Circuit Court for Baltimore County
Case No. 03-C-16-007939

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 326

September Term, 2018

JAMES J. DASHER

v.

CLIFFORD F. RANSOM, III

Meredith,*
Berger,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: July 15, 2021

*Meredith, Timothy E., J., now retired, participated in the hearing of this case while an active member of this Court, and after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

After a lengthy bench trial, the Circuit Court for Baltimore County found that James J. Dasher, appellant, had entered into a binding agreement with his wife, Edith B. Dasher, now deceased, pursuant to which appellant would make a will that would leave all of his assets, including valuable real estate, to Clifford F. Ransom, III, appellee, who was Edith's only child (from a previous marriage). The court entered a declaratory judgment to that effect and ordered that the agreement was specifically enforceable by the son as the beneficiary of that agreement. The court further imposed a constructive trust on the property for the remainder of James's lifetime for the benefit of the son.

In this appeal, appellant presents three questions he frames as follows:

1. Did the [c]ircuit [c]ourt err when it ignored Maryland's Statute of Frauds and allowed the oral testimony of a disgruntled heir, about a never seen post-nuptial agreement, to override the conveyor's recorded deeds and Wills?

2. Did the [c]ircuit [c]ourt err when it admitted and relied upon the testimony of a disgruntled heir about statements allegedly made by the deceased in contravention of Maryland's Dead Man's Statute and Hearsay Rules?

3. Did the [c]ircuit [c]ourt err by not identifying [a]ppellee's burden of evidentiary proof and then failing to apply the "especially explicit and convincing" standard?

Although we shall consider the questions posed by appellant in reverse order, we shall answer "no" to each question and shall affirm the judgment of the circuit court.

PERTINENT LEGAL PRINCIPLES

This is an unusual case in multiple respects.

Normally, a child has no binding expectation of inheritance when a parent says to a child: "Your other parent and I have mirror wills that provide that everything goes to the survivor of us when the first dies, and then everything goes to you [or to you and your siblings] upon the death of the second of us." The wills operate prospectively only, and can be revoked at any time before either parent dies. *Shimp v. Shimp*, 287 Md. 372, 379 (1980) ("In Maryland a will is revocable."). And, even when there are mirror wills, upon the first-occurring death of one of the parents, the surviving spouse typically receives unfettered ownership of the couple's assets (whether pursuant to a will or as surviving owner of property that was jointly owned with right of survivorship), and is thereafter free to dispose of the assets or make a new will at any time before that parent's death. "'The testator can revoke his declared intention and alter his will as long as he possesses testamentary capacity. The untrammeled right to revoke a will has never been abridged by the State.'" *Id*. at 380 (quoting *O'Hara v O'Hara*, 185 Md. 321, 325 (1945)).

But the Court of Appeals also held in *Shimp* that, although a testator retains the power to revoke a will, a testator could nonetheless be contractually obligated to comply with *an agreement* "to make a particular testamentary disposition" of assets. 287 Md. at 386. The Court observed in *Shimp* that "[c]ontracts to devise are subject to the same rules as to validity as are other contracts." *Id*. at 383. The Court ruled in *Shimp* that, notwithstanding the legal right to revoke a will that conformed to an agreed testamentary disposition, the contract to make a particular testamentary disposition "may be specifically enforced in equity[,] or damages may be recovered upon it at law." *Id*. at 388.

In this case, the trial court found that there was a post-nuptial agreement between the decedent ("Edith" or "Edie") and her surviving spouse ("James" or "Jim"), and the beneficiary of that post-nuptial agreement (*i.e.*, Edith's son, "Cliff") was entitled to specific enforcement of the agreement. The trial court concluded that the terms of the post-nuptial agreement had been proved as permitted by Maryland Rule 5-1004, even though the written agreement was never produced and, at trial, its existence was denied by the surviving spouse.[1]

Here, the surviving spouse's inconsistent statements and testimony led the trial court to find that, despite the surviving spouse's denial at trial of the existence of any signed agreement—which was testimony the court deemed to have no credibility—appellant's earlier statements in which he described the terms of the agreement, including his assertions that he and the decedent had signed the agreement, were the more accurate version of the facts.

[1] Maryland Rule 5-1004, derived from F.R.Ev. 1004, provides:

> The contents of a writing, recording, or photograph may be proved by evidence other than the original if:
>
> (a) Original lost or destroyed. All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith;
>
> (b) Original not obtainable. No original can be obtained by any reasonably practicable, available judicial process or procedure;
>
> (c) Original in possession of opponent. At a time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing or trial, and that party does not produce the original at the hearing or trial; or
>
> (d) Collateral matters. The writing, recording, or photograph is not closely related to a controlling issue.

The Maryland Statute of Frauds requires a memorandum signed by the party to be charged in order to enforce an agreement for the "disposition of land or of any interest in or concerning land[.]" Maryland Code (1974, 2015 Repl. Vol.), Real Property Article ("RP") § 5-104. But, even though the Statute of Frauds was applicable to the agreement alleged in this case because the agreement pertained in large part to the disposition of interests in real estate, the RESTATEMENT (SECOND) OF CONTRACTS (1981) provides in § 137: "The loss or destruction of a memorandum does not deprive it of effect under the Statute." The trial court in this case was persuaded that there *was* a memorandum even though the defendant refused to produce it and eventually denied its existence.

In order to satisfy the Statute of Frauds applicable to contracts pertaining to the disposition of an interest in real property, the requisite memorandum may be "a signed writing [that was] not made as a memorandum of a contract." RESTATEMENT (SECOND) OF CONTRACTS § 133 (1981). And the memorandum "may be made or signed at any time *before or after* the formation of the contract." RESTATEMENT (SECOND) OF CONTRACTS § 136 (1981) (emphasis added). *Accord Salisbury Building Supply Co., Inc. v. Krause Marine Towing Corp*., 162 Md. App. 154, 161 (2005).

Comment d to RESTATEMENT (SECOND) OF CONTRACTS § 131 explains:

> The statutory memorandum may be a written contract, but under the traditional statutory language **any writing, formal or informal, may be sufficient**, including a will, a notation on a check, a receipt, a pleading, or an informal letter. Neither delivery nor communication is essential. See § 133. **Writing for this purpose includes any intentional reduction to tangible form**. See Uniform Commercial Code § 1-201.

> **Illustrations**:
> 1. A makes an oral contract with B to devise Blackacre to B, and executes a will containing the devise and a recital of the contract. The will is revoked by a later will. **The revoked will is a sufficient memorandum** to charge A's estate.

(Emphasis added.)

The memorandum must contain the essential terms of the agreement, but need not include all details or particulars. Comment g to RESTATEMENT (SECOND) OF CONTRACTS § 131 explains:

> g. Terms; accuracy. The degree of particularity with which the terms of the contract must be set out cannot be reduced to a formula. The writing must be the agreement or a memorandum "thereof"; a memorandum of a different agreement will not suffice. The "essential" terms of unperformed promises must be stated; "details or particulars" need not. What is essential depends on the agreement and its context and also on the subsequent conduct of the parties, including the dispute which arises and the remedy sought. Omission or erroneous statement of an agreed term makes no difference if the same term is supplied by implication or by rule of law. Erroneous statement of a term can sometimes be corrected by reformation. See § 155. Otherwise omission or misstatement of an essential term means that the memorandum is insufficient. Uniform Commercial Code § 2-201, however, states a different rule for sale of goods.

And RESTATEMENT (SECOND) OF CONTRACTS § 132 provides: "The memorandum may consist of several writings . . . ." Comment a to § 132 elaborates:

> A memorandum of a contract need only give assurance that the contract enforced was in fact made and provide evidence of its terms. It may consist of several separate documents, even though not all of them are signed and even though no one of them is itself a sufficient memorandum. At least one must be signed by the party to be charged, and the documents and circumstances must be such that the documents can be read together as "some memorandum or note" of the agreement. Explicit incorporation by reference is unnecessary, but if the connection depends on evidence outside the writings, the evidence of connection must be clear and convincing.

Here, there was testimony, credited by the trial judge, that James told Cliff that both he and Edith had signed a post-nuptial agreement that called for everything to go to Cliff. In WILLISTON ON CONTRACTS, the author emphasizes that the Statute of Frauds was not intended to bar enforcement of a contract "fairly, and admittedly, made," stating:

> Therefore, if after a consideration of the surrounding circumstances, the pertinent facts and all the evidence in a particular case, the court concludes that enforcement of the agreement will not subject the defendant to fraudulent claims, the purpose of the Statute will best be served by holding the note or memorandum sufficient even though it is ambiguous or incomplete provided that the essential terms can be identified with reasonable certainty.

RICHARD A. LORD, 10 WILLISTON ON CONTRACTS § 29.4 at 567-69 (4th ed. 2011) (footnotes omitted). *See* RESTATEMENT (SECOND) OF CONTRACTS § 137, Comment a, stating: "Although the Statute of Frauds was designed to serve an evidentiary purpose, it is not a rule of evidence. In cases of loss or destruction, *the contents of a memorandum may be shown by an unsigned copy or by oral evidence*." (Emphasis added.)

In addition to the post-nuptial agreement to leave all property to Cliff—*i.e.*, the document that was never produced by James—there were two subsequent memoranda of key terms that were recorded or signed by James. 1) A video recording of a purported "will." 2) A handwritten "will" James signed in the presence of two witnesses who also signed the document in the presence of each other. In the video recording, James stated:

> On this day of January 18th, 2016, I, Jim Dasher, am actually doing a live Will here and everything that I own, all tangible, all real estate, all accounts, all monies, everything, goes to Clifford Ransom, III, Edie Dasher's son and my stepson. If anything were to happen to me, I want all those possessions and everything material and everything, and anything and everything, to go to Clifford Ransom, III.

The handwritten "will"—that was prepared soon after the video recording, and was signed by James and witnessed by two persons—stated:

> I, James Dasher, being of sound mind and body, would like to make my final wishes known. Upon my death, I would like to grant all assets, tangible and intangible, to Clifford Fredic Ransom, III, the son of my wife Edith Bonsal Dasher and my step-son. Clifford Fredic Ransom III will be the executor of the estate.
>
> Assets include land, buildings, financial accounts. One exception will be the assets held in Best Sunshine Properties LLC, along with a bank account associated with the LLC. That property will go to the partners of the LLC. Beyond this exception all assets go to Clifford Fredic Ransom III. This is my final wish.

The terms of the agreement the trial judge found to have been made by James (with Edith) were similar to provisions set forth in Defendant's Exhibit 31, which, though no signed copy was introduced, reflected an agreement captioned "Mutual and Voluntary Separation and Property Settlement Agreement," prepared by an attorney in 1999. That agreement included provisions that called for new deeds to be drawn reflecting that James and Edith would hold their real property as tenants in common, each owning a life estate with the remainder interest of each belonging to Edith's son, Cliff. The document further reflected an agreement that each would execute a will that bequeathed all property owned upon their respective deaths to Cliff, and an agreement that neither of them would make any conveyance of money or property to any party other than Cliff for less than fair and adequate consideration. Additionally, the agreement provided that, if either Edith or James remarried, that party would enter into "a premarital agreement with [that party's]

new spouse so that it is clearly recognized that the entire estate of either . . . shall be inherited by" Edith's son, Cliff.

Although no signed copy of the post-nuptial agreement was ever obtained by Cliff, James himself told Cliff and others that he had such an agreement with Edith, and, at one point after Edith's death, James told Cliff he had found a signed copy of the agreement he had entered into with Edith. At trial, however, James denied the existence of any agreement.

The judgment entered by the trial court awarded Cliff three forms of equitable relief: 1) the court entered a declaratory judgment that the post-nuptial agreement was in effect and enforceable; 2) the court ordered specific performance of the agreement by James; and 3) the court imposed a constructive trust for the benefit of Cliff upon all assets, including the real property that had been titled as tenants by the entireties, and all other assets owned by James.

BURDEN OF PROOF

Before summarizing the evidence in more detail, we will address the third question posed by appellant, that is, whether the circuit court failed to apply the correct standard relative to appellee's burden of proof. Although the trial judge indicated that she was making all of her factual findings based upon "clear and convincing" evidence, appellant contends that a more stringent "especially explicit" standard should have been employed in this case. Appellant asserts in his brief: "'The evidence necessary to establish a lost instrument and to prove its contents must be *clear and positive* and of

such a character as to leave *no reasonable doubt* as to its terms and conditions.'" (Emphasis added by appellant; quoting *Barranco v. Kostens*, 189 Md. 94, 98 (1947), a case in which the court held that the evidence was insufficient to enforce an option agreement that had allegedly been lost or destroyed.) Appellant further asserts in his brief: "Appellee did not prove any alleged terms by 'explicit and convincing evidence,' so he failed to carry his burden as a matter of law."

In his reply brief, appellant reiterates:

> The Circuit Court did not apply the required "especially explicit and convincing" standard as set out in *Barranco*; rather, it applied the much laxer "clear and convincing" standard. The correct standard requires testimony that leaves "*no reasonable doubt* as to the existence of the contract and its terms." *Barranco*, 189 Md. at 97, 54 A.2d at 328 (emphasis added [by appellant]).

(Record references omitted.)

Appellant also quotes from *Beall v. Beall*, 291 Md. 224, 230 (1981) (which in turn quotes *Semmes v. Worthington*, 38 Md. 298, 326-27 (1873)), as follows: "Furthermore, we have held that the part performance itself 'must furnish evidence of the identity of the contract; and it is not enough that it is evidence of *some* agreement, but it must relate to and be unequivocal evidence of the *particular* agreement. . . .'"

Although it is true that the Court of Appeals indicated in *Barranco*, 189 Md. at 97, and cases there cited, that a "chancellor cannot grant specific performance unless the evidence is so clear, definite and convincing as to leave no reasonable doubt as to the existence of the contract and its terms," the appellate courts of Maryland have

subsequently clarified that the correct evidentiary burden is the "clear and convincing" standard, and that standard does not require proof beyond a reasonable doubt.

The Court of Appeals undertook the task of defining the term "clear and convincing evidence" in *Berkey v. Delia*, 287 Md. 302, 319-20 (1980), stating:

> We do not appear to have defined the term "clear and convincing evidence." Judge Orth did define it, however, for the Court of Special Appeals in *Whittington v. State*, 8 Md. App. 676, 679, n. 3, 262 A.2d 75[, 77 n. 3] (1970), as "more than a preponderance of the evidence and less than evidence beyond a reasonable doubt . . . ." It would be immediately perceived that this is almost precisely the definition given by the Supreme Judicial Court of Massachusetts in *Stone* [*v. Essex County Newspapers, Inc*., 367 Mass. 849, 871, 330 N.E.2d 161, 175 (1975)]. We adopt that definition. We point out in this regard the observation in 30 Am. Jur. 2d, Evidence § 1167:
>
> > The requirement of "clear and convincing" or "satisfactory" evidence does not call for "unanswerable" or "conclusive" evidence. The quality of proof, to be clear and convincing, has also been said to be somewhere between the rule in ordinary civil cases and the requirement of criminal procedure—that is, it must be more than a mere preponderance but not beyond a reasonable doubt. It has also been said that the term "clear and convincing" evidence means that the witnesses to a fact must be found to be credible, and that the facts to which they have testified are distinctly remembered and the details thereof narrated exactly and in due order, so as to enable the trier of the facts to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. Whether evidence is clear and convincing requires weighing, comparing, testing, and judging its worth when considered in connection with all the facts and circumstances in evidence.

The same year the Court of Appeals filed its opinion in *Berkey v. Delia*, the Court described "the degree of proof required to establish a contract to devise as 'clear and

convincing'" in *Shimp v. Shimp*, 287 Md. at 383, citing BERTEL M. SPARKS, CONTRACTS TO MAKE WILLS 24 (1956).

In *Weisman v. Connors*, 76 Md. App. 488, 502 (1988), Judge Alan Wilner, writing for this Court, stated:

> The law now recognizes three different, supposedly discrete standards for proving an allegation of fact in court: [1] proof by preponderance of the evidence, [2] proof by "clear and convincing" (or sometimes "clear, cogent, unequivocal, and convincing") evidence, and [3] proof beyond a reasonable doubt. *See generally* E. Cleary, *McCormick On Evidence* §§ 339-41 (3d ed. 1984); *Addington v. Texas*, 441 U.S. [418] at 423-25, 99 S.Ct. [1804] at 1808-09.

Even though Judge Wilner observed in *Weisman* that the "clear and convincing" burden had sometimes been described as requiring "clear, cogent, unequivocal, and convincing" evidence, the *Weisman* Court did not recognize a fourth level of persuasion *between* the "clear and convincing" standard and the standard requiring proof beyond a reasonable doubt. With respect to the intermediate burden applicable in this case (requiring proof by clear and convincing evidence), Judge Wilner acknowledged that "[l]oose and confusing language abounds" in Maryland caselaw. *Id*. at 503. The Court noted:

> As pointed out by L. McLain, *Maryland Evidence* § 300.4 at 145-46 n. 6 (1987), the courts and the General Assembly have used a variety of adjectives to express this intermediate standard, among them "clear and satisfactory" evidence and "clear and unequivocal" evidence. Weisman notes other cases requiring the evidence to be "clear," "precise," and even "indubitable." . . . Professor McLain observes that "[t]hese terms have been used confusingly, sometimes as the equivalent of a preponderance of the evidence . . ., sometimes as 'something more' than a preponderance . . . . On occasion they have been equated to proof beyond a reasonable doubt." L. McLain, § 300.4, at 146 n. 6, cont'd. (Citations omitted.)

Id. at 503-04.

A more recent edition of Professor McLain's treatise includes a similar discussion of this burden of persuasion. LYNN MCLAIN, MARYLAND EVIDENCE STATE AND FEDERAL § 300:4(ix.) at 323 (3d ed. 2013) (hereafter "MCLAIN"). Professor McLain notes, however, that this Court in *Weisman* rejected the characterization of this burden of persuasion as requiring proof beyond a reasonable doubt, *id*. at 323 n.60. *See Weisman*, 76 Md. App. at 505 ("However one may choose to define the [clear and convincing evidence] standard, the one thing that is clear beyond dispute is that it is a lesser standard than 'beyond a reasonable doubt.' . . . To instruct otherwise is wrong." The Court reversed the judgment in *Weisman* on the basis of that instructional error.).

Professor McLain also points out in her treatise, § 300:4(ix.) at 319 n.38, that the Maryland Civil Pattern Jury Instructions include a definition of the clear and convincing evidence standard, currently found in MARYLAND CIVIL PATTERN JURY INSTRUCTIONS (5th ed. MSBA 2017) MPJI-Cv 1:15, which states, in pertinent part:

> This burden of proof requires more than a preponderance of the evidence but less than proof beyond a reasonable doubt.
>
> To be clear and convincing, evidence should be "clear" in the sense that it is certain, plain to the understanding, and unambiguous and "convincing" in the sense that it is so reasonable and persuasive as to cause you to believe it.

The pattern jury instruction committee's Comment to MPJI-Cv 1:15 states: "For discussion of 'clear and convincing evidence' standard, see *Spengler v. Sears*, 163 Md. App. 220, 878 A.2d 628, *cert. denied*, 389 Md. 126, 883 A.2d 915 (2005)." In *Spengler*,

we said: "To satisfy this standard [of clear and convincing evidence], a plaintiff must persuade the jury that the truth of his contention is 'highly probable,' not 'merely probable.'" 163 Md. App. at 247.

With respect to cases addressing the burden of proof relative to the Statute of Frauds, in a pair of opinions authored by Judge Lawrence Rodowsky, the Court of Appeals described the evidentiary standard set forth in *Semmes v. Worthington* as an "overstatement":

> It is an overstatement to say, as did *Semmes v. Worthington*, 38 Md. 298, 327 (1873), that "it is not enough that [the conduct relied upon for part performance] is evidence of some agreement, but it *must relate to and be unequivocal evidence of the particular agreement charged in the bill*."

Unitas v. Temple, 314 Md. 689, 707 (1989). The Court in *Unitas* observed that the rule that had actually been applied in Maryland for establishing a contract by evidence of part performance is "more accurately encapsulate[d]" in this excerpt the Court quoted from J. Pomeroy, *Specific Performance of Contracts* § 107 (3d ed. 1926):

> In a footnote to the foregoing discussion Pomeroy opines that the "correct rule ... is admirably stated" in *Dale v. Hamilton*, 5 Ha. 369, 381 (1846):
>
> > " 'It is generally of the essence of such an act (of part performance) that the court shall, by reason of the act itself, without knowing whether there was an agreement or not, find the parties unequivocally in a position different from that which, according to their legal rights, they would be in if there were no contract.' "
>
> Pomeroy, at 259 n. 2.

> The quotation from *Dale* more accurately encapsulates the rule actually applied in the more recent part performance cases of this Court than does the statement in *Semmes*.

Unitas, 314 at 709. *Accord Cecil Sand & Gravel, Inc. v. Jones*, 335 Md. 539, 551 (1994).

Although the case currently before the Court focuses on the sufficiency of evidence of the alleged agreement rather than the adequacy of the parties' part performance, the *Unitas* Court's clarification of evidentiary burdens in a Statute of Frauds case, reiterated in *Cecil Sand*, 335 Md. at 551, bolsters our conclusion that a plaintiff's burden in such cases is to prove a prima facie case by clear and convincing evidence, and not, as appellant contends, by removing all reasonable doubt as the law requires in criminal cases.

Notwithstanding any conflicting statements that may appear in cases predating the decision of the Court of Appeals in *Berkey v. Delia*, 287 Md. 302, we hold that, in a case of this nature, the applicable burden of persuasion is the clear and convincing evidence standard, and we conclude that the trial judge in this case applied the correct burden of proof and burden of persuasion.

FACTS AND PROCEDURAL BACKGROUND

Because this case was tried as a bench trial, we are obligated to view all evidence in the light most favorable to the prevailing party (here, the appellee) pursuant to the "clearly erroneous" standard prescribed by Maryland Rule 8-131(c), which states:

> 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 evidence in this case included the following.

James Dasher, appellant, married Edith B. Dasher in 1992. At that time, Edith had one son from a previous marriage, namely, Cliff, appellee. At the time Edith and James married, Edith was the owner of Baltimore County real estate that had been in her family since 1933. That property is known as the Bristol House Farm. The property contains approximately one hundred acres of farmland in the Greenspring Valley, with a residence and outbuildings, and comprises four contiguous parcels of 20.80 acres, 10.50 acres, 49.28 acres, and 16.68 acres. The property was conveyed to Edith and her then-husband, appellee's father, Clifford F. Ransom, II ("Clifford II"), by her parents in 1975. The Bristol House Farm was across the road from the Mantua Farm, which was the property where Edith and her siblings grew up. The Mantua Farm was owned at the time of trial by Edith's brother, Frank Bonsal. Like the Bristol House Farm, the Mantua Farm had been in Edith's family since 1933.

Cliff, appellee, was born in 1974 and grew up on the Bristol House Farm. Edith and Clifford II divorced in the early 1980s, and, as part of their property settlement, the Bristol House Farm was conveyed from Edith and Clifford II as tenants by the entireties to Edith alone in fee simple. Edith and Clifford II shared joint custody of Cliff, and their relationship was amicable through the time of Edith's death in 2016.

Edith began dating James Dasher in 1987, and they married in August 1992. In October 1992, Edith conveyed the Bristol House Farm to herself and appellant as tenants

by the entireties. Clifford II testified that both Edith and James had spoken to him about their agreement that the property from Edith's family would eventually belong to Cliff.

At trial, Clifford II described several conversations he had with Edith about their son's eventual inheritance of her estate:

> [CLIFFORD II]: When she married [appellant] in about 1992, shortly thereafter, I became aware of the fact that she had changed the Deeds on the property to include [appellant] as a joint tenants by entirety. I called her up and said what the h is going on here? And she said, don't worry, I did that because [appellant] felt more secure if his names were on the Deeds, but he and I have an agreement that provides for, essentially, three things. [Appellant] gets life tenancy in the property, [appellee] gets the property, the financial assets, everything, on [appellant's] death.
>
> * * *
>
> [COUNSEL FOR APPELLEE]: All right. When was this conversation?
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> [CLIFFORD II]: I'm going to think it was roughly 1995.
>
> [COUNSEL FOR APPELLEE]: . . . [D]id you have any following conversations concerning an agreement between Dasher and Edie?
>
> * * *
>
> [CLIFFORD II]: In at least 2001, she told me that she was going to send her attorney, a fellow named Capriola, was going to send me some paperwork associated with the land transfers from me to her at the time of our divorce. I said, why do I need to do that, hasn't it already been done? And she said that this was a, pursuant to a reaffirmation of the agreement that she had with Cliff and she wanted to make sure that the titles on the land were in perfect order. I ---
>
> [COUNSEL FOR APPELLEE]: I'm sorry, you said a reaffirmation of the agreement with Cliff, did you mean [appellant]?
>
> [CLIFFORD II]: I'm sorry, with [appellant], thank you. I said, why do we need to, I already told her I was very upset that she put it in joint tenants by the entireties. She basically reassured me that [appellee] was well

protected. She kept saying, well protected, accommodations, agreements, written agreement with [appellant] and she said that was still in place and so I signed the documents and sent them back.

[COUNSEL FOR APPELLEE]: All right and was that the extent of any conversations you had with your ex-wife about this agreement?

[CLIFFORD II]: No. In 2005, when [appellant] went to jail on a murder charge, she called up in a panic to get him a lawyer.[2] As I said before, she often felt that I was a useful resource when it came to that kind of information. I talked to her about people that she could talk to. . . . [T]hat was the precursor to a follow on conversation a few days later when I called up and said, look, you have, you have a bigger problem than this criminal case. I said, it's going to cost you a half a million dollars to pay for [appellant's] defense, but the farm hand who was on the other side of that controversy is probably going to sue you civilly and while that should not impact your personal possessions, I'm not a lawyer, I can't speak to that, but I know you're threatened and if you get threatened, [appellee] gets threatened[,] and she said you don't have to worry about that. The agreement that I've talked to you about before still stands and I have that written agreement with [appellant,] and [Cliff] would be protected from any civil case against [appellant] and/or her.

[COUNSEL FOR APPELLEE]: All right.

[CLIFFORD II]: So, we, we spoke with great detail once again.

[COUNSEL FOR APPELLEE]: And was that the last conversation you had with Edie about this agreement?

[CLIFFORD II]: I can remember at least one more in roughly 2012 when she called up to ask my advice about a sinkhole that appeared underneath the house. I'm laughing because she didn't know where the

[2] On August 31, 2005, appellant was arrested when an employee, David Wonderlin, contended that appellant had fired a shotgun at him in anger after appellant confronted Wonderlin about appellant's suspicion that Wonderlin was romancing appellant's fiancée, Clara Larsen. Appellant insisted the shotgun had gone off accidentally because he had tripped over his shoelaces. Appellant was charged with attempted murder, 1st- and 2nd-degree assault, and reckless endangerment, but was convicted only of reckless endangerment.

> sinkhole came from, she didn't know how to resolve it. I told her that I had friends in the water business, broadly defined, who could probably help her. I also reminded her that one of the contributors to Garden Harvest, the food for the poor business that she was running, was Northrup Grumman and I said, they'll know everything about engineering and spy cameras and fiber optic cables, ask them. And I said, but just, she said, I'm concerned that the kitchen is going to fall off the back of the house into that sinkhole. And I then said, well, this is [Cliff's] asset and she said, yes, I understand. I said, I said I'm worried that if the wrong thing is done to remedy the sinkhole, . . . that it would damage his eventual asset and at that time she said, look, she was concerned about the sinkhole, not about the agreement. She said, I've told you, he's well protected, he's well protected, well accommodated, there's an agreement between me and [appellant] and I told her that I would not get involved with fixing the sinkhole unless it impacted directly on [appellee].

Cliff (the son) also testified about having conversations with his mother regarding an agreement she had made with appellant. Cliff testified that he and his mother were close, and that, although he had never seen or read the agreement, his mother had talked about it with him over the years. Cliff testified that, around the time of Edith's marriage to James Dasher in 1992, Edith had called Cliff into the library at the Bristol House to discuss the agreement she had made regarding the family property:

> [APPELLEE]: **. . .** She said that she and [appellant] had signed a marital agreement and she said that, you know, in that agreement, all the land and assets would go to [appellant] and then ultimately go to me and she wanted to be clear that this was family property and that, you know, while she wanted [appellant] to have the use of it, absolutely, and that he was her husband, you know, that it was going to be protected for generations to come.

Cliff moved to New York City in August 1995. But he continued to see his mother on holidays and some weekends. He spent nearly a year in Asia in 2000, and upon his return, he noticed that Edith seemed "really isolated" and that her "health seemed to be in

decline." Edith had been living in her upstairs bedroom at the Bristol House Farm for at least a year, yet no one knew it except for appellant, who told anyone who asked about Edith that she was in New Hampshire. The decline in Edith's health led to another discussion between Cliff and his mother about the agreement she had regarding the property:

> [APPELLEE]: Yes. So, this would have been when I returned from Asia, it would have been late fall in 2000, I visited my mother in her bedroom and, you know, she was looking really bad and I said to her, you know, Mom, what's going on and, and we talked a little bit about her health then and I said, well, you know, what's, what's the, what's the plan here? You know, around your estate? [. . .] And she said I needn't worry, there was an agreement in place. She referred to the same agreement that she talked about in the early nineties. I will make a point to add that she had mentioned that agreement and we had had discussions about that agreement a number of times over the years, just in passing, when we talked about the future and stuff like that. And so, she explained the terms of the agreement, she made clear that it was a written agreement, just as before, ["]Jim and I signed an agreement.["] And that was what we discussed about in regards to her estate.

Cliff testified that he and his mother also discussed the agreement she had with appellant in 2002 or 2003, when Edie was contemplating a divorce from appellant:[3]

[3] Although Edith and appellant married in 1992, and remained married at the time of Edith's death, appellant was engaged, from 2003-2005, to Clara Larsen, who worked for appellant on the Bristol House Farm. Between 2000 and 2016, appellant had Clara Larsen preparing meals every day for Edie, who Clara was told was named "Rebecca," and for a woman named Janet Knapp, who Clara was told was named "Marie." The meals appellant arranged for Clara to make for the two women were always the same: steamed vegetables, rice, and lentils. Cliff learned during appellant's criminal trial that Clara Larsen was appellant's fiancée. And "Marie" was actually Janet Marie Knapp, who was appellant's second wife, whom he had divorced about a month before marrying Edith.

(continued…)

> [COUNSEL FOR APPELLEE]: All right. We were talking about a discussion in 2003. . . . Was there a discussion about the agreement, was that a subject matter of that discussion, and if so, in what way?
>
> [APPELLEE]: Yes, in that discussion in 2002 or '03, my mother brought up the agreement in light of her seeking, or potentially seeking a divorce from [appellant]. As a result of him having a relationship with Clara Larsen.
>
> [COUNSEL FOR APPELLEE]: All right and what did she say about the agreement at that time?
>
> [APPELLEE]: Well, she reminded me of its terms. There was, there was nothing set, you know, the agreement was set but there was nothing set, vis-à-vis a divorce. But she was reassuring me that were something to change, one way or another, her, you know, that the agreement would be upheld.

(continued…)

Janet Knapp testified at the trial of this case that she had been suffering from fatigue continuously since 1969 and her only employment had been for a week or two while living in Florida in the 1980s. She testified that she married appellant on March 31, 1980, and that they separated in 1985 at appellant's request "because I didn't have enough energy." Janet Knapp lived in the upstairs of a house on Geist Road that appellant and Edith purchased as a rental property in 2000, while Clara Larsen and her three children lived in the downstairs of the Geist Road property (which was around the corner from the Bristol House Farm). Appellant promised to take care of Knapp for the rest of her life, and Knapp promised appellant that if he ever found a woman he wanted to marry, Knapp would grant him a divorce. In the summer of 1992, appellant sent Knapp to South Dakota to obtain a quick divorce. The divorce decree was signed on June 30, and appellant married Edie on August 3.

Cliff testified at the trial of this case that one of appellant's idiosyncrasies was that, even after Cliff learned of Janet Knapp and Clara Larsen, appellant would permit no discussion of either woman:

> I was prohibited from talking about both Clara and Janet. Jim made it very clear that there were to be no discussions about Clara or Janet. If I were to bring up their name, the conversation would immediately shut down and he prohibited my mother from speaking about Clara and Janet as well.

Appellee also testified about a conversation he had with Edith in the spring of 2005, when he told his mother he was planning to propose to his then-girlfriend. Appellee testified: "My mother was adamant that I get a pre-marital agreement." According to Cliff, his mother followed up on that conversation by sending him an e-mail, which was admitted, over objection, as appellee's Exhibit 4. In that e-mail, dated May 31, 2005, Edith wrote:

> De[a]r Cliffie,
>
> I got your message. So **here is the list of assets you will inherit from me**:
>
> [A]pproximately 100 acres of land in 4 parcels:
> 16.78 acres with the house and outbuildings; this piece is in Easement, meaning that no more living dwellings can be built on it. Just the site itself is worth $1,000,000. (someone recently bought 10 acres on Geist Road for $1,000,000, and it has almost no views)
> 10.5 acres that is not in easement, meaning that they have potentially two building sites, which increases the monetary value tremendously;
> 20 acres (the corner field opposite Frank and Helen [Edith's brother and sister-in-law]), also could have two building sites; six years ago we were offered $550,000 for this; it's worth more now
> 49.6 acres (the woods, Bauer's field, sage grass field), also with two building sites. The []value of this land has skyrocketed and is highly sought after. Just six years ago, a couple dropped off a signed contract for 1.2 million for the 49.5 acres; it is worth more now. The little tenant house opposite the old mill house (was owned by the Sages, then the Blacks, and then, I forget their names) that sits on one acre went for $500,000 a few years ago; that was just for the land because they tore the house down and rebuilt.
> All these parcels have access to Mantua Mill Rd., which means the building sites are viable, unlike the Gillettes who have potentially 14 building sites, but almost all are landlocked, not accessible to any road.
>
> The trust at the Mercantile is worth around $850,000. I can't find the trust agreement, but I will call the Mercantile and see if we can get a copy. I'm

> sure if I looked long enough, I could find it, but it's probably quicker to get a copy[.]
>
> You have 33.33 acres of land (or as it is now, 1/3 of 100 acres) in Sharon, N.H. that could be one or two building sites. David would have the best idea of the worth of that as he owns 1/3 as does Frank.
>
> And of course the few bits of furniture I got from Ma's possessions, and what I already have, and an attic full of junk, and probably your Asian treasures!
>
> You can see what the lawyer can do, but, especially after seeing [appellee's then-girlfriend]'s reaction, **I'm very uncomfortable leaving my unencumbered assets (everything except the Trust) to you without a prenuptial agreement.** When she says "You want a prenupt[i]al agreement, you find another woman!", I have to ask where is the love for you? **I am the one demanding the prenupt, not you**; she shouldn't hold this against YOU, only against ME. If she loves YOU, then she would be willing to marry you no matter what so long as YOU are treating her with Love and Respect; it is clearly not you who is insisting. Remember the lines, ". . . For richer, for poorer. . ."?
>
> By me bringing it up and not you, it is patently obvious that I am the one behind it, not you, so if she loves you, she should be willing to work out <u>something</u>. But she isn't even willing to talk about it much less negotiate. However indelicate I may have been, that is no reason to take it out on you and threaten not to marry you.
>
> Because of her reaction, I have to say that I am more uncomfortable than ever about anything short of a prenupt to protect the assets you will inherit from me. And this is not about singling out [appellee's then-girlfriend]; **I would say the same for any woman; this day and age**, with the divorce rate at 50% as it is and if you were engaged to a woman with more assets than you, **you still should have a prenupt; every spouse should have protection**.

(Underlining and capitalization in original; bold emphasis added.)

Cliff also spoke to Edith in 2014 about her agreement with appellant. When Cliff made a visit to Maryland and mentioned to his mother that the Bristol House Farm was

looking "dilapidated," she told him that all the land would one day be his and he could clean it up as much as he wanted at that time.

Around Thanksgiving of 2015, Edith went on a spiritual retreat and was only occasionally in contact with the family. Appellee spoke to her on Christmas Day, but then she went back into retreat, and that was the last time Cliff spoke to his mother until the day she died.

Appellant called him the week before Edith died, and told Cliff that he was taking Edith to the hospital because she had developed a bacterial infection from eating bad yogurt. Cliff offered to come to Baltimore, but appellant was adamant that he not travel down to see Edith, nor would appellant let Cliff speak to her. Appellant "made it clear there would be a confrontation if I came to the hospital." Then, on the morning of January 16, appellant called Cliff (who was in New York) and told him: "[Y]our mom has taken a turn for the worse, if you want to see her, you better get down here right now." Cliff caught the first train to Baltimore and met appellant at Bristol House because appellant had taken Edie home from the hospital. Cliff helped his mother into the "hut" in the yard where she had been staying. Cliff said he "could see that she was in a really horrible condition," jaundiced and bleeding. Cliff was with Edith when she died a short while later that day. He was still unaware at that point that his mother had cancer.

Edith died of Stage 4 breast cancer on January 16, 2016. She had been diagnosed in October 2014, but, according to appellant, she had insisted that no one be told about

her condition. This included Cliff as well as Edith's brother David, neither of whom were informed that Edith had cancer, let alone that she was dying, until the day she died.

January 18, 2016, was the day of Edith's viewing. Cliff testified that, on that day, he not only had conversations with appellant in which appellant confirmed the agreement Edith had discussed, but appellant also took steps to memorialize his effort to comply with the agreement. Cliff testified:

> [APPELLEE]: Well, [appellant] called me first thing in the morning, I was still in bed, and he said it was urgent. I get up to the house immediately, because I was staying at Mantua [Farm, his Uncle Frank's property across the street from Bristol House Farm]. I drove up to the house, he met me in the front hall and **he immediately put a key in my hand and he said that he and my mother had an agreement where all the land would ultimately go to me and this key was a symbol that he planned to honor that agreement and he said, more to the point, I don't even want the land, I want to transfer the land to you as soon as possible** and then he walked me into the living room and we sat down.
>
> [COUNSEL FOR APPELLEE]: All right and what occurred?
>
> [APPELLEE]: Well, he told me that the night before he had these terrible heart palpitations, they were so bad that at one point he thought he might die and, you know, I was shocked, I mean, because I had just learned that my mother, you know, my mother had just died two days before and now Jim is talking about dying and so I said, well, you know, do you need to go to the hospital, did you call any paramedics? And he said, he said he was fine for now but, you know, and he wasn't worried about his heart, but **he had realized and was worried about, you know, he didn't have a Will and he wanted me to get him a lawyer to make a Will that day and his big fear was that, you know, were he to die without a Will that the agreement that he had with my mother where the land, all assets, everything went ultimately to me, that would not be upheld because his family would swoop in and they would kind of get involved and he didn't have very good things to say about his family. He just wanted to get a Will made that day immediately.** And I said, well, you know, what can I do? He asked me to go to Mantua to speak to my, my uncle and see whether he could get him a lawyer to speak to that, later that day, he asked

> me to call whoever to get him a lawyer to speak to later that day. I reminded him that **it was Martin Luther King Day, a national holiday**, and he said, you know, whatever it takes, just find me a lawyer. And I said, well, look, if it's so urgent, how about we make a video Will and **he said** that's great, I want, **I want some kind of Will that reflects the agreement that me and your mother have**. And I said, okay. **So, I pulled out my phone and took a video of [appellant], you know, delivering his Will**.

(Emphasis added.)

The video recording was admitted as Plaintiff's Exhibit 24. In it, appellant said:

> [APPELLANT]: Okay. On this day of January 18th, 2016, I, Jim Dasher, am actually doing a live Will here and **everything that I own, all tangible, all real estate, all accounts, all monies, everything, goes to Clifford Ransom III, Edie Dasher's son and my stepson**. If anything were to happen to me**, I want all those possessions and everything material and everything, and anything and everything, to go to Clifford Ransom III.**

(Emphasis added.)

Later that day, however, Cliff did some reading online and discovered that a video will may not be sufficient under Maryland law. But appellee was having trouble finding an attorney due to the holiday. He told appellant that a will needed to be written and witnessed to be effective, and that his Uncle David and his then-fiancée (Stephanie Clinton, whom he would later marry) could be witnesses. Cliff testified:

> [APPELLEE]: [S]o, I grabbed [David Bonsal and Stephanie Clinton, the witnesses, and] we drove up to Bristol House. I ran inside and told Jim that, you know, the video wasn't going to work and if he really wanted a Will right now at this moment, as he said to me, that I had two witnesses in the car[;] and he said, absolutely, bring them in. And so, David and Stephanie, I waved them into the house. David and Stephanie came in, we all sat in the living room and Jim told them, more or less, what he told me when we were sitting in the living room earlier. He said that he had a horrible heart condition the night before and was concerned, you know, at the time about it. He realized he didn't have a Will. **He told us multiple times about the agreement that, you know, all, you know, all the land**

> **and the assets would, would go to me ultimately, you know, it would first go to him, then, then to, then to me and he said he wanted a Will that reflected that agreement so in case something happened to him**, his family wouldn't come swooping in and mess things up and so he asked me to take a Will down for him. I grabbed a piece of paper, he dictated the terms of that Will, I wrote them down, **he reviewed the Will, he signed it**, David and Stephanie witnessed it and that was it.

(Emphasis added.)

The Will dictated by appellant and handwritten by appellee on January 18, 2016, was admitted as Plaintiff's Exhibit 23. It provided:

> 01/18/2016
>
> LAST WILL & TESTAMENT
>
> I, Jim Dasher, being of sound mind and body, would like to make my final wishes known**. Upon my death, I would like to grant all assets tangible and intangible, to Clifford Fredic Ransom III, the son of my wife Edie Bonsal Dasher and my step-son. Clifford Fredic Ransom III will be the executor of the estate.**
>
> **Assets include land, buildings, financial accounts**. One exception will be the assets held in Best Sunshine Properties LLC, along with a bank account associated with the LLC. That property will go to the partners of the LLC. Beyond this exception all assets go to Clifford Fredic Ransom III. This is my final wish.
>
> Signed
> /s/ James Joseph Dasher
>
> Witnesses
> /s/ David Stewart Bonsal
> /s/ Stephanie Renee Clinton

(Emphasis added.)

Cliff testified that, at the time, he did not know what Best Sunshine Properties LLC was, but he later discovered that it was an LLC registered to appellant and Clara Larsen, and the LLC owned a condominium in Florida.

Both David Bonsal and Stephanie Clinton testified and confirmed Cliff's description of appellant's acknowledgement of having an agreement with Edith to leave all property and assets to Cliff. Mr. Bonsal testified that appellant "said, . . . I want to **I want to draw a Will up . . . that reflects an agreement that your sister and I had regarding the disposition of the assets, the assets, of her assets**," after which appellant dictated to appellee what he wanted the will to say, and appellee "took down word for word" appellant's statements. (Emphasis added.) Mr. Bonsal identified Exhibit 23 as the document he had witnessed appellant sign as a will on January 18, 2016.

Stephanie Clinton similarly testified:

> So, then **Jim explained that he and Edie had an agreement and that agreement said that everything was supposed to go to Clifford** and he was concerned because he realized the night before that he doesn't have a Will and that he's estranged from his family and that they were, you know, not good people and that he was worried they would swoop in and try to take things from the estate. So, he wanted to make sure he had a Will immediately and he actually wanted, if possible, to get the land out of his hands as soon as possible, to transfer that to Cliff.

(Emphasis added.)

When Cliff's father, Clifford II, testified, he recounted a conversation he had with James Dasher at the funeral home on January 18, 2016, the day of Edith's viewing:

> [CLIFFORD II]: . . . [Jim Dasher] then said that he was worried about his heart, that he was in the process of making, **preparing a Will that would validate the agreement that he had with Edie, that she and I had discussed many times, that [appellee] would get everything at his death.**
>
> [COUNSEL FOR APPELLEE]: Did, just so I'm clear, a little unclear, what did he tell you specifically about the agreement?

> [CLIFFORD II]: **He said that Edie and he had an agreement, a written agreement, that had been in place for a very long time, that everything would go to [appellee] at [appellant's] death.**

(Emphasis added.)

The evening after the viewing, an attorney named Edward (Ned) Halle, Jr., came to Mantua Farm and met with appellant and appellee. Appellee described the meeting:

> [APPELLEE]: Well, you know, we were, I, I showed Ned the Will that I made out this morning and he reviewed it and he thought it looked pretty good. Then Jim had a lot of questions for Ned about how to transfer the land to me and he wanted to understand what that process looked like. We talked about creating an irrevocable trust where Jim would get to live on the land and, for as long as he wanted, but the land would be protected in that it would go to me. We also talked a little bit about conservation and protecting the land. And how we might, you know, go at that, you know, in that it was going to be in an irrevocable trust.
>
> [COUNSEL FOR APPELLEE]: All right and what else was discussed?
>
> [APPELLEE]: Well, toward the end of the conversation, we all sort of agreed that the irrevocable trust was a good way to go, we were all kind of high fiving, this is a great idea, Jim was onboard with it, he liked it a lot. And they agreed to follow-up. But at the end of the conversation, Jim said, oh, well, there's just one small detail. There happens to be a $500,000 reverse mortgage on the Bristol House residence and that was sort of a shocker because, I guess, now I know you can't put land in irrevocable trust when it has a lien on it. And so, we briefly discussed how we would clear that lien and I believe it was suggested that maybe [Edith's brother] Frank, my uncle ---
>
> * * *
>
> Jim said he thought he could get Frank to pay for it. Those were his words. He said, yeah, I think I can get Frank to pay for it. That was in response to a comment made by Mr. Halle.

Mr. Halle's testimony relative to the January 18, 2016 meeting was consistent with appellee's testimony:

> [MR. HALLE]: There was a sense of urgency. . . . [T]here was some sense of urgency in, in, in having to get this done right away.
>
> * * *
>
> [COUNSEL FOR APPELLEE]: . . . So, then the three of you were in a room at Mantua Farm house and could you tell us what transpired?
>
> [MR. HALLE]:. . . [T]he gist of it was that there was discussion about could, **could I help put the farm in a trust for, with, with Cliff[] to be the beneficiary and Mr. Dasher to . . . have a life estate** in the trust, and the right to stay in the farm for as long as he wanted to but the, with Cliff[] as basically the owner of the, of the trust, or the, the beneficiary of the trust and, and, and that was the discussion.
>
> * * *
>
> [COUNSEL FOR APPELLEE]: And so, as best you recall, can you tell us what the conversation was, . . . particularly focus, focused on what Mr. Dasher had to say at this meeting?
>
> [MR. HALLE]: Well, he just, he made it clear that he wanted, he wanted to do this . . . . And, you know, that, they just basically wanted to know was that doable, could I help and **the gist of it was that** what I said, that he, **he wanted Cliff[] to have the farm and he just wanted to be, have a life estate in the farm and that was it**.

(Emphasis added.)

Cliff stayed in Baltimore for several days after Edith's viewing, helping appellant with chores around Bristol House. During that period, Cliff helped clear out the structure

behind Bristol House where Edith had been staying near the end of her life. The parties described the structure as a "hut" or a "bungalow" about 200 yards from the main house.[4]

In the hut/bungalow, Cliff "found a number of notes and journals, rules about how [Edith] would interact with Jim, diaries taken at the time, you know, of her illness." Appellant photographed some of these documents and said he found them "disturbing."

Cliff returned to his home in New York. His phone records reflected that, on the afternoon of Sunday, February 21, 2016, appellant called him and engaged in a "long conversation," which Cliff described as follows:

> [APPELLEE]: . . . [H]e called me to tell me that that week he had been made personal representative and we talked about a number of different things in that conversation but **one very important thing that we discussed was that while going through my mother's files, he came across the original agreement that was signed between the two of them, that talked about, the same agreement we've been talking about, you know, all morning long.**

[4] Appellant testified that he had built this "hut" or "bungalow" for Edie in 2002. Appellant claimed that Bristol House had a mold problem that was causing Edie so much concern that Edie wanted to move to an apartment complex. Appellant testified that, because of the mold problem, he built an entirely separate structure on the footings of what was initially envisioned as a pool house, and Edie spent her nights there and her days inside Bristol House. Appellant testified that, because Edie was an invalid, he carried her around like a baby; he also explained that she was not totally bedridden, but could not walk the 200 yards between the hut/bungalow and Bristol House. Appellant built the hut/bungalow to consist of two separate bedrooms without an interior connection. The court expressed "baffle[ment] at why someone who owns a home builds another bedroom in the backyard, in essence . . . [a]s opposed to renovating the home." Appellant testified that he "never thought about" remediating the mold problem, and that Edie spent her days upstairs in a "room sealed off from the rest of the house." When asked what the need for the bungalow was if Edie could be in a sealed-off room, appellant responded that Edie wanted the bungalow because she "felt it would be better for her to have a fresh, clean place to sleep." The court did not find this explanation credible.

* * *

[H]e said that in the course of going through my mother's files, he found the original agreement. He said that, you know, it was signed by the both of them but it wasn't witnessed. He said, it was made out shortly after their marriage but before the Deeds were, were done. I guess the Deeds were done in October, they were married in August or somewhere in there presumably. **He described its terms. He said that, you know, everything was going to go to him and then, ultimately, everything would go to me and he said very clearly, you know, land and all assets, accounts, so on and so forth and he said that a number of times. He also said that he would have the ability to live on the land for as long as he wanted and he said that my mother wrote in sort of a little clause about it, were she to die in advance of him, were she to pre, predecease him and he to remarry, his new wife would have to sign a prenuptial agreement that adhered to this, this agreement that he had found. And he said that, you know, he would be happy to show it to me.** He said that he thought it would give me sort of a window into my mother's thinking and give me some peace of mind.

* * *

I'd say probably about a third of the conversation was devoted to the agreement. We kind of kept circling back to it. We talked about other things, we talked about, you know, [appellant] was keenly interested in some of the family trusts and he said now that he's the personal representative, he was going to be doing some investigation into whether those trusts, whether he had any claim on those trusts. We talked about his legal problems, when he went up for attempted murder and he was, you know, he went into a long bit about, you know, how disappointed he was with the legal system and how he felt wronged and then he started to, you know, he started talking about how that had disrupted, and these are his words, I still don't really understand them but how this had disrupted the natural order of things, he said. And in order for him to put that order back into balance, he needed three things. He needed a pardon from the governor. He thought that would make everything right. He needed my Uncle Frank Bonsal to pay the $500,000 reverse mortgage and he needed the family not to contest, not to contest how he settled the estate in any way, shape, or form.

(Emphasis added.)

After that phone call, appellee recorded a video statement recapping the call because he was "feeling sort of unsettled by the conversation[.]" That recording, along with a transcript of the recording, was admitted in evidence as Exhibit 29.

Stephanie Clinton, appellee's then-fiancée and now wife, testified that she was present in the apartment she shared with appellee when he received this call, and she heard appellee say to the caller, "oh, you found it, great. I'd love to see it[.]" She further testified that, when appellee ended the phone call, he repeated what appellant had just told him:

> [STEPHANIE CLINTON]: [Cliff said: "]Oh my God, he found it, he found the agreement, it's signed and he's willing to show it to me.["] He then said that Jim had told him that the agreement was not only signed and that he found it, but that it said he, that the, everything was to go to Cliff, but also that he [Jim] could stay on the land as long as he wanted and that there was a clause even for him, if he [Jim] were to remarry, he had to get a prenuptial agreement. He also said that . . . he [Jim] had three things that he needed in order to feel safe and that listing [sic] were [Frank Bonsal] paying a reverse mortgage . . . [a] pardon from the governor for his murder trial[,] and for the family not to interfere with his handling of the estate in any way[,] and then he had also asked for Cliff to get other trust documents to him, other, other family trust documents.

Over the next few months, appellee sent several e-mails to appellant in which appellee recounted many of their past conversations and made requests for various items that appellant had promised to show him, including the post-nuptial agreement, Edith's medical records, and a file containing Edith's funeral wishes. These e-mails were admitted as Exhibits 31 through 42.

As an example, Cliff sent Jim an e-mail on February 28, 2016, which said, in part:

> **When we spoke last weekend, you'd said that you'd found the original agreement that you guys signed in 1992 – the one that says you both agreed to eventually leave the land to me**. I'd love to see that, since it gives me a window into my mother's mind. As you know, she was very quiet about your shared plans. She told me about the agreement some years ago but I never saw it. I'm amazed that she filed it! I don't suppose you could send a copy to me when you get a chance?

(Emphasis added.) Appellant did not respond to this e-mail.

On March 19, 2016, appellee and Stephanie visited Baltimore. They met appellant for lunch and then returned with him to Bristol House to fold laundry. Appellee asked appellant if he could find, among Edie's papers, appellee's birth certificate. Appellant told him he would look, but that he did not want appellee in the room while he went through the files. Appellee testified that he "asked [appellant] about the marital agreement and he, again, he agreed to show it to me. He acknowledged it and then agreed to show it to me and then quickly changed the subject to talk about something else." Later that day, appellant came downstairs with appellee's birth certificate, and another discussion regarding the agreement ensued. Appellee testified:

> [APPELLEE]: At some point, I went into the kitchen to get Stephanie a glass of water, Jim was in there trying to fix a clock and I sat with him and we had a long discussion about estate related matters, about, you know, his struggles with the law and, and a pardon, but most particularly**, I asked him about the marital agreement and I asked him whether I could see it and he said yes, absolutely**. [Jim said: "]I took it to Geist Road, that's where I took all my important documents and I'd be happy to show it to you, but not today.["] And I said, ["]well, that's fine.["] And he said, ["]you know, the one thing is, I'll show it to you, but you can't make a copy.["] And that sort of rang as funny to me. But I said, ["]fine, no problem**.**["] **And then he went on to describe the details of the agreement again, you know, as he had done previous times.**
>
> * * *

> **[H]e said that it was, excuse me, it was an original agreement, it was signed by both him and my mother. He said that it was dated in 1993 [sic], he said right around the time of the Wills. I believe he even said August. He said, he explained the terms of the agreement. He said that just as before, you know, everything was going to go to Jim, but then everything ultimately was going to go to me, the land, the assets, everything would go to me**. He said that he would, you know, have the ability to live on the land for as long as he wanted and then he also brought up the little detail about the prenuptial agreement, which I remember, because we sort of chuckled about it, you know? He said, well, yeah, your mom sort of wrote that in there and said, well, you know, if I should, if, if she should predecease me and I remarry and then whoever my wife is needs to sign an agreement to adhere to the terms of the agreement that my mother, that, that me and your mother have, me being Jim. And, you know, like I said, I asked him to see it and he was amenable to it.

(Emphasis added.)

Three days later, on March 22, 2016, appellant e-mailed appellee regarding a "series of conversations" the two had had about safe-deposit boxes. Appellant also stated in the e-mail: "Any legal matter I like in writing[.]" Appellee testified that appellant's March 22 e-mail had "mischaracterized [their previous] conversation entirely," and appellee e-mailed appellant immediately to refute it.

Appellant sent appellee a more conciliatory e-mail response on March 23, but said nothing about the agreement appellee had asked to see.

On March 24, 2016, Cliff sent Jim an e-mail, stating, in part:

> That brings up a point I've been meaning to discuss with you, one that's perhaps easier to write than say. I know I ask a lot of questions about my mother, and I think it's important you understand why. For the past 20 years, my mother put certain boundaries on our relationship. According to her, she promised you that she would not discuss with me significant details of her health or finances, her relationship with you, Clara Larsen, Janet Knapp, the house on Geist Road, the condo in Bahama Bay, your life,

> health, and legal struggles, your family, and so on. As I've said, she would divulge things here and there, but if I asked too many questions[,] she would explain that she had to honor her obligation to you. I was not allowed to sleep at Bristol House, nor go upstairs—even to see my own possessions—or visit Geist Road. If you wonder why I lingered in my mother's room on Sunday with you, it's because I hadn't seen it for a while.
>
> As you can imagine, that level of secrecy was difficult to deal with when she was alive. It's even more difficult in death, particularly since she held on to her secrets until the very end. You remember that it wasn't until 8:30 AM on the day she died that you called me to tell me she was in serious condition. She was dead by 4:45 that afternoon.
>
> You've said that now that my mother is dead, we can put an end to the secrets. I certainly hope that's the case. Without transparency it's very hard to find closure—and that's what I crave most deeply right now. I want to understand what my mother was thinking and the decisions she made. If I could not get that understanding with her alive, perhaps I can find it now that she's gone.
>
> In that regard, **I have a few important requests of the non-estate variety: You've said that while going through her files you have come across medical records about my mother's cancer, a funeral file that dictates the kind of service she would like, and your post-nuptial agreement that passes the estate to me upon your death. You said you'd be happy to show those to me. Can we set aside some time this weekend to look them over?** You said you'd moved a lot of the documents over to Geist Road, so hopefully this gives you enough time to pull them together.

(Emphasis added.)

Appellant responded with an e-mail on March 25, but again, made no mention of Cliff's request to see the agreement. Jim's e-mail told Cliff that he would not be able to meet with him that coming weekend "for I must devote my entire weekend to estate matters." Appellant's March 25 e-mail made a couple of requests of appellee:

> The only last thing for you to do with the estate is to open the safety deposit boxes. We should arrange a time to do it together, maybe this Saturday would work for you --- let me know by email. As you know Edie and I

> have a safety deposit box, that box hasn't been opened since 1999 and then about a month ago it was finally opened again in your presence. I wanted you there as a witness to prove that there was not a more recent will in it. It is in your own best interest to have me present when you open your own boxes. I would also like Ed Brigham present in case there is a will to take possession of it.
>
> **As far as getting together this weekend with you at Bristol House and the family at the Mansion that is going to be impossible for I must devote my entire weekend to estate matters.** I have spent many weekends with you or with you and Stephanie and that has put me behind with my deadlines as PR for the estate. For I have an April 15 deadline approaching fast and I must make haste. **The only time I have to spend with you would be to open those SD boxes** --- so let me know as soon as possible. I do really appreciate the invitation to spend Easter with everybody and as much as I would like to I must decline.
>
> **There is one other matter that you offered to do for me. And that is to write a letter --- a character reference letter. This letter would be for the governor to read. It should say in it how long you have known me, what our relationship is, and then say as many good things about me as you can possibly think of**. This letter would be much appreciated and is going to be read by many more people than just the governor. By writing this letter for me, you would be showing the respect for me in writing that you have expressed many times to me verbally; and also it would show to everybody that there in fact [is] no animosity between us.

(Emphasis added.)

Appellee testified that he went to Bristol House on April 17 with his Uncle David to drop off a key and the will of his late paternal grandmother (which appellant had asked him to provide in order to prove that he was the owner of a painting that appellee's grandmother had left to him many years earlier). Appellee testified:

> I asked Jim if I could set a time with him to review the medical records that I had been looking for for such a long time and the, the marital agreement and he said, yeah, sure, that's fine and I suggested the following weekend. He said that wouldn't work but he said that we could meet to review those documents the weekend after and so, I said, great. I'll see you in two weeks

> and we left. And this e-mail [referring to Plaintiff's Exhibit 36] was sent a couple hours after we left and, as you can read, it cancels the meeting that we had arranged just hours before.

The e-mail to which appellee was referring, admitted as Exhibit 36, was sent at 5 p.m. on April 17. It said:

> Hi Clifford,
>
> Thanks for returning the front door key. I appreciate that you went through the trouble of getting me a brand new shining one.
>
> As far as talking about the land or any talk of a pardon or any other issue not pertaining to settling of the estate, I prefer to wait until after the estate is settled.
>
> **I will still be living up to my promise that I made to Edie, that is to treat you like my son.**

(Emphasis added.)

On April 29, 2016, appellee responded to this e-mail, again repeating his requests to see the marital agreement, Edith's medical records, and the file Edith had maintained regarding her wishes regarding a funeral service. Appellee's April 29 e-mail to appellant read, in relevant part:

> [Y]ou and I had planned to sit down this weekend to review my mother's medical records and the post-nuptial agreement. I take it from your earlier email that you are no longer willing to do so? Is that the case or am I misreading things?
>
> I certainly hope we can sit down. At this point, I have been asking for my mother's medical records since the day she died. And **I have been asking to see the post-nuptial agreement since you told me about it in mid-February. Though you've been very clear about what [the] post-nup says, which I appreciate, I'd still love to see it** --- even if, as you requested, I not make a copy.

I know I sound sort of like a broken record in asking for these things, but please understand where I'm coming from. First, you've told me repeatedly that you'd show me these documents, so I'm confused by your reticence to do so now. Second, my mother's condition was kept from me until the day she died. I know relatively little about her condition and her estate planning beyond what you've told me. While I asked her about those topics frequently, she said she promised you that she would not speak to me about them.

In the absence of information, I'm left trying to piece together a picture of my mother's life and intentions. Frankly, that process is torturous. More to the point, it doesn't need to be that way. A bit of transparency from you could end a tremendous amount of misery for me.

And that brings me to another point: You've said on multiple occasions that you desire a good relationship with me. I genuinely desire that too. I have invited you to our wedding in July. And I have offered help at every turn since my mother's death: figuring out the estate's finances, tracking down trust documents for you (and then backtracking on that request when you asked me to), cleaning the house, shoveling you out from the snowstorm, and so on.

While you say you want a good relationship with me --- one based on trust and transparency --- I'm becoming concerned that may not actually be the case. The evidence seems to indicate otherwise.

- You have said you won't show me any meaningful documents about my mother's medical condition until the estate is settled.
- You have seemingly avoided visitation with me, even for brief periods, for the nearly two months.
- **You have yet to show me the post-nuptial agreement, although you were at one point eager to do so**.
- You have requested back the house key for reasons that remain unclear.
- You have made it clear that you'd prefer I not go upstairs in Bristol House or look through any of my mother's possessions, even when I've said I would not take anything without your consent.
- You will not show me my mother's funeral file, in which she describes what sort of service she would like.

> - You continue to restrict me from visiting the Geist Road house. Though you have owned it for 16 years, I have never been allowed to set foot inside.
> - You have knowingly removed certain personal possessions from Bristol House to get them appraised, even after I asked you keep them there.
>
> The list could go on but I think you get my drift. Your requests do not encourage a lot of trust. Also, they're hurtful, intentionally or not. My mother died three months ago. I spent my entire childhood in my great-grandmother's house, sharing experiences with my mother, drawing pictures, playing games. Part of the healing process is to go through all that stuff and relive those memories in a way I never will again. I can't help but feel that I'm being robbed of that experience just when I need it most.
>
> * * *
>
> To that end, I'm requesting we find some time to meet this weekend. As we planned, we can review the documents I've requested and talk about how you and I can move forward with a better, stronger, more transparent relationship. . . . Please let me know if you're willing to go forward from here.

(Emphasis added.)

Appellant e-mailed back the next day. Appellant focused on how much of his time it was taking to settle Edie's estate. He referred to the house key mentioned in earlier e-mails, spoke of his work overseeing the farm and food deliveries, applying for grants, paying bills, and his own grieving process. He asked again that appellee open the safety deposit box he owned with Edie in the presence of appellant. But, despite being lengthy—containing twenty-six paragraphs—appellant's reply e-mail made no mention of appellee's requests to see the post-nuptial agreement, Edie's medical records and her funeral-planning file.

Appellee sent another e-mail to appellant on May 7, requesting that appellant find the time to get together and satisfy appellee's requests for documents:

> How about this: You find 30 minutes between now and May 19th when we can talk and review documents. It can be in the evening after work is done, or in the morning before it begins. It can be on the weekend or during the week. I would only ask that you decide on a time by this Monday, so I can make plans to come to Baltimore.
>
> My request is simple: **I would like to see** any and all medical records that describe my mother's bout with cancer, **the post-nuptial agreement you signed with my mother**, and the file that describes what kind of funeral service she would like. **You have promised repeatedly to show them all to me. Yet I have been requesting to see them for months to no avail**. If you don't want to see me, you can leave a stack of papers for me to look through. I won't take anything.
>
> Please, I don't think I'm asking for much here. I know what it's like to be busy. I have managed multi-million dollar businesses while working 14-hour days. Still, if a family member ever came to me and asked for 30 minutes, I would always find the time. That you seem unwilling to do so confuses me.
>
> You've said you desire a good relationship with me, and you've told me repeatedly what I can do for you to further that relationship. Still, after repeated entreaties, you seem unwilling to acknowledge this rather low-effort request. After all, you said that you have the funeral file and the post-nuptial agreement at the house on Geist Road.
>
> * * *
>
> Per the family, I will, of course, do my best to explain your actions and foster good relations, as I have over the past few months. To be honest, that's getting progressively more difficult. Every time I see my family, they ask me about the medical records, the post-nup, and the funeral file. I can only tell them what you've told me: that you're too busy to show them to me. David [Bonsal] was there when I asked you about the documents at our last meeting (when we ran into you and Clara at Bristol House [on April 17]). While you acknowledged the documents, David was confused by your reticence to give many details. He was even more confused when he learned that you rescinded the offer to meet with me just hours after you'd

> agreed to it. As I said, I will explain how busy you are, but at this stage you can put their minds more at rest than I can.
>
> * * *
>
> Please let me know by Monday when we can find those 30 minutes to talk and review documents. I cannot stress how important this is to me.

(Emphasis added.) Appellant did not respond to this e-mail.

On the afternoon of May 13, appellee sent appellant another e-mail letting him know that appellee would be in town that coming weekend and asking to arrange a time that he could go to Bristol House and pick up his possessions.

Appellant replied via e-mail the evening of May 13. He complained that appellee was "not being very responsive to my needs right now," said that appellee was "confused" about estate matters. The e-mail asserted that, "since February, I communicate to you only in emails" as "a simple way to straighten out the confusion" and "track our conversations in detail." Appellant emphasized that opening the safe-deposit box appellee owned jointly with Edie was "important." But, despite saying that appellee was confused about many things, appellant's e-mail did not expressly mention appellee's requests to see the agreement, Edie's medical records, and her funeral file.

On May 16, appellee sent a reply e-mail to appellant, stating in pertinent part:

> I understand your point about email and keeping a record of correspondence. If that's the medium you prefer for now, that's fine. But if that's the case, I feel it necessary to address a few points for the sake of accuracy.
>
> You seem to be painting my behavior as confused and erratic, but my actions have been remarkably consistent. I've fulfilled all of your requests, whenever appropriate, as quickly as possible, even when those requests

changed or shifted over time. I've said I want a good relationship with you—a point I still maintain. And **I've consistently requested one thing above all: I'd like to see the medical records, the post-nup, and the funeral file, all of which you promised to show me on numerous occasions.**

If I were to offer 'constructive criticism' to you, as you did for me, I'd ask you examine your own actions for inconsistencies. For example, **you said numerous times that you would show me my mother's medical records, the post-nup, and the funeral file, but you now refuse to do so**. You gave me a house key, but then requested it back with no explanation. You asked me to get you a number of trust documents, only to call me off that hunt a few days later (after I'd contacted trust officers on your behalf). You offered to meet with me in late April, but rescinded the offer later that day with little explanation. You asked if I'd like my possessions at Bristol House to go to Good Will since you were cleaning out the attic, but now you seem exasperated that I'm requesting them in short order.

The list could go on but please understand, Jim, I don't mean to attack you here. I just hope that you can see how your actions might appear confusing to me (or anyone else). I know you're busy and dealing with a lot—and I want to be sensitive to that—but I don't think I'm being unreasonable here.

An additional point to address: You've mentioned repeatedly that you spent "weeks" speaking to me after my mother's death, and that you showed me many documents. That's not quite right. Other than the week after my mother died, which was predominantly consumed with the logistics of her sudden death, you and I spent a few afternoons together over a handful of weekends over the course of two months. While you did show me certain documents during that time, none were the ones I'd actually requested: the medical records, the post-nup, and the funeral file. Many of the documents were related to your criminal trial and your pursuit of a pardon.

Finally, I feel it necessary to address one last point: You say that you tried your best to keep all your communications to email since February because I was confused about many issues. Yet it was you who called me in late February to tell me about the post-nup and how you wanted to show it to me. We talked on the phone again in March, and then met in person in the middle of the month. Up until your email this weekend, you never said that you did not want to meet with me alone. Quite the opposite, a handful of times you requested that Steph not come to the house, so we could speak alone.

(Emphasis added.)

On May 23, 2016, appellant sent an e-mail to appellee that indicated appellant was replying to appellee's e-mail of May 16. In appellant's May 23 e-mail, he denied—for the very first time—the existence of any post-nuptial agreement regarding Cliff. The e-mail included the following:

> As you know I am very busy, ... [H]owever, I do want to at least address your three requests.
>
> . . . So what I have done below is: to list your three requests and to clear-up your confusion involved in each.
>
> Request number one:
>
> Please, don't keep using the term "post-nuptial agreement" because I've never used it and it's misleading. There is no post-nuptial agreement and never has been. The correct term is, "declaration of love". So that being said, I did find the original one written by Edie, way back in 1992, after we were married. This declaration of love is only an expression of her loving affection for me. It has nothing to do with you or the estate or what happens to it when I die. – all that language was written in a will of mine at that time and I think you are just confusing the two.
>
> Back in January, in an act of compassion for you, I offered to show you this declaration of love to give some insight into Edie's loving-relationship with me, hoping that it might console you. Because of the sweet and tender feelings involved in this declaration of love of hers, I thought it might be helpful for you [to] see the affections that filled our marriage. But, in the light of my act of compassion for you; I feel, now, your current hard and insistent demand to see it, is rather coarse and repugnant.
>
> Request number two:
>
> I did find Edie's cancer file that I told you about. Also, please don't use the term "medical records", again because, I've never used it and it's misleading. The file does not contain medical records. It only contains descriptions of natural diets and supplements that are very popular. It has some good articles and a lot of the latest information on cancer. So, you can

read through the file at your leisure, I hope it brings you closer to your mom. I do have some attachment to the file, so you can borrow the file for a while; but after you are done with it, please give it back to me. I think the confusion this time is that you must have assumed that I was offering more then [sic] I was. So, let me be perfectly clear on this issue.

As far as Edie's actual medical records, meaning the ones that are reports from doctors and hospitals, they are private. One of Edie's last wishes was not to disclose the details of her illness to anyone. As her husband, I told her that I would fulfill her wish for complete privacy about her illness. As she was totally private about her illness in life, she also wanted to be totally private about her illness in death. She is entitled to her privacy.

Request number three:

I will give you the paper that explains the kind of service Edie would like for her funeral, which I intend to follow to the fullest extent I can. As you will see, Edie was specific concerning many details of the kind of funeral service she wants.

* * *

One other thing, over the past few weeks your emails have been falsely characterizing me as promising, and I might add promising repeatedly, to show certain things to you. I have not promised to show you anything – not the medical records, or the imaginary post-nuptial agreement, or the funeral file.[5]

[5] In evidence in this case as Plaintiff's Exhibits 45-46, 48-56 were a series of draft e-mails—obtained via a forensic search of appellant's computer—that appellant drafted, but never sent, to appellee. These drafts composed between April 13, 2016 and June 5, 2016 reflect appellant's evolving version of events that would later appear in e-mails that were actually sent by appellant to appellee. But, nowhere in the record is there any indication prior to May 18—when appellant saved an early draft of the e-mail he sent to appellee on May 23—that appellant was disputing appellee's many statements about the existence of a signed post-nuptial agreement and appellant's offer to show him the agreement.

Counsel for the parties communicated about various issues over the summer of 2016. In a July 8, 2016 letter from appellant's counsel to counsel for appellee, counsel represented (a) "[t]here are no prenuptial agreements or post-nuptial agreements to Mr. Dasher's knowledge and any 'declarations of love' are private and Mr. Dasher intends to keep them so"; and (b) appellant "has no knowledge of a 2006 Will written by Edith Dasher." But the letter provided a copy of an unwitnessed 2010 Will of Edith.

On July 29, 2016, appellee filed a complaint against appellant, followed by an Amended Complaint on November 16, 2016, and a Second Amended Complaint on November 18, 2016. On February 21, 2017, appellant filed a counter-complaint, which was amended on July 10, 2017.

Appellee filed a Third Amended Complaint on December 21, 2017, which is the complaint that went to trial in this case. The Third Amended Complaint sought a declaratory judgment that appellant and Edith "entered into an enforceable Agreement which is still in effect," pursuant to which appellant would have "a life estate interest in the Four Mantua Mill Road Parcels and the Geist Road Property," but that upon his death, all of appellant's assets would pass to appellee. Appellee requested specific performance of the agreement to make appellee the sole beneficiary of appellant's estate, and also requested that the court impose a constructive trust over all of appellant's assets.

Appellant's counterclaim was dismissed with prejudice by stipulation of the parties on January 8, 2018. Appellant admitted at trial of this matter, however, that the allegations he made against appellee in the counterclaim—which included an assertion

that appellee falsely imprisoned him on January 18, 2016 (while appellee was experiencing heart problems) and refused to take him to the hospital—were not true.

Trial consumed eight days: January 24-26, 29-31, and February 8-9, 2018.

THE COURT'S JUDGMENT

The court's oral ruling (which was later incorporated by reference into a written opinion) included the following pertinent findings [paragraph breaks and indentations have been added to enhance readability]:

> Based upon the testimony and evidence presented in this case, **this [c]ourt finds by clear and convincing evidence as fact that a written agreement was indeed executed sometime after the marriage, shortly before or after the transfer of the various properties.**
>
> Maryland Rule 5-1004 provides that contents of a writing may be proved . . . by secondary evidence, if you will, . . . if an original is lost or destroyed or if an original was under the control of a party against whom it's offered and that party is put on notice, etcetera, etcetera. **This [c]ourt finds the plaintiff has met the burden** and the [c]ourt has carefully considered the extensive secondary evidence regarding this document.
>
> **A significant portion of that evidence turns or relates to the credibility of the witnesses and the respective parties in this case**. This [c]ourt finds that both parties have, in essence, the same biases or interests. They both have an interest in this land, they both have an interest in the property, they've lived on it, tilled it, farmed it, used it to benefit their fellow citizens, loved it for many, many, many, many years. **However, if you look at the credibility of these witnesses, there is no, there is no contest.**
>
> **Moreover, the independent evidence, if you will, the documents, wills, purported wills are generally consistent with the existence of an agreement.** For instance, the 2006 will, Plaintiff's Exhibit No. 2, while narrowing the bequest to the plaintiff, references its conditions pursuant to the criminal trial that was then pending when the 2006 will was executed. **The only one who now says there was no agreement ever is James Dasher.**

In this case, **he has exhibited a pattern of inconsistent statements** between his, his interrogatories, his answers, his answers to interrogatories, his counter-complaint, his trial testimony, his deposition testimony. **There's a significant pattern of inconsistent statements including, but not limited to, the allegation of in essence false imprisonment. To put it diplomatically, there is a pattern of deception . . . that has occurred in this case and between these parties that is particularly concerning**. For instance, the forged signature of Anthony McCrory on the 2010 purported will**. Mr. Dasher's testimony regarding that particular item appears to this [c]ourt to be patently false and unbelievable**. **The tale of doing a draft will using that former copy with that signature being just added as part of the draft is even laughable and not to be believed. The attempt to get the plaintiff to participate in that forgery. The blatant attempt to leverage the Bristol House Farm, Mantua Mill properties for assistance with a pardon. The failure to produce the 2006 will. The imaginings, numerous versions and variations.**

This [c]ourt would find the tacit admissions, his failure to deny through the course of numerous e-mails and other communications in this case would be sufficient alone to establish by clear and convincing evidence that this agreement existed but under the totality of these circumstances, the totality of this evidence, **Mr. Dasher doesn't even deny, really, doesn't deny the existence of the agreement until approximately the time it becomes clear apparently to him that [appellee] will not follow his instructions[.]**

There is emotional manipulation, a refusal to release childhood items, a refusal to release the funeral file or ashes or tell where they are, the seeking of the pardon, seeking payment of the reverse mortgage. Mr. Dasher wants Mr. Ransom to take his word for it but Cliff won't and he wants to see the documents and he wants, he wants the information and he isn't following Mr. Dasher's instructions. And there's a great deal of extraordinary evidence in this case that occurs prior to this case.

And, again, as I indicated, . . . **this [c]ourt would find that Mr. Dasher's tacit admissions alone are sufficient to support a finding by clear and convincing evidence that this agreement existed**. But this additional evidence is so striking and concerning that it, it needs to be addressed.

While [appellant and Edie] certainly served the community with their charitable organization, Garden Harvest, for which he should be commended, [and] he had a vision of supporting the community in a way that is, is very commendable, it is equally apparent that, at least in personal matters, **Mr. Dasher has demonstrated a pattern of significant and disturbing deception dating back to at least the 1980's. Manipulation and control for years including down to the food that his wives ate.**

It seems impossible for [Cliff Ransom] to have made up this story. There are numerous references in, **there are numerous references or consistencies between** the wills that were executed previously, the purported wills, [Edith Dasher's] e-mail to [Cliff Ransom], **the testimony of his father, Clifford, II, of his now wife, Stephanie, and of his uncle, Mr. Bonsal. And [appellee's] testimony is consistent throughout these proceedings, consistent with his video recordings made contemporaneously, consistent through his answers to interrogatories, his depositions.**

Mr. Dasher's testimony varies virtually day to day, even from direct to cross to redirect.

This [c]ourt finds as a fact that Mr. Dasher had complete control over the documents, the various documents including this written executed agreement that the properties and estate would be left to Clifford [Ransom], III. He had complete control over the documents both before and after Edie's death. As I said, he even had control over what she ate. [Cliff Ransom's] phone logs corroborate the timeliness [sic], contemporary recordings are internally consistent and consistent with the trial testimony, the pleadings, in his testimony on cross and direct. There were hundreds of pages of photographs which he readily produced. The witnesses corroborate his testimony regarding the timelines, calls, and meetings. And as I said before, **the documents are consistent with there being an agreement**. Even the invalid will of 2010 is consistent with there being a prenuptial agreement. The 2006 will, with the conditions related to the pending criminal trial, even mentions a prenuptial agreement though the date is different but even that which narrows [Cliff] Ransom's, which narrows [Cliff] Ransom's, the residuary estate that would go to [Cliff] Ransom, even though it's narrowed in the 2006 will, it's still consistent with there being an agreement and the document itself, along with all the other ramblings, mentions an agreement. . . .

[T]he testimony from Mr. Dasher and regarding Mr. Dasher is just replete with inconsistencies and deception. His imaginings and numerous versions and variations of testimony and answers to interrogatories mentioned in those imaginings. The rules that are indicative of unusual power, influence and control over Janet, Edie[,] and Clara. The inconsistent testimony between his counter-complaint [and] trial testimony, depositions. I mean even things that were really not at issue such as in apparently some testimony he indicated that they were separated, in some testimony he indicated they were not. Keeping secrets, the secret locations, the secret identities of his wife, the deception of Clara Larsen for years, the strange coincidence of food and physical incapacity of both wives for extended periods of time, years. And in his testimony, everything is someone else's idea. It was Edie's idea, according to Mr. Dasher, to not tell the employees, the house rules, to fire employees because they knew of her being present, don't tell the family about the cancer, don't tell Clara about Janet. He testified he told Edie he would do a fake engagement and denied, and denied medical records to the family even after death. He indicated that Edie didn't want Clara to, or Janet's testimony was that Edie didn't want Clara to know it was Janet's idea to go to South Dakota to get the [divorce], I mean there's just so many things I don't even, I don't even know where to begin. That Janet didn't want proper legal review or alimony, she was just going to take [appellant's] word for it that, you know, she was going to be supported by him. He's away for days and months in Florida while [Edie] is present in the home.

It just, **the pattern of deception is astonishing, to say the least. The manipulation and control, if I had not witnessed this testimony with my own eyes, I'm not even sure I would believe this was a real court case. It is stunning in its magnitude.** Most significant of those being **the forgery** of the 2000 [sic-2010] will, that is the Anthony McCrory signature [as witness], **the intent to hide the 2006 will**, the **failure to produce the documents** that [Cliff Ransom requested], a photograph, and in comparison of the demeanor of [Cliff] Ransom and **Mr. Dasher on the witness stand for days of testimony. Mr. Dasher's attempt at emotional blackmail with the ashes of [Cliff] Ransom's mother, the seeking of the pardon. It's, it's astonishing. It's simply astonishing.**

So in this matter, the [c]ourt will grant Declaratory Judgment. **This [c]ourt will issue Judgment declaring that the defendant, Mr. James J. Dasher, and his wife, Edith B. Dasher, entered into an enforceable agreement which is still in effect.** That **pursuant to that agreement, the defendant, Mr. Dasher, agreed he would make provision that upon his**

> **death his entire estate would be devised to Mr. Clifford Ransom, III.** This [c]ourt declares that plaintiff may enforce that agreement by specific performance and that **upon defendant's death, the plaintiff shall receive all of the assets of James J. Dasher, including, but not limited to, the four Mantua Mill Road parcels also known as the Bristol House Farm and the Geist Road property. This [c]ourt will declare that defendant has no right to sell the four Mantua Mill Road properties or the Geist Road property and declare that the defendant, Mr. Dasher, holds a life estate interest in the four Mantua Mill Road properties and the Geist Road property. That the plaintiff, Mr. [Cliff] Ransom, holds the remainder interest in those properties.** This [c]ourt finds that under the agreement, the defendant agreed to name the plaintiff as a sole beneficiary of his estate and that he has repudiated his obligations under the agreement. **This [c]ourt finds it would be inequitable for the defendant to devise his assets in direct violation of the terms of the agreement**. This [c]ourt, in its equitable, with its equitable powers, will order the following relief. This [c]ourt charges that the defendant, **Mr. James J. Dasher, will be in constructive trust of all of the assets including the four Mantua Mill Road properties also known as Bristol House Farms [sic] and the Geist Road property for the benefit of plaintiff and, as constructive trustee, he is to name the plaintiff as sole beneficiary of the constructive trust**. And, likewise, in accordance with the [c]ourt's rulings, this [c]ourt will order specific performance that upon the defendant's death, Mr. [Cliff] Ransom shall receive all of the assets of defendant, James J. Dasher. This [c]ourt orders the defendant to irrevocably name the plaintiff as sole beneficiary of his estate. This [c]ourt will declare as well that defendant has no right to sell the four Mantua Mill Road properties or the Geist Road property. In other words, that he does not have powers as we discussed earlier. This [c]ourt declares that Mr. Dasher holds a life estate interest in those properties and that Mr. [Cliff] Ransom holds the remainder interest.

(Emphasis added.)

The court subsequently filed a written opinion that began by stating: "This proceeding was generated by perhaps the most unusual and unique situation this [c]ourt has ever encountered." The court explained: "This [c]ourt's initial thought was one of skepticism about establishing the existence of a document that no witness had ever seen" [*i.e.*, other than the appellant, whom the court found *had signed and "had complete*

control of" the document]. "However, after careful consideration of the extensive evidence presented during the course of this eight (8) day trial," the trial court found that "the Plaintiff has met the burden of proof."

The court noted in its written opinion that Maryland Rule 5-1004 permits proof of the contents of a writing which is not available because the party in possession of the original has not produced the document. The court's opinion stated:

> Maryland Rule 5-1004 provides that:
>
> "the contents of a writing . . . may be proved by evidence other than the original if: (a) All originals are lost or have been destroyed, unless the proponent lost or destroyed them in bad faith; [or] (c) At the time when an original was under the control of the party against whom offered, that party was put on notice, by the pleadings or otherwise, that the contents would be a subject of proof at the hearing or trial, and that party does not produce the original at the hearing or trial."
>
> Rule 5-1004 is derived from and is "substantively identical" to Federal Rule of Evidence 1004. MCLAIN, MARYLAND EVIDENCE § 1004:2, at 951 (3d ed. 2013). "[O]nce an enumerated condition of Rule 1004 is met, the proponent may prove the contents of a writing by any secondary evidence, subject to an attack by the opposing party not as to admissibility but to the weight to be given the evidence, with final determination left to the trier of fact." *Id*. at footnote 2, quoting from *United States v. Gerhart*, 538 F.2d 807, 809 (8th Cir. 1976).[6]

[6] With respect to the final determination being left to the trier of fact, Maryland Rule 5-1008(b) provides:

> The following issues, if raised, are for the trier of fact to determine as in the case of other issues of fact: (1) whether the asserted writing, recording, or photograph ever existed, (2) whether another writing, recording, or photograph produced at the trial is the original, or (3) whether evidence of contents other than the original correctly reflects the contents.

The trial court also emphasized the importance of its findings as to credibility of the witness, and, more critically, the lack of credibility of Mr. Dasher:

> **The credibility of the witnesses is essential to this ruling and to understanding this case.** . . .
>
> * * *
>
> **The Plaintiff's testimony is consistent and credible** across multiple hearings, depositions, and in relation to his recordings and emails which were prepared contemporaneously as the events leading up to this litigation unfolded.
>
> **This [c]ourt does not find the testimony of the Defendant to be believable or credible. The testimony of the Defendant is implausible at best, and at times simply inconceivable.** He has demonstrated a significant pattern of deceit, manipulation, and absurd control, particularly of women, both now, and dating back decades. The [c]ourt finds that the Defendant did not deny the existence of the agreement until it appeared that the Plaintiff would not follow his instructions. The Defendant appears to have denied the existence of the agreement to manipulate the Plaintiff and witnesses, inter alia, into providing additional financial support, and to coerce their support for a gubernatorial pardon for the Defendant's criminal conviction. He has openly admitted falsehoods perpetrated by him in relation to legal documents and court pleadings. His testimony on occasion has been inconsistent within the same examination.

(Footnote omitted, emphasis added.)

The court returned to the subject of Mr. Dasher's lack of credibility later in the written opinion, stating:

> Throughout the trial, Defendant demonstrated a pattern of altering and fabricating documents and statements. The most disturbing example of Defendant's deceptions is his forged signature of [his relative Anthony McCrory as a witness] on the 2010 will that Defendant showed to the Plaintiff. It appears that Defendant intended to probate the 2010 will with the forged signature and asked Plaintiff to keep the secret. . . .

> Defendant filed a Counter-Complaint on February 21, 2017, amended it on July 6, 2017, and later withdrew it. During the trial, *Defendant admitted that the statements in his Counter-Complaint were completely false.*

(Footnotes omitted.)

Based on the evidence, the court found that "Mrs. [Edith] Dasher's wish was for [James Dasher] to live on the land until his death and [for her son, Cliff Ransom] to then inherit the properties." The court entered a declaratory judgment that included the following pertinent findings "by clear and convincing evidence" (as set forth in a "corrected" judgment filed February 13, 2019):

1. Defendant, James J. Dasher, and his wife, Edith B. Dasher, who died on January 16, 2016, entered into a written enforceable agreement signed by both of them (the "Agreement") which is still in effect.

2. The Agreement, at all relevant times, has been in the custody and control of Defendant, James J. Dasher.

3. Despite demand therefore, Defendant, James J. Dasher, has failed to produce the Agreement.

4. The Agreement was executed after the August 3, 1992 marriage of James J. Dasher and Edith B. Dasher, and either shortly before or just after the October 16, 1992 land transfers of the Bristol House Farm (described below) by Edith B. Dasher to Edith B. Dasher and James J. Dasher as tenants by the entireties.

5. The Agreement was executed before the execution of the Wills of Edith B. Dasher and James J. Dasher dated August 17, 1993.

6. The inability of the [c]ourt to determine the exact date of the Agreement is a result of the failure of Defendant, James J. Dasher, to produce the Agreement.

7. The Defendant, James J. Dasher, has wrongfully denied the execution and existence of the Agreement and has repudiated his obligations under the Agreement.

8. In making this declaration of rights and obligations, this [c]ourt credits the testimony of Plaintiff, Clifford F. Ransom, III, who is Edith B. Dasher's only child, with regard to the statements and actions of Defendant, James J. Dasher, following the death of Edith B. Dasher on January 16, 2016, and the witnesses who testified on Plaintiff's behalf, including but not limited to the testimony of Plaintiff's father, Clifford F. Ransom, II, with regard to statements made by Defendant, James J. Dasher at the funeral home on January 18, 2016, and the testimony of Stephanie Clinton and David Bonsal concerning their interactions with Defendant following the death of Edith B. Dasher.

9. In making this declaration of rights and obligations, this [c]ourt rejects the testimony of Defendant, James J. Dasher, as being incredible and replete with internal and irreconcilable inconsistencies between his trial testimony, deposition testimony and discovery responses and drafts, and the documents entered into evidence by both parties.

10. The Agreement provides as follows:

    a. Upon the death of Edith B. Dasher, the land (Bristol House Farm and the Geist Road Property, both of which are described below) and all other assets (except those bequeathed directly to Clifford F. Ransom, III as set forth in Edith B. Dasher's valid October 27, 2006 Will) go first to Defendant, James J. Dasher, and then upon Defendant's death, the land (Bristol House Farm and the Geist Road Property) and all other assets go to Plaintiff, Clifford F. Ransom, III.

    b. Upon the death of the Defendant, James J. Dasher, Plaintiff, Clifford F. Ransom, III, shall receive all assets of Defendant, James J. Dasher.

    c. If Defendant, James J. Dasher[,] remarries, he is required to obtain a prenuptial agreement from his new wife providing that the Agreement will be/is complied with by his new wife.

11. The Bristol House Farm consists of and is described as all of those parcels of land binding on Mantua Mill Road in Baltimore County

which were conveyed on October 16, 1992 by Edith B. Dasher in fee simple to Defendant, James J. Dasher, and Edith B. Dasher, his wife, as tenants by the entireties [deed references and property descriptions omitted].

12. The Geist Road Property consists of and is described as all of those parcels of land which were conveyed on May 10, 2000 to Defendant, James Joseph Dasher, and Edith Bonsal Dasher [deed references and property descriptions omitted].

13. It would be inequitable for Defendant, James J. Dasher, to devise his assets in direct violation of the Agreement.

14. The Agreement is enforceable by specific enforcement.

15. Defendant, James J. Dasher, holds a life estate *without powers* in the land (Bristol House Farm and Geist Road Property).

16. Plaintiff, Clifford F. Ransom, III, holds the remainder interest in fee simple in the land (the Bristol House Farm and Geist Road Property).

17. Defendant, James J. Dasher, has no right to sell or encumber any portion of the land (the Bristol House Farm and the Geist Road Property).

18. The Defendant, James J. Dasher, during the term of his natural life (or unless and until he relinquishes his life estate interest in the Bristol House Farm and Geist Road Property in favor of Clifford F. Ransom, III) shall maintain both the Bristol House Farm and the Geist Road Property and shall not commit waste upon either the land or improvements thereon.

19. The Defendant, James J. Dasher, shall timely pay all real estate taxes when due on the Bristol House Farm and the Geist Road Property.

20. The Defendant, James J. Dasher, shall maintain adequate casualty insurance on the Bristol House Farm and the Geist Road Property improvements and shall timely pay all premiums when due.

21. The Defendant, James J. Dasher, shall timely pay all amounts due and owing under the Champion Mortgage reverse mortgages on the Bristol House Farm. [Mortgage recording references and descriptions omitted].

22. Defendant, James J. Dasher, shall irrevocably name Plaintiff, Clifford F. Ransom, III, as the sole beneficiary of his estate.

23. Upon his death, all assets of Defendant, James J. Dasher, including but not limited to the land (the Bristol House Farm and the Geist Road Property), shall pass to Plaintiff, Clifford F. Ransom, III.

In addition to the above-quoted declaration of rights and obligations, the court decreed specific enforcement of James J. Dasher's obligations under "the Agreement," and the court imposed a constructive trust, decreeing that James J. Dasher holds all assets "as constructive trustee . . . for the sole benefit of Plaintiff, Clifford F. Ransom, III."[7]

This appeal followed.

DISCUSSION

Dead Man's Statute; Hearsay Rule[8]

Appellant asserts that, under the Maryland Dead Man's Statute, the appellee "should not have been able to testify about anything Mrs. Dasher told him about an alleged post-nuptial agreement, especially when the case involved assets covered by that

[7] In *O'Connor v. Estevez*, 182 Md. 541, 555 (1943), the Court of Appeals affirmed the imposition of a constructive trust as an equitable remedy for the protection of parties who had an equitable interest in, but did not hold legal title to, certain real estate, noting that such implied trusts "arise by operation of equity. These trusts are known as constructive trusts. **They are declared to exist** where property has been acquired by fraud or some other improper method, or **where the circumstances render it inequitable for the party holding the title to retain it.**" (Emphasis added.)

[8] As noted above, this opinion addresses appellant's questions in reverse order. We have already addressed appellant's third question (regarding the applicable burden of proof). Appellant's second question asks whether the circuit court "err[ed] when it admitted and relied upon the testimony of a disgruntled heir about statements allegedly made by the deceased in contravention of Maryland's Dead Man's Statute and Hearsay Rules?"

agreement." It appears, however, that the statute's limitations were not applicable to this case, and that, even if they were, Cliff Ransom's testimony about conversations with his mother were not a significant factor in the outcome of this case given the trial court's emphasis upon appellant's own conduct, his lack of credibility, and the documentary evidence that was properly admitted.

Notwithstanding the seemingly broad language of the statutory provision known as the Dead Man's Statute, cases interpreting the statute have made clear that it has limited application and is to be strictly construed. The statute, codified at Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article, § 9-116, provides:

> A party to a proceeding by or against a personal representative, heir, devisee, distributee, or legatee as such, in which a judgment or decree may be rendered for or against them, or by or against an incompetent person, may not testify concerning any transaction with or statement made by the dead or incompetent person, personally or through an agent since dead, unless called to testify by the opposite party, or unless the testimony of the dead or incompetent person has been given already in evidence in the same proceeding concerning the same transaction or statement.

The restriction imposed by the statute applies only to a "party" to certain proceedings. In *Reddy v. Mody*, 39 Md. App. 675, 679 (1978), we explained:

> The testimony meant to be excluded by the Statute is **only testimony of a party to a cause which would tend to increase or diminish the estate of the decedent by establishing or defeating a cause of action by or against the estate**. *Snyder v. Crabbs*, 263 Md. 28, 282 A.2d 6 (1971); *Wm. D. Shellady, Inc. v. Herlihy, et al.*, 236 Md. 461, 204 A.2d 504 (1964); *Guernsey v. Loyola Federal Savings and Loan Association*, 226 Md. 77, 172 A.2d 506 (1960); *State, Use of Miles v. Brainin*, 224 Md. 156, 167 A.2d 117 (1960); *Robinson v. Lewis*, 20 Md. App. 710, 317 A.2d 854 (1974). The language of the Statute makes this clear by specifically narrowing its application to "[a] proceeding by or against a personal

> representative, heir, devisee, distributee or legatee ***as such*** . . . [.]" (Emphasis supplied [by this Court in *Reddy*].)

(Bold emphasis added.)

Clearly, this case does not include a cause of action that would tend to increase or diminish the estate of Edith B. Dasher; the sole defendant is James Dasher in his personal capacity. *See* MCLAIN, § 601:4(c.) at 460-61 ("It does not apply if the heir, personal representative, etc. sues or is sued on his own behalf.").

Furthermore, even if this case was one in which the statute applied, "a written statement will not be excluded [under the Dead Man's Statute], if it is properly authenticated." MCLAIN, § 601:4(d.ii.) at 463. Because there was no question about the authenticity of Edith's e-mails to her son, those documents were not excluded by the Dead Man's Statute. Cliff's testimony about conversations with his mother regarding her agreement with appellant were largely duplicative of the e-mails that were admitted in evidence.

Appellant points out that the trial court's opinion mentioned "several conversations over a number of years in which Mrs. Dasher told him of a written agreement between herself and [Appellant], which she would leave the Bristol House Farm to him after [Appellant's] death," and appellant argues that all of those conversations were inadmissible hearsay. But, even if some or all of those statements did not fall within the exception for a "statement of the declarant's then existing state of mind" under Maryland Rule 5-803(b)(3), that testimony was of minor significance in comparison to appellant's own statements on that point. Appellant himself made a video

recording in which he said "everything that I own, all tangible, all real estate, all accounts, all monies, everything, goes to Clifford Ransom, III, Edie Dasher's son and my stepson. If anything were to happen to me, I want all those possessions and everything material and everything, and anything and everything, to go to Clifford Ransom, III." When appellant signed a hand-written will later that day, he did so in the presence of two witnesses (other than appellee) who testified that appellant told them that he and Edie Dasher had an agreement that everything was to go to Cliff upon James Dasher's death and he needed a will to document that. Appellee's father also testified about a similar conversation with appellant wherein appellant "said that Edie and he had an agreement, a written agreement, that had been in place for a very long time, that everything would go to [appellee] at [appellant's] death." None of that testimony of Stephanie Clinton, David Bonsal, Clifford Ransom II, or James Dasher himself would have been excluded under either the Dead Man's Statute or the hearsay rules. In Paragraph No. 8 of the court's declaratory judgment, the trial court stated:

> 8. In making this declaration of rights and obligations, this [c]ourt credits **the testimony of Plaintiff**, Clifford F. Ransom, III, who is Edith B. Dasher's only child**, with regard to the statements and actions of Defendant, James J. Dasher, following the death of Edith B. Dasher** on January 16, 2016, **and** the witnesses who testified on Plaintiff's behalf, including but not limited to **the testimony of Plaintiff's father, Clifford F. Ransom, II, with regard to statements made by Defendant, James J. Dasher at the funeral home on January 18, 2016, and the testimony of Stephanie Clinton and David Bonsal concerning their interactions with Defendant following the death of Edith B. Dasher**.

None of the testimony highlighted by the court as the key testimony it credited in making its declaration would have been excluded by either the Dead Man's Statute or the rules regarding hearsay.

Moreover, the trial court said *twice* when rendering its oral findings, that the court "would find that Mr. Dasher's tacit admissions alone are sufficient to support a finding by clear and convincing evidence that this agreement existed."

Under the circumstances, even if some of appellee's testimony about oral statements made by Edith were not properly admitted pursuant to either the Dead Man's Statute or the rule against hearsay, appellant has failed to persuade us that he was prejudiced by the admission of such statements.

In *Brown v. Daniel Realty Co.*, 409 Md. 565 (2009), the Court of Appeals made plain that, in civil cases, an appellate court will not reverse a judgment based upon erroneous evidentiary rulings unless the party complaining of the rulings carries the burden of persuading the appellate court that the error or errors *probably*—and not merely *possibly*—caused the court to reach a different judgment than it would have reached in the absence of those errors. Writing for the Court in *Brown*, *id*. at 583-84, Judge Glenn T. Harrell, Jr., stated:

> Maryland Rule 5-103 provides, in pertinent part:
>
> > (a) Effect of erroneous ruling. Error may not be predicated upon a ruling that admits or excludes evidence unless the party is prejudiced by the ruling. . . .
>
> Thus, even if "manifestly wrong," we will not disturb an evidentiary ruling by a trial court if the error was harmless. *Crane v. Dunn*, 382 Md. 83,

> 91-92, 854 A.2d 1180, 1185 (2004). The party maintaining that error occurred has the burden of showing that the error complained of "likely . . . affected the verdict below." *Id*. "It is not the possibility, but the probability, of prejudice which is the object of the appellate inquiry. Courts are reluctant to set aside verdicts for errors in the admission or exclusion of evidence unless they cause substantial injustice." *Flores v. Bell*, 398 Md. 27, 34, 919 A.2d 716, 720 (2007) (quoting *Crane*, 382 Md. at 91-92, 854 A.2d at 1185).

Accord Zook v. Pesce, 438 Md. 232, 252 (2014) ("in a civil case, a petitioner must not only show error but must demonstrate that the error was prejudicial"); *Consol. Waste Industries, Inc. v. Standard Equip. Co.*, 421 Md. 210, 219-20 (2011) (the burden is on an appellant to show that the trial court error is accompanied by prejudice); *Flores v. Bell*, 398 Md. 27, 33 (2007) (appellate courts of Maryland "will not reverse a lower court judgment if the error is harmless" and "[t]he burden is on the complaining party to show prejudice as well as error." (footnote omitted)); *Green v. McClintock*, 218 Md. App. 336, 366 (2014) ("even if the circuit court erred in allowing Nelson's testimony about the 2003 will, we would still affirm, because the testimony was cumulative and thus harmless"); *Goss v. Estate of Bertha Jennings*, 207 Md. App. 151, 167 (2012) (the challenged evidence "cannot reasonably be understood as the pivotal evidence that tipped the verdict in favor of the appellees. In short, assuming an error did occur, we conclude that it was harmless as a matter of law."); *see also Fields v. State*, 395 Md. 758, 763-64 (2006) ("We need not determine whether the testimony of Detective Canales was inadmissible [hearsay] based on *Bernadyn* [*v. State*, 390

Md. 1 (2005)], or even if the evidence is distinguishable, because even if it was hearsay and not admissible, any error was harmless beyond a reasonable doubt.").

Statute of Frauds

Appellant's remaining question asks: "Did the [c]ircuit [c]ourt err when it ignored Maryland's Statute of Frauds and allowed the oral testimony of a disgruntled heir, about a never seen post-nuptial agreement, to override the conveyor's recorded deeds and Wills?" In his brief in this Court, appellant argues that Maryland's Statute of Frauds, specifically RP § 5-104, "requires a written contract or memorandum, to support Appellee's claims about an alleged post-nuptial agreement. No such document exists[.]." Appellant's brief continues:

> First, Appellee never saw, let alone produced a copy of the post-nuptial agreement. Second, Appellant denies one existed. Third, other than Appellee and his father, no witness had ever heard of, let alone seen such an agreement, even those who would have known about it had it existed. Finally, the recorded deeds and wills of the decedent, Mrs. Dasher, not only fail to mention such an agreement, but contradict the terms that Appellee claims it contained. Put mildly, there is no "clear and positive" proof that such agreement existed, nor did Appellee meet his "especially explicit and convincing" standard to prove its terms.

(Record references omitted; underlining in original.)

These arguments, in essence, urge us not to view the evidence in the light most favorable to the prevailing party. As noted above, the trial judge, who was the trier of fact in this case, concluded from all of the evidence that there *was* a post-nuptial agreement between appellant and Edith Dasher, and concluded that the reason appellee "never saw, let alone produced a copy of the post-nuptial agreement" was that appellant either

destroyed or otherwise refused to produce the document after he had mentioned such an agreement not only to Cliff, but also to Cliff's father, Cliff's Uncle David Bonsal, and Stephanie Clinton. The trial court found that the terms of the agreement were memorialized in several writings, including a draft separation agreement and appellant's own video recording and his signed hand-written will. The memorandum required to satisfy the Statute of Frauds can consist of multiple writings made at various times and for various purposes.

Appellant urges us to give no credence to appellee's testimony that, during a telephone conversation with James Dasher on February 21, 2016, appellant told appellee that he had found the signed agreement. But that evidence was clearly admissible as the statement of a party opponent, and it was up to the trial judge to decide how much, if any, weight to give that evidence. It is not our call to second guess the trial judge on that point. The trial judge was very clear about finding appellant's testimonial denial of the agreement lacking in credibility, and equally clear about finding appellee's description of events—including appellee's descriptions of many admissions made by appellant—credible.

Rule 5-1008(b) expressly provides that it is "for the trier of fact to determine as in the case of other issues of fact: (1) whether the asserted writing . . . ever existed," and "(3) whether evidence of contents other than the original correctly reflects the contents." Here, the trial judge, as trier of fact, made findings on both of these points, and those findings were not clearly erroneous.

As noted above, the Court of Appeals ruled in *Shimp*, 287 Md. at 388, that, notwithstanding the legal right of a testator to revoke a will that conforms to an agreed testamentary disposition, a contract to make a particular testamentary disposition "may be specifically enforced in equity[,] or damages may be recovered upon it at law." Here, the trial court's finding that appellant had entered into an agreement with appellee's mother to leave all assets to appellee was not clearly erroneous, and the equitable remedies ordered by the trial judge—*i.e.*, specific enforcement and imposition of a constructive trust as an ancillary remedy to ensure compliance with the agreement—were not an abuse of the court's discretionary equitable powers.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.