REL: March 22, 2019

SUPREME COURT OF ALABAMA

OCTOBER TERM, 2018-2019

1170490

Teresa Elizabeth Mitchell and Steve E. Allen, as personal representatives of the Estate of Gayron E. Brooks, deceased

v.

David A. Brooks

Appeal from Marshall Circuit Court
(CV-16-900251)

MITCHELL, Justice.

This case contests the validity of a property deed that was executed by Gayron E. Brooks in the weeks before her death from lung cancer. The deed conveyed her house in Boaz to her

husband of 18 years, David A. Brooks. Following Gayron's death, her adult children, Teresa Elizabeth Mitchell and Steve E. Allen, as personal representatives of Gayron's estate, sued David in the Marshall Circuit Court. Teresa and Steve alleged, among other things, that David held a dominant position over Gayron and that he had unduly influenced her to sign the deed.

After a four-day nonjury trial, the trial court entered a judgment in favor of David. This appeal followed. For the reasons discussed below, we affirm the judgment.

Facts and Procedural History

Teresa and Steve are Gayron's only children, both from her first marriage. In April 1996 -- some time after her first marriage had ended -- Gayron purchased a house and approximately nine acres in Boaz that she titled solely in her name. Gayron thereafter used the Boaz house as her primary residence.

On April 11, 1997, Gayron married David. They thereafter resided in the Boaz house together until Gayron's death. A prenuptial agreement executed by Gayron and David provided that all real or personal property owned by either party

before the marriage was to remain his or her separate property. The prenuptial agreement also specifically provided that the parties did not intend for the agreement "to limit or restrict in any way the right and power to receive any such transfer or conveyance from the other."

In January 2001, Gayron executed a will giving David the right to live in the Boaz house following her death until such time as he remarried or otherwise began living with another woman; at that time, or upon David's death, the Boaz house would become the property of Teresa and Steve. In November 2007, Gayron had a different attorney prepare a draft of a new will that contained a substantially similar provision, giving David a limited right to live in the Boaz house following her death. Gayron, however, never executed that will.

On May 14, 2015, Gayron was diagnosed with end-stage lung cancer and given a prognosis of approximately six months to live. She elected not to pursue traditional chemotherapy and radiation treatments and instead pursued alternative treatments at a clinic in Mexico. She also began estate planning in earnest and decided to sell the successful mulch business that she owned and at which David worked. In

approximately July 2015, David located a buyer willing to pay $1,425,000 for the business. Gayron, however, decided instead to sell the business to Steve for $1,000,000, to be paid in monthly installments. David testified that it was around this same time that Gayron separately told both Steve and him that David would receive the Boaz house after her death.[1]

On July 27, 2015, Gayron, upon the recommendation of her accountant Jerry Rowe, met with Charles Hare, an attorney who had previously assisted her with legal matters related to the mulch business. Hare testified that Gayron told him at that meeting that she wanted to execute a new will but that she did not know yet what dispositions she wanted to make. Ultimately, Hare stated, they agreed that Gayron would revoke the January 2001 will that day -- which she did -- and that she would finalize and execute a new will after she returned from an upcoming trip to Mexico.

Gayron met with Hare again in mid-September 2015. Rowe, David, and Steve were also at this meeting. Both Hare and Rowe testified at trial that Gayron stated during this meeting

[1]Steve acknowledged that at some point he told David that Gayron wanted David to have the Boaz house, but he testified that he did so just to "get [David] off my back."

that she wanted David to have the Boaz house. They both stated, however, that Gayron still was not ready to finalize her estate arrangements. Hare testified that in all of his conversations with Gayron she consistently said that "she wanted to be fair to David" but that she did not want her assets to eventually go to his children from a previous marriage. Hare also testified that Gayron generally did not like to talk about estate planning when David was present and that, when David was around, she would steer the conversation toward business matters.

Teresa testified that, around this same mid-September time frame, she was also having discussions with Gayron about Gayron's estate planning and that Gayron would sometimes instruct Teresa to write notes regarding their conversations. Teresa stated that at other times she would write notes of her own accord following her discussions with Gayron. In one undated note, which Teresa said was written during this time frame and which Teresa captioned, "Notes from Teresa to Mom," Teresa wrote: "If David is going to get the house (& land it sits on) please have it put in writing that Steve or I get first chance at buying it if he decides to sell it." In

another undated note, which Teresa said was written at this same approximate time, Teresa wrote: "Mom said if David gets home you get 17 acres deeded to you."[2] Yet another note, which Teresa remembered writing during this time at Gayron's direction, stated: "Mom wants David to have: 1. House & land it sits on [and] 2. Land on Legion Rd (16+ acres)." In a final note, which Teresa stated was probably written closer to the end of September, Teresa wrote that David had told Gayron that he did not want the Boaz house because of the upkeep associated with the property; that Gayron was relieved and had stated that she would instead give the house to Teresa; and that David was satisfied with her giving the house to Teresa. At trial, David denied ever telling Gayron that he did not want the Boaz house.

Beginning in September 2015, Gayron started receiving in-home visits from hospice. Hospice records from this period show that Gayron repeatedly expressed agitation regarding her estate planning and the discord it was causing within her family. On September 28, 2015, Gayron discussed her concerns with Amanda Hollingsworth, a hospice social worker, during a

[2]Gayron and David owned a 17-acre parcel of property adjacent to the 9-acre parcel on which the Boaz house sat.

private meeting. Hollingsworth's notes from that meeting indicate that Gayron was worried about what she was going to do with her estate and whether she was going "to ruin her family by leaving them the amount of money that she would be leaving them." Hollingsworth further noted that Gayron stated that "she did not mind that her husband have the house, but she did not want him to have all the land." Hollingsworth wrote that she encouraged Gayron to speak with an attorney. Gayron told Hollingsworth that she would be meeting with Hare soon.

Subsequently, on October 1, 2015, Gayron went to Hare's office with Teresa and Steve to finalize a new will. Hare testified that they talked about her assets and that Gayron again expressed that she wanted to take care of David but that she did not want her assets ultimately to go to David's children. Hare testified that, after much discussion about the Boaz house, Gayron eventually decided that she would let David live in the house for one year after her death and that Teresa and Steve would take ownership of the house after the expiration of that one-year period.[3] In accordance with

[3]Hare also noted that, at one point, he and another attorney in his law firm met with Gayron away from Teresa and

Gayron's desire, Hare prepared a will providing that, upon Gayron's death, David would receive "the right to live in and enjoy [the Boaz house] for a period of one (1) year after [Gayron's] death," so long as he agreed to pay the necessary taxes and insurance premiums and to reasonably maintain the property during that year. Gayron executed the new will that same day.

Hare, Teresa, and Steve all testified at trial that Gayron became emotional after executing the new will and that she did not want to go home to David but wished to check into the hospice facility.[4] Teresa accordingly took Gayron to the hospice facility, where Gayron was admitted. Hospice records indicate that Gayron told Hollingsworth at that time that she had changed her will and that she was afraid that David would be upset when he found out. Gayron explained to Hollingsworth that she just wanted to "stay for a few days to allow him to calm down." Gayron also told Hollingsworth that she did not

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Steve. Hare stated that Gayron told them during that meeting that Teresa and Steve were not pressuring her to leave them assets and that they had accompanied her to Hare's office only to assist with communication because her voice was weak.

[4]Gayron had previously been admitted to the hospice facility for a brief stay on September 23, 2015.

want David to visit but that he could receive information about her condition.

Notwithstanding Gayron's desire to avoid speaking with David, Hollingsworth encouraged Gayron to let David know that she was all right. David testified that Gayron, in fact, telephoned him later that night and told him that she had been to see Hare and that she was at the hospice facility. Gayron eventually allowed David to visit, and, on October 6, 2015, she was discharged and David took her home. David testified that he did not thereafter attempt to discuss with Gayron her October 1 meeting with Hare because he assumed any changes she had made to her estate plan were in accordance with her previously expressed wishes, including her alleged desire for him to receive the Boaz house.

For the next month, David continued to care for Gayron at their home, administering her various medications and assisting her with meals and other aspects of daily living. Hospice personnel continued to make regular home visits at least weekly, and their records contain no indication that David mistreated Gayron. One nurse who regularly visited, in fact, testified that David was an "excellent" caregiver.

Throughout October, Gayron's condition was relatively stable and the discord within the family lessened to some degree.

On the night of November 4, 2015, however, Teresa and Steve visited Gayron and David and an argument ensued. At trial, Teresa acknowledged that she was upset with David that night and that Gayron, at some point during the argument, defended David, saying that he had been good to her. David testified that, after Teresa and Steve left, Gayron was still emotional and that she eventually volunteered to him that he was not going to like what was in her will. David stated that, when he asked Gayron what she meant, she told him for the first time that he was not getting the Boaz house. He then stated that he told her that he thought she wanted him to have the house and that she replied that she did.

The next day, November 5, 2015, David contacted a local attorney, George Barnett, to talk about, as David described it in an affidavit, "Gayron having made a will that did not reflect what she had stated on several occasions were her intentions of giving me the house." Barnett advised David that, if Gayron wished to leave him the Boaz house but her will did not reflect that wish, she could transfer the house

to him by deed instead. Barnett advised David to discuss that possibility with Gayron. David stated that Gayron agreed that she wanted to transfer the Boaz house to him by deed and told him to have Barnett make the necessary arrangements.

On November 7, 2015, Steve was visiting Gayron and David when Gayron began writing out a list of how she wanted things handled after her death. On that list, she included the names of potential pallbearers as well as songs she wanted sung at her funeral. She also made three columns -- one each for David, Teresa, and Steve -- and listed property she presumably wanted each of them to have after her death. The items in Teresa's column included "jewelry, Jeep, Nissan, [and] cash"; the items in Steve's column included the mulch business, with instructions that his monthly payments for the business were to be paid into the "joint account";[5] and the items in David's column included the house, trucks, tractors, and the "joint account." When this list was introduced at trial, nobody disputed that it was in Gayron's handwriting, and Steve even acknowledged being present when Gayron wrote it. Steve also testified, however, that he thought Gayron was writing the

[5]The only evidence in the record of a joint account is a bank account that Gayron shared with David.

list merely to appease David because she had already memorialized her wishes in the October 2015 will.[6]

The next day, November 8, 2015, Teresa went to visit Gayron and David, and, according to David, Gayron shared with her the list Gayron had made the previous night. Teresa subsequently took Gayron to Steve's house so that they could talk together; it appears that at least one other family member was present. Neither Teresa nor Steve remembered specifics of this conversation with Gayron. They acknowledged at trial, however, that they wanted to talk to Gayron without David present and that they probably talked about estate matters. Steve also testified that Gayron became upset during their conversation. Teresa brought Gayron back to the Boaz house approximately two hours later, and, David testified, Gayron was angry and agitated upon her return, stating that "they made me feel like an idiot." David testified that he asked Gayron what was wrong, and she told him that, while they were talking at Steve's house, somebody had said, "I thought

[6]After this litigation commenced, Teresa produced another undated list that she had found in Gayron's papers after her death containing three similar columns. On this list, Teresa's column listed "jewelry, Jeep, [and] Nissan"; Steve's column listed "business"; and David's column listed "house, trucks, [and] tractors."

Teresa was going to get the house." David testified that this comment "kind of humiliated [Gayron] and made her feel really stupid. They made her feel like why are you even here, basically, this is supposed to be settled."

On November 10, 2015, David returned to Barnett's law office with the list Gayron had written on November 7 and information about the Boaz house and property, so that Barnett could prepare a deed.[7] Barnett agreed to prepare the requested documents and made arrangements to come to the Boaz house the next day so Gayron could execute the documents.

On November 11, 2015, Barnett arrived at the Boaz house for Gayron to execute the deed and other documents. At trial, Barnett testified that, when he met Gayron, she confirmed that she had made the November 7 list and that she wanted to deed the Boaz house to David. Barnett further testified that he explained to Gayron the documents that he had prepared, that he was confident that she understood them, and that she did

[7]David told Barnett that Gayron also wanted (1) to revoke a power of attorney that she had executed in favor of Steve before she and David went to Mexico for medical treatment; (2) to execute a new power of attorney in favor of David; and (3) to execute a deed conveying to David 15 acres that she owned in Winston County, even though the 15-acre Winston County property would become David's upon Gayron's death pursuant to the terms of her October 2015 will.

not appear to be under any "duress or constraints." Gayron executed the deed conveying the Boaz house to David, and that deed was recorded at the courthouse the next day.

On November 16, 2015, Gayron's condition deteriorated and extended family members began arriving at the Boaz house, believing that her death was imminent. At some point during that day, Steve learned from Hare that Gayron had executed a deed conveying the Boaz house to David. Steve testified that he then asked Gayron about it, and she denied executing such a deed. He stated that she eventually told him that she remembered "signing something, but I don't know what it was." Thirteen days later, on November 29, 2015, Gayron died.

On June 15, 2016, Teresa and Steve sued David, alleging that Gayron lacked the capacity to convey the Boaz house at the time she executed the deed in favor of David. Teresa and Steve further alleged that Gayron had executed the deed only because David exercised undue influence over her at that time. Teresa and Steve accordingly requested that the trial court declare the deed void.

Following the completion of discovery, Teresa and Steve moved for a summary judgment on their undue-influence claim,

alleging that the undisputed evidence established (1) that David and Gayron had been in a confidential relationship and (2) that David was the dominant party in that relationship. Teresa and Steve further argued that a presumption of undue influence exists when those two factors are established; that David was unable to establish that the conveyance of the Boaz house was nevertheless fair, just, and equitable; and that they were entitled to a summary judgment. On August 16, 2017, the trial court, after considering David's response and the evidentiary submissions that accompanied both parties' filings, denied Teresa and Steve's summary-judgment motion.

The case proceeded to trial, and, over four days ending August 29, 2017, the trial court received evidence without a jury on Teresa and Steve's claims. On September 21, 2017, the trial court entered an order detailing its findings of fact and concluding that Teresa and Steve had failed to prove that the deed conveying the Boaz house to David "was the product of undue influence or that Gayron Brooks lacked the mental capacity to understand in a reasonable manner the nature and effect of her act in executing the subject statutory warranty deed." The trial court further concluded that Gayron's

conveyance of the Boaz house to David "was fair, just, and equitable in all respects." Accordingly, the trial court entered a judgment against Teresa and Steve and in favor of David.

Teresa and Steve subsequently moved the trial court, pursuant to Rule 59, Ala. R. Civ. P., to alter, amend, or vacate that judgment. After conducting a hearing on that motion, however, the trial court took no further action, and on January 21, 2018, the motion was denied by operation of law pursuant to Rule 59.1, Ala. R. Civ. P. On February 26, 2018, Teresa and Steve filed their notice of appeal to this Court.

Standard of Review

This case was decided by the trial court without a jury. This Court has described the standard of review it applies to a judgment entered following a nonjury trial at which the court hears oral testimony:

> "'[W]hen a trial court hears ore tenus testimony, its findings on disputed facts are presumed correct and its judgment based on those findings will not be reversed unless the judgment is palpably erroneous or manifestly unjust.' Philpot v. State, 843 So. 2d 122, 125 (Ala. 2002). '"The presumption of correctness, however, is rebuttable and may be overcome where there is insufficient evidence presented to the trial court to sustain its judgment."' Waltman v. Rowell, 913 So. 2d 1083,

> 1086 (Ala. 2005) (quoting Dennis v. Dobbs, 474 So. 2d 77, 79 (Ala. 1985)). 'Additionally, the ore tenus rule does not extend to cloak with a presumption of correctness a trial judge's conclusions of law or the incorrect application of law to the facts.' Id."

Fadalla v. Fadalla, 929 So. 2d 429, 433 (Ala. 2005).

Notwithstanding the fact that the appealed judgment was entered following a nonjury trial at which ore tenus evidence was presented, Teresa and Steve argue that the judgment should be afforded no presumption of correctness because, they argue, the facts in this case are essentially undisputed. See, e.g., Carter v. City of Haleyville, 669 So. 2d 812, 815 (Ala. 1995) (explaining that, even though the judgment being appealed was entered following a nonjury trial, the presumption of correctness typically afforded the findings underlying such judgments was inapplicable because the facts were not in dispute and the appeal focused on the application of the law to those facts). We disagree. A review of the trial transcript reveals that numerous material facts were disputed.[8] Therefore, the ore tenus rule cloaks the trial court's findings of fact with a presumption of correctness.

[8]The trial court correctly noted at the conclusion of the trial that, although "[t]he issues are very well defined ..., [t]he facts are very much in dispute, heavily in dispute."

See also Hall v. Mazzone, 486 So. 2d 408, 410 (Ala. 1986) ("The ore tenus rule is grounded upon the principle that when the trial court hears oral testimony it has an opportunity to evaluate the demeanor and credibility of witnesses."). Nevertheless, although we must presume that the trial court's findings of fact are correct, to the extent we are reviewing the trial court's conclusions of law or its application of law to the facts, we make no such presumptions; rather, that review is de novo. Waltman v. Rowell, 913 So. 2d 1083, 1086 (Ala. 2005).

Discussion

Steve and Teresa challenge the trial court's judgment only as it relates to their undue-influence claim. They have not challenged the trial court's conclusions regarding Gayron's mental capacity at the time she executed the deed conveying the Boaz house to David.

This Court has long recognized the hallmarks of undue influence:

> "Undue influence is variously defined as influence that dominates the grantor's will and coerces it to serve the will of another, Adair v. Craig, 135 Ala. 332, 33 So. 902 (1902); influence which renders the grantor the passive agent of the dominating will of another, Cox v. Parker, 212 Ala.

> 35, 101 So. 657 (1924). In determining dominance, however, it is not a question whether the party knew what he was doing, had done, or proposed to do, but how the intention was produced. Wooddy v. Matthews, 194 Ala. 390, 69 So. 607 (1915)."

Wyatt v. Riley, 292 Ala. 277, 282, 293 So. 2d 288, 291 (1974); see also Donald v. Donald, 270 Ala. 483, 486, 119 So. 2d 909, 912 (1960) ("[I]nfluence in order to be undue must be such as to destroy free agency and substitute the will of another for that of the party nominally acting.").

Where a party seeks to have an inter vivos[9] gift invalidated because of undue influence by the grantee, the parties' respective burdens are as follows:

> "A plaintiff seeking to invalidate an inter vivos gift on grounds of undue influence must produce evidence that the donor and the donee were in a confidential relationship and that the donee was the dominant party in the relationship. Chandler v. Chandler, 514 So. 2d 1307, 1308 (Ala. 1987). If the plaintiff makes out such a prima facie case, the donee must either refute the proof that he was the dominant party in a confidential relationship or show that the transaction was 'fair, just, and equitable in every respect.' Brothers v. Moore, 349 So. 2d 1107, 1109 (Ala. 1977). The law raises a presumption of undue influence when an inter vivos gift is made to the dominant party in a

[9]Inter vivos is a Latin phrase that translates as "between the living." Black's Law Dictionary 949 (10th ed. 2014), defines the phrase as "[o]f, relating to, or involving property conveyed not by will or in contemplation of an imminent death, but during the conveyor's lifetime."

> confidential relationship. As this Court stated in Hutcheson v. Bibb, 142 Ala. 586, 587, 38 So. 754, 754 (1905):
>
> > "'In transactions inter vivos, where confidential relations exist between the parties, the law raises up the presumption of undue influence, and puts upon the donee, when the dominant party in the transaction, the burden of repelling such presumption by competent and satisfactory evidence; and this is usually done by showing that the [donor] had the benefit of competent and independent advice of some disinterested third party.'"

Beinlich v. Campbell, 567 So. 2d 852, 853-54 (Ala. 1990) (footnote omitted). Thus, Teresa and Steve had the initial burden of making a prima facie case both that Gayron and David were in a confidential relationship and that David was the dominant party in that relationship. Once that showing was made, the burden shifted to David to produce either (1) evidence refuting their claim and establishing to the reasonable satisfaction of the court that he was not the dominant party in a confidential relationship or (2) clear and convincing evidence that the conveyance of the Boaz house to him by Gayron was fair, just, and equitable in all respects.

We first note that "[t]he relation of husband and wife is per se a confidential relation," Rash v. Bogart, 226 Ala. 284, 287, 146 So. 814, 816 (1933), and David does not dispute that he was in a confidential relationship with Gayron. See also § 30-4-9, Ala. Code 1975 ("The husband and wife may contract with each other, but all contracts into which they enter are subject to the rules of law as to contracts by and between persons standing in confidential relations."). Accordingly, Teresa and Steve's initial burden was only to make a prima facie case that David was the dominant party in his relationship with Gayron when Gayron executed the deed conveying the Boaz house to him. See Beinlich, 567 So. 2d at 854 (reversing a summary judgment because a genuine issue of material fact existed as to whether the defendants were the dominant parties in a confidential relationship with the grantor "at the time the gift ... was made").

Teresa and Steve clearly met this burden. They presented evidence at trial, much of it undisputed, indicating that, on November 11, 2015, Gayron was heavily dependent on David for her day-to-day needs. That evidence included David's testimony and discovery responses acknowledging that, in the

days and weeks leading up to and including November 11, he assisted Gayron with her daily activities and was her primary caregiver -- managing her meals, medication, and appointments -- and assisted her with her personal, legal, and financial affairs by helping to pay bills and otherwise to manage the household. Moreover, hospice records from November 10, 2015, indicate that Gayron needed assistance with activities of daily living such as mobility, bathing, dressing, and toileting, and that she was "dependent in all [instrumental activities of daily living]." This evidence is sufficient to create a prima facie case that David was the dominant party in the relationship. See, e.g., Hayes v. Apperson, 826 So. 2d 798, 804 (Ala. 2002) (noting this Court's numerous cases holding that the fact that a party "controls the personal, business, and household affairs" of another party is evidence of a dominant and controlling influence). But "this evidence does not establish [the grantee's] dominion and control beyond doubt." Killough v. DeVaney, 374 So. 2d 287, 289 (Ala. 1979). Rather, it merely shifts the burden to David to refute the evidence indicating that he was the dominant party.

In its judgment, the trial court held that David had successfully established that he was not the dominant party in his relationship with Gayron, citing the following facts in support of its conclusion:

> "[A]fter Gayron Brooks was diagnosed with terminal lung cancer in May of 2015 and given approximately six months to live, she herself chose to forego [sic] conventional treatment for cancer. However, she later chose to seek unconventional treatment for her cancer in Mexico and traveled there on two separate occasions. Gayron Brooks made the decision to sell the family mulch business ... to her son Steve for [$1,000,000] with no down payment, although David Brooks, who had worked for years building up the business and the cash reserves, had negotiated a sale of the business to a third party for the sum of [$1,425,000], most of which was to be paid in a lump sum at closing. At or prior to the time of the sale of the mulch business, Gayron Brooks transferred the sum of $572,000 from the business account to which David Brooks had access into a personal account to which only Gayron had access. And a final but not the only other example, on November 7, 2015, Gayron, in the presence of David and her son Steve, wrote out a list of certain items of property she owned and to whom she wanted to have that property [sic]. Among other items, Gayron designated the house to go to husband David, with no conditions or limitations attached. ... The very next day after this list was composed, plaintiff daughter Teresa transported Gayron by automobile to plaintiff son Steve's house where Gayron spent some two plus hours with her children. David Brooks was well aware of the plan to drive Gayron over to Steve's house, but he made no effort to prevent or interfere with Gayron leaving."

The trial court further noted the existence of additional evidence indicating that Gayron wanted David to receive the Boaz house after her death, including writings and statements of Gayron's that were made outside David's presence. In his brief to this Court, David counters Teresa and Steve's argument that he was the dominant party by essentially relying on the same evidence cited in the trial court's order.

Teresa and Steve argue that the evidence relied on by the trial court indicating that David was not the dominant party is largely so remote in time that it is irrelevant. We agree that the evidence of Gayron's independence and business acumen from years before she was diagnosed with lung cancer are of minimal value when determining whether David was in a dominant position over her when she conveyed the Boaz house to him on November 11, 2015.[10] We disagree, however, that evidence from the days surrounding November 11 is totally irrelevant when making the determination whether David was the dominant party over Gayron on November 11 when she executed the challenged deed. Evidence of Gayron's independence and/or David's

[10]Such evidence might be of more relevance if there was an allegation that David was the dominant party in the marriage relationship even before Gayron became ill, but no such allegation has been made.

domination from the period surrounding November 11 is certainly "relevant evidence" as defined by Rule 401, Ala. R. Evid., because it tends to make it more or less probable that David was the dominant party over Gayron on November 11. Ultimately, it is up to the fact-finder -- in this case the trial court -- to weigh each item of evidence and to decide the probative value it should be given. Garth v. Foster, 608 So. 2d 726, 727 (Ala. 1992). Of course, direct evidence from the date in question will generally be the most probative, but evidence from the surrounding dates can also have probative value as determined by the fact-finder. See also Jones v. Moore, 295 Ala. 31, 36, 322 So. 2d 682, 686 (1975) (rejecting the appellant's argument that only those in attendance when a challenged deed was executed were qualified to testify regarding the grantor's competency because "such precision" is not required under our caselaw).

In this case, the trial court heard and considered evidence from which it could have concluded that David was not the dominant party in his relationship with Gayron at the time she deeded the Boaz house to him. The undisputed evidence indicated that Gayron struggled with what to do with her

estate and worried about the effect her decisions would have on her family. With regard to the Boaz house, there is evidence indicating that Gayron changed her mind multiple times and that, on at least some occasions, she indicated that she wanted David to have the house. This is evident from her January 2001 will and from the testimony of David and others, including Hare and Rowe. It is also evident from the testimony of Teresa and Hollingsworth, who notably testified that Gayron expressed that desire to them outside David's presence. Barnett also testified that he saw no indications that Gayron was under "duress or constraints" when she executed the challenged deed on November 11.[11] Finally, the trial court heard David's testimony indicating that Gayron's family generally had unrestricted access to her. In that vein, the trial court heard testimony indicating that, on November 7, 2011 -- just four days before Gayron executed the challenged deed -- Teresa took Gayron to Steve's house to

[11]The only other evidence in the record concerning Gayron's state on November 11 is a list of medications she was taking on that date. There is no evidence, however, as to the side effects of those medications or how Gayron typically reacted to them.

discuss her estate plans away from David and that David made no effort to stop them or to otherwise intervene.

The trial court had evidence before it from which it could have concluded that, on November 11, 2015, although Gayron was terminally ill and dependent on David for her care, he was not the dominant party over her such that her will was replaced with his own. Moreover, that same evidence supports the conclusion that Gayron's intent for David to have the house came from Gayron herself and was not the product of domination by David.

It is clear that the trial court carefully considered the narrative put forth by Teresa and Steve (i.e., that Gayron deeded the Boaz house to David only because he was, at the time she executed the deed, the dominant party over her and could impose his will upon her) and the narrative put forth by David (i.e., that, notwithstanding the terms of her October 2015 will, Gayron again changed her mind and decided to deed the Boaz house to him after becoming upset with Teresa and Steve on multiple occasions in early November 2015) and, based on all the evidence presented, concluded that the narrative offered by David was more credible. The trial court's

judgment in favor of David based on those facts is not palpably erroneous or manifestly unjust. Accordingly, the judgment of the trial court is due to be affirmed.[12]

Conclusion

Teresa and Steve sued David alleging that the property deed Gayron executed 18 days before her death was the result of David's undue influence. During a nonjury trial at which ore tenus evidence was presented, Teresa and Steve presented evidence sufficient to make a prima facie case that David was the dominant party in a confidential relationship with Gayron at the time Gayron executed the challenged deed. David, however, submitted evidence from which the trial court could, and in fact did, find that David had rebutted the presumption of dominance raised by Teresa and Steve's evidence. The trial court accordingly entered judgment in favor of David and against Teresa and Steve. There is sufficient evidence in the record to support the trial court's findings, and its judgment

[12]The evidence in the record is sufficient to support the trial court's conclusion that David was not the dominant party in his relationship with Gayron at the time she conveyed the Boaz house to him. This holding makes it unnecessary to review the trial court's conclusion that the transaction was fair, just, and equitable. We accordingly pretermit any discussion of the parties' arguments on that point.

based on those findings is not palpably erroneous or manifestly unjust. The judgment is hereby affirmed.

AFFIRMED.

Parker, C.J., and Shaw, Bryan, and Mendheim, JJ., concur.