Circuit Court for Frederick County
Case No. C-10-CV-19-000517

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1653

September Term, 2023

EDWARD GAZVODA, JR.,

v.

ZACHARY WENTZ, ET AL.

Leahy,
Friedman,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.
Concurrence in Part, Dissent in Part
by Friedman, J.

Filed: July 23, 2025

This appeal arises from a dispute over the distribution of funds from a life insurance policy ("the Policy") held by the decedent, Marjorie Larson ("Ms. Larson"). Appellant Edward A. Gazvoda, Ms. Larson's son, was the direct beneficiary of the Policy and the personal representative of Ms. Larson's Estate. Appellees Steven and Zachary Wentz ("the Wentzes"), who are Ms. Larson's grandsons and Edward Gazvoda's nephews, contended that they were entitled to receive $28,000 each from the proceeds of the Policy. However, Edward only sent the Wentzes two checks for $5,000 each, which he later cancelled. The Wentzes sued Edward Gazvoda in the Circuit Court for Frederick County on multiple theories of liability, including third-party beneficiary breach of contract and unjust enrichment. Following a jury trial, the jury awarded both Steven and Zachary a total of $28,000 in damages: $5,000 for breach of contract, and $23,000 for unjust enrichment. Edward moved for a judgment notwithstanding the verdict (JNOV) and a motion for new trial, and the circuit court denied both motions. Edward timely filed this appeal on October 23, 2023, and presents two questions for our review:

1. Did the Circuit Court err by sustaining the jury's unjust enrichment award, where the Plaintiffs also recovered breach of contract damages?

2. Was there sufficient evidence adduced at trial to support Plaintiff's breach of contract and/or unjust enrichment claims?

We will address these questions in reverse order. First, we hold that there was sufficient evidence adduced at trial to support the Wentzes' claims. Second., we conclude that Edward's challenge to the concurrent verdicts in the motion for JNOV was not preserved for review. However, we hold that, following the motions for JNOV and for

new trial, the court erred in failing to invoke its revisory powers to amend the inconsistent verdict. Accordingly, we vacate and remand to the circuit court for an election of remedies.

BACKGROUND

Factual Background

Marjorie Larson was born on March 3, 1938. She had two children: Edward A. Gazvoda, and Michelle Wentz. Edward[1] had two children, Garrison and Grant Gazvoda. Michelle had two children, Zachary and Steven Wentz.[2] From 2007 until her death in 2018, Ms. Larson lived in Maryland, near the Wentz family. Edward lived in Colorado. In 2017 and 2018, Grant lived with Ms. Larson in her home. Grant moved out in February of 2018, prior to Ms. Larson's death.

Although Edward lived primarily in Colorado, he regularly visited Ms. Larson. In the summer of 2017, he went with her to see an oncologist, where she was diagnosed with pancreatic cancer. The oncologist estimated that Ms. Larson would live about 18-24 months if she underwent chemotherapy. The oncologist recommended that Ms. Larson "get her affairs in order." Later that year, on November 29, 2017, Ms. Larson changed the beneficiary of her $150,000 life insurance policy to Edward Gazvoda.

In December 2017, Ms. Larson was hospitalized with a serious bacterial infection. On December 14, 2017, while she was in the hospital, Ms. Larson executed five

[1] Because some of the parties and witnesses share the same surname, we shall refer to them by their first names throughout the opinion in order to avoid any confusion, and mean no disrespect thereby.

[2] Michelle also had three stepchildren not related to Ms. Larson.

documents: a "Last Will and Testament," (the "Will") a "Power of Attorney," an "Advance Medical Directive," an "Appointment of Health Care Agent," and an "Appointment of Agent to Control Disposition of Remains." [3] All five documents were witnessed by Grant Gazvoda and Candie Kitts, Grant's then-girlfriend. Edward was present when the documents were executed.

The Will directed $165,000 in cash bequests, including $28,000 to each of Ms. Larson's four grandchildren. It also directed a special cash bequest of $5,000 to Grant Gazvoda "for being my caregiver." The Will named Edward as the personal representative of Ms. Larson's estate, and the Power of Attorney named Edward as Ms. Larson's agent. On the same day the documents were executed, Edward signed an affidavit declaring that the Power of Attorney had become effective. Edward did not take any action under the Power of Attorney at that time.

Ms. Larson died on October 21, 2018. The Will named Edward the personal representative of her estate and directed $165,000 in cash bequests. However, at the time of her death, Ms. Larson's estate had less than $50,000 in assets. Ms. Larson did have two life insurance policies—one for $150,000 and the other for $240,000.[4] Edward was the

[3] Drafts of these documents were prepared by the Bethesda Legal Assistance Office of Walter Reed Hospital. Various changes were made before these documents were executed on December 14, 2017.

[4] There is scant information about this $240,000 life insurance policy in the record because Edward did not provide any documentation related to the policy in discovery. Accordingly, there are no documents in the record on appeal showing who the named beneficiaries of that policy were. However, Edward's bank records show a $240,000 (Continued)

beneficiary of both life insurance policies and received the distribution for those policies upon Ms. Larson's death.[5]

In November and December 2018, Edward wrote a series of checks, many to individuals and institutions named in the Will. These payments included $1,000 to George Washington University, $1,000 to American University, $1,000 to Waynesburg University, and $10,000 to David Larson—amounts corresponding to cash bequests in the Will. Edward transferred money to his son Grant in a series of increments, totaling around $33,000. However, Edward only gave $5,000 each to Garrison Gazvoda, Steven Wentz, and Zachary Wentz, rather than the $28,000 specified in the Will.

After the Wentzes received the $5,000 checks, Michelle took a picture of the checks and texted the picture to Edward, asking "if this was a down payment on what was due to them in the will or was it a bonus." Edward responded, "no, that's all they were getting. That's all [Ms. Larson] wanted them to have." At this point, the Wentzes contacted an attorney, who sent a letter to Edward demanding the $23,000 difference. Edward then sent an email to the Wentzes' attorney advising that he had placed a stop payment on the checks. Despite receiving this email, the Wentzes attempted to cash their checks. Zachary was fined $20 by his bank for the returned deposit, and Steven was charged a fee of $12.50.

deposit and he acknowledged receiving the money from a life insurance policy in Ms. Larson's name.

[5] The evidence at trial showed that Edward received one deposit for $240,000 and another deposit for roughly $137,000. The latter deposit was in the amount of $137,000, rather than $150,000, because Ms. Larson took out a $12,421.32 loan on the policy in November 2017.

Procedural History

On July 1, 2019, the Wentzes filed a complaint against Edward in the Circuit Court for Frederick County. The initial complaint contained four counts: two for breach of third-party beneficiary contract, and two for dishonored checks.[6] On November 4, 2020, following various other filings and nearly a year of discovery, the Wentzes filed an amended complaint. The amended complaint contained four counts applicable to both brothers: breach of third-party beneficiary contract, unjust enrichment, constructive trust, and dishonored check. Edward filed a motion for summary judgment on June 3, 2021. The Wentzes filed an opposition motion on July 7, 2021. The circuit court stayed the summary judgment motion until depositions could be completed, and heard argument on the motion for summary judgment on October 24, 2022. On October 26, 2022, the circuit court issued an order denying Edward's motion for summary judgment.

Trial

The jury trial began on June 13, 2023, and lasted five days. The Wentzes called four witnesses: Edward Gazvoda, Michelle Wentz, Zachary Wentz, and Steven Wentz. Edward did not put on his own case; instead, his counsel cross-examined the plaintiff's witnesses and introduced evidence during cross-examination.

[6] The claims for dishonored checks were based on Maryland Code (1975, 2013 Repl. Vol.), Commercial Law Article ("CL") § 15-802, which imposes liability under certain circumstances "[w]hen a check or other instrument has been dishonored by nonacceptance or nonpayment."

First Witness

The first witness called by the Wentzes was Edward Gazvoda. The Wentzes' direct examination of Edward lasted over a day. Edward testified that he received $240,000 from a second life insurance policy but was unable to explain why documents related to this policy were not provided in discovery. Edward admitted that the income from Ms. Larson's life insurance policy made up more than half of his income from 2018-2021 but asserted that he also lived off other funds.

Edward explained that his relationship with his sister, Michelle, became strained around 2015-2016, when she "used one of my friends to have my son [Grant] extradited from Arizona . . . to Maryland to face terrorist charges." In addition, he stated that there was conflict between his son Grant and Michelle during the period that Grant lived with Ms. Larson in 2017 and 2018. He confirmed that Grant moved out of Ms. Larson's home because he was told to leave.

Edward confirmed that he gave his mother the draft will to review on December 13, 2017, but denied taking part in drafting it. Edward stated that he discussed the Will and Power of Attorney with Ms. Larson between December 13 and 14, and that he advised her to sign them. Edward acknowledged differences between the draft will of December 13 and the final will executed on December 14, including the addition of $8,000 in cash bequests to Grant. However, he denied making the changes himself. He said that he did not recall whether Ms. Larson read the documents before signing them. Edward acknowledged that Grant and Grant's girlfriend witnessed the documents. Edward testified

that he did not ask them to come, and they only witnessed because they happened to be visiting Ms. Larson in the hospital.

Edward told the jury that he found out about the second life insurance policy, for $240,000, while Ms. Larson was in hospice. He stated that he "helped clean out the house and her documents" while she was in hospice and discovered the policy. Edward testified that he did not copy any documents related to the policy or share them with his sister. He acknowledged sending multiple checks after Ms. Larson's death, many of which went to individuals or institutions named in the Will. He sent checks for $5,000 each to Steven and Zachary Wentz, but they had not received any money because he stopped payment on the checks. He also sent a check for $5,000 to his son Garrison in July 2018, nearly eight months after Ms. Larson's death. Edward testified that he was "not eager" to give Garrison money at the time because he had been in protracted litigation with Garrison's mother over custody, and Garrison decided to live with his mother. He acknowledged that the only one of the four grandchildren that received $28,000 or more was Grant.

Edward, as personal representative of Ms. Larson's estate, testified that she had less than $50,000 in assets at the time of her death, and her estate therefore qualified as a "small estate." He explained that at the time of her death, Ms. Larson had debts totaling $653,239, and that her home sold for about $599,000—approximately $50,000 less than what was owed on it. He billed the estate $15,000 for funeral expenses, the statutory limit. Edward also acknowledged that, based on bank records, he transferred a total of about $27,400 to Grant in a series of increments.

In response to questioning by his counsel, Edward stated that he transferred approximately $27,400 to his son Grant because of Ms. Larson's wishes expressed verbally to him. Edward recounted that it was Ms. Larson's desire to give the Wentzes $5,000 each, and that he was willing to send them that amount. He stated that he only stopped payment when the Wentzes' attorney demanded the whole $28,000. He claimed that Ms. Larson gave him verbal instructions on how to distribute the insurance proceeds, and that his distribution was in accordance with those instructions. Although he lived in Colorado, Edward said that he talked to Ms. Larson "every other day, probably. A few times a week." He stated that he mainly talked to Ms. Larson over the phone.

Edward recounted that the Will was prepared by free counsel through Walter Reed, and that he had no bearing on what Ms. Larson chose to itemize as bequests in the will. He asserted that Ms. Larson asked him to give Grant $31,000. He related that Grant left Ms. Larson's house in February 2018 because Grant pushed her, and Edward called him up and told him to leave. He added that after Grant left, however, Grant would communicate with Ms. Larson over FaceTime, and those conversations were "loving."

When asked why Ms. Larson wanted to give the Wentzes $5,000 each, Edward responded, "She wanted them to have something, is what she told me. She thought giving them nothing wouldn't be fair and she loved them. She cared a lot about Zach and Steve, and wanted them to each have $5,000." When asked why Ms. Larson did not choose to give them any more than $5,000, Edward responded, "She felt that during the time that she really needed them, they didn't communicate with her or visit her. Very infrequently. And

she had higher expectations of what they would do when she was dying." Edward asserted that he did not gain any benefits from being personal representative of Ms. Larson's estate. He stated that Ms. Larson made him the sole beneficiary of the $150,000 life insurance policy because she did not trust Michelle and thought that Michelle "was going to kill her and steal her jewelry."

Edward's counsel then returned to the subject of the $240,000 life insurance policy. He explained that Ms. Larson never discussed the policy with him, and that it was a "total surprise" that she had another policy that directed the proceeds to go to him. He added that Ms. Larson did not instruct him to use to proceeds for anything, and that he was free to use the proceeds in any way he saw fit.

Edward testified that he was not living off the life insurance proceeds, and that he worked for a real estate development firm in 2018 and then started two other businesses. According to Edward, Ms. Larson was able to manage her own affairs from the time she was diagnosed with cancer in summer 2018, all the way until she entered hospice in October 2018. He confirmed that the Will contained no instructions on the distribution of her life insurance policies beyond giving all rights to him, and stated that Ms. Larson had the opportunity to change the Will in the ten months after it was executed, but that she chose not to do so. Edward insisted that his disposition of insurance proceeds was in accordance with Ms. Larson's wishes and had nothing to do with the Will.

Second Witness

The Wentzes then called their second witness, Michelle Wentz. She testified that her sons, Zachary and Steven Wentz, have speech impediments and dyslexia, which made it difficult for them to read, finish homework, and write papers. She explained that Ms. Larson had a PhD in special education, and that she would help Zachary and Steven with their homework after she moved to Maryland. According to Michelle, Ms. Larson went back to work full-time at a private school in Maryland that the boys were attending so she could work with them. Michelle related that Ms. Larson went to all kinds of events with Steven and Zachary, including sporting events and holidays. She estimated that between 2007 and 2018, Ms. Larson interacted with Zachary and Steven roughly three times a week.

Michelle explained that her relationship with her brother, Edward, became strained during the period of her mother's illness. She said that in June 2017, Grant threatened her, and she had to get a restraining order against him. Accordingly, she was unable to visit Ms. Larson's home very frequently because Grant was living there, although they still met outside Ms. Larson's home. Michelle admitted that there was some strain between her and her mother because Ms. Larson did not want her to have the restraining order against Grant.

Michelle recounted that on Mother's Day in 2018, she and Ms. Larson discussed the assistance Ms. Larson intended to provide to her grandchildren after her death. According to Michelle, Ms. Larson "said that she had a life insurance policy worth about $150,000 and that [Edward] and I were to get no money because she had already provided to us," and "that she had already allocated $28,000 to four of the grandchildren for their

education[.]" Michelle also overheard a conversation between Zachary and Ms. Larson during which Ms. Larson offered him a check for his college, but he declined the money. Michelle testified that she had no knowledge of the $240,000 insurance policy until the court case began. Michelle testified that she did not find out about the Will until Ms. Larson was in hospice and Edward handed it to her.

Third Witness

The third witness called was Zachary Wentz. Zachary testified that Steven Wentz was his twin brother. Zachary said that he knew Ms. Larson his "whole life," and that he and his brother Steven helped her move up to Maryland in 2007. He recounted spending nearly every holiday with Ms. Larson, including Christmas, Thanksgiving, and Mother's Day. Ms. Larson lived "walking distance" from him in Maryland, so he and his brother visited her house often. Zachary related that he was diagnosed with dyslexia and ADHD in eighth grade, and that Ms. Larson helped him all throughout high school, including helping him write his college essays. Zachary told the jury that when he was in sixth grade, Ms. Larson became a teacher at his school, and that he had English class with her every day and ate lunch with her.

According to Zachary, after his mother obtained a protective order against Grant, his interactions with Ms. Larson did not really change. He testified that on Father's Day 2017, when he committed to play Division One lacrosse, Ms. Larson offered to write him a check for $25,000 to pay his tuition. However, he declined the money, telling her, "You have more time here than you think." Zachary said that in June 2017, Ms. Larson again

reminded him that she had money set aside for college. He again declined, explaining that "[a]t that time, it was her money still. She was still living and I had no reason to use it because she was still alive and it was hers." Zachary testified that he would regularly visit Ms. Larson while she was sick and help her around the house.

On cross-examination, Zachary was asked how Ms. Larson could have intended her life insurance policy to cover the bequests in her will when the life insurance policy was for $150,000, and the bequests in the will added up to $165,000. Zachary responded that Ms. Larson told him she bought Grant a Mercedes when he moved out, and that this was intended as an advance on Grant's bequest. Zachary stated that he did not know the value of the Mercedes. Zachary confirmed that he did not have personal knowledge of the terms of any agreement between Ms. Larson and Edward regarding the distribution of the life insurance policy. When Ms. Larson offered to give him $25,000 for college on Father's Day 2017, she did not tell him where the money would come from. However, Zachery testified that when she offered him money for college in June 2017, she said "that it was going to come from the life insurance policy."

Fourth Witness

The fourth and final witness was Steven Wentz. Steven also testified that he knew Ms. Larson all his life, that she would visit his family for holidays while she lived in Florida, and that he helped her move to Maryland in 2007. He testified that Ms. Larson was his English teacher from sixth grade to seventh grade, when the private school he was attending shut down. Steven stated that Ms. Larson regularly gave him and his brother

gifts for occasions like Christmas and birthdays, as well as special occasions like graduation and sporting events. He said he would help her out whenever he could; he would shovel her driveways in the winter, wash her patio furniture in the summer, and go grocery shopping for her if needed. In high school he installed fake wood tile flooring in her basement. Steven testified that at one point he returned home from college because "school was not for me." During that period, he briefly took care of Ms. Larson when Grant wasn't there. Steven would cook Ms. Larson breakfast and dinner, help with her laundry, clean her house, and spend time with her. Following Steven Wentz's testimony and the introduction of some additional exhibits, the Wentzes closed their case.

Motion for Judgment

After the Wentzes closed their case, Edward made a motion for judgment under Maryland Rule 2-519. Edward's counsel argued that the Wentzes had failed to meet their burden of proof on all four counts: breach of third-party contract, unjust enrichment, constructive trust, and dishonored checks.

Regarding the third-party beneficiary claim, counsel contended that the Wentzes failed to prove that there was an actual contract between Edward and Ms. Larson. Counsel argued that there was no evidence to suggest that Edward received a benefit in exchange for promising to distribute the life insurance proceeds. Counsel therefore contended that any purported promise by Edward would have been gratuitous and unenforceable.

Edward's counsel argued that if the contract were to distribute the proceeds of the life insurance policy in accordance with the Will, that would have been impossible as there

was not sufficient money in the life insurance policy. Counsel pointed out that there was no evidence on the specific instructions given by Ms. Larson to Edward. Based on evidence surrounding the relationship between Ms. Larson and the Wentzes, counsel asserted, "it is perfectly logical to conclude that Marjorie Larson at or around the time of her death did, in fact, instruct Edward to send [her] grandson $5,000 and not anything else."

Edward's counsel then argued that there was no evidence of any undue influence, stating that there was no evidence that Ms. Larson was incompetent when she made the Will or changed the beneficiary of her life insurance. Counsel pointed out that the revised Will actually increased the bequest to the grandchildren, including the Wentzes. Counsel argued that it is reasonable to assume that Ms. Larson intended the bequests in the Will to come out of her estate and did not realize that her estate would not cover the bequests.

Edward's counsel then made a brief argument on the second count, unjust enrichment:

> As to plaintiff's claim of unjust enrichment, under Maryland law to sustain a claim under the doctrine of unjust enrichment, three elements must be established: Number one, a benefit conferred upon the defendant by the plaintiff. An appreciation or knowledge by the defendant of the benefits and the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without payment of its value.
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> Again, plaintiff[s] bear the burden of proving what it is that they are alleging. And in Maryland, a claim for unjust enrichment can only stand when all three of those elements that I just mentioned to Your Honor have been met. There are no facts in this record that has been submitted over the past couple of days at trial to show that the plaintiffs are entitled to the sum of $28,000 from the life insurance proceeds. It is that simple.

> Where the $28,000 came from in the will, her estate. But there is no evidence to suggest that they are entitled to $28,000 from the policy. As such, Defendant Gazvoda was the sole and proper beneficiary of the life insurance policy[. T]hat he used the policy to give money to several, more than several individuals, and in an amount acceptable to plaintiffs doesn't make it wrong as to what he did. He didn't retain any benefit to put the plaintiffs in an inequitable position. In fact, they were written checks for $5,000 each. Plaintiffs would have to overcome that. The plaintiffs would have to show that they were, in fact, entitled to $28,000.

On the third count, constructive trust, Edward's counsel argued that there was no evidence of a confidential relationship that would give rise to a constructive trust. Counsel analogized the case to *Potts v. Emerick*, 293 Md. 495 (1982), and argued that if Ms. Larson wanted the Wentzes to receive $28,000 from her life insurance policy, she could have made them beneficiaries or directed Edward as personal representative in the Will. Finally, on count four, dishonored checks, counsel argued that the Wentzes came to the court with unclean hands. Counsel argued that the Wentzes' injuries were their own fault because they attempted to cash the checks knowing that Edward had placed a stop payment.

Arguing against the motion, the Wentzes' counsel urged that there was sufficient evidence from which a jury could find for the Wentzes on each count. Counsel pointed to two cases holding that circumstantial evidence was sufficient to find the existence of an oral contract and create a third-party beneficiary claim. Counsel pointed to evidence of a confidential relationship between Edward and Ms. Larson. Counsel also argued that, because Edward did not provide any documentation surrounding the $240,000 life insurance policy in discovery, the jury was entitled to make an adverse inference against him. Various pieces of evidence, counsel argued, contradicted Edward's version of

events—such as the fact that Grant had to leave Ms. Larson's house. Counsel also pointed out that even if the $150,000 life insurance policy was not sufficient to cover all bequests in the Will, it was enough to pay $56,000 to the Wentzes.

At this point the court interjected and engaged in an extended colloquy with the Wentzes' counsel about Count III, constructive trust. The court pointed out that a constructive trust is not a cause of action, but an equitable remedy. The court discussed with counsel the implications if the jury found for Edward on counts I and II, and the Wentzes' counsel agreed that a constructive trust could not be implemented in that situation.

The Wentzes' counsel then argued on count four, dishonored check. Counsel argued that CL § 15-802 was applicable despite the Wentzes knowing that Edward had placed a stop payment.

The circuit court denied Edward's motion for judgment with respect to counts I and II, third-party beneficiary contract and unjust enrichment. The court granted Edward's motion for judgment on count III, constructive trust, and reserved judgment on count IV, dishonored checks, until further argument.

Edward then rested his case without putting on any evidence. Edward did not make a second motion for judgment. The parties then had a bench conference regarding jury instructions. After a lunch break, the parties returned and had further argument on count IV, so the court granted Edward's prior motion for judgment on that count. Only counts I and II went to the jury.

Jury Instructions

The circuit court read a series of agreed jury instructions, largely based on the Maryland Pattern Jury Instructions. Relevant here, the jury instructions related to third-party beneficiary contracts were as follows:

> A contract is an agreement creating rights or obligations between two or more parties. A contract is an agreement consisting of five elements. There must be two or more parties. The parties must have legal capacity to make the agreement. The agreement must be mutual. The agreement must be stated with reasonable certainty. And there must be consideration for the agreement. A promise is an expression by words or conduct, that a person will perform or not perform certain acts.
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> A bilateral contract is an agreement wherein the parties exchange promises to each other. A unilateral contract is an agreement in which the promise of one party is given in exchange for the doing or not doing of an act by the other party. An express contract is an agreement by the parties that is oral or written. An implied contract is an agreement created by the conduct of the parties. An offer is a reasonably definite proposal made by one party to another under circumstances indicating an intent to enter into a contract. Acceptance is an agreement by the party to whom an offer has been made to unconditionally accept the terms of the offer.
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> To create a contract, an offer must be accepted within the time set forth by the party making the offer. If the party making the offer has not specified a time within which the offer is to be accepted, then the other party may accept the offer within a reasonable period of time after it was made. The party making an offer may withdraw the offer at any time before it is accepted by the other party by giving notice of the withdrawal.
>
> An offer terminates when the party making the offer dies, or becomes legally disabled from entering into a contract. An offer terminates if the terms of the offer become illegal or impossible to perform. An offer terminates when it is not accepted within the time set by the party making the offer, or if no time has been set, within a reasonable time. A party to whom an offer is made may respond by making a counteroffer. A counteroffer terminates the original offer. Acceptance occurs when the accepting party so notifies the offering party.

In this case, the law does not require the agreement to be in writing. The agreement can be formed by either spoken words, a writing, or actions that indicate consent to the -- to this agreement. A contract may be entered into by parties who are not in each other's physical presence at the time of contracting. The offer and the acceptance may be made while they are communicating with each other by any means.

For an agreement to be binding, it must involve consideration. Consideration can be anything of value to the other party. No particular or formal words are needed to make a contract. Each party must agree to be bound by the terms and conditions. The agreement may be demonstrated in writing, orally, or may be shown by the conduct of the parties.

A person who is not a party to a contract may enforce it if that contract was expressly made for the person's benefit, and that person was intended to be a primary beneficiary. A confidential relationship exi[s]ts between two persons when one of them, the trusting party, is justified in assuming that the other, the trusted party, will protect the welfare of the trusting party. In determining whether a confidential relationship exists, you may consider any differences in things like age, mental condition, education, business experience, health, and degree of dependence between the two parties.

Undue influence occurs if the trusted party takes advantage of the . . . trusting party in making a contract. If those parties enter into a contract, the trusted party bears the burden of proving that he provided full disclosure of material facts to the trusting party, and that the contract is fair to the trusting party.

When a confidential relationship is established, and the party occupying the position of dominion receives a benefit from the transaction, there is a presumption against its validity, placing upon the beneficiary the burden of establishing by clear and convincing evidence, that there has been no abuse of confidence and that he acted in good faith, and that the act by which he benefitted was free, voluntary, and independent act of the other party to the relationship. To be clear and convincing, evidence should be clearer, in the sense that it is certain, plain to the understanding, unambiguous, and convincing in the sense that it is so reasonable and persuasive to cause you to believe it.

A material breach by one party relieves the other party from duty and performance. A breach is material if it affects the purpose of the contract in an important way. Performance is excused if it is impossible, or

> impracticable, because of the extreme and unreasonable difficulty, expense, injury, or loss which would result from its performance.

The court then read the following instruction on unjust enrichment to the jury:

> A plaintiff may recover from a defendant on a claim for unjust enrichment upon proving the following three elements: a benefit conferred on the defendant by the plaintiff; an appreciation or knowledge by the defendant of the benefit; the acceptance or retention by the defendant of the benefit under circumstances that would make it inequitable for the defendant to retain the benefit without the payment of its value. The measure of damages for unjust enrichment is the value of the benefit conferred upon the defendant.

Neither counsel objected to the jury instructions prior to their reading, or afterwards.

Jury Verdict

After the parties finished closing arguments on June 21, 2023, the jury retired to deliberate. The following day, June 22, the jury found for the Wentzes on count I, breach of third-party beneficiary contract, and awarded them $5,000 each. The jury also found for the Wentzes on count II, unjust enrichment, and awarded them $23,000 each.[7] The court asked the parties if they had anything further before the jury was dismissed, and counsel for both sides said that they had nothing further.

[7] Interestingly, the verdict sheet signed by the foreperson appears to contain a typo: after asking the jury for whom it finds on Count II of the Amended Complaint, it asks, "If you find in favor of Plaintiffs on Count I [sic], what if any damages do you find for each Plaintiff:" Below this, the jury wrote "23,000" twice—for both Zachary Wentz and Steven Wentz.

When the court hearkened the entire jury, however, it formulated the verdict correctly, asking: "And for the second do you find, on Count II for the amended complaint, unjust enrichment for the plaintiffs; Zachary Wentz, $23,000 and Steven Wentz, $23,000, as well." To this, the jurors responded, "I do." At oral argument, both parties agreed that this final hearkening takes priority.

Motion for New Trial and Judgment Notwithstanding the Verdict

On July 3, 2023, Edward filed two motions: a motion for new trial and a motion for judgment notwithstanding the verdict (JNOV). [8] In these motions, Edward raised for the first time the issue of inconsistent verdicts.

On September 27, 2023, the circuit court held a hearing on Edward's motions. Edward's counsel argued that the two verdicts for breach of contract and unjust enrichment were inconsistent, and that the evidence was insufficient to find breach of contract. The Wentzes' counsel argued that the evidence was sufficient, and that the verdicts were not inconsistent. After the parties concluded their arguments, the court thanked them and stated that it would render a decision on both motions by that afternoon. Later that day, the court issued two one-page orders denying Edward's motions. Edward timely noted his appeal to this Court.

DISCUSSION

I.

Sufficiency of the Evidence

A. Parties' Contentions

Edward argues there was insufficient evidence to support the jury's finding on Count I that he breached any third-party beneficiary contract. Edward argues that there is

[8] These motions were filed within the period prescribed by Maryland Rules 2-532(b) and 2-533(a) because the tenth day after the verdict, July 2, 2023, was a Sunday, and so the period ran to the end of the following day. *See* Md. Rule 1-203(a).

no evidence in the record to establish any definite terms of the alleged oral agreement, and asserts that "the evidence in this case, circumstantial or not, falls way short of establishing the requisite contractual elements to sustain the existence of a contract." Specifically, Edward argues that there is no "evidence by which a reasonable factfinder could conclude that any alleged contract was supported by consideration." "At best," he argues, the evidence shows he "agreed to make gifts on behalf of the Decedent as she requested him to do[,]" which "does not give rise to the formation of a contract."

The Wentzes' brief on appeal is almost entirely focused on the inconsistent verdict issue. However, the Wentzes do quote the argument of trial counsel below, which pointed to two cases holding that circumstantial evidence was sufficient to find the existence of an oral contract and create a third-party beneficiary claim. The Wentzes argue that there is sufficient evidence to find that a contract existed between Edward and Ms. Larson, especially given Edward's alleged spoliation of evidence related to the $240,000 life insurance policy.

B. Standard of Review

"We review the sufficiency of the evidence *de novo*," considering the evidence in the light most favorable to the prevailing party at trial. *White v. Kennedy Krieger Inst., Inc.*, 221 Md. App. 601, 645 (2015); *see B-Line Med., LLC v. Interactive Digital Sols., Inc.*, 209 Md. App. 22, 44 (2012). "In a jury trial, the quantum of legally sufficient evidence needed to create a jury question is slight." *B-Line Med., LLC*, 209 Md. App. at 45 (quoting *Univ. of Md. Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 (2012)). "Evidence is

legally sufficient if 'reasonable jurors, applying the appropriate standard of proof, could find in favor of the plaintiff on the claims presented.'" *White*, 221 Md. App. at 645 (quoting *Hoffman v. Stamper*, 385 Md. 1, 16 (2005)). The appropriate standard of proof "in a civil action . . . is the 'preponderance of the evidence' standard."[9] *Mathis v. Hargrove*, 166 Md. App. 286, 310 n.5 (2005). "To prove by a preponderance of the evidence means to prove that something is more likely so than not so." *Id.* (quoting *Coleman v. Anne Arundel Cnty. Police Dept.*, 369 Md. 108, 127 n.16 (2002)).

C. Breach of Third-Party Beneficiary Contract

Legal Framework

"A contract is defined as a promise or set of promises for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty." *Maslow v. Vanguri*, 168 Md. App. 298, 321 (2006) (internal quotation marks and citations omitted). "A contract may be oral or written." *Id.* "To be binding and enforceable, contracts ordinarily require consideration." *Cheek v. United Healthcare of Mid-Atl., Inc.*, 378 Md. 139, 147 (2003). "In Maryland, consideration may be established by showing 'a benefit to the promisor or a detriment to the promisee.'" *Id.* at 148 (quoting *Harford Cnty. v. Town of Bel Air*, 348 Md. 363, 382 (1998)). An intended third-party beneficiary of a

[9] Heightened standards of proof, such as the "clear and convincing evidence" standard required to prevail on a claim for fraud, *see White*, 221 Md. App. at 635, are not applicable here.

contract may bring a suit to enforce the contract. *CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 457 (2012).

Analysis

Considering that "[i]n a jury trial, the quantum of legally sufficient evidence needed to create a jury question is slight[,]" *Gholston*, 203 Md. App. at 329, a reasonable jury could have found the elements of breach of contract met below. This case is similar to *Parlette v. Parlette*, 88 Md. App. 628 (1991), in which a mother claimed the existence of an agreement between her deceased son and his father to pay the son's life insurance proceeds to her. *See id.* at 632-33. In that case, the evidence showed that (1) the son bought the policy from the father's insurance company; (2) the son instructed the father to make the mother the beneficiary; (3) the father filled out the life insurance policy and gave it to the son to sign; and (4) the son was much closer to the mother than the father. *See id.* at 633-34. Further, there was no evidence that the son ever personally read the completed policy. *Id.* at 633. On those facts, this Court held that there was sufficient evidence of breach of contract to take the case to a jury. *Id.* at 640.

In the instant case, there was evidence adduced at trial that, if believed by the jury, would establish: (1) Edward received a benefit from Ms. Larson in the form of the $240,000 insurance policy, he was named personal representative of her estate, and he received an extra bequest in the Will to his son Grant; (2) Ms. Larson desired for some of her life insurance proceeds to be paid out to the Wentzes; (3) Edward encouraged Ms. Larson to change the beneficiary of the life insurance policies to himself; and (4) Ms. Larson had a

closer relationship to the Wentzes than Edward and his sons. Further, there is no direct evidence that Ms. Larson reviewed the Will or life insurance policy herself; even Edward did not testify to this fact. Although there is no testimony to the specific terms of any contract between Edward and Ms. Larson, the evidence supports a reasonable inference that such a contract existed. Thus, there was sufficient evidence to support a verdict on the breach of third-party beneficiary contract claim.

D. Unjust Enrichment

Legal Framework

"The doctrine of unjust enrichment is applicable where the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money, and gives rise to the policy of restitution as a remedy." *Bank of Am. Corp. v. Gibbons*, 173 Md. App. 261, 267 (2007) (internal citations and quotations omitted). In general, unjust enrichment consists of three elements:

1. A benefit conferred upon the defendant by the plaintiff;
2. An appreciation or knowledge by the defendant of the benefit; and
3. The acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value.

Hill v. Cross Country Settlements, LLC, 402 Md. 281, 295 (2007) (quoting *Berry & Gould, P.A. v. Berry*, 360 Md. 142, 151-52 (2000)).

It is not necessary that a benefit conferred in an unjust enrichment action come directly to the defendant from the plaintiff's own resources. *Id.* at 298; *see also Plitt v.*

Greenberg, 242 Md. 359, 364 (1966) ("It is immaterial how the money may have come into the defendant's hands, and the fact that it was received from a third person will not affect his liability, if, in equity and good conscience, he is not entitled to hold it against the true owner." (quoting *Empire Oil Co. v. Lynch*, 126 S.E.2d 478, 479 (Ga. Ct. App. 1963))). For example, in *Alternatives Unlimited, Inc. v. New Baltimore City Board of School Commissioners*, 155 Md. App. 415, 431-32 (2004), an alternative education provider was awarded a contract to run a "dropout prevention program" at a Baltimore City high school for the remainder of the 1999-2000 school year. The following year, the provider implemented another dropout prevention program despite having no formal contract with the Baltimore City Board of School Commissioners (the "Board"). *Id.* at 432. According to the provider, the Baltimore City School System received $284,750 from the State of Maryland because of the provider's dropout prevention program. *Id.* at 436. However, the Board refused to pay the provider for the second year of the program. *Id.* at 433.

The provider sued the Board on a variety of legal theories, including unjust enrichment. *Id.* at 422-23. The provider's case was complicated by the Supreme Court of Maryland's decision in *Gontrum v. City of Baltimore*, 182 Md. 370 (1943), the "overarching principle" of which "is that a governmental entity, unlike a private corporation, may never have an obligation imposed upon it to expend public funds except in the formal manner expressly provided by law." *Alternatives Unlimited*, 155 Md. App. at 425. Based on the authority of *Gontrum*, the circuit court granted summary judgment in favor of the Board on the provider's claim for unjust enrichment. *Id.* at 424. On appeal,

we noted that the provider had two possible theories regarding the nature of the benefit conferred on the Board: the "non-cash benefit" of its professional services, or the "cash benefit" of "the monetary payments forwarded by the State to the Board as opposed to a direct cash benefit." *Id.* at 506. We held that if the benefit conferred on the Board was a cash benefit, then the provider's unjust enrichment claim would not be barred. *See id.*

We explained that the provider may be able to meet the first element of unjust enrichment, "[a] benefit conferred upon the defendant by the plaintiff[,]" as follows:

> With respect to the first element, it well may be that Alternatives will be able to prove that the State, because of Alternatives's Drop-Back-In program, provided to the Board a certain amount of funding to which the Board would not otherwise have been entitled. . . . If, when all the figuring is completed . . . the Board was, indeed, enriched by monies it would not otherwise have received, there would seem to have been proved "a benefit conferred upon" the Board by Alternatives, the first element of an unjust enrichment claim.

Id. at 497. Finding that the provider could meet all three elements of unjust enrichment, we reversed the circuit court's grant of summary judgment as to that claim.[10] *Id.* at 497, 506, 511-12.

Analysis

A reasonable jury could also find that the Wentzes proved all three elements of unjust enrichment. As noted above, those elements are:

1. A benefit conferred upon the defendant by the plaintiff;

[10] We noted, however, that the provider would "be restricted to proving benefits conferred before it was expressly directed on February 26, 2001, to terminate all operations." *Alternatives Unlimited*, 155 Md. App. at 499.

2. An appreciation or knowledge by the defendant of the benefit; and

3. The acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value.

Hill, 402 Md. at 295 (quoting *Berry*, 360 Md. at 151-52). The second and third elements of unjust enrichment are clearly satisfied. With regard to the second element, the evidence shows that Edward understood he was receiving a benefit in the form of life insurance proceeds in the combined amount of $377,400, and that the total value of the estate was less than $50,000, qualifying it as a "small estate." Facts alleged during trial that support the third factor include: (1) Edward was well aware that the Will bequeathed Steven, Zachary, Grant and Garrison $28,000 each because Edward was the personal representative and was in the room when the Will was executed; (2) Edward did not inform his sister about the $240,000 life insurance policy (nor did he produce a copy of it at trial), but the entire amount of that policy was transferred to his bank account; (3) Edward did not inform his sister of the change in beneficiary to the $150,000 policy, and the entire amount of $137,00 remaining on that policy was transferred to his bank account; and, (4) Edward transferred at least $27,400 to his son, Grant, after receiving the life insurance distributions.

The first element of unjust enrichment is less obvious—here, the benefit of the life insurance policies was directly conferred on Edward by Ms. Larson under those policies, not by the Wentzes. However, "the fact that [money] was received from a third person will not affect [the defendant's] liability, if, in equity and good conscience, he is not entitled to hold it against the true owner." *Plitt*, 242 Md. at 364 (quoting *Empire Oil*, 126 S.E.2d

at 479). The Wentzes' theory of unjust enrichment is that the Wentzes indirectly conferred a benefit on Edward, because Ms. Larson directed that they were each entitled to $28,000 of the life insurance proceeds that Edward wrongfully retained.

This case is analogous to *Alternatives Unlimited*, in which the provider could proceed on a claim of unjust enrichment based on the theory that the provider indirectly conferred a benefit on the Board in the form of funding given to the Board by the State.[11] *See* 155 Md. App. at 497. The provider alleged that it was entitled to a portion of the State funding because the Board would not have received those funds without the provider's program. *See id.* Here, the Wentzes adduced sufficient evidence at trial to show that they indirectly conferred a benefit on Edward in the amount of $56,000 in life insurance proceeds that Edward retained. Evidence at trial showed that Ms. Larson promised a portion of her life insurance proceeds to the Wentzes. Both brothers maintained a strong relationship with Ms. Larson, and Edward acted wrongfully by failing to give them the $28,000 promised to them, as reflected in the Will. Under these facts, a reasonable jury could find that the Wentzes met the first element of unjust enrichment because they indirectly conferred a benefit upon Edward in the form of the life insurance proceeds that Edward failed to distribute to them.

[11] Although it might be argued that the provider directly conferred a benefit on the Board in the form of the dropout prevention program, this Court specifically held that *Gontrum* would bar recovery for the conferral of such a "non-cash" benefit. *See Alternatives Unlimited*, 155 Md. App. at 504-05. Therefore, the relevant benefit in *Alternatives Unlimited* was the cash benefit allegedly conferred on the Board by the State.

II.

Inconsistent Verdicts

A. Parties' Contentions

Edward argues, "It is well-settled that an unjust enrichment claim cannot lie where there is an express contract between the parties concerning the subject matter upon which the unjust enrichment claim rests." He contends that parties in Maryland are not precluded from raising the issue of inconsistent verdicts post-judgment because "irreconcilably defective verdicts cannot stand." Edward argues that he preserved the inconsistent verdict argument in his motion for JNOV because when he moved for judgment at the close of the evidence during trial, the jury had not rendered a verdict and the issue of inconsistent jury verdicts could not have been raised at that time.

To the contrary, the Wentzes insist that there was a logical basis for the jury's double verdict. They contend that there could be a contract to pay them $5,000 each, and an unjust enrichment claim to make up the remaining $23,000. Second, the Wentzes argue that Edward's inconsistent verdict argument was not preserved because Edward failed to object before the circuit court discharged the jury. The Wentzes also take issue with Edward's reliance on *Southern Management Corp. v. Taha*, 378 Md. 461 (2003), which dealt with a verdict that found an employee non-liable but the employer liable through respondeat superior. The Wentzes point to this Court's decision in *AXE Properties & Management, LLC v. Merriman*, 261 Md. App. 1 (2024), in which we held that a party must raise an inconsistent verdict argument in a motion for judgment at the close of the evidence to later

make that same argument in a motion for JNOV. The Wentzes argue that Edward made no such argument at the close of the evidence, and his inconsistent verdict argument is therefore unpreserved.

B. Standard of Review

"Where a case involves the application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are legally correct under a *de novo* standard of review." *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 338 (2017) (internal quotations and citations omitted); *see also Plank v. Cherneski*, 469 Md. 548, 559 (2020). "The standard of review of a court's denial of a motion for JNOV is . . . whether on the evidence presented a reasonable fact-finder could find the elements of the cause of action by a preponderance of the evidence." *B-Line Med., LLC v. Interactive Digital Sols., Inc.*, 209 Md. App. 22, 45 (2012). "The standard of review of the denial of a motion for new trial is abuse of discretion." *Id.*

C. Legal Framework

Preservation

Maryland Rule 2-532(a) states that "[i]n a jury trial, a party may move for judgment notwithstanding the verdict only if that party made a motion for judgment at the close of all the evidence and only on the grounds advanced in support of the earlier motion." In *AXE Properties & Management, LLC v. Merriman*, 261 Md. App. 1 (2024), this Court addressed the irregularity of challenging an inconsistent verdict through a motion for JNOV. In that case, we observed that

> normally, a motion for JNOV would not be the proper motion to file after the entry of inconsistent breach of contract and unjust enrichment judgments, given that the motion may only be made upon the grounds advanced in support of the earlier motion for judgment, and under the doctrine of election of remedies, plaintiffs are generally not required to 'elect' which of two inconsistent or alternative remedies they will recover under until after the jury returns its verdict(s).

Id. at 30 (emphasis removed).[12] We stated that "the better practice would have been to file motions to alter or amend and to revise under Rules 2-534 and 2-535," as these motions would not have required the issue to have been raised in an earlier motion for judgment. *Id.* at 25.

We further noted, however, that a motion for JNOV is "sufficient to invoke the revisory power of the court under Maryland Rule 2-535." *Id.* at 31 (citing *Taha*, 378 Md. 461); *Allstate Ins. Co. v. Miller*, 315 Md. 182 (1989)). Under Maryland Rule 2-535(a), "[o]n motion of any party filed within 30 days after entry of judgment, the court may

[12] In *Axe Properties,* the appellant had briefly raised the issue of incompatibility in its motion for judgment at the close of the plaintiff's evidence presented at trial, arguing:

> "[W]ith regard to re[scission] and unjust enrichment rescission and alternative remedy, plaintiff is obviously now seeking for money damages rather than rescission. So, you know, unfortunately I don't think they could have both. You know, one is, 'we're seeking damages.' That's—on top of that, 'we're seeking re[s]cission with respect to unjust enrichment[.]' There is a written contract. So unjust enrichment is improper."

261 Md. App. at 26 (alterations in original). The appellant then "renew[ed]" its earlier motion for judgment at the close of all the evidence. *Id.* In that situation, we held that the appellant had preserved the issue of inconsistent verdicts "by advancing it in the motion for judgment at the close of the evidence and the post-trial motions for JNOV." *Id.* at 31.

exercise revisory power and control over the judgment[.]"[13] A court's revisory power includes the power to correct a judgment when the plaintiff doubly recovered under inconsistent verdicts. *See AXE Props.*, 261 Md. App. at 31-32, 41. A court abuses its discretion if it allows an irreconcilably inconsistent jury verdict to stand. *Taha*, 378 Md. at 495.

Inconsistent Verdicts

"It is settled law in Maryland, and elsewhere, that a claim for unjust enrichment may not be brought where the subject matter of the claim is covered by an express contract between the parties." *Cnty. Comm'rs of Caroline Cnty. v. J. Roland Dashiell & Sons, Inc.*, 358 Md. 83, 96 (2000) (quoting *FLF, Inc. v. World Publ'ns, Inc.*, 999 F. Supp. 640, 642 (1998)). Both written and oral contracts are considered "express contracts." *Dolan v. McQuaid*, 215 Md. App. 24, 35 (2013). Unjust enrichment is incompatible with an express contract because "[w]hen parties enter into a contract they assume certain risks with an expectation of a return." *Dashiell*, 358 Md. at 83 (quoting *Mass Transit Admin. v. Granite Constr. Co.*, 57 Md. App. 766, 776 (1984)). Parties thus cannot turn to unjust enrichment for recovery when they have no remedy under an existing contract. *Id.* "[W]hile a plaintiff may allege causes of action for breach of contract and unjust enrichment concurrently 'when there is evidence of fraud or bad faith,' a plaintiff may not ultimately recover under both for any claim covered under the contract." *AXE Props.*, 261 Md. App. at 41 (quoting

[13] After 30 days, a court may only exercise revisory power in cases of fraud, mistake, or irregularity. Md. Rule 2-535; *see Facey v. Facey*, 249 Md. App. 584, 611 (2021).

Dashiell, 358 Md. at 100) (emphasis removed). When two inconsistent verdicts are entered, the plaintiff must make an election of remedies prior to the entry of judgment. *See Hauswald Bakery v. Pantry Pride Enterprises, Inc.*, 78 Md. App. 495, 506 (1989); 25 Am. Jur. 2d *Election of Remedies* § 13, Westlaw (database updated October 2024).

D. Analysis

Preservation

Edward's inconsistent verdict argument was not properly preserved in his motion for JNOV. At no point in Edward's motion for judgment at the close of evidence did counsel mention a potential incompatibility between a verdict for breach of third-party beneficiary contract and a verdict for unjust enrichment. Although the parties did discuss a potential conflict with the jury's verdict, this was only in relation to the first two counts and count III, constructive trust. However, Edward's motion for JNOV was sufficient to invoke the court's revisory power under Maryland Rule 2-535. *See AXE Props.*, 261 Md. App. at 31. Therefore, despite Edward's failure to properly raise the issue, the circuit court had the power to address the allegedly inconsistent verdicts and order an election of remedies. *See id.*

Inconsistent Verdicts

We hold that the two verdicts are inconsistent, and that the trial court erred in not ordering an election of remedies. The Wentzes' principal theory of this case was that there was an oral contract between Edward and Ms. Larson, and that the Wentzes were third-party beneficiaries of this contract. Under this theory, the verdicts for breach of contract

and unjust enrichment are clearly incompatible. If the jury found that Edward had a contract with Ms. Larson to give $5,000 to each of the Wentzes, then the Wentzes cannot go beyond the terms of the contract to claw money from Edward beyond the agreed amount. *See Dashiell*, 358 Md. at 101.

The Wentzes advance the following argument to reconcile these seemingly inconsistent jury verdicts:

> The Appellees Zachary and Steven Wentz, were owed and promised exactly $28,000 from their grandmother, which third-party benefit was improperly interfered with by their uncle, [Edward], who refused to abide by his mother's instructions, both written and verbal. This includes the *separate* $5000 that for all intents and purposes, was conceded by Appellants. This was therefore reasonably and logically, put by the jury, into the given "box" of Contractual Breach. No such box existed for the remainder, and so the jury again did what was sound, which is to review the Instructions on Unjust Enrichment, arising out of the greater "quasi-contractual" damages, as illustrated in the Will, and concluded it matched.

The Wentzes appear to be arguing that there was a separate contract between Edward and the Wentzes to give them each $5,000, created when the checks were sent, and that this accounts for the breach of contract verdict—separate and apart from their claim of unjust enrichment.

The problem with this theory is that there was no evidence presented at trial of any consideration given by the Wentzes to Edward in exchange for the $5,000 checks. The Wentzes presented evidence of consideration that could support a contract between Edward and Ms. Larson to give them each $28,000, including the $240,000 life insurance policy, being named personal representative of her estate, and increasing Grant's cash bequest in the Will. But there is no evidence that could lead a reasonable jury to conclude that there

was a valid contract between Edward and the Wentzes that would give rise to an independent obligation on the part of Edward to pay the Wentzes each $5,000. In the absence of such a contract, Edward sending the Wentzes checks for $5,000 each would be merely a gratuitous promise.

There is no reasonable interpretation of the evidence that would support a finding that Edward breached two contracts worth $5,000, and separately owed the Wentzes $23,000 each based on unjust enrichment.[14] These verdicts were irreconcilably inconsistent, and the circuit court erred as a matter of law in permitting them to stand. *See* Taha, 378 Md. at 495. Where the jury has returned these two inconsistent verdicts, the Wentzes must make an election of remedies. *See AXE Props.*, 261 Md. App. at 30 n.15. Confronted with Edward's post-trial motions, the circuit court erred in not invoking its revisory power to order an election of remedies. On remand, the Wentzes much choose whether to recover under Count I, Breach of Third-Party Beneficiary Contract, or Count II, Unjust Enrichment.

Therefore, we vacate the judgment of the Circuit Court for Frederik County granting Steven and Zachary Wentz damages for both breach of contract and unjust enrichment, and remand to the circuit court for an election of remedies between those claims. Following

[14] The dissenting opinion states that the jury intended the "Wentzes to each recover the full $28,000 from their grandmother." The law permitted the jury to award each of the Wentzes up to $28,000 in unjust enrichment damages, **or,** up to $28,000 in contract damages. Maryland law did not countenance rendering separate verdicts for both breach of contract and unjust enrichment in amounts that added up to $28,000.

the election, the circuit court should enter judgment against Edward A. Gazvoda only in the amount awarded by the jury for the elected claim.

JUDGMENT OF THE CIRCUIT COURT FOR FREDERICK COUNTY VACATED; CASE REMANDED TO THE CIRCUIT COURT FOR FREDERICK COUNTY TO CONDUCT FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

Circuit Court for Frederick County
Case No. C-10-CV-19-000517

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1653

September Term, 2023

EDWARD GAZVODA, JR.,

v.

ZACHARY WENTZ, ET AL.

Leahy,
Friedman,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Concurrence in Part, Dissent in Part
by Friedman, J.

Filed: July 23, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to MD. RULE 1-104(a)(2)(B).

While I wish I could join my colleagues' excellent opinion in full, I respectfully concur in part and dissent in part. I agree fully with Section I of the majority opinion and with Section II on the issue of preservation. I disagree, however, with their ultimate holding in Section II that the circuit court erred by not using its revisory powers and ordering an election of remedies.

I think it sufficiently clear from the record that the jury's intent was for the Wentzes to each recover the full $28,000 from their grandmother. All of the evidence was about $28,000. That the verdict was split into $5,000 and $23,000 was the result of the legal mumbo jumbo presented to the jury, which was not adequately explained by the instructions given. The jury even told this to the court when it sent a note saying "[w]e are confused on the part that says quote, conferred on the defendant by the plaintiff." Had the monetary split of the verdict not aligned perfectly with the evidence presented at trial, I would join fully with the majority. Here, however, I would hold that the circuit court did not err in entering the verdicts and did not abuse its discretionary authority to use—or in this case—not use, its revisory power, because the verdicts reflected the "intent of the jury … beyond doubt[,]" and were not "irreconcilably inconsistent." *Turner v. Hastings*, 432 Md. 499, 512, 518 (2013) (holding that a trial judge may revise a jury verdict when the intent of the jury is "manifest and beyond doubt[,]" and that as long as the revised verdict is not "irreconcilably inconsistent … [it] could stand under the rule in *Taha*."). The intent of this jury was self-evident that the Wentzes receive the full amount of $28,000 each bequeathed by their grandmother, not either $5,000 or $23,000.