Filing # 98649959 E-Filed 11/08/2019 10:56:47 PM

IN THE DISTRICT COURT OF APPEAL OF FLORIDA
SECOND DISTRICT

CASE NO: 2D 19-1949
LT No.: 17-CA-2092-CI

T. Nichole Drapp and Michael R. Streiff,
Appellants,

v.
Edward Reid McDaniel,
Appellee.

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On Appeal from the Circuit Court Sixth Judicial Circuit
Pinellas County, Florida

INITIAL BRIEF

Appellant's Initial Brief Filed by

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Introduction[1]

Appellants are Pharmacist T. Nichole Drapp ("Appellant Drapp or Dr. Drapp") and Michael Streiff USMC retired ("Appellant Streiff") ("Appellants"). This appeal originates from Dr. Drapp's efforts to help her father, Appellee Reid McDaniel("Appellee") save his real property (the "Property") in St. Petersburg, FL from a pending tax deed auction after he failed to pay three years of taxes (2013, 2014, 2015). The three years of tax certificates had to be paid by May 6, 2016 to ensure the Property would not be sold at auction, but nobody had the money.

Appellant Streiff is a totally disabled Marine Corps veteran who suffered a debilitating injury that "destroyed [his] spine and legs" and he "wasn't supposed to walk again" but, after many years of aquatic therapy with his therapist mother, he eventually became mobile (R 1057:3-12). On May 6, 2016, Dr. Drapp contacted him and he agreed to provide her $12,000 for Appellee's Property taxes that same day, which was the last day they could pay and save the Property from the tax deed auction. (R 713:15-25). Streiff could not afford to risk losing $12,000 and wanted a guarantee he would get all his money back within six months with *no interest* (R

[1] The Record for this Appeal consists of one volume. This Initial Brief cites the Record using "R" followed by the page number(s) and the symbol ¶ followed by the paragraph number(s) if applicable. The Trial Transcript, which was supplemented to the original Record, is cited using a "T" followed by the referenced page number(s) and line numbers.

1083:8-9), so he could resume repairs on his house in Illinois and sell it. Appellee agreed to Deed the Property to Dr. Drapp to ensure Streiff got repaid if Appellee reneged on repaying the $12,000.

Six months later in November 2016, Appellee had not repaid any of Streiff's money and, by December 2016, Appellants discovered Appellee secretly contracted with a neighbor to sell the Property combined with the neighbor's parcel --even though he already Deeded the Property to Dr. Drapp and did not repay Streiff as promised. Appellants had to record the Deed in the official records to protect it but the clerk told them Appellee signed on the wrong line. Ultimately, the Notary on the Deed executed an Affidavit explaining the location of Appellee's signature and, with that, the clerk recorded the Deed.

Meanwhile, Appellee was trying to sell the same Property and denied the Deed existed; denied signing the Deed; acted like he did not remember it; called Appellants liars and thieves, reported them to DCF and St. Petersburg Police (SPPD) for investigations of elderly abuse and criminal theft of the Property with Appellee claiming he was a "vulnerable adult." When that failed and DCF concluded he was not a "vulnerable adult" and SPPD concluded Appellants did nothing wrong, Appellee filed this case against Appellants --the very people who bailed him out when no one else would, paid his delinquent Property taxes on the very last date to save the Property from a tax deed auction. In return, Appellee never repaid Streiff.

As we demonstrate in this Brief: ***No good deed goes unpunished.***

We appeal the trial court's determination that it could void the Deed by determining Appellee was a "vulnerable adult" rather than the correct stricter "mentally incompetent" standard for voiding a Deed requiring Appellee to prove he was unable to grasp the nature or effect of the Deed when he executed it August 4, 2016; and that Appellee did not realize what he was doing when he persuaded Appellants to pay three years ($12,000) of his delinquent taxes on his Property, which satisfied the debt and canceled the Property auction (R. 119; 577)[2] and then refused to repay the $12,000.

After a bench trial, Judge Linda Allen wrote a Final Judgment harshly depicting Appellants as liars, thieves, scoundrels, and frauds, but never mentioned they paid Appellee's delinquent taxes and saved the Property from the auction block, or that Appellee failed to repay Streiff's $12,000 at zero interest as agreed, which triggered this lawsuit. But the trial court unfairly bad mouthed Appellants to the extreme, voided a valid Deed Appellee executed and delivered to Dr. Drapp, which also voided the parties' underlying agreement *after* Appellants fully performed their obligation to pay $12,000 taxes and give Appellee six months to repay Streiff, meanwhile, Appellee refused to repay the $12,000 but received all its benefits.

[2] R 119 and R 577 contain copies of the same document, but the version at R 119 is much clearer than the trial exhibit at R 577.

Most importantly, the trial court ruled Appellee was mentally incompetent to know what he did August 4, 2016 when he executed the Deed to Dr. Drapp – yet the record contains no medical evidence whatsoever as to Appellee's condition in general or his condition specifically on August 4, 2016. And, other than Appellee's own testimony, the record contains no evidence of corroboration from anyone present when Appellee executed the Deed August 4, 2016; or suggesting Appellee is a "vulnerable adult" under Fla. Stat 415, which contradicts DCF's opposite conclusions after a full investigation a month before Appellee filed this lawsuit.

In this appeal, Appellants will show this Court must reverse the trial court's fatally defective Final Judgment because it gets the material facts wrong and the record contains no competent evidence to support any of its multiple erroneous conclusions – particularly its conclusion that Appellee met the burden to prove he was not competent August 4, 2016 when he executed and delivered the Deed to Dr. Drapp. This Court should reverse, remand, and direct the trial court to enter an involuntary dismissal for insufficiency of evidence.

STATEMENT OF THE CASE AND FACTS

In late April 2016, the Pinellas County Tax Collector sent Appellee Notice of tax certificates issued for 2013, 2014, and 2015 on his Property and noting the 2014 certificate holder cashed in its certificate, which required Appellee to pay all three unpaid tax certificates, or $11,665.78, by May 6, 2016, or else the Tax Collector would auction the Property. (R 119).

Appellee knew three years of accumulated taxes were due on his Property because he had not paid them since 2012 (T 209:12-15; T 222:12-22) and he did not have $12,000 to pay the three years of tax certificates by May 6, 2016 to stop the auction. Curtis Drapp, Appellant Drapp's now ex-husband, collected the rents for Appellee but could not pay the taxes (T 183:6-8); Dr. Drapp was living paycheck to paycheck and did not have the cash or credit to pay the taxes (T 128:24-25; 129:1-2), plus Appellee already owed her $4,000 for paying fines, fees, etc. to reinstate his driver license and car insurance, and his delinquent balances, fines, fees, deposits to reconnect his disconnected water, sewer, electric, and phone services. (R 623-624).

On May 6, 2016 – the last day to pay the taxes to stop the auction, Appellee asked Dr. Drapp if she could pay his property taxes and she told him she had no money, so he asked her to do whatever she could to get the money or he would lose the Property (R 617:14-16; R 663:14-25), so she said "let me see what I can do." (R 713:15-25; R 663:14-25). But the taxes were due that same day and she knew only

one person who might have that much money *and* would loan it to her: Streiff, "a hundred percent VA disabled" Marine Corps veteran (R 1057:3-4) with the good habit of saving and investing his money (R 1057:17-18); she met him two summers prior through a mutual friend (R 1052:22-25); she took care of his cat for a month while he was out of town (R 1054:9-20) and he taught her four young kids to swim and helped supervise them when they used the pool where he lived (R 619:17-25, 620:1-5; 1056:14-25); they were close but had not spoken recently. (R 618:18-21).

Luckily, Streiff had been saving to fix up and sell his house in Illinois and had about $16,000 saved to finance that work. (R 1060:6-25; 618:1-4). Streiff told Dr. Drapp he could loan her the money but had to get repaid within six months so as not to jeopardize selling his house. (R 1054:20-25, 1055:1-5; 621:3-4). Streiff trusted Dr. Drapp – "she's a doctor" and always was "good and giving towards me," but the money "wasn't for her" and he did not know Appellee at this time. (R 1061:3-11).

Dr. Drapp knew she could not afford to repay Streiff if Appellee failed to repay him and had serious concerns over Appellee's rich history of unpaid debts over the past 30 years including these taxes, "four foreclosures that I know of," plus all the money Appellee still owed her, at least $4,000, for paying his car insurance, his driver license, and all delinquent balances, fines, fees, deposits, to restore his utilities and activate his water, sewer, electricity, and phone services.(R 643:10-11).

After talking to Streiff, Dr. Drapp told Appellee she was not sure she wanted to borrow the money from Streiff but Appellee implored her "to do anything we can to make this happen" (T 129:13); "whatever it takes to save the properties" (R 619:8-10); that he would repay the $12,000 within two months (R 646:1-3); Dr. Drapp said "Yeah, but Dad, I need some security with this. I need to know it's going to get repaid" (T 129:14-16) because "I am not going to put a veteran who is 100 percent disabled, that I trust … who has taught my children how to swim, in jeopardy of losing money without having anything to be able to give to him." (R 646:14-25).

The Agreement on May 6, 2016. Dr. Drapp and Appellee discussed the Streiff option and Appellee had to pay the taxes that afternoon by closing time to stop the auction; given Appellee's poor credit history including his very failure to pay the delinquent taxes at issue, Dr. Drapp told Appellee "if you want me to borrow this money and give it to you to pay your taxes, these are the terms" (R 716:16-25): Time is of the essence, Appellee had six months to repay Streiff the full $12,000 at $2,000 per month with no interest (R 1062:7) starting June 1, 2016 (R 1067:19-20), and Appellee must deed the Property to Dr. Drapp. If Appellee fails to repay the money as promised by November 6, 2016, Dr. Drapp will execute a Deed to Streiff, or sell the Property to repay Streiff, or otherwise use or dispose the Property as best she can to repay Streiff to cure Appellee's breach. Appellee agreed to repay $12,000

in six months (R 717:1-2) and execute the Deed to Dr. Drapp as "he was going to give them to me anyway so it wasn't that big of a deal." (T 61:1-5; 129:17-19).

After Appellee and Appellant Drapp agreed to the terms and conditions for using Streiff's money (T 63:24-25; 64:1-4; 77:7-8), Appellant Drapp next called Streiff again to tell him the conditions (R 1054:24-25) and he agreed to them too such that all Parties agreed to these conditions *before* Dr. Drapp obtained $12,000 from Streiff to pay Appellee's Property taxes. (T 59:14-20; 60:23-25; 61:1-5). "That's how I [Appellant Drapp] was able to get the money from Mike [Streiff] to loan to my father [Appellee]." (T 62: 12-17). The Parties agreed Appellee would start paying Appellant Streiff $2,000 per month for six months beginning June 1, 2016, and that Appellee would execute the Deed to Drapp as soon as someone had time to obtain a deed form (R 1064:8-13) but, for now, the immediate emergency was to pay the taxes before the tax collector closed that day, and Dr. Drapp still had to drive over to the beach and get the money from Streiff and get back to the tax collector before it closed; (R 1069:10-17). Appellant Streiff was "not worried about getting repaid because I thought he [Appellee] was just like her, same type of person, professional, [and] would take care of things." (R 1064:17-19); he expected to get repaid in six months because "I knew if she had it [the Deed] she would either give me the money or just hand [the Deed] to me and say, Here. I had no doubt at all. She's an honest, trustworthy person." (R 1083:17-29).

Appellants Pay Appellee's Taxes May 6, 2016. *After* all three Parties made the agreement and after Appellee agreed to Deed the property to Dr. Drapp to secure Streiff's $12,000 (R 1064:11-12)and, on the last day to pay the bill and stop the auction, Dr. Drapp picked up $12,000 (R 1061:18-25) from Streiff, who kept it in a safe in his closet (R 1063:6-12), drove directly to the Pinellas County Tax Collector, and used Streiff's cash to pay off the three certificates for the delinquent taxes for 2013, 2014, and 2015,. (R 577). The tax collector's receipt corroborates Appellant Drapp's testimony on the May 6, 2016 payment: It identifies Dr. Drapp as the payor, showing she tendered $11,680.76 in cash and received $15 in change. (R. 1439).

Curtis Drapp Drafted the Deed June 23, 2016. Over a month later, Curtis Drapp drafted the Deed for Appellee to convey the Property to Dr. Drapp as Appellee and Dr. Drapp agreed May 6, 2016 *before* she paid the Property taxes that same day. (T 77:7-8; R 646:23-25; 647:1-3). This Deed was the *sine qua non* of the agreement to pay Appellee's Property taxes because Streiff refused to loan the money without a guarantee of repayment and Dr. Drapp refused to borrow the money unless Appellee *first* agreed to execute the Deed to her so she had a way to repay Streiff if Appellee reneged. (R 648:1-11; T 178:3-10).

Curtis Drapp drafted the Deed with Appellee as the Grantor and Appellant Drapp as the Grantee (T 176:3-10), but he left blank lines fort the tax folio number, legal description, and witness names because he was not sure "what to put in there"

and told Appellant Drapp "figure it out" (T 83:1-2) and "handwrite it in." (T 82:10-11). He gave the Deed to Appellant Drapp June 23. 2016 and she "tried to figure out what was supposed to go in there" and eventually wrote the information on the empty lines in the Deed before August 4, 2016 when Appellee executed the Deed and delivered it to her. (T 82: 1-25). As it turned out, Curtis Drapp also omitted the line for Appellee/Grantor's signature but no one noticed it missing until the Notary discovered it August 4, 2016, and directed Appellee where to sign. (R 599 ¶ 5).

Curtis Drapp knew about this Deed --also referenced at trial as Exhibit E (R 597-599) because he drafted it June 23, 2016 (T 176:3-10) yet at trial, he testified he was not "aware of the Deed" until "long after the litigation started" April 4, 2017 (T 172:20-25; 173:1), which was about a year after he drafted the Deed. Appellee also knew about the Deed and knew Curtis Drapp drafted it: Q. Did you know Curtis "drafted this deed?" A. I think -- I think at one point in time he said to get her off his back that he -- he ran some -- a copy or something or got some forms or something. And I do remember him saying that, you know, your dad has to okay this and sign this and so forth and so on." (T 221: 4-17). Notwithstanding their knowledge at least by June 23, 2016, both Curtis Drapp and Appellee testified they knew nothing about this Deed and never saw it until late in 2017.

Appellee Executes the Deed August 4, 2016 -Trial Exhibit E (R 597-599). Appellee went alone to Dr. Drapp's house August 4, 2016 to execute the Deed to

Appellant Drapp (R 1096:1-25); three other people were present: Dr. Drapp, Streiff and the Notary: Streiff corroborated "it was me and Nichole, and a notary and Reid [Appellee]." (R 1084:25, 1085:1), and the Notary likewise confirmed these were the same three people present and that Appellee, as Grantor, signed the Deed "in my presence as a witness and notary" and in the presence of Appellant Streiff "as a witness" and in the presence of Appellant Drapp, Grantee. (R 599 ¶ 3). Appellee executed the Deed and delivered it to Dr. Drapp and she kept it "right there in my dresser drawer for a matter of time" and, on June 6, 2016 – two months after Appellee filed the lawsuit below, Dr. Drapp brought the original Deed and some copies to her first deposition – the original was a one page two-sided document while the copies were two pages single sided; Appellee's attorney was able to freely handle and examine the Deed: "All right. I'm holding in my hand both the original and a copy. I will note initially that the copy …has an attachment it to, a schedule, two legal descriptions … the original I'm holding onto, the front appears to be the same as the copy which is marked as an exhibit, and the back contains the legal description. (R 616:11-22).

The Notary Public was Jesse R. Otazo ("the Notary") who witnessed Appellee execute the Deed to Dr. Drapp on August 4, 2016. The Notary also executed an Affidavit of Notary Public for State of Florida to clarify the Deed and explain the location of Appellee's signature. (R 599). The Deed and the Affidavit of Notary were

recorded September 25, 2017 at Book 19781/ Pages 1802-1804 of the Pinellas County Official Records. (R. 597-599). The Notary's Affidavit confirms he noticed the Deed had "no signature line…for the Grantor to sign" thus he specifically "instructed [Appellee] to sign his name in the acknowledgment section of the Quit Claim Deed" where Appellee's signature now is located (R 599 ¶ 5). The Notary also reconfirmed he knew Appellee personally, that Appellee executed and signed the Deed "in my presence" and that Appellee "did not appear to be impaired in any form" when he executed the Deed in front of the Notary. (R 599 ¶ ¶ 3, 4, 5, 6). The Notary knew both Appellee and Dr. Drapp for many years because the Notary's wife was the family's hair dresser (R 752:1-17) since Appellant Drapp was a young child. The Notary and the trial judge even knew each other from an exercise boot camp they both attended "for many, many years." (T 191:12-25).

Appellant Streiff testified Dr. Drapp's handwritten information to identify the Property "was already there when I signed it… I even asked what is it and I was told those are tax folio numbers" (R 1086:20-15); that he (Streiff) was outside when Appellee arrived and he saw Appellee "Hopped right up the step outside the house. Not a problem. Got in the door. No problem" (R 1096:4-8, 1097:3-7); and that he watched Appellee sign and execute the Deed and observed nothing was wrong with Appellee's physical or mental condition. (R 1097:11-12). Dr. Drapp also testified Appellee was sitting up when he executed and signed the Deed (T. 87:5-6) and that

he was not "laying down in bed" (sic). (T 86:25, 87:1). Similarly, the Notary testified Appellee "did not appear to be impaired in any form" when he executed the Deed in front of the Notary. (R 599 ¶ ¶ 3, 4, 5, 6). The Notary confirmed the one-page two-sided Deed was the only document he notarized for the parties that day and that he did not see Appellants with any other documents, and did not see the parties sign any other documents. (T 201:11-16). Streiff also testified the Deed was the only document they signed that day (R 1085:18-25).

Appellee testified "I been around property and I know what a warranty deed and a deed is and this and that" and "I remember her coming in with some paperwork …I probably didn't read it very well" (T 220:11-20) but "had a vague recollection" about signing the deed, and "maybe I disengaged my brain for a period of time." (T 229:25, 230:8-9, 13-24)

The Notary's Trial Testimony. At trial, the Notary testified that he -- not Dr. Drapp, reviewed the Deed and noticed it did not have a signature line for the Grantor's (Appellee) signature so he examined the Deed and determined the blank line in the notary jurat was only one other alternate location for Appellee's signature and explained this to Appellee; and that he – not Dr. Drapp, explicitly directed Appellee's attention to the blank line in the notary block toward the bottom of the page and instructed him to sign his name there; and, that the one-paged Deed was

the only document the Notary saw on the table that day when he notarized the Deed -- there was no pile of documents for Appellee to sign when he executed the Deed.

The Notary corroborated the facts in his Affidavit regarding how he noticed the Deed did not have a signature line for the Grantor so he instructed Appellee to sign on a line in the acknowledgement section, noting he has been a Florida notary for over 20 years it is not as uncommon as people might think; "I've run into this before -there are many documents that aren't prepared to have a notary sign or execute – so sometimes you write something in .." and in "this particular case there was nothing or space so… I thought this [line] was the only place the signature could go under the circumstances" because the document otherwise "did not have a place" for Plaintiff to sign (T 198:2-8). The Notary testified he only notarizes documents "for friends, acquaintances, people that I would know" (T 192:18, 23-24) and he already knew Appellee and Dr. Drapp well because "I know them all through my wife's shop" and met them "years back" when his wife introduced them to him, and "did not notice anything that was out of the ordinary." (T 195:7-8).

Appellee's attorney asked the Notary about conversations with his wife: "You recently said to your wife that you feel tricked or somehow misled about this" (T 198:24-25); and again: "But back to what you communicated to your wife recently, you feel that you were tricked or kind of misled is what you communicated to your wife, correct?" with the Notary promptly responding firmly "No, that's not accurate."

Appellee's counsel continued badgering the Notary as he did with every other witness: "Okay. What did you say to your wife about this?" and the Notary said he "hated being in the middle of something like this" because "this is a family matter and unfortunately there seems to be … a major issue regarding property that Mr. McDaniel signed over to his daughter. And I hate the fact that that occurred, but … I'm not privy to what's happened beyond that, okay." (T 199:11-25). Finally, Appellee's counsel effectively called the Notary a liar when he asks: "The truth of the matter is that you did not at that point in time know [Appellee], right?" and the Notary swiftly answered "That's incorrect." (T 200:15-17).

Time Expires for Appellee to Repay Appellant. On November 6, 2016, the six months expired for Appellee to repay Appellants $12,000 under the agreement, but Appellee had not repaid any of the money as he promised and he began avoiding Appellants a couple weeks later around Thanksgiving. (R 706: 10-14). Appellants asked Appellee several times over the six months to repay the $12,000, but he just gave them excuses and did not attempt to repay the debt. Finally, Appellants had "a serious discussion" with him because "the six months is up" and he needed to pay back the $12,000. (R 700:10-15, 21-25). Dr. Drapp told Appellee he "needs to pay this money back" because Streiff has to fix his house to sell it and "is putting pressure on me to pay him back" (T 88:15-25) because "the $12,000 was the only money he had." (T 89:1-2). Dr. Drapp called Appellee Thanksgiving night and Appellee said

he was coming over for breakfast the next day but "he never showed," they never spoke after that, and Appellee never repaid any of the $12,000. (R 701: 1-7).

In the end of December 2016 or the beginning of January 2017, a friend of Appellee told Dr. Drapp Appellee was planning to sell the Property and Appellants took the Deed to the Pinellas Clerk to record it in the official records (R 755:4-13).

Appellee Files Elder Abuse Complaint but Conceals He Executed and Delivered the Deed to Dr. Drapp. On February 27, 2017, Appellee reported Appellants to DCF for elderly abuse under Fla. Stat. § 415.1111; he alleged he was a "vulnerable adult" and Dr. Drapp was his caretaker –which was false because they were not even speaking to each other at the time, and he claimed Appellants stole the Property from him but withheld the fact that he Deeded the Property to Dr. Drapp August 4, 2016. (R 1426-1429). Appellee's complaint prompted an "Adult In-Home Investigation" of Appellee's physical and mental conditions. The report of "elder abuse" to DCF shows Appellee falsely identified Dr. Drapp as his "Caregiver Responsible" (R 1426) and triggered an extensive investigation by various State and/or local agencies as required by Fla. Stat. § 415.104. (R 1429). The next day, February 28, 2017, DCF reported Appellee's complaint to the St. Petersburg Police Department (SPPD), which initiated a criminal investigation against Appellants for "Adult Abuse" under Fla. Stat. §825.103 (1). (R 1427). DCF called Dr. Drapp and told her Appellee did not want her to have his POA anymore. (R 707:24-25; 708:1).

DCF Concludes Appellee Is Not a Vulnerable Adult. On March 31, 2017, DCF closed the case after conducting the required multiple statutory investigations. DCF specifically concluded Appellee *does not* have any disabilities, physical limitations, other infirmities/aging, or fatality; Appellee does not lack capacity to consent; Appellee can bathe, dress, groom himself, and able to do his finances, take his medication, prepare his meals, clean and do laundry; Appellee does not need intervention services or placement outside the home, was not a "vulnerable adult" and No Judicial Action is Required. (R 1426). The criminal and administrative investigations against Appellants were closed as unsubstantiated even with Appellee concealing from DCF and SPPD his May 6, 2016 agreement with Appellants, his August 4, 2016 Deed to Dr. Drapp, and the $12,000 he still owed Streiff. (R 1426).

Appellee Files This Lawsuit. On April 4, 2017, Appellee next filled this civil lawsuit against Appellants containing multiple counts accusing Appellants of the same serious, vile, defamatory egregious acts that failed with DCF or SPPD: Stealing property, collecting and stealing rent from tenants, elderly abuse, etc. (R 23-32). However, at trial, Appellee dismissed all but Count 4 for Declaratory Judgment to declare the Deed void because Appellee "has no recollection of every (sic) executing the deed and, if he did, he was heavily medicated and under duress and undue influence from" Dr. Drapp. (R 172-172).

Appellant Dr. Drapp practiced pharmacy since 2001. R 631: 2-7. At trial, Dr. Drapp testified consistent with her three prior depositions: That Appellee was not in a compromised mental state (R 633:7); that in 2013 Appellee "thought he was sick and went to the doctor numerous times;" that Appellee told her he had cancer and he went to three different hospitals; that Dr. Drapp believed Appellee when he told her he had cancer until she spoke with his oncologist around five times. (T 37:6-25). The oncologist "could not find cancer after multiple biopsies." (T 38:1-4). Appellee had three liver biopsies that indicated he did not have cancer (R 622: 11-12) But during one of his three liver biopsies in 2014, the doctor accidentally injured Appellee's liver which was serious, and Appellee was hospitalized for that.

Bench Trial and Final Judgment. On February 22, 2019, the court held a one day non-jury trial and the parties each submitted written closing arguments and findings of fact and conclusions of law. On April 18, 2019, the trial court entered its Final Judgment in favor of Appellee wherein it noted Appellee dropped seven of the eight counts at trial and proceeded on the declaratory judgment only. The trial court's Final Judgment found Appellee was "gravely ill at the time he wrote his name on the deed" August 4, 2016, based on Appellee's own testimony and Curtis Drapp's testimony –although Curtis Drapp did not, and could not, give testimony on Appellee's condition when he signed the Deed because he was not one of the four people present when Appellee signed the Deed. (R 599 ¶ 3; R 1084:25, 1085:1).

The Final Judgment also found Appellee "suffered acute symptoms of illness" and "was unable to perform the normal activities of daily living or to provide for his own care or protection" and that Appellee "testified that for many months he felt severely compromised mentally, physically, and emotionally" and noted "His recollection that he didn't sign the deed is incorrect but his belief that he would never voluntarily sign such a document is firm and believable." (R 571). The trial court also determined Appellee did not deliver the Deed to Dr. Drapp because he "never had the intent to transfer "the Property to Appellant Drapp (R 571) and voided the Deed so Streiff lost his $12,000. And finally, the Final Judgment declared Appellee a vulnerable adult *after* DCF, the agency authorized to make determinations under Chapter 415, already concluded Appellee *was not* a vulnerable adult, *did not lack capacity to consent, does not* have any disabilities, physical limitations, or other infirmities /aging; and, that Appellee is able to do his finances, take his medication, able to bathe, dress, and groom himself, prepare his meals, clean, and do laundry (R 1426). The trial court contradicted and effectively overruled DCF's findings and conclusion that Appellee *is not* a vulnerable adult and "No Judicial Action is Required." (R 1426).

This appeal timely followed.

SUMMARY OF THE ARGUMENT

This case is a travesty: Appellee, a savvy business man with an endearing southern wit who owns investment properties and has been very familiar with real properties and deeds for many decades, successfully orchestrated this pretense to elude his promise to repay $12,000 to Appellant Streiff, a kind hearted disabled veteran who loaned almost all his savings to Dr. Drapp so she could timely pay Appellee's $12,000 in delinquent Property taxes and save the Property from a tax deed auction. Appellee conned Appellants out of $12,000 and then came into court and conned the trial court into declaring him a "vulnerable adult" while declaring Appellants every conceivable ilk of scoundrel and thief, then voiding a valid Deed Appellee executed and delivered to Dr. Drapp to secure Streiff's $12,000 he never repaid. Appellee mesmerized the trial court into eschewing basic law, logic, fairness, and the fundamental requirement for Appellee to satisfy the clear and convincing standard of evidence to prove his case, and the evidence is insufficient to support the trial court's rulings

First, the trial court erred as a matter of law when it ignored at least five strong presumptions of correctness recognized under Florida law that will prevail unless a plaintiff supplies strong, clear, convincing evidence proving they are not correct, to wit: That properly executed deeds are presumed valid; that grantors of deeds are presumed sane/competent; that the parties to a deed (or other written instrument) are

presumed to know what they sign because they have a duty to read, learn, and understand the contents before they sign; that a deed takes effect upon the grantor's delivery to the grantee and the grantee's acceptance; and that recording a deed operates as notice to the world and is not necessary to pass title. The Record demonstrates Appellee did not tender clear convincing evidence to defeat and overcome these basic presumptions. Therefore, the trial court erred when it declared Appellee's Deed to Dr. Drapp lacked delivery because the Record contains no clear and convincing evidence of non-delivery to rebut the legal presumption of Appellee's delivery of the Deed to Dr. Drapp, yet the trial court ruled otherwise.

Second, the trial court erred when it declared Appellee a "vulnerable adult" and accused Dr. Drapp of "undue influence" but there is no evidence in the Record to support the findings of facts and conclusion of law in the Final Judgment. The Record shows the absence of strong, clear, convincing evidence to overcome the presumption of sanity/ competence and proving Appellee lacked the requisite mental capacity on August 4, 2016, when he executed and delivered the Deed to Dr. Drapp or that Appellee is a "vulnerable adult" as defined by Fla. Stat. § 415.102 (28), which is not the standard for voiding a deed anyway. And there is no evidence Dr. Drapp imposed undue influence on Appellee; rather, the evidence shows Dr. Drapp was vulnerable, in the middle of an ugly divorce; Appellee pressured her to borrow the money from anyone who would loan it to her to save his Property from a tax auction.

But Appellee did not repay the $12,000 and Dr. Drapp was on the hook for it except for the Deed she required from Appellee before she borrowed the money.

Finally, the trial court erred when it erroneously gave Appellee an improper inference on the presumptions because Appellant Streiff did not attend trial even though the testimony would be redundant of Streiff's testimony in three depositions and even though counsel told the court Streiff could not testify even if he had attended the trial. In addition, the trial court erred when it overruled Appellant's objections of relevancy and permitted Appellee to put Dr. Drapp's final judgment of dissolution of marriage into the Record on direct examination of Curtis Drapp.

The trial court got this case remarkably wrong when it voided the Deed that was the security mechanism for the agreement requiring Appellee to repay Streiff $12,000 he already spent paying Appellee's Property taxes, thus converting the secured agreement into an unsecured agreement that effectively facilitated a $12,000 gift to Appellee at Streiff's expense and with no evidence to support any basis to void the Deed based on Appellee's mental incompetence to enter into the agreement on May 6, 2016 and to execute the Deed to Dr. Drapp memorializing the agreement on August 4, 2016. This Court easily will recognize the glaring insufficiency of evidence as set forth in this Brief and should reverse the trial court's fatally defective judgment and direct it to enter an involuntary dismissal of the case.

Standard of Review

The operative complaint contained eight counts including one count for declaratory judgment; "At trial, Counsel for McDaniel elected to proceed exclusively on that portion of his Amended Complaint which seeks relief in the form of declaratory judgment. While that is the relief the Court will provide, the Court makes the following additional findings with regard to other allegations contained in the Amended Complaint." (R 572).

Standard of Review for Declaratory Judgment. "A trial court's findings of fact in an action for a declaratory judgment will be upheld if they are supported by competent, substantial evidence" but we review a trial court's legal conclusions de novo." Harkless v Lubham (Fla. 2d DCA 2019, *citing* Reed v. Honoshofsky, 76 So. 3d 948, 951 (Fla. 4th DCA 2011); "We may not overturn such a decision unless the trial court has misapplied the law or unless the decision is against the manifest weight of the evidence or not supported by competent, substantial evidence. Williams v. Gen. Ins. Co., 468 So. 2d 1033, 1034 (Fla. 3d DCA 1985).

Standard of Review Insufficiency Evidence. The party seeking to void a deed has the burden to disprove the challenged issue or element with strong, clear, and convincing evidence**. "**We review the sufficiency [or insufficiency] of the evidence … *de novo.* Lacombe v. Deutsche Bank Nat'l Tr. Co. 149 So.3d 152, 153 (Fla. 1st DCA 2014). Florida appeal courts recognize if "the findings of the

Chancellor are supported by the evidence or where the evidence is conflicting, and there is substantial evidence to support the Chancellor's findings" the reviewing court will not set aside those findings "unless the appellant makes it clearly to appear that substantial error was committed in his conclusions, or that the evidence clearly shows them to be erroneous." Tyler v. Tyler, 108 So. 2d 312, 314 (Fla. 2d DCA 1959). The Record will show *the evidence is not conflicting* because its insufficient; the only evidence relevant to whether Appellee was mentally incompetent August 4, 2016 when he executed the Deed is the testimony of those present who observed him execute the Deed, and all of them testified Appellee was not mentally incompetent and was his usual self. Appellee's testimony is uncorroborated and, as a matter of law, is not competent substantial evidence to create "conflicting" testimony.

Standard of Review for Setting Aside/Canceling/Voiding a Deed. Appellee asked the trial court to cancel or void a Deed he executed to Appellant Drapp. "Hence, to cancel an instrument because of the maker's mental weakness, the plaintiff has the burden to present clear and convincing evidence proving "there was no intelligent execution by him of the" Deed; similarly, "incapacity of the grantor" must prove incapacity by clear and convincing evidence because the presumption "always supports the validity of the deed and the sanity of the grantor."

ARGUMENT

I. Insufficiency of Evidence: Appellee Failed to Rebut the Legal Presumptions with Clear and Convincing Evidence

The trial court failed to recognize Appellee's elevated burden requiring clear and convincing evidence to overcome all the applicable legal presumptions that assume the Deed is valid and Grantor/Appellee is sane/competent.

Legal Presumptions Establish a Prima Facie Case In this Section I, we briefly identify the five legal presumptions applicable in this case which the trial court failed to recognize and we dispel several of Appellee's incorrect legal arguments the trial court seemed to adopt; after that we identify Appellee's conspicuous failure to overcome any of these legal presumptions given the absence of clear and convincing evidence in the Record to defeat the legal presumptions and demonstrating the trial court's erroneous ruling to void the Deed.

1. Florida Law Presumes All Deeds are Valid. The presumed validity of deeds is well established and firmly entrenched in Florida's legal history. "A duly executed deed, setting forth a grantor, a grantee, a thing granted, and otherwise in conformity with the statutory requirements, including the recitation of consideration, creates a presumption in favor of the validity of the deed." Hassey v. Williams, 127 Fla. 734, 174 So. 9 (Fla. 1937). This presumption prevails unless the party contending the contrary overcomes it by submitting clear and convincing evidence." Crusaw v. Crusaw, 637 So. 2d 949 (Fla. 1st DCA 1994).

In Howell v. Fiore, the Second District noted "the strong presumption in favor of the correctness of deeds and other instruments as written and executed, and that this presumption of correctness would prevail unless the party who alleges that it does not express the truth overcomes that presumption and shows the contrary by satisfactory evidence which is clear, strong and convincing." Howell v. Fiore, 210 So. 2d 253, 256 (Fla. 2d DCA 1968).

2. Florida Law Presumes All Grantors are Sane/Competent**.** In Tyler v. Tyler, the Second District noted the legal presumption that the grantor of a deed was sane when the Deed was executed unless the grantor meets her burden to prove by clear and convincing evidence the alleged mental incapacity to execute a valid conveyance; thus, in an action to rescind or cancel an instrument, the plaintiff has the burden "to establish his right to relief by clear and convincing evidence. Hence, … to cancel an instrument because of the mental weakness of the maker," the plaintiff has the burden to show he did not intelligently execute the instrument in question because "the burden rests on those seeking to set aside a deed, for incapacity of the grantor, to show such fact, since the presumption always supports the validity of the deed and the sanity of the grantor." Tyler v. Tyler, 108 So. 2d at 314.

Likewise, a party seeking to avoid a contract by alleging the plaintiff "was mentally incompetent" at the time he executed the deed" has "the burden of pleading

and proving by clear and convincing evidence of fraudulent misrepresentations as a basis for rescission and cancellation of an agreement." Id.

The Second District "is committed to the rule that mere mental weakness will not authorize a court of equity to set aside a deed if such weakness does not amount to inability to comprehend the effect and nature of the transaction and is not accompanied by evidence of imposition or undue influence" because the legal presumption "always supports the validity of the deed and the sanity of the grantor until overcome by a preponderance of the evidence." So "under no circumstances" will a deed "be voided unless proven that the mind of the grantor was so affected as to render her incapable of comprehending the nature" and effect of the deed. Id.

3. Florida Law Presumes Signers Read the Documents They Sign**.** In Berry v. Berry, the Second District repeated the established legal axiom that "parties to a written instrument have a duty to learn and understand the contents of that instrument before signing it" and, while it "may not have been the Former Wife's intent to convey her homestead interest in the property," she still "is bound by the deed unless she was prevented from reading the deed" before she signed it. Berry v. Berry, 992 So. 2d 898, 900 (Fla. 2d DCA 2008).

4. Florida Law Presumes Transfer at Delivery and Acceptance of Deed &
5. Recordation of Deed Functions as Notice.

A deed takes effect upon the grantor delivering it to the grantee, and nothing passes until delivery. Bould v. Coe, 63 So. 2d 273 (Fla. 1953). A grantor's delivery

of possession of the deed to a grantee is a necessary part of the property transfer while also constituting a symbolic gesture of change in ownership representing the grantor's transfer to the grantee of the rights, title, ownership, and possession of the property; however, recording the deed is not part of the property transfer itself and its not required to effectuate the transfer. Thus, while the grantor's delivery and the grantee's acceptance of the deed are essential to transfer title and complete the process, recording the deed after delivery is not a part of the title transfer process although a grantor may elect to record the deed *instead of* delivering it to the grantee. Ellis v. Clark, 39 Fla. 714, 720, 721, 23 So. 410 (Fla. 1897).

Recording the deed operates only as notice to announce the property transfer and change in ownership. Under Fla. Stat. § 695.01, the act of recording a deed in the official records of the county where the real property is situated constitutes constructive notice. Crenshaw v. Holzberg, 503 So. 2d 1275, 1277 (Fla. 2d DCA 1987) *citing* Hull v. Md. Cas. Co., 79 So. 2d 517, 519 (Fla. 1954) So, while recordation may be a wise practice with prudent policy considerations, there is no inherent legal requirement to record deeds. Accordingly, a property transfer occurs at delivery of the Deed and a grantee's "failure to record the deed for eleven years also did not extinguish his ownership of the property." Berry v. Berry at 900.

Presumptions Establish a Prima Facie Case. Applying the forgoing presumptions establishes the Deed's validity and Appellee's competence as a matter of law *unless* Appellee defeats the presumptions with clear and convincing evidence. Appellee had a heightened burden to produce clear and convincing evidence that he was mentally incompetent and *incapable of comprehending the nature and effect of the transaction* on August 4, 2016 when he executed the Deed to Dr. Drapp. "In an action for rescission or cancellation of an instrument, the burden is upon a complainant to establish his right to relief by clear and convincing evidence" that is precise, explicit, lacking in confusion, and of such weight and magnitude that it produces a firm belief or conviction, without hesitation, about the matter in issue. Tyler v. Tyler, 108 So. 2d at 314. Appellee must overcome the legal presumptions that the Deed is presumed valid as a matter of law the grantor presumed competent. The "burden rests on those seeking to set aside a deed, for incapacity of the grantor, to show such fact, since the presumption always supports the validity of the deed and the sanity of the grantor." Id.

The main question here is whether Appellee presented clear convincing evidence proving he was mentally incompetent when he executed the Deed to Dr. Drapp on August 4, 2016, and the answer is no. In the next section, we address the lack of relevant evidence in the Record as to Appellee's mental incompetence when he executed the Deed August 4, 2016.

II. The Trial Court Applied the Wrong "Vulnerable Adult" Standard to Void the Deed Instead of Using the Correct "Mentally Incompetent and Unable to Comprehend the Nature and Effect of the Transaction" Standard

In this section, we examine the trial court's erroneous and irrelevant use of a "vulnerable adult" standard to void the Deed rather than using the correct and much higher "mentally incompetent" standard with the legal presumption Appellee is competent/sane standard requiring clear and convincing evidence that Appellee was "unable to comprehend the nature and effect of the transaction" by to overcome.

First, Appellee prompted the trial court to void the Deed using the wrong "vulnerable adult" standard and ignoring the presumption of competence/sanity instead of using the correct standard of "mental incompetence" requiring Appellee to overcome the presumption that he is sane/competent using clear and convincing evidence that identifies Appellee's temporary or permanent condition causing Appellee's mental incompetence rendering him "incapable of comprehending the nature and effect of the" Deed when he executed and delivered it to Dr. Drapp.

The "vulnerable adult" error originated in Count VIII of Appellee's Second Amended Complaint for a "Violation of Fla. Stat § 415.1111" against both Appellants alleging Appellee was a "vulnerable adult" and asking the court to cancel the Deed; but the complaint merely restated verbatim the definition of "vulnerable adult" in Fla. Stat. §415.102: "I am a person 18 years or older whose ability to perform the normal activities of daily living or to provide for my own care or

protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging" but did not contain any of Appellee's particular facts. (R 338 ¶ 4). Appellants filed a motion to dismiss this count for failure to state a cause of action or for a more definitive statement, but the trial court denied it without a hearing unlike in Bohannon v. Shands where the First District affirmed dismissal under the same circumstances: "To state a cause of action under section 415.1111, a complaint must set forth factual allegations" but the allegations in the complaint "were mere conclusions tracking the language of the statutory definitions, unsupported by facts, and are legally insufficient." Bohannon v. Shands Teaching Hosp., 983 So. 2d 717, 721 (Fla. 1st DCA 2008).

Judgment Voiding the Deed. Second, as mentioned in the previous section, the issue here is that Appellee sought to void the Deed using the wrong "vulnerable adult" standard and the trial court obliged without requiring Appellee to overcome the presumption of a valid deed and a sane grantor with the elevated standard of clear and convincing evidence to prove Appellee was "mentally incompetent" and "unable to comprehend the nature and effect" of the Deed when he executed it August 4, 2016. The trial court did not conclude Appellee was "mentally incompetent" and "unable to comprehend the nature and effect" of the Deed. Appellee and the trial court erroneously equated "vulnerable adult" with "mental incompetence" without

supplying any legal basis for the substitution; and no Florida case law exists suggesting the "vulnerable adult" standard is an acceptable proxy for "mental incompetence" for purposes of voiding a deed –probably because every senior citizen in Florida meets the "vulnerable adult" standard of "weakened" or "impaired ability" to perform normal daily activities and could use the "vulnerable adult" mantra –as Appellee did here –to easily escape transactions such that few people would be willing to do business with the elderly lest they end up like Appellants.

Fortunately, "vulnerable adult" is not the standard in Florida for voiding a deed. Rather, the grantor is presumed competent by law and must prove he is not using the elevated "mental incompetence" standard requiring clear and convincing proof of a condition rendering the grantor mentally incompetent and "incapable of comprehending the nature and effect" of the Deed at the time he executed it, a far more difficult standard the Florida Supreme Court recognized almost a hundred years ago:

> a weakened mental and physical condition at the time of the execution of the deed is … an inescapable conclusion, *but it does not follow that she was incompetent at the time she made a valid conveyance of her property*. To avoid the conveyance, it is necessary to *prove that the powers of her mind were so affected as to render her incapable of comprehending the nature and effect* of the transaction.

Travis v. Travis, 87 So. 762, 764 (Fla. 1921) (emphases added). The Florida Supreme Court in Travis explicitly ruled "a weakened mental and physical condition" which is the "vulnerable adult" standard, *is not* sufficient and does not

constitute the "mentally incompetent" standard and being a "vulnerable adult" *does not* justify an inference of "mentally incompetent" but this is the very basis of the trial court's ruling. Based on Travis alone, this Court must reverse the trial court's ruling and reinstate the void Deed as a matter of law.

In fact, being a "vulnerable adult" is irrelevant to the task of voiding a deed because the latter requires proof of "mental incompetence" and whether Appellee is a "vulnerable adult" is beside the point. Either way, the Record contains no evidence Appellee was "mentally incompetent" at the time he executed the Deed, which was the only legitimate basis the trial court could properly void the Deed.

III. The Record Does Not Support the Trial Court's Final Judgment

The evidence does not support the trial court's findings of fact and the case law does not support its legal conclusions. Indeed, as mentioned in the prior section, the trial court disregarded the legal presumptions altogether and did not assume the Deed's validity or Appellee's competence/sanity when he executed it, and certainly did not recognize Appellee's elevated burden to defeat the presumptions with clear and convincing evidence proving his mental incompetence/insanity and inability to understand the nature and effect of the Deed when he executed it August 4, 2016.

Appellee did not defeat the legal presumption because the Record contains no medical records or expert testimony of any existing medical conditions that caused an inability to understand the nature and effect of the Deed. After that, Dr. Drapp, Streiff, and the Notary are the only witnesses whose testimony is *relevant* because they were the only witnesses present to observe Appellee execute the Deed and, of those, the Notary personally knew both Appellee and Dr. Drapp for many years because the Notary's wife was the family's hair dresser, and he said Appellee "did not appear to be impaired in any form" when he executed the Deed. (R 599 ¶ ¶ 3, 4, 5, 6). The trial court also noted the Notary "was highly credible" and he "remembered the precise circumstances of the execution of the deed including how ill McDaniel was at the time" but the Record reveals the Notary never said anything like that and his affidavit and trial testimony suggest just the opposite. Nevertheless,

the Final Judgment found Appellee was "gravely ill at the time he wrote his name on the deed" based on Appellee's own testimony and Curtis Drapp's testimony, but Curtis Drapp never said that and was not present to observe Appellee sign the Deed. (R 599 ¶ 3; R 1084:25, 1085:1). Therefore, the trial court erred by using Curtis Drapp's irrelevant testimony as the basis to conclude Appellee was mentally incompetent/insane when he executed the Deed.

Appellant Admits He Did Not Read the Deed and Does Not Allege Anyone Interfered or Prevented Appellee from Reading, Reviewing, or Examining the Deed Before He Signed It. Appellee had a legal duty to read the Deed before executing it because in Florida, "parties to a written instrument have a duty to learn and understand the contents of that instrument before signing it." Berry 992 So. 2d at 900. Appellee had the opportunity to review the Deed before he signed it but admits he "probably didn't read it very well" even though the Deed was only one page and he testified he is familiar with warranty deeds, quit claim deeds, and property transactions. "I been around property and I know what a warranty deed is … and this and that" and "I remember her coming in with some paperwork" (T 220:11-20); "I had a vague recollection" about signing the deed and "maybe I disengaged my brain for a period of time." (T 229:25, 230:8-9, 13-24).

No Undue Influence. The trial court concluded Appellee "signed the deed not knowing what the document was and at the direction of Drapp, who knew, or

should have known, that McDaniel did not know what he was signing." (R 570). But "at the direction of Drapp" is false and no evidence in the Record supports that conclusion. Rather, the Notary testified he directed Appellee to sign the Deed in the particular location while Curtis Drapp drafted the Deed a month earlier and had far more influence over Appellee than Dr. Drapp, who testified she was divorcing Curtis Drapp during this timeframe and felt estranged from her family and betrayed.

Appellee did not allege, and no evidence suggests, that anyone prevented him from reading or reviewing the Deed, induced or tricked him to sign it before he read it, or lied about the contents of the Deed, or any other nefarious activity that would taint Appellee's execution of the Deed. Rather, this was not a typical, mundane Deed transaction given the missing signature line, and the evidence shows: The Notary took charge of the Deed's execution when the Notary discovered the Deed was missing Appellee's signature line; the Notary examined the Deed and confirmed the missing signature line for Appellee; that the Notary determined the alternate location for Appellee's signature and explained same to Appellee; the Notary explicitly directed Appellee where to sign. There is no evidence Dr. Drapp was actively involved in the execution of the Deed except to sign it as the grantee as the Notary testified. Under these circumstances, the Deed is binding: No one stopped Appellee from reading it before he signed it or tricked him into signing it, or lied about the contents. In fact, Appellee's testified he discussed the Deed with the drafter

Curtis Drapp Appellee is "bound by the deed" even if he did not "intend to convey [his] the homestead interest." Berry at 900.

No Medical Evidence in the Record. Appellant never produced any kind of medical evidence to support the premise that he had "a permanent disability … or a temporary condition of alleged lapse in mental awareness. Mere mental weakness will not authorize a court of equity to set aside a deed" unless the grantor proves with clear and convincing evidence the "inability to comprehend the effect and nature of the transaction." Parks v. Harden, 130 So. 2d 626, 628 (Fla. 2d DCA 1961).

In Parks, the record contained no medical testimony but the permanent medical condition was identified as diabetes and the temporary condition was an episode of "insulin shock" on the date the party signed the contract. The trial court reformed the instrument to eliminate a portion unfavorable to the diabetic but the Second District reversed after it "carefully reviewed the record" and the diabetic's testimony regarding the severity of the "insulin shock" that particular day, and concluded he did not prove his condition affected his brain so severely it rendered him incompetent, thus he did not overcome his presumed competence. Parks at 629.

The Second District noted "there is no testimony by the physician as to the severity or degree of the defendant's diabetic condition" or how that condition affected his brain or mentality and, to void an instrument, the physician would have to show the defendant's diabetic condition was so severe on the date he signed the

document it rendered him "incapable of comprehending the nature and effect of the transaction" Instead, at best, the diabetic proved only "mere mental weakness" which "does not authorize setting aside a deed" because it is not sufficient to overcome "the presumption that always supports the validity of the deed and the sanity of the grantor" unless he proves he was "incapable of comprehending the nature and effect of the transaction." Parks at 629.

Likewise, Appellee never provided any medical records or his physician's testimony showing the severity or degree of his particular cancer and/or chemotherapy treatments such that it rendered Appellee so mentally incompetent on August 4, 2016 that he was "incapable of comprehending the nature and effect of the transaction" and failed to move any medical evidence into the Record. And, except for repeating the generic words "cancer" and chemotherapy" throughout their testimony, Appellee and Curtis Drapp, who has no medical training, never identified any *specific* diagnosis or explained how such diagnosis or medical condition *specifically affected* Appellee's *mental competency* to render him incapable of comprehending the nature and effect of executing the Deed; they never identified any *specific dates* of Appellee's diagnosis or chemotherapy treatments or how it caused him to be mentally incompetent when he executed the Deed, or whether Appellee had chemotherapy treatments on August 4, 2016 when he executed the

Deed to Dr. Drapp. The Record contains no explanation whatsoever of exactly what caused the mental incompetence Appellee alleges as the basis to void the Deed.

Thus, the Record contains no medical evidence of any specific "physical condition or past medical history" and the only testimony of mental incompetence was Appellee's own testimony and Curtis Drapp's testimony of his "observations" of Appellee's physical condition, which is not even relevant to proving mental incompetency. Similarly, except for anecdotal testimony Appellee had constipation a few times possibly in 2014 and he complained of unspecified pain and sought medicine for it, Appellee and Curtis Drapp's testimony provide no specific dates for the alleged medical conditions and treatments and gives no specific details as to symptoms or effects of the conditions or treatments; as such, *none* of the testimony is relevant because it fails to identify any permanent medical conditions that would divest Appellee of his mental capacity always, or any temporary conditions that did affect Appellee's brain and rendered him mentally incompetent when he executed the Deed August 4, 2016. Finally, most or all of Curtis Drapp's testimony was irrelevant as to Appellee's "mental incompetency" when he executed the Deed because he was not even present when Appellee executed the Deed, and any conditions before or after Appellee executed the Deed are not relevant because "the capacity of the grantor at the time the deed is executed [] is controlling and his subsequent incapacity will not affect the deed." Parks at 628.

Moreover, if the grantor "claims to not remember [some] of the details surrounding the execution of the instrument" but not others, he probably is not mentally incompetent. Parks at 628. Appellee remembered some details about August 4, 2016: "the only time that I really remember signing things was -- I was in bed …she came in with a stack of things and… I guess, you know, I was focused on the medical and this and that and so forth. And I did -- I probably didn't read it very well. But there again, I remember her coming in with some paperwork … and I was just looking at the bottom and she said sign here, initial here and so forth and so on." (T 220:11-16).

The Second District in Parks cited Davis v. Wigfall where the grantor went through an illness at age 85, was bed ridden, suffered ringing in the ears for the prior two and a half years, and felt dizzy when she executed the deed, and she recovered two years later, at which time she sought to void the deed she executed during the illness. While the woman was a senior citizen who had various health problems, and physical challenges, the fact that she had age-related physical problems does not automatically make her mentally incompetent – and the trial court recognized this and denied her relief, which the Supreme Court affirmed because she "wholly failed to prove" she was mentally incompetent to understand the nature and effect of the deed at the time she executed it. Davis v. Wigfall, 70 So. 2d 908, 909 (Fla 1954).

Appellee's argument at bar seems to be that he was mentally incompetent merely because he had cancer and received chemotherapy to treat it, all of which may be physically challenging but Appellee never explained how it caused him to be *mentally incompetent* and unable to understand the nature and effect of the deed at the time he executed it certainly does not warrant an inference that did not present any evidence as to the status of his mental capacity August 4, 2016. Like the diabetic in Parks, Appellee did not have any medical testimony or evidence to identify and explain the nature and extent of his alleged cancer and the treatments he received and, when asked for specific information at trial, Appellee said he did not know any specific dates as to when he was diagnosed or when he received chemotherapy or other treatments, or the severity or degree of Appellee's condition or treatments, and particularly how they affected his brain or mental competency on August 4, 2016.

Appellee is presumed competent when he executed the Deed and, without identifying a specific cause or medical condition(s) and how it affected his mental competence to the extent he is unable to understand the nature and effect of the Deed, a trial court is not equipped to properly determine whether and how Appellee was mentally incompetent. Therefore, Appellee did not meet his burden to overcome the legal presumption of competency and the trial court erred when it voided the Deed.

Appellee's Uncorroborated Testimony is not Competent Substantial Evidence. Appellee gave various excuses when he testified at trial, but he never

actually testified he was mentally incompetent and, even if he had, a party's uncorroborated testimony that he is or was mentally incompetent "is not sufficient to support a valid decree" because it does not constitute substantial competent evidence. Dworkis v. Dworkis, 110 So. 2d 70, 73 (Fla 3d DCA 1959). No competent substantial evidence in the Record supports a finding Appellee was mentally in competent to understand the nature of the transaction on August 4, 2016 when he executed and delivered the Deed to Dr. Drapp. Rather, it appears the trial court made its conclusions based on its own opinions and conclusions there were not based on the actual trial testimony. "The only evidence which appeared to suggest [Appellee] may have been incompetent was not direct, but circumstantial. Evidence of isolated incidents of irrationality, confusion, and forgetfulness cannot suffice to establish a continuing condition of incompetency. There was no evidence of the latter … the judge's comments [indicate] his findings primarily were based on his observation of [] demeanor at trial. Although demeanor is important, it goes to the credibility of the witness. Standing alone, it is not competent substantial evidence to support a finding of incompetence." Freeman v. Lane, 504 So. 2d 1297, 1301 (Fla 5th DCA 1987) *rehearing denied*. Accordingly, as a matter of law, Appellee failed to satisfy the clear and convincing standard required to rebut a presumption to prove he was incompetent/insane when he executed the Deed.

The Trial Court Erred It Determining Appellee Did Not Deliver the Deed.

The evidence reveals Appellee executed and delivered the Deed to Dr. Drapp August 4, 2016, and she accepted and took possession of the Deed and stored it safely in her drawer at home and did not immediately record it, which has no relevance or impact on its validity or the transfer or quality of her ownership. In addition, Appellee did not defeat the presumption of his competence/sanity when he executed and delivered the Deed to Dr. Drapp. "A critical factor in determining delivery … is whether the grantor retained the "locus poenitentiae" … the "test of delivery of a conveyance is whether the grantor … parts with the control of the deed, or evinces an intention to do so, and to pass it to the grantee, though he may retain the custody or turn it over to another, or place it upon record, the delivery is complete." Smith v. Owens, 91 Fla. 995, 1002, 108 So. 891, 893 (Fla. 1926). Accordingly, no evidence in the Record supports the trial court's ruling while there is competent evidence rebutting this ruling and supporting the legal inference that the Deed is valid, the Grantor/Appellee was competent, and delivery occurred.

IV. Trial Court's Harmful Error to Permit Highly Prejudicial Collateral Judgment Into the Record Solely to Impeach Appellants Credibility and Improper Inference

The trial court erred when it overruled Appellants' two objections to Appellee submitting into the Record a 2018 Final Judgment of Dissolution of the Marriage of Curtis Drapp and Dr. Drapp (FJDOM), which had no relevance to this case except as collateral impeachment of Appellants. Appellee's counsel improperly submitted it into the Record on his direct examination of nonparty Curtis Drapp over Appellants' objections. The trial court's Final Judgment extracted numerous derogatory quotes from the irrelevant collateral FJDOM and used it solely to disparage Dr. Drapp and destroy her credibility. The trial judge should have known better but obviously was looking for reasons to rule in Appellee's favor.

In Tucker, this Court reversed a trial court allowing collateral impeachment evidence and remanded for a new trial: "We agree the [] incident was erroneously admitted because it had no relevance to the issues being tried and served only to impeach Tucker's credibility and reflect poorly on her character." Fla. Stat §§ 90.608-610. Tucker v. Allstate Ins. Co., 842 So. 2d 1029, 1030 (Fla 2d DCA 2003).

In Markowski v. Alltel Bank Int'l Ltd., a trial with few witnesses, the Third District concluded: "We find merit in Markowski's argument that the trial court improperly allowed … into evidence" Markowski's arrest by Swiss authorities, disciplinary findings of the NASD and a consent decree with the SEC because the

"incidents served only to impeach Markowski's credibility and character in a manner not permitted by the Florida Evidence Code" *see* Fla. Stat §§ 90.608-610. Most important, Markowski was the only defense witness who testified and, as such, "his credibility was of the utmost importance" such that it was "extremely prejudicial" to permit the inadmissible information requiring the trial court to give him a new trial. Markowski v. Alltel Bank Int'l Ltd., 758 So. 2d 1283, 1284 (Fla. 3d DCA 2000).

Finally, the Third District in a negligence action reversed the trial court's error in permitting the defendant to cross-examine the plaintiff about his misconduct when he worked for police department, which questions were only marginally relevant to the case. DeSantis v. Acevedo, 528 So. 2d 461, 462 (Fla. 3d DCA 1988). Accordingly, the trial court erred when it permitted Appellee to move Appellant Final Judgment from Dr. Drapp's divorce into the record over Appellants' two objections, because it had absolutely no relevance to this case and its sole use was to inflict damage to Appellants' credibility and thus was very prejudicial to them.

The Trial Court Erred When It Gave a Negative Inference

The final judgment notes "Streiff, who appears to have participated in this litigation in the past, inexplicably. failed to appear for the trial. Both Drapp and Streiff were represented by attorney Ann Allison. Although no explanation was offered for Streiffs absence, both Streiffs and Drapp's three prior depositions were

admitted into evidence by agreement of counsel. (R 566). However, the Record does not support the trial court's conclusion that there was no explanation for Streiff's absence because before the trial stated, Appellant's attorney twice mentioned Streiff's absence and indicated a problem with competence and allowing Streiff to testify even if he was present. The first time was: "We think he's out of state. This date was set and he knew about it so -- but there's some other issues with that, that I'm not sure we could put him on the stand anyhow. I would go off the record if you wanted to discuss that."(T 5:22-25, 6:1); the second time was a longer discussion after the court asked if there are "any problems with Mr. Streiff's absence and his depositions being – coming in?" Appellant's counsel responded: Judge, I would like to go off the record if I could right now. Because he [Streiff] had some medical situations and I'm not sure he's even competent to testify." The court responded it could not go off the record, and counsel said: "Okay.I'm not sure that I could put him on the stand today. I believe Mr. Weidner [opposing counsel] is apprised of his situation." And, the trial court asked "do you have a problem with using his depositions?" and counsel said "No, I don't. I mean -- I'm assuming he was competent then. I didn't know he had a problem to begin with until, you know, something happened a few months ago." (T 8:5-25, 9:1-2).

"The unfavorable inference which may be drawn from the failure of a party to testify is not warranted when there has been a sufficient explanation for such

absence or failure to testify." Geiger v. Mather of Lakeland, Inc. 217 So. 2d 897, 898-899 (Fla. 4th DCA 1968). Appellant provided a sufficient explanation to the trial court as to Streiff's medical problems and that his competence was too questionable to put him on the witness stand. Moreover, Appellee and Appellants agreed to put Streiff's three depositions in the record as his testimony, so any live testimony would be cumulative of the depositions moved into the record. "Among reasons which might be considered as sufficient explanation would be a showing that the party has no personal knowledge or memory of the facts in issue, or a showing that the testimony of the party would be cumulative of that already established by other competent evidence." Id.

Thus, this Court should reverse the trial court's ruling on the negative inference Appellee requested and the court granted because it was improper or unjustified, i.e., that "deeds, C, D and E are of no force and effect because they represent fraudulent transactions, breaches of fiduciary duty and exploitation" and the inference to be drawn is that hat we have proven our case as to all of those elements because he has introduced no evidence to contradict any of the elements of our complaint in all the counts against him." (T 147:1-23).

CONCLUSION

The record contains no competent evidence and the trial court erred when it voided the Deed with no evidence Appellee was mentally incompetent and unable to comprehend the nature and effect of the Deed when he executed it August 4, 2016.

First, being a "vulnerable adult" or "confused and weak" is not the correct legal standard to void a deed for "mental incompetence" as the Second District established in Tyler, its seminal case applying the Florida Supreme Court's rule in Travis "that mere mental weakness will not authorize a court of equity to set aside a deed if such weakness does not amount to inability to comprehend the nature and effect of the transaction and is not accompanied by evidence of imposition or undue influence." Tyler v. Tyler, 108 So. 2d at 314 *citing* Travis v. Travis, 87 So.at 764.

Appellee's case was shoddy at best: He never specifically identified the exact kind of cancer, its severity or degree, the date of his diagnosis or any dates related to it, whether and how the cancer affected his brain so severely he was mentally incompetent specifically on August 4, 2016 when he executed the Deed. Appellee also did not give any specific information about his alleged chemotherapy or other treatments – he did not identify any dates when he started receiving treatments or the date he received his last/final treatment; he did not identify the dates of the time span when he was treated; he did not identify the type of treatment he received, the strength and side effects he experienced, whether, when, and how any treatments

affected his brain functioning and to what extent; whether he had any treatments August 4, 2016 when he executed the Deed and to what extent that treatment affected him; when was his last treatment before he executed the Deed August 4, 2016.

The Record contains no medical evidence; no clear and convincing evidence from anyone present when Appellee executed the Deed August 4, 2016. Indeed, Appellee does not himself even testify he was mentally incompetent such that he was unable to comprehend the nature and effect of the Deed when he executed it to Dr. Drapp. The Record simply does not contain the quantity and quality of evidence and corroboration necessary to overcome the legal presumptions that the Deed is valid, the Appellee was sane, and the parties to the Deed read and understood the Deed before they signed it. As discussed herein, Appellee failed to meet the heavy burden to produce clear and convincing evidence to rebut the presumptions and prove Appellee was mentally incompetent on August 4, 2016, and did not understand the nature and effect of the Deed he executed to Dr. Drapp. Appellee never identified any specific dates and instead used the evasive phrases of "relevant time" and "relevant period" to avoid committing themselves to any specific dates; and, most disturbing, these same hedge phrases show up in large numbers in the Final Judgment where they are antithetical to the specificity required to legitimately prevail below. For all the these reasons, this Court must reverse the trial court's decision and enter an order of involuntary dismissal.

CERTIFICATE OF COMPLIANCE

I certify this Brief is formatted as to size and style in compliance with Fla. R. App. 9.210(a)(2), with 1- inch margins on all sides and a size 14-point Times New Roman Font including footnotes.

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CERTIFICATE OF SERVICE

I CERTIFY I filed and served Appellant's Initial Brief on November 8, 2019 in Florida's E-filing System Portal via email to Matt Weidner at service @mattweidnerlaw. com, Joe Stern at stern@jealegal.com, and any secondary email addresses in the clerk's mailing matrix for this case in compliance with Fla. R. Jud. Admin 2.516.

Respectfully Submitted,

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