UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0925

September Term, 2014

JACQUALYN ANDERSON

v.

ROGER STAIGER, III

Meredith,
Berger,
Nazarian,

JJ.

Opinion by Berger, J.

Filed: July 8, 2015

* 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.

This case involves a dispute between Jacqualyn Anderson ("Anderson"), appellant, and Roger Staiger, III ("the Caveator"), appellee, over the validity of a purported will allegedly executed by Roger Powell Staiger, Jr. ("Captain Staiger"). The Caveator, who is Captain Staiger's sole heir-at-law, filed a petition to caveat the will, arguing that the signature on the purported will was forged. The matter ultimately was tried before a jury, which determined that: (1) the purported will was not signed by Captain Staiger, and (2) the purported will was not attested and signed by two or more credible witnesses in the presence of Captain Staiger.

On appeal, Anderson presents a single question for our review, which we recite verbatim:

> Did the trial judge err as to the admission of evidence and did any such error lead to a tainted verdict form the jury?

We answer the question in the negative. Finding no error, we shall affirm.

FACTS AND PROCEEDINGS

Captain Staiger died on October 19, 2012. He had one child, the Caveator, born October 8, 1970, who was a product of Captain Staiger's marriage with Barbara Ann Staiger. Captain Staiger and Barbara Ann Staiger married in 1969 and divorced in 2000. Captain Staiger did not remarry, but had a long-term romantic relationship with Anderson from the early 2000s until his death. For reasons that are unknown and irrelevant to the

present case, Captain Staiger had little to no contact with the Caveator for several years preceding his death.[1]

Following Captain Staiger's death, Anderson filed the purported will and a petition for administrative probate with the Register of Wills for St. Mary's County on November 16, 2012. The Caveator filed a petition to caveat on February 6, 2013, and a jury trial was scheduled to begin on June 16, 2014. The Caveator moved *in limine* to preclude Anderson from introducing the following into evidence at trial: (1) a draft of an earlier will dated 2008 which Anderson allegedly recovered from Captain Staiger's computer after his death and which Captain Staiger allegedly delivered to his attorney, Joseph C. Capristo ("Capristo"), on May 2, 2011; (2) Capristo's testimony about a May 2, 2011 meeting with Captain Staiger, the papers brought by Captain Staiger to the May 2, 2011 meeting, and Capristo's file on Captain Staiger; (3) four drafts of various documents purported to be Captain Staiger's living wills; (4) testimony about the relationship between Captain Staiger and Anderson; and (5) testimony about the relationship between Captain Staiger and the Caveator.

Following a hearing on the Caveator's motion *in limine*, the trial court reserved its ruling and explained that evidentiary rulings would be made at trial. The trial court, however, directed the parties to avoid mentioning the purported 2008 draft will in opening statements, explaining that the court was "not going to have somebody tell a jury there's a

[1] Anderson testified that, although she had been in a relationship with Captain Staiger for approximately ten years, she never met the Caveator until several months after Captain Staiger's death.

document that I later conclude is excluded." The trial court further commented that it was likely that the court would hear from Capristo outside the presence of the jury before ruling on the admissibility of his testimony and any related documentary evidence. The court explained that it would, at trial, evaluate each evidentiary issue on a case-by-case basis and would permit some amount of "backstory" about Captain Staiger and Anderson's relationship:

> I am not embracing the backstory. I am in fact skeptical of the backstory. But as we like to say we do lay a foundation. I don't think that the jury needs to go back there thinking that he met Ms. Anderson the night before or that, you know, she was his healthcare provider and worked with him at Charlotte Hall Veterans Home or something. I am going to let [Anderson's counsel], within limits, lay the foundation . . . .

At trial, the jury heard testimony from Register of Wills Lois Duke, Donna Crown (one of the purported witnesses to the will) ("Crown"), Janet Mertz (a second purported witness to the will) ("Mertz"), Anderson, weather expert Howard Altschule, William Norton (a friend of Captain Staiger), Capristo, and forensic handwriting experts J. Wright Leonard and John Hargett.[2]

Lois Duke, the Register of Wills for St. Mary's County, testified that her office received Captain Staiger's purported will for probate. Duke testified that she had seen

[2] In this will caveat case, first, the caveatee -- here, Anderson -- bore the burden of presenting a *prima facie* case of the execution of the will, *Slicer v. Griffith*, 27 Md. App. 502, 506 (1975), which she did through the testimony of Duke, Crown, and Mertz. Thereafter, the burden shifted to the Caveator to overcome, by clear and convincing evidence, the presumed validity of the will. *Slack v. Truitt*, 368 Md. 2, 8 (2002).

thousands of wills in her over seventeen years in the Register of Wills office. She explained that Captain Staiger's purported will was unusual in that it had an email header on the first page, had a nearly blank page in the middle of the document, had multiple blank bequests, and had an incorrect number of pages in the attestation clause. The purported will included significant bequests to Anderson, as well as to various other individuals and organizations.[3]

Crown and Mertz, sisters who were both friends of Anderson, testified that they arrived at Captain Staiger's home on August 26, 2012, the day of the alleged will signing, to visit Anderson, who was recovering from foot surgery. Crown and Mertz testified that they arrived at Captain Staiger's home midday prior to going crabbing at a nearby bridge. They explained that they did not crab because the water level was too low but instead returned to Captain Staiger's home, where Captain Staiger asked them to witness his will. Crown testified that she had known Captain Staiger for approximately ten years and saw him socially a few times each year, but had been to his home fewer than ten times prior to August 26, 2012. Mertz testified that she had only seen Captain Staiger four or five times over the ten years she had known him.

Crown testified that she did not believe that Anderson's children or grandchildren were present when she arrived on August 26, 2012, but Mertz testified that Anderson and her family were at Staiger's home. Crown testified that Captain Staiger met her and Mertz

[3] In the purported will, Anderson's first name was misspelled "Jacquelyn" instead of "Jacqualyn."

at the front door when they returned. According to Crown, she and Captain Staiger discussed "some clocks he had in his house" while Mertz used the restroom. Crown testified that after Mertz finished in the restroom, Captain Staiger asked the two sisters to witness his will. Crown testified that she saw Captain Staiger sign and date the purported will. Mertz testified that she saw Captain Staiger sign the purported will but could not recall whether he dated the will. Crown and Mertz both testified that Captain Staiger was a very intelligent and very private person. Mertz acknowledged that she had never discussed personal matters with Captain Staiger. Nevertheless, when asked whether it was her testimony "that on a random day out of the blue, this private man who never talked to [her] about private matters asked her to witness [his will]," she testified "that's correct."

Anderson testified that on August 26, 2012, she was convalescing at Captain Staiger's home following foot surgery. She testified that her family members were at Captain Staiger's home that day, but she did not remember whether Mertz and Crown arrived before or after her family members. She further testified that she did not remember the weather that day. On cross-examination, Anderson was shown a document from the local utility which indicated that there was two power outages at Captain Staiger's house on August 26, 2012, one at 12:07 p.m. and one at 12:43 p.m. Anderson acknowledged that she did remember generally that there were utility power issues at Captain Staiger's house.

Anderson testified that she was not aware that Captain Staiger had a will until after he died. She explained that she was frustrated after Captain Staiger's death because she was

not able to locate a will. Anderson contacted Capristo's office, but he did not know anything about any signed will. Anderson testified that she voiced her frustrations to Crown, who informed Anderson that she knew Captain Staiger had a will because she had witnessed it. Anderson testified that, prior to Captain Staiger's death, Crown had never mentioned to Anderson that she had witnessed Captain Staiger's will. Anderson testified that she eventually found the purported will folded in a notebook under the cushion of Captain Staiger's chair.

Anderson testified about the nature of her relationship with Captain Staiger, explaining that she met Captain Staiger in 2003 and that they had since dated and spent holidays together. Anderson testified that she knew Captain Staiger had minimal contact with the Caveator, explaining that she did not know that Captain Staiger even had a son until two years into their relationship and that she did not meet the Caveator until more than ten months after Captain Staiger's death. Additionally, Mertz testified about Anderson and Captain Staiger's relationship, describing them as acting "like a normal married couple" and "affectionate and like any married couple would be."

The Caveator called weather expert Howard Altschule ("Altschule") to attack the credibility of Anderson's witnesses. Altschule testified that on August 26, 2012, there were thunderstorms throughout the day within a fifteen mile radius of Captain Staiger's home. Altschule testified that the lightning strikes closest to Captain Staiger's house occurred between noon and 1 p.m. He explained that the lightning strikes were close enough for the

thunder to be audible at Captain Staiger's home. By noon, 1.2 inches of rain had fallen, and a total of 2.5 inches of rain fell by 5:00 p.m. at Captain Staiger's home. Altschule showed the jury Doppler radar images for August 26, 2012 which indicated that it rained off-and-on throughout the afternoon.

Joseph Capristo testified that he met with Captain Staiger on May 2, 2011 to discuss the preparation of a will. Capristo took notes during the meeting and, based upon his conversation with Captain Staiger, prepared a draft will using WordPerfect word processing software. Capristo testified that the draft will printed from WordPerfect was four pages in length. On May 10, 2011, Capristo's office emailed the draft will to Captain Staiger as a WordPerfect attachment. Several minutes later, Capristo's office sent a second email which contained the text from the WordPerfect document in the body of the email. Capristo testified that he had experienced situations in which clients were unable to open WordPerfect files and asked that he re-send documents in a different format. Following the May 10, 2011 email, Capristo did not recall whether Captain Staiger ever followed up with him regarding any changes to the draft will or concerning the signing of the draft will.

Both parties presented testimony from forensic handwriting experts. The Caveator's expert, J. Wright Leonard ("Leonard"), testified that the signature, initials, and date on the August 26, 2012 purported will were not written by Captain Staiger. Anderson's handwriting expert, John Hargett ("Hargett"), testified that he believed that Captain Staiger had written the signature and initials on the August 26, 2012 purported will. Hargett

conceded on cross-examination that the middle name "Powell" on the purported will "ha[d] problems." Hargett further acknowledged that the initials known to be written by Captain Staiger were different from the initials on the purported will.

The jury rendered its verdict on June 17, 2014, finding that the purported will was not signed by Captain Staiger. The jury further found that the purported will was not attested and signed by two or more credible witnesses in the presence of Captain Staiger. This timely appeal followed.

DISCUSSION

I. The Trial Court's Evidentiary Rulings

On appeal, Anderson avers that the trial court committed various substantive evidentiary errors which, she alleges, tainted the jury's verdict. The specific evidentiary rulings which Anderson contends were erroneous are the trial court's exclusion from evidence of the following: four purported living wills, Anderson's testimony about a document she viewed on Captain Staiger's computer, testimony about Captain Staiger's relationship with the Caveator, the draft will allegedly brought by Captain Staiger to his meeting with Capristo, and testimony about Anderson and Captain Staiger's relationship. Anderson points to eight separate examples of evidence which, due to the trial court's rulings, "the jury did not hear or see." Specifically, Anderson contends that "the jury did not hear or see any evidence" of the following:

> A. That [Captain] Staiger had a long time estrangement from his son. In approximately 2008, [Captain Staiger] personally

prepared a Last Will and Testament that was found on his computer which will [sic] is in virtually all respects the same as the one entered into evidence at trial with one glaring exception. In the draft he prepared was a paragraph that read: "I have the following child: Roger Powell Staiger, III, born October 8, 1970 in Alameda, California. It is not an oversight that I am not leaving any part of my estate to this individual."

B. That the draft of his Last Will and Testament (a draft essentially the same as the questioned document) was brought by [Captain] Staiger to his attorney, Joseph C. Capristo, Esquire in 2011. The questioned document is in the form of an email. It was Mr. Capristo who prepared the Will and an assistant from his office who sent it by email to Mr. Staiger, first as a Word [sic] attachment and then in the body of the email.

C. That the Will prepared by Mr. Capristo did not include the statement disinheriting Roger Powell Staiger, III. Had Mr. Capristo testified he would have said that it was his choice to remove the statement as he did not like to include disinheriting statements in the Wills he prepared.

D. That [Captain] Staiger had a loving and romantic relationship of years['] duration with Jacqualyn Anderson.

E. That email communications between [Captain] Staiger and his former wife, Barbara Staiger, would explain why she was included as a Legatee in the Will.

F. That [Captain] Staiger and his parents had significant connections with Ursinus College and the Mercersburg Academy that would explain why those charitable entities were bequeathed a significant portion of the Estate.

G. That [Captain] Staiger had voiced to others reasons why he wanted his ownership interest in Hall Pond Refuge, LLC to be in the hands of the State of Maryland.

H. That there were significant relationships with others named as Legatees in his Will.

First, we observe that, of the eight examples of evidence which Anderson contends "the jury did not hear or see," only one involved a ruling of the circuit court excluding evidence. The jury was presented with evidence that Captain Staiger and the Caveator had minimal contact through Anderson's testimony. Indeed, Anderson testified that she had spent holidays with Captain Staiger for approximately a decade but never met the Caveator until after Captain Staiger's death. Anderson further testified that she was unaware of the existence of Captain Staiger's son until she had been in a relationship with Captain Staiger for two years. Accordingly, the jury had before it evidence of a significant period of minimal to no contact between Captain Staiger and the Caveator.

With respect to Anderson's assertion that the jury was not permitted to hear evidence that Captain Staiger brought a draft will to his 2011 meeting with Capristo, we observe that the jury was presented with evidence that Captain Staiger brought notes to his May 2, 2011 meeting. Capristo testified that he drafted a will based upon the meeting and notes provided by Captain Staiger. Capristo explained that the will he drafted was emailed to Captain Staiger as an attachment and in the body of an email, and Capristo further testified that the WordPerfect file printed as a four-page document.

Anderson asserts that the jury was not permitted to hear evidence that she and Captain Staiger "had a loving and romantic relationship of years[']duration." The record reflects that Mertz testified that Anderson and Captain Staiger acted like a "married couple." Anderson testified that she met Captain Staiger on a dating website in 2003 and was in a

relationship with him until his death. Nothing further was asked of Anderson or any other witness about the relationship between Anderson and Captain Staiger.

Anderson contends that the jury was not permitted to hear evidence which would explain why Barbara Staiger, Ursinus College, and the Mercersburg Academy were named as legatees in the purported will. Critically, Anderson never sought to introduce evidence at trial about any of the above-listed legatees. The Caveator asked Anderson about Captain Staiger's relationship with the organizations identified as legatees in the purported will, and Anderson's counsel objected. Anderson similarly complains that the jury was not permitted to hear evidence relating to Captain Staiger's interest in Hall Pond Refuge. The Caveator asked William Norton about Captain Staiger seeking to leave his interest in Hall Pond Refuge, LLC to the State of Maryland, but Anderson's counsel objected. The objection was sustained after a few limited questions were asked. Anderson did not ask any questions about Hall Pond Refuge, LLC or make a timely proffer after evidence was excluded. Anderson cannot be heard to complain, on appeal, about evidence relating to various legatees in the purported will when she did not seek the admission of such evidence below.

One of Anderson's examples of evidence "the jury did not hear or see" is preserved for our review. Specifically, Anderson is correct that, as a result of the trial court's ruling, the jury was precluded from hearing testimony from Capristo that, when drafting a will for Captain Staiger, Capristo specifically chose not to include a disinheriting statement that Captain Staiger had included in an unsigned 2008 draft will which Captain Staiger brought

to his meeting with Capristo. In sum, the issues preserved for appeal involve the following evidence which Anderson contends the trial court improperly limited: (1) an unsigned draft will dated 2008, (2) testimony from Capristo and Anderson regarding the contents of the 2008 unsigned draft will, and (3) four unauthenticated draft documents purported to be living wills.

II. Analysis

The admission or exclusion of evidence "is generally committed to the sound discretion of the trial court." *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 406 (2012) (citing *Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 619-20 (2011)). Appellate courts reviewing whether a trial judge erred in its relevancy determination engage in a two-step analysis. *Washington Metro. Area Transit Auth. v. Washington*, 210 Md. App. 439, 451 (2013) (citing *State v. Simms*, 420 Md. 705, 724 (2011)). "First, we consider whether the evidence is legally relevant, a conclusion of law which we review *de novo*." *Id.* (citing *Simms*, *supra*, 420 Md. at 725). If we conclude that the challenged evidence meets this definition, we then determine whether the trial court abused its discretion in determining "whether the evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice, or other countervailing concerns as outlined in Maryland Rule 5-403." *Simms*, *supra*, 420 Md. at 725. "We will only find an abuse of such discretion where no reasonable person would share the view taken by the trial judge." *CR-RSC Tower I, LLC*, *supra*, 429 Md. at 406 (internal quotation and citation omitted).

Pursuant to Maryland Rule 5-401, relevant evidence is defined as

> evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

Md. Rule 5-401. Maryland Rule 5-402, which governs the admissibility of relevant or irrelevant evidence, provides:

> Except as otherwise provided by constitutions, statutes, or these rules, or by decisional law not inconsistent with these rules, all relevant evidence is admissible. Evidence that is not relevant is not admissible.

Md. Rule 5-402. All relevant evidence is not necessarily admissible, however. Pursuant to Maryland Rule 5-403, a trial court may exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

Anderson asserts that the excluded evidence was relevant to the determination of whether Captain Staiger, in fact, signed the will on August 26, 2012. Before the trial court, Anderson argued that the evidence was relevant because a testator is more likely to have signed a will which is consistent with the testator's earlier expressed intentions than if the will had been inconsistent with the testator's expressed intentions. The Caveator's position, on the other hand, was that it did not matter whether the purported will was consistent with Captain Staiger's intentions because his capacity had not been challenged. Rather, the limited issues for the jury's determination were whether Captain Staiger signed the purported

will on August 26, 2012 and whether the will was properly attested to and signed by the two witnesses.

In support of her position, Anderson cites to out-of-state cases, contending that this is a matter of first impression in the State of Maryland. Anderson cites to the New Jersey case of *State v. Ready*, 75 A. 564, 568 (N.J. 1910), for the principle that "the pre-existing testamentary design of the alleged testator if always relevant," including in a forgery case. Anderson cites to the New Jersey case of *In re Estate of Spiegelglass*, 137 A.2d 440, 444 (N.J. 1958), and the New Mexico case of *In re Roeder's Estate*, 103 P.2d 631, 634 (N.M. 1940), for the same principle. Other courts have reached the opposite conclusion, holding that declarations of the purported testator are not admissible when the only issue raised is forgery. *See, e.g.*, *Throckmorton v. Holt*, 180 U.S. 552, 571, 21 S. Ct. 474, 481, 45 L. Ed. 663 (1901) (observing that "the decisions of the State courts as to the admissibility of [intent evidence in forgery cases] are not in accord"); 62 A.L.R.2d 855 § 5 ("In numerous cases the courts have taken the view that declarations of the alleged testator were inadmissible on the issue of the forgery of a will.").

The only Maryland case to directly address this issue is *Hoppe v. Byers*, 60 Md. 381 (1883).[4] In *Hoppe*, the Court considered a handwritten note of purported testamentary intent found on the back of a letter signed by the testator. The Court held that declarations of the testator made before the disputed document were admissible "not to be taken as direct proof

[4] The *Hoppe* case was not cited to the trial court in the present case.

to establish the paper, but merely as corroborative of such direct proof." *Id.* at 393.[5]

Applying *Hoppe*, we conclude that evidence as to intent was relevant, in that it tended "to make the existence of any fact that is of consequence to the determination of the action more probable . . . than it would be without the evidence." Md. Rule 5-401. It is arguably more likely that Captain Staiger would have signed a will that was consistent with earlier expressed intent. Critically, however, the trial court did not exclude the admission of intent evidence on the basis that it was legally irrelevant. Rather, that trial court determined that the limited probative value of the evidence was substantially outweighed by unfair prejudice. For example, the trial court explained as follows when ruling on the admissibility of the 2008 draft will and related testimony:

> There are so many disparities between the draft will of 2008, what was presented in 2011 and signed and is Defendant's [Exhibit] 1 in 2012, that I believe it would confuse the jury rather than be helpful.
>
> And the final will does not say that he is leaving his son out; it just leaves him out. I believe that the jury considering the draft would be more prejudicial than probative, and that is why I have ruled it can't come in.

[5] The disputed document in *Hoppe* would be invalid if submitted to probate today because, except in limited circumstances irrelevant here, Maryland does not recognize unwitnessed holographic wills. Md. Code (1974, 2011 Repl. Vol.), §§ 4-102 and 4-103 of the Estates and Trusts Article. At the time *Hoppe* was decided, the unwitnessed will could be valid "as a will of personalty" which "does not profess to pass real estate." 60 Md. at 391.

With respect to the four purported living wills, we acknowledge that the trial court did not expressly state the basis for its decision to sustain the Caveator's objection. The trial court questioned the relevance of the purported living wills, asking Anderson's counsel, "Other than bolstering [Crown's] testimony that she saw the living will, how does it convince the jury that it is more likely than not whether something was forged and whether something was witnessed?" Anderson's counsel answered that the living wills were "part of what happened that day" and that "the jury [was] entitled to know what [Captain Staiger] said and what he did." The trial court thereafter sustained the Caveator's objection, but did not explain the precise reason for its decision.

Having examined the record as a whole, we believe that the trial court excluded the evidence on the basis of Maryland Rule 5-403, finding that the limited probative value of the living wills was substantially outweighed by the danger of unfair prejudice. The trial court considered each evidentiary issue relating to testamentary intent separately, which strongly indicates that the court did not find that evidence of testamentary intent was *per se* irrelevant. *See supra*, pages 9-11. Rather, the trial court examined the relevance of each document and each example of testimony offered into evidence and reached a separate conclusion after considering each separately. Accordingly, the trial court acted within its discretion by excluding from evidence the unsigned 2008 draft will, the purported living wills, and testimony from Capristo and Anderson regarding the contents of the 2008 unsigned draft will.

We similarly find no merit to Anderson's assertion that the trial court improperly excluded testimony about the relationship between Anderson and Captain Staiger as well as testimony about the relationship between Captain Staiger and the Caveator. As discussed *supra* pages 9-10, the jury heard significant evidence about both relationships. The circuit court, however, limited testimony about these relationships to a certain extent, directing the parties as follows:

> I'm not letting [Anderson's counsel] run all over the courtroom. But if [Anderson] has information that she has never seen [the Caveator] there, never seen him at dinner, that [Captain Staiger] seldom spoke about [the Caveator], things like that, without the particulars, I think it is relevant to whether she forged the document.

The circuit court further instructed the attorneys that it did not "intend to let [Anderson's counsel] probe deeply into the relationship between father and son. But if he paints a broad-brush, very fast picture with several questions that the son was not part of [Captain Staiger's] life, I am going to allow that." These instructions provided the parties with a warning of how the court was inclined to rule, but did not preclude Anderson from introducing testimony or other evidence at trial. On appeal, Anderson cannot be heard to complain about the trial court's admonition because the circuit court did not make any rulings to exclude any such evidence at trial. To preserve this issue for appeal, Anderson was required to lodge a timely objection and make a proffer during trial. Accordingly, the issue is not properly before us on appeal.

The task of the trial court is to carefully consider each challenged piece of evidence and determine whether its "probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403. The record reflects that this is precisely the task undertaken by the trial court in the present case. Perceiving no error, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR ST. MARY'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.