Circuit Court for Anne Arundel County
Case No. C-02-CV-19-003326

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 0574

September Term, 2021

JOAN M. SULLIVAN

v.

REBECCA ANN WYATT

Arthur,
Tang,
Moylan, Charles E., Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Tang, J.

Filed: February 7, 2023

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

** At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Everett Wyatt died intestate at the age of 73 in 2018. He is survived by his second wife, Joan M. Sullivan, appellant, and his daughter, Rebecca Ann Wyatt, appellee.[1] In the Circuit Court for Anne Arundel County, Rebecca filed suit against Joan alleging, *inter alia*, that Joan, acting as Everett's attorney-in-fact, exerted undue influence on Everett when various assets of his were transferred to Joan during the last years of his life. At the end of a multi-day trial, the jury returned a verdict awarding damages to Rebecca after finding that certain transfers were the product of Joan's undue influence.

After the court entered judgment in Rebecca's favor, Joan filed a motion to alter or amend the judgment, seeking to change the judgment creditor to Everett's estate. The court denied Joan's motion. Joan presents four questions for our review, which we rephrase for clarity:[2]

[1] For convenience, we refer to Everett Wyatt, Rebecca Ann Wyatt, and Joan M. Sullivan by their first names.

[2] The questions raised by Joan in her brief are:

I. The trial court erred in refusing to modify the judgment party plaintiff to Everett's Estate, the real party in interest[.]

II. The trial court erred in entering judgment on behalf of Rebecca individually because it did not have subject matter jurisdiction over the administration of estate assets[.]

III. The trial court erred in finding a confidential relationship when, at the time of the transactions, the principal was mentally sharp, fit as an ox, worked full-time, drove 2 hours each way to work and suffered from no "feeble factors[.]"

1. Did the court err in denying Joan's motion to alter and amend the judgment?

2. Did the court exceed its subject matter jurisdiction when it entered judgment in Rebecca's favor?

3. Did the court err in finding a confidential relationship between Everett and Joan?

4. Did the court err in failing to exclude claims for damages not previously identified by Rebecca in discovery?

For the reasons set forth below, we affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Everett and his first wife, Beverly Wyatt, had one child, Rebecca. The Wyatts had lived in an apartment complex where they became acquainted with Joan, also a resident at the complex. Beverly had taken care of the household while Everett worked at the Naval Academy. After Beverly passed away in 2002, Everett, 57 years old at the time, was "very scared, very distraught, unsettled, weary[, and] tired." Without a caretaker, Everett moved in with Joan, who was 34 years his junior. Joan assumed the caretaking functions of cooking, cleaning, and caring for Everett, while Everett paid for Joan's expenses.

Over the next few years, Everett and Joan resided together intermittently in various residences. In 2009, Everett purchased a home on Cortez Road ("Cortez Property"), where

IV. The trial court erred in allowing substantial damage claims not previously disclosed in discovery that were highly prejudicial to [Joan's] trial preparation and defense[.]

he continued to live with Joan. In October 2011, Everett conveyed the property to Joan and himself as joint tenants with a right of survivorship.

A few months prior, in February 2011, Everett executed a durable general Power of Attorney ("POA") naming Joan as his attorney-in-fact. Using the POA, Joan opened a joint bank account at Wells Fargo Bank, from which funds were used to pay bills and to "do things [Everett and Joan] wanted to do together." In addition to the joint Wells Fargo account, Everett had an individual account with Navy Federal Credit Union ("NFCU"), which was later converted into a joint account held with Joan,[3] a life insurance policy,[4] and a Thrift Savings Plan ("TSP") retirement account.

Everett's Hospitalization

Everett, who had been employed as a machinist, was forced to retire after suffering a heart attack on March 18, 2017. The heart attack required quadruple bypass surgery. Everett experienced post-surgical complications, including strokes, partial loss of vision, and partial paralysis. His condition required care at a rehabilitative facility, where he subsequently suffered a second heart attack which sent him back to the hospital. At times during his hospitalization, Everett was variously oriented to persons but not to time or date. For about three days during this period, Everett's "competence" was "completely out."

[3] The NFCU account had been held by Everett, individually, until the summer of 2017, after Everett suffered a heart attack, *infra*.

[4] The life insurance policy was established around March 31, 2017, after Everett suffered a heart attack, *infra*, and in connection with his application for retirement, which Joan helped him prepare.

On the evening of May 28, 2017, while he was still hospitalized, Everett, 73 years old, and Joan, 38 years old, were married by Joan's friend. Although Rebecca had not been aware of the marriage until later, she recalled visiting Everett that afternoon and observing that he was "utterly confused."

Everett was able to return home in June 2017 where he received home care with the assistance of medical professionals until he died on March 20, 2018.

Administration of Everett's Estate

After Everett passed, Joan filed a small estate petition for administration with the Register of Wills for Anne Arundel County in April 2018. In the petition, Joan listed herself, as spouse, and Rebecca as an interested party. Except for $1,069.93 held in an attorney trust account, Joan did not list any other assets of the estate. As for debts, Joan listed funeral expenses, and NFCU asserted a claim against the estate for about $4,900. Based on the petition, the Orphans' Court appointed Joan the personal representative of Everett's estate. The estate was closed the same day the petition was filed.

Accounting Action

When Rebecca visited Everett at the hospital in March 2017, she learned, for the first time, of the existence of the POA. She also discovered, on Everett's cell phone, text messages sent by Joan that caused Rebecca to become concerned over Joan's treatment of him.[5] Based on these discoveries, Rebecca filed an action to account for Everett's finances.

[5] On March 9, 2017, days before Everett's heart attack and hospitalization, Joan texted Everett the following: "What the fuck did I tell u about having your phone on you";

Rebecca later dismissed the action, but not before gathering, through discovery, bank records documenting financial transactions between Everett and Joan. These documents later served as the basis for an undue influence action against Joan.

Rebecca's Complaint

In October 2019, Rebecca filed suit against Joan alleging, *inter alia,* that *inter vivos* transfers of Everett's assets to Joan between 2012 and 2017 were the product of Joan's undue influence. Rebecca variously pursued claims individually and/or on behalf of Everett's estate and, with respect to certain counts, sought recovery of damages for herself as the purported sole heir of her father's estate.

In Count I, Rebecca sought to impose a constructive trust by setting aside *inter vivos* transfers made to Joan. She requested that Joan, as constructive trustee, convey to the estate "such monies and properties" determined to have been the product of Joan's undue influence.

In Counts II and III, Rebecca sought to set aside conveyances of two properties (one being the Cortez Property) as a product of Joan's undue influence. Rebecca alleged that she "ha[d] a higher equitable call than [Joan]" as to the properties, and she requested that the properties be conveyed to "Everett's Estate and/or [Rebecca] as sole and rightful heir of assets of" the estate.

"If I have to drive home because your not answering god help you"; "Answer the fucking phone"; "Did u put her back in the crate and lock both locks and let the boys back in"; "Answer this phone"; "You don't answer this phone when I get home I will smash it into a million fucking pieces"; "If I lose my fucking job because of you today god help you when I get home[.]"

In Count IV, Rebecca alleged that Joan caused property to be fraudulently conveyed in an attempt "to shield the transfer from creditors, especially the Estate of Everett L. Wyatt." Rebecca sought to set aside that conveyance and transfer ownership of the property to Rebecca "as sole and rightful heir of assets of" the estate.

In Count V, Rebecca alleged constructive fraud against Joan, claiming that Joan took advantage of the confidential relationship she had with Everett. Rebecca claimed that she suffered damages because of the fraud and sought recovery in an amount exceeding $75,000.

In Count VI, Rebecca asserted a civil conspiracy claim, alleging that Joan conspired to conceal Everett's assets to which Rebecca would have been entitled "as the sole and rightful heir to her father's estate." Rebecca sought recovery in an amount exceeding $75,000.

In Count VII, Rebecca asserted a conversion claim, alleging that Joan, under the POA, made transfers and exercised control over Everett's assets to which Rebecca had a legal interest. Rebecca sought recovery in an amount exceeding $75,000.[6]

Jury Trial

A five-day jury trial commenced on May 5, 2021. At the close of the evidence, the trial court found that the POA, appointing Joan as attorney-in-fact, established a confidential relationship between Everett and Joan as a matter of law. This finding shifted

[6] Rebecca subsequently withdrew Counts VI and VII.

the burden to Joan to rebut the presumption of undue influence, *i.e.*, Joan had to prove that the disputed transactions were the voluntary act of Everett and were fair, proper, and reasonable under the circumstances.

The court instructed the jury as to damages:

> If you find [for] *the plaintiff* [Rebecca] on the issue of liability, you must consider the question of damages. It will be your duty to determine what, if any, award would fairly compensate *the plaintiff*. The plaintiff has the burden of proof by the preponderance of the evidence each item of damages claimed to be caused by the defendant [Joan]. In considering the items of damage, you must keep in mind that your award must adequately and fairly compensate *the plaintiff*. However, an award should not be based on guesswork.

(Emphasis added).

On the verdict sheet, the parties submitted 25 questions, representing alleged improper transactions between 2012 and 2017. The verdict sheet directed the jury to award damages to "Rebecca A. Wyatt" for certain transactions it found improper. The jury found that the following eight transactions were the product of Joan's undue influence:

$5,000 Checks: Four transactions were checks in the amount of $5,000 each payable to Joan, drawn from the joint Wells Fargo account, dated June 22, 2012 (check no. 1041), June 25, 2012 (check no. 1042), June 29, 2012 (check no. 1044), and July 3, 2012 (check no. 1045). Between May and June 2012, Joan had arranged for renovations to the Cortez Property. She testified that she had used these funds to pay various contractors in cash, though she could not recall specific details. The jury awarded Rebecca a total of $20,000.

TSP Disbursement: On December 9, 2016, Everett received a disbursement from his TSP account in the amount of $6,115, which was deposited into the NFCU account. Joan testified that she transferred the funds to the joint Wells Fargo account and used the funds to pay for veterinary bills incurred when Everett's dog received treatment for cancer. The jury awarded Rebecca $6,115.

Post-Heart Attack Transfers: Three transfers occurred after Everett suffered his heart attack in March 2017. The first was a withdrawal of $3,500 by Joan from the joint Wells Fargo account on March 20, 2017, two days after Everett suffered his heart attack. Joan testified that she was instructed to "get [the money] out of the bank before [Everett's] daughter got to it." The jury awarded Rebecca $3,500.

The second transfer occurred on April 13, 2017, while Everett was in the rehabilitation facility and "very ill." Joan, using the POA, directed the TSP administrator to disburse $61,086.15 from Everett's TSP account. Joan deposited the funds into the NFCU account, explaining that those funds were used to pay for Everett's healthcare needs and mortgage. Of that amount, the jury awarded Rebecca $38,000.

The third transfer also occurred in mid-April 2017 while Everett was in the rehabilitation facility. At the time, Everett decided to designate Rebecca's children (his grandchildren) as beneficiaries of his life insurance policy. On April 11, 2017, Everett executed a beneficiary designation form in accordance with that intent. Days later, however, using the POA, Joan cashed out the policy (valued at $59,913) and deposited the proceeds into the NFCU account. By that time, Joan had become joint owner of the NFCU

account. Joan testified that she used the proceeds to pay for Everett's healthcare needs and taxes arising from past draws on the TSP account. The jury awarded Rebecca $59,913.

In sum, the jury awarded "Rebecca A. Wyatt" damages totaling $127,528.00.

Entry of Judgment in Rebecca's Favor

After the jury rendered its verdict, the trial court and counsel discussed the entry of the judgment. The following colloquy ensued:

> THE COURT: Okay. So, am I to enter judgment *in favor of the plaintiff* for one -- 127,528?
>
> [REBECCA'S COUNSEL]: Yes, Your Honor. Post judgment, it's a legal right.
>
> THE COURT: And post judgment legal right of interest. And there is no constructive trust though, correct?
>
> [REBECCA'S COUNSEL]: Correct.
>
> THE COURT: So -- so, this is simply a judgment *in favor of the plaintiff* in the amount of $127,528; does everyone agree with that?
>
> [REBECCA'S COUNSEL]: Yes, Your Honor.
>
> THE COURT: *Do you agree with that, [Joan's counsel]?*
>
> [JOAN'S COUNSEL]: *Yes, Your Honor.*
>
> THE COURT: And, so, that's what the verdict will be. A judgment will be entered, plus post judgment interest, in that amount, which is 127,528. *Anything else counsel?*
>
> [JOAN'S COUNSEL]: *No, Your Honor.*

(Emphasis added).

On May 12, 2021, the trial court ordered that "judgment to be entered at [the] direction of the court *in favor of the plaintiff, Rebecca Wyatt*[,] against the defendant, Joan Sullivan[,] for the sum of $127,528.00 plus post judgment interest." (Emphasis added).

Joan's Motion to Alter or Amend Judgment

On May 21, 2021, Joan filed a Motion to Alter or Amend Judgment, pursuant to Maryland Rule 2-534. She argued that the claims asserted by Rebecca to recover "monies improperly diverted from Everett Wyatt by [Joan]" "belong solely to Everett's Estate[,]" the real party in interest. Joan's primary contention was that Rebecca did not join the estate as a necessary party to the proceedings which resulted in an error in the judgment entered in Rebecca's favor.[7] Accordingly, Joan requested that the court vacate the entry of judgment. Alternatively, she requested that the court change the judgment creditor to reflect "Rebecca Wyatt, on behalf of the Estate of Everett Wyatt."

Rebecca opposed the motion, arguing that the estate is not a necessary party to the proceeding and, even if the estate is a necessary party, Joan forfeited the challenge because she had full knowledge of the proceedings in her capacity as the personal representative of

[7] Maryland Rule 2-211 governs the joinder of necessary parties. It "provides for the compulsory joinder of necessary parties so that the case can proceed efficiently with respect to all persons having a cognizable interest in the matter and, at the end, the court can grant complete relief." *Caretti, Inc. v. Colonnade Ltd. P'ship*, 104 Md. App. 131, 142 (1995). Designation as a real party in interest does not necessarily mean that joinder is required. *See Poteet v. Sauter*, 136 Md. App. 383, 407 (2001).

the estate and knowingly determined that compulsory joinder of the estate was not required.[8]

On June 11, 2021, the trial court entered an order denying Joan's motion, from which Joan timely appealed.

We shall include additional facts in our discussion of the issues.

DISCUSSION

I. REAL PARTY IN INTEREST

Joan argues that the trial court erred in denying the Motion to Alter or Amend Judgment. Notably, Joan abandons her primary contention, previously asserted below, that the estate was not joined as a necessary party in the proceeding.[9] Instead, she focuses on the real-party-in-interest aspect, namely that the estate is the real party in interest and is "the only entity holding legal claim for wrongs against [it]." Joan claims that, to the extent Rebecca pursued claims derivatively on behalf the estate, the recovery belongs to the estate. Accordingly, she argues, the judgment should either be vacated or amended to reflect the judgment creditor as "The Estate of Everett Wyatt."

[8] Although a necessary party challenge generally cannot be waived and can be raised at any time, the challenge can be forfeited where the unnamed but necessary party has effectively had her "day in court" by virtue of her knowledge of the litigation. *See Bodnar v. Brinsfield*, 60 Md. App. 524, 536 (1984).

[9] In her reply brief, Joan argues, for the first time on appeal, that the estate "was and is already joined" as a party. We decline to address this new argument, and therefore, limit our review to her real-party-in-interest challenge. *See Gazunis v. Foster*, 400 Md. 541, 554 (2007) ("[A]ppellate courts ordinarily do not consider issues that are raised for the first time in a party's reply brief.").

A. Standard of Review

Maryland Rule 2-534 governs the court's revisory power over judgments:

> In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. . . .

Appellate review of a court's ruling on a Rule 2-534 motion is typically limited in scope. *Schlotzhauer v. Morton*, 224 Md. App. 72, 84 (2015) (citation omitted). "In general, the denial of a motion to alter or amend a judgment is reviewed by appellate courts for abuse of discretion." *Id*. (citation omitted). "The relevance of an asserted legal error, of substantive law, procedural requirements, or fact-finding unsupported by substantial evidence, lies in whether there has been such an abuse." *Id*. (citation omitted). "Nevertheless, a 'court's discretion is always tempered by the requirement that the court correctly apply the law applicable to the case.'" *Id*. (quoting *Arrington v. State*, 411 Md. 524, 552 (2009)).

B. Analysis

The trial court did not err in denying Joan's Motion to Alter or Amend Judgment because she forfeited her right to raise the real-party-in-interest challenge. A "real party in interest" with respect to a claim is one who "has the right to assert the claim," and not

necessarily the party with a beneficial interest.[10] *Morton v. Schlotzhauer*, 449 Md. 217, 242 (2016). Maryland Rule 2-201 provides that:

> Every action shall be prosecuted in the name of the real party in interest, except that an executor, administrator, personal representative, guardian, bailee, trustee of an express trust, person with whom or in whose name a contract has been made for the benefit of another, receiver, trustee of a bankrupt, assignee for the benefit of creditors, or a person authorized by statute or rule may bring an action without joining the persons for whom the action is brought. . . .

The purpose of the real-party-in-interest rule is to protect a defendant from multiple claims and judgments. *Schlotzhauer*, 224 Md. App. at 95-96 n.10 (citation omitted). The origin of Rule 2-201 is permissive in purpose. *S. Down Liquors, Inc. v. Hayes*, 323 Md. 4, 8 (1991) ("an action [to] be brought by the real party in interest traces its origin to statutes and rules which were permissive in nature, authorizing plaintiffs such as assignees to bring actions at law in their own names rather than in the names of the assignors."). With some exceptions, the Rule does not attempt "to define who is, or is not, a real party in interest in any specific context." *Id*. at 7. "Notwithstanding its permissive origins, Rule 2-201 does have a mandatory component. If the party bringing an action is not the real party in interest, the action may be dismissed, provided a reasonable time is allowed after objection 'for

[10] We note the distinction between real party in interest and standing. "A person's standing to be a party in a lawsuit ordinarily requires that the outcome of the lawsuit might cause the person to 'suffer [ ] some kind of special damage . . . differing in character and kind from that suffered by the general public.'" *Duckworth v. Deane*, 393 Md. 524, 540 (2006) (citation omitted). Joan has not raised the issue of Rebecca's standing. *Garner v. Archers Glen Partners, Inc.*, 405 Md. 43, 55 (2008) ("We ordinarily do not decide issues of standing not raised in the trial court.").

joinder or substitution of the real party in interest.'" *Id*. at 8; Md. Rule 2-201. In circumstances where there are two parties in interest, each of whom has the right to bring an action for the entire claim, the bringing of an action by one satisfies the requirement of Rule 2-201. *Hayes*, 323 Md. at 10.

The Rule was patterned after Rule 17 of the Federal Rules of Civil Procedure. *Morton*, 449 Md. at 241.[11] Federal courts, applying Rule 17, have held that the real-party-in-interest defense is not jurisdictional and may be waived or forfeited by failing to make a challenge in a timely manner.[12] *See, e.g., Audio-Visual Mktg. Corp. v. Omni Corp.*, 545 F.2d 715, 719 (10th Cir. 1976) (the real-party-in-interest objection is for the benefit of a defendant, and should be raised in a timely fashion or it may be deemed waived) (citing Wright and Miller, Federal Practice & Procedure, § 1554); *Hefley v. Jones*, 687 F.2d 1383, 1388 (10th Cir. 1982) (real-party-in-interest defense waived when raised sixteen days before trial and a year and a half after defendant had facts before him to assert the defense); *Lucas v. Lucas*, 946 F.2d 1318, 1322-23 (8th Cir. 1991) (waived where defendant should have raised before trial real-party-in-interest challenge as to identifying

[11] "When interpreting a Maryland Rule that is similar to a federal rule of Civil Procedure, we may look to federal decisions construing the corresponding federal rule for guidance." *Bond v. Slavin*, 157 Md. App. 340, 358-59 n.30 (2004) (citation omitted).

[12] "[F]orfeiture is the failure to make the timely assertion of a right[;] waiver is the 'intentional relinquishment or abandonment of a known right.'" *United States v. Olano*, 507 U.S. 725, 733 (1993) (quoting *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938)).

plaintiff as executrix or individually on conversion claim); *Gogolin & Stelter v. Karn's Auto Imps., Inc.*, 886 F.2d 100, 102 (5th Cir. 1989) (waived where raised for first time on motion for directed verdict), *cert. denied*, 494 U.S. 1031 (1990); *Allegheny Int'l v. Allegheny Ludlum Steel Corp.*, 40 F.3d 1416, 1431 (3d Cir. 1994) (waived where first raised in defendant's second motion for summary judgment made during trial). Similarly, in Maryland, a party may forfeit a real-party-in-interest defense when it was not raised below. *See, e.g.*, *Pumphrey v. Pumphrey*, 11 Md. App. 287, 293 (1971) (real-party-in-interest challenge raised for the first time on appeal); *cf. Poteet v. Sauter*, 136 Md. App. 383, 398 n.4 (2001) (no waiver simply because an appellant had not cited to Rule 2-201 specifically).

In the instant matter, Joan does not dispute that Rebecca is a real party in interest. Her focus, rather, is that Everett is a real party in interest and should have had the judgment entered in favor of his estate. Even assuming so, Joan forfeited the real-party-in-interest challenge by failing to raise it earlier in the trial court proceeding. The lawsuit commenced on October 14, 2019, when Rebecca, as plaintiff, filed a complaint against Joan, seeking damages as purported sole heir of the estate. The trial began on May 4, 2021, nearly a year and a half later. At no time before or during the trial did Joan raise a real-party-in-interest challenge. When the proposed jury instructions and verdict sheet were discussed, Joan made no real-party-in-interest objection, nor did she indicate that the verdict sheet should have reflected that any damages be awarded to the estate. Further, during the post-verdict discussion with the court, Joan's counsel did not raise a real-party-in-interest challenge nor

was there any objection to entering the judgment in Rebecca's favor. It was not until *after* the judgment had been entered that Joan broached this issue for the first time. We hold that Joan forfeited her real-party-in-interest argument by failing to raise it timely below. Accordingly, the trial court did not err in denying Joan's Motion to Alter or Amend Judgment.[13]

II. SUBJECT MATTER JURISDICTION

Joan argues that the trial court erred in entering judgment for Rebecca, individually, because it did not have subject matter jurisdiction over the administration of estate assets. Joan does not seriously dispute that the circuit court had subject matter jurisdiction to determine title over disputed property. Rather, she contends that the court's "jurisdictional job was done" when the jury found that various transactions were the product of Joan's undue influence. Because Rebecca sought and obtained judgment as sole heir of the estate,

[13] In her reply brief, Joan argues that this outcome results in a "non-waivable necessary party problem" because the jury awarded Rebecca damages arising out of a life insurance policy for which Rebecca's children were named beneficiaries. She argues that Rebecca's children were necessary parties to the lawsuit, a challenge that Joan claims could not have been raised prior to trial because that claim for damages was not disclosed by Rebecca's counsel until just prior to trial. We decline to address this point as Joan did not raise it in her principal brief and she fails to cite to any legal authority to support the contention. *See Strauss v. Strauss*, 101 Md. App. 490, 509 n.4 (1994) (declining to address point raised for the first time in a reply brief "as the scope of a reply brief is limited to the points raised in appellee's brief, which, in turn, address the issues originally raised by appellant . . . . A reply brief cannot be used as a tool to inject new arguments."); *Anderson v. Litzenberg*, 115 Md. App. 549, 578 (1997) (contention that is not supported by authority is deemed waived because "[i]t is not our function to seek out the law in support of a party's appellate contentions."). *See also* n.19, *infra*.

Joan maintains that the judgment is effectively a distribution of estate assets, which should have been administered by the Orphans' Court. By entering a judgment in Rebecca's favor, Joan argues, the circuit court "impermissibly exceeded its jurisdictional bounds."

A. Standard of Review

"Subject matter jurisdiction, also called fundamental jurisdiction, is the court's ability to adjudicate a controversy of a particular kind." *Beckwitt v. State*, 477 Md. 398, 421 (2022) (cleaned up). "[L]ack of subject matter jurisdiction may be raised at any time, including initially on appeal" and "need not be raised by a party, but may be raised by a court *sua sponte*." *Derry v. State*, 358 Md. 325, 334 (2000) (cleaned up); *see also* Md. Rule 8-131(a) ("The issue[ ] of jurisdiction of the trial court over the subject matter . . . may be raised in and decided by the appellate court whether or not raised in and decided by the trial court.").

B. Analysis

The Orphans' Court is a court of special and limited jurisdiction. *DeFelice v. Riggs Nat. Bank of Washington*, 55 Md. App. 476, 478-79 (1983); *see* Md. Code Ann., Estates & Trusts, § 2-102 (1974, 2017 Repl. Vol) (conferring power on the Orphans' Court to conduct judicial probate and direct the conduct of a personal representative, among other things). The Supreme Court of Maryland[14] has established that when a claim requires the

[14] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these

determination of "title to personalty between conflicting claims," equity jurisdiction is appropriate. *Tribull v. Tribull*, 208 Md. 490, 502 (1956); *DeFelice*, 55 Md. App. at 481-82 (the Orphans' Court is without jurisdiction to consider claims that "will either directly or effectively involve a determination of title to personal property.").

In *Ibru v. Ibru*, we concluded that the question of whether a decedent's attorney-in-fact fraudulently obtained and employed the powers of attorney to become a joint owner of joint accounts during the decedent's lifetime was a question of title that was squarely within the scope of the circuit court's equity jurisdiction and "beyond the jurisdiction of the Orphans' Court." 239 Md. App. 17, 40 (2018) (quoting *Libonati v. Ransom*, 664 F. Supp. 2d 519, 524 (D. Md. 2009)). In the instant matter, Rebecca's essential claim was that, prior to Everett's death, Joan wrongfully transferred his assets to herself. Because the dispute required a determination of title, the circuit court had subject matter jurisdiction over Rebecca's claims.[15]

Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland….").

[15] Further, Rebecca's claims involved funds from jointly titled accounts, a life insurance policy, and the TSP retirement account, all of which are non-probate assets and would not fall within the jurisdiction of the Orphans' Court in any event. *See* Estates & Trusts, § 1-101(r)(2) (2021 Supp.) ("Property" refers to "(i) All real and personal property of a decedent; and (ii) Any right or interest therein which *does not pass, at the time of the decedent's death, to another person by the terms of the instrument under which it is held, or by operation of law*.") (emphasis added); *Ibru*, 239 Md. App. at 40 (*inter vivos* transfer of funds pursuant to the power of attorney into the jointly held transfer-on-death accounts converted those funds into non-probate assets); *Libonati*, 664 F. Supp. 2d at 524 (*inter vivos* transfer of funds pursuant to the power of attorney converted the assets into non-

Joan's issue is not one of subject matter jurisdiction because her attack is not against the circuit court's *power* to adjudicate the controversy over title between conflicting claims; it is against the *propriety* of entering judgment in Rebecca's favor. In *Moore v. McAllister,* 216 Md. 497 (1958), our Supreme Court explained the concept of "jurisdiction" as referring to these two distinct concepts:

> Juridically, jurisdiction refers to two quite distinct concepts: (i) the *power* of a court to render a valid decree, and (ii) the *propriety* of granting the relief sought. To ascertain whether a court has power, it is necessary to consult the Constitution of the State and the applicable statutes. These usually concern two aspects: (a) jurisdiction over the person—obtained by proper service of process—and (b) jurisdiction over the subject matter—the cause of action and the relief sought.

Id. at 507 (emphasis in original) (internal citation omitted). Only a lack of jurisdictional "power" can justify relief from an enrolled judgment. *Thacker v. Hale,* 146 Md. App. 203, 224 (2002) (citing *Moore*, 216 Md. at 507-08). The "propriety" of granting relief sought, on the other hand, merges into the final judgment and cannot be attacked once enrolled. *Evans v. Evans*, 75 Md. App. 364, 372 (1988) (citation omitted).

Our Supreme Court examined the "power v. propriety" distinction in *First Federated Commodity Trust Corp. v. Commissioner of Securities,* 272 Md. 329 (1974). There, the appellant argued that the circuit court's decree was inconsistent with a statute and, therefore, it lacked subject matter jurisdiction. *Id*. at 334. The Court affirmed the

probate assets, making it "an issue beyond the jurisdiction of the Orphans' Court."); *Cooper v. Bikle*, 334 Md. 608, 624 (1994) (decedent's interest in joint bank account is immediately extinguished upon death and becomes sole property of owner pursuant to right of survivorship and without necessity of probate); *Karsenty v. Schoukroun*, 406 Md. 469, 488, n.13 (2008) (non-probate assets include proceeds from life insurance and retirement).

denial of a motion to vacate the decree challenged for want of jurisdiction, explaining that the attack was against "the *right* of the [commissioner] to proceed with his action, which has already been finally determined by the consent decree . . . not the power of the court to hear and determine the case, which it clearly possesses." *Id.* at 336 (emphasis in original). It explained,

> It is only when the court lacks the power to render a decree, for example because the parties are not before the court, as being improperly served with process, or because the court is without authority to pass upon the subject matter involved in the dispute, that its decree is void. *On the other hand, the question of whether it was appropriate to grant the relief merges into the final decree and cannot thereafter be successfully assailed for that reason once enrolled.* . . . The power which a court possesses to hear and determine cases, other than that which is inherent in it, is delineated by the applicable constitutional and statutory pronouncements. *If by that law which defines the authority of the court, a judicial body is given the power to render a judgment over that class of cases within which a particular one falls, then its action cannot be assailed for want of subject matter jurisdiction.*

Id. at 334-35 (citations omitted) (emphasis added).

In *Board of License Commissioners v. Corridor Wine, Inc.*, 361 Md. 403 (2000), the appellant argued that the tribunal lacked subject matter jurisdiction because its decision allegedly violated a statute. Our Supreme Court further expounded:

> Simply because a statutory provision directs a court . . . to decide a case in a particular way, if certain circumstances are shown, does not create an issue going to the court's . . . subject matter jurisdiction. There have been numerous cases in this Court involving the situation where a trial court . . . has jurisdiction over the subject matter, but where a statute directs the court . . . under certain circumstances, to exercise its jurisdiction in a particular way, or to rule in favor of a respondent, or to dismiss the case, and the tribunal erroneously refuses to do so because of an error of statutory interpretation or an error of fact. In these situations, this Court has regularly

> held that the matter did not concern the subject matter jurisdiction of the trial court[.]

Id. at 417-18; *see, e.g.*, *Beckwitt*, 477 Md. at 421 (not an issue of subject matter jurisdiction where statute purportedly prohibits criminal prosecution of particular act); *Tshiwala v. State*, 424 Md. 612, 621 (2012) (not an issue of subject matter jurisdiction where three judge panel ruled on a motion for reconsideration of sentence).

Considering the foregoing, the circuit court's entry of judgment in Rebecca's favor was not beyond its subject matter jurisdiction. Because the court had jurisdiction to consider and resolve title to property, the entry of judgment rendered therefrom cannot be assailed for want of subject matter jurisdiction.[16] *See First Federated Commodity Tr. Corp.*, 272 Md. at 334-35.

III. CONFIDENTIAL RELATIONSHIP

Joan argues that the trial court erred in finding that a confidential relationship existed between Everett and herself. At trial, after Rebecca rested her case, Joan's counsel moved for judgment premised on the absence of a confidential relationship. The court denied the motion. At the close of all the evidence, Joan renewed her motion for

[16] At bottom, Joan's subject-matter-jurisdiction challenge is a veiled real-party-in-interest challenge. Joan admits as much in her principal and reply briefs where she makes the same real-party-in-interest assertions: "Everett's Estate was the holder of any monies recovered"; "Everett's Estate holds the claims against [Joan] for undue influence"; and the appropriate remedy is to "amend the judgment in favor of 'Rebecca Wyatt, on behalf of the Estate of Everett Wyatt' or 'The Estate of Everett Wyatt.'" As explained in Section I, Joan forfeited her real-party-in-interest challenge.

judgment.[17] The court proceeded to address, based on all the evidence, whether such relationship existed between Joan and Everett. It found that it did and denied Joan's motion for judgment, explaining, in pertinent part:

> So the question becomes in this case whether by operation of law there is a confidential relationship between the Defendant, Joan Sullivan, and the deceased, Everett Wyatt.
>
> I will note for the record[] that the law of the land in this case is *Sanders v. Sanders*, 261 Md. 268. In that it says for non-family members that a POA by law makes the person who is the holder of the POA in a confidential relationship. The reason that families don't is because by convenience many times husband and wives and families do that for their own purposes.
>
> Now, having said that, even though I believe – I know that *Sanders* says that a confidential relationship is established against the holder of the power of attorney. Even if that were not the case there are other indicia of this case that the [c]ourt believes that makes the issue of confidential relationship -- the evidence is there that it should be a confidential relationship by law as well. One of which is that the power of attorney was -- well, some background facts.

The court proceeded to summarize the nature of Everett's relationship with Joan: Everett "was bereaved" when Beverly died "and was in a vulnerable position"; he became "in love or infatuated" with Joan, who was 34 years his junior; Joan prepared the POA that Everett signed "because he trusted her"; and Joan "used the POA to do different tasks

[17]Although Joan did not particularize reasons in support of the renewed motion pursuant to Maryland Rule 2-519(a), the trial court apparently understood that it was premised on the purported absence of a confidential relationship. *See Nelson v. Carroll*, 350 Md. 247, 250 (1998) ("[T]he sufficiency of the particularity of the reasons for a Rule 2-519(a) motion is determined in light of legal arguments that have been made in the course of the action, with particular emphasis on whether the trial judge could identify, through a process analogous to incorporation by reference, the argument that was being made in support of the motion.").

including open a joint bank account which she took liberally from." In denying Joan's motion for judgment, the court concluded that "[b]ased on all of that evidence, and based on *Sanders*, there is absolutely in this case by law the [c]ourt finds that there is a confidential relationship."

Thereafter, the parties discussed jury instructions, and Joan's counsel objected to the proposed instruction on the issue of confidential relationship:

> THE COURT: Okay. We -- we've gone over jury instructions. I will be giving them to them, and I will be filing both the jury instructions and the verdict sheet, and you had a couple issues?
>
> [JOAN'S COUNSEL]: I do. The first was the instruction on confidential relationship, which I believe requires a showing of a dependency created by a condition, such as feebleness, old age, or cognitive or physical impairment. So, I would object to that kind of jury instruction.
>
> THE COURT: Okay. Let's start with that for a record. I've already placed on the record the finding of facts. I think, legally, not only do we have *Sanders v. Sanders*, where they're not related, but in addition to that, there were other overwhelming -- there was overwhelming evidence, which I've already put on the record, as to confidential nature as a matter of -- as a matter of law.

The court then instructed the jury on the issue of confidential relationship, as follows:

> The [c]ourt has found, as a matter of law, that a confidential relationship existed between the defendant, Joan M. Sullivan and Everett L. Wyatt. Once a confidential relationship is created, and a presumption of undue influence is created, the defendant has the burden to prove by clear and convincing evidence, that there has been no abuse of confidence, and the transfer and/or gift was fair, proper, and reasonable.

> In the context of a gift or transfer, where a confidential relationship exists, the transaction between the parties will not stand unless there is a full and fair explanation of the whole transaction.

On appeal, Joan does not challenge the trial court's finding, as a matter of law, that a confidential relationship existed during the period after Everett's heart attack. Instead, she challenges the finding as it relates to the period prior thereto, when Everett, according to Joan, was "mentally sharp, fit as an ox, worked full-time, drove 2 hours each way to work," and "suffered from no feeble factors."

She makes two contentions. First, Joan argues that the trial court erred in submitting Rebecca's "undue influence claims" to the jury and instead, "should have determined as a matter of fact and law, that the 2011-2015 transactions could not be the result of undue influence because they occurred at a time when Everett was fit and active, worked full time, and had ample opportunity to set aside any transaction he felt were wrong." She theorizes that the "better rule" would have been to conclude that "if 2 or 3 years passe[d] after a transaction occur[ed] without [Everett] setting it aside, the transaction cannot be considered undue influence as a matter of law." Another possibility, Joan posits, would have been if the court "simply [did] not impose[] the 'heavy burden' shift otherwise imposed in undue influence cases."

Second, Joan argues that the court erred in instructing the jury that a confidential relationship existed "per se," because the instruction was premised on "bad law" derived from *Sanders v. Sanders*, 261 Md. 268, 271 (1971). Joan criticizes the *Sanders* decision for its potential overreach, claiming that the mere existence of a power of attorney would

unfairly result in a finding of a confidential relationship and shift a "heavy burden" on a defendant to demonstrate the propriety of the disputed transaction by clear and convincing evidence. Because the jury instruction was a product of the "*Sanders* Rule," Joan argues the jury was deprived of its ability to determine whether a confidential relationship existed.

A. Arguments Not Adequately Briefed

Aside from citing to cases for general, uncontroversial propositions, Joan does not cite to any legal authority to support her claim that the trial court erred with respect to her contentions, above. Maryland Rule 8-504(a)(6) requires that an appellate brief contain "[a]rgument in support of the party's position on each issue." This means that "[a]n appellant is required to articulate and adequately argue all issues the appellant desires the appellate court to consider in the appellant's initial brief." *Oak Crest Vill., Inc. v. Murphy*, 379 Md. 229, 241 (2004). As our appellate courts have advised, "it is not incumbent upon this Court, merely because a point is mentioned as being objectionable at some point in a party's brief, to scan the entire record and ascertain if there be any ground, or grounds, to sustain the objectionable feature suggested" and then search for law to support the party's position. *State Rds. Comm'n v. Halle*, 228 Md. 24, 32 (1962); *Van Meter v. State*, 30 Md. App. 406, 408 (1976).

Joan does not tie her first contention to any specific ruling by the trial court. It is unclear whether Joan appeals from the court's ruling on the motion for judgment, the giving of a jury instruction, the propriety of the court's factual findings, or otherwise. Without a particularized argument with supporting legal authority, we are without a framework to

review this contention and therefore decline to address the alleged error. *See Mathis v. Hargrove*, 166 Md. App. 286, 318 (2005) (declining to address the assignment of error because appellant did not cite to legal authority to provide a framework for the Court's consideration); *Elecs. Store v. Cellco P'ship,* 127 Md. App. 385, 405 (1999) ("[I]t is not this Court's responsibility to attempt to fashion coherent legal theories to support appellant's sweeping claims.").

Her second contention suffers from a similar defect. Although the claimed error is the giving of a jury instruction, Joan fails to cite to any legal authority (other than *Sanders* for its "bad law") to support her contention that the court abused its discretion in instructing the jury on the issue of a confidential relationship. *See Boston Sci. Corp. v. Mirowski Fam. Ventures, LLC*, 227 Md. App. 177, 209 (2016) (we are not "required to address an argument on appeal when the appellant has failed to adequately brief his argument.").

Without adequate presentation of developed arguments supported by legal authority, we cannot conclude that the trial court erred in finding that a confidential relationship existed.[18]

[18] In any event, we are not persuaded by Joan's "better rule" and "bad law" arguments because we are bound by precedent set by the Maryland Supreme Court. *Montgomery Cnty. Career Fire Fighters Ass'n v. Montgomery County*, 210 Md. App. 200, 230 (2013). "[W]e may not entertain [an] invitation to adopt and apply a new standard of law in contravention of existing [Maryland Supreme Court] precedent." *Shaarei Tfiloh Congregation v. Mayor & City Council of Baltimore*, 237 Md. App. 102, 145 (2018).

IV. "ADDITIONAL" CLAIMS FOR DAMAGES

Joan argues that the trial court erred "in allowing substantial damage claims not previously disclosed in discovery that were highly prejudicial to [her] trial preparation and defense." Approximately two weeks prior to trial, Joan learned that Rebecca had intended to introduce at trial 2,454 pages of NFCU and Wells Fargo bank records and cross-examine Joan on purported improper transactions documented among them in support of Rebecca's claims for damages. This discovery prompted Joan to file a Motion *in Limine* to Exclude New Damages Evidence ("Motion *in Limine*"), in which she sought to exclude at trial "the presentation of the 2,454 pages of [her own] bank records." Joan claimed that Rebecca had only identified 16 alleged improper transactions which Joan believed were the extent of Rebecca's claims for damages. She argued that Rebecca's introduction of additional documents would not only leave Joan guessing as to which other transactions were also the subject of Rebecca's claims for damages, but it also would impair Joan's ability to prepare for her defense and extend the duration of trial beyond the scheduled three days.

On the second day of trial, the court deferred ruling on the Motion *in Limine*, which Joan clarified was limited to the exclusion of "new damage claims":

> THE COURT: Defendant's Motion *in Limine* to Exclude New Damages Evidence and Memorandum in Support is also being . . . deferred. Correct? Until . . .
>
> [JOAN'S COUNSEL]: Being deferred; yes.
>
> THE COURT: That's being deferred because we don't know what new evidence is coming in at this point, and we have -- the [c]ourt's not going rule on that until he hears -- till we get to that point.

> [JOAN'S COUNSEL]: I don't think it's new evidence; I think it's new damage claims.
>
> THE COURT: Well, because for the record, that information of the new damages comes from documentation that was provided by [Rebecca to Joan] in discovery. Is that correct?
>
> [JOAN'S COUNSEL]: That's correct, but the limitation of damages was stated in discovery as being exhibits --
>
> THE COURT: And we'll get to that when the time comes --
>
> [JOAN'S COUNSEL]: Thank you, Your Honor.
>
> THE COURT: -- And we'll deal with that as far as we can deal with that. And one of the things I talked about was that even if I deny your motion, that we can parse out the damages in such a way on the verdict sheet that we can protect the record, for you.
>
> [JOAN'S COUNSEL]: Thank you, Your Honor.

The trial court never mentioned the Motion *in Limine* again, and Joan's counsel did not renew it. The 2,454 pages of records were pared down to 79 pages of NFCU bank statements, which were admitted as Exhibit 15 without objection. Later, Joan objected to Exhibit 15 only as it pertained to Rebecca's failure to timely disclose her claims for damages derived therefrom. The court acknowledged a continuing objection to the exhibit and confirmed the scope of Joan's objection to it:

> THE COURT: I'm giving you a continuing objection as to the damages [reflected] in [Exhibit] 15. My understanding is . . . these were provided in discovery, but weren't provided in discovery as damages. The documents were provided, but the claim for damages were not provided.
>
> [JOAN'S COUNSEL]: Exactly.

After the close of evidence, Joan objected to the verdict sheet in so far as it related to claims for damages that were disclosed late. Of the 25 transactions itemized on the verdict sheet, Joan objected to the submission of seven (questions nos. 16-21 and 23) as transactions that Rebecca purportedly did not timely identify as part of her damages claim. Nearly all of these seven transactions were derived from Exhibit 15; one (question no. 16) related to the $59,913 cash-out of Everett's life insurance policy, derived from another exhibit (Exhibit 23). As the basis for her objection to the court's submitting to the jury the seven late-disclosed claims for damages, Joan explained:

> [JOAN'S COUNSEL]: So, the primary basis for my objection to the verdict sheet relates to anything that is not contained on Plaintiff's Exhibit 5, for future additional damages, which were not set forth in interrogatories, or request for production of documents of damage claims. And documents -- so, that would be related to verdict -- verdict number 16, 17, 18, 19, 20, 21, 23, and that's -- that's it.

Rebecca's counsel argued, in part, that there was no discovery violation as she had produced the documents requested in discovery. Conceding that the requested documents were produced, Joan's counsel clarified and narrowed the ground for the objection:

> [JOAN'S COUNSEL]: Yes. And -- and my point, just in furtherance of my claim or my opposition, is not that they weren't produced, that they were unaware of it. Obviously, they're our records. It's -- we asked for a three-day jury trial, we did not ask for a five-day jury trial. We probably would've asked for a ten-day jury trial had I known we were going through detailed transactions and year by year documentation, of which we now have a burden to prove clear and convincing standard and show fair and reasonable -- we would have never agreed to a three-day jury trial, if that was, in fact, my understanding going into trial.

> THE COURT: Well, we're into day five, so, it looks like we were able to deal with it. And, I think, my understanding was from the plaintiff was that you knew about this at least a week or two before trial?
>
> [REBECCA'S COUNSEL]: Correct. And, also, I will say that the fact that the burden could have shifted, and, in fact shifted, is no surprise.
>
> THE COURT: Okay.
>
> [REBECCA'S COUNSEL]: And that --
>
> [JOAN'S COUNSEL]: Well, except exhibits and documents that were supported the fairness and reasonableness would have also been produced and dealt with during discovery and it wasn't.
>
> THE COURT: Okay.
>
> [JOAN'S COUNSEL]: Thank you, Your Honor.

The trial court effectively overruled Joan's objection to the inclusion of the seven claims for damages on the verdict sheet. Of those, the jury rendered a verdict against Joan on only one: the $59,913 cash-out on the insurance policy (question no. 16), derived from Exhibit 23.

Although Joan prevailed in obtaining a favorable verdict as to all claims for damages derived from Exhibit 15, she argues that this Court should vacate the judgment as to the $59,913 cash-out on the insurance policy. As best we understand, the alleged error in this regard is limited to the trial court's handling of the Motion *in Limine*. Joan claims that Rebecca's purported discovery violation prejudiced her by impairing her defense. First, she argues that, had Rebecca disclosed her other claims for damages earlier, Joan would have moved to join the named beneficiaries of the policy (Rebecca's children) and "prepare

a full and complete defense to this specific claim."[19] Second, Joan argues that the disclosure of other claims for damages, derived from the 2,454 pages of bank records, left her with only two weeks to prepare "a meaningful defense."

A. Standard of Review

We review a ruling on a motion *in limine* for a discovery violation under an abuse of discretion standard. *See Lowery v. Smithsburg Emergency Med. Serv.*, 173 Md. App. 662, 674 (2007) ("In applying sanctions for discovery violations, a large measure of discretion is entrusted to the trial court."). Our Supreme Court has identified five factors ("*Taliaferro* factors") that a trial court must consider when exercising its discretion to exclude evidence disclosed in violation of the discovery rules: (1) whether the disclosure violation was technical or substantial; (2) the timing of the ultimate disclosure; (3) the reason, if any, for the violation; (4) the degree of prejudice to the parties respectively offering and opposing the evidence; (5) whether any resulting prejudice might be cured by a postponement and, if so, the overall desirability of a continuance. *Taliaferro v. State*, 295

[19] In her principal brief, Joan did not raise the issue of whether the judgment arising from the life insurance policy should be vacated for failure to join Rebecca's children as necessary parties. *See Health Servs. Cost Rev. Comm'n v. Lutheran Hosp.*, 298 Md. 651, 664 (1984) ("[A] question not presented or argued in an appellant's brief is waived or abandoned[.]"). To be sure, she did not cite to any legal authority in support of a necessary party challenge. Instead, Joan's necessary party argument is framed in the context of purported prejudice resulting from Rebecca's alleged discovery violation. She explains she was "surprised" to learn at trial that Rebecca pursued a "damage claim for insurance monies for which Rebecca was never a beneficiary. . . . Simply stated, because of the surprise at trial, Joan was not prepared to present a coherent, well documented and well-prepared defense to this or the other newly disclosed financial claims."

Md. 376, 390-91 (1983). Because "[f]requently these factors overlap[,] [t]hey do not lend themselves to compartmental analysis." *Taliaferro*, 295 Md. at 391.

B. Analysis

To the extent that Joan argues that the trial court erred in denying her Motion *in Limine*, we cannot so conclude because the court never ruled on the motion.[20] As mentioned, the trial court deferred ruling on the motion, it did not revisit the motion, and Joan's counsel did not renew it. Accordingly, any challenge as it pertains to the motion is waived. *See, e.g.*, *Mitchell v. Montgomery County*, 88 Md. App. 542, 560 (1991) ("The trial judge expressed some doubts about the validity of the motion [for judgment at the close of the evidence], but reserved judgment until the following day. The trial judge never mentioned the motion again and counsel for [the defendant] failed to renew it. This issue, therefore, has been waived."); Md. Rule 8-131 ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

Even if preserved, we would conclude that the trial court did not err in effectively denying the motion by submitting the seven disputed claims to the jury. In seeking to exclude certain claims for damages, the Motion *in Limine* was, in substance, a motion for sanctions pursuant to Maryland Rule 2-433. *See* Md. Rule 2-433(a)(2) (sanctions for failure of discovery include "an order refusing to allow the failing party to support or

[20] Our review of the trial court's hearing sheet confirms that the Motion *in Limine* was "reserved" but never ruled on.

oppose designated claims. . . ."). The crux of Joan's objection to the disputed claims was that Rebecca did not supplement her responses to discovery by identifying those additional claims for damages.[21] Therefore, according to Joan, the trial court should have refused submission to the jury any additional claims for damages not previously disclosed.

The problem for Joan, however, is that her discovery requests did not include one for itemizing damages claimed by Rebecca, a standard form discovery request. *See* Md. Rules Form No. 3 (General Interrogatories) ("Itemize and show how you calculate any economic damages claimed by you in this action, and describe any non-economic damages claimed. (Standard General Interrogatory No. 4)"). Instead, Joan propounded requests broadly seeking documents that "support[ed] [Rebecca's] contention that [Joan] ever defrauded [Everett]," that Rebecca "intended to introduce at trial" and that she intended to rely on to support "a position . . . taken or . . . intend[ed] to take in the action, including any claim for damages."

We have advised that "[a] party seeking discovery may not expect his opponent to construe discovery requests as broadly as possible, in essence, to volunteer information beyond the request, on pain of preclusion of evidence at trial as a discovery sanction." *Bartholomee v. Casey*, 103 Md. App. 34, 49 (1994) (quoting John A. Lynch &

[21] During bench conferences at trial, Joan clarified that the purported discovery violation had little to nothing to do with Rebecca's recent production of documents and more to do with Rebecca's alleged failure to identify other claims for damages. *See* Section IV, *supra* (confirming that the "documents were provided, but the claim for damages were not provided"; stating "[Joan's] opposition, is not that [the documents] weren't produced, that they were unaware of it. Obviously, they're our records. . . .").

Richard W. Bourne, *Maryland Civil Procedure*, § 7.8(c), at 597 (1993)); *see also Bowers v. Nat'l Collegiate Athletic Ass'n*, 475 F.3d 524, 540 (3d Cir. 2007) (the duty to supplement discovery "does not require that a party volunteer information that was not encompassed within the scope of an earlier discovery request."). Accordingly, to the extent that the trial court effectively denied the Motion *in Limine*, we perceive no abuse of discretion.

Even if Joan's discovery requests encompassed the itemization of claims for damages, we would reach the same conclusion. The "more draconian sanctions, of dismissing a claim or precluding the evidence necessary to support a claim, are normally reserved for persistent and deliberate violations that actually cause some prejudice, either to a party or to the court." *Butler v. S & S P'ship*, 435 Md. 635, 650 (2013) (quoting *Admiral Mort., Inc. v. Cooper*, 357 Md. 533, 545 (2000)). The circumstances here do not demonstrate that the late disclosure was a result of persistent or deliberate violations that actually caused prejudice to Joan.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.