No. __________

In the Supreme Court of the United States

JERI L. KNOX,

Petitioner,

v.

WINNIE J. WALKER, INDIVIDUALLY AND AS TRUSTEE OF THE FRANK R. WALKER AND WINNIE J. WALKER LIVING TRUST,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF INDIANA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Indiana law treats actual fraud and constructive fraud as distinct torts. Actual fraud requires a showing of an intent to deceive. Constructive fraud does not, and the presence or absence of that intent is what differentiates them. Here, the trial court's fraud determination pointed to both standards, along with the rule that intent distinguishes the two torts, and entered judgment on a finding that petitioner "fraudulently misrepresented her ownership interest," without identifying which standard its findings satisfied. The Court of Appeals affirmed, treating the judgment as one for actual fraud.

The question presented is:

Whether the Due Process Clause permits a judgment for intentional fraud to stand when the court that entered it cited both the actual fraud and constructive fraud standards, acknowledged that an intent to deceive is what distinguishes them, and never determined which standard its findings satisfied.

PARTIES TO THE PROCEEDINGS

Petitioner, and defendant-appellant below is Jeri L. Knox.

Respondent, and plaintiff-appellee below is Winnie J. Walker, Individually and as Trustee of the Frank R. Walker and Winnie J. Walker Living Trust.

RELATED PROCEEDINGS

Circuit Court of Indiana (Putnam Cty.):

Walker v. *Knox*, No. 67C01–2212–CT–663 (Apr. 22, 2025) (judgment entered)

Court of Appeals of Indiana:

Knox v. *Walker*, No. 25A–CT–1022 (Jan. 27, 2026) (memorandum decision entered)

Supreme Court of Indiana:

Knox v. *Walker*, No. 25A–CT–1022 (Jun. 4, 2026) (discretionary review/transfer denied)

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The memorandum decision of the Court of Appeals of Indiana is reproduced in the Appendix at App. 1–24. The findings of fact, conclusions of law, and judgment of the Circuit Court of Indiana, Putnam County, is reproduced in the Appendix at App. 25–54. The order of the Supreme Court of Indiana denying transfer is reproduced in the Appendix at App. 55.

JURISDICTION

The Court of Appeals of Indiana's judgment was entered on January 27, 2026. The Supreme Court of Indiana denied discretionary review on June 4, 2026. This Court's has jurisdiction under 28 U. S. C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in relevant part: "nor shall any state deprive any person of life, liberty, or property, without due process of law." U. S. Const., Amdt. XIV, § 1.

INTRODUCTION

Indiana law recognizes two distinct fraud torts. Actual fraud requires an intent to deceive, and constructive fraud does not. The trial court cited both standards, quoted the rule that the presence or absence of that intent is what separates them, and entered judgment on a finding that Knox "fraudulently misrepresented her ownership interest in the Oregon Home" without identifying which standard the finding satisfied. App. 45–46.

The judgment that followed is an intentional tort judgment, with damages measured by the benefit-of-the-bargain rule drawn from fraudulent inducement. The Court of Appeals affirmed, describing the judgment as one for actual fraud and holding that the findings would support an inference of intent to deceive. App. 18–20.

In this petition, Knox asks only whether the Due Process Clause permits a judgment for intentional fraud when the court that entered it failed to determine which of two different standards its findings met.

STATEMENT OF THE CASE

I. Preservation of the federal question

Petitioner did not expressly invoke the Due Process Clause in the state courts. In the Court of Appeals she argued that the actual fraud determination should be reversed because the record did not show that she made any knowingly false statement with an intent to deceive. App. 61, 71–73. She relied on the authorities the trial court had itself cited: that an intent to deceive is an essential element of actual fraud, *Kapoor* v. *Dybwad*, 49 N. E. 3d 108, 124 (Ind. Ct. App. 2015) (*trans. denied*), and that reckless disregard requires more than carelessness, negligence, or mistake of fact, *Spainhower* v. *Smart & Kessler, LLC*, 176 N. E. 3d 258, 266 (Ind. Ct. App. 2021) (*reh'g denied, trans denied*). App. 71–72.

On transfer she framed the same defect in terms of the two fraud doctrines, arguing that the trial court's conclusions cited both fraud standards, and that while the trial court properly acknowledged that the two types of fraud have two distinct intent requirements, it failed to identify which the findings satisfied. App. 95.

The Court of Appeals affirmed the trial court under Indiana law. App. 18–20. The Supreme Court of Indiana denied transfer without opinion. App. 55.

II. Proceedings below

Petitioner Jeri Knox and her mother, Winnie Walker, moved to a home in Florence, Oregon in September 2018 to care for Walker's sister, Juanita Petroni. App. 61. Title was held first by Walker and later by her living trust. App. 28, 31. Knox tracked shared household expenses on a spreadsheet and, in January 2019, prepared a document titled "Note of Ownership" assigning percentage interests in the home to the three women. All three signed it. In August 2019 Walker executed a restated trust providing that the Trustee would honor the most recent Note of Ownership. A second Note, signed by Knox and Walker in July 2020, increased Knox's stated share to 13.22%. App. 31–36.

The Oregon home sold on February 1, 2022 for $625,000. After an outstanding home equity line of credit was retired, $403,772.50 of the proceeds was used to purchase a home in Greencastle, Indiana, and $142,225.00 remained. App. 39.

Walker, as Trustee, filed a partition action in the Putnam Circuit Court on December 21, 2022. In July 2024 she moved to amend to add herself individually and to plead fraud, undue influence, slander of title, and financial exploitation of a senior consumer; the court granted leave. Trial began February 19, 2025, and the court entered findings of fact and conclusions of law on April 22, 2025. App. 25, 41–42.

The fraud conclusions set out the elements of actual fraud, quoted *Spainhower* for the rule that an intent to deceive is an essential element of actual fraud and that reckless disregard requires more than carelessness, negligence, or mistake of fact, and quoted the same decision for the rule that constructive fraud is a breach of duty the law declares fraudulent irrespective of the moral guilt of the fraudfeasor. The court stated that "it is the presence or absence of such an intent that distinguishes actual fraud from constructive fraud." App. 45–46. It then concluded that Knox "fraudulently misrepresented her ownership interest in the Oregon Home," inducing the check and the deed. It did not state which standard its findings satisfied. App. 45–46. Its damages analysis invoked the benefit-of-the-bargain measure for fraudulent inducement and calculated the damages as equal to the value of the check plus half the value of the Greencastle home. App. 46.

The court entered judgment for Walker on fraudulent misrepresentation, undue influence, and slander of title. It awarded her the net proceeds from the sale of the Greencastle home and entered a money judgment against Knox of $71,112.50 "plus the entire amount of the escrow funds." App. 53–54. The court's stated measure was the check plus one-half the Greencastle Home; the judgment awarded the entire proceeds. It denied the financial exploitation claim and dismissed the partition claims as moot. App. 53.

The Court of Appeals affirmed in an unpublished memorandum decision. App. 12. It described the judgment as one for actual fraud and held that the findings would support an inference of an intent to deceive. App. 18–20. The court denied Knox's motion to publish on February 9, 2026, and the Supreme Court of Indiana denied transfer on June 4, 2026. App. 55.

REASONS FOR GRANTING THE PETITION

This petition presents a single question of law. Accepting every finding as true, it asks only whether the Due Process Clause permits a judgment for intentional fraud when the court that entered it failed to determine which of two different fraud standards its findings satisfied.

I. Due process and a judgment for intentional fraud that never resolves which fraud standard the findings satisfy.

Intent is the line between actual fraud and constructive fraud. Indiana law treats the two as separate torts. Actual fraud requires a knowing or reckless falsehood and an intent to deceive; as the trial court explained, quoting *Spainhower*, 176 N. E. 3d, at 265, "[a]n intent to deceive is an essential element of actual fraud," and "reckless disregard or ignorance requires more than mere carelessness, negligence, or a mistake of fact[.]" *Id.*, at 266. Constructive fraud is its opposite, a breach of duty the law calls fraudulent "irrespective of the moral guilt of the fraud feasor." *Ibid*. The trial court stated the distinction itself: "it is the presence or absence of such an intent that distinguishes actual fraud from constructive fraud." App. 45–46.

Due process limits the judgments a State may enter against a private party. See *BMW of N. Am., Inc.* v. *Gore*, 517 U. S. 559, 562 (1996) (due process imposes substantive limits on state-imposed civil liability).

The Court has not decided whether due process permits liability for an intentional tort without a determination that the required mental state was found. The distinction is important because a determination of actual fraud brands a defendant a deliberate deceiver, while constructive fraud does not, and a person is entitled to know which wrong the State has adjudged her to have committed.

The decision below speaks in the language of Indiana law and cites no federal authority, but the federal question comes before the judgment rather than beside it. The trial court entered judgment on the fraud count and awarded damages on it. App. 53–54. It cited both standards and acknowledged that intent differentiates them, then found only that Knox "fraudulently misrepresented her ownership interest," without saying which doctrine its findings satisfied. App. 45–46. Its damages analysis measured the award by the value of the check "plus" half the Greencastle home, a benefit-of-the-bargain measure drawn from intent-based fraudulent inducement, without making the intent finding that theory requires. App. 46. The Court of Appeals affirmed without addressing this issue. App. 12, 18–20. A judgment for actual fraud unsupported by a finding of intent has not adjudicated the element that makes it actual fraud.

This Court is the proper forum to decide whether due process allows this result. The petition for a writ of certiorari should be granted, the judgment on the fraudulent misrepresentation claim vacated, and the cause remanded for further proceedings.

II. The question is important, recurring, and unsettled.

Families share finances, and aging parents rely on adult children to manage accounts and paper transactions the parent no longer follows. When those arrangements fall apart, actual and constructive fraud are pleaded together, because the same conduct can support either. The intent element is what separates a contested family accounting from a deliberate deceit, and a rule that lets a court enter an intentional fraud judgment without properly determining the element of intent will recur across many cases and many families.

III. Threshold considerations bearing on the Court's review.

Three threshold questions bear on the Court's authority to reach the merits: whether the judgment rests on an independent state ground, whether the federal question was preserved, and whether the petition seeks only error correction. Each is addressed in turn.

The state-ground question. A judgment that arises from an adequate and independent state ground lies beyond this Court's reach on direct review, because a ruling that could not change the judgment would be advisory. *Coleman* v. *Thompson*, 501 U. S. 722, 729 (1991). But a state ground is independent only when it does not depend on and is not intertwined with a federal question. *Glossip* v. *Oklahoma*, 604 U. S. 226, 242 (2025). Here the state ground depends on the federal one: the Indiana courts could not sustain this fraud judgment without presupposing that a fraud judgment untethered to a resolved intent standard satisfies due process, and that presupposition is the federal question. Knox acknowledges the Court may find the state ground adequate and independent and deny on that basis, but believes that the question is close enough to call for a decision rather than simply assumption.

The preservation question. A litigant raises a federal issue in state court by, for example, citing the federal source, citing a case that decides the issue on federal grounds, or labeling the claim federal. *Baldwin* v. *Reese*, 541 U. S. 27, 32 (2004). The petitioner did not expressly cite to the Due Process Clause below, but she argued throughout that the fraud judgment failed to resolve the intent element the governing rule requires. A party is not confined on review to the precise arguments made below, provided the question was brought to the court's attention in some manner. *Bankers Life & Cas. Co.* v. *Crenshaw*, 486 U. S. 71, 78 (1988). *Crenshaw* itself found a due process challenge unpreserved on its own facts, and the Court could do so here.

The error correction question. It is true that certiorari is rarely granted where the claimed error is a mistaken factual finding or the misapplication of a settled rule. S. Ct. R. 10. Here, Knox asks only whether, taking the findings as given, a judgment for intentional fraud can stand when the court never determined which fraud standard those findings satisfy. The petition should be granted.

CONCLUSION

Wherefore, this Court should grant certiorari.

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SEPTEMBER 2026

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Appendix A
[Filed: Jan. 27, 2026]

MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision is not binding precedent for any court and may be cited only for persuasive value or to establish res judicata, collateral estoppel, or law of the case.

IN THE
Court of Appeals of Indiana

Jeri L. Knox,
Appellant-Defendant

v.

Winnie J. Walker, Trustee of the
Frank R. Walker and Winnie J. Walker Living Trust,
Appellee-Plaintiff

January 27, 2026
Court of Appeals Case No.
25A–CT–1022
Appeal from the Putnam Circuit Court
The Honorable Matthew Headley, Judge
Trial Court Cause No.
67C01–2212–CT–663

Memorandum Decision by Judge DeBoer
Judges Bradford and Weissmann concur.

DeBoer, Judge.

Case Summary

[1] This appeal arises from a partition action and related claims for damages between a mother and her adult daughter over ownership of an Indiana home.[1] After the mother sold a residence titled in her name, she used the proceeds to acquire a second home in Greencastle. The daughter asserted an ownership interest in both properties—not because she contributed to their purchase price, but because she claimed to have accrued "equity" in them, including by paying for shared living expenses.

[2] Following a three-day bench trial, the trial court rejected the daughter's ownership theory. The court found that the daughter had used her position of trust to overstate her contributions and stake in the properties. On appeal, the daughter argues that the court improperly discounted her evidence and credited the mother's. Finding no error, we affirm.

Facts and Procedural History

[3] Winnie is the eighty-one-year-old surviving spouse of Frank Walker and trustee of The Frank

[1] Winnie Walker brought her amended complaint for partition and damages in her individual capacity and as trustee of The Frank R. Walker and Winnie J. Walker Living Trust. The trial court's April 22, 2025 appealed order noted this but did not distinguish between these capacities in entering "judgment in favor of Plaintiff and against Defendant" for fraudulent misrepresentation, undue influence, and slander of title. Appellant's Appendix Vol. 2 at 231–32. For simplicity, we use "Winnie" throughout this opinion when referencing the plaintiff/appellee.

R. Walker and Winnie J. Walker Living Trust (Living Trust). In 2018, Winnie and her daughter, Jeri Knox, moved to Oregon to help care for Winnie's older sister, Juanita. The sisters purchased a shared home (the Oregon Home) from a neighbor for $375,000 and titled the property in Winnie's name because Juanita believed she would predecease Winnie and intended for Winnie to receive her assets.[2]

[4] After the three women moved into the Oregon Home, Jeri, who held an accounting degree, assumed responsibility for managing household finances. She was primarily in charge of purchasing groceries and allocated shared expenses among the three women. She tracked these amounts in monthly Microsoft Excel spreadsheets that she periodically shared with Winnie and Juanita. In any given month, the spreadsheets generally contained entries for their shared expenses, any purchases made on behalf of only one other household member, the payments each had made, and the debts each had accrued. However, at the eventual trial in this matter, Jeri conceded that her calculations contained errors, and the trial court found the spreadsheets were "almost impossible to follow[.]" Appellant's Appendix Vol. 2 at 216. Winnie testified that she did not understand "how those expenses were [] categorized[,] [] what the numbers

[2] Although proceeds from the eventual sale of the Oregon Home were used to purchase the home at issue in Indiana, the case was litigated in the trial court and briefed on appeal under Indiana law, and we proceed on that same basis.

meant[,]" or the formula Jeri used to come to the amounts owed. Transcript Vol. 2 at 156.

[5] Jeri would "get quite upset" if Winnie and Juanita questioned her calculations regarding "who owed who what." *Id.* at 152. Winnie became "afraid to ask questions" about the spreadsheets because Jeri "raise[d] her voice" and became "totally disgusted" if the older women did not understand her calculations. *Id.* at 157.

[6] In January 2019, after less than three months of living in the Oregon Home, Jeri prepared a document titled "Note of Ownership" (First Note of Ownership), which purported to grant her equity in the home based on the expenses she had tracked. The document provided there were "[m]ultiple [o]wners" of the Oregon Home—Juanita (55.89%), Winnie as trustee of the Living Trust (35.96%), and Jeri (8.15%). Exhibits Vol. 5 at 148. Winnie did not understand the document, but Jeri told her "that that was the way it [was.]" Tr. Vol. 2 at 165. In February, Winnie conveyed the Oregon Home to her Living Trust, and the next day all three women signed the First Note of Ownership, which was later notarized. At trial, when asked to explain how she had acquired such a sizeable ownership interest so quickly, Jeri was unable to do so and suggested that she might have made payments to the sisters "outside of [the documented] expenses[.]" Tr. Vol. 4 at 37.

[7] Later that year, in August 2019, Winnie executed a restated trust with the assistance of Jeri and an attorney. Article 8.2 of the restated trust provided that ownership of the Oregon Home was

subject to "the most recently signed, notarized 'Note of Ownership' agreement in effect at the time of [Winnie's] death." Ex. Vol. 5 at 158. At trial, Winnie testified that she did not recall requesting that provision. That same day, Winnie executed a durable power of attorney appointing Jeri as her attorney in fact, which granted Jeri authority to make real estate transactions on her behalf. Jeri testified that she was unaware of the appointment at the time and claimed that she never exercised those powers.

[8] By the summer of 2020, the relationship among the three women had deteriorated and Juanita moved to an assisted living facility. Around that time, Jeri prepared an updated "Note of Ownership" (Second Note of Ownership), which she and Winnie signed and had notarized in July. Juanita did not sign the document, which increased Jeri's ownership share to 13.22% and reduced Juanita's share to 52.95% and the Living Trust's to 33.84%.

[9] During the time Jeri was asserting an ownership interest in the Oregon Home, she was also a party to divorce proceedings in Indiana. In August 2020, she filed an inventory of assets and debts that did not disclose any interest in the Oregon Home. A few days later, she entered into a property settlement agreement in which she represented that she had fully disclosed her assets and acknowledged that her failure to do so would constitute fraud. Addressing this omission at the trial in this case, Jeri testified that she and her husband made informal arrangements regarding

some property during their dissolution proceedings.

[10] As time went on, Winnie began to feel morally obligated to financially assist Juanita, who had contributed significantly to the Oregon Home purchase but had since moved into an expensive assisted living facility. In April 2021, Winnie and Jeri applied for a home equity line of credit (HELOC) secured by the Oregon Home, the proceeds of which Winnie intended to use to help Juanita pay for assisted living. Jeri, however, *see*mingly selected the loan amount based on her belief that she and Winnie each owed Juanita certain sums to buy out her remaining interest in the Oregon Home. After Winnie received the HELOC funds, she made two separate transfers to Juanita in amounts corresponding to Jeri's calculations of what they each owed Juanita. Shortly thereafter, Winnie took out a second HELOC with a lower interest rate and paid off the first loan.

[11] In early 2022, Winnie decided to move back to Indiana to be closer to family. On February 1 of that year, she sold the Oregon Home with Jeri's assistance for $625,000. After the second HELOC was paid off, Winnie used a portion of the proceeds to purchase a home in Greencastle, Indiana (the Greencastle Home). The remaining proceeds (approximately $142,225) were deposited into Winnie's bank account. At that point, Winnie "understood from all Jeri's calculations that" Jeri had accrued 50% equity in the Oregon Home, so she wrote Jeri a check for $71,112.50. *Id.* at 200. A few days later, Jeri paid Juanita

$28,409, which Jeri testified was the final payment required for her to become a 50% owner of the already-sold Oregon Home. Tr. Vol. 4 at 49–50, 81. At trial, Jeri confirmed that she believed she did not acquire a 50% ownership interest until after she wrote that "last check to Juanita[.]" Tr. Vol. 3 at 75; *see also* Tr. Vol. 4 at 81, 83.

[12] On February 7, Jeri handled the closing on the Greencastle Home without Winnie present and executed the closing documents, including a deed listing Jeri and the Living Trust as tenants in common. Winnie signed the closing documents from Oregon with the assistance of the title company and a notary. At trial, Winnie testified that she "had no idea what [the phrase 'tenants in common'] meant" but believed "everything was okay" because the Living Trust was named first on the deed. Tr. Vol. 2 at 237.

[13] Winnie and Jeri initially moved into the Greencastle Home together, but their relationship soon declined. When Winnie decided to sell the property, she learned that Jeri was asserting an undivided one-half ownership interest in the property. Winnie moved out of the Greencastle Home in July 2022, while Jeri remained in possession claiming this was consistent with her interest in the property.[3]

[3] While tenants in common need not always take in equal shares and the closing documents do not reference proportions of ownership share, the trial court's continual references to Jeri's asserted one-half ownership interest in the Greencastle Home is consistent with Indiana law as well as Jeri's expressed intentions. *See Willett v. Clark*, 542 N. E. 2d 1354, 1358 (Ind. Ct. App. 1989) ("When two or more persons take as tenants in common under

[14] In December 2022, Winnie filed this action to partition the property. She later amended her complaint to add claims for fraudulent misrepresentation, undue influence, and slander of title, among other things. Jeri remained in sole possession of the Greencastle Home until it was sold at auction in October 2024.

[15] In February 2025, the trial court held a three-day bench trial on Winnie's claims. In April, the court issued an order including many findings of fact and conclusions of law. Among other findings, most of which are reflected above, the court found:

> 27. . . . [Jeri's] spreadsheet is almost impossible to follow – with even . . . Jeri[] admitting several errors were made.
>
> . . .
>
> 35. On the [E]xcel spreadsheets, Jeri would often credit herself equity in the Oregon Home in lieu of being repaid by Winnie or Juanita for her purchase of groceries and other household items. There are no receipts, just raw numbers. It appears that Jeri came up with an interest[-]free scheme for her to attempt to acquire equity in the home.

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an instrument which is silent in regard to their respective shares, there is a presumption that their shares are equal."); *see also* Appellant's App. Vol. 2 at 19 (Jeri's answer to the complaint asserting that she "is the owner of an undivided one-half [] interest in" the Greencastle Home); Tr. Vol. 3 at 91 (Jeri testifying that she assumed tenants in common "own the house 50/50").

. . .

43. [] Jeri, who holds an accounting degree, was given a calculator [at trial] and asked to perform and testify regarding the math she used to calculate her ownership interest; however, using her own math, Jeri calculated that she would have [had less ownership share than she was accorded] at the time the First Note of Ownership was signed.

. . .

74. Winnie testified that Jeri instructed her to write Jeri a check for $71,112.50 because Jeri convinced Winnie that by that point in time, Jeri owned 50% equity in the Oregon Home and as such Jeri was entitled to one-half (1/2) of the remaining proceeds from the sale of the Oregon Home. . . . Jeri's math basically "double dips" herself. None of the proceeds went to Juanita.

. . .

91. Jeri was never "loaned" equity in the Oregon Home by Juanita or Winnie. Her spreadsheets were a one-sided, self-serving way to attempt to put home ownership in her pocket through a personal property house of cards – one in which she was always dealt four aces.

. . .

93. Jeri was unable to substantiate her claim that she paid for equity in the Oregon Home by purchasing shared groceries and other

> household items. The amounts[] just don't add up. . . .
>
> 94. The [E]xcel spreadsheet of shared expenses, which Jeri contends shows evidence of how she paid for equity in the Oregon Home, is riddled with errors, including an incorrect basis, inclusion of payments not yet made, multiple months showing negative numbers, double payments, and exclusion of payments.
>
> . . .
>
> 96. Because Jeri testified that the ownership percentages listed in the First and Second Notes of Ownership are based on calculations using the [E]xcel spreadsheet, the Court finds that both Notes of Ownership are unreliable due to the multitude of errors contained in the [E]xcel spreadsheet of shared expenses identified during trial.

Appellant's App. Vol. 2 at 216–223.

[16] Ultimately, the trial court concluded that Winnie had proven her claims for fraudulent misrepresentation, undue influence, and slander of title. The court awarded Winnie the proceeds from the sale of the Greencastle Home and entered a money judgment in favor of Winnie and against Jeri in the amount of $71,112.50—the amount Winnie paid Jeri for half the remaining proceeds from the sale of the Oregon Home. Jeri now appeals.

Discussion and Decision

1. Standards of Review

[17] As aptly stated in a recent case involving the same procedural posture as this appeal:

> This case involves two standards of review: clear error and *de novo*. We review special findings and conclusions entered following a bench trial for clear error, applying a two-tiered standard of review: "first determining whether the evidence supports the findings and, if so, whether the findings support the judgment." *Town of Linden v. Birge*, 204 N. E. 3d 229, 233 (Ind. 2023); Ind. Trial Rule 52(A). We do not reweigh evidence or reassess witness credibility. *See Town of Linden*, 204 N. E. 3d at 234; T. R. 52(A). Because [Jeri] appeals from an adverse judgment—one entered against a party defending on a given question—trial court findings are clearly erroneous "if they are not supported by substantial evidence of probative value." *Serenity Springs v. LaPorte Cnty. Convention & Visitors Bureau*, 986 N. E. 2d 314, 319 (Ind. Ct. App. 2013) (explaining what constitutes clear error depends on whether the appellant is appealing a negative or adverse judgment). A finding or conclusion is clearly erroneous if it leaves us with a "firm conviction that a mistake has been made." *Yanoff v. Muncy*, 688 N. E. 2d 1259, 1262 (Ind. 1997).

> We review the trial court's legal conclusions and any questions of law—like statutory interpretation—*de novo*. *Nardi v. King*, 253 N. E. 3d 1098, 1103 (Ind. 2025).

White v. Town of Plainfield, 264 N. E. 3d 727, 737, (Ind. Ct. App. 2025) (italics in original).

Preliminarily, we note that although Jeri raises multiple issues in this appeal, her arguments share a common theme: that the trial court improperly discounted her evidence and credited Winnie's in resolving disputed facts. Jeri does not claim that the court's findings are not supported by the evidence, nor that any specific findings are clearly erroneous. Instead, she protests the court's assessment of the parties' alleged financial arrangements and the inferences it drew from competing testimony. Because Jeri does not dispute the court's findings of fact, we accept those findings as true for purposes of this appeal and review only whether the trial court clearly erred in concluding that she committed undue influence, fraud, and slander of title. *See Moriarty v. Moriarty*, 150 N. E. 3d 616, 626(Ind. Ct. App. 2020) (stating "when findings of fact are unchallenged, this Court accepts them as true" and will affirm "if the unchallenged findings are sufficient to support the judgment"), *trans. denied*.

2. Undue Influence

[18] The trial court found that Jeri exerted undue influence over Winnie in attempt to claim an ownership interest in the Oregon and Greencastle Homes. The court found that Jeri was the dominant party in a confidential relationship with

Winnie because she exercised control over the household finances, prepared and relied on inaccurate spreadsheets to convert shared expenses into claimed equity, and instructed Winnie to sign ownership documents that Winnie did not understand. The court found that Jeri used these representations to obtain half the remaining proceeds from the sale of the Oregon Home and assert a one-half interest in the Greencastle Home, and that Winnie acquiesced to transactions she did not fully comprehend because of Jeri's representations.

[19] Undue influence exists when a person exercises sufficient control over another so as "to destroy his free agency and constrain him to do what he would not have done if such control had not been exercised.'" *Moriarty*, 150 N. E. 3d at 629 (quoting *In re Est. of Compton*, 919 N. E. 2d 1181, 1185-86 (Ind. Ct. App. 2010), *trans. denied*). Undue influence "may flow from the abuse of a confidential relationship in which 'confidence is reposed by one party in another with resulting superiority and influence exercised by the other.'" *Carlson v. Warren*, 878 N. E. 2d 844, 851 (Ind. Ct. App. 2007) (quoting *In re Est. of Neu*, 588 N. E. 2d 567, 570 (Ind. Ct. App. 1992)).

[20] Confidential relationships that can implicate undue influence arise as either a matter of law or a matter of fact. *In re Est. of Blair*, 177 N. E. 3d 84, 94 (Ind. Ct. App. 2021). Regarding the former, certain legal and domestic relationships invoke "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[,]" including "attorney and client, guardian and ward, principal and agent, pastor and parishioner, husband and wife," and potentially other relationships. *Id.* at 95 (quoting *Lucas v. Frazee*, 471 N. E. 2d 1163, 1166-67 (Ind. Ct. App. 1984)). If a party proves

> (a) the existence of such a relationship, and (b) that the questioned transaction between those parties resulted in an advantage to the dominant person in whom trust and confidence was reposed by the subordinate, the law imposes a presumption that the transaction was the result of undue influence exerted by the dominant party, constructively fraudulent, and thus vo*id.*

Supervised Est. of Allender v. Allender, 833 N. E. 2d 529, 533 (Ind. Ct. App. 2005), *reh'g denied*, *trans. denied*. The dominant party may rebut this presumption by producing "clear and convincing evidence that the fiduciary acted in good faith, did not take advantage of the position of trust, and that the *trans*action was fair and equitable." *Scribner v. Gibbs*, 953 N. E. 2d 475, 484 (Ind. Ct. App. 2011).

[21] Even when no confidential relationship exists as a matter of law, "the evidence in a given case may show a relationship of trust and confidence that would have justified one in relying upon that relationship." *Id.* In such cases, there is no rebuttable presumption of undue influence, the plaintiff must show "the parties to the challenged transaction did not deal on terms of equality[,]" and the burden shifting operates differently. *Id.*

(describing the procedure for analyzing undue influence claims arising from a confidential relationship as a matter of fact).

[22] Here, the trial court expressly found that a confidential relationship existed between Jeri and Winnie both as a matter of law and as a matter of fact. Jeri does not specifically challenge those findings on appeal.[4] Nor does she dispute the court's findings regarding her exclusive control over the household finances, the unreliability of her spreadsheets, her inability to explain how she rapidly acquired the ownership percentages stated in the Notes of Ownership, or her role in persuading Winnie to sign ownership documents and transfer funds. Instead, Jeri asserts that Winnie was competent, voluntarily executed the documents at issue, and intended to recognize Jeri's claimed ownership interests. But these arguments are nothing more "than an invitation

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[4] Jeri's brief only references the law related to confidential relationships that arise as a matter of law, and her entire appellate argument focuses on whether the trial court erred in finding that she failed to rebut the presumption invoked by such relationships. *See* Appellant's Brief at 11–15. To the extent that she mentions in passing that the presumption may not have applied, she fails to make a cogent argument that she did not have a confidential relationship with Winnie, or that the burden-shifting should have operated differently because any confidential relationship existed only as a matter of fact. *See* Ind. Appellate Rule 46(A)(8)(a) (noting that each contention in appellant's brief must be supported by cogent reasoning and citations to the record and legal authority); *Schwartz v. Schwartz*, 773 N. E. 2d 348, 352 n.5 (Ind. Ct. App. 2002) (failure to make cogent argument as required by Rule 46(A)(8)(a) results in waiver of issue on appeal); *see also* Appellant's Br. at 15 (summarily asserting that "[t]he presumption, if it arose at all, was rebutted").

for this Court to reweigh the evidence presented at trial, which we cannot do." *Nichols v. Est. of Tyler*, 910 N. E. 2d 221, 230 (Ind. Ct. App. 2009) (affirming trial court's undue influence judgment accompanied by findings of fact and conclusions of law on these grounds). Accordingly, we accept the trial court's findings as true for purposes of this appeal and will affirm "if the unchallenged findings are sufficient to support the judgment." *Moriarty*, 150 N. E. 3d at 626.

[23] Given the trial court's findings, we limit our review to whether the court clearly erred in concluding that Jeri did "not affirmatively rebut[]" the presumption of undue influence. Appellant's App. Vol. 2 at 229. Relating to the fairness of the transactions and whether Jeri abused her position of trust, the trial court found that Jeri's claimed ownership interest was not tied to any contemporaneous contribution toward the purchase of the Oregon Home. Rather, it was derived in significant part from shared expense calculations that even Jeri acknowledged contained errors and which the court found were mere pretext for asserting an ownership interest in the home without a legal basis to do so. The court further found that Jeri could not articulate at trial how her ownership percentages reflected in the Notes of Ownership had increased so quickly. Nonetheless, Jeri used her spreadsheets to persuade Winnie to pay her significant sums of money and sign documents affecting title and ownership. She did so even though Winnie did not understand how the claimed equity had been derived or how it would affect her property rights.

[24] Those findings support the trial court's conclusion that the transactions were not fair or well understood and that Jeri used her position of trust to her disproportionate benefit. As we have stated, Jeri's appellate arguments do not undermine this conclusion but instead invite this Court reweigh the evidence, which we will not do. Thus, we cannot say that the court clearly erred in concluding that Jeri failed to rebut the presumption that the challenged transactions were the product of undue influence.

3. Fraud

[25] The trial court found that Jeri committed actual fraud by misrepresenting her ownership interest in the Oregon Home and using that misrepresentation to obtain half of the leftover proceeds from the sale of that home and a property interest in the Greencastle Home to which she was not entitled. Specifically, the court found that Jeri represented to Winnie that she had acquired a 50% ownership interest in the Oregon Home at the time it was sold and was thus entitled to half the leftover proceeds from its sale. Relying on that representation, Winnie issued a check to Jeri for $71,112.50 and later executed documents stating Jeri shared title to the Greencastle Home as a tenant in common.

[26] To establish actual fraud, Winnie needed to show "(1) a material misrepresentation of past or existing facts; (2) made with knowledge or reckless ignorance of falsity; (3) causing the claimant to rely upon the misrepresentation to the claimant's detriment." *Spainhower v. Smart & Kessler, LLC*,

176 N. E. 3d 258, 265 (Ind. Ct. App. 2021) (quoting *America's Directories Inc. v. Stellhorn One Hour Photo, Inc.*, 833 N. E. 2d 1059, 1067 (Ind. Ct. App. 2005), *trans. denied*), *reh'g denied*, *trans. denied*. While proof of intent to deceive is a necessary element of actual fraud, such intent may be inferred from the circumstances. *Id.*; *Wright v. Pennamped*, 657 N. E. 2d 1223, 1230 (Ind. Ct. App. 1995) ("Fraud may be proven by circumstantial evidence, provided there are facts from which the existence of all of the elements can be reasonably inferred."), *trans. denied*.

[27] Here, the trial court's findings support each element of fraud. The court found that Jeri falsely represented she had obtained a 50% ownership interest at the time the Oregon Home was sold. Although she claimed to have accumulated substantial equity through the purchase of shared household expenses, the court found that the spreadsheets she exclusively controlled were not only built on a "house of cards," but contained many errors and were unreliable, and that Jeri could not explain how she arrived at the percentages reflected in the Notes of Ownership. Appellant's App. Vol. 2 at 223. Importantly, at trial, Jeri admitted that she did not believe she reached 50% ownership until she made an additional payment to Juanita several days *after* the Oregon Home had been sold and she had received half the leftover proceeds. The trial court also considered Jeri's conduct outside the immediate transactions in evaluating her intent. In her divorce proceedings, Jeri filed a sworn inventory of assets that did not disclose any ownership interest in

the Oregon Home. The court was entitled to view that omission, at best, as evidence that Jeri herself did not believe her claimed ownership interest was real or complete at the time she represented otherwise to Winnie. At worst, she did not want her husband or the dissolution court to know of this asset in those proceedings. From these findings, the trial court could infer that Jeri's representation of a 50% ownership interest at the time of sale was not merely "mistaken or exaggerated[,]" Appellant's Br. at 17, but was made with knowledge or reckless ignorance of its falsity.

[28] The trial court further found that Winnie relied on Jeri's representation to her financial detriment. Specifically, Winnie wrote a check to Jeri for half the proceeds from the sale of the Oregon Home and signed documents she was not aware granted Jeri a one-half interest in the Greencastle Home. Jeri does not challenge the court's detrimental reliance finding and damages award.

[29] On appeal, Jeri argues that her bookkeeping was disclosed, the parties executed "mutual acknowledgements of shared ownership[,]" and her "inability to articulate a precise formula for her equity calculations . . . does not prove fraud." Appellant's Br. at 16. But the trial court based its decision on the timing and content of Jeri's representations, the unreliability of the calculations she exclusively controlled, her own admissions regarding when she acquired ownership, and her selective omission of ownership in her divorce proceedings. Thus, Jeri's arguments invite this Court to reweigh the evidence, which we will not

do. Given the trial court's findings, we cannot say that it clearly erred in concluding that Jeri committed actual fraud.

4. Slander of Title

[30] The trial court found that Jeri committed slander of title by asserting a one-half interest in the Greencastle Home despite *knowing* that she did not possess a valid ownership interest. The court further found that this conduct prevented Winnie from freely marketing and selling the Greencastle Home and caused her to incur attorney's fees to resolve the resulting title dispute.

[31] "To prevail on a slander of title claim, a plaintiff must prove that the defendant made false, malicious statements regarding the plaintiff's ownership of the land in question and that those statements caused the plaintiff to suffer pecuniary loss." *Country Contractors, Inc. v. A Westside Storage of Indianapolis, Inc.*, 4 N. E. 3d 677, 691 (Ind. Ct. App. 2014), *reh'g denied*. Malice exists where the person knew the statement was false or acted with reckless disregard for its truth. *Holland v. Steele*, 961 N. E. 2d 516, 526 (Ind. Ct. App. 2012), *trans. denied*.

[32] On appeal, Jeri correctly notes that "the mere fact than an ownership claim ultimately fails does not, by itself, prove it was made with malice." Appellant's Br. at 18; *see alsoDavis v. Sponhauer*, 574 N. E. 2d 292, 300 (Ind. Ct. App. 1991), *trans. dismissed*. But the trial court's finding of malice did not rest on Jeri's failed claim of ownership. It rested on the court's finding that Jeri "**knew** that she did not have a valid ownership interest"

when she asserted one. Appellant's App. Vol. 2 at 225, 230 (emphasis added). As detailed above, the court found that Jeri falsely represented that she owned 50% of the Oregon Home at the time it was sold, which is evidenced by her later admission that she did not believe she accrued that level of ownership until after she made an additional payment to Juanita. The court further found that Jeri's calculations were not reliable and that—to the extent Jeri ever had an equity interest in the Oregon Home—she overstated it to obtain financial benefit.

[33] Those findings support the trial court's conclusion that Jeri's assertion of a one-half ownership interest in the Greencastle Home was knowingly false or, at a minimum, recklessly disregarded the truth of the matter asserted. Unlike the defendant in *Davis*, whose claim to land was based on commissioned land surveys, Jeri's claim was not grounded in independent verification or reasonable mistake but in unreliable calculations the court could have reasonably inferred amounted to a malicious misrepresentation of ownership. *SeeDavis*, 574 N. E. 2d at 300 (finding *Davis*' property ownership claim was false but not malicious because "it was not unreasonable for *Davis* to place his faith" in property surveys he had commissioned).

[34] The trial court also found that Winnie suffered pecuniary loss because of Jeri's representations when she "wished to market and sell the Greencastle Home but was unable to do so and had to pay her attorney in order to put this matter to rest[.]" *Id.* at 230. Indiana courts have

recognized attorney's fees as a proper measure of damages where a slander of title prevents a property owner from freely dealing with their property. *See Keilbach v. McCullough*, 669 N. E. 2d 1052, 1053 n.2 (Ind. Ct. App. 1996); *Bixeman v. Hunter's Run Homeowners Ass'n of St. John*, 36 N. E. 3d 1074, 1079 (Ind. Ct. App. 2015) (finding plaintiffs "were unable to market their property and had to pay their attorney" to sue to release an invalid lien, "which resulted in pecuniary loss"). Jeri does not meaningfully challenge the trial court's findings regarding pecuniary loss or the measure of damages employed, and she has therefore waived any such arguments.[5] *See Z. C. v. Rev. Bd. of Ind. Dep't of Workforce Dev.*, 213 N. E. 3d 1101, 1109 (Ind. Ct. App. 2023) ("We will not address arguments which are not developed and will not develop arguments for a party to an appeal."); *see also* App. R. 46(A)(8)(a), (C). Given the trial court's findings, we cannot say that the court clearly erred in concluding Jeri committed slander of title.

5. Appellate Attorney's Fees

[35] Finally, Winnie asks this Court to award her appellate attorney's fees under Indiana Code section 32–20–5–2.[6] We decline to do so. When

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[5] Likewise, Jeri does not challenge the trial court's damages award on the undue influence and fraud claims.

[6] Indiana Code section 32–20–5–2 states: In any action to quiet title to land, if the court finds that a person has filed a claim only to slander title to land, the court shall: (1) award the plaintiff all the costs of the action, including attorney's fees that the court allows to the plaintiff; and (2) decree that the defendant

considering section 32–20–5–2 in the context of the article in which it is found, it is clear that Jeri's actions—namely, manipulating the Greencastle Home closing to have her name reflected on the deed—do not implicate this fee-shifting statute. *See* I. C. §32–20–1–1 (stating that the purpose of the article is to "simplify[] and facilitate[e] land title transactions by allowing persons to rely on a record chain of title"); I. C. §32–20–5–1 (providing that a person may not file a notice under article 32–20 or use procedures concerning common law liens to slander the title to land); I. C. §32–20–4–1 (discussing the procedures for filing a notice to preserve a claim to an interest in land).[7] Because Jeri did not file any statutory notice that would have constituted a "claim" under section 32–20–5–2, that statute is not applicable here.

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asserting the claim shall pay to the plaintiff all damages that the plaintiff may have sustained as the result of the notice of claims having been filed for record.

[7] Winnie does not assert any other basis, such as under Appellate Rule 66(E), that would entitle her to an award of appellate attorney's fees.

Conclusion

[36] For the foregoing reasons, we affirm the judgment of the trial court.

[37] Affirmed. Bradford, J., and Weissmann, J., concur.

Bradford, J., and Weissmann, J., concur.

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Appendix B
[Filed: Apr. 22, 2025]

STATE OF INDIANA	)	IN THE PUTNAM CIRCUIT/SUPERIOR COURT
COUNTY OF MARION	)	
WINNIE J. WALKER, TRUSTEE OF THE FRANK R. WALKER AND WINNIE J. WALKER LIVING TRUST, Plaintiff,	)	CAUSE NO. 67C01–2212–CT0000663
v.	)	
JERI L. KNOX Defendant.	)	

<u>COURT'S FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT</u>

This matter came before the Court for a three-day bench trial beginning on February 19, 2025, and ending on February 21, 2025. Plaintiff Winnie Walker, Individually and as Trustee of The Frank R. Walker and Winnie J. Walker Living Trust ("Plaintiff" or "Winnie") appeared alongside her attorneys Bradley M. Owen and Che'lee A. John, and Defendant Jeri L. Knox ("Defendant" or "Jeri") appeared alongside her attorney Christopher A. Parker.

This lawsuit arises from a dispute over ownership of the real property located at 132 Woods Edge Blvd. East, Greencastle, Putnam County, Indiana 46135 (the "Greencastle Home"). Winnie asserts the following claims: (1) fraudulent misrepresentation; (2) undue influence; (3) slander of title; (4) financial exploitation of a senior consumer; and (5) partition.

Winnie called the following witnesses: Justin R. Walker, Winnie J. Walker, Laura Walker, Bruce Hadley, and Jeri L. Knox.

Jeri called the following witnesses: Jeri L. Knox, Jennifer Walker, and Sean Knox.

The following exhibits were entered into evidence at trial: Plaintiff's Exhibits 1–4, 6–10, 13–17, 19–23, 25–30, 36–37, 40–45, 48–52, 69–71, 73–74, 78, and Defendant's Exhibits A-HH.

Counsel for the parties submitted their proposed findings of fact and conclusions of law which have been reviewed and considered by the Court along with the evidence presented by the parties.

The Court, being duly advised, now finds and concludes as follows:

Findings of Fact

1. Winnie is eighty-one (81) years old and is the Trustee of The Frank R. Walker and Winnie J. Walker Living Trust. (Pl. Exs. 23, 73)
2. Winnie is the surviving spouse of Frank Ray Walker, who passed on October 19, 2017.
3. Winnie has three children: Rex Wilson Walker, Jeri Lynn Knox, and Justin Ray Walker.
4. Defendant Jeri Lynn Knox is Winnie's daughter.
5. Justin Ray Walker is Winnie's son and current Power of Attorney. (Pl. Ex. 27)
6. Winnie is one of six sisters. Two of her sisters are still living: Mary and Bonnie. Winnie's

other three sisters—Juanita, Betty, and Dorothy—have passed.

7. Winnie's sister, Juanita Mae Petroni, passed on July 3, 2023.

<u>Purchase of Oregon Home</u>

8. After Winnie's husband Frank passed away in October 2017, Winnie received a call from neighbors of her sister Juanita, Bruce Hadley ("Bruce") and Mai Hadley.
9. Bruce and Mai Hadley called Winnie to let her know that her sister Juanita was not doing well and that they believed she needed someone to assist her full-time or live with her.
10. After receiving the call from Bruce and Mai about Juanita, Winnie made arrangements to move to Oregon to live with Juanita, including listing and selling her Indiana home.
11. Winnie's daughter, Jeri, decided to accompany Winnie and move to Oregon to live with Juanita.
12. At the time, Jeri was in the midst of separating from her husband John C. Knox.
13. Throughout September 2018, Winnie and Jeri communicated with Bruce to arrange for the purchase of a home in Oregon that Winnie, Jeri, and Juanita would live in together. (*See generally* Pl. Ex. 70.)
14. Jeri instructed Bruce to find a home that had a large garage for Jeri's eBay business.
15. Ultimately, the property located at 5086 Wood Lake Way, Florence, Oregon 97439 (the "Oregon Home") was agreed upon to be purchased for $375,000.

16. Bruce agreed to initially purchase the Oregon Home outright and Winnie and Juanita agreed to repay him the purchase price plus closing costs and the cost of repairs and improvements Bruce made to the Oregon Home.
17. On September 8, 2018, Bruce received Check #152 in the amount of $150,000 from Winnie and Check #131 in the amount of $25,000 from Juanita. (Pl. Exs. 6 p. 2, 40, & 44)
18. On September 25, 2018, Bruce transferred ownership of the Oregon Home to Winnie, individually, by Warranty Deed. (Pl. Ex. 7)
19. Bruce testified that while both Winnie and Juanita would be contributing funds to purchase the Oregon Home, he understood that the Oregon Home was to be deeded in Winnie's name only as it was Juanita's generally known estate plan for Winnie "to get everything."
20. In September 2018, when the Oregon Home was purchased, Juanita's applicable trust, The Juantia M. Petroni Trust dated March 11, 1994, and its Amendment dated February 24, 2004, provided that Winnie would receive all trust assets upon Juanita's death. (Pl. Exs. 25, 74)
21. On October 3, 2018, Bruce received Check #183 in the amount of $8,359.83 from Winnie for payment of the cost of repairs and improvements Bruce made to the Oregon Home. (Pl. Ex. 6 p. 2)
22. On October 31, 2018, Juanita wired $202,613.70 to Bruce, which satisfied the remaining payment owed to Bruce for his initial

purchase of the Oregon Home. (Pl. Exs. 6p. 2, 40)

23. Bruce confirmed that he never received any payment from Jeri for purchase of the Oregon Home. So in Oct/Nov 2018, Winnie had $150,000.00 invested, Juanita $227,613.70 and Jeri $0.00.

<u>While Living in Oregon</u>

24. After the purchase of the Oregon Home, Winnie, Jeri, and Juanita began living together in the Oregon Home.
25. While the three lived together, Jeri assisted Winnie and Juanita by performing various household tasks and running errands.
26. Specifically, Jeri was primarily in charge of purchasing groceries and other household items and coordinated the payment of what she determined were expenses that should be shared between the three.
27. Winnie and Juanita's involvement was limited to reading receipts while Jeri input the values for what she determined were shared expenses into an excel spreadsheet. (Pl. Ex. 36). This spreadsheet is almost impossible to follow — with even the author, Jeri, admitting several errors were made.
28. Jeri testified that she maintained and updated the excel spreadsheet monthly.
29. After the monthly shared expenses were input into the excel spreadsheet, Jeri said she would divide the cost of groceries and other household items that she determined were shared expenses by three (3) and Winnie, Jeri, and

Juanita would owe each other whatever balance Jeri calculated so that they were each contributing an even third to what Jeri determined were shared expenses.

30. Winnie testified that Jeri was the main coordinator of the household's finances, and that Jeri had access to Winnie's bank accounts because all of Winnie's account logins and passwords were maintained on a sheet of paper that Jeri had full access to.
31. Jeri provided Winnie and Juanita a summary sheet from the excel spreadsheet that Jeri maintained on a monthly basis showing the final numbers of what each of them owed.
32. Winnie testified that Jeri would get upset if either Winnie or Juanita asked questions about the sheet. Specifically, Winnie said that Jeri would raise her voice and act disgusted toward Winnie and Juanita for not understanding and that Winnie became afraid to ask questions about Jeri's excel spreadsheet.
33. Although Winnie had access to the computer where Jeri maintained the excel spreadsheet, Winnie testified that she never accessed the excel spreadsheet.
34. Winnie said that she never understood Jeri's calculations and did not know what formula Jeri was utilizing to maintain the excel spreadsheet and calculate shared expenses.
35. On the excel spreadsheets, Jeri would often credit herself equity in the Oregon Home in lieu of being repaid by Winnie or Juanita for her purchase of groceries and other household items. There are no receipts, just raw

numbers. It appears that Jeri came up with an interest free scheme for her to attempt to acquire equity in the home.

36. Jeri acknowledged that there was never a written agreement entered into by herself, Winnie, and Juanita memorializing the three's agreement that Jeri could credit herself equity in the Oregon Home for her purchase of groceries and other household items.
37. Jeri testified that she calculated the equity she was taking in the Oregon Home using the excel spreadsheet for shared expenses but could not describe the formula she used to calculate equity.
38. In January 2019, Jeri prepared a document titled "Note of Ownership" (hereinafter, the "First Note of Ownership") that purports to show that there are multiple owners of the Oregon Home. Specifically, the First Note of Ownership provides:
    a. Juanita Mae Petroni owns 55.89%
    b. Winnie J. Walker, Trustee Of The Frank R. And Winnie J. Walker Living Trust owns 35.96%
    c. Jeri Lynn Walker Knox owns 8.15% (Pl. Ex. 21)
39. On February 19, 2019, Winnie conveyed ownership of the Oregon Home to her trust, The Frank R. Walker and Winnie J. Walker Living Trust, dated May 28, 1999. (Pl. Ex. 8)
40. The next day, February 20, 2019, the First Note of Ownership was signed by Juanita, Winnie, and Jeri on February 20, 2019, and notarized the same day. (Pl. Ex. 21)

41. Winnie testified that Jeri instructed her to sign the First Note of Ownership and that at that time she trusted Jeri, so Winnie did as she was told and signed the First Note of Ownership.
42. When Jeri was asked to explain how she calculated the ownership percentages provided in the First Note of Ownership, Jeri was unable to describe a formula and could not calculate her ownership interest of 8.15% for the Court. This would amount to approximately $30,000.00 — for which Jeri could not provide proof of how she contributed that amount in approximately 3 months of ownership.
43. Specifically, Jeri, who holds an accounting degree, was given a calculator and asked to perform and testify regarding the math she used to calculate her ownership interest, however, using her own math, Jeri calculated that she would have only had approximately 6.8% of an ownership interest—a difference of over $5,000 in equity—at the time the First Note of Ownership was signed. Jeri admitted that there were errors in both the excel spreadsheet and in her calculation of any purported ownership interest as reflected in the First Note of Ownership. (Compare Pl. Ex. 21 with Pl. Ex. 36 pp. 10–11)
44. The First Note of Ownership was never recorded in the Lane County recorder's office and the deed for the Oregon Home was never changed to show the property was owned by multiple owners as stated in the First Note of Ownership. However, ownership does not have to be recorded — although wise to do.

45. On August 29, 2019, Winnie, with assistance from Jeri, executed a Restated Revocable Living Trust Agreement for the Frank R. Walker and Winnie J. Walker Living Trust (the "Restated Trust"). Most relevant, the Restated Trust contained the addition of Article 8, Section 8.2. "Real Property" and provided that:

> Although the Wood Lake Way property is titled in the name of this trust, it is subject to a separate written agreement between the following three parties: Juanita Mae Petroni (my sister), Jeri Lynn Walker Knox (my daughter), and myself as Trustee of this Trust. The agreement is titled "Note of Ownership," and is subject to modification from time to time.
>
> My Trustee shall honor and abide by the terms of the most recently signed, notarized "Note of Ownership" agreement in effect at the time of my death. My sister, Juanita Mae Petroni shall have the right to live in the house for as long as she is living. This trust's percentage of ownership of the Wood Lake property under said agreement shall be distributed by Trustee pursuant to the terms of Trust Residue under Paragraph 8.3 below. (Pl. Ex. 23)

46. Also, that same day, Winnie executed a Durable Power of Attorney designating Jeri Lynn Walker Knox as Winnie's attorney-in-fact. As Winnie's attorney-in-fact Jeri was empowered to, in relevant part:

> B. Make gifts, whether outright or in trust, to the relatives of the principal, including the principal's children and the spouses of any such relatives;
>
> H. Sell, convey, lease, exchange or otherwise transfer or encumber any real or personal property of or for the principal;
>
> I. Disclaim, in whole or in part, any interest in property, whether outright, in trust or otherwise, so long as in the sole discretion of the attorney-in-fact such disclaimer would not be detrimental to the best interests of the principal and would be in the best interests of those interested in the estate of the principal and of those who take as a result of any such disclaimer[.] (Pl. Ex. 26)

47. Winnie testified that she did not recall the addition of Section 8.2 to the Restated Trust regarding ownership of the Oregon Home. Unfortunately, Winnie/her counsel could not locate the Oregan lawyer who preordered this trust. Jeri claimed she had "no knowledge" of the trust but did know of the P. O. A. By becoming a P. O.A, Jeri had an enhanced duty to protect Winnie and her assets.
48. While living together in the Oregon Home, Jeri's adversarial behavior toward Winnie and Juanita deteriorated their relationships and ultimately, the three's living arrangement.
49. Jeri would lash out and yell at Winnie and Juanita and at some point, Winnie witnessed Jeri lift Juanita off the ground using a

chokehold when they were attempting to leave for a doctor's appointment.

50. Eventually, sometime in May 2020, Juanita moved out of the Oregon Home due to Jeri's behavior and treatment toward her.
51. In June 2020, Jeri prepared another document titled "Note of Ownership" (hereinafter, the "Second Note of Ownership") that again purports to show that there are multiple owners of the Oregon Home. Specifically, the Second Note of Ownership provides:
    a. Juanita Mae Petroni owns 52.95%
    b. Winnie J. Walker, Trustee Of The Frank R. And Winnie J. Walker Living Trust owns 33.84%
    c. Jeri Lynn Walker Knox owns 13.22% (Pl. Ex. 22)
52. Bruce testified that on July 12, 2020, he received a copy of an unsigned, word document draft of what later became the Second Note of Ownership as an attachment to an email from Jeri. Bruce examined the properties of the word document and testified that he could determine that the document was created on June 30, 2020, and stated that he believed that Jeri drafted the document since he received a copy of the draft word document in an email from Jeri. Jeri, for her part, denied being the drafter of this agreement. So, if each 1% equals $3750.00, Jeri has claimed to increase her equity approximately $18,000.00 in about one year.
53. On July 17, 2020, the Second Note of Ownership was signed by Winnie and Jeri only;

Juanita did not sign. The Second Note of Ownership was also notarized that same day. (Pl. Ex. 22)

54. Winnie testified that Jeri instructed her to sign the Second Note of Ownership and that to avoid conflict with Jeri, Winnie complied without question and signed the Second Note of Ownership.
55. Winnie testified that she did not know why Juanita did not sign the Second Note of Ownership. The Court finds that the lack of Juanita's signature conflicts with the provision set forth in Section 8.2 of the Restated Trust regarding modification of the purported ownership agreement. Moreover, since all three did not sign, it's inval*id.*
56. When Jeri was asked to explain how she calculated the ownership percentages provided in the Second Note of Ownership, Jeri was unable to describe a formula and could not calculate her ownership interest of 13.22% for the Court.
57. Again, Jeri, who holds an accounting degree, was given a calculator and asked to perform and testify regarding the math she used to calculate her ownership interest; however, using her own math, Jeri calculated that she would have only had approximately 11% of an ownership interest—a difference of over $8,000 in equity—at the time the Second Note of Ownership was signed. Jeri admitted that there were errors in both the excel spreadsheet and in her calculation of any purported ownership interest as reflected in the Second Note of

Ownership. (Compare Pl. Ex. 22 with Pl. Ex. 36 pp. 96–100)

58. Meanwhile, Jeri was also party to a pending divorce proceeding in the Hendricks County Superior Court, Cause No. 32D01-1905-DN-000321 (filed May 20, 2019) (the "Divorce Proceeding"). (*See* Pl. Ex. 28)
59. On September 1, 2020, as part of the Divorce Proceeding, Jeri filed an inventory with the Court disclosing all assets, debt, and income. However, the inventory Jeri filed did not include Jeri's purported ownership interest in the Oregon Home. (Pl. Ex. 29)
60. Just days later, on September 3, 2020, Jeri executed a Mediated Agreement for Property Settlement and Waiver of Final Hearing in the Divorce Proceedings. In signing the Mediated Agreement, Jeri affirmatively represented to the Court that she had disclosed all assets, debts, income, and recognized that failure to do so would constitute fraud. (Pl. Ex. 30). Interestingly, at trial, Jeri said she did not include this, Oregan house in her declaration or in the settlement, because her husband knew what was going on and some items were "his" and some "hers" that just weren't included. Her husband (now ex) happened to be at this trial on day. Jeri said she was staying with him during the trial.
61. Winnie testified that at some point she began to feel morally obligated to help Juanita in any way she could and so she decided to pay back what she could to Juanita because Juanita had

to move out of the Oregon Home, a purchase that she had contributed to.

62. Winnie confirmed that she was not obligated to repay Juanita but did so to help her sister after their planned living arrangements for the Oregon Home fell through and Juanita was no longer living in the Oregon Home, but instead was incurring high rent in an assisted living facility.
63. On April 6, 2021, Winnie took out a home equity loan ("HELOC") for approximately $70,000. (Pl. Ex. 69 pp. 1–6). It is unclear why this amount was selected but it appeared that Jeri "calculated" this was the remainder of Juanita's equity in home.
64. On May 24, 2021, the HELOC funds were deposited into Winnie's bank account. (Pl. Ex. 42)
65. The next day, May 25, 2021, $65,507 of the HELOC funds were transferred from Winnie's bank account to Juanita's bank account. (Pl. Ex. 41).
66. Winnie testified that she quickly took out a second HELOC from Veterans United for $74,659.48 and used the second HELOC to pay off the first HELOC from Oregon Pacific Bank because she recalled the Veterans United loan offered a better interest rate than the loan held by Oregon Pacific Bank. (Pl. Ex. 69 pp. 7–10)

<u>Purchase of Greencastle Home</u>

67. Eventually, Winnie decided she wanted to move back to Indiana to be near her two sons—Rex and Justin—and her grandchildren.

68. By that time, Jeri's divorce had been finalized and Jeri decided to move back to Indiana and continue living with Winnie.
69. Winnie, with assistance from Jeri, then made arrangements to list and sell the Oregon Home as Trustee of The Frank R. Walker and Winnie J. Walker Living Trust, dated May 28, 1999.
70. On February 1, 2022, the Oregon Home was sold for $625,000. (Pl. Ex. 9) —a significant post COVID profit of approximately $250,000.00.
71. Part of the proceeds from the sale of the Oregon Home were used to pay off the $74,659.48 HELOC from Veterans United. (*Id.* at 1). It is unclear if just Winnie or Winnie and Jeri paid the monthly installments.
72. Additional proceeds from the sale of the Oregon Home were used to purchase the property located at 132 Woods Edge Blvd. E., Greencastle, IN 46135 (hereinafter, the "Greencastle Home") in the amount of $403,772.50. (*Id.* at 35)
73. The remaining proceeds of $142,225.00 from the sale of the Oregon Home were deposited into Winnie's personal bank account. (*Id.*)
74. Winnie testified that Jeri instructed her to write Jeri a check for $71,112.50 because Jeri convinced Winnie that by that point in time, Jeri owned 50% equity in the Oregon Home and as such Jeri was entitled to one-half (1/2) of the remaining proceeds from the sale of the Oregon Home. (Pl. Ex. 37 p. 1). Jeri's math basically "double dips" herself. None of the proceeds went to Juanita.

75. Winnie testified that, as Trustee, it was her intent that the Greencastle Home would be owned solely by The Frank R. Walker and Winnie J. Walker Living Trust, dated May 28, 1999, However, this contradicts at least the "First Note of Ownership".
76. Winnie believed that Jeri knew that the Greencastle Home was to be owned solely by The Frank R. Walker and Winnie J. Walker Living Trust, dated May 28, 1999, and agreed to Jeri's plan that Jeri travel to Indiana on Winnie's behalf to attend the closing on the Greencastle Home in person. Winnie remained in Oregon and does not recall how she signed the closing documents.
77. On February 7, 2022, however, Jeri executed closing documents for the purchase of the Greencastle Home that granted herself an interest in the Greencastle Home as a Tenant in Common, (Pl. Exs. 13 p. 4, 14,15)
78. After Winnie and Jeri moved to Indiana and continued living together, Jeri's disrespectful behavior and abusive treatment toward Winnie resumed to the point Winnie had to move out of the house.

Partition Action and Sale of Greencastle Home

79. Eventually, Winnie decided to sell the Greencastle Home due to the rising tension between her and Jeri.
80. Winnie testified that it was at that point in time when she first understood that Jeri had granted herself an ownership interest in the Greencastle Home as a Tenant in Common.

81. When Winnie asked Jeri why the deed for the Greencastle Home named her as a Tenant in Common, Jeri claimed that she was entitled to a one-half (1/2) ownership interest in the Greencastle Home as a result of her purported one-half (1/2) ownership interest in the Oregon Home.
82. In July 2022, Winnie was forced to vacate the Greencastle Home due to Jeri's behavior and treatment of her.
83. Jeri remained in sole possession of the Greencastle Home and continued to assert that she had a valid one-half (1/2) ownership interest in the Greencastle Home.
84. On December 21, 2022, Winnie filed her Complaint for Partition, asserting her equitable right of partition pursuant to Indiana Code §32–17–4–1 for the Greencastle Home. (Pl. Ex. 1)
85. On January 9, 2023, Jeri filed her Answer to Winnie's Complaint for Partition and continued to assert that she had a valid one-half (1/2) ownership interest in the Greencastle Home. (Pl. Ex. 2)
86. On July 12, 2024, Winnie moved for leave to Amend her Complaint for Partition to add claims for fraudulent misrepresentation, undue influence, slander of title, and financial exploitation of a senior consumer alongside her request for partition. (Pl. Ex. 3)
87. On July 29, 2024, the Court entered an Order granting Winnie's motion for leave to Amend her Complaint for Partition, and on August 29, 2024, Jeri filed an Answer to the Amended

Complaint for Partition in which she continued to assert that she holds a valid one-half (1/2) ownership interest in the Greencastle Home. (Pl. Ex. 4)

88. Jeri remained in sole possession of the Greencastle Home until it was sold at auction on October 30, 2024.
89. The closing for the sale of the Greencastle Home occurred on December 2, 2024, and proceeds from the sale were deposited into Plaintiff's attorneys' trust account pending resolution of this litigation. (*See* Pl. Exs. 16–20)
90. The Oregon Home was at all times relevant solely owned by Winnie, individually, and later The Frank R. Walker and Winnie J. Walker Living Trust, dated May 28, 1999. This is obvious because before the spreadsheets were even started, Juanita had paid over 60% of the purchase price but did not have her name put on the deed.
91. Jeri was never "loaned" equity in the Oregon Home by Juanita or Winnie. Her spreadsheets were a one-sided, self-serving way to attempt to put home ownership in her pocket through a personal property house of cards — one in which she was always dealt four aces.
92. Based on the testimony provided by Bruce Hadley, the Court finds there is only one reasonable conclusion—Jeri created the First and Second Notes of Ownership, one of which is unsigned by Juanita.
93. Jeri was unable to substantiate her claim that she paid for equity in the Oregon Home by purchasing shared groceries and other household

items. The amounts, just don't add up. Jeri didn't have the income from her eBay or any savings to account to the totals she claims she should be awarded.

94. The excel spreadsheet of shared expenses, which Jeri contends shows evidence of how she paid for equity in the Oregon Home, is riddled with errors, including an incorrect basis, inclusion of payments not yet made, multiple months showing negative numbers, double payments, and exclusion of payments.
95. Specifically, regarding the basis used by Jeri in her excel spreadsheet, Jeri was unable to testify how the additional improvements and repairs made by Bruce were included in the basis. Even if Jeri claims some of her extra payments should go to equity in the home, she fails to account for any interest.
96. Because Jeri testified that the ownership percentages listed in the First and Second Notes of Ownership are based on calculations using the excel spreadsheet, the Court finds that both Notes of Ownership are unreliable due to the multitude of errors contained in the excel spreadsheet of shared expenses identified during trial.
97. The Court finds that Jeri's testimony that she was unaware that she was named as Winnie's Attorney-in-Fact in Winnie's August 2019 Power of Attorney is not credible.
98. The Court finds that Jeri's income between 2019 to 2021 was not sufficient to acquire one-half (1/2) ownership interest in the Oregon Home.

99. The Court finds that Jeri testified that she knew she did not possess a one-half (1/2) ownership interest in the Oregon Home when it was sold, yet she convinced Winnie to write her a check for $71,112.50, which represented one-half (1/2) of the remaining proceeds, and granted herself a one-half (1/2) ownership interest as a Tenant in Common in the Greencastle Home.
100. The Court finds that the last-minute evidence admitted by Jeri in Defendant's Exhibit HH clearly shows that Jeri knew she did not possess a one-half (1/2) ownership interest in the Oregon Home because after closing for the sale of the Oregon Home on February 1, 2022, Jeri made a $28,409.00 payment to Juanita on February 5, 2022. (Def. Ex. HH). If so, Jeri is enjoying the value increase of the home, yet Juanita does not ? — this just doesn't make logical sense.

Conclusions of Law

I. <u>Fraudulent Misrepresentation</u>

To show fraud, Winnie must show "(1) a material misrepresentation of past or existing facts; (2) made with knowledge or reckless ignorance of falsity; (3) causing the claimant to rely upon the misrepresentation to the claimant's detriment." *Spainhower v. Smart & Kessler, LLC*, 176 N. E. 3d 258, 265 (Ind. Ct. App. 2021) (quoting *America's Directories, Inc. v. Stellhorn One Hour Photo, Inc.*, 833 N. E. 2d 1059, 1067 (Ind. Ct. App. 2005), *trans. denied*), *trans. denied*. "Fraudulent inducement occurs when a party is induced through fraudulent misrepresentation to enter into a contract." *Id.* (citing *Lightning Litho, Inc. v. Danka Industries, Inc.*, 776 N. E. 2d 1238, 1241 (Ind. Ct. App. 2002), *trans. denied*), "Because fraudulent inducement is a 'hybrid' of tort and contract, the measure of damages in fraudulent inducement and fraudulent misrepresentation cases is the benefit of the bargain." *Id.*

"An intent to deceive is an essential element of actual fraud."' *Id.* at 265 (quoting *Kapoor v. Dybwad*, 49 N. E. 3d 108, 124 (Ind. Ct. App. 2015) (internal quotations and citations omitted), *trans. denied*). Whereas "reckless disregard or ignorance requires more than mere carelessness, negligence, or a mistake of fact." *Id.* at 266. Moreover, "[c]onstructive fraud is a breach of legal or equitable duty which, irrespective of the moral guilt of the fraud feasor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests." *Id.* (quoting *Kapoor*, 49 N. E. 3d at 124 (internal quotations omitted)); *see also Siegel v. Williams*, 818 N. E. 2d 510, 515 (Ind. Ct. App. 2004) (finding an oral promise as to future conduct may form the basis of a constructive fraud action if the promise induces one to place himself in a worse position than he would have been in had no promise been made and if the party making the promise derives a benefit as a result of the promise). "Neither actual dishonesty nor intent to deceive is an essential element of constructive fraud." *Id.* Rather, "it is the presence or absence of such an intent that distinguishes actual fraud from constructive fraud." *Id.* (internal quotations and citations omitted).

Here, the testimony and evidence presented at trial shows that Jeri fraudulently misrepresented her ownership interest in the Oregon Home and induced Winnie into writing her a check for $71,112.50, (which was the % of amount left over after the HELOC loan was paid off and the Greencastle home was purchased) which Jeri convinced Winnie that she was entitled to as a one-half (1/2) owner of the Oregon Home. Moreover, Jeri used her misrepresented ownership interest in the Oregon Home to Winnie to grant herself a fraudulent one-half (1/2) ownership interest in the Greencastle Home as a Tenant in Common. It is not clear how Jeri manipulated the closing to have her name put on the deed.

As stated above, the measure of damages in fraudulent inducement cases is "the difference between the value of the property as represented and the actual value of the property." Lightning Litho, Inc., 776 N. E. 2d at 1242. While proof that a tort was committed does not necessarily establish the right to punitive damages, punitive damages may be awarded if there is clear and convincing evidence that the defendant acted with malice, fraud, gross negligence, or oppressiveness that was not the result of a mistake of fact or law, honest error in judgment, overzealousness, mere negligence, or other human failing. *Williams v. Younginer*, 851 N. E. 2d 351, 358 (Ind. Ct. App. 2006), *trans. denied*.

Here, the measure of damages is clearly ascertainable by combining the value gained by Jeri's misrepresentation that she possessed a one-half (1/2) ownership interest in the Oregon Property. That is, the value of the $71,112.50 check Winnie wrote to Jeri plus one-half (1/2) the value of the Greencastle Home that Jeri granted to herself based on her misrepresented ownership interest in the Oregon Home.

Because the evidence and testimony provided at trial explicitly shows (and Jeri herself admitted) that Jeri knew she did not possess a one-half (1/2) ownership interest in the Oregon Home when it was sold on February 1, 2022.

So, the damages awarded are (1) the value of the sale of the Greencastle home, which is held in Plaintiff's attorneys trust account, plus $71,112.50 which is the other portion of the profit from the Oregon sale.

Jeri may say "well, at least where is my $28,409.00 that I wrote a check to Juanita? Answer: pursue Juanita.

II. Undue Influence

Undue influence is the exercise of sufficient control over a person to destroy her free agency and constrain her to do what she would not have done if such control had not been exercised. *Carlson v. Warren*, 878 N. E. 2d 844, [ ] (Ind. Ct. App. 2007) (internal quotations and citations omitted). It may flow from the abuse of a confidential relationship in which "confidence is reposed by one party in another with resulting superiority and influence exercised by the other." *Id.* (quoting *In re Neu*, 588 N. E. 2d 567, 570 (Ind. Ct. App. 1992)).

"Indiana recognizes that certain legal and domestic relationships raise a presumption of trust and confidence as to the subordinate party and a corresponding influence as to the dominant party." *Barkwill v. Cornelia H. Barkwill Revocable Trust*, 902 N. E. 2d 836, 839 (Ind. Ct. App. 2009) (citing *Meyer v. Wright*, 854 N. E. 2d 57, 60 (Ind. Ct. App. 2006), *trans. denied*), *trans. denied*. In reviewing transactions between such parties, courts employ a burden-shifting approach: If the plaintiff's evidence establishes (a) the existence of such a relationship, and (b) the questioned transaction(s) between the parties resulted in an advantage to the dominant party in whom the subordinate party had placed his or her 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, therefore, vo*id.* The burden of proof then shifts to the dominant party to rebut the presumption by clear and unequivocal proof that the questioned transaction was made at arm's length and was thus val*id.* *Meyer*, 854 N. E. 2d at 60.

A confidential relationship sufficient to allow for a successful undue influence claim may arise either as a matter of law or it can be shown on the particular facts of a case. *Carlson*, 878 N. E. 2d at [] (citing *Lucas v. Frazee*, 471 N. E. 2d 1163, 1166 (Ind. Ct. App. 1984). Confidential relationships that arise as a matter of law include relationships such as those of "attorney and client, guardian and ward, principal and agent, pastor and parishioner . . . [and] parent and a child," among others. *Id.* (quoting Supervised Estate of *Allender v. Allender*, 833 N. E. 2d 529, 533 (Ind. Ct. App. 2005) (citation omitted), *reh'g denied*, *trans. denied*). These matter-of-law 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." *Id.*

Indiana caselaw further provides "that where certain adult children are caretakers for ailing parents, the children take on the dominant role." *Barkwill*, 902 N. E. 2d at 839–40; *see Meyer*, 854 N. E. 2d at 59–60 (applying the presumption after finding roles were reversed where an adult child was caring for an aging parent and transported the parent to the attorney's office when necessary); Supervised Estate of *Allender v. Allender*, 833 N. E. 2d 529, 533–34 (Ind. Ct. App. 2005) (applying the presumption after finding hired caretaker son was in dominant position where he obtained power of attorney over his aging parents and convinced an attorney to draft a new will for his mother), *trans. denied*; Outlaw *v. Danks*, 832 N. E. 2d 1108, 1110 (Ind. Ct. App. 2005) (applying the presumption where nephew was in dominant position by taking care of his ailing, blind aunt and drafted the will that left his aunt's estate to him), *trans. denied*. The question of which party has attained the position of the dominant party, under the evidence, is a question for the trier of fact. *Id.* (citing *Crider v. Crider*, 635 N. E. 2d 204, 210 (Ind. Ct. App. 1994), *trans. denied*).

Even where there is no confidential relationship and the presumption of undue influence is not applied, the particular facts of a given case may show "a relation of trust and confidence justifying one in relying thereon[.]"*Id.* (citing *Middelkamp v. Hanewich*, 263 N. E. 2d 189, 193 (Ind. Ct. App. 1970)). In such situations, the plaintiff must establish not only the existence of a confidential relationship in fact between the parties but also that "the parties to the questioned transaction did not deal on terms of equality." *Id.* (quoting *Lucas*, 471 N. E. 2d at 1167). In other words, the plaintiff "must prove either the dominant party dealt with superior knowledge of the matter derived from a fiduciary relationship, or dealt from a position of overpowering influence as to the subordinate party." *Id.* Only when the plaintiff has shown this and that "the result was an unfair advantage to the dominant party" will the burden of proof shift to the defendant. *Id.* The defendant then has an affirmative duty to show that "no deception was practiced, no undue influence was used, and all was fair, open, voluntary, and well understood." *Id.* (emphasis added).

Here, the evidence shows that a confidential relationship between Winnie and Jeri existed both as a matter of law and under the particular facts of this case. First, under particular facts of this case, Winnie was the elderly parent and Jeri was the care giving child, which creates a confidential relationship between parent and child substantial enough to invoke the presumption of undue influence. Moreover, Jeri, who holds an accounting degree, was primarily in charge of the household finances and maintained a complex excel spreadsheet of shared expenses, using calculation methodology that she herself was unable to easily explain to the Court, let alone something that would be easily understood by her elderly mother. As such, it is clear that Jeri was in a position to have an unfair advantage over Winnie and the two were not dealing on terms of equality regarding any alleged agreement to the calculation of equity purportedly earned by Jeri in the Oregon Home by purchasing shared groceries and other household goods. Lastly, Jeri was named as Winnie's Attorney-in-Fact in August 2019 and the Court does not find her testimony that she was unaware of such designation credible. As such, Winnie has established that a confidential relationship existed between her and Jeri both as a matter of law and under the particular facts of this case, and that the presumption that Jeri asserted undue influence over Winnie to gain an advantage was not affirmatively rebutted by Jeri. Based on the evidence, including reasonable inferences the Court draws from the facts and circumstances and further based on the findings of fact above, the Court concludes that Winnie was susceptible to undue influence, Jeri exercised undue influence over Winnie, and the resulting deed for the Greencastle Home, which granted Jeri a one-half (1/2) ownership interest as a Tenant in Common, was a result of Jeri's exercise of undue influence over Winnie.

III. Slander of Title

"To demonstrate slander of title, Winnie must prove 'false statements were made, with malice, and that the plaintiff sustained pecuniary loss as a necessary and proximate consequence of the slanderous statements.'" *Bixeman v. Hunter's Run Homeowners Ass'n of St. John, Inc.*, 36 N. E. 3d 1074, 1078 (Ind. Ct. App. 2015) (quoting *Display Fixtures Co., a Div. of Stein Indus. v. R. L. Hatcher, Inc.*, 438 N. E. 2d 26, 30 (Ind. Ct. App. 1982)). "A malicious statement is one 'made with knowledge of [its] falsity or with reckless disregard for whether [it is] false.'" *Id.* (quoting *Holland v. Steele*, 961 N. E. 2d 516, 525 (Ind. Ct. App. 2012), *trans. denied*).

Here, the evidence submitted demonstrates that Jeri knew that she did not have a valid ownership interest, let alone a one-half (1/2) ownership interest, in the Oregon Home entitling her to half the proceeds from the sale of the Oregon Home and thereby a one-half (1/2) ownership interest in the Greencastle Home. Jeri admitted that when she executed documents during the closing for the purchase of the Greencastle Home she had not yet contributed enough funds to equate to one-half (1/2) ownership of the Oregon Home; nonetheless, Jeri saw to it that her a one-half (1/2) ownership interest in the Greencastle Home as a Tenant in Common. Jeri's execution of such documents at a time she knew she had not yet contributed enough funds to equate to one-half (1/2) ownership in the Oregon Home demonstrates malice or gross negligence.

Further, the evidence showed that after the living arrangement between Winnie and Jeri broke down, Winnie wished to market and sell the Greencastle Home but was unable to do so and had to pay her attorney in order to put this matter to rest, which resulted in pecuniary loss to Winnie. *Id.* (citing *Keilbach v. McCullough*, 669 N. E. 2d 1052, 1053 n.2 (Ind. Ct. App. 1996) (approving of "attorneys fees as the proper measure of damages" in slander of title actions)). Jeri maliciously granted herself an unearned one-half (1/2) ownership interest in the Greencastle Home and caused Winnie pecuniary loss and therefore committed slander of title of the Greencastle Home. Moreover, even after the initiation of this action by Winnie's filing of a request for partition and thereby receiving notice that she was not entitled to an ownership interest in the Greencastle Home, Jeri continued to assert that she had a valid one-half (1/2) ownership interest in the Greencastle Home, acting with reckless disregard for the truth. *See Walsh & Kelly, Inc. v. Int'l Contractors, Inc.*, 943 N. E. 2d 394, 400 (Ind. Ct. App. 2011) (though court declared lien invalid, party maliciously asserting lien still liable for slander of title).

Accordingly, the evidence reveals only one conclusion—that Jeri committed slander of title as to the

Greencastle Home and that Winnie suffered pecuniary loss in initiating this action to settle the ownership dispute. Plaintiff's counsel is to submit a billing to the court/opposing counsel. Court will allow 30 days for Defendant to review and if no hearing is requested, then that is amount owed. If hearing requested, court will set a hearing on attorney fee issue only.

IV. Financial Exploitation of a Senior Consumer

Plaintiff attempts to claim this as a Senior Consumer Exploitation. However, these cases are much more in line with Home Improvement type claims as such; court denies the Plaintiffs request on this allegation.

V. Partition and Jeri's Counterclaim

Since the Greencastle Home was sold in December and the proceeds shall be awarded to Winnie as set forth above, Winnie's claim for partition and Jeri's counterclaim are moot.

Judgment

Based on the evidence, including reasonable inferences the Court draws from the facts and circumstances, and further based on the findings of fact and conclusions of law above, the Court hereby enters judgment in favor of Plaintiff and against Defendant as follows: The Court hereby enters judgment in favor of Plaintiff and against Defendant, on Plaintiff's claim for fraudulent misrepresentation in amount of $71,112.50 plus the entire amount of the escrow funds.

The Court hereby enters judgment in favor of Plaintiff and against Defendant, on Plaintiff's claim for undue influence. Accordingly, the Court rejects Jeri's purported ownership of the Greencastle Home and awards all proceeds from the sale of the Greencastle Home to Winnie. The Court further enters a money judgment against Defendant in the following amount reflecting the value of one-half (1/2) of the remaining proceeds from the sale of the Oregon Home: $71,112.50.

The Court hereby enters judgment in favor of Plaintiff and against Defendant, on Plaintiff's claim for slander of title.

SO ORDERED, ADJUDED AND DECREED this 4/22/25

/s/ Matthew Headley
Judge Matthew Headley,
Putnam County Circuit Court

Appendix C
[Filed: Jun. 4, 2026]

In the
Indiana Supreme Court

Jeri L. Knox, Appellant(s), v. Winnie J. Walker, Trustee of the Frank R. Walker and Winnie J. Walker Living Trust, Appellee(s).	Court of Appeals Case No. 25A–CT–01022 Trial Court Case No. 67C01–2212–CT–663

Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 6/4/2026.

/s/ Loretta H. Rush
Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

Appendix D
[Filed: Jul. 23, 2025]

**IN THE
COURT OF APPEALS OF INDIANA**

CASE NO. 25A–CT–01022

Jeri L. Knox, *Appellant,* v. Winnie J. Walker, Trustee of the Frank R. Walker and Winnie J. Walker Living Trust, *Appellee.*	Appeal from the Putnam Circuit Court Trial Court Cause No.: 67C01–2212–CT–000663 The Honorable Matthew Headley, Judge

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I. STATEMENT OF THE ISSUES

1. Whether the trial court erred in finding that Appellant Jeri Knox ("Knox") exerted undue influence over her mother, Winnie Walker ("Walker"), when the record shows that Walker acted independently, understood the transactions at issue, and was not subject to the kind of coercion or destruction of free will required under Indiana law.

2. Whether the trial court erred in finding that Knox committed actual fraud when the record contains no evidence of a knowingly false statement made with the intent to deceive, and Knox's claims were based on documents signed and ratified by Walker.

3. Whether the trial court erred in finding that Knox acted with the requisite malice for slander of title when she asserted her ownership claims under a colorable claim of right, based on written agreements signed by Walker that were incorporated into Walker's own Restated Trust.

II. STATEMENT OF THE CASE

On December 21, 2022, Appellee Winnie Walker, as Trustee of the Frank R. Walker and Winnie J. Walker Living Trust, filed a complaint for partition against her daughter, Jeri Knox, related to real property located in Greencastle, Indiana. App. at 13. Knox filed an answer and counterclaim in which she asserted a one-half interest in the property and requested an appraisal, mediation, and a public sale of the property. *Id.* at 18–20.

Walker admitted that Knox's name appeared on the deed but denied authorizing it. *Id.* at 22–23. The parties mediated in March 2024 without resolution. *Id.* at 25. In July 2024, Walker amended her complaint to add herself individually and assert against Knox claims of fraud, undue influence, slander of title, and financial exploitation of a senior. *Id.* at 27–30, 57. Knox filed an answer denying the new allegations and reasserting her claim to proceeds from a prior sale of the home in which Knox and Walker lived together in Oregon. *Id.* at 62–70.

Following a multiple-day trial in February 2025, on April 22, 2025, the trial court issued its Findings of Fact, Conclusions of Law, and Judgment. *Id.* at 213. It found in Walker's favor on her claims against Knox of fraudulent misrepresentation, undue influence, and slander of title. *Id.* at 213–232. The court awarded Walker all net proceeds from the Greencastle sale, entered a $71,112.50 judgment against Knox, awarded remaining escrow funds to Walker, and dismissed both partition claims as moot. *Id.* at 226, 231. It denied Walker's financial exploitation claim and invited Walker to submit an attorney's fee petition. *Id.* at 231. Knox now appeals.

III. <u>STATEMENT OF FACTS</u>

Jeri Knox is the daughter of Winnie Walker. For years, they lived together, first in Oregon, then in Greencastle, Indiana. Tr. Vol. II pp. 48–51, 74–78, 128, 194. They moved from Indiana to a home in Florence, Oregon, in September 2018, with the primary purpose of caring for Winnie's sister, Juanita Petroni ("Petroni"), whose health was declining. Tr. Vol. II p. 129; Tr. Vol. III p. 4. After Petroni moved into an assisted living facility and because Walker wanted to be closer to her sons, she and Knox moved back to Indiana and lived together in a home in

Greencastle from March 2022 until Walker moved out in July 2022. Tr. Vol. II pp. 152, 213; Tr. Vol. III p. 214.

On December 21, 2022, Walker, acting as Trustee of the Frank R. Walker and Winnie J. Walker Living Trust ("Trust"), filed against Knox a complaint for partition of Walker's real property located in Greencastle. App. at 13. In response, Knox filed an answer and counterclaim asserting that she owned an undivided one-half interest in the Greencastle property and that she should receive portions of the proceeds from the sale of Walker's Oregon property. *Id.* at 18–20. She asked the court to appoint an appraiser, order mediation, and authorize a public sale. *Id.* at 19. Walker subsequently admitted that Knox's name appeared on the Greencastle property's deed but denied that she ever authorized the addition of Knox's name. *Id.* at 22. She argued that the property belonged solely to the Trust and that Knox had no valid interest. *Id.* at 22–23. The parties mediated on March 18, 2024, but did not settle. *Id.* at 25.

In July 2024, Walker moved to amend her complaint to add herself individually and to accuse her daughter of fraud, undue influence, financial exploitation of a senior, and slander of title. *Id.* at 27–30. She alleged that Knox manipulated records, forged documents, and recorded herself on the Greencastle property's deed without authorization. *Id.* The court granted her motion to amend. *Id.* at 57.

Knox's answer denied all wrongdoing. *Id.* at 62–69. She argued that the money and ownership rights she received reflected years of unpaid labor, caregiving, and financial contributions. *Id.* She also reasserted her claim to proceeds from the sale of Walker's Oregon home. *Id.* at 69–70.

Trial began on February 19, 2025. Tr. Vol. II p. 1. Walker testified that she never intended to give Knox a 50% interest in the Oregon home. *Id.* at 234, 248. She described how Knox had managed household finances and controlled records and payments using Walker's income and trust distributions. *Id.* at 153, 239. When the Oregon property sold, Walker wrote Knox a check for $71,112.50, but only, she said, because Knox insisted that she was owed half. *Id.* at 165, 200. She testified that she signed "Notes of Ownership" at Knox's urging, but did not understand their legal implications. *Id.* at 56–64, 165, 200. Walker said she trusted Knox to handle the paperwork for the Greencastle property purchase but later discovered that Knox had recorded herself as a co-owner on the deed. *Id.* at 234.

Knox testified that she created the Notes of Ownership in good faith and to reflect what she believed was a fair division of interest based on her contributions. Tr. Vol. III pp. 65–66. She based these notes on an Excel spreadsheet she had created and maintained to track household costs. *Id.* at 72–74. Knox conceded that the spreadsheet was imperfect, with significant calculation errors, and difficult to follow. *Id.* at 71, 181–82, 186–88. Knox testified that she reviewed the household expenses with her mother and Petroni, her mother's sister, monthly. Tr. Vol. II pp.

239. Knox acknowledged the notarization date on the second Note of Ownership was one day earlier than the date typed on the document itself. Tr. Vol. III pp. 77–78.

As for the $71,112.50 she received from Walker, Knox testified that she subsequently paid Walker's late sister, Petroni, who had lived with Knox and Walker in the Oregon home from 2018 to 2020, to finalize her ownership interest, including a final payment of $28,409.00. Tr Vol. II p. 128, 160; Tr Vol. III p. 56, 193; Tr. Vol. IV p. 49. She did not document the payment or consult Walker beforehand. Tr. Vol. II pp. 130–131.

Knox acknowledged that she signed the Greencastle property deed and other closing documents when her mother was in another state. Tr. Vol. III pp. 218–219. She said she believed she was entitled to partial ownership based on conversations she had with her mother and also based on her contributions of time, labor, and money. Tr. Vol. II pp. 132–139; Tr. Vol. III pp. 90, 220. When asked about her 2020 divorce filings, Knox admitted that she did not list any ownership interest in the Oregon or Greencastle homes. Tr. Vol. III pp. 86–89. On redirect, Knox explained that her actions were in good faith and based on her belief that she had earned a share. Tr. Vol. IV pp. 2–89.

On April 22, 2025, the court issued its Findings of Fact, Conclusions of Law, and Judgment. App. at 213. It found in Walker's favor on three counts: fraudulent misrepresentation, undue influence, and slander of title. *Id.* at 213–232. The court found that Knox had falsely recorded herself on the Greencastle deed and improperly claimed Oregon proceeds. *Id.* It awarded Walker all net proceeds from the Greencastle property sale and entered a $71,112.50 judgment against Knox. *Id.* at 226. The court also awarded Walker the remaining escrow funds and dismissed both parties' partition claims as moot. *Id.* at 231. It denied Walker's financial exploitation claim. *Id.* The court invited Walker's counsel to submit a fee petition. *Id.*

Knox now appeals

IV. SUMMARY OF THE ARGUMENT

The trial court's order is clearly erroneous and should be reversed. The court's findings on undue influence, fraudulent misrepresentation, and slander of title are unsupported by both the evidence and the law, which requires more than inter-family conflict and mother-daughter financial entanglements to establish such serious claims. The record here shows that while the relationship between Walker and Knox was complicated and eventually broke down, it was not one of exploitation, fraud, or malice.

Specifically, the trial court's undue influence finding should be reversed. Walker, though elderly, was not mentally incapacitated or isolated. She herself executed the two "Notes of Ownership" and a Restated Trust that acknowledged Knox's ownership interest. She kept track of her own finances, did not appear to have any problem communicating with friends and family, and freely made her own decisions. Undue influence requires the destruction of the subordinate party's free will, a standard this record does not meet. Knox's involvement in Walker's life, even if at times overbearing, was not the kind of mental subjugation required to prove undue influence.

Second, the court's finding of actual fraud fails because there is no evidence of a knowingly false statement made by Knox with an intent to deceive. Knox's claims to ownership of the property were not fabricated out of thin air; they were based on written documents that Walker herself signed. And while Knox's spreadsheet accounting was not perfect, a mistake in calculation is not the same as fraud. There must be a "high degree of awareness" that a statement is false, and the record here contains no such evidence. To the contrary, Knox's actions, including her voluntary payment to her aunt from her own proceeds, are inconsistent with a fraudulent scheme.

Finally, the slander of title claim fails because the record shows that Knox did not act with malice. Her ownership claims were based on a colorable claim of right grounded in the "Notes of Ownership" and Walker's own Restated Trust. Relying on signed legal documents is not a reckless disregard for the truth. Because Knox had a good-faith basis for her claims, the malice element was not met, and the slander of title finding must be reversed.

V. <u>STANDARD OF REVIEW</u>

Because Knox is appealing from an adverse judgment following a bench trial, the Court will not set aside the findings or judgment unless clearly erroneous, and will give deference to the trial court's judgment of the credibility of the witnesses. Ind. Trial Rule 52(A). The Court will reverse the judgment only if there is no evidence supporting the findings, or the findings fail to support the judgment. *Pardue v. Perdue Farms, Inc.*, 925 N. E. 2d 482, 488 (Ind. Ct. App. 2010). The Court will not reweigh the evidence, but consider only the evidence favorable to the trial court's judgment. *Id.*

VI. ARGUMENT

A. The trial court clearly erred in finding that Knox exerted undue influence over Walker.

Undue influence is "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 v. Crider*, 635 N. E. 2d 204, 210 (Ind. Ct. App. 1994). In Indiana, undue influence is presumed when certain legal or domestic relationships exist between the parties, including "that of attorney and client, guardian and ward, principal and agent, pastor and parishioner, husband and wife, parent and child, and there may be others." *Lucas v. Frazee*, 471 N. E. 2d 1163, 1166-67 (Ind. Ct. App. 1984). *See also In re Est. of Wade*, 768 N. E. 2d 957, 961–62 (Ind. Ct. App. 2002). If the plaintiff's evidence shows both (a) the existence of a fiduciary relationship and (b) a transaction between the two parties that resulted in an advantage to the dominant party, in whom the subordinate party had placed both trust and confidence, then "the law imposes a presumption [that] the transaction was the result of undue influence exerted by the dominant party, constructively fraudulent, and thus vo*id*." *Id.* at 1167. Once those two elements are established, the burden shifts to the dominant party to rebut the presumption with clear and unequivocal proof. *Wade*, 768 N. E. 2d at 962.

The presumption is important because it protects vulnerable parties from being pressured or exploited by those they trust. *See Matter of Good*, 632 N. E. 2d 719, 721 (Ind. 1994). But it does not dispense with the requirement that the subordinate party's will was actually overborne. Put differently, the presumption does not compel a finding of undue influence, it just shifts the burden.

The record here does not meet that standard. Walker signed the Notes of Ownership herself. Tr. Vol. III pp. 162–165. She wrote the $71,112.50 check herself, from her own account. Tr. Vol. II p. 200. She executed a Restated Trust, which acknowledged her intention to divide her estate and did not disavow any gift to Knox. *Id.* at 172, 175–176. She was not isolated, impaired, or dependent in a way that prevented independent thought. In fact, it is undisputed that she continued to make her own financial decisions, retained access to her accounts, and kept in touch with friends and family. Tr. Vol. III pp. 30–31. In *Farner v. Farner*, 480 N. E. 2d 251, 254–61 (Ind. Ct. App. 1985), the Court affirmed judgment for the caregiver on a claim of undue influence because "there [was] no evidence Carl and Bub ever discussed the terms of Carl's will." The Court made clear that even close relationships and heavy involvement in daily life do not support a finding of undue influence without evidence of control of the testator's mind to the point where the will did not reflect the testator's own desires. *Id.* at 257. *See also Hummer v. Donathan*, 231 N. E. 3d 905, 913–15 (Ind. Ct. App. 2024) (holding that a daughter's near-constant caregiving did not give rise to a presumption because the mother remained lucid, involved, and independent).

The trial court focused itself on Knox's role in managing the household's finances and her position as Walker's power of attorney ("POA"). App. at 223–226. But the record does not show that Knox used her POA to complete any of the disputed transactions.

Tr. Vol. III p. 82. *See In re Est. of Compton*, 919 N. E. 2d 1181, 1186 (Ind. Ct. App. 2010) (declining to apply presumption where testator acted independently and fiduciary did not use the POA).

The trial court's findings of fact also focus heavily on Knox's dominant personality and her deep involvement in Walker's daily life, but those things are not enough to support a finding of undue influence. *See Lindinger v. Lindinger*, 126 Ind. App. 463, 470–71, 130 N. E. 2d 75, 79 (1955) ("General influences brought to bear on the testamentary act, however strong and controlling, do not in themselves constitute undue influence."). There is no evidence that Knox threatened, isolated, or manipulated Walker into writing the check or recording the deed. Walker signed both of her own accord. Tr. Vol. II pp. 162–165, 218–219. Even when Knox paid $28,409 to Petroni, an action that cut directly against her own financial interest, she did so voluntarily. Tr. Vol. IV p. 49. Knox's conduct is not that of someone scheming to defraud her family.

There is also no evidence that Walker lacked mental capacity. The trial court heard no expert testimony and pointed to no medical records suggesting that she was impaired or incompetent. The record contains no statement from a lawyer, notary, or witness who observed Walker under duress. And the court itself denied Walker's financial exploitation claim for lack of evidence. App. at 231. It should not be able to both reject that theory and yet impose a judgment for undue influence based on the same factual assumptions.

In the testamentary context, "[a]dvice, persuasion and other influences by family will not vitiate a will so long as the 'free agency' of the testator to act has not been interfered with." *Farner*, 480 N. E. 2d at 257. The presumption exists to guard against abuse, but it also must be applied with precision. Otherwise, those who require care become legal liabilities and adult children who pay bills, manage homes, and take on financial responsibility end up accused of fraud the moment the relationships sour. Where family members live together and share expenses and household responsibilities, there is a difference between steering a conversation and hijacking another's will. The doctrine of undue influence is not meant to criminalize closeness and a parent's trust in an adult child should not be a trap; that is why the presumption is rebuttable. And here, Knox rebutted it with evidence that Walker understood what she was signing, chose to write the check, and continued managing her own affairs.

In summary, the record here does not show that Walker was coerced, silenced, or her will overridden by Knox. What it does show is that she, a competent adult, made choices, some of which she later regretted or came to *see* differently, but choices nonetheless. The presumption, if it arose at all, was rebutted, and the trial court's finding of undue influence should be reversed.

B. The trial court erred in finding that Knox committed actual fraud.

To prove actual fraud, the plaintiff must show "(1) a material misrepresentation of past or existing facts; (2) made with knowledge or reckless ignorance of falsity; (3) causing the claimant to rely upon the misrepresentation to the claimant's detriment."

Spainhower v. Smart & Kessler, LLC, 176 N. E. 3d 258, 265 (Ind. Ct. App. 2021) (quoting *America's Directories, Inc. v. Stellhorn One Hour Photo, Inc.*, 833 N. E. 2d 1059, 1067 (Ind. Ct. App. 2005)). "An intent to deceive is an essential element of actual fraud." *Kapoor v. Dybwad*, 49 N. E. 3d 108, 124 (Ind. Ct. App. 2015). Actual fraud may not be based on representations of future conduct, on broken promises, or on representations of existing intent that are not executed. *Wallem v. CLS Indus., Inc.*, 725 N. E. 2d 880, 889 (Ind. Ct. App. 2000). And while fraudulent intent may be inferred from certain "badges of fraud," such as hurried or secret transactions, inadequate consideration, or transfers to family members that deplete the transferor's estate while allowing them to retain benefits, no one indicium is dispositive. *Otte v. Otte*, 655 N. E. 2d 76, 81 (Ind. Ct. App. 1995).

The trial court's conclusion that Knox knowingly misrepresented her ownership in the Oregon home to fraudulently induce Walker to write a $71,112.50 check is unsupported by the record. First, there was no direct evidence that Knox made a knowingly false statement with intent to deceive. Knox never hid her equity calculations or concealed her belief that she was entitled to a share. She gave Walker monthly summaries from the spreadsheet she maintained, and although the spreadsheet was confusing and flawed, it was not secret. Walker had access to it, and both she and her sister, Petroni, signed the first Note of Ownership. She also included reference to that Note in her Restated Trust, a document prepared by her Oregon attorney. Tr. Vol. II p. 173.

The trial court pointed to Knox's inability to articulate a precise formula for her equity calculations as evidence of deception, but the inability to explain a formula does not prove fraud. As the Court held in *Spainhower*, reckless disregard requires more than "mere carelessness, negligence, or a mistake of fact." *Id.* at 266 (citing *Shine v. Loomis,* 836 N. E. 2d 952, 958–59 (Ind. Ct. App. 2005)). There must be a "high degree of awareness" that the statement is false and a willful decision not to investigate. *Id.* The record here contains no such showing. Knox's spreadsheets contained errors and her ownership percentages overstated, but those errors are far more consistent with mistaken self-interest or faulty bookkeeping than it is with a calculated scheme to defraud.

Even the "badges of fraud" referenced in *Otte* do not support a finding of fraudulent intent. There was no secret or hurried transaction. The transfer Walker made (writing the $71,112.50 check) was not made under duress, and the record reflects no concealment, misdirection, or last-minute deception by Knox. Tr. Vol. II pp. 74, 201. Instead, the payment followed years of cohabitation, sharing expenses, and mutual acknowledgments of shared ownership, however informal. Tr. Vol. II pp. 152–154; Vol. III pp. 65–69, 96, 165–166. And although the court found that Knox received a check for $71,112.50 from the Oregon sale proceeds and also granted herself an ownership interest in the Greencastle home, this conclusion hinges on an assumption of bad faith that is not supported by Knox's testimony or conduct. Tr. Vol. II pp. 74, 201, 234; Vol. III pp. 181–182].

There is also a fundamental logical gap in the court's conclusion. To prove fraud, there must be a knowing lie and the intent to use it to induce another to act. *Spainhower*, 176 N. E. 3d at 265. The court's reasoning skips a step. It jumps from (1) finding Knox's ownership claim mistaken or exaggerated to (2) concluding it must have been knowingly false and intentionally manipulative. But the record does not support that leap. Knox made clear that she believed she was owed something for her years of contribution. She documented that belief, asked Walker and Petroni to sign documents memorializing that belief, referenced the agreement in the trust, and paid part of her proceeds to Petroni. Her actions may have been misguided and perhaps even self-serving, but they were not fraud. To find fraud on the unique facts of this case is to open the door for nearly any mistaken belief or poorly documented financial understanding between relatives to be relabeled as deceit.

The trial court's conclusion also defies common sense. If Knox truly intended to swindle Walker, she would not have insisted on signed Notes of Ownership, or encouraged Walker to include those notes in her trust, or sent a payment of $28,409 to Petroni after the Oregon sale. These actions reflect good faith and imperfect understanding, not a deliberate fraud.

In the end, this is not a case about a con artist deceiving an elderly woman. It is about a daughter who lived with her mother, sloppily tried to account for years of shared expenses, overestimated her entitlement, and ultimately failed to properly formalize her claims. That may give rise to other remedies, but it is not actual fraud. The trial court's finding should be reversed.

C. The trial court erred in finding Knox acted with malice because the evidence demonstrated she asserted her ownership claims under a colorable claim of right.

To demonstrate slander of title, a plaintiff must prove that "false statements were made, with malice, and that the plaintiff sustained pecuniary loss as a necessary and proximate consequence of the slanderous statements." *Display Fixtures Co., a Div. of Stein Indus. v. R. L. Hatcher, Inc.*, 438 N. E. 2d 26, 30 (Ind. Ct. App. 1982). The malice element requires a showing that the statement was "made with knowledge of [its] falsity or with reckless disregard for whether [it is] false." *Holland v. Steele*, 961 N. E. 2d 516, 525 (Ind. Ct. App. 2012), *trans. denied*. Although malice may be inferred from the evidence, the mere fact that an ownership claim ultimately fails does not, by itself, prove it was made with malice. *See Country Contractors, Inc. v. A Westside Storage of Indianapolis, Inc.*, 4 N. E. 3d 677, 691 (Ind. Ct. App. 2014); *Morris v. G. Rassel, Inc.*, 576 N. E. 2d 596, 600 (Ind. Ct. App. 1991). Instead, the inquiry focuses on the defendant's state of mind at the time the statements were made. A claim asserted under a colorable, good-faith belief in its validity, even if mistaken, does not meet the high standard for malice. *See Davis v. Sponhauer*, 574 N. E. 2d 292, 300 (Ind. Ct. App. 1991) (holding that "the conclusion that *Davis* acted with malice in making such statements is clearly erroneous" where he reasonably relied on a land survey in disputing adverse possession claim).

Here, the trial court concluded that Knox acted with malice when she asserted an ownership interest in the

Greencastle property. App. at 230. But this conclusion is contrary to the facts and the law because the record shows Knox was not making a baseless claim out of thin air. Instead, she reasonably relied on a series of documents executed by Walker herself, which created, at a minimum, a colorable claim of right to the property.

First, Walker signed the January 31, 2019 Note of Ownership, a document that explicitly granted Knox an 8.15% ownership interest in the Oregon Home. Pl. Ex. 21. Second, on July 17, 2020, Walker signed another Note of Ownership, which increased Knox's ownership stake to 13.22%. Pl. Ex. 22. Third, and most significantly, Walker's own Restated Trust, executed on August 29, 2019, contained a specific provision that incorporated these agreements. App. at 217–18. Section 8.2 of the Trust stated that although the Oregon Home was titled in the Trust's name, it was "subject to a separate written agreement between...Juanita Mae Petroni (my sister), Jeri Lynn Walker Knox (my daughter), and myself as Trustee." Pl. Ex. 23. The Trust further directed that the Trustee "shall honor and abide by the terms of the most recently signed, notarized 'Note of Ownership' agreement in effect at the time of my death." Pl. Ex. 23.

These documents, all undisputedly bearing Walker's signature, show that Knox's ownership claim was not a fabrication. How could Knox have known her claim was false, or have acted in reckless disregard of the truth, when she was relying on written instruments that her mother had signed and notarized? The record contains no evidence that Knox forged these documents or that Walker was incompetent when she signed them. On the contrary, Walker's own Restated Trust ratified the existence of the ownership agreements.

In *Davis*, 574 N. E. 2d 292, the Court reversed the trial court's finding of malice. There, the defendant mistakenly asserted ownership over a disputed strip of land based on two land surveys and was sued by his neighbors for slander of title. *Id.* at 300. Even though his neighbors informed him of their belief that the property was theirs, the court found it was "not unreasonable for *Davis* to place his faith" in the surveys. *Id.* His reliance on those documents, even if they were ultimately incorrect, negated a finding of malice. *Id.* The same is true here. Faced with a choice between her mother's later-professed change of heart and two signed Notes of Ownership and a Restated Trust, it was not unreasonable for Knox to place her faith in the latter. Compare to *Bixeman v. Hunter's Run Homeowners Ass'n of St. John, Inc.*, 36 N. E. 3d 1074, 1079 (Ind. Ct. App. 2015) (holding that where the defendant was formally notified by the plaintiff's attorney that its lien was legally invalid but still refused to release it, that refusal, was enough to show reckless disregard).

The trial court's finding of malice *see*ms to stem in large part from its conclusion that Knox's spreadsheet contained calculation errors and that she received more than she was actually owed. But math errors, without more, are not malice. Reckless disregard requires more than just carelessness, negligence, or mistake. *See Spainhower*, 176 N. E. 3d at 266. The record does not support a finding that Knox acted with knowledge that her ownership claims were false. *Id.* In fact, the evidence that Knox paid $28,409 to Petroni after the Oregon sale, an action that reduced her own proceeds, is inconsistent with a malicious scheme to defraud her family. Tr. Vol. IV p. 49.

Because the record shows that Knox asserted her ownership interest based on written documents signed and ratified by Walker, she acted under a colorable claim of right that negates the element of malice in Walker's slander of title claim. The trial court's contrary finding is clearly erroneous and must be reversed.

VII. CONCLUSION

For all these reasons, Appellant Jeri Knox respectfully requests that this Court reverse the trial court's judgment and remand with instructions to enter judgment in favor of Knox.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I certify that on July 23, 2025, I electronically filed this document using the Indiana E-Filing System. IEFS. I also certify that on July 23, 2025, this document was served on these persons via IEFS:

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Bryan L. Ciyou

Appendix E
[Filed: Mar. 11, 2026]
IN THE
SUPREME COURT OF INDIANA
NO: ________________________

COURT OF APPEALS CASE NO. 25A–CT–01022

JERI L. KNOX, *Appellant/Petitioner,* v. WINNIE J. WALKER, TRUSTEE OF THE FRANK R. WALKER AND WINNIE J. WALKER LIVING TRUST, *Appellee/Respondent.*	Appeal from the Putnam Circuit Court Trial Court Cause No.: 67C01–2212–CT–000663 The Honorable Matthew Headley, Judge

APPELLANT'S PETITION TO TRANSFER

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I. QUESTION PRESENTED ON TRANSFER

1. Whether, at the rebuttal stage of an undue influence claim, a finding that the dominant party controlled household finances the subordinate party did not fully understand is sufficient, without any finding of cognitive impairment, isolation, or diminished capacity, to prove the destruction of free will the doctrine requires.

2. Whether actual fraud may be established without evidence that the defendant had a "high degree of awareness" that a specific representation was false, where the trial court's scienter finding rested on errors in a spreadsheet, the defendant's accounting degree, and her failure to disclose an asset in a separate proceeding.

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II. INTRODUCTION

This case asks the Court to define two boundaries the law in Indiana has not yet drawn. Appellant/Petitioner Jeri Knox is a daughter who lived with and cared for her mother, Winnie Walker. She managed their household finances through a shared spreadsheet, claimed an ownership interest in the family home, and memorialized that interest in documents Walker signed, one of which Walker incorporated into a restated trust prepared by an independent Oregon attorney. No expert testified that eighty-one-year-old Walker suffered from any cognitive impairment, and no medical records suggested diminished capacity.

The trial court nonetheless found Knox liable to Walker for undue influence and actual fraud, and the Court of Appeals affirmed. The Court of Appeals' memorandum decision below ("Decision") affirmed the trial court's finding of undue influence based on Knox's control of household finances that Walker did not fully understand, without addressing whether such control, absent any evidence of compromised capacity, amounts to the destruction of free will the doctrine requires. On fraud, the Decision affirmed a finding of fraud based in large part on errors in Knox's spreadsheet and on her accounting background, without identifying evidence that Knox had a "high degree of awareness" that any specific representation was false.

Both questions have statewide significance. Adult children often handle finances for their aging parents. The trust and estate bar needs to know what evidence proves undue influence when no cognitive impairment is shown, and what separates a family's misunderstanding over their finances from actual fraud.

III. FACTUAL BACKGROUND AND PRIOR TREATMENT

Appellant Jeri Knox is the grown daughter of Winnie Walker. App. at 214. Walker is the trustee of the Frank R. Walker and Winnie J. Walker Living Trust. App. at 214. After Walker's husband passed away in October 2017, Knox accompanied her mother to Florence, Oregon, to help care for Walker's older sister, Juanita Petroni ("Petroni"). Tr. Vol. II p. 129; Tr. Vol. III p. 4; App. at 214–15.

A neighbor, Bruce Hadley, purchased a home in Oregon for $375,000, and Walker and Petroni repaid him. App. at 215; Tr. Vol. III pp. 93–94, 114–15. Walker contributed $150,000 plus $8,359.83 for repairs; Petroni contributed $227,613.70; Knox did not contribute. App. at 215–16; Tr. Vol. II pp. 135–36; Tr. Vol. III pp. 59–60. The property was deeded in Walker's name because Petroni's estate plan provided for Walker to receive her assets. App. at 215; Tr. Vol. II pp. 52–53.

Once the three had moved in together, Knox started tracking shared expenses in an Excel spreadsheet. App. at 216; Tr. Vol. II pp. 152–54. On the spreadsheets, Knox gave herself equity in the home in exchange for purchasing groceries. App. at 217; Tr. Vol. II pp. 153, 155. There was no written agreement memorializing this arrangement. App. at 217; Tr. Vol. II p. 156.

In January 2019, Knox prepared, and Walker signed, a "note of ownership" assigning Knox an 8.15% interest in the house. App. at 217. Walker testified she signed it at Knox's instruction because she trusted her daughter. App. at 217; Tr. Vol. II p. 165. On August 29, 2019, Walker, with Knox's help, executed a restated trust whose Section 8.2 acknowledged the note of ownership and directed the trustee to honor its terms. App. at 217–18; Tr. Vol. II pp. 171–73. That same day, Walker executed a power of attorney designating Knox as her attorney-in-fact. App. at 218. The trial court found Knox's testimony that she was unaware of this appointment not credible. App. at 223. In July 2020, Knox prepared a second note of ownership increasing her interest to 13.22%. Walker signed it, but Petroni did not. App. at 219; Tr. Vol. II pp. 62, 168–70.

On February 1, 2022, Walker sold the Oregon home for $625,000. App. at 221; Tr. Vol. II p. 73. Walker wrote Knox a check for $71,112.50, which Walker testified Knox instructed her to write. App. at 221; Tr. Vol. II pp. 74, 200. Days later, Knox paid Petroni $28,409, which Knox testified was the final payment to buy out Petroni's share of the property. Tr. Vol. IV pp. 49–50, 81; App. at 224.

On February 7, 2022, Knox attended a closing for a Greencastle, Indiana property, which purchase was funded primarily by proceeds from the sale of the Oregon property. Tr. Vol. II pp. 207–08; Tr. Vol. III pp. 216–19. She attended without Walker present and executed documents listing herself and the trust as tenants in common. App. at 221; Tr. Vol. III pp. 218–19. Walker testified she did not understand this meant Knox had taken an ownership interest. Tr. Vol. II p. 237.

Walker sued Knox. App. at 13, 33; Tr. Vol. II p. 45, 232. Following a three-day bench trial, the trial court found in Walker's favor on fraud, undue influence, and slander of title, and entered a $71,112.50 money judgment against Knox. App. at 225–32. The Court of Appeals affirmed in a memorandum decision.[1] Knox Decision at 1. The court generally concluded that Knox's arguments were only invitations to reweigh the evidence. *Id.* at 11. On undue influence, the court did not address whether evidence of diminished cognitive capacity is necessary at the rebuttal stage, holding only that the transactions were "not fair or well understood." *Id.* at 15. On fraud, the court affirmed without addressing the distinction between actual and constructive fraud or identifying which evidence in the record satisfied the scienter element. *Id.* at 16–18. Neither the trial court nor the Court of Appeals addressed the restated trust's incorporation of the notes of ownership within the rebuttal framework for either claim. *Id.* at 14–18. Knox now *see*ks transfer.

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[1] The Court of Appeals denied Knox's motion to publish its memorandum decision.

IV. <u>ARGUMENT</u>

A. The Decision presents an undecided question of state law: whether a trial court may sustain undue influence liability at the rebuttal stage based solely on a dominant party's control over family finances the subordinate party did not fully understand, without evidence of the subordinate party's diminished capacity for independent judgment.

This Court reviews findings and conclusions following a bench trial for clear error. *Town of Linden v. Birge*, 204 N. E. 3d 229, 233 (Ind. 2023); Ind. Trial Rule 52(A). The Court does not reweigh evidence or reassess credibility. *Id.* at 234. Legal conclusions are reviewed *de novo*. *Nardi v. King*, 253 N. E. 3d 1098, 1103 (Ind. 2025). In this case, transfer is appropriate because the Decision conflicts with our existing framework for undue influence claims and presents an undecided question of state law. Ind. Appellate Rule 57(H)(2), (4), (6).

It is well settled in Indiana that a finding of undue influence requires a finding of the destruction of the subordinate party's free will. *See Moriarty v. Moriarty*, 150 N. E. 3d 616, 629 (Ind. Ct. App. 2020), *trans. denied*; *In re Est. of Compton*, 919 N. E. 2d 1181, 1185-86 (Ind. Ct. App. 2010), *trans. denied*; *Crider v. Crider*, 635 N. E. 2d 204, 210 (Ind. Ct. App. 1994). Once a confidential relationship and beneficial transaction are established, the burden shifts to the dominant party to prove by clear and convincing evidence that she acted in good faith, did not exploit the position of trust, and that the transaction was fair and equitable.

Scribner v. Gibbs, 953 N. E. 2d 475, 484 (Ind. Ct. App. 2011).

Knox does not challenge the confidential relationship finding; the facts there are hard to dispute on this record. The question arises at the rebuttal stage: whether a trial court may conclude the presumption was not rebutted based only or primarily on evidence that the dominant party controlled complex household finances the subordinate party did not fully understand, without any finding of impaired cognitive function, isolation, or diminished capacity for independent judgment. That is a question of law the Court of Appeals did not reach. Knox Decision at 14–15. Whether particular categories of evidence are sufficient to support a judgment is a question of law. A judgment is clearly erroneous when it relies on the wrong standard. *Menard, Inc. v. Dage-MTI, Inc.*, 726 N. E. 2d 1206, 1210 (Ind. 2000). The question Knox presents is not whether the trial court's factual findings are supported by the record, but whether those findings, accepted as true, prove that Walker's free will was overcome.

Other Indiana cases sustaining undue influence against a family caretaker have involved significant evidence that the subordinate party's capacity for independent judgment was compromised in some way. For example, in *Matter of Est. of Blair*, 177 N. E. 3d 84, 95–97 (Ind. Ct. App. 2021), the grandfather had had brain tumor surgery, understood conversations only part of the time, and had hallucinations. In *Nichols v. Est. of Tyler*, 910 N. E. 2d 221, 226–28 (Ind. Ct. App. 2009), the subordinate party had an extensive history of mental illness, including schizophrenia and bipolar disorder, and was diagnosed with

Alzheimer's disease at the time of the contested transaction. In *Moriarty*, 150 N. E. 3d at 626–29, an expert geriatrician testified to impaired ability to evaluate third parties, psychological vulnerability, and untreated anxiety and depression. In *Supervised Est. of Allender v. Allender*, 833 N. E. 2d 529, 533–34 (Ind. Ct. App. 2005), *reh'g denied*, *trans. denied*, the son held a power of attorney and served as the caretaker for his parents while obtaining deeds to their real estate. And in *Woodson v. Randall*, No. 25A-PL-779, 2026 WL 201925, at *5–6 (Ind. Ct. App. Jan. 27, 2026), the subordinate party suffered advanced dementia and could not make decisions for himself. No Indiana court has expressly held that evidence of diminished cognitive capacity is a prerequisite to sustaining undue influence at the rebuttal stage, but the pattern across four decades of case law reflects a principle this Court should make clear: the doctrine protects against the overcoming of free will, rather than against imbalanced access to information in family relationships. *See also Woodson*, 2026 WL 201925, at *5–6 (affirming finding of undue influence where stepchild had complete control over finances of elderly stepfather diagnosed with dementia who had suffered two strokes and was unable to make decisions for himself).

On the other hand, where the parent retained the capacity for independent judgment, the courts are more likely to reject claims of undue influence. In *Scribner*, 953 N. E. 2d at 484–85, the court found no caretaker relationship and no evidence of dementia or mental infirmity. In *In re Est. of Compton*, 919 N. E. 2d at 1187–88, the court declined to apply the presumption where the principal clearly acted independently and was described as strong-willed and held that both the statutory framework and the evidence of independent action precluded the presumption.

In this case, no expert testified about Walker's mental capacity. App. at 213–232. No medical records suggested cognitive impairment. The findings reference no diagnosis, no medical assessment, no cognitive evaluation. Instead, the trial court rested its conclusion on the fact that Knox controlled household finances through spreadsheets Walker did not fully understand, and that Walker signed documents at Knox's direction. *Id.* at 223–229. The Court of Appeals affirmed on the ground that the transactions were "not fair or well understood." Knox Decision at 15.

None of this is to say the trial court's findings are trivial. Knox's spreadsheets undisputedly contained errors, and the trial court was entitled to view those errors with skepticism. But a dominant party's control over household finances that the subordinate party did not independently verify is not the same thing as the destruction of that person's free will. The undue influence doctrine requires the latter.

The record also contains evidence bearing on good faith and voluntariness that neither court below addressed within the rebuttal framework. On August 29, 2019, Walker executed a Restated Trust with an Oregon attorney. Section 8.2 expressly acknowledged the Notes of Ownership and directed the Trustee to honor them. App. at 217–218. It is true that Walker testified she did not recall Section 8.2, and the Oregon attorney did not testify. Tr. Vol. II pp. 176–177; App. at 218. But the rebuttal inquiry requires the trial court to evaluate the totality of circumstances bearing on good faith and fairness, including independent counsel. *See Meyer v. Wright*, 854 N. E. 2d 57, 61–64 (Ind. Ct. App. 2006), *trans. denied* (considering involvement of independent counsel in evaluating whether dominant party rebutted the presumption). The trial court's failure to address this evidence within the rebuttal framework shows how the courts below treated the rebuttal inquiry as a narrow question of whether Knox's spreadsheets were fair and understood, rather than as the full evaluation of good faith, exploitation, and fairness that *Scribner* requires.

This question has statewide significance. Adult children who live with and care for aging parents are often called on to manage the parents' finances. Under the Decision, any such arrangement in which the parent does not independently verify the child's accounting may give rise to undue influence liability, regardless of whether the parent had the capacity for independent judgment. The trust and estate planning bar lacks guidance on what evidence is sufficient to sustain a finding of undue influence at the rebuttal stage when there is no cognitive impairment. At the same time, the existing framework already protects vulnerable adults through the burden-shifting presumption and the clear and convincing evidence standard. The Decision is silent as to a framework for future cases, and this Court should grant transfer to provide one.

B. The Decision permits actual fraud liability based on evidence that establishes, at most, constructive fraud, and this Court should clarify the boundary.

Whether a given set of undisputed facts satisfies the elements for a particular claim is a question of law, not a question of evidentiary weight. This Court reviews such legal conclusions *de novo*. *Nardi*, 253 N. E. 3d at 1103.

No Indiana case has directly addressed what quantum of evidence satisfies the scienter element of actual fraud where the alleged misrepresentation relates to a dispute over property ownership interests. Transfer is appropriate under Indiana Appellate Rule 57(H)(1) because the Decision conflicts with *Spainhower v. Smart & Kessler, LLC*, 176 N. E. 3d 258 (Ind. Ct. App. 2021), which drew a line between the two fraud doctrines and held that the evidence in that case could not cross it, and under Rule 57(H)(4).

It is well settled in Indiana that actual fraud requires "(1) a material misrepresentation of past or existing facts; (2) made with knowledge or reckless ignorance of falsity; (3) causing the claimant to rely upon the misrepresentation to the claimant's detriment." *Spainhower*, 176 N. E. 3d at 265. Importantly, if there is no intent to deceive, there is no actual fraud. *Kapoor v. Dybwad*, 49 N. E. 3d 108, 124 (Ind. Ct. App. 2015). The reckless-disregard alternative "requires more than mere carelessness, negligence, or a mistake of fact." *Spainhower*, 176 N. E. 3d at 266. The defendant must have had a "high degree of awareness" that the statement was false and willfully declined to investigate. *Id.*

Constructive fraud does not require intent to deceive. It is a breach of legal or equitable duty that the law declares fraudulent because of its tendency to deceive others. *Id.* at 265. Indeed, "it is the 'presence or absence of such an intent' that 'distinguishes actual fraud from constructive fraud.'" *Id.* (quoting *Kapoor*, 49 N. E. 3d at 124). After holding that the plaintiff could not satisfy the scienter element for actual fraud, the *Spainhower* court observed that she "may well have prevailed" on a constructive fraud theory. *Id.* at 265–66.

The trial court's conclusions of law set out the elements of actual fraud, then immediately discussed the constructive fraud standard in the same section, quoting *Spainhower* for the proposition that constructive fraud is a breach of duty the law declares fraudulent "irrespective of the moral guilt of the fraud feasor." App. at 224–25. The order acknowledged that "it is the presence or absence of such an intent that distinguishes actual fraud from constructive fraud." *Id.* at 225. But the order never specifically explained which doctrine its findings actually satisfied, or why the evidence crossed the higher threshold. It simply concluded that Knox "fraudulently misrepresented her ownership interest" and entered judgment.[2] *Id.*

[2] The same misapplication of the intent standard infects the slander of title judgment, where the courts equated Knox's unreliable internal bookkeeping with the malice required to disparage title, despite her being a record titleholder at the time. *See Davis v. Sponhauer*, 574 N. E. 2d 292, 300 (Ind. Ct. App. 1991) (holding that record owner did not maliciously assert ownership interest in disputed property which was acquired by adverse possession, even though disputed property had been adversely occupied for more than ten years, where record owner had two

The Decision affirmed without addressing this gap. Knox Decision at 16–18.

The trial court found that when Knox attempted to recalculate her ownership at trial, her figures did not match the percentages listed on either note of ownership. App. at 217–19. Knox does not dispute these discrepancies, but points out they are errors of a few percentage points in a household spreadsheet, not outright fabrications. It is also worth noting that Knox reviewed the spreadsheet every month with Walker and Petroni. Tr. Vol. III pp. 72–74; Tr. Vol. II p. 239. Walker and Petroni signed the First Note of Ownership. App. at 217. Walker signed the Second Note. *Id.* at 219. Walker's own Restated Trust incorporated the Notes and directed compliance with them. *Id.* at 217–18. Even if Knox's conduct amounts to a breach of duty in a confidential relationship, *Spainhower* holds that carelessness, negligence, and mistake are not enough for actual fraud. 176 N. E. 3d at 266.

The Decision's reasoning rests on three points, none of which prove the level of scienter required for actual fraud. First, it relies on the spreadsheet errors and Knox's inability to explain her calculations. Knox Decision at 17. But while an inability to explain a formula at trial may be evidence of poor recordkeeping, it does not prove a "high degree of awareness" that the formula was wrong when used. Second, the trial court inferred scienter from Knox's accounting

surveys conducted of property which did not reveal location of previously agreed upon boundary line; record owner's reliance on valid land survey to dispute adverse possession claim was not unreasonable).

degree. *Id.* at 8. The implied logic is that Knox has an accounting degree and so she should have known her calculations were wrong; therefore she must have known her representations were false. But this syllogism supplies scienter by inference from professional background rather than from evidence of actual awareness of a specific falsity. An accounting degree does not establish that Knox had a "high degree of awareness" that a particular formula in a particular spreadsheet produced an incorrect result at a particular point in time. *Spainhower*, 176 N. E. 3d at 266. If professional credentials alone could satisfy the scienter element, then every accountant who makes a computational error, every engineer who miscalculates a load, and every lawyer who misstates a position would face potential fraud liability. That is fortunately not the law. The scienter standard requires evidence that the defendant actually knew or deliberately avoided learning that a specific representation was false, not that she should have known because of her professional background. *Id.* The Decision points to no such evidence.

Third, the Decision relies on Knox's omission of any ownership interest from her 2020 divorce filings. Knox Decision at 17. Even assuming this omission was intentional, it occurred in a separate proceeding against a different party (Knox's ex-husband). Knox explained that the filing listed only contested assets and that the parties reached a mediated settlement days later. App. at 64. The trial court was entitled to view the omission skeptically, and Knox does not ask this Court to reweigh that credibility determination. But the question remains: even accepting the trial court's adverse inference, does the omission of an approximately $30,000 interest from a divorce inventory prove that Knox had a "high degree of awareness" that her specific ownership percentages on the notes of ownership were false? The omission does not supply the particularized knowledge of falsity that *Spainhower* requires. 176 N. E. 3d at 266.

Knox's undisputed conduct after receiving the $71,112.50 is also in tension with the scienter that actual fraud requires. She paid $28,409 to Petroni to buy out what she believed was Petroni's remaining ownership interest. Tr. Vol. IV p. 49. The trial court found that this payment suggested Knox knew she did not have a half-interest. App. at 223–24. Knox does not ask this Court to reweigh the trial court's assessment of this evidence. But the payment is relevant to the scienter analysis because a person who knows her ownership claim is fabricated would presumably not be eager to voluntarily reduce her proceeds by paying a third party under the very arrangement she is supposedly inventing. Even accepting every adverse finding the trial court made, this conduct must be weighed against the scienter standard, and the Decision does not explain how it fits within the framework of a "high degree of awareness" of falsity.

To be clear, Knox does not ask this Court to accept her testimony over Walker's, to reassess the trial court's view of the spreadsheet, or to find that her calculations were accurate. Even accepting as true every factual finding and every adverse inference the trial court drew, the evidence does not prove the "high degree of awareness" that separates actual fraud from constructive fraud. *Spainhower*, 176 N. E. 3d at 265–66.

Parents and adult children sometimes share households, split expenses, and disagree about who contributed what. If actual fraud can be established from inflated self-calculations in a shared household ledger, periodically disclosed to the other party and memorialized in documents that party signed, then the line between a real family disagreement and a fraud judgment becomes blurry. This Court should grant transfer.

V. CONCLUSION

WHEREFORE, Appellant Jeri Knox respectfully requests that this Court grant her Petition to Transfer.

Respectfully submitted,

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VI. WORD COUNT CERTIFICATE

I verify that this brief contains no more than 4,200 words.

/s/ Bryan L. Ciyou
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CERTIFICATE OF FILING AND SERVICE

I certify that on March 11, 2026, I electronically filed this document using the Indiana E-Filing System. IEFS. I also certify that on March 11, 2026, this document was served on these persons via IEFS:

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/s/ Bryan L. Ciyou
Bryan L. Ciyou