

No. 1-16-0388

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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<i>In re</i> ESTATE OF ARMANDO ALVARADO	)	
	)	
(WAYNE ALVARADO,	)	Appeal from the
	)	Circuit Court of
Petitioner-Appellant,	)	Cook County
	)	
v.	)	No. 12 P 6039
	)	
JACQUELINE ALVARADO,	)	Honorable
	)	Karen L. O'Malley
Respondent-Appellee.)	)	Judge Presiding.

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JUSTICE MASON delivered the judgment of the court.  
Presiding Justice Hyman and Justice Pierce concurred in the judgment.

**ORDER**

¶ 1 *Held:* Trial court's determination that beneficiary under will did not exercise undue influence was supported by the manifest weight of the evidence.

¶ 2 At the time of his death on September 27, 2012, Armando Alvarado had 10 natural born children and one stepchild. In a will executed on October 8, 2006, he named his son Michael and daughter Jacqueline as co-executors and left each of them 30% of the estate. Two other siblings, Robert and Timothy, each received 15% and the remainder was to be divided among four other

siblings. Three siblings, including petitioner Wayne Alvarado, received \$1 under the will.

Armando also made a bequest of \$2,000 to each of his 18 grandchildren, regardless of whether provision was made for their parents under the will.

¶ 3 After Armando's death, his will was admitted to probate. On December 5, 2012, Wayne petitioned the probate court to require formal proof of Armando's will. After a hearing at which witnesses to the will testified,<sup>1</sup> the court determined that the will had been proved and confirmed the order admitting the will to probate.

¶ 4 Wayne next filed a petition to contest the will alleging in a single count that the disposition of Armando's estate was the product of undue influence exercised by Jacqueline. Wayne alleged that Jacqueline lived with Armando and assisted him both in his daily activities and in managing his personal and financial affairs. By virtue of their relationship, Wayne alleged that Jacqueline was her father's fiduciary and that she used her position to influence Armando to leave her and Michael the majority of his estate. Wayne also alleged that at the time he executed the will, Armando was 84, was suffering from a number of physical ailments and was hospitalized.

¶ 5 Another sibling, Jeffrey, who was one of the residual beneficiaries under the will, also filed various motions seeking, among other things, to remove Jacqueline and Michael as executors and accusing Jacqueline of financial exploitation of Armando. Those motions were ultimately stricken by the trial court.

¶ 6 The trial court held a hearing on Wayne's petition on April 16, 2015. The court heard testimony from Michael, Jacqueline, Wayne, Linda Clark, Michael's mother-in-law who

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<sup>1</sup> The transcript of this hearing is not included in the record although the trial court alluded to reviewing it in connection with the ruling on Wayne's petition to invalidate the will.

prepared the will, and Michael's wife, Dawn. Although it had stricken his motions, the trial court allowed Jeffrey, acting *pro se*, to participate in the hearing.

¶ 7 According to the evidence, in 2003, Armando requested that Jacqueline move into the family home to help take care of her ailing mother. Jacqueline, her husband and two children sold their home and moved in with her parents. After her mother's death in 2005, Jacqueline stayed to take care of Armando. Beginning in 2006 or 2007, Jacqueline's family paid \$700 per month in rent. Armando executed health care and property powers of attorney naming Jacqueline and placed his bank accounts in joint tenancy with her.

¶ 8 In September 2006, Armando asked Michael, with whom he spoke frequently, to come from his home in Kentucky for a meeting. Armando met with Jacqueline and Michael at the family home and informed them that he wanted to make a will. He told them how he wanted his assets distributed and asked Jacqueline to take notes. There was no evidence that Jacqueline or Michael had any input into the distribution of assets. Armando reviewed Jacqueline's notes and gave them to Michael.

¶ 9 After the meeting, Michael took Jacqueline's notes home with him and Clark, a realtor, typed the will on a form she had in her office. Michael returned to Chicago in October after his father was hospitalized on October 15. He and Dawn brought the will to an attorney to review. Michael brought the will to Armando in the hospital on October 17th. Armando had Jacqueline read the will to him. The next day, Armando executed the will in his hospital room and three individuals witnessed his signature. Jacqueline was either in the room or in the hall and Michael and Timothy were close by. Although Armando had a number of health problems in 2006, he was competent and coherent at the time he signed the will.

¶ 10 During his 2006 hospitalization, the only children who visited Armando were Jacqueline, Michael, Timothy and Robert. Although Wayne claimed that he did visit Armando in the hospital at one point, it was unclear from his testimony whether the visit was during 2006 or years later, prior to Armando's death. In any event, when Wayne did visit, there was a disturbance and he was asked to leave. Wayne, who used to live next to his parents, evidently had a falling out with them around 1990. A gate in a fence between the two properties was permanently sealed by Armando as a result. Relationships between and among other of the siblings were likewise strained. In particular, Jacqueline and Michael did not get along with Robert and Timothy.

¶ 11 After he signed the will, Armando gave it to Jacqueline along with the keys to a closet in his bedroom and told Jacqueline to put the will in his closet. Jacqueline followed Armando's instructions and neither she nor Michael saw the will again until after Armando died in 2012. Jacqueline and Michael did not discuss the will or the disposition of Armando's assets with other members of the family prior to Armando's death.

¶ 12 The trial court initially ruled that Wayne had not sustained his burden to show undue influence and denied his petition. Wayne sought reconsideration on the ground that, because Jacqueline was a fiduciary who benefitted under the will, there was a presumption of undue influence and it was Jacqueline's burden to establish by clear and convincing evidence that the will was not the product of undue influence. The court agreed and, on reconsideration, found that Jacqueline had rebutted the presumption of undue influence. The court further found that based on its assessment of the credibility of the witnesses, the will reflected Armando's wishes and not Jacqueline's. On December 30, 2015, the court again denied Wayne's petition to invalidate the will and Wayne timely appealed.

¶ 13 We agree with the trial court that under the circumstances presented here, Jacqueline was her father's fiduciary and Jacqueline does not contest that finding on appeal. Generally, a presumption of undue influence arises when a fiduciary participates in the drafting of a will under which the fiduciary benefits. *DeHart v. DeHart*, 2013 IL 114137 ¶ 30. Undue influence is defined as "any improper \*\*\* urgency of persuasion whereby the will of the person is overpowered and he is induced to do or forebear an act which he would not do if left to act freely. [Citation]." (internal quotations omitted) *In re Estate of Hoover*, 155 Ill. 2d 402, 411 (1993). A fiduciary who benefits under a will must establish by clear and convincing evidence that the will reflects the testator's freely expressed wishes and not those of the fiduciary. See *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 465 (1983) (attorney who participated in the drafting of a will under which he received substantial legacy was required to rebut presumption of undue influence by clear and convincing evidence.); *In re Estate of Kline*, 245 Ill. App. 3d 413, 425 (1993). The presumption does not shift the burden of proof, but rather requires the party against whom the presumption operates to present evidence to rebut it. *Franciscan Sisters Health Care*, 95 Ill. 2d at 462 (quoting *Diedrich v. Walters*, 65 Ill. 2d 95, 102 (1976)). Once evidence rebutting the presumption has been presented, the presumption disappears and the party asserting the invalidity of the will must sustain the burden to prove undue influence. *Id.*

¶ 14 We review the trial court's finding that Armando's will was not the product of undue influence under the manifest weight of the evidence standard. *In re Estate of Kline*, 245 Ill. App. 3d at 426. A decision is contrary to the manifest weight of the evidence only where the opposite conclusion is apparent or where the court's findings are arbitrary, unreasonable or not based on the evidence. *Konfrst v. Stehlik*, 2014 IL App (1st) 132113, ¶ 11.

¶ 15 Based on the evidence summarized above, it is obvious that the trial court's finding that Armando's will was not the product of undue influence is supported by the manifest weight of the evidence. Other than the fact that Jacqueline was a beneficiary under the will and was present when it was executed, there was no evidence that the will reflected anything other than Armando's wishes as to the distribution of his estate upon his death. The evidence regarding Jacqueline's conduct in moving in with and taking care of both her parents is uncontested. It would stand to reason, therefore, that Armando would be inclined to provide for her in his will and, logically, disproportionately to those of his children who provided no assistance or from whom he was estranged. There was also evidence regarding Armando's close relationship with Michael, which would likewise explain Armando's decision to make substantial provision for him. By the same token, given the undisputed evidence regarding the estrangement between Wayne and Armando, we find it unsurprising that Armando chose not to provide for Wayne. The only evidence in the record regarding the actual preparation of the will reveals that Armando, and only Armando, dictated its terms, which he directed Jacqueline to reflect in her notes and Michael to memorialize in a legal document.

¶ 16 Other evidence also supports the finding that was the product of Armando's decision. In particular, the will's provision for Robert and Timothy circumstantially supports the conclusion that the will reflected Armando's and not Jacqueline's wishes, since Jacqueline did not get along well with either brother. Had Jacqueline been dictating the distribution of Armando's assets, she would likely not have provided for them. Finally, the bequests totaling \$36,000 to Armando's grandchildren, including children of his offspring who received nothing under the will, strongly support the conclusion that the distribution of his assets reflected Armando's wishes and not the wishes of another.

¶ 17 The trial court's ruling that Jacqueline rebutted the presumption that Armando's will was the product of undue influence and that Wayne had not sustained his ultimate burden to prove that it was, is amply supported by the evidence and, therefore, the trial court's judgment is affirmed.

¶ 18 Affirmed.