

**IN THE INDIANA COURT OF APPEALS
CAUSE NO. 21A-GU-01909**

In Re The Guardianship of EUGENIA P. GALANOS)	Appeal from the Lake Circuit Court
)	Probate Division
)	
NIKI P. GALANOS, Appellant,)	Trial Ct Cause No. 45C01-2009-GU-00199
)	
and)	
)	
GEORGE P. GALANOS, Appellee.)	Hon. Jewell Harris Jr., Special Judge

APPELLANT'S REPLY BRIEF

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SUMMARY OF REPLY ARGUMENT

First, Appellant provided this Court with a sufficient record to enable review of the issue raised on appeal; namely, whether the trial court abused its discretion in issuing the Protective Order. Precedent states that it is the duty of an appellant to provide this Court with a record sufficient to enable this Court to review the claim of error. Yet, precedent further states that the rules require an appellant to transmit only those parts of the record that are necessary for review of the issues to be asserted upon appeal. Here, Appellant provided this Court with the transcripts of all three (3) days of final hearings, as well as the transcript for the March 25, 2021 hearing on temporary guardianship. As such, Appellant provided this Court with more than a sufficient record to enable review.

Second, the trial court abused its discretion in issuing the Protective Order because there was no evidence presented that Mrs. Galanos was incapacitated. Appellee concedes that there was no presumption of undue influence arising in this matter. Precedent states that in cases where there is no presumption, undue influence can be established upon a showing of the imposition of power by one party to deprive the other party of the exercise of free will. Here, there is no evidence, nor does Appellee point to any in his Response, that Appellant exerted undue influence over Mrs. Galanos such that Mrs. Galanos was deprived of her free will.

Instead, the evidence presented revealed that at all relevant times Mrs. Galanos was of sound mind and body, and had the capacity to make important decisions relating to her finances, legal issues, and health care. The evidence presented further revealed that Mrs. Galanos willingly deeded the real properties to Appellant because Appellant was the one providing care for Mrs. Galanos. Furthermore, that Mrs. Galanos willingly deeded the properties to Appellant just as Ms. Galanos as willingly gave Appellee substantial amounts money.

REPLY ARGUMENT

I. Appellant Provided this Court with a Record Sufficient to Enable Review of the Issue Presented.

Appellee's first argument, that Niki waived her appeal because "a complete record does not exist for appellate review," is not cogent. Appellant's Br. pp. 16. Niki provided this Court with the transcripts of all three (3) days of final hearings, as well as the transcript for the March 25, 2021 hearing on temporary guardianship. As such, Niki provided this Court with more than a sufficient record to enable review. Appellee's Br. pp. 16. *see Lenhardt Tool & Die Co., Inc. v. Lumpe*, 703 N.E.2d 1079, 1084 (Ind. Ct. App. 1998) ("It is the duty of an appellant to provide this court with a record sufficient to enable us to review the claim of error.").

To expand, Appellee filed his Petition for Appointment of Guardian Over Person & Estate of Incapacitated Person on or about September 9, 2020 ("Guardianship Petition"). Appellant's App. Vol. II, pp. 27. Pursuant to the trial court's Order of Hearing Held March 25, 2021:

"3. [w]hile the temporary guardianship has expired, the September 10, 2020 **petition for permanent guardianship still pends** with this Court **and is set for evidentiary hearing on April 29, 2021 at 9:30a.m.**" Appellant's App. Vol. II, pp. 86 (emphasis added).

Thus, the first day of the final hearing on the Petition for Guardianship was April 29, 2021. *Id.* The trial court held two (2) additional days final hearings on May 13, 2021 and June 15, 2021. Appellant's App. Vol. II, pp. 2-19. Following the conclusion of the final hearings on the Petition for Guardianship, the trial court issued the Protective Order "[i]n lieu of formal guardianship." Appellant's App. Vol. II, pp. 20.

Niki is appealing the trial court's Protective Order. Therefore, Niki provided this Court with the transcripts for all three (3) of the final hearing dates, as well as the hearing held on March 25, 2021 on the temporary guardianship that was in place at the time. Thus, Niki has supplied this

Court with a sufficient record to review the issue raised on appeal; namely, whether the trial court abused its discretion in issuing the Protective Order.

Appellee claims that Niki “failed to provide a record (transcripts) of the other evidentiary hearings held in this matter.” Appellee’s Br. pp. 16. Appellee does not specify which additional hearings Appellee believes are necessary in order to provide this Court with a sufficient record to review the issue raised by Niki. *Id.* at 16. Again, since Appellant provided this Court with transcripts for all final hearings held on the Petition for Guardianship¹, it is unclear what additional transcripts would be needed.

To the extent that Appellee is suggesting that an Appellant is required to provide transcripts of every hearing held, whether it be provisional, final, or one dealing with collateral matters, such is inconsistent with established precedent. As our Supreme Court has explained, “Appellate Rule 7.2(B) directs that ‘[n]either party shall request parts of the record or a transcript of the proceedings which are not needed for the issues to be asserted on appeal.’” *In re Walker*, 665 N.E.2d 586, 588 (Ind. 1996). In fact, as our Supreme Court has clarified, “the rules require an appellant to transmit ‘only those parts of the record that are necessary for review of the issues to be asserted upon appeal.’” *In re Walker*, 665 N.E.2d 586, 588 (Ind. 1996).

Finally, Appellee’s argument that Niki waived her appeal because Niki did not provide this Court with a record of the private in chambers interview of Mrs. Galanos by the trial court judge is illogical.² Appellee’s Br. pp. 16-17. The in chambers interview is not necessary for this Court’s

¹ While the petition for permanent guardianship was denied, the trial court issued a protective order in lieu of a formal guardianship following the conclusion of the final hearings. Appellant’s App. Vol. II. pp. 20-22. Therefore, the transcripts for the final hearings on the Petition for Guardianship are the relevant transcripts for the Protective Order currently on appeal.

² Appellee recognizes that “no record exists of this in camera interview of [Mrs. Galanos]”, yet argues that Niki’s appeal should be waived because Niki did not provide this Court with something (i.e., the non-recorded in chambers interview) that does not exist. Appellee’s Br. pp. 16.

review because the interview was conducted prior to the issuance of the temporary guardianship. Appellant's App. Vol, II, pp. 66. Even more, the in chambers interview is not necessary for review of the issue raised on appeal because Mrs. Galanos testified at the April 29, 2021 final hearing, and as such, any necessary information obtained by the trial court judge in the private chambers could have been obtained through Mrs. Galanos' testimony. Finally, it is well established that "a judgment based solely upon an extra-judicial inquiry cannot stand." *Truden v. Jacquay*, 480 N.E.2d 974, (Ind. Ct. App. 1985).

In summary, Appellant provided this Court with a sufficient record to review the issue raised on appeal; namely, whether the trial court abused its discretion in issuing the Protective Order. Appellee's argument is not cogent.

II. The Trial Court Abused its Discretion in Issuing a Protective Order Under Indiana Code Section 29-3-4-1 Because There was No Evidence Presented to Support a Finding of Incapacitation Pursuant to Indiana Code Section 29-3-1-7.5

In this present matter, the trial court abused its discretion in issuing a protective order under Indiana Code section 29-3-4-1 because there was no evidence that Mrs. Galanos was incapacitated as defined by Indiana Code section 29-3-1-7.5. Appellant's App. Vol. II, pp. 20. In particular, the evidence presented was wholly insufficient to support a conclusion that Niki unduly influenced such that Mrs. Galanos would be incapacitated. *see* Ind. Code 29-3-1-7.5(2) ("incapacitated person" is "an individual who: . . . (2) is unable: (A) to manage in whole or in part the individual's property; (B) to provide self-care; or (C) both; because of . . . undue influence of others on the individual.").

At the outset, it is worth noting that the Appellee concedes that there was no presumption of undue influence arising in this case due to Niki acting as Mrs. Galanos' power of attorney.³ Appellee's Br. pp. 19. Therefore, Niki stands on her argument presented in Appellant's Brief as to why there was no presumption of undue influence in this matter. Appellant's Br. 19.

As this Court has explained, “[i]f there is no applicable presumption, undue influence can be established upon a showing of the imposition of power by one party to deprive the other party of the exercise of free will.” *Trent v. National City Bank*, 918 N.E.2d 646, 652 (Ind. Ct. App. 2009); *see also In re Estate of Compton*, 919 N.E.2d 1181, 1187 (Ind. Ct. App. 2010) (“[w]hen the common law presumption of undue influence does not apply, plaintiffs can establish undue influence by showing the imposition of power by one party to deprive the other party of the exercise of free will.”).

In this matter, there is no evidence that Niki in any way influenced Mrs. Galanos such that Mrs. Galanos was “deprive[ed] . . . of the exercise of free will.” To the contrary, the evidence presented revealed that the evidence presented revealed that Mrs. Galanos was declared of sound mind and body: (1) at the time that Mrs. Galanos elected Niki to serve as her power of attorney; (2) at the time that Mrs. Galanos transferred the real property to Niki; and (3) at the time shortly after George filed his Petition for Guardianship in September of 2020. Exhibits Vol. I, pp. 9, 10, 11-14, 30.

Furthermore, at the final hearing April 29, 2021 hearing, Mrs. Galanos testified that she willingly gave Niki the real properties, and that Niki never asked Mrs. Galanos for the real

³ Appellee specifically states that “[t]his is not about the Appellant utilizing a power of attorney . . .” Appellee's Br. pp. 19. Thus, coupled with the fact Appellee presents no argument regarding presumptions of undue influence, the only reasonable inference is that Appellee concedes there was no presumption arising in this matter. *Id.*

properties that Mrs. Galanos transferred to Niki. Tr. Vol. 2 of 3, pp. 85, 132. Mrs. Galanos further testified that Niki had never forced her to give Niki money. Tr. Vol. 2 of 3, pp. 96.

In fact, Mrs. Galanos testified she willingly gave Niki the real properties just like she willingly gave George money. Tr. Vol. 2 of 3, pp. 132. Additionally, the evidence presented reveals that Mrs. Galanos' actions of transferring the DeKalb Street Property and 28th Street Property to Niki were consistent with her similar generous actions around the same time, such as providing George a check for fifty thousand dollars (\$50,000) to buy his child a car. Exhibits Vol. I, pp. 4, 30.

Mrs. Galanos' testimony that she willingly gave the real properties to Niki is further supported by the testimony of other several other witnesses. In particular, Denise Skiadopoulos, a family friend of the Galanos, testified that Mrs. Galanos told her "on numerous occasions" that Mrs. Galanos deeded the real properties to Niki because Niki was taking care of Mrs. Galanos. Tr. Vol. 3 of 3, pp. 85. Mrs. Galanos' doctor and close family friend, Dr. Gasparis, testified that Mrs. Galanos was a strong-willed woman, and that it was his opinion that no one could force Mrs. Galanos to do something she did not want to do. Tr. Vol. 2 of 3, pp. 140. Dr. Gasparis further testified that, around the time that Mrs. Galanos transferred the real property to Niki, Mrs. Galanos was of sound mind. Tr. Vol. 2 of 3, pp. 142.

Importantly, there was simply no evidence, nor does Appellee point to any evidence, that would provide a reasonable inference that Niki unduly influenced Mrs. Galanos such that Mrs. Galanos was deprived of the exercise of her free will. Appellee's Br. pp. 18-20. *see Trent v. National City Bank*, 918 N.E.2d 646, 652 (Ind. Ct. App. 2009) ("if there is no applicable presumption, undue influence can be established upon a showing of the imposition of power by one party to deprive the other party of the exercise of free will.").

Instead, Appellee’s argument consists of baseless assertions unsupported by the record, and mischaracterizations of the evidence presented. Appellee’s Br. pp. 18-20. First, Appellee makes several baseless assertions in his Appellee’s Brief. Appellee’s Br. pp. 18-20. The baseless nature of these allegations is best demonstrated by the fact that Appellee fails to provide citation to any authority contained in the record.⁴ *Id.*

Furthermore, Appellee’s argument consists of several assertions mischaracterizing the evidence presented at trial. *Id.* In particular, Appellee attempts to provide this Court with an inference of undue influence on the part of Niki by pointing out that Niki’s “friend, attorney Irene Gasparis” prepared the quitclaim deeds for Mrs. Galanos. *Id.* at 20 What Appellee conveniently omits is that, he too, is friends with Irene Gasparis. For example, during Appellee’s direct examination of Irene, the following testimony was provided:

“Q Okay. And how long have you known my mother?

A Fifty years.

...

Q Okay. And how long have you known me?

A Probably the same amount of time.

Q Okay.

A We all grew up together.

Q And my sister?

A Same.” Tr. Vol. II, pp. 180-181.

Additionally, during Appellee’s direct examination of Irene, the following exchange occurred:

“Q Irene, what’s your relationship with Niki?

⁴ In particular, Appellee provides several baseless, unsupported assertions, which include: Appellee’s unsupported and uncited claim that the “facts and circumstances presented” revealed that Mrs. Galanos was divested “of all assets while convalescing in a rehabilitation facility after surgery”; Appellee’s unsupported and uncited claim that Niki “divest[ed] all of [Mrs. Galanos’] assets.”; and Appellee’s unsupported and uncited assertion that Mrs. Galanos was taking “pain medication” at the time that Mrs. Galanos deeded the properties to Niki. Appellee’s Br. pp. 18-20.

A Oh, I have known her since I was eight.

Q Do you guy's hang around?

A Yeah.

Q She spends nights in your home?

A I, I think twice because we were traveling.

Q Okay; and you spent nights at her home?

A Just like I have at your's; yes." Tr. Vol. II, pp. 206.

Finally, during cross examination, Irene testified that:

"Q So, it's safe to say that, Mrs. Galanos, George and Niki have, you guy's have all been family friends for years and years and years?"

A For years and years and years and on both ends, I mean." Tr. Vol. II, pp. 211.

Thus, despite Appellee's mischaracterization of the evidence, the record reveals that Irene was friends with the family, and was just as much Appellee's friend as Niki's. Tr. Vol. II, pp. 206, 211.

Importantly, however, Irene did make clear that any legal performed on behalf of Mrs. Galanos was done at the direction of Mrs. Galanos and no other person. For example, during direct examination, Irene testified to the following:

"Q Okay. When my mom would come to your office, would she be, would Niki be in your presence with her?"

A No." Tr. Vol. II, pp. 181.

In fact, Irene consistently testified that all work performed on behalf of Mrs. Galanos was at the direction of Mrs. Galanos, and Mrs. Galanos alone. Tr. Vol. II, pp. 188-189; 190, 193, 197. Even more, Irene consistently testified that any time Irene met with Mrs. Galanos for work related matters, it was just the two (2) of them and Niki was not present. Tr. Vol. II, pp. 188-189; 190, 193, 197.

Thus, the fact that Irene performed legal work for Mrs. Galanos, while also being a family friend, is not evidence of undue influence. Irene's testimony was consistent in that Mrs. Galanos

directed her to perform the legal work relevant to this matter, and that no other person was involved in their meetings when discussing legal matters. Tr. Vol. II, pp. 181, 188-189; 190, 193, 197.

Finally, Appellee ends his argument by inaccurately claiming that commissioner John O'Drobinak testified "it is not normal for a person of elderly stature to divest themselves of their assets while they are still alive." Appellee's Br. pp. 20. Instead, Mr. O'Drobinak testified to the following:

"Q Is it normal for a person of elderly stature to divest themselves of all assets while they're still alive?"

A They can do anything that they want, that is not my experience at all." Tr. Vol. II, pp. 174. (emphasis added).

Clearly then, Appellee's assertion is not supported by the record. Appellee's Br. pp. 20.

In summary, the trial court abused its discretion in issuing a protective order on behalf of Mrs. Galanos because there is no evidence that Mrs. Galanos was incapacitated within the meaning of Indiana Code section 29-3-1-7.5. This Court should reverse the trial court's protective order and remand with instructions to terminate the protective order and re-deed the DeKalb Street Property and 28th Avenue Property back to Niki.

CONCLUSION

For the reasons stated herein, this Court should reverse the trial court's Protective Order on behalf of Mrs. Galanos and remand with instructions to terminate the protective order and re-deed the DeKalb Street Property and 28th Avenue Property back to Appellant.

Respectfully submitted,

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WORD COUNT CERTIFICATE

I, Alexander N. Moseley, verify that this Appellant's Reply Brief contains no more than 7,000 words, including footnotes, as prescribed by Ind. App. Rule 44(E), notwithstanding those items excluded from page length limits under Ind. App. Rule 44(C), as determined by the word counting function of Microsoft Word 2010

/s/ Alexander N. Moseley
Alexander N. Moseley

Reply Brief of Appellant, Niki P. Galanos

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing was served upon the following this
5th day of May, 2022, via the Court's electronic filing system:

George Galanos
geogalanos@gmail.com

/s/ Alexander N. Moseley
Alexander N. Moseley