IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 1, 2016 Session

HORACE PAUL ELEDGE v. JERRY PAUL ELEDGE

Appeal from the Chancery Court for Lawrence County
No. 13-16267 Stella L. Hargrove, Judge

No. M2015-01055-COA-R3-CV – Filed May 26, 2016

This is an action by Father to rescind a quitclaim deed on the ground the deed was procured by Son's fraud or constructive fraud. Father, believing his property might be subject to the claims of creditors, sought advice from Son on how to preserve his real property for the benefit of his two children and grandchildren. Son engaged an attorney to prepare a quitclaim deed reserving a life estate for Father and conveying the remainder interest in the property to Father's two children, Son and Daughter. Father executed the deed without reading it. Two years later, after realizing he only held a life estate, Father asked both children to re-convey the property. Daughter complied, but when Son refused, Father commenced this action against Son. Following a bench trial, the court held that rescission of the deed was warranted because the deed was procured by Son's fraud or constructive fraud given that "[Father] was under the domination and control of his son at the time the deed was signed." Fraud can be established by proof of nondisclosure or concealment of a known material fact in situations where a party has a duty to disclose that fact. *Justice v. Anderson County*, 955 S.W.2d 613, 616 (Tenn. Ct. App. 1997). Similarly, constructive fraud is a breach of a legal or equitable duty which is deemed fraudulent because of its tendency to deceive others by, *inter alia*, violating a private confidence. *Kincaid v. SouthTrust Bank,* 221 S.W.3d 32, 39 (Tenn. Ct. App. 2006). The general rule is that a party to a transaction has no duty to disclose material facts to the other. *Homestead Grp., LLC v. Bank of Tenn.*, 307 S.W.3d 746, 751-52 (Tenn. Ct. App. 2009). However, such a duty may arise when there is a confidential relationship between the parties. *Benton v. Snyder*, 825 S.W.2d 409, 414 (Tenn. 1992). "The normal relationship between a mentally competent parent and an adult child is not per se a confidential relationship." *Kelly v. Allen*, 558 S.W.2d 845, 848 (Tenn. 1977). In certain circumstances, however, a duty may arise out of a "family relationship" when there is proof of "dominion and control" sufficient to establish the existence of a confidential relationship. *See Matlock v. Simpson*, 902 S.W.2d 384, 385-86 (Tenn. 1995). We have determined that the evidence preponderates against the finding that Father was under the dominion and control of Son. The facts of this case reveal that Father was in good physical and mental health, lived separately from Son, and was not dependent on Son or

anyone else for his daily needs. Although Father trusted Son completely, relied on Son for financial advice, and could be persuaded by Son's ardent opinions, Son did not have control over Father or Father's finances. To the contrary, Father described situations in which he independently conducted business and made his own decisions, some of which were contrary to Son's wishes. Having determined that the evidence preponderates against the finding that Father was under the domination and control of Son at the time the deed was signed, we find no basis upon which to conclude that Son owed an affirmative duty to disclose all material facts relevant to the transaction. Because Son did not owe an affirmative duty to disclose all material facts relevant to the transaction, Father's claim that Son procured the deed by fraud or constructive fraud cannot be sustained. Accordingly, we reverse the judgment of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Reversed

FRANK G. CLEMENT, JR., P.J., M.S., delivered the opinion of the Court, in which, ARNOLD B. GOLDIN and KENNY W. ARMSTRONG, JJ., joined.

Mark T. Freeman, Nashville, Tennessee, for the appellant, Jerry Paul Eledge.

Robert D. Massey, Pulaski, Tennessee, for the appellee, Horace Paul Eledge.

OPINION

After an extended illness, Doris Eledge passed away on January 20, 2002, leaving her husband, Horace Paul Eledge ("Father"), as the sole owner of real property located in Lawrence County, Tennessee. Due to his wife's medical expenses, Father became concerned that his creditors would take his land and leave nothing for his children or grandchildren's inheritance. To remedy these concerns, Father sought help from his son, Jerry Paul Eledge ("Son"), who often advised Father on financial and business matters. Thereafter, Son engaged an attorney to draft a quitclaim deed to reserve a life estate in the property for Father and convey the remainder interest in fee simple to Son and Susanne Ballard ("Daughter"). Son presented the deed to Father, who signed it on July 13, 2006, in the presence of a notary public. The deed was duly recorded soon thereafter.

In September 2008, Father, who was preparing to get married, retained an attorney to draft an antenuptial agreement. According to Father, it was during his meeting with the attorney that Father learned he no longer had full ownership of the subject realty. Thereafter, Father requested that his children convey their respective remainder interests back to him. Daughter complied with this request. Son did not.

On April 9, 2013, Father commenced this action against Son in the Chancery Court of Lawrence County seeking to rescind the quitclaim deed. Father alleged, *inter alia*, that the deed was "procured by the fraud, force or duress of [Son]." The complaint

also alleged that Son caused the quitclaim deed to be prepared and that neither Son nor anyone else explained to Father that he would "not be able to freely dispose or alienate the land he conveyed." Son filed an answer in which he denied that his interest in the property was obtained by fraud, force, or duress; however, Son's answer did not assert any affirmative defenses.

A bench trial was held on February 24, 2015. During opening statements, counsel for Son made an oral motion to dismiss the complaint, arguing that: (1) Father's claim was barred by the three year statute of limitations for torts involving property pursuant to Tenn. Code Ann. § 28-3-105; and (2) Father failed to plead fraud with sufficient particularity as required by Tenn. R. Civ. P. 9.02. The trial court reserved judgment on the motions and proceeded with the trial, hearing testimony from Father, Son, and Daughter, among others.

Father testified that he often asked Son for financial advice and that Son assisted Father with business finances and handled a 401k account for Father. Father stated that when it came to financial advice, it was "[Son's] way or the highway," and recalled an incident when Son refused a request to withdraw $11,000 from Father's retirement account so that Father could build an addition to his home. Father testified that he asked Son for advice on how to protect the land from being sold in whole or in part to pay creditors because he "always trusted him."

However, Father testified that when he asked for Son's advice, his goal was simply to keep the government and creditors from getting his property after he died. Father stated that he "didn't know what a quitclaim deed was" and would not have signed the deed had he known that it affected his ownership interest in the property. Father stated that no one explained to him what would happen once the quitclaim deed was signed and that he did not read the quitclaim deed before signing it because he trusted Son. Father also testified that no one forced him to sign the deed.

Daughter testified that she deeded her interest in the property back to Father upon his request because she "didn't want to be part of anything that tricked [Father] into doing something that he didn't intend to do." She also stated that she never discussed the plan with Father or the attorney that prepared the deed and stated that she "trusted [Son] to take care of it all." Daughter further testified that Father, Son, and Daughter, never discussed the implications of the quitclaim deed prior to its execution and that it became clear to her that Father never discussed the implications of the deed with anyone.

Son testified that Father is a very "trusting, believing person," and that Father "listened to [his] advice," "relied on" him, and "respected and trusted" him. Son also stated that he explained the terms of the deed to Father and had Father repeat them back to him; however, Son could not recall whether he informed Father that the quitclaim deed would limit Father's ability to transfer the property. Son also testified that Father, Son,

and Daughter, met and went over the decision together prior to executing the deed. Son stated that the notary, Father, Son, and Son's wife were present when the deed was signed, but he did not remember anything about the execution of the deed and could not recall who paid the attorney to prepare the deed.

At the conclusion of trial, Father made an oral motion to conform the pleadings to the proof, asserting that rescission of the quitclaim deed was warranted based on the confidential relationship between Father and Son. It is unclear whether the court granted or denied the motion because the court did not make an express ruling, it merely stated that it would consider the evidence.

With regard to Son's motion to dismiss, which was made in his opening statement, the court stated the statute of limitations defense was waived because Son neither filed a pre-trial motion to dismiss nor raised the statute of limitations defense prior to trial as required by Rule 8.03 of the Tennessee Rules of Civil Procedure. The court also found that because all parties agreed at the hearing that the action accrued on September 5, 2008, which is less than six years before the filing of the complaint, Father's action was timely in accordance with the six-year statute of limitations applicable to contract disputes, Tenn. Code Ann. § 47-2-725, and alternatively, the six-year statute of limitations for the use and occupation of land. *See* Tenn. Code Ann. § 28-3-109(a)(1).

The court also found that the complaint contained sufficient particularity because it explained the basis for the claims of fraud against Son and "specifically identifies the time and place of each alleged false representation, and identifies the manner in which each representation was fraudulent."

With regard to Son's motion to dismiss based on the lack of specificity in the complaint, the court ruled the defense was waived as it was not asserted in his answer or made by motion in writing prior to trial as required by Rule 12.02(6).[1]

By an order entered May 13, 2015, the trial court held that rescission of the quitclaim deed was warranted because the deed was procured through fraud or constructive fraud and ordered Son to re-convey his interest in the property to Father. The final order reads in pertinent part:

> The Court finds that at no time did [Father] intend to give up ownership rights in his farm. The Court also finds that the legal significance of the quit

[1] Although Son's motion did not explicitly state that it was a Rule 12.02(6) motion to dismiss for failure to state a claim upon which relief may be granted, the trial court correctly interpreted it as such. *See PNC Multifamily Capital Inst. Fund XXVI Ltd. P'ship. v. Bluff City Cmty. Dev. Corp.*, 387 S.W.3d 525, 537 ("[A] Tennessee Rule of Civil Procedure 12.02(6) motion to dismiss a complaint for failure to state a claim upon which relief can be granted tests the legal sufficiency of the complaint.").

claim deed was never explained to [Father], and [Father] did not understand that by signing the quit claim deed he was relinquishing his rights to his real estate. Despite being told by [the attorney] to explain fully the legal repercussions of the quitclaim to his father, [Son] did not do so.

In an action for fraudulent misrepresentation, a plaintiff must allow 1) that the defendant made a representation of fact, 2) that the representation was false, 3) that the representation related to a material issue, 4) that the representation was made knowingly, recklessly, or without belief in its truth, 5) that the plaintiff acted reasonably in relying on the representation, and 6) that the plaintiff suffered damages as a result of that misrepresentation. *Metro Govt. of Nashville and Davidson County v. McKinney*, 852 S.W.2d 233, 237 (Tenn. Ct. App. 1992); *Graham v. First American National Bank*, 594 S.W.2d 723, 725 (Tenn. App. 1979) (citing *Edwards v. Travelers Ins. Co.*, 563 F.2d 105, 110-114 (6th Cir. 1977)).

In an action for fraud, the plaintiff must show 1) an intentional misrepresentation of a material fact, 2) knowledge of the representative's falsity, 3) an injury caused by the reasonable reliance on the misrepresentation, and 4) the misrepresentation involves a past or existing fact. Nondisclosure will give rise to a claim for fraud when the defendant has a duty to disclose and when the matters not disclosed are material. *Dobbs v. Guenther*, 846 S.W.[2d] 270, 274 (Tenn. Ct. App. 1992).

Constructive frauds are acts, statements, or omissions, which operate as virtual frauds on individuals, are not clearly resolvable as accident or mistake, and yet may be unconnected with a selfish design. *Maxwell v. Land Developers*, 485 S.W.2d 869 (Tenn. Ct. App. 1980).

[Father] was justified and reasonable in making the decision to sign the deed, based on the assurances given him by his son that the document would accomplish his goal of protecting his land from creditors and preserving his estate for his children. [Son] had directed his attorney to create the quitclaim and benefitted financially as a result of its execution. He was fully aware that this deed would do much more than what his father wished. He knew that it would divest [Father] of everything but a life estate in the property on which he had lived and worked since 1967. [Son's] silence on this regard is the equivalent of a conscious omission, which the Court finds relevant in its judgment.

The Court finds that the relationship between [the parties] went beyond that of father/son and/or being based on trust and love. It was "[Son's] way or the highway," and [Father] was afraid his son would "yell at him" for

> wanting his land back. When it came to financial matters, [Father] was under the domination and control of his son at the time the deed was signed. [Son's] control over his father's finances was such that [Father] had difficulty withdrawing funds from his own Ameritrade account. The relationship between [Father] and [Son] at the time was such that [Son] had both a legal and an equitable duty to explain fully and adequately to his father the legal significance of the deed, just as [the attorney] had directed.
>
> The Court finds that [Father] was injured by the actions of his son. The injury was a result of his justifiable and reasonable reliance on [Son] to find a way to keep his estate intact. The document he signed did not accomplish the goal with which he had entrusted his son and financial advisor. The Court follows the law as well as the facts and finds, through a preponderance of the evidence, that the deed in this case was procured through fraud or constructive fraud, either of which justifies the Court's decision to return to [Father] the remaining one-half (1/2) interest in the property currently held by his son.

Son initiated this appeal and raises the following issues: (1) whether the trial court erred by denying Son's motion to dismiss the case based on the statute of limitations defense; (2) whether the trial court erred by denying Son's motion to dismiss the case on the grounds that Father failed to assert the fraud allegations with sufficient particularity; (3) whether the trial court erred in allowing Father to amend his pleadings to conform to the evidence presented at trial; (4) whether the trial court erred in finding that Father was under the domination and control of Son; and (5) whether the trial court erred when it found Son liable for fraud and constructive fraud.

ANALYSIS

I. STATUTE OF LIMITATIONS DEFENSE

Son contends the trial court erred by failing to dismiss the complaint as time barred. We find no error with the trial court's decision.

The statute of limitations defense was first mentioned at the end of Son's opening statement. It was raised in the following manner:

> So the simple -- the simplest way to resolve this case, Your Honor, is to dismiss it for two reasons. One, they failed to state with any particularity, even up to now, what the fraud is. And, second, the statute of limitations has run. And I didn't realize that he was aware of this until I took his deposition when he specifically said, "I knew of it when I did the prenup." So if that's the basis of the case, we're -- I think the ultimate outcome here

is that it will be dismissed for failure to meet the statute of limitations requirement, Your Honor. Thank you.

Rule 8.03 of the Tennessee Rules of Civil Procedure states that an affirmative defense, including the statute of limitations defense, shall be set forth in "a pleading to a preceding pleading." Failure to plead an affirmative defense generally results in a waiver of the defense. *Pratcher v. Methodist Healthcare Memphis Hosps*., 407 S.W.3d 727, 735 (Tenn. 2013) (citing Tenn. R. Civ. P. 12.08). Moreover, a statute of limitations defense is waived if not pleaded within the proper time or in the proper manner. *Steed Realty v. Oveisi*, 823 S.W.2d 195, 197 (Tenn. Ct. App. 1991).

An affirmative defense generally must be asserted in one's answer to the complaint. *See* Lawrence A. Pivnick, *Tennessee Circuit Court Practice*, § 12.4 (2012); *see also* Donald F. Paine, *The Need to Plead Affirmative Defenses*, 45 Tenn. B.J. 33, 33 (Sept. 2009) ("Affirmative defenses are speed traps. Plead them or pay the penalty."). This general rule, however, is not rigid and inflexible because trial judges have wide latitude to allow a defendant to amend its answer before trial. *Pratcher*, 407 S.W.3d 735-36 (citing *Biscan v. Brown*, 160 S.W.3d 462, 471 (Tenn. 2005) ("The rules relating to amendment of pleadings are liberal, vesting broad discretion in the trial court.")).

In this case, Son did not raise the statute of limitations as a defense in his answer to Father's complaint as required by Tenn. R. Civ. P. 8.03. Moreover, Son did not file a pre-trial motion to dismiss based on the statute of limitations. It was not until the morning of trial that Son attempted to assert the statute of limitations defense by making an oral motion. The trial court denied the motion as untimely. As noted earlier, the trial court had broad discretion to grant or deny Son's belated oral motion to assert the statute of limitations defense. *See Biscan*, 160 S.W.3d at 471; *Richardson v. Richardson*, 969 S.W.2d 931, 935 (Tenn. Ct. App. 1997). Therefore, we affirm the trial court's decision to deny the belated motion.

II. AVERMENTS OF FRAUD IN THE COMPLAINT

Son contends the trial court erred by refusing to dismiss the complaint on the ground that Father failed to plead fraud with sufficient particularity.

Two rules of civil procedure are germane to this issue, Tenn. R. Civ. P. 9.02 and Tenn. R. Civ. P. 12.02. Rule 9.02 requires that, "[i]n all averments of fraud . . . , the circumstances constituting fraud . . . shall be stated with particularity." "The particularity requirement means that any averments sounding in fraud (and the circumstances constituting that fraud) must 'relat[e] to or designat[e] one thing singled out among many.'" *Diggs v. Lasalle Nat. Bank Ass'n*, 387 S.W.3d 559, 565 (Tenn. Ct. App. 2012) (quoting *The New Lexicon Webster's Dictionary of the English Language* 954 (1993)). "In other words, particularity in pleadings requires singularity—of or pertaining to a

single or specific person, thing, group, class, occasion, etc., rather than to others or all." *Id.*

Rule 12.02 of the Tennessee Rules of Civil Procedure states how and when a defense to a claim shall be presented to the court. "Every defense, in law or fact, to a claim for relief in any pleading, . . . shall be asserted in the responsive pleading thereto if one is required," except certain enumerated defenses may, at the option of the pleader, be made by motion in writing. Tenn. R. Civ. P. 12.02. One of the defenses that may be made by motion is "failure to state a claim upon which relief can be granted." *Id*. The rule goes on to provide that "[a] motion making any of these defenses *shall be made before pleading* if a further pleading is permitted." *Id.* (emphasis added).

In this case, Son did not file a motion to dismiss the claim of fraud before filing his answer to the complaint. In fact, Son never filed a motion to dismiss the claim of fraud. Moreover, Son did not challenge the sufficiency of the averments of fraud in his answer. The first time this defense was mentioned was during Son's opening statement. Specifically, Son stated during his opening statement that the claim of fraud should be dismissed for failing to plead specific facts of fraud.[2] The trial court took Son's motion under advisement and, at the conclusion of the trial, ruled that the complaint pled fraud with sufficient particularity. In its ruling, the trial court identified the following paragraphs of Father's complaint as sufficient to state a claim of fraud:

> 8. On or about July 13, 2006, defendant, [Son], caused the Quitclaim Deed which is the subject of this cause of action to be prepared by an attorney in Franklin, Tennessee. Said deed states,
>
> > The purpose of this Quitclaim Deed is to create in the properties conveyed a life estate in [Father] with the remainder to two herein named children, an equal undivided shares per stirpes, their heirs and assigns forever.
>
> 9. [Father] alleges that neither [Son] nor anyone else explained to him that he would not be able to freely dispose or alienate the land conveyed in the aforementioned Quitclaim Deed. [Father] requested both [Son and Daughter] to convey their respective remainder interest back to [Father] so that he might have full control of his real property. [Daughter] has complied with [Father's] request, however, defendant, [Son], has failed and refused to comply with [Father's] request.

[2] Son did not even make an oral motion to dismiss during the trial, he merely stated or suggested during his opening statement that the claim of fraud should be dismissed for lack of specificity.

> 10. Plaintiff, [Father], alleges that the aforementioned Quitclaim Deed was procured by the fraud, force, or duress of [Son] and fails for lack of consideration.

After considering the relevant legal principles and reviewing Father's complaint, we agree that the allegations in the complaint were sufficient to plead fraud. Although fraud must be pled with particularity, the Advisory Commission Comments to Rule 9.02 explain that, "The requirement in Rule 9.02 . . . is not intended to require lengthy recital of detail. Rather, the Rule means only that general allegations of fraud and mistake are insufficient; the pleader is required to particularize, but by the 'short and plain' statement required Rule 8.01." Tenn. R. Civ. P. 9.02; *see also Harvey v. Ford Motor Credit Co.*, 8 S.W.3d 273, 275-76 (Tenn. Ct. App. 1999) ("Despite Rule 9.02's particularity requirements, we must determine the sufficiency of the claims in light of Tenn. R. Civ. P. 8.01's liberal pleadings standards.").

In paragraph 10 of the complaint Father puts Son on notice that he is asserting a claim based on fraud. More importantly, in paragraphs 8 and 9 Father states with particularity that his claim of fraud is based on Son's act of hiring an attorney to prepare a quitclaim deed that conveys title to Son (and Daughter), reserving only a life estate for Father, and that Son failed to explain to Father that "he would not be able to freely dispose or alienate the land conveyed in the aforementioned Quitclaim Deed." These "averments sounding in fraud" identify with specificity "the circumstances constituting" the alleged fraud because they designate "one thing singled out among many" that constitutes the fraud allegedly perpetrated by Son upon Father. *See Diggs*, 387 S.W.3d at 565. Therefore, we affirm the trial court's ruling that Father's complaint states a claim of fraud.

Moreover, Son waived the affirmative defense of failing to state a claim upon which relief can be granted because he failed to set forth the affirmative defense in his answer and he failed to file a Rule 12.02 motion to dismiss the fraud claim prior to filing his answer to the complaint.

Accordingly, we affirm the trial court's decision to deny Son's belated motion to dismiss the complaint on the grounds that Father failed to plead fraud with sufficient particularity.

III. MOTION TO CONFORM THE PLEADINGS TO THE PROOF

Son contends the trial court erred by granting Father's oral motion to conform the pleadings to the proof presented at trial. According to Son, it was highly-prejudicial to his case to allow Father to raise a claim of undue influence and the issue of a confidential relationship on the day of trial.

We have determined the trial court did not actually grant Father's motion to conform the pleadings, at least insofar as it relates to a claim of undue influence. Instead, the court stated that conforming the pleadings to the evidence "would not come under the heading of a minor pleading technicality, but, certainly, the Court can consider the evidence here, the sworn testimony. . . ." Based on this statement, it appears that the trial court declined to consider claims of undue influence but determined that it could consider the proof that was presented about the relationship between Father and Son, which had been entered without objection. This decision was not error.

Nevertheless, if the court did grant the motion, we find no error with such decision. As a general rule, "[j]udgments awarded beyond the scope of the pleadings are void." *See Randolph v. Meduri*, 416, S.W.3d 378, 384 (Tenn. Ct. App. 2011). However, Rule 15.02 allows the trial of an unpled issue by express or implied consent of the adverse party followed by an amendment of the pleadings to encompass the issue. *Id.* (citing Tenn. R. Civ. P. 15.02). As our Supreme Court has explained the rule:

> Tennessee Rule of Civil Procedure 15.02 provides that pleadings may be amended to conform to the evidence "[w]hen issues not raised by the pleadings are tried by express or implied consent of the parties." Such amendment may be allowed by the court "even after judgment." *Id.*; *see also George v. Bldg. Materials Corp. of Am.*, 44 S.W.3d 481, 486 (Tenn. 2001) ("'Amended pleadings may be filed before trial, after trial, or even after appeal so long as the trial court has jurisdiction and so long as the trial court does not abuse its discretion in allowing the amendment.'" (quoting *Harris v. St. Mary's Med. Ctr., Inc.*, 726 S.W.2d 902, 904 (Tenn. 1987))). The rules relating to amendment of pleadings are liberal, vesting broad discretion in the trial court.

Biscan, 160 S.W.3d at 471.

Father does not contend there was express consent to try the issue of whether a confidential relationship existed; thus, the dispositive question is whether the parties impliedly consented to try this issue.

"Generally speaking, trial by implied consent will be found where the party opposed to the amendment knew or should reasonably have known of the evidence relating to the new issue, did not object to this evidence, and was not prejudiced thereby." *Hiller v. Hailey*, 915 S.W.2d 800, 804 (Tenn. Ct. App. 1995).

> Implied consent . . . is much more difficult to establish (than express consent) and seems to depend on whether the parties recognized that an issue not presented by the pleadings entered the case at trial. A party who knowingly acquiesces in the introduction of evidence relating to issues that

> are beyond the pleadings is in no position to contest a motion to conform. Thus, consent generally is found when evidence is introduced without objection, or when the party opposing the motion to amend himself produced evidence bearing on the new issue.

Zack Cheek Builders, Inc. v. McLeod, 597 S.W.2d 888, 891 (Tenn. 1980). Determining whether an issue was tried by implied consent rests with the discretion of the trial judge whose determination will be reversed only upon a finding of abuse of discretion. *Goff v. Elmo Greer & Sons Const. Co., Inc.*, 297 S.W.3d 175, 197 (Tenn. 2009).

The record reveals that Father, Son, and Daughter each testified extensively at trial regarding the close personal relationship between Father and Son and it is significant that Son never objected to the admission of evidence concerning the "relationship" between Son and Father. As noted above, a party who acquiesces to the introduction of evidence relating to issues that are beyond the pleadings is in no position to contest a motion to conform. *McLeod*, 597 S.W.2d at 891. Moreover, consent is generally found when evidence is introduced without objection. *Id*. The record reveals that Son did not object to this evidence.

Therefore, we find no error with the trial court's discretionary decision to amend the pleadings to conform to the evidence if, indeed, that is what was done. *See Goff*, 297 S.W.3d at 197. We also find no error with the trial court's decision to consider evidence introduced at trial concerning the relationship between Son and Father to the extent it pertains to Father's claim that Son procured the quitclaim deed by fraud or fraudulent concealment.

IV. Rescission of the Quitclaim Deed

Son contends the trial court erred by rescinding the quitclaim deed based upon findings that Father was under "the domination and control of his son at the time the deed was signed," and that "the deed . . . was procured through fraud or constructive fraud." More specifically, Son contends the evidence preponderates against the finding that Father was under his domination and control. Son also contends he was not in a confidential relationship with Father. Therefore, Son did not owe a duty to disclose all material facts concerning the quitclaim deed before Father signed the deed.

A. Tenn. R. Civ. P. 52.01

Before assessing the merits of Son's argument, we find it necessary to discuss the sufficiency of the trial court's findings of fact and conclusions of law.

In all actions tried upon the facts without a jury, the trial court is required to "find the facts specially and shall state separately its conclusions of law and direct the entry of

the appropriate judgment."[3] Tenn. R. Civ. P. 52.01. The underlying rationale for the Rule 52.01 mandate is that it facilitates appellate review by "affording a reviewing court a clear understanding of the basis of a trial court's decision," and in the absence of findings of fact and conclusions of law, "this court is left to wonder on what basis the court reached its ultimate decision." *In re Estate of Oakley*, No. M2014-00341-COA-R3-CV, 2015 WL 572747, at *10 (Tenn. Ct. App. Feb. 10, 2015) (citing *Lovlace v. Copley*, 418 S.W.3d 1, 35 (Tenn. 2013)). Further, compliance with the mandate of Rule 52.01 enhances the authority of the trial court's decision because it affords the reviewing court a clear understanding of the basis of the trial court's reasoning. *Gooding v. Gooding*, 477 S.W.3d 774, 782 (Tenn. Ct. App. 2015); *In re Zaylen R.*, No. M2003-00367-COA-R3-JV, 2005 WL 2384703, at *2 (Tenn. Ct. App. Sept. 27, 2005) ("Findings of fact facilitate appellate review, *Kendrick v. Shoemake*, 90 S.W.3d 566, 571 (Tenn. 2002), and enhance the authority of the court's decision by providing an explanation of the trial court's reasoning.").

Our Supreme Court explained the reasoning for the Rule 52.01 mandate in *Lovlace v. Copley*:

> Requiring trial courts to make findings of fact and conclusions of law is generally viewed by courts as serving three purposes. First, findings and conclusions facilitate appellate review by affording a reviewing court a clear understanding of the basis of a trial court's decision. Second, findings and conclusions also serve "to make definite precisely what is being decided by the case in order to apply the doctrines of estoppel and res judicata in future cases and promote confidence in the trial judge's decision-making." A third function served by the requirement is "to evoke care on the part of the trial judge in ascertaining and applying the facts." Indeed, by clearly expressing the reasons for its decision, the trial court may well decrease the likelihood of an appeal.

Lovlace, 418 S.W.3d at 34-35 (internal citations and footnotes omitted).

While there is no bright-line test by which to assess the sufficiency of the trial court's factual findings, the general rule is that "the findings of fact must include as much of the subsidiary facts as is necessary to disclose to the reviewing court the steps by which the trial court reached its ultimate conclusion on each factual issue." *Gooding*, 77 S.W.3d at 782 (quoting *Lovlace*, 418 S.W.3d at 35). Thus, "[s]imply stating the trial court's decision, without more, does not fulfill [the Rule 52.01] mandate." *Id*. Conversely,

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[3] "If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rules 41.02 and 65.04(6)." Tenn. R. Civ. P. 52.01.

when the trial court does not make specific findings of fact, no presumption of correctness arises because "there was nothing found as a fact which we may presume correct." *Id*. (quoting *Brooks v. Brooks*, 992 S.W.2d 403, 405 (Tenn. 1999)).

When we have the benefit of comprehensive and detailed findings of fact by the trial court, which fully comply with the Rule 52.01 mandate, we review a trial court's factual findings de novo, accompanied by a presumption of the correctness of the finding of fact, unless the preponderance of the evidence is otherwise. Tenn. R. App. P. 13(d); *see Boarman v. Jaynes*, 109 S.W.3d 286, 289-90 (Tenn. 2003). For the evidence to preponderate against a trial court's finding of fact, it must support another finding of fact with greater convincing effect. *Walker v. Sidney Gilreath & Assocs.*, 40 S.W.3d 66, 71 (Tenn. Ct. App. 2000); *Realty Shop, Inc. v. R.R. Westminster Holding, Inc.*, 7 S.W.3d 581, 596 (Tenn. Ct. App. 1999). However, when the trial court fails to sufficiently explain the factual basis for its decisions, we may conduct a de novo review of the record to determine where the preponderance of the evidence lies. *Gooding*, 477 S.W.3d at 782 (citing *Lovlace*, 418 S.W.3d at 36; *Ganzevoort v. Russell*, 949 S.W.2d 293, 296 (Tenn. 1997); *Nashville Ford Tractor, Inc. v. Great Am. Ins. Co.*, 194 S.W.3d 415, 424 (Tenn. Ct. App. 2005)).

In this case, it appears the trial court's basis for concluding the deed was procured by Son's fraud or constructive fraud was that "[Father] was under the domination and control of his son at the time the deed was signed," which gave rise to a duty to disclose to Father material facts pertinent to the quitclaim deed. The relevant portion of the trial court's factual findings and legal conclusions reads as follows:

> [Father] was justified and reasonable in making the decision to sign the deed, based on the assurances given him by his son that the document would accomplish his goal of protecting his land from creditors and preserving his estate for his children. [Son] had directed his attorney to create the quitclaim and benefitted financially as a result of its execution. He was fully aware that this deed would do much more than what his father wished. He knew that it would divest [Father] of everything but a life estate in the property on which he had lived and worked since 1967. [Son's] silence on this regard is the equivalent of a conscious omission, which the Court finds relevant in its judgment.
>
> **The Court finds that the relationship between [the parties] went beyond that of father/son and/or being based on trust and love.** It was "[Son's] way or the highway," and [Father] was afraid his son would "yell at him" for wanting his land back. **When it came to financial matters, [Father] was under the domination and control of his son at the time the deed was signed.** [Son's] control over his father's finances was such that [Father] had difficulty withdrawing funds from his own Ameritrade

> account. **The relationship between [Father] and [Son] at the time was such that [Son] had both a legal and an equitable duty to explain fully and adequately to his father the legal significance of the deed, just as [the attorney] had directed.**
>
> **The Court finds that [Father] was injured by the actions of his son. The injury was a result of his justifiable and reasonable reliance on [Son] to find a way to keep his estate intact.** The document he signed did not accomplish the goal with which he had entrusted his son and financial advisor. **The Court** . . . **finds** . . . **that the deed in this case was procured through fraud or constructive fraud**, **either of which justifies the Court's decision to return to [Father] the . . . interest in the property currently held by his son**.

(Emphasis added).

Having reviewed the trial court's findings and conclusions of law, we respectfully submit that they do not satisfy the Rule 52.01 mandate because they are more akin to simply stating the trial court's decision than findings that "include as much of the subsidiary facts as is necessary to disclose to the reviewing court the steps by which the trial court reached its ultimate conclusion." *See Gooding*, 477 S.W.3d at 782; *see also Lovlace*, 418 S.W.3d at 35.

When the trial court does not sufficiently explain the factual basis for its decisions, we may conduct a de novo review of the record to determine where the preponderance of the evidence lies. *Gooding,* 477 S.W.3d at 783. Therefore, we shall review the record to determine whether the factual basis of the decision is supported by sufficient evidence using the preponderance of the evidence standard in Tenn. R. App. P. 13(d). *Id.*; *Boyd v. Comdata Network, Inc.*, 88 S.W.3d 203, 212 (Tenn. Ct. App. 2002). As for the trial court's legal conclusions, we will review them de novo without a presumption of correctness. *Id.*

B. Fraud and Constructive Fraud

To establish a claim for fraud, a plaintiff must prove that: (1) the defendant made a representation of an existing or past fact; (2) the representation was false when made; (3) the representation was in regard to a material fact; (4) the false representation was made either knowingly or without belief in its truth or recklessly; (5) the plaintiff reasonably relied on the misrepresented material fact; and (6) plaintiff suffered damage as a result of the misrepresentation. *Walker v. Sunrise Pontiac-GMC Truck, Inc.*, 249 S.W.3d 301, 311 (Tenn. 2008).

Although it was not clear at trial whether Father was asserting a claim based on fraud or constructive fraud, Father is not alleging on appeal that Son made an affirmative misrepresentation regarding the nature of the transaction. Indeed, Father's complaint states that "neither his son nor anyone else explained to him that he would not be able to freely dispose or alienate the land conveyed in the aforementioned Quitclaim Deed." This sentence is an allegation of nondisclosure or concealment rather than an allegation of an affirmative misrepresentation. Moreover, there is no evidence in this record to support a finding that Son knowingly made a false representation of an existing fact to Father.

Fraud can be established by proof of nondisclosure or concealment of a known, material fact only when one party has a duty to disclose that fact. *See Justice v. Anderson County*, 955 S.W.2d 613, 616 (Tenn. Ct. App. 1997). Similarly, constructive fraud arises from the breach of a legal or equitable duty coupled with conduct that can reasonably be expected to influence the conduct of others. *See Kincaid v. SouthTrust Bank,* 221 S.W.3d 32, 39 (Tenn. Ct. App. 2006). Therefore, based on the complaint and the evidence in the record, Father must demonstrate that Son owed him a duty whether Father's claim is for fraud or constructive fraud. *See id.*; *Justice*, 955 S.W.2d at 616.

The general rule is that one party to a transaction has no duty to disclose material facts to the other. *Homestead Grp., LLC v. Bank of Tenn.*, 307 S.W.3d 746, 751-52 (Tenn. Ct. App. 2009) (citing *Wright v. C & S Family Credit, Inc.*, No. 01A01-9709-CH-00470, 1998 WL 195954, at *2 (Tenn. Ct. App. Apr. 24, 1998). However, such a duty may arise when a confidential relationship exists between the parties. *See Benton v. Snyder*, 825 S.W.2d 409, 414 (Tenn. 1992). A confidential relationship "is not merely a relationship of mutual trust and confidence . . . ." *Kelley v. Johns*, 96 S.W.3d 189, 197 (Tenn. Ct. App. 2002). Rather, a confidential relationship is "one 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." *Id.* (quoting *Iacometti v. Frassinelli*, 494 S.W.2d 469, 499 (Tenn. Ct. App. 1973).

"[T]he normal relationship between a mentally competent parent and an adult child is not per se a confidential relationship." *Kelly v. Allen*, 558 S.W.2d 845, 848 (Tenn. 1977); *see In re Estate of Schisler*, 316 S.W.3d 599, 609 (Tenn. Ct. App. 2009) (noting that typical "family relationships" are not confidential *per se*). However, a confidential relationship may exist between family members when there is proof of "dominion and control."[4] *See Matlock v. Simpson*, 902 S.W.2d 384, 385-86 (Tenn. 1995) (citing *Kelly*, 558 S.W.2d at 848; *Mitchell v. Smith*, 779 S.W.2d 384, 389 (Tenn. Ct. App. 1989)).

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[4] The legal concept of "dominion and control" is generally associated with "the doctrine of undue influence" in the context of a claim that a deed or other transaction that benefits the dominant party was obtained by undue influence that was exerted by a dominant party who had "a confidential relationship" with the grantor of the deed or transaction. *See Fell v. Rambo*, 36 S.W.3d 837, 847-48 (Tenn. Ct. App.
(continued…)

Whether or not a confidential relationship between family members exists is a question of fact. *Matlock*, 902 S.W.2d at 385 (citing *Roberts v. Chase*, 166 S.W.2d 641 (Tenn. Ct. App. 1942); *Turner v. Leathers*, 232 S.W.2d 269 (Tenn. 1950); *Halle v. Summerfield*, 287 S.W.2d 57 (Tenn. 1956)). This court has found that confidential relationships exist when one party is in poor health and depends upon the other party for their physical and financial needs. *See Kelley*, 96 S.W.3d at 197-98; *In re Estate of Schisler*, 316 S.W.3d at 609. In contrast, no confidential relationship existed when the allegedly-dominated party was mentally healthy, drove himself around, transacted his own business, and "had his own assets at all times." *See Banc of America Inv. Servs., Inc. v. Davis*, No. E2008-00559-COA-R3-CV, 2009 WL 277050, at *4 (Tenn. Ct. App. Feb. 5, 2009).

C. SON'S DUTY TO FATHER

The trial court's findings regarding dominance and control, which is the basis for concluding that Son owed Father a duty to disclose facts material to the quitclaim deed, were based in pertinent part on the following findings and conclusions. The trial court found that Father trusted Son "one hundred percent," and that Father believed it unnecessary to read legal documents presented to him by Son. Further, the trial court determined that the relationship between Father and Son:

> went beyond that of father/son and/or being based on trust and love. It was '[Son's] way or the highway,' and [Father] was afraid his son would 'yell at him' for wanting his land back. When it came to financial matters, [Father] was under the domination and control of his son at the time the deed was signed.

Based on these findings, the trial court reached the legal conclusion that Son owed a duty to Father. The court specifically held that "[t]he relationship between [Father] and [Son] at the time was such that [Son] had both a legal and an equitable duty to explain

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2000); *see also Childress v. Currie*, 74 S.W.3d 324, 329 (Tenn. 2002). Although undue influence and fraud or constructive fraud are grounds for rescinding a deed or contract, and in many cases both may be present, the doctrine of undue influence is distinguishable from that of fraud or constructive fraud. *Rawlings v. John Hancock Mut. Life Ins. Co*., 78 S.W.3d 291, 301 (Tenn. Ct. App. 2001); Joseph Warren, *Fraud Undue Influence, and Mistake in Wills*, 41 Harv. L. Rev. 309, 326-27 (1928). This is because the basic ingredient of a fraud claim is deception, which is based on a trick or other use of false information that induces a person to dispose of his or her property in a way he or she would not otherwise have done but for the fraud, while a claim of undue influence is based on the exertion of pressure to break down a person's will power so that the person is unable to keep from doing what he or she would not otherwise have done. *Rawlings*, 78 S.W.3d at 301. In this case, however, it is important to recognize that the trial court did not conclude that the deed was procured by undue influence. Instead, the trial court granted relief based on fraud or constructive fraud.

fully and adequately to his father the legal significance of the deed, just as [the attorney] had directed."

The following evidence is indicative of the close relationship between Son and Father. Father often asked Son for financial advice. After Father retired, Son assisted him in establishing a 401(k) retirement account. Father "trusted [Son] one hundred percent," and he found it unnecessary to read legal documents presented to him by Son. Additionally, as Father explained, when it came to finances "it was [Son's] way or the highway" and that Son would get upset if Father questioned him about anything. For example, Father recounted an instance in which Son refused to withdraw $11,000 from Father's retirement account so that Father could build an addition onto his home.[5]

However, there is evidence to support a finding that Father was not under Son's dominion or control at any time. After Son refused to withdraw $11,000 from Father's 401(k) retirement account, Father withdrew the money from the account himself and made the addition to his home against the ardent advice of Son. Thereafter, Father removed the remaining funds from the 401(k) retirement account and deposited the funds in a bank in Lawrenceburg, Tennessee.

Although Father occasionally relied on Son for financial advice and could be persuaded by Son's opinions, Son did not have control over Father or Father's finances. Furthermore, Father frequently bought and sold used cars on his own for which he negotiated the sales prices, exchanged titles, and completed all necessary paperwork to finalize such transactions. Also, while Son helped with the finances for Father's nursery business "at the very beginning," Father testified that he subsequently took over these responsibilities and was doing all of the financial work for the business himself.

In addition, at all times material to this case Father was in good physical and mental health, Father lived separately from Son, and Father was not dependent on the Son, or anyone, for his daily needs.

These facts are in sharp contrast to those in *Kelley v. Johns*, where the court found a confidential relationship because the father was in poor physical and mental health and was dependent on his son for his daily needs. *Kelley v. Johns*, 96 S.W.3d at 197. The facts here are also in sharp contrast to those in *Estate of Schisler*, where the court found a confidential relationship existed because the mother, who was partially incapacitated, depended on her daughter to care for her, feed her, house her, and transport her. *In re Estate of Schisler*, 316 S.W.3d at 609. Unlike *Kelley* and *Schisler*, the facts here are more akin to those in *Banc of America Inv. Services, Inc. v. Davis*, where we found no

[5] Father testified that, because Son assisted in setting up Father's account, both of them had access to the account and both of them were able to withdraw money at any time.

confidential relationship because the evidence revealed that the decedent was mentally healthy, transacted his own business, and was capable of driving himself at all times material to the issue. *Davis*, 2009 WL 277050, at *4.

Having conducted a thorough review of the record, we have determined that despite Son's involvement in Father's financial affairs and Son's "my way or the highway" attitude, Father was not dependent on anyone. To the contrary, Father exercised independent decision-making, and he had ultimate control over his finances, his business dealings, and his real property. Therefore, the evidence preponderates against the finding that Son exercised dominion and control over Father to the extent necessary to establish a confidential relationship in the legal context. *See Kelley*, 96 S.W.3d at 197; *In re Estate of Schisler*, 316 S.W.3d at 609; *Davis*, 2009 WL 277050, at *4.

The general rule is that one party to a transaction has no duty to disclose material facts to the other, *see Homestead Grp., LLC*, 307 S.W.3d at 751-52, and the normal relationship between a mentally competent parent and an adult child is not per se a confidential relationship which would create such a duty. *See In re Estate of Schisler*, 316 S.W.3d at 609. We have determined that Son did not exercise dominion and control over Father to the extent necessary to establish a confidential relationship, and no other exception to the general rule has been established. Therefore, Son did not owe Father a duty to disclose facts material to the conveyance of Father's real property to Son pursuant to the quitclaim deed.[6] Because Son did not owe Father a duty, Son did not breach a duty to Father by failing to disclose to Father the information given to Son by the attorney who prepared the deed or other facts material to the transaction. Consequently, Father has not established either fraud or constructive fraud. *See Kincaid*, 221 S.W.3d at 39; *Justice*, 955 S.W.2d at 616.

Moreover, had Son owed a duty to Father to disclose facts material to the conveyance of Father's property, we find Father's reliance on Son's silence was unreasonable. This is because ordinary diligence by Father, that being merely reading the deed, would have revealed the undisclosed facts. *See PNC Multifamily Capital Inst. Fund XXVI Ltd. P'ship.*, 387 S.W.3d at 550 ("Although there may be a duty to disclose material facts, a party does not have a duty to disclose a material fact where ordinary diligence would have revealed the undisclosed fact."). Father testified that he did not read the quitclaim deed presented to him by Son prior to its execution. Had he done so, it would have been evident that the nature of the transaction was to convey title in the real property to Son and Daughter with Father merely retaining a life estate. Therefore, Father's reliance was not justifiable in this circumstance. *Id.*; *see also Macon County Livestock Mkt., Inc. v. Kentucky State Bank, Inc.*, 724 S.W.2d 343, 351 (Tenn. Ct. App.

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[6] It is not for this court to determine whether Son owed Father a moral duty to make such disclosures, and we shall refrain from doing so.

1986) ("A party cannot be permitted to claim that he has been taken advantage of if he had the means of acquiring the needed information[.]").

IN CONCLUSION

The judgment of the trial court is reversed, and this matter is remanded for further proceedings consistent with this opinion. Costs of appeal are assessed against Father.

FRANK G. CLEMENT, JR., JUDGE