

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of the Estate of LILLIAN G. BODEN,
Deceased,

UNPUBLISHED
July 29, 1997

MICHAEL BODEN, VINCENT BODEN,
ROBERT BODEN, VICKIE COOK, LANA
SANDERSON, and WILLIAM C. BODEN,

Petitioners-Appellees,

v

ANNA L. VINCENT, Personal Representative of the
Estate of LILLIAN G. BODEN, Deceased,

Respondent-Appellant.

No. 193572
Monroe Probate Court
LC No. 93-004226-SE

Before: Doctoroff, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

Lillian Boden died intestate in May, 1993. Respondent is her daughter; petitioners are the children of Boden's deceased son. Respondent moved into Boden's home in 1990, after Boden's husband died. This case involves petitioners' claim that certain assets held jointly by Boden and respondent should be included in Boden's estate. Respondent appeals as of right from the probate court's order requiring her to return funds from five separate transactions to the estate. We affirm.

Respondent contends that there was insufficient evidence to support the trial court's finding that respondent's joint ownership of the disputed assets was the product of undue influence. We review the sufficiency of the evidence by viewing the evidence in the light most favorable to petitioners and giving them the benefit of every reasonable inference which can be drawn from the evidence. *Mull v Equitable Life Assurance Society of the United States*, 196 Mich App 411, 421; 493 NW2d 447 (1992), aff'd 444 Mich 508, 510 NW2d 184 (1994). Where, as here, a respondent has failed to properly preserve the issue by a motion for a directed verdict or by a post-verdict motion, we review the issue only for manifest injustice. *Napier v Jacobs*, 429 Mich 222, 229; 414 NW2d 862 (1987).

A presumption of undue influence attaches to a transaction where the evidence establishes:

- (1) the existence of a confidential or fiduciary relationship between the grantor and a fiduciary,
- (2) that the fiduciary (or an interest which he represents) benefits from the transaction, and
- (3) that the fiduciary had an opportunity to influence the grantor's decision in that transaction. [*Kar v Hogan*, 399 Mich 529, 541-542; 251 NW2d 77 (1976).]

A review of the record in this case indicates that there was sufficient evidence to satisfy each prong of the *Kar* test. First, there was evidence of a confidential relationship between Boden and respondent. A confidential relationship is generally formed when a person in poor health relies on another to conduct banking or other financial transactions. *In re Swantek*, 172 Mich App 509, 514; 432 NW2d 307 (1988). Here, Boden's doctor testified that she was a frail, elderly lady with multiple medical problems. Respondent herself testified that she took over her mother's financial affairs after Boden's husband died. This was sufficient to establish a confidential relationship.

Respondent also testified that she benefited from the transactions which established her as a joint owner of her mother's accounts. Evidence that she withdrew money from these accounts for her own personal needs was sufficient to satisfy the second prong of *Kar*, *supra*. In addition, testimony demonstrated that after respondent moved into her mother's home, she took control over Boden's life and therefore had the opportunity to influence Boden's decisions in financial transactions. Thus, under *Kar*, *supra*, there was a presumption that respondent exerted undue influence over Boden.

To rebut the presumption of undue influence, respondent presented the testimony of Boden's surviving son and neighbors, who stated that Boden was alert and capable of managing her own affairs. However, we defer to the probate court on matters of credibility and give broad deference to findings made by the probate court because of its unique vantage point regarding witnesses, their testimony, and other factors not readily available to the reviewing court. *In re Erickson Estate*, 202 Mich App 329, 331; 508 NW2d 181 (1993). Viewing the evidence in a light most favorable to the petitioners, sufficient evidence was established to warrant the probate court's finding of undue influence. *Mull*, *supra*, 196 Mich App 421. There was no manifest injustice requiring reversal.

Respondent also contends that she was denied her due process rights by the trial court's denial of proper notice, shifting the burden of proof, and denying her an effective opportunity to defend. Respondent failed to preserve these claims for appellate review. In any event, the record

shows that due process notice and opportunity to defend considerations were satisfied and the burden of proof was not improperly shifted under *Kar, supra*.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Barbara B. MacKenzie

/s/ Richard Allen Griffin