

FIFTH DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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Case No. 5D2023-2156  
LT Case No. 2021-CP-2344

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GEORGE W. LEITNER, III, as  
PERSONAL REPRESENTATIVE of  
the ESTATE of JULIA WILLIAMS  
LEITNER,

Appellant,

v.

PHILLIP M. LEITNER,

Appellee.

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On appeal from the Circuit Court for Marion County.  
Kristie M. Healis, Judge.

Nikie Popovich, of Popovich Law Firm P.A., Orlando, for  
Appellant.

Patrick John McGinley, of Law Office of Patrick John McGinley,  
P.A., Winter Park, and Kali Brianne Strauss Lourenco, of  
Strauss Law, P.A., Ocala, for Appellee.

August 2, 2024

KILBANE, J.

George W. Leitner, III, as personal representative of the  
estate of Julia Williams Leitner, appeals an order of the trial court

granting Philip M. Leitner's motion for partial summary judgment. In granting Philip's motion, the order on appeal further granted final judgment and disposed of all claims concerning George's consolidated civil action, lower court case number 2021-1862-CA, wherein George alleged that Philip obtained a 2016 warranty deed through undue influence. On appeal, George argues that there was sufficient evidence presented to raise the presumption of undue influence regarding the 2016 warranty deed and preclude the entry of summary judgment. We agree and reverse.<sup>1</sup>

### **Facts**

In June 2021, Julia Leitner ("Grantor"), a widow, died testate at the age of one hundred. She has two living adult children, George and Philip. Per her 2016 last will and testament, Julia appointed George as her personal representative. George filed a petition for administration upon his mother's death.

Per the 2016 will, Grantor's roughly 70 acres of real property, including her house, was to be given to the Leitner Family Limited Partnership or to George. However, shortly after the execution of the 2016 will, Grantor deeded the 70-acre real property to Philip, via a warranty deed for ten dollars (the "Deed"). Attorney Jose Moreno prepared the Deed, signed it as a witness, notarized it, and kept it in the safe at his office.

Philip filed a motion for partial summary judgment explaining that Grantor deeded the property that was the subject of the 2016 will to him. George opposed Philip's motion arguing that there were sufficient facts to establish the presumption of undue influence.

Philip supported his motion with various deposition transcripts including his own and that of attorney Moreno. In his deposition, Philip discussed the devolving situation with George.

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<sup>1</sup> Because the order on appeal entered final judgment and disposed of all claims in lower court case number 2021-1862-CA, it functioned as a partial final judgment, and we have jurisdiction. See Fla. R. App. P. 9.030(b)(1)(A); 9.110(k); 9.170(b)(12).

Philip believed George was scheming to have him disinherited. As a result, Philip drove over to Grantor's house while George was at church. He asked Grantor who was supposed to inherit the property, and she told Philip that it was supposed to go to him. After having that conversation with Grantor, Philip contacted attorney Moreno "about what could be done to protect the interest of what [his] mom's wishes were." Attorney Moreno recommended having Grantor deed him the property.

Then, George dropped Grantor off at Philip's house for a week so Philip could look after her. Philip instructed attorney Moreno to come over and discuss creating the Deed with Grantor. According to Philip, he was present for all meetings where the Deed was discussed, and the Deed was signed at his home. The two witnesses who signed the Deed were Attorney Moreno and one of his employees. Attorney Moreno kept the Deed in his safe but was instructed not to record the Deed right away as not to alert George to its execution. After Grantor's death, Philip contacted attorney Moreno and instructed him to record the Deed. Philip paid attorney Moreno for his services regarding the Deed.

Attorney Moreno in his deposition disputed Philip's version of events. He confirmed that he went over to Philip's home to discuss creating the Deed. However, he claimed that Philip was not present when he met with Grantor, and he never discussed the Deed with Philip prior to its execution. He further claimed that Grantor paid for his services, not Philip.

The trial court entered an order granting Philip's motion for partial summary judgment. Despite acknowledging the existence of some of the factors identified in *In re Estate of Carpenter*, 253 So. 2d 697 (Fla. 1971), the court found there was not enough evidence "when weighed with all the other evidence to raise the presumption of undue influence." In doing so, the court accepted attorney Moreno's version of events and found that Philip was not present when attorney Moreno and Grantor discussed creating the Deed.

## Analysis

We review a trial court's order granting summary judgment de novo. *Volusia County v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000). "The trial court must view all evidence in the light most favorable to the nonmoving party and draw all reasonable inferences in its favor." *Pial Holdings, LTD v. Riverfront Plaza, LLC*, 379 So. 3d 547, 551 (Fla. 6th DCA 2024) (citing *Newcomb v. Spring Creek Cooler Inc.*, 926 F.3d 709, 713 (11th Cir. 2019)). "[A] genuine dispute occurs when the evidence would allow a reasonable jury to return a verdict for that party." *Welch v. CHLN, Inc.*, 357 So. 3d 1277, 1278 (Fla. 5th DCA 2023) (citing *Baum v. Becker & Poliakoff, P.A.*, 351 So. 3d 185, 189 (Fla. 5th DCA 2022); *Ibarra v. Ross Dress for Less, Inc.*, 350 So. 3d 465, 467 (Fla. 3d DCA 2022)).

Where a substantial beneficiary of a deed occupies a confidential relationship with the grantor and is active in procuring the contested deed, the presumption of undue influence arises. *See Carpenter*, 253 So. 2d at 701 (citing *Zinnser v. Gregory*, 77 So. 2d 611 (Fla. 1955)); *see also Ballard v. Ballard*, 549 So. 2d 1176, 1177–78 (Fla. 2d DCA 1989) (extending *Carpenter* to deeds).

The Florida Supreme Court has established a set of non-exhaustive factors for courts to consider on the issue of undue influence or active procurement:

- (a) presence of the beneficiary at the execution of the [deed];
- (b) presence of the beneficiary on those occasions when the [grantor] expressed a desire to make a [deed];
- (c) recommendation by the beneficiary of an attorney to draw the [deed];
- (d) knowledge of the contents of the [deed] by the beneficiary prior to execution;
- (e) giving of instructions on preparation of the [deed] by the beneficiary to the attorney drawing the [deed];

(f) securing of witnesses to the [deed] by the beneficiary;  
and

(g) safekeeping of the [deed] by the beneficiary  
subsequent to execution.

*Blinn v. Carlman*, 159 So. 3d 390, 391 (Fla. 4th DCA 2015) (citing *Carpenter*, 253 So. 2d at 702).

A party is not required to prove the existence of all *Carpenter* factors as “it will be the rare case in which all the criteria will be present.” *Carpenter*, 253 So. 2d at 702. Moreover,

where there is evidence supporting the existence of a rebuttable presumption with respect to a material issue and the moving party bears the burden of disproving the presumed fact, the moving party is precluded from obtaining summary judgment. Determining whether such a presumption has been rebutted requires a “weighing [of] the available evidence against the presumption,” which cannot appropriately be undertaken in summary judgment proceedings.

*RBC Ministries v. Tompkins*, 974 So. 2d 569, 571 (Fla. 2d DCA 2008) (alteration in original) (quoting *In re Est. of Short*, 620 So. 2d 1106, 1106 (Fla. 4th DCA 1993)). In other words, “once the presumption arises, the undue influence issue cannot be determined in a summary judgment proceeding.” *Allen v. Dutton’s Est.*, 394 So. 2d 132, 135 (Fla. 5th DCA 1980) (citing *In Re Knight’s Est.*, 108 So. 2d 629 (Fla. 1st DCA 1959)).

Here, it is clear from the record that Philip is a substantial beneficiary of the Deed and occupied a confidential relationship with Grantor. Furthermore, Philip testified in his deposition that (a) he was present for the signing of the Deed; (b) he was present when Grantor and attorney Moreno discussed creating the Deed; (c) he recommended attorney Moreno to handle the matter; and (d) he discussed the creation of the deed with attorney Moreno prior to its execution. Furthermore, by hiring and recommending attorney Moreno, Philip also had a hand in securing both witnesses

who signed the Deed. These facts are sufficient to raise the presumption of undue influence.

Although attorney Moreno disputed some of these facts, the trial court could not, at the summary judgment stage, accept attorney Moreno's testimony over Philip's. "While no longer an absolute prohibition—depending on the nature of the evidence—the general rule remains intact: credibility determinations and weighing the evidence 'are jury functions, not those of a judge,' when ruling on a motion for summary judgment." *Gracia v. Sec. First Ins. Co.*, 347 So. 3d 479, 482 (Fla. 5th DCA 2022) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986)). "Only when the record evidence blatantly contradicts a litigant's version of the facts will a court be allowed to weigh conflicting evidence or determine the credibility of a witness." *Id.* at 482 n.1 (citing *Scott v. Harris*, 550 U.S. 372, 380 (2007)).

### **Conclusion**

Because evidence supporting the existence of a rebuttable presumption of undue influence existed, Philip was precluded from obtaining summary judgment. *See RBC Ministries*, 974 So. 2d at 571. Accordingly, we reverse the trial court's order and remand for further proceedings.

REVERSED and REMANDED.

WALLIS and MACIVER, JJ., concur.

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*Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.*

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