Circuit Court for Prince George's County
Case No.: CAL16-27752

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1730

September Term, 2017

JEAN GREENE

v.

RONALD MATTOX, ET AL.

Fader, C. J.,
Nazarian,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: February 21, 2019

On July 5, 2016, Ronald Mattox and William B. Mattox, as guardians of the person and property of Wanda E. Mattox and Ronald Mattox, individually, filed a complaint in the Circuit Court for Prince George's County against Jean Greene. The complaint contained seven counts that were captioned as follows: Count I – Fraud; Count II – Constructive Fraud; Count III – Constructive Trust; Count IV – Resulting Trust; Count V – Declaratory Judgment; Count VI – Unjust Enrichment; Count VII – Negligence – Breach of Fiduciary Duty.

The trial judge allowed four of the counts to be considered by a jury. The jury found in favor of Ms. Greene in regard to Count I - Fraud; Count II - Constructive Fraud; and Count VII – Negligence-Breach of Fiduciary Duty. As to Count VI, however, alleging unjust enrichment, the jury found in favor of the plaintiffs and awarded damages in the amount of One Hundred Thirty-One Thousand Eight Hundred Fifty-One dollars and Twenty-Four cents ($131,851.24) plus Fifteen Thousand Eight Hundred Twenty-Two dollars and Fifteen cents ($15,822.15) in interest. The trial judge entered judgment in favor of plaintiffs on the unjust enrichment count and, with approval of all counsel, dismissed the declaratory judgment count as well as the three counts in which the jury ruled in favor of Ms. Greene. No post-trial motions were filed and, within thirty-days of the entry of judgment, Ms. Greene filed this appeal in which she raises two questions, which we have rephrased:[1]

[1] As phrased by appellant, the questions presented were "[d]id the trial court err in finding (continued . . .)

1) In regard to the unjust enrichment count, did the trial court err in denying appellant's motion for judgment that was made at the conclusion of the case?

2) Did the testimony of Ronald Mattox regarding statements by the late Mary Ella Mattox violate the Dead Man's statute as set forth in Md. Code (2013 Repl. Vol.), Courts and Judicial Proceedings Article, § 9-116?

For the reasons set forth below, we shall hold that the first question was not preserved for appellate review. As to the second question, we shall hold that the objected to testimony by Ronald Mattox did not violate the Dead Man's statute.

I.

BACKGROUND FACTS[2]

Mary Ella Mattox ("Mary Ella"), who died on August 15, 2015, was the step-mother of the appellees, Wanda Mattox ("Wanda"), Ronald Mattox ("Ronald") and William Mattox ("William"). Wanda suffers from an intellectual disability, which is the reason that her brothers, Ronald and William, now serve as her guardians.

Until 2011, Mary Ella and Wanda lived together and had a very close personal relationship. Mary Ella, along with Ronald, served as co-guardians of the person and property of Wanda until 2011. After 2011, William and Ronald served as co-guardians of Wanda.

(. . . continued)

that [a]ppellant was unjustly enriched?" And, "[d]id the trial court err in admitting testimony from [a]ppellee Ronald Mattox regarding statements made by a deceased person?"

[2] The facts set forth in this opinion are presented in the light most favorable to the appellees. *See* Md. Rule 2-519(b).

In 2008, Mary Ella held bank accounts at SunTrust Bank and Navy Federal Credit Union. Several of the SunTrust accounts were titled in the joint names of Wanda, Mary Ella and Ronald, with Wanda being the first person named in the account titles. The reason the accounts were titled in this manner, according to Ronald's testimony, was that Mary Ella intended that upon her death monies in the account would be used for Wanda's benefit. In one of those SunTrust accounts titled in the names of Wanda, Mary Ella and Ronald, a portion of the money belonged to Wanda. That money came from monthly checks sent by the federal government to Wanda and represented Wanda's share of her late father's military retirement annuity.

By 2011 Mary Ella suffered from significant mental disabilities and began living with appellant, who was Mary Ella's sister. On December 5, 2011, appellant took Mary Ella to SunTrust Bank where Mary Ella made changes to the titling of several bank accounts so as to exclude Ronald and Wanda as title holders. One of those SunTrust accounts had money in it that belonged to Wanda.

Less than a week after the changes to the SunTrust accounts were made, Mary Ella was seen by a doctor who determined that, as of December 16, 2011, she lacked the capacity to care for her person or property.

On February 1, 2012, appellant, with her sister, Mattie Cromwell, filed in the Circuit Court for Prince George's County, a petition for guardianship of the person and property of Mary Ella. The petitioners attached to that filing the December 16, 2011 report by the physician who determined that, as of the date of the report, Mary Ella lacked mental

capacity to care for her person or property. The petition was also supported by a report prepared by a second doctor, who examined Mary Ella on January 12, 2012. That doctor concluded that Mary Ella "suffers from late stage dementia of the Alzheimer's type and must be considered incompetent to recognize her personal needs and financial situation." The petition for guardianship was later amended. In the amended petition, appellant and Mattie Cromwell stated, under oath, that since August 2011, they had observed significant memory loss on the part of Mary Ella together with an inability on Mary Ella's part to perform basic daily activities without assistance. The amended petition asserted that as of March 2012, Mary Ella was "unable to give a reliable response" as to whether she adopted Ronald, Wanda or William or their sister, Theresa.

In April 2012, Alisa Chernack, Esquire was appointed to represent Mary Ella in the guardianship case. On May 22, 2012, Ms. Chernack had an attorney from her office meet with Mary Ella at appellant's home. The attorney reported that Mary Ella was unaware that appellant was seeking guardianship of her, that Mary Ella's memory was significantly impaired, that she could not recall her deceased husband's full name or the full name of her stepchildren, that she did not know what day of the week it was and did not know her date of birth or social security number or the source of her income or the whereabouts of her assets.

The Circuit Court for Prince George's County, after a hearing, determined Mary Ella to be an adult disabled person. Appellant was named guardian of the person and

property of Mary Ella.[3] After that appointment, appellant turned her attention to two life insurance policies owned by Mary Ella. The policies were issued by Transamerica Insurance Company and American General Life Insurance Company. The two policies, combined, had a death benefit of $58,825.52. While she was Mary Ella's guardian, appellant obtained from the life insurance companies the forms needed to change the name of the beneficiaries. She then typed up the form, changing the beneficiaries in each policy from Ronald Mattox to Damien Greene (hereinafter "Damien"). In her testimony, appellant admitted that it was her idea to change the beneficiaries of the two policies. Nevertheless, knowing that Mary Ella was incompetent to do so, appellant had Mary Ella sign the two insurance forms. When Mary Ella died, Damien, appellant's 42-year-old son who lived with appellant, received the death benefits due under the policies.

Prior to Mary Ella's death, but while Mary Ella was incompetent, all the accounts that had previously been in the name of Wanda, Ronald and Mary Ella were converted to accounts in the joint name of appellant and Mary Ella, with one exception. One of the SunTrust accounts was properly titled in appellant's name as guardian of Mary Ella. Appellant took advantage of the "mistake" in the way the other accounts were titled and, when Mary Ella died, appellant kept the entire proceeds of all the checking and savings

[3] The court did not name Mattie Cromwell as a co-guardian of Mary Ella.

accounts that were titled in the joint names of Mary Ella and appellant. Those proceeds totaled slightly over $73,000.[4]

Additional facts will be set forth in order to answer the questions presented.

II.

A. First Question Presented

In this appeal, appellant contends that the trial judge, at the end of the evidentiary phase of the case, erred when he denied the motion for judgment her counsel made in regard to the unjust enrichment count. Recently, in *Chassels v. Krepps*, 235 Md. App 1, 18 (2017), citing *Mohiuddin v. Doctors Billing & Mgmt. Solutions, Inc. et al.*, 196 Md. App. 439, 449 (2010) we said that: "[u]njust enrichment occurs when the plaintiff confers a benefit on the defendant, the benefit is known to the defendant, and retention of that benefit by the defendant under those circumstances in inequitable."

Md. Rule 2-519, provides:

> (a) **Generally**. A party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party, and in a jury trial at the close of all the evidence. The moving party shall state with particularity all reasons why the motion should be granted. No objection to the motion for judgment shall be necessary. A party does not waive the right to make the motion by introducing evidence during the presentation of an opposing party's case.
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> (b) **Disposition**. When a defendant moves for judgment at the close of the evidence offered by the plaintiff in an action tried by the court, the court may proceed, as the trier of fact, to determine the facts and to render judgment against the plaintiff or may decline to render judgment until the close of all

[4] Prior to awarding prejudgment interest, the jury calculated damages by adding the amount of the life insurance proceeds ($58,825.52) and the money received from the checking and savings accounts.

> the evidence. When a motion for judgment is made under any other circumstances, the court shall consider all evidence and inferences in the light most favorable to the party against whom the motion is made.
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> (c) **Effect of denial.** A party who moves for judgment at the close of the evidence offered by an opposing party may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. In so doing, the party withdraws the motion.
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> (d) **Reservation of decision in jury cases**. In a jury trial, if a motion for judgment is made at the close of all the evidence, the court may submit the case to the jury and reserve its decision on the motion until after the verdict or discharge of the jury. For the purpose of appeal, the reservation constitutes a denial of the motion unless a judgment notwithstanding the verdict has been entered.

(Emphasis added.)

At the conclusion of appellees' case in chief, counsel for appellant made a motion for judgment.[5] In that motion, appellant's counsel discussed, very briefly, whether the appellees had conferred any benefit upon appellant. Counsel initially argued that the appellees had conferred no benefit upon appellant; he then admitted that, with respect to Wanda, "perhaps there is a [unjust enrichment] claim as high as $2,300[.]"[6]

[5] At trial, appellant's counsel, not the attorney who represents appellant on appeal, called the motion one for "summary judgment" but all parties in this appeal agree that this was merely a "slip of the tongue" and that counsel meant to say that he was making a motion for judgment.

[6] As mentioned, Ronald testified on direct-examination that one of the SunTrust accounts that was in his name and in the name of Wanda and Mary Ella, had funds in it that belonged to Wanda because they represented monies received by Wanda from the federal government. There was no evidence as to exactly what dollar amount in the account belonged to Wanda, except on cross-examination, counsel for appellant asked Ronald whether, prior to Mary Ella's death, he (Ronald) had asked counsel for appellant to return

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The trial judge "declined" to grant appellant's motion as to any count. Appellant then put on evidence, which had the effect of withdrawing the motion. *See* Md. Rule 2-519(c).

At the end of the evidentiary phase of the case, counsel for appellees made a motion for judgment. Counsel for appellant responded by making a motion to dismiss, which we shall treat as a motion for judgment. In support of appellant's motion, counsel for appellant presented argument in regard to why judgment should be granted in favor of appellant as to several counts. In regard to evidence presented by appellees that concerned changes to the name of the beneficiary on the two life insurance policies, counsel admitted that it was appellant's intent and not that of Mary Ella, to change the beneficiary. But, according to appellant's counsel, his client, as guardian, had the right to "ratify" the written choice of Mary Ella to change the beneficiary. Evidently sensing that the last mentioned argument might not be persuasive, counsel went on to say, in regard to the life insurance issue, that appellees were not entitled to a declaratory judgment because they had failed to add Damien as a defendant. Counsel also argued that the change of beneficiary in the life insurance policies was legitimate because it was done "in the best interest of Mary Ella Mattox." That argument was based upon appellant's testimony that she changed the name of the beneficiary for two reasons. First, because she had come to the conclusion that

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$2,300 from the account, because the monies belonged to Wanda. Ronald admitted that he had made a demand but couldn't remember what amount he had asked to be returned. In any event, according to Ronald, no monies were returned as a result of that demand.

Ronald had stolen "an awful lot of money" from Mary Ella and that as a result, Mary Ella would not have wanted any more money to go to Ronald.[7] Appellant's second reason was that the change was made because, in the event no money was left in Mary Ella's estate at the time of her death, appellant thought that her son, Damien, would use the insurance money "to do things like pay for funeral and other expenses." Therefore, according to appellant's counsel, there was "certainly enough [evidence presented] to create a jury issue" in regard to appellees' entitlement to monies from the policies. Additionally, in regard to the insurance beneficiary issue, counsel argued that "just because somebody has been judged incompetent doesn't mean that they don't have testamentary capacity" and doesn't mean that appellant was unable to "talk to her sister, try to ascertain what she would like, which is what she [appellant] testified that she did." Next, after acknowledging that his client and Mary Ella had a confidential relationship, appellant's counsel then segued to a discussion of what effect that relationship had on the declaratory judgment count. Counsel maintained it had no bearing on that, or any other count, because appellees had failed to plead such a relationship. Counsel then reiterated that in regard to the declaratory judgment count, judgment could not be granted in favor of appellees because Damien was a missing party.

In regard to the fraud and constructive fraud counts, counsel argued that appellant was entitled to judgment in her favor because appellees had failed to show either a misrepresentation by appellant to them or reliance by appellees upon any representation.

[7] At trial, appellant presented no evidence that Ronald had stolen money from anyone.

Counsel for appellant then pointed out, accurately, that the appellees had failed to show that there was a confidential relationship between appellant and them.

Counsel next argued that because appellant was allowed under Maryland law to cash in the insurance policies and put the proceeds in a bank account for Mary Ella's benefit, she should also be allowed to change beneficiaries. At that point the trial judge voiced the opinion that no statute allowed her to change beneficiaries. Appellant's counsel disagreed saying that a fair reading of the statute (he didn't say which one) showed that appellant had no duty to protect "any kind of beneficiary interest that they (appellees) might have."

Lastly, counsel for appellant turned his attention to Count VII, the count captioned "negligence - breach of fiduciary duty." In regard to that count, counsel argued that there was no evidence that appellant "had any kind of duty to the [appellees]." He added that there was no negligence because all of appellant's acts were purposeful.

Counsel for appellant concluded his argument by asking that judgments be entered in appellant's favor as to all counts. The trial judge reserved on both motions for judgment. The court's reservation of its decision as to appellant's motion for judgment, had the effect of a denial of it, because a judgment notwithstanding verdict was not entered prior to the date that appellant filed her appeal. *See* Md. Rule 2-519(d).

As can be seen, appellant's motion for judgment set forth no reason why judgment should be entered in her favor as to the unjust enrichment count. Thus, appellant failed to meet the requirement, set forth in Md. Rule 2-519(a), that movant "state with particularity" all reasons why the motion should be granted.

In this appeal, appellant claims that the appellees failed to prove the necessary elements of an unjust enrichment cause of action. Concerning the change of the name of the beneficiary of the two life insurance policies, appellant now argues, citing, *Bank of America Corp. v. Gibbons*, 173 Md. App. 261, 269 (2007), that appellees failed to prove that they "conferred some sort of benefit directly on the [appellant] from whom the restitution is sought." According to appellant, the evidence showed that no benefit was conferred on her; instead, the benefit was conferred on her son, Damien. In regard to the various bank accounts, where appellees' proof showed appellant changed the title of several accounts that had previously been in the name of Wanda, Mary Ella and Ronald, appellant contends that appellees conferred no benefit on her because "[a]ll monies held in SunTrust belonged solely to [Mary Ella]," because "[a]t trial, [a]ppellee Ronald Mattox did not and could not provide any evidence of any monies belonging to or sourced from himself or" any other appellee.

None of the arguments that appellant makes on appeal concerning the unjust enrichment count were put forth when her counsel made the motion for judgment at the conclusion of all of the evidence and, consequently, none of those arguments are preserved for appellate review.

In *Kent Village v. Smith*, 104 Md. App. 507, 516-17 (1995), Chief Judge Wilner, speaking for this Court, set forth the legal principles that govern this case:

> Rule 2-519(a) requires that, in making a motion for judgment, the moving party "shall state with particularity all reasons why the motion should be granted." This is the same requirement that appears in the analogous criminal rule, Md. Rule 4-324(a), and it means what it says. Failure to state

> a reason "with particularity" serves to withdraw the issue from appellate review. *State v. Lyles*, 308 Md. 129, 517 A.2d 761 (1986); *Muir v. State*, 308 Md. 208, 517 A.2d 1105 (1986).
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> This requirement has important and salutary purposes. It implements, on the one hand, a principle of basic fairness. A trial judge must be given a reasonable opportunity to consider all legal and evidentiary arguments in deciding what issues to submit to the jury and in framing proper instructions to the jury. The other parties must have a fair opportunity at the trial level to respond to legal and evidentiary challenges in order (1) to make their own record on those issues and (2) to devise alternative trial strategies and arguments should the court grant the motion, in whole or in part. Allowing these issues to be presented for the first time on appeal is also jurisprudentially unsound, for it may well result in requiring a full new trial that otherwise might have been avoided.
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> We do not believe that the brief, non-specific argument made by appellants in support of their motions sufficed to present "with particularity" the arguments presented on appeal.

For the aforementioned reasons, we hold that the issue of whether the trial judge erred by failing to grant appellant's motion for judgment as to the unjust enrichment count was not preserved for appellate review.[8]

[8] If, at the conclusion of the evidentiary phase of the case, appellant's counsel had made the same arguments that she makes in her brief, it does not appear that appellant would be entitled to judgment in her favor. Under Rule 2-519, if there is any evidence showing that the appellees were entitled to recover any monies under the unjust enrichment count, the trial judge was required to deny the motion. In regard to the changes in the title to the bank accounts, appellant's only argument on appeal is that the evidence showed that all monies in the bank account belonged to Mary Ella, and therefore the appellees conferred no benefit on appellant. This argument overlooks the fact that, if the jury believed Ronald, monies in one of the SunTrust accounts belonged to Wanda, not Mary Ella. In other words, there was a dispute as to whether all the monies in the accounts originally belonged to Mary Ella.

III.

A. The Dead Man's Statute

Appellant's second contention is that the "trial court erred in permitting testimony of [a]ppellee Ronald Mattox in violation of the Dead Man's Statute[.]" The Dead Man's statute is found in Md. Code, Courts & Judicial Proceedings Article, § 9-116. The statute reads:

> A party to a proceeding by or against a personal representative, heir, devisee, distributee, or legatee as such, in which a judgment or decree may be rendered for or against them, or by or against an incompetent person, may not testify concerning any transaction with or statement made by the dead or incompetent person, personally or through an agent since dead, unless called to testify by the opposite party, or unless the testimony of the dead or incompetent person has been given already in evidence in the same proceeding concerning the same transaction or statement.

Appellant contends that the trial judge erroneously allowed Ronald "to testify, on numerous occasions, of the intention of the [d]ecedent for placing . . . Ronald Mattox and Wanda Mattox as joint account holders of her account." Additionally, appellant claims that Ronald was erroneously allowed to testify that "he was made beneficiary to the [d]ecedent's two life insurance policies to 'take care of Wanda.'"

At trial, appellant's counsel never objected to any testimony on the basis of the Dead Man's statute. Counsel simply made a general objection. In her opening brief, appellant gives no basis for her contention that the Dead Man's statute was applicable. In her reply brief, she contends that the statute was applicable because the suit appellees filed constituted a proceeding against her in her capacity as an "heir." She phrases that argument as follows:

> The [a]ppellee[s] argue that the Dead Man's statute is not applicable to this case because the [a]ppellees are not "[the] personal representative, heir, devisee, distributee, or legatee[s]," however, the statute states "a party to a proceeding by or against" and the [a]ppellant is an heir to the estate of the [d]ecedent. This is applicable to the instant case because, contrary to [a]ppellees' arguments, there is no evidence that any of the funds in those joint accounts belonged to them. In fact, had [a]ppellant set up a guardianship account as she intended, the funds in any guardianship account would have been part of the [d]ecedent's probate estate upon her death. Md. Code Ann., Est. & Trusts § 1-301.
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> Accordingly, it is either the case that the [a]ppellees contend that the funds in those joint accounts belonged to them or that the funds should have been in a "guardianship" account wherein the monies would be part of the decedent's Estate. Since the [a]ppellees offered no evidence or made any contention that the funds in those accounts actually belonged to them, then it only logically follows that their allegation is that the funds should have been included in the decedent's estate, wherein the [a]ppellant is an heir.

(Emphasis added.)

It is true that appellant happened to be one of several heirs to the estate of Mary Ella. But, contrary to appellant's argument, the appellees have never based their unjust enrichment claim on the fact "that the funds should have been included in the decedent's estate[.]" The complaint filed by appellees against appellant had nothing to do with appellant's status as an heir to Mary Ella's estate. More specifically, appellees' complaint made no claim whatsoever against Mary Ella's estate nor did appellees claim entitlement to any money appellant received as one of Mary Ella's heirs. Thus, contrary to appellant's argument, no plaintiff was "a party to a proceeding by or against . . . an heir[.]"

For those reasons, we reject appellant's contention that the Dead Man's statute was applicable.[9]

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[9] In this appeal, appellant does not argue that Ronald's testimony violated the rule against hearsay.