2012 IL App (3d) 100646-U

Order filed January 24, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2012

ESTATE OF EDWARD AITUTIS, Deceased,	)	Appeal from the Circuit Court of the 13th Judicial Circuit, Bureau County, Illinois,
(MARLENE MISKA, Independent Administrator,	)	
Plaintiff-Appellant,	)	Appeal No. 3-10-0646 Circuit No. 06-P-18
v.	)	
JANET HUENEBERG and EDWARD ZEGLIS,	)	Honorable Scott A. Madson and Cornelius J. Hollerich,
Defendants-Appellees).	)	Judges, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justice Holdridge concurred in the judgment.
Presiding Justice Schmidt specially concurred.

ORDER

¶ 1 *Held*: Trial court properly found that defendants overcame the presumption of fraud concerning certain CDs and a checking account which named them beneficiaries. Trial court also properly found that defendants failed to overcome the presumption of fraud regarding proceeds from a CD that they did not deposit as directed by the decedent. Trial court did not err when it ordered the defendants return those funds to the Estate.

¶ 2 Plaintiff Estate of Aitutis filed a citation to discover and recover assets from defendants Janet

Hueneberg and Sandra Zeglis. The trial court denied the citation, in part, finding that the respondents had overcome the presumption of fraud regarding the majority of the conduct at issue. The trial court granted the citation, in part, finding the defendants did not overcome the presumption of fraud as to one account and ordered that money returned to the Estate. We affirm.

¶ 3 **FACTS**

¶ 4 In March 2006, plaintiff Estate of Aitutis filed citation proceedings against defendants Janet Hueneberg and Sandra Zeglis, who were nieces of decedent Edward "Bud" Aitutis, to discover assets and recover property of the Estate. In the citation, the Estate alleged that Janet and Sandra had possession of a $25,000 certificate of deposit (CD) in Mid-America Bank; a $15,137 CD and a $12,000 CD at State Bank of Speer; a $1,110 CD at Bank of Peoria/Morton Community Bank; and a $57,090 CD at National City Bank; or proceeds from the accounts. In August 2006, Janet and Sandra filed a claim against the Estate for services they provided to Bud. In December 2006, the Estate filed a motion for summary judgment. The Estate's motion was granted, in part, in regard to Janet and Sandra's claim for services. The remainder of the motion was denied.

¶ 5 Sandra died in October 2009, and her husband, Edward, was substituted as a party. For consistency, we will continue to refer to the defendants as Janet and Sandra. They filed a motion to quash the citation, which the trial court heard and denied. The Estate filed a motion to deem facts judicially admitted and to take judicial notice of other facts. This motion was premised on alleged admissions made by Janet and Sandra in their discovery depositions that the accounts were convenience accounts, established so they could pay Bud's bills and medical expenses. The Estate's motion was denied. On the morning of trial, Janet and Sandra filed a second motion to quash the citation. The trial court denied the motion, and a trial took place. The following evidence was

presented.

¶ 6 Decedent Edward "Bud" Aitutis was born and raised in Spring Valley. He moved to Peoria in 1965 or 1966. He married Hattie Cassassa in 1979, and they resided together in Peoria in a house owned by Hattie with her son, Chuck Tieber. In late 2001, Bud suffered a stroke. He thereafter appointed Chuck as his power of attorney for property. Chuck cared for Bud and Hattie, doing household chores, helping pay bills and driving Bud to doctor's appointments. He handled Bud's personal affairs until October 2004 and his financial affairs until April 2005. During this period, Bud cashed several CDs to pay for Hattie's medical and nursing home care. He remained Bud's power of attorney until March 2005.

¶ 7 In January 2004, Bud's nieces, Janet Hueneberg and Sandra Zeglis began to visit Bud at the nursing home, where he and Hattie both resided temporarily. After Bud and Hattie's release from the nursing home in mid-March 2004, Janet and Sandra began providing caretaking services to them at their house in Peoria. After Hattie re-entered the nursing home, Bud moved to the Aitutis family homestead in Spring Valley in October 2004. He owned the home prior to moving to Peoria in the 1960s and continued to maintain it. He lived alone in the homestead but had a cell phone available. Janet and Sandra began caring for him 16 to 17 hours a day. Marlene Miska, Bud's niece and administrator of his estate, never heard Bud express a desire to return to Spring Valley. Neither Chuck nor Hattie was informed of the move prior to it happening. Informing them was left to Bud's discretion. After his move to Spring Valley, Janet or Sandra would drive Bud from Spring Valley to Peoria two or three times a week to visit Hattie in the nursing home and attend doctor appointments. Hattie died on February 10, 2005.

¶ 8 Also on February 10 or 11, 2005, Bud, Janet and Sandra opened a checking account at the

Spring Valley City Bank that listed them as joint tenants with the right of survivorship. Janet used $500 of her own money to open the account. Bud accompanied Janet and Sandra to the bank, and signed the signature card and the first check drawn on the account. This account was Bud's first checking account. He had previously paid his bills with cash. On March 3, 2005, Bud executed a power of attorney (POA) for property that named Janet as his agent and Sandra as successor agent. The POA did not grant Janet the express powers to make gifts or name or change beneficiaries. Execution of the POA was witnessed by Janet's and Sandra's husbands and the document was notarized by Sandra's daughter. Bud had used an attorney when he previously executed the power of attorney naming Chuck as agent.

¶ 9 On March 7, 2005, a $25,000 certificate of deposit (CD) at the Mid-America Bank was retitledd in the names of Bud, Janet and Sandra as joint tenants with the right of survivorship. Hattie had previously been named on the account with Bud. On March 18, 2005, Bud cashed a CD he held at the Bank of Peoria/Morton Community Bank, in the amount of $1,110 and personally retained those funds. A bank officer who conducted the transaction submitted an affidavit to which the parties stipulated. The affidavit stated that Bud handled the transaction himself, and in the affiant's opinion, he was competent to do so. Also on March 18, Bud went to the doctor for severe hip pain he was experiencing. The doctor's affidavit stated that Bud was mentally competent and strong-willed. On March 31, 2005, Bud added Janet and Sandra as payable on death (POD) beneficiaries to a CD in the amount of $47,090 he held at National City Bank in Peoria. The prior POD beneficiary was Bud's brother, Leonard, who had died in September 2002. Bud knew that there was no beneficiary named on the CD. For some period of time, Bud was unaware of where this CD was located, but requested on March 31 to travel to Peoria to retitle it. At the bank, Bud told Janet that

he knew who was caring for him.

¶ 10 Bud entered the hospital on April 1, 2005, for severe hip pain and was diagnosed with metastasized lung cancer. On April 11, 2005, Janet used her power of attorney to cash two CDs Bud held at the State Bank of Speer. These actions were taken at Bud's direction. One CD was valued at $15,137, and also named Lucille Van Cauwenberger, Bud's sister, as joint tenant with right of survivorship. The second CD, valued at $12,000, named Beverly Aitutis, the widow of Bud's brother Leonard, as joint tenant with right of survivorship. Bud intended that all the funds from the CDs be deposited into the Spring Valley checking account. On April 23, acting as trustee for Janet, and without Bud's knowledge and contrary to his direction, Sandra opened three $5,000 CDs in Janet's name, using the proceeds of the $15,000 Speer CD. One of these $5,000 CDs was cashed at maturity and the proceeds deposited into the joint checking account. The other two CDs were rolled over. The $12,000 Speer CD was redeemed, and the proceeds were deposited into the joint checking account, consistent with Bud's directions.

¶ 11 When Bud was released from the hospital at the end of April 2005, he stayed at Janet's home, where she and Sandra provided 24-hour care until his death on May 25, 2005. No other family members, besides Janet's and Sandra's husbands, helped with Bud's care. Following Bud's death, Lucille discovered that the Speer CD#1 was gone and Marlene began investigating his finances. Janet's husband informed her that the CDs were redeemed to pay bills. He did not mention Bud making any gifts. The proceeds of the National City CD passed equally to Janet and Sandra upon Bud's death. As joint beneficiaries of the Mid-America CD, Janet and Sandra cashed it in July 2005, splitting the proceeds. The remaining funds in the checking account also reverted to Janet and Sandra as joint tenants. They used $3,000 of the funds in the checking account to pay their attorney fees.

¶ 12 The trial court made oral findings on May 10, 2010, denying the Estate's citation for recovery of assets but reserving ruling on the Speer CDs. The trial court made additional oral findings on June 11, 2010, and denied the Estate's motion for judgment as a matter of law. The trial court found that Janet and Sandra overcame the presumption of fraud with clear and convincing evidence regarding Bud's accounts; there was no evidence of overreaching on Janet and Sandra's part; the CDs in their names were part of Bud's testamentary plan or practice; Bud was aware of the implications of a joint tenancy and payable on death account; and the CDs and accounts were not convenience accounts.

¶ 13 Regarding the specific accounts, the trial court found as follows. The Spring Valley Bank checking account was opened with testamentary purpose and used to pay Bud's expenses. The Mid-America National Bank CD was changed under Bud's direction without any evidence of overreaching. The Morton Community Bank CD was cashed by Bud in person and the funds used by him personally. The National City Bank CD had been without a named POD beneficiary since 2002, which Bud was aware. The $12,000 CD at Speer State Bank was cashed and the funds deposited into the checking account per Bud's direction. The $15,000 CD at Speer State Bank was placed into three $5,000 CDs, despite Bud's direction to put the money in the checking account. Because one $5,000 CD was placed in the checking account on its maturity, the transaction was in accord with Bud's direction. Because the other two $5,000 CDs were opened contrary to Bud's direction, Janet and Sandra were required to pay $10,000, with interest, to the Estate. A written order was entered in August 2010 incorporating the oral findings. The Estate appealed.

¶ 14 **ANALYSIS**

¶ 15 On appeal, the issues are whether the trial court erred in finding that the Power of Attorney Act was not violated and that none of the accounts were convenience accounts, and in determining that Janet and Sandra overcame the presumption of fraud.

¶ 16 The first issue is whether the trial court erred when it found that Janet did not violate the Power of Attorney Act (755 ILCS 45/1-1 *et seq.* (West 2004)). The Estate argues that Janet acted outside the scope of her authority as power of attorney when she transferred the Speer CDs.

¶ 17 Section 4-3 of the Power of Attorney Act sets forth powers granted to the agent under a statutory short form power of attorney for properly and expressly limits the agent's power under the statutory categories:

> "to make gifts of the principal's property, to exercise powers to appoint to others or to change any beneficiary whom the principal has designated to take the principal's interests at death under any will, trust, joint tenancy, beneficiary form or contractual arrangement." 755 ILCS 45/3-4 (West 2004).

¶ 18 When construing a statute, we give its language its plain and ordinary meaning. *Fandel v. Allen*, 398 Ill. App. 3d 177, 179 (2010). When the statute's language is clear and unambiguous, the court should not read into it exceptions, limitation or conditions that the legislature did not express. *Fandel*, 398 Ill. App. 3d at 179. This court reviews issues of statutory construction *de novo*. *Fandel*, 398 Ill. App. 3d at 180.

¶ 19 The Estate contends that the trial court should have ordered the $12,000 Speer CD and the entirety of the $15,000 Speer CD returned to the Estate. According to the Estate, Janet and Sandra

lacked the authority to make gifts or change beneficiaries under the POA, which it alleges they did when redeeming the Speer CDs. The Estate further contends that the trial court should have followed *Estate of Romanowski*, 329 Ill. App. 3d 769 (2002), and *Fort Dearborn Life Insurance Co. v. Holcomb*, 316 Ill. App. 3d 485 (2000), to conclude Janet and Sandra exceeded their authority as powers of attorney.

¶ 20 In *Romanowski*, the decedent named her daughter POA; the POA did not include any specific limitations or expansions. *Romanowski*, 329 Ill. App. 3d 771. Acting under the POA, the daughter created a trust and conveyed a building her mother owned into the trust, naming her mother as beneficiary and herself and her daughter as contingent beneficiaries. *Romanowski*, 329 Ill. App. 3d at 772. After her mother died, the agent daughter sold the building and split the proceeds with her own daughter, the co-contingent beneficiary. *Romanowski*, 329 Ill. App. 3d at 772. Although finding the argument waived, the trial court proceeded to determine that the agent daughter had exceeded her powers under the POA because it did not expressly authorize her to change beneficiaries. *Romanowski*, 329 Ill. App. 3d at 775.

¶ 21 In *Fort Dearborn*, at issue was whether the POA was governed by the short form or the durable power of attorney statute. *Fort Dearborn*, 316 Ill. App. 3d at 490. Having determined that the short form rules applied to the POA, the reviewing court found that the principal's failure to include a paragraph granting the agent additional powers, such as the power to change beneficiaries, indicated his intent that the agent not be granted those powers. *Fort Dearborn*, 316 Ill. App. 3d at 496.

¶ 22 The trial court distinguished *Romanowski*, where the principal was unaware of the agent's actions and did not direct them. *Romanowski*, 329 Ill. App. 3d at 772. The trial court found that Bud

was aware of, and directed, the transactions. *Romanowski*, 329 Ill. App. 3d at 772. Similarly, in *Fort Dearborn*, the agent made beneficiary changes without the principal's knowledge and against his expressed wishes. *Fort Dearborn*, 316 Ill. App. 3d at 488. Here, as discussed above, the Speer CDs were redeemed at Bud's direction and with his knowledge. *Romanowski* and *Fort Dearborn* do not compel a different result.

¶ 23 The Estate complains that the only evidence of Bud's supposed intentions regarding the Speer CDs came from Janet, which the trial court acknowledged. The Estate contends that because Janet is an interested party, her testimony must be considered with suspicion. The trial court expressly stated that it found Janet to be a credible witness, even admitting actions that were detrimental to her position. The trial court was in the best position to assess the credibility of witnesses and determine the weight to give their testimony. *Buckner v. Causey*, 311 Ill. App. 3d 139, 144 (1999). We will not disturb its determination.

¶ 24 The POA at issue in this case does not grant to Janet or Sandra the power "to change any beneficiary whom the principal has designated to take the principal's interests at death under any *** joint tenancy [or] beneficiary form." 755 ILCS 45/3-4 (West 2004). If they had changed any beneficiary contrary to the terms of the POA, the transactions would have been void and the Estate would be entitled to recover the proceeds. However, unlike in *Romanowski*, Janet and Sandra did not change any beneficiary that was entitled to the CD proceeds at Bud's death. The Speer CDs about which the Estate complains were cashed in at Bud's request to pay his medical bills. He directed Janet and Sandra to put the proceeds from both CDs into the Spring Valley joint checking account. They followed his directions regarding the $12,000 CD, depositing its proceeds in the checking account. They acted at Bud's bequest, not under their powers of attorney.

¶ 25 The trial court found that the $12,000 was cashed and deposited into the checking account at Bud's direction and with his knowledge. We agree with its finding that Janet and Sandra did not exceed their statutory powers under the POA or violate the POA Act regarding the $12,000 CD. The trial court's reasoning applied similarly in its determination that neither Janet nor Sandra exceeded their authority as POAs regarding the $15,000 CD. The CD was cashed at Bud's direction. While Janet and Sandra thereafter acted contrary to Bud's wishes in failing to deposit the proceeds into the Spring Valley checking account, we find that they did not exceed their authority under the POA in redeeming the CD.

¶ 26 We next consider whether the trial court erred in finding that none of the CDs or the checking account was convenience accounts. The Estate argues that the trial court erred when it failed to apply the presumption of a convenience account, in not treating Janet's and Sandra's deposition statements as judicial admissions, and in not granting its motion for judgment as a matter of law based on other statements made by Janet and Sandra that the CDs and joint checking account were convenience accounts. Because these are questions of law, our review is *de novo*. *Eychaner v. Gross*, 202 Ill. 2d 228, 252 (2002).

¶ 27 A convenience account is an account held in some form of joint tenancy where "the creator did not intend the other tenant to have any interest, present or future, but had some other intent in creating the account." *In re Estate of Harms*, 236 Ill. App. 3d 630, 634 (1992). A joint account is one where "the creator does not intend the other tenant to have any present interest, but does intend the other tenant to have the account on the creator's death." *Harms*, 236 Ill. App. 3d at 634. A joint account is often used as a form of testamentary disposition and is not a convenience account. *Harms*, 236 Ill. App. 3d at 635. 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 binds a party and may not be contradicted. *Rennick*, 181 Ill. 2d at 406.

¶ 28 The Estate contends that the trial court failed to apply the presumption of a convenience account. The evidence supports the trial court's determination that the checking account and CDs were not convenience accounts but were intended as testamentary dispositions. Bud had a history of setting up CDs in joint tenancy with right of survivorship or payable on death. He was aware of the implications. He told Janet that he wanted her and Sandra to have anything left in the accounts after his death, stating he knew who was providing him care. He made one account a POD account, which reinforces his testamentary intent. Similarly, while the checking account made paying Bud's expenses convenient for Janet and Sandra, there was no evidence that Bud did not understand the proceeds would go to Janet and Sandra at his death. He signed the signature card for the account and the first check drawn on the account.

¶ 29 The Estate submits that Janet's and Sandra's descriptions that the accounts were established so that they could pay Bud's bills, medical expenses and funeral costs constitute binding judicial admissions. The Estate is incorrect. Janet and Sandra were expressing their views on why they were included on the accounts. Their statements were not deliberate, clear and unequivocal about a known fact. Janet testified that she did not understand what constituted a convenience account. Bud appeared to have known the implications of various means of titling accounts and his intent is determinative. Furthermore, admissions regarding conclusions of law are not binding on parties. *J.P. Morgan Chase Bank v. Earth Foods, Inc.*, 238 Ill. 2d 455, 475 (2010) (court determines legal effect of facts presented). We find the trial court did not err in rejecting the Estate's claim that

Janet's and Sandra's statements were binding judicial admissions.

¶ 30 The Estate further submits that if Janet's and Sandra's statements were not deliberate, clear and unequivocal judicial admissions, they were insufficient to overcome the presumption of fraud that attached as a result of their fiduciary positions to the transactions regarding all the accounts which were changed to benefit them. The Estate maintains that it should have been granted judgment as a matter of law. It relies on *Estate of Skinner*, 111 Ill. App. 2d 267 (1969), and *Estate of Heilman*, 37 Ill. App. 3d 390 (1976) for support. In *Skinner*, the reviewing court instructed that where a fiduciary relationship exists between donor and donee, the donee must prove donative intent by clear and convincing evidence. *Skinner*, 111 Ill. App. 2d at 277. In *Heilman*, the court stated that when one is in a fiduciary position, a purported gift is presumed fraudulent and the donee has the burden of establishing the absence of fraud by clear and convincing evidence. *Heilman*, 37 Ill. App. 3d at 395. In both *Skinner* and *Heilman*, the reviewing courts found that the donees failed to prove by clear and convincing evidence that a gift was intended or to overcome the presumption of fraud. *Skinner*, 111 Ill. App. 2d at 280; *Heilman*, 37 Ill. App. 3d at 397-8. Here, as discussed below, the trial court found, in part, that Janet and Sandra overcame the presumption of fraud. We find it did not err in denying the Estate's motion for judgment as a matter of law.

¶ 31 The third issue is whether the trial court erred in determining that Janet and Sandra overcame the presumption of fraud. The Estate argues the trial court erred in applying an "actual fraud standard" and the evidence does not support the trial court's finding that Janet and Sandra rebutted the presumption of fraud by clear and convincing evidence.

¶ 32 A fiduciary relationship arises from a power of attorney as a matter of law. *Pottinger v. Pottinger*, 238 Ill. App. 3d 908, 918 (1992). When a fiduciary relationship is involved, a

presumption exists that a transaction between the principal and agent from which the agent benefits is presumed fraudulent. *Pottinger*, 238 Ill. App. 3d at 918. The agent must prove by clear and convincing evidence that the transaction was fair and did not result from undue influence. *Pottinger*, 238 Ill. App. 3d at 918-19. The presumption of fraud is a "bursting-bubble" presumption, meaning that once evidence is introduced contrary to the presumption, it disappears. *Franciscan Sisters Health Care Corp. v. Dean*, 95 Ill. 2d 452, 462 (1983). In determining whether a fiduciary rebutted the presumption of fraud, a court considers (1) whether the fiduciary demonstrated that all relevant information was disclosed to the principal before the transaction; (2) whether the fiduciary paid adequate consideration; and (3) whether the principal had competent and independent legal advice. *Estate of Teall*, 329 Ill. App. 3d 83, 88 (2002). This court will not reverse a trial court's factual findings unless they are against the manifest weight of the evidence. *Estate of Miller*, 334 Ill. App. 3d 692, 699 (2002).

¶ 33 The Estate challenges the standard used by the trial court, arguing that the proper standard was "undue influence" rather than "actual fraud" it claims the trial court applied. We consider the trial court's analysis to incorporate both concepts, as is suitable when determining whether a party rebutted a presumption of fraud. *Miller*, 334 Ill. App 3d at 698 (presumption may be rebutted with proof "by clear and convincing evidence that the transaction *** did not result from the agent's undue influence"). The trial court expressly found that Janet and Sandra did not overreach or unduly influence Bud. He was mentally capable, and by all accounts, willing to express his wishes. There was no evidence presented that the assistance provided to Bud by Janet and Sandra was done for any reason except devotion to their uncle. Janet and Sandra did not isolate Bud. Rather, they made multiple trips to Peoria for Bud, particularly during Hattie's stay at the nursing home. They also took

Bud to his doctors' appointments. They traveled to Peoria many times without stopping at a bank. Janet testified they did not suggest Bud change his accounts. They cared for him because he was a member of their family.

¶ 34 The trial court considered that the *Teall* factors were not applicable under the instant facts and circumstances, but made findings. The first factor, whether relevant information was disclosed by the fiduciary to the principal, the trial court found that in all the transactions, except one Speer Bank CD, Janet and Sandra acted at Bud's request and direction. The second factor, consideration, is not at issue. Regarding the third factor, the trial court found that Bud had prior legal advice when executing the POA to Chuck, knew what he was doing, and did not need independent legal advice, a finding it supporting by reference to undisputed testimony that Bud was frugal. Its findings under *Teall* were not against the manifest weight of the evidence.

¶ 35 The trial court found that Janet and Sandra rebutted the presumption of fraud by clear and convincing evidence. It noted that the change in title on the CDs and establishment of the new accounts were part of Bud's testimonial plan and were done at his direction. Bud died without a will and the joint tenancies and POD accounts were established presumably to avoid probate. There was no issue of Bud's competence; all the evidence reflected that he was mentally sound until his death. He participated in opening the Spring Valley City Bank checking account. The checking account was used only for Bud's expenses. He signed the signature card granting Janet and Sandra joint tenancy with right of survivorship. From his past experience with his financial affairs, Bud knew he was making a testamentary disposition and that any remainder in the account at his death would go to Janet and Sandra as joint tenants. Janet testified that Bud told her he wanted her and Sandra to keep the leftover funds and that he could do what he wanted to do with his money.

¶ 36 The Morton Community Bank CD was cashed and used solely by Bud. Bud was aware that there was no joint tenant named on the CD at National City Bank. He added Janet and Sandra as POD beneficiaries, an intentional testamentary disposition. Bud changed the Mid-America CD in Peoria to remove Hattie's name as joint tenant after her death. He added Janet and Sandra as joint tenants. The trip to the bank was initiated by Bud and Bud handled the transaction by himself. He told Janet that he could do what he wanted with his own money. The $12,000 Speer CD was cashed and deposited into the Spring Valley checking account at Bud's direction. A $5,000 of the $15,000 Speer CD was ultimately deposited into the checking account also in accordance with Bud's wishes. We find the trial court's determination that Janet and Sandra overcame the presumption of fraud regarding these transactions was not against the manifest weight of the evidence.

¶ 37 The trial court also found that Janet and Sandra did not overcome the presumption of fraud as to a $10,000 portion of the $15,000 Speer CD. The CD was cashed at Bud's direction but Janet and Sandra failed to put the proceeds in the Spring Valley checking account as Bud instructed. Rather, they purchased three $5,000 CDs. When the first one matured, it was cashed and the proceeds placed in the checking account. Because Janet and Sandra ultimately complied with Bud's directions regarding $5,000, the trial court did not err when it found that they overcame the presumption of fraud as to that portion of the initial $15,000 CD. However, Janet and Sandra "rolled over" the two remaining $5,00 CDs and failed to deposit them in the Spring Valley checking account as Bud had instructed them. We acknowledge, like the trial court, that had they deposited the proceeds into the checking account, they would have received the funds as joint tenants on the account. However, because they never complied with Bud's directions as to the remaining $10,000, we find that the trial court's determination that Janet and Sandra did not overcome the presumption

of fraud as to this portion of the initial $15,000 CD was not against the manifest weight of the evidence. It properly ordered that Janet and Sandra turn the proceeds to the Estate.

¶ 38 For the foregoing reasons, the judgment of the circuit court of Bureau County is affirmed.

¶ 39 Affirmed.

¶ 40 PRESIDING JUSTICE SCHMIDT, specially concurring:

¶ 41 The only issues raised on appeal were those raised by independent administrator, Marlene Miska. For reasons that escape me, in the second and third sentences of paragraph 1, the majority makes reference to an issue not raised on appeal. Then, in paragraph 37, the majority decides an issue not raised on appeal.

¶ 42 Since I do agree that the trial court should be affirmed on the issues that were raised on appeal, I concur in the judgment.