

Case Summary and Issue

Marjorie Guthrie entered into a real estate contract with her son, Don Guthrie, pursuant to which Don was to pay Marjorie \$130,720 plus 4.5% interest over fifteen years for an approximately eleven and one-half acre parcel of land. In the event Marjorie died before the land was paid for, Don was to make the payments to his brother, Dennis Guthrie, and sister, Regina Kerber. After Marjorie's death, Dennis and Regina sued Don seeking imposition of a constructive trust on the real estate. The trial court found that the contract was procured through undue influence and ordered the contract reformed to a purchase price of \$250,000 with 5.45% interest. Regina appeals the trial court's order, contending that the trial court erred in ordering reformation where that relief was not requested. Don cross-appeals, contending the trial court should have granted his motions to dismiss and that the trial court's order is clearly erroneous. Concluding that the trial court could not order reformation when it was not requested by the parties but that the trial court's findings and conclusions support the imposition of a constructive trust as sought in Dennis and Regina's complaint, we reverse and remand.

Facts and Procedural History

Marjorie had three children, Don, Dennis, and Regina, with her husband, Ernest. Marjorie and Ernest separated approximately twenty years prior to the events relevant to this appeal; however, they remained married until Marjorie's death. Marjorie lived on her own following their separation, but in her later years experienced financial difficulties. Both Don and Regina gave Marjorie money to help her with her expenses. Regina testified that she gave Marjorie approximately \$3,300; Don estimated that he gave Marjorie approximately

\$50,000.

On December 20, 2002, Marjorie and Don executed a contract for the sale of 11.43 acres of undeveloped real estate Marjorie owned in Clark County, Indiana. Attorney Betty Hogue Carver prepared the contract and Marjorie and Don signed the contract in her presence. Marjorie and Don had originally agreed to a purchase price of \$180,000. Attorney Carver indicated that for tax purposes, an interest rate would be necessary. Marjorie and Don then agreed to a purchase price of \$130,000 at 4.5% interest, to be paid in monthly installments of \$1,000 for fifteen years. If Marjorie died before the contract was fully paid, Don was to pay \$500 monthly to both Dennis and Regina for the duration of the contract. Marjorie died on February 5, 2004. Thereafter, Don made his payments to Dennis and Regina per the contract.

On October 14, 2004, Dennis and Regina filed a complaint against Don, alleging fraud, constructive fraud, undue influence, intentional interference with inheritance, intentional infliction of emotional distress, and breach of fiduciary duty. Dennis and Regina requested the imposition of a constructive trust, among other relief. Following a trial, during which the intentional interference with inheritance and intentional infliction of emotional distress counts were dismissed pursuant to Dennis's motion, the trial court entered the following relevant provisional findings of fact and conclusions of law:

FINDINGS OF FACT

* * *

3. The complaint filed by the plaintiffs . . . alleged multiple theories of action, but essentially this was an action that alleged the existence of constructive fraud or undue influence arising from the sale of an 11.433 acre tract of real estate in Henryville, Indiana that Marjorie sold to Don on December 20, 2002 for \$130,720.10 in a fifteen year installment real estate

contract. . . . Marjorie was not represented by separate legal counsel and her other adult children Regina and Dennis were not aware of the contract until some time later but prior to her death in 2004.

4. . . . Don made payments to his mother, Marjorie, during her lifetime pursuant to the contract that provided her with additional income that was needed to avoid monthly shortfalls. Prior to the execution of the contract, Marjorie received considerable financial contributions, primarily from Regina and Don, in amounts that were characterized by several witnesses but not proven with any reasonable certainty by the evidence. After Marjorie's death . . . Don continued to make monthly payments to Regina and Dennis which they accepted until the suit was filed herein.

5. Paragraph 1d of the contract provided that upon the death of Marjorie (vendor) that Don (purchaser) shall pay the unpaid balance of the contract as follows: one-half to his sister Regina and one-half to his brother Dennis upon the same terms as provided. This clause is consistent with all of the evidence that Marjorie wanted to treat all of her adult children equally and fairly without favoring one over the other.

* * *

7. The following representation in paragraph 17 is particularly relevant to the plaintiffs' claims for constructive fraud by undue influence: "THE PURCHASE PRICE FOR THE REAL ESTATE HAS BEEN ARRIVED ABOUT BY BOTH PARTIES INDEPENDENTLY DETERMINING THE VALUE OF THE REAL ESTATE."

8. The contract was drafted and executed in the presence of attorney Betty Hogue Carver as a notary public at Don's request. Attorney Carver was aware of the mother-son relationship between Marjorie and Don Although Carver testified that she would have stopped the sale immediately if there had been any hint of improprieties or any question about Marjorie's legal capacity to execute a real estate contract, she did not purport to provide Marjorie with independent legal representation.

* * *

[11]e. Don testified that he gave vast sums of money to Marjorie to meet her monthly shortfalls but provided no documentary evidence at trial to prove his contributions of \$50,000.00. Although the parties could not agree on the amounts contributed by Regina or Don, it is apparent that at the time of the contract Marjorie was dependent on Don's contributions to meet her monthly expenses. In addition, the sale would benefit Don giving him the ability to recoup his contributions by developing said land for residential purposes and the sale proceeds would eliminate the need for future contributions.

[11]f. . . . [T]here is no evidence that Marjorie intended to favor one of her children over another in the sale of the real estate or otherwise. There is no evidence that Marjorie intended to "gift" any portion of the real estate to Don or that Marjorie lowered the sale price in order to repay Don's alleged

financial contributions. Neither Marjorie nor Don notified Regina or Dennis prior to the sale.

[11]g. Don was aware of Marjorie's propensity to engage in real estate transactions without consulting the rest of the family and proceeding on her own without the benefit of a lawyer or other professionals and often to her detriment. . . .

[11]h. There is absolutely no evidence whatsoever that Marjorie "independently" determined the value of the real estate. . . . No appraisals were completed prior to litigation. There was no evidence that Marjorie even had the independent business acumen to accurately assess the value of her real estate, especially without consulting family or qualified professionals. All of the evidence proved to the contrary that Marjorie lacked the necessary business skills to prudently sell her real estate without professional assistance. . . .

12. In addition to opinions expressed by family members concerning the value of the real estate on December 20, 2002, two appraisers testified during the parties' case-in-chief that ranged from a low of \$171,494 . . . to a high of \$650,000.00 The court-appointed appraiser . . . testified that the fair market value of the property on the date in question was \$195,000.00

All three appraisals were considerably higher than the sale price to Don of \$130,720.10. After considering the varying methods of valuation of property presented in evidence, the court determines that the fair market value of property was \$250,000.00 on the date of the sale.

* * *

14. The total consideration for the purchase of the subject real estate is clearly stated as the contract price of \$130,720.10. The court specifically reject[s] any evidence to the contrary that suggested the price was actually \$180,000.00 by factoring total payments under a 15 year installment payout which includes interest at 4.5% or that "boot" (non-cash consideration) was received by Marjorie in the form of repayment of cash contributions of \$50,000.00 that Don claimed to have provided Marjorie to cover her monthly shortfalls. The court rejects this testimony and any other attempts to repudiate the terms of an executed written contract. Don[']s claim for services is an issue for the probate court and not as additional consideration in said real estate contract that is devoid of any such reference.

15. Based on Carver's testimony, neither Don nor Marjorie initially made a distinction between the purchase price and the total payout under a 15 year installment contract. . . . It was only at Carver's insistence that a modest fixed rate of 4.5% interest was specifie[d] which lowered the so-called "purchase price" from 180,000.00 to the exact amount of \$13[0],720.10. The evidence is not persuasive that Marjorie understood the time value of money or the significance of principal and interest for tax purposes. Without the assistance of qualified professionals, Marjorie accepted a lower interest rate on her real estate sale than what she was paying on her home mortgage at a sale

price well below fair market value. Don testified at trial that he actually paid \$180,000.00 for the property after considering his undocumented claim of financial contribution. Assuming this testimony to be true, then Marjorie would have reason to believe the sale price was actually \$180,000.00 rather than \$130,720.10. The evidence supports a prima facie claim of undue influence.

16. Much testimony was presented about Marjorie's physical appearance, her lack of good business sense, health problems, eccentric and sometimes odd behavior. . . . The evidence fails to meet the legal standard required for a finding that Marjorie suffered from an "unsound" mind or that she lacked the legal capacity to execute a real estate contract merely because she exercise[d] poor judgment without professional assistance. . . . The court finds that on December 20, 2002 Marjorie was fully competent to execute a contract for sale of her real estate and to manage her own daily affairs, however poorly.

17. Marjorie . . . trusted Don explicitly in all aspects of the real estate contract, including the price and interest rate which she believed to be fair because Don believed it to be fair, but not because she made an "independent" determination of the value of the property. The price, terms and interest rate were not negotiated through a bargaining process by independent counsel in a manner consistent with an arms length transaction. . . . The deal provided a windfall to Don to help with the shortfalls to Marjorie. This enabled Don to gain an unfair advantage from the sale on several important aspects: price, interest rate and down payment.

18. At the time of the real estate contract, Don had a fiduciary relationship with Marjorie based [on] his superior knowledge and expertise in building and selling houses in addition to his mother's dependency on her son's financial assistance to meet her monthly expense[s] which according to Don was a debt in the range of \$50,000.00. Based on the fiduciary relationship that existed at the time of the sale, Don enjoyed the confidence of his mother's trust and it is highly probable that Marjorie would have trusted Don's judgment in all matters connected to the sale. Don violated this fiduciary trust by not providing his mother with prudent independent counsel and by not providing prior notice to Regina and Dennis that was necessary to ensure a fair dealing. This resulted in an advantage to Don and to the detriment to Marjorie as described above.

* * *

CONCLUSIONS OF LAW

* * *

2. Because Don (purchaser) had a fiduciary relationship with his mother Marjorie (vendor) at the time of the real estate contract and the contract resulted in an advantage to . . . Don as the purchaser, this gives rise to a rebuttable presumption that the contract was constructively fraudulent and

void.

* * *

4. A fiduciary may rebut a presumption of undue influence in a transaction with a subordinate party favorable to the fiduciary by establishing by clear and convincing evidence that the fiduciary acted in good faith, did not take advantage of his position of trust, and that the transaction was fair and equitable.

5. Whereas the parent is generally the dominant party, Don was in the position of dominance on these facts as recited above by virtue of being a caretaker and benefactor to his ailing mother. Don was in a dominant position with his mother at the time of the execution of the contract due to his superior knowledge and skill as an entrepreneur engaged in the building and selling of houses, in addition to the declining health and abilities of his mother.

6. This fiduciary relationship between Don and his mother, Marjorie, coupled with the transfer of substantial assets of 11.433 acres which was by far the single largest asset under her control in December, 2002, raises a presumption of undue influence. . . .

* * *

8. The court now concludes that the real estate contract in dispute was a direct result of undue influence exercised by the fiduciary which resulted in an advantage to Don in purchasing the real estate

9. The evidence presented by Don falls far short of clear and unequivocal proof that the questioned transaction was in fact held at arm's length. . . .

10. The plaintiffs are entitled to a judgment in their favor as the contract for the sale of real estate executed on December 20, 2002 is null and void. The defendant's request for a dismissal of Dennis' claim is hereby denied on a finding that Dennis is entitled to rely on the proof as presented by Regina and her counsel.

11. Reformation is an extreme equitable remedy utilized to relieve the parties of mutual mistake or fraud. The court finds by clear and convincing evidence that reformation of the contract is the appropriate remedy because Marjorie had the legal capacity to sell the real estate to Don and it was her intention to do so in a manner that did not result in unequal treatment by appearing to favor Don over Regina and Dennis. The court finds that reformation pursuant to this order is appropriate where Don made payments under the contract for 14 months prior to Marjorie's death and for an additional nine months before suit was filed.

12. The plaintiffs are entitled to recover damages computed by a reformation of the contract as follows: Setting the purchase price on December 20, 2002 at \$250,000.00, instead of \$130,720.10 at an interest rate consistent with an average of then prevailing lending market rates, instead of 4.5%, as reduced by the amount of monies actually paid to Marjorie or to

Regina and Dennis. The court requires the assistance of expert testimony or an agreement of legal counsel in a further proceeding.

Appellant's Appendix at 10-19 (some emphasis omitted) (citations omitted). The court held a hearing for the purpose of fixing an interest rate. Following the hearing, the trial court issued a new order, incorporating its previous findings of fact and conclusions of law. The new order was prefaced with the following discussion:

The court's decision to reform the contract for sale of an 11.433 acre tract executed more than a year prior to Mrs. Guthrie's death was neither sought nor requested by any party. The plaintiffs want the sale nullified and the value of the property distributed through the probate court and the defendant wants to maintain the status quo. The court's remedy to reform the contract is an attempt to give effect to Mrs. Guthrie's intentions to sell the tract to her son Donald Guthrie, a local developer, at a time when it was desirable for her to liquidate some of her fixed assets. This is clearly supported by the evidence.

Reformation of the contract is the only remedy that gives effect to Mrs. Guthrie's intentions to sell the property while determining a reasonable purchase price and interest rate and thereby avoiding the taint of undue influence. The court is aware that reformation is an extreme equitable remedy to be reserved for the most unusual of circumstances to avoid further hardships.

Id. at 21-22. The court's final judgment reads as follows:

IT IS NOW HEREBY ORDERED AND ADJUDGED that the contract for sale of real estate entered into between defendant Don C. Guthrie and his mother Marjorie Guthrie on December 20, 2002 is set aside as null and void for the reasons specified above. The contract shall be reformed with a sale price of \$250,000.00 payable in equal monthly payments over fifteen years to Regina and Dennis at a 5.45% fixed interest rate per annum. Don is entitled to credit for any payments made to Marjorie during her lifetime or to [Regina] and Dennis personally before filing of this suit. . . .

IT IS FURTHER ORDERED that execution of this final judgment is STAYED PENDING AN APPEAL

Id. at 32-33.

Both Regina and Don filed notices of appeal; Regina has proceeded as the appellant in this appeal and Don has proceeded as the appellee and cross-appellant.

Discussion and Decision

I. Standard of Review

Where, as here, the trial court has entered findings of fact and conclusions thereon pursuant to Indiana Trial Rule 52, we apply the following two-tiered standard of review: whether the evidence supports the findings and whether the findings support the judgment. Paternity of M.M.B., 877 N.E.2d 1239, 1242 (Ind. Ct. App. 2007). The trial court's findings and conclusions will be set aside only if they are clearly erroneous, that is, if the record contains no facts or inferences supporting them. Id. A judgment is clearly erroneous when a review of the record leaves us with a firm conviction that a mistake has been made. Id. We neither reweigh the evidence nor assess the credibility of witnesses, but consider only the evidence most favorable to the judgment. Id. We review conclusions of law de novo. Id.

II. Regina's Appeal: Reformation as a Remedy

Regina's appeal concerns solely the propriety of the trial court ordering reformation of the contract. The trial court's final judgment acknowledges that reformation was not requested by the parties. In fact, the trial court was unable to reform the contract on the basis of the parties' evidence, requiring a separate hearing for the purpose of gathering evidence on an appropriate interest rate. Don agrees that the trial court should not have reformed the contract.

Our courts have held that a court's jurisdiction is limited by the pleading before the court invoking that jurisdiction and that a judgment that does not conform to the pleadings is

void. See Holmes v. Randolph, 610 N.E.2d 839, 843 n.11 (Ind. 1993); Surprise v. Porter Circuit Court, 226 Ind. 375, 381, 80 N.E.2d 107, 110 (1948). In New Life Cmty. Church of God v. Adomatis, 672 N.E.2d 433 (Ind. Ct. App. 1996), the buyer under a land contract did not make its final payment because it believed the seller was in breach of a contract provision requiring it to install perimeter drains for surface water damage. The buyer filed a complaint for specific performance, declaratory relief, and damages. The trial court granted partial summary judgment in favor of the buyer on the issue of liability and held a hearing on the issue of damages. In its order following the hearing, the trial court indicated that it had three options for resolution: order rescission, order specific performance, or award damages. Ultimately, the trial court rescinded the contract as “the most fair remedy.” Id. at 436. On appeal, we noted that neither party, through pleadings or during court hearings, requested rescission of the contract. We noted that we did not disagree with the principle that “one who invokes the equitable power of the court submits himself to the imposition of such terms as well-established equitable principles require,” id. at 438 (citing Local 715 v. Michelin America Small Tire, 848 F. Supp. 1400, 1412 (N.D. Ind. 1994)), but stated that we did disagree that the principle was broad enough to grant a court authority to order rescission of a contract when neither party has requested that remedy.¹ Id. We therefore reversed the trial court’s judgment ordering rescission of the contract and determined that the requested relief, specific performance, should have been granted. Id. at 438-39.

Likewise in this case, none of the parties requested that the contract be reformed and the trial court should not have undertaken to rewrite the contract because it found the

¹ We also noted that there was no basis to support rescission, such as fraud, illegality, mutual

contract's terms to be unfavorable to Marjorie, and ultimately, to Dennis and Regina.² Accordingly, the trial court's judgment ordering reformation of the contract is reversed. We turn now to a consideration of whether the findings and conclusions by the trial court support the requested relief.

III. Don's Cross-Appeal

A. Trial Rule 41 Dismissal

On cross-appeal, Don first contends that the trial court erred in denying his Trial Rule 41 motions for dismissal at the close of the plaintiffs' case-in-chief and again at the close of all evidence.

When trial is to the court, the defendant can test the sufficiency of the plaintiff's case by moving for dismissal pursuant to Trial Rule 41(B), which provides:

After the plaintiff or party with the burden of proof upon an issue, in an action tried by the court without a jury, has completed the presentation of his evidence thereon, the opposing party, without waiving his right to offer evidence in the event the motion is not granted, may move for a dismissal on the ground that upon the weight of the evidence and the law there has been shown no right to relief. The court as trier of the facts may then determine them and render judgment against the plaintiff or may decline to render any judgment until the close of all the evidence.

Pursuant to the foregoing rule, a trial court may weigh the evidence, determine the credibility of witnesses and decide whether the party with the burden of proof has established a right to

mistake, or a contract provision providing for such a remedy. *Id.* at 438.

² As in *Adomatis*, we also note that there is no apparent basis for reformation in this case. A trial court may reform a contract in two situations: 1) where there has been a meeting of the minds but the written document does not express the agreement; and 2) where one party has acted under a mistake of fact fraudulently or inequitably induced by the other party. *Mid-States Gen. & Mech. Contracting Corp. v. Town of Goodland*, 811 N.E.2d 425, 435 (Ind. Ct. App. 2004). As the real estate contract accurately expressed Marjorie and Don's agreement, and as the trial court found no actual fraud by Don, reformation would have been an improper remedy even if it had been requested. Moreover, the trial court's findings of undue influence and constructive fraud and its conclusion that the real estate contract was therefore

relief during the case-in-chief. Barger v. Pate, 831 N.E.2d 758, 761 (Ind. Ct. App. 2005).

The grant or denial of a motion to dismiss made under Trial Rule 41(B) is reviewed under the clearly erroneous standard. Thornton-Tomasetti Eng'rs v. Indianapolis-Marion County Pub. Library, 851 N.E.2d 1269, 1277 (Ind. Ct. App. 2006). In reviewing a motion for involuntary dismissal, we will not reweigh the evidence or judge the credibility of the witnesses. Id. We will reverse the trial court only if the evidence is not conflicting and points unerringly to a conclusion different from the one reached by the lower court. Id.

Don first contends that because Dennis, who was not represented by Regina's counsel during trial, did not present any independent evidence, his claims should have been dismissed at the close of the plaintiffs' case-in-chief. Don also contends that because Regina did not produce substantial evidence of probative value to establish the material elements of the complaint in her case-in-chief, her claims should have been dismissed.

We note first that Regina and Dennis's claims were identical. Dennis was not required to duplicate Regina's evidence in support of his claim. As will be discussed in more detail below, Regina and Dennis had to prove only the existence of a fiduciary relationship and an advantage to Don in order to raise the presumption of undue influence in support of their claim. The evidence at the close of the plaintiffs' case-in-chief showed that Marjorie and Don, as mother and son, were in a fiduciary relationship; that Don, who had superior business knowledge and was holding the pursestrings, was in the dominant position; and that he secured an advantage from a beneficial land sale transaction between the two. The trial court determined that this evidence was sufficient to establish a right to relief. We cannot say

null and void are inconsistent with reformation.

that the evidence points unerringly to the opposite conclusion, and therefore conclude that the trial court's denial of Don's Trial Rule 41 motion to dismiss at the conclusion of the plaintiffs' case-in-chief was not clearly erroneous.

Don renewed his motion at the close of all evidence. However, at that stage of the proceedings, Don's motion was nothing more than a request for judgment in his favor, and we will review the trial court's findings, conclusions, and judgment below under the Trial Rule 52 standard.

B. Constructive Trust as a Remedy

Regina and Dennis asserted in their complaint that a constructive trust should be imposed upon the real estate that was the subject of the land sale contract between Marjorie and Don. A constructive trust is a creature of equity, devised to do justice by making equitable remedies available against one who through fraud or other wrongful means acquires property of another. Kalwitz v. Estate of Kalwitz, 822 N.E.2d 274, 280 (Ind. Ct. App. 2005), trans. denied. Discussing the law on constructive trusts, our supreme court stated:

A constructive trust is imposed where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it. The duty to convey the property may rise because it was acquired through fraud, duress, undue influence or mistake, or through a breach of a fiduciary duty, or through the wrongful disposition of another's property. The basis of the constructive trust is the unjust enrichment which would result if the person having the property were permitted to retain it.

Melloh v. Gladis, 261 Ind. 647, 656, 309 N.E.2d 433, 438-39 (1974) (quoting 5 SCOTT ON TRUSTS § 404.2). The law presumes constructive fraud once it is clear that a fiduciary or confidential relationship existed between two parties, and the dominant party gained an advantage through a transaction involving the subordinate party. Morfin v. Estate of Martinez, 831 N.E.2d 791, 803 (Ind. Ct. App. 2005).

In Indiana, certain legal and domestic relationships raise a presumption of trust and confidence as to the subordinate party on the one side and a corresponding influence as to the dominant party on the other. Meyer v. Wright, 854 N.E.2d 57, 60 (Ind. Ct. App. 2006), trans. denied. These relationships include that of attorney and client, guardian and ward, principal and agent, pastor and parishioner, husband and wife, and, as in this case, parent and child. Id. Generally, the parent is the dominant party and the child is the subordinate party. Id. The question of which party has attained the position of dominance is a question for the trier of fact, however. Crider v. Crider, 635 N.E.2d 204, 210 (Ind. Ct. App. 1994) (addressing trial court's findings that son was in dominant position over father), trans. denied. But see id. at 210 n.4 (questioning whether presumption should apply only with respect to a minor child living in his or her parent's household and asserting that perhaps dominance of one party over another in other parent-child relationships should be established by evidentiary proof and not resort to a fictional presumption). The trial court here found that Don was in the dominant position in this parent-child relationship because he was a "caretaker and benefactor" to Marjorie and had "superior knowledge and skill as an entrepreneur." Appellant's App. at 30 (Conclusion of Law 5).

If the plaintiff establishes (a) the existence of such a relationship, and (b) the

questioned transaction between those parties resulted in an advantage to the dominant party in whom the subordinate party had placed trust and confidence, the law imposes a presumption that the transaction was the result of undue influence exerted by the dominant party, constructively fraudulent, and thus void. Estate of Allender v. Allender, 833 N.E.2d 529, 533 (Ind. Ct. App. 2005), trans. denied. Undue influence has been defined as “the exercise of sufficient control over the person, the validity of whose act is brought into question, to destroy his free agency and constrain him to do what he would not have done if such control had not been exercised.” Crider, 635 N.E.2d at 210. At that point, the burden of proof shifts to the dominant party to rebut the presumption by clear and unequivocal proof that he acted in good faith, did not take advantage of the position of trust, and that the transaction was fair and equitable. In re Knepper, 856 N.E.2d 150, 154 (Ind. Ct. App. 2006), trans. denied.

As noted above, in the present case, we have the fiduciary relationship of parent and child. The trial court found that Don, the child, was in the dominant position. In addition to the fiduciary relationship, there was a transaction that resulted in an advantage to Don. Specifically, Don and Marjorie agreed to the sale of land that constituted a substantial part of her assets at a contract price of approximately \$130,000. No independent or outside sources were consulted in arriving at a contract price, but appraisers testifying at trial indicated that the land was worth at least \$172,000 and as much as \$650,000 on the contract date. In addition to purchasing the land below market value, Don secured a larger portion of Marjorie’s assets than he would have gotten had the sale not taken place and the land been distributed as part of Marjorie’s estate. Thus, the fiduciary relationship coupled with the

transfer of substantial assets gives rise to the presumption that the transaction was the result of undue influence.

The trial court concluded that Don had failed to rebut the presumption by clear and unequivocal evidence. Don testified that after Marjorie purchased a house at an auction in 1997, he gave her money to help with her financial shortfalls. In approximately 2000, Don talked to Regina about buying the subject real estate “more adamantly . . . after [Marjorie] got to the point where she was owing me quite a bit of money,” tr. at 676, but Regina would not agree to the sale. Don told Regina that she would have to take over meeting Marjorie’s financial shortfalls. Regina gave Marjorie money for several months. After approximately six months, Regina stopped giving Marjorie money and Marjorie again turned to Don. Don acknowledged that Marjorie didn’t have “the mind of a real estate person,” tr. at 687, and that Marjorie “could’ve gotten more money [and] probably done a little better if she’d consulted with somebody” regarding certain previous real estate transactions she had handled on her own, *id.* at 703. Although he believed that the contract with Marjorie was a fair arrangement, he neither had the property appraised, nor suggested an appraisal to Marjorie. Don testified that he had no intention to cheat his mother when he entered into the contract; however, he stated that he would not have sold the property the day after signing the real estate contract for the same amount he was paying because he “looked at it as an investment,” *id.* at 728, and “was hoping to profit,” *id.* at 731.

On this evidence, we agree with the trial court’s conclusion that Don has failed to rebut the presumption of undue influence. He had superior knowledge of business and real estate dealings, knew he had superior knowledge, and he benefited from the land sale

contract by becoming the owner of Marjorie's largest single asset at a price below the lowest estimation of fair market value. Don has failed to prove by clear and unequivocal evidence that the transaction was fair and equitable.

Our review of the transcript convinces us that the trial court's findings regarding undue influence and constructive fraud rendering the land sale contract "null and void" were supported by the evidence³ and support the imposition of a constructive trust as requested in the complaint. See Kalwitz, 822 N.E.2d at 282-84 (holding that trial court's findings that a confidential and fiduciary relationship existed between son and his parents, that son exercised a dominant position in his relationship with his parents, and that son, acting in concert with his wife, induced and persuaded his parents to convey title to land to son's two children, were not clearly erroneous and supported imposition of constructive trust in favor of parents' estates).

Conclusion

The trial court erred in ordering reformation of the land sale contract between Marjorie and Don because such relief was not requested by the parties. However, the trial court's findings and conclusions support the imposition of a constructive trust on the real estate in favor of Marjorie's estate. We therefore reverse the judgment of the trial court ordering reformation and remand for the trial court to amend its judgment to order a constructive trust consistent with this opinion.

³ Don challenges seventeen specific findings and conclusions by the trial court. We do not deem it necessary to discuss each individual finding, as we hold that the trial court's relevant findings and conclusions are supported by the evidence. Moreover, Don's argument is primarily an invitation for us to reweigh the evidence and find in his favor, which we cannot do. See Paternity of M.M.B., 877 N.E.2d 1239, 1242 (Ind. Ct. App. 2007).

Reversed and remanded.

FRIEDLANDER, J., and MATHIAS, J., concur.