NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

KATHERINE M. PURCELL	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
CAROLE CAPLES	:	No. 1818 EDA 2023

Appeal from the Judgment Entered June 21, 2023
In the Court of Common Pleas of Lehigh County Civil Division at No(s): 2019-C-1929

CAROLE LEE CAPLES	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
KATHERINE M. PURCELL	:	No. 1963 EDA 2023

Appeal from the Judgment Entered June 21, 2023
In the Court of Common Pleas of Lehigh County Civil Division at No(s): 2021-C-2083

KATHERINE M. PURCELL	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
CAROLE CAPLES	:	
	:	
Appellant	:	No. 1964 EDA 2023

Appeal from the Judgment Entered June 21, 2023
In the Court of Common Pleas of Lehigh County Civil Division at No(s): 2019-C-1929

CAROLE LEE CAPLES	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA

v.	:	
KATHERINE M. PURCELL	:	
Appellant	:	No. 1210 EDA 2024

Appeal from the Judgment Entered June 21, 2023
In the Court of Common Pleas of Lehigh County Civil Division at No(s): 2021-C-2083

BEFORE: LAZARUS, P.J., BOWES, J., PANELLA, P.J.E., STABILE, J., DUBOW, J., NICHOLS, J., McLAUGHLIN, J., BECK, J., and NEUMAN, J.

CONCURRING/DISSENTING MEMORANDUM BY BECK, J.:

FILED NOVEMBER 5, 2026

I concur in the result of the Majority's resolution of Carole Lee Caples' ("Caples") cross-appeal. I respectfully disagree, however, with the Majority's disposition of the appeal filed by Katherine M. Purcell ("Purcell").

The discrete and distinct issue before this Court in Purcell's appeal is whether she breached a fiduciary duty owed to Caples based upon the manner in which the Whitehall Property was deeded and sold (including to whom the proceeds of the sale were to be paid). For Caples to have succeeded before the trial court under the facts of this case, she had to show that Purcell either exercised her power of attorney ("POA") or was in a confidential relationship with Caples to direct the deeding and/or sale of the Whitehall Property. My review of the record reveals there was no testimony or other evidence presented from which the jury could find that Purcell either exercised her POA or was in a confidential relationship with Caples either at the time she deeded

the property or at the time of the sale. Further, the clear and unambiguous language of the deed of the Whitehall Property established Purcell and Caples were joint tenants with the right of survivorship—a decision made exclusively by Caples without Purcell's participation or urging.

Thus, there is no record support for the jury's determination that Purcell breached a fiduciary duty to Caples when she kept half the proceeds from the sale of the Whitehall Property. As such, in my view, the trial court erred by denying Purcell's motion for JNOV on this basis. My reasoning follows.

Standard of Review

Our standard of review of a decision from a party's request for JNOV is as follows:

> A motion for [JNOV] is a post-trial motion which requests the court to enter judgment in favor of the moving party. There are two bases on which the court can grant [JNOV].
>
> [One is that] the movant is entitled to judgment as a matter of law [and the other is that] the evidence is such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant. With the first, the court reviews the record and concludes that even with all factual inferences decided adverse to the movant the law nonetheless requires a verdict in his favor, whereas with the second, the court reviews the evidentiary record and concludes that the evidence was such that a verdict for the movant was beyond peradventure. In an appeal from the trial court's decision to deny [a motion for JNOV, a court] must consider the evidence, together with all favorable inferences drawn therefrom, in a light most favorable to the verdict winner.
>
> Our standard of review when considering motions for a directed verdict and judgment notwithstanding the verdict are identical. We will reverse a trial court's grant or denial of a [JNOV] only when we find an abuse of discretion or an error of law that

> controlled the outcome of the case. Further, the standard of review for an appellate court is the same as that for a trial court. Concerning any questions of law, our scope of review is plenary. Concerning questions of credibility and weight accorded the evidence at trial, we will not substitute our judgment for that of the finder of fact[. A JNOV] should be entered only in a clear case. [T]he entry of a [JNOV] is a drastic remedy. A court cannot lightly ignore the findings of a duly selected jury.

DeVore v. Metro Aviation, Inc., 328 A.3d 1012, 1016-17 (Pa. Super. 2024) (citation omitted). As the Majority recognizes, Purcell contends that she was entitled to JNOV as a matter of law. ***See*** Majority Mem. at 15.

Deed

As the question at issue involves the proceeds from the sale of real property, I start from the beginning—with the deed. Regarding the deed, Purcell argues

> (i) [she] had no influence whatsoever on or over the joint titling of the Whitehall [P]roperty in 2010, which was entirely Caples' decision, (ii) Purcell played no role in the 50/50 distribution of the proceeds from the sale of that property in 2018, and (iii) perhaps most importantly, Purcell was entitled to 50% of those proceeds, given the absence of any theory having been asserted by Caples challenging the joint titling of that property.

Purcell's Supplemental Brief at 9; ***see also id.*** at 9-12. She highlights that "there was zero evidence offered as to the circumstances surrounding the titling of the Whitehall property by [] Caples in 2010, such as would give rise to a breach of fiduciary duty claim." ***Id.*** at 9. Purcell asserts that "Pennsylvania law is clear that a deed's language controls the interest conveyed[,]" and "the grantor's intent of the deeding is irrelevant" absent any

claims of fraud, intentional misrepresentation or constructive trust. ***Id.*** at 10, 11.

It is well settled that

> [w]hen construing a deed, a court's primary object must be to ascertain and effectuate what the parties themselves intended. The traditional rules of construction to determine that intention involve the following principles. First, the nature and quantity of the interest conveyed must be ascertained from the deed itself and cannot be orally shown in the absence of fraud, accident or mistake. We seek to ascertain not what the parties may have intended by the language but what is the meaning of the words they used. Effect must be given to all the language of the instrument, and no part shall be rejected if it can be given a meaning. If a doubt arises concerning the interpretation of the instrument, it will be resolved against the party who prepared it. ... To ascertain the intention of the parties, the language of a deed should be interpreted in the light of the subject matter, the apparent object or purpose of the parties and the conditions existing when it was executed.
>
> In the absence of fraud, accident or mistake, the nature and quantity of the real estate interest conveyed must be ascertained from the deed itself and cannot be shown by parol. When the language of the deed is clear and free from ambiguity, the intent of the parties must be determined from the language of the deed. With respect to unambiguous deeds, a court must ascertain what is the meaning of the words used, not what may have been intended by the parties as shown by parol.

Hunnell as Tr. of Hunnell Fam. Revocable Living Tr. v. Krawczewicz, 284 A.3d 1192, 1197-98 (Pa. Super. 2022) (citation, ellipses, and paragraph break omitted).

The record reflects that Caples bought the Whitehall Property in 2010, and the deed specifically lists Purcell and Caples as "JOINT TENANTS WITH RIGHT OF SURVIVORSHIP." Deed, 2/5/2010, at 1 (emphasis in original).

Neither party alleged before the trial court or on appeal, and neither the jury, the trial court, nor the Majority found, that the language of the deed is ambiguous, or that the deed is a product of fraud, accident, or mistake.[1] Furthermore, Caples never alleged that Purcell was her POA or in a confidential relationship with her at the time she purchased the Whitehall Property and elected to add Purcell's name to the deed in 2010. To the contrary, in her amended counterclaim below, Caples averred that Purcell served as Caples' agent under the POA from May 21, 2018, through February 21, 2019, and only contended the two were in a confidential relationship "as a matter of law" during the time of the POA. Amended Counterclaim, 11/5/2020, ¶¶ 53-54; ***see also Carringer v. Taylor***, 586 A.2d 928, 932 (Pa. Super. 1990) (noting "counterclaims are permissive in Pennsylvania; however, once the defendant asserts a counterclaim, he becomes a plaintiff and must join all counterclaims which arise from the same 'transaction or occurrence' upon which the counterclaim is based or such claims shall be deemed waived").

Nor is there any evidence of record, or contention by either Caples, the trial court, or the Majority, that Caples suffered from a weakened intellect at the time of the creation of the deed; that Purcell somehow influenced Caples

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[1] The claim of fraud Caples raised at trial regarding the Whitehall Property pertained only to Purcell's disposition of the proceeds from the sale; the jury found in favor of Purcell on this question. Verdict, 2/1/2023, at 4 (finding that Caples did not prove "her claim for fraud (intentional misrepresentation) against [] Purcell regarding the disposition of the proceeds from the [Whitehall Property]").

to name her as a joint tenant in the ownership of the Whitehall Property; or that Purcell had any role in that decision. Thus, in the absence of fraud, mistake, or accident, and under the plain and clear terms of the deed, Purcell was a joint tenant with a right of survivorship. ***See Est. of Reigle***, 652 A.2d 853, 854 (Pa. Super. 1995) ("Where the language of the deed is clear and unambiguous, the intent of the grantees must be gleaned solely from the deed's language.").

The Majority, however, disregards both the plain language of the deed and settled law, instead relying upon parol evidence to discern the intent of the parties as to the nature of the interest conveyed. Specifically, under the guise of viewing the evidence in a light most favorable to the verdict winner, the Majority relies on testimony from Caples, Christine Cullen ("Cullen"), and Kimberly D'Alessandro ("D'Alessandro"), that the property was deeded in that manner for estate planning purposes, and testimony from Purcell's son that she stated she was holding the money she received from the sale for the benefit of Caples. ***See*** Majority Mem. at 18 ("Viewing the record in [the light most favorable to the verdict winner], there was corroborating testimony presented that it was understood by all, including Purcell, that Caples placed Purcell's name on the deed for the Whitehall Property because it was a family practice, and Caples expected this would help facilitate Purcell evenly dividing the house between the three daughters in the event their mother moved or

passed away.");[2] ***see also id.*** at 20-21 ("The [] testimony provided at trial, construed in favor of Caples as the verdict winner, showed that Caples never intended to give the proceeds of the sale of the house to Purcell, and that Purcell's name on the deed was only for convenience and estate planning purposes to facilitate splitting everything evenly between the three children. The evidence, read in light of the verdict winner, shows there was no intention of a gift to Purcell.").

The record unequivocally shows that the decision to title the Whitehall Property in the names of both Purcell and Caples was Caples' decision alone. I agree with the Majority that, per Caples' testimony, she did so based upon the advice of her late husband that she not be the sole name on the title to any home she owned after he died. N.T., 1/27/2023, at 52 (Caples testifying: "My husband … we talked about, you know, if I was by myself to put somebody else on … a deed for a house …, or don't do it alone. He wanted me to have

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[2] The Majority's statement that Caples placed Purcell's name on the deed of the Whitehall Property to facilitate the even division of the proceeds of the property with her sisters "in the event their mother moved" is unsupported by the record. ***See*** Majority Mem. at 18. To the contrary, D'Alessandro testified that there was no discussion or agreement as to what would happen to the proceeds if Caples and Purcell sold the property before Caples died. N.T., 1/25/2023, at 205. Indeed, as the Majority otherwise recognizes, Caples testified only that "she placed Purcell on the deed with the intent that if Caples were to pass away while still owning the house, Purcell would divide the property evenly between all three sisters[.]" Majority Mem. at 18 (citing N.T., 1/27/2023, at 52); ***see also id.*** at 18-19 (quoting testimony presented by Purcell's sisters indicating that Caples placed Purcell on the deed to the Whitehall Property for "estate" and "inheritance" purposes following Caples' death) (record citations omitted).

somebody else, one of the girls or -- so that's what I did."). Caples stated that she placed Purcell's name on the deed of the Whitehall Property, and that her plan was for Purcell to divide the property equally with her sisters, Cullen and D'Alessandro, if Caples died while she still owned the home. ***Id.***; ***see also id.*** at 117, 119-20; N.T., 1/26/2023, at 106; N.T., 1/25/2023, at 200-01, 204-05.

The parties' oral statements in this regard, however, are of no moment. The law is clear:

> The nature and quantity of the interest conveyed must be ascertained by the instrument itself and cannot be orally shown. Furthermore, in construing a deed, as in the case of a will, it is not what the parties may have intended by the language used but what is the meaning of the words.

Est. of Reigle, 652 A.2d at 854-55; ***see also Krawczewicz***, 284 A.3d at 1198. This aligns with the longstanding and well-settled law of the Parol Evidence Rule, which provides "that when the terms of a written instrument are clear and incontrovertible, parol or extrinsic evidence is not admissible to explain the intent of the [] parties." ***Clancy v. Recker***, 316 A.2d 898, 902 (Pa. 1974).

Here, the deed was absolute and unconditional; it did not include any provisions concerning how the proceeds from the sale would be divided or any limitation on Purcell's interest as a joint owner with right of survivorship. Capels could have listed all three of her daughters as joint tenants with the right of survivorship, but she did not. As noted above, the record gives no

indication that Caples was suffering from a weakened intellect or was not of sound mind at the time she executed the deed listing Purcell as her joint owner, and there is nothing in the record to show Purcell owed Capels a fiduciary duty in 2010. Thus, based on the clear language in the deed, Caples and Purcell were each entitled to an equal share of the proceeds from the sale of the Whitehall Property. ***See In re Est. of Quick***, 905 A.2d 471, 474 (Pa. 2006) ("When two or more persons hold property as [joint tenants with right of survivorship], title to that property vests equally in those persons during their lifetimes"); ***see also Masgai v. Masgai***, 333 A.2d 861, 864 (Pa. 1975) (the "fact that the payor takes title to property in the name of himself and another jointly is an indication of an intention of the payor to make a beneficial gift of an undivided interest in the property to the other person").

Breach of Fiduciary Duty

Nevertheless, the Majority finds that Purcell breached a fiduciary duty to Caples by retaining half the proceeds from the sale of the Whitehall Property. Majority Mem. at 16-30. In reaching this conclusion, the Majority observes that Purcell was Caples' agent under a POA, and "[t]he trial evidence shows that Purcell was involved in listing the Whitehall Property for sale, selected the real estate agent of her choosing, and signed the listing agreement as Caples' agent under the POA." ***Id.*** at 19; ***see also id.*** at 24-28. To that end, the Majority rejects Purcell's argument that she did not act as Caples' agent on the sale of the Whitehall Property other than signing the

listing agreement, and does so based upon other financial transactions where Purcell did act as Caples' agent, including $100,000 given to Purcell at her direction, monthly transfers of $469.71 paid by Purcell to herself on Caples' behalf, and $28,528.39 transferred from a joint account Purcell shared with Caples to Purcell's personal account. ***Id.*** at 27-28. According to the Majority, "the jury was free to find there was nothing independent about these transactions [from the sale of the property] as they all involved a financial benefit to Purcell, and a financial detriment to Caples." ***Id.*** at 26; ***see also id.*** at 29 ("The above transactions were all directed by Purcell and are examples of Purcell controlling Caples' money[] and not allowing Caples power over her own funds.").

The Majority further finds a fiduciary duty existed because there was evidence that Purcell was in a confidential relationship with Caples at the time of the sale. ***Id.*** at 18, 23. In support, it identified testimony that Caples suffered from a weakened intellect at and around the time of the sale of the property; she placed unequivocal trust in Purcell to handle her financial affairs; she was confused by Purcell's financial transactions; and Purcell was actively controlling Caples' finances. ***Id.*** at 21-23.

The Majority thus concludes that the evidence was "sufficient to show a fiduciary duty existed between Caples and Purcell, whether through the existence of a confidential relationship and/or through Purcell's role as her

mother's POA," noting that the financial transactions resulted in a financial benefit to Purcell and a detriment to Caples. ***Id.*** at 29; ***see also id.*** at 26.

In my view, the Majority's reasoning goes well beyond the scope of the claim at issue here, taking what it views to be Purcell's breaches as Caples' agent that occurred **after** the sale of the Whitehall Property as proof to find that she breached her fiduciary duty to Caples as to that transaction as well. The sole claim for breach of fiduciary duty brought by Caples against Purcell concerned Purcell keeping the proceeds from the sale of the house. Thus, not only did these subsequent transactions have nothing to do with the sale of the Whitehall Property or whether Purcell was acting as Caples' agent or in a confidential relationship with her at that time, they were not pled as bases to find that Purcell breached her fiduciary duty to Caples.

Based upon my review of the record, there was no evidence presented to support a finding that Purcell breached a fiduciary duty to Caples—either based upon the POA or a confidential relationship—related to the sale of the Whitehall Property.

POA

Viewing the evidence in the light most favorable to Caples, the record reflects that Caples named Purcell as her POA several months prior to the sale, but it was Caples' decision to move and to sell the Whitehall Property. ***See*** N.T., 1/27/2023, at 52-53. Pointedly, throughout the life of this case, Caples never made an allegation suggesting Purcell was involved in the sale of the

Whitehall Property as her agent. ***See, e.g.,*** Amended Counterclaim, 11/5/2020, ¶¶ 73-74; Petition for Breach of Fiduciary Duty, 9/17/2019, ¶¶ 27-28; ***see also In re Caples***, 262 A.3d 495, *4 (Pa. Super. 2021) (non-precedential decision) ("Caples only challenged actions taken by [] Purcell *in her individual capacity* while serving as [] Caples' POA.") (emphasis in original). Indeed, the sole evidence that Purcell acted as Caples' agent for the sale of the home in any respect was her signing the listing agreement at Caples' direction while Caples was out of town—a document Caples signed on her own upon her return. ***See*** N.T., 1/24/2023, at 122-23; Exhibit P-16 (Listing Agreement).

Therefore, although the Whitehall Property was sold after Purcell was appointed by Caples as her POA in 2018, there is nothing in the record to suggest Purcell was given any proceeds from the sale of the Whitehall Property as POA on behalf of Caples. Instead, as discussed at length above, she was given half the money from the sale pursuant to the deed naming her as a joint owner. As she was not acting as Caples' agent at the time of the sale of the Whitehall Property, Purcell's duties as POA did not apply. ***See*** POA, 10/11/2018, at 1. ("This power of attorney does not impose a duty on your agent to exercise granted powers") (unnecessary capitalization omitted); ***see also In re Est. of Moskowitz***, 115 A.3d 372, 385 (Pa. Super. 2015) ("[P]owers of attorney are strictly construed and the grant of special powers is not to be enlarged unless this is clearly intended.") (citation omitted).

Confidential Relationship

As to the existence of a confidential relationship, it is important to recognize, as noted above, that Caples alleged a confidential relationship with Purcell regarding the sale of the property **solely** on the basis of Purcell serving as her POA. ***See*** Amended Counterclaim, 11/5/2020, ¶¶ 54-55 ("Purcell served as []Caples' agent under a [POA] from Mary 21, 2018, through February 21, 2019. … As such, [] Purcell, as a matter of law, was in a confidential relationship with [] Caples from May 21, 2018, through February 21, 2019."); Petition for Breach of Fiduciary Duty, 9/17/2019, ¶¶ 19-20 (same). Thus, the Majority's conclusion that the POA "was not necessarily dispositive" of Caples' breach of fiduciary duty claim is belied by Caples' own claims. ***See*** Majority Mem. at 17. Regardless, my review of the evidence of record shows it does not establish a confidential relationship existed between Purcell and Caples at the time of the sale of the Whitehall Property.

Our Supreme Court has stated the following:

> Where no fiduciary duty exists as a matter of law, Pennsylvania courts have nevertheless long recognized the existence of confidential relationships in circumstances where equity compels that we do so. Our courts have found fiduciary duties in circumstances where the relative position of the parties is such that the one has the power and means to take advantage of, or exercise undue influence over, the other. The circumstances in which confidential relationships have been recognized are fact specific and cannot be reduced to a particular set of facts or circumstances. We have explained that a confidential relationship appears when the circumstances make it certain the parties do not deal on equal terms, but, on the one side there is an overmastering influence, or, on the other, weakness, dependence or trust, justifiably reposed.

Yenchi v. Ameriprise Fin., Inc., 161 A.3d 811, 820 (Pa. 2017) (cleaned up).

"A parent-child relationship does not establish the existence of a confidential relationship nor does the fact that the proponent has a power of attorney where the [person] wanted the proponent to act as attorney-in-fact." ***In re Est. of Fritts***, 906 A.2d 601, 608 (Pa. Super. 2006) (quoting ***In re Est. of Angle***, 777 A.2d 114, 123 (Pa. Super. 2001)); ***see also Walsh v. Bucalo***, 620 A.2d 21, 23-24 (Pa. Super. 1993) (stating "the fact that the relationship … was one of parent and child did not, in and by itself, create a confidential relationship. … [I]t is necessary to show that as a result of a relationship between two parties, one depended upon the other, who was able to exercise an overmastering influence over the other"). To make this determination, courts must look at the interactions between the parties:

> A confidential relationship exists when the circumstances make it certain the parties do not deal on equal terms, but, on the one side there is an overmastering influence, or, on the other, weakness, dependence or trust, justifiably reposed. It is marked by such a disparity in position that the inferior party places complete trust in the superior party's advice and seeks no other counsel, so as to give rise to a potential abuse of power.

Fritts, 906 A.2d at 608 (cleaned up); ***see also Angle***, 777 A.2d at 125.

The Majority accurately identifies the evidence that was presented of Caples' weakened intellect at the time of the sale of the Whitehall Property. ***See*** Majority Mem. at 21-22. There is no evidence, however, to support a finding that Purcell exerted overmastering influence or that Caples was

operating from a position of weakness regarding her decision to sell the Whitehall Property. ***See Yenchi***, 161 A.3d at 821 (noting "disease or advancing age do not by themselves create a confidential relationship with another") (citation omitted). Critically, the trust Caples placed in Purcell regarding the Whitehall Property occurred in 2010, when she deeded the property as joint tenants with right of survivorship—a time when, as discussed above, there is no contention that Caples suffered from any mental infirmity or that there was an unequal power dynamic with Purcell.

Although the Majority is unquestionably correct that the record establishes Caples' confusion regarding various transactions with Purcell that occurred post-sale, there was no evidence presented that Purcell influenced her regarding any aspect of the sale of the property or that Caples exhibited any weakness. To the contrary, the evidence universally shows that Caples made her own decisions concerning the sale of the Whitehall Property, including the decision to sell the house and move in the first place. Purcell had very little involvement in the sale, and her only actions were taken at the direction of Caples, with Caples' written confirmation. ***See*** Exhibit P-16 (Listing Agreement).

As it pertains only to the sale of the Whitehall Property, there is simply no basis in the record to conclude that the parties were not dealing on equal terms, or that Purcell wielded any power or authority in the transaction. ***Cf. Yenchi***, 161 A.3d at 821 ("Where one party lacks the ability to understand

the nature and terms of the transaction and simultaneously reposes their complete trust in the other party based upon well-established relationships, this circumstance provides an opportunity for the second party to exercise undue influence over the first and, thus, effectively control the decision-making process to their advantage.").

Conclusion

I am fully cognizant of the deferential review we must engage in when determining whether a trial court correctly ruled upon a post-verdict motion for JNOV. Viewing the record as we must, in the light most favorable to Caples and giving her the benefit of every reasonable inference, I cannot find any evidence to support a finding that Purcell breached a fiduciary duty to Caples concerning the sale of the Whitehall Property. Although there may be other legal avenues that could have afforded Caples relief and allowed her to recover the full proceeds from the sale of the Whitehall Property, that is not the case pled or tried. As Purcell was the joint owner of the Whitehall Property and did not breach a fiduciary duty to Caples as to its purchase or sale, I would conclude the trial court erred as a matter of law in denying Purcell's request for JNOV. I therefore would reverse this aspect of the judgment[3] and direct the trial court to enter JNOV in favor of Purcell, and affirm in all other respects.

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[3] Purcell did not raise any claim of entitlement to the sewer refund, and in fact conceded at trial that she never paid any expenses on the property. ***See*** N.T., 1/25/2023, at 30-31. As such, I would keep intact the verdict requiring Purcell to repay Caples the amount she received for the sewer refund.

Judge Dubow joins the concurring and dissenting memorandum.