Superior Court Provides Guidance On What Constitutes a "Confidential Relationship"

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In challenges to Wills based on undue influence, proof that the testator occupied a "confidential relationship" with the testator, that the testator had a "weakened intellect" and that the proponent receives a "substantial benefit" shifts the burden of proof to the proponent to prove the absence of undue influence. *Estate of Clark*, 461 Pa. 52, 334 A.2d 628 (1975).[1] Proof of a confidential relationship alone is sufficient to shift the burden of proof in challenges to inter vivos gifts. *Estate of Clark (No. 2)*, 467 Pa. 628, 359 A.2d 777 (1976).

A confidential relationship exists "when the circumstances make it certain the parties [did] 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." *Leedom v. Palmer*, 274 Pa. 22, 25, 117 A. 410, 411 (1922). The relationship of the parties is determinative:

> [a]lthough no precise formula has been devised to ascertain the existence of a confidential relationship, it has been said that such a relationship is not confined to a particular association of parties, but exists whenever one occupies toward another such a position of advisor or counselor as reasonably to inspire confidence that he will act in good faith for the other's interest.

Estate of Keiper, 308 Pa. Super. 82, 86, 454 A.2d 31, 33 (1982).

Lurking in a May 2001 opinion of the Superior Court, in a case not involving a challenge to a Will or inter vivos gift, is the most recent appellate guidance on what constitutes a confidential relationship. *Basile v. H & R Block, Inc.*, 777 A.2d 95 (Pa. Super. 2001). In addition to correcting a conflict among appellate cases regarding whether one needs to prove both overmastering influence **and** "weakness, dependence or trust, justifiably reposed"[2], the

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[1] *See generally* THE PRESUMPTION OF UNDUE INFLUENCE AND THE SHIFTING BURDEN OF PROOF, 18 Fiduc. Rep. 2d 348.

[2] This conflict is evidenced by the following cases, all of which say "and" instead of "or": *McClatchy Estate*, 433 Pa. 232, 237 (1969); *Zarnowksi v. Fidula*, 376 Pa. 602, 605-06 (1954); *Rebidas v. Murasko*, 450 Pa. Super. 546, 553 (1996); *Biddle v. Johnsonbaugh*, 444 Pa. Super. 450, 456 (1995); *Burns v. Kabboul*, 407 Pa. Super. 289, 309 (1991); *Estate of Jackiella*, 353 Pa. Super. 581, 586 (1986).

Basile Court expressly confirmed that the test for a confidential relationship is a *subjective* analysis of the relationship between the parties on a "sliding scale":

> Our Supreme Court has acknowledged that "[t]he concept of a confidential relationship cannot be reduced to a catalogue of specific circumstances, invariably falling to the left or right of a definitional line." *In re Estate of Scott,* 455 Pa. 429, 316 A.2d 883, 885 (1974).
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> The Court has recognized, nonetheless, that "[t]he essence of such a relationship is trust and reliance on one side, and a corresponding opportunity to abuse that trust for personal gain on the other." *Id.* Accordingly, "[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[.]" *Frowen v. Blank,* 493 Pa. 137, 425 A.2d 412, 416-17 (1981) (emphasis added). The Supreme Court's use in *Frowen* of the disjunctive "or" to separate the cognizable characteristics of confidential relation is critical. Contrary to the trial court's determination in this case, our law does not require both "over[mastering] influence ***and,*** ... weakness, dependence or trust." . . . Indeed, both elements need not appear together as "in both an unfair advantage is possible." *Frowen,* 425 A.2d at 417.
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> . . . Both our Supreme Court and other courts have recognized that those who purport to give advice in business may engender confidential relations if others, by virtue of their own weakness or inability, the advisor's pretense of expertise, or a combination of both, invest such a level of trust that they seek no other counsel. . . .
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> Although the language used to define such advisor/advisee relationships has varied over time and in response to the circumstances established by the record, the Pennsylvania Supreme Court has focused, consistently, on the disparity in position between the parties to determine whether their relationship is, in fact, confidential. . . .
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> Moreover, the Court's decisions suggest that disparity between the respective parties is to be adjudged subjectively, and may occur anywhere on a sliding scale of circumstances. . . . We conclude that these cases, when considered together and in conjunction with prior authority, compel recognition of confidential relations between parties in a wide array of individual circumstances. The possibility of a confidential relationship cannot be excluded by a concrete rule. So long as the requisite disparity is established between the parties' positions in the relationship, and the inferior party places primary trust in the other's counsel, a confidential relationship may be established.

777 A.2d at 101-103.

"Confidential relationship" is not a concept limited to Will contests and challenges to inter vivos gifts. As the *Basile* case indicates, the civil division of the court often faces a claim of a confidential relationship in civil causes of action. As such, practitioners must be careful not to limit their research only to the traditional Orphans' Court cases.