Circuit Court for Montgomery County
Case No. 155029FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0067

September Term, 2021

IN THE MATTER OF IVA E. JOHNSON

Graeff,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: November 16, 2022

In this appeal, Kevin Johnson, appellant, challenges the decision of the Circuit Court for Montgomery County to remove him as trustee of the Iva E. Johnson Revocable Trust ("Trust"). Following a trial on the guardianship petition, the circuit court held a hearing to address the various pending motions. The court then issued an order removing Mr. Johnson as trustee and appointing, in his place, appellee Robert McCarthy, the court-appointed guardian of the property. Mr. Johnson presents the following issue for our review:

Did the circuit court err in removing [a]ppellant as trustee of the Trust?

For the reasons that follow, we answer that question in the affirmative and vacate the judgment of the circuit court.

BACKGROUND

This case originated from a guardianship petition filed by Mr. Johnson in July 2018 for appointment of himself as guardian of the property and person of his mother, Iva E. Johnson. A four-day trial took place from July 15, 2019 through July 18, 2019. The circuit court granted the petition for appointment of a guardian of Ms. Johnson's property but declined to appoint a guardian of the person. The court originally appointed Catherine McQueen as the property guardian.[1] Approximately a year later, the court permitted Ms. McQueen to resign and appointed Mr. McCarthy as the successor guardian of the property.

[1] Earlier, Mr. Johnson withdrew his request for appointment of himself as guardian of Ms. Johnson's property.

At the time of the petition, Mr. Johnson served as trustee of the Trust. Ms. Johnson created the Trust in April 2001 and funded it with, among other assets, real property located in Silver Spring, Maryland at which Ms. Johnson resided, as well as a brokerage account. The Trust Agreement delineated Ms. Johnson as the original trustee[2] and the sole beneficiary of the Trust during her lifetime. Ms. Johnson, as the grantor, expressly reserved "the right, power or authority, to change, modify, alter, amend, revoke or terminate" the Trust and "[a]ll of the Grantor's reserved powers under this Trust are personal to the Grantor and shall not accrue to any other person." The Trust Agreement also provides that in the event Ms. Johnson ceased to serve as trustee during her lifetime, Mr. Johnson would serve as successor trustee and that, upon her death, Ms. Johnson's children, Mr. Johnson and Michelle Johnson Lancaster, would serve as co-trustees.

On February 21, 2019, prior to the trial on the guardianship petition, Ms. Johnson filed a Motion to Remove Petitioner Kevin Johnson as Trustee of The Iva E. Johnson Revocable Trust and to Return Iva E. Johnson's Assets and Income to Her Use and Possession Forthwith and for Other Relief. One of the attached exhibits was the Trust Agreement.

In her motion, Ms. Johnson explained that she was a 78-year-old, retired social worker residing at the residence owned by the Trust and that her primary sources of income were a federal pension and social security. Ms. Johnson stated that, "[b]ased on

[2] Sometime prior to his guardianship petition, Mr. Johnson assumed the role of trustee in Ms. Johnson's place, although the record is not clear how that came to be.

[Mr. Johnson]'s unilateral actions, [they] have a fiduciary-beneficiary relationship" and argued that he should be removed as trustee for his "wrongful actions," "breach of fiduciary duties," and "conflict of interest." According to Ms. Johnson, Mr. Johnson deprived her "of her assets and income," "her ability to drive an insured vehicle," and "the ability to manage her affairs, make purchases for her residence, [and] purchase her own food and clothing." More specifically, the motion alleged that Mr. Johnson withheld her mail, failed to provide an accounting and other requested financial information, neglected to pay certain expenses on time, and failed to respond to requests for funds to purchase groceries and other necessary personal items. In addition, Ms. Johnson asserted that although she revoked his power of attorney, Mr. Johnson applied for and was appointed as representative payee of her retirement income. Mr. Johnson also allegedly removed funds from Ms. Johnson's Wells Fargo checking account and, contrary to her wishes, diverted her income to himself as trustee. Ms. Johnson stated that documents were executed to remove Mr. Johnson as trustee in November 2017 and again in October 2018.

Mr. Johnson filed an opposition on February 28, 2019, denying that any of his actions warranted his removal as trustee. He stated that Ms. Johnson inaccurately asserted that in November 2017, documents were executed to remove him as trustee; rather, at that time, she revoked his power of attorney.[3] Mr. Johnson also clarified that,

[3] In his opposition, Mr. Johnson referenced his separate lawsuit against Ms. Lancaster in which he argued that the revocation of his power of attorney and "the Amendment to the Trust dated October 17, 2018" were the product of undue influence

contrary to Ms. Johnson's assertion, he did not have control of her assets in April 2017 or at any point prior to Mr. Johnson becoming trustee in December 2017. In contesting that he breached his fiduciary responsibilities and duties to Ms. Johnson, Mr. Johnson explained that he did not insure Ms. Johnson's vehicle because the Motor Vehicle Administration decided to suspend her license after reviewing information submitted by him, including documentation of her dementia diagnosis. Mr. Johnson further explained that Ms. Johnson's mail was diverted to him so he could collect the bills of the Trust and that the Office of Personnel Management and Social Security Administration determined, upon receiving evidence of his payments of Ms. Johnson's bills with her benefit checks, that he was qualified to continue serving as representative payee. Mr. Johnson asserted that he maintained an accurate record of Ms. Johnson's finances and while Ms. Johnson's attorney's request for an accounting was "denied based on her bias and false accusations against" him, he provided the relevant documents to the court-appointed investigator. Additionally, Mr. Johnson asserted that he used Ms. Johnson's limited funds to pay for her care and that, in light of her financial status, he prioritized payment of her bills.

On June 14, 2019, the circuit court held a hearing on Ms. Johnson's motion to remove Mr. Johnson as trustee.[4] According to the docket sheet, the court deferred ruling

exerted by Ms. Lancaster and, thus, invalid. He also referenced a temporary restraining order issued in that action, allegedly "stating that [Ms.] Lancaster was not to interfere with [Mr. Johnson]'s ability to serve as Trustee."

[4] A transcript of the June 14, 2019 hearing was not included in the record extract provided to this Court.

on that motion.[5] The parties to the appeal agree that Ms. Johnson's motion was not decided during the guardianship trial in July 2019.

Following the guardianship trial, the circuit court set a hearing for September 21, 2020 to address various pending motions. In preparation for that hearing, on August 19, 2020, the court's judicial assistant sent the parties the following email: "Below are the current open motions which are set to be heard on September 21st at 9:30AM (see attached). If there is something that needs to be addressed by the [c]ourt that is not included please file the appropriate motion. Thank you!" The attachment listed the docket entries for seven motions: (1) Mr. Johnson's Motion for Disallowance of Court Appointed Counsel Fees, filed June 25, 2019; (2) Ms. Johnson's Motion to Alter or Amend the Order Denying Ms. Johnson's Request that Mr. Johnson Be Required to Pay Her Attorney's Fees and Costs, filed August 9, 2019; (3) Ms. Johnson's Motion for Payment of Attorney's Fees and Costs for Court Appointed Attorney, filed August 9, 2019; (4) Ms. Johnson's Motion to Alter or Amend and/or Reconsider the Order Entered October 25, 2019, filed November 7, 2019; (5) Mr. Johnson's Motion for Court Order, filed January 2, 2020; (6) Guardian of the Property's Verified Motion to Sell Car, filed March 6, 2020; (7) Guardian of the Property's Motion for Instructions Regarding Social Security Income, filed March 6, 2020. Ms. Johnson's motion for removal of trustee was not mentioned in the email or the attachment.

[5] Specifically, the docket entry stated that the circuit court "defers [Ms. Johnson's motion for removal of trustee] to be heard by [the] trial judge."

At the September 21, 2020 hearing, Mr. Johnson and his attorney, Ms. Johnson and her attorney, and Mr. McCarthy were present. The motions hearing began with opening statements by Mr. McCarthy, Mr. Johnson's attorney, and then Ms. Johnson's attorney.

During his opening statement, Mr. McCarthy provided his position on the various open matters, including the issue of Mr. Johnson's removal as trustee: "The next issue is the issue of, [Mr. Johnson] made continuous trustee of the Trust, which is one of the motions that are still outstanding, that has not yet been ruled on by the [c]ourt." In support of removing Mr. Johnson as trustee, Mr. McCarthy discussed Mr. Johnson's lack of cooperation with him. He explained that Mr. Johnson refused to send him another copy of the accounting and that he eventually found the original copy, though it was not an accounting but merely "a compilation of the [T]rust assets."[6] Mr. McCarthy also referenced the "toxic relationship between [Mr. Johnson] and [his] sister," noting that Mr. Johnson filed a motion for a temporary restraining order against Ms. Lancaster, and stated that Mr. Johnson "doesn't have a functioning relationship with [Ms. Lancaster,] the

[6]At this point, the circuit court stopped Mr. McCarthy's opening statement and stated:

> This is just a terrible way to be dealing with your mother's issues.
>
> And to have your lawyer absolutely not help in any way, by saying no, we're not going to give you this, because we already gave it to you once? It's on a piece of paper. That takes about three seconds and a -- maybe you have to mail it to him, but it's not a big problem. It's a big problem because -- the war is what's the problem. This lady does not need what she has had to go through**.**

person who's taking care of [Ms. Johnson] on a daily basis, which he has to have [as trustee]." As an additional reason, Mr. McCarthy noted Mr. Johnson's noncompliance with the order entered on October 25, 2019 ("October 25, 2019 order") that required the property guardian "and/or" trustee pay Phillip Karasik, the court-appointed independent investigator, from the assets of the guardianship estate "and/or" Trust within 21 days. According to Mr. McCarthy, while "the guardianship . . . has no money," "there's been a lot of money spent out of the [T]rust." He mentioned in passing that he was "concerned about what [Mr. Johnson] spent the [T]rust monies on." Ultimately, Mr. McCarthy opined that the "[T]rust has [not] been operated in [Ms. Johnson]'s best interest" and that "there's a whole lot of personal ego involved in this case, which is driving this entire case." He requested that the court appoint him as substitute trustee.

In his opening statement, Mr. Johnson's attorney stated that Mr. Johnson "has faithfully and competently and assiduously fulfilled his mission as trustee." He further explained:

> He has accounted for every expenditure, to the penny. The accounting that he submitted is in the same form as the one he submitted to the [c]ourt previously. [Mr. Johnson] has the highest level of security clearance and any mismanagement of funds would cost him his clearance, and his livelihood.
>
> It is not just [Ms. Lancaster] who takes care of [Ms. Johnson]'s daily needs. It is [Mr. Johnson], as well. He visits his mother on a weekly basis, talks to her several times a week, and provides for whatever needs she may have.

Counsel for Mr. Johnson then addressed the issue of removing him as trustee:

> [T]he [T]rust document, which was prepared . . . when [Ms.] Johnson was a younger woman and very astute, does not allow for a change in the trustee, except under the most extraordinary of circumstances, or for a breach of a fiduciary duty, and it's our vigorous and strenuous argument that [Mr. Johnson] has not breached that fiduciary duty.

He asserted that Mr. Johnson "wants to work with Mr. McCarthy. He is by the book, but it is a book which is not a book of ego. It is a book of love for his mother."

At that point, the circuit court stopped counsel's opening statement to remark:

> [T]his is not the first time that we've found ourselves in a situation where the family just can't do it. Not because they don't want to, not because they don't love their parent, but because of a lifetime of disconnection . . . and that somebody from the outside needs to do it. Not because there are bad people doing it, but because somebody else has to do it. Somebody who's not connected to the family . . . .
>
> So I get that this is a war between the siblings . . . and . . . it's . . . not anything that's helping their mother. And I think what has to happen is that somebody else needs to do it.
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> * * *
>
> . . . [Y]ou're going to have to convince me that this is -- that this is the best way to do this. I . . . mean no disrespect to either one of you, but clearly, you're not on the same page, and when that happens, it's time to move on so somebody else can do this. And somebody who you don't pick. The [c]ourt will probably pick. But this is not fair to your mother. She's entitled to have this be a peaceful time in her life. And we're not getting there this way.

Mr. Johnson's attorney resumed his opening statement, stating:

> [T]he one oral motion that we disagree with most vehemently is [Mr. McCarthy's] motion to remove [Mr. Johnson] as trustee. And that is because the [T]rust language is very clear, and it is only for breach of fiduciary duty that he could

> be removed, and I believe that, if the [c]ourt were to take that action, that would be appealable.

At the end of his opening, counsel requested that Mr. Johnson be permitted to address commentary made by the court and Mr. McCarthy. The court responded:

> I'm pretty sure that what you just said is that your client, regardless of what I do, is not going to step down. That being the case, I'm not sure where else we go.
>
> This isn't really one of those -- . . . because the document says it, he's forever the person in charge. I think that the whole point of this process is to make sure that even though the document says that this is the person, it can be undone, particularly if it's not working.
>
> So I'm happy to have some kind of a proceeding that somehow gets to the end.

The court granted counsel's request and Mr. Johnson proceeded to make a statement.

In his sworn statement, Mr. Johnson stated that any "suggest[ion] that [he] was not cooperative with [Ms.] McQueen, and for that matter [Mr. McCarthy], is patently false." He explained that he "bent over backwards trying to work with [Ms.] McQueen on behalf of" Ms. Johnson and contended that Ms. McQueen mismanaged the estate by, for example, failing to pay or pay on time "every single one of [Ms. Johnson]'s monthly bills that [Ms.] McQueen had responsibility for." Expounding on that latter point, he stated that Ms. Johnson received, on a monthly basis, "approximately $2,800 from her [Office of Personnel Management] pension" that is used to pay her "mortgage, her cell phone bills, her landline bills, her water utility bills, her electricity bills, and her HOA payment for her property." However, "every month, . . . [Ms.] McQueen could not pay those bills

on time, although those bills were being sent to her office [and] . . . . [s]he received the funds . . . from OPM the first of every single month." Mr. Johnson stated that he and his attorney tried to "assist" Ms. McQueen "to no avail."[7]

Mr. Johnson then began to reference issues stemming from Ms. Lancaster, stating: "[T]he problem that I was having, as well as [Ms.] McQueen was having, dealing with, was that my sister was repeatedly impersonating my mother. My mother has never directly contacted [Ms.] McQueen for any reason." Before he could elaborate further, the court stopped Mr. Johnson's statement, explaining that the hearing will now be conducted "as a proceeding, not as a discussion." The court further explained that it would "go through the motions that are . . . open[] and rule." Ms. Johnson's attorney then requested an opportunity to make an opening statement, which the court allowed.

In her opening statement, counsel for Ms. Johnson focused primarily on the pending motions concerning attorneys' fees. In the context of those motions, she mentioned an "amendment[] removing [Mr. Johnson] as trustee", explaining that this was a "historical document[] so the idea of [Ms. Johnson]'s objection to her son continuing to act as trustee . . . was something that preceded any hearing." She stated that she asked Mr. Johnson to provide an accounting and other financial documents, but he refused. She also asserted that Mr. Johnson breached his fiduciary duty by having Ms. Johnson's

[7] During his sworn statement, Mr. Johnson detailed how he, as representative payee, spent Ms. Johnson's monthly social security payments of $377: "$200 of that $377, I was using to pay my mother's credit card bills every single month. Another $100 was given to [Ms.] McQueen to supplement groceries for my mother. $77 remained, of which I would use to pay for my mother's health care."

driver's license revoked and "controlling her money[] so she had no money to pay for the insurance." Counsel later noted that Ms. Johnson's motion for removal had not yet been decided and asserted that Mr. Johnson should no longer serve as trustee.

Mr. Johnson's attorney then called Ms. Johnson to testify on Mr. Johnson's motion related to attorneys' fees. She testified that her current residence is titled in the name of the Trust. Ms. Johnson stated, when asked whether she has a pleasant relationship with Mr. Johnson, that "it's not the same relationship of growing up at that time" and that "[l]ife seemed to have changed, to some degree." Ms. Johnson explained that "a while back," "there was a . . . little bumping of my car, at the bank[] [a]nd once it was at the bank, [Mr. Johnson] had my car taken from me, even after I called my insurance carrier." She testified that Ms. Lancaster takes her to medical appointments, picks up her medications, and prepares meals for her. She further stated that Ms. Lancaster "does a lot of helpful things for me" and "tries to assist in any way she can." Later in her testimony, Ms. Johnson commented:

> I don't know what has created such a hateful time in my life. . . .
>
> . . . I grew up . . . with a family that took care of their children very good. And they taught us to love each other and care about each other. But for life to turn so much against me, it hurts me on a daily basis.

Counsel then called Mr. Johnson as his next witness in connection with the motion on attorneys' fees. Mr. Johnson testified that the Trust was created in April 2001 and he became trustee in December 2017. He explained that one of the Trust assets, in addition

to Ms. Johnson's current residence, was a brokerage account and that, in approximately March 2019, there was $60,000 in that account. Mr. Johnson testified that, for unknown reasons, Ms. Johnson's attorney had "adopt[ed] an adversarial tone in direction towards [him]." He claimed that he has "had to file pleadings responding to inflammatory comments made by [Ms. Johnson] through her counsel, about [Mr. Johnson's] character." As an example, Mr. Johnson testified:

> [Ms. Johnson's attorney] has repeatedly accused me of mismanaging my mother's estate and overstepping my bounds of fiduciary responsibility to my mother. However, there is zero evidence of that. [Another circuit court judge] did not find that. Mr. Karasik did not find that. [Ms.] McQueen did not find that. . . .
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> * * *
>
> . . . At no time has this Court found any evidence that I have remotely, whatsoever, mismanaged a single dime of the [T]rust assets at all.
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> * * *
>
> . . . [Ms. Johnson's attorney] continued to say that I mismanaged my mother's estate. But there's never been any evidence that I've breached my fiduciary responsibility to my mother in any way.

Additionally, Mr. Johnson testified that, within the past few days, he had visited the [T]rust property at which Ms. Johnson resides with a plumber after being informed of a plumbing problem by Mr. McCarthy. Mr. McCarthy had been contacted by Ms. Lancaster who, according to Mr. Johnson, falsely claimed that there were "emergency plumbing issues" in the house. Mr. Johnson stated that the plumber identified minor

repairs needed to the toilets as well as a leak in the kitchen. But there was no leak originating from the toilets as Ms. Lancaster had apparently claimed. Mr. Johnson also testified that Ms. Johnson has been subject to the influence of Ms. Lancaster. When asked "[h]ow so," Mr. Johnson responded:

> This proceeding, as well as the prior civil proceeding, which resulted in the issuance of a temporary restraining order and a preliminary injunction, due to my sister's ongoing interference, over -- her interference, rather, of my duties and responsibilities as trustee.
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> That interference has also extended to documents that [Ms. Johnson's attorney] represented in her opening introduction, specifically the [T]rust amendment and the power of attorney document, which were examined and dealt with at the guardianship trial for which my mother took the stand . . . . She could not recognize or authenticate either document. Those documents were also placed in front of . . . the estate attorney who drafted the [T]rust, and he also concurred that he himself did not draft those documents.

Towards the end of Mr. Johnson's direct examination, the court remarked: "[P]erhaps it's time for things to change, because this is really not working. This is a terrible way to manage a family." The court, addressing Mr. Johnson, continued: "And I ask you again . . . to consider whether there's a way to do this that does not involve you or your sister, but somebody else, outside the family, who can do what needs to get done, without this kind of process."

During cross examination by Mr. McCarthy, Mr. Johnson stated that he did not know the balance of the Trust account at the time he became trustee. He testified, in regard to the October 25, 2019 order, that he had not paid Mr. Karasik from the Trust

assets and was unsure whether the guardianship estate had liquid assets in the amount owed to Mr. Karasik. Additionally, Mr. Johnson denied that he refused to send Mr. McCarthy a copy of the accounting, stating: "What I instructed my counsel to do was to ask you to look for the accounting that had been sent to you two and a half weeks prior. And I was informed by Counsel that you found the 30-page accounting that was sent to you two weeks prior." Mr. Johnson also denied having rejected Mr. McCarthy's request for a $6,000 loan from the Trust because of its tax implications. Rather, according to Mr. Johnson, he had "explained to . . . [Mr. McCarthy] that the sale of [Ms. Johnson's] car should cover the initial cost of the $6,000," and "in the event that that was not the case, then we could discuss $6,000 being withdrawn from the [T]rust."

Mr. Johnson, on cross examination, confirmed that he has disagreements with Ms. McQueen, Ms. Johnson's attorney, and Ms. Lancaster. Regarding Ms. Lancaster specifically, Mr. Johnson testified that he filed for a temporary restraining order against her and, in his filing, referred to an incident that occurred at Ms. Johnson's residence. He explained that Ms. Johnson had invited him to the house and that they "were having a pleasant conversation that was interrupted" by Ms. Lancaster when she entered the premises. When asked to characterize the interaction between him and his sister, Mr. Johnson stated that "[u]pon her entering the home and her refusal to follow [Ms. Johnson]'s direction to exit the home, the discussion could be characterized as contentious." Mr. Johnson also acknowledged that Ms. Lancaster had "made very

serious allegations [of assault] against [him]" but asserted that "they have all been denied and dismissed."

Ms. Johnson's attorney cross examined Mr. Johnson, focusing primarily on his accusations concerning her representation of Ms. Johnson as it pertains to the attorneys' fees issue. Her attorney asked Mr. Johnson to identify the court filings allegedly made on behalf of Ms. Lancaster. He responded that all the motions filed after the guardianship trial were "filed without the consent, knowledge, or direction of my mother" and that " [m]y mother has had no contact with you, either written[] [or] telephonic."[8] Mr. Johnson testified that he does not have access to Ms. Johnson's email account but would know whether Ms. Johnson communicated with her attorney or Ms. Lancaster by email "based upon the conversations with my mother." He also explained that Ms. Johnson's mail was redirected to him as a result of a restraining order issued against Ms. Lancaster in a separate lawsuit he filed against her and asserted that Ms. Johnson's "mail was tampered with by [Ms. Lancaster]." Lastly, when questioned about withholding pieces of Ms.

[8] The circuit court stopped Mr. Johnson's testimony to hold a bench conference during which it stated:

> I don't know what to do about your client. He is combative, and this is not helping the -- I'm really struggling with what can come out of this other than something that he doesn't want to have happen. But I'm just going to call in the balls and strikes now, and we'll go on from there. I don't know how else to do this. . . .
>
> * * *
>
> It's a combative process. Just despicable, but that's where we are. Okay.

Johnson's mail sent by her attorney, Mr. Johnson stated that "[i]t may have happened on an occasion or two[,] [b]ut my counsel immediately provided the mail to you or provided awareness to you that that had happened, and my mother received the mail."

On redirect, Mr. Johnson provided further detail about the incident that occurred at Ms. Johnson's residence:

> When the conversation with my mother was interrupted by my sister, and later her grandson, my sister attempted to instigate conflict between myself, that her son also participated in. During that time, she attempted to videotape the interaction, at which time it became clear to me to attempt to deescalate the situation. I decided to inform my mother than I was going to leave the premises.

He also testified that the funds in the Trust are insufficient to pay anyone other than Ms. Johnson and denied "hav[ing] any pecuniary goals in this case." Additionally, when asked why he "believe[s] the [T]rust should remain in its current form," Mr. Johnson asserted:

> The [T]rust should remain in its current form because it was designed and developed in the needs and wishes of my mother when she created it. And the [T]rust is very clear in terms of how the [T]rust should be managed in a situation where she's no longer [able] to handle the responsibilities as trustee.
>
> Additionally, her wishes are stated very clearly in . . . the [T]rust itself. At the point in time when the [T]rust was created, she had full understanding of what the [T]rust document meant and what it entailed. That is no longer the case today, unfortunately."

At the conclusion of Mr. Johnson's testimony, the circuit court ran through the open motions listed in the judicial assistant's email, broadly summarizing the issues

presented and, for some of the motions, indicating its ruling in its forthcoming order. In addressing the motions on attorneys' fees, the court made the following statement:

> I think the problem that's going to be true throughout this is that there is a wall that I think has been erected, that no one who went in a direction not approved by [Mr. Johnson] can climb. That's what he wants to have happen. He wants it to be that he has control of this. I understand that.
>
> I don't actually think he has any ill will toward anybody. Well, let me back up on that. No ill will toward his mother. But he has not made good on the -- on what he is required to do in the position he's in. It's not the first time that somebody, who's decided that a sibling doesn't count, does what has happened here.
>
> And while I understand that [Mr. Johnson] is sure that his sister -- hornswoggled is what comes to my mind -- his mother into helping her out, I don't know how he would know that, and I don't know why that's what we're talking about, as opposed to what's really important.
>
> So I also recognize that this has been fabulously expensive, largely because of the complete incapacity of [Mr. Johnson] to imagine a situation where the best thing to do would be to try to come to terms.
>
> Having listened to [Mr. Johnson] here today, it's clear to me that his sense of this is that he's protecting something, and while he may well be, I think it might be more related to himself than to his mother, and that he has also done it in a way that makes it very hard to imagine that there could be anybody -- and any way for the [c]ourt to see a way through to get what Ms. Johnson needs.

The court also commented: "The issue is your mother and her resources and the truth that what happened was, you let whatever it is between you and your sister get into the middle of where your responsibility for your mother was supposed to be."

After discussing all the motions listed in the email attachment, Mr. McCarthy directed the court's attention to "[t]he last . . . most contentious issue," stating:

> I would like to ask that [Mr. Johnson] be removed as trustee of the [T]rust, . . . and have him be removed for cause, because of his failure to comply with the October [25], 2019 court order, ordering him to pay within 21 days the fees owed to Mr. Karasik. Also, his inability to work with the family that would enable him to manage the property in a fashion to the benefit of [Ms. Johnson].

The following exchange occurred:

> [COUNSEL FOR MR. JOHNSON]: Your Honor, I most vehemently and strenuously object, and respectfully ask that this motion be denied. This was not on the docket for today. The [T]rust document does not provide -- notwithstanding the [c]ourt's equitable powers.
>
> If the [c]ourt is going to take up this motion, I ask that I be given sufficient time to prepare and brief this issue, because notwithstanding Mr. McCarthy's statement, the October [25], 2019 order is in the disjunctive, and there was an agreement between [Ms.] McQueen and--
>
> [MR. JOHNSON]: Mr. Karasik.
>
> [COUNSEL FOR MR. JOHNSON]: -- Mr. Johnson and Mr. Karasik that once the car was sold, Mr. Karasik, who has been very patient, would be paid. And in fact, everybody has the transcript of our January 29, 2020 hearing, and the first thing you asked is, when is Mr. Karasik going to be paid?
>
> And that's when Ms. McQueen brought up the issue of the sale of the vehicle. So it has never been [Mr. Johnson]'s intention to deny Mr. Karasik his payment. If the [c]ourt --
>
> [THE COURT]: However, the car's not been sold, and while I recognize that's a sore spot for Ms. Johnson, and -- the reality is that things have changed. And what I am concerned about here, more than anything else, is the focus on who's in

> charge, and who gets to say what's going to happen, and who's got the right idea about what happens next.
>
> There are going to be lots of changes as things move along. It will upset maybe everybody. Maybe only some. But that's how this works, unfortunately. The [c]ourt can't decide that now we're going to have another hearing about something that's already happened. We've spent a day on this. And it's not appropriate at this point to go back over what's already been done. So I'm not inclined to grant that motion.

Ms. Johnson, upon her attorney's request, was then given an opportunity to address the court. In doing so, Ms. Johnson explained that Mr. Johnson had her driver's license revoked and refused to pay for car insurance, noting that "he was controlling my money without my knowledge." She further stated: "And I thought that was very cruel, but he has a strong hate and memory. And he seems to -- when you excel and he does not want you to excel, he will revoke you in a minute." Ms. Johnson's attorney next asked her to explain why she wants Mr. Johnson removed as trustee and Ms. Johnson replied:

> Because [Mr. Johnson] removed me from my [T]rust without my knowledge. He took all of my funds from the bank and after I took the -- he promised that he was going to set it up for me, and he didn't set it up for me. He took my money, and he's been in control of it ever since.
>
> And I've been trying to get things improved, but every time I try anything, he will not let me have control over anything. I have never been controlled like this. And I've worked for everything that I have.
>
> I had a second home. And my second home, he said he sold it, and he didn't get anything for it.

Ms. Johnson also referenced an issue that occurred with her bank account: "I opened up an account, and I put my money in the bank, and somehow, they went and took my money out of my account. I went to Wells Fargo, and Wells Fargo replaced the $300 that was taken out of my bank account." And she stated that she had problems using her credit card to make purchases, including groceries and her medication.

Following Ms. Johnson's statement, Mr. Johnson's attorney requested that Mr. Johnson "be heard one last time." A bench conference ensued, and the court denied the request. Mr. Johnson's attorney then sought clarification about the court's decision on the issue of Mr. Johnson's removal as trustee:

> [COUNSEL FOR MR. JOHNSON]: I'm a little unclear. Have you made an order about the [T]rust?
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> [THE COURT]: I haven't made any orders yet. I mean --
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> [COUNSEL FOR MR. JOHNSON]: Then I would --
>
> [THE COURT]: -- put it another way, I haven't written any orders yet.
>
> [COUNSEL FOR MR. JOHNSON]: You made a decision, but haven't made an order?
>
> [THE COURT]: I've made decisions, but not an order.
>
> [COUNSEL FOR MR. JOHNSON]: Yes, I'm in a -- I'm in a bind.
>
> [THE COURT]: I'm sorry?
>
> [COUNSEL FOR MR. JOHNSON]: I'm in a bind about that.
>
> [THE COURT]: About what?

> [COUNSEL FOR MR. JOHNSON]: The [T]rust.
>
> [THE COURT]: Okay.
>
> [COUNSEL FOR MR. JOHNSON]: I would appreciate an opportunity to delete that.
>
> [THE COURT]: No. I'm sorry. I can't do that. I recognize that you're (unintelligible). I recognize that you've done what you can with it. But I can't allow this to be that this goes on forever and ever. . . .
>
> * * *
>
> [COUNSEL FOR MR. JOHNSON]: But if you would just give him five minutes, I would be most appreciative.
>
> [THE COURT]: No, sir. I cannot. I cannot. You have had plenty of time. He has spoken more than anyone else. And this is just who gets to talk last. And for today, it's going to be me.

At the conclusion of the hearing, Mr. Johnson's attorney objected again to consideration of the request for removal of Mr. Johnson as trustee:

> [COUNSEL FOR MR. JOHNSON]: Your Honor, I need to note my objection, for the record, if the [c]ourt does consider the motion to remove [Mr. Johnson] as trustee, just because that was not on the [c]ourt's docket for consideration.
>
> [THE COURT]: But it was on the docket in the context of the proceeding here today. It was discussed. And I think that one of the issues here is the -- if I could use a phrase that my father liked to use -- lingering death about how we're going to get the documents where they need to go.
>
> [COUNSEL FOR MR. JOHNSON]: Oh, I know, but I would be remiss if I didn't make that objection for the record.

On March 8, 2021, the circuit court issued an Omnibus Order for Opening Motions. In pertinent part, the court ordered "that [Mr. Johnson] is removed as Trustee of the [Trust], dated April 19, 2001, as amended, nunc pro tunc to September 21, 2020" and that Mr. McCarthy is appointed the substitute trustee. The court did not explicitly identify its reasoning for this particular order. At the beginning of the order, the court did note that "[t]his matter has been litigated for two and one half years" and "has 276 docket entries" and that "[t]hus far, five lawyers and multiple family members have wrangled their way through litigation." It also stated: "[Ms. Johnson]'s two adult children, [Mr. Johnson] and [Ms. Lancaster], do not get along. In fact, they are at war. Thus, progress has been difficult."

Mr. Johnson noted this appeal on March 16, 2021. He challenges only the portion of the circuit court's omnibus order concerning his removal as trustee of the Trust.

DISCUSSION

In arguing that the circuit court committed reversible error in removing him as trustee, Mr. Johnson makes four general contentions. He first argues that Ms. Johnson's written motion seeking his removal as trustee was not properly before the court at the September 21, 2020 hearing because it was not identified in the court correspondence sent prior to that hearing as one of the pending motions to be considered. Second, he argues that Mr. McCarthy was not entitled to raise the request for removal because he failed to file the appropriate written petition under the Maryland Rules. As his final two

arguments, Mr. Johnson contends that no evidentiary hearing took place and that no findings of facts were made by the court as required by Maryland law.

In response, Mr. McCarthy argues that the circuit court acted within its discretion to remove Mr. Johnson as trustee. First, Mr. McCarthy argues that Mr. Johnson's actions in serving as trustee meet the permissible statutory grounds for removal under § 14.5-706 of the Estates and Trusts Article. Second, he argues that it was appropriate for the circuit court to hear Ms. Johnson's written motion at the September 21, 2020 hearing because "the removal motion had been pending for many months; [Mr.] Johnson had filed a lengthy written opposition to the motion, so the motion was ripe for resolution; and [the judge] had set aside an entire day for motions hearings."

As explained further below, we vacate the circuit court's order removing Mr. Johnson as trustee of the Trust and remand the case for further proceedings not inconsistent with this opinion.[9]

I. STANDARD OF REVIEW

Generally, the decision to grant or deny a request for removal of a trustee is a matter for the circuit court's discretion.[10] *See Schmidt v. Chambers*, 265 Md. 9, 34 (1972). Where a judge's exercise of discretion is at issue, an appellate court reviews the trial court's factual findings for clear error and its legal analysis under the de novo

[9] We are sympathetic with the circuit court's sentiment regarding Ms. Johnson enduring additional proceedings given the toll this case has already taken on her. The procedure for removing a trustee, however, must comply with the applicable rules.

[10] Under certain circumstances not implicated in this appeal, removal of a trustee by the circuit court is mandatory. *See* Md. Code Ann., Est. & Trusts § 15-112(a)(1).

standard. *In re Adoption of Ta'Niya C.*, 417 Md. 90, 100 (2010). If no clear error or faulty legal reasoning exists, the trial court's discretion should not be disturbed absent a finding of abuse of discretion. *Id.*

Appellate courts will identify an abuse of discretion if the trial court's decision exists outside the realm of what "the court deems minimally acceptable." *North v. North*, 102 Md. App. 1, 14 (1994). Such a scenario can manifest in various ways, such as when a ruling "does not logically follow the findings upon which it supposedly rests or has no reasonable relationship to its announced objective." *Id.* "[W]hen an otherwise discretionary decision is premised upon legal error, the decision is necessarily an abuse of discretion because 'the court's discretion is always tempered by the requirement that the court correctly apply the law applicable to the case.'" *Bass v. State*, 206 Md. App. 1, 11 (2012) (quoting *Arrington v. State*, 411 Md. 524, 552 (2009).

II. THE CIRCUIT COURT ERRED WHEN IT REMOVED MR. JOHNSON WITHOUT FOLLOWING PROPER PROCEDURE.

Rule 10-712 delineates the procedures for the removal of a trustee. *See also* Est. & Trusts § 15-112(b) (stating that "[p]rocedures for the removal of a fiduciary shall be conducted by the court in accordance with the provisions of the Maryland Rules applying to a fiduciary"). Rule 10-712 provides that a trustee may be removed for cause on the court's own initiative or on a petition by an interested person.[11] Md. Rule 10-712(a)-(b).

[11] Rule 10-103(f) defines "interested person" as follows:

> (1) In connection with a guardianship of the person or the authorization of emergency protective services, "interested person" means the minor or the disabled person; the guardian

See also Est. & Trusts § 14.5-201(a), (d) (providing that "the court may intervene actively in the administration of a trust, fashioning and implementing remedies as the public interest and the interests of the beneficiaries may require," and affording the court "general superintending power with respect to trusts").

Specifically, the court "may order a fiduciary to show cause why the fiduciary should not be removed" or an "interested person may file a petition to remove a fiduciary," which must "state the reasons why the fiduciary should be removed." Md. Rule 10-712(a)-(b). The court must "issue a show cause order pursuant to Rule 10-104[12] which shall set a hearing date." Md. Rule 10-712(d). If no petition has been filed, the

> and heirs of that person; a governmental agency paying benefits to that person or a person or agency eligible to serve as guardian of the person under Code, Estates and Trusts Article, § 13-707; the Department of Veterans Affairs as directed by Code, Estates and Trusts Article, § 13-801; and any other person designated by the court.
>
> (2) In connection with a guardianship of the property or other fiduciary proceedings, "interested person" means a person who would be an interested person under subsection (f)(1) of this Rule and a current income beneficiary of the fiduciary estate; a fiduciary and co-fiduciary of the fiduciary estate; and the creator of the fiduciary estate.

"Fiduciary," under Rule 10-103(c), includes "a guardian of the property of a minor or disabled person" as well as "a trustee acting under any inter vivos or testamentary trust over which the court has been asked to assume or has assumed jurisdiction."

[12] Rule 10-104 provides that the circuit court, "upon the filing of a petition, . . . shall issue a show cause order directing persons on whom it is served to show cause in writing on or before a specified date why the court should not take the action described in the order." Generally, "the specified date for a response shall be 20 days after the date prescribed for service in the order." Md. Rule 10-104. "A copy of any related petition or document shall be served with a copy of the order." *Id.*

show cause order must "state the grounds asserted by the court for the removal." Md. Rule 10-712(d). The show cause order directs the trustee to "show cause in writing . . . why the court should not take the action prescribed in the order." Additionally, the court "shall conduct a hearing for the purpose of determining whether the fiduciary should be removed" and, upon finding grounds for removal, it may remove the trustee. Md. Rule 10-712(d)-(e).

There was no petition to remove Mr. Johnson as trustee listed among the motions to be heard at the September 21, 2020 hearing (including Ms. Johnson's motion[13] to remove Mr. Johnson as trustee), no show cause order issued, and Mr. Johnson, of course, was not notified that a petition to remove him would be heard on that date.

The circuit court erred by not issuing a show cause order and scheduling a hearing date as required by Rule 10-712(d). Accordingly, we vacate the circuit court's order removing Mr. Johnson as trustee and appointing Mr. McCarthy as substitute trustee. We also vacate the circuit court's order deeming Ms. Johnson's motion to remove Mr. Johnson as trustee as moot.

Upon remand, the circuit court should issue a show cause order regarding Ms. Johnson's motion and set a hearing date, and otherwise comply with Rule 10-712. In the event Mr. McCarthy files a petition to remove Mr. Johnson,[14] the court should issue a show cause order, set a hearing date, and otherwise comply with Rule 10-712.

[13] The motion should have been styled as a petition.

[14] Ms. Johnson's written motion and Mr. McCarthy's oral motion raised different grounds for Mr. Johnson's removal.

THE PORTIONS OF THE MARCH 8, 2021 OMNIBUS ORDER FOR OPEN MOTIONS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY REMOVING MR. KEVIN JOHNSON AS TRUSTEE AND APPOINTING ROBERT M. MCCARTHY, ESQ. SUBSTITUTE TRUSTEE ARE VACATED;

THE ORDER OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY DEEMING MOOT MS. JOHNSON'S MOTION TO REMOVE MR. KEVIN JOHNSON AS TRUSTEE IS VACATED;

CASE REMANDED FOR ADDITIONAL PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION.

COSTS TO BE PAID BY APPELLEE.