IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
May 16, 2023 Session

IN RE ESTATE OF WILLIE C. CHANEY

Appeal from the Probate Court for Sevier County
No. 17-08-6707 Deborah C. Stevens, Judge[1]

No. E2022-01051-COA-R3-CV

This appeal involves a dispute between family members regarding their father's/grandfather's estate. Following the filing of an action to probate the decedent's will by his daughter, the decedent's son and grandson contested the will. The trial court conducted a bench trial, subsequently entering an order determining that the residuary clause in the decedent's will was invalid due to undue influence by his daughter. The court also held that the decedent's son and grandson had proven that a portion of the decedent's real property should be vested in the son due to a "resulting/constructive" trust. The decedent's daughter and her son have appealed the trial court's rulings. Discerning no reversible error, we affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Probate Court Affirmed; Case Remanded

THOMAS R. FRIERSON, II, J., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J., and W. NEAL MCBRAYER, J., joined.

Steven E. Marshall, Sevierville, Tennessee, for the appellants, Kathy Diane Proffitt and Jacob Proffitt.

Ben W. Hooper, III, and Barry H. Valentine, Newport, Tennessee, for the appellees, Nicky Darrell Chaney and Samuel Chaney.

[1] Sitting by interchange.

OPINION

I. Factual and Procedural Background

This action originated with the filing of a "Petition to Open Estate" ("the Petition") by Kathy Diane Proffitt ("Kathy") in the Sevier County Probate Court ("trial court") on August 14, 2017.[2] Kathy averred that she had been named executor in a 2005 Last Will and Testament ("the Will") executed by her father, Willie C. Chaney ("Decedent"), who had passed away on February 13, 2015. According to Kathy, Decedent left an estate to be administered that was valued at approximately $900,000.00, consisting mostly of real property. Kathy further averred that Decedent's "legatees, devisees, heirs at law and next of kin" included Nicky Darrell Chaney ("Nicky"), Samuel Chaney ("Samuel"), Jacob Proffitt ("Jacob"), Matthew Blaine Proffitt ("Matthew"), and herself.[3] Kathy requested that the court admit the Will to probate and issue letters testamentary to her.

A copy of the Will was attached to the Petition and demonstrated that Decedent had identified Kathy and Nicky as his adult children therein. Decedent had bequeathed certain items of personal property, primarily farm equipment, to his grandsons, Samuel, Jacob, and Matthew, as well as to his son, Nicky. Decedent left the remainder of his real and personal property to Kathy. On August 17, 2017, the trial court admitted Decedent's estate to probate and appointed Kathy as the executor.

Following publication of the notice to creditors, Nicky and Samuel retained counsel to represent them concerning the status of an irrevocable trust that had been established by Decedent several years prior to his death. Their attorney sent a letter to Kathy's counsel on February 12, 2018, asking that Kathy provide a copy of the complete trust document, as well as the exhibits thereto, in order to ascertain the assets comprising the trust. They also requested that Kathy provide an accounting of all trust transactions from the date of the trust's creation forward.

On May 16, 2018, Kathy filed a petition seeking to close the estate, representing that the estate had been fully administered. Subsequently, on June 26, 2018, Nicky and Samuel ("Contestants") filed a "Complaint to Contest Will," asserting that they were contesting the Will because they believed that it was the result of Kathy's exertion of undue influence over Decedent, who was eighty-four years old at the time of his death. Kathy, Jacob, and Matthew ("Defendants") were named as defendants in the action. On July 5, 2018, Defendants filed an answer to the complaint, denying that the Will was the

[2] Inasmuch as many of the parties share the same surname, they will be referred to by their first names as designated herein. No disrespect is intended.

[3] It appears that Kathy and Nicky are siblings and the children of Decedent. Samuel is Nicky's son, and Jacob and Matthew are Kathy's sons.

result of undue influence. On September 7, 2018, the trial court entered an order certifying the will contest.

On February 5, 2019, Contestants filed a motion to amend their complaint, seeking to add claims of resulting or constructive trust. Contestants averred that Nicky had purchased six tracts, numbered 4 through 9, of the real property known as the K.A. Finchum property ("the Finchum Property") from Decedent in 1976 for $41,000.00. According to Contestants, Nicky, Decedent, and Decedent's parents had subsequently executed a written agreement providing that Nicky would conditionally convey the Finchum Property back to Decedent and that Decedent would hold the property in trust for Nicky. The agreement also stated that Decedent's father would give his "99 Acre Farm Blowing Cave" ("the Blowing Cave Property") to Nicky. The agreement further provided that in the event that Decedent and his wife obtained a divorce and Decedent's wife was awarded the Finchum Property, Decedent would repay Nicky for his $41,000.00 investment. Contestants therefore claimed that Nicky held an equitable interest in both the Blowing Cave Property and the Finchum Property (collectively, "the Disputed Properties").

Contestants asserted that Nicky had paid the property taxes on the Finchum Property from 1976 forward and that Contestants had maintained the Disputed Properties and raised cattle thereon. Contestants averred that in 2002, Decedent conveyed the Disputed Properties to a trust and later conveyed the Disputed Properties back to himself in violation of the 1976 written agreement. According to Contestants, Decedent subsequently devised the Disputed Properties to Kathy, also in violation of the written agreement. Contestants thus sought imposition of a resulting or constructive trust concerning the Disputed Properties. The trial court granted Contestants permission to amend their complaint, and Contestants filed an amended complaint on October 28, 2019.

Defendants filed a response to the amended complaint, denying the averments therein. Defendants submitted that Nicky and Decedent had executed a subsequent written agreement in 2005, which stated that Contestants could live on the Disputed Properties if they paid the real property taxes and maintained the fences. Defendants asserted that this agreement superseded any prior agreements. Defendants also pled the statute of limitations as an affirmative defense, positing that Contestants' claim sounded in breach of contract, which claim triggered a six-year limitations period. In addition, Defendants asserted that there was no allegation or proof that Decedent was incapacitated. According to Defendants, Decedent had acted of his own free will and upon advice of counsel in his estate planning decisions. In support, Defendants attached a copy of the purported 2005 handwritten agreement between Nicky and Decedent.

The trial court conducted a bench trial on February 18 and 19, 2020. At the conclusion of trial, the court requested that the parties submit proposed findings of fact and conclusions of law. Following the parties' respective filings, the trial court entered

lengthy findings of fact and conclusions of law on September 2, 2020. In pertinent part, the trial court found the following facts to be true, although we have restated and paraphrased the court's findings.

Contestants had worked the family farm for many years, growing tobacco and corn and raising cattle thereon; Kathy had not been involved in the family farm business. However, following the death of Decedent's wife in 2003, Kathy began to assist Decedent, transporting him to the store and to doctors' appointments. Decedent made Kathy a signatory on his checking account, and she balanced his checkbook. She also possessed a key to his lock box, which contained his important papers. At the time, Decedent suffered from an eye condition, macular degeneration, and experienced problems with reading, driving, and other daily tasks due to this condition.

The trial court further found that Decedent's mother, Exie Chaney ("Exie"), had acquired the Finchum Property from her brother, Kerm Finchum. This tract contained approximately 51.4 acres. Decedent's father, Arthur "Babe" Chaney ("Babe"), owned a house on the Blowing Cave Property, consisting of approximately 100 acres. Both of these properties, the Disputed Properties, were part of the family farm. In 1976, Decedent deeded title to the Finchum Property to Nicky, and Nicky paid $41,000.00 to his father in consideration. At approximately the same time, Kathy received title to the property known as the William Sisk Farm from Decedent. Shortly thereafter, deeds were prepared transferring title to these real properties back to Decedent. Nicky and Kathy testified that this was accomplished so that if their mother, Doris Chaney ("Doris"), proceeded to divorce Decedent, she would have no claim to the properties. Kathy testified that she paid nothing for the transfer of property; instead, she propounded that the deeds were prepared "because her grandparents were afraid that her mother was going to ask for a divorce and they wanted to make sure that [Doris] did not receive any of the family farms."

The trial court determined that Nicky's payment of $41,000.00 to Decedent was supported by a handwritten agreement signed in 1976 by Nicky, Decedent, Babe, and Exie, stating that Nicky would allow Decedent to put "his name only" on the house and farm for which Nicky had previously paid Decedent $41,000.00. The agreement also provided that if Doris obtained a divorce and was awarded the house and farm, Decedent would repay Nicky's purchase money. Babe agreed to give Nicky the "99 acre Farm Blowing Cave" along with other property. The agreement further states, "We all keep a Lifetime Estate." Nicky explained that he executed the deed conveying the Finchum Property back to Decedent based on this agreement.

Nicky also related that he had paid the real property taxes concerning the Finchum Property every year since, either by paying them in person or giving the money to his father to pay them. In response, Kathy admitted that she knew Contestants had paid taxes

on the Disputed Properties since 2015 but stated that she did not know who paid them from 1976 to 2015.

The trial court found that in 1991, in conjunction with Nicky's divorce from his wife, Martha ("Marty") Chaney, there occurred a meeting at an attorney's office wherein Nicky, Marty, Babe, Exie, and Decedent were in attendance. All of those family members who were present signed a written and notarized agreement as part of the property settlement between Nicky and Marty. This agreement provided that Marty would waive any claim she had to "Nicky's property known as K.A. Finchum's or Kerm's place," which Nicky had purchased from Decedent shortly before the marriage. The agreement further stated that Babe had "transferred the farm to include the marital home to [Decedent] with instruction that it be left to Nicky." Marty agreed to waive any right to Nicky's interest in the Blowing Cave Property, which was referred to as Nicky and Marty's marital home, even though the agreement included that the parties had renovated and maintained the property and paid the taxes from marital funds. According to this property settlement agreement, Babe was "adamant in it being known that his intent was that the farm be passed to [Samuel]." Therefore, the agreement recited that Decedent and Nicky had agreed that the farm would be left to Samuel.

In 2002, Decedent and Doris executed documents establishing the irrevocable trust. Title to the Disputed Properties was transferred to the trust. The trustee was ultimately directed, upon the deaths of Decedent and Doris, to transfer ninety-nine acres (the Blowing Cave Property) to Nicky and Samuel. Kathy was to receive the Finchum Property, consisting of approximately fifty acres. Nicky and Samuel testified that they were unaware of the creation of the trust.

In 2003, Exie transitioned to a nursing home at the age of ninety-two years. Following Exie's admission to the nursing home, Kathy prepared a power of attorney document for Exie to sign. Kathy also drafted a purported assignment of Exie's interest in the Finchum Property, which was executed by Exie and Decedent. After Exie's death, Kathy sought a judicial determination that she, rather than Nicky, was entitled to Exie's interest in the Finchum Property; however, Nicky was awarded Exie's interest in that property. According to the trial court, the probate file concerning Exie's estate demonstrated that in 1993, Exie and Babe had sold to Nicky four promissory notes executed by Kathy, totaling $40,000.00, because Exie and Babe had been unable to collect the debt from Kathy. Nicky later sold the notes to a third party for collection. The court noted that Exie's will was also included in the court file wherein Exie indicated that she was leaving nothing to Kathy because "we have given her substantial money to build her house."

The trial court stated that Decedent's medical records were made an exhibit, which demonstrated that Decedent had been diagnosed with macular degeneration in 2000. The records evinced that Decedent was having difficulty reading, driving, and managing other

daily activities. Decedent apparently reported to his medical provider that he was "nearly blind" and relied on Kathy for check writing, mail management, and transportation.

In 2005, following Doris's death, Kathy and Decedent consulted two attorneys concerning the irrevocable trust. One attorney, Dale Allen, advised that it would be "most prudent" to seek judicial approval to terminate the trust due to fiduciary obligations to the trust beneficiaries. He further advised that as an alternative, Decedent could revoke the trust and quitclaim the trust assets to himself. However, Mr. Allen cautioned that certain steps should be taken in that event, such as having a physician certify Decedent's competence. Mr. Allen's letter to Decedent reflected that Decedent had indicated that he was unhappy with Nicky and Samuel and no longer wished for them to receive a large portion of his estate. Decedent subsequently executed documents revoking the trust and transferring title of the trust properties to himself without seeking judicial approval.

On the same day that Decedent recorded the trust revocation document and the quitclaim deeds transferring the Disputed Properties back to himself, Kathy drove Decedent to a different attorney's office to discuss changing Decedent's will. The attorney mailed a draft of the Will to Kathy's residence and addressed his letter to her. By its terms, the Will leaves Decedent's residuary estate, including the Disputed Properties, to Kathy and grants Nicky an interest in farm equipment only. The attorney testified that Kathy was not present in the room when he discussed the terms of the Will with Decedent. He further testified that Decedent appeared to be in good health and to know what he was doing. The attorney also related that Decedent indicated that he had particular reasons for dividing his estate unequally but declined to specifically state what those reasons were. The attorney testified that Decedent told him, "this is the way I want it made." The attorney articulated that he also prepared a general durable power of attorney for Decedent, naming Kathy as his attorney-in-fact. Witnesses to the signing of these documents by Decedent testified that they observed no signs of undue influence although most were unable to recall the event with specificity.

Kathy acknowledged that she had received the draft copy of the Will in the mail and conveyed that she had read it to Decedent. Neither informed Nicky that a Will had been drafted or signed. Samuel testified that in 2011, he purchased Decedent's remaining farm equipment for $10,600.00. Samuel also related that he had made substantial improvements to the Blowing Cave Property, including construction of a large hay barn.

Kathy testified that after Decedent's death, she opened his lockbox and found the handwritten agreement, dated November 18, 2005, stating that Decedent would allow Nicky to live on the Blowing Cave Property so long as Nicky paid the associated taxes and maintained the fences and buildings. The agreement purported to bear the signatures of Decedent and Nicky, but Nicky denied any knowledge of it or that the signature purporting to be his was genuine.

Kathy and Nicky both acknowledged that their relationship had been strained for many years. Neither party indicated a reason for the estrangement. Kathy added that Nicky did not visit Decedent often after their mother died. Nicky countered that he had always been close with his father and his grandparents but visited his father less in later years in order to avoid seeing Kathy.

After reviewing the evidence presented, the trial court concluded that Defendants had proven that the Will was duly executed. The court explained that the burden then shifted to Contestants to demonstrate that the Will was the result of undue influence. Regarding undue influence, the court ruled that Contestants needed to demonstrate a confidential relationship between Kathy and Decedent. The court found that although Kathy held a power of attorney, she had never utilized it.

The trial court concluded that Contestants had proven a confidential relationship between Kathy and Decedent and that Kathy exercised increasing dominion and control over Decedent in his later years predicated on the following facts:

1. Decedent was seventy-four years old when he executed the 2005 Will.

2. Decedent was grief stricken after the deaths of his wife and his mother in 2003.

3. Decedent was "nearly blind" and required Kathy's help to read documents. Kathy also helped Decedent by providing transportation, writing checks, and managing other daily activities.

4. Kathy admitted that she spent a considerable amount of time with Decedent and that he relied on her for check writing, mail management, and transportation.

5. Kathy initiated the visit with an attorney to discuss revocation of the trust, although she indicated that this was at Decedent's request.

6. Attorney Allen's letter was sent to Kathy. Decedent signed the trust revocation and quitclaim deeds without further communication with Mr. Allen.

7. When Decedent met with an attorney regarding changes to his will, Kathy transported him there and filled out the paperwork. Kathy was "privy to all legal communications regarding the Trust and her father's revised Will."

8. The draft will was sent to Kathy, who read it to Decedent. The evidence was unclear regarding whether anyone else read the Will to Decedent before he signed it.

9. Because of the strained relationship between Kathy and Nicky, Contestants spent less time with Decedent in his later years when Kathy was more involved in his care.

10. Decedent executed a power of attorney naming Kathy as his attorney-in-fact, although it was never utilized by her.

11. Kathy had also prepared a power of attorney for Exie when she was in a nursing home, as well as an assignment of Exie's interest in the Finchum Property to Kathy. No legal counsel was involved in the drafting and execution of these documents. The assignment was later held invalid by the probate court.

12. The documents regarding revocation of the trust were sent to Kathy. The trust revocation was completed without judicial approval and without following all of Mr. Allen's recommendations.

The trial court determined that these facts established the existence of a confidential relationship between Decedent and Kathy. The court further found that the evidence demonstrated suspicious circumstances sufficient to create a presumption of undue influence, relying on *In re Estate of Maddox*, 60 S.W.3d 84 (Tenn. Ct. App. 2001). The court specifically found that "[f]or more than forty years the Chaney family had engaged in a pattern of conduct to keep the family farm within the Chaney family with the intention that the farm would continue to be operated by the next generation of Chaney farmers, including [Nicky and Samuel]." The court further determined that although the family had executed various agreements purporting to affect the titles to the Disputed Properties, none of those agreements had mentioned or been signed by Kathy. The trial court also concluded that Kathy had not succeeded in rebutting the presumption of undue influence because she had not provided sufficient evidence to demonstrate that the Will was the product of Decedent's independent judgment.

In addition, the trial court found that Contestants had shown the existence of a "resulting/constructive" trust concerning the Finchum Property, by reason of the 1976 agreement between Decedent and Nicky (reciting that consideration was paid by Nicky for the Finchum Property) and the 1991 agreement executed by Nicky, Marty, Babe, Exie, and Decedent. The court determined that in reliance upon these agreements, Nicky had maintained, improved, and paid the real property taxes on the Finchum Property for many years. The court further determined that Contestants had not proven by clear and

convincing evidence that a constructive or resulting trust should be imposed on the Blowing Cave Property. However, to the extent that Contestants had paid taxes or made improvements to this property, the court instructed that they could be entitled to repayment for those payments and improvements from Decedent's estate. The court declared that the Will's provisions passing the remainder of Decedent's property to Kathy were invalid; that Nicky was the owner of the Finchum Property via a "resulting/constructive" trust; and that upon proof of payment of real property taxes or for maintenance/improvements to the Blowing Cave Property, Contestants would be due a credit for those payments.

On October 2, 2020, Defendants filed a motion for new trial or to alter or amend the judgment, urging that the trial court's findings of fact and conclusions of law were contrary to the law and evidence. Contestants opposed the motion, and they also sought appointment of an administrator *ad litem* for Matthew, who had passed away following trial. On September 3, 2021, the court entered an agreed order appointing an administrator *ad litem* to represent Matthew's estate.

On July 5, 2022, the trial court entered an order denying the motion for new trial. However, the court granted the motion to amend in part, making slight changes to its findings of fact and conclusions of law. The court corrected its finding that the attorney who prepared the 2005 Will was deceased and apologized for that error. The court also revised its finding that Kathy had met with an attorney regarding revocation of the trust, stating instead that she had taken her father to meet the attorney. After correcting these findings and two other minor misstatements, the court affirmed its earlier rulings. The court also concluded that it was appropriate to appoint an administrator *ad litem* to represent Matthew's estate. Defendants timely appealed.

On January 3, 2023, the trial court entered a final judgment following a show cause order from this Court. In this judgment, the trial court incorporated its July 2022 order, declaring the residuary clause in the Will to be invalid. The court vested title to the Finchum Property in Nicky and vested title to the Blowing Cave Property in Nicky and Kathy as tenants in common via intestate succession. The court found that the specific bequests to Matthew and Jacob made in the Will were valid. The court further ruled that "upon proof of payment of taxes by Nicky Chaney and/or Samuel Chaney or payment of any maintenance, upkeep or the construction of any fixtures on the property, Nicky Chaney and/or Samuel Chaney may be entitled to a credit against the Estate of Willie Chaney for those payments."

II. Issues Presented

Defendants present the following issues for this Court's review, which we have restated slightly:

1. Whether the trial court erred by determining that a confidential relationship existed between Kathy and Decedent.

2. Whether the trial court erred by determining that Decedent's execution of the Will was the product of undue influence by Kathy.

3. Whether the trial court erred by imposing a resulting or constructive trust in favor of Nicky regarding the Finchum Property.

III. Standard of Review

Our review of the trial court's judgment following a non-jury trial is *de novo* upon the record with a presumption of correctness as to the trial court's findings of fact unless the preponderance of the evidence is otherwise. *See* Tenn. R. App. P. 13(d); *Rogers v. Louisville Land Co*., 367 S.W.3d 196, 204 (Tenn. 2012). "In order for the evidence to preponderate against the trial court's findings of fact, the evidence must support another finding of fact with greater convincing effect." *Wood v. Starko*, 197 S.W.3d 255, 257 (Tenn. Ct. App. 2006). The trial court's determinations regarding witness credibility are entitled to great weight on appeal and shall not be disturbed absent clear and convincing evidence to the contrary. *See Jones v. Garrett*, 92 S.W.3d 835, 838 (Tenn. 2002). We review the trial court's conclusions of law *de novo* with no presumption of correctness. *Hughes v. Metro. Gov't of Nashville & Davidson Cnty*., 340 S.W.3d 352, 360 (Tenn. 2011).

IV. Confidential Relationship

Kathy and Jacob[4] contend that the trial court erred in determining that a confidential relationship existed between Decedent and Kathy. The issue of whether such a confidential relationship existed is a question of fact. *See In re Estate of Price*, 273 S.W.3d 113, 125 (Tenn. Ct. App. 2008). As this Court has previously elucidated:

> Confidential relationships can assume a variety of forms, and thus the courts have been hesitant to define precisely what a confidential relationship is. *Robinson v. Robinson*, 517 S.W.2d 202, 206 (Tenn. Ct. App. 1974). In general terms, it is any relationship that gives one person the ability to exercise dominion and control over another. *Givens v. Mullikin ex rel. Estate of McElwaney*, 75 S.W.3d 383, 410 (Tenn. 2002). It is not merely a relationship of mutual trust and confidence, but rather it is one

[4] The administrator *ad litem* of Matthew's estate has not participated in the appellate proceedings.

> where confidence is placed by one in the other and the recipient of that confidence is the dominant personality, with ability, because of that confidence, to influence and exercise dominion and control over the weaker or dominated party.

Iacometti v. Frassinelli, 494 S.W.2d 496, 499 (Tenn. Ct. App. 1973).

> Fiduciary relationships are confidential per se because of the legal status of the parties. They automatically give rise to a presumption of undue influence with regard to transactions that benefit the fiduciary. Examples of such fiduciary relationships include that between guardian and ward, attorney and client, or conservator and incompetent. *Kelly v. Allen*, 558 S.W.2d 845, 848 (Tenn. 1977). Relationships not fiduciary in nature, even those that are inherently confidential, such as those between family members, are not confidential per se and require proof of the elements of dominion and control in order to establish the existence of a confidential relationship.

Kelley v. Johns, 96 S.W.3d 189, 197-98 (Tenn. Ct. App. 2002) (other internal citations omitted).

Further, the burden of proof regarding a confidential relationship rests upon the party claiming the existence of such a relationship, which in this case would be Contestants. *See Brown v. Weik*, 725 S.W.2d 938, 945 (Tenn. Ct. App. 1983). As this Court has further explained:

> A confidential relationship in this context is not merely a relationship of mutual trust and confidence, but rather a relationship in which confidence is placed in one who is the dominant personality in the relationship, with the ability, because of that confidence, to exercise dominion and control over the weaker or dominated party. *Iacometti v. Frassinelli*, 494 S.W.2d 496, 499 (Tenn. Ct. App. 1973).
>
> > [T]here must be a showing that there were present the elements of dominion and control by the stronger over the weaker, or there must be a showing of senility or physical and mental deterioration of the donor or that fraud or duress was involved, or other conditions which would tend to establish that the free agency of the donor was destroyed and the will of the donee was substituted therefor.
>
> *Kelly v. Allen*, 558 S.W.2d 845, 848 (Tenn. 1977) (emphasis added). Evidence of one party's deteriorated mental or physical condition will

> substantiate the existence of a confidential relationship if the condition renders the weaker party unable to guard against the dominant party's imposition or undue influence. *Williamson v. Upchurch*, 768 S.W.2d 265, 270 (Tenn. Ct. App. 1988). Still, "[t]he core definition of a confidential relationship requires proof of dominion and control," and the question of whether undue influence existed should be decided by the application of sound principles and good sense to the facts of each case. *Childress v. Currie*, 74 S.W.3d 324, 329 (Tenn. 2002). In undue influence cases, the question for us "is not whether the weaker party's decision was a good one, or even whether he knew what he was doing at the time." *Williamson v. Upchurch*, 768 S.W.2d at 270. Instead, we must determine "whether the weaker party's decision was a free and independent one or whether it was induced by the dominant party." *Id*.

In re Estate of Reynolds, No. W2006-01076-COA-R3-CV, 2007 WL 2597623, at *8 (Tenn. Ct. App. Sept. 11, 2007).

In this case, it is undisputed that there was no fiduciary relationship between Decedent and Kathy because the power of attorney granted to Kathy by Decedent had never been exercised. *See Parish v. Kemp*, 179 S.W.3d 524, 531 (Tenn. Ct. App. 2005) ("No confidential relationship arises when an unrestricted power of attorney is executed but has not yet been exercised."). Accordingly, in order to find that a confidential relationship existed, Contestants were required to demonstrate that Kathy exercised dominion or control over Decedent. *See Estate of Reynolds*, 2007 WL 2597623, at *8; *see also Kelly v. Allen*, 558 S.W.2d 845, 848 (Tenn. 1977) (holding that the parent-child relationship was not confidential *per se* and requiring that elements of dominion and control or other conditions be shown that would "tend to establish that the free agency of the donor was destroyed" to invoke the presumption of undue influence).

The trial court found, *inter alia*, the following facts in support of its determination that a confidential relationship existed between Decedent and Kathy:

> After [Decedent's] wife, Doris passed away in 2003, Kathy Proffitt began to assist her father. She took him to the grocery store and doctors' appointments. She was a signatory on his checking account and balanced his check book. She had a key to his lockbox with his important papers. [Decedent] suffered from macular degeneration which caused him to have problems with reading, driving and other day-to-day tasks. He required a magnifying glass to read.
>
> * * *

Trial Exhibit 22 are the medical records from Southeastern Retina for [Decedent] beginning in February of 2000. [Decedent] is diagnosed with macular degeneration and has eye surgery in June of 2000. In November of 2003, the medical records include a note of [Decedent's] primary complaint which states "I'm nearly blind." The records include a letter from Dr. Gilliland to Dr. Miller dated January 24, 2004 in which it is observed that [Decedent] reports that he has difficulty reading, driving, writing and managing daily activities. It also states that he relies on his daughter for check writing, mail management and driving. It also stated that [Decedent] should discontinue driving and he is referred to Services for Blind and Visually Impaired.

In June of 2005, after the death of his wife, Doris, Kathy Proffitt went to visit with Attorney Richard Wallace about the 2002 Willie and Doris Chaney Irrevocable Trust.[5] Mr. Wallace suggested that he would like to consult with Attorney Dale Allen in Knoxville. After Attorneys Allen and Wallace met, Attorney Wallace sent a letter to Kathy Proffitt suggesting that she take [Decedent] to meet with Attorney Dale Allen. Kathy Proffitt and [Decedent] then met with Attorney Dale Allen. On June 30, 2005, Mr. Allen prepared a letter to [Decedent] in care of Attorney Richard Wallace that was forwarded to Kathy Proffitt. Mr. Allen advised that it would be most prudent to seek a judicial approval of the trust termination because of fiduciary obligations to the trust beneficiaries. As an alternative, he states that [Decedent] as Trustee could execute a revocation of trust and quitclaim the deeds from the trust to himself. If this option was chosen, Mr. Allen recommends that [Decedent] obtain a doctor's statement as to his competency and execute a statement as to the reasons for the revocation of the trust.

Mr. Allen's letter of June 30, 2005 to [Decedent] indicated that [Decedent] had expressed that he was unhappy with his son, Nicky, and grandson, Samuel and no longer wanted them to receive a large portion of his estate. Mr. Allen testified that [Decedent] shared no specifics about his relationship with his son.

Without seeking judicial approval or following some of the steps outlined in Mr. Allen's letter, [Decedent] as Trustee executed four deeds to [Decedent] and executed a Resolution of Trustee. No copies of the executed documents were provided to Mr. Allen as he requested. These documents were recorded on November 22, 2005. Those deeds purportedly

[5] The trial court later amended this finding to state that Kathy had accompanied Decedent in visiting with Mr. Wallace; however, Kathy testified that she had only spoken to Mr. Wallace via telephone.

put the K.A. Finchum Farm property and the Blowing Cave property back into the hands of [Decedent].

* * *

On November 22, 2005, the same date the Revocation and four Quit Claim deeds were recorded, Kathy Proffitt drove her father to the law office of Charlie Johnson to discuss his Will. Attorney Johnson mailed a draft of the will to Kathy Proffitt at her residence and addressed his letter to her.

On December 13, 2005, [Decedent] executed his Last Will and Testament which left his residuary estate to Kathy Proffitt. The Last Will and Testament does not reference any of the prior written agreements regarding the Chaney Family farms. The Last Will and Testament left Nicky Chaney a 1/4 interest in a John Deere round baler.

* * *

Johnson sent the draft will to [Kathy] and she reviewed and read the will to [Decedent]. At the time, he was suffering from macular degeneration and needed a magnifying glass to read.

* * *

At the time [Decedent] executed his will in 2005, he was 74 years old.

In July of 2003, Doris Chaney, [Decedent's] wife of approximately 50 years died, and he was grief stricken. In November of 2003, Exie Chaney, mother of [Decedent] also died.

* * *

Kathy Proffitt testified, and the file of Southeastern Retina confirm that [Decedent] relied on his daughter for check writing and mail management and she would drive him to the store and to appointments. She thought his health was such that it would be better for him to move in with her, but he chose not do so, at least as of the time the will was executed. Kathy Proffitt testified that she spent considerable time with her father.

* * *

> Kathy Proffitt received and was privy to all legal communications regarding the Trust and her father's revised Will. . . .
>
> When a draft of the Will was prepared, it was sent to Kathy Proffitt who read the will to her father. The testimony of the witnesses who were present during the signing of the Will were inconsistent as to whether anyone else read the Will to [Decedent] prior to its execution at the lawyer's office.
>
> * * *
>
> Because of the strained relationship that existed between brother and sister for many years before the events in question, [Nicky] and Samuel Chaney spent less time with their father/grandfather after Kathy Proffitt became more involved in caring for her father.
>
> * * *
>
> For more than forty years the Chaney family had engaged in a pattern of conduct to keep the family farm within the Chaney family with the intention that the farm would continue to be operated by the next generation of Chaney farmers, including Nicky Chaney and Samuel Chaney. The Chaney family members signed multiple hand-written documents purporting to affect the title to the K.A. Finchum farm and the Blowing Cave farm but none of the documents contain any mention of Kathy Proffitt or have the signature of Kathy Proffitt.
>
> Other than making specific provisions for certain farm equipment interest to be transferred to Sam Chaney, Jacob Proffitt, Matthew Proffitt and Nicky Chaney, [Decedent's] Will gave all the "rest of my estate including house, furnishings, life insurance, bank accounts, CDs and all other real and personal property" to Kathy Chaney.

(Paragraph numbering and exhibit references omitted.)

Having carefully reviewed the record in this matter, we determine that the evidence preponderates in favor of the above factual findings. As such, the issue that remains to be determined is whether these facts establish that a confidential relationship existed between Decedent and Kathy.

In other cases adjudicated by this Court wherein we have affirmed the trial court's finding of the existence of a confidential relationship between the decedent and a family member, certain factual similarities exist. Those similarities include (1) the decedent's

declining physical or mental health; (2) the decedent's resulting dependency on the family member; and (3) the family member's ability to exercise control over the decedent's financial affairs, acceptance of visitors, healthcare decisions, or other important actions. *See*, *e.g.*, *In re Estate of Schisler*, 316 S.W.3d 599, 609 (Tenn. Ct. App. 2009); *Kelley v. Johns*, 96 S.W.3d at 197; *McMillin v. McMillin*, No. E2014-00497-COA-R3-CV, 2015 WL 1510766, at * 6 (Tenn. Ct. App. Mar. 31, 2015); *Waller v. Evans*, No. M2008-00312-COA-R3-CV, 2009 WL 723519, at *8 (Tenn. Ct. App. Mar. 17, 2009); *In re Estate of Neely*, No. M2000-01144-COA-R3-CV, 2001 WL 1262598, at *4 (Tenn. Ct. App. Oct. 22, 2001).

For example, in *Estate of Schisler*, the jury found that two of the decedent's children maintained a confidential relationship with her because both children exercised a degree of dominion and control over their mother. *See* 316 S.W.3d at 609. This Court agreed, noting that the decedent was partially incapacitated and dependent on her daughter for her care and transportation. *Id*. Moreover, the decedent was financially dependent on her son, with whom she shared a joint bank account, and her son had control of the funds in the account and how they were dispersed. *Id*. Similarly, in *Kelley*, the jury found and this Court agreed that as the decedent's health had declined, he had become more dependent on his son. *See* 96 S.W.3d at 197. Evidence was presented demonstrating that the decedent's son held significant control over his father's assets and was authorized to write checks on his father's accounts, sometimes writing checks to himself or his businesses. *Id*. Accordingly, this Court affirmed the jury's determination that a confidential relationship existed between the decedent and his son.

Likewise, in *McMillan*, the jury determined that a confidential relationship existed between the decedent and her son, who had helped care for the decedent in the months preceding her death. *See* 2015 WL 1510766, at *1-2. This Court agreed, relying on the evidence presented that the decedent had experienced mental confusion prior to her death, suffered from brain atrophy and other serious physical conditions, and was unable to care for herself. *Id*. at *6. The decedent's son was a joint owner of funds in the decedent's bank accounts and acted as general contractor in building the decedent a new home with her funds. *Id*. at *2.

In *Waller*, the trial court determined that the decedent had a confidential relationship with his new wife, who had provided significant care for the decedent in the months preceding his death. *See* 2009 WL 723519, at *8. This Court agreed, based on evidence demonstrating that the decedent was "weak" and "dependent," that the decedent's wife provided a majority of his care, and that the decedent's wife controlled who was allowed to visit the decedent. *Id*. at *9. In so finding, this Court relied upon *In re Estate of Neely*, 2001 WL 1262598, at *4, wherein this Court found evidence of dominion and control because the decedent relied on his daughter for his financial and physical needs, including dispensing medication, assisting his movement from a bed to a recliner, and either sitting with him or hiring a sitter.

In contrast, this Court has reversed a trial court's determination that a confidential relationship existed when the evidence failed to demonstrate the elements of dominion and control. *See Jarnigan v. Moyers*, 568 S.W.3d 585, 593 (Tenn. Ct. App. 2018) (determining that no confidential relationship existed inasmuch as the decedent had suffered no mental decline and the decedent's friend only provided transportation or cashed checks for the decedent when requested but did not have "unrestrained access" to the decedent's financial assets). Similarly, this Court has affirmed a jury's determination that no confidential relationship existed when evidence was presented that the decedent was "sharp" and could not be forced to do something that she did not wish to do despite some level of physical infirmity and dependence on her son for her daily needs. *See Johnson-Murray v. Burns*, 525 S.W.3d 625, 636 (Tenn. Ct. App. 2017).

In the instant action, Contestants presented proof that Decedent was "grief stricken" in 2003 following the deaths of his wife and mother. Kathy testified that she began assisting her father as early as 2003 because of his failing eyesight due to macular degeneration. She added that she began writing checks for her father and was a signatory on his account after her mother died. Moreover, Kathy acknowledged that in 2005 when the Will was executed, Decedent could not see very well and required the use of a magnifying glass to read. She further acknowledged that she drove her father to the store and any appointments because he could no longer drive. Kathy claimed that Decedent suffered from no cognitive impairment in 2005 although she acknowledged that he did in later years.

Nicky testified that Kathy and he had been estranged for many years, explaining that following Exie's death in 2003, Kathy and he were involved in litigation because Kathy had prepared and had Exie execute an assignment prior to her death that purportedly conveyed Exie's interest in the Finchum Property to Kathy even though Nicky had purchased that interest years before. Nicky indicated that he was never told about the trust or the Will until after Decedent died. Nicky reported no strain in his relationship with his father. Nicky also related that at one time, he would visit his father daily and they would share meals together; however, in the final few years of Decedent's life, Nicky could not visit Decedent because Kathy or Decedent would call and instruct him that he could not visit. Samuel corroborated Nicky's testimony that there was no strain in Nicky's relationship with Decedent.

We further note that Decedent's medical records established that in 2003, Decedent had represented to his physician that he was "nearly blind." In 2004, Decedent ostensibly reported that he was experiencing "difficulty reading, driving, writing and managing daily activities" and that he relied on Kathy for "check writing, mail management and driving." Kathy acknowledged that Decedent struggled to perform daily activities, such as cooking, because his eyesight was poor and that she thought he should not live alone.

The evidence is undisputed that Kathy had unfettered access to Decedent's bank account because she could and did write and sign checks regarding the account. The evidence is also undisputed that Kathy transported Decedent to various attorneys' offices in order to facilitate Decedent's commissioning and execution of the Will, in addition to his revocation of the prior trust document, which act ensured that the Disputed Properties would be controlled by the Will. Although Kathy claimed that she had read the Will to Decedent, other witnesses could not conclusively establish that the Will had been read to Decedent prior to its execution although they all reported that such was Mr. Johnson's usual practice. We reiterate that the trial court's determinations regarding witness credibility are entitled to great weight on appeal and shall not be disturbed absent clear and convincing evidence to the contrary. *See Jones*, 92 S.W.3d at 838. As the trial court noted, the evidence demonstrated that Kathy was "privy to all legal communications regarding the Trust and her father's revised Will."

Based upon the proof presented at trial, we conclude that the evidence preponderates in favor of the trial court's determination that a confidential relationship existed between Decedent and Kathy. Kathy testified that she spent a significant amount of time caring for Decedent, transported him to all of his appointments, wrote checks from his bank account, had access to his lockbox, and received legal correspondence respecting his Will and revocation of the prior trust. In addition, medical evidence demonstrated that Decedent was nearly blind and could not read without a magnifying glass, which substantially limited his ability to conduct his daily activities independently. Decedent was dependent upon Kathy, and Kathy exercised control by limiting other family members' access to Decedent and asserting dominion over his care and finances. Accordingly, for the foregoing reasons, we conclude that a preponderance of the evidence supports the trial court's determination that a confidential relationship existed between Decedent and Kathy, and we affirm that finding.

V. Undue Influence

Kathy and Jacob also contend that the trial court erred by determining that Decedent's execution of the Will was the result of undue influence by Kathy. The trial court found that there were suspicious circumstances surrounding Decedent's revocation of the trust and execution of his Will. Following our thorough review of the evidence presented, we agree.

As this Court previously has explained with respect to evidence of undue influence:

> It is rare to find direct evidence of undue influence. [*In re Estate of Maddox*, 60 S.W.3d 84,] 88 [(Tenn. Ct. App. 2001)]. Usually, to prove undue influence, one "must prove the existence of suspicious circumstances

> warranting the conclusion that the person allegedly influenced did not act freely and independently." *Id*. "The suspicious circumstances most frequently relied upon to establish undue influence are: (1) the existence of a confidential relationship between the testator and the beneficiary, (2) the testator's physical or mental deterioration, and (3) the beneficiary's active involvement in procuring the will." *Id*. at 89. Some other recognized suspicious circumstances are:
>
> > (1) secrecy concerning the will's existence; (2) the testator's advanced age; (3) the lack of independent advice in preparing the will; (4) the testator's illiteracy or blindness; (5) the unjust or unnatural nature of the will's terms; (6) the testator being in an emotionally distraught state; (7) discrepancies between the will and the testator's expressed intentions; and (8) fraud or duress directed toward the testator.
>
> *Mitchell v. Smith*, 779 S.W.2d 384, 388 (Tenn. Ct. App. 1989). "The courts have refrained from prescribing the type or number of suspicious circumstances that will warrant invalidating a will on the grounds of undue influence." *Id*.

DeLapp v. Pratt, 152 S.W.3d 530, 540-41 (Tenn. Ct. App. 2004).

In the case at bar, the trial court found and we have agreed that a confidential relationship was established between Decedent and Kathy. Furthermore, the evidence demonstrated that Decedent had experienced physical deterioration due to his macular degeneration and had reported two years before his execution of the Will that he was "nearly blind." Kathy acknowledged that Decedent could not read, drive, watch television, or perform many daily tasks without her help. Decedent was also reportedly "grief stricken" following the death of his wife in 2003, and his mother died later that same year.

The evidence preponderates in favor of a determination that Kathy was actively involved in procuring the Will by transporting Decedent to the attorney's office for an initial meeting and for the Will's execution, receiving correspondence from the attorney concerning the Will, and purportedly reading the draft to her father. In addition, Kathy had transported Decedent to consult with other attorneys concerning the revocation of a prior trust and execution of documents, thereby ensuring that the Disputed Properties would pass under the Will.

Neither Kathy nor Decedent informed Contestants of the existence of the trust, its revocation, the subsequent recording of deeds to the Disputed Properties, or execution of the Will devising those properties to Kathy. Moreover, the terms of the Will were unjust

in that the substantial majority of Decedent's estate was left solely to Kathy, despite years of planning by Decedent, his parents, and Nicky for the Chaney Farms to eventually belong to Nicky, and later, Samuel. The terms of the Will were inconsistent with Decedent's earlier agreements with Nicky and Samuel, as expressed in various writings executed by Decedent, his parents, and Nicky, as well as the later transaction wherein Samuel purchased Decedent's equipment.

"The existence of a confidential relationship, together with a transaction by which the dominant party obtains a benefit from the other party or another suspicious circumstance, triggers a presumption of undue influence." *In re Estate of Murdaugh*, No. W2011-00041-COA-R3-CV, 2011 WL 6141067, at *3 (Tenn. Ct. App. Dec. 8, 2011). By reason of the fact that Kathy obtained a benefit from Decedent's execution of his Will as well as the suspicious circumstances outlined above, we conclude that the trial court properly determined that the presumption of undue influence was triggered.

As to Kathy's burden to rebut the presumption of undue influence, we note:

> The presumption of undue influence can only be rebutted by clear and convincing evidence of the fairness of the transaction. *Richmond v. Christian*, 555 S.W.2d 105, 107 (Tenn. 1977). The difficulty in proving the fairness of a transaction varies depending on the circumstances of a particular case and the strength of the presumption of undue influence. *Id*. at 108. A lack of suspicious circumstances can rebut the presumption. *Parish v. Kemp*, 308 S.W.3d 884, 891 (Tenn. Ct. App. 2008) (citing *Simmons v. Foster*, 622 S.W.2d 838, 841 (Tenn. Ct. App. 1981)). A showing that the testator had independent advice is another way of showing the fairness of the transaction. *Matter of Estate of Depriest*, 733 S.W.2d 74 (Tenn. Ct. App. 1986). "A showing . . . of independent advice is ordinarily required where it is a reasonable requirement and where it would be difficult to show the fairness of the transaction without it." *Id*. at 79. Fairness, in the context of a will contest involving allegations of undue influence, has been explained as follows:
>
> > It is understandable that judges and lawyers might be confused in this area because the appellate courts have not carefully defined what is meant by the fairness of the transaction. Without the term being carefully defined the average jury might assume that it was being asked to find whether the person benefitting from the will deserved what the will provided. That is not the meaning of the term. The jury should not be concerned with the question of whether the testator did right by those who ordinarily would be the objects of the testator's bounty. The jury's function is limited to a

> determination of the testator's capacity to make a will and whether the provisions in the will were arrived at through the free agency of the testator rather than through the imposition of someone else's will. If the jury finds in favor of the will on these two questions it has found that the transaction was fair.

Matter of Estate of Depriest, 733 S.W.2d at 79.

In re Estate of Murdaugh, 2011 WL 6141067, at *3-4. "Clear and convincing evidence means evidence in which there is no serious or substantial doubt about the correctness of the conclusions drawn from the evidence." *Furlough v. Spherion Atl. Workforce, LLC*, 397 S.W.3d 114, 128 (Tenn. 2013) (quoting *Hodges v. S.C. Toof & Co*., 833 S.W.2d 896, 901 n.3 (Tenn. 1992)).

We reiterate that the proof at trial demonstrated multiple and significant suspicious circumstances surrounding the execution of the Will, as outlined above. Decedent executed the Will at a time when he was of advanced age, had experienced substantial loss of his eyesight and endured the loss of his spouse of many years, and was dependent upon Kathy for reading, check writing, mail management, transportation, and other care actions. Moreover, neither Decedent nor Kathy informed other family members of the Will's existence or contents. Although there was also evidence that Decedent had received independent advice concerning the drafting of the Will, the evidence does not rise to the level of clear and convincing with regard to whether the Will was the result of Decedent's free agency. Witnesses to the Will's execution could not remember with specificity whether the Will was read to Decedent before he executed it although one such witness did recall that Decedent had a problem with his eyesight. The proof was simply insufficient to establish that Decedent was making decisions completely of his own accord. As such, we cannot conclude that Kathy presented clear and convincing proof of the fairness of the transaction.

Based on our review of the evidence presented, we agree with the trial court's determination that the Will's residuary clause was the product of undue influence by Kathy. We therefore affirm the lower court's decision to invalidate that clause based on undue influence.

VI. Resulting or Constructive Trust

Finally, Kathy and Jacob argue that the trial court erred by imposing a resulting or constructive trust in favor of Nicky regarding the Finchum Property. Concerning this issue, the trial court found:

> The Court finds that [Contestants have] proved by clear and convincing evidence the existence of a constructive and/or resulting trust for the K.A. Finchum farm property. Evidence was presented that Nicky Chaney paid his father $41,000.00 for the property on February 17, 1976 when Nicky Chaney was 22 years old. The payment is confirmed in a document created on February 20, 1976 and signed by Nicky Chaney and [Decedent]. The written agreement, inartfully drafted as it may have been, stated that Nicky Chaney would convey the 50-acre farm and house back to [Decedent] in "name only." The agreement references [Decedent] maintaining a life estate. The payment and purchase of the farm is confirmed in a separate agreement dated October 7, 1991 that was signed by Nicky Chaney, Martha Chaney, [Decedent], Exie Chaney and Arthur "Babe" Chaney as part of the divorce of Nicky and Martha Chaney. Since that time Nicky Chaney has worked the farm, made improvements and paid the taxes on the 50-acre K.A. Finchum farm property.

The evidence adduced at trial supports these findings.

This Court has previously stated: "Constructive or resulting trusts are judge-created trusts or doctrines which enable a court, without violating all rules of logic, to reach an interest in property belonging to one person yet titled in and held by another." *Wells v. Wells*, 556 S.W.2d 769, 771 (Tenn. Ct. App. 1977). In defining a resulting trust, our Supreme Court has explained:

> Broadly speaking, a resulting trust arises from the nature or circumstances of consideration involved in a transaction whereby one person becomes invested with a legal title but is obligated in equity to hold his legal title for the benefit of another, the intention of the former to hold in trust for the latter being implied or presumed as a matter of law, although no intention to create or hold in trust has been manifested, expressly or by inference, and there ordinarily being no fraud or constructive fraud involved.
>
> While resulting trusts generally arise (1) on a failure of an express trust or the purpose of such a trust, or (2) on a conveyance to one person on a consideration from another—sometimes referred to as a "purchase-money resulting trust"—they may also be imposed in other circumstances, such that a court of equity, shaping its judgment in the most efficient form, will decree a resulting trust—on an inquiry into the consideration of a transaction—in order to prevent a failure of justice.

In re Estate of Nichols, 856 S.W.2d 397, 401 (Tenn. 1993) (quoting 76 Am. Jur. 2d *Trusts* §166, pp. 197-98 (1992)). This Court has elucidated how a constructive trust may arise as follows:

> [A]gainst one who by fraud, actual or constructive, by duress or abuse of confidence, by commission of wrong, or by any form of unconscionable conduct, artifice, concealment, or questionable means, or who in any way against equity and good conscience, either has obtained or holds the legal title to property which he ought not, in equity and good conscience hold and enjoy.

Livesay v. Keaton, 611 S.W.2d 581, 584 (Tenn. Ct. App. 1980). Both types of trust must be proven by clear and convincing evidence. *See Story v. Lanier*, 166 S.W.3d 167, 185 (Tenn. Ct. App. 2004) ("As with a resulting trust, the plaintiff has the burden of proving, by clear and convincing evidence, the existence of a constructive trust based on parol evidence.").

The proof presented at trial demonstrated that Decedent had conveyed the Finchum Property to Nicky via warranty deed on February 17, 1976, upon Nicky's payment of $41,000.00. Nicky testified that he had worked for years raising cattle and hogs and growing crops to sell and that he had saved up most of the money he used to pay his father for the property, borrowing the rest from a friend. Nicky subsequently conveyed the real property back to Decedent on February 23, 1976. Nicky explained the reason for the reconveyance by presenting a handwritten agreement, dated February 20, 1976, and signed by Nicky, Decedent, Babe, and Exie. This agreement provided that Nicky would allow Decedent to "put in his name only house and farm" and that "he paid Willie $41,000 cash for farm and house on Tuesday, February the 17th, 1976." The agreement further provided that if Decedent and his wife divorced and Decedent's wife was awarded the house and farm, Decedent would reimburse Nicky's $41,000.00 payment. The agreement also stated that Babe and Exie would give to Nicky certain parcels of real property and items of personal property and that "we all keep a lifetime estate." Nicky testified that he had paid the property taxes associated with the Finchum Property and worked on the land from that day forward. Samuel corroborated Nicky's testimony regarding farming the land and payment of property taxes.

Nicky testified that he was later married to Marty Chaney, who is Samuel's mother. When Nicky and Marty divorced in 1991, they met at an attorney's office, along with Decedent, Babe, and Exie, in order to settle the property issues attendant to the divorce. As a result of that meeting, an agreement was drafted and signed by all five of them, which evinced that Marty had agreed to waive any claim to "Nicky's property known as K.A. Finchum's or Kerm's place," "bought shortly before their marriage from Nicky's father." In exchange, the parties agreed that title to this property would pass to Samuel upon Nicky's death.

We acknowledge that Kathy also presented a handwritten note, purportedly written by Decedent and dated November 18, 2005. This note states that Decedent had

agreed to allow Nicky to reside on the Blowing Cave property "if he would pay land tax and keep up fence and Building." The note further reflects that Samuel "has cattle on the other farm if he would pay land tax and keep up fence." This note bears the signature of Decedent and Nicky; however, Nicky testified that he was unaware of this writing and had not signed it. This note also includes no specific mention of the Finchum Property or any disposition of same. We therefore determine the 2005 handwritten note to be immaterial to the issue at hand.

Based on the evidence presented, we determine that the trial court properly imposed a resulting trust on the Finchum Property in Nicky's favor.[6] Nicky testified that he had purchased the Finchum Property from Decedent in 1976, making a cash payment of $41,000.00 to Decedent as consideration. A few days later, Nicky allowed Decedent to take title to the property "in name only" based on the agreement among himself, his father, and his grandparents, with the understanding that the property would return to him. Nicky then proceeded to conduct farming activities on the land and pay the property taxes for over forty years. Moreover, Nicky's agreement with Decedent and other family members is also corroborated by the 1991 property settlement agreement executed during his divorce proceedings. Accordingly, we conclude that the record contains clear and convincing evidence supporting the imposition of a resulting trust in Nicky's favor concerning the Finchum Property, *see Furlough v. Spherion Atl. Workforce, LLC*, 397 S.W.3d at 128, and we affirm the trial court's ruling on this issue.

VII. Conclusion

For the foregoing reasons, we affirm the trial court's judgment in its entirety. Costs on appeal are assessed to the appellants, Kathy Diane Proffitt and Jacob Proffitt. This case is remanded to the trial court for enforcement of the judgment and collection of costs assessed below.

s/Thomas R. Frierson, II

_____

THOMAS R. FRIERSON, II, JUDGE

[6] The trial court found that the evidence supported imposition of a "resulting/constructive" trust, and we acknowledge that in certain cases, a distinction regarding the type of trust imposed has not been made. *See*, *e.g.*, *Sliger v. Sliger*, 105 S.W.2d 117, 120 (Tenn. Ct. App. 1937) ("[W]e think the land bank has a right to have set up a constructive or resulting trust on the Allen mortgage[.]"). However, our more recent authorities have highlighted the distinction between these trusts, typically imposing either one or the other. *See Logan v. Estate of Cannon*, No. E2015-02254-COA-R3-CV, 2016 WL 5344526, at *15 (Tenn. Ct. App. Sept. 23, 2016) ("[A] resulting trust would require a finding of intent, implied or presumed as a matter of law, to create a trust . . . and, in the alternative, a constructive trust would require a finding of fraud or bad faith[.]"). Based on the evidence presented in this matter, we conclude that a resulting trust should be imposed due to the intent expressed by Decedent and Nicky concerning the Finchum Property.