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.

On 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 RESPONDENT-APPELLEE DOROTHY COFFMAN

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NATURE OF THE CASE

Petitioners filed an action in Kendall County contesting the 2018 will of their brother and seeking to have it declared invalid in favor of a prior will executed in 2001. Petitioners did not contest the testamentary capacity of their brother, age 68 at the time of his death. Rather, they alleged that Respondent, the decedent's wife of 24 years, exercised undue influence on her husband during his final illness.

The case proceeded to a bench trial in probate court. After hearing Petitioners' case, including their testimony and the testimony of the respondent, of the decedent's physician, and of attorneys from a law firm that provided estate planning services for the decedent's family for decades, the trial judge granted Respondent's motion for a directed finding pursuant to 735 ILCS 5/2-1110. The trial court found that the evidence did not support a claim of actual undue influence, a finding Petitioners did not contest in the appellate court or in this Court. Under the factors determining whether a presumption of undue influence arose, the trial court also found the evidence did not support the presumption. The appellate court affirmed the trial court's judgment.

The appeal raises no questions on the pleadings.

ISSUES PRESENTED FOR REVIEW

1. Whether the trial court correctly granted Respondent's motion for a directed finding under 735 ILCS 5/2-1110 and entered judgment for Respondent where the manifest weight of the evidence amply supported the court's findings and conclusion that the evidence did not support a presumption of undue influence.

2. Whether the lower courts correctly declined to apply an alternative test, which this Court has expressly repudiated, for determining a presumption of undue influence.

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3. Whether this Court should affirm the judgment on the ground that the record contains sufficient evidence to rebut any presumption of undue influence.

STATEMENT OF FACTS

Petitioners Peggy LeMaster and Kathleen Martinez omit critical evidence from their statement of facts, including unrebutted testimony concerning the execution of their brother's will establishing that he—and not his wife, Respondent Dorothy Coffman—dictated what terms should be included in the will. Petitioners also fail to mention the law firm that drafted the 2018 will was the same firm that the decedent, Mark Coffman ("Mark"), and his family had used for estate planning for decades. Petitioners also incorrectly assert that Mark's 2001 plan would have bequeathed to Petitioners his interests in Coffman Truck Sales, Inc. ("Coffman Truck Sales"), despite a buy-sell agreement in place before the execution of the 2001 will that required Coffman Truck Sales to repurchase his ownership interests when he died—meaning that Petitioners would not have inherited Mark's ownership interests in Coffman Truck Sales under his 2001 estate plan. To correct these and other misstatements and omissions, Respondent Dorothy Coffman ("Dorothy") submits this supplemental statement of facts.

Mark and Dorothy's 24-Year Marriage

Mark and Dorothy were married in 1994, when each was 42 or 43 years old. C2484; R1119. Neither Mark nor Dorothy were previously married, and they had no children together. C8, C2486. Mark had a daughter from a previous relationship, Courtney Crenshaw Coffman ("Courtney"). R131-33.

Mark and Dorothy were happily married for 24 years until Mark died on April 26, 2018. R2484. Throughout that time, Petitioners Peggy LeMaster ("Peggy") and Kathleen

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Martinez ("Kathleen"), Mark's two sisters, came to know Dorothy well. R267, 1756. Dorothy, a central part of Mark's family, regularly attended Coffman family dinners, holidays, and other events. R267-68. Mark and Dorothy lived next door to Mark's and the Petitioners' childhood home in Plano, Illinois, until Mark's death. R134. Petitioners saw Dorothy and Mark regularly and generally had a good relationship with Dorothy. R267, 1756.

Petitioners acknowledge that Dorothy was a good wife. R268, 1757. When Mark became ill with cancer, Dorothy took care of him, including traveling with Mark to his doctor's appointments and staying with him in the hospital. R268-69. According to Petitioners, "[Dorothy] was by his side during [Mark's] horrible illness and struggle. … She was by his side as anyone would expect a spouse to be in a good marriage." R107.

Coffman Truck Sales and the Other Coffman Entities

For his entire adult life, Mark worked at Coffman Truck Sales, a truck sales, service, and parts business founded in 1946 by his father Glenn Coffman ("Glenn") and uncle Erwin Coffman. C2484-85. Mark started working there part-time in high school and left college early to work there full-time from age 20 until his death. R127-28; C2485. His sister Peggy called him "probably one of the hardest working people that you'd ever meet." R149. Mark's work ethic played a significant role in the growth of Coffman Truck Sales. R342.

Originally, Mark was a 25% shareholder of Coffman Truck Sales. C2485. When Glenn died in 1991, he left his ownership interest to Mark, increasing Mark's ownership to 50% and making Mark the largest shareholder. C2485; R130. Mark also became president of the company, a position he held until his death. R130; C2485.

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Petitioners have never been owners of Coffman Truck Sales and had limited involvement in the company. R140-41, 343-44. Kathleen worked there in high school. R1675-76. Peggy also worked there in high school and on summer breaks and after graduating from college in 1980, for a year or two. R125-26, 265.

Mark also owned 33.3% of the membership interests of Coffman Real Estate LLC ("Coffman Real Estate"), which owns the real estate where Coffman Truck Sales operates, and held an ownership interest in Coffman Brothers LLC ("Coffman Brothers"), another real estate holding company. C2485; R140-141. The Petitioners each inherited a portion of Coffman Real Estate and Coffman Brothers from their mother. R138-141, 1683. Mark managed the Coffman Real Estate and Coffman Brothers properties. R1683.

Mark's 2001 Estate Planning

In 2001, Mark executed a will ("the 2001 Will") and other estate planning documents, including a Power of Attorney for Health Care and Property naming Dorothy as his agent. C2486. Attorney John Rooks of Hynds, Rooks, Yohnka, Mattingly & Bzdill (the "Hynds Firm") prepared the estate planning documents. *Id*. Relevant to Petitioners' allegations, the 2001 Will provided as follows:

1. Mark appointed Dorothy executor and trustee of his estate, and Petitioners were named as successor co-executors and co-trustees. E408-20.

2. Mark made a special monetary bequest to his daughter Courtney. E407; R1288.

3. Mark left all his personal effects and residences to Dorothy. E407; R1287-88.

4. Mark left the remainder of his estate in a marital or a family trust, with Dorothy appointed trustee. E408-12; R1289-90.

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5. Mark's shares of Coffman Truck Sales and other business interests or the proceeds from any sale of those ownership interests pursuant to any operative buy and sell agreement in existence at Mark's death were excluded from the assets that Dorothy could distribute to herself during her lifetime and would pass to Petitioners after Dorothy's death. E411; R1295, 1301-02.

Petitioners were unaware of the terms of the 2001 Will, and Mark never told them what would happen to Coffman Truck Sales after his death. R121, 340, 1675. Although Dorothy was aware of the existence of the 2001 Will, she "never really read it"; she only knew what Mark told her. R1125.

Mark's Illness

In June 2016, Mark was diagnosed with laryngeal cancer. C2487. His cancer slowly metastasized until his death on April 26, 2018. *Id*. Mark had a strong will to beat his cancer diagnosis and recover, and he fought until the end. R293, 1759. Throughout his illness, Mark remained optimistic and believed that the various treatments would work. R294-95, 298. Mark's sisters shared that optimism. Peggy testified: "He had hope that miraculously something was going to happen" (R180-81); "[Mark] was hopeful that he had been—he could lick it. And we all were too." R177.

Mark's treatment included multiple surgical procedures and treatments, including a tracheotomy, radiation, and chemotherapy. C2487. Dorothy assisted and supported Mark every step of the way, and in Peggy's words, Dorothy gave "it [her] very all." E133; R246, 268-69.

Mark continued running Coffman Truck Sales until his passing. He went into the office when he could. R318-19. Just before his final hospitalization, Mark was working

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on income tax returns for the various family businesses and on an important bid for Coffman Truck Sales. R320-22.

On March 11, 2018, Mark's oncologist, Dr. John Showel, referred Mark to the emergency room at Rush University Medical Center ("Rush"). C2488. Mark underwent an MRI and was anesthetized to keep him comfortable during the procedure. R221. The anesthesia, coupled with the pain medication he was already taking, caused symptoms of delirium and confusion after the procedure, but those symptoms quickly waned. E305-07 (March 14 note: "resolution of delirium, likely 2-3 days"). The medical records reflect that, by March 15, Mark exhibited "improvement today in mental status," and the notes from that day state that his "mental status seems normal." E312-13. Any concerns Dr. Showel had about Mark's mental status subsided by March 15. R1005-06. Dr. Showel did not note any confusion on March 15 or 16 and was discussing Mark's care with him. E311-12, 319; R1013. On March 16, Mark's mental status was again noted as normal and he was "[m]aking jokes." E315-16. Any symptoms of delirium had completely resolved by March 17. E326 (March 17 note: "no further delirium").

Preparation of the 2018 Will

A. Mark Directs Dorothy to Telephone the Hynds Firm.

On March 15, Dr. Showel advised that Mark's life expectancy was only about six to eight weeks and Mark's family should look into hospice care. R252. Mark asked Dorothy to call his attorneys and ask them to draft a new will for him that would address an unresolved estate tax issue and leave his estate to Dorothy without restricting her control over the assets. R1343, 1348-49, 1470-72.

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It was difficult to understand Mark over the telephone. Mark's sister Peggy testified that Mark could not project his voice, rendering telephone conversations with Mark difficult even before the tracheotomy—a surgical procedure to create an opening in the neck into the windpipe:

> "Mark was very hard to—even before he had the trach[eotomy], Mark was very hard to hear. He had a very rough voice, couldn't really project. You had to be very careful on how you called him. … It was very difficult to hear him." R147.

As Mark requested, on March 16, Dorothy called the Hynds Firm, the same law firm that drafted Mark's 2001 Will and handled his parents' estates. R627; C2486; E617-18. Dorothy spoke with attorney John Hynds ("Hynds") about what Mark told Dorothy he wanted. R1348-49, 1470-71; E617-20. John Rooks, the drafter of the 2001 Will, had retired in 2016. R1224. Mark was familiar with Hynds, who had handled Mark's father's estate. R618-19.

Hynds understood that Mark had directed Dorothy to call about a will, an understanding confirmed the next day when Hynds spoke with Mark in person. R1470-71. During the March 16 telephone call to Hynds, Dorothy conveyed Mark's medical condition and mentioned that she and Mark were aware of a letter that Hynds' partner had previously sent Mark regarding tax law changes. R629-30. Dorothy also indicated that Mark wanted to leave his estate to her outright and relayed Mark's request that, should she predecease him, half of his estate be left to Mark's nieces and nephews, with the other half going to Dorothy's nieces and nephews. R630.

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B. The Hynds Firm Prepares Three Alternative Options for Mark.

After the telephone call, Hynds and his partner began preparing estate planning documents for Mark. C2488; R627-28. They started by reviewing Mark's existing estate plan, which the Hynds Firm had drafted 16 years before. R1472-73. Hynds prepared three alternative documents to discuss with Mark because they had not yet spoken directly. R1473-75, 1491.

One of those options was a codicil, an amendment to the 2001 Will to take advantage of a 2009 tax law change. R1473-74, 1487. The codicil would have left the terms of the 2001 Will intact, including the terms that preserved for Petitioners the sale proceeds from Mark's ownership interests in Coffman Truck Sales, or the ownership interests themselves if no buy-sell agreement existed requiring the company to repurchase his ownership interests. R1530-31.

The other two options were draft wills. R1488. One version left all of Mark's assets to Dorothy outright, without using any trusts (the "Outright to Dorothy Will"). R1488. Because of the tax liability that would be caused by that version, Hynds also drafted a will that used a family trust with updated tax formulas to address the tax law change referenced in the 2009 letter to Mark from the Hynds Firm, while also allowing Mark to leave Dorothy control over the ultimate disposition of his ownership interests in Coffman Truck Sales or the proceeds from a sale of the company (the "Family Trust Will"). R1474-78, 1488. Hynds felt that having three different options to present to Mark would facilitate a full conversation with Mark about his estate planning objectives. R1491.

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C. Dorothy Tells the Petitioners that Mark was Making Changes to His Will.

It was no secret that Mark was planning on changing his will in March 2018. Dorothy informed each Petitioner beforehand that the lawyers were coming to see Mark to work on his will. R335, 1726. The Petitioners both testified they were not concerned that Mark was working on his will at that time. R335, 1727. Neither attempted to intervene or to ask Mark's doctors or nurses about whether Mark was in a state to be making changes to his will. R336-37, 1765. Nor did they ask Mark about it when they visited him after learning that he had met with his lawyer. R123-24, 338-39, 1727. Similarly, Mark also never expressed any concern to his sisters about the will. R339, 1752.

The 2018 Will Signing

A. Hynds Presents Three Alternative Estate Plans to Mark.

Hynds brought the three alternative documents to Rush on the morning of March 17 to review them with Mark. R634-35, 926. Hynds's assistant, Lisa Barkley, joined Hynds to witness the will signing. R893-94. Barkley, a legal assistant with the firm for 40 years, previously had met Mark. R893, 896.

Prior to meeting with Mark at the hospital, Hynds asked Mark's attending nurse about Mark's condition to make sure he was capable of making estate planning decisions. R1492-93. The nurse indicated that she had spoken with Mark earlier that morning, that Mark had told her a lawyer was coming, and that he was "up for visiting [Hynds]" and was "having a good day." R920-23, 1495. She also confirmed that Mark was capable of talking with Hynds and making decisions. R1495.

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Other medical professionals noted in their records that Mark had informed them he was expecting his lawyers to visit with him that day about making a will. R1023; E323, 327, 330. Dr. Showel testified that Rush has procedures in place if a doctor has concerns about a patient entering into estate planning documents. R1026-27. No concerns were voiced or noted by Rush medical professionals regarding Mark's meeting with his lawyer. R1026-27.

After checking with Mark's nurse, Hynds and Barkley entered Mark's hospital room. Mark recognized Hynds, even mentioning that he remembered that Hynds wore hearing aids. R926, 1498-99. Hynds thought the comment was noteworthy because the two had not seen each other in about 20 years. R1498-99; E618.

Hynds asked Mark about his estate planning objectives. R1498-1500. Specifically, Hynds asked Mark how he wanted to distribute his estate, and Mark responded that "he wanted Dorothy to have control over all his assets." R1500, 674. Hynds was comfortable from that in-person discussion that this was Mark's wish: "I thought he was perfectly competent and understood what he told me he wanted." R675. Hynds described Mark's voice as "very weak, but it was understandable." R1499.

Hynds and Mark then discussed the different documents that Hynds had prepared, and Hynds used the various options to let Mark explain what he was trying to accomplish. R926, 1475, 1501. Hynds and Mark discussed how to meet his objectives. R1518. Based on that discussion, Hynds perceived that Mark understood the information Hynds was presenting. R1518-21.

Hynds informed Mark that the codicil option would amend his 2001 Will only to update a tax issue and would have left everything else about the 2001 Will intact,

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including the level of control Dorothy had under the 2001 Will over the proceeds from the sale of Mark's interests in Coffman Truck Sales, or the ownership interests themselves if no buy-sell agreement existed. R1530-31. Hynds also explained to Mark that the Outright to Dorothy Will could cause a significant tax consequence. R704-05, 1531-32. He further explained to Mark that the Family Trust Will would minimize estate taxes as stated in the Hynds Firm's 2009 letter to Mark. R1533-34.

B. Mark Chooses the Family Trust Will Option.

After Hynds explained the various options, Mark decided to use the Family Trust Will option. R1534. Hynds recalled that Dorothy preferred the Outright to Dorothy option, and she remarked that the estate taxes should make no difference to their heirs, whom she said were "lucky they're getting the inheritance." E618; R705-06, 1520, 1535, 1555-56. Describing Mark's preference to use the Family Trust Will option, Hynds testified: "Mark disagreed, and then Mark said, no, this is the way he wanted it done." R1535.

During the meeting about the will, Dorothy did not intervene in Mark's discussion with Hynds:

> "Q. And during the conversations that Mr.—you were having with Mr. Coffman, did Mrs. Coffman attempt to intervene in that discussion and speak for Mr. Coffman?
>
> A. No.
>
> Q. Was she allowing you to have whatever conversation you felt was appropriate with Mr. Coffman at that time?
>
> A. Yes, it was basically a conversation between him and me." R1521-22.

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Hynds further confirmed that "Mark was the one that was—with whom I was primarily engaged" (R666), and Mark ultimately made the decision:

> "Q. How was it decided what document to move forward with?
>
> A. After we had discussed the alternatives, he indicated to me that he wanted to use the family trust that I—with the outright bequest to Dorothy, and we went ahead and signed that document.
>
> Q. Okay. And when you say he—
>
> A. He signed it.
>
> Q. Sorry. The he you're referring to was Mark Coffman?
>
> A. Mark indicated that he wanted to use the family trust with the outright bequest of the marital share to Dorothy, and that after he expressed that, we went through the process where he signed it, and Lisa and I witnessed his signature." R1536-37.

Similarly, Barkley testified that, although Dorothy was present for the conversation, most of it was directly between Mark and Hynds, and Mark—not Dorothy—identified what he wanted. R925-26, 938, 943-44. Dorothy never spoke with Hynds that day outside of Mark's presence. R1496-97.

C. Hynds and Mark Review and Revise the Draft Family Trust Will.

After Mark decided on the Family Trust Will option, Hynds went through the document with him, paragraph by paragraph, stopping to explain to Mark how the will operated, and if necessary, discussing the various provisions or answering Mark's questions about them. R671, 1537-38, 1539-40. Mark had a copy in front of him, reading along as Hynds read it aloud to him. R671, 913-14, 1537-38. Based on what Hynds called their "intelligent conversation" about the effect of a particular paragraph or provision, Hynds perceived that Mark understood what they were talking about. R1538. Hynds

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stood by Mark's bed while Hynds and Mark were reviewing the will. R924. Throughout the meeting, Barkley and Dorothy sat in the back of the room and made small talk. R924-25.

When Mark and Hynds were analyzing the Family Trust Will paragraph by paragraph, Mark directed Hynds to cross out a section. R1540-41. Hynds had drafted terms giving Petitioners a right of first refusal upon the sale or transfer of Mark's ownership interests in Coffman Truck Sales, whereby Petitioners would have the option to purchase those ownership interests "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." E451; R1541. After debating whether to amend the language to substitute his nephews for his sisters, Mark decided to delete the section and instructed Hynds to strike the entire paragraph. R1541-42. 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." R1541. Mark, Hynds, and Barkley initialed the changes. E451; R918, 1542. Mark then signed the draft Family Trust Will Option, as amended by Mark (the "2018 Will"), with Hynds and Barkley as witnesses. C2488.

After Mark signed the will, Hynds told him he would be available if Mark and Dorothy wanted to follow up with any questions by telephone and that he would be willing to come back to make any changes. R694. Hynds left Mark and Dorothy his cell, home, and office phone numbers before leaving. *Id.*

The Corresponding Changes to the Coffman Entities' Buy-Sell Agreements

From 2001 until April 2018, Mark's ownership interests in Coffman Truck Sales, Coffman Real Estate, and Coffman Brothers (collectively the "Coffman Entities") were

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subject to provisions in various agreements requiring each entity to purchase a deceased owner's ownership interests from his or her estate at an agreed upon price. E192-204; R793-94, 797-98, 800. Mark experienced the effect of the mandatory buy-sell provisions in early 2018, after the death of his uncle Frank Coffman, a co-owner of Coffman Truck Sales. E564, 586; R317. Mark reported to Peter Wilson ("Wilson"), the corporate attorney for the Coffman Entities, that the buy-sell provisions were causing difficulties with his uncle's estate. R763-64, 793-95. Mark noted to Hynds on March 17 that he needed to make changes to the corporate documents containing the mandatory buy-sell provisions so that Dorothy ultimately could control the disposition of Mark's ownership interests in the Coffman Entities. E619.

In late March or early April, Mark had one or two telephone conversations with Wilson, in which Mark instructed Wilson to remove any mandatory buy-sell provisions from the corporate documents governing the Coffman Entities. R760-61, 763-64, 793-95. Wilson testified that the calls were primarily with Mark, although he knew Dorothy was present on one call, conducted on speakerphone, and sometimes Dorothy would repeat a word for Mark if Wilson could not understand. R796-97. Wilson drafted documents removing the mandatory buy-sell provisions. R802-03. The owners of the Coffman Entities, including Petitioners, signed those documents in April of 2018. R368-371, 1778-80; C2489-90; E152-71, 172-91.

Disposition at Trial of Petitioners' Will Contest

After Petitioners rested, the trial court heard argument on Dorothy's motion for a directed finding pursuant to 735 ILCS 5/2-1110. The next day, after providing a detailed explanation of its reasoning, the trial court granted the motion. R1875-99; C3012.

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Recounting the case law governing actual undue influence and contrasting the evidence here with the facts of cases where undue influence was adequately alleged or established, the trial court found "no proof" (R1881) that Dorothy's conduct suggested actual undue evidence, such as where a will was drafted by a stranger to a testator with dementia, where a sister controlled and hid her brother and through lies convinced him to disinherit his daughter, or where an elderly man was convinced to cut out the person he had held out as his son for 60 years in a will written by a new attorney, at the urging of his wife of one year, nearly 30 years younger than the testator. R1878-81.

Next, explaining its findings on presumptive undue influence, the court again recounted the governing case law at length and compared and contrasted the facts of those cases with the evidence Petitioners presented. The court found no fiduciary relationship arising from a 16-year-old power of attorney, which Dorothy did not use to benefit herself. R1884. Assessing the other factors under the relevant case law and statutes, the trial court noted that Mark's sisters did not hold a claim equal to Dorothy, as the spouse, or to Mark's daughter, whose bequest under both wills was unchanged. R1886. The court cited the case law addressing the significant impact of a lengthy marriage in assessing whether a beneficiary should be considered to have an unduly dominant role. R1886-88. The court described the evidence establishing Mark's control over his treatment decisions (R1888) and over his estate planning decisions (R 1890-95), including his direction to Dorothy to contact his family's lawyers and his election to overrule Dorothy's preferred form of will and selection of the form that would reduce tax liability, evidence disproving a level of a beneficiary's participation required for a presumption of undue influence. R1894.

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STANDARD OF REVIEW

A trial court's factual findings during a bench trial are reviewed under a "manifest weight of the evidence" standard. *Lozman v. Putnam*, 379 Ill. App. 3d 807, 820 (1st Dist. 2008). A finding is against the manifest weight of the evidence "only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Id.* A trial court employs a two-step analysis when ruling on a section 2-1110 motion for a directed finding, first considering whether the petitioner has presented a *prima facie* case. *Greater Pleasant Valley Church in Christ v. Pappas*, 2012 IL App (1st) 111853, ¶ 23. The plaintiff must present some evidence on every element essential to the cause of action to survive that part of the inquiry. *Id*. If so, the trial court then must weigh the totality of the evidence, including any evidence favorable to the moving party. *Id*. The process may negate some of the evidence presented by the plaintiff. *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 276 (2003). Where, as here, a trial court states that it has considered the evidence, the court has engaged in the second step of its analysis, calling for deferential review. See *Prodromos v. Everen Securities, Inc*., 389 Ill. App. 3d 157, 170 (1st Dist. 2009).

Contrary to Petitioners' argument for *de novo* review, there is no legal question as to whether the 2018 Will resulted from illegal influence on Dorothy's part, or whether the trial court "confused and conflated" the procurement question with the ultimate question of whether Dorothy overpowered Mark's free will. Petitioners' Brief at 37. The trial court correctly applied the presumption test and concluded that the evidence did not support a presumption that Dorothy unduly influenced Mark to execute the will, and that

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conclusion is not against the manifest weight of the evidence. Even under a *de novo* standard of review, however, the record fully supports the trial court's judgment.

ARGUMENT

Petitioners do not challenge the trial court's finding that there was no evidence of actual undue influence, insisting instead that it should have presumed that Dorothy exerted undue influence on her husband of 24 happy years. They conspicuously ignore this Court's warning that in the marital context, such a presumption should be applied with caution, urging it to adopt a presumptive suspicion of such things as trust and confidence that are ordinary and desirable features of a good marriage. The trial court correctly evaluated the evidence and concluded that it did not support a presumption of undue influence. That conclusion was consistent with the manifest weight of the evidence and should be affirmed.

I. The Evidence Amply Supports the Trial Court's Conclusion that the Petitioners Failed to Establish a Presumption of Undue Influence.

The lower courts followed the manifest weight of the evidence in declining to presume that Mark's 2018 Will was the product of any undue influence Dorothy exerted on him. Illinois courts may presume the existence of undue influence when the following circumstances are established:

> (1) a fiduciary relationship between the testator and a comparatively disproportionate beneficiary under the will;
>
> (2) a testator who was in a dependent situation where the beneficiary is in a dominant role;
>
> (3) a testator who placed trust and confidence in the beneficiary; and
>
> (4) a will that was prepared or executed in circumstances where the beneficiary was instrumental or participated.

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In re Estate of Baumgarten, 2012 IL App (1st) 112155, ¶ 14.

The lower courts agreed that the evidence did not support these factors, and Petitioners offer nothing to the contrary.

A. The presumption of undue influence should be applied only with caution in the marital context.

The law does not lightly presume that one spouse has exerted wrongful influence on the other, warning that "the use of the presumption of undue influence must be applied with caution as to marital relationships." *DeHart v. DeHart*, 2013 IL 114137, ¶ 33 (quoting *In re Estate of Glogovsek*, 248 Ill. App. 3d 784, 790 (5th Dist. 1993)). While the marital setting alone does not preclude such a presumption, a cautious application recognizes that "in the vast majority of marriages, spouses influence each other for better or worse from the day they first date to the day they die or the divorce order is entered." *Glogovsek*, 248 Ill. App. 3d at 792. Since "good marriages involve give and take and compromises between spouses," the law "does not and should not presume a spouse to be guilty of undue influence simply … because the spouse has been able throughout the marriage to have considerable influence on her spouse." *Id.*

By contrast, undue influence is "improper urgency of persuasion whereby the will of a person is overpowered and he is induced to do or forbear an act which he would not do or would do if left to act freely." *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 460 (1983) (citation omitted). "All wills are the result of influence," and therefore, not all influence is undue influence. Ray D. Madoff, *Unmasking Undue Influence*, 81 Minn. L. Rev. 571, 575 (1997); see, *e.g.*, *Hurd v. Reed*, 260 Ill. 154, 161 (1913). Rather, the "word 'undue,' when used to qualify influence, has the legal meaning

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of 'wrongful,'" and thus, "'undue influence' means a wrongful influence." *Hurd*, 260 Ill. at 161 (citation omitted). " '[U]ndue' influence means influence that is excessive, improper, or illegal." *Glogovsek*, 248 Ill. App. 3d at 792. The amount of wrongful influence sufficient to set aside a will is that which "destroy[s] the freedom of the testator's will and render[s] the instrument more the offspring of the will of another than of his own." *In re Estate of Lemke*, 203 Ill. App. 3d 999, 1005 (5th Dist. 1990).

The evidence fell far short of supporting a presumption that Dorothy wrongly influenced Mark to make his 2018 Will. Petitioners fail even to acknowledge the caution to be used when a court is asked to presume undue influence in the marital setting. They cite *Glogovsek* only fleetingly, and more importantly, do not disclose that it reversed a trial court for applying the presumption to a spousal relationship. In *Glogovsek*, a will-challenger accused the wife in a decades-long marriage of illegally influencing her husband to favor her children from a prior relationship. *Glogovsek*, 248 Ill. App. 3d at 785-86. The appellate court recognized the significance of the longtime marriage in determining whether to apply the presumption of undue influence: "what quality and quantity of evidence should be required before a wife of 34 years is presumed to have acted wrongfully?" *Id.* at 792.

This Court endorsed that caution in *DeHart,* and while it found the allegations of a complaint sufficient to allege the presumption and state a case, it agreed that the presumption of undue influence should be applied with caution to marital relationships. *Dehart*, 2013 IL 114137, ¶ 33. Serving as a useful contrast to this case, the allegations in *DeHart*—which the trial court referenced in finding no presumption here (R1878-81)—illustrate the high bar for presuming undue influence between spouses. In *DeHart*, the

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alleged undue influencer was the testator's second wife, 29 years his junior, and they had been married for just over a year, after a brief courtship. *DeHart*, 2013 IL 114137, ¶¶ 8-12. The changes to the will in *DeHart* disinherited the 84-year-old testator's adopted son, whom he had held out to the world as his son for decades. *Id.,* ¶ 9. It was further alleged that the testator's wife had exploited his condition to convince him he had no children. *Id.,* ¶ 32. These circumstances justified the use of the presumption, even accounting for the caution that this Court endorsed in that case.

The same caution, however, defeats the presumption here—where the facts are sharply different from *DeHart* and closely resemble *Glogovsek*. Dorothy and Mark were married for 24 years; neither had been married before; they were close in age; Dorothy was a good wife throughout their marriage and took good care of Mark when he was ill; the 2018 Will made no changes to the preexisting bequest to Mark's daughter; and there is no evidence that Mark did not know the natural objects of his bounty when he signed the 2018 Will. C8, 2484-86; R 267-68, 1119, 1498-99; 1756-57; E407, 448.

Treating marriages differently than other relationships is common under Illinois law. For example, Illinois presumes transfers of property between spouses to be gifts, even when the spouses are in a fiduciary relationship, unlike in a non-spousal fiduciary relationship, where Illinois law presumes the transfer to be fraudulent. *Miethe v. Miethe*, 410 Ill. 226, 231 (1951); *Mache v. Mache*, 218 Ill. App. 3d 1069, 1075 (1st Dist. 1991). Similarly, Illinois law grants a surviving spouse the special right to renounce a will altogether if the spouse is not provided for or is inadequately provided for in the will, entitling a spouse up to at least a third of the estate no matter what the will provides. 755 ILCS 5/2-8(a). The findings here of the lower courts were consistent with the

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longstanding, widespread policy of applying the presumption of undue influence cautiously to long-term spouses. See Madoff, 81 Minn. L. Rev. at 585-86 ("In states that recognize the possibility of a confidential relationship between spouses, courts generally limit this application to situations in which the spouse is a second spouse and the testator's children from a prior marriage have been disinherited."); see also Restatement (Third) of Property: Wills and Other Donative Transfers § 8.3 (Am. Law Inst. 1999) ("[T]o invalidate such a plan [favoring a spouse or partner] on the ground of undue influence requires strong evidence that the will was not the result of the testator's free and independent judgment.").

Petitioners ignore this general policy, and the caution required by *DeHart* and *Glogovsek*, by insisting on a strict application of the presumption of undue influence even in the context of marriage. Yet they point to nothing that might be considered suspicious in such a marriage, let alone presumptively improper; indeed, while they lean heavily on the notion that the marital context is not necessarily immune to a presumption of undue influence, they conspicuously ignore the principle of caution where a party seeks a presumption of undue influence in the context of a marriage.

B. The evidence did not support a presumption of undue influence.

Even apart from the cautious application of the presumption, it was consistent with the manifest weight of the evidence for the circuit court not to presume that Mark was unduly influenced by his wife of 24 years. Petitioners point to factors that do not suggest anything wrongful in the relationship between Mark and Dorothy, or any improper influence over Mark's 2018 Will.

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1. The evidence supports the conclusion that Dorothy was not a comparatively disproportionate beneficiary with a fiduciary relationship to Mark.

The evidence amply supports the trial court's findings that no fiduciary relationship existed between Mark and Dorothy when the 2018 Will was made, and that Dorothy was not a comparatively disproportionate beneficiary under the 2018 Will. See *Baumgarten,* 2012 IL App. (1st) 112155, ¶ 14.

a. A power of attorney form does not establish a fiduciary relationship sufficient to presume undue influence between spouses.

The evidence did not support the conclusion that Dorothy was in a fiduciary relationship with Mark, let alone that she acted within the context of such a relationship to do anything related to the 2018 Will. While Mark had executed a short form power of attorney for healthcare and property 16 years earlier, naming Dorothy as his agent, the evidence did not suggest that Dorothy accepted the power of attorney or exercised any powers the document purportedly granted. Based on that evidentiary record, the trial court concluded that no fiduciary relationship automatically sprung from the power of attorney itself. R1884-85. That conclusion is also consistent with statutory and case law, and the language of the power of attorney at issue.

Contrary to Petitioners' contention, 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. *In re Estate of Stahling*, 2013 IL App (4th) 120271, ¶ 22. "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." *Stahling*, 2013 IL App (4th)

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120271, ¶ 22. Rather, "to create a fiduciary relationship, an agent must accept the powers delegated by the principal." *Id*.

In *Stahling*, like in this case, the mere existence of the power of attorney at issue was invoked to satisfy the first prong of the presumption, yet there was no evidence of acceptance or use of the power of attorney. *Id.* Without any such evidence, the appellate court held, the necessary fiduciary relationship had not been shown. *Id.*

That principle governs here as well. Acceptance or use of a power of attorney are key to the fiduciary relationship, because without them the putative fiduciary's acts have no legal significance. Under Petitioners' argument, the agent need not even be aware that she has been named as an agent on a power of attorney form for a fiduciary relationship to arise, thereby subjecting those unwitting agents to fiduciary duties and potential presumptions of fraud or undue influence. More than merely naming someone on a power of attorney form should be necessary; as *Stahling* held; "to establish a fiduciary relationship, the trust and confidence allegedly reposed by the first party must be accepted by the second party." *Stahling*, 2013 IL App (4th) 120271, ¶ 21.

Petitioners try to distinguish *Stahling* as involving a healthcare power of attorney, but they give no reason for treating a power of attorney for property any differently. See Petitioners' Brief at 34. The type of power of attorney should not matter, and *Stahling* should apply equally to healthcare and property powers of attorney. *Stahling*, 2013 IL App (4th) 120271, ¶ 21 (quoting *Hensler v. Busey Bank*, 231 Ill. App. 3d 920, 928 (4th Dist. 1992)).

Indeed, while Petitioners insist that Mark's power of attorney alone created the requisite fiduciary relationship, they ignore contrary language in the power of attorney

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specifying that merely naming an agent in the document would not impose fiduciary duties on the agent until those powers are exercised:

> "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…" E461 (capitalization in original).

Similarly, Mark's power of attorney stated that:

> "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." E464 at Section 3-4.

Dorothy never signed the power of attorney (E461-66), and no evidence establishes that she otherwise accepted it or exercised any powers at or prior to the 2018 Will signing. According to the plain terms of the power of attorney itself, therefore, no fiduciary relationship arose between Mark and Dorothy at or prior to the will signing.

In recognizing that no fiduciary relationship flows automatically from the power of attorney form alone, the lower courts followed the language of the Illinois Power of Attorney Act, 755 ILCS 45/3-4, providing that the *use* of the power of attorney, and not its mere execution by the principal, creates the fiduciary relationship:

> "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 act in good faith for the benefit of the principal using due care, competence, and diligence in accordance with the terms of the statutory power and will be liable for negligent exercise." 755 ILCS 45/3-4 (emphasis added).

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Moreover, the statutory short form power of attorney includes a warning to prospective named agents that similarly ties the commencement of fiduciary duties to the agent's acceptance of the powers granted to him or her:

> "*When you accept the authority granted under this power of attorney* a special legal relationship, known as agency, is created between you and the principal. Agency imposes upon you duties that continue until you resign or the power of attorney is terminated or revoked." 755 ILCS 45/3-3(e) (emphasis added).

Petitioners ignore that language, which speaks to the issue of when a fiduciary relationship arises, and instead focus on language from the Illinois statutory short form power of attorney warning the principal that, unless any limitations are specified in the form, the authority granted in the power of attorney becomes "effective" when signed. Petitioners' Brief at 32. The timing of the principal's grant of authority to the agent, however, is irrelevant to whether a fiduciary relationship begins. By contrast, the lower courts correctly focused on language governing when a fiduciary relationship commences—that is, when the powers are accepted or exercised by the agent.

Moreover, presumptions of undue influence based on a fiduciary relationship as a matter of law do not extend beyond the scope of the fiduciary relationship. *McDonald v. McDonald*, 408 Ill. 388, 394 (1951) ("where a conveyance arises outside the scope of a fiduciary relation shown to exist only as a matter of law, there is no presumption that the transaction resulted from undue influence"). The appellate court correctly noted, therefore, that no presumption of undue influence could be based on a fiduciary relationship from Mark's power of attorney, since Dorothy had no power under it to make or change a will. *In re Estate of Coffman*, 2022 IL App (2d) 210053 ("Appellate Opinion"), ¶ 94; E464 at Section 3-4.

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Petitioners rely on *Estate of Alford v. Shelton* for the proposition that a fiduciary relationship begins at the time the power of attorney document is signed. Petitioners' Brief at 31; *Estate of Alford v. Shelton*, 2017 IL 121199, ¶ 22. Unlike the *Stahling* decision, however, the issue in *Shelton* was whether a fiduciary relationship existed between the principal and a *successor* agent under a power of attorney when the successor agent was not the acting agent. *Id.*, ¶ 25. In determining that the mere act of naming someone a successor agent did *not* give rise to a fiduciary relationship, the *Shelton* court reasoned that the Power of Attorney Act "recognizes that it is the agent's *exercise of power pursuant to the authorizing document* which triggers the agent's duty to the principal." *Id.*, ¶ 24 (emphasis added). Since this Court determined that no fiduciary relationship arose under the facts of *Shelton*, the language from that decision on which Petitioners rely suggesting a fiduciary relationship exists when a power of attorney is signed was not necessary to its holding. *Id.*, ¶ 25.

Moreover, the *Shelton* decision cited *In re Estate of Miller* and *In re Estate of Rybolt* for the proposition that a fiduciary relationship begins at the time the power of attorney is signed, but in both cases the alleged wrongdoers began using the powers of attorney for their benefit shortly after obtaining them. *In re Estate of Miller*, 334 Ill. App. 3d 692, 694-95 (5th Dist. 2002) (agent "used her power of attorney" to transfer principal's assets into agent's account); *In re Estate of Rybolt*, 258 Ill. App. 3d 886, 888 (4th Dist. 1994) (after receiving power of attorney, agent began directing assets from principal's account to new account jointly held by agent and principal). Under those circumstances, the courts were not concerned with the difference between the time the power of attorney was signed by the principal and the time it was accepted or used by the

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agent. The appellate court in this case properly distinguished those and similar decisions dealing with alleged wrongdoers who actually used the powers of attorney at the relevant time. Appellate Opinion, ¶ 13. Since there is no dispute that Dorothy never used the power of attorney prior to the 2018 Will signing, those cases are not controlling here.

Petitioners mischaracterize *DeHart* as standing for the proposition that being named as an agent on a power of attorney form is the critical event that gives rise to a fiduciary relationship. Petitioners' Brief at 31. But since *DeHart* concerned the sufficiency of the complaint, there was no evidentiary record of whether the named agent had accepted the power of attorney or exercised powers thereunder. *DeHart*, 2013 IL 114137, ¶ 10. Indeed, the complaint in *DeHart* suggested that the wife who held the power of attorney had used it to exercise "significant control over [the testator's] real estate dealings, including the sale of the family farm." *Id.*, 2013 IL 114137, ¶¶ 10, 31, 36. This is a sharp contrast to this case, where the evidence showed Mark engaged in preparing a major bid on behalf of Coffman Truck Sales, without any evident involvement by Dorothy, let alone under the power of attorney.

Petitioners rely on several other cases, each distinguishable either because the alleged wrongdoer had used the power of attorney or the existence of a fiduciary relationship was not at issue. See *In re Estate of DeJarnette*, 286 Ill. App. 3d 1082, 1083-85, 1090 (4th Dist. 1997) (niece obtained power of attorney for elderly aunt and immediately began using it to transfer aunt's assets into joint tenancy); *Simon v. Wilson*, Ill. App. 3d 495, 500, 502 (1st Dist. 1997) (power of attorney obtained by agent at his own insistence and used to transfer securities into trust he controlled); *In re Estate of Gerulis*, 2020 IL App (3d) 180734, ¶¶ 26, 38 (respondent admitted in pleadings to being

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fiduciary of the testator, obviating dispute over fiduciary relationship or what caused it to arise). The record contains no evidence that Dorothy did anything of the sort, and even Petitioners do not claim she did.

Indeed, while Petitioners insist that Dorothy "held" Mark's power of attorney, they do not suggest that she accepted it or used it for any purpose at all until the month after the 2018 Will was executed. Petitioners' Brief at 31-32. The trial court, however, did not find, and no evidence in the record supports, that Dorothy "held" Mark's power of attorney in any legal sense giving rise to a fiduciary duty prior to or at the time that the will was signed, and they offer no reason to consider later events in this analysis.

b. Dorothy was not a comparatively disproportionate beneficiary.

Even if the evidence were sufficient to establish the necessary fiduciary relationship, the presumption does not apply unless the fiduciary is "a person who receives a substantial benefit under the will *compared to other persons who have an equal claim to the testator's bounty*." *DeHart*, 2013 IL 114137, ¶ 34 (emphasis in original); *Glogovsek*, 248 Ill. App. at 794; *Baumgarten*, 2012 IL App (1st) 112155, ¶ 14; *In re Estate of Mooney*, 117 Ill. App. 3d 993, 997 (3d Dist. 1983).

The trial court found that while Dorothy was a substantial beneficiary under both wills, she was not a comparatively disproportionate beneficiary under the 2018 Will, since the only other person with an equal or better claim than Dorothy was Mark's daughter Courtney, whose bequest remained unchanged from the 2001 Will to the 2018 Will. R1885-86.

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The trial court's finding that Dorothy was not a comparatively disproportionate beneficiary was correct because Petitioners, as Mark's sisters, did not have a claim to Mark's bounty equal to his wife's claim. The Illinois laws of testacy and intestacy "favor a spouse over relatives that are not descendants of the decedent." *DeHart*, 2013 IL 114137, ¶ 35. As the trial court observed, the only person with an equal or superior claim to Dorothy's is Mark's daughter Courtney, whose bequest was unchanged by the 2018 Will, and who has not challenged it.

Petitioners do not address the trial court's finding that Dorothy was not a comparatively disproportionate beneficiary, forfeiting any argument to the contrary. See Ill. S. Ct. R. 341(h)(7). Should they raise this subject nonetheless—as they did in the appellate court, where their reply brief unveiled previously unstated objections to the existence and use of this requirement—those objections are meritless. In the courts below, Petitioners mischaracterized the comparatively disproportionate benefit requirement as an outlier, claiming that no decision of this Court has adopted it. Not so: This Court applied the comparatively disproportionate benefit requirement in *DeHart*, finding that, unlike the spouse in *Glogovsek* (and unlike Dorothy in this case), the spouse in *DeHart* received a comparatively disproportionate benefit when she obtained a will that disinherited the testator's son. *DeHart*, 2013 IL 114137, ¶¶ 34-35. Moreover, the appellate courts have applied this requirement in a host of cases. See*, e.g., Glogovsek*, 248 Ill. App. 3d at 791; *Baumgarten*, 2012 IL App (1st) 112115, ¶ 14; *In re Estate of Julian*, 227 Ill. App. 3d 369, 376 (1st Dist. 1991); *Mooney*, 117 Ill. App. 3d at 997; *In re Estate of Henke*, 203 Ill. App. 3d 975, 978 (5th Dist. 1990); *Nemeth v. Banhalmi*, 125 Ill. App. 3d 938, 960 (1st Dist. 1984).

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Petitioners might also argue that Dorothy received a disproportionate benefit under the 2018 Will as compared to Courtney, but that too is incorrect. Any increase in benefits to Dorothy under the 2018 Will did not come at the expense of Courtney's share, which was the same under both wills, and Courtney did not challenge the 2018 Will or participate in this case, despite Petitioners naming her as a respondent. Even if this Court overlooks Petitioners' forfeiture of this argument, it should affirm the trial court's decision that the first element of the presumption test was not met because Dorothy was not a comparatively disproportionate beneficiary under the 2018 Will.

2. The evidence supports the conclusion that Mark was not dependent and that Dorothy did not dominate him.

The trial court followed the evidence in finding that Petitioners failed to establish Mark was dependent or that Dorothy was dominant. The evidence was that Mark was the one making his own treatment decisions and directed Dorothy to enlist the law firm that he had historically used for estate planning to update his will. Rather than making her the dominant person in the relationship, Dorothy's dutiful care for her ailing husband is at the heart of what a marriage should be. R1887-89. Since caring for a spouse "in sickness" is to be expected in a marriage, the courts should be cautious indeed about efforts to characterize it as evidence of undue influence.

Indeed, Petitioners offer no evidence to support this prong, relying solely on the power of attorney naming Dorothy as Mark's agent and insisting that "[d]ominance and dependence" is "inherent in the fiduciary relationship recognized to exist as a matter of law…." Petitioners' Brief at 35. By implication, this Court has rejected Petitioners' argument, the Court has separately analyzed the second and third prongs of the

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presumption test even where a fiduciary relationship flows from the use or acceptance of a power of attorney, a step which would be wholly unnecessary if, as Petitioners claim, those factors were presumed whenever a power of attorney exists. See, *e.g.*, *DeHart*, 2013 IL 114137, ¶ 31 (evaluating second and third prongs of the presumption, even after concluding that alleged undue influencer held and apparently exercised testator's power of attorney).

Petitioners' novel power-of-attorney "shortcut" to a presumption of undue influence has no support in Illinois law. See Petitioners' Brief at 35. Petitioners cite *Lagen v. Balcor Co*., *Bensen v. Stafford*, and *Anthony v. Anthony* for the proposition that dominance and dependence are inherent when a fiduciary relationship exists as a matter of law. None of those cases, however, suggest that the four-factor presumption of undue influence test collapses into a two-factor test when someone signs a power of attorney. Rather, *Lagen* and *Bensen* addressed fiduciary relationships arising in business disputes—not presumptions of undue influence. *Lagen v. Balcor Co.*, 274 Ill. App. 3d 11, 13-14 (2d Dist. 1995); *Bensen v. Stafford*, 407 Ill. App. 3d 902, 909-10 (1st Dist. 2010). They say nothing about whether a power of attorney renders factors two and three of the presumption test moot. If anything, those decisions undercut Petitioners' contention that the mere act of signing a power of attorney form alone automatically gives rise to a fiduciary relationship, even without any evidence of dominance or dependence by noting that "in the absence of dominance and influence, there is no fiduciary relationship, regardless of the level of trust between the parties." *Lagen*, 274 Ill. App. 3d at 21; *Bensen*, 407 Ill. App. 3d at 913. *Anthony* is similarly unsupportive of Petitioners' contention because it involves a fiduciary relationship arising as a matter of fact, and

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therefore, cannot possibly stand for the proposition that when a fiduciary relationship arises as a matter of law, the dominance and dependence requirement of the presumption test are automatically and inherently satisfied. *Anthony v. Anthony*, 20 Ill. 2d 584, 586-87 (1960).

The Fourth District recently rejected the notion that the dependent/dominant prong was an inherent part of the fiduciary relationship, such that proof of the latter was enough to establish the former as well. *In re Estate of Reynolds*, 2022 IL App (4th) 210039-U, ¶ 30 (see Appendix at A41). In a persuasive order under this Court's Rule 23, the *Reynolds* court affirmed the dismissal of a complaint alleging presumptive undue influenced where a legal guardian had "acted to procure [testator's] will" cutting out the testator's grandson, and had attended the meeting where it was signed. *Id.* at ¶¶ 2, 8, 36. The will-challenger in *Reynolds*, like Petitioners here, attempted to collapse the first, second, and third prongs of the undue influence presumption test based on the purported existence of a fiduciary relationship as a matter of law. *Id.* at ¶¶ 30-31 (also conflating the fiduciary prong with the trust and confidence prong). The appellate court rejected that argument, observing that if dominance and dependence were presumed whenever there is a fiduciary relationship as a matter of law, there would be no need to require dominance and dependence as a distinct factor of the presumption test. "[S]omething more" than the existence of a fiduciary relationship is required. *Id.*

Moreover, if Petitioners' interpretation of the presumption test were correct—that the existence of a power of attorney satisfies the first three prongs of the presumption—then the four-factor presumption test would be a two-factor test: a presumption within a presumption that would largely subsume the original four-factor test, since powers of

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attorney are a routine estate planning tool in which spouses typically name each other as agents. See*, e.g., Estate Planning for Illinois Attorneys: The Basics and Beyond*, James M. Lestikow, *Establishing and Maintaining the Attorney-Client Relationship*. Estate Planning for Illinois Attorneys: The Basics and Beyond § 1.22 (Ill. Inst. For Cont. Legal Educ. 2012 ("The job of an estate planner is not complete with the drafting of the will…. Each client should also have a power of attorney for healthcare and power of attorney for property."); 20 Robert S. Hunter, Illinois Practice, Estate Planning and Administration, § 272:1 (4th ed. 2022) ("The power of attorney is one of the most useful of all estate planning tools.") and § 272:5 ("Most people past 60 or 65 should execute a power of attorney to the spouse or, if none, the children, or other trusted person.").

Dominance and dependence are not presumed because Mark signed a power of attorney for property naming Dorothy as his agent 16 years before the 2018 Will. The action says nothing about dominance or dependence. Petitioners' claimed presumption of undue influence should not be premised on other presumptions, and this Court should decline to adopt Petitioners' novel argument that the mere existence of a power of attorney satisfies the first three prongs.

3. The evidence supports the conclusion that Mark did not repose unusual or extraordinary trust and confidence in Dorothy.

Mutual trust and confidence is a fundamental part of marriage: "The marital relation involves the most unlimited trust and confidence." *Rose v. St. Louis Union Trust Co.*, 99 Ill. App. 2d 81, 89 (5th Dist. 1968), *aff'd*, 43 Ill. 2d 312 (1969). This feature is such a natural and desirable feature of marriage that *Glogovsek* dismissed it as "probably the least important" factor of the presumption in that case. *Glogovsek*, 248 Ill. App. 3d at

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797. Indeed, *Glogovsek* held that the trial court had contradicted the manifest weight of the evidence by applying the presumption of undue influence, even despite the evidence that the testator trusted and had confidence in his wife. *Id.* The court recognized that in the marital context this prong of the test had little significance to the question of undue influence, and concluded that the evidence did not suggest anything amiss about the spousal relationship: "Suffice it to say that there was no evidence that Frank had an unusual or extraordinary amount of trust and confidence in Margaret[.]" *Id.*

Nor does the evidence suggest anything "unusual" or amiss about Mark's relationship with Dorothy. The trial court noted the same quality of mutual trust and confidence, observing that "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." R1889. Echoing *Glogovsek*, the court found "no evidence that there was an unusual or out of the ordinary business decisions with regard to Mark's confidence in his wife." R1890. Even Petitioners acknowledge the evidence of an enviably happy marriage, and all the evidence is that the Coffmans enjoyed the sort of union that naturally engenders trust and confidence. This feature of a good marriage is to be expected and encouraged, not treated as a sign of wrongful influence. It is consistent with the trial court's conclusion not to apply the presumption of undue influence.

4. The evidence supports the conclusion that Dorothy did not procure the preparation of the 2018 Will.

The lower courts correctly found that Petitioners failed to satisfy the fourth prong of the presumption test because the evidence supported the finding that Dorothy did not procure preparation of the 2018 Will. R1890-97; Appellate Opinion, ¶ 103. Petitioners

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rely on the fact that Dorothy telephoned Hynds's firm for Mark to initiate the changes in the will, and was present in the hospital room while Hynds discussed the options with Mark. Petitioners' Brief at 39-40. But the lower courts correctly recognized that neither the phone call nor her presence, especially in light of surrounding circumstances, rises to the level of "procurement" as that prong is applied in the law.

For purposes of the presumption of undue influence, participation in the "procurement" of a will does not refer to arranging the logistics. It is not enough, for instance, that an alleged influencer drives the testator to an attorney's office to make a will, or to help the testator retrieve a prior will from a safe-deposit box so that it can be amended. See, *e.g.*, *Glogovsek*, 248 Ill. App. 3d a 798 (citing *In re Estate of Henke*, 203 Ill. App. 3d 975, 982 (5th Dist. 1990); *Lemke*, 203 Ill. App. 3d at 1005. Nor is it enough merely to be present during the discussion and execution of a will. *Lemke*, 203 Ill. App. 3d at 1005. A person "procures" a will by influencing the substantive terms of the will. See *Glogovsek*, 248 Ill. App. 3d at 798.

The trial court cited *Estate of Lemke* as support for the conclusion that Dorothy's telephone call to Hynds and being present in the room did not require a finding that Dorothy "procured" the 2018 Will. R.1892-1894; *Lemke*, 203 Ill. App. 3d 999. Petitioners claim that *Lemke* is irrelevant because the will-challenger in that case did not satisfy the first prong of the presumption test, and therefore, Petitioners argue that *Lemke* has no application to the analysis of the fourth prong. Petitioners' Brief at 38. As even Petitioners concede, however, the *Lemke* court stressed that the alleged undue influencer's involvement with the procurement of the will was minimal despite (i) retrieving the old will, (ii) making the appointment for the testator to see an attorney, (iii)

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driving the testator to the attorney's office, and (iv) being present when the will was discussed with the attorney. *Lemke*, 203 Ill. App. 3d at 1005; Petitioners' Brief at 38. It was entirely proper, therefore, for the trial court to rely on *Lemke* for the proposition that, despite evidence of some degree of assistance, the court could still find that Dorothy did not procure the 2018 Will and was not instrumental in its preparation.

Lemke is not the only Illinois case to stand for that proposition. In *Greathouse v. Vosburgh*, this Court held that a husband accused of unduly influencing his wife was not directly connected with the making of the will, and therefore no presumption of undue influence arose, despite the fact that the husband, who held his wife's power of attorney, was present in the home and "in and out of the room" when the wife signed a will that benefitted the husband. *Greathouse v. Vosburgh*, 19 Ill. 2d 555, 561 (1960).

A finding that a close family member did not obtain or procure the testator's will despite the family member's assistance or participation in the process is not uncommon or unique to Illinois law:

> "Just as courts are reluctant to find a confidential relationship between family members, courts are similarly often reluctant to find that the participation requirement has been met when family members are involved…. Courts often view such involvement as natural and therefore characterize participation in the execution of the will as ' "perfunctory physical activities" rather than active procurement.' " Madoff, 81 Minn. L. Rev. at 587 (quoting *Carter v. Carter*, 526 So. 2d 141, 143 (Fla. Dist. Ct. App. 1988)).

Relying on the unrebutted testimony that Mark was fully engaged in the discussions regarding the various options for his will, and that when Dorothy disagreed with Mark about which option to choose, "Mark was the one that put his foot down," the court rightly found that "Mark's wishes and Mark's insistence came through." R1890-92.

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After choosing the option that he wanted, over Dorothy's objection and stated preference for a different option, Mark then reviewed the final draft of the 2018 Will with Hynds and directed Hynds to make specific handwritten changes to it. R671, 914, 1537-38.

The trial court also found (R1882-96) that 1) Dorothy's telephone call to the Hynds Firm was at Mark's request, and her involvement in the initial call was explained by Petitioners' admission that it was difficult to hear Mark over the phone (R1343, 1348-49, 1470-72); 2) Mark had not made any changes to his estate plan in over 16 years, explaining why an update was overdue; 3) Mark told his nurse the day before Hynds arrived at the hospital that his lawyers were coming to make changes to his will and mentioned that he had been putting it off, corroborating the fact that a will update was something Mark wanted but had not yet done (E323, 327, 330; R1495, 1583); 4) Dorothy called the Hynds Firm, a firm with which Mark had a long history, rather than some other law firm with which Mark had no relationship (R618-19); and 5) Hynds brought multiple alternative options to Mark, one of which would have preserved the terms of the 2001 Will at issue here, and discussed those options with Mark who made the ultimate decision. (R1473-74).

After Mark executed the 2018 Will, he discussed with Hynds the need to make changes to the buy-sell agreements governing the Coffman Entities. E619. Attorney Peter Wilson then testified that Mark subsequently called his firm to make changes to the buy-sell agreements, with Dorothy on the telephone line repeating any words that Wilson could not hear. R796-97. Wilson testified that, like Hynds, he found Mark to be engaged in the discussions and testified that it appeared Mark understood why the changes to the buy-sell agreements were being made. R797-800; R1896. The changes to the buy-sell

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agreements were also consistent with the desire that Mark expressed to Hynds that Dorothy be given the ability to decide who should inherit Mark's ownership interests after Mark and Dorothy were both deceased without restriction. R1541-42.

Moreover, Mark's update to his will while hospitalized in 2018 was well known. Besides Mark advising multiple members of his medical team that he was meeting with his lawyers to discuss a will (E323 (Dr. Li); E330 (Dr. Cameron); R1495 (Mark's nurse)), Dorothy advised the Petitioners beforehand that Mark was making a new will. R335, 1726. At the time, Petitioners never raised any concerns regarding Mark's decision or his capability to direct his affairs, and even entered into business agreements with Mark weeks later. R335, 368-371, 1727, 1778-80; E152-71, 172-91. It was only after they determined that they potentially stood to inherit more under Mark's previous will that Petitioners began to complain of the timing and circumstances of Mark's changes to his will. The record overwhelmingly supports the trial court's conclusion that Dorothy did not play a significant role, if any, in procuring the 2018 Will, and that finding is not against the manifest weight of the evidence.

Petitioners claim the lower courts erred in considering Dorothy's testimony that she telephoned Hynds at Mark's request and suggest that this Court should discredit the testimony "as a matter of law." Petitioners' Brief at 45-46. But the trial court "is in a superior position to observe witnesses, judge their credibility, and determine the weight their testimony should receive." *Battaglia v. 736 N. Clark Corp.*, 2015 IL App (1st) 142437, ¶ 23. Indeed, Dorothy's testimony was corroborated by Hynds, who testified that he had discussed Mark's wishes with him in person and that those wishes were the same as what Dorothy had told Hynds on the telephone.

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Petitioners misrepresent *Glogovsek* as supporting their notion of "procurement" here. See Petitioners' Brief at 44. While the court found the procurement element was satisfied, it expressly rejected the idea that the wife's act of driving the testator to his attorney's office for the purpose of making the will could be deemed "procurement" of the will. *Glogovsek*, 248 Ill. App. 3d at 798. Rather, the court found that the procurement element was satisfied because the testator's wife had later contacted the attorney and told him to make a material change to the beneficiaries, contradicting what the testator himself had told the attorney shortly before. Petitioners point to nothing like this in the present case and ignore the fact that *Glogovsek* found error in the trial court's presumption of undue influence—even despite a showing of procurement much more significant than anything in this case. *Id.* And even that showing suffered a significant weakness, the court held, because "[t]he total lack of evidence to show that Margaret dominated Frank causes Margaret's role in procuring the will to be less ominous." *Id.*

Also availingly, Petitioners cite a number of Illinois decisions in which the fourth prong of the presumption test was satisfied in an attempt to draw parallels to this case—but those cases all considered circumstances directly tied to the substance of each will, as opposed to the perfunctory physical activities of having a will updated, such as driving the testator to an attorney's office (as in *Lemke*) or making a phone call for a husband who had a tracheotomy and being present in the hospital room when the testator discussed the will, as in this case. Petitioners' Brief at 43-45 (citing *Tidholm v. Tidholm*, 391 Ill. 19, 22, 24-25 (1945) (finding that *prima facie* case of presumptive undue influence was established when the evidence showed, among other things, that a sister procured her deaf father's will disinheriting her brother when she drafted a memorandum

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containing the terms to be included in the will and gave them to an attorney and took the testator to meet with the attorney by appointment); *In re Estate of Roeseler*, 287 Ill. App. 3d 1003, 1006 (1st Dist. 1997) (attorney drafted will benefiting his mother and cutting out testator's step-child, and apparently realizing likelihood of undue influence challenge, sent a copy to another attorney with instructions to redraft it in virtually identical terms, and then destroyed his copy); *Donnal v. Donnan*, 256 Ill. 244, 250-51 (1912) (a son, under the pretense of taking his ill father to a doctor, really took his father to an attorney's office where a will was drawn up and executed largely benefitting the son and practically disinheriting his older brother); *Swenson v. Wintercorn*, 92 Ill. App. 2d 88, 95, 97-98 (2d Dist. 1968) (testator's niece procured the will when she enlisted her own attorney to draft her aunt's will disinheriting a nephew, urged the testator to execute a new will, and was present when the will was explained to the testator and executed); *In re Estate of Maher*, 237 Ill. App. 3d 1013, 1016-19 (1st Dist. 1992) (alleged undue influencer took possession of testator's will and directed the preparation of a new will by a new attorney, and brought new will to testator in nursing home for execution, apparently without letting testator consult drafting attorney); *In re Estate of Jessman*, 197 Ill. App. 3d 414, 417-18 (5th Dist. 1990) (testator's friend asked testator to make appointment with attorney to draft will, then took testator to multiple meetings with friend's own attorney and was present for the meetings, resulting in will disinheriting testator's only heir in favor of friend); and *In re Estate of Hoover*, 155 Ill. 2d 402, 414 (1993) (a "secret influences" case where the conduct alleged to be "directed towards procuring the will" was "a calculated series of lies, misrepresentations, and omissions" that "struck at the core of [testator's] ethical code of conduct and were designed to and

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did destroy the once warm and loving relationship" between the testator and his disinherited son)).

The fourth factor of the presumption test requires more than evidence that Dorothy arranged for Mark's attorney to come to the hospital to work on revising his will. It was consistent with the manifest weight of the evidence for the trial court to find that Dorothy's minimal role in the process—what would be expected of a loving and supportive spouse during her husband's last days—did not rise to the level of "procuring" the 2018 Will.

C. The decisions below protect Mark's testamentary freedom, while Petitioners' desired outcome is demonstrably contrary to his wishes.

By applying the undue influence presumption test to marriages with a heightened degree of caution, the *Glogovsek* and *DeHart* decisions seek to strike a balance between protecting against suspicious circumstances while also acknowledging that the four-factor presumption test as applied to long-term marriages frequently results in false positives. The rote application of the presumption test that Petitioners seek here would destabilize that balance and result in valid wills being presumed the product of illegal influence, thus undermining the testator freedom they purport to espouse. Petitioners' suggestion to alter Illinois law and apply a strict application of the presumption test should be rejected.

Moreover, Petitioners' stated concern about protecting testator freedom rings hollow, since they are selectively choosing which of Mark's 2018 changes to challenge and which to retain. Specifically, Petitioners are attempting to throw out Mark's 2018 Will and replace it with the 2001 Will, while at the same time retaining the changes that Mark made to the buy-sell agreements governing the Coffman Entities, changes Mark

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made in connection with the 2018 update to his will. R1541. Reverting to the 2001 Will while retaining Mark's 2018 revisions to the buy-sell agreements would result in Petitioners receiving Mark's majority ownership interests in Coffman Truck Sales and his interests in the other Coffman Entities themselves rather than the cash proceeds from their purchase, as would have been the case had Mark made no changes at all in 2018. By selectively invoking the undue influence doctrine and mixing and matching different elements of Mark's 2001 estate plan with his 2018 estate plan, Petitioners are effectively attempting to engineer a result that Mark *never* intended under any iteration of his estate plan, all under the guise of protecting testamentary freedom.

II. The Lower Courts Correctly Declined Petitioners' Invitation to Announce an Alternative Test for a Presumption of Undue Influence.

Implicitly acknowledging that the evidence supports the trial court's conclusion under the four-factor test, Petitioners propose an alternative two-factor test for the presumption of undue influence—one that would not require proof of a fiduciary relationship. Petitioners' Brief at 49. But this Court "expressly repudiated" the notion "that such presumption might arise absent a fiduciary relationship[.]" *Belfield v. Coop*, 8 Ill. 2d 293, 311 (1956).

Petitioners concede that *Belfield* rejected any suggestion that a presumption of undue influence can arise without a fiduciary showing, but nevertheless suggest that this Court should reverse course and recognize Petitioners' proposed "debilitated testator presumption." Petitioners' Brief at 49. They incorrectly argue that this Court resurrected the "debilitated testator presumption" just four years after repudiating it in *Belfield* and

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mistakenly claim that this "debilitated testator" presumption has been "uniformly" applied since then. *Id.* at 49-50.

A. The alternative test has been neither resurrected nor "uniformly" applied.

Petitioners misconstrue *Greathouse* as supporting this alternative standard. Petitioners' Brief at 50-51 (citing *Greathouse*, 19 Ill. 2d at 571, 572). Despite what they tell this Court, *Greathouse* did not overrule *Belfield*. To the contrary, this Court affirmed its holding in *Belfield*: "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." *Greathouse*, 19 Ill. 2d at 573. *Greathouse* did not concern whether a presumption could exist without a fiduciary relationship, and the portion of the *Mitchell* decision cited in *Greathouse* does not mention a presumption at all. Rather, the concept from *Mitchell* that *Greathouse* cited stands for the proposition that, the more susceptible to undue influence the testator is, "no matter from what cause," "the less evidence will be required to invalidate the will of such person." *Greathouse*, 19 Ill. 2d at 571 (quoting *Mitchell v. Van Scoyk*, 1 Ill. 2d 160, 172 (1953)). *Greathouse* did not reverse *Belfield.*

Indeed, one of Petitioners' attorneys is among the legal commentators who agree that any suggestion of a fiduciary-less presumption like the one articulated before *Belfield* has been overruled. Petitioners' counsel wrote:

> "It has been held that 'absent a fiduciary relationship no presumption of undue influence can arise.' ***This holding overrules previous determinations that a weakened state of mind coupled with the active procurement of a will is sufficient to prevail in a will contest based on undue influence.***" Elizabeth A. McKillip, John T. Brooks, and Richard C. Johnson, *Will Contests*, in

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> Litigating Disputed Estates, Trusts, Guardianships, and Charitable Bequests § 1.15 (Ill. Inst. For Cont. Legal Educ. 2016) (emphasis added) (citing *Belfield v. Coop*, 8 Ill. 2d 293 (1956)).

This Court's discussion in *Greathouse* of *Mitchell* and its predecessors concerned language that has been interpreted to mean that the alleged susceptibility of a testator to undue influence is relevant to whether undue influence has occurred and can reduce the proof necessary to establish the existence of undue influence. "The feebler the mind of the testator, regardless of the cause, when a will was executed, the less evidence is required to invalidate the will on the ground of undue influence. However, although the court may require less evidence to establish undue influence…the plaintiff must nevertheless introduce some evidence to support allegations of undue influence." 36 Ill. L. and Prac. *Wills* § 56 (2023).

Petitioners also incorrectly assert that Illinois appellate courts have "uniformly applied" a fiduciary-less "debilitated testator presumption" after *Belfield*. Petitioners' Brief at 49. Not so; Petitioners cite a handful of decisions quoting *Mitchell* without applying any such presumption, and all but one of those decisions applied the four-factor presumption test and found a fiduciary relationship sufficiently alleged or proved. Petitioners' Brief at 50 (citing *Schmidt v. Schwear*, 98 Ill. App. 3d 336, 344-45 (5th Dist. 1981); *Swenson v. Wintercorn*, 92 Ill. App. 2d 88, 97-98 (2d Dist. 1968); *Estate of Maher*, 237 Ill. App. 3d 1013, 1018 (1st Dist. 1992); *In re Estate of Roeseler*, 287 Ill. App. 3d 1003, 1017-18 (1st Dist. 1997). Only the First District's decision in *In re Estate of DiMatteo*, 2013 IL App (1st) 122948, suggests otherwise, and to the extent that the appellate court construed *Mitchell* to recognize a presumption without a fiduciary

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relationship, the decision is an outlier that incorrectly fails to follow *Belfield* or *Greathouse*.

B. Even if an alternative two-factor presumption test existed, Petitioners failed to satisfy it.

Even if this Court were to revive the "debilitated testator presumption" it expressly repudiated in *Belfield*, Petitioners failed to satisfy its elements. Petitioners' proposed two-factor presumption test, as repeated in *Schmidt*, would presume undue influence "[w]here one procures the execution of a will largely benefiting himself to the detriment of others having an equal claim to the bounty of a testator who is infirm due to age, sickness or disease." *Schmidt*, 98 Ill. App. 3d at 345.[1] The original statement in *Mitchell*, to which *Schmidt* refers, emphasized the mental state of the testator whose "mind [is] wearied and debilitated by long-continued and serious illness." *Mitchell*, 1 Ill. 2d at 172. At trial, Petitioners failed to introduce sufficient evidence of either element.

1. Dorothy did not procure the 2018 Will and it did not benefit her to the detriment of others having an equal claim to Mark's estate.

The first element necessary to create the purported presumption, according to Petitioners, is the defendant's procurement of the contested will, which did not occur here. Section I.B.3., *supra*, addresses the reasons why the trial court's factual finding that Dorothy did not procure the 2018 Will was not against the manifest weight of the evidence. Section I.B.1.b., *supra*, addresses the reasons why Dorothy is not a comparatively disproportionate beneficiary.

[1] Notably, the *Schmidt* court found a fiduciary relationship existed. *Schmidt*, 98 Ill. App. 3d at 342, 344.

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2. Mark's mind was not wearied or debilitated.

No modern Illinois court has applied Petitioners' proposed "debilitated testator presumption," so the case law lacks any guidance on what constitutes a "wearied or debilitated" mind sufficient to trigger such a presumption. Under any measure, however, the record reflects that Mark's mind was not impaired at the time the 2018 Will was prepared, discussed, or signed.

Immediately prior to Mark's hospitalization, Mark was still working as the President of Coffman Truck Sales and was specifically working on the Coffman Entities' tax returns and overseeing the preparation of a bid for Coffman Truck Sales' largest customer. R320-22. Petitioners rely on evidence that Mark experienced brief episodes of confusion in connection with anesthesia, but Dr. Showel's testimony and medical records reflect that his mental status had returned to normal before he met with Hynds. E312-13; R854, 1005-06.

The medical records also confirmed that any symptoms of delirium remained resolved as of March 17, the date of the meeting with Hynds. E315-16, 326. On March 17, Dr. Li noted that Mark mentioned that his attorneys were coming to meet with him later that day. E323. He also had mentioned the upcoming meeting to Dr. Cameron and his attending nurse on March 17. R1495; E330. Rush medical professionals voiced no concern about that meeting, despite the hospital procedures at Rush if a doctor has concerns about a patient entering into estate planning documents. R1023, 1026-27. Likewise, Mark's attending nurse told Hynds when he arrived at the hospital on March 17th that Mark was expecting him and was having a good day, and confirmed that Mark was capable of talking with Hynds and making decisions. R923, 1495. Hynds's own

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observations corroborated what the nurse told him. Mark recognized Hynds, although they had not seen each other in about 20 years, even remarking that he remembered that Hynds wore hearing aids. R 926, 1498-99. The two then discussed Mark's estate planning objectives, with Mark confirming what Dorothy had relayed on the phone the previous day. R674, 900, 1500.

After Mark chose the option that met his goals, Hynds read the draft will to him and explained each provision, while Mark read along. R671, 913-14, 1537-40. At trial, Hynds described their dialogue about the effect of the various provisions as an "intelligent conversation." R1538. Telling Hynds "he 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 instructed Hynds to remove a right-of-first-refusal provision concerning Coffman Truck Sales. R1541; E451. Hynds's assessment from his interactions with Mark that day was that Mark's mind was not impaired: "I thought he was perfectly competent and understood what he told me he wanted." R675.

III. The Record Contains Sufficient Evidence to Rebut Any Resulting Presumption of Undue Influence Under Any Burden of Proof.

A presumption is not evidence itself and cannot be treated as evidence or weighed in the scale against evidence. *Franciscan Sisters Health Care Corp.*, 95 Ill. 2d at 461. Rather, presumptions are legal conclusions that arise from the existence of predicate facts. *Id.* Illinois follows Thayer's bursting-bubble metaphor: as soon as evidence is introduced contrary to the presumption, the "bubble" bursts, and the presumption vanishes. *Id.* at 462. Thus, "the presence of a presumption in a case only has the effect of shifting to the party against whom it operates the burden of going forward and

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introducing evidence to meet the presumption." *Id*. In other words, if a presumption of undue influence arises, but evidence is introduced that is "sufficient to support a finding of the nonexistence of the presumed fact," then the presumption will cease to operate, and the burden of proof is upon the petitioner to establish undue influence. *Id.* at 462-64. If evidence rebuts any one of the four prongs of the presumption of undue influence test, the entire presumption bursts. *In re Estate of Henke*, 203 Ill. App. 3d at 981.

Petitioners concede that the strength of any presumption and the amount of proof required to overcome it depend on the circumstances of each case. Petitioners' Brief at 58; *Wunderlich v. Buerger*, 287 Ill. 440, 445 (1919); *Franciscan Sisters*, 95 Ill. 2d at 463. Since the strength of the presumption, if any, is fact-dependent, that determination, and the amount of proof necessary to overcome it, should be made by the trial court. *Id.* at 456-57. To the extent that this Court elects to weigh the strength or weakness of any presumption, and if one were to apply here, it should be deemed exceptionally weak on these facts and in light of Illinois' policy of applying the presumption of undue influence test cautiously to marriages.

Even if a strong presumption arose from the facts of this case, the record here contains overwhelming evidence that Dorothy did not wrongfully and illegally influence her husband to execute the 2018 Will, and that evidence is sufficient to meet any burden of proof. For example, Dorothy's telephone call on Mark's behalf was explained by the uncontroverted fact that Mark had trouble being heard on the telephone due to his voice, negating any suggestion that it was suspicious for Dorothy to make the call. R147. By all accounts, Mark was a fighter and was determined to beat his cancer diagnosis, which explains why he waited until hospice care was recommended before asking Dorothy to

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call the Hynds Firm to update his estate plan. R177, 180, 293. When given the opportunity to call a lawyer for Mark, Dorothy dutifully called the law firm that Mark and his family had used for decades for estate planning work, rather than a lawyer of her choosing. R672, 1342, 1470-71. Dorothy even told Petitioners that Mark was updating his will at his March 17 meeting with Hynds, a sharp contrast to the surreptitious and secretive behavior that would be expected of an illegal and wrongful influencer. R122, 335, 1726. Petitioners had no concerns at the time that Mark was making changes to his will and even entered into business agreements with him in the following weeks, contradicting any suggestions that Mark was too weakened or enfeebled to be making changes to his will at the time. R335, 368, 1727, 1729. Mark also informed his medical team that a lawyer was coming to assist him with his will and that it was something that he had intended to do but he had procrastinated, and no concerns were noted or voiced by his medical staff about Mark making a will at the time or any time thereafter. R1023, 1027, 1495; E323, 327, 330.

All third-party witnesses to the will signing testified that Mark appeared to be the one who was in control, and that it did not appear that Dorothy was influencing him. R666, 925-26, 943-44, 1536. Mark then noted to Hynds that he needed to revise business agreements to eliminate the mandatory buy-sell provisions affecting the Coffman Entities, which he then followed through with weeks later. R803, 1541; E172-91, 619; C2489-90. Attorney Peter Wilson had one or two telephone conversations with Mark about that topic and noted that Mark “knew what he was asking me,” corroborating Hynds’s impression that despite being gravely ill, Mark was coherent and in control. R795; R799. Mark mentioned to Wilson that the buy-sell provisions were causing

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difficulties with Frank Coffman's estate, which explains why Mark was motivated to make changes to his estate plan to allow his ownership interests to pass to Dorothy. R793-94.

The trial court found that there was insufficient evidence to establish a *prima facie* case of actual undue influence, a finding not challenged on appeal. R1878, 1881 ("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."). Therefore, no presumption arose here; and once it vanished, the Petitioners could not prevail.

CONCLUSION

The trial court properly found that the evidence did not give rise to a presumption that Dorothy illegally influenced her husband. Accordingly, Respondent-Appellee Dorothy Coffman respectfully requests this Court affirm the judgments of the appellate and trial courts.

Dated: May 10, 2023

Respectfully submitted,

By: /s/ Scott L. Howie

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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 14,607 words.

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APPENDIX

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In re Estate of Helen Reynolds, Deceased v. Michael K. Reynolds, et al.,
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FILED JD
KENDALL COUNTY ILLINOIS
3/8/2021 3:21 PM
MATTHEW G. PROCHASKA
CLERK OF THE CIRCUIT COURT

1 IN THE CIRCUIT COURT FOR
2 THE TWENTY-THIRD JUDICIAL CIRCUIT
3 KENDALL COUNTY, ILLINOIS - PROBATE DIVISION
4 In Re: The Estate of MARK)
5 COFFMAN,)
6 Deceased,)
7 PEGGY LeMASTER and KATHLEEN)
8 MARTINEZ,)
9 Petitioners,)
10 vs.)No. 18 P 000065
11 DOROTHY COFFMAN and COURTNEY)
12 COFFMAN CRENSHAW,)
13 Respondents.)
14 REPORT OF PROCEEDINGS at the trial of the
15 above-entitled cause before the Honorable
16 MELISSA S. BARNHART, Judge of said Court, on the
17 5th day of January, 2021, at the hour of
18 2:30 p.m. via Zoom.
19
20
21
22
23 REPORTED BY: MARY KAY ANDRIOPOULOS, CSR
24 LICENSE NO.: 084-002248

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1 THE COURT: This is 18 P 65, the Estate
2 of Mark Coffman.
3 MR. LIEBERMAN: Good afternoon, your
4 honor, David Lieberman from Levin Schreder and
5 Carey for petitioners who are present by video,
6 and my partner Elizabeth McKillip should be
7 joining as soon as she returns to her office.
8 THE COURT: Thank you.
9 MR. WOOD: Good afternoon, your Honor.
10 Hal Wood and Matt Barrett for respondent Dorothy
11 Coffman. Ms. Coffman is also present as is our
12 paralegal Nick Ciaccio.
13 THE COURT: Okay. Good afternoon.
14 This matter comes on for the Court's
15 ruling on respondent's motion for a directed
16 finding.
17 I will offer to both of you an
18 opportunity, if you wish, to make any other
19 argument that you deem necessary at this point.
20 Mr. Wood?
21 MR. WOOD: I don't believe so, your
22 Honor.
23 THE COURT: Okay. Mr. Lieberman?
24 MR. LIEBERMAN: Thank you, your Honor.

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1 No, we made our arguments yesterday.
2 THE COURT: Okay. Yesterday the
3 petitioners rested their case, and the
4 respondent made that motion for a directed
5 finding pursuant to 735 ILCS 5/2-1110.
6 The questions for the Court are did the
7 petitioners present a prima facie case by
8 producing evidence on every element; and if so,
9 the Court must weigh the evidence considering
10 the credibility, the weight and quality of the
11 evidence, and draw reasonable inferences
12 therefrom.
13 I have to draw those reasonable
14 inferences in favor of the non-moving party, but
15 I do not have to draw inferences that are
16 matters of speculation, surmise or conjecture.
17 The gravamen of undue influence is that
18 the will of the one exerting the influence is
19 substituted for the will of the testator.
20 What constitutes undue influence can't
21 be defined by fixed words and will depend upon
22 the circumstances of each case.
23 That's expressed in the Estate of
24 Hoover.

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1 And before I begin, I just want to say
2 that these are the saddest cases I do.
3 A lot of people say to me, well, you
4 did divorce for a long time, those are sad.
5 Those are sad cases for sure.
6 You do cases where you terminate
7 people's parental rights to their children.
8 Those are sad, but the outcome is generally good
9 with those cases, because children are being
10 placed with people who love them and want them
11 rather than with parents who don't want them or
12 don't know how to care for them.
13 This is sad, because everybody has lost
14 something and lost someone.
15 Dorothy's lost her husband. Kathy and
16 Peggy have lost their brother.
17 Everybody's lost their friend in this
18 case, and it's sad, because not only do you lose
19 the person that you love, but you've lost the
20 communion and the community of the extended
21 family for both of you.
22 Peggy and Kathy have lost some of their
23 family, I suppose, through this litigation;
24 Dorothy being part of that family, and Dorothy

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1 on the other hand, has lost Kathy and Peggy
2 through this litigation.
3 And you always hope that when this
4 litigation starts, there can be a resolution
5 that's worked out between the parties, but that
6 didn't work, and that's why I'm here.
7 But I will say that after having this
8 case on my docket for a couple of years, it's
9 clear that not only did all of you love your
10 husband and your brother, but he loved all of
11 you as well.
12 That's clear from his texts to you,
13 clear from the testimony that I've heard, and
14 you get a flavor in the texts that Mark sent out
15 as to the type of person he is and was.
16 He was funny. He was sarcastic. He
17 didn't think that he, himself, was so important
18 that he couldn't joke around about different
19 things even when he was going through the worst
20 thing that I could imagine; the pain and
21 suffering that he was enduring, and the fact
22 that he knew that the outcome -- well, at a
23 certain point he knew that the outcome was not
24 going to be good.

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1 It's clear from his texts that he was a
2 fighter, that he wanted every opportunity that
3 there was to beat cancer.
4 He was encouraged in that fight by his
5 sisters and by his wife, and he chose to go on
6 that fight. He chose to go into that battle
7 with everybody's support and with their love.
8 So having said that, I want to go into
9 my review of the cases and my review of the
10 facts as I have them at this point.
11 Actual undue influence, the first thing
12 I have to consider is was there a preponderance
13 of evidence establishing a prima facie case of
14 actual undue influence.
15 I don't find that there was actual
16 undue influence.
17 I contrast this case with the other
18 cases where undue influence was found, and some
19 of those were summary judgment cases, some of
20 those were on 2-615 and 2-619 motions, but the
21 court still went through a pretty thorough
22 review of what comprises undue influence.
23 One of those cases that I looked at was
24 the Maher case, M-A-H-E-R, which is at 237 Ill.

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1 App. 3d 1013.
2 In that case an aunt had dementia. A
3 doctor had already diagnosed her with dementia,
4 she was suffering at the last of her life. She
5 had depression. She had all kinds of physical
6 problems, and her niece swooped in, for lack of
7 a better word, got a POA, a Power of Attorney,
8 signed by the aunt with a friend of the niece
9 witnessing it, had a will done by an attorney
10 that was not Mrs. Maher's or Ms. Maher's
11 attorney.
12 The attorney didn't even come to the
13 hospital or to the nursing home where the niece
14 had moved her, and the niece had two of her
15 friends witness the signing of the will.
16 In that case it was clear that the
17 niece used her undue influence, and used her
18 authority to steal money, to transfer money to
19 move the aunt to a different kind of a facility.
20 I even contrast it with the Mitchell
21 case, M-I-T-C-H-E-L-L, versus Van Scoyk,
22 S-C-O-Y-K, which is 1 Ill. 2d 160, where a
23 sister got her brother to disinherit the
24 brother's daughter through lies,

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1 misrepresentation, hiding the brother. The
2 brother was feeble, had been ill and feeble for
3 many, many years, and the sister used these lies
4 and misrepresentations to control the brother,
5 and to convince him that he ought to redo his
6 will and disinherit the daughter that he had.
7 Also, this is not like the Dehart case
8 at all. In that case the dad was 83 years old.
9 He had a person he held out as his son for over
10 60 years.
11 Dad at the age ripe age of 83 hooked up
12 with some sales girl from a Costco or Sam's Club
13 who was 30 years younger than him, himself.
14 They met in the spring of 2005. They
15 were hurriedly married in December of 2005, and
16 low and behold, in 2006 she takes him to a
17 lawyer, she changes his will, took him to a
18 lawyer that had never been his lawyer before,
19 makes him change his will, makes him execute all
20 kinds of Powers of Attorney, and immediately
21 began selling off his assets, transferring and
22 conveying property.
23 Again, that also involved the new wife
24 badmouthing the son, telling Mr. Dehart that the

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1 son wasn't really his kid, and so he didn't have
2 any obligation to provide for him.
3 The facts that we have here, there's
4 been no proof from anybody, no evidence from
5 anyone that Dorothy did anything to establish
6 actual undue influence.
7 There was never any cross-word that was
8 testified to.
9 Dorothy was never accused of locking
10 Mark away, of depriving him of contact and
11 communication with his siblings, with his
12 coworkers.
13 There is just no testimony that Dorothy
14 lied to keep anyone away from Mark.
15 As a matter of fact, she told everyone
16 the lawyers were coming to redo the will.
17 There's no facts presented that she
18 denigrated or made invidious representations
19 about Mark or Mark's family to Mark that would
20 cause this to rise to an actual undue influence.
21 And the next question is, is there
22 presumptive undue influence? Was there a
23 preponderance of evidence establishing that
24 prima facie case of presumptive undue influence?

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1 The Courts may presume the existence of
2 undue influence only when the facts that all of
3 you have pointed out and have argued -- we went
4 through this in the summary judgment motion, but
5 I'll set those out -- that the fiduciary
6 relationship between the testator and the
7 comparatively disproportionate beneficiary under
8 the will, now that language is used in several
9 cases; the disproportionate beneficiary under a
10 will.
11 It's used in Baumgarten,
12 B-A-U-M-G-A-R-T-E-N, Kline, K-L-I-N-E, the
13 Mitchell case, Glogovsek, G-L-O-G-O-V-S-E-K,
14 Henke, H-E-N-K-E, and Gerulis, G-E-R-U-L-I-S,
15 which is 20 Ill. App. 3d 180734.
16 It's also expressed in the Greathouse
17 case, Greathouse which is 19 Ill. 2d 555.
18 Then there are cases that take that
19 disproportionate language out, and just say that
20 a fiduciary relationship between a testator and
21 a person who receives substantial benefit from
22 the will.
23 Those cases are Dehart, Maher,
24 M-A-H-E-R, Dimatteo, D-I-M-A-T-T-E-O.

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1 So the question to ask is was Dorothy a
2 fiduciary, first of all, because she had a Power
3 of Attorney; and then, if so, do I apply the
4 comparatively disproportionate beneficiary under
5 the will standard or the substantial benefit
6 standard?
7 So first of all, was she a fiduciary,
8 because she was Power of Attorney; in Estate of
9 Stahling, the case that was cited by the
10 respondents, and that's S-T-A-H-L-I-N-G, that
11 Court said no, just being a Power of Attorney
12 doesn't give rise to a fiduciary relationship.
13 However, in Gerulis, G-E-R-U-L-I-S,
14 which is the 2020 case, and there's some
15 language in Shelton, Estate of Shelton, that an
16 individual holding Power of Attorney is a
17 fiduciary as a matter of law, and has a
18 fiduciary duty to the person who made that
19 designation.
20 I do want to point out, though, that in
21 those cases where the Courts held that the Power
22 of Attorney automatically made somebody a
23 fiduciary, all of those cases dealt with Powers
24 of Attorney that were executed within days of an

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1 agent transferring funds, conveying property,
2 moving the principle to nursing homes or out of
3 their home.
4 They were not Powers of Attorney that
5 were some 17 years old.
6 What we have here with Mark and Dorothy
7 is that Mark when he did his will back with
8 Hynds firm or John Rooks in 2001 did standard
9 Powers of Attorney for property and Powers of
10 Attorney for health.
11 There's nothing to show that Dorothy
12 acted under those Powers of Attorney either
13 materially benefiting herself or for a
14 third-party.
15 All of those other cases, especially
16 Shelton and Gerulis, dealt with those Powers of
17 Attorney that transferred things right initially
18 upon executing the Power of Attorney.
19 That's very evident in that Maher case
20 as well where the niece took advantage of the
21 aunt's dementia and her other physical problems
22 to basically steal from the aunt or steal from
23 the aunt's estate.
24 So I don't find that it's automatically

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1 a fiduciary relationship because Dorothy had
2 this Power of Attorney.
3 There's nothing that indicates to me
4 that she did anything to materially or
5 fraudulently transfer anything.
6 Then I look at the difference between
7 substantial benefit and comparatively
8 disproportionate benefit, and it's interesting
9 that a lot of these cases go back and forth
10 using that -- I don't want to pronounce it wrong
11 -- Glogovsek or Glogovsek language, and the
12 Courts in several of those cases talked about
13 how no one had a greater claim to a spouse's
14 estate than a surviving spouse.
15 That's evident in also the statute
16 under 755 ILCS 5/2-1 and 2-8.
17 A child has an equal claim, but not a
18 superior or a greater claim, and Mark's sisters'
19 claims are diminished from those of Dorothy's
20 and Courtney's.
21 Courtney, it was brought up about how
22 Courtney had an equal claim. That's true.
23 Courtney was bequeathed the same amount of money
24 in both wills. There was no diminution in her

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1 bequest; and if anyone could have made a claim
2 for a bigger bite of the apple, it could have
3 been Courtney. Rather, she's named as a
4 respondent in this cause challenging her
5 father's will.
6 Dorothy was a substantial beneficiary
7 of both wills.
8 I'm not saying that she was
9 comparatively disproportionate, but she was a
10 substantial beneficiary of both wills.
11 Her benefit didn't decrease outright,
12 her control over the property of appointment
13 upon her death was the change in the 2018 will.
14 So I find that the evidence that I
15 heard doesn't establish the fiduciary
16 relationship and anything that would give rise
17 to a fraudulent transfer.
18 I'm going to go through the other
19 factors as well.
20 The second factor is the testator who's
21 in a dependent situation where the beneficiary
22 is in a dominant role.
23 I looked to Glogovsek, Baumgarten and
24 Greathouse.

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1 All of those cases talk about how
2 taking good care of a dying spouse or an ill
3 spouse is at the heart of what marriage is
4 about. The vows that we take when we get
5 married at our wedding say to have and to hold,
6 in good times and bad, in sickness and health
7 until death do us part.
8 Just being ill and sick, even dying,
9 doesn't equate to the relinquishment of all of
10 the principals or all of the testator's
11 faculties which cause a person to become
12 overcome by another.
13 I think that this is not the Dehart
14 case. As I said, the facts are so different.
15 This is closer to the Glogovsek case or the
16 Baumgarten case.
17 If you look at that Greathouse case,
18 there was a case where the Courts could have
19 said that this husband who was 30 years younger
20 than his very much elderly wife should not have
21 benefited from a will that was executed not too
22 long before the wife died, however, the Court
23 went through your obligations as a spouse, and
24 that Mr. Vosberg who was a younger man, but

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1 lived with his elderly wife, took care of her,
2 promised to keep her out of a nursing home, gave
3 her her medicine, I mean, the facts are similar,
4 but dissimilar than this.
5 In our case Dorothy and Mark had been
6 married for 24 years. They had been together
7 for longer than 24 years.
8 Mark's reliance on Dorothy to take him
9 to doctors, to care for him, and to stay by his
10 side didn't make her the dominant person in that
11 relationship.
12 Mark made his own treatment decisions.
13 It was evident from his e-mails to his sisters
14 that he was choosing to undergo every available
15 therapy to beat this insidious disease, and, you
16 know, he's the one that made those treatment
17 decisions with his doctors.
18 Dr. Showel's evidence dep made that
19 clear that it was the doctors and Mark who made
20 the decisions about what Mark was going to do
21 with his physical health.
22 Mark told Dorothy to call the lawyers
23 who were the same lawyers with whom the Coffman
24 family had dealt with decades both in their

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1 estate planning and in their business dealings.
2 Mark controlled the scenario.
3 If Dorothy had been so bent on getting
4 access to things that Mark didn't want her to
5 have, what an opportunity to call a lawyer that
6 had no idea who the Coffmans were, what an
7 opportunity to make a call to some lawyer out of
8 the phonebook or somebody that maybe one of your
9 friends knew about to come do a will, but it
10 didn't happen that way.
11 It happened that Mark said, hey, these
12 people have done our business, have done my mom
13 and dad's, have done Coffman Truck Sales or
14 Coffman Brothers, they've done work for us, give
15 them a call, they're familiar with me.
16 So I don't find that Mark was in a
17 dependent situation.
18 The third factor is the testator who
19 placed trust and confidence in the beneficiary.
20 And again, when you've been married to
21 somebody for that many years, of course, you're
22 going to place confidence and trust in your
23 spouse just as Dorothy would do to Mark.
24 She had been by his side through the

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1 fight when he got diagnosed with cancer, and
2 like in Glogovsek, Dorothy cared for Mark, she
3 made sure his needs were met.
4 There was a dearth of evidence that she
5 had done anything differently than Mark would
6 have done in paying taxes, paying bills.
7 There was no evidence that there was an
8 unusual or out of the ordinary business
9 decisions with regard to Mark's confidence in
10 his wife.
11 The fourth factor that the will was
12 prepared or executed in circumstances where the
13 beneficiary was instrumental or participated.
14 To be sure, Dorothy made the phone call
15 to the Hynds Law Firm, and said, hey, you know,
16 Mark wants to change his will, we need to make
17 some changes to the will.
18 Again, the Hynds Law Firm had been the
19 Coffman family lawyers for decades.
20 The call was made at Mark's request,
21 and the day before, as we heard through
22 testimony, he had been told that his cancer was
23 terminal, and hospice was recommended to him.
24 There had been some argument that, you

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1 know, here's a person who spent all these years
2 not doing anything in his will.
3 Well, when you're told that you're not
4 going to live, that the fight that you've
5 undertaken is over, what an opportunity to make
6 the change that you've been putting off.
7 He even told the nurse, hey, you know,
8 I've got lawyers coming this afternoon, this
9 morning or today, you know, my wife is mad at me
10 for not getting this done.
11 Husbands and wives -- especially
12 husbands -- tend to put things off, not always
13 because they want to and because they can, but
14 because husbands tend to do those kinds of
15 things.
16 Again, I point to if Dorothy's intent
17 had been to overcome Mark's will or to overcome
18 Mark's choice of what his estate planning had
19 been, here was the opportunity and the obvious
20 ploy to get some lawyer that didn't know the
21 Coffmans and didn't know Mark.
22 Rather, we had Jack Hynds testify that
23 he got the call. He pulled up Mark's old estate
24 plan. He prepared three different documents to

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1 go over with Mark, that Mark was fully engaged
2 in the discussions of the various options for
3 the new will.
4 When Dorothy actually suggested that
5 she be given an outright bequest, Mark was the
6 one that put his foot down and said, hey, uh-uh,
7 I want to use the vehicle that's going to save
8 the most money and most taxes. I'm not going to
9 be using some outright gift where taxes get
10 plopped down on my estate and somebody's got to
11 pay them.
12 Even after Dorothy had said, well,
13 after I'm dead, what difference does it make,
14 you know, everybody's going to be getting a
15 windfall, Mark's wishes and Mark's insistence
16 came through.
17 If you look at the Lemke case, that's a
18 case where a will was upheld where a cousin
19 drove her cousin, Ms. Lemke, Ms. Behnke was the
20 cousin who drove the testator, Ms. Lemke, to the
21 lawyer's office. She retrieved a will from the
22 safe deposit box that belonged to the testator.
23 She undertook to find the lawyer who she knew,
24 she was familiar with the lawyer. Ms. Lemke was

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1 not familiar with the lawyer, but Ms. Behnke,
2 the beneficiary, was familiar with the lawyer
3 through some social contact with children or
4 something.
5 Ms. Behnke, the beneficiary, stayed
6 with the testator at her home, drove her to some
7 appointments, cooked food for her, took care of
8 her for the last few months of her life.
9 The testator, when she went to sign or
10 to talk to the lawyer about doing a will, the
11 lawyer would ask questions to the testator. The
12 testator would look over to the beneficiary who
13 would just shrug her shoulders. The beneficiary
14 said you do what you want to do with your will,
15 but the testator never said, hey, what should I
16 do or would give answers. She would just look
17 over to the beneficiary.
18 When the testator was in the hospital,
19 the lawyer went to the hospital. There was a
20 mistake in the will, a spelling error that he
21 had to correct, and it had to be retyped, but
22 the beneficiary was there in the hospital the
23 whole time while the testator was executing the
24 will.

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1 The Court in that case said, look, just
2 because the beneficiary is there, just because
3 the beneficiary participated in all of these
4 moves to get this will signed -- and by the way,
5 the will changed the beneficiaries. The
6 beneficiaries had originally been neighbors, and
7 now it became a cousin.
8 They said, look, just because a
9 beneficiary has done all these things to
10 effectuate the change of the will, that doesn't
11 indicate that the will is not the decision of
12 the maker of that will.
13 There has to be -- there has to be
14 more, and I think that's clear in Glogovsek. I
15 think that's clear in the Hoover cause, the
16 Maher case, and the Dehart case.
17 They all have language in there that
18 indicates that there has to be more than just
19 that she's there, she made the phone call.
20 The Hoover case was an undue influence
21 case, too, that involved the series of lies and
22 representations by a new beneficiary against a
23 testator's son, and that Court instructs us to
24 look at the testator's age as well as health,

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1 and as well as the condition of the testator.
2 There is no doubt that Mark was very,
3 very sick. He was dying, and those decisions
4 that he made in spite of the fact that he was
5 dying, similar to the Logston (phonetic) case,
6 doesn't mean that he didn't have the ability to
7 exercise his own freewill.
8 Competency has never been a question.
9 I've been told that from the beginning. Mark's
10 competency was not questioned.
11 So we don't have that concern,
12 although, Dr. Showel did try to weigh in on
13 that. I found that that was irrelevant.
14 There were also some arguments made
15 that when Mr. Hynds came to do the will, that
16 Mark -- there was no provision for charitable
17 gifts or charitable giving in his second will.
18 Well, there weren't any in his first
19 will either.
20 Those bequests were never made in the
21 first will nor in the second.
22 I also considered Mr. Wilson's
23 testimony as to Mark's ability to understand
24 what was happening with regard to any changes.

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1 Mr. Wilson said he had two
2 conversations with Mark about changing some of
3 the corporate structure because of issues with
4 his Uncle Frank's estate, which included issues
5 on the buyout, the buy/sell agreements.
6 Pete Wilson said that he found Mark to
7 be engaged in the discussions, that he
8 understood why the changes were being made in
9 that regard as well.
10 There were some implications that Peggy
11 and Kathy's expectancy was affected.
12 For sure it was, but with regard to
13 Coffman Truck Sales, there was a lot of
14 testimony about how this was a family business,
15 it had been in the family for 70 years, that
16 their parents had worked hard, as did their
17 uncles, worked very hard to keep this in the
18 family and to make it as successful as it was,
19 but under no circumstance based on the documents
20 that were admitted into evidence were Peggy and
21 Kathy ever in expectancy to own Coffman Truck
22 Sales.
23 Under the buy/sell agreement that was
24 in effect, any shares of the deceased

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1 shareholder had to be purchased back by the
2 company, by Coffman Truck Sales.
3 So they would not have been in line to
4 inherit the business to begin with.
5 So, I think, that maybe the -- I
6 understand that this was their dad's business,
7 that this was their uncle's business, and that
8 this was their brother's business, and it has
9 been built into a very successful endeavor, but
10 their expectancy as to that was mislaid.
11 Based upon everything that I've gone
12 through, based upon my review of the testimony,
13 assessing the testimony, I find that the
14 respondent's motion for a directed finding is
15 proper, and I will grant the motion for a
16 directed finding today.
17 There's somebody coming into the
18 waiting room, Daniel Eukich (phonetic).
19 Do you know if he's part of this
20 litigation?
21 MR. WOOD: You know, he's -- I just
22 e-mailed him.
23 He's counsel for Dr. Cameron who was
24 going to be our first witness, and we told him

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1 it would be about 3:00 we expected, so I just
2 e-mailed him to sit tight.
3 THE COURT: Okay. Okay.
4 MR. WOOD: I'll e-mail him again that
5 you're not going -- he saw that we're not going
6 to let him in right now.
7 THE COURT: Okay. All right. Okay.
8 So, Mr. Wood, if you would prepare an order,
9 please.
10 MR. WOOD: Yes, your Honor.
11 THE COURT: And again, I really want to
12 thank the attorneys for the job that you've done
13 here.
14 I enjoy working with lawyers who know
15 how to present a case, and I appreciate the hard
16 work that you've all put in, because this is not
17 an easy task or an undertaking. So I thank you
18 all.
19 MR. WOOD: Thank you for your time,
20 your Honor.
21 We appreciate it.
22 THE COURT: Good luck everybody. Good
23 luck to everyone.
24 MR. WOOD: Thank you very much.

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1 THE COURT: Thank you.
2 (Which were all the
3 proceedings had in the
4 above-entitled cause
5 this date and time.)
6 (Proceedings concluded at 3:02 p.m.)
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21
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23
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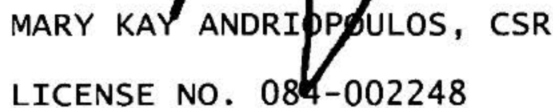
1 STATE OF ILLINOIS)
2) SS:
3 COUNTY OF C O O K)
4
5 I Mary Kay Andriopoulos, CSR, being first duly
6 sworn, on oath says that she is a court reporter
7 doing business in the City of Chicago; and that
8 she reported in shorthand the proceedings of
9 said hearing, and that the foregoing is a true
10 and correct transcript of her shorthand notes so
11 taken as aforesaid, and contains the proceedings
12 given at said hearing.
13
14 
15 MARY KAY ANDRIOPOULOS, CSR
16 LICENSE NO. 084-002248
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NOTICE
This Order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

2022 IL App (4th) 210039-U

NO. 4-21-0039

FILED
June 6, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re ESTATE OF HELEN REYNOLDS, Deceased	)	Appeal from the
	)	Circuit Court of
(Kirk Reynolds,	)	Logan County
Plaintiff-Appellant,	)	No. 18P35
v.	)	
Michael K. Reynolds, Executor,	)	
Jennifer M. Coleman, Michelle R. Dixon, Jason	)	Honorable
Retinger, and Karen S. Retinger,	)	Jonathan C. Wright,
Defendants-Appellees).	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Knecht and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, finding the trial court did not abuse its discretion by denying plaintiff's motion for leave to file a second amended petition to contest the validity of the decedent's will.

¶ 2 Helen Reynolds died in January 2018, leaving a will which bequeathed her estate to four family members, namely her son, Michael K. Reynolds, and three of her grandchildren, Jennifer M. Coleman, Michelle R. Dixon, and Jason N. Retinger. Helen's will expressly disinherited three other family members, including her grandson, plaintiff Kirk Reynolds. In March 2019, Kirk filed a petition to contest the validity of Helen's will. Defendant Michael K. Reynolds, as executor of Helen's estate, moved to dismiss the petition pursuant to section 2-619.1 of Illinois's Code of Civil Procedure (Code) (735 ILCS 5/2-619.1) (West 2018)). The

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trial court granted Michael's motion and struck the petition, but it granted Kirk leave to file an amended petition.

¶ 3 In June 2019, Kirk filed a first amended petition and Michael again filed a section 2-619.1 motion, seeking either dismissal or summary judgment. The trial court bifurcated Michael's motion and held a hearing on only the section 2-615 motion-to-dismiss portion in September 2019 (see 735 ILCS 5/2-615 (West 2018)). Following arguments from counsel, the trial court granted the motion to dismiss and struck the first amended petition. The trial court, however, informed Kirk he could file a motion for leave to file a second amended petition.

¶ 4 A few weeks later, Kirk moved for leave to file another amended petition along with a proposed second amended petition. At an October 2019 hearing, the trial court heard arguments from the parties and took the matter under advisement. On December 10, 2019, the trial court issued an order and memorandum decision denying Kirk's motion, finding the proposed second amended petition failed to cure pleading defects and, therefore, failed to sufficiently plead a cause of action. Kirk then filed motions to vacate and reconsider, which the trial court eventually denied.

¶ 5 On appeal, Kirk argues the trial court erred in denying his motion for leave to file a second amended petition because it sufficiently stated causes of action. We affirm.

¶ 6 I. BACKGROUND

¶ 7 Helen died on January 14, 2018, and left a will dated August 28, 2009. In May 2018, Michael filed a petition for probate of the will and for letters testamentary. Helen's will bequeathed her estate to her son, Michael, and three grandchildren, Jennifer, Michelle, and Jason. The will expressly excluded Kirk from inheriting from the estate. The trial court admitted the will to probate.

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¶ 8 In March 2019, Kirk filed a petition to contest the validity of Helen's will. The petition alleged Helen lacked testamentary capacity because she was under a guardianship and the guardian of her person, Michael Reynolds, "engaged in various acts and practices affecting Helen ***, and he made false representations to [her] for the purpose of improperly controlling, dominating and misleading her and unduly influencing her and wrongfully inducing her to execute the purported will." The petition further alleged Michael, "[i]n his capacity as fiduciary, *** acted to procure [Helen's] purported will of which effectively excludes [Kirk] as a beneficiary." The petition ultimately alleged Michael Reynolds's actions "deprived [Helen] of her free agency in the making of the purported will and was wrongfully induced to make it." Michael moved to dismiss the petition pursuant to section 2-619.1 of the Code. Following a May 2019 hearing, the trial court found the pleadings in Kirk's petition insufficient and, therefore, granted the section 2-615 portion of Michael's motion to dismiss and struck the petition. The trial court, however, granted Kirk leave to file an amended petition.

¶ 9 In June 2019, Kirk filed a first amended petition. Unlike the March 2019 petition, this petition challenged Helen's 2009 will through two counts: (1) undue influence and (2) wrongful interference with an expectancy. In terms of relief, the petition requested that Helen's 2009 will be set aside, her estate be distributed to her heirs at law, and damages be awarded in the amount of $150,000. Michael, on behalf of all the named defendants, filed another section 2-619.1 combined motion seeking either dismissal pursuant to sections 2-615 or 2-619(a)(9) of the Code or summary judgment pursuant to section 2-1005 of the Code (see 735 ILCS 5/2-1005 (West 2018)).

¶ 10 In an August 2019 hearing, the trial court divided Michael's combined motion into three separate parts, a section 2-615 motion to dismiss, a section 2-619 motion to dismiss,

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and a section 2-1005 motion for summary judgment. It heard arguments on the section 2-615 motion in September 2019 and rendered its decision on the record. The trial court noted it must determine whether Kirk's petition "has alleged sufficient facts *** that if proved would entitle [him] to relief." The trial court found the petition contained the following well-pleaded facts:

> "So, as the Court looks at the well-pled facts, the well-pled facts are that Helen Reynolds passed away on January 14, 2018. That there is a will purporting to be that Helen Reynolds dated August 28, 2009. That as of January 6, 2006, Michael Reynolds was appointed guardian of the person. That sometime thereafter, he made efforts by directing the staff at the nursing home not to allow *** Kirk Reynolds inside to see her. That she wished to see him. And that in January of 2006, he accompanied Helen Reynolds to the office and participated in the conversations that led to the will."

The trial court determined "that looking at those facts alone, that would not entitle Plaintiff to relief." The trial court noted Kirk's counsel argued additional factual information not contained in the petition but explained it could not consider those facts, even though "they make for good argument." The trial court then granted the section 2-615 motion as to count I.

¶ 11 Before moving on to count II, the trial court decided to "touch on the fiduciary presumption" in count I. The court acknowledged Kirk's petition invoked and relied upon the fiduciary presumption, but it noted how case law instructs that one factor necessary for establishing the fiduciary presumption "is that the testator is the dependent and the beneficiary is the dominant party." The court went on to explain:

> "The Court interprets that to mean something more than the

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> existence of fiduciary like here. There would not be any need to have that as a separate and distinct fact to allege or to show by way of evidence for the presumption. Again, there's reference to the person receiving a substantial benefit from the will. Again, I know we're dealing with a presumption which is an evidentiary issue. But there's no allegation of that in this complaint as it relates to Count 1."

¶ 12 The trial court then turned its attention to count II and noted case law requires "there has to be reasonable certainty of an expectation alleged" to properly plead interference with an expectancy. While the court found the petition's count II contained well-pleaded facts regarding Helen's date of death, her 2009 will, and the guardianship, it determined it did not contain "sufficient facts alleged to state a reasonable certainty of an expectation in having an inheritance." The trial court, therefore, granted the section 2-615 motion to dismiss as to count II.

¶ 13 Though Michael's counsel asked the petition be dismissed with prejudice, the trial court, in an exercise of its discretion, "allow[ed] time for the Plaintiff to file a motion for leave to file an amended *** petition." The trial court instructed Kirk's counsel he had 21 days to file the motion and should attach a proposed second amended petition to the motion. The trial court likewise informed opposing counsel he could file an objection to the motion, which would be "kind of a back door 2-615 motion, at this point to see if the petition cures the defect stated by the Court today."

¶ 14 Kirk timely filed a barebones motion for leave to file an amended petition and attached thereto a proposed second amended petition which included additional factual allegations not included in earlier iterations. The second amended petition alleged times prior to

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2006 when Michael Reynolds took money from Helen without her permission, or would ask her for money, or ask her to give him farmland because he deserved it. The petition alleged Michael's behavior caused Helen to leave him out of her initial estate plans. Concerning the Helen Reynolds Trust, the petition alleged Kirk had been named a lifetime income beneficiary in the first two iterations of the trust. The third version of the trust named one hospital and three schools as beneficiaries. Not until the fourth and final version of the trust, dated the same date as the August 2009 will, were Michael and other family members (except Kirk) named as trust beneficiaries. The second amended petition further alleged, unlike before, that "[p]rior to and at the time of the making of the will, Michael was guardian of the Helen's person [*sic*], and he stood in a fiduciary relationship to her, in which he was the dominant party and Helen was the dependent party."

¶ 15 Kirk's second amended petition pleaded many of the same factual allegations included in his prior petitions: Helen did not want Michael to be her guardian; Michael used the guardianship and the protection order to keep Kirk away from Helen; Michael used the guardianship and protection order to prevent Helen from leaving the nursing home, even for brief visits to her home or farm or a friend's home; Michael accompanied Helen to her attorney's office and participated in conversations about her will and trust documents in August 2009; and Michael maintained his guardianship of Helen longer than necessary in order to disinherit Kirk. The second amended petition contended these factual allegations (old and new) supported both count I (undue influence) and count II (tortious interference with an expectancy).

¶ 16 Michael opposed the motion for leave to file another amended petition, arguing Kirk failed to make the necessary showing to further amend his petition. Specifically, the opposing memo claimed: (1) the second amended petition failed to cure the pleading defects in

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earlier versions, (2) amendment would prejudice Michael and the other defendants, (3) the amendment was not timely, and (4) Kirk has already had opportunities to file a sufficient pleading. Michael's opposition placed great significance on facts surrounding Kirk's failure to oppose the guardianship and protection order, arguing the doctrines of *laches* and collateral estoppel prevented Kirk from arguing Michael kept Kirk away from Helen when he did not oppose those orders.

¶ 17 Following an October 2019 hearing, the trial court took the matter under advisement. Two months later the trial court issued an order denying Kirk leave to file a second amended complaint, finding Kirk's proposed amendment did not cure the defective pleading. As to count I, the trial court found the second amended petition sufficiently pleaded one required element for an undue-influence claim, namely, the existence of a fiduciary relationship. In contrast, the court found the amended petition did "not sufficiently allege that the testatrix, Helen Reynolds, was dependent upon Michael Reynolds, beneficiary, and that Michael Reynolds was in a dominant role over Helen Reynolds at the time the will was made August 28, 2009." The trial court further found the amended petition failed to "allege sufficient facts that Helen Reynolds placed trust and confidence in Michael Reynolds." In fact, the trial court found the amended petition did just the opposite, observing how the allegation "that Helen Reynolds protested against Michael Reynolds being her guardian *** suggests [she] did not place her trust and confidence in [him]." The trial court further found the proposed amendment failed to include specific facts alleging the manner in which the free will of the testator (Helen) was impaired at the time of the execution of the will.

¶ 18 As for count II, the trial court determined the amended petition sufficiently alleged Kirk's expectancy interest; however, the petition did "not sufficiently allege that Michael

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intentionally acted to interfere with [Kirk's] expectancy." The trial court concluded, "[t]he involvement of an independent court ordering the guardianship and the restraining order do not allow for a reasonable inference that the actions were taken for the purpose of altering the estate plans of Helen Reynolds." The trial court next determined the amended petition did not sufficiently plead tortious conduct by Michael Reynolds, namely undue influence, fraud, or duress. The trial court's order noted: "In this case, [Kirk] has been afforded three opportunities to state a cause of action. Regarding this proposed Second Amended Complaint [*sic*], there is no cause of action that can be stated if even [Kirk's] Motion is granted."

¶ 19 Kirk timely filed motions to vacate and reconsider the December 2019 order, which the trial court eventually denied. The trial court determined the motions were not based on newly discovered evidence or changes in the law but alleged errors in the order. The court found the motion unpersuasive and relied upon its earlier findings.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 Kirk argues the trial court erred in denying his motion for leave to file a second amended petition because the proposed petition sufficiently stated causes of action. We disagree.

¶ 23 "Illinois law supports a liberal policy of allowing amendments to the pleadings so as to enable parties to fully present their alleged cause or causes of action." *Grove v. Carle Foundation Hospital*, 364 Ill. App. 3d 412, 417, 846 N.E.2d 153, 157 (2006). For example, section 2-616(a) of the Code gives trial courts discretion to allow parties to amend the pleadings at any time before final judgment. 735 ILCS 5/2-616(a) (West 2018) (stating "amendments may be allowed on just and reasonable terms"). "Litigants, however, have no absolute right to amend their [pleadings]." *Grove*, 364 Ill. App. 3d at 417. Parties seeking leave to amend the pleadings

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bear the burden of showing amendments would be just and reasonable. See *Devyn Corp. v. City of Bloomington*, 2015 IL App (4th) 140819, ¶ 89, 38 N.E.3d 1266. When considering a motion to amend the pleadings, a trial court must consider the following: ' "(1) whether the proposed amendment would cure the defective pleading; (2) whether other parties would sustain prejudice or surprise by virtue of the proposed amendment; (3) whether the proposed amendment is timely; and (4) whether previous opportunities to amend the pleading could be identified.' " *Devyn*, 2015 IL App (4th) 140819, ¶ 89 (quoting *Loyola Academy v. S&S Roof Maintenance, Inc.*, 146 Ill. 2d 263, 273, 586 N.E.2d 1211, 1215-16 (1992)). "The overriding concerns, however, are justness and reasonableness." *In re Estate of Hoover*, 155 Ill. 2d 402, 416, 615 N.E.2d 736, 742 (1993). Absent an abuse of discretion, we will not reverse a trial court's ruling on a motion for leave to amend a pleading. *Devyn*, 2015 IL App (4th) 140819, ¶ 88.

¶ 24 Here, Kirk sought leave to file a second amended petition contesting his grandmother's will. The trial court denied him leave based on the first factor listed in *Devyn* — the proposed amended petition failed to cure the defective prior pleadings. The trial court specifically found the second amended petition lacked enough well-pleaded facts to sufficiently plead causes of action for both counts, presumption of undue influence and tortious interference with an expectancy. We will take each count in turn. But before wading into these specific causes of action, we must first review basic pleading requirements.

¶ 25 "Because Illinois is a fact-pleading jurisdiction, a plaintiff is required to set forth a legally recognized claim and plead facts in support of each element that bring the claim within the cause of action alleged." (Internal quotation marks omitted.) *Dupree v. Hardy*, 2011 IL App (4th) 100351, ¶ 22, 960 N.E.2d 1. When reviewing a complaint or petition that has been challenged by a section 2-615 motion to dismiss, "the court must accept as true all well-pleaded

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facts in the complaint, as well as any reasonable inferences that may arise from those facts." *Grant v. State*, 2018 IL App (4th) 170920, ¶ 12, 110 N.E.3d 1089. " 'Well-pleaded facts' is a term that stands in contrast to 'conclusions.' " *Pickel v. Springfield Stallions, Inc.*, 398 Ill. App. 3d 1063, 1066, 926 N.E.2d 877, 882 (2010). A plaintiff's petition "need not itemize the evidence supporting the claim," but it must contain well-pleaded facts and "not bare conclusions." *Pickel*, 398 Ill. App. 3d at 1066.

¶ 26 A. Presumption of Undue Influence

¶ 27 One ground for contesting a will is undue influence. " '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 judgement and reason [Citation.]' " *DeHart v. DeHart*, 2013 IL 114137, ¶ 27, 986 N.E.2d 85 (quoting *Hoover*, 155 Ill. 2d at 411).

¶ 28 Illinois law provides for a presumption of undue influence in some circumstances. "It is well settled that a presumption of undue influence will arise *** 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. Kirk's three petitions relied upon this presumption and attempted to properly plead it; however, the trial court concluded each time that Kirk failed to plead sufficient facts to sustain the cause of action. Relevant here is Kirk's proposed second amended petition, which the trial court determined failed to plead sufficient facts to support the second and third elements for the undue influence presumption—*i.e.*, that

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Helen was the dependent and Michael the dominant party in their relationship and Helen reposed trust and confidence in Michael.

¶ 29 Concerning the second element of undue influence, a dominant beneficiary and dependent testatrix, Kirk's proposed amended petition alleged: "Prior to and at the time of the making of the will, Michael was guardian of the Helen's person, and he stood in a fiduciary relationship to her, in which he was the dominant party and Helen was the dependent party." The trial court found this allegation "conclusory and *** not a well-pleaded fact." We agree with the trial court because the allegation lacks specific facts demonstrating the dominant-dependent relationship between Michael and Helen. See *In re Estate of Baumgarten*, 2012 IL App (1st) 112155, ¶ 22, 975 N.E.2d 651 ("The mere conclusion that the persuasive or dominant nature of the beneficiary influenced the testator is not sufficient.").

¶ 30 From our review of the record, it appears Kirk conflates the first two elements for the undue-influence presumption, meaning he seems to equate a fiduciary relationship with a dominant-dependent relationship. In other words, according to Kirk, if there is a fiduciary relationship like the guardianship here where Michael was Helen's guardian, then Michael necessarily dominates the dependent Helen. Case in point is the appellant's brief, which addresses the first two elements under the same heading, "There was a fiduciary relationship between Helen and Mike." More importantly, though, at the September 2019 hearing where the trial court dismissed Kirk's first amended complaint, it paused to comment on the second element for the undue influence presumption, saying:

> "The second factor analyzed in the *DeHart* case is that the testator is the dependent and the beneficiary is the dominant party. The Court interprets that to mean something more than the existence of fiduciary like here. There would not

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> be any need to have that as a separate and distinct fact to allege or to show by way of evidence for the presumption."

The trial court went on to note there was no allegation of a dominant-dependent relationship between Michael and Helen. Despite such guidance, Kirk's proposed second amended petition did not cure that defect. To the extent the petition alleged that as Helen's guardian Michael controlled where she lived and kept Kirk from her, those do not relate specifically to the drafting of the August 2009 will or show Michael dominated the dependent Helen at that time to secure a larger inheritance. See *Baumgarten*, 2012 IL App (1st) 112155, ¶ 22 ("The pleading of undue influence must specifically allege the manner in which the free will of the testator was impaired at the time the challenged instrument was executed."). Since the proposed second amended petition pleaded only a conclusory allegation regarding the dominant-dependent relationship element for undue influence, it did not sufficiently cure the pleading defect. See *Pickel*, 398 Ill. App. 3d at 1066 (stating a pleading "must allege facts sufficient to comprise a legally recognized cause of action, not bare conclusions").

¶ 31 As for the third element for undue influence presumption, the trial court found the proposed second amended petition failed to allege sufficient facts that Helen placed her trust and confidence in Michael. In fact, the trial court found the petition did the opposite when it alleged "Helen Reynolds protested against Michael Reynolds being her guardian." The trial court was right. There are no factual allegations in the petition that Helen put her trust and confidence in Michael. The appellant's brief, however, contends "the issue of trust and confidence [is] established by the very nature of the guardian-ward relationship." Kirk again conflates this element with the fiduciary relationship. For purposes of the undue influence presumption, the testator's trust and confidence in the beneficiary cannot be presumed from the mere existence of

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a fiduciary relationship between them.

¶ 32 The proposed second amended petition did not cure the pleading defects because it did not allege well-pleaded facts to show Helen was the dependent and Michael the dominate party in their relationship, nor did it allege well-pleaded facts that Helen reposed trust and confidence in Michael. See *DeHart*, 2013 IL 114137, ¶ 30. Consequently, the trial court did not abuse its discretion in denying the motion for leave to amend because Kirk did not satisfy the first of four considerations for such motions. See *Devyn*, 2015 IL App (4th) 140819, ¶ 89. Since Kirk failed to cure pleading defects in count I, we need not consider the remaining three factors *Devyn* outlines for motions for leave to amend. See *I.C.S. Illinois, Inc. v. Waste Management of Illinois, Inc.*, 403 Ill. App. 3d 211, 220, 931 N.E.2d 318, 325 (2010) (" '[I]f the proposed amendment does not state a cognizable claim, and thus, fails the first factor, courts of review will often not proceed with further analysis.' ") (quoting *Hayes Mechanical, Inc. v. First Industrial, L.P.*, 351 Ill. App. 3d 1, 7, 812 N.E.2d 419, 424 (2004)).

¶ 33 B. Tortious Interference With an Expectancy

¶ 34 Illinois law provides that "[o]ne who by fraud, duress or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he otherwise would have received is subject to liability to the other for the loss." *DeHart*, 2013 IL 114137, ¶ 39. "To recover for tortious interference with an economic expectancy, the plaintiff must establish the following: (1) existence of his expectancy; (2) defendant's intentional interference therewith; (3) tortious conduct such as undue influence, fraud or duress; (4) a reasonable certainty that the expectancy would have been realized but for the interference; and (5) damages." *DeHart*, 2013 IL 114137, ¶ 39.

¶ 35 The trial court determined Kirk's second amended complaint, specifically, the

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allegations he had been named a lifetime income beneficiary in the first two iterations of the Helen Reynolds Trust, sufficiently pleaded an expectancy interest. However, it concluded the petition failed to sufficiently plead the remaining elements, particularly intentional interference with the expectancy and tortious conduct. Concerning the former element, the trial court noted, “[a] court ordered guardianship and a court ordered restraining order are not facts of intentional interference with an expectancy” because those required “a factual basis to issue the order[s].” The trial court went on to explain, “[t]he involvement of an independent court ordering the guardianship and the restraining order do not allow for a reasonable inference that actions were taken for the purpose of altering the estate plans of Helen Reynolds.” As for the latter element (tortious conduct), the trial court relied on its analysis in count I. Since count I failed to state a claim for undue influence, count II necessarily failed to sufficiently allege undue influence as the tortious conduct from Michael. We agree.

¶ 36 The appellant’s brief cites no authority attacking these determinations. It steadfastly maintains it sufficiently pleaded all the necessary elements for count II because there was a fiduciary relationship between Michael and Helen and Helen subsequently changed her estate plans. As before, we find such an argument unconvincing because it disregards the applicable law and relies instead upon the fallacy of false cause. Again, Kirk relies on the existence of the guardianship as *ipso facto* proof of intentional tortious interference with Kirk’s expected inheritance—because Michael became guardian of Helen’s person in 2006 and Helen changed her estate plans after that, then Michael must have intentionally and tortiously acted to cause those changes. Kirk directs our attention to no case law to support his reasoning, leaving us to presume none exists for this context because we will not do his legal research for him. See *Obert v. Saville*, 253 Ill. App. 3d 677, 682, 624 N.E.2d 928, 931 (1993) (“A reviewing court is

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entitled to have issues clearly defined with pertinent authority cited and cohesive arguments presented [citation], and it is not a repository into which an appellant may foist the burden of argument and research."). Ultimately, Kirk's allegations that Michael was guardian of Helen's person and attended the 2009 meeting where she signed her estate plans do not sufficiently allege intentional tortious conduct. Since these allegations amount to conclusions and not well-pleaded facts, it did not cure the pleading defects. See *Pickel*, 398 Ill. App. 3d at 1066. The trial court, therefore, did not abuse its discretion in denying Kirk leave to file a second amended petition. *Devyn*, 2015 IL App (4th) 140819, ¶¶ 88-89.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the trial court's judgment.

¶ 39 Affirmed.

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NOTICE OF FILING AND PROOF OF SERVICE

I hereby certify that on May 10, 2023, I electronically filed the Brief of Respondent-Appellee Dorothy Coffman with the Supreme Court of Illinois by using the Odyssey eFileIL system.

I certify that on May 10, 2023, I electronically served the above-mentioned document through the court electronic filing manager and by email to the attorneys of record listed below. Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct.

/s/Patrice A. Serritos
Patrice A. Serritos

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