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Karen A. Yarbrough  
Cook County Clerk  
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## RECORDING COVER PAGE

**Permanent Parcel Number:** 31-01-420-048-1044

**Property Address:** 2640 Central Dr #1N, Flossmoor, IL 60422

**Prepared by and Mail to:**

Russell F Kazda  
17112 S Oak Park Ave  
Tinley Park, IL 60477

\*Please note – This cover page has been attached to the document for recording purposes. It is a permanent part of the document and has been included in the page count.

**UNOFFICIAL COPY****IN THE CIRCUIT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, PROBATE DIVISION****IN RE****ESTATE OF JEAN BOLZ MARIN,****Deceased.**)  
)  
)  
)  
)**17 P 001257****Hon. Carolyn J. Gallagher****Room 1807****ORDER**

THIS CAUSE coming on to be heard on Motion for a Directed Finding and for the Entry of Judgment filed by Peter Marin (the "Executor"), due notice having been served and the Court having read the relevant pleadings and heard oral argument and being otherwise advised in the premises,

The Court finds as follows:

1. On Aug. 17, 1973, the decedent executed the Will of Jean B. Marin (the "Will").
2. On April 13, 2015, the decedent executed Powers of Attorney for property and health care, appointing her daughter, Diedre Bodine (the "Respondent"), as her agent under both instruments, and a Quit Claim Deed conveying her real estate into joint tenancy with the Respondent (the "Quit Claim Deed").
3. On Sept. 26, 2016, the decedent died.
4. On Dec. 12, 2017, the Court admitted the Will to probate and held that the decedent's heirs were her three children -- the Respondent, the Executor and Thomas Marin.
5. On May 23, 2018, the Respondent appeared pursuant to the Executor's Citation to Discover Assets and testified, *inter alia*, that, without a doubt, the decedent reposed trust and confidence in her for the last ten years of her life; that the decedent was diagnosed with pre-dementia and began taking a pre-dementia prescription medication in 2007; that she and her family lived with the decedent in the decedent's home beginning in 2010; that the decedent made her a signatory on the decedent's bank accounts in 2011; that the accounts held only the decedent's money; that she accompanied the decedent to the meeting with an attorney at which the Quit Claim Deed and Powers of Attorney were prepared and signed; that despite the Quit Claim Deed, in her mind, the real estate still belonged to the decedent; that she paid the decedent's bills when asked; and that she received no gifts from the decedent.
6. On Feb. 14, 2019, the Executor filed a Petition and Citation to Recover Assets ("Petition and Citation") against the Respondent, alleging undue influence and breach of fiduciary duty by causing decedent to transfer ownership of bank accounts and real

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- estate (collectively, the "Property") to her in joint tenancy, and seeking the return of the Property to the decedent's estate.
7. On March 15, 2019, the Respondent filed her Response to Petition and Citation to Recover Assets.
  8. On March 19, 2019, the Court entered an order authorizing discovery.
  9. The Respondent failed to respond to the Executor's interrogatories and document request.
  10. On Feb. 25, 2020, at an evidentiary hearing on the Petition and Citation, the Respondent began and completed her testimony, largely restating her May 23, 2018 testimony.
  11. Following the completion of the Respondent's testimony, the Feb. 25, 2020 hearing was continued to a date that was later cancelled as a result of the pandemic-related court closure.
  12. On May 16, 2022, the Executor filed the Motion for a Directed Finding and for the Entry of Judgment, arguing that the evidence at the Feb. 25, 2020 hearing made a *prima facie* showing of presumption of undue influence; that the Respondent failed to offer evidence to rebut this presumption; and that the Property should therefore be returned to the decedent's estate for distribution under the Probate Act.
  13. On June 7, 2022, the Respondent filed her Response to Motion for a Directed Finding and for Entry of Judgment ("Response"), arguing that the Petition and Citation lacked verification; that the Respondent's testimony did not suggest that the transfer of the real property into joint tenancy was irregular or improper; that the Respondent had the right to take the real property as a joint tenant; that the bank accounts were made not joint accounts, but rather transfer-on-death accounts; that the Petition and Citation contained no allegations concerning the decedent's mental condition; that her testimony "categorically denie[d] each allegation" of the Petition and Citation; that the Executor failed to carry his burden of proof, and that the Motion for a Directed Finding and for the Entry of Judgment and the underlying Petition and Citation should be denied.

## ANALYSIS

The Executor argued that the Respondent's own testimony established a fiduciary or confidential relationship with the decedent, thereby creating a presumption of undue influence and shifting the burden to the Respondent to show, by clear and convincing evidence, that the Property transfers were fair, equitable and just.

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In her Response, the Respondent failed to address whether a fiduciary or confidential relationship existed, or whether a presumption of undue influence should be made. Nor did she identify evidence (clear and convincing or otherwise) of fairness, the absence of undue influence or breach of fiduciary duty, donative intent, consideration, or a right to possession.

She stated generally that her testimony "categorically denie[d] each allegation" of the Petition and Citation, but in fact the testimony did not deny or contradict the allegations; rather, it supported them and provided the Executor with a basis for the Motion.

The Respondent defended the Property transfers as common estate planning tools. Whether such transfers of property are typically utilized in estate planning, however, is immaterial to the question whether the decedent was unduly influenced to transfer her assets to the Respondent to the exclusion of her other heirs and contrary to the bequests set forth in her Will. Moreover, the suggestion that the Property transfers were part of the decedent's estate plan is not consistent with the Respondent's testimony (despite the Quit Claim Deed, in her mind, the real estate still belonged to the decedent, and she received no gifts from the decedent).

None of the other arguments in the Response explained why the Court should not find, based on the testimony, the existence of a fiduciary duty or of a breach of that duty.

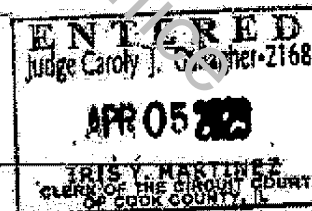
Therefore, the Court holds that the bank account funds and the real property that were the subject of the Petition and Citation are assets of the decedent's estate. The Motion for a Directed Finding and for the Entry of Judgment will be granted.

## IT IS HEREBY ORDERED:

- (1) That the Motion for a Directed Finding and for the Entry of Judgment is granted;
- (2) That Diedre Bodine shall return the bank account funds and the real property that were the subject of the Petition and Citation to Recover Assets to the decedent's estate within ten days of the date of this order; and
- (3) That a hearing on status is set for on May 18, 2023, at 10:00.

ENTERED:

Judge Carolyn J. Gallagher



The Response to Petition and Citation to Recover Assets failed to raise this objection, thereby effectively waiving it.

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Situated in the County of Cook, State of Illinois, to wit:

UNIT '2640 1-N' AS DELINEATED ON SURVEY OF THE FOLLOWING PARCEL OF REAL ESTATE:  
LOTS A, B, C, D, AND E, IN THE RESUBDIVISION OF LOTS 35 TO 45 BOTH INCLUSIVE IN BLOCK 8 IN THE  
SUBDIVISION OF 91.76 ACRES OF THE SOUTHEAST 1/4 OF SECTION 1, TOWNSHIP 35 NORTH, RANGE 13 EAST  
OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF RESUBDIVISION RECORDED MAY 21, 1959  
AS DOCUMENT 17545634, IN BOOK 536 OF PLATS, PAGE 37, IN COOK COUNTY, ILLINOIS SAID SURVEY IS  
ATTACHED AS EXHIBIT A' TO THAT CERTAIN DECLARATION OF CONDOMINIUM OWNERSHIP AND OF  
EASEMENTS, RESTRICTIONS AND COVENANTS FOR FLOSSMOOR COUNTRY CLUB APARTMENTS CONDOMINIUM  
MADE BY AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, A NATIONAL BANKING  
ASSOCIATION, AS TRUSTEE UNDER TRUST AGREEMENT DATED JUNE 1, 1966 AND KNOWN AS TRUST NUMBER  
23555, RECORDED IN THE OFFICE OF THE RECORDER OF DEEDS OF COOK COUNTY, ILLINOIS, AS DOCUMENT  
22557628; TOGETHER WITH AN UNDIVIDED PERCENTAGE INTEREST IN SAID PARCEL (EXCEPTING FROM SAID  
PARCEL ALL THE PROPERTY AND SPACE COMPRISING ALL THE UNITS THEREOF AS DEFINED AND SET FORTH IN  
SAID DECLARATION AND SURVEY) IN COOK COUNTY, ILLINOIS.

31-01-420-048-1034

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