Circuit Court for Montgomery County
Case No. 129728FL

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1862

September Term, 2017

No. 3483

September Term, 2018

NAZ ELYASSI

v.

JOSEPH A. SUTTON, JR.

Kehoe,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: April 16, 2020

On October 20, 2017, the Circuit Court for Montgomery County entered a judgment of absolute divorce in an effort to finally resolve all remaining marital issues between appellant, Naz Elyassi,[1] and appellee, Joseph Sutton. After the court entered the judgment, the parties continued to communicate, primarily because both parties were dissatisfied with the judgment of absolute divorce. They ultimately executed a Consent Amendment to Judgment of Absolute Divorce (the "Consent Amendment"), which had the effect of altering some terms reflected in the court's divorce judgment. As part of the Consent Amendment, both Ms. Elyassi and Mr. Sutton agreed to waive their respective rights to appeal the judgment of absolute divorce. Nevertheless, within the time to appeal the judgment of absolute divorce, Ms. Elyassi, dissatisfied with the Consent Amendment for reasons we shall discuss below, noted an appeal.

After Ms. Elyassi noted her appeal, Mr. Sutton filed a motion to enforce the Consent Amendment.[2] Following a two-day hearing, the circuit court granted Mr. Sutton's motion to enforce the Consent Amendment, and in an order entered on February 6, 2019, the court approved the Consent Amendment. Ms. Elyassi timely appealed the court's decision, and

[1] Throughout most of the proceedings below, Ms. Elyassi went by the name Nayereh Nazi Sutton. In the judgment of absolute divorce, Ms. Elyassi legally changed her name to Naz Elyassi. Accordingly, we shall refer to appellant as "Ms. Elyassi" throughout this opinion.

[2] Mr. Sutton later filed an amended motion to enforce the Consent Amendment, the operative motion which the court ultimately granted. For simplicity, throughout this opinion we shall refer to this motion as the motion to enforce the Consent Amendment.

we thereafter consolidated Ms. Elyassi's two appeals.[3]

In her brief, Ms. Elyassi presents the following seven questions for our review:

1. Did the trial court err in granting [Mr.] Sutton's motion to enforce the [Consent Amendment]?

2. Did the trial court err by ordering the parties to sell their Sutton & Associates, Inc. stock at public auction in a blind bid?

3. Did the trial court err in finding that [Mr.] Sutton's interest in Bradley Arlington, LLC was encumbered by a $5,000,000 debt?

4. Did the trial court err in finding that Baker Big Ridge, LLC was not marital property?

5. Did the trial court err in determining [Ms.] Elyassi's monetary award?

6. Did the trial court err by denying [Ms.] Elyassi's claim for alimony?

7. Did the trial court err in denying [Ms.] Elyassi's claim for attorneys' fees?

We conclude that the trial court did not err in granting Mr. Sutton's motion to enforce the Consent Amendment. Because Ms. Elyassi expressly waived her right to appeal the judgment of absolute divorce in the Consent Amendment, we shall not address the remaining issues on appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Because we conclude that the circuit court correctly found that the Consent Amendment was valid and enforceable, we focus our brief factual recitation on the events

[3] Case Number 1862, September Term, 2017 corresponds to Ms. Elyassi's November 20, 2017 appeal of the judgment of absolute divorce. Case number 3483, September Term, 2018 corresponds to Ms. Elyassi's February 28, 2019 appeal of the court's grant of Mr. Sutton's amended motion to enforce the Consent Amendment.

surrounding the execution of that agreement. As stated above, on October 20, 2017, the Circuit Court for Montgomery County entered a judgment of absolute divorce. According to Ms. Elyassi, several days after issuance of the court's judgment, Mr. Sutton contacted her to discuss potential modifications to the judgment, but without their respective attorneys' involvement.

The parties met on November 5, 2017, and after working together to amend the document to their satisfaction, ultimately executed the Consent Amendment. This one-and-a-half-page document provided that:

1. The parties waived their respective rights to appeal the judgment of absolute divorce.

2. Mr. Sutton would cooperate with Ms. Elyassi to either liquidate assets or provide funding through a line of credit so that Ms. Elyassi could purchase a home in Florida.

3. Mr. Sutton assigned to Ms. Elyassi his right, title, and interest to entities referred to in the judgment of divorce as "Bradley Arlington," an asset the court determined to be worth $1 million (a $6 million interest in property subject to a $5 million loan).

4. Ms. Elyassi assigned to Mr. Sutton her right, title, and interest in Sutton & Associates, Inc. (which the court determined to be worth $3,625,000).

5. Mr. Sutton would indemnify and hold Ms. Elyassi harmless from any claims for expenses related to Sutton & Associates, including claims for reimbursements owed, which were anticipated to exceed $525,000.

6. The monetary judgment entered against Mr. Sutton would be deemed "paid and satisfied."

7. The parties would retain $75,000 in a Morgan Stanley account, which would pay expenses for sale and maintenance of two properties until their respective sales, at which point any remaining balance would be divided equally between the parties.

8. All other terms of the judgment of absolute divorce not inconsistent with the Consent Amendment would remain in full force and effect.

Ms. Elyassi notified her attorneys about the Consent Amendment on November 16, 2017, eleven days after she signed the document. Four days later, she filed her notice of appeal from the judgment of absolute divorce, and told Mr. Sutton she was rescinding the Consent Amendment.

As stated above, Mr. Sutton then moved to enforce the Consent Amendment. After the circuit court found that the Consent Amendment was valid and enforceable, Ms. Elyassi appealed. We shall provide additional facts as necessary to resolve this appeal.

DISCUSSION

We begin by establishing the proper analytical framework to address Ms. Elyassi's claims.[4] In this case, we must first determine whether the Consent Amendment discloses "any injustice or inequity" on its face. *Bell v. Bell*, 38 Md. App. 10, 14 (1977); *see also Blum v. Blum*, 59 Md. App. 584, 595 (1984). In this regard, Ms. Elyassi contends that the Consent Amendment is facially unconscionable and lacks consideration. Because we shall reject Ms. Elyassi's unconscionability and lack of consideration claims, our analysis next requires us to examine whether a confidential relationship existed between the parties because, if a confidential relationship existed at the time the agreement was executed, the

[4] Our analysis is guided by the methodology suggested in Cynthia Callahan & Thomas C. Ries, *Fader's Maryland Family Law*, § 14-5(b) (6th ed. 2016), which we believe accurately reflects Maryland law concerning challenges to separation agreements and other post-nuptial agreements.

burden of proof shifts to the party seeking to uphold the agreement to prove that the agreement is fair and equitable. *Blum*, 59 Md. App. at 595. The trial court here found that no confidential relationship existed between Ms. Elyassi and Mr. Sutton at the time the Consent Amendment was executed, a finding that we conclude was not clearly erroneous. Our analytical framework therefore requires us to examine Ms. Elyassi's claims that the Consent Amendment was procured by duress, undue influence, or fraud, with the understanding that Ms. Elyassi had the burden of proof as to these recognized defenses to contract enforcement. *Id*. As previously noted, we shall hold that the trial court did not err in concluding that Ms. Elyassi failed to sustain her burden of proof to invalidate the Consent Amendment.

I. UNCONSCIONABILITY

We first turn to Ms. Elyassi's argument that the Consent Amendment was unconscionable. "Although the question of whether a contract is unconscionable is a question of law and subject to *de novo* review, the factual findings of the trial court that inform its judgment are subject to the clearly erroneous standard." *Doyle v. Fin. Am., LLC*, 173 Md. App. 370, 391 (2007) (citing *Monetary Funding Grp., Inc. v. Pluchino*, 867 A.2d 841, 848 (Conn. App. Ct. 2005)). Under the clearly erroneous standard of review, "this Court does not sit as a second trial court, reviewing all the facts to determine whether an appellant has proven [her] case." *L.W. Wolfe Enter., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 343 (2005) (quoting *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996)). Instead,

> [o]ur task is limited to deciding whether the circuit court's factual findings were supported by substantial evidence in the record: "The appellate court

> must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court's determination, it is not clearly erroneous and cannot be disturbed."

Id. at 343-44 (quoting *GMC v. Schmitz*, 362 Md. 229, 234 (2001)).

Turning to appellant's claims, this Court has previously noted that "[t]here are two aspects of unconscionability – procedural and substantive – both of which must exist for a court to decline to enforce" a contract. *Rankin v. Brinton Woods of Frankford, LLC*, 241 Md. App. 604, 621-22 (2019) (citing *Doyle*, 173 Md. App. at 383).

> Procedural unconscionability "concerns the process of making a contract and includes such devices as the use of fine print and convoluted or unclear language, as well as deficiencies in the contract formation process, such as deception or refusal to bargain over contract terms."
>
> Substantive unconscionability, on the other hand, "refers to contractual terms that are unreasonably or grossly favorable to the more powerful party and includes terms that attempt to alter in an impermissible manner fundamental duties otherwise imposed by the law[.]" They are "provisions that seek to negate the reasonable expectations of the nondrafting party, and terms unreasonably and unexpectedly harsh . . . having nothing to do with . . . central aspects of the transaction."

Id. at 622 (alteration in original) (internal citations omitted) (quoting *Stewart v. Stewart*, 214 Md. App. 458, 477-78 (2013)).

In *Stewart*, this Court considered whether a prenuptial agreement was unenforceable due to its unconscionability. 214 Md. App. at 463. There, the parties met and engaged in an affair when Ms. Stewart was twenty-six years old and Mr. Stewart, who was already married, was twenty-four. *Id*. Whereas Ms. Stewart worked at a daycare center for minimum wage, Mr. Stewart "owned a successful construction business." *Id*. The two planned to marry once Mr. Stewart obtained a divorce from his then current wife. *Id*.

"Because, at that time, he had approximately $2 million in assets and his pending bride had practically none," Mr. Stewart told Ms. Stewart he would not marry her unless she signed a prenuptial agreement "waiving any and all interest in his assets." *Id*. According to Ms. Stewart, she only received the agreement four days before their planned wedding, while Mr. Stewart claimed he provided the agreement approximately a month prior to the scheduled wedding. *Id*. at 463-64. Despite not having her own legal counsel, and only having four days to obtain legal advice, Ms. Stewart nevertheless signed the agreement. *Id*. at 464. After approximately twenty years of marriage, the Stewarts divorced, and Mr. Stewart sought to enforce the prenuptial agreement. *Id*. at 466. Ms. Stewart challenged the validity of the agreement, but the circuit court ultimately declared the agreement valid and enforceable. *Id*. at 466-67.

On appeal, Ms. Stewart argued that the agreement was unconscionable because it was "'clearly one-sided' and was 'disproportionate to the advantage of' Mr. Stewart[.]" *Id*. at 477. Ms. Stewart further claimed that she signed the agreement without consideration or an understanding of what rights she was waiving. *Id*. Specifically, Ms. Stewart claimed that the agreement was procedurally unconscionable because "Mr. Stewart told her that he would not marry her unless she signed the prenuptial agreement and that she 'really didn't know' what she was signing." *Id*. at 479.

In rejecting her argument, we stated, "Notably absent from her brief is any allegation of 'fine print,' 'convoluted or unclear language,' 'deception,' or 'a refusal to bargain over contract terms.'" *Id*. (quoting *Walther v. Sovereign Bank*, 386 Md. 412, 426-27 (2005)).

Additionally, Ms. Stewart conceded that she never attempted to bargain over the terms despite the fact that, according to her own rendition of the events, she had four days to do so. *Id*. We held that there was no procedural unconscionability under those circumstances. *Id*.

Although she fails to specifically articulate as much in her brief, Ms. Elyassi appears to allege that the Consent Amendment was procedurally unconscionable because of the circumstances attendant to its execution. At the hearing on the motion to enforce the Consent Amendment, Ms. Elyassi stated that, after she received the judgment of divorce, she contacted Mr. Sutton about dividing an account at Morgan Stanley because she wanted to buy a house in Naples, Florida. Mr. Sutton resisted Ms. Elyassi's request for an immediate distribution, noting the thirty-day period to appeal the judgment. Nevertheless, Mr. Sutton sent Ms. Elyassi a text that he had "some ideas" about how they could resolve all of their issues and avoid further litigation. Ultimately, the parties agreed to meet at the vacant marital home on November 5, 2017. Ms. Elyassi testified that, at the time, she was taking medication for emotional issues, and suffered from headaches, dizziness, confusion, and difficulty focusing. Ms. Elyassi claimed that Mr. Sutton presented her with a two-page document and told her that if she signed it, he would help her reconcile with the parties' two sons; if, on the other hand, she did not sign and instead appealed, he would make their joint interests in Sutton & Associates, Inc. worthless, and that his business partners would sue her for more than $500,000.

Ms. Elyassi testified that that she was confused during the meeting, and did not want

to sign the Consent Amendment without first consulting her lawyers. She stated that Mr. Sutton told her not to involve attorneys, and that one of the parties' sons called while she was contemplating signing the document, the effect of which emotionally manipulated her into signing the Consent Amendment. According to Ms. Elyassi, Mr. Sutton told her to sign the agreement "if you ever want to see your kids again[.]" Ms. Elyassi further claimed that, before signing the Consent Amendment, she and Mr. Sutton went to a restaurant where they ate and shared "two bottles of wine." Afterward, the two returned to Mr. Sutton's office where Mr. Sutton further modified the document, and Ms. Elyassi signed it.

Mr. Sutton provided a different rendition of the events. He testified that the two parties met on November 5 at the marital home. Although he had prepared a draft of the Consent Amendment the previous night, when Ms. Elyassi arrived, the two worked together "penciling things in and it became quickly clear that [they] needed to amend the documents to her satisfaction." Mr. Sutton stated that they then drove together in his car to his office, where they continued to work on the draft. Once they both agreed on a "final form," he scanned and e-mailed her the Consent Amendment. "[S]eeing the light at the end of the tunnel[,]" the two then went to dinner for a celebration. Mr. Sutton made clear that the parties only went to the restaurant and ordered a single bottle of wine and two more glasses, after signing the documents.

The trial court generally found Mr. Sutton's rendition of the events more credible. Specifically, the court discredited Ms. Elyassi's testimony that they consumed two bottles of wine before finalizing the Consent Amendment. Furthermore, the evidence showed that

Ms. Elyassi actively participated in the drafting of the Consent Amendment, and that the entire document was only a page-and-a-half long. Because these findings are supported by the record, they are not clearly erroneous. *L.W. Wolfe Enter., Inc.*, 165 Md. App. at 343-44.

Relying on the trial court's factual findings, we similarly conclude that there was no procedural unconscionability here. Indeed, there is an even weaker claim for procedural unconscionability here than in *Stewart*. Whereas Ms. Stewart claimed that she did not know what interests she was waiving by signing the pre-nuptial agreement, and that her ability to marry Mr. Stewart was conditioned on her signing the agreement, the record here shows that Ms. Elyassi was indeed familiar with Mr. Sutton's assets as the parties had been entangled in divorce litigation for at least two years prior to the signing of the Consent Amendment. *Stewart*, 214 Md. App. at 479. Furthermore, like in *Stewart*, "Notably absent from [Ms. Elyassi's] brief is any allegation of 'fine print,' 'convoluted or unclear language,' 'deception,' or 'a refusal to bargain over contract terms.'" *Id*. (quoting *Walther*, 386 Md. at 426-27). Indeed, the evidence shows that Ms. Elyassi participated in the negotiations regarding the ultimate terms of the Consent Amendment, a mere one-and-a-half-page document written in reasonably simple English. Accordingly, we agree with the trial court that Ms. Elyassi failed to prove procedural unconscionability.

A party must prove both procedural and substantive unconscionability in order to set aside an agreement. *Rankin*, 241 Md. App. at 621-22. Because the trial court correctly determined that there was no procedural unconscionability, we would not need to examine

whether the agreement was substantively unconscionable. Nevertheless, we agree with the trial court that the Consent Amendment was not substantively unconscionable.

A contract is voidable due to substantive unconscionability "when the terms are so one-sided as to 'shock the conscience' of the court." *Li v. Lee*, 210 Md. App. 73, 112 (2013) (citing *Walther*, 386 Md. at 426), *aff'd* 437 Md. 47 (2014). Although it is true that Ms. Elyassi will receive approximately $1,250,000[5] less under the Consent Amendment than she would have under the court's judgment of divorce, we note that she will have property valued well in excess of five million dollars under the Consent Amendment, with more than three million dollars of that in cash or cash equivalents. In the Consent Amendment, Ms. Elyassi was able to acquire the Bradley Arlington asset that the court valued at one million dollars, but which she asserted at trial was worth six million dollars. Moreover, although the Consent Amendment required that she transfer to Mr. Sutton her fifty percent interest in Sutton & Associates stock valued at $1,632,500, Mr. Sutton expressly agreed to indemnify Ms. Elyassi for any claims related to that company. Significantly, the Consent Amendment expressly stated that the parties anticipated those claims to exceed $525,000. Finally, both parties agreed to end their protracted and

[5] In her brief, Ms. Elyassi claims that she will suffer a net loss of $1,754,500 as a result of the Consent Amendment, whereas we calculate a net loss of $1,254,500. Ms. Elyassi's calculation is based on the erroneous assumption that Mr. Sutton only had a $500,000 interest in Bradley Arlington. In the court's judgment of absolute divorce, it found Bradley Arlington to be worth $1,000,000, and titled exclusively in Mr. Sutton's name. By acquiring Bradley Arlington in the Consent Amendment, Ms. Elyassi received an asset worth $1,000,000 ($500,000 more than she valued the asset in her erroneous calculation).

expensive litigation. We agree with the trial court that the provisions of the Consent Amendment are not sufficiently egregious to "shock the conscience" of the court.

Finally, we reject Ms. Elyassi's argument that the agreement lacked consideration, as both parties sought the benefit of obtaining a final agreement which would end the pending litigation, including the possibility of appeals. In this regard, the finality contemplated by the Consent Amendment alone served as adequate consideration.

II. DURESS, UNDUE INFLUENCE, AND FRAUD

Before we decide whether the Consent Amendment was executed by means of duress, undue influence, or fraud, we must determine whether a confidential relationship existed between the parties. This is so because whether the parties were in a confidential relationship informs the burden of proof to set aside the Consent Agreement. *Blum*, 59 Md. App. at 595. Ms. Elyassi argues that the trial court erred by finding that she did not have a strong degree of dependence on Mr. Sutton when the record showed that she "was mentally and emotionally manipulated by [Mr.] Sutton, and that she was depending on him to help correct what they both perceived to be errors and inequities in the Judgment of Absolute Divorce." According to Ms. Elyassi, Mr. Sutton "used financial and emotional manipulation to convince [her] that she could trust him to act in both of their best interests. In reality, he was only looking to better his position in the divorce and strip her of a large portion of her marital award." We perceive no error in the trial court's determination that no confidential relationship existed between the parties when the Consent Amendment was executed.

In *Hale v. Hale*, we stated:

> [T]he question of whether a confidential relationship exists between husband and wife [is] a question of fact. Among the various factors to be considered in determining whether a confidential relationship exists are the age, mental condition, education, business experience, state of health, and degree of dependence of the spouse in question.

74 Md. App. 555, 564 (1988) (alterations in original) (quoting *Bell*, 38 Md. App. at 14). In reviewing a trial court's decision regarding the existence of such a relationship, "we must first assume the truth of all the evidence and of all the favorable inferences fairly deducible therefrom tending to support the factual conclusions reached by the [trial judge]." *Id*. (alteration in original) (quoting *McClellan v. McClellan*, 52 Md. App. 525, 530 (1982)).

In *Hale*, we affirmed a trial court's determination that the parties were in a confidential relationship. There, the facts showed that at the time of their marriage, both Mr. and Ms. Hale owned "very little property." *Id*. at 560. When Ms. Hale learned that Mr. Hale was having an affair, the parties agreed to a separation, with a family friend/attorney drafting an agreement. *Id*. The attorney, however, "also represented Mr. Hale's substantial business interests." *Id*. Ultimately, Ms. Hale signed the agreement. *Id*.

After Mr. Hale asked to borrow Ms. Hale's luggage so that he could "take his girlfriend on a trip to Mexico[,]" Ms. Hale met with another attorney and shortly thereafter sought to rescind the separation agreement. *Id*. at 560-61. The trial court rescinded the agreement, and Mr. Hale appealed. *Id*. at 561.

On appeal, we affirmed the trial court's finding that the parties were in a confidential

relationship. We noted that Ms. Hale had one year of community college education and limited business experience. *Id*. at 564-65. While working at Mr. Hale's business prior to the separation, Ms. Hale was only responsible for ministerial tasks, and "merely signed whatever papers her husband told her to sign." *Id*. at 565. At the inception of Mr. Hale's business, Ms. Hale attempted to run the company, but was so overwhelmed by the responsibility that she moved out of the family home for two weeks in order to recover from stress. *Id*.

After that incident, Ms. Hale managed the family household with a budget that Mr. Hale provided. *Id*. In fact, prior to their separation, Ms. Hale "never even had her own bank account." *Id*. "The court found that Mrs. Hale was generally aware of her husband's wealth and property—she knew that they lived well—but found that she was not sufficiently informed for the purpose of making the 'ultimate decision' to sign the agreement." *Id*.

In addition to her limited business acumen, the court found that Ms. Hale "was not well physically at the time the agreement was promulgated. The revelation of her husband's infidelity and the separation had caused her great emotional distress. She had difficulty eating and sleeping and developed an ulcer." *Id*. Finally, the court found that Ms. Hale "did, in fact, repose trust in her husband, as she always had, to take care of her and [their child]. The court felt that Mr. Hale was aware of her trust in him, that he intended for her to trust him, and that he used this trust to 'extract' the agreement from her." *Id*.

On appeal, we agreed with the trial court that a confidential relationship existed.

We noted that "In order for Mrs. Hale to establish a confidential relationship, she 'must prove that she justifiably assumed that her husband would only act in a manner consistent with [her] welfare.'" *Id*. at 566 (alteration in original) (quoting *McClellan*, 52 Md. App. at 531). Although Mr. Hale argued that Ms. Hale played an active role in negotiating the agreement, we noted that "[w]hile she did make a few suggestions, most of her input resulted from suggestions made to her by [Mr. Hale's attorney], whom she thought was acting as her attorney." *Id*. We further noted that Ms. Hale did not understand the agreement, nor did she understand that the agreement was final. *Id*. Ms. Hale's meetings with the attorney were short, and the trial court expressly rejected the attorney's representations that he went through the agreement "line by line" with her. *Id*. at 566-67. Against this factual backdrop, we concluded that Ms. Hale reasonably believed that Mr. Hale was acting in her best interests and therefore a confidential relationship existed. *Id*. at 567.

In her brief, Ms. Elyassi argues that the court did not "meaningfully consider" her "mental condition and state of health." She further argues that the court erred by finding that she did not have a strong degree of dependence on Mr. Sutton. According to Ms. Elyassi, she "depend[ed] on [Mr. Sutton] to help correct what they both perceived to be errors and inequities in the Judgment of Absolute Divorce." As previously discussed, however, Ms. Elyassi needed to show that she justifiably believed that Mr. Sutton would act in her best interests, or that her age, health, education, and business experience required her to rely on Mr. Sutton. *Id*. at 564.

In rejecting Ms. Elyassi's argument that she reasonably believed Mr. Sutton would act in her best interests, the trial court noted that the parties had been involved in "hotly contested litigation for the past couple of years" prior to their divorce. Furthermore, the court noted that "there's nothing here to indicate that the wife did not have any business acumen of her own," and found that "[t]his is not a situation where [Ms. Elyassi] was uneducated or undereducated or uninformed about the nature of the assets." The court concluded its confidential relationship analysis by noting that Ms. Elyassi "was in fact closely involved with the businesses." The court acknowledged that Ms. Elyassi's knowledge of the businesses did not match Mr. Sutton's, but found that she nevertheless was adequately informed and possessed sufficient business acumen to understand the assets involved in the Consent Amendment.

The record here demonstrates that the trial court not only applied the correct law governing confidential relationships, but also did not err in concluding that Ms. Elyassi failed to prove the existence of a confidential relationship with Mr. Sutton when the Consent Amendment was executed.

The determination that the parties were not in a confidential relationship when they executed the Consent Amendment means that Ms. Elyassi bore the burden of proving that the Consent Amendment was procured by duress, undue influence or fraud. *Blum*, 59 Md. App. at 595. We shall first address Ms. Elyassi's related claims of duress and undue influence. "In order to establish duress, there must be a wrongful act which deprives an individual of the exercise of [her] free will." *Eckstein v. Eckstein*, 38 Md. App. 506, 512

(1978). Relying on 13 Williston on Contracts, the *Eckstein* Court noted that "three elements are common to all situations where duress has been found to exist: '1) that one side involuntarily accepted the terms of another; 2) that circumstances permitted no other alternative; and 3) that the circumstances were the result of the coercive acts of the other party." *Id.* at 514.

The concept of undue influence is closely related to duress, and frequently arises in the context of *inter vivos* gifts and wills. Unfortunately, Maryland courts "have not created a bright-line test to detect the existence of undue influence[.]" *Anderson v. Meadowcroft*, 339 Md. 218, 229 (1995). The Restatement (Second) of Contracts, however, provides some guidance. Under the section titled, "When Undue Influence Makes a Contract Voidable," it states that "[u]ndue influence is unfair persuasion of a party who is under the domination of the person exercising the persuasion or who by virtue of the relation between them is justified in assuming that that person will not act in a manner inconsistent with [her] welfare." Restatement (Second) of Contracts, § 177 (1981). Additionally, *Williston on Contracts* describes "undue influence" as follows:

> If a party in whom another reposes confidence misuses that confidence to gain an advantage while the other has been made to feel that the party in question will not act against its welfare, the transaction is the result of undue influence. The influence must be such that the victim acts in a way contrary to its own best interest and thus in a fashion in which it would not have operated but for the undue influence. Undue influence is equivalent to that which constrains the will or destroys the free agency of the person and substitutes in its place the will of another. The characteristics which play a role in establishing undue influence include pressure "of whatever sort which overpowers the will[.]" The pressure is applied "by a dominant subject to a servient object." The will of the servient person is actually the will of the dominant party.

28 *Williston on Contracts*, § 71:50 (4th ed. 2019) (footnotes omitted). In the end, "[u]ndue influence is that degree of importunity which deprives a [party] of [her] free agency, which is such as [she] is too weak or too feeble to resist, and will render the instrument executed under its influence not [her] free and unconstrained act." *Longanecker v. Sowers*, 148 Md. 584, 587 (1925).

Eckstein presents an example where this Court set aside a separation agreement due to duress and undue influence. There, "[t]he wife had a history of mental disturbances," and had previously sought help from a psychiatrist. *Eckstein*, 38 Md. App. at 507. Ms. Eckstein had attempted suicide approximately four or five times, and was hospitalized on at least three occasions because of these attempts. *Id*. at 508.

One evening, Ms. Eckstein left the marital home, taking the parties' jointly owned van "with only the clothes on her back." *Id*. "She had no funds and the husband promptly closed the couple's joint back account." *Id*. Ms. Eckstein contacted Legal Aid but learned that she did not qualify for legal assistance. *Id*. When Mr. Eckstein discovered her whereabouts, he took the van back and refused Ms. Eckstein's requests to see or contact the couple's children, and also refused to give her any of her clothing. *Id*. at 508-09. Instead, he told her that she could see her children and have her clothes only if she signed a separation agreement which his attorney had prepared. *Id*. at 509.

At Mr. Eckstein's attorney's office, Ms. Eckstein asked the attorney several questions, which he refused to answer because she was not his client. *Id*. According to Ms. Eckstein, she was told that if she did not sign the agreement, she would never see her

children again, nor would she be able to retrieve her clothes or keep the van. *Id*. Ms. Eckstein signed the agreement without making any changes to it, and immediately received her clothes and the keys to the van. *Id*.

On appeal, this Court noted that, "In order to establish duress, there must be a wrongful act which deprives an individual of the exercise of [her] free will." *Id*. at 512 (citing *Central Bank v. Copeland*, 18 Md. 305 (1862)). As previously noted, "three elements are common to all situations where duress has been found to exist: '1) that one side involuntarily accepted the terms of another; 2) that circumstances permitted no other alternative; and 3) that the circumstances were the result of the coercive acts of the opposite party.'" *Id*. at 514.

Applying these elements to Ms. Eckstein's case, we noted that she "had a long history of depressive behavior which indicated mental and emotional instability." *Id*. at 516. In addition to these mental and emotional problems, we noted that Ms. Eckstein was "entirely without funds and without counsel at the time of the signing of the agreement." *Id*. at 517. Not only was she unemployed, but Ms. Eckstein also could not obtain assistance from Legal Aid because she was found ineligible for their services. *Id*. Additionally, Ms. Eckstein only had the clothes she was wearing at the time of signing, and Mr. Eckstein only promised to return her clothes to her once she signed the separation agreement. *Id*. Finally, Mr. Eckstein forbade her from seeing or communicating with their minor children until she signed. *Id*.

We were further persuaded that Ms. Eckstein signed the separation agreement under duress by noting that Mr. Eckstein pressured Ms. Eckstein into signing the agreement because, upon her signing, he immediately provided her with her clothes, the van, and $1,100 in cash. *Id*. at 518. In conclusion, we stated,

> It was, we believe, improper to submit the documents to her on a take it or leave it basis and to coerce her signature by withholding her property and threatening to prevent her from seeing or communicating with her children. We might well have reached that conclusion even if the evidence was clear that the wife was a competent, stable, knowledgeable woman; but when, as here, it is obvious that the husband and his lawyer were dealing with an emotionally and mentally unstable individual, we think that the conclusion that the execution of the agreement was obtained by duress is inescapable. With no funds, no lawyer, no clothes, no transportation, and no viable alternative, it is not surprising that the wife capitulated and signed the agreement.

Id.

We acknowledge that *Eckstein* presents a strong case of duress and undue influence, and that duress and undue influence may be found in less egregious circumstances. Nevertheless, the facts of the instant case do not meet the requirements for duress and undue influence. Here, the trial court found that Ms. Elyassi was "stressed" throughout the proceedings. However, the court noted that the "mere stress alone" did not suffice to constitute duress. The court also did not find credible Ms. Elyassi's claim that Mr. Sutton threatened her by telling her to sign the Consent Amendment or she would never see the children. In addressing Ms. Elyassi's claim that Mr. Sutton threatened to withhold access to the children, the court stated, "[t]hese children were not minors. There's no access schedule." Applying the elements of duress, the court found:

> So in terms of duress, the [c]ourt does not find the three elements for duress being that one side involuntarily accepted the terms of another; two, that the circumstances permitted no other alternative; and three, that the circumstances were the result of coercive acts of the opposite party. Those are strong, strong elements and requirements for a finding of duress. And the [c]ourt does not find that the elements of duress have been met in this case under these facts.

We discern no error in the court's determination that Ms. Elyassi failed to prove that the Consent Agreement was procured by duress.

In her brief, Ms. Elyassi fails to articulate with any precision the basis for her contention that she was unduly influenced to sign the Consent Amendment. Nevertheless, it is apparent from the bench opinion that the court was not convinced that Ms. Elyassi was deprived of her "free agency" to sign the Consent Amendment. *Longanecker*, 148 Md. at 587. Specifically, the court found that Ms. Elyassi had "not hesitated to be combative and to challenge [Mr. Sutton]" concerning the terms of the agreement. The court also found that Ms. Elyassi's "questions were intelligent and they were directed specifically to the assets and to the terms of the agreement." These circumstances are antithetical to an undue influence claim, *i.e.*, that the party was "too weak or too feeble to resist," robbing the party of her "free agency." *Id*.

Finally, we turn to Ms. Elyassi's claim that the Consent Agreement should be invalidated for fraud. The Restatement (Second) of Contracts provides that:

> (1) A misrepresentation is fraudulent if the maker intends his assertion to induce a party to manifest his assent and the maker
>
> (a) knows or believes that the assertion is not in accord with the facts, or
>
> (b) does not have the confidence that he states or implies in the truth of the assertion, or

> (c) knows that he does not have the basis that he states or implies for the assertion.
>
> (2) A misrepresentation is material if it would be likely to induce a reasonable person to manifest his assent, or if the maker knows that it would be likely to induce the recipient to do so.

Restatement (Second) of Contracts, § 162 (1981). The Court of Appeals has stated that, "To permit rescission of a contract for misrepresentation, the plaintiff must show that a false representation of material fact was made and was actually relied upon by the plaintiff." *In re Adoption/Guardianship Nos. T00130003, T00130004*, 370 Md. 250, 263 (2002).

> While it is not necessary to produce proof of wrongful conduct in order to succeed in establishing constructive fraud that justifies the rescission of a contract, a plaintiff still must show the "breach of a legal or equitable duty which, irrespective of the moral guilt of the fraud feasor, the law declares fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests."

Md. Envtl. Tr. v. Gaynor, 370 Md. 89, 97 (2002) (quoting *Ellerin v. Fairfax Savings*, 337 Md. 216, 236 n.11 (1995)). In order to rescind the Consent Amendment due to fraud, Ms. Elyassi needed to prove that Mr. Sutton made a false, material representation upon which she actually relied.

Ms. Elyassi failed to meet this burden. We reprint her entire appellate argument on this issue as reflected in her brief: "The court did not address Elyassi's fraud claim, but the evidence of Sutton's lies about consultations with counsel establish this element." It is not surprising that the trial court did not specifically address Ms. Elyassi's fraud claim because she never so much as uttered the word "fraud" in her closing argument to the court. In fact, Ms. Elyassi's counsel summarized her claims at the end of her closing argument:

> I've already talked about the duress and coercion. I think Your Honor sees that from all of the events that precipitated the execution of this agreement. In light of all of that, Your Honor, I would ask the [c]ourt to make a finding that the agreement is both procedurally and substantively unconscionable, . . . including all of the arguments of duress, coercion and undue influence.

In our view, Ms. Elyassi did not preserve her fraud argument and, even if she had, her one-line argument in her appellate brief is insufficient. *See HNS Dev., LLC v. People's Counsel for Balt. Cty.*, 425 Md. 436, 459 (2012) (noting that "The Court of Special Appeals [has] refused repeatedly . . . to address issues not briefed properly by a party."); *see also Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 201-02 (2008) (Court declined to "delve through the record to unearth factual support" for an appellant's bald assertions, and similarly refused to "seek out law to sustain [her] position" (quoting *von Lusch v. State*, 31 Md. App. 271, 282, 285 (1976))).

In any event, we reject the notion that Mr. Sutton lied about consulting with counsel in order to induce Ms. Elyassi's assent. At the hearing on the motion to enforce the Consent Amendment, the court expressly rejected Ms. Elyassi's contention that Mr. Sutton lied about obtaining legal advice stating, "I credit the testimony of [Mr. Sutton] that he did not consult with a lawyer. . . . I do not believe that [Mr. Sutton's attorney] gave him advice and has conveniently forgotten about it." Ms. Elyassi completely fails to articulate why these findings are clearly erroneous, and we shall not scour the record to make the argument for her.

We therefore affirm the circuit court's judgment that the Consent Amendment is legally valid and enforceable. Because Ms. Elyassi expressly waived her rights to appeal

any issues pertaining to the judgment of absolute divorce in the Consent Amendment, we shall dismiss her appeal in No. 1862, Sept. Term 2017.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY GRANTING APPELLEE'S AMENDED MOTION TO ENFORCE CONSENT AMENDMENT AFFIRMED. APPEAL IN CASE NO. 1862, SEPT. TERM 2017 DISMISSED. COSTS TO BE PAID BY APPELLANT.