2013 IL App (3d) 110681-U

Order filed September 23, 2013

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

ROY R. BUEHLER,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
Plaintiff-Appellant,	)	Hancock County, Illinois
	)	
v.	)	Appeal No. 3-11-0681
	)	Circuit No. 00-L-8
	)	
MICHAEL A. BUEHLER,	)	Honorable
	)	David F. Stoverink,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Wright and Justice Lytton concurred in the judgment.

ORDER

¶ 1 *Held*: In suit for breach of fiduciary duty brought by son of deceased mother against his brother, trial court did not violate the Dead-Man's Act (735 ILCS 5/8-201(a) (West 2010)) by allowing defendant to testify as to an event involving his deceased mother and a conversation he had with his mother where the plaintiff "opened the door" by introducing portions of defendant's prior deposition testimony regarding the same conversation and event, and where admission of defendant's testimony was necessary to rebut inferences created by plaintiff's evidence; (2) deceased mother's interrogatory response was admissible as an evidentiary admission; and (3) trial court's finding of no fiduciary or confidential relationship between defendant and his mother was not against the manifest weight of the evidence.

¶ 2 This case was initiated as an action by Irene Buehler (Irene) against her son, defendant Michael Buehler (Michael), to recover $63,519.77 that she claimed was wrongfully taken by Michael. Irene asserted claims for conversion and for money had and received. Irene died during the litigation, and her other son, Roy Buehler (Roy) was substituted as plaintiff. After conducting a bench trial, the trial court granted Michael's motion for a directed verdict. Roy filed a posttrial motion to conform the pleadings to the evidence presented at trial. Specifically, Roy moved to add to his complaint allegations of a confidential or fiduciary relationship between Michael and Irene and a breach of that relationship by Michael. The trial court denied the defendant's motion.

¶ 3 Roy appealed. In an unpublished order, a divided panel of this court affirmed the trial court's granting of a directed verdict for Michael on Roy's claims for conversion and money had and received. However, this court reversed the trial court's denial of Roy's posttrial motion to add a claim of breach of a confidential or fiduciary relationship. This court remanded the cause, and the trial court conducted a bench trial on Roy's amended complaint. After hearing all of the evidence and arguments, the trial court entered judgment in favor of Michael.

¶ 4 Roy has appealed the trial court's judgment. He argues that the trial court committed certain evidentiary errors during the trial. Specifically, he argues that the trial court violated the Dead-Man's Act (735 ILCS 5/8-201(a) (West 2010) (Dead-Man's Act) by allowing Michael to testify as to an alleged conversation Michael had with his mother and as to an event that took place in her presence. The trial court admitted this testimony under an exception to the Dead-Man's Act because it found that Roy had "opened the door" by introducing portions of Michael's

deposition testimony regarding the same conversation and event. Roy denies that he opened the door and argues that the exception to the Dead-Man's Act cited by the trial court does not apply.

¶ 5 In addition, Roy argues that the trial court erred by: (1) admitting an interrogatory response by Irene which stated that Michael was not her "fiduciary"; and (2) treating this statement either as a judicial admission or as substantive evidence that Michael did not have a confidential or fiduciary relationship with his mother.

¶ 6 Finally, Roy argues that the trial court's finding of no fiduciary relationship was against the manifest weight of the evidence.

¶ 7 BACKGROUND

¶ 8 The subject matter of Roy's amended complaint in this case is a cashier's check that was made out to Michael in the amount of $63,519.77. This check represented a large portion of the proceeds that Irene received from the sale of her home in Wisconsin in September 1998. Michael claims that the check was a gift from Irene. Roy disagrees, claiming that Michael received the money through a breach of his confidential or fiduciary relationship with Irene.

¶ 9 A. Roy's Evidence

¶ 10 During the trial, Roy presented no live testimony and relied entirely on certain stipulations and admissions by Michael and his counsel and on certain portions of Michael's deposition which Roy introduced into evidence. The following summary of the evidence presented by Roy is taken from those sources.

¶ 11 In the summer and fall of 1998, Irene was approximately 82 years old.[1] She lived in Milwaukee, Wisconsin. At that time, Michael was the principal of the Warsaw Elementary School in Warsaw, Illinois. He lived in Hamilton, Illinois.

¶ 12 In 1998, Michael assisted Irene in locating and purchasing a home in Warsaw, Illinois. He picked Irene up in Milwaukee on April 24, 1998, and drove her to his home in Hamilton, where she stayed for one week. During her visit, Irene told Michael that she wanted to get an idea of properties in the area and asked him if he knew a realtor. She specified that the price should not exceed $70,000. Michael contacted a realtor, and he and Irene looked at various houses that the realtor showed them. Michael drove Irene to each of these houses. Irene wanted to make an offer on a home before leaving town. Michael drove her to the realtor's office where Irene made an offer on a home. Irene asked the realtor to respond to her offer within 24 hours. Irene later bought the house. Michael attended the closing on July 8, 1998, on Irene's behalf. Irene was in Milwaukee at the time.

¶ 13 Michael stayed with Irene in Milwaukee from June 19 through July 5, 1998. During that time, he prepared Irene's Milwaukee house for sale. When he returned to Illinois, Michael moved some of Irene's belongings to her new home in Warsaw. Irene's Milwaukee home sold on September 15, 1998. Michael was present at the closing. He rented a U-Haul trailer and moved his mother and the rest of her belongings to Warsaw.

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[1] Allegations and admissions in the pleadings reveal that Irene was 84 years old when the action was filed in November of 2000. Thus, she would have been approximately 82 years old in the summer and fall of 1998.

¶ 14 During the drive from Milwaukee to Warsaw, Michael told Irene that she had quite a bit of money in her regular savings account and suggested that she put the proceeds of the home sale into a certificate of deposit (CD) because CDs paid a higher interest rate. Irene agreed. Michael told her that he would call various banks to compare rates. He did so, and he eventually selected the Security State Bank in Hamilton as having the best rate on CDs at the time.

¶ 15 On September 18, 1998, Michael drove Irene to the Security State Bank. Irene brought the check that she had received from the sale of her Milwaukee home, which was in the amount of $88,519.77. Michael received $63,519.77 from that check. The remaining $25,000 was used to purchase a CD in Irene's name. Although Michael completed, signed, and filed a federal income tax return on Irene's behalf for the year 1998, Irene filed no federal gift tax return for that year. Michael admitted that there is no written evidence that the $63,519.77 was a gift from Irene to him.

¶ 16 While Irene was living in Warsaw, the defendant assisted her in paying monthly bills, lawn care, home cleaning and maintenance, buying groceries and other shopping, hooking up utilities, and car maintenance. The defendant also assisted Irene in establishing her checking and savings accounts, and he helped her get her pension and social security checks automatically deposited in her Warsaw bank accounts. The defendant visited Irene approximately four times per week.

¶ 17 B. Michael's Evidence

¶ 18 The following is a summary of the relevant evidence presented by Michael at trial. Melody McCandless, the salesperson for Cramer Real Estate who showed houses to Irene and the defendant in 1998, testified in support of Michael. McCandless testified that she showed homes

to Irene on three different days over a period of approximately four weeks. When they looked at the homes, McCandless and Irene would discuss the pros and cons of each home. McCandless believed that Michael was with them on all of these occasions because Irene did not drive.

¶ 19 McCandless was present at Cramer Real Estate when Irene made the offer on her new home. Michael was also there. McCandless and Irene discussed what Irene should offer based on the listing price. According to McCandless, Irene made the decision on the offer price and signed the offer. McCandless later called Irene in Wisconsin to communicate a counteroffer from the sellers. Michael answered the phone and put Irene on the phone. McCandless discussed the counteroffer with Irene. Irene told McCandless that she wanted to discuss it with Michael and that she would call her back. Michael and Irene called McCandless back a few hours later. McCandless faxed changes to Irene, who initialed the changes and faxed the document back to McCandless. McCandless met with Irene to sign a purchase agreement. Michael was also present at that time.

¶ 20 McCandless had no recollection of the closing. An informational document prepared by either McCandless or her broker at the time of the closing was signed by Michael, but not by Irene.

¶ 21 After Irene moved into her new home, McCandless visited her at least twice. Michael was there during her first visit, when Irene was moving in. About a month later, McCandless visited Irene again when Michael asked her to check up on his mother. McCandless testified that she "never saw anything but happiness for [Irene]" when Irene was looking at houses and found her new house.

¶ 22 Debra Faulkner, an account representative with the Security State Bank of Hamilton in September 1998, also testified in support of Michael. Faulkner vaguely remembered meeting Irene and Michael at the bank on September 18, 1998. She testified that they did a certificate of deposit and that she had to give them a cashier's check as part of the transaction. Irene instructed Faulkner as to the amount and duration of the CD and told Faulkner to issue the cashier's check to Michael. Although her memory of these events was vague, Faulkner testified that her best recollection is that Irene instructed her to do what she did that day in that transaction. On cross-examination, Faulkner admitted that she had no specific memory of any conversations and did not know the specific words that were spoken. She testified that, when she said on direct examination that Irene had instructed her to do things, she had reached that conclusion based upon the protocol and policies of the bank.

¶ 23 Michael offered into evidence Irene's answer to Michael's Interrogatory No. 7, which was served to Michael on October 11, 2002. The question posed to Irene in that interrogatory was: "State your full name and last known address of each person or persons who has acted in a fiduciary capacity for you, and the dates and places of such acts, and the circumstances in which they did so act." Irene's answer to this interrogatory was: "None. [Michael] has purported to act in a fiduciary capacity for me. However, I did not authorize any of his acts." Roy objected to the admission of this interrogatory response on hearsay grounds. The trial court overruled the objection and admitted the interrogatory response into evidence.

¶ 24 Michael testified that, from April 25 through May 2, 1998, he, Irene, and McCandless looked at homes in Warsaw and Hamilton. He was at Cramer Real Estate on May 2, 1998, when an offer was made on a home. Michael's counsel asked Michael what he did during that meeting.

Roy objected, arguing that the Dead-Man's Act barred the defendant from testifying as to events that occurred in the presence of Irene. Michael argued that the Dead-Man's Act did not bar him from testifying as to what he did during the meeting because Roy had opened the door by introducing portions of Michael's deposition addressing what happened during the meeting. The trial court overruled Roy's objection and instructed Michael to answer the question. Michael testified that he was "basically an observer" at the meeting, that he did not sign anything or give any instructions to the realtor, and that he did not bring anything to the meeting or take anything away from the meeting except for his mother. He also testified that he did not sign any documents regarding the acceptance of the offer. Roy renewed his objection and moved to strike Michael's testimony about the meeting. The trial court denied Roy's motion.

¶ 25 Michael testified that he took Irene to the closing on her Milwaukee home during which he was an "observer." He did not sign any documents at the closing or take anything away from the closing except for his mother.

¶ 26 After the closing, Michael drove Irene from Milwaukee to her new home in Warsaw. Michael testified that, during the trip, he had a discussion with Irene concerning regular savings accounts and CDs. When Michael was asked to describe the conversation, Roy objected on the basis of the Dead-Man's Act. The trial court overruled the objection. Michael then testified that, during the drive, Irene opened her purse, took out an envelope, looked at the cashier's check she had received from the Milwaukee closing, and asked Michael how much his mortgage was. Michael told her that it was roughly $63,000. According to Michael, Irene then began writing on the envelope and said "well, that means to pay off your mortgage, I would have about $25,000 left of my cashier's check."

¶ 27 Roy's counsel renewed his objection and moved to strike. He argued that Michael's testimony "went beyond any waiver" that Roy made by introducing Michael's deposition testimony regarding this conversation. Roy's counsel noted that "we put in that [Michael] told Irene that she had quite a bit of money in her regular savings account and considered CDs," and that Michael "called different banks to find the best CD rates." He argued that the conversation to which Michael testified went "way beyond the discussion about CDs."

¶ 28 Michael's counsel argued that Roy had opened the door about the conversation between Michael and Irene during the trip back from Milwaukee by presenting testimony that Irene decided during that trip that she would like to look into CDs. Michael's counsel argued that Michael could therefore testify about how Irene decided to buy a $25,000 CD. The trial court agreed and ruled that Roy had "opened the door and waived the Dead-Man's Act as to this conversation." Michael proceeded to testify that Irene said that, when they got to Warsaw, "[w]e'll cash my cashier's check [and] *** I'll take out $25,000 to put into my savings. And I'll have them write a check to you for the balance as a gift for you to pay off your mortgage on your home."

¶ 29 After hearing all of the evidence and arguments, the trial court entered judgment in favor of Michael. This appeal followed.

¶ 30 ANALYSIS

¶ 31 1. The Admission of Michael's Testimony Under the Dead-Man's Act

¶ 32 Roy argues that the trial court violated the Dead-Man's Act by allowing Michael to testify as to: (1) the conversation Michael allegedly had with Irene while driving from Milwaukee to Warsaw; and (2) what Michael did during the May 2, 1998, meeting at Cramer Real Estate.

As noted, the trial court admitted this testimony under an exception to the Dead-Man's Act because it found that Roy had "opened the door" by introducing portions of Michael's deposition testimony regarding the same conversations or events. Roy denies that he opened the door and argues that the exception to the Dead-Man's Act cited by the trial court does not apply.

¶ 33 We disagree. Determining the admissibility of conversations or events under the Dead-Man's Act is an evidentiary issue that is reviewed for abuse of discretion, provided that the issue does not involve statutory construction. *Agins v. Schonberg*, 397 Ill. App. 3d 127, 130 (2009); see also *Gunn v. Sobucki*, 216 Ill. 2d 602, 609 (2005) (evidentiary errors are reviewed for abuse of discretion). The construction of a statute presents a question of law which we review *de novo*. *Gunn*, 216 Ill. 2d at 609.

¶ 34 The Dead-Man's Act provides, in relevant part:

> "In the trial of any action in which any party sues or defends as the representative of a deceased person or person under a legal disability, no adverse party or person directly interested in the action shall be allowed to testify on his or her own behalf to any conversation with the deceased or person under legal disability or to any event which took place in the presence of the deceased or person under legal disability, except in the following instances:
>
> (a) If any person testifies on behalf of the representative to any conversation with the deceased or person under legal disability or to any event which took place in the presence of the deceased or person under legal disability, any adverse party or interested

person, if otherwise competent, may testify concerning *the same conversation or event*."

(Emphasis added.) 735 ILCS 5/8-201 (West 2010).

¶ 35 The purposes of the Dead-Man's Act are to protect decedents' estates from fraudulent claims and to equalize the position of the parties in regard to the giving of testimony. *Gunn*, 216 Ill. 2d at 609; *Hoem v. Zia*, 159 Ill. 2d 193, 201 (1994). The Dead-Man's Act advances these purposes by preventing the introduction of testimony concerning events or conversations that only the decedent might have been able to contradict. See, *e.g.*, *Goad v. Evans,* 191 Ill. App. 3d 283, 300 (1989). However, subsection (a) of the Dead-Man's Act permits the decedent's representative to waive the protection of the Dead-Man's Act by presenting evidence concerning an event which occurred in the presence of the decedent. *Goad*, 191 Ill. App. 3d at 300. When this occurs, subsection (a) prevents the presentation of a one-sided picture of the event by allowing the opposing party to present testimony concerning the same event. *Id.* When testimony regarding conversations or events involving the decedent creates an impression or supports an inference adverse to the opposing party, and the opposing party would be unfairly disadvantaged thereby, the opposing party must be allowed to provide relevant testimony regarding the same conversation or event in order to rebut the adverse testimony or to explain his version of what happened. See, *e.g.*, *Hoem*, 159 Ill. 2d at 202; *In re Estate of Phillips*, 359 Ill. App. 3d 114, 125 (2005); *Wasleff v. Dever*, 194 Ill. App. 3d 147, 154 (1990). However, the opposing party may only testify concerning the "same conversation or event" as to which the decedent's representative (or his witness) testified. 735 ILCS 5/8-201(a) (West 2010).

¶ 36 In this case, the trial court ruled that the Dead-Man's Act did not bar Michael from testifying as to what he did during the May 2, 1998, meeting at Cramer Real Estate because Roy had opened the door by introducing portions of Michael's deposition which addressed that meeting. The deposition testimony at issue read as follows:

> "She [Irene] wanted to make an offer on the home before she left town, and we went to Cramer Realty right up across from that McDonald's store in Keokuk, and she filled out the paperwork there and requested that a response be made by or within 24 hours. And Melody *** then asked how she could reach us because I explained I was driving her back to her home in Milwaukee. And so I jotted down on the paper her telephone number, and my mother signed the offer. And we left from–we went to McDonald's afterwards, then left for Milwaukee."

¶ 37 After the trial court overruled Roy's counsel's objection under the Dead-Man's Act, Michael testified that he was "basically an observer" at the May 2, 1998, meeting, that he did not sign anything or give any instructions to the realtor, and that he did not bring anything to the meeting or take anything away from the meeting except for his mother. He also testified that he did not sign any documents regarding the acceptance of the offer.

¶ 38 We hold that the defendant's trial testimony concerned the "same event" that was described in the deposition testimony, *i.e.*, the May 2, 1998, meeting between the defendant, the decedent, and McCandless at Cramer Real Estate. This is true even if the term "event" is interpreted narrowly to mean a discrete occurrence (see, *e.g.*, *Manning v. Mock*, 119 Ill. App. 3d

788, 799 (1983); *Estate of Phillips*, 359 Ill. App. 3d at 124-25), rather than broadly to mean all events or conversations leading up to the meeting (see, *e.g.*, *Zorn v. Zorn*, 126 Ill. App. 3d 258, 263 (1984); *Wasleff*, 194 Ill. App. 3d at 153-54). Thus, the court did not abuse its discretion in admitting Michael's testimony about the May 2, 1998, meeting and what he did and did not do during that meeting.[2]

¶ 39 The trial court also properly admitted Michael's testimony about Irene's alleged statements of her intention to gift him the funds at issue. Michael testified that Irene made this statement during a conversation that he had with her while he was driving her from Milwaukee to her new home in Warsaw. During his case-in-chief, Roy introduced portions of Michael's deposition testimony regarding other statements that Irene made to Michael during that same trip. For example, Roy presented deposition testimony that, during the drive from Milwaukee to Warsaw, Michael told Irene that she had quite a bit of money in her regular savings account and should consider CDs, that Irene agreed, and that Michael offered to call various banks to see which had the best rates on CDs.

¶ 40 Roy argues that the conversation about CDs had nothing to do with Irene's alleged intention to gift money to the defendant and did not open the door to defendant's testimony about that issue. Roy suggests that the latter discussion, if it occurred at all, was a separate

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[2] Moreover, it could be argued that the deposition testimony that Roy presented at trial invited an inference that the defendant was acting as his mother's fiduciary when she made an offer on a house. If so, the defendant should be given an opportunity to rebut that inference by presenting his version of the event. See, *e.g.*, *Hoem,* 159 Ill. 2d at 202; *Phillips*, 359 Ill. App. 3d at 125; *Goad*, 191 Ill. App. 3d at 300.

conversation. Michael counters that Irene's statements about gifting funds to him were part of a single, ongoing conversation about what Irene wanted to do with the proceeds from the sale of her Milwaukee home. Michael also argues that the deposition testimony presented by Roy could leave the impression that Michael was controlling Irene's disposition of the funds. Michael maintains that he must be allowed to rebut that impression by showing that Irene decided to gift him the funds of her own accord.

¶ 41 We agree with Michael. Irene's statements about her intention to gift the funds to Michael were part of a single conversation regarding what Irene wanted to do with the home sale proceeds. Moreover, the deposition testimony presented by Roy arguably suggested that Irene intended to put all of the home sale proceeds into CDs, which tends to undermine Michael's defense that Irene gifted some of the funds to him. It also arguably created the impression that Michael was controlling or influencing Irene's disposition of the funds. Fairness dictates that Michael should have an opportunity to present rebuttal testimony regarding that same conversation. Accordingly, the trial court's decision to allow Michael's testimony regarding Irene's statements about gifting funds to him was not an abuse of discretion.

¶ 42 2. The Admission of Irene's Interrogatory Response

¶ 43 Roy also argues that the trial court erred by admitting into evidence Irene's response to Michael's Interrogatory No. 7. That interrogatory asked Irene to state the last name and address of "each person or persons who acted in a fiduciary capacity for you, the date and places of such acts, and the circumstances in which they did so act." Irene's response to this interrogatory was "None. [Michael] has purported to act in a fiduciary capacity for me. However, I did not

authorize any of his acts."[3] Over Roy's objection, the trial court admitted Irene's interrogatory response into evidence. The court relied on Irene's interrogatory response in concluding that there was no confidential or fiduciary relationship between Michael and Irene. Roy argues that the trial court erred by admitting Irene's interrogatory response into evidence and by treating it as either a judicial admission or as substantive evidence that Michael did not have a confidential or fiduciary relationship with his mother.

¶ 44 As a preliminary matter, we note that the trial court treated Irene's interrogatory response as an evidentiary admission, not a judicial admission. A judicial admission is a "deliberate, clear, unequivocal statement[] by a party about a concrete fact within that party's knowledge." *In re Estate of Rennick*, 181 Ill. 2d 395, 406 (1998). A judicial admission "conclusively bind[s] a party," and may not be contradicted in a motion for summary judgment or at trial. *Id.*; see also *Lossman v. Lossman*, 274 Ill. App. 3d 1, 5 (1995). An evidentiary admission, by contrast, is substantive evidence that "may be contradicted or explained" by other evidence. *Estate of Rennick*, 181 Ill. 2d at 406. Here, the trial court treated Irene's interrogatory response as ordinary evidence to be considered with and weighed against the other evidence; it did not treat the interrogatory response as a binding, conclusive, and irrebuttable judicial admission. Accordingly, Roy's arguments regarding judicial admissions are inapposite.

¶ 45 The question is whether Irene's interrogatory response was admissible as an evidentiary admission. Roy argues it was not admissible because it expressed a legal conclusion rather than a factual conclusion. We disagree. Whether a fiduciary or confidential relationship exists

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[3] Irene answered this interrogatory on October 11, 2002, before she asserted a claim against Michael for breach of fiduciary duty.

between two individuals is a question of fact. *Clark v. Clark*, 398 Ill. 592, 600 (1947); *Metropulos v. Chicago Art Glass, Inc.*, 156 Ill. App. 3d 727, 738 (1987); *Wold v. Wold*, 43 Ill. App. 3d 773, 778 (1976). Thus, Irene's statement that Michael did not act in a fiduciary capacity for her expressed Irene's conclusion about a factual matter within her knowledge, not a legal conclusion. As such, it was admissible as an evidentiary admission.[4]

¶ 46 Michael argues that the interrogatory response was nevertheless inadmissible on hearsay grounds because Irene is no longer a party to the lawsuit. We disagree. Admissions against interest made by a party are admissible against that party's estate or representative after the party has died. See, *e.g.*, *Estate of Rennick*, 181 Ill. 2d at 405; *Republic Iron & Steel Co. v. Industrial Comm'n*, 302 Ill. 401, 405 (1922); *Beringer v. Lackner*, 331 Ill. App. 591, 596 (1947). Accordingly, the fact that Irene's executors substituted Roy as the plaintiff after Irene died does not render Irene's prior interrogatory responses inadmissible hearsay. Prior admissions by Irene are admissible against Roy as admissions against interest.

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[4] We agree with Roy that statements involving legal conclusions are not ordinarily admissible as evidentiary admissions. See, *e.g.*, *Ferry v. Checker Taxi Co.*, 165 Ill. App. 3d 744, 748 (1987); see also *National General Insurance Co. v. Ozella*, 17 Ill. App. 3d 703, 706 (1974) ("statements which are in fact legal conclusions cannot be used as admissions to support or sustain the plaintiff's burden of proof"); *cf. Fortae v. Holland*, 334 Ill. App. 3d 705, 714 (2002) (stating the question must be determined on a case-by-case basis, but finding no error in exclusion of statement involving legal conclusion). However, as noted above, Irene's statement that Michael did not act as her fiduciary expressed a conclusion of fact, not of law.

¶ 47 Roy also argues that Irene's interrogatory response should not have been admitted because the interrogatory at issue asked about the existence of a "fiduciary" relationship, not a "confidential" relationship (which is what Roy alleges existed between Michael and Irene). Roy appears to suggest that the interrogatory response was not relevant because it asked only whether a formal legal fiduciary relationship existed, rather than an informal confidential relationship created out of a social or family relationship involving the repose of trust or confidence. We do not believe that this limitation should be read into the interrogatory at issue. Interrogatory No. 7 asked Irene to identify each person or persons who acted in a "fiduciary capacity" for her. The term "fiduciary" includes both formal legal relationships (such as the relationship created by execution of a power of attorney) and "moral, social, domestic, or personal" relationships of "trust and confidence" between family members or other individuals. See, *e.g.*, *Simon v. Wilson*, 291 Ill. App. 3d 495, 503-04 (1993). In other words, a "confidential" relationship between family members is one type of "fiduciary" relationship. *Id.* The interrogatory posed to Irene was not expressly or implicitly limited to formal fiduciary relationships. Nor did it expressly or implicitly exclude "confidential" relationships from its scope. Thus, Irene's response to this interrogatory was clearly relevant to the existence of a confidential relationship—and therefore admissible as evidence on that issue—even if it was not dispositive of the issue.

¶ 48 Roy also contends that the trial court erred in admitting the interrogatory response because: (1) the interrogatory response was "ambiguous," "meaningless," and "not clear and unequivocal"; and (2) in the interrogatory response, Irene noted that Michael had "purported to act in a fiduciary capacity" for her. Both of these arguments go to the weight of the evidence rather than its admissibility.

¶ 49 3. Whether the Trial Court's Decision Was Against the Manifest Weight of the Evidence

¶ 50 The trial court held that Roy's claim for breach of fiduciary duty failed because Roy did not prove that Michael stood in a confidential or fiduciary relationship to Irene at the time she gave him the check for $63,519.77. Roy argues that the trial court's decision was against the manifest weight of the evidence and should be reversed. A trial court's determination that a fiduciary relationship did not exist will not be overturned unless it is against the manifest weight of the evidence. *In re Estate of Long*, 311 Ill. App. 3d 959, 964 (2000)). A finding is against the manifest weight of the evidence "when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *People v. Parcel of Property Commonly Known as 1945 North 31st Street, Decatur, Macon County, Illinois*, 217 Ill. 2d 481, 507 (2005).

¶ 51 As this court noted in the prior appeal in this case, even in the absence of a formal legal relationship, the law recognizes that intimacy and trust can also create the obligations of a fiduciary to act in the best interests of another. *Matter of Estate of Heilman*, 37 Ill. App. 3d 390, 396 (1976). The circumstances giving rise to a fiduciary relationship require some degree of superior skills of one person exerted to influence the decision-making of another person with weaker decision-making skills. See *Zachary v. Mills*, 277 Ill. App. 3d 601, 608-10 (1996). Lack of mental acuity, difficulty speaking or comprehending the language, diminished memory due to age, or isolation can provide an environment ripe for potential abuse. *Dombrow v. Dombrow*, 401 Ill. 324, 331 (1948) (aged mother and son). When skills are unequal and trust is reposed, acting to shape the decision-making of another creates a fiduciary duty. *White v. Ross*, 160 Ill. 56, 71-72 (1985) (mother and invalid daughter).

¶ 52 An adult child/aged parent relationship does not automatically create a fiduciary or confidential status, nor does the furnishing of necessary transportation, assistance, or companionship. *Eiberger's Estate v. Nickel*, 60 Ill. App. 3d 790, 792 (1978). However, a fiduciary relationship may be created where an adult child or another trusted individual advises the elderly person in managing her business or personal affairs or suggests, proposes, or assists in financial matters. *Id.*; *Estate of Heilman*, 37 Ill. App. 3d at 396.

¶ 53 Thus, the existence of a confidential or fiduciary relationship in this case depended upon whether the evidence showed that: (1) Irene reposed trust in Michael and depended on him to help her with financial or real estate matters; (2) Michael had superior skills in these areas or superior mental acuity; and (3) Michael influenced Irene's decision-making in her financial or real estate transactions. See *Zachary*, 277 Ill. App. 3d at 608-09; *Estate of Heilman*, 37 Ill. App. 3d at 396; *Anthony v. Anthony*, 20 Ill. 2d 584, 587 (1960); *Dombrow*, 401 Ill. at 331; *White*, 160 Ill. at 71-72.

¶ 54 As this court recognized in the prior appeal, there is stipulated evidence in this case suggesting that Irene depended on Michael for transportation, shopping, and home maintenance. Michael also prepared Irene's tax returns in 1998, assisted her in finding a house in Warsaw, advised her to put the Milwaukee sales proceeds in a CD, and helped her find banks to set up a savings account and a CD. Moreover, Michael attended the real estate closing on Irene's behalf. This evidence arguably supports the existence of a fiduciary relationship.

¶ 55 However, Michael presented evidence rebutting the inference that he acted as Irene's fiduciary in financial matters during the relevant time period. He testified that he was merely an "observer" at the closing of the Milwaukee home sale and during the meeting in which Irene

made an offer on her new Warsaw home. McCandless testified that she discussed all of the issues relating to the offer, counteroffer, and purchase of a new home directly with Irene and that Irene made the decisions regarding when to make an offer and how much to offer. Moreover, in her response to Interrogatory No. 7, Irene stated that no one had acted in a fiduciary capacity for her and that, although Michael had "purported to act in a fiduciary capacity for [her]," she "did not authorize any of [his] acts." In addition, Michael testified that his mother came up with the idea to gift him the funds at issue. The trial court found Michael's testimony credible, and credibility findings are within the province of the trial court. *In re Marriage of Bradley*, 2013 IL App (5th) 100217, ¶ 23. Further, there was no evidence that Irene had diminished mental capacities at the relevant times, that Michael had superior skills, that Michael attempted to manipulate Irene or exert control over her affairs, or that Michael attempted to influence Irene's decisions to sell her home or to gift him part of the proceeds of that sale. In short, there was ample evidence to support the trial court's finding of no fiduciary relationship, and we cannot say that an opposite conclusion was apparent. Although reasonable people might draw different conclusions from the evidence, the trial court's decision was not against the manifest weight of the evidence.

¶ 56 Roy argues that there is a "presumption" of a fiduciary relationship when certain facts of an intimate relationship are proven. That is incorrect. Once a fiduciary relationship has been established, the law presumes that any benefit obtained by a fiduciary through the fiduciary relationship results from fraud. *Spring Valley Nursing Center, L.P. v. Allen*, 2012 IL App (3d) 110915, ¶12.[5] However, the *existence of a fiduciary relationship* is not presumed. The mere

[5] This presumption may be rebutted by clear and convincing evidence to the contrary. *Id.* ¶ 13.

fact of a family relationship—even a family relationship involving intimacy, trust, and assistance—does not automatically give rise to a fiduciary or confidential relationship. *Eiberger's Estate*, 60 Ill. App. 3d at 792. The existence of such a relationship must be proven under the legal standards discussed above based on the evidence. As noted, the trial court's finding that the evidence presented in this case failed to establish a fiduciary relationship was not against the manifest weight of the evidence.

¶ 57 Finally, Roy maintains that, in the prior appeal, this court ruled that the stipulated evidence demonstrated a fiduciary relationship and that this ruling is law of the case. Not so. In the prior appeal, this court made it clear that it did *not* decide that issue. Specifically, this court expressly stated:

> "We decide not whether the plaintiff can prevail—only that plaintiff can proceed. *We do not reach the issue of whether the facts prove a fiduciary relationship existed*; we only decide [that] the stipulated facts support *pleading* the existence of a fiduciary relationship. *** We conclude only that these facts support a prima facie case for breach of fiduciary duty, cured the defects in the complaint, and should have been allowed by the court as an amendment to the pleadings." (Emphasis added.)

¶ 58 **CONCLUSION**

¶ 59 For the foregoing reasons, we affirm the judgment of the circuit court of Hancock County.

¶ 60 Affirmed.