

Circuit Court for Montgomery County  
Case No. 136236C

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1551

September Term, 2021

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JONATHAN DAVID ROBBINS

v.

STATE OF MARYLAND

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Wells, C.J.,  
Graeff,  
Meredith, Timothy E.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Graeff, J.

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Filed: April 25, 2023

\*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.

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.

On June 11, 2021, a jury in the Circuit Court for Montgomery County convicted appellant, Jonathan David Robbins, of multiple counts of theft and related offenses committed in the course of legal representation for his now-deceased elderly client, Helen Nutt. The court sentenced him as follows: 15 years, all but five suspended, for a theft scheme with a value over \$100,000; 15 years, all but five suspended, consecutive, for financial exploitation of an adult over 68; 10 years, all suspended, for financial exploitation scheme of a vulnerable adult; 10 years, all but two suspended, consecutive, for theft scheme with a value over \$100,000; and five years of supervised probation upon release. The court merged the conviction of misappropriation by a fiduciary for sentencing purposes.

On appeal, appellant presents one question for this Court's review, which we have rephrased, as follows:

Did the circuit court err in admitting into evidence information regarding appellant's case before the Maryland Attorney Grievance Commission ("AGC") and Maryland Consumer Provision Division ("CPD")?

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

### **FACTUAL AND PROCEDURAL BACKGROUND**

In the fall of 2013, Mrs. Nutt hired appellant to represent her as her lawyer, trustee of her accounts, and power of attorney. Mrs. Nutt, an elderly woman with dementia, was living in Kensington Park Senior Living ("Kensington Park") because she could no longer live by herself.

Between September 10, 2013, and November 11, 2015, appellant failed to provide Ms. Nutt with any billing invoices for his services. On August 8, 2015, Anita Baker Nutt,

Mrs. Nutt's daughter-in-law, filed a complaint with the AGC. On November 11, 2015, after multiple requests for information regarding fees, appellant sent a 109-page invoice, with charges of \$322,050 in fees and \$2,920 in expenses. Although he was supposed to create a financial plan for Mrs. Nutt and file taxes, there was no financial plan and he had failed to file tax returns for Mrs. Nutt or her trusts.

On May 24, 2017, after reviewing the complaint, the AGC filed a Petition for Disciplinary Action against appellant. The AGC determined, after investigation, that appellant had charged Mrs. Nutt excessive and inappropriate fees for functions that required no charge, such as "administrative" functions like receiving and reviewing emails, and he had engaged in self-dealing by using Mrs. Nutt's funds to defend himself in his matters against the AGC and the CPD.

The Supreme Court<sup>1</sup> designated Judge Harry Storm to conduct a hearing, and after a five-day hearing in 2018, Judge Storm found that appellant violated the Maryland Attorneys' Rules of Professional Conduct ("MARPC") in multiple ways. *Att'y Grievance Comm'n v. Robbins*, 463 Md. 411, 424 (2019). In April 2019, the Supreme Court issued its decision, concluding that appellant's multiple violations of the MARPC warranted the

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<sup>1</sup> 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.

sanction of disbarment. *Id.* at 468.<sup>2</sup> It found that appellant’s “inclination to prey on the elderly [in this case and others was] particularly heinous.” *Id.*

In August 2019, the Montgomery County State’s Attorneys’ Office brought criminal charges against appellant. Carolyn Sweeney, former director of assisted living at Kensington Park, testified at trial that Mrs. Nutt was one of the residents under her care. Mrs. Nutt arrived at Kensington Park in November 2013, and Ms. Sweeney created a service plan for Mrs. Nutt’s care, which she discussed with Mrs. Nutt and Anita Rothwell, Mrs. Nutt’s independent geriatric care manager. In the service plan, Ms. Sweeney diagnosed Mrs. Nutt with aphasia, meaning that “she [knew] what she want[ed] to say, but she [didn’t] always have the right words coming out.”

Stephanie Shepard, a physician’s assistant in geriatrics, testified that she saw Mrs. Nutt at the request of Kensington Park staff. She noted that Mrs. Nutt had physical and mental deficiencies, including memory loss, aphasia, and depression. In February 2017, Ms. Shepard assessed Mrs. Nutt and noted that Mrs. Nutt had dementia. Mrs. Nutt seemed nervous, anxious, and worried. Mrs. Nutt “believe[d] her geriatric care manager and power of attorney were scheming against her and she told her sister this over the last days.”

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<sup>2</sup> Although the opinion was not admitted into evidence at trial, we take judicial notice of the Court’s decision as a matter “capable of certain verification.” *Dashiell v. Meeks*, 396 Md. 149, 174 (2006) (quoting *Faya v. Almaraz*, 329 Md. 435, 444 (1993)) (“[T]here is no mandatory requirement for [Maryland’s appellate courts] to take judicial notice of any such adjudicative fact, but both courts, if they choose to do so, may take judicial notice of adjudicative facts.”).

Dr. Amanda Goldfarb, a geriatric physician, testified that she started seeing Mrs. Nutt in approximately July 2014. Upon meeting Mrs. Nutt, Dr. Goldfarb noted that Mrs. Nutt had anxiety and dementia or memory problems. Mrs. Nutt's overall medical problems persisted and worsened until her passing on June 26, 2017.

John Patrick Berger, a financial advisor, testified that he began working with the Nutt family in approximately 2008. Mr. Berger established a joint account and an IRA account for Mrs. Nutt and her husband, including the Helen E. Nutt Trust ("Helen trust") and James R. Nutt Trust (the "family trust"). Mr. Berger worked primarily with Mr. Nutt. Following Mr. Nutt's passing and Mrs. Nutt's move to Kensington Park, Mr. Berger visited her on a couple occasions. He noted, however, that "there wasn't much point other than making a social call" because her cognition had declined, and "she didn't really understand or remember" why Mr. Berger visited or what they discussed. The financial plan at that time was to continue the Nutts' conservative investments, "with the primary goal of generating reliable income." Given the passing of her husband and son, Mrs. Nutt discussed delegating her investment decisions and finalizing her estate plan with Mr. Berger. Mr. Berger had met appellant through a business networking group, and knowing appellant's credentials, he connected appellant with Mrs. Nutt for the purpose of managing Mrs. Nutt's affairs.

Appellant eventually took over Mrs. Nutt's affairs as her attorney and trustee of the trust accounts. On November 1, 2013, appellant created a new trust account on Mrs. Nutt's

behalf: the Helen Echard Nutt Revocable Trust (the “revocable trust”).<sup>3</sup> The trust document stated that Mrs. Nutt transferred to appellant, as trustee, all of her property. Mr. Berger testified that he communicated with Mrs. Nutt and appellant, and that he had concerns about a conflict of interest because appellant drafted the trust document while simultaneously serving as trustee to the account.

On December 17, 2013, Mrs. Nutt and appellant signed a “Trust Certification Form,” allowing appellant to receive correspondence about the trust directly. Mr. Berger interacted with appellant on many occasions regarding Mrs. Nutt’s accounts. Appellant “made a number of requests from the accounts to address a variety of [Mrs. Nutt’s] needs,” but it “was often difficult to get signed correspondence. [Appellant] would make requests . . . for specific things before the authorizations were in place for him to do those things, and he was generally not getting the items that [they] needed in order to do the things he was asking.” Appellant did not always provide reasons for withdrawing money from Mrs. Nutt’s accounts.

Mary McCarty, appellant’s former employee, testified that she began working for appellant in approximately December 2017. She worked out of appellant’s home office, which she described as a large house. Ms. McCarty was paid bi-weekly at a rate of \$22 per hour. She assisted appellant with his AGC case, and appellant explained to her that the complaint against him concerned his management of various clients, including Mrs. Nutt.

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<sup>3</sup> Ruth Ann Taylor, Mrs. Nutt’s sister, testified that she was aware of the creation of the revocable trust. Mrs. Nutt had told her that a new trust needed to be created.

Appellant also told Ms. McCarty that he had lost his law license and that he planned to sue various members of the AGC. Ms. McCarty helped proofread approximately 20 demand letters appellant drafted, where he stated that he was innocent of the accusations and that he was entitled to damages. Ms. McCarty stopped working for appellant in approximately October 2019.

Reverend Dr. Todd Adams, the President and Chief Executive Officer for the Pension Fund of the Christian Church (the “Fund”), an entity that provides retirement benefits services, testified that Mrs. Nutt joined the Fund in approximately 1982, and she enrolled in a Tax Deferred Retirement Account (“TDRA” or “pension fund”) and a Benefit Accumulation Account (“savings account”) with the Fund. By December 2014, due to his role as Mrs. Nutt’s Power of Attorney, appellant was added to Mrs. Nutt’s account at the Fund and his address appeared as the mailing address on Mrs. Nutt’s statements. Following a Fund member’s death, pension payments were meant to cease because a person is “only entitled to the pension the month in which they lived.” Therefore, after Mrs. Nutt’s death, the Fund would go through the “death process,” which included identifying the beneficiaries on the accounts and paying the balance out to them. Appellant would not have been allowed to stay on the accounts because his access extended from Mrs. Nutt’s power of attorney, which expired when Mrs. Nutt died.

Reverend Dr. Adams testified that, as of June 2017, the Fund did not have any record that Mrs. Nutt had died. Accordingly, the Fund continued to issue pension payments to Mrs. Nutt’s Trust until the Fund learned of Mrs. Nutt’s passing in February 2019. The

Fund was apprised of Mrs. Nutt's passing when her daughter, Nancy Nutt, called to inquire about any funds her mother may have left for her. Nancy Nutt was the sole beneficiary of Mrs. Nutt's Fund accounts. In February 2019, appellant attempted to withdraw funds from Mrs. Nutt's savings account, at which point Reverend Dr. Adams spoke with appellant, and appellant stated "that he was surprised that he hadn't notified [the Fund] of the death even though [the Fund] continued to make the payments every month."<sup>4</sup>

The Fund paid out approximately \$40,845.76, in pension after Mrs. Nutt's death. On December 17, 2018, appellant submitted an application for withdrawal on behalf of the trust, and the Fund subsequently issued a sum of \$250,000 from Mrs. Nutt's accounts. Reverend Dr. Adams stated that the Fund would not have issued the payments had it known that Mrs. Nutt had died in June 2017. The Fund was able to recover its overpayments from the remainder of Mrs. Nutt's assets, assets that would have belonged to Mrs. Nutt's beneficiaries, that were still in the Fund's possession.

Ms. Taylor testified that she learned of appellant's involvement in Mrs. Nutt's finances when appellant became Mrs. Nutt's attorney in October 2013. She met appellant only once, when Mrs. Nutt was transferred to Kensington Park, but Mrs. Nutt often asked

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<sup>4</sup> On cross-examination by defense counsel, Reverend Dr. Adams stated that he was not aware of Mrs. Nutt or her account until the Nancy Nutt phone call and appellant's attempted withdrawal. During his conversation with appellant in 2019, appellant stated that he thought he had called to notify the Fund of Mrs. Nutt's passing, and any lack of notice was an oversight.

that Ms. Taylor speak to appellant, on her behalf, about her finances. Accordingly, Ms. Taylor had telephone and email conversations with him.

Ms. Taylor testified that, over the years, it was common for her and appellant to discuss Mrs. Nutt's health and finances. The State introduced several email conversations between Ms. Taylor and appellant, where Ms. Taylor relayed Mrs. Nutt's questions and concerns about her finances. Mrs. Nutt was concerned about, among other things, the bill for Kensington, appellant's rates, and about the possibility of running out of money.<sup>5</sup> On June 8, 2014, and July 10, 2014, Ms. Taylor sent an email to appellant requesting, among other things, a financial report on Mrs. Nutt's spending and appellant's fees, noting that it had been months since she or Mrs. Nutt had received any information about where Mrs. Nutt's money was going.<sup>6</sup> Ms. Taylor testified that she kept asking appellant for updates on the finances, but she was not getting any answers, and with respect to her June 8, 2014 inquiry, appellant did not provide her with any information about where Mrs. Nutt's money had gone.<sup>7</sup> It was not until December 2015 that appellant sent an accounting, dated

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<sup>5</sup> As reflected in one of Ms. Taylor's email to appellant, Mrs. Nutt was shocked to discover that her Kensington Park bill was approximately \$9,600 a month.

<sup>6</sup> Another matter Ms. Taylor specifically inquired about was information on Mrs. Nutt's long term life insurance policy with Met Life Long Term Care Insurance. Ms. Taylor testified that payments for Mrs. Nutt's policy had been delayed for a couple years, and she inquired about the delay. Ms. Taylor also inquired about the sales of Mrs. Nutt's home and car.

<sup>7</sup> Ms. Taylor continued to press appellant for the details on Mrs. Nutt's finances and appellant's billing. For example, Ms. Taylor contacted appellant again on August 13, 2014, after which appellant responded, and the two individuals exchanged emails until August

November 11, 2015, of the billing for his services.<sup>8</sup> Ms. Taylor also recalled appellant telling her that Anita Baker Nutt had filed a lawsuit to gain control of Mrs. Nutt's estate, and that "he was spending hours and hours in court" because of this lawsuit.

On July 5, 2018, Ms. Taylor sent a letter to the AGC expressing her concerns about appellant's actions. In the letter, she stated that, despite her countless attempts, appellant failed to provide her and Nancy Nutt with financial reports outlining the estate's expenses and balance. The only report that she received was from December 2015, containing appellant's charges from October 2013 to December 2015. The December 2015 bill was a 109-page document that detailed appellant's personal charges to the estate, totaling \$321,000. Ms. Taylor described the total charges as "excessive," and noted her concerns that appellant may be using the estate funds to defend his personal lawsuit. Ms. Taylor wrote:

While I hate to say this, [appellant] has lied to us (Nancy and myself) over and over again on numerous occasions. He forgets what he tells one of us and we catch him big time in those lies. I really became concerned this past winter when he kept telling us he was spending "hours upon hours" in court over a lawsuit brought against my sister's estate by her former daughter-in-law, Anita Baker Nutt. He said it was really putting a drain on [Mrs. Nutt's] estate.

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16, 2014. Appellant occasionally responded to Ms. Taylor's emails, but no concrete billings or financial report was sent. Notably, he told Ms. Taylor on October 23, 2014, that he visited Mrs. Nutt at least once every two weeks, and that he discussed her finances with her, but because of Mrs. Nutt's memory issues, she often forgot about their discussions.

<sup>8</sup> The bill is dated November 11, 2015. Ms. Taylor stated that, in an email dated January 20, 2015, appellant informed her that his rate was approximately \$6,000 a month, subject to increase due to the amount of work.

Back several years, there was a lawsuit brought forth from Anita Baker Nutt, who was attempting to get control of [Mrs. Nutt's] estate but it is our understanding that this suit was resolved, in our favor. So now I have learned that apparently there is no current lawsuit concerning Anita Baker Nutt but that [appellant] himself is the one the lawsuit is targeting.

He has told us that he stayed up until the early hours of the morning just making copies of thousands and thousands of documents to present to the court dealing with my sister's estate. First, I can't even imagine there would be thousands upon thousands of documents in her file to begin with. Again, he said these charges to her estate were considerable.

You can imagine that we are literally scared to death that he is taking money from [Mrs. Nutt's] estate to pay for his own lawsuit. He is certainly planting the seed that it is a lawsuit against her estate so it has to be funded from that estate. We are just panicking over what is still in this estate and how it has diminished under his handling of things. And, since he won't send us a financial report, we are really frightened about what we might discover.

Ms. Taylor testified that communications between her and appellant ceased after she sent her letter to the AGC. The State presented several invoices to Mrs. Nutt, recovered from appellant's home following the execution of a search warrant on or about October 2019, dated December 31, 2015, December 31, 2016, December 31, 2017, and January 4, 2019.<sup>9</sup> Ms. Taylor stated that the only bill that appellant sent was in December 2015, but she recalled that appellant told her that he paid himself \$863,000 in 2018.

Alexis Martinez, a financial advisor, took over Mr. Berger's involvement in Mrs. Nutt's trust accounts. Mr. Martinez worked with appellant to advise on the proper investments for the accounts. Over time, Mr. Martinez became concerned about the rate

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<sup>9</sup> These bills were never sent to Mrs. Nutt, her sister, or Nancy Nutt; they were recovered from appellant's home following the execution of a search warrant on or about October 2019.

at which the trust money was being spent. He stated that appellant always had some “sort of story about the need for the trust for the beneficiaries, whether it [was] medical – there were various needs.” In February 2018, Mr. Martinez spoke with appellant, and appellant discussed “his need for money for litigation involving the Trust and his role as trustee.” In July 2018, appellant requested \$65,000, stating that he was going to sue Mrs. Nutt for damages. Appellant, however, did not provide any petition or pleading for the “upcoming” litigation.

Paul Kemp, an attorney and an expert in attorney discipline, testified that he reviewed the materials related to appellant’s AGC case in preparation for his testimony. Mr. Kemp explained that the AGC’s role is “to administer the Rules of Professional Conduct for attorneys” and oversee the investigation and prosecution of an attorney subject to discipline. The Supreme Court, however, makes the final decision whether to discipline the attorney. Mr. Kemp described the attorney discipline process from the AGC to the Supreme Court. With respect to appellant’s failures to comply with the MARPC, appellant charged excessive and inappropriate fees for functions that required no charge. For example, he charged a rate of \$500 per hour for “administrative” functions, such as receiving and reviewing emails. He also engaged in conflicts of interest by self-dealing Mrs. Nutt’s funds to defend against his matters with the AGC and the CPD.

The State produced a compilation of appellant's charges to Mrs. Nutt, related to appellant's AGC and CPD matters.<sup>10</sup> The State also admitted a redacted copy of the Petition for Disciplinary Action or Remedial Action filed by the AGC against appellant on May 24, 2017.<sup>11</sup> Mr. Kemp testified that the petition did not, and could not, request that appellant be removed as trustee of the Helen Nutt Trust.<sup>12</sup>

Mr. Kemp opined that it was "entirely inappropriate to bill a trust account or client for a defense of a personal action against an attorney." He acknowledged that proof of a criminal act was not required for the Supreme Court to disbar an attorney.

Detective Brandon Mengedoht, a member of the Montgomery County Police Department Financial Crimes Section, testified that, on September 27, 2019, he participated in a search, pursuant to a warrant, of appellant's home office. Pictures of the

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<sup>10</sup> The document indicated that, from 2015 to 2018, appellant billed Mrs. Nutt approximately \$958,622.50 for work he performed concerning his AGC and CPD matters. Specific examples of appellants charges related to the AGC and CPD matters are discussed in more detail, *infra*.

<sup>11</sup> The AGC alleged, among other things, that between 2013 and 2015, appellant failed to provide Mrs. Nutt with any billing invoices, yet he charged and collected approximately \$324,970 in attorney's fees and expenses. Appellant only provided a billing statement in November 2015, after the AGC Bar Counsel began its investigation into appellant's conduct. The AGC stated that appellant "by his acts and omissions . . . engaged in professional misconduct and violated the . . . Maryland Attorneys' Rules of Professional Conduct."

<sup>12</sup> The petition instead asked that the circuit court: (1) take the appropriate disciplinary action against appellant; (2) assess a money judgment against appellant, reflecting "the reasonable costs of these proceedings, both arising subsequently to the filing of these charges and necessarily incurred in investigating the same prior to the filing hereof"; and (3) take any other action appropriate under the circumstances.

home showed, among other things, several offices, office chairs, computer equipment, a grand piano, several guitars, and oil paintings. In the primary bedroom, there were several boxes of watches.

Trey Kiska, an office furniture dealer, testified that, on or about December 8, 2015, appellant entered an agreement to purchase 14 “Aeron chairs,” totaling \$12,482.25. In August 2016, appellant purchased 10 additional chairs, totaling \$9,356. In November 2017, appellant purchased 20 more chairs, totaling \$18,120.59.

In April 2017, appellant purchased thousands of dollars in computer equipment and oil paintings. In June 2017, appellant purchased additional computer equipment and a generator totaling \$24,585.76. In February 2018, appellant purchased more computer equipment totaling \$13,795.02.

Robert Williams, appellant’s former landlord, testified that, for approximately 10 years, appellant rented his two-bedroom townhouse for \$2,000 a month. Appellant moved out of the townhouse in 2015. Betty He, appellant’s new landlord, testified that, in September 2015, appellant rented her five-bedroom house for \$5,250 a month. Upon moving in, appellant was required to make two payments of \$10,500 each. In 2016, appellant installed a generator on the property.

Nancy Nutt lived in Connecticut, but she was close with her mother and always spent her work vacations in Maryland with her parents. When her mother was at Kensington Park, she visited her, and when she was away in Connecticut, she spoke with

her mother approximately three times a week. Her mother suffered from memory loss, so she often forgot what they discussed.

On October 20, 2013, Nancy Nutt met appellant during an introductory phone call. She spoke to appellant more than once a month, mostly to discuss receiving her monthly checks from the Trust. She believed that she was the beneficiary of her mother's estate. After Mrs. Nutt died, appellant did not inform or notify Nancy Nutt of her mother's assets, so Nancy Nutt made independent efforts, including contacting financial institutions, to locate her mother's assets. Nancy Nutt testified that appellant once told her that she would not receive money from the Trust unless her aunt, Ms. Taylor, dropped the criminal charges against him. On cross-examination by defense counsel, Nancy Nutt denied that appellant told her that he was using the Trust funds to defend against the charges against him, or that there would not be money left unless the charges were dropped.

Robert Frey, an Assistant Attorney General for the State of Maryland, testified that he worked in the CPD. The CPD was created to, among other things, investigate possible exploitation of vulnerable adults and "engage in civil lawsuits to recover property or damage." The CPD began investigating Mrs. Nutt's case in 2017 and issued an administrative subpoena to appellant, in his individual capacity, and not in his capacity as trustee of Mrs. Nutt's Trust accounts.<sup>13</sup> Mr. Frey stated that, on two occasions, appellant admitted that he took money from Mrs. Nutt and her Trust accounts to pay for his legal

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<sup>13</sup> The CPD issues an administrative subpoena to conduct its investigations, by requesting that the person issued produce documents or records.

fees related to the AGC case, but he stated that he was justified in using the Trust funds to pay for his legal fees because his conduct as Mrs. Nutt's trustee and attorney was being challenged.

The subpoena issued against appellant requested that he produce documents, including emails, banking records, and other electronic documents. Appellant refused to follow the CPD's instructions for producing the documents electronically, stating that he feared producing those documents would compromise all his clients' confidentiality. Mr. Frey then provided appellant with alternative ways to produce the documents, but appellant still failed to produce the materials.

On March 1, 2018, Mr. Frey filed a petition and a motion for summary judgment with the Circuit Court for Montgomery County, seeking to enforce the CPD subpoena against appellant. In November 2018, appellant consented to judgment to be issued against him. The court ordered that appellant produce the documents in 30 days, but appellant did not comply, and the CPD filed an amended petition to enforce, and a petition for contempt against appellant. A contempt finding was issued, which appellant contested. On March 7, 2019, the court gave appellant another 30 days to produce the requested documents, which appellant ultimately produced.

The State admitted into evidence the CPD subpoena, petition to enforce, motion for summary judgment, and other CPD case documents, to which defense counsel objected. The court admitted some of the documents, including the subpoena, petition to enforce,

and motion for summary judgment, ruling that the evidence was necessary to provide context to the jury regarding appellant's billing entries related to the CPD case.

Daniel Wortman, a special investigator with the Montgomery County State's Attorney's Office, testified that he worked for the Special Prosecutions Division investigating financial crimes, including elder financial abuse. He became involved with investigating Mrs. Nutt's theft case after a referral from the AGC.

Over the course of his 14-month investigation, Mr. Wortman gathered banking records and created a chart that showed the movement of money from Mrs. Nutt's accounts before and after she met appellant. From September 2013 to March 2016, Mrs. Nutt's assets totaled \$2,888,751.57. Conversely, from November 2017 to August 2019, Mrs. Nutt had a total of \$551,099.60 in assets. Mr. Wortman also created a chart showing appellant's payments to himself, from Mrs. Nutt's assets, between 2013 to 2019.<sup>14</sup>

<b>Year</b>	<b>No. of Checks/Debits</b>	<b>Amount Received</b>
2013	6	\$32,700.00
2014	26	\$142,700.00
2015	16	\$112,320.04
2016	23	\$201,500.00
2017	36	\$360,500.00
2018	41	\$863,000.00
2019	7	\$145,000.00
	155	\$1,857,720.04

In 2018, when Mrs. Nutt died, and appellant was being investigated by the AGC and incurring expenses for his home office, there were significant withdrawals of Mrs. Nutt's

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<sup>14</sup> Additionally, Mr. Wortman created a chart that showed the comparison between money paid to appellant from Mrs. Nutt's account, money paid for Mrs. Nutt's benefits, and money paid to Nancy Nutt.

money. Mr. Wortman participated in the search of appellant's house, where investigators discovered appellant's billing invoices to Mrs. Nutt.

Michaela Muffoletto, the State's Estates and Trusts expert, testified that she reviewed several estate planning documents prepared by appellant on Mrs. Nutt's behalf. The documents showed that appellant was Mrs. Nutt's designated trustee on her trust accounts, as well as her power of attorney and the personal representative of her estate. Specifically, the Helen Echard Nutt Revocable Trust Agreement contained a provision that authorized "the trustee to defend, at the expense of the trust estate . . . any contest or other attack" on the trust or trust agreement. The trust agreement did not provide for defending the trustee's bar license.

Ms. Muffoletto explained that, once Mrs. Nutt died, her trust account should have been closed. She explained that

at the moment of death, everything stops or should have stopped for [Mrs. Nutt]. Those assets that would have been part of her estate -- and I think there were a couple of bank accounts that were in her name as either the sole survivor or her name alone -- would have become part of her estate. So her will would have been delivered to the Register of Wills for Montgomery County; an estate would have been opened; those assets would have been collected; under the court's supervision, the estate would have been administered; and then ultimately the assets, the net assets from the estate would have been distributed to the Helen Nutt Revocable Trust.

The Helen Nutt Revocable Trust at that point in time already had assets because there were assets that were titled in the name of the trust during Helen's lifetime. So they would have been merged at that point into one pot of assets, and then at that moment in time, they would have been divided between the Nancy Nutt CST Trust and the Nancy Nutt Share Trust, which was payable to the [Nancy Nutt] 2013 special-needs trust.

Ms. Muffoletto stated that appellant had a fiduciary relationship with Mrs. Nutt, whereby he was required to act in Mrs. Nutt's best interests. She opined that, as a fiduciary, appellant was prohibited from self-dealing, that is, acting in his "own personal interests as opposed to the interests of the beneficiary and the trust." Although appellant took care of Mrs. Nutt's general needs, like providing food, shelter and health care, she noted that appellant breached his fiduciary duties when, for example, appellant continued to access and withdraw funds from Mrs. Nutt's Christian Pension Fund account. Upon Mrs. Nutt's death, appellant had a duty to notify Mrs. Nutt's retirement benefits providers, including the Christian Pension Fund, so that Nancy Nutt, as beneficiary of the account, would have received the assets. Appellant's power of attorney privileges should not have been used following Mrs. Nutt's death. Ms. Muffoletto stated that appellant also violated his fiduciary duty when he failed to file Mrs. Nutt's will after her death.

Ms. Muffoletto testified that she reviewed appellant's billing documents to Mrs. Nutt, and she opined that his charges were unreasonable and excessive. She stated that it was improper for appellant to use Mrs. Nutt's funds to defend himself against his AGC and CPD matters "if it [was] not for the benefit of the trust or the trust beneficiaries."<sup>15</sup>

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<sup>15</sup> Ms. Muffoletto explained that trustees have the ability to use the trust funds only to defend themselves in a "fiduciary action or defend the trust." Even when the trust funds were to be used on behalf of the trust or trustee, such action is subject to a court's review because "if it turns out that it's not being defended in good faith, if it is not for the benefit of the trust or the trust beneficiaries, then there would be no authority to pay those fees in the name of the trust."

Mark Fiedler, an investigator with the AGC, testified that he conducted an interview with Ms. Taylor in February 2016, regarding the 2016 complaint filed by Anita Baker Nutt against appellant. The purpose of the interview was to investigate appellant's billing. Ms. Taylor stated that appellant was responsive to Mrs. Nutt's needs, and although appellant's rates were high, she was satisfied with his services. On cross-examination by the State, Mr. Fiedler testified that, over the course of the interview, he determined that Ms. Taylor lacked detailed knowledge of appellant's billing.

In closing argument, the State argued that Mrs. Nutt trusted appellant to take care of her, but he exploited her. Appellant was behind on his bills, including his rent, before he met Mrs. Nutt, yet he was able to move from his townhome into a "gigantic" house after he began representing Mrs. Nutt. Appellant was then able to afford additional expenses, including paying for a generator and purchasing expensive paintings, clothing, furniture, and computers. Counsel also argued that appellant inappropriately used Mrs. Nutt's trust assets to defend himself and his law license.

Defense counsel conceded that appellant was incompetent in the performance of his duties as an attorney, but counsel argued that appellant had not committed a crime. Counsel explained that appellant's disbarment was not evidence of criminal liability and only demonstrated appellant's substandard work as an attorney because he had failed to send his billings and communicate with his client. With respect to using Mrs. Nutt's money to defend himself, appellant honestly believed that he had the right to use the trust money to

defend himself in his AGC and CPD matters, and appellant openly told people that he was using Mrs. Nutt’s money for “litigation costs.”

On June 11, 2021, the jury returned a guilty verdict on the charges against appellant. On November 29, 2021, the circuit court sentenced appellant.

This appeal followed.

### **STANDARD OF REVIEW**

An appellate court generally reviews rulings on the admissibility of evidence using an abuse of discretion standard. *Sykes v. State*, 253 Md. App. 78, 100 (2021). Whether evidence is relevant is an issue of law reviewed *de novo*. *Montague v. State*, 471 Md. 657, 673 (2020); *Portillo Funes v. State*, 469 Md. 438, 478 (2020) (“An appellate court reviews *de novo* a trial court’s determination as to whether evidence is relevant.”). Even if evidence is relevant, the court may exclude it where the “probative value is substantially outweighed by the danger of unfair prejudice to the defendant.” *Id.* at 100. Mere prejudice is not grounds for exclusion of evidence, however. *Sykes*, 253 Md. App. at 100. Rather, an abuse of discretion occurs when the circuit court’s decision is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Devincentz v. State*, 460 Md. 518, 550 (2018) (quoting *North v. North*, 102 Md. App. 1, 14 (1994)).

## DISCUSSION

### I.

#### **Admissibility of Other Proceedings**

Appellant contends that the circuit court erred in admitting evidence related to proceedings before the AGC and the CPD. He asserts that this evidence was irrelevant and unduly prejudicial. Additionally, he argues that the evidence that he was disbarred improperly “invaded the province of the jury.”

The State contends that the court acted within its discretion in admitting details of appellant’s AGC proceedings and the CPD action to enforce an administrative subpoena issued to appellant. It argues that “[d]etailed information about the AGC and CPD proceedings helped explain [appellant’s] billing documents, showed that litigating these actions was in his personal interest and not that of the trust, and provided circumstantial proof of his state of mind.” As such, the evidence was relevant and probative.

To be admissible, evidence must be relevant. *See* Md. Rule 5-402 (“Evidence that is not relevant is not admissible.”). Maryland Rule 5-401 defines “relevant evidence” 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.”

We agree that detailed evidence about the AGC and CPD proceedings was relevant. It was helpful to assist the jury in understanding appellant’s charges and in understanding that the matters were filed against appellant individually. From 2015 to 2018, appellant

billed Mrs. Nutt approximately \$958,622.50 for work he performed concerning the AGC and CPD matters. The State admitted appellant's billing documents that showed his charges to Mrs. Nutt in this regard.

Specific examples of appellant's billing entries include the following:

1. AGC Charges

- 8/8/15: "Received AGC complaint from Anita-Baker Nutt, reviewed files." - \$2,450.
- 8/12/15: "Continued to work on outline & drafting response." - \$3,550.
- 7/1/16: "Traveled to Annapolis, MD & returned to offices; met with Lydia Lawless, Esq., and Marc O. Fiedler, lead investigator, at the AGC . . . & discussed the current ethics complaint[s] against me." - \$1,800.
- 11/28/16: "Revised doc entitled Wh [sic] Dismissed Baker Nutt[']s Complaint 2." - \$900.
- 12/9/16: "Traveled to Rockville participated in ethics panel hearing." - \$1,300.
- 5/25/17: "Sent e-mail to Norman Smith & Nusinov asking for meeting to discuss the AGC complaint & time-line for discovery." - \$100.
- 8/21/17: "MD court of appeals order reassigning AGC case from McCally to Storm." - \$50.
- 9/22/17: "Reviewed e-mail from Smith with Respondent[']s First Request for Production of Docs to Bar Counsel, Notice of Service of Discovery & Interrogatories to Bar counsel." - \$200.
- 2/5/18: "Met Sperling & Kane, discussed AGC's charges, responses & introduction of evidence." - \$2,400.
- 2/25/18: "E-mail from Sperling draft complaint against Lawless, Boltz, Melnick & AGC." - \$700.
- 3/7/18: "Continued preparations for [c]ircuit [c]ourt [h]earings." - \$3,200.
- 6/14/18: "Met Sperling & Kane; worked on Reply Brief to the AGC's Statement of Proposed Findings of Fact & Conclusion of Law." - \$1,800.
- 8/5/18: "Worked on response to AGC Complaint by Ruth Ann Taylor." - \$2,250.
- 8/13/18: "Met with Sperling & discussed Judge Storm's Findings of Fact etc." - \$1,650.
- 9/1/18: "Met Sperling, discussed Demand Letters to Lawless, AGC personnel, Ms. Boltz & Melnick." - \$1,250.
- 10/19/18: "Completed US District Court Complaint against Lydia Lawless & AGC." - \$1,600.

- 12/17/18: “Called Priority Process about Melnick, called Hunt reporting requesting transcript of Court of Appeals hearing.” - \$100.

## 2. CPD Charges

- 8/30/17: “Conducted research regarding [CPD] of MD Office of Attorney General; downloaded & reviewed pamphlets, publications to determine their function, methods.” - \$900.
- 9/12/17: “Reviewed e-mail from Christopher Waldt, Investigator Attorney General [CPD], and its attached subpoena.” - \$250.
- 11/9/17: “Received call from Norman Smith & discussed MD Atty General’s Offices efforts to obtain documents, Robert Frey & other issues.” - \$200.
- 1/17/18: “Received call from Robert Frey & informed him we should go to [c]ircuit [c]ourt . . . & let judge hear our dispute regarding the turning over to Maryland Attorney General’s offices copies of e-mail received & sent, noted same for discussion with Eugene Kane & Joseph Sperling.” - \$100.
- 3/23/18: “Reviewed Writ of Summons & [CPD] Motion for Summary Judgment & request hearing etc.” - \$1,400.
- 6/6/18: “Traveled to Rockville Circuit Court, Motion Hearing to discuss concerns with Robert Frey of the Attorney General’s Office, discussed with Kane & Sperling regarding electronic e-mails.” - \$2,050.

Evidence about the AGC proceeding was admitted through a redacted copy of the AGC petition and Mr. Kemp’s testimony. Mr. Kemp’s testimony about the attorney discipline process and the AGC petition were relevant to help the jury understand, for example, that when appellant charged Mrs. Nutt \$2,450 for reviewing the AGC complaint filed by Anita-Baker Nutt, the filing of a complaint is the first step in the attorney discipline process. The AGC petition was relevant to show that the charges were against appellant in his individual capacity.

Evidence about the CPD matter was admitted through the CPD petition and Mr. Frey’s testimony. Mr. Frey testified that the CPD issued an administrative subpoena to appellant, in his individual capacity, requesting that he produce electronic documents. This

testimony was relevant to help the jury understand the September 12, 2017 billing entry, which stated that appellant reviewed a subpoena that was emailed to him by an investigator at the CPD. The admitted evidence, therefore, had the tendency to make it more probable that appellant knew that the AGC and CPD actions were against him as an individual, and that appellant knew that it was improper to charge Mrs. Nutt for his defense. The circuit court properly determined that the evidence was relevant.

Appellant contends that, even if the evidence was relevant, the probative value of the evidence was outweighed by the danger of unfair prejudice. Maryland Rule 5-403 provides that relevant evidence may be excluded if the court finds that “its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.” *Accord Dejarnette v. State*, 478 Md. 148, 175 (2022).

In assessing prejudice, we note that evidence that prejudices a party, “in the sense that it hurts his or her case, is not the undesirable prejudice referred to in Rule 5-403.” *Burris v. State*, 435 Md. 370, 392 (2013) (quoting *Odum v. State*, 412 Md. 593, 615 (2010)). “Rather, evidence is considered unfairly prejudicial when ‘it might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which [the defendant] is being charged.’” *Id.* (alterations in original). Thus, the more probative the evidence, “the less likely it is that the evidence will be unfairly prejudicial.” *Id.*

The evidence here was probative to show that appellant was aware that the AGC and CPD actions were directed at him personally, and to explain appellant’s billing entries regarding his AGC and CPD matters. The AGC proceeding involved a determination

whether appellant violated the rules of professional conduct by failing to, among other things, provide Mrs. Nutt with billing statements. Whether appellant stole money from Mrs. Nutt was not discussed, so there was little likelihood of unfair prejudice due to the admission of the AGC evidence. With respect to the CPD matter, the admitted evidence merely showed the process the CPD went through to get appellant to provide the requested electronic documents. The circuit court did not abuse its discretion in determining that the probative value of the evidence was not outweighed by unfair prejudice.

Appellant next contends that evidence of the AGC case, and his disbarment, invaded the province of the jury. He argues that the issue of his criminal culpability involved whether he had an honest belief that he could use Mrs. Nutt's funds to defend himself, and admission of evidence of his disbarment constituted a determination of guilt, thereby invading the province of the jury.

The State contends that evidence of appellant's disbarment did not invade the province of the jury. The jury was presented only with "basic historical facts," i.e., that the circuit court issued findings and that the Supreme Court ultimately disbarred appellant. This evidence did "not amount to offering an opinion of guilt that invade[d] the province of the jury."

The State argues further that, even if the circuit court erred in admitting evidence of appellant's disbarment, any error was harmless. It notes that the jury "knew that the issues in the AGC case did not resolve [appellant's] criminal charges," but rather, the decision to disbar appellant was a finding of professional misconduct. Mr. Kemp testified that there

was no criminal finding in the AGC case, and the circuit court instructed the jury that the State's burden of proof in the AGC case was lower than the burden in the criminal case. Accordingly, "[t]he jury would not have misinterpreted [appellant's] sanction for professional misconduct as establishing his guilt of the charged crimes."

In evaluating whether evidence invades the province of the jury, it must be considered in "the context in which it was used." *Tyner v. State*, 417 Md. 611, 617 (2011). Here, the evidence admitted was historical facts, including that appellant was disbarred. The rationale was not provided, and the jury knew that the issues in the AGC case and the criminal case were different, and that appellant's disbarment was his penalty for violating the MARPC, not punishment for any criminal behavior. Therefore, the evidence admitted did not invade the province of the jury on the issues before it.

## **II.**

### **Voir Dire**

Although appellant's question presented addresses only the admission of evidence, he argues in his brief that the court erred in its voir dire. Appellant contends that, because the circuit court erroneously ruled that evidence of his disbarment was admissible, it erred in asking the jury a voir dire question concerning his disbarment. We have already rejected the argument that the jury should not have been told that appellant was disbarred, so to the extent that appellant is arguing that the evidentiary ruling resulted in an improper voir dire question, we reject that argument.

Indeed, after the court's evidentiary ruling, defense counsel requested the following voir dire question:

"You will hear evidence that [appellant] was disbarred by the Maryland courts, meaning he lost his law license as a result of his work on Helen Nutt's legal matters. The determination to revoke a lawyer's license is completely different from a prosecution for criminal charges and should have no influence on the decision that the jury in this case will need to make. Will the fact that Maryland's highest court revoked Mr. Robbins' law license due to his work for Helen Nutt and the Nutt Trust have any influence on you?"

The circuit court declined to ask that question in the form requested by appellant, noting that the purpose of voir dire was to identify any potential biases, and specifically, to determine whether any potential jurors' knowledge of evidence of appellant's disbarment would have any influence on them. The court stated that, whether appellant's disbarment would influence a juror was important to know, but it was not necessary to instruct, at the voir dire stage, that it should have no influence on the outcome of the case. Accordingly, the circuit court propounded the following voir dire question:

The jury will hear evidence in this case that [appellant] was disbarred by the Maryland Courts, meaning that he lost his license to practice law as a result of his work on Helen Nutt's legal matters. The standard of proof required to revoke a lawyer's license is completely different from the standard of proof required in a criminal case, which is proof beyond a reasonable doubt.

Is there any member of the prospective jury panel who would let the fact that the [Supreme Court] revoked [appellant's] license influence their decision on guilt or innocence in the criminal case?

We review for an abuse of discretion a circuit court's decision to ask a voir dire question. *Collins v. State*, 463 Md. 372, 391 (2019); *Pearson v. State*, 437 Md. 350, 356 (2014). On request of counsel, a circuit court must ask a voir dire question "if and only if

the voir dire question is ‘reasonably likely to reveal specific cause for disqualification.’” *Id.* at 376 (quoting *Pearson*, 437 Md. at 357) (cleaned up).

In Maryland, we employ limited voir dire. *Id.* at 404. The “sole purpose of voir dire is to ensure a fair and impartial jury by determining the existence of specific cause for disqualification.” *Id.* at 376 (quoting *Pearson*, 437 Md. at 356) (cleaned up).

Here, the circuit court did not abuse its discretion in asking the voir dire question that is being challenged. The court’s voir dire question, including whether “there [is] any member of the prospective jury panel who would let the fact that the [Supreme Court] revoked [appellant’s] license influence their decision on guilt or innocence in the criminal case,” was sufficient to determine cause for disqualification by identifying any juror who might be influenced by knowledge of appellant’s disbarment. Accordingly, the court did not abuse its discretion in the voir dire in this case.

**JUDGMENTS OF THE CIRCUIT COURT  
FOR MONTGOMERY COUNTY  
AFFIRMED. COSTS TO BE PAID BY  
APPELLANT.**

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<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/1551s21cn.pdf>