UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1640

September Term, 2015

IN THE MATTER OF
FRANCIS P. GRIFFITH, JR.

Arthur,
Reed,
Beachley,

JJ.

Opinion by Reed, J.

Filed: January 18, 2017

This case originated in the Circuit Court for Calvert County and stems from allegations that the appellee, Christine Musselman, in her role as successor trustee, mismanaged The Francis P. Griffith, Jr. Revocable Trust. On appeal, we are asked to consider the following questions:

1. Did the circuit court err in excluding the Bank of America checking account from the assets of the Trust Estate?

2. Did the circuit court err in approving the Successor Trustee's conveyance of the real property owned by the Trust to herself?

3. Did the circuit court err in approving the expenses claimed by the Successor Trustee?

For the following reasons, we answer each of these questions in the negative and, therefore, affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On October 12, 2010, just days after being diagnosed with cancer, Dr. Francis P. Griffith, Jr. (hereinafter "Dr. Griffith") executed a revocable trust agreement for the equal benefit of his five children, among whom were the appellant, Lori Ramsey, and the appellee, Christine Musselman. The trust agreement named Dr. Griffith as both settlor and trustee and designated the appellee to be the successor trustee. Furthermore, it declared the following as trust property by reference to the attached Schedule A:

1. All tangible personal property.

2. *Real property and improvement thereon known as 6150 Sandy Point Road, Prince Frederick, MD 20678*.

3. *All accounts with Bank of America*.

4. All accounts with M&T Bank.

5. All accounts with Chevy Chase Bank.

6. Merrill Lynch Brokerage Account.

7. Death benefits payable under Northwestern Mutual life insurance policy.

(Emphasis added).

Dr. Griffith had opened a Bank of America checking account on November 9, 2009. The appellee was originally designated as the pay on death beneficiary of that account, but was later made a joint account holder on November 20, 2009. On December 15, 2010, three days before Dr. Griffith's death, the appellee transferred $16,000.00 from Dr. Griffith's Bank of America savings account into the checking account.[1] The appellee used that money to pay for Dr. Griffith's final medical and funeral expenses. Thereafter, until November 2013, the appellee used the funds in the checking account for purposes of administering her father's estate. Likewise during that time period, the income from Dr. Griffith's investments was deposited into the Bank of America checking account.

In or around November 2013, someone at Bank of America suggested to the appellee that the money in the checking account belonged to her because she was the joint account holder. She therefore withdrew the balance of the checking account ($80,000.00) and deposited it into her personal account.

[1] The record indicates that the appellee had been handling her father's affairs in the months leading up to his death.

With regard to the "[r]eal property and improvement thereon known as 6150 Sandy Point Road, Prince Frederick, MD 20678," they were conveyed in fee simple by the appellee, in her role as successor trustee, to herself individually on August 30, 2013.

On September 8, 2014, the appellee filed an accounting of her father's estate in the Circuit Court for Calvert County, as directed. The appellant filed an objection to the accounting on October 24, 2014. The matter proceeded to a hearing, which began on January 12, 2015, and concluded on February 10, 2015. The circuit court set forth its original findings in an Order dated March 3, 2015. With regard to Dr. Griffith's real property, the court found as follows:

> For the reasons stated, the Court finds that the transfer of Dr. Griffith's house to her and two of her brothers was improper, as the transfer was not what Dr. Griffith intended under the trust. The house should be sold and the proceeds divided or once the house's value is determined, if any sibling wishes to buy-out the other siblings, then they may do so.

Moreover, with regard to the Bank of America checking account, the court found that it "was a joint account held by [the appellee] and her father. The account was never transferred to the trust. Upon Dr. Griffith's death, the ownership of the account passed to [the appellee]."

Finally, the circuit court ordered:

> [The appellee] must account for the proceeds from the sale of Dr. Griffith's Toyota Matrix, which was sold and the proceeds not added to the trust, $2,496.81 that [the appellee] paid from the trust to satisfy a court-ordered sanction, and $6,000 she paid herself in a commission without regard to the provisions of the Estates and Trusts Article of the Annotated Code.

On March 12, 2015, the appellant filed a Motion to Alter or Amend and/or Reconsider the Memorandum and Order dated March 3, 2015, and on March 13, 2015, the appellee filed her own Motion to Alter, Amend, or Revise the Judgment. "Upon consideration of the motion[s] and responses thereto," the circuit court revised its findings on April 22, 2015:

> The Court's previous findings as to: 1.) the propriety of [the appellee]'s in-kind distribution of Dr. Griffith's house to herself and two of her brothers in trust, 2.) [the appellee]'s payment of [the appellant]'s counsel fees as a court-ordered sanction, and 3.) [the appellee] taking a trustee's commission, are vacated. The Court revises its judgment to find that [the appellant]'s objections to these three items are overruled[.]

Thereafter, on August 3, 2015, the appellee filed a second and final accounting of her father's estate. The appellant filed an objection to the second accounting on August 10, 2015. Finally, by written Order dated September 1, 2015, the circuit court both denied the appellant's objection and approved the final accounting.

On September 24, 2015, the appellant noted a timely appeal.[2]

[2] That the appellant did not file a Motion to Alter or Amend or an appeal from the circuit court's written, revised findings of April 22, 2015, does not render the present appeal untimely. Maryland Code Ann., Cts. & Jud. Proc. § 12-303(3)(vi) provides that "[a] party *may* appeal from . . . interlocutory orders. . . [d]etermining a question of right between the parties and directing an account to be stated on the principle of such determination." (Emphasis added). Thus, the appellant was permitted to file an interlocutory appeal from the circuit court's April 22, 2015, Order. However, the appellant was not ***required*** to do so because the court's revised findings did not constitute a final judgment. *See Commercial Union Ins. Co. v. Porter Hayden Co.*, 116 Md. App. 605, 638 (1997) ("While the trial judges may choose to respect a prior ruling in a case, they are not required to do so." (quoting *Ralkey v. Minnesota Min. & Mfg. Co.*, 63 Md. App. 515, 522-23 (1985) (emphasis omitted)). Accordingly, because it was filed within 30 days of the court's September 1, 2015, Order approving the second and final accounting, ***i.e.***, the "final judgment" in this case, the appellant's notice of appeal was timely. *See* Md. Rule 8-202.

STANDARD OF REVIEW

The standard of appellate review of cases "tried in a circuit court without a jury . . . is dictated by Maryland Rule 8-131(c)." *Toth v. State*, 393 Md. 318, 323 (2006). The Court of Appeals has explained that

> [a]ccording to Maryland Rule 8–131(c) "when an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." The clearly erroneous standard does not apply to legal conclusions. *Nesbit v. GEICO,* 382 Md. 65, 72, 854 A.2d 879, 883 (2004). "When the trial court's order 'involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are legally correct under a *de novo* standard of review.'" *Nesbit,* 382 Md. at 72, 854 A.2d at 883 (quoting *Walter v. Gunter,* 367 Md. 386, 392, 788 A.2d 609, 612 (2002)).

Toth, 393 Md. at 323-24 (quoting *Gray v. State*, 388 Md. 366, 374-75 (2005)).

DISCUSSION

I. Joint Checking Account

a. Parties' Contentions

The appellant argues that upon Dr. Griffith's death, the appellee became bound to hold all trust property, including the Bank of America checking account, in trust in accordance with the terms set forth in the trust agreement. According to the appellant, because the Bank of America checking account was listed as trust property, it was governed by the trust agreement, rather than the "multiple-party accounts" statute of Md. Code Ann., Fin. Inst. ("F.I.") § 1-204, at the time the appellee transferred its remaining balance of

$80,000.00 to her personal account. The appellant asserts that *Wagner v. State*, 445 Md. 404 (2015), supports the proposition that "the ['multiple-party accounts'] statute must yield to the express language of the Trust instrument and to a paramount equity, firmly grounded upon the fiduciary responsibilities of the Successor Trustee."

The appellant further contends that the appellee's handling of the funds in the checking account from the date of her father's death until her "claimed epiphany at the Bank in 2013" confirm that it was "well understood that the 'Joint Account' was Trust property." As evidence that the appellee understood the checking account to be trust property, the appellant points to: (1) how the appellee used the $16,000.00 she transferred from the savings account to the checking account on December 15, 2010, to pay Dr. Griffith's final medical and funeral expenses; (2) how she "routinely" paid other trust expenses using checking account funds; and (3) how she regularly deposited income received from Dr. Griffith's assets into the checking account.

The appellee responds that the appellant misrepresents the Court of Appeals' holding in *Wagner*. According to the appellee, *Wagner* simply stands for the proposition that the "common law presumption of joint ownership created by titling the bank account as joint could be overcome by evidence that the owner's intent was not to create such rights in the title holder." Therefore, the appellee argues, because there is no evidence that Dr. Griffith did not intend to create the rights of a joint account holder in his daughter when he added her name to the checking account on November 20, 2009, *Wagner* does not apply. The appellee asserts that the present case is instead governed by F.I. § 1-204, which clearly

provides that "unless contrary direction is given in the account agreement, upon the death of a party, the funds in the multiple-party account will belong to the surviving party or parties." *Id.* at § 1-204(e)(1). Thus, according to the appellee, in order for the assets in the joint checking account to have become trust property, additional documentation with the Bank indicating that the account was no longer "joint" was necessary.

b. Analysis

We agree with the appellee that ownership of the joint checking account was not transferred to The Francis P. Griffith, Jr. Revocable Trust merely by virtue of its being listed in Schedule A as trust property. We explain.

In its March 3, 2015, Order, the circuit court made the following ruling with respect to the Bank of America checking account:

> Despite Dr. Griffith's intention, for whatever reason during the last weeks of his life he neglected to transfer ownership of the account to the trust. The Court concludes that as the checking account was jointly owned by Dr. Griffith and [the appellee], once the former died, the later became the account's sole owner. The Court does not find that [the appellee] reimbursing herself $16,478.71 from the account for her father's funeral expenses was improper. It is undisputed that [the appellee] could have written a check from the trust to pay those same expenses rather than paying them herself. For similar reasons, the $80,000 check that [the appellee] wrote to herself from this account in November 201[3] was not improper. She essentially wrote the check to herself from her own bank account. Obviously, had the Court not found that the account reverted to [the appellee] upon Dr. Griffith's death, then these funds would be a trust asset.
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> * * *

> The Bank of America checking account was a joint account held by [the appellee] and her father. The account was never transferred to the trust. Upon Dr. Griffith's death, the ownership of the account passed to [the appellee].

Then, when it revised some of its earlier rulings by Order dated April 22, 2015, the court "let stand its finding that [the appellee] became the sole owner of this checking account upon the death of the co-owner, Dr. Griffith." The appellant assigns error to this finding. Citing *Wagner*, *supra*, she argues that ownership of the checking account transferred to the trust when it was executed on October 12, 2010. However, as the appellee points out, the holding of *Wagner* is inapplicable.

Marion Wagner was eighty-four years old in 2013 when his daughter, Jacqueline Wagner, was tried before the bench of the Circuit Court for Baltimore County on charges of theft of property with a value of at least $500 and embezzlement. *Wagner*, 445 Md. at 410. For most of his life, Marion's wife handled the couple's finances. *Id.* When his wife passed away in 2005, he added his daughter Jacqueline as a joint holder to his Provident Bank checking and savings accounts, testifying that he "wanted somebody else to be able to get . . . [my] money [out] if I couldn't get it myself." *Id.* at 410-11. He testified, however, that he had given his daughter specific instructions that "this is my money in there, but not hers, and she agreed to that." *Id.* at 411.

The evidence showed that from 2005 to 2009, Jacqueline Wagner transferred $181,670.09 from her father's IRA account into the Provident Bank checking and savings accounts, from which she transferred $251,645.83 to herself by various means. *Id.* at 413. Jacqueline was convicted of both theft and embezzlement. *Id.* at 409. The case ultimately

made its way to the Court of Appeals, which held that "[e]ven if a rebuttable presumption of equal ownership of funds among parties to a multiple-party account exists, we hold that the evidence adduced at trial rebutted that presumption[.]" *Id.* at 434. The Court held that even though "the signature card submitted to the bank identified [Jacqueline] as a 'joint owner[,]' . . . it was understood [by both parties] that the funds were to be withdrawn only upon Father's direction and on his behalf." *Id.*

The present case is easily distinguishable. For instance, unlike the father in the *Wagner* case, Dr. Griffith was not alive when the proceedings in the instant matter were initiated. More importantly, however, there is no evidence that Dr. Griffith did not intend the appellee to have joint ownership of the checking account when he submitted the appellee's signature card to Bank of America on November 20, 2009, almost a year before executing his revocable trust agreement. Absent evidence that Dr. Griffith did not intend to convey joint ownership of the checking account to the appellee in 2009, the "presumption of equal ownership of funds among parties to a multiple-party account" cannot be rebutted. *Id.* at 433.

Our holding is consistent with the plain language of F.I. § 1-204, which provides:

> Each account agreement for a multiple-party account opened on or after October 1, 1993, shall contain a clear and conspicuous written statement specifying that unless contrary direction is given in the account agreement, *upon the death of a party, the funds in the multiple-party account shall belong to the surviving party or parties*.

Id. at § 1-204(e)(1) (emphasis added). As we stated in *Stanley v. Stanley*, 175 Md. App. 246, 264 (2007),

> [t]he history of the [F.I. § 1-204] and its declared purpose make plain that the overriding intent of the legislature was to abrogate the common law rules concerning donative intent established by *Milholland I* and *II*, and to provide unequivocally that, in the absence of an account agreement that states otherwise, upon the death of one of the parties to a multiple-party account the survivors own the funds in the account.

What the appellant would have us do is undermine the "unequivocal" intent of the legislature by creating an exception that goes against the plain language of the multiple-party account statute. This we decline to do.

There were mechanisms available to Dr. Griffith that would have allowed him to transfer ownership of the checking account to the trust if that was indeed his intention. One way he could have done this was by executing an account agreement with Bank of America indicating that he did not want the funds in the account to transfer to the co-owner upon his death. *See* F.I. § 1-204(e)(1) ("[U]nless contrary direction is given in the account agreement, upon the death of a party, the funds in the multiple-party account shall belong to the surviving party or parties."). Another way by which he could have effectuated this end was, as the appellee suggests, by "withdraw[ing] all of the funds and open[ing] a new account in the name of the Trust." Because he did neither of these things, we agree with the circuit court that the appellee became the sole owner of the Bank of America checking account upon the death of her father.

Before moving on to our analysis of the other issues, we shall address the Motion to Supplement Record filed by the appellant on September 29, 2016, less than one week before oral arguments. The purpose of the motion was "to supplement the record of

proceedings in the case below with some *additional document* authored by the Appellee." (Emphasis added). However, because "[t]he court ordinarily may not order an addition to the record of new facts, *documents*, information, or evidence that had not been submitted to the lower court," Md. Rule 8-414(a) (emphasis added), and because the appellant merely alleges in her motion that she "inadvertently overlooked" the document, the appellant's motion is hereby denied.

II. Conveyance of Real Property

b. Parties' Contentions

The appellant argues that the circuit court erred in approving the appellee's conveyance of the real property located at 6150 Sandy Point Road, Prince Frederick, Maryland 20678 to herself. The appellant asserts that the circuit court had gotten it correct in its original ruling on March 3, 2015, wherein it declared the appellee's transfer of the property to herself "improper."

The appellee, on the other hand, contends that because the trust agreement specifically permits her to distribute trust assets "in-kind or in money," the circuit court correctly found that she did not violate her duties as successor trustee when she conveyed the house to herself for the purpose of holding it in trust for herself and her two brothers.

b. Analysis

In its March 3, 2015, Order, the circuit court found as follows with respect to the house:

> The Court is not convinced that [the appellee]'s transfer of the house to herself is proper, even if it is held in trust for

> [her and two of her brothers]. The Court understands the reason why the three siblings did this[;] however, the Court concludes that this act has worked to defeat the intent of Dr. Griffith. He clearly wanted the house sold and the proceeds evenly divided between the siblings. Further, as Ramsey argues, the Court is not confident that the house's true value at the time of the transfer is really $240,000 as [the appellee] asserts. . . . The house should be sold and the proceeds divided per the terms of the trust instrument, or once it's current value is determined, if any sibling wishes to buy-out another sibling's interest, then they may do so.

On March 13, 2015, the appellee filed a Motion to Alter or Amend the court's March 3, 2015, rulings. Based on that motion and the appellant's response thereto, the court amended its previous findings with respect to the transfer and valuation of the house:

> After re-considering the evidence, the Court finds that the trust permits [the appellee], as trustee, to make in-kind distributions of trust assets. Section 5 of the trust documents, specifically, 5.01(d), permits the trustee to distribute trust assets "in kind or in money" or partly either. Upon further reflection, the Court concludes that [the appellee]'s distribution of the house in-kind to herself and brothers was permitted under the trust.
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> The final issue is whether the valuation of the house at $240,000.00 was reasonable. The Court concludes that this valuation, the fourth one made, was, in fact, reasonable. This conclusion is based on the evidence that indicates that the parties agreed that Michael A. Thomas would provide an appraisal within the guidelines that counsel for [the appellee] and [the appellant] set. The Court further finds that the parties were engaged in an email conversation that disclosed that [one of the brothers] was interested in purchasing the house, "as is," for $240,000.00. The Court also finds that [the appellant] was interested in buying the house for the same price. Based on this, the Court concludes that the Thomas valuation was one that all parties accepted. Consequently, the Court shall accept that valuation as well.

On appeal, the appellant does not challenge the $240,000.00 valuation of the house, instead focusing her allegations of error solely on the circuit court's interpretation of Section 5.01(d) of the trust agreement. Specifically, the appellant argues that "[t]he provisions in Section 5 are patently 'boilerplate' and may not trump the explicit instruction and intent of the Settlor set forth in Section 4.05." In order to resolve this issue, we must examine the language of both of these trust agreement provisions.

Section 4.05 of the trust agreement provides, in relevant part: "After the proper provisions, if any, for the obligations and payments described hereinabove, the Trustee shall divide the remaining principal and undistributed income into five (5) equal shares, one for each of my children."

On the other hand, Section 5 provides:

> The Trustee shall have all powers, authorities and discretions granted by common law, statute, and under any rule of court. In addition, the Trustee is expressly authorized and empowered, in the Trustee's sole and absolute discretion, to exercise the following powers without application to, approval of or ratification by any court:
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> * * *
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> to value and appraise the assets comprising the trust estate and make any allocations, division or distributions required or permitted by this trust, in kind or in money, or partly in kind and partly in money, in different assets or disproportionate interests in assets, and to that end to allow to any part or share such assets, real or personal, or portions thereof or undivided interests therein, as the Trustee may elect. Except as otherwise herein specifically provided, the judgment and any determination of the Trustee in connection with, including any decisions to make a non-pro rata distributions [sic] and any decisions regarding the values assigned to various

> assets, shall be binding and conclusive on all parties interested therein.

Id. at § 5.01(d).

As stated by the United States Court of Appeals for the Third Circuit, "the settlor's intent is the primary guide to interpreting a trust instrument." *Dardovitch v. Haltzman*, 190 F.3d 125, 139 (3d Cir. 1999). To that end, "a writing itself is the best evidence of the . . . settlor's intent." *Id.*

In the case at bar, the terms of the trust agreement provide that the successor trustee shall be authorized to "make any allocations, division or distributions required or permitted by this trust, in kind or in money, . . . and to that end to allow to any part or share such assets, real or personal, or portions thereof or undivided interests therein, as the Trustee may elect." This clear authorization of power is not, as the appellant contends, at odds with Section 4.05's mandate that the "remaining principal and undistributed income [be divided] into five (5) equal shares, one for each of [Dr. Griffith's] children."

Black's Law Dictionary defines "principal" as: "The corpus of an estate or trust." BLACK'S LAW DICTIONARY (10th ed. 2014). In turn, it defines "corpus" as: "The property for which a trustee is responsible." *Id.* Thus, when Sections 4.05 and 5.01(d) of the trust agreement are read together, Dr. Griffith's intent is clear: He wanted his estate divided equally among his five children in in-kind, in-money, or partly-in-kind-and-partly-in-money shares. That is precisely what happened. The first accounting, which outlines the vast majority of the distributions, indicates that Ms. Musselman received an $80,000.00 interest in real property (one-third of the value of the house), $530.00 worth of personal

property in kind, and $11,114.00 in cash. The sum of these three amounts is the same as the cash distribution received by Ms. Ramsey pursuant to the first accounting: $91,644.00. Dr. Griffith's intent was simply that his children receive equal shares of his estate, and the manner of distribution we just described was one way to achieve that goal. Accordingly, we hold that the circuit court did not err where it found that the "in kind" distribution of the house was permitted by the terms of the trust agreement.[3]

III. Approval of Claimed Expenses

a. Parties' Contentions

The appellant assigns error to three of the circuit court's determinations regarding expenses. First, the appellant argues that the circuit court erred where it approved a total expense reimbursement of $16,478.71, despite the fact that the $16,000.00 transfer from the savings account to the checking account on December 15, 2010, plus the $14,615.69 in reported trust income add up to $30,615.96, which is a mere $378.71 less than the $31,094.67 of claimed expenses overall. Second, the appellant asserts that the court's allowance for attorneys' fees constituted error because those fees "were incurred to support the truculent resistance of the Successor Trustee to the legitimate Discovery efforts of the Appellant." Lastly, the appellant challenges the circuit courts "inexplicable decision to

[3] On appeal, the appellant assigned error the circuit court in this issue solely on the basis of her belief that the trust agreement mandated the house be sold and the proceeds of the sale divided equally among her and her four siblings. As such, she did not present her argument sufficiently to raise the issue of whether the appellee's deeding of the house to *herself only*, to be held in accordance with a verbal trust agreement between herself and her two brothers, was permissible.

allow the Successor Trustee to brazenly pay the sanction imposed by the Circuit Court for Anne Arundel County with Trust funds."

The appellee responds that despite the appellant's assertion that she transferred $16,000.00 from the savings account to the checking account three days prior to her father's death, the record does not clearly demonstrate how the transfer was made. Therefore, the appellee argues, because the $16,000.00 was deposited into the checking account while Dr. Griffith was alive, that money automatically passed to her as the joint account holder upon his death.

Regarding the approval of attorneys' fees, the appellee asserts that "there was no specific testimony that demonstrated any of the charged attorney fees were inappropriate." She further contends that the facts presented to the circuit court demonstrate that the issues and delays in this matter were not the fault of the appellee.

Finally, the appellee argues that the court did not err in allowing the $2,496.81 sanction imposed on the successor trustee by the Circuit Court for Anne Arundel County to be paid out of trust assets because that sanction was not issued *in personam* against Christine Musselman, but rather against the trustee of the trust.

b. Analysis

We agree with the appellee that the circuit court did not err in approving the expenses listed on the second and final accounting. As for the $16,000.00 transfer from the savings account to the checking account on December 15, 2010, the appellee is correct that the record is void of evidence concerning how the transfer was made. The transfer occurred

three days prior to Dr. Griffith's death. Thus, in accordance with our holding regarding ownership of the Bank of America checking account, *supra*, the $16,000.00 that was the subject of the transfer became the property of the appellee upon her father's death. As such, the court correctly determined that Dr. Griffith's final medical and funeral expenses were paid by the appellee rather than the trust.

We also hold that the court did not err where it approved the appellee's attorneys' fees. We agree with the appellee in that the appellant has "failed to produce any evidence to demonstrate that the attorney fees were inappropriate." In non-jury cases such as this, we review the approval of all expenses claimed in a final accounting of an estate, including attorneys' fees, under the clearly erroneous standard. *Toth*, 393 Md. at 323-24. Simply put, the appellant has not persuaded this Court that the allowance of attorneys' fees was, in fact, clearly erroneous. Likewise, because the sanction in the Circuit Court for Anne Arundel County was issued against the trust, rather than against the appellee personally, the court did not err where it approved the $2,496.81 in sanction-related expenses.

THE APPELLANT'S MOTION TO SUPPLEMENT THE RECORD IS DENIED. JUDGMENTS OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.