

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).

2026 IL App (4th) 251250-U

NO. 4-25-1250

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 15, 2026
Carla Bender
4th District Appellate
Court, IL

<i>In re</i> ESTATE OF EVA LOU WHITE,	)	Appeal from the
Deceased,	)	Circuit Court of
	)	Fulton County
(Victoria J. Harper, Christina L. Werland, and Michael E. White,	)	No. 21P108
	)	
Petitioners-Appellants,	)	
v.	)	
Bruce A. White, as Executor of the Estate of Eva Lou White and in His Official Capacity,	)	
	)	Honorable
	)	Curtis S. Lane,
Respondent-Appellee).	)	Judge Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Doherty and Lannerd concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed the trial court's entry of partial summary judgment against petitioners, holding (1) respondent did not waive objections to inadmissible evidence; (2) petitioners failed to present issues of material fact concerning undue influence; (3) a presumption of breach of fiduciary duty does not apply to claims for civil liability for financial exploitation of an elderly person under the Probate Act of 1975 (755 ILCS 5/2-6.2 (West 2022)); and (4) upon the failure of their remaining claims, petitioners' claim for breach of fiduciary duty under the Illinois Power of Attorney Act (755 ILCS 45/2-7 (West 2022)) became moot because petitioners were no longer capable of being successors in interest.

¶ 2 In January 2019, decedent, Eva Lou White, called Ted Collins, an attorney who previously represented her son, respondent and estate executor, Bruce A. White, seeking a will. After speaking with Eva Lou and with no evidence Bruce was present or spoke to either Eva Lou or Collins about the substantive provisions of the will, Collins drafted a will leaving the entirety

of Eva Lou's estate to Bruce, naming Bruce the executor of her estate, and specifically disinheriting petitioners, Victoria J. Harper, Christina L. Werland, and Michael E. White. Eva Lou signed the will in the presence of two bank employees and also signed powers of attorney for property and health care naming Bruce as her agent.

¶ 3 Following Eva Lou's death, petitioners filed a second amended complaint against Bruce and the estate, seeking to invalidate the will and obtain damages. Petitioners alleged the following claims: (1) lack of testamentary capacity based on allegations Eva Lou lacked the mental capacity necessary to execute a will due to suffering from dementia; (2) undue influence and a presumption of undue influence based on allegations Bruce had exerted dominance over Eva Lou, isolated her from petitioners, and arranged for the will to be drafted; (3) breach of fiduciary duty under the Illinois Power of Attorney Act (755 ILCS 45/2-7 (West 2022)) based on allegations Bruce wrote checks for Eva Lou to sign that benefited him; and (4) financial exploitation of an elderly person under the Probate Act of 1975 (Probate Act) (755 ILCS 5/2-6.2 (West 2022)).

¶ 4 During discovery, it was shown that Bruce had a farm near Eva Lou and her late husband, Marvin White, and Bruce and Marvin had traditionally shared farming equipment and various farming duties among the farms. Bruce accounted for specific checks petitioners alleged were written for his benefit, stating they were for farming operations, and the items purchased were included in Eva Lou's estate. Depositions from petitioners and other family members included allegations Eva Lou previously suffered from dementia and paranoia, and she believed family members were stealing from her in various years before the will was signed. Deposition testimony also included allegations Bruce locked Eva Lou in her home and isolated her from the rest of her family after the will was signed. Deposition testimony contained numerous instances

of opinions based on lack of personal knowledge, speculation, hearsay, and conversations that were arguably inadmissible under the Dead-Man's Act (735 ILCS 5/8-201 (West 2024)).

¶ 5 Shortly before trial, Bruce filed a motion for partial summary judgment on all claims except the claim of lack of testamentary capacity. Citing the Dead-Man's Act, Bruce also filed a motion *in limine* seeking, in part, to bar petitioners from eliciting testimony concerning conversations with Eva Lou. With the general agreement of petitioners, the trial court granted that motion. The court also granted other motions *in limine* barring evidence such as lay opinion testimony about medical conditions, the contents of previous wills, and the cleanliness of Eva Lou's person or home. Immediately after ruling on the motions, the court proceeded to the hearing on the motion for partial summary judgment, during which issues of the Dead-Man's Act and hearsay were mentioned.

¶ 6 The trial court granted the motion for partial summary judgment, finding there was no evidence Bruce procured the will to support a finding of undue influence. The court found complaints concerning purchased items that benefited Bruce were actually complaints concerning how Bruce operated Eva Lou's farm under the power of attorney instead of a breach of fiduciary duty. The court further noted the items purchased were included in Eva Lou's estate and found no damages could be shown.

¶ 7 The matter proceeded to a jury trial on the claim of lack of testamentary capacity. The jury found in favor of Bruce and the estate, and the trial court entered a final judgment declaring the will valid.

¶ 8 On appeal, petitioners contend the trial court erred in granting Bruce's motion for partial summary judgment. We affirm.

¶ 9 I. BACKGROUND

¶ 10 Eva Lou had five children: Bruce, Victoria, Christina, Michael, and Cynthia LaSalle. Cynthia, who was never a petitioner, died before the proceedings concerning the will concluded. On December 31, 2018, or January 1, 2019, Eva Lou's husband, Marvin, passed away. On January 9, 2019, Eva Lou executed a will devising all of her property to Bruce, with Bruces' nephew, Marcus White, and Marcus's children listed as alternate devisees in the event Bruce predeceased her. The will specifically disinherited Eva Lou's remaining children. Eva Lou also executed a power of attorney for property, naming Bruce as her agent. In November 2021, Eva Lou died after a short stay in a nursing home.

¶ 11 In their second amended complaint, petitioners alleged Eva Lou was over 75 years of age at the time of her death and required assistance with activities of daily living, including assistance with her finances. Petitioners alleged Eva Lou had been hospitalized in 2015, when she exhibited confusion, and she had suffered from dementia since 2015, when she was no longer cooking, cleaning, or driving on a regular basis. According to petitioners, Eva Lou suffered from paranoia and wrongly accused family members of stealing from her. Petitioners also alleged that, by January 2019, Eva Lou was unable to dress herself and did not understand how to unlock the door to her home. Thus, petitioners alleged Eva Lou "exhibited signs of severe mental deterioration resulting in insane delusions, an inability to perform activities of daily living, and an inability to transact ordinary business affairs before, on, and after January 9, 2019." Petitioners further alleged that, after the will was executed, Bruce locked Eva Lou in her home and would not allow her to move to an assisted living facility.

¶ 12 Petitioners alleged Bruce told them around the time of Marvin's death that he was moving in with Eva Lou. On January 2, 2019, Eva Lou spoke to Collins about executing a will. Petitioners alleged Bruce facilitated a call between Eva Lou and Collins and was present when

the will was signed. Petitioners alleged Eva Lou lacked the capacity to execute a will and that Bruce unduly influenced her to execute a will devising her property solely to him. Thus, petitioners sought to invalidate the will.

¶ 13 Petitioners also alleged Bruce made purchases under the power of attorney benefiting himself. In the complaint, petitioners alleged Bruce wrote checks for Eva Lou to sign for four specific purchases of home furnishings: (1) a stove, (2) two chairs, (3) a couch, and (4) another couch, mattress, and box springs. Petitioners also alleged Bruce wrote checks for Eva Lou to sign to purchase vehicles and farm equipment for his own use, “including but not limited to the following:” (1) a tractor, (2) a grain bin, (3) a combine, (4) a truck, and (5) another tractor. Petitioners also alleged Bruce wrote checks to himself for Eva Lou to sign, “including but not limited to” (1) \$12,000 on March 9, 2020 and (2) \$18,000 on July 27, 2020. Petitioners sought damages as successors in interest for the allegedly improper purchases and transactions. Petitioners did not allege Bruce failed to keep records or receipts.

¶ 14 Finally, petitioners alleged financial exploitation of an elderly person under the Probate Act (755 ILCS 5/2-6.2 (West 2022)). Specifically, petitioners alleged Bruce “used and abused his position of trust and confidence to unduly influence and breach his fiduciary duties to Eva Lou, engaging in presumptively fraudulent activity in order to misappropriate Eva Lou’s assets and resources for his own use and benefit.” Petitioners alleged Bruce was civilly liable based on his acts of undue influence and breach of fiduciary duty and should be barred from benefiting under the will. Petitioners again did not allege Bruce failed to keep proper records or receipts.

¶ 15 Bruce filed an answer, denying Eva Lou suffered from dementia to the extent petitioners alleged. Bruce stated he farmed both his own and Eva Lou’s properties but generally

denied the other allegations. Bruce stated he wrote checks for Eva Lou to sign at her express direction and instruction to make purchases for her home and farm.

¶ 16 Bruce stated he had continuously farmed his land alongside his parents' farm since 1981 and had solely handled all farming for his parents when they lived in Ohio in the 1980s. Bruce stated he and his parents utilized his farm equipment, including, but not limited to, his tractors, planters, auger, and disc, for farming his parents' land. He also stated he and his parents utilized his parents' equipment, including, but not limited to, his parents' combine, tractors, and grain carts, for farming his land. According to Bruce, he and his parents continuously shared their labor and equipment while farming their respective properties as a family for approximately four decades. Bruce stated the farm equipment and vehicle purchases were necessary for Eva Lou's farming operation and noted that all items purchased remained listed as assets in Eva Lou's estate.

¶ 17 Regarding checks to himself, Bruce stated the checks were written to reimburse himself for farm equipment he purchased using his own funds on Eva Lou's behalf and at her express instruction, and those items remained as assets of the estate.

¶ 18 Shortly before trial, Bruce filed multiple motions *in limine*, including a motion requesting that petitioners not be permitted to elicit testimony in violation of the Dead-Man's Act. Bruce also filed a motion for partial summary judgment on all claims except the claim Eva Lou lacked testamentary capacity. Bruce alleged petitioners could not show there was an issue of material fact regarding whether he procured the will or breached a fiduciary duty. Bruce included with the partial summary judgment motion multiple exhibits, including depositions of family members. Petitioners filed a response and also included exhibits. What follows are from the various exhibits provided by the parties.

¶ 19

A. Bruce's Deposition

¶ 20 Bruce testified he took college courses in farm management and had been farming since 1981. Bruce stated he shared farming operations with Marvin and Eva Lou. He testified they shared labor on their farms together and shared each other's equipment in the farming operation. Bills and income from each farm were kept separate.

¶ 21 Bruce stated that, before Marvin's death, he saw his parents five days per week or every day during farming season. In 2015, Eva Lou was hospitalized, and her physical health deteriorated. Bruce testified Eva Lou's mental health at that time was fine as far as he could tell. Bruce testified he saw Eva Lou cook and clean at that time, but Eva Lou's sister and Christina would also visit every week or two, and Christina would bring food. Bruce agreed that Eva Lou stopped driving by the end of 2015. He stated she generally did not leave the house after that time and did not want to leave the house.

¶ 22 Bruce disagreed that Eva Lou suffered from confusion and paranoia before Marvin died or that she needed help with daily tasks or finances. Bruce testified he moved into Eva Lou's house on December 29, 2018, when Marvin, who had been hospitalized, was brought home for hospice care. Marvin died shortly after, and Eva Lou was distraught. Bruce testified Marvin had said he had a will, but Bruce looked for it and could not find it. Bruce slept in the living room of Eva Lou's house.

¶ 23 Bruce testified that, shortly after Marvin's death, Eva Lou asked him if he knew an attorney, but he could not remember the exact date. Bruce stated Eva Lou said she needed a will since one of them had died. Bruce testified he gave attorney Collins's phone number to Eva Lou, and he believed Eva Lou called Collins to set up an appointment. Bruce stated he was not present when Eva Lou called Collins and did not know the details of the will.

¶ 24 Bruce testified Collins mailed the will, and Bruce picked it up from the mailbox, which was down a dusty road. Bruce testified he went to the bank to ask bank employees Rhonda Munson and Andrew Clay McConkey to witness the will signing at Eva Lou's request. He said Eva Lou also called them. He was at the house when they arrived for the will signing, but he left to work on the farm. Bruce put the will and powers of attorney in Eva Lou's safe. He stated Eva Lou knew the combination for the lock on the safe.

¶ 25 Bruce testified Marcus lived on another farm, which the record shows was another property owned by Eva Lou, and would visit Marvin and Eva Lou weekly or biweekly. Marcus cut firewood for them and also helped Bruce with some farm activities.

¶ 26 Bruce testified that, after Marvin's death, he assisted Eva Lou with cooking and would buy groceries and pick up her medications. However, he stated she was able to take care of herself. Bruce stayed with Eva Lou to provide support and companionship but would also go to his own home two miles away to take care of laundry "and do stuff."

¶ 27 Bruce testified he looked into assisted living for Eva Lou in July 2019 at her request. Eva Lou later changed her mind and did not want to pursue it. He did not recall talking to Collins about it.

¶ 28 Bruce testified Eva Lou was able to personally review her bank statements and canceled checks. Bruce identified checks he wrote for Marvin to sign in 2018 and also checks entirely written by Marvin. When Marvin died, Bruce began writing checks for Eva Lou to sign at her instruction. Bruce did not know why Eva Lou asked him to do so, but he stated they would sit in the kitchen and go through bills together. Bruce was aware he had been named Eva Lou's agent under a power of attorney. Bruce stated that, through 2020, Eva Lou was still involved with making managerial decisions for the farm.

¶ 29 Bruce testified the purchases of a stove and household furnishings were at Eva Lou's request, and she helped select the items. He said Eva Lou used the stove for cooking. The chairs were purchased to replace old chairs that were falling apart. The mattress and box springs went in Eva Lou's bedroom, and the couch went in the living room. An earlier couch purchase had been canceled and refunded.

¶ 30 Likewise, Bruce testified purchases of farm equipment were made at Eva Lou's request with his consultation. Bruce testified Eva Lou wanted to purchase the items and agreed to Bruce writing the checks for her to sign for the purchases. He described the reasoning for the purchases and why he thought they were prudent or necessary.

¶ 31 Bruce testified that, on February 21, 2020, he wrote a check signed by Eva Lou for a 2020 Chevrolet truck for Eva Lou's farm. Bruce traded in Eva Lou's car and another truck when making the purchase. Bruce testified both vehicles were over 10 years old and had over 100,000 miles on them. Bruce was listed as the purchaser and owner of the new truck on the sale documents, and his address was used instead of Eva Lou's. The truck was also registered to Bruce. Bruce stated his name was on the truck because he had a driver's license and Eva Lou did not. Bruce included the truck in the estate inventory after Eva Lou's death.

¶ 32 Bruce also purchased a grain bin for Eva Lou's property. Bruce testified Marvin had previously intended to get a grain bin and had been paying for grain storage. He testified farm yield had improved, and the bin was necessary for increased farm profit. Bruce testified the cost of the bin had been recouped by increased profit. Bruce testified he did not store any of his own grain in the bin.

¶ 33 Generally, the farm equipment Bruce purchased was used both on Eva Lou's property and his own. Most of Bruce's own equipment was also used on both properties. The

items Bruce purchased using checks signed by Eva Lou were all included in the estate inventory.

¶ 34 Bruce testified that, in 2019, Eva Lou canceled a hunting lease on her property. He stated Eva Lou spoke to the lessee on the phone about the cancellation. Bruce testified that he, too, talked to the lessee.

¶ 35 Bruce identified an invoice from January 29, 2019, for deadbolt locks to be installed at Eva Lou's house. He testified Eva Lou requested the locks. He stated there had been an incident in which Cynthia had tried to enter the home and could not open the door, but he did not recall if that was before or after the locks were installed.

¶ 36 Bruce was asked about two checks he wrote to himself. He testified one, written for \$12,000, was to reimburse him for a John Deere 630 platform he had purchased himself. The other, written for \$18,000, was for a John Deere 608C corn head Bruce purchased himself. He stated Eva Lou had approved the purchases for the farm, the checks were reimbursement for the purchases, and the items remained a part of the estate. Bruce included with his motion for partial summary judgment copies of checks written by himself on his own account for those amounts and with notations on them reflecting the purchases.

¶ 37 Bruce was asked about a March 3, 2021, debit from Eva Lou's account to himself for \$6,462. A bank statement in the record shows a withdrawal from the account for \$6,462 and a debit slip with the notion "To Bruce ck #2162." When asked what it was for, Bruce replied, "I don't know, I'd have to see the check. Have you got that check?" The attorney for petitioners replied, "No, I don't know what that check is," and moved on to other questions.

¶ 38 The record contains checks written for cash in the amount of \$378 on May 10, 2019, and for \$500 on August 22, 2019. There are no notations on those checks. A check written for cash for \$700 on September 23, 2019, has a notation that appears to include the word "auger"

and “10x60.” A check written for \$500 cash on December 16, 2019, has the notation “charity.” There are five checks in the record written to Bruce that have the notation “supplies.” The record also contains a check written to Bruce for \$305 on March 19, 2020, with the notation “repairs.” Bruce was not asked about those checks, nor were they specifically included in any pleadings or the motion for partial summary judgment.

¶ 39 Bruce was asked about over 2,000 documents he provided in document production that included receipts and asked about receipts for groceries or clothing for Eva Lou. Bruce testified he paid for things like clothes and groceries for Eva Lou with cash. Bruce did not keep receipts or a record of those items because they were not tax deductible.

¶ 40 Bruce did not recall having any conversations with Christina when Eva Lou entered a nursing home shortly before her death. He testified he did not instruct anyone at the nursing home to not allow his siblings to visit Eva Lou.

¶ 41 When Eva Lou died, Bruce contacted Cynthia but did not contact the other siblings. Bruce testified that his relationship with his siblings other than Cynthia was “[v]ery strained.”

¶ 42 B. Collins’s Deposition

¶ 43 In his deposition, Collins testified he was an attorney and concentrated his practice on real estate and probate law. Collins stated he normally would talk with a client to develop a sense of whether they were competent to prepare and sign a will. Collins knew Bruce because he had previously represented Bruce in a real estate transaction and estate planning.

¶ 44 Collins testified Bruce did not ask him to prepare Eva Lou’s estate plan, and no one other than Eva Lou asked him to do so. Collins did not meet with Eva Lou in person. He testified Eva Lou said she had limited mobility and preferred to speak over the phone. Collins

stated that was not his standard operating procedure, but he had done that before with other clients, and it was not unheard of to prepare an estate plan via remote communication. He could not recall if Eva Lou called him or if he made the call to her under a scheduled time to call.

¶ 45 Collins testified his phone call with Eva Lou took place on January 2, 2019, and lasted approximately 46 minutes. Eva Lou provided him with details about her children, their locations, how to spell their names, and their alleged conduct with regard to previous thefts of her property. Eva Lou also provided details about her grandchildren, Marvin's death, and Marvin's social security number. Eva Lou further provided her own social security number. Collins described Eva Lou's conversation with him as "very fluent." Collins had no reason to believe anyone was present with Eva Lou during the conversation. He never heard a voice other than Eva Lou's during the call. Collins testified he also had no reason to believe Eva Lou lacked the ability to know the nature and extent of her property or her family members at that time. Collins believed she had the ability to form a plan as to the disposition of her estate.

¶ 46 Eva Lou told Collins Victoria had stolen antiques from her approximately four years prior. She told Collins Michael had also stolen from her, and she had given him a farm in 1987 or 1988, which was his inheritance. Eva Lou referred to Michael's children and stated Marcus was "a doll" and, "I would take him in a New York minute." Eva Lou told Collins that Christina had taken things from her property during a time when Eva Lou was in the hospital. Eva Lou told Collins she considered Bruce her only child. Collins stated he had no reason to dispute anything Eva Lou told him.

¶ 47 Collin's notes were included as an exhibit. Those notes include notations corroborating his testimony. The notes also stated Cynthia was " 'alright.' " Collins made a note to specifically omit the four children aside from Bruce from the will.

¶ 48 Collins testified he did not discuss Eva Lou's assets with her. He stated that whether it would be his custom and practice to do so would depend on the circumstances. Because Eva Lou was making Bruce the sole heir, Collins did not feel it was necessary to discuss her specific assets.

¶ 49 Collins testified he waited to send the documents to Eva Lou until after Marvin's funeral as a courtesy, in order to be sensitive to the grieving process. Collins had a note written to call Eva Lou or Bruce after the funeral. Collins stated his custom was to execute wills in his office, but he had also mailed documents to clients before. Collins testified he did not have a social relationship with Bruce. Collins testified that, in July 2019, Bruce spoke to Collins about an assisted living facility for Eva Lou.

¶ 50 C. Affidavits of Munson and McConkey

¶ 51 Both Munson and McConkey averred they were employees of Fairview State Bank and knew Eva Lou, who was a customer of the bank. They averred that, before January 9, 2019, Eva Lou called Munson at the bank and asked if they could witness her will signing. After Eva Lou called, Bruce visited the bank to schedule a time and date for the will signing. On January 9, 2019, Munson and McConkey traveled to Eva Lou's residence, and Eva Lou signed the will at her kitchen table in their presence. Each averred Bruce was at the residence when they arrived, but they did not recall Bruce being present at the time Eva Lou signed the will. Each averred they believed Eva Lou was of sound mind and body on January 9, 2019, and they would not have witnessed the signing if they believed otherwise. They each believed Eva Lou signed the will voluntarily and was not being forced to sign the will by anyone.

¶ 52 Petitioners provided evidence that, in March 2022, at a proof of will hearing, McConkey had testified he, Eva Lou, Munson, and Bruce were present at Eva Lou's house on

January 9, 2021. McConkey testified he saw Eva Lou sign the will and believed her to be of sound mind and memory when she did so. McConkey testified Munson was present when Eva Lou signed the will. He was not asked if Bruce was still present at the time.

¶ 53 On cross-examination, McConkey testified Bruce came to the bank and asked McConkey and Munson to be witnesses. He did not recall whether Eva Lou herself asked him to be a witness. When asked if he had any reason to believe Eva Lou understood the will, McConkey replied, “No, not one way or the other, no.” McConkey repeated he did not think anyone forced Eva Lou to sign the will.

¶ 54 Munson testified she and McConkey were asked by both Eva Lou and Bruce to come witness the will signing. She, Eva Lou, McConkey, and Bruce were present at Eva Lou’s house on January 9, 2021. Munson saw Eva Lou sign the will and believed her to be of sound mind and memory when she did so. Munson testified McConkey was present when Eva Lou signed the will. She was not asked if Bruce was still present at the time.

¶ 55 On cross-examination, Munson was asked if it was Eva Lou or Bruce who asked them to witness the will signing. Munson testified there was a phone call, and she knew Bruce was coming into the bank. When asked, “[W]hich one of them asked you to witness the will?” Munson responded, “Bruce was the one that actually came in.” Eva Lou knew Munson’s name when she arrived at the house. Eva Lou referenced the will when speaking with Munson. The contents of the will were not discussed.

¶ 56 D. Christina’s Deposition

¶ 57 Among the petitioners, Christina was the only one who was regularly in contact with Eva Lou around the time the will was executed. In her deposition, Christina testified she previously had attended a meeting on an unspecified date with Marvin, Eva Lou, Michael, and

Victoria about Marvin's will. Cynthia and Bruce were not present. When describing Marvin's will, Christina stated Michael had gotten an inheritance by being given a farm and that Cynthia had also already gotten an inheritance. Christina stated that, under Marvin's will, Bruce was to have the "home place" and Christina and Victoria "the other." The record indicates that was additional farmland owned by Marvin and Eva Lou. Marvin's will does not appear in the record, and Christina stated it "was never in probate."

¶ 58 Christina's testimony and the record as a whole showed Michael had been allowed to live in another house owned by Marvin and Eva Lou without paying rent. Michael was given farmland but sold it as part of a divorce, which upset Marvin and Eva Lou. Michael's son, Marcus, still lived in the other house. The record indicates Victoria and Christina lived nearby on land given to them by Marvin and Eva Lou, and their wells were on land that remained owned by Eva Lou. Christina testified that, until 2016, Eva Lou had told Christina she and Victoria would be given the land their wells were on.

¶ 59 Christina testified that, on January 1, 2019, she asked Eva Lou what she wanted to do and discussed the possibility of a nursing home. She stated Bruce then said he was going to move in. During the conversation, Christina said she mentioned Marvin's will, and Bruce said, "[D]ad's will don't mean shit." During the conversation, Eva Lou did not initially respond to the suggestions about a nursing home. Christina opined Eva Lou wanted to stay at home to make sure no one stole her things because Eva Lou had previously spoken about people trying to steal from her.

¶ 60 Christina testified that, on unspecified occasions, Bruce would go missing for weeks and had taken a trip to China when he was possibly needed for harvesting or farm work. Christina could not remember when Bruce went to China or specify exactly what Bruce might

have been needed for at the time he traveled. She admitted Bruce helped Marvin and Eva Lou on the farm. However, she stated Bruce was not dependable before Marvin died and testified he became somewhat dependable between Marvin's and Eva Lou's deaths. She testified Bruce did not do things the way Marvin did.

¶ 61 Christina recounted an incident when Eva Lou was hospitalized and the hospital called her, stating Eva Lou was agitated and accusing the hospital of holding Marvin, Bruce, and Victoria hostage. She did not provide a date, but other materials in the record indicate the incident was likely in 2015. Christina also recounted times, perhaps before 2010, in which Eva Lou said she thought there was something wrong and thought she was having "small strokes." However, Eva Lou would not go to a doctor.

¶ 62 Christina stated Eva Lou would change doctors because she did not like what they told her. Christina testified that, in 2017, Eva Lou no longer trusted her because she had a brain scan performed by Christina's doctor. The details of that scan or any findings from it were not provided.

¶ 63 Christina described Marvin as having a "horrible temper" and stated that Eva Lou beat her. She said Eva Lou began calling her a liar when she was four or five years of age. She also described Marvin and Bruce both as people who would yell and recounted times when Bruce would yell at Eva Lou. She also described both Marvin and Eva Lou as violent, and she stated Eva Lou "was violent her whole life."

¶ 64 Christina recounted the events surrounding Michael's divorce that caused him to become estranged from his son Marcus and stated Eva Lou also did not like Marcus. Christina opined Eva Lou would never have put Marcus in her will if Bruce were not there.

¶ 65 Christina described events before Marvin's death where Eva Lou believed people

were breaking in and stealing things. Christina was unclear if she personally witnessed some of those events and did not give specific dates. She also recounted things Marvin told her Eva Lou had done in 2016 that were indicative of paranoia and dementia. Christina testified she and Victoria did the cleaning and cooking for Eva Lou around 2016. Christina did not see Eva Lou in 2021 because she was afraid. She testified that, in 2017, Eva Lou had thrown Michael out, told him to never come back, and tried to hit Michael with a chair. Christina testified Eva Lou had previously wrongly accused her of trying to steal a vase and a washboard.

¶ 66 Counsel for Bruce showed Christina a document from Modern Woodmen executed by Eva Lou in 2012, in which she made Marvin the beneficiary of an account worth \$500,000 and made Bruce the contingent beneficiary. Christina testified Eva Lou had previously told her that she and Victoria would be the beneficiaries of that account. She indicated she blamed Bruce for the change, stating, “He did it, like I say, cloak-and-dagger.” But when asked what Bruce’s involvement was in the change, Christina responded, “I don’t know.” An account for Marvin with Modern Woodmen listed Christina and Victoria as beneficiaries. After that line of questioning, Christina then opined Eva Lou lacked the mental ability to make changes to beneficiaries in 2012. However, shortly after, she stated Eva Lou “did have the wheretoall (*sic*) to change this in 2012” but “had problems with things.” Christina said Eva Lou at that time was not cooking because the stove did not work, had mostly stopped driving, and had hired someone to clean. Marvin did the laundry at that time. When pressed further about Eva Lou’s mental capacity in 2012, Christina said, “I don’t know, it might have been a good day. Yeah, she may have had a good day.”

¶ 67 Christina stated she “heard through the grapevine” that Eva Lou wanted to go to a nursing home and Bruce would not allow her to do so. She stated “Aunt Pat” told her about a

conversation with Eva Lou in which Eva Lou said Bruce would stop her from going to a nursing home. Christina admitted she and Victoria had entered Eva Lou's home before without permission.

¶ 68 Christina testified Eva Lou's hair was filthy in the month leading up to Marvin's death. Eva Lou was distraught by Marvin's death and said no one had told her Marvin was dying. However, Christina stated Marvin had repeatedly told Eva Lou he was dying. Christina testified she helped Eva Lou prepare for Marvin's funeral viewing, and Eva Lou was unkempt and smelled bad. Eva Lou was crying and not eating or sleeping that week. Christina stated Eva Lou's behavior did not improve after that. However, Christina admitted the cleanliness of Eva Lou's home improved after Marvin's death. She did not know who was doing the cleaning but said it was not Eva Lou.

¶ 69 Christina testified that, after Marvin's death, she continued to visit Eva Lou for about a year. She testified Eva Lou did not cook or clean during that time and did not wash herself or brush her hair.

¶ 70 Christina stated Eva Lou never forgot who she was or who her siblings were. She was not aware of Eva Lou forgetting she owned farmland or farm equipment. Christina had never spoken with Eva Lou's doctors about Eva Lou's ability to make a will, although a doctor had said Eva Lou was "unreasonable" when she suffered from hallucinations in the hospital in 2015. Christina did not see Eva Lou on January 9, 2019. Christina disputed that Eva Lou lacked mobility and opined Eva Lou could have gone to Collins's office in person.

¶ 71 Christina visited Eva Lou in the hospital shortly before her death, and Eva Lou introduced her to the nurses. Christina was on a list of authorized people. Christina said Eva Lou apologized for calling Christina a liar and thief. Christina testified that, when Eva Lou was

moved from the hospital to a nursing home, she was not allowed in. She stated Bruce told her Eva Lou did not want to see her.

¶ 72 Regarding Bruce's purchases when he was Eva Lou's agent under a power of attorney, Christina described the stove purchase as "weird" because Eva Lou was not cooking. She did not express an issue with the other home furniture purchases. Christina did not dispute an assertion that Eva Lou's farm had record yields following Marvin's death. She agreed Bruce and Marvin traditionally had shared equipment. However, she stated Eva Lou did not want a grain bin. She did not know if Bruce kept any of his grain in the grain bin.

¶ 73 E. Christopher Werland's Deposition

¶ 74 Christina's son, Christopher Werland, testified Marvin previously told him his plans for his will under which Bruce would get the "home place," Victoria would get another farm, Michael would get some money because he already had been given and sold farmland, and Cynthia would get some money. Christopher stated Marvin told him no grandchild would be in the will. He testified Eva Lou told him that Marvin's wishes were her wishes.

¶ 75 Christopher testified Marcus had lived on Eva Lou's property since 2001 and agreed that Eva Lou did not like Marcus. He stated Eva Lou also did not like Michael. Christopher recounted a time where Michael told Marvin he wanted to be disowned by the family.

¶ 76 Christopher testified he helped with the farming. He stated that, beginning in about 2015, Eva Lou would sometimes confuse him with Bruce. He also testified about various instances in which Eva Lou accused people of stealing things. However, he also stated Eva Lou never forgot who Bruce and other people were.

¶ 77 Without giving specific dates, Christopher testified Bruce helped with the

farming, but he was absent a lot and had taken a trip to China. Christopher stated Bruce was working double shifts at his employment before he retired in 2016 or 2017. Bruce's involvement with the farm increased "[a] little bit" after his retirement. Bruce did the farming after Marvin died with the help of Marcus, and Christopher had not helped with the farm since that time. Christopher agreed Bruce needed to use Marvin's equipment to farm his land but disagreed that Marvin and Eva Lou's land could not be farmed without Bruce's equipment. Christopher testified that, in 2019, he heard Eva Lou tell Bruce she had a down payment for farmland for him.

¶ 78 Christopher testified he did not see Eva Lou after 2020 because Bruce would lock the door and people would be unable to get in. He did not dispute that, after Christina became estranged from Eva Lou in 2020, Bruce was the only child who stayed in contact with Eva Lou.

¶ 79 When asked about allegations made against Bruce, Christopher often relied on things he heard from other people. However, he recounted a time in 2017 when he saw Eva Lou confused about where a tractor was and stated she was not adequately dressed and had not eaten. He also stated he had witnessed other similar events after 2015 and had witnessed Eva Lou accuse people of breaking in and stealing things or poisoning her food.

¶ 80 Regarding purchases, Christopher generally did not disagree with the purchases of household furnishings. He testified Eva Lou did not want the grain bin that was purchased. When asked if it was a good idea to purchase the grain bin, Christopher stated he wouldn't have done so but it was a personal choice. Christopher also stated Eva Lou complained about Bruce selling her car.

¶ 81 Christopher visited Eva Lou twice the week after Marvin died. He stated Eva Lou was a "nervous wreck" and "was constant[ly] crying." Christopher had witnessed Bruce yell at

Eva Lou in 2019 about her grief. Christopher stated that, up until the last time he saw her, Eva Lou had days she was “not fully there” and days where she “was fully there.” He stated there were more bad days than good and estimated a ratio of 90/10 for bad days to good days.

¶ 82 Christopher agreed Eva Lou had the ability to dial and speak on the phone in January 2019, but he stated her judgment was clouded. He did not see her on January 9, 2019. Christopher stated that, sometime in February or March of 2019, Eva Lou told him she had to speak to Collins on the phone about something she did not understand. Christopher did not visit Eva Lou when she entered a nursing home because he was told he was not on a list.

¶ 83 F. Michael’s Deposition

¶ 84 In his deposition, Michael testified he had not seen Eva Lou since 2017. Michael stated Eva Lou had dementia since 2015. Michael said he knew Eva Lou had dementia because two doctors told the family that when Eva Lou was in the hospital. Michael recounted instances in which Eva Lou would not allow him in her home and wrongly accused him of stealing from her. Michael recounted things his late sister, Cynthia, told him about Eva Lou’s dementia, stating Cynthia told him she had to break a window to enter the house, but he did not provide a date. Michael recounted issues Eva Lou had with cleaning, cooking, and self-care in 2017, but he admitted he did not know what her actual mental ability was in 2019. He also did not know if Eva Lou was paranoid or disoriented on January 9, 2019, or if she lacked the ability to remember her children or form a plan about the disposition of her assets on that date.

¶ 85 Michael testified other people normally picked up the mail for Eva Lou. He stated she did not like to leave the house much even before she was mentally challenged.

¶ 86 Michael stated he had three children, including Marcus. Michael stated he and Marcus had moved into Marvin and Eva Lou’s property in 1981. Michael moved out in 2000, but

Marcus stayed. Marcus later testified in favor of his mother in a divorce action and had been estranged from Michael since 2009. Michael did not know if Marcus had seen Eva Lou since 2017, but he said he doubted he had since Eva Lou did not like Marcus. Michael said Bruce and Marcus had a “pretty tight” relationship. Michael opined that Marcus must have been mentioned in the will because someone coached Eva Lou to include him.

¶ 87 Michael made allegations Bruce “cleaned out” Eva Lou’s bank account and used money from that to buy another farm. However, he could not say how much money Bruce allegedly took, when that happened, or under what circumstances, and he admitted he had no supporting records. Michael agreed the purchase of a stove for Eva Lou was appropriate. He opined other furniture purchases were unnecessary or too expensive but then said he did not know the prices of furniture. Michael expressed criticism of the farm equipment purchases and how Bruce farmed the property, stating, “T[he way Bruce farms and the way Dad farms is totally different.” Michael stated, “Bruce thinks he has to compete with the Joneses.” Generally, Michael opined that Bruce did not need the equipment he purchased in order to farm the properties.

¶ 88 Michael provided testimony about Marvin’s will that was similar to Christina’s testimony. Michael described Bruce as an alcoholic who “didn’t hang around much” and “only showed up basically when he wanted something.” However, Bruce had gone on vacation with Marvin and Eva Lou and had paid for a trip to Hawaii for them.

¶ 89 Michael had not helped Marvin with the farm since 2015. Michael testified Bruce assisted Marvin with the farm in 2017 and 2018 but also stated Bruce helped “[v]ery little” in 2017. Marvin and Bruce harvested both of their properties together. Michael stated Marvin had “all the equipment but about five pieces,” and Bruce had the remaining equipment. Michael

recounted various instances in which he believed Bruce had not helped with the farm, but when asked what that had to do with Eva Lou's ability to execute a will, he stated, "That doesn't have anything." Michael testified Bruce and Marcus farmed Eva Lou's property after Marvin passed.

¶ 90 Michael testified Collins and Bruce were drinking buddies but said he knew that from what other people said and stated, "I'm going by that is hearsay. So it's not submissible (*sic*) in court." He stated he had no documented proof or pictures to support the accusation. Michael also stated he had heard that Bruce would not let Eva Lou go to a nursing home even though he had heard from others that she had nursing home insurance. Generally, when asked about the allegations in the complaint, Michael admitted a lack of personal knowledge regarding them or testified other people told him about the facts alleged.

¶ 91 Michael did not attempt to visit Eva Lou in the nursing home before she died. No one had told him he was not allowed to visit her. Bruce did not call him to inform him of Eva Lou's death.

¶ 92 G. Victoria's Deposition

¶ 93 Victoria testified Marvin told her in 2016 that he had prepared a will but had said Eva Lou had issues with what he wanted done. Victoria said Eva Lou "was angry by that point with the whole world" and wrongly thought people had been stealing things from her.

¶ 94 Victoria's testimony was similar to that of Michael. As with Michael's testimony, parts of Victoria's testimony were based on things other people had told her. Victoria testified Eva Lou had dementia and could not cook. Victoria testified that, before 2015, Eva Lou stated she thought she was having " 'ministrokes' " and wanted to enter a nursing home. After suffering from health issues in 2015, Eva Lou started accusing Victoria of stealing from her. Victoria was aware of an incident involving Michael's wife, Roberta White, in which Roberta had been

accused of theft. Victoria thought that contributed to Eva Lou's beliefs about thefts. Victoria stated Eva Lou did not like Marcus and had said in 2016 she wanted him evicted. Victoria did not know how Eva Lou felt about Marcus in 2019.

¶ 95 Victoria indicated she had concerns Bruce had conversations with Collins about the will or influenced the preparation of the will but admitted she had no proof. Victoria testified Eva Lou was distraught by Marvin's death and was not mentally capable of dressing herself. However, she stated Eva Lou knew who everyone was. Victoria stated Eva Lou could not open her safe because it was "touchy." Victoria knew the code for the safe. Victoria stated the mailbox was half of a mile away from the house, and Eva Lou never picked up the mail. Instead, Marvin always picked it up when he was alive. Victoria testified Eva Lou did not like to leave the farm.

¶ 96 After Marvin died, Victoria saw Eva Lou three times. She stated she "stayed away" because it would be easier for Bruce to care for Eva Lou if Eva Lou was not worried that Victoria was stealing from her. When asked if Bruce was honest in how he dealt with Eva Lou under the power of attorney, Victoria stated, "I don't know because I wasn't around." When asked if Bruce influenced Eva Lou to name him as her agent, Victoria responded "Could have I don't know. I wasn't there." She admitted she lacked personal knowledge of Eva Lou's mindset or ability to form a plan on January 9, 2019.

¶ 97 H. Roberta's Deposition

¶ 98 Roberta testified the last time she had seen Eva Lou was before the fall of 2017. She generally did not know anything about the farming operations and lacked knowledge of many of the events she was asked about. In other instances, Roberta's testimony was similar to that of other witnesses for petitioners. In many cases, the information she provided was based on things she had been told by others. Roberta had not seen the will. Aside from possibly seeing

Eva Lou at Marvin's funeral, she did not see Eva Lou in January 2019.

¶ 99 Roberta's deposition and the depositions of others revealed Roberta had previously taken an item from a store, and Eva Lou knew about that.

¶ 100 I. Other Records

¶ 101 Nursing home records from shortly before Eva Lou's death stated on a social services admission assessment under a section titled "Any complications of marital/family relationships?" that "Bruce is [power of attorney] -Victoria, Kris, and Mike are not to visit or call for information." It is unknown who requested that be placed in the records. Those same records listed Eva Lou as oriented to self and oriented to others and place "At Times." It listed "No" as oriented to time. Short-term and long term memory were listed as "OK" but also stated, "Memory problem." Cognitive skills for daily decision-making were listed as "Modified independence-some difficulty in new situations only." No behavioral symptoms were noted. Hearing was listed as adequate and speech clarity was listed as "Clear speech-distinct intelligible words."

¶ 102 While the depositions in the record at times include references to conversations with doctors, no formal documentation or testimony from physicians specifically diagnosing Eva Lou with dementia were provided with the materials submitted regarding the partial summary judgment motion. A report from Doctor Jason Chamberlin in December 2017 diagnosed Eva Lou with severe depression. The report noted she was having trouble with paranoia symptoms and thought family members were stealing from her. The report stated, "No other concerns reported." Dementia was not noted. Under "Neurological," the report stated, "Psychological cognitive testing and assessment MiniCog performed. See scanned document. Result, Pass." A "scanned document" was not included. Under a section pertaining to a physical assessment, the report

stated Eva Lou needed assistance with preparing meals, transportation, shopping, taking medicine, and finances.

¶ 103 Documents from Modern Woodmen show that, in September 2012, Eva Lou changed the beneficiary of an account to Marvin as the principal beneficiary and Bruce as the contingent beneficiary. On January 18, 2019, she changed the principal beneficiary to Bruce and made Marcus the contingent beneficiary.

¶ 104 A certificate of death produced in discovery from Modern Woodmen appears in the record and listed Eva Lou's cause of death as "senile dementia" and "infirmities of aged." However, that certificate was not specifically included with the materials submitted regarding the motion for partial summary judgment.

¶ 105 J. Hearing

¶ 106 On October 16, 2025, the trial court held a hearing on Bruce's motions *in limine* and the motion for partial summary judgment. Petitioners agreed to the following motions *in limine*, provided they were reciprocal: That the parties not be permitted to (1) attempt to elicit medical testimony from any lay witnesses, (2) testify as to conversations with medical providers, (3) introduce opinion testimony or bases for opinions other than those properly disclosed pursuant to Illinois Supreme Court Rule 213 (eff. Jan. 1, 2018), including during depositions, and (4) allow witnesses to comment on the credibility of the evidence. Petitioners also did not object to motions barring testimony of Bruce's alcohol consumption and Marvin's will or intentions.

¶ 107 Regarding a motion that petitioners not be allowed to make mention of the state, organization, or cleanliness of Eva Lou and her home, Bruce noted that, under *Forberg v. Maurer*, 336 Ill. 192, 201 (1929), as to capacity to make a will, "[e]ccentricity, miserliness,

uncleanness, slovenliness, neglect of person and clothing, offensive and disgusting personal habits, do not constitute unsoundness of mind.” Bruce argued petitioners should not be able to present such evidence to show lack of testamentary capacity, undue influence, or breach of fiduciary duty. The trial court granted the motion over objection.

¶ 108 The trial court also granted a motion over objection barring mention of Eva Lou’s cause of death, noting three years from the date of the making of the will was too remote. However, it reserved for trial or the summary judgment hearing the issue of whether other postwill conduct was admissible.

¶ 109 Regarding the Dead-Man’s Act, petitioners admitted the act prohibited adverse parties from testifying to any conversation or event that took place in the presence of deceased parties. However, petitioners argued it did not prevent them from testifying about their general observations and impressions concerning Eva Lou. Counsel for Bruce agreed that general impressions and observations were admissible but specific events and communications were not. The trial court stated, “Agreed. Again, I will allow basic, I guess, description of, you know, as long as they’re not conversations or specific events, it’ll be allowed.” After addressing the motions *in limine*, the court proceeded directly to the hearing on the motion for partial summary judgment.

¶ 110 Addressing the partial summary judgment motion, the trial court first told the parties, “Again, keeping in mind, folks, that I’ve read every page; I’ve read every transcript; I’ve read everything; I’m not going to cut you off on what you want to argue, but I have read everything.”

¶ 111 Counsel for Bruce argued there was no evidence Bruce engaged in specific misconduct in procuring the will or that Eva Lou did not understand what she signed on January

9, 2019. Petitioners argued, in part, that Bruce’s provision of Collins’s phone number to Eva Lou and Eva Lou’s mental state presented an issue of material fact. Counsel for Bruce responded that conversations with Eva Lou about Bruce providing the phone number were inadmissible under the Dead-Man’s Act. Counsel also argued there was no presumption of undue influence based on the existence of a fiduciary relationship because, in early January 2019, multiple people were assisting Eva Lou, those people were not excluded from her, and there was a lack of evidence Bruce procured the will.

¶ 112 Regarding breach of fiduciary duty, counsel for Bruce argued the purchases Bruce made were for Eva Lou’s benefit and remained in the estate. Counsel noted the equipment was shared under a long-standing custom and practice where labor was shared but ultimate finances were kept separate. Counsel also noted a lack of evidence of the amount of damages from any sharing of items and various evidentiary problems with some of the evidence, including hearsay regarding an appraisal, and that what Eva Lou might have said about the grain bin was a violation of the Dead-Man’s Act. Similarly, counsel argued the claim concerning financial exploitation of an elderly person had no merit.

¶ 113 The trial court granted the motion for partial summary judgment. The court found the only evidence Bruce procured the will was that he gave Eva Lou his previous attorney’s phone number. The court noted Collins’s 46-minute call with Eva Lou and stated:

“There is not a scintilla of evidence that [Bruce] procured this will or participated in any capacity whatsoever. It does not matter if you utilized an attorney before. It is not uncommon that attorneys are used by the same family members. There is no evidence of preparation. There is no evidence of procurement for the, the establishment of the will.”

¶ 119 This appeal followed.

¶ 120 II. ANALYSIS

¶ 121 On appeal, petitioners contend the trial court erred in granting Bruce’s motion for partial summary judgment.

¶ 122 Summary judgment is appropriate “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c) (West 2024). “A triable issue of fact exists where there is a dispute as to a material fact or where, although the facts are not in dispute, reasonable minds might differ in drawing inferences from those facts.” *Petrovich v. Share Health Plan of Illinois, Inc.*, 188 Ill. 2d 17, 31 (1999). “Because summary judgment is a drastic means of disposing of litigation, the pleadings and supporting documentation are construed strictly against the movant and liberally in favor of the opponent, and summary judgment should be granted only when the movant’s right is clear and free from doubt.” *Peters v. R. Carlson & Sons, Inc.*, 2016 IL App (1st) 153539, ¶ 13. While a party need not prove the case in order to survive summary judgment, he or she must present a factual basis that would arguably entitle him or her to judgment. *Bruns v. City of Centralia*, 2014 IL 116998, ¶ 12. “Unsupported conclusions, opinions, or speculation is insufficient to raise a genuine issue of material fact for purposes of summary judgment.” *Orr v. Fourth Episcopal District African Methodist Episcopal Church*, 2018 IL App (4th) 170469, ¶ 61. We review summary judgment rulings *de novo*. *Id.*

¶ 123 A. Inadmissible Evidence in Depositions

¶ 124 At the outset, we note the parties disagree over the extent of material this court can or should rely on from the record. Petitioners rely on numerous statements from depositions

consisting of hearsay and statements from Eva Lou that the parties agreed would generally be inadmissible under the Dead-Man's Act. In many instances, testimony regarding Eva Lou's state of mind or behavior referred to conduct occurring well before or after the preparation and signing of the will. At times, petitioners, in their brief, refer to evidence presented at trial or after the ruling on the motion for partial summary judgment. Instead of attempting to show specific facts were admissible or relevant, petitioners contend Bruce waived any objection to the evidence by submitting the depositions in their entirety in support of his motion for partial summary judgment. We disagree that Bruce waived objections to inadmissible evidence.

¶ 125 "Evidence, such as hearsay, which is inadmissible at trial, is not admissible in support of or in opposition to a motion for summary judgment." *Id.* "It is proper to apply the Dead-Man's Act in the context of a summary judgment proceeding because, while a motion for summary judgment is not a modified trial procedure, it is an adjudication of a claim on the merits and is the procedural equivalent of a trial." *Balma v. Henry*, 404 Ill. App. 3d 233, 238 (2010) (citing *Rerack v. Lally*, 241 Ill. App. 3d 692, 694, (1992)). The privilege of invoking the Dead-Man's Act belongs to the representative of the deceased to assert or waive. *Id.* at 239. The representative may waive the protections of the Dead-Man's Act either by offering testimony about an event or conversation that took place in the presence of the decedent or by admitting the deposition of the decedent into evidence. 735 ILCS 5/8-201(a), (b) (West 2024); see *Ruback v. Doss*, 347 Ill. App. 3d 808, 814 (2004).

¶ 126 Here, Bruce attached depositions containing references to statements made by Eva Lou to his motion for partial summary judgment. However, Bruce also made motions *in limine* that were heard immediately before the hearing on the partial summary judgment motion seeking to limit testimony that would violate the Dead-Man's Act and seeking other

limitations on the use of evidence. Petitioners did not contest many of the motions, other than requesting that they be reciprocal and seeking clarification about whether they could elicit testimony of descriptions of various circumstances. Thus, Bruce offered the full depositions but specifically drew the issue of the Dead-Man's Act to the trial court's attention. During argument regarding the motion for partial summary judgment, Bruce again mentioned the Dead-Man's Act and noted an instance of arguable hearsay. Under such circumstances we do not find Bruce waived application of the Dead-Man's Act or invited the court to consider other inadmissible evidence.

¶ 127 Citing *Enbridge Pipeline (Illinois), LLC v. Kiefer*, 2017 IL App (4th) 150342, ¶ 56, petitioners suggest a motion to strike and/or a formal hearing regarding admissible evidence for summary judgment purposes was required. But petitioners ignore that the trial court specifically ruled on the motions *in limine* immediately before proceeding to the hearing on the motion for partial summary judgment. We presume the court knew and followed the law concerning what it could consider when ruling on the motion for partial summary judgment and would not rely on evidence it had moments before found would be inadmissible. See *In re N.B.*, 191 Ill. 2d 338, 345 (2000) (stating the trial court is presumed to know the law and apply it properly, absent an affirmative showing in the record to the contrary). In any event, we also review summary judgment rulings *de novo* and remain mindful in our review that evidence which is inadmissible at trial is not admissible at summary judgment.

¶ 128 We also note that many instances of hearsay, violations of the Dead-Man's Act, testimony based on lack of personal knowledge, and opinions based on speculation or mere conclusions are obvious from the deposition testimony. It would be nonsensical for this court to overturn a ruling on a motion for partial summary judgment based on evidence that would not be

admissible at trial. Doing so would defeat the purpose of the summary judgment procedure to determine whether any genuine issue of material fact exists and to summarily dispose of cases where none exists so as to avoid the congestion of trial calendars and the expense of unnecessary trials. See *Hiatt v. Illinois Tool Works*, 2018 IL App (2d) 170554, ¶ 46. Thus, we decline petitioners’ suggestion that we should consider inadmissible evidence on appeal. Regardless, as we discuss below, even if we consider items of questionable admissibility, we would ultimately determine the trial court properly granted the motion for partial summary judgment.

¶ 129 B. Undue Influence

¶ 130 Petitioners first argue the trial court erred in finding there was no issue of material fact concerning undue influence. We note petitioners alleged both undue influence arising from coercion and a presumption of undue influence based on a fiduciary duty.

¶ 131 1. *Facts Required to Show Undue Influence*

¶ 132 Undue influence to invalidate a testamentary document

“ ‘must be directly connected with the execution of the will itself, must operate when the will is made, must be directed toward the procuring of the will in favor of a particular person, and be such as to destroy the freedom of the testator’s actions, thereby making the instrument more the result of the will and intent of another than that of the testator himself.’ ” *In re Estate of Osborn*, 234 Ill. App. 3d 651, 660 (1992) (quoting *Hockersmith v. Cox*, 407 Ill. 321, 325 (1950)).

Undue influence cannot be inferred from the will in a respondent’s favor because “ ‘a testator may distribute his estate as he pleases.’ ” *Id.* at 660 (quoting *Hockersmith*, 407 Ill. at 326). The pleading of undue influence must contain specific allegations of the manner in which the free will of the testator was impaired at the time the instrument was executed. *DeHart v. DeHart*,

2012 IL App (3d) 090773, ¶ 22.

¶ 133 “ ‘What constitutes undue influence cannot be defined by fixed words and will depend upon the circumstances of each case.’ ” *Dehart v. Dehart*, 2013 IL 114137, ¶ 27 (quoting *In re Estate of Hoover*, 155 Ill. 2d 402, 411 (1993)). “ ‘The exercise of undue influence may be inferred in cases where the power of another has been so exercised upon the mind of the testator as to have induced him to make a devise or confer a benefit contrary to his deliberate judgment and reason.’ ” *Id.* (quoting *Hoover*, 155 Ill. 2d at 411). “ ‘Proof of undue influence may be wholly inferential and circumstantial.’ ” *Id.* (quoting *Hoover*, 155 Ill. 2d at 411-12). “ ‘False or misleading representations concerning the character of another may be so connected with the execution of the [testamentary document] that the allegation that such misrepresentations were made to the testator may present triable fact questions on the issue of undue influence.’ ” *Id.* (quoting *Hoover*, 155 Ill. 2d at 412). However, “[t]he mere conclusion that the testator was influenced by the dominant nature of the disproportionate beneficiary is insufficient.” *DeHart*, 2012 IL App (3d) 090773, ¶ 22 (quoting *In re Estate of Julian*, 227 Ill. App. 3d 369, 376 (1991)). Influence resulting from love or affection which does not seek to control the will of the testator is also not undue influence. *Flanigon v. Smith*, 337 Ill. 572, 577 (1929). Undue influence also cannot be inferred from the will in the respondent’s favor because a testator may distribute his or her estate as he or she pleases. *Osborn*, 234 Ill. App. 3d at 660. “To aver undue influence as a conclusion, facts must be stated warranting that conclusion and must go the extent of showing the testator was thereby deprived of his free agency.” *In re Estate of Sutera*, 199 Ill. App. 3d 531, 538 (1990).

¶ 134 *2. Presumption of Undue Influence*

¶ 135 Courts distinguish undue influence arising from coercion or active fraud from

undue influence resulting from the abuse of a fiduciary relationship between the parties. *In re Estate of Coffman*, 2023 IL 128867, ¶ 47. A presumption of undue influence may arise based on a fiduciary duty. Such a presumption arises when (1) a fiduciary relationship exists between the testator and a person who receives a substantial benefit from the will or testamentary document, (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 or document is prepared by or its preparation procured by such beneficiary. See *id.*

¶ 136 This court has stated a fiduciary relationship may either be presumed from the relationship of the parties, such as from an attorney-client relationship, or “may be found to exist by the facts of a particular situation, such as a relationship where trust is reposed on one side and there is resulting superiority and influence on the other side.” *Hensler v. Busey Bank*, 231 Ill. App. 3d 920, 928 (1992). A power of attorney creates a fiduciary relationship as a matter of law. *Zachary v. Mills*, 277 Ill. App. 3d 601, 607 (1996). In addition,

“[a] fiduciary relationship exists when there is a special confidence reposed in one, who, in equity and good conscience, is bound to act in good faith and with due regard to the interest of the one reposing the confidence. The factors to be considered in determining whether a fiduciary relationship exists include the degree of kinship, disparity of age, health and mental condition, and the extent to which the allegedly servient party entrusted the handling of his business and financial affairs to and reposed faith and confidence in the dominant party.”

Hensler, 231 Ill. App. 3d at 927.

Thus, the presumption of undue influence “may be the result of a more informal relationship—moral, social, domestic, or even personal.” *Coffman*, 2023 IL 128867, ¶ 89. However, the mere

existence of a fiduciary relationship is insufficient to raise the presumption of undue influence. *Estate of Letsche v. Gillespie*, 73 Ill. App. 3d 643, 646 (1979). “The fiduciary must have actually participated in procuring the execution of the will.” *Id.*

¶ 137 *3. Jury Finding of Testamentary Capacity*

¶ 138 Here, petitioners argue there are issues of material facts that Eva Lou suffered from dementia, was paranoid, had wrongly accused others of theft, was distraught, required assistance with daily living activities, and made a will contrary to her previous intentions. Petitioners contend those facts raise an inference of undue influence. However, we first note the jury found Eva Lou had testamentary capacity, and petitioners have not challenged that determination.

¶ 139 In order to establish the lack of testamentary capacity, it must be shown that, at the time the will was executed, the testator lacked sufficient mental ability to (1) know and remember who were the natural objects of his or her bounty, (2) comprehend the kind and character of his or her property, and (3) make disposition of his or her property according to some plan formed in his or her mind. *Sutera*, 199 Ill. App. 3d at 536. “[L]ack of testamentary capacity is not an element of undue influence. A testator may have had the requisite testamentary capacity to execute his will while, at the same time, operating under undue influence.” *Hoover*, 155 Ill. 2d at 419. However, testamentary capacity is relevant because “the more enfeebled the mind of the testator, the less evidence is required to establish the existence of undue influence.” *In re Estate of Roeseler*, 287 Ill. App. 3d 1003, 1018 (1997).

¶ 140 Here, the jury determined Eva Lou had testamentary capacity, and petitioners did not appeal that determination. Under principles of collateral estoppel, we find that determination binding. See *LaSalle Bank National Ass’n v. Village of Bull Valley*, 355 Ill. App. 3d 629, 635

(2005) (stating the doctrine of collateral estoppel prevents retrial of an issue that has been fairly and completely resolved in a prior proceeding). We further note there is no presumption of undue influence based on infirmity, age, or illness of the testator. See *Coffman*, 2023 IL 128867, ¶ 85; *Fornadel v. Kelly*, 2026 IL App (1st) 250502-U, ¶ 64. Instead, absent a presumption based on a fiduciary relationship, it must be shown the respondent engaged in acts to overcome the testator's free will. See *Hoover*, 155 Ill. 2d at 411 (stating undue influence which will invalidate a will is any improper urgency of persuasion whereby the will of a person is overpowered and he or she is induced to do or forbear an act which he or she would not do if left to act freely).

¶ 141 4. *Lack of Material Facts to Show Undue Influence*

¶ 142 We first note petitioners argue Bruce was Eva Lou's fiduciary both under the power of attorney and based on his close relationship with Eva Lou. However, we note the power of attorney was executed at the same time as the will, not before it. We need not and do not decide whether that created a fiduciary duty as a matter of law or whether there are issues of fact concerning the existence of a fiduciary duty because we determine the trial court properly found petitioners failed to present sufficient evidence Bruce procured the will or engaged in acts to overcome Eva Lou's free will so as to defeat the motion for partial summary judgment.

¶ 143 As the trial court noted, the relevant time frame was the time surrounding the signing of the will. Most of the evidence provided by petitioners consisted of observations of Eva Lou wrongly accusing petitioners of stealing items due to paranoia and their personal opinions that she suffered from dementia. But many of those observations were from well before 2019 and, in many instances, involved arguably inadmissible evidence. Regarding the days surrounding the making of the will, Christina testified Eva Lou appeared distraught, and Christina helped her dress. However, the court had disallowed testimony regarding Eva Lou's

personal cleanliness or the cleanliness of the house. There was no physician's testimony at the time of the summary judgment hearing that Eva Lou suffered from dementia when she executed the will or that she was unable to understand the will. Petitioners also alleged Bruce isolated Eva Lou and controlled her, but multiple family members were present in the days surrounding Marvin's death and the execution of the will. Allegations of isolation pertained to times after the will was executed, and there were no specific facts that Bruce affirmatively kept his siblings from seeing Eva Lou around the time the will was made and signed. Instead, petitioners speculated that Bruce did so because locks were changed at a later date and their names were on a list of disallowed visitors at the nursing home before Eva Lou's death, without providing facts to show Bruce instead of Eva Lou was responsible for those actions.

¶ 144 Regardless, even if we were to consider the evidence petitioners alleged, including what appears to be inadmissible evidence from irrelevant time frames, petitioners ultimately failed to show Bruce engaged in acts directed toward preparing or procuring the will in his favor. We note that, under either a claim of undue influence arising from coercion or active fraud or undue influence resulting from the abuse of a fiduciary relationship between the parties, petitioners were required to show Bruce engaged in acts that overcame Eva Lou's free will at the time she executed the will or that he engaged in acts to prepare or procure the will. As we address below, notably absent here are allegations of acts by Bruce that were such as to destroy the freedom of Eva Lou's actions, thereby making the instrument more the result of the will and intent of himself other than that of Eva Lou. Petitioners have also failed to present sufficient facts to raise a question of fact that Bruce prepared or procured the will in order to apply a presumption of undue influence.

¶ 145 Regarding the presumption, petitioners challenge Collins's procedure in preparing

the will and argue Bruce was instrumental in procuring the will by providing Collins's phone number to Eva Lou, picking up the will from the mailbox, arranging for the witnesses to the will signing, possibly being present when the will was signed, and putting the will in the safe.

Addressing similar facts, our supreme court has held that facts showing a testator spoke to a lawyer in the presence of the beneficiary, the beneficiary arranged for the witnesses, and the will was signed in the beneficiary's home in the presence of the beneficiary are insufficient to show a presumption of undue influence. See *People v. Weld*, 410 Ill. 198, 205 (1951); see also *Anthony v. Anthony*, 20 Ill. 2d 584, 587 (1960) (stating the fact that the beneficiary drove the testator to the attorney and was present in the outer office when the will was signed was insufficient to show undue influence); *Powell v. Bechtel*, 340 Ill. 330, 336-38 (1930) (stating the facts that the beneficiary and testator were living in the same house, the beneficiary called for attesting witnesses, and the beneficiary was present when the will was signed did not raise a presumption of undue influence); *Flanigan*, 337 Ill. at 578 (stating the facts showing the beneficiary may have called the lawyer who drew the will and may have asked persons to be present and witness it did not raise the presumption of undue influence). Such facts also do not necessarily indicate a beneficiary has overcome the testator's free will. "Otherwise, any situation where a son or daughter assisted an elderly and sick parent would meet this requirement." *Fornadel*, 2026 IL App (1st) 250502-U, ¶ 64. "It is not enough that the circumstances attending the execution of the will are consistent with the exercise of undue influence. They must be inconsistent with the absence of such influence." *Waterman v. Hall*, 291 Ill. 304, 309 (1920).

¶ 146 Petitioners cite *In re Estate of Maher*, 237 Ill. App. 3d 1013, 1019 (1992), and *In re Estate of Henke*, 203 Ill. App. 3d 975, 978-79 (1990), to suggest the act of speaking to an attorney about the will or taking the decedent to see an attorney about a will is sufficient to raise

an issue of material fact concerning the presumption of undue influence. Petitioners also cite *In re Estate of Burren*, 2013 IL App (1st) 120996, ¶¶ 16, 22, for the proposition that, when a beneficiary “brings the will ‘to the table for signing’ ” and obtains the witnesses, that is sufficient evidence of participation in the procurement of the will. We disagree with their arguments that those cases apply here.

¶ 147 In *Henke*, the appellate court affirmed the trial court’s determination that the petitioners made a *prima facie* case of a presumption of undue influence when the respondent, who was made the sole beneficiary under a will, in part, “drove [the] testator to a lawyer to have the will changed.” *Henke*, 203 Ill. App. 3d at 979. However, in doing so, the court noted additional facts and later stated, “The mere fact that a beneficiary provides transportation to a law office for a testator raises no presumption whatever of undue influence.” *Id.* at 982 (citing *Sloger v. Sloger*, 26 Ill. 2d 366, 369 (1962)). Thus, *Henke* does not support the proposition petitioners cite it for. The court in *Henke* then affirmed the trial court’s determination the presumption was rebutted because the respondent was not present in the room when the will was signed, did not witness the signing of the will, and was not present when a codicil was signed. *Id.* at 982-83.

¶ 148 In *Burren*, the presumption was applied when the decedent did not prepare a will naming his attorney the executor of his estate. *Burren*, 2013 IL App 3d 120996, ¶ 22. In addressing the presumption, the appellate court noted it was unknown who drafted the will, but the attorney executor was “the person who brought the typewritten will to the table,” the executor’s mother signed as a witness, and the executor showed another person where to sign as a witness. *Id.*

¶ 149 In *Maher*, the issue was whether the pleadings were sufficient to state a cause of

action. The pleadings alleged the decedent had been diagnosed with dementia and the creation of a conservatorship had been advised. *Maher*, 237 Ill. App. 3d at 1015. At the time the decedent executed a will making the respondent her sole heir, the decedent was oriented only to her own person and could not remember either long or short term events without coaching. *Id.* The respondent caused the decedent to execute a living will that included a “do not resuscitate” order, which was executed by the decedent’s friend. *Id.* at 1016. Shortly thereafter, the respondent then asked that friend to recommend an attorney for the purpose of drafting a will for the decedent. *Id.* The respondent consulted with an attorney, who prepared the will at issue. *Id.* The decedent signed the will in the presence of the respondent and two coworkers of the respondent who accompanied the respondent to the signing. *Id.* The appellate court held the petition adequately alleged the existence of a fiduciary relationship and that relationship, coupled with the allegations that the will was prepared by an attorney engaged by the respondent, and the fact that the respondent was the sole beneficiary named in that will were sufficient to state a cause of action against the respondent for the exercise of undue influence. *Id.* at 1019.

¶ 150 Here, unlike in *Burren* and *Maher*, there are no facts showing Bruce consulted with Collins about the content of the will, was present when the will was signed, or had parties closely associated with him instead of Eva Lou witness the signing. Without more, under *Weld* and similar precedent, there are insufficient facts raised to support application of a presumption of undue influence.

¶ 151 Similarly, absent the presumption, there are insufficient facts to show Bruce engaged in acts directly connected with the execution of the will itself when the will was made that were directed toward procuring the will in his favor and were such as to destroy the freedom of Eva Lou’s actions. Absent are allegations or supporting facts showing that Bruce told Eva Lou

to make a will, told her what to put in it, made misrepresentations to Eva Lou about his siblings, or took other actions to induce Eva Lou to make a will or name him her sole beneficiary. It further had been decided that Eva Lou had testamentary capacity and thus had sufficient mental ability to know and remember the natural objects of her bounty, comprehend the kind and character of her property, and to make disposition of her property according to some plan formed in her mind. Allegations that Bruce must have influenced Eva Lou to execute the will in his favor are based solely on speculation and conjecture or based on her mental state, which the jury found was sufficient to execute a will.

¶ 152 Normally, when a testator has testamentary capacity and undue influence is alleged, the allegations involve issues of alleged misrepresentations by the beneficiary inducing the testator to act in the beneficiary's interest. See, *e.g.*, *DeHart*, 2013 IL 114137, ¶ 28; *Hoover*, 155 Ill. 2d at 413-15. Nothing of the sort has been alleged here. Even if we accept as true and admissible that Eva Lou was paranoid and wrongly believed her children stole from her, completely absent are facts showing the manner in which Bruce allegedly overcame Eva Lou's free will or prepared or procured the substantive provisions of the will. Absent are allegations or facts showing that Bruce fostered Eva Lou's beliefs about his siblings, lied to Eva Lou, or otherwise suggested to Eva Lou that she execute a will disinheriting them. Essentially, the only "influence" on the part of Bruce is that Bruce provided Collins's phone number to Eva Lou, picked the will up at the mailbox, helped arrange for witnesses to the will, was present when the witnesses arrived, and put the will in Eva Lou's safe. Such influence is not "undue" influence and, as previously addressed, does not support a presumption of undue influence. Accordingly, the trial court properly granted summary judgment on the issue of undue influence.

¶ 153 C. Financial Exploitation of an Elderly Person and Breach of Fiduciary Duty

¶ 154 Petitioners contend there are issues of material fact regarding whether Bruce financially exploited Eva Lou under the Probate Act and breached his fiduciary duty to her under the common law and Power of Attorney Act. In particular, they argue Bruce presumptively breached his fiduciary duty as Eva Lou’s agent acting under the power of attorney for property, which also raises a claim under the Probate Act. Petitioners argue Bruce titled the truck in his name, received benefits from farm purchases, wrote checks to himself, made a withdrawal in his name under the power of attorney, and did not keep receipts for items that were not tax deductible.

¶ 155 1. *The Power of Attorney Act and Presumption of Breach*

¶ 156 Under section 2-7(a) of the Power of Attorney Act (755 ILCS 45/2-7(a) (West 2022)), “[t]he agent shall be under no duty to exercise the powers granted by the agency or to assume control of or responsibility for any of the principal’s property, care or affairs, regardless of the principal’s physical or mental condition.” However, “[w]henever a power is exercised, the agent shall act in good faith for the benefit of the principal using due care, competence, and diligence in accordance with the terms of the agency and shall be liable for negligent exercise.” *Id.*

“An agent who acts with due care for the benefit of the principal shall not be liable or limited merely because the agent also benefits from the act, has individual or conflicting interests in relation to the property, care or affairs of the principal or acts in a different manner with respect to the agency and the agent’s individual interests.” *Id.*

Regardless, “[a]n agent that has accepted appointment must act in accordance with the principal’s expectations to the extent actually known to the agent and otherwise in the principal’s

best interests. *Id.* § 7(b). “An agent shall keep a record of all receipts, disbursements, and significant actions taken under the authority of the agency” and provide a copy of the record when asked by parties enumerated in the Power of Attorney Act. *Id.* § 7(c) An agent that violates the act is liable to the principal or the principal’s successors in interest. *Id.* § 7(f).

¶ 157 “An agent appointed under a power of attorney has a common-law fiduciary duty to the principal.” *Coffman*, 2023 IL 128867, ¶ 59. Under the common law, “[a] power of attorney creates a fiduciary relationship as a matter of law.” *Collins v. Noltensmeier*, 2018 IL App (4th) 170443, ¶ 25 (citing *In re Estate of Shelton*, 2017 IL 121199, ¶ 22; 755 ILCS 45/2-7(a), (b) (West 2010)). “The mere existence of a fiduciary relationship prohibits the agent from seeking or obtaining any selfish benefit for herself; if the agent seeks or obtains such benefit, the transaction is presumed to be fraudulent.” *Id.* (citing *Shelton*, 2017 IL 121199, ¶ 23). “ ‘Thus, any conveyance of the principal’s property that either materially benefits the agent or is for the agent’s own use is presumed to be fraudulent.’ ” *Id.* (quoting *Spring Valley Nursing Center, L.P. v. Allen*, 2012 IL App (3d) 110915, ¶ 12).

¶ 158 Under the common law, once a fraudulent transaction has been alleged, the burden shifts to the agent to prove by clear and convincing evidence the transaction was fair and did not result from undue influence by the agent over the principal. *Id.* “In other words, the presumption of fraud is rebuttable if it can be shown that the agent exercised good faith and did not betray the confidence placed in her.” *Id.* ¶ 26. “If the agent rebuts the presumption of fraud, the transaction in question will be upheld.” *Id.* (citing 755 ILCS 45/2-7(a) (West 2010) (“[An] agent who acts with due care for the benefit of the principal will not be held liable merely because the act also benefits the agent.”)).

¶ 159 When a conveyance is not procured through improper means attended with

circumstances of oppression or overreaching but was entered into by the principal with full knowledge of its nature and effect and because of his or her deliberate, voluntary, and intelligent desire, the existence of a fiduciary relationship does not invalidate the transaction. See *id.* (citing *Clark v. Clark*, 398 Ill. 592, 602 (1947)). “Some of the significant factors to be considered in determining if the presumption of fraud has been rebutted include whether the fiduciary made a frank disclosure to the principal of the information he had, whether the fiduciary paid adequate consideration, and whether the principal had competent and independent advice.” *Spring Valley Nursing Center*, 2012 IL App (3d) 110915, ¶ 13.

¶ 160

2. Civil Claims Under the Probate Act

¶ 161

The Probate Act also allows a cause of action for financial exploitation of an elderly person based on breach of a fiduciary duty. Section 2-6.2(b) of the Probate Act provides, in part, the following:

“[P]ersons who have been found by a preponderance of the evidence to be civilly liable for financial exploitation shall not receive any property, benefit, or other interest by reason of the death of that elderly person or person with a disability, whether as heir, legatee, beneficiary, survivor, appointee, claimant under Section 18-1.1, or in any other capacity.” 755 ILCS 5/6.2(b) (West 2020).

The Probate Act defines “financial exploitation” as follows:

“ ‘Financial exploitation’ means any offense or act described or defined in Section 16-1.3 or 17-56 of the Criminal Code of 1961 or the Criminal Code of 2012, and, in the context of civil proceedings, the taking, use, or other misappropriation of the assets or resources of an elderly person or a person with a disability contrary to law, including, but not limited to, misappropriation of assets

or resources by undue influence, breach of a fiduciary relationship, fraud, deception, extortion, and conversion.” *Id.* § 6.2(a).

“A civil action against a person for financial exploitation may be brought by an interested person.” *Id.* § 6.2(e). Section 17-56(g) of the Criminal Code of 2012 also provides a similar civil cause of action. 720 ILCS 5/17-56(g) (West 2024).

¶ 162 While the common law allows for a rebuttable presumption of fraud, both the Criminal Code of 2012 and the Probate Act specifically place the burden of proof on the petitioner to prove the claim by a preponderance of the evidence. 755 ILCS 5/6.2(b) (West 2022); 720 ILCS 5/17-56(g) (West 2020). The Illinois Appellate Court, Fifth District, recently declined to extend the common law presumption of breach of a fiduciary duty to civil actions brought under the Probate Act and Criminal Code of 2012. *In re Estate of Ticknor*, 2026 IL App (5th) 250501, ¶¶ 72-73. There, the court noted that both statutes clearly specify a preponderance burden of proof on the petitioner without language shifting the burden of proof to the respondent. Because courts may not read language into a statute that is not there, the appellate court declined to read into either statute a presumption that shifts that burden to the respondent. *Id.* We agree with the reasoning of *Ticknor* and apply it here.

¶ 163 *3. Failure to Show Financial Exploitation*

¶ 164 Here, petitioners claim the trial court erred by failing to find issues of material fact that Bruce financially exploited Eva Lou under the Probate Act. But in doing so, they rely on the common law presumption and assert there are issues of fact because Bruce did not rebut facts showing he benefited from various transactions. However, as we have decided the presumption does not apply to civil actions under the Probate Act, we find no merit to this argument.

¶ 165 Without the presumption, petitioners did not present facts to show Bruce’s actions

were improper. While the truck was titled in his name, he did not convert it, as it remained an asset of the estate. Purchases were made for Eva Lou and for her farming operation. While Bruce may have also derived some benefit from some of those purchases or chosen to use his agency to operate in a manner differently than Marvin did in the past, that was not prohibited by the Power of Attorney Act. See 755 ILCS 45/2-7(a) (West 2022). As the trial court noted, the sharing of farm equipment between Bruce's and Eva Lou's farms was undisputedly a long-standing practice. Meanwhile, all purchases Bruce made were included in the estate.

¶ 166 On appeal, petitioners note checks Bruce wrote to himself or for cash and a withdrawal in his name that listed a check number. However, petitioners never specifically alleged those items in their pleadings, and they did not ask Bruce about most of the checks in his deposition. Bruce accounted for the specific checks written to himself that he was asked about. As to the withdrawal, petitioners briefly asked Bruce about it but then abandoned that line of questioning after Bruce stated he would need to see the check it referenced, and petitioners did not have the check. Most of the checks contained notations indicating they were not for Bruce's personal use. Meanwhile, Bruce also testified he used cash for groceries and clothing for Eva Lou and had previously reimbursed himself for purchases he made for the farming operation. At Bruce's deposition, petitioners also noted Bruce had produced over 2,000 documents that included receipts. Those documents were not provided in support of the motion for partial summary judgment, and petitioners have not attempted to show items reflected by the withdrawal, checks Bruce wrote to himself, or checks for cash were not included among those or were for improper purposes.

¶ 167 Petitioners also point to Bruce's deposition admission that he did not keep receipts for some items, such as clothing and food, that were paid for in cash and were not tax

deductible. However, petitioners did not present a theory of recovery based on inadequate recordkeeping in their pleadings or argue such to the trial court. They also did not plead or identify specific items regarding groceries or clothing they believed were improperly purchased or provide anything to show the items were not accounted for in checks written for cash that appear in the record. The theory upon which a case is tried in the lower court cannot be changed on review, and an issue not presented to or considered by the trial court cannot be raised for the first time on review. *Daniels v. Anderson*, 162 Ill. 2d 47, 58 (1994). This principle applies even in a summary judgment case. *Witek v. Leisure Technology Midwest, Inc.*, 39 Ill. App. 3d 637, 640 (1976).

¶ 168 Here, in their pleadings, petitioners alleged Bruce financially exploited an elderly person by engaging “in presumptively fraudulent activity in order to misappropriate Eva Lou’s assets and resources for his own use and benefit.” Absent the presumption, it was petitioners’ burden to provide facts to show by a preponderance of the evidence that Bruce breached his fiduciary duty as they alleged. They did not provide sufficient material facts to do so. Accordingly, the trial court did not err in granting the motion for partial summary judgment.

¶ 169 4. *Breach of Fiduciary Duty Under the Power of Attorney Act Is Moot*

¶ 170 Regarding breach of fiduciary duty under the Power of Attorney Act and the common law, we find petitioners’ claim is moot. Having determined petitioners’ claims that would invalidate the will or prevent Bruce from benefiting under it fail, their only remaining claim is one that would not allow them relief because they are no longer successors in interest.

¶ 171 “An issue is moot if no actual controversy exists or where events occur which make it impossible for the court to grant effectual relief.” *Wheatley v. Board of Education of Township High School District 205*, 99 Ill. 2d 481, 484-85 (1984). Petitioners brought their claim

for breach of fiduciary duty under the Power of Attorney Act based on their status as successors in interest. The Power of Attorney Act also clearly requires petitioners to be successors in interest to bring such a claim. Under the Power of Attorney Act:

“An agent that violates this Act is liable to the principal or the principal’s successors in interest for the amount required (i) to restore the value of the principal’s property to what it would have been had the violation not occurred, and (ii) to reimburse the principal or the principal’s successors in interest for the attorney’s fees and costs paid on the agent’s behalf.” 755 ILCS 45/2-7(f) (West 2024).

An “interested person” is not a successor in interest under the Power of Attorney Act. *In re Estate of Piton*, 2024 IL App (3d) 240051, ¶ 29.

¶ 172 Here, we have disposed of all claims that would invalidate the will or disallow Bruce from benefitting from it. Thus, petitioners are no longer possible successors in interest, and it is impossible to grant them relief on the claim for breach of fiduciary duty.

¶ 173 In sum, we determine (1) the presumption of breach of a fiduciary duty does not apply to the Probate Act and (2) because the trial court did not err in granting summary judgment on the undue influence and financial exploitation claims, the breach of fiduciary duty claim fails because petitioners were no longer possible successors in interest. Accordingly, albeit for different reasons than set forth by the trial court, we determine the grant of summary judgment on the issues of financial exploitation of an elderly person and breach of fiduciary duty was proper. See *Cessna v. City of Danville*, 296 Ill. App. 3d 156, 165 (1998) (“In reviewing a trial court’s judgment, a reviewing court is not limited to the reasoning employed by the trial court and may affirm the judgment on any basis warranted by the record.”).

¶ 174

III. CONCLUSION

¶ 175

For the reasons stated, the trial court's judgment is affirmed.

¶ 176

Affirmed.