IN THE DISTRICT COURT OF APPEAL
SECOND DISTRICT OF FLORIDA

DAVID K. OAKS, as Personal Representative of the Estate of Alvin Gould, deceased,

Appellant,

v.

GULF COAST COMMUNITY FOUNDATION, INC., a Florida not for profit corporation,

Appellee.

Case No. 2D23-1381

L.T. Case No. 21-CA-3885

ON APPEAL FROM THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT IN AND FOR SARASOTA COUNTY, FLORIDA

REPLY BRIEF OF APPELLANT

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Standard of Review

GCCF urges this Court to apply the competent substantial evidence standard. (AB.15, 24, 26-28, 30, 34-35). But that is because GCCF missed our point and refused to respond to the Estate's arguments. And while it might be true that an appellate court defers to the trial court for factual findings, *Managed Care of N. Am., Inc. v. Fla. Healthy Kids Corp.*, 268 So. 3d 856, 859 (Fla. 1st DCA 2019), the issue here is not the trial court's factual findings. The issue is that the trial court misapplied the law, and that merits *de novo* review. *Swiss v. Flanagan*, 329 So. 3d 199, 202 (Fla. 3d DCA 2021).

I. The trial court erred because if it had applied the law correctly to the facts, it should have determined the presumption of undue influence arose, and GCCF failed to disprove it obtained the TODs through the undue influence of a third party, Linda Coules.

GCCF mischaracterized the Estate's arguments by insisting that we are asking this Court to reweigh the *Carpenter* factors and the trial court's findings of facts. (AB.21, 30, 36). But perhaps this was intentional—the misapplication of law to the facts requires *de novo* review, *id.* at 202, and that means looking behind a curtain GCCF does not want pulled back. Had the trial court performed the

proper analysis, going through each of the steps, it would have come to the correct conclusion—Ms. Coules unduly influenced Mr. Gould into signing the TODs.

A summary of what is and is not being challenged can dispel any misconception that the Estate is challenging the court's factual findings. Those findings were: 1) there was a confidential relationship between Ms. Coules and Mr. Gould (an undisputed fact), (R.3496); 2) Ms. Coules was a substantial beneficiary of the TODs (a fact found in the Estate's favor), (R.3496-97); 3) Ms. Coules was present when Mr. Gould expressed his testamentary plan, (R.3498); 4) Ms. Coules knew the details of Mr. Gould's estate plan, (R.3499); 5) Ms. Coules drew up the TOD documents, (R.3499); 6) Ms. Coules knew the contents of the TODs and Mr. Gould's will, (R.3499); 7) Ms. Coules not only gave instructions on how the TODs should be drafted—she drafted them herself, (R.3499-500); 8) there were no witnesses to the TODs because that is not a requirement for that type of document, (R.3500); and 9) Ms. Coules took the TODs and turned them in to her employer, (R.3500).

The Estate is not challenging any of these facts. It is challenging how the trial court applied the law. And case law is filled with

appellate courts reversing errors of law in fact-heavy cases. *Cf., e.g., Eldridge v. State*, 817 So. 2d 884 (Fla. 5th DCA 2002) (holding the trial court misapplied the law to the facts of the case in its denial of a motion to suppress); *Fla. Dep't of Child. & Fams. v. A.R.*, 253 So. 3d 1158 (Fla. 3d DCA 2018) (holding the trial court misapplied the statute defining sexual abuse to the facts of the case); *Proveaux v. Proveaux*, 358 So. 3d 488 (Fla. 1st DCA 2023) (holding the trial court misapplied the law to the facts of the case when it determined the wife and her boyfriend were not in a supportive relationship).

Mistakes of law pervaded the trial court's ruling in Count VII. First, the court failed to determine whether several of its factual findings supported a finding of active procurement. (R.1833-36, 3500). Then, it failed to determine whether the presumption of undue influence arose, a necessary part of the undue influence analysis. *See In re Carpenter's Est.*, 253 So. 2d 697, 700-01 (Fla. 1971). Lastly, it reached its decision on Count VII based on facts and legal conclusions relevant to other counts. (R.3499-501). Count VII is about Ms. Coules's undue influence, not GCCF's. (R.3496).

A. The trial court misapplied the law when it analyzed the *Carpenter* factors; the presumption of undue influence applies.

GCCF treated the presumption of undue influence here dismissively. It called the presumption—and the analysis of it—"meaningless" and "irrelevant." (AB.17, 23). But this conflicts with its admission that "[t]he *Carpenter* presumption is designed to compensate for the difficulty of obtaining direct proof in a case where undue influence is alleged." (AB.17). By dismissing the proper legal standard for analyzing undue influence, GCCF exploited undue influence's shadowy and "secret nature[,]" *Carpenter*, 253 So. 2d at 703, telling this Court that it is not necessary to examine the indirect proof to see what really happened.

But that is the point of the presumption—it sheds light on circumstances for which it is hard to find direct proof. *In re Reid's Est.*, 138 So. 2d 342, 350 (Fla. 3d DCA 1962), *abrogated by Carpenter*, 253 So. 2d 697.[1] Skipping the steps necessary to determine whether

[1] *Carpenter* abrogated the standard used in *Reid* to determine whether the presumption had been rebutted. *See Carpenter*, 253 So. 2d at 702-04. The Legislature later reinstated that standard—that the proponent of the instrument must disprove undue influence—and it is the standard used today. Fla. Stat. § 733.107.

the presumption arose is not only antithetical to the spirit of the law but also a misapplication of it. To use such an analysis is to act as if the presumption doesn't even exist, but it does.

GCCF also tried to reframe the Estate's argument as making the presumption "conclusive." (AB.20, 22-23). But this is illogical—if GCCF affirmatively disproved undue influence, the result should not change if the court completes its full analysis. GCCF has essentially admitted that it cannot win if the court applies the law in the correct way.

In *In re Est. of Murphy*, 184 So. 3d 1221, 1228 & 1235 (Fla. 2d DCA 2016), the trial court mixed up steps in its legal analysis and reached the wrong conclusion, requiring reversal. This Court explained that the trial court should have "examine[d] each step in its proper turn." *Id.* at 1228.

Our case is like *Murphy* because, here also, the trial court reached the wrong result when it mixed up the steps in the analysis, misapplying the law to the facts. And while GCCF is wrong about the standard of review, even using that standard would have the same result—the trial court's holding is not supported by competent,

substantial evidence because the court misapplied the law to the facts. Therefore, this Court should reverse.

B. The trial court did not apply the right burden to determine whether GCCF overcame the presumption of undue influence.

The trial court next held that GCCF had affirmatively disproved undue influence despite finding much of the evidence inconclusive. *E.g.*, (R.3500-01) (noting that evidence rendered the court unable to determine why Mr. Gould had hidden his changed estate plan from his long-time attorney and friend); (T.66-67; R.3033-34) (no one explained why Mr. Gould made broken promises in a public way that would hurt the family legacy he had tried to build). But the trial court should have been able to explain Mr. Gould's contradictory behavior if GCCF had disproved undue influence because the evidence would have established one answer was more probable than another.

This shows that on top of the other errors, the court did not apply the correct burden—which is a preponderance of the evidence. *See RBC Ministries v. Tompkins*, 974 So. 2d 569 (Fla. 2d DCA 2008). And that requires more than an inconclusive fifty-fifty split. *Dufour v. State*, 69 So. 3d 235, 252 (Fla. 2011) ("Preponderance of evidence is defined as . . . more probable than not. The fact that the [court

found] an alternative explanation demonstrates that there is another, equally likely reason for [the defendant's] behavior . . . . Therefore, [the defendant] did not present evidence . . . as required." (cleaned up)), *as revised on denial of reh'g* (Aug. 25, 2011); *Moore v. State*, 800 So. 2d 747, 749 (Fla. 5th DCA 2001) ("[The preponderance of the evidence] is a determination of the trier of fact that a greater amount of credible evidence supports one side of an issue or cause than the other.").

GCCF is wrong that the Estate is asking for a higher burden. (AB.25 n.1). We are asking only for the burden required by the law. Doing otherwise, as the trial court did here, results in the misapplication of the presumption. So this Court should reverse.

C. A gift or testamentary instrument obtained by undue influence is invalid, and a court must revoke it without considering another beneficiary's actions in obtaining the benefit.

GCCF does not dispute the legal premise that if Ms. Coules unduly influenced Mr. Gould into signing the TODs, they must be revoked. (AB.31). GCCF tries, instead, to assure this Court that the trial court did not mix up the counts during its analysis, so its ultimate conclusions are unaffected by legal error. (AB.31-32). But

even in trying to defend this position, GCCF admits the court considered factors relevant to one count in its analysis of others. (AB.31). Furthermore, the trial court's analysis and explicit findings reveal that it did consider GCCF's actions in Count VII, even though its analysis of Count VII should have been about only Ms. Coules's actions. (R.3496).

To begin with, when the trial court examined the *Carpenter* factors for active procurement, it repeatedly referenced the testamentary fund documents, which are relevant to whether *GCCF* unduly influenced Mr. Gould; they are not relevant to whether Ms. Coules unduly influenced Mr. Gould. (R.3499-500). That error affected the trial court's conclusions about the factors for active procurement.

For example, the trial court found only a partial factor for whether Ms. Coules participated in drafting the TODs because she did not participate in drafting the testamentary fund agreement—GCCF did. (R.3488-89, 3499). It made the same mistake when it considered whether Ms. Coules gave instructions for how the TODs were drafted, again mentioning that she had nothing to do with the testamentary fund agreement. (R.3499-500). To say that the trial court did not consider GCCF's actions when it analyzed Count VII is to

ignore the court's explicit findings. Findings, by the way, GCCF urged this Court to accept. (AB. 28-29, 32, 35). And the legal significance of these errors is that they led the trial court to conclude that fewer of the factors supported active procurement than actually did.

Finally, the trial court held that GCCF disproved that Ms. Coules had unduly influenced Mr. Gould. (R.3500-01). But the court nowhere detailed how GCCF did so, an omission in the trial court's otherwise detailed fact findings. It did, however, explain how it found *GCCF* did not unduly influence Mr. Gould, even if the analysis were ultimately incomplete. (R.3493-95). And that holding bled into Count VII in which, again, the trial court explicitly and erroneously applied the law to GCCF's actions when it should only have been considering Ms. Coules's actions. (R.3499-501).

These errors are all legal errors in which the trial court misapplied the law in analyzing undue influence by a third party. Because of that, this Court should reverse.

II. The trial court erred when it ruled against the Estate on count IV because GCCF obtained the testamentary fund agreement through undue influence, and the court should void the fund.

GCCF argued repeatedly that the trial court held that GCCF disproved undue influence. (AB.15-16, 25, 32). The court, though, never completed the required *Carpenter* analysis to make this ruling. It held only that there was no undue influence because GCCF did not have a confidential relationship with Mr. Gould, leaping over necessary steps to reach an unsupported conclusion. (R.3493-95). First, the court used the wrong standard to determine whether there was a confidential relationship. (R.3493-94). Then, it skipped the required analysis to determine whether GCCF unduly influenced Mr. Gould even if the presumption did not apply. (R.3493-95).

This misapplication of the law cannot support GCCF's position that it rebutted the presumption. If the court had completed the analysis, it would have seen that GCCF had unduly influenced Mr. Gould, and the testamentary fund should be voided.

GCCF downplays the trial court's error by calling the presumption merely "a procedural artifice." (AB.33). But it does not matter whether GCCF characterizes the presumption as "fictional[,]"

(AB.33)—it is the law. And the court's misapplication of the law merits *de novo* review. *Swiss*, 329 So. 3d at 202.

A. A confidential relationship existed between GCCF and Mr. Gould.

The trial court did not perform a *Carpenter* analysis. It started to, examining whether there was a confidential relationship between GCCF and Mr. Gould. (R.3493-94). But the trial court veered away from the correct analysis when it applied the wrong legal standard to that element: it held that there was no confidential relationship because Mr. Gould was free to end his relationship with GCCF at any time, and GCCF was only trying to make Mr. Gould happy. (R.3493-95). But the correct standard is whether there is a relationship in which "one man trusts in and relies upon another." *Blades v. Ward*, 475 So. 2d 935, 937 (Fla. 3d DCA 1985) (quoting *Quinn v. Phipps*, 113 So. 419, 420-21 (Fla. 1927)).

Here, there was. GCCF proved this point for us by pointing out that Mr. Gould made multiple donations to GCCF over many years, trusting it to distribute those donations to other charitable organizations according to Mr. Gould's wishes. (AB.10-12). And GCCF solicited that trust by promising to advise Mr. Gould about the best ways

to donate his money. (R.3220-21, 3239; T.433-40). If the court had used the correct standard, it would have seen that there was a confidential relationship between the two. That is a misapplication of the law, requiring *de novo* review.

While not an undue influence case, *Managed Care* is instructive. In that case, the trial court erred in applying the statute defining trade secrets and ordering the disclosure of those secrets in discovery. *Managed Care*, 268 So.3d at 857. The trial court incorrectly applied the factors to raise the presumption of what a trade secret is considered to be. *Id.* at 859-60. It had conflated several different statutory provisions and incorrectly defined "of value." *Id.* at 861. It also incorrectly believed that information known to the public could never be a trade secret. *Id.* Because of that, the trial court erred as a matter of law, even though the First District Court of Appeal of Florida left the trial court's factual findings undisturbed. *Id.* at 859-62.

Managed Care is like our case. Just as the trial court there believed information known to the public could never be a trade secret, the trial court here believed that there was no confidential relationship because Mr. Gould could change his mind. That's not the test, though, and just as the First District held in *Managed Care*, that is

a mistake of law requiring reversal. Similarly, when the trial court in *Managed Care* misapplied the factors relevant to a presumption, that was an error of law the First District reversed, and the same should happen here.

B. The trial court misapplied the law because it did not analyze whether there was undue influence without the presumption.

But even if the trial court had not erred there, it erred by skipping another step in the analysis: whether the Estate proved undue influence even if it never raised the presumption. The facts that support the presumption are themselves evidence of undue influence, so even without the presumption, they can prove undue influence. *Ahlman v. Wolf*, 483 So. 2d 889, 892 (Fla. 3d DCA 1986) (quoting *Carpenter*, 253 So. 2d at 704). For instance, had the trial court done the correct analysis, it would have held that GCCF was a substantial beneficiary because it received most of the TOD funds—millions of dollars—almost entirely without restriction. (R.3487-88).

Similarly, several of the factors for active procurement were present. GCCF discussed with Mr. Gould his options through GCCF and created the testamentary fund agreement and the amendment, (R.3484-86), so GCCF knew Mr. Gould's estate planning. This would

support factors two, three, and four: being present when the decedent expressed a desire to create the estate plan, recommending an attorney to draw up the instrument, and knowing what was contained in the instrument. *See Carpenter*, 253 So. 2d at 702.

Not only that, but GCCF suggested to Ms. Coules to use the TODs to fund that testamentary fund, (T.116, 133-35; R.3016-17), so GCCF provided directions on how to create the estate plan, supporting factor five for active procurement, *see Carpenter*, 253 So. 2d at 702. And Mr. Gould mailed the testamentary fund agreement to GCCF for its signature, (R.3488-89), supporting factor seven—keeping the instrument instead of the decedent keeping it, *see Carpenter*, 253 So. 2d at 702. These facts support a finding that there was undue influence, regardless of the presumption.

But the trial court skipped this analysis only because it held there was no confidential relationship. (R.3493-95). So, although the trial court made factual findings to support undue influence, it never applied the law to those findings to draw the correct conclusion.

GCCF argues that none of these errors matter because it disproved undue influence. (AB.15-16, 25, 32). But that ignores how the court also misapplied the law to reach the conclusion that GCCF had

not unduly influenced Mr. Gould. The trial court's mistake in analyzing whether there was undue influence without the presumption cannot be corrected by another conclusion based on a different mistake. Because the trial court misapplied the law, this Court should reverse.

CONCLUSION

For all these reasons, this Court should reverse the trial court's finding that neither GCCF nor Ms. Coules unduly influenced Mr. Gould, and the TOD funds should be returned to the Estate.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via the Florida Courts E-Filing Portal on all counsel in the service list below, on this 22nd day of May 2024.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this brief complies with the font requirements of Florida Rule of Appellate Procedure 9.045(b) and the word limitation requirements of Florida Rule of Appellate Procedure 9.210(a)(2)(B). This brief contains 2962 words.

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