

Circuit Court for Montgomery County
Case No. W95698

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1846

September Term, 2019

KELLY BROWN

v.

C. BRIAN CARLIN

Wells,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 7, 2021

*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.

Kelly Brown, appellant, appeals from an order issued by the Orphan’s Court for Montgomery County denying her petition for allowance of claim that was filed against the Estate of Charles Giles, Jr. For the reasons that follow, we shall affirm the judgment of the circuit court.

Ms. Brown is the daughter of the decedent, Charles Giles, Jr. Following Mr. Giles’s death, Ms. Brown filed a claim against his estate alleging that she was owed \$17,830 for services that she rendered to Mr. Giles, including house cleaning and personal care. The Personal Representative of the Estate gave notice of disallowance of the claim on the basis that it was not timely filed. Ms. Brown filed a Petition to Allow Claim and the matter was heard by the Orphan’s Court. At that hearing, the Personal Representative argued that the claim should be disallowed because it was untimely. However, the Orphan’s Court disagreed and found that it had been timely filed. It then allowed Ms. Brown to present evidence.

Ms. Brown testified that the decedent’s home had become unlivable due to self-neglect, and that the nursing home that was caring for him would not release him unless his home was in good condition and he had appropriate care. Ms. Brown asserted that the decedent had asked her to come live with him and to “take care of him and to get his house livable again so that he could return home.” Because she lived in Texas and had a family that she would be leaving behind, Ms. Brown testified that she only agreed on the condition that the decedent would pay her \$425 per day for every day that she had to clean up the house and \$45 per hour for personal care once he returned home. Ms. Brown claimed that this agreement was made between herself, the decedent, and Charlene Anderson, who was the personal representative of the Estate at the time Ms. Brown filed her claim. She acknowledged to the court that she

did not have anything in writing to support the agreement. No other witnesses were called. The court orally denied her petition stating that it had “had no evidence of an agreement,” that “most children do things for their family out of love and kindness,” and that it could not “enforce this verbal contract.” The court subsequently entered a written order denying her petition, but that order did not specifically indicate the basis for the denial. This appeal followed.

Because the basis of the court’s ruling was unclear, we issued an order remanding the case, without affirming or reversing, so that the court could provide a written explanation of its reasons for denying Ms. Brown’s claim. On March 9, 2021, the court entered an order finding that Ms. Brown had not rebutted the presumption of law that the services she had rendered to the decedent were gratuitous. In doing so, the court noted that she had not provided evidence of a written contract and that it did “not credit [her testimony] that she and the Decedent entered into a verbal contract to provide services for house cleaning and personal care.” Finally, the court found that even if it were to credit her testimony it would have been barred by Maryland’s Dead Man’s Statute.

In claiming that the petition for allowance should have been granted, Ms. Brown asserts that there is no law in Maryland requiring that there be a written contract for services or “saying that an adult child cannot receive financial compensation for caring for an elderly parent.” She also contends that the court “should not have presumed that [her] services were gratuitous;” that there “was no evidence entered nor submitted disproving” the existence of a contract; and that the court erred in finding that her testimony was not credible. We disagree.

Contrary to Ms. Brown’s claim, there is a presumption in Maryland that services rendered to a decedent by a member of the decedent’s immediate family are gratuitous. *See Shaefer v. Hewes, Ex’r*, 225 Md. 207 (1961). To be sure, that presumption may be rebutted. And a written contract is not necessarily required to establish such an agreement. But Ms. Brown ultimately had the burden of proof and it was not incumbent on the personal representative to present evidence disproving her claim.

Here, the only evidence offered by Ms. Brown regarding the existence of an agreement between herself and the decedent to pay for services was her own testimony.¹ However, the Orphan’s Court found that her testimony was not credible. Although Ms. Brown disagrees with the court’s credibility findings, it is not the role of “an appellate court, to second-guess the trial judge’s assessment of a witness’s credibility.” *Gizzo v. Gerstman*, 245 Md. App. 168, 203 (2020).² As we have repeatedly noted, it is very difficult for a party who bears the burden of persuasion on an issue—as Ms. Brown did in this case—to convince an appellate court that the trier of fact erred by not being persuaded. In fact, in *Byers v. State*, 184 Md. App. 499,

¹ In response to the trial court’s March 9 order, Ms. Brown submitted to this Court a USB flash drive, which she claims contains a recently found “recording dated January 13, 2018, proving that such conversations and agreements were made” between her and the decedent. However, that flash drive was never offered or admitted as evidence in the Orphan’s Court. “[A]n appellate court must confine its review to the evidence actually before the trial court when it reached its decision.” *Cochran v. Griffith Energy Service Inc.*, 191 Md. App. 625, 663 (2010). And “[p]arties to an appeal are not entitled to supplement the record[.]” *Id.* at 662-63 (internal quotation marks and citation omitted). Consequently, we will not consider the USB flash drive or its contents in this appeal.

² Because the court found that Ms. Brown’s testimony concerning the agreement was not credible, we need not consider whether her testimony was also barred by the Dead Man’s Statute.

531 (2009), we noted that it is nearly impossible for a decision to be “legally in error when it is based not on a fact finder’s being persuaded of something but only on the fact finder’s being unpersuaded.” (citation omitted). Ultimately, the Orphan’s Court was not persuaded by Ms. Brown’s testimony that the decedent and Ms. Anderson had agreed to pay her for her services. Consequently, it did not err in denying her Petition to Allow Claim.

**JUDGMENT OF THE ORPHAN’S
COURT FOR MONTGOMERY
COUNTY AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**