Circuit Court for Anne Arundel County
Case No. C-02-FM-19-000868

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1186

September Term, 2020

GRAMMATIKI AVRAMIDIS

v.

DIMITRIOS THEO

Fader, C.J.,
Graeff,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: March 11, 2022

Grammatiki Avramidis, the appellant, challenges an order of the Circuit Court for Anne Arundel County invalidating a postnuptial agreement she had entered with Dimitrios Theo, the appellee. Because we discern no legal error by the circuit court with respect to the arguments Ms. Avramidis preserved for our review, we will affirm its decision and remand for further proceedings. On remand, the circuit court will need to determine, among other things, how to place the parties in their pre-contractual positions to effectuate the rescission of the postnuptial agreement.

BACKGROUND

Factual Background

Ms. Avramidis and Mr. Theo began living together in 1998 and married in 2014. In March 2019, Ms. Avramidis initiated divorce proceedings against Mr. Theo in the Circuit Court for Anne Arundel County. In July 2019, the parties entered into a consent pendente lite order, in which, among other things, Mr. Theo agreed: (1) to pay Ms. Avramidis $3,000 per month in pendente lite alimony; (2) to provide Ms. Avramidis with a credit card on which she could charge up to an additional $2,500 per month; and (3) to "continue to pay ongoing expenses associated with the parties' marital home."

In August 2019, the parties attended a mediation during which they "decided to give [their] marriage another try." Ms. Avramidis and Mr. Theo therefore agreed to enter into a postnuptial agreement (the "Agreement"). Two recitals in the Agreement identify the parties' stated intent in entering it and are particularly relevant to this appeal. Recital C provides:

> The parties intend to remain married and continue residing together in the marital home; but wish to set forth the rights and obligations of each in the event of a separation, absolute divorce or the death of either party.

Recital G provided further that it was the parties' desire that the Agreement

> resolve all questions relating to their respective rights and obligations pertaining to real property, personal property, retirement accounts, spousal support, counsel fees and all other rights and obligations, and claims arising out of their marriage or otherwise currently and in the event of a separation, divorce between the parties or the death of either of them.

Among other terms, the Agreement contained provisions obligating Mr. Theo to pay monthly alimony of $1,500 to Ms. Avramidis "while the parties are married and living in the same house," increasing to $3,500 per month "[s]hould the parties separate . . . whether the parties are married or not." The Agreement further required Mr. Theo to pay $1.1 million to Ms. Avramidis as a monetary award, which was to be secured by a lien in the form of a promissory note and a deed of trust against his interest in a business, Theo Properties, LLC, and commercial real estate owned by Theo Properties. Mr. Theo was required to sign the promissory note and deed of trust "simultaneously with the execution of this Post Nuptial Agreement." The Agreement also obligated Mr. Theo to pay $20,000 toward Ms. Avramidis's attorney's fees incurred in connection with the divorce proceeding and the preparation of the Agreement. The parties agreed to enter a joint stipulation of dismissal of the divorce case upon executing the Agreement.

Mr. Theo signed the Agreement on December 11, 2019. Ms. Avramidis did not sign until February 6, 2020. Much of the present dispute focuses on the events of the days leading up to and immediately following February 6. According to Ms. Avramidis, Mr. Theo committed acts of domestic violence against her on February 4, 5, and 6. She

described incidents that occurred on February 4 and 5 in which he "grabbed . . . for [her] throat," chased her with a broom, and yelled at her. Mr. Theo denied those allegations, although he admitted that he had "grabbed her by the shoulder" on one occasion. According to Ms. Avramidis, Mr. Theo was angry because she would not agree to renegotiate the terms of the Agreement. Nonetheless, on the night of February 5, the parties slept in the same bed.

Ms. Avramidis had an appointment scheduled on February 6 to meet with her attorney and sign the Agreement. She testified that early that morning, while she was still in bed, Mr. Theo threatened to kill her. A "couple hours" later, Ms. Avramidis had coffee with Mr. Theo, was "pretending everything was fine," and discussed meeting for lunch at the mall after Ms. Avramidis had signed the Agreement. At 11:00 a.m., Ms. Avramidis went to her attorney's office, as previously arranged. Ms. Avramidis appeared "visibly upset" and "very shaken," but signed the Agreement in the presence of her attorney and a notary public. Ms. Avramidis testified that after signing, she was too "terrified" to return home, "could not face [Mr. Theo]," and so decided she had to leave. She arranged to meet Mr. Theo "for lunch at the casino" for the purpose of getting "him out of the house," instead went home to pack "a couple of necessities," and then drove to her daughter's house in Cleveland. She decided to stay with her daughter, rather than her son, whose house was five minutes away from the marital home, out of fear that Mr. Theo would "find [her] there and start creating issues." Ms. Avramidis stayed with her daughter for three months, then

returned to Maryland and began living at her son's home, where she continued to reside as of the date of the hearing in this case.

On February 7, the day after Ms. Avramidis signed the Agreement, Mr. Theo went to his attorney's office and executed the following documents necessary to implement the Agreement: a Confessed Judgment Promissory Note, a Confessed Judgment Guaranty, an Indemnity Deed of Trust, a Security and Pledge Agreement, and a Resolution of the Members of Theo Properties. He also initialed beside an agreed-upon change to the Agreement concerning the commencement date of the alimony payments.[1] Afterward, Ms. Avramidis told him over the phone that she did not intend to return to their home right away because she was afraid of him, that she would stay in a hotel for "a couple days . . . to relax," and then "see what [she is] going to do." Mr. Theo testified that he signed the documents on February 7 because Ms. Avramidis had told him that "as soon as we finish with signing, we're going to be a happy couple." He testified that he would not have signed if he had known Ms. Avramidis was leaving him.

Mr. Theo and Ms. Avramidis never resumed living together. On June 8, Ms. Avramidis filed an amended complaint for absolute divorce. At the same time, she filed a motion to establish and enforce alimony arrearages, in which she asserted that Mr. Theo owed her $25,500, comprised of $12,000 in alimony arrearages that had accrued under the pendente lite order and $13,500 accrued under the Agreement. Ms. Avramidis

[1] As drafted, the Agreement stated that alimony payments would commence January 1, 2010. The date was changed by hand to March 1, 2020.

alleged in the motion that Mr. Theo had indicated through a relative "that he has no intention of paying her alimony as he is obligated to do for the rest of this year."

On July 2, Mr. Theo filed both a motion to dismiss the amended complaint and a motion to determine the validity of the Agreement. In the latter, Mr. Theo argued that the Agreement "was entered into fraudulently and therefore [was] not entitled to recognition and enforcement." Ms. Avramidis opposed the motions and argued that the Agreement was a valid, enforceable contract.

The Court's Hearing

On November 30, 2020, the court held an evidentiary hearing on Mr. Theo's motion to determine the validity of the Agreement. The court heard testimony from Ms. Avramidis, Mr. Theo, Ms. Avramidis's son, Mr. Theo's brother, and the notary who was present when Ms. Avramidis signed the Agreement. Mr. Theo argued that the Agreement was invalid because it was fraudulently induced and because Ms. Avramidis failed to initial a handwritten change concerning the start date for alimony payments. Ms. Avramidis argued that there was no fraud, both because the Agreement contemplated that the parties might not stay married and because she did not intend to seek a divorce at the time she signed the Agreement. She also argued, somewhat confusingly, that she did intend to return to live in the marital home, and had been trying to do so for many months, but was unwilling to do so while Mr. Theo was there.[2]

[2] In closing, Ms. Avramidis's counsel argued that "when [Ms. Avramidis] left . . . on February 6th . . ., she intended to come back, as long as [Mr. Theo] would vacate the house. And then they would be separated." She thus appeared to concede that she intended

At the end of the hearing, the court issued an oral ruling in which it determined that the Agreement was invalid and unenforceable because it was fraudulently induced. The court reviewed the five elements of fraudulent inducement as set forth in *Dynacorp Ltd. v. Aramtel Ltd.*, 208 Md. App. 403 (2012), and found each satisfied.[3] First, the court found that Ms. Avramidis's representation that she would "continue[] to reside with" Mr. Theo and remain in the marriage was false at the time she signed the Agreement. Based on the events leading up to February 6 and her behavior that day and immediately thereafter, the court determined that Ms. Avramidis had no intention of remaining in the marriage or continuing to reside with Mr. Theo at the time she signed the Agreement. In doing so, the court credited Ms. Avramidis's fear of Mr. Theo at the time. The court also emphasized her use of deception by scheduling a lunch for the purpose of getting Mr. Theo out of the home so that she could retrieve some personal belongings and leave immediately for

to separate from Mr. Theo when she left on February 6, although she maintained that she had not yet decided to seek a divorce.

[3] The elements of fraudulent inducement as set forth in *Dynacorp* are:

> (1) that the representation made is false; (2) that its falsity was either known to the [defendant], or the misrepresentation was made with such a reckless indifference to truth as to be equivalent to actual knowledge; (3) that it was made for the purpose of defrauding the [plaintiff]; (4) that [the plaintiff] not only relied upon the misrepresentation, but had a right to rely upon it in the full belief of its truth, and that [the plaintiff] would not have done the thing from which the injury resulted had not such misrepresentation been made; and (5) that [the plaintiff] actually suffered damage directly resulting from such fraudulent misrepresentation.

208 Md. App. at 452 (quoting *First Union Nat'l Bank v. Steele Software Sys.*, 154 Md. App. 97, 134 (2003)).

Cleveland. Second, for the same reasons, the court found that Ms. Avramidis's false representation was made knowingly.

Third, the court determined that the false representation was made for the purpose of defrauding Mr. Theo because it "accomplished an aim that was very different from that which was reciprocally intended by [Ms. Avramidis] when she signed the Agreement." Fourth, the court found that Mr. Theo had reasonably relied on the misrepresentation in agreeing to the terms contained in the Agreement, including those concerning alimony, the family business, and the marital home. Finally, the court concluded that Mr. Theo had sustained damages as a result of the fraudulent misrepresentation, including, at a minimum, payment of attorney's fees.

The court entered a written order on December 2, 2020, in which it granted Mr. Theo's motion, declared the Agreement invalid and unenforceable, ordered that the parties would be responsible for their own attorney's fees, and "ordered that all alimony obligations and attending arrearages set forth in the February 6, 2020 Post-Nuptial Document are discharged."[4] The order did not address any other implications of the invalidation of the Agreement, including its effect on Mr. Theo's pendente lite obligations that the Agreement had replaced.

[4] Although Ms. Avramidis's motion to establish and enforce alimony arrearages was also pending at the time of the hearing, the court decided to address the validity of the Agreement first, in the belief that it presented a threshold issue. In its order, the court denied Ms. Avramidis alimony to the extent she sought it pursuant to the Agreement. It does not appear that the court ruled on the portion of Ms. Avramidis's motion related to the alimony arrearages accrued under the pendente lite order.

Ms. Avramidis timely appealed and then sought a stay of the circuit court proceedings, which the circuit court granted.

DISCUSSION

"When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence." Md. Rule 8-131(c). We "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." *Id.* "If there is any competent and material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous." *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005) (quoting *Yivo Inst. for Jewish Rsch. v. Zaleski*, 386 Md. 654, 663 (2005)). To the extent that the court's decision "involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the [trial] court's conclusions are 'legally correct' under a *de novo* standard of review." *Nouri v. Dadgar*, 245 Md. App. 324, 343 (2020) (quoting *L.W. Wolfe Enters.*, 165 Md. App. at 344).

A postnuptial agreement, which "'look[s] a lot like [a] prenuptial agreement[],'" is "a contract . . . that sets forth the rights, duties and responsibilities of the parties during and upon termination of the marriage through death or divorce." *McGeehan v. McGeehan*, 455 Md. 268, 297 (2017) (quoting Cynthia Callahan & Thomas C. Ries, Fader's Maryland Family Law § 14-15 (6th ed. 2016)). Accordingly, "many postnuptial agreements attempt to use financial rewards and penalties to create incentives during a marriage that constrain

the behavior of both spouses." *McGeehan*, 455 Md. at 298 (quoting Williams, 2007 Wis. L. Rev. at 835). Such agreements are enforceable and "generally held to be binding when they are shown to be fair and regular and not unconscionable or the product of fraud, duress, mistake or undue influence." *McGeehan*, 455 Md. at 298 (quoting 7 Williston on Contracts § 11:7 (4th ed. 2017)).

I. THE CIRCUIT COURT'S ORDER IS APPEALABLE UNDER THE COLLATERAL ORDER DOCTRINE.

At oral argument, counsel for Mr. Theo raised for the first time whether the circuit court's interlocutory order invalidating the Agreement is appealable. Because the question concerns our jurisdiction, we must consider it as a threshold matter. *See Gruber v. Gruber*, 369 Md. 540, 546 (2002) ("Where appellate jurisdiction is lacking, the appellate court will dismiss the appeal on its own motion."). In general, an appellate court will consider an appeal only "if the trial court has entered a final judgment." *Stidham v. R.J. Reynolds Tobacco Co., Inc.*, 224 Md. App. 459, 467 (2015); *see* Md. Code Ann., Cts. & Jud. Proc. § 12-301 (2020 Repl.; 2021 Supp.). To constitute a final judgment, a trial court's ruling "must either decide and conclude the rights of the parties involved or deny a party the means to prosecute or defend rights and interests in the subject matter of the proceeding." *Maryland Bd. of Physicians v. Geier*, 451 Md. 526, 545 (2017) (quoting *Harris v. State*, 420 Md. 300, 312 (2011)).

Although "[a]n order that is not a final judgment is an interlocutory order and ordinarily is not appealable," *Bartenfelder v. Bartenfelder*, 248 Md. App. 213, 230 (2020) (quoting *Nnoli v. Nnoli*, 389 Md. 315, 324 (2005)), "[a]n interlocutory order may be

appealed . . . if an immediate appeal is authorized by a statute, if it falls within the collateral order doctrine, or if the circuit court directs the entry of a final judgment pursuant to Maryland Rule 2-602," *Bartenfelder*, 248 Md. App. at 230. We conclude that the order under review here is appealable under the collateral order doctrine.

"The collateral order doctrine treats as final and appealable a limited class of orders which do not terminate the litigation in the trial court." *O'Sullivan v. Kimmett*, 252 Md. App. 653, 670 (2021) (internal quotation marks omitted) (quoting *Bunting v. State*, 312 Md. 472, 476 (1988)). To be appealable under the collateral order doctrine, the order must: "(1) conclusively determine[] the disputed question, (2) resolve[] an important issue, (3) resolve[] an issue that is completely separate from the merits of the action, *and* (4) [ ] be effectively unreviewable if the appeal had to await the entry of a final judgment." *O'Sullivan*, 252 Md. App. at 670 (quoting *Pittsburgh Corning v. James*, 353 Md. 657, 660-61 (1999)). These four requirements "are very strictly applied." *O'Sullivan*, 252 Md. App. at 671.

In determining that the court's order here meets the four requirements of the collateral order doctrine, we find the Court of Appeals' decision in *Clark v. Elza*, 286 Md. 208 (1979), instructive. There, in the context of a motor vehicle tort action, the trial court issued an order denying a motion to enforce a settlement agreement. *Id.* at 210-11. The Court of Appeals held that although interlocutory, the order satisfied the four requirements for appealability under the collateral order doctrine because (1) "the order finally resolved the disputed question of whether the plaintiffs were bound by their oral settlement

agreement or were entitled to proceed with the tort action"; (2) the order concerned an "important issue" "because a decision holding the settlement agreement to be enforceable would have the direct effect of terminating the litigation"; (3) "the questions bearing upon the enforceability of the settlement agreement have absolutely nothing to do with the merits of the tort cause of action" and were thus "completely separate" from the tort action; and (4) "a final judgment on the merits of the underlying tort claim would render the ruling on the settlement agreement effectively unreviewable." *Id.* at 213. Elaborating on the fourth requirement, the Court observed:

> One of the principal considerations in entering a pre-trial settlement agreement is the avoidance of the expense and inconvenience of a trial. If the defendants must proceed to a trial on the merits, this contractual benefit will be irretrievably lost. Regardless of the outcome of the trial or the outcome of an appeal after trial, the defendants will have been forced to go to trial and thus will have been deprived of a right under the contract if the contract should have been enforced.

Id. The Court thus concluded that the order was appealable.[5] *Id.*; *see also Erie Ins. Exch. v. Estate of Reeside*, 200 Md. App. 453, 455 n.2 (2011) ("A ruling denying a motion to

[5] The decision in *Clark* is contrary to the reasoning employed by the United States Supreme Court in *Digital Equipment Corp. v. Desktop Direct, Inc.*, where the Court held that a trial court's refusal to enforce a settlement agreement that would have sheltered a party from trial was not appealable under the collateral order doctrine, as applied by that Court, because it would not be "effectively unreviewable" after a final judgment. 511 U.S. 863, 869, 884 (1994). The Court held that immediate appeal of such an order was reserved for "rights more deeply rooted in public policy" than "the sort of (asserted) contractual right at issue" there. *Id.* at 884. And in *Tamara A. v. Montgomery County Department of Health & Human Services*, the Court of Appeals stated that the right to an immediate appeal from an interlocutory order denying enforcement of a purported right to avoid litigation under the collateral order doctrine "is a limited one," generally applicable only to double jeopardy claims in criminal cases and certain immunity issues in civil cases. 407 Md. 180, 191 (2009). However, although the Court cited with apparent approval the reasoning of *Digital Equipment Corp*. and the Supreme Court's subsequent decision in *Will v. Hallock*,

enforce a settlement agreement, although interlocutory, is subject to immediate appeal under the collateral order doctrine."); *Milburn v. Milburn*, 142 Md. App. 518, 531 (2002) (holding that a court's order refusing to accept a joint stipulation of dismissal was appealable as a collateral order); *Courtney v. Harford County*, 98 Md. App. 649, 657-59 (1994) (holding that an order declaring a plea agreement null and void was appealable as a collateral order).

Here, the order determining the validity of the Agreement meets the requirements of the collateral order doctrine for the same reasons as the order denying the motion to enforce the settlement in *Clark*. That is because: (1) the order conclusively resolved whether Mr. Theo and Ms. Avramidis are bound by the Agreement; (2) the order concerned an "important issue" because it would have conclusively resolved nearly all issues that otherwise might be raised and decided in the divorce proceeding, *see Milburn*, 142 Md. App. at 527 (finding that an "important issue" existed where the outcome of the appeal would terminate the litigation of an issue); (3) the questions bearing on fraudulent inducement are completely separate from the merits of the divorce action; and (4) the decision as to enforceability of the Agreement, which was intended to eliminate the need to litigate the financial implications of the parties' divorce, would be effectively unreviewable on appeal from a final judgment. As in *Clark*, if not granted an immediate appeal from the court's order, Ms. Avramidis will have "irretrievably lost" the benefit of the Agreement. *See Clark*, 286 Md. at 210-11; *see also Milburn*, 142 Md. App. at 530

546 U.S. 345 (2006), the Court of Appeals' majority opinion did not mention or purport to overrule *Clark*. *Clark* thus remains binding authority on this Court.

(considering the parties' interests in avoiding attorney's fees and other litigation expenses associated with trial). We conclude that the order satisfies the collateral order doctrine and will turn to the merits of Ms. Avramidis's appeal.

II. PRESERVATION

Another preliminary matter we must confront is Mr. Theo's contention that Ms. Avramidis failed to preserve any of the issues she raises on appeal because she did not make them in the circuit court. We largely agree. On appeal, Ms. Avramidis identifies a single question presented, which is: "Whether the trial court committed reversible error when it determined the post-nuptial agreement of the parties was invalid and unenforceable." Within the argument section of her brief, Ms. Avramidis makes the following sub-arguments:

- First, Ms. Avramidis contends that the circuit court erred in applying the elements of a claim of fraudulent inducement as set forth in *Dynacorp* because that was a corporate fraud case in which the plaintiff sought contract damages, whereas this case involves a request for rescission of a postnuptial agreement. In particular, Ms. Avramidis contends that the court's error caused it to omit consideration of two conditions precedent to the remedy of rescission: (1) that the court place the party against whom relief is sought in substantially the position held before termination; and (2) that the party seeking rescission elected that remedy promptly after uncovering the fraud and did not ratify the agreement.

- Second, Ms. Avramidis argues that if the circuit court had applied those conditions precedent, it would have concluded that Mr. Theo was not eligible for rescission of the Agreement, because: (1) he did not seek rescission when he allegedly learned of the fraud; (2) the parties ratified the Agreement by dismissing the divorce case; and (3) Mr. Theo retained the benefit of the dismissal by no longer being subject to the obligations of the pendente lite order.

- Third, Ms. Avramidis contends that the circuit court's invalidation of the Agreement was an abuse of discretion and offends public policy because the

court held the Agreement invalid notwithstanding its conclusion that Ms. Avramidis's allegations of domestic violence were credible. Ms. Avramidis contends that the circuit court, contrary to public policy, thus left her the options of either returning to live with her abusive spouse or being financially supported by her children.

- Fourth, Ms. Avramidis argues that the court abused its discretion by awarding relief to Mr. Theo even though he came to court with unclean hands as a result of having committed acts of domestic violence. Ms. Avramidis asserts that the court impermissibly permitted Mr. Theo to benefit from his acts of domestic violence and penalized Ms. Avramidis for what she identifies as an act of self-preservation in signing the Agreement on February 6. Thus, she contends, the court should have denied Mr. Theo the equitable relief of rescission due to his unclean hands.

Mr. Theo contends that Ms. Avramidis failed to make *any* of these arguments before the circuit court and, therefore, failed to preserve any of them for appeal to this Court.

Ms. Avramidis contends that she did enough to preserve her current arguments. She argues that by "attempt[ing] several times during the hearing to bring to the Trial Court's attention that [Mr. Theo] abided by the parts of [the] . . . Agreement he favored and avoided the parts he disfavored," she preserved her contentions that the circuit court "fail[ed] to apply equitable considerations to a claim for equitable relief." Her argument that she preserved the other issues she raises on appeal consists of the following three sentences, followed by a string cite to unexplained pages of testimony contained in the record extract:

> Moreover, Appellant asserts all of the issues raised in Appellant's Brief were preserved for appeal by either Appellant or the Trial Court. The record speaks for itself. Nevertheless, a review of the hearing transcript shows that Appellant raised or attempted to raise particular issues before the Trial Court, and the Trial Court made certain evidentiary rulings relevant to the issues set forth in Appellant's Brief.

Under Rule 8-131(a), this Court ordinarily "will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." An issue

that is not preserved in the trial court generally cannot be raised for the first time on appeal. *DiCicco v. Baltimore County*, 232 Md. App. 218, 224 (2017). The preservation requirement serves to "ensure fairness for all parties . . . by requiring counsel to bring the position of their client to the attention of the [trial] court . . . so that the trial court can pass upon, and possibly correct any errors in the proceedings." *Bryant v. State*, 436 Md. 653, 659 (2014) (quoting *Robinson v. State*, 410 Md. 91, 103 (2009)).

Notably, in responding to Mr. Theo's contention that she did not preserve the arguments she raises on appeal, Ms. Avramidis does not identify or explain how any part of the record is to the contrary. Positing that the "record speaks for itself," that the record reflects that she "raised or attempted to raise particular issues," and that the circuit court "made certain evidentiary rulings," without identifying or discussing any such issues or rulings is insufficient to demonstrate preservation. Nonetheless, we have identified one issue that we conclude was preserved for review. Ms. Avramidis argued in her written submission to the trial court and in the hearing that there was no fraudulent inducement. Based on its application of the elements of fraudulent inducement as set forth in *Dynacorp*, the circuit court disagreed. We will, therefore, consider whether the circuit court erred in applying the elements of fraudulent inducement set forth in *Dynacorp*.

With that one exception, based on our review of the record, we agree with Mr. Theo that Ms. Avramidis failed to preserve the issues she now raises on appeal. She did not contend that the remedy of rescission required Mr. Theo to satisfy conditions precedent, that Mr. Theo had ratified the Agreement, or that he had not demonstrated a willingness to

accept the consequences of rescission; she did not argue that Mr. Theo was ineligible for equitable relief because he had unclean hands; and she did not argue that the court should decline to invalidate the Agreement on public policy grounds.[6] As a result, Ms. Avramidis has not preserved those issues for appellate review and we will not reach them.

Although we will not address the merits of the arguments Ms. Avramidis presents for the first time on appeal, we do observe that an incorrect premise underlies some of her unpreserved arguments. Ms. Avramidis contends that by invalidating the Agreement, the circuit court permitted Mr. Theo to benefit from his acts of domestic violence, left Ms. Avramidis financially vulnerable, and so effectively encouraged her to return to live with her abuser.[7] That is not a fair characterization of the circuit court's ruling. The court never suggested in any way, shape, or form that Ms. Avramidis should return to live with Mr. Theo, nor did the court take any action to encourage that. The court's ruling was limited to the issue of whether Ms. Avramidis had fraudulently induced Mr. Theo to enter the Agreement with the false promise that she intended to resume "residing together in the

[6] The closest Ms. Avramidis came to her current public policy argument is when, in closing, she contended that under Mr. Theo's "theory of the case," she was required to continue residing in the marital home even after being abused, and that she should not have to endure abuse "in order to validate this agreement." Those remarks, however, were made in the context of arguments about whether Ms. Avramidis fraudulently induced Mr. Theo to enter the Agreement and how the Agreement should be interpreted. Ms. Avramidis did not argue that the court should take extra-contractual public policy considerations into account. Moreover, even if Ms. Avramidis had preserved her public policy argument, she would not prevail because, as further described in this section, her argument depends on the false premise that the only two options for the court were to enforce the Agreement or force her to return to live with Mr. Theo.

[7] Mr. Theo denies the acts of domestic violence alleged by Ms. Avramidis. We do not reach any conclusions concerning the allegations.

marital home." In other words, the issue the circuit court decided was not whether Ms. Avramidis should be forced to live with Mr. Theo, but whether she could enforce financial terms contained in an agreement that was procured by a promise to continue to live with him notwithstanding that she had no intent to do so.

To that extent, it is also notable that although the court's ruling prevented Ms. Avramidis from relying on the Agreement to compel financial support from Mr. Theo while the parties pursued their claims in the divorce, nothing prevented her from seeking similar or even greater support in the form of a pendente lite order. Indeed, the original pendente lite order had given Ms. Avramidis alimony of $3,000 per month and access to an additional $2,500 per month on a credit card. Ms. Avramidis does not explain why she could not have sought pendente lite relief to ensure her independence from Mr. Theo during the divorce proceedings. Moreover, as Ms. Avramidis points out, rescission "relieve[s] . . . all obligations under the contract" and results in "[t]he restoration of the parties to their original position." *Merritt v. Craig*, 130 Md. App. 350, 366 (2000). Here, the court did not enter an order restoring the parties to their original position—i.e., immediately before the effective date of the Agreement—likely because Ms. Avramidis did not request such an order before seeking a stay of proceedings pending the result of this appeal. Nonetheless, as we explain below, it will be appropriate for the court to explore that issue on remand.

In sum, the only issue Ms. Avramidis raises on appeal that she preserved for our review is whether the circuit court erred when it applied the elements of fraudulent

inducement identified in *Dynacorp* to analyze Mr. Theo's fraudulent inducement claim. We now turn to consider that issue.

III. THE CIRCUIT COURT DID NOT ERR IN IDENTIFYING AND APPLYING THE ELEMENTS OF FRAUDULENT INDUCEMENT.

Ms. Avramidis argues that the circuit court erroneously based its analysis on the elements of fraudulent inducement set forth in *Dynacorp Ltd. v. Aramtel Ltd.*, 208 Md. App. 403 (2012), which, she contends, is inapposite because it is a "corporate fraud case for contract damages," rather than a domestic case seeking rescission. Ms. Avramidis contends that where a party seeks rescission, the court must go beyond the *Dynacorp* elements and consider whether the party seeking rescission has met conditions precedent for rescission, including that the party promptly sought rescission and demonstrated a willingness to forgo the benefits as well as the burdens of the agreement. Mr. Theo responds that the court did not err because it correctly applied the elements of fraudulent inducement as set forth by our appellate courts.

"The tort of fraudulent inducement 'means that one has been led by another's guile, surreptitiousness or other form of deceit to enter into an agreement to his detriment.'" *Rozen v. Greenberg*, 165 Md. App. 665, 674 (2005) (quoting *Sec. Constr. Co. v. Maietta*, 25 Md. App. 303, 307 (1975)). Fraudulent inducement may occur when a person "enters an agreement to do something, without the present intention of performing." *First Union Nat'l Bank v. Steele Software Sys.*, 154 Md. App. 97, 134 (2003). "In such a case[,] fraud is committed by false pretense and deliberate deception." *Id.* (quoting *Appel v. Hupfield*, 198 Md. 374, 382 (1951)). That is because "when one person makes a promise to another

as an inducement for a change of position, the promisee has the right to assume that the promisor has an existing intention to fulfill his promise." *First Union Nat'l Bank*, 154 Md. App. at 135 (quoting *Appel*, 198 Md. at 382).

Our courts have consistently held that to state a claim for fraudulent inducement, a party must demonstrate five elements by clear and convincing evidence:

> (1) that the representation made is false; (2) that its falsity was either known to the [defendant], or the misrepresentation was made with such a reckless indifference to truth as to be equivalent to actual knowledge; (3) that it was made for the purpose of defrauding the [plaintiff]; (4) that [the plaintiff] not only relied upon the misrepresentation, but had a right to rely upon it in the full belief of its truth, and that [the plaintiff] would not have done the thing from which the injury resulted had not such misrepresentation been made; and (5) that [the plaintiff] actually suffered damage directly resulting from such fraudulent misrepresentation.

Dynacorp, 208 Md. App. at 452 (quoting *First Union Nat'l Bank*, 154 Md. App. at 134); *accord Martens Chevrolet, Inc. v. Seney*, 292 Md. 328, 333 (1982) (quoting *Gittings v. Von Dorn*, 136 Md. 10, 15-16 (1920)); *Sass v. Andrew*, 152 Md. App. 406, 429 (2003).

Although Ms. Avramidis contends that the circuit court erred in applying the elements of fraudulent inducement as set forth in *Dynacorp* to this case, she does not offer any alternative elements or cite any Maryland authority applying different elements. Indeed, as Mr. Theo points out, the same cases from which Ms. Avramidis claims support all cite essentially the same elements as *Dynacorp*.

At its core, in spite of the way she characterizes her argument, Ms. Avramidis does not really mount a challenge to the circuit court's use of the elements set forth in *Dynacorp* for a claim for fraudulent inducement. Instead, her argument is that, in considering

rescission *as a remedy for fraudulent inducement*, the court was required to apply two conditions precedent in addition to the elements of the claim itself. First, she contends that the court failed to apply the "condition precedent to the right to rescind" that the parties be restored to their original positions. (Quoting *Blum v. Blum*, 59 Md. App. 584, 594 (1984)). Second, she contends that "the Trial Court should have determined whether [Mr. Theo] promptly elected to rescind the contract upon discovery of the 'fraud' or did he ratify it." *See also Merritt*, 130 Md. App. at 358 ("[W]hen a party to a contract discovers a fraud has been perpetrated . . ., [the party] is put to a prompt election to rescind the contract or to ratify it and claim damages." (quoting *Wolin v. Zenith Homes, Inc.*, 219 Md. 242, 250 (1959))). *But see Benjamin v. Erk*, 138 Md. App. 459, 482-83 (2001) ("The right to rescission . . . must be exercised within a reasonable time, which is determined, in large part, by whether the period has been long enough to result in prejudice." (quoting *Cutler v. Sugarman Org., Ltd.*, 88 Md. App. 567, 578 (1991))). However: (1) those issues are relevant to the propriety of the remedy of rescission, not to whether the court applied the correct elements to a claim of fraudulent inducement; and (2) by not raising either of those conditions precedent in the circuit court, Ms. Avramidis failed to preserve them for our review.

In sum, the circuit court correctly identified and applied the elements of a claim of fraudulent inducement as those elements have been set forth consistently in opinions of this State's appellate courts, including in this Court's opinion in *Dynacorp*. Accordingly, we will affirm the order under review.

Importantly, however, that does not necessarily mean that Ms. Avramidis is foreclosed from seeking to force Mr. Theo to bear the consequences of the rescission he sought and achieved. "[R]escission is permitted when 'the act failed to be performed [goes] to the root of the contract or . . . render[s] the performance of the rest of the contract a thing different in substance from that which was contracted for.'" *Maslow v. Vanguri*, 168 Md. App. 298, 324 (2006) (quoting *Traylor v. Grafton*, 273 Md. 649, 687 (1975)). A party seeking to rescind a contract on grounds of mistake, fraud, misrepresentation, duress, or undue influence must restore the status quo either by returning or by offering to return what it has received under the contract. *See Wash. Homes, Inc. v. Interstate Land Dev. Co.*, 281 Md. 712 (1978); *see also Merritt*, 130 Md. App. at 366 (stating that a rescission "relieve[s] . . . all obligations under the contract" and results in "[t]he restoration of the parties to their original position"); "Rescission," *Black's Law Dictionary* (11th ed. 2019) (stating that rescission generally "is accompanied by restitution of any partial performance, thus restoring the parties to their precontractual positions").

As we have observed, before the parties entered the Agreement, a pendente lite order imposed certain obligations on Mr. Theo. Those obligations were then replaced by his obligations under the Agreement, which, in turn, were subsequently invalidated at his request. Thus, as Ms. Avramidis persuasively argues, Mr. Theo received a benefit under the Agreement, which he has never returned, in the form of being excused from the pendente lite obligations he otherwise owed. If, on remand, Ms. Avramidis properly seeks an order requiring Mr. Theo, in light of the rescission of the Agreement, to return the

benefit he received under it—i.e., requiring him to pay amounts he would have owed under the pendente lite order but for the Agreement—it will be appropriate for the circuit court to consider such a request in the first instance.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. CASE REMANDED TO THE CIRCUIT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANT.