

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

JANE WATERMANN, Plaintiff/Appellant,)	No. ED96541
v.)	Appeal from the Circuit Court
ELEANOR E. FITZPATRICK REVOCABLE)	of Franklin County
LIVING TRUST, WALLACE W. FITZPATRICK,)	Honorable David L. Hoven
Individually and as Trustee of the ELEANOR E.)	Date: June 19, 2012
FITZPATRICK REVOCABLE LIVING TRUST,)	
BONITA FITZPATRICK, LEROY G.)	
FITZPATRICK, PAULETTE FITZPATRICK,)	
DERIC FITZPATRICK, DEAN FITZPATRICK,)	
and WAYNE C. FITZPATRICK,)	
Defendants/Respondents.)	

Plaintiff, the beneficiary of a trust, filed a lawsuit against the trust, the trustee, the trustee's wife, and the remaining trust beneficiaries to obtain an accounting, removal of the trustee, and imposition of a constructive trust on the ground that the settlor of the trust created the trust and transferred assets to it as a result of the undue influence of the trustee and his wife (Count I) and to obtain damages based on tortious interference with inheritance (Count II). Defendants filed a counterclaim seeking repayment under the trust's anti-contest clause of a \$25,000 distribution to plaintiff. After a bench trial, the trial court entered judgment in defendants' favor on Counts I and II and awarded defendants \$24,999 on their counterclaim.

AFFIRMED.

Division Two Holds:

1. A settlor's mental and physical condition is "highly material" to the issue of undue influence because the condition would indicate whether the settlor was susceptible to undue influence.
2. In a court-tried case, the court does not need to specifically analyze whether the plaintiff made a prima facie case, but must only determine whether action was taken by the settlor as a result of undue influence, which is such influence that by force, coercion, or overpersuasion destroys the free choice of the actor.
3. In a court-tried case, whether a person exercised undue influence over another is a factual determination for the trial court.

Opinion by: Kathianne Knaup Crane, P.J.
Lawrence E. Mooney, J. and Kenneth M. Romines, J., concur.

Attorney for Appellant: Joseph V. Neill
Attorneys for Respondents: Steven P. Kuenzel, Colleen M. Kuenzel, and Frederick H. Schwetye

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.