

IN THE SUPREME COURT OF IOWA

NO. 22-1905

CONSERVATORSHIP OF JANICE GEERDES,
BY LAURA JENKINS, CONSERVATOR,

Plaintiff/Appellee,

v.

ALBERT CRUZ,

Defendant/Appellant.

APPEAL FROM THE IOWA DISTRICT COURT
IN AND FOR KOSSUTH COUNTY
THE HONORABLE DON E. COURTNEY

PLAINTIFF/APPELLEE'S FINAL BRIEF

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ROUTING STATEMENT

Transfer of this case to the Court of Appeals is appropriate because it presents the application of existing legal principles. See Iowa Rules of Appellate Procedure, Rule 6.1101(3).

I. STATEMENT OF THE CASE

This is an appeal from the district court's ruling on a Petition to Set Aside Conveyance, issued on November 10, 2022. The ruling found that the conveyance at issue was invalid.

A Petition to Set Aside Conveyance was filed on behalf of Janice Geerdes by her court-appointed Conservator Laura Jenkins. Ms. Geerdes signed a quit claim deed dated January 9, 2019, for real estate in Kossuth County. Such quit claim deed purported to transfer any and all interest owned in such real estate by Janice Geerdes to Albert Cruz. The Petition asserted that such conveyance was invalid as a result of undue influence by Mr. Cruz over Ms. Geerdes, and that Ms. Geerdes was without the required mental capacity to legally sign the deed and make such conveyance.

Following a bench trial, the court found that a confidential relationship existed between Ms. Geerdes and Mr. Cruz. As a result, the court found that the execution of the January 9, 2019,

deed was presumptively fraudulent, and Mr. Cruz failed to rebut such legal presumption to negate undue influence. As a result the conveyance was invalid. The district court's ruling also held that Ms. Geerdes lacked the requisite mental capacity to quit claim her interest in the property to Mr. Cruz, as further basis for setting aside the deed and finding the conveyance invalid.

II. STATEMENT OF THE FACTS

Janice Geerdes ("Janice") is currently subject to a conservatorship, with her daughter Laura Jenkins ("Laura") appointed as Conservator. (Tr. p. 5:18-24). Janice was married to her husband Marlin who passed away in 1999. (Tr. P. 7:4-11). Janice has five children, including her daughter Laura. Id.

Laura had regular contact with her mother Janice following the passing of her father in 1999, talking to her or seeing her once a week at least. (Tr. P. 7:24-25, P. 8:1-2). Laura's contact with Janice remained consistent in this manner into the 2000s. (Tr. P. 8:6-9).

Janice was an owner of parcels of farmland from which she received rental income. This included a farm upon which the current hog site in question is now located. (Tr. P. 9:7-15). Janice also owned another 80 acre parcel that was rented out. Id.

Janice has sold 80 acres of such farmland and continues to own approximately 150 to 160 acres of tillable land for which she receives rent. Tr. P. 9:16-25, P. 10:1-4. The land upon which the hog site at issue was constructed in 2004 was at one time owned by Janice and her late husband. Tr. P. 12:1-9. A warranty deed was recorded transferring ownership from Janice Geerdes to Janice Geerdes and Albert Cruz in 2004. Tr. P. 13:1-7. At such time Janice took out a loan through Farm Credit for construction of the site. Tr. P. 13:8-14.

Albert Cruz ("Albert") was a prior acquaintance of Janice and her late husband. Tr. P. 14:16-18. Laura began to see Albert around and observed his relationship with Janice beginning in 1999. Janice and Albert would go places together and it appeared Janice was always paying for stuff. Tr. P. 15:8-14. Janice and Albert later became involved in a business related to the operation of the hot site, and had a partnership which was identified as Blue Acres Pork. Tr. P. 16:8-15. The conveyance of a one-half interest from Janice to Albert occurred in 2004 by warranty deed, and was prepared by an attorney who had performed legal services for Janice in the past. App. p. 109; Tr. P. 18:22-25, P. 19:1-9. Such

warranty deed indicated that it was an absolute gift without consideration. App. p. 109;Tr. P. 19:13-21.

Janice continued to reside in Swea City following the construction of the hog site, commencing an over-the-road trucking relationship with Albert. Tr. P. 20:14-25. Following the end of the over-the-road trucking, Janice continued to live in Swea City and Laura continued the same level of contact with her mother. Tr. P. 21:1-3. Janice would pay for certain expenses for Albert, including groceries and gas, as seen in certain checks that Laura viewed. Tr. P. 21:4-19. Laura has continually assisted Janice with her finances, more so over the last few years. Tr. P. 21:22-25, Tr. P. 22:1-4.

Janice was involved in a motor vehicle accident as a passenger in a vehicle of Albert in 2017. Tr. p. 22:9-13. Janice was hospitalized with injuries that included a fractured neck, and was later released to a nursing home for rehabilitation. Tr. p. 22:9-21. As part of her rehabilitation, Janice went through occupational treatment at Kossuth Regional Medical Center. App. pp. 71-106; Tr. p. 23:13-19. The records for such treatment showed cognitive impairment. App. pp. 71-106; Tr. p. 24:21-25. Such records further noted deficits with working memory, problems

observed with recent memory, judgment, and reasoning. Such records further noted Janice's performance on testing indicated dementia. App. p. 73; Tr. p. 25:1-14. Laura was having frequent contact with Janice during such time, and noted Janice seemed confused about a lot of things. Tr. p. 25:15-21. Janice's medical records further stated that she needed frequent check-in support and assistance with instrumental activities of daily living as of January 2018. App. p. 73; Tr. p. 27:2-10.

Following the accident in 2017, Laura became more involved with helping her mother with financials. Tr. p. 31:2-7. There were lots of times that Janice wanted to take Albert grocery shopping, and Laura would advise Janice there wasn't any money in the checking account to cover a check. At such time, Albert took Janice to Fairmont to an ATM machine using her debit card, and was unable to make any withdrawal due to insufficient money in the account. Tr. p. 31:20-25. During such time, Albert also took Janice to Menards to buy certain materials, and the check was returned for insufficient funds. Tr. p. 32:11-19. As a result of such action, Janice was required to return certain materials to Menards, and ended up paying an amount to cover the check. This

was for a purchase made by Janice and Albert. Tr. p. 32:25, 33:1-6)

Janice executed a quit claim deed on January 19, 2019 conveying any and all right, title and interest in the hog site to Albert Cruz. App. pp. 109-110. Albert drove Janice to the office of an accountant who had previously been completing tax returns for the parties. Tr. p. 189:22-25. The relationship between Albert and Janice was close, and he was like a son to her. Albert took care of things for Janice. Tr. p. 190:1-4. The deed was notarized by Gayle Lemmon, an accountant who had performed services for both Albert and Janice. Tr. p. 36:11-19. Ms. Lemmon had received a call from Albert and Janice regarding preparation of a deed, and she referred them to attorney Robert Myott. Tr. p. 186:17-22. Ms. Lemmon called Mr. Myott's office and arranged for the appointment for purposes of drafting the deed that same day. Tr. p. 199:18-23. The deed was drafted by attorney Robert L. Myott. App. 107-108. Janice had not used Attorney Myott for legal services in the past. Tr. p. 36:8-10.

At the time Janice signed the deed, her daughter Laura was not aware of her intent or action to sign the deed. Tr. p. 35:7-14. Shortly after the deed was recorded, Laura became aware of the

deed and when asking Janice about it, Janice did not have a memory or understanding of executing the deed and transferring her interest. Tr. p. 40:1-13. After recording of the quit claim deed the loan with Farm Credit remained on the property and continued to be serviced from money from Blue Acres Pork. Tr. p. 41:15-18. Payment for the insurance on the real estate was also still being paid by the Blue Acres Pork Partnership. Tr. p. 41:25, p. 42:1-3. Janice remained individually liable on the loan that was given to Farm Credit and secured by the real estate. Tr. p. 42:18-22.

Following the quit claim deed, Janice continued to have financial obligations that included an outstanding tax obligation to the IRS for past taxes. Tr. p. 43:12-21. The tax obligation relates to a prior sale of 80 acres of farmland, for which Albert went with Janice to meet with an attorney and the tenant. Tr. p. 44:5-11. Albert had previously made contact with the tenant Charlie Laubenthal regarding the payment of rent, making assertions and representations on behalf of Janice. Tr. p. 180:5-25. Albert gave the appearance of having influence over Janice's decision making in his contacts with tenant Laubenthal. Tr. p. 133:9-17. That during the relevant time period, Charlie Laubenthal was the longtime tenant for Janice and had a regular contact and

relationship. Tr. p. 125:1-19. Albert had insight and influence over Janice's decision making, and made contact with Mr. Laubenthal regarding rental issues. Tr. p. 133:5-12.

Laura became the conservator for Janice and Letters of Appointment were issued on July 31, 2019. Janice then moved to Kansas with her daughter Peggy Redmond in August of 2019. Tr. p. 89:5-8. Peggy proceeded with an action to establish guardianship within the first week or two of Janice's arrival. Tr. p. 89:21-25. As part of such proceeding, Janice underwent an examination, and a report of examination and evaluation was entered in the Kansas proceeding. App. pp. 173-175. The report noted Janice had poor insight, have very low functional abilities, and needed 24/7 care. Id. The report of examination and evaluation in the Kansas proceeding found that Janice did not have capacity to meet essential needs for physical health, safety or welfare, and further that she did not have the capacity to manage her estate, and was therefore an adult with impairment. App. pp. 173-175; Tr. p. 91:1-8. Such guardianship process further included a letter regarding the testing and evaluation underwent by Janice. Such letter report found Janice's problem solving capabilities and visual

perception skills comparable to a 5 to 8 year old adolescent youth.
App. pp. 176-177.

III. ARGUMENT

A. **The District Court Correctly Found a Confidential Relationship Existed Between Mr. Cruz and Ms. Geerdes, Creating Undue Influence to Invalidate the Conveyance Made by the January 19, 2019 Quit Claim Deed.**

Preservation of Error.

Janice agrees with the statement of error preservation made by Albert.

Scope of Review and Standard of Review.

This action is in equity, and review is de novo. The appellate court is to give weight to the trial court's findings. *Oehler v. Hoffman*, 113 N.W.2d 254, 256 (Iowa 1962); citing *Groves v. Groves*, 82 N.W.2d 124, 130 (Iowa 1957). Considering the trial court's superior ability to review witnesses and assess credibility, weight is given to the district court's credibility findings. *In re the Marriage of Fox*, No. 20-0213 (Iowa Appellate 2021) at page 4.

The district court found that a confidential relationship existed between Albert and Janice creating a presumption of undue influence for the conveyance of interest in the quit claim deed.

The Court further found that Albert failed to rebut such presumption of undue influence, invalidating the conveyance of interest in the real estate made by Janice to Albert by quit claim deed on January 19, 2019.

ARGUMENT

1. THE DISTRICT COURT CORRECTLY FOUND A CONFIDENTIAL RELATIONSHIP EXISTED BETWEEN JANICE GEERDES AND ALBERT CRUZ.

In the court's consideration of Janice's Petition to Set Aside Conveyance made to Albert, the district court found the existence of a confidential relationship between Albert and Janice. A confidential relationship between parties to a deed may exist even in the absence of a fiduciary relation. *Oehler*, 113 N.W.2d at Page 256. A confidential relationship exists where one person has gained the confidence of another and purports to act or advise with the other's interest in mind. *Id.* 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, and the purpose of such doctrine is to defeat and correct betrayals of trust and abuses of confidence. *Id* (citations omitted).

A determination of a confidential relationship involves several principles:

1) A confidential relationship is a broad term and is not at all confined to any specific association of the parties to it.

2) It has been defined or described as any relation existing between parties to a transaction wherein one of the parties is duty-bound to act with the utmost good faith for the benefit of the other party.

3) In a broad view, the term confidential relationship embraces positions in life where a person comes to rely on and trust another in their important affairs.

In the Matter of Herm's Estate, 284 N.W.2d 191, 199 (Iowa 1979); citing *Dibel; v. Meredith*, 10 N.W.2d 28, 30 (Iowa 1943). A confidential relationship arises whenever a continuous trust is reposed by one person in the skill and integrity of another, and where it has been said that dominion may be exercised. *Id.*

Iowa courts have had ample opportunity to review instances claiming confidential relationships. *In the Matter of the Estate of Clark*, 357 N.W.2d 34, 37 (Iowa 1984). Such reviews have included finding that a grantee as an agent for nearly 20 years in the management of land, where grantee spoke to others as if the land was his, was found to be in a confidential relationship. *Id.*, citing *Curtis v. Armogast*, 138 N.W. 837, 880 (Iowa 1912). A

confidential relationship was also found involving a 90 year old individual who maintained mental competency and involvement in business decisions, but had physical deficiencies and was not as dominant as the alleged confidant who handled such person's business affairs. *Id.* (citing *First National Bank in Sioux City v. Curran*, 206 N.W.2d 317 (1973)). In another example, a decedent of 83 years of age having four years previously suffered a head injury and his mentality not keen thereafter, was less aggressive and active and less able to look after business affairs, and at another's instigation added such person's name as a joint tenant on accounts, was found to be in a confidential relationship. *Id.*, citing *In re Estate of Lundvall*, 46 N.W.2d (Iowa 1951).

Based upon the above established law and examples, the district court clearly had sufficient evidence to find the existence of a confidential relationship between Albert and Janice. It was undisputed that Albert had been in a relationship with Janice for 20 plus years. Tr. 15:8-10 [Laura]. Albert received interest in the real estate in question via transfer from Janice in 2004. App. p. 109. Evidence provided that Albert and Janice were involved in a business relationship since that time to the time of the deed in 2019. Tr. 16:15-18 [Laura]. During such

time period, Janice continually paid for expenses for Albert at his request and insistence. Merely because Albert didn't write checks does nothing to eliminate the clear dominion and control he had over Janice.

Janice's longtime farm tenant Charlie Laubenthal testified that Albert seemed to have insight and influence over Janice's decision making. Mr. Laubenthal further testified, as did Albert himself, that contact was made by Albert with Mr. Laubenthal regarding issues of rental of farmland owned by Janice. Such actions by Albert show acting in a manner consistent with a confidential relationship with Janice. Gayle Lemmon, the accountant for Albert and Janice in past years, stated that Albert was like a son to Janice. Albert took care of things for Janice. Tr. 190:1-4.

All of the above clearly establishes the existence of a confidential relationship between Albert and Janice.

2. THE DISTRICT COURT CORRECTLY DETERMINED THAT ALBERT FAILED TO REBUT THE PRESUMPTION OF UNDUE INFLUENCE.

Where a confidential relationship exists, a transaction where a person having the advantage profits at the expense of the other will be held presumptively fraudulent and voidable. *In the Matter of Herm's Estate*, 284 N.W.2d at 200; citing *Marron v. Bowen*, 16

N.W.2d 14, 16-17 (1944). The burden of proceeding with evidence then shifts to the person claiming such transfer was valid, to establish by clear and convincing evidence that the advantage was procured without undue influence. *Id.* Such rule is particularly applicable where one of the parties has a dominating influence over the other by reason of the affection, trust and confidence of the latter in the former. *In the Matter of Herm's Estate* at page 200 (citations omitted).

It is clear from the factual circumstances set forth above, that Albert has failed to rebut the presumption created as a result of the confidential relationship between himself and Janice. The Iowa Court has made prior determinations regarding the standard necessary for rebutting such presumption. It has been most recently determined that to rebut such presumption of undue influence, a grantee of a transaction must prove by clear, satisfactory and convincing evidence that the grantee acted in good faith throughout the transaction, and that the grantor acted freely, intelligently, and voluntarily. *Jackson v. Schrader*, 676 N.W.2d 599, 605 (Iowa 2003).

It is without question that Albert has failed such standard in this case. Any suggestion that Albert acted in good faith with

respect to the 2019 quit claim deed is without merit. The evidence shows that Albert initially took Janice to their accountant for purposes of drafting a deed of conveyance. Tr. 189:22-25 [Lemmon]. When advised that the accountant could not perform such service, an appointment was **IMMEDIATELY** arranged with an attorney the same day. Tr. 199;18-23 [Lemmon]. Such attorney had never provided any legal services or consultation to Janice in the past. Tr. 36:8-10 [Laura]. Testimony has established that Albert clearly controlled and had influence over Janice's actions in their relationship over the years. Furthermore, the quit claim deed would act to transfer Janice's remaining undivided interest in the real estate, despite the existing and remaining loan obligation in her individual name, continued payment of real estate taxes and insurance through the joint partnership, and receipt of absolutely zero consideration for such conveyance.

It is also clear that Janice did not act freely, intelligently, and voluntarily so as to provide the required evidence to rebut the presumption of undue influence. Instead, the evidence shows that Janice was driven to the accountant and the attorney by Albert. The 2017 motor vehicle accident and subsequent treatment and rehabilitation of Janice show dementia

and lack of capacity. Immediately subsequent to the deed, Janice was found to be intellectually impaired and a guardianship was established. Such proceedings showed Janice had very low functional abilities and did not have capacity to manage her estate. The medical records, reports, and testimony clearly showed that Janice was significantly impaired such that she was unable to intelligently sign the quit claim deed to Albert.

Albert's Brief alleges that the Court failed to address the issue of undue influence beyond the finding of a presumption as a result of a confidential relationship. Janice disputes such contention. Nonetheless, Iowa law also addresses the applicable factors in finding undue influence in general. The factors include: 1) A person is susceptible to undue influence; 2) there is opportunity to exercise undue influence; 3) a disposition to influence; and 4) the result must clearly appear to be the effect of undue influence. *Mendenhall v. Judy*, 671 N.W.2d 452, 460 (Iowa 2003).

The record clearly provides that undue influence by Albert was established by clear, convincing and satisfactory evidence. First, it has been clearly shown that Janice was susceptible to undue influence. Albert was identified as having "insight and

influence" over Janice's decision making by longtime tenant Laubenthal. Accountant Ms. Lemmon stated that Albert was "like a son to her" and he "took care of things for her." The medical records provide clear evidence that Janice's physical and mental condition were weakened prior to and therefore at the time of the conveyance of real estate interest to Mr. Cruz. See *Mendenhall v. Judy*, 671 N.W.2d at 460.

The record further reflects clear evidence of opportunity to exercise undue influence and a disposition to influence. Albert was in a longtime relationship with Janice. He exercised control over her decision making. He was involved in a partnership for many years, exercising control regarding the same. Evidence was clearly provided that Albert had a disposition to exercise such influence, by way of garnering financial resources from Janice for his benefit over many years.

Finally, the result clearly appears to be the effect of undue influence. As a result of such conveyance, Albert received an interest in real estate of significant value. Conversely, Janice transferred such interest while still retaining a legal debt obligation in her individual name, and without any consideration. Furthermore the ongoing loan payments, insurance and real estate

taxes were continued to be paid by the partnership, despite no ongoing benefit to be received by Janice. Even in the absence of any confidential relationship, the factors of undue influence clearly exist as to invalidate the January 19, 2019 quit claim deed from Janice to Albert.

B. The District Court Correctly Found that Janice Geerdes Lacked the Requisite Mental Capacity to Execute the January 9, 2019 Quit Claim Deed Transferring her Interest to Albert Cruz.

Preservation of Error.

Janice agrees with the Appellant's statement of error preservation made by Mr. Cruz.

Scope of Review and Standard of Review.

This action is in equity and review is de novo. Iowa R.App.P. 6.4. In equity cases, especially when considering credibility of witnesses, weight is given to the factual findings of the District Court. *Id.*; *Mendenhall v. Judy*, 671 N.W.2d 452, 454 (Iowa 2003).

The scope of review concerns the district court's determination that Janice Geerdes lacked the sufficient mental capacity to execute the quit claim deed dated January 9, 2019, and conveying her interest to Albert Cruz.

ARGUMENT

Under established Iowa law, a party alleging lack of mental capacity 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 importance of their acts when the deed was executed. *Daughton v. Parson*, 423 N.W.2d 894, 896 (Iowa 1988); *citing Costello v. Costello*, 186 N.W.2d 651, 654 (Iowa 1971). 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.*

Prior decisions have listed several factors to consider on the issue of mental capacity. Such factors include 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 other acts within a reasonable time prior and subsequent to the acts sought to be impeached. *Daughton*, 423 N.W.2d at 896; *citing Brewster v. Brewster*, 188 N.W. 672, 674 (Iowa 1922). The *Daughton* Court also noted that the

consideration of lack of independent advice is another factor in determining mental capacity. *Daughton*, 423 N.W.2d at 896, citing *In re Estate of Herm* at 200. (Citing that the record showed that the grantor did not receive independent advice concerning the deeds in question as they were prepared by the grantee's attorney).

It should be first noted that the assertion made by Albert that the applicable conveyance by quit claim deed is subject to a lower standard of mental competence is incorrect. As noted above and as stated by Albert, 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. *Costello v. Costello*, 186 N.W.2d at 654-655. The quit claim deed in question is clearly a transaction in ordinary business as opposed to an act of testamentary disposition. It goes without saying that the deed was not a Will. Furthermore, Albert's characterization of the deed as a gift is not only an unsubstantiated assertion, but is directly contradicted by the evidence. The warranty deed executed in 2004 conveying an interest from Janice Geerdes to Albert Cruz contained the specific recitation that it was an "absolute gift without actual consideration". App. p. 109. In contrast, the quit claim deed of

January 2019 contained no recitation identifying a gift. App. p. 107. Iowa case law clearly uses a higher degree of mental competence when reviewing inter vivos transfers of property, such as the alleged conveyance by quit claim deed in this case.

When examining the record under the standards of mental competence outlined in *Brewster* and cited in *Daughton*, it is clear that Janice Geerdes lacked the required level of mental capacity to sign the January 2019 quit claim deed. The medical records clearly show Janice's deteriorated mental condition and capacity. App. pp. 73-74. Such records show indications of dementia, as recited by the district court. It is well known that dementia is a debilitating condition, and one that certainly does not improve, but unfortunately worsens over time. Janice's daughter Laura and her longtime tenant Mr. Laubenthal provided clear testimony that Janice's physical and mental condition was clearly compromised at the execution of the Deed in 2019. Therefore the factor of Janice's physical and mental condition was established.

Secondly, the quit claim deed in 2019 was made without any adequate consideration. The deed recites an exemption under Iowa law for consideration under \$500.00. App. pp. 107-108. Testimony indicated that immediately after recording of the Deed, Janice did

not have any understanding of the effect of such conveyance. Tr. P. 40:7-13. Janice did not have a recollection of such Deed. Tr. P. 40:22-24.

The conveyance in the 2019 quit claim deed was also clearly "improvident". Such term is generally noted as "not having shown foresight; spendthrift or thoughtlessness." The record reflects that Albert took Janice to accountant Lemon's office, following which an appointment was scheduled with a new and unknown attorney that very day. Tr. P. 199:18-23. Such transfer was done without consideration and yet Janice remained obligated under the loan agreement on such real estate. Janice has continued to contribute towards expenses for taxes and insurance.

It is also well established that Janice held Albert in a position of trust and confidence, with the district court finding that a confidential relationship existed. Accountant Lemon testified that Albert was like a son to her, and took care of things for her. Tr. P. 190:1-4. It has also been clearly established that Janice Geerdes had a weakness of mind at the time of the execution of the Deed. This is evidenced by the medical records, and the nearly immediate and subsequent establishment of

conservatorship and guardianship following the deed. App. pp. 73, 74; 173-175; pp. 176-177.

The additional factor noted by the Court in *In the Matter of Herm's Estate* is the lack of independent advice. This was clearly the case with the 2019 deed, as the deed was prepared by an attorney that was not Janice's normal attorney.

The record clearly shows that Janice Geerdes was without the mental capacity required to sign the January 2019 deed. This is evidenced based upon her physical and mental condition at the time of execution, the lack of adequacy of any consideration, the improvident nature of such conveyance, the relationship of trust and confidence that she had in Albert Cruz, the weakness of her mind as shown by her acts prior to and subsequent to the conveyance, and the lack of any independent advice. Such clear and convincing evidence establishes a lack of mental capacity, as adjudged by the district court based upon the record at trial and under the applicable standard.

IV. CONCLUSION

The district court properly found that Albert Cruz and Janice Geerdes were in a confidential relationship. The evidence at trial showed that Janice was in a longtime business relationship with

Albert, that she relied on and trusted Albert in handling certain affairs, and that he was a dominant influence over her and handled affairs on her behalf. The existence of such confidential relationship creates a presumption of undue influence regarding the January 2019 deed, which the trial court correctly found Albert failed to rebut at trial.

Even in the event a confidential relationship was not found, the evidence clearly showed that undue influence was established. Ms. Geerdes was highly susceptible based upon her physical and mental condition and Albert had insight and influence over Janice's affairs and decision making. The record further reflects that Albert had an opportunity to exercise such influence, and the result was the clear result of such undue influence. Therefore, the district court's finding to invalidate the quit claim deed of January 19, 2019, was correct.

The district court correctly found that Janice lacked the required mental capacity to execute the quit claim deed. The evidence showed that Janice's mental condition had clearly deteriorated, and she lacked the mental capacity to execute the deed. Her medical records and mental evaluation show that she had dementia and was clearly incompetent to sign the deed. In

addition, Janice signed the deed without any consideration, despite having an individual debt obligation remaining upon the real estate. The evidence further showed Janice did not have an understanding prior to and certainly subsequent to the signing of the deed. Such transfer was improvident and Janice had a weak state of mind at the time of execution. Furthermore, Janice did not have separate and independent advice at the time of the execution of the deed. All of these factors clearly show clear and convincing evidence that Janice was without the mental capacity to sign the quit claim deed. The trial court correctly ruled that the requisite capacity was not present and as a result the deed was deemed invalid.

V. REQUEST FOR SUBMISSION WITHOUT ORAL ARGUMENT

Janice does not believe that oral argument will provide further guidance to the Court with respect to these issues and therefore does not request oral argument. However, if the Court determines that oral argument would be appropriate and allows Albert oral argument, then Janice also requests to be heard in oral argument.

VI. ATTORNEY'S COST CERTIFICATE

I hereby certify that the actual cost of printing the necessary copies of the foregoing Appellee's Brief is \$-0-.



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VII. CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 5th day of April, 2023, I electronically filed the foregoing Brief with the Clerk of the Supreme Court using the electronic case filing system (EDMS) which will send notification of such filing to the following:

Shaun Thompson (via email: shaun@newmanthompsongray.com)



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