

NOTICE  
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2017 IL App (5th) 160140-U

NO. 5-16-0140

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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).

THE ESTATE OF FREDERICK BOYD, by	)	Appeal from the
Bryan Boyd, Administrator,	)	Circuit Court of
	)	St. Clair County.
Petitioner-Appellant,	)	
	)	
v.	)	No. 14-P-612
	)	
ORA LANGFORD,	)	Honorable
	)	Stephen P. McGlynn,
Respondent-Appellee.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.  
Presiding Justice Moore and Justice Cates concurred in the judgment.

**ORDER**

¶ 1 *Held:* In a probate case where the decedent's long-term girlfriend and caregiver was the designated beneficiary on two life insurance policies and the joint owner with right of survivorship of a checking account, the trial court's finding that she overcame the presumption of fraud was not against the manifest weight of the evidence. The admission of two letters from the decedent's doctor constituted harmless error where the court did not appear to consider the letters in its ruling. The court's reference to a statute it recognized did not apply was not part of its ruling and therefore did not constitute error.

¶ 2 The petitioner, Bryan Boyd, is the son of the decedent, Frederick Boyd (Fred). The respondent, Ora Langford, was involved in a long-term romantic relationship with Fred when he suffered a stroke. After that time, she became his caregiver. Fred's health

continued to deteriorate. Eventually, he executed documents giving Ora durable power of attorney. Fred died without a will nine years later, and Bryan was named as the administrator of his estate. At issue in this appeal are three of Fred's assets: a joint checking account with a balance of approximately \$44,000 at the time of Fred's death, and the proceeds of two life insurance policies. Ora opened the checking account just before being given power of attorney, and she was subsequently designated as the primary beneficiary on both life insurance policies. The trial court found that Ora overcame the presumption of fraud in these transactions. Bryan appeals, arguing that (1) this finding was against the manifest weight of the evidence; (2) the court erred in admitting two letters from Fred's doctor; and (3) the court erred in relying on section 18-1.1 of the Probate Act of 1975 (755 ILCS 5/18-1.1 (West 2012)). We affirm.

¶ 3 Fred and Ora met in 1975 and began dating in 1976. Fred suffered a stroke in 1988. As a result, the left side of his body was impaired, he began to experience chronic pain, and he became impotent. Although Ora testified that she became Fred's caregiver after he suffered the stroke, the record is not clear on the level of care he needed prior to 2005.

¶ 4 In August 2005, Fred was seriously injured during a home invasion. His doctors believed he also suffered another stroke. Fred spent several months in a rehabilitation facility recovering from his injuries. While Fred was in the rehabilitation facility, he executed documents giving Ora durable power of attorney for health care and for other matters. It was also during this time that Ora opened the joint checking account that is at issue in this appeal. After Fred was discharged from the rehabilitation facility, Ora

helped him move from the house he owned to an apartment in a retirement community. She stayed there with him until his condition improved enough that he did not need her there at night. However, she continued to provide daily assistance to Fred after she moved back to her own home.

¶ 5 In 2009, Fred contracted C-difficile. As a result of the infection, Fred underwent surgery to remove his colon. He was released from the hospital in July 2010. At this time, Ora moved into his apartment because he needed round-the-clock care. In 2010, Fred changed the primary beneficiary on the two life insurance policies at issue from Bryan to Ora.

¶ 6 In 2012, Fred received a refund check from United Healthcare in the amount of \$49,288. Ora deposited this into the joint checking account.

¶ 7 In February 2014, Fred suffered another stroke, which left him unable to speak or to eat without a feeding tube. He died on September 9, 2014, with Ora at his side.

¶ 8 On October 24, 2014, Bryan was appointed as the administrator of Fred's estate. On June 4, 2015, he filed a petition for the discovery of assets. Although the petition listed other assets, only three are at issue in this appeal: the funds in the joint checking account, the proceeds of a life insurance policy issued by Jackson National Life Insurance Company, and a small portion of the proceeds of a life insurance policy issued by Met Life. Most of the proceeds of the Met Life policy were paid directly to the funeral home.

¶ 9 On March 10, 2016, the matter came for an evidentiary hearing. Ora testified that she began dating Fred in 1976 and remained close friends with him until his death in 2014. Asked by counsel for Bryan when she and Fred stopped dating, Ora explained that

when Fred suffered his first stroke in 1988, he was not able to go out to places anymore. She further explained, "I don't call it dating then because you're not going out anywhere." She testified, however, that the feelings she and Fred had for each other did not change, and their relationship remained an exclusive one. Ora testified that the stroke left Fred with impairment to the left side of his body and chronic pain. He also became impotent.

¶ 10 Ora testified that on August 3, 2005, Fred suffered injuries when he was assaulted during a home invasion. In addition, doctors believed he may have suffered another stroke. As noted previously, Fred spent several months in a rehabilitation facility recovering from these injuries. Ora testified that after he was released, she helped him move into an apartment at McCormack House, a retirement community. Initially, she stayed there with him to provide round-the-clock care; however, she testified, once he was "medically stable," she moved back into her own home. Ora further testified that although Fred's condition improved, he was never fully able to care for himself. She explained that he was unable to cook, get dressed, or bathe himself. He was also unable to drive. Ora testified that she helped him with all these activities. It was also during this time that she was given durable power of attorney for Fred and opened the joint checking account.

¶ 11 Ora testified that after Fred contracted a C-difficile infection in 2009, his health deteriorated. Ora testified that she moved into his apartment permanently to provide care to him round-the-clock. She was asked, "And were you staying with him because you were boyfriend/girlfriend or companions, or were you staying with him so you could care for him?" She replied, "All of the above." In July 2010, shortly after Fred was released

from the hospital, he designated Ora as the primary beneficiary of both of his life insurance policies. He named his son, Bryan, as the secondary beneficiary.

¶ 12 In February 2014, Fred suffered another stroke. Ora testified that it affected his cognitive abilities and left him unable to speak. She further testified that he required a feeding tube and dialysis. She testified that she was with Fred when he died in September 2014. She testified that she made the arrangements for Fred's funeral and wrote his obituary.

¶ 13 Ora testified about the joint checking account, which she opened while Fred was in the rehabilitation facility following the 2005 home invasion. She testified that she opened the account at some point during August 2005 using her own funds. She explained that she was unable to open it as a joint account at that time because Fred was not able to go with her to the bank. She testified that shortly thereafter, on September 6, 2005, Fred signed a signature card that allowed him to be added to the account. After that, she and Fred were listed as joint owners of the account with right of survivorship. The documents giving Ora power of attorney were executed by Fred shortly after the joint account was opened, on September 30, 2005.

¶ 14 Ora testified that the account was used to pay Fred's bills and provide for his care, although she occasionally used money from the account to make small purchases for herself with Fred's permission. She testified that both she and Fred wrote checks on the account; however, she wrote most of the checks. Ora acknowledged that only she had a debit card for the account. She explained that this was because Fred was not able to get around on his own and, therefore, had no use for a debit card. Ora testified that Fred's

retirement income was automatically deposited into the joint account. Although Ora "may have" deposited additional funds of her own into the account "a couple of times," her retirement income was deposited into her own checking account.

¶ 15 Ora testified that in 2012, Fred unexpectedly received a refund check from United Healthcare for \$49,288. She deposited the check into the joint account to use for Fred's care. When Fred died in 2014, there was a little over \$44,000 in the joint account. Ora acknowledged that she withdrew most of this money shortly after Fred's death. She explained that she used some of the funds to pay Fred's bills, but she acknowledged that she used the remainder for her own needs.

¶ 16 Ora also testified about the two life insurance policies. She stated that she called the life insurance companies to request that the change of beneficiary forms be sent to Fred. She was present when he signed the forms, and she acknowledged that she filled in the information on at least one of the forms. Proceeds from the Met Life policy were paid directly to the funeral home, which subsequently refunded \$357 to Ora. The proceeds of the policy with Jackson National Life Insurance Company were paid directly to Ora in the amount of \$10,071.

¶ 17 Two letters from Fred's physician, Dr. Paul Stein, were admitted into evidence over Bryan's objection. The first was a letter written in November 2010 asking that Ora be excused from jury duty on the grounds that she was needed to provide daily care to Fred. The letter outlined several medical conditions that Fred suffered from at that time, and indicated that Fred needed Ora to take him to the dialysis unit three times a week and to help him daily with grooming and feeding. The second letter was a condolence letter

written three days after Fred's death. In it, Dr. Stein told Ora that it was a pleasure to care for Fred for 25 years, praised the care that Ora provided to Fred, and told Ora that she was a "very special person" who always had Fred's best interests at heart.

¶ 18 Ora testified that she was not paid to provide care for Fred. She further testified that she did not take care of him in the hopes of inheriting money or other assets. She noted that when she "started taking care of Fred, he didn't have anything."

¶ 19 Bryan Boyd also testified. Much of his testimony was consistent with Ora's. He testified that he first met Ora "probably prior to 1978." Bryan moved away from the area in 1982, six years before Fred suffered his first stroke. He testified that he usually visited his father once a year, and he spoke to him on the phone once a week on Sundays until early 2014, when Fred was no longer able to talk.

¶ 20 Bryan testified that Fred's health deteriorated to the point where he needed a caregiver to be with him daily near the end of his life. Bryan acknowledged that Ora was the person who provided this care. Asked if he was "okay with" Ora being Fred's caregiver, Bryan replied, "I can't say I was okay with it, but what I can say is I respected what she did." Asked if he ever offered to care for his father, Bryan explained that he did not offer to be Fred's caregiver because he did not want to try to force Fred to move to Atlanta, where Bryan lived at the time. Bryan confirmed that Ora did not receive a salary or stipend for caring for Fred.

¶ 21 Bryan further testified that he found out that Ora had power of attorney for Fred, although neither Fred nor Ora told him this. Bryan did not approve of Fred's decision to give Ora power of attorney. He testified that his father was not very smart in business

matters. Bryan testified, however, that he did not argue with his father and that he trusted Ora to pay the bills.

¶ 22 The court announced its ruling from the bench. The court first stated, "Let me read you—this is if Ora was married or a parent or a daughter or a sister. Under Illinois statutes, she could have filed a claim." The court then read section 18-1.1 of the Probate Act, which provides that a spouse, parent, child, or sibling who is the caregiver for a decedent may make a claim against the estate for the services provided. 755 ILCS 5/18-1.1 (West 2012). Bryan's attorney stated, "That statute does not apply here \*\*\* because she's not a family member." The court responded, "And that's what I said. But \*\*\* it shows that the court recognizes that there are circumstances in which a person would reasonably be entitled to something."

¶ 23 The court continued:

"I've had some tough cases as a judge; this isn't one of them. She took care of your father for many, many years and was not paid. I find that any presumption of undue influence, improper conduct, or breach of fiduciary duty is overcome by clear and convincing evidence that it makes perfect sense that he would have elected to do what he did. I think that [Fred] spent his declining years cared for by someone who obviously had love and affection for him and helped him a great deal."

The court also noted that Bryan inherited Fred's house and personal effects. Although not noted in the court's ruling, the evidence showed that Bryan also inherited Fred's 1993

Jaguar and \$390 in a bank account that was in Fred's name only. On March 15, 2016, the court entered a written judgment. This appeal followed.

¶ 24 Bryan first argues that Ora did not present sufficient evidence to overcome the presumption of fraud, and that the court's finding to the contrary was against the manifest weight of the evidence. We disagree.

¶ 25 We note that Ora concedes that a fiduciary relationship existed between her and Fred at the time the transactions at issue occurred. Once a fiduciary relationship is established, any transactions between the parties that benefit the agent are presumed to be fraudulent. This is a rebuttable presumption which can be overcome with clear and convincing evidence "that the transaction was fair and equitable and did not result from the agent's undue influence over the principal." *In re Estate of Miller*, 334 Ill. App. 3d 692, 698 (2002). Relevant factors that often overcome the presumption include evidence that (1) the fiduciary agent made a full and fair disclosure of any relevant information to the principal; (2) the agent paid fair value for the property received; and (3) the principal received independent advice. *Id.*; *In re Estate of DeJarnette*, 286 Ill. App. 3d 1082, 1088 (1997). However, the evidence needed to overcome the presumption of fraud "is not determined by any fixed rule" and "depend[s] upon the circumstances of [the] case." (Internal quotation marks omitted.) *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 463 (1983). On appeal, we defer to the factual findings of the trial court, and we will reverse its decision only if those findings are against the manifest weight of the evidence. *In re Estate of Miller*, 334 Ill. App. 3d at 699.

¶ 26 Bryan argues that the court's finding was against the manifest weight of the evidence for two reasons. First, he argues that her testimony was self-serving and unsupported by other evidence. Second, he argues that Ora offered no testimony to support any of the three factors we just discussed. We are not persuaded.

¶ 27 Bryan correctly notes that a trial court might reasonably find the testimony of a beneficiary such as Ora to be self-serving and, thus, not credible. See *In re Estate of Miller*, 334 Ill. App. 3d at 698. This does not mean, however, that the court *must* find such testimony not to be credible. It is the role of the trial court to evaluate the weight of evidence, including the credibility of witness testimony. *Id.* at 699.

¶ 28 Here, Ora testified at length about her relationship with Fred and the care he needed her to provide for him during much of that relationship. She testified that she was involved in a relationship with Fred from 1976 until his death in 2014, a period of 38 years, and that she was his caregiver for much of this time, beginning in 1988. For at least the last nine years of Fred's life, he needed daily care, which Ora provided. She also testified that she obtained the change of beneficiary forms at Fred's request and opened the joint bank account to enable her to act on his behalf. Although there was no other evidence or testimony concerning the transactions themselves, much of Ora's testimony was corroborated by Bryan's testimony. Bryan's testimony that he met Ora before 1978 supports Ora's testimony concerning the length of her relationship with Fred. Bryan acknowledged that he was aware that Fred wanted Ora to have power of attorney so that she could pay his bills for him. Bryan's testimony also confirmed Ora's description of

Fred's increasing need for care and the fact that Ora provided that care. The court could properly find Ora's testimony to be credible.

¶ 29 Bryan also argues that there was no evidence of any of the three factors we identified earlier. As we noted, courts have found that the presumption of fraud can be overcome by evidence that (1) the fiduciary made a full and fair disclosure of any relevant information; (2) the agent paid fair value for the property; and (3) the principal received independent advice. See *In re Estate of DeJarnette*, 286 Ill. App. 3d at 1088. Again, we are not persuaded. We acknowledge that there was no evidence that Fred sought or received independent advice. However, we find that the record contained ample evidence that the care Ora provided to Fred over 26 years was more than adequate consideration for the benefit she received. Both Ora and Bryan testified that she provided this care without compensation. The disputed assets add up to just under \$55,000. Although neither Ora nor Bryan knew how much it would have cost to hire a caregiver to provide the same care over those years, it is inconceivable that it would have been less than \$55,000. In addition, there is nothing in the record to suggest either that Fred was unaware that any of the transactions took place or that there was any additional information that Ora had that she could have or should have imparted to Fred. Thus, we reject Bryan's claim that considering these three factors requires a different result than that reached by the trial court.

¶ 30 Moreover, we believe it is important to consider all of the circumstances involved in this case. The court emphasized in its ruling that Ora not only provided care to Fred, but that the relationship between them was one of love and affection. In light of the facts

and circumstances of this case, it was logical to infer that Fred wanted to provide for both Ora and Bryan upon his death, and that is exactly what occurred as a result of the transactions. Fred's estate was small. In addition to the two life insurance policies and the \$44,000 remaining in the joint checking account, Fred owned a house, furniture, various photographs and other mementos, a 1993 Jaguar, and at least one other bank account with a small balance. Bryan testified that the house needed some repairs and that the amount remaining on the mortgage was \$8,000 or \$9,000; however, no other evidence was introduced concerning the value of this property, all of which was inherited by Bryan. We conclude that the court's finding was supported by the evidence.

¶ 31 Bryan next argues that the two letters from Dr. Stein were not properly admitted. He contends that Ora did not authenticate the letters and that they do not fall within any recognized exception to the hearsay rule. Ora argues that the letters were admissible under three hearsay exceptions found in Illinois Rule of Evidence 803 (Ill. R. Evid. 803 (eff. Apr. 26, 2012)). The exceptions she cites provide that evidence that would otherwise be inadmissible hearsay is admissible if it is (1) a statement of the *declarant's* then-existing physical condition or state of mind (Ill. R. Evid. 803(3) (eff. Apr. 26, 2012)); (2) a statement made for the purpose of medical diagnosis or treatment (Ill. R. Evid. 803(4) (eff. Apr. 26, 2012)); or (3) a statement concerning the "[r]eputation of a person's character among associates or in the community" (Ill. R. Evid. 803(21) (eff. Apr. 26, 2012)). She does not address Bryan's arguments concerning her failure to authenticate the letters. Alternatively, Ora contends that admission of the letters constituted harmless error.

¶ 32 We agree with Bryan that the letters were admitted in error. However, we do not believe the court relied on the letters in making its ruling. The court did not refer to the letters in announcing its ruling from the bench. Moreover, the letters did little to bolster Ora's claim.

¶ 33 Significantly, neither letter addressed the transactions at issue, and there was no evidence to suggest that Dr. Stein had any personal knowledge related to these transactions. The November 2010 letter asking that Ora be excused from jury duty described several medical conditions Fred suffered from, most of which were not discussed in Ora's testimony. The letter also indicated that she was needed to provide care to Fred on a daily basis. However, neither the fact that Fred needed daily care in the last years of his life nor the fact that Ora provided that care were in dispute. As discussed earlier, Bryan himself testified to both of these facts.

¶ 34 In the condolence letter, Dr. Stein opined that Ora was a "very special person" who provided excellent care to Fred and always had his best interests at heart. While his statement that he believed Ora always had Fred's best interests at heart could be construed as evidence that Ora was unlikely to defraud Fred, we believe the context in which the statement was made was much more general. Moreover, as Bryan acknowledges, the issue was not whether Ora was a good person who deserved the funds, but rather, whether the transactions involved were fraudulent. Dr. Stein's letter did not speak to this question. We reiterate that the court did not mention, much less discuss, the letters in explaining the reasons for its decision. Because we believe the letters played no

role in the court's decision, we agree with Ora that their admission constituted harmless error.

¶ 35 Finally, Bryan argues that the court erred in relying on section 18-1.1 of the Probate Act. We are not persuaded. The court explicitly stated that it recognized that the statute did not apply.

¶ 36 We conclude that the evidence supported the trial court's decision. For this reason, we affirm the judgment of the trial court.

¶ 37 Affirmed.