

IN THE SUPREME COURT OF IOWA

No. 22-1905

APPELLANT'S FINAL BRIEF

CONSERVATORSHIP OF JANICE GEERDES, BY LAURA
JENKINS, CONSERVATOR,
Plaintiff (Appellee),

And concerning

ALBERT CRUZ,
Defendant (Appellant),

APPEAL FROM THE
Iowa District Court for Kossuth County Dist. Ct. No.
EQCV027463
The Honorable Don E. Courtney

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CERTIFICATE OF SERVICE

I, Shaun A. Thompson, hereby certify and remember that on the date stated in the file stamp on the cover of the Brief, I filed the Brief contained herein with the Clerk of the Supreme Court, 1111 E. Court, Des Moines, Iowa 50319 and all registered parties through EDMS in full compliance with the provisions of the Rules of Appellate Procedure.

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CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because this Brief contains approximately 6,167 words, including everything, even the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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STATEMENT OF THE ISSUES

ISSUE I.

THE DISTRICT COURT ERRED WHEN IT FOUND UNDUE INFLUENCE THROUGH A CONFIDENTIAL RELATIONSHIP BETWEEN MR. CRUZ AND MS. GEERDES.

AUTHORITIES:

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ISSUE II.

THE DISTRICT COURT ERRED WHEN IT FOUND THAT MS. GEERDES LACKED THE MENTAL CAPACITY TO EXECUTE THE QUIT CLAIM DEED ON JANUARY 9, 2019.

AUTHORITIES:

Cases

Costello v. Costello, 186 N.W.2d 651, 654 (Iowa 1971) 34
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ROUTING STATEMENT

This case involves straightforward application of existing law and so it should be transferred to the Court of Appeals.

STATEMENT OF THE CASE and SUMMARY OF THE FACTS

Nature of the Case:

This is an equitable action involving the validity of a quit claim deed where a co-owner of a hog site gifted her fifty percent interest in the hog site to the other co-owner through a quit claim deed. The Plaintiff is the conservator of Janice Geerdes. Janice Geerdes is the individual who gifted her interest in the hog site to the co-owner, Albert Cruz, who is a long-time friend.

The district court decreed the deed invalid based on finding that Ms. Geerdes and Mr. Cruz were in a confidential relationship; therefore, a presumption of undue influence was found that was not rebutted. The district court also held that even if a confidential relationship were not present, then Ms. Geerdes lacked the capacity to gift Mr. Cruz her half-interest in the hog site.

The district court did not find that undue influence existed apart from the presumption created by the confidential relationship.

Facts:

Janice, Marlin, and Albert

Albert Cruz is a sixty-two year old man who is basically illiterate. (Trial Tr. 97:18; Trial Tr. 98:6-20). Mr. Cruz was taken out of school when he was four or five years old by his father so that he could work with his father. (Trial Tr. 97:19-25). Mr. Cruz has never learned to read well enough to understand documents; he has other people read documents for him and tell him what they say. (Trial Tr. 98:6-20). He cannot write other than to sign his name. (Trial Tr. 98:14-17).

Mr. Cruz became friends with Janice Geerdes and her late husband Marlin in 1991 or 1992. (Trial Tr. 99:21). Janice and Marlin Geerdes owned a house that Mr. Cruz rented while he was doing seasonal farm work in North Iowa. (Trial Tr. 100:7-17). Mr. Cruz became friends with both Janice and Marlin and would visit them at their home. (Trial Tr. 100:24-101:21).

In 1995 Mr. Cruz moved up to North Iowa permanently; he and his then wife were close friends with Marlin and Janice. (Trial Tr. 103:5-16). Marlin passed away in 1999. After Marlin passed away, Mr. Cruz continued a close relationship with Ms. Geerdes.

Mr. Cruz visited Ms. Geerdes every day, as he lived only a block from her. (Trial Tr. 104:9-106:25). Mr. Cruz would drive Ms. Geerdes to her doctor appointments, drive her to get groceries or other errands, help clean her house, cook, and visit with Ms. Geerdes. Id. Mr. Cruz and Ms. Geerdes were very close. Id. Mr. Cruz was “kind of like a son” to Ms. Geerdes. (Trial Tr. 190:1-4, CPA Gayle Lemmon). “He took care of things for her.” Id.

Ms. Geerdes children were not happy with how close she was with Mr. Cruz. (Trial Tr. 190:20-191:3). There were problems with how Ms. Geerdes’ children treated Mr. Cruz. Id. There were times when Ms. Geerdes’ sons would come to Ms. Geerdes’ residence and threaten Mr. Cruz, including once when they brought a firearm. (Trial Tr. 107-108; Trial Tr. 114:3-19).

Mr. Cruz also had some difficulties with Charlie Laubenthal, the tenant of Ms. Geerdes' farmland, related to the low amount of rent he was paying Ms. Geerdes. (Trial Tr. 179:25-181:13; Trial Tr. 148:2-149:19). Mr. Cruz confronted Mr. Laubenthal about the rent he was paying, which resulted in Mr. Laubenthal increasing his rent by over fifty-percent. Ms. Geerdes' children and Mr. Laubenthal were the only witnesses who testified against Albert at trial. Mr. Laubenthal testified that Ms. Geerdes' mental abilities were "I think worse" after her 2017 car accident. (Trial Tr. 143:6-11). He did not testify an opinion that she lacked capacity as he himself continued to do business with her.

In 2017, Ms. Geerdes and Mr. Cruz were involved in a car accident where Mr. Cruz was driving and Ms. Geerdes was injured. Mr. Cruz drove Ms. Geerdes around less often after the accident, but still continued to drive her places at times and visit Ms. Geerdes. (Trial Tr. 104:9-106:25).

Ms. Geerdes lived on her own, in her own house, until around August of 2019 after which she moved in with her daughter in Kansas. (Trial Tr. 197:18-23). A guardianship

was created for Ms. Geerdes in Kansas at the end of 2019. (Trial Tr. 47:12-17). A conservatorship was also created for Ms. Geerdes in Kossuth County, Iowa; however, the record does not reflect when the conservatorship was created. It was likely created around the same time as the guardianship.

The Hog Site

Prior to his passing in 1999, Marlin Geerdes had discussed with Albert the possibility of building a hog site. (Trial Tr. 109:5-14). After Marlin passed away, Ms. Geerdes and Mr. Cruz discussed building a hog site on Ms. Geerdes' property. (Trial Tr. 109-110). Ms. Geerdes and Mr. Cruz decided to form a partnership where Ms. Geerdes would build and manage the "paperwork" for the hog site and Mr. Cruz would provide labor for the hog site including cleanup of the site prior to construction. (Trial Tr. 111:19-114:1).

The hog site was constructed sometime near the execution of the warranty deed granting Mr. Cruz a one-half interest in the hog site. App. p. 109.

The hog site began operation in 2005. Despite Mr. Cruz and Ms. Geerdes each owning half of the hog site, Ms. Geerdes received all of the money from the hog site. (Trial Tr. 119:2-8). It was Mr. Cruz's understanding that he was entitled to half of the income from the hog site due to his half ownership and their partnership agreement. Id.

Rather than demanding half the income from the hog site, Mr. Cruz would request that Ms. Geerdes help him by paying for living expenses such as gas and groceries. (Trial Tr. 119:9-25). The arrangement Mr. Cruz and Ms. Geerdes fell into was that Ms. Geerdes would receive all the income from the hog site and then pay for some of Albert's living expenses. Id.; App. p. 61 ("Over the years Albert has received monetary benefit from Janice"; however, he received no income for his ownership of the hog site).

Ms. Geerdes' children took issue with the fact that Ms. Geerdes was often paying for Albert's gas and groceries; however, Albert was receiving no income from the hog site despite being a co-owner.

Ms. Geerdes handled the business side of the hog site. (Trial Tr. 118:9-11). Mr. Cruz handled the labor. Mr. Cruz also lives at the hog site with his daughter. (Trial Tr. 151:4-152:10). Mr. Cruz moved into the office of the hog site around 2017. *Id.* The hog site is Mr. Cruz's home.

In January 2019, Ms. Geerdes and Mr. Cruz set up an appointment with the accountant for the hog-site, Ms. Lemmon, because Ms. Geerdes wanted to deed over her remaining half-interest to Mr. Cruz. (Trial Tr. 186:2-187:21). Ms. Lemmon was not comfortable drafting the deed, so Ms. Lemmon referred them to attorney Robert Myott. *Id.*

Ms. Geerdes appeared to be the person who was mainly driving the decision to do the quit claim deed. (Trial Tr. 187:1-3).

While the January 2019 deed was drafted by attorney Myott, it was Ms. Lemmon who witnessed and notarized the signature of the deed. App. pp. 107-108.

Ms. Lemmon testified that *Ms. Geerdes appeared to be in a similar mindset regarding decision making when she signed*

the January 2019 deed as she was in while dealing with her since 2004. (Trial Tr. 188:12-21).

Ms. Geerdes told Ms. Lemmon that she signed the January 2019 deed because she wanted to make sure that Albert had gotten his share of the property. (Trial Tr. 190:5-8). When she signed the deed, Ms. Geerdes understood what property she owned, the effect of the deed, and who would naturally inherit from her estate. (Trial Tr. 186:2-187:21). It should also be noted, as discussed above, that Mr. Cruz was like a son to Ms. Geerdes and the hog site is Mr. Cruz's home.

After Ms. Geerdes executed the January 2019 deed, she gave Ms. Lemmon a signed handwritten note stating “what I help Albert Cruz is nobody concern.” App. p. 70. (Trial Tr. 191:4-193:14). Ms. Geerdes gave this note to Ms. Lemmon to “safeguard” it. *Id.* Ms. Lemmon recognized that the handwriting was Ms. Geerdes' handwriting. *Id.*

The transfer of Ms. Geerdes' remaining half-interest in the hog site was a gift to Mr. Cruz.

In addition to the hog site, Ms. Geerdes owns substantial farmland. When the deed was executed in 2019, and today,

Ms. Geerdes owned one-hundred and fifty to one-hundred and sixty acres of farmland that she rents out. (Trial Tr. 10:3-4).

While no evidence was presented as to the value of this farmland, average farmland in Iowa is valued at over ten-thousand dollars per acre and so this farm is likely worth at least one and a half million dollars.

No evidence was presented that Ms. Geerdes' gift of her half interest in the farmland represented a significant portion of her net worth. While Ms. Geerdes continued to owe one-hundred thousand dollars to Farm Credit, she also continued to own much more than one-million dollars of farmland. App. p. 62. All that was litigated was the hog-site. I say this to address the district court's implication that the transfer of the hog-site left Ms. Geerdes with a negative net worth. App. p. 62.

Course of Proceedings:

This action was filed on May 8, 2020. Despite Plaintiff arguing lack of capacity and bearing a heavy burden on that issue, no experts were designated by either party.

The matter was tried before the court in equity on July 20 and 21, 2023.

ARGUMENT

ISSUE I.

THE DISTRICT COURT ERRED WHEN IT FOUND UNDUE INFLUENCE THROUGH A CONFIDENTIAL RELATIONSHIP BETWEEN MR. CRUZ AND MS. GEERDES.

ISSUE PRESERVATION:

Error was preserved because notice of appeal was timely filed on this issue after the court filed its decree. Mr. Cruz argued at trial and in his post-trial briefing that he did not have a confidential relationship with Ms. Geerdes nor that undue influence was present. App. pp. 54-55.

SCOPE & STANDARD OF REVIEW:

This action is in equity, review is de novo. Iowa R. App. P. 6.4. De novo review also applies to review of trial court's finding of the existence of a confidential relationship. *Oehler v. Hoffman*, 113 N.W.2d 254, 256 (1962); *Groves v. Groves*, 692, 82 N.W.2d 124, 130 (1957).

Undue influence must be present at the very time the transfer is made. *Arndt v. Lapel*, 214 Iowa 594, 603, 243 N.W. 605, 609 (1932). Proof of undue influence must be by evidence that is clear, convincing, and satisfactory. *Else v. Fremont Methodist Church*, 247 Iowa 127, 139, 73 N.W.2d 50, 57 (1955). Evidence is clear, convincing, and satisfactory when there is no serious or substantial uncertainty about the conclusion to be drawn from it. *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa Ct. App.1983).

ARGUMENT & SUPPORT:

a. Confidential Relationship

The trial court based its decree invalidating the deed on a holding that Ms. Geerdes had a confidential relationship with Mr. Cruz. The district court's basis for its finding of a confidential relationship appears to be Ms. Geerdes' medical condition and the fact that she, at times, paid for Mr. Cruz's expenses upon his request. App. pp. 64-65.

While Ms. Geerdes' medical condition is relevant to undue influence generally and capacity; there is no basis in existing authority to support the notion that medical condition is relevant to confidential relationship. For this reason, Ms. Geerdes' medical condition will be addressed later in this brief when undue influence is generally addressed. Ms. Geerdes' medical condition does not create a confidential relationship.

Mr. Cruz's request for Ms. Geerdes to pay some of his living expenses also does not create a confidential relationship.

"A confidential relationship does not arise solely from blood relationship such as between parent and child. The gist of the doctrine of confidential relationship is the presence of a dominant influence under which the act is presumed to have been done. The purpose of the doctrine is to defeat and correct betrayals of trust and abuses of confidence." *In re Estate of Clark*, 357 N.W.2d 34, 37-38 (Iowa Ct. App. 1984).

In order to establish a confidential relationship, Plaintiff has “the burden to show by clear proof the existence of a confidential relationship in which she was the subservient and [Albert] the dominant person.” *Id.* at 14 citing *Punelli v. Punelli*, 346 N.W.2d 259, 261 (Iowa Ct. App. 1984); *See also Groves v. Groves*, 82 NW 2d 124, 130 (Iowa 1957).

Mr. Cruz is barely literate and was not dominant over Ms. Geerdes. Janice was not subservient to Albert. Janice was the primary decision maker of the two when it came to business decisions as Albert is barely literate and has limited ability to understand written documents or business dealings. Albert’s role was that of a laborer, not a business decision maker.

The fact that Mr. Cruz and Janice were close does not raise a presumption of a confidential relationship. In examining the close relationship between a mother and son, the Iowa Supreme Court held the following:

“a person by kind and considerate treatment induces an affectionate regard on the part of another raises

no presumption of confidential relation, as the term is used in this connection, in the absence of some showing that by this means, a dominant influence was obtained over the other.” *Groves*, 82 NW 2d 131 (Iowa 1957).

As far as Mr. Cruz’s requests for Ms. Geerdes to pay some of his living expenses, it must be noted that Ms. Geerdes retained all income from the hog site despite co-owning the hog site with Mr. Cruz. The arrangement Mr. Cruz and Ms. Geerdes fell into was one where Ms. Geerdes kept all income from the hog site and then paid for some of Mr. Cruz’s living expenses. However, Albert never acted on Ms. Geerdes’ behalf, himself writing checks on her account and so forth, because he did not have this authority.

Mr. Cruz was like a son to Ms. Geerdes. (Trial Tr. 190:1-4, CPA Gayle Lemmon). This is a similar situation to *Groves*, where the Iowa Supreme Court held the following:

“As we have indicated, there was undoubtedly a close family relationship between plaintiff and Ralph—closer than between many mothers and adult sons. Ralph was almost a daily visitor in plaintiff’s home and did many errands for her. However, Wilfred, who is at odds with Ralph in this controversy, also called on plaintiff very often and did some errands for her. There is little if any evidence Ralph ever transacted

any business for plaintiff except, at her request, to deposit in her bank account the rent he owned her and to make a few other deposits for her. Of course his arrangement with plaintiff required him to pay his rent and taxes on the farm and in doing so he was acting for himself as such as for plaintiff.” *Id.*

In any event, the mere request for another party to make gifts does not create a dominant, subservient situation. The fact that one party asks for another party to pay for certain expenses does not create a confidential relationship here anymore than it does in the series of cases where confidential relationships have been addressed between spouses and parent/child relationships.

The Iowa Court of Appeals recently addressed the issue of confidential relationship in a spousal situation in an opinion filed on July 20, 2022, which was the first day of trial in this matter. *Hindman v. Hindman*, 21-1378 filed 7/20/22, (Iowa Ct. App. 2022) (No reporting decision, non-authoritative). In *Hindman*, a farmer’s ex-wife argued that the deeds she had executed while married to a farmer were invalid because she was in a confidential relationship with her then husband when

they deeded property to their son. *Id.* The court of appeals held that the fact that the parties were married did not create a confidential relationship. *Id.*

In Hindman, the court of appeals did not find a confidential relationship despite the fact that the husband had greater access to information and was for all intents the primary business manager. *Id.* at 14. (“[Wife] testified that she was unaware of almost all the details of the transaction—the purchase price, the amount of the gift they were making to [son], and even the date of the closing.”)

Here, it was Ms. Geerdes herself who was the primary business manager of the hog site. Mr. Cruz was barely literate and required documents to be read to him.

Furthermore, it was Ms. Geerdes who appeared to be driving the decision to execute the January 2019 deed and not Mr. Cruz. (Trial Tr. 187:1-3, CPA Gayle Lemmon).

“A confidential relationship arises ‘when one person has gained the confidence of another and purports to act or advise

with the other's interest in mind.” *Oehler v. Hoffman*, 113 N.W.2d 254, 256 (Iowa 1962). There is not even an allegation that Albert ever purported to act or advise with Janice's interest in mind. In fact, Plaintiff's adamantly claimed that Albert acted only with his own interest in mind. The record is devoid of Mr. Cruz, who is barely literate, ever acting or representing himself as an agent of Ms. Geerdes.

A confidential relationship arises whenever a continuous trust is reposed by one person in the skill and integrity of another, and so it has been said that all the variety of relations in which dominion may be exercised by one person fall within the general term "confidential relation.” *Id.* There is no indication in the record that Ms. Geerdes ever placed any trust in Mr. Cruz's managing anything related to the business of the hog site. He is barely literate. Ms. Geerdes is the person who handled the business.

Plaintiffs have not met their burden to show by clear proof the existence of a confidential relationship where Janice was

subservient to Albert. Janice is the person who primarily dealt with the business affairs, including the quit claim deed in January 2019. Janice understood the animosity her children felt toward Albert due to their close relationship and went as far as to give Ms. Lemmon a handwritten note stating that “What I help Albert Cruz is nobody concern.” App. p. 70.

Plaintiff has not shown through clear evidence nor facts supporting that Mr. Cruz was dominant over Ms. Geerdes; therefore, the district court erred in finding a confidential relationship. *Groves*, 82 NW 2d 132 (Iowa 1957) (Conclusionary statements that one party was an advisor is “of little weight” in the absence of facts bearing out the assertion; facts showing the manner in which trust and confidence have been violated must appear.)

b. Undue Influence Generally

The trial court did not find undue influence apart from a confidential relationship and no motion to enlarge this issue was sought. It is unclear to me whether any error of undue

influence apart from a confidential relationship has been preserved.

Absent a confidential relationship, Plaintiffs bear the burden to show undue influence by clear, convincing, and satisfactory evidence.

“(1) The [grantor] must be susceptible to undue influence, (2) opportunity [on the part of the grantee] to exercise such influence and effect the wrongful purpose must exist, (3) a disposition [on the part of the grantee] to influence unduly for the purpose of procuring an improper favor must be present, and (4) the result must clearly appear to be the effect of undue influence.” *Estate of Herm v. Henderson*, 284 N.W.2d 191, 200-01 (Iowa 1979).

To set aside a transfer on the ground of undue influence, one must show "such persuasion as results in overpowering the will of the [grantor] or prevents him from acting intelligently, understandingly, and voluntarily—such influence as destroys the free agency of the grantor and substitutes the will of another

person for his own." *Leonard v. Leonard*, 234 Iowa 421, 429, 12 N.W.2d 899, 903 (1944). Undue influence must be present at the very time the transfer is made. *Arndt v. Lapel*, 214 Iowa 594, 603, 243 N.W. 605, 609 (1932). Proof of undue influence must be by evidence that is clear, convincing, and satisfactory. *Else v. Fremont Methodist Church*, 247 Iowa 127, 139, 73 N.W.2d 50, 57 (1955).

Evidence is clear, convincing, and satisfactory when there is no serious or substantial uncertainty about the conclusion to be drawn from it. *Raim v. Stancel*, 339 N.W.2d 621, 624 (Iowa 1983).

That a person by kind and considerate treatment induces an affectionate regard on the part of another raises no presumption of confidential relationship, as the term is used in this connection, in the absence of some showing that by this means a dominant influence was obtained over the other. *Groves v. Groves*, 82 N.W.2d at 131.

No evidence was presented at trial that Janice was susceptible to undue influence. Certain medical records of Ms. Geerdes' medical records were identified by both parties; these records do not show susceptibility to undue influence under a clear and convincing standard. *Id.*

Ms. Geerdes' medical records showed a SLUMS score of 19 of 30 *in 2017*. App. pp. 104-105 (These records are from 2017). A score of 1-20 denotes dementia for someone with a high school education; and so Ms. Geerdes' score barely met the score that denotes dementia. *Id.* The records go on to say that Ms. Geerdes' level "denotes mild cognitive-function disability; with deficits in working memory... Minor problems may be noticed in conversation. Mild impairments in working memory..." *Id.* (emphasis added). Ms. Geerdes' score demonstrated mild impairment.

Despite carrying the burden to demonstrate undue influence by a clear and convincing standard, Plaintiff did not identify any expert to testify how these mild impairments could result in undue influence or any testimony demonstrating that this

diagnosis rendered Ms. Geerdes susceptible to undue influence. The record is devoid of any evidence of how this diagnosis actually translated to Ms. Geerdes' mental function in a meaningful way. *Hart v. Lundby*, 137 NW 2d 642, 647 (Iowa 1965) ("Failure to call witnesses, expert or nonexpert, or failure to ask questions of witnesses who are closely and intimately acquainted with testator as to the question of mental incapacity militates against a contestant.")

Plaintiff has the burden to demonstrate with clear and convincing evidence how Ms. Geerdes' medical diagnosis affected her cognitive ability. Reference to the medical records, without any expert to give context to how it would affect Ms. Geerdes' decision making or susceptibility fails to meet this heavy burden.

In January 2019, when the deed was signed, Ms. Geerdes continued to live at home by herself. Ms. Geerdes continued to live at home alone from 2017, the date from the medical records, through January 2019. At this time, she was receiving no outside help managing her finances apart from Gayle Lemmon,

who testified that Ms. Geerdes appeared to have the same mental capacity as she had in dealing with her for years. (Trial Tr 188:12-21). It is apparent that the condition noted in the medical records from 2017 did not render her significantly impaired as she continued to live at home alone and managed her affairs alone for years prior to the execution of the deed.

Mr. Laubenthal, Plaintiff's only witness other than Ms. Geerdes' children, testified that he continued to deal with Ms. Geerdes at this time. Clearly, he did not believe she lacked capacity or was susceptible to undue influence as he continued to transact with her.

While Albert and Janice were close, Janice also had a close relationship with her children. Albert did not have abnormal opportunity to exercise influence, nor was there any evidence of wrongful motivation on his part. Albert was a friend to Janice for many years; there is no indication that his purpose in befriending Janice was motivated by influencing her decision making. The result of the transfer was not clearly the effect of undue influence. Gayle Lemmon did not question that transfer

of the remaining interest to Albert as they were close friends and Albert had been heavily involved with the hog barns, and Janice's children's animosity toward Albert certainly would raise issue with its continued operation.

Lastly, the result does not clearly appear to be the effect of undue influence. *Estate of Herm*, 284 N.W.2d at 200-01. Ms. Geerdes had already gifted Mr. Cruz half the interest in the hog site through their prior arrangement. Mr. Cruz was like a son to Mr. Cruz. Ms. Geerdes had suggested that Mr. Cruz live at the hog site when he divorced his wife in 2017. (Trial Tr. 151:12-20). Ms. Geerdes additionally owned between 150 and 160 acres of farmland valued well over one-million dollars for her children to inherit. Ms. Geerdes' close relationship with Mr. Cruz, combined with him living at the hog site with his daughter, show why Ms. Geerdes wanted to ensure Mr. Cruz would have the hog site considering the animosity between him and her children. App. p. 70. There is not a clear showing of any effect of undue influence.

The evidence at trial demonstrated that Ms. Geerdes continued to own substantial farmland that would, presumptively, eventually go to her children. The evidence also demonstrated that Ms. Geerdes intended Mr. Cruz to have the hog site. App. p. 70. In *Groves*, which represents a similar situation, the court said the following:

“There is quite a little reliable evidence, much of it undisputed, that for many years before this deed was made plaintiff intended Ralph to have this land when she was through with it. We regard this as highly important. It is reasonable to conclude, as the trial court did, the deed was made in order to carry out this intent rather than through any abuse of confidence on Ralph's part or mental incapacity of plaintiff.” *Groves*, 82 NW 2d 132 (Iowa 1957).

Plaintiff has failed to prove undue influence by clear and convincing evidence.

ISSUE II.

THE DISTRICT COURT ERRED WHEN IT FOUND THAT MS. GEERDES LACKED THE MENTAL CAPACITY TO EXECUTE THE QUIT CLAIM DEED ON JANUARY 9, 2019.

ISSUE PRESERVATION:

Error was preserved because notice of appeal was timely filed on this issue after the court issued its final order and assessed court costs.

SCOPE & STANDARD OF REVIEW:

This action is in equity, review is de novo. Iowa R. App. P. 6.4. De novo review also applies to review of trial court's finding that Ms. Geerdes lacked capacity to execute the January 2019 deed. *Groves*, 692, 82 N.W.2d 130 (1957).

The party alleging lack of mental capacity sufficient to execute a deed has the burden of proving by clear, convincing and satisfactory evidence that the grantor did not possess "sufficient consciousness or mentality... to understand the import of her acts" when the deed was executed. *Daughton v.*

Parson, 423 N.W.2d 894, 896 (Iowa Ct. App. 1988) (citing *Costello v. Costello*, 186 N.W.2d 651, 654 (Iowa 1971)).

Plaintiff bears the “burden to show by clear, satisfactory and convincing evidence that at the time she made the deed she was incapable of understanding in any reasonable manner the nature of the transaction and its consequences and effects upon her rights and interests.” *Groves*, 82 N.W.2d 131 (1957)

A higher degree of mental competence is required for the transaction of ordinary business and the making of contracts than is necessary for testamentary disposition of property. *Id.*

ARGUMENT & SUPPORT:

The transfer of Ms. Geerdes’ remaining half interest in the hog site was a gift and not in the ordinary course of business; therefore, a lower standard of mental competence is present. *Costello*, 186 N.W.2d 654-655 (Iowa 1971).

When examining the issue of mental capacity, a court may consider:

[The grantor's] physical condition; the adequacy of consideration; whether or not the conveyance was improvident; the relation of trust and confidence between the parties to the conveyance, and the weakness of mind of the grantor as judged by h[er] other acts within a reasonable time prior and subsequent to the act sought to be impeached. *Brewster v. Brewster*, 188 N.W. 672, 674 (Iowa 1922).

The court also considers "the lack of independent advice as another relevant factor in determining mental capacity." *Id.*

Ms. Geerdes sought independent advice regarding the transfer to Mr. Cruz. First, she spoke with her accountant Gayle Lemmon; then she spoke with an attorney who actually drafted the deed. (Trial Tr. 186:2-187:21). Ms. Lemmon testified that Ms. Geerdes appeared to be in a similar mindset regarding decision making when she signed the January 2019 deed as she was in while dealing with her since 2004. (Trial Tr. 188:12-21).

No evidence was presented that Ms. Geerdes lacked mental capacity when the deed was executed. *Cf.*

Lundby, 137 NW 2d 647 (Iowa 1965) (compare “Evidence of mental incapacity must refer to the exact time of making the will”)

As discussed above, Ms. Geerdes’ medical record “denotes mild cognitive-function disability; with deficits in working memory... Minor problems may be noticed in conversation. Mild impairments in working memory...” App. pp. 104-105 (These records are from 2017)(emphasis added). Again, this record is from April 2017, which was nearly two years prior to the transfer. Ms. Geerdes’ score demonstrated mild impairment. She continued to live at home alone and manage her own affairs for the two-year period between 2017 and 2019, including dealing with Mr. Laubenthal.

She continued to live at home and manage her own affairs in the nearly two years before this record and the execution of the deed. Again, while carrying the burden to prove incapacity by clear and convincing evidence, Plaintiff introduced no expert witness to provide context as to how this condition could affect capacity. *Lundby*, 137 NW 2d 647 (Iowa 1965) (“Failure to call witnesses, expert or nonexpert, or failure to ask questions of

witnesses who are closely and intimately acquainted with testator as to the question of mental incapacity militates against a contestant.”)

"[m]ere mental weakness or unsoundness to some degree is not sufficient in the absence of fraud or undue influence, to invalidate a contract." *Daughton*, 423 N.W.2d 897 citing *Sjulin v. Clifton Furniture Co.*, 763, 41 N.W. 2d 721, 723 (1950). “To avoid the contract it must appear not only that Sterling was of unsound mind when it was made but that this unsoundness was such that he had no reasonable perception of the nature and terms of the contract.” *Id.*

When discussing the transfer of her remaining interest in the hog site to Mr. Cruz, Ms. Geerdes was aware of her property, natural heirs, and the effect of deed. (Trial Tr. 186:2-187:21). The only disinterested witness to testify, accountant Lemmon, testified that Ms. Geerdes had similar mental capacity in 2019 as she did dealing with Ms. Geerdes in 2005. (Trial Tr. 188:12-21).

Plaintiff failed to carry its heavy burden of showing a lack of capacity by clear and convincing evidence.

CONCLUSION

This case is very similar to the series of cases that have analyzed execution of deeds between family members where confidential relationship, undue influence, and capacity are questioned. While Mr. Cruz was not Ms. Geerdes' son, the record demonstrated a familial like relationship between the two. Plaintiff introduced no expert testimony demonstrating how a medical condition present for nearly two-years resulted in undoing a deed executed by a woman living alone and managing her affairs over this nearly two-year period. Clear and convincing evidence is not present in this case.

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REQUEST FOR ORAL ARGUMENT

Counsel for Appellant requests time to be heard orally on his appeal.

COST CERTIFICATE

Albert Cruz hereby certifies that the cost of producing the above Brief was \$0.00.

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