he could not speak, and he depended on Dorothy to communicate with family members, business associates, and medical personnel. Dorothy assisted Mark with his health care and activities of daily living.

¶ 11 On March 15, 2018, Dr. John Showel, Mark's oncologist, advised the family that Mark had six to eight weeks to live and recommended hospice care. The next day Dorothy called attorney John Hynds of Hynds, Rooks, Yohnka, Mattingly & Bzdill about Mark's estate planning. Hynds had handled Glenn's probate, and Mark's 2001 will had been drafted by John N. Rooks, who was a partner at the firm but had since retired.

¶ 12 On March 17, Hynds and his legal assistant, Lisa Barkley, met with Mark at the hospital about executing a new will. Hynds brought three versions of proposed estate planning documents, and Mark discussed his options with Hynds and Dorothy. Mark chose one and executed the new will that day in his hospital bed, with Hynds and Barkley serving as attesting witnesses. Dorothy routinely signed for Mark because he had limited use of his right arm, but Mark signed the new will, using his left hand.

¶ 13 The next day, Hynds called Dorothy and confirmed that she and Mark were satisfied with the new will and did not have any questions or requests for changes. Hynds sent Dorothy his invoice, which she paid.

¶ 14 On April 15, Mark and Dorothy decided to begin end-of-life hospice care for Mark. Mark died on April 26 at age 68.

¶ 15 In both the 2001 will and the 2018 will, Mark left all residences and tangible property to Dorothy and a $100,000 bequest to respondent Courtney Coffman Crenshaw, his adult daughter from a prior relationship. The two wills differ in their disposition of the residuary interest in Mark's estate.

¶ 16 The 2001 will divided Mark's residuary estate between two trusts under Dorothy's management and control as trustee. The 2001 will directed Dorothy to distribute to herself all income and principal from the trusts, except for certain excluded assets that are at issue in this appeal.

¶ 17 The excluded assets included Mark's ownership interests in Coffman Truck Sales and Coffman Real Estate, or the proceeds from their sale. The 2001 will prohibited Dorothy or any successor trustee from distributing the excluded assets during Dorothy's lifetime. The 2001

will directed the distribution of the excluded assets, after Dorothy's death, to petitioners or *per stirpes* to petitioners' descendants.

¶ 18 The 2018 will granted Mark's business ownership interests partially to Dorothy outright and the rest to her as trustee of the family trust. The new will also authorized Dorothy to use her own will to appoint the recipients of those interests held in trust at her death. In contrast to the 2001 will, the 2018 will authorized Dorothy, not petitioners, to designate the ultimate disposition of the excluded assets.

¶ 19 The circuit court granted Dorothy's petition to admit the 2018 will to probate, and petitioners contested the will. See 755 ILCS 5/8-1 (West 2020). Petitioners sought an order to declare the 2018 will invalid and to admit the 2001 will to probate.

¶ 20 Petitioners asserted the 2018 will resulted from Dorothy's undue influence over Mark. Petitioners claimed the 2018 will was executed when Mark was physically and psychologically weakened and vulnerable to undue influence by, and dependent on, Dorothy. They alleged that, during the last month of his life, Mark took regular doses of morphine for pain. Petitioners implied the timing of the new will was suspicious because Mark revoked the 2001 will just two days after his oncologist recommended hospice care.

¶ 21 Petitioners argued that Dorothy became the dominant party in a fiduciary relationship in which Mark grew heavily dependent on her, including for financial matters. They also alleged that Mark reposed trust and confidence in Dorothy. 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.

¶ 22 The matter proceeded to a bench trial. In his videorecorded testimony, Dr. Showel described Mark's condition around the time he executed the new will. Dr. Showel saw Mark nearly every day through March 2018. Patient notes stated Mark was at times confused and at other times oriented to time and place. Mark was treated for acute delirium after a fall, but Dr. Showel testified that any concerns about Mark's mental status would have subsided by March 15. And, over the next two days, Dr. Showel discussed the treatment plan with Mark himself. Notes dated March 17 described Mark as oriented and alert and stated that Mark was expecting his attorney to visit that day. Mark commented, " 'my wife is unhappy with me because I've been dragging my feet on this.' " Dr. Showel did not see Mark on the day he executed the new will, but a note entered the next day stated Mark's delirium was "now resolved."

¶ 23 Hynds testified that he has practiced at his firm for more than 50 years, focusing on estate planning and administration. Hynds had handled Glenn's estate years earlier and represented Dorothy as executor of Mark's estate. Hynds testified that, when he works with couples, he represents and acts for both but the 2018 will reflects Mark's wishes.

¶ 24 Hynds did not discuss Mark's estate planning with Mark before Dorothy called him on March 16. Dorothy told him that Mark wanted to change his will, including to incorporate changes recommended in a 2009 letter from Rooks concerning the decoupling of the Illinois estate tax from the federal estate tax and leaving Mark's estate to Dorothy outright, "totally under her control." Dorothy also told Hynds 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. Hynds did not speak to Mark, but Dorothy told him that Mark could communicate.

¶ 25 Hynds and his law partner prepared three sets of documents. One was a codicil that would account for the 2009 change in the tax law but would leave the beneficiaries from the 2001

will unchanged. The other options were two wills that would change the ultimate disposition of assets in favor of Dorothy and to the detriment of petitioners. One will would involve a trust to account for the revised tax law and the other would leave the assets to Dorothy outright. Neither Hynds nor anyone at his firm communicated with Mark before preparing the draft documents.

¶ 26 Dorothy testified that, when Hynds arrived at the hospital on March 17, Hynds indicated that Mark, not Dorothy, was his client. When Dorothy tried to speak, Hynds told her not to. However, Dorothy ultimately joined the discussion with Mark about the estate plan and asked questions. Barkley was also in the room. Mark stayed in bed. The conversation indicated to Hynds that Mark had directed Dorothy to arrange the meeting.

¶ 27 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 spoke at times, but Mark was "primarily engaged" with Hynds.

¶ 28 Hynds conceded that he did not ask to speak to Mark privately, but Mark told Hynds he wanted Dorothy to have control over the ultimate distribution of the assets at issue. Hynds and Mark read through the will together. When Hynds explained how the proposed limited power of appointment would work and how it would also save taxes, "Mark had indicated that that's what he wanted." Dorothy initially questioned the advantages of the proposed trust structure, but she acquiesced to Mark's preference for the trust over leaving the property to her outright. According to Hynds, Dorothy realized 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."

¶ 29 Hynds testified that authorizing Dorothy to direct the distribution of all the assets through her own estate plan "was a key for Mark." Hynds did not ask Mark why he wished to give Dorothy the ultimate control, but Hynds testified Mark "was perfectly competent" and understood what he wanted in the will. Conversely, Dorothy "made no specific comments" about her authority to direct the distribution. According to Hynds, "Mark was the one that was doing the talking."

¶ 30 For instance, Mark directed Hynds to cross out a section in the draft that would have granted petitioners 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.

¶ 31 Hynds did not believe Dorothy overpowered Mark into making the new will. She did not attempt to intervene, and she did not have any real impact on Mark. Mark insisted 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."

¶ 32 Barkley testified that, when she and Hynds arrived at the hospital, they asked if Mark was lucid and a nurse replied that Mark was having a good day. Mark recognized Hynds immediately, and they chatted about how long it had been since they had seen each other. Barkley and Dorothy sat apart from Hynds, who stood by Mark's bed most of the time. As Hynds and Mark went over the documents, Mark appeared to understand the issues and asked intelligent questions about tax consequences. Dorothy was present the entire time and

participated in the discussion, but she did not appear to pressure Mark in any way. Dorothy asked Hynds questions but did not ask Mark questions or tell him what he should do.

¶ 33 Barkley opined that Mark was of sound mind on March 17 and was "more than competent" to execute the will. She had known Mark for years, and based on what she observed, she believed that Mark knew what he was doing.

¶ 34 Peggy testified that she communicated with Mark via text message nearly every day after he lost his ability to speak. Dorothy periodically updated Peggy on Mark's condition in the hospital. On March 17, Dorothy sent Peggy a text message that Mark was "doing good" and in less pain.

¶ 35 On cross-examination, Peggy testified that she had a good relationship with Dorothy. They spent holidays together, and Dorothy was a good wife to Mark and took care of him when he became ill. Dorothy sent text messages on Mark's behalf, accompanied him to medical appointments, and stayed with him at the hospital.

¶ 36 Two days before the meeting, Dorothy told Peggy that the lawyers were coming to see Mark about his will. Peggy did not witness any conversations between Mark and Dorothy related to the new will. Mark never told Peggy that Dorothy was pressuring him to make a will or to do anything concerning the disposition of his business. Nevertheless, Peggy believed Dorothy had exercised undue influence and overpowered Mark.

¶ 37 Kathleen testified that she and Mark never discussed his estate planning and that Mark never told her anything about either will. Kathleen had known Dorothy since high school and believed Dorothy was a good wife to Mark. Kathleen did not go to the hospital on March 17, as Dorothy asked her not to, because the lawyers were coming to work on Mark's will. Kathleen testified that, when family visited Mark at the hospital, Dorothy usually welcomed the opportunity to take a break and leave Mark's hospital room, but in March 2018 she stopped leaving family alone with Mark. That said, Kathleen never asked Dorothy to leave her alone with Mark. Kathleen never saw Dorothy urging or persuading Mark to execute the 2018 will, and no one told her that they saw Dorothy doing so.

¶ 38 Following petitioners' case-in-chief, the circuit court denied the petition to contest the 2018 will and entered a directed finding and judgment for Dorothy. First, the court found petitioners had failed to present any evidence of actual undue influence, which petitioners do not dispute.

¶ 39 Second, the court found petitioners had not presented sufficient evidence on any of the four elements of presumptive undue influence. As to the first element, the court concluded that, although Mark had appointed Dorothy as his agent, she was not a fiduciary, because there was no evidence that she acted under the powers of attorney for health care or property to materially benefit herself or a third party before the 2018 will was executed. The court found Dorothy was a substantial beneficiary under both wills.

¶ 40 As to the second element, the court found, for purposes of the presumption, that Mark was not dependent on Dorothy and she was not in a dominant role. The court emphasized the marriage spanned 24 years and "taking good care of a dying spouse or an ill spouse is at the heart of what marriage is about." The court commented, "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 the relationship." The court noted Mark made his own treatment decisions and directed Dorothy to contact the family's longtime attorneys. So, "Mark controlled the scenario."

¶ 41 As to the third element, the court observed that, considering the long duration of the marriage, it would be obvious that Mark would place trust and confidence in Dorothy, just as she would place trust and confidence in him. The court found that, although Mark increasingly relied on Dorothy as his condition worsened, his reliance was not unusual for a married couple, especially where there was no evidence of Mark making unusual decisions based on his confidence in Dorothy.

¶ 42 As to the fourth element, the court found that Dorothy did not procure the new will. She called Hynds and was present when Mark executed the document, but she was not "instrumental" to its preparation. The court credited the testimony that Mark was fully engaged in the discussions of the various estate planning options and, in fact, rejected one of Dorothy's suggestions.

¶ 43 The court found that Mark's competence was not in dispute. Petitioners, the court observed, were never in expectancy to own Coffman Truck Sales, as the shareholder agreement contained buyout provisions that required the company to purchase any deceased shareholder's shares. The court noted petitioners "would not have been in line to inherit the business to begin with." The circuit court concluded, "Based on everything that I've gone through, based upon my review of the testimony, assessing the testimony, I find that [Dorothy's] motion for a directed finding is proper."

¶ 44 The appellate court affirmed the judgment, holding that Dorothy did not owe Mark a fiduciary duty as a matter of law and the circuit court's directed finding that she did not procure the contested will was not against the manifest weight of the evidence. 2022 IL App (2d) 210053, ¶¶ 94, 103. The court also rejected, as no longer good law, petitioners' debilitated-testator theory of presumptive undue influence. *Id.* ¶ 106.

¶ 45 II. ANALYSIS

¶ 46 Petitioners renew their argument that the 2018 will should be declared invalid because Dorothy exerted undue influence over Mark to procure it. They argue Dorothy similarly manipulated Mark to revoke the 2001 will, which contained provisions ensuring that the family business remained with the siblings' descendants. *In re Estate of Hoover*, 155 Ill. 2d 402, 411-12 (1993), is one of our leading decisions on undue influence:

> "[U]ndue influence which will invalidate a will is ' "any improper *** urgency of persuasion whereby the will of a person is over-powered and he is induced to do or forbear an act which he would not do or would do if left to act freely." ' [Citations.] To constitute undue influence, the influence ' "must be of such a nature as to destroy the testator's freedom concerning the disposition of his estate and render his will that of another." ' [Citations.]
>
> What constitutes undue influence cannot be defined by fixed words and will depend upon the circumstances of each case. [Citation.] The exercise of undue influence may be inferred in cases where the power of another has been so exercised upon the mind of the testator as to have induced him to make a devise or confer a benefit contrary to his deliberate judgment and reason. [Citation.] Proof of undue influence may be wholly inferential and circumstantial. [Citation.] The influence may be that of a beneficiary or that of a third person which will be imputed to the beneficiary. [Citations.] False or misleading representations concerning the character of another may be so connected

with the execution of the will that the allegation that such misrepresentations were made to the testator may present triable fact questions on the issue of undue influence. [Citations.]"

¶ 47 This court distinguishes undue influence arising from coercion or active fraud from undue influence resulting from the abuse of a fiduciary relationship between the parties. *Belfield v. Coop*, 8 Ill. 2d 293, 309 (1956); *Weston v. Teufel*, 213 Ill. 291, 299 (1904). A presumption of undue influence based on a fiduciary duty arises when

> "(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 v. DeHart*, 2013 IL 114137, ¶ 30.

Proof of these elements standing alone and undisputed by other proof entitles the person contesting the will to a verdict (*Weston*, 213 Ill. at 299), but the presumption can be rebutted by contrary evidence (*DeHart*, 2013 IL 114137, ¶ 30).

¶ 48 On appeal, petitioners contend they presented sufficient evidence to make a *prima facie* case of presumptive undue influence because the power of attorney for property created a fiduciary relationship and Dorothy's status as a fiduciary rendered her dominant and Mark dependent in the relationship. Petitioners conclude that Mark placed extraordinary trust in Dorothy and that she was instrumental in procuring the 2018 will.

¶ 49 Petitioners ask this court to reverse the appellate court's judgment, vacate the circuit court's judgment, reverse the directed finding, and remand the cause to the circuit court for further proceedings. Petitioners further request that we direct the circuit court to apply the presumption of undue influence to the 2018 will and to declare the will invalid if Dorothy fails to present clear and convincing evidence to rebut the presumption on remand.

¶ 50 Dorothy responds that petitioners' evidence on each of the four elements actually supports the judgment. In the interest of judicial economy, we address just the first and fourth elements of presumptive undue influence, because the fiduciary-relationship requirement needs clarification and the evidence concerning procurement is dispositive of the appeal.

¶ 51 We review petitioners' allegations in the context of the circuit court's directed finding. "In all cases tried without a jury, defendant may, at the close of plaintiff's case, move for a finding or judgment in his or her favor." 735 ILCS 5/2-1110 (West 2020). To rule on a motion filed under section 2-1110, the circuit court undertakes a two-part analysis. *Kokinis v. Kotrich*, 81 Ill. 2d 151, 154-55 (1980).

¶ 52 First, the court must determine, as a matter of law, whether the plaintiff has presented a *prima facie* case by proffering at least "some evidence on every element essential to [the plaintiff's underlying] cause of action." *Id.* at 154. If the plaintiff fails to meet this burden, the court should grant the motion and enter judgment for the defendant. *Id.* at 155. Because a determination that the plaintiff has failed to present at least some evidence on every element is a question of law, such a ruling is reviewed *de novo. Id.* at 154-55.

¶ 53 If, however, the circuit court determines that the plaintiff has presented some evidence on every element, the court proceeds to the second part of the inquiry and considers the totality of the evidence presented, including any evidence that is favorable to the defendant. In its role as the finder of fact, the court weighs all the evidence, determines the credibility of the witnesses,

and draws reasonable inferences therefrom. 735 ILCS 5/2-1110 (West 2020); *Kokinis*, 81 Ill. 2d at 155. The weighing process may negate some evidence presented by the plaintiff.

¶ 54 After weighing all the evidence and applying the standard of proof required for the underlying cause, the court must determine whether sufficient evidence remains to establish the plaintiff's *prima facie* case. If the circuit court finds that sufficient evidence has been presented, the court should deny the defendant's motion and proceed with the trial. *Kokinis*, 81 Ill. 2d at 155. If, however, the court determines that the evidence warrants a finding in favor of the defendant, it should grant the defendant's motion and enter a judgment dismissing the action. *Id.* A reviewing court will not reverse a ruling following this weighing process unless it is contrary to the manifest weight of the evidence. *Id.* at 154.

¶ 55 Here, the parties dispute our standard of review because they disagree on whether the circuit court proceeded to the second step, which would trigger deferential review. Petitioners argue *de novo* review applies based on their misconception that the circuit court addressed only the first step, considering whether there was "a preponderance of evidence establishing [a] *prima facie* case of presumptive influence," then finding there was not. Dorothy responds that the court implicitly proceeded to the second step by weighing the credibility of the witnesses, which renders the ruling subject to the manifest-weight standard of review. We agree with Dorothy.

¶ 56 The circuit court's written order incorporated the court's reasons stated on the record at the hearing. The court stated, "[b]ased upon everything that I've gone through, based upon my review of the testimony, *assessing* the testimony, I find that [Dorothy's] motion for a directed finding is proper, and I will grant the motion for a directed finding today." (Emphasis added.) We interpret these words to mean the court, in its role as finder of fact, considered the totality of the evidence presented, including any evidence that was favorable to Dorothy. The court weighed the evidence, assessed the witnesses' credibility, and determined the evidence warranted a directed finding for Dorothy. Therefore, we will not reverse the circuit court's judgment unless it is contrary to the manifest weight of the evidence. *Id.* A judgment is against the manifest weight of the evidence only when the opposite conclusion is apparent or when the judgment is arbitrary, unreasonable, or not based on the evidence. *Vician v. Vician*, 2016 IL App (2d) 160022, ¶ 27.

¶ 57 A. Fiduciary Relationship

¶ 58 The first element of presumptive undue influence is the existence of a fiduciary relationship between the testator and a person who receives a substantial benefit from the will. A fiduciary relationship may be shown to exist either as a matter of law or as a matter of fact. *In re Estate of Stahling*, 2013 IL App (4th) 120271, ¶ 18. "A fiduciary relationship 'may exist as a matter of law between partners, joint adventurers, trustee and beneficiary, guardian and ward, attorney and client, and principal and agent.' " *Id.* (quoting *Carroll v. Caldwell*, 12 Ill. 2d 487, 495 (1957)). In this case, the petition to contest the will alleged Dorothy was a fiduciary as a matter of law as agent under Mark's power of attorney for property.

¶ 59 It is well settled that an individual holding a power of attorney is a fiduciary as a matter of law. *In re Estate of Shelton*, 2017 IL 121199, ¶ 22; *Clark v. Clark*, 398 Ill. 592, 600 (1947). An agent appointed under a power of attorney has a common-law fiduciary duty to the principal. *Shelton*, 2017 IL 121199, ¶ 22; see also 755 ILCS 45/2-7(a), (b) (West 2020)

(codifying the agent's duty of care owed to the principal for purposes of the Illinois Power of Attorney Act (755 ILCS 45/1-1 *et seq.* (West 2020))). Unless otherwise noted, the fiduciary relationship between the principal and his or her agent begins at the time the power of attorney document is signed. *Shelton*, 2017 IL 121199, ¶ 22.

¶ 60 Here, Mark appointed Dorothy as his agent for property:

> "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."

¶ 61 The document also prescribed the duration of Dorothy's agency:

> "ABSENT AMENDMENT OR REVOCATION, THE AUTHORITY GRANTED IN THIS POWER OF ATTORNEY WILL BECOME EFFECTIVE AT THE TIME THIS POWER IS SIGNED AND WILL CONTINUE UNTIL YOUR DEATH UNLESS A LIMITATION OF THE BEGINNING DATE OR DURATION IS MADE ***."

¶ 62 The document did not limit the beginning date or duration, so Dorothy's agency became effective on August 4, 2001, the date Mark signed the document, and remained effective until his death. But because Dorothy did not *exercise* the power of attorney for property before Mark executed the 2018 will, the lower courts held that Mark and Dorothy did not have a fiduciary relationship for purposes of the presumption of undue influence. We disagree.

¶ 63 In *Shelton*, this court cited section 2-7(a) of the Power of Attorney Act for the proposition 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.) *Id.* ¶ 24. This accurate statement of the law, taken out of context, gave petitioners and the appellate court the false impression that a fiduciary relationship does not exist without the agent exercising his or her power of attorney.

¶ 64 Stated precisely, section 2-7(a) provides, "[w]henever a power is exercised, the agent shall act in good faith for the benefit of the principal using due care, competence, and diligence in accordance with the terms of the agency." 755 ILCS 45/2-7(a) (West 2020). Section 2-7(a) prescribes the contours of the agent's duty, requiring good faith when exercising the power of attorney, but it says nothing about when the agency creates the fiduciary relationship. *Shelton* made the point that an agent owes a fiduciary duty when exercising the power of attorney, not that the fiduciary relationship lies dormant until the power is exercised. *Shelton*, 2017 IL 121199, ¶ 22 ("The fiduciary relationship between the principal and agent begins at the time the power of attorney document is signed.").

¶ 65 The defendant in *Shelton* was named in the agency document as a successor agent but did not owe a fiduciary duty to the principal because the initial agent still retained authority under the agency. No fiduciary relationship existed between the purported successor agent and the principal because, "[b]y definition, a successor agent's authority to act on behalf of the principal is contingent upon the initial agent's resignation, death, incapacitation, or refusal to

serve." *Id.* ¶ 24 (citing 755 ILCS 45/2-10.3(a) (West 2010)). The successor agent was not a fiduciary because he lacked authority to act under the agency document, not because he was authorized to act but had not exercised the power of attorney.

¶ 66 By contrast, the power of attorney for property in this case stated that Dorothy became Mark's agent on the date he signed the document and would remain Mark's agent unless she "became incompetent, resigned, or refused to accept the office of agent." The plain and ordinary meaning of the text did not condition the agency on Dorothy performing an affirmative act to accept the office. Aside from Dorothy's inaction, petitioners cite nothing in the record to suggest that Dorothy gave up or lost her authority as agent at any time before Mark executed the 2018 will.

¶ 67 The appellate court observed that, although Dorothy exercised the power of attorney to amend the real estate entities' documents, she did so in April 2018, about one month after Mark executed the new will. 2022 IL App (2d) 210053, ¶ 94. But the timing of Dorothy's exercise of her power is immaterial to whether she owed Mark a fiduciary duty when he executed the new will.

¶ 68 Moreover, the appellate court concluded that Dorothy could not exert undue influence over Mark because the power of attorney contained a provision that prohibited her from making or changing his will. *Id.* But that misses the point of invalidating a will procured through undue influence. If Dorothy had been authorized to change Mark's will herself, she would not have needed to resort to exerting undue influence to achieve that goal.

¶ 69 We hold that, for purposes of proving the fiduciary-relationship element of the presumption of undue influence, the 2001 power of attorney for property created a fiduciary relationship between Mark and Dorothy as a matter of law. Mark did not terminate Dorothy's agency, and she did not resign, die, become incapacitated, or refuse to serve. Therefore, the fiduciary relationship existed at the time Mark executed the 2018 will, regardless of whether Dorothy had previously exercised her authority. 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.").

¶ 70 Dorothy disagrees, citing *Stahling* for the proposition that "a fiduciary relationship for purposes of presuming undue influence does not spring into existence the moment that someone is named as an agent on a signed power of attorney form." The *Stahling* court, answering a certified question, held the existence of a health care power of attorney did not create a fiduciary relationship that, as a matter of law, would raise the presumption of undue influence in the execution of a deed. *Stahling*, 2013 IL App (4th) 120271, ¶ 1. The court held, "[t]o create a fiduciary relationship, an agent must accept the powers delegated by the principal. The execution of a statutory short form power of attorney, alone and without evidence of acceptance by the named agent, is insufficient to create a fiduciary relationship between the principal and that agent." *Id.* ¶ 22.

¶ 71 *Stahling*'s reasoning can be traced back to *People ex rel. Barrett v. Central Republic Trust Co.*, 300 Ill. App. 297, 303 (1939), where the appellate court stated

> "[t]he courts have invariably held that a fiduciary relationship exists only when confidence is reposed on one side and there is a resulting superiority and influence on the other side. It is not sufficient that confidence be reposed by one party, but the

confidence must be actually accepted by the other party in order to constitute a fiduciary relationship."

See also *Hensler v. Busey Bank*, 231 Ill. App. 3d 920, 928 (1992) ("In order to establish a fiduciary relationship, the trust and confidence allegedly reposed by the first party must actually be accepted by the second party."); *De Witt County Public Building Comm'n v. County of De Witt*, 128 Ill. App. 3d 11, 26 (1984) (same). But *Central Republic Trust* was commenting on trust and confidence in the context of a fiduciary relationship alleged as a matter of fact, not as a matter of law. The court was making the point that a fiduciary relationship does not arise as a matter of fact without evidence of one person accepting the trust and confidence of another. By contrast, the petition to contest the 2018 will alleged "Dorothy Coffman was a fiduciary as a matter of law as agent under Mark Coffman's power of attorney for property."

¶ 72 Dorothy also raises the concern that "unwitting agents" should not be subject to fiduciary duties and potential presumptions of fraud or undue influence alleged by principals who grant powers of attorney in secret. However, allegations of undue influence turn on the circumstances of each case. Dorothy has never alleged that she was unaware of the powers of attorney for property and health care or that she intended to refuse to serve as Mark's agent.

¶ 73 B. Procuring the Will

¶ 74 The fourth element of the fiduciary-relationship presumption requires proof that the will was prepared by or its preparation was procured by the person who received a substantial benefit from the will. *DeHart*, 2013 IL 114137, ¶ 30. The parties compare and contrast the evidence from prior decisions to support their opposing positions on the procurement element. But what constitutes undue influence cannot be defined by fixed words and will depend upon the totality of the circumstances of each case.

¶ 75 On one hand, a sweeping prohibition against applying the presumption to spouses of testators could cause an injustice under certain facts and circumstances, and we decline to exclude the use of the presumption against all spouses. On the other hand, "[s]uffice it to say that the use of the presumption of undue influence must be applied with caution as to marital relationships, because of the unique relationship between spouses and the importance of marriages in our society." *In re Estate of Glogovsek*, 248 Ill. App. 3d 784, 790-91 (1993); see also *Michael v. Marshall*, 201 Ill. 70, 76 (1903) ("in the case of wills, knowledge and experience teach that persons in confidential relations are very likely to be the beneficiaries of wills freely made, and of the most natural character"). "We must keep in mind that we are considering *undue* influence by a spouse," not the absence of influence. (Emphasis in original.) *Glogovsek*, 248 Ill. App. 3d at 792.

¶ 76 Petitioners argue they proved the procurement element with evidence that Dorothy "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." Petitioners' portrayal of the evidence tells an incomplete story. Under the circumstances, the circuit court's finding that Dorothy's conduct did not amount to procurement of the preparation of the will is not against the manifest weight of the evidence.

¶ 77 Undue influence can be shown through circumstantial evidence, but petitioners offered little evidence aside from the timing of the new will, which could be attributed to

procrastination. By contrast, Hynds and Barkley testified unequivocally that Mark was competent to execute the new will and that Mark chose the will that represented his wishes.

¶ 78 Hynds testified that he believed Mark had directed Dorothy to arrange the meeting in the hospital room. Dr. Showel testified that Mark's delirium resolved around that time and that he discussed treatment plans with Mark, who was alert and oriented to time and place. Given that Mark was hospitalized, had difficulty speaking, and had limited use of the hand he used to write, one could reasonably expect Dorothy to facilitate the meeting with Hynds.

¶ 79 Hynds presented Mark with three estate planning options and guided him through each one. Hynds testified that authorizing Dorothy to direct the distribution of all the assets through her own estate plan was important to Mark. Hynds and Barkley opined that Dorothy did not overpower Mark into making the new will, and petitioners presented no evidence that Dorothy made false or misleading representations to Mark. The testimony was consistent that Mark, not Dorothy, directed the discussion and decisions concerning the new will. Mark was fully engaged and understood the process. Dorothy inserted herself into the discussion, but Mark overruled her initial preference for an outright distribution. And Mark specifically asked Hynds to cross out a provision that might have benefited petitioners because Mark was concerned it would hinder Dorothy's control over the excluded assets.

¶ 80 As the court observed, Mark's deteriorating condition afforded Dorothy the opportunity to enlist the help of an unfamiliar, unwitting counsel to prepare a will that represented Dorothy's wishes, not Mark's. Instead, Dorothy contacted Hynds, who was familiar to Mark and his family. She also did not attempt to conceal the meeting, as she informed petitioners in advance that Mark was revisiting his estate plan.

¶ 81 The circuit court found that, under the circumstances, Dorothy's arrangement of the meeting, her presence in the room during the meeting, and her payment of the law firm's invoice do not qualify as improper procurement of the contested will. The court, mindful of the marital relationship, found that Dorothy's involvement amounted to the type of caring assistance an ill testator would hope to expect from his devoted spouse of 24 years. The circuit court's judgment is not arbitrary, unreasonable, or not based on the evidence. See *Vician*, 2016 IL App (2d) 160022, ¶ 27.

¶ 82 C. Debilitated-Testator Presumption

¶ 83 Petitioners alternatively argue they made a *prima facie* case of the so-called "debilitated-testator" presumption of undue influence. Petitioners rely on *Swenson v. Wintercorn*, 92 Ill. App. 2d 88, 101-02 (1968), which stated that "[o]ne 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." Petitioners contend that, regardless of the existence of a fiduciary relationship, Dorothy procured the execution of the 2018 will when Mark was enfeebled by his age and medical condition.

¶ 84 *Swenson* and other decisions cited by petitioners originate from *Mitchell v. Van Scoyk*, 1 Ill. 2d 160, 172-73 (1953), which stated that "the active agency of the chief beneficiary in procuring a will especially, in the absence of those having equal claim on the bounty of the testator, who was enfeebled by age and disease, is a circumstance indicating the probable

exercise of undue influence," "irrespective of the existence of a fiduciary relationship between the chief beneficiary and the testator."

¶ 85 Regardless of whether the facts support application of the debilitated-testator presumption in this case, petitioners' reliance on *Swenson* and *Mitchell* is misplaced because Illinois does not recognize the presumption. This court overruled *Mitchell* and likeminded decisions in *Belfield*, where this court stated, "[a]ny language in those opinions indicating that such a presumption might arise absent a fiduciary relationship was unnecessary and is expressly repudiated." *Belfield*, 8 Ill. 2d at 311.

¶ 86 Petitioners claim this court reaffirmed *Mitchell* four years after *Belfield* in *Greathouse v. Vosburgh*, 19 Ill. 2d 555, 571 (1960). In support, petitioners cite the following quotation from *Mitchell* in *Greathouse*:

> " 'This court has said that the active agency of the chief beneficiary in procuring a will especially, in the absence of those having equal claim on the bounty of the testator, who was enfeebled by age and disease, is a circumstance indicating the probable exercise of undue influence. In that connection we have observed that a mind wearied and debilitated by long-continued and serious illness is susceptible to undue influence and liable to be imposed upon by fraud and misrepresentation; that 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.' " *Id.* (quoting *Mitchell*, 1 Ill. 2d at 172).

¶ 87 *Greathouse* described the preceding passage as a "proper statement" that petitioners interpret as an endorsement of the debilitated-testator presumption, which it is not. *Greathouse* quoted *Mitchell* favorably to make the point that the more susceptible a testator is to undue influence, the less evidence of improper conduct is needed to presume the exercise of undue influence. *Greathouse* went on to emphasize that the presumption does not arise without proof that the beneficiary is a fiduciary who prepares or procures the will. *Id.* at 573 ("To establish undue influence it was incumbent upon the plaintiffs to prove not only the fiduciary relationship but participation in procuring the execution of the will, which would give rise to the presumption of the exercise of undue influence.").

¶ 88 Petitioners ask this court to overrule *Belfield* and revive the debilitated-testator presumption as a matter of policy. We decline to do so. The doctrine of *stare decisis* is the means by which courts ensure that the law will not merely change erratically but will develop in a principled and intelligible fashion. *O'Casek v. Children's Home & Aid Society of Illinois*, 229 Ill. 2d 421, 439-40 (2008). Overruling precedent is appropriate "when the intervening development of the law has 'removed or weakened the conceptual underpinnings from the prior decision, or where the later law has rendered the decision irreconcilable with competing legal doctrines or policies.' " *Neal v. United States*, 516 U.S. 284, 295 (1996) (quoting *Patterson v. McLean Credit Union*, 491 U.S. 164, 173 (1989)); *People v. Castleberry*, 2015 IL 116916. But that is not the case here.

¶ 89 *Belfield* rested on the legal premise that the presumption of undue influence arises where there is a special confidence reposed in one who, by reason of such confidence, must act in good faith and with due regard to the interests of the person reposing such confidence. *In re Estate of Osborn*, 128 Ill. App. 3d 453, 455 (1984). That premise exists today. The fiduciary relationship may exist as a matter of law between attorney-client, guardian-ward, trustee-

beneficiary, and the like, or it may be the result of a more informal relationship—moral, social, domestic, or even personal. *Id.* (citing *Swenson*, 92 Ill. App. 2d at 100). But regardless of how the fiduciary relationship is created, it must exist for the presumption to apply. Petitioners do not propose a compelling reason to depart from this principle in favor of reviving a rule that this court repudiated nearly 70 years ago. We reaffirm *Belfield* and decline to adopt the debilitated-testator presumption of undue influence.

¶ 90 III. CONCLUSION

¶ 91 For the preceding reasons, we hold that a power of attorney for property held by a substantial beneficiary under the will creates a fiduciary relationship with the testator for purposes of the presumption of undue influence. The 2001 power of attorney for property created a fiduciary relationship between Dorothy and Mark as a matter of law. However, the circuit court's finding that Dorothy did not procure the preparation of the contested will was not against the manifest weight of the evidence.

¶ 92 Judgments affirmed.