

WARE V. WARE AND THE PRESUMPTION OF UNDUE INFLUENCE IN CONFIDENTIAL RELATIONSHIPS

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ABSTRACT

Alaska law has long recognized that a presumption of undue influence arises as a matter of law when a will's primary beneficiary participates in its drafting and has a fiduciary or confidential relationship with the testator. In its 2007 decision Ware v. Ware, the Alaska Supreme Court extended this principle beyond testamentary scenarios to any situation in which the principal in a confidential relationship benefits from the relationship. But the decision stated the law incorrectly. The court's analysis, cited precedents, and common sense all demonstrate that the court meant to say that the presumption of undue influence arises when a fiduciary in a confidential relationship benefits from the relationship, not when a principal benefits.

I. INTRODUCTION

The Alaska Supreme Court has long held that there is a presumption of undue influence when the main beneficiary of a will has a confidential or fiduciary relationship with the testator but still participates in the will's drafting.¹ In its 2007 decision *Ware v. Ware*,² the Alaska Supreme Court extended this holding beyond testamentary scenarios to have general applicability.

Unfortunately, the decision has an error that obscures its usefulness. Misreading one of its precedents, the court inadvertently inverted the positions of the principal (or dependent) party and the fiduciary (or dominant) party. In *Ware*, the court held that a presumption of undue influence arises “when a principal in a confidential relationship benefits

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1. Paskvan v. Mesich, 455 P.2d 229, 233 (Alaska 1969).
2. 161 P.3d 1188 (2007).

from that relationship.”³ But the court’s analysis, the precedents it cited, and common sense all demonstrate that the court meant to say that the presumption arises when a *fiduciary* in a confidential relationship benefits from the relationship, not when a *principal* benefits. This mistake resulted in an incorrect statement of the law that distorts the court’s holding and can confuse those handling actions involving undue influence. This Comment recommends substituting the word “principal” with “fiduciary” or “dominant party” when citing the decision to ensure an accurate citation of the law.

II. BACKGROUND

Undue influence is a common law doctrine usually categorized as a form of duress or fraud.⁴ It typically arises in trust and estate cases, though it can also arise in contractual disputes.⁵ Courts usually define undue influence as a person’s exercise of control over another to overcome the other person’s free will and preferences.⁶ Most courts, including Alaska courts, hold that inter vivos and testamentary gifts obtained through undue influence are void⁷ and that contracts to which parties are induced to assent through the exertion of undue influence are voidable or invalid.⁸

Finding undue influence normally involves a fact-intensive inquiry into elements such as whether a party was vulnerable, whether another party had an opportunity to exert influence, whether the other party exerted improper influence, and whether the improper influence’s effects are manifest in the result.⁹

3. *Id.* at 1194.

4. 25 AM. JUR. 2D *Duress & Undue Influence* § 36 (2021).

5. *E.g.*, *Allen v. Vaughn*, 161 P.3d 1209 (Alaska 2007); *Enders v. Parker*, 125 P.3d 1027 (Alaska 2005); *Helgason v. Merriman*, 36 P.3d 703 (Alaska 2001); *In re Estate of McCoy*, 844 P.2d 1131 (Alaska 1993).

6. *Id.*; *see also, e.g., In re Adoption of S.K.L.H.*, 204 P.3d 320, 328 n.41 (Alaska 2009) (alterations in original) (quoting 25 AM. JUR. 2D *Duress & Undue Influence* § 36 (2004)) (“Undue influence is the exercise of sufficient control over a person that: (1) deprives that person of freedom of choice or overcomes that person’s free will and substitutes the will of another in its place; (2) ‘precludes [that person’s] exercise of free and deliberate judgment’; or (3) ‘coerces [that] person into doing something’ that would not have been done absent the influence.”).

7. 25 AM. JUR. 2D *Duress & Undue Influence* § 40 (2021); *see also, e.g., Roberson v. Manning*, 268 P.3d 1090, 1094 (Alaska 2012) (“We have held that a gift is void if obtained by undue influence.”).

8. RESTATEMENT (SECOND) OF CONTS. § 177(2) (AM. L. INST. 1981); *see also, e.g., Allen*, 161 P.3d at 1214 (Alaska 2007) (“Settlement agreements that divide property in a divorce case are generally treated under general contract law theories and can be held invalid if there is fraud, duress, or undue influence.”).

9. 25 AM. JUR. 2D *Duress & Undue Influence* § 36 (2021). The Alaska Supreme

If parties share a fiduciary or confidential relationship, however, a presumption of undue influence may arise as a matter of law.¹⁰ As a general matter, confidential relationships exist between parties when they share “a relationship based on special trust and confidence.”¹¹ Under Alaska law, the canonical definition of a confidential relationship is “when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence.”¹²

The most common types of confidential relationships are fiduciary relationships, such as those between principals and agents, attorneys and clients, guardians and wards, and attorneys-in-fact and power-of-attorney grantors.¹³ In many jurisdictions, parent-child and other close family relationships also automatically create confidential relationships, but they do not in Alaska.¹⁴

III. CASE DESCRIPTION

In 2007, the Alaska Supreme Court addressed undue influence in an

Court’s descriptions of the elements of undue influence have varied depending on the type of transaction involved. For example, in cases of disputed testamentary gifts, the court has said that “[t]he party challenging a will must prove that ‘the testator was virtually compelled to make a will that the testator would not have made if left to the free exercise of the testator’s own judgment and wishes.’” *Crittell v. Bingo*, 36 P.3d 634, 639 (Alaska 2001) (quoting *In re Kraft’s Est.*, 374 P.2d 413, 417 (Alaska 1962)).

10. 25 AM. JUR. 2D *Duress & Undue Influence* § 39 (2021).

11. RESTATEMENT (THIRD) OF PROP.: WILLS & DONATIVE TRANSFERS § 8.3 cmt. g (AM. L. INST. 2003).

12. 1200 “L” *St. Corp. v. Inlet Co.*, 438 P.2d 708, 709 (Alaska 1968). The Alaska Supreme Court borrowed this language from a 1952 Idaho Supreme Court decision, *Stearns v. Williams*, 240 P.2d 833, 840–41 (Idaho 1952). It ultimately traces back to the “Fiduciary” entry in the original edition of the *Corpus Juris*. 25 C.J. 1119 (1921) (“The [fiduciary] relation may exist under a great variety of circumstances; it exists in all cases where there has been a special confidence reposed in one who in equity and good conscience is bound to act in good faith, and with due regard to the interests of the one reposing the confidence.”).

13. 25 AM. JUR. 2D *Duress & Undue Influence* § 39 (2021). It is not entirely clear whether confidential relationships are distinct from fiduciary relationships. Relatively few jurisdictions expressly equate them, but *Black’s Law Dictionary* has long treated them as synonyms. EUNICE L. ROSS & THOMAS J. REED, *WILL CONTESTS* § 7:4 (2d ed., 2021). The general terms for the parties in a fiduciary relationship are “beneficiary” and “fiduciary,” whereas in confidential relationships the normal terms are “dependent party” and “dominant party.” For simplicity’s sake, the remainder of this Comment will simply speak of “principals” and “fiduciaries.”

14. *See, e.g., Purcella v. Olive Kathryn Purcella Tr.*, 325 P.3d 987, 994 (Alaska 2014) (“A confidential relationship does not necessarily arise from a family relationship.”).

inter vivos gift for the first time.¹⁵ The case, *Ware v. Ware*,¹⁶ involved an intrafamilial dispute among four siblings over land on the Kenai Peninsula on which their parents had homesteaded in the early 1960s. The siblings had grown up on the property, and by the time of the litigation it comprised roughly eighty acres of land.¹⁷

The siblings' father died in 1999, leaving their elderly mother as the property's sole owner.¹⁸ She placed the property into a revocable living trust, naming herself as trustee and the siblings as beneficiaries.¹⁹ The siblings each had homes on the property, and the trust provided that they would individually acquire the land on which their homes sat, with one of the daughters receiving the family home.²⁰ But in 2003, the mother executed a warranty deed in her capacity as trustee that conveyed the entire property to one of the sons.²¹ The daughter promptly sued the son, claiming the conveyance was the result of undue influence he had exerted upon the mother.²² After discovery, the son moved for summary judgment on the matter in his favor, which the superior court granted.²³

On appeal, the Alaska Supreme Court affirmed the superior court's summary judgment ruling. Never having addressed the issue before, the court held that under Alaska law, the same undue influence and lack of capacity rules that apply to testamentary gifts also apply to inter vivos gifts.²⁴ Regarding gifts between parents and children, the court held that "transfers of property, including real property, money, and cash advances, from parent to child are presumptively gifts."²⁵

The court then addressed the issue of confidential relationships and their effect on claims of undue influence.²⁶ It recited the canonical definition of such relationships in Alaska, then reaffirmed Alaska precedent holding that undue influence is presumed in some confidential relationship transactions.²⁷ The court then framed the law as follows:

15. One earlier case involved an allegation of undue influence in the gratuitous assignment of a promissory note, but the court decided other issues in the case in a way that made consideration of the undue influence issue unnecessary. *Aiello v. Clark*, 680 P.2d 1162, 1167 & n.5 (Alaska 1984).

16. 161 P.3d 1188 (Alaska 2007).

17. Brief for Appellant at 5, *Ware v. Ware*, 161 P.3d 1188 (Alaska 2007) (No. S-11687), 2005 WL 3125972 at *i.

18. *Ware*, 161 P.3d at 1191.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *Id.* at 1192.

25. *Id.* at 1192-93.

26. *Id.*

27. *Id.* at 1193.

“Although the existence of a confidential relationship alone does not create a presumption of undue influence, when a principal in a confidential relationship benefits from that relationship, a presumption of undue influence arises.”²⁸

The remainder of the opinion addresses the factual elements of the appellant’s remaining claims. After analyzing the facts of the relationship between the mother and son, the court reached *de novo* the same conclusion that the trial court reached regarding undue influence: that they did not share a confidential relationship.²⁹ It therefore held that the trial court correctly concluded no presumption of undue influence arose, and it affirmed the court’s finding of no undue influence in the transaction.³⁰

But, as the next section explains, the court’s description of the presumption of undue influence created by confidential relationships contains a significant error: it inverted the position of principal for fiduciary.

IV. ANALYSIS

Ware’s description of the effect of an undue influence claim arising from a transaction between parties in a confidential relationship is erroneous. The court held that confidential relationships do not necessarily give rise to presumptions of undue influence.³¹ Rather, according to the court, presumptions of undue influence only arise “when [the] principal in a confidential relationship benefits from that relationship.”³²

But this description of the law makes little sense. One of the fundamental elements of confidential and fiduciary relationships is the legal requirement that a fiduciary conduct relevant business with the sole object of benefiting the principal or dependent party.³³ In agency law, for example, the foundational principle of the fiduciary relationship is that “[a]n agent has a fiduciary duty to act loyally *for the principal’s benefit* in all matters connected with the agency relationship.”³⁴ The court’s description, if literally adopted, would raise presumptions of undue

28. *Id.* at 1194.

29. *Id.* at 1194–95.

30. *Id.* at 1195.

31. *Id.*

32. *Id.*

33. See 37 AM. JUR. 2D *Fraud & Deceit* § 34 (2021) (“A fiduciary is a person who is required to act for the benefit of another person in all matters within the scope of their relationship.”).

34. RESTATEMENT (THIRD) OF AGENCY § 8.01 (AM. L. INST. 2006) (emphasis added).

influence in nearly every confidential relationship.

Moreover, the court's framing of the law does not square with its analysis of the facts in *Ware*. The *Ware* court examined the relationship between the elderly mother and the son to whom she conveyed the property.³⁵ The court concluded they did not share a confidential or fiduciary relationship because the elderly mother was neither "controlled by" nor "depend[ent]" upon the son to whom she had conveyed the property.³⁶ Because the son did not stand in a confidential relationship to his mother, the court reasoned, his benefiting from the transaction did not create a presumption of undue influence.³⁷

The *Ware* court analogized the mother and son's situation to a 1957 Michigan case in which an elderly man claimed his children had acquired his property by exercising undue influence upon him.³⁸ The Michigan court concluded that the elderly man's children had no fiduciary duty to him because, despite the man's advanced age, he still "was able to determine for himself what he wished to do and to refuse to act against his own inclinations."³⁹ Furthermore, there was no evidence that he "was governed by [his children's] advice or that he depended on them in the making of decisions concerning his business affairs."⁴⁰

The *Ware* court followed the Michigan court's analysis, comparing the relationship of the *Ware* elderly mother and the son to that of the Michigan elderly man and his children.⁴¹ But the *Ware* court inadvertently flipped the parties' roles.⁴² In the Michigan case, it was the elderly man who would have been the principal, not the children.⁴³ The children would have been his "fiduciaries" because "there [was] a reposing of faith, confidence and trust and the placing of reliance by one upon the judgment and advice of another."⁴⁴ The *Ware* court said that it analyzed the mother and son's relationship to see if the "principal in a confidential relationship benefited,"⁴⁵ but it was actually analyzing whether the *fiduciary* in such a relationship had benefited.⁴⁶ It was the elderly mother in *Ware* who was the principal, not the son to whom she conveyed the

35. *Ware*, 161 P.3d at 1194-95.

36. *Id.*

37. *Id.*

38. *Id.* (citing *Salvner v. Salvner*, 84 N.W.2d 871 (Mich. 1957)).

39. *Salvner*, 84 N.W.2d at 875.

40. *Id.*

41. *Ware*, 161 P.3d at 1194.

42. *Id.*

43. *Salvner*, 84 N.W.2d at 872.

44. *Id.* at 875 (quoting *In re Jennings' Est.*, 55 N.W.2d 812, 813 (Mich. 1952)).

45. *Ware*, 161 P.3d at 1194.

46. *See id.* ("[T]here is no evidence of a . . . fiduciary relationship . . .").

property.⁴⁷

The court's error comes from a misreading of its 1969 decision *Paskvan v. Mesich*.⁴⁸ *Paskvan* involved a dispute over a will that a decedent had executed bequeathing his entire estate to a business partner.⁴⁹ Several challengers alleged that the decedent's will was the product of undue influence exerted by the business partner.⁵⁰ They pointed to two factors in support of their claim. First, the business partner was present at the will's execution and had participated in its drafting.⁵¹ Second, they alleged that the business partner had stood in a confidential relationship to the decedent.⁵² The decedent had given the business partner a one-half interest in his Fairbanks hotel and a general power of attorney over his affairs.⁵³ The probate master had concluded that a confidential relationship had existed, and the court found no error in this determination, saying that the facts "show[] quite clearly that [the decedent] trusted [the business partner] and reposed confidence in him — that he relied upon [the business partner] to act in [the decedent]'s best interests in handling his affairs."⁵⁴

After affirming that a confidential relationship existed, the *Paskvan* court then considered whether this produced a presumption of undue influence in the will's execution.⁵⁵ It briefly explained that not all transactions within confidential relationships raise undue influence presumptions, but only those where the fiduciary benefits.⁵⁶ "[W]hen the principal or sole beneficiary under a will, who had a confidential relationship with the testator, participated in the drafting of the will, then a presumption of undue influence arises."⁵⁷

It is not difficult to see what the *Ware* court was trying to do. The court wanted to take the *Paskvan* court's description of the law for testamentary situations and generalize it to inter vivos transfers and beyond.⁵⁸ How, then, did the *Ware* court flip *Paskvan*'s description of the law? The problem seems to have been the court's reading of the phrase "when the principal or sole beneficiary." In *Paskvan*, the court used

47. *Id.* at 1191.

48. 455 P.2d 229 (Alaska 1969).

49. *Id.* at 232.

50. *Id.* at 231.

51. *Id.* at 233.

52. *Id.* at 232.

53. *Id.*

54. *Id.*

55. *Id.* at 232–33.

56. *Id.* at 233.

57. *Id.*

58. See *Ware v. Ware*, 161 P.3d 1188, 1193 (Alaska 2007) (citing *Paskvan* and other cases for general rules about undue influence in parent-child relationships).

“principal” as an adjective, meaning “among the most important; prominent, leading, main.”⁵⁹ It said “principal or sole beneficiary” to say that the mere fact that a fiduciary was not the only beneficiary of a will did not negate the undue influence presumption.

Further examination of the *Paskvan* court’s opinion makes this clear. In *Paskvan*, the decedent’s business partner was the sole beneficiary of his will.⁶⁰ But in other precedents the court cited for its legal proposition, *more than one party* had benefited from the wills of testators with whom they had shared fiduciary relationships.⁶¹ This appears to have been the *Paskvan* court’s motivation to write “principal or sole beneficiary,” rather than simply “sole beneficiary.”⁶² The formulation is a reasonable one, and prevents bad actors from eluding the presumption of undue influence simply because one other party also received bequests under a will, even if the amount of property was trivial.

The *Ware* court apparently mistook this adjectival form of “principal” for its noun form as it occurs in the terminology of fiduciary relationships. It took only “principal” from “principal or sole beneficiary,” producing a formulation that precisely reverses the correct rule in *Paskvan*. The *Ware* court’s statement of the law implicates situations where “principals” benefit, rather than fiduciaries, as *Paskvan* originally intended. The mistake is a relatively small one, but the *Ware* court’s inadvertent error makes the distinction’s importance manifest.⁶³

With this in mind, it is clear that the court’s opinion in *Ware* ought to have read: “when a *fiduciary* in a confidential relationship benefits from that relationship, a presumption of undue influence arises.” This formulation not only follows the meaning of the original text, but also makes much more sense. Raising presumptions of undue influence whenever a principal benefited from a fiduciary relationship would frustrate a fundamental purpose of agency law. Moreover, it would be illogical to raise presumptions of undue influence when principals benefit from transactions because it is fiduciaries, not principals, who usually have extensive control over the other party’s property and affairs. Replacing the “principal” in the *Ware* court’s holding with “fiduciary”

59. *Principal*, OXFORD ENGLISH DICTIONARY (online ed. June 2021); *see also Principal (adj.)*, BLACK’S LAW DICTIONARY (11th ed. 2019) (“chief; primary; most important”).

60. *Paskvan*, 455 P.2d at 233–34.

61. *See id.* at 233 n.7.

62. *See id.* at 233.

63. The potential confusion between the two senses of “principal” may be the reason why *Black’s Law Dictionary* has separate entries for them. Compare *Principal (adj.)*, BLACK’S LAW DICTIONARY (11th ed., 2019) (“chief; primary; most important”), with *Principal (n.)*, BLACK’S LAW DICTIONARY (11th ed., 2019) (“someone who authorizes another to act on his or her behalf as an agent”).

restores the rule's original paradigm.

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The court may already be aware of the error in *Ware*. In a subsequent case involving an inter vivos transaction in which a donee was alleged to have been in a confidential relationship with the donor, the court did not cite *Ware* for the proposition that "a confidential relationship . . . trigger[s] a presumption of undue influence."⁶⁴ Instead, it cited *Paskvan's* holding on the doctrine's function on testamentary bequests.⁶⁵ Since *Paskvan* dealt only with testamentary gifts, the court was forced to use a "see" signal to indicate that a logical extension was needed to support the proposition.⁶⁶ Nevertheless, the court in that case did not correct the mistake, and *Ware's* erroneous language remains.

V. CONCLUSION

In *Ware v. Ware*, the Alaska Supreme Court extended its longstanding holding that a presumption of undue influence arises as a matter of law when a fiduciary in a fiduciary or confidential relationship benefits from a will in whose drafting they participated, to include inter vivos gifts and transactions. But, misreading one of its earlier decisions, the *Ware* court inadvertently misstated the law. The court wrote that such presumptions arise when a principal benefits from a gift or transaction, despite the fact that the presumptions of undue influence arise when a fiduciary benefits.

Alaska practitioners should be aware of the error when handling matters involving allegations of undue influence. The mistake has been incorporated into the headnotes on both *Westlaw* and *LexisNexis*.⁶⁷ Unwary practitioners and courts could easily be confused into making legal errors in undue influence litigation. Until the court issues a decision that gives a correct formulation of the law, courts and practitioners citing this language from *Ware* ought to substitute "principal" as "fiduciary" to

64. *Purcella v. Olive Kathryn Purcella Tr.*, 325 P.3d 987, 994 (Alaska 2014).

65. *Id.* at 994 n.23 (citing *Paskvan*, 455 P.2d at 233).

66. *Id.* The court has never explicitly quoted the problematic passage from *Ware*.

67. On *Westlaw*, this headnote has been linked to a subsequent case, *Purcella v. Olive Kathryn Purcella Trust*, 325 P.3d 987 (Alaska 2014), though *Ware's* problematic language is not present. See *Ware v. Ware: WestLaw Headnote 17*, WESTLAW (June 1, 2007), <https://next.westlaw.com> (search "161 P.3d 1188" in search bar; then choose *Ware v. Ware*; then click "West Headnotes"; then scroll to Headnote 17 with heading "Contracts"). No such connection accompanies the Lexis headnote. See *Ware v. Ware: Lexis+ Headnote 7*, LEXIS+ (June 1, 2007), <https://plus.lexis.com/> (search "161 P.3d 1188" in search bar; then click "Headnotes"; then scroll to "HN7 Undue Influence, Elements").

ensure a correct formulation of the law.