Circuit Court for Baltimore County
Case No. 03-C-16-7367

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1946

September Term, 2016

DANIEL BAHR, *et al.*

v.

SALVATORE ZANNINO*, et al.*

Nazarian,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: February 6, 2018

This case concerns a challenge to the last will and testament of Larry Zannino Jr. ("Larry"), who passed away on October 23, 2013. Appellants in this case, Larry's two sisters, Rose Lancaster ("Rose") and Jeanette Jacobs ("Jeanette"), and his two nephews, Daniel Bahr ("Daniel") and Charles Schuler ("Charles"), filed a Petition to Caveat Larry's will in the Orphans' Court for Baltimore County. In their petition, appellants alleged that Larry's brother, appellee Salvatore Zannino, exerted undue influence on Larry. Appellants also alleged that Larry's will was invalid due to fraud, duress, and lack of mental capacity.

The orphans' court transmitted the case to the Circuit Court for Baltimore County. Appellee moved for summary judgment, arguing that appellants had failed to generate a genuine dispute of material fact. Following a hearing on November 2, 2016, the court granted appellee's motion. Appellants timely appealed and present the following issues for our review:[1]

1. Did the circuit court err in granting summary judgment when there was more than sufficient evidence of undue influence to generate genuine issues of fact?

2. Did the circuit court err in granting summary judgment when there was more than sufficient evidence to generate genuine issues of fact on appellants' other claims of fraud, duress, and lack of mental capacity?

We answer these questions in the negative, and affirm.

[1] Appellants did not include a questions presented section in their brief pursuant to Md. Rule 8-504(a)(3). We formulated these questions based upon the headings of the argument sections in appellants' brief.

FACTS AND PROCEEDINGS

Larry Zannino, Sr. ("Larry Sr.") and his wife Theresa Zannino ("Theresa") had nine children.[2] Their eldest son Larry, the decedent in this case, was born on September 10, 1922.

For many years, Larry Sr. and Theresa owned and operated Zannino's Superette, a grocery store in Baltimore. Their children also worked at the store, including: Larry, who worked as a butcher and a manager; appellee, Larry's younger brother, who was also a butcher and managed the business in conjunction with Larry until retirement; and appellants Rose and Jeanette, Larry's younger sisters, who both worked in the store's deli until the age of sixty.[3] After Larry Sr. and Theresa passed away in 1969 and 1991, respectively, Larry and appellee inherited and ran the grocery store together. In addition to the store, Larry Sr. and Theresa owned a farm in Cecil County, which Theresa, as the surviving spouse, devised to Larry.

Larry never married, but lived with his companion, Nora Lundgren ("Nora"), for roughly fifty years. Larry and Nora did not have any children together, but Nora had a son, Larry Lundgren, from a prior relationship. Through her son, Nora also had a

[2] Larry Sr. and Theresa's nine children were, in order from oldest to youngest: Catherine, Larry, Mabel, Josephine, Salvatore, Rose, John (who died in an accident at the age of six), Jeanette, and Jane (who died a year before Theresa in 1990).

[3] The remaining two appellants, Daniel and Charles, are Larry's nephews and the sons of Larry's sisters Catherine and Josephine, respectively.

granddaughter, Michelle Lundgren ("Michelle"). Nora died in 2003. Ten years later, Larry passed away at the age of ninety-one.

Larry executed wills in 1993, 2004, 2006, and 2008, with each will revoking all previous wills. All four wills appointed appellee the personal representative of Larry's estate, with Larry's sister Mabel as an alternate. In Larry's 1993 will, which he signed at the age of seventy, he disposed of his property as follows:

- 301 S. 52nd Street to Nora;
- 315 S. 52nd Street to Nora;
- 307 S. 52nd Street to his sisters Rose, Mabel, and Josephine;[4]
- 8C Blue Teal to Nora for life, with remainder to Michelle;[5]
- Zannino's Superette (7770 Gough Street) to appellee; and
- Residuary estate (including Cecil County farm) to his siblings: appellee, Rose, Mabel, Josephine, Jeanette, and Catherine.

In 2004, the year after Nora's death, Larry executed another will, adjusting the disposition of his estate to account for Nora's passing (changes from 1993 in italics):

- 301 S. 52nd Street *to appellee*;
- 315 S. 52nd Street *to Larry Lundgren and his daughter, Michelle*;
- 307 S. 52nd Street to his sisters Rose, Mabel, Josephine, *and Jeanette*;
- 8C Blue Teal to Nora for life, with remainder to Michelle;[6]
- Zannino's Superette (7770 Gough Street) to appellee; and
- Residuary estate (including Cecil County farm) to his siblings: appellee, Rose, Mabel, Josephine, Jeanette, and Catherine.

[4] 301, 307, and 315 52nd St. are all located in Baltimore, Maryland.

[5] 8C Blue Teal refers to a trailer and real property located in Shelbyville, Delaware.

[6] Through an apparent oversight, Nora's name remained in the will despite her death the year before.

Two years later in 2006, Larry executed another will, notably devising the Cecil County farm to appellee (changes from 2004 in italics):

- 301 S. 52nd Street to appellee *or, if dead, to appellee's sons*;
- 315 S. 52nd Street to Larry Lundgren and Michelle;
- 307 S. 52nd Street to his sisters Rose, Mabel, Josephine, and Jeanette;
- 8C Blue Teal to Michelle or, *if dead, to appellee*;
- 7770 Gough Street[7] to appellee *or, if dead, to appellee's sons*;
- *Cecil County farm to appellee or, if dead, to appellee's sons; and*
- Residuary estate (*no longer including Cecil County farm*) to his siblings: appellee, Rose, Mabel, Josephine, Jeanette, and Catherine.

On October 23, 2008, Larry executed his fourth and final will, changing the disposition of his estate so that Larry would be the beneficiary of everything except for 8C Blue Teal (changes from 2006 in italics):

- 301 S. 52nd Street to appellee or, if dead, to appellee's sons;
- 315 S. 52nd Street to *appellee or, if dead, to appellee's sons*;
- 307 S. 52nd Street to *appellee or, if dead, to appellee's sons*;
- 8C Blue Teal to Michelle or, if dead, to appellee;
- 7770 Gough Street to appellee or, if dead, to appellee's sons;
- Cecil County farm to appellee or, if dead, to appellee's sons; and
- Residuary estate to *appellee or, if dead, to appellee's wife or, if dead, to appellee's sons*.

Larry died on October 23, 2013. On November 13, 2013, the Register of Wills for Baltimore County ordered that Larry's 2008 Last Will and Testament be admitted to probate and appointed appellee as personal representative of Larry's estate. On October 21, 2014, appellants filed a Petition to Caveat, challenging Larry's 2008 will on the grounds

[7] When Larry and appellee retired, Zannino's Superette closed and eventually became a catering business run by appellee's sons, Sam and Larry.

of undue influence, fraud, duress, and lack of mental capacity. Appellants later amended their petition to include a challenge to Larry's 2006 will on the same grounds. On July 5, 2016, the Orphans' Court for Baltimore County transmitted appellants' issues to the circuit court pursuant to Md. Rule 6-434.

Appellee thereafter moved for summary judgment. The motion was heard on November 2, 2016, after which the circuit court granted summary judgment in appellee's favor. Appellants challenge this determination on appeal.

STANDARD OF REVIEW

We review a trial court's grant of summary judgment *de novo*. *Koste v. Town of Oxford*, 431 Md. 14, 25 (2013).

> The appellate court will review the record in the light most favorable to the nonmoving party and construe any reasonable inferences that may be drawn from the facts against the moving party. In reviewing a grant of summary judgment under Md. Rule 2–501, we independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law.

Hill v. Cross Country Settlements, LLC, 402 Md. 281, 294 (2007) (citations and quotation marks omitted).

DISCUSSION

Appellants argue that Larry's 2006 and 2008 wills were the products of undue influence, fraud, duress, and Larry's lack of mental capacity. Because appellants' primary

argument is that appellee exerted undue influence over Larry, we will first address that issue before moving to consider appellants' other arguments.[8]

I. Undue Influence

Appellants argue that the circuit court erred when it found that appellants had not produced sufficient evidence of undue influence to survive a motion for summary judgment.

Undue influence in this context is generally defined as "physical or moral coercion that forces a testator to follow another's judgment instead of his own." *Moore v. Smith*, 321 Md. 347, 353 (1990) (citation omitted). The caveator bears a heavy burden to establish that a testator was subject to undue influence, and must show that the influence exerted was "to such a degree as to amount to force or coercion, destroying free agency[.]"[9] *Zook v. Pesce*, 438 Md. 232, 249 (2014) (quoting *Koppal v. Soules*, 189 Md. 346, 351 (1947)). It is not enough to show circumstances which give rise to a mere suspicion of undue influence, or even that a person had "power unduly to overbear the will of a testator," but rather "it must appear that the power was actually exercised, and that by means of its exercise the supposed will was produced." *Id*. (quoting *Koppal*, 189 Md. at 351).

[8] In their thirty-one page brief, appellants devote approximately one page of argument to issues other than undue influence.

[9] When a confidential relationship exists, the burden of proving undue influence over a devise in a will is on the party challenging the will. *Upman v. Clarke*, 359 Md. 32, 43 (2000). In contrast, when an *inter vivos* gift is made in the context of a confidential relationship, the burden is on the recipient to justify the transaction. *Id.* The rationale for this difference is based on our understanding that "[p]ersons ordinarily desire to retain possession and use of their property while they are alive." *Id.* at 44.

There is no bright-line test for undue influence. Instead, the Court of Appeals has identified seven elements characteristic of undue influence:

1. The benefactor and beneficiary are involved in a relationship of confidence and trust;
2. The will contains substantial benefit to the beneficiary;
3. The beneficiary caused or assisted in effecting execution of will;
4. There was an opportunity to exert influence;
5. The will contains an unnatural disposition;
6. The bequests constitute a change from a former will; and
7. The testator was highly susceptible to the undue influence.

Moore, 321 Md. at 353.

While a caveator need not prove the presence of all seven factors, we have observed that the first and seventh factors (relationship of confidence and trust, and high susceptibility to undue influence) are crucial and appear to be necessary to a finding of undue influence. *Green v. McClintock*, 218 Md. App. 336, 369 (2014).

The Court of Appeals' decision in *Sellers v. Qualls*, 206 Md. 58 (1954) provides helpful guidance in analyzing an undue influence case. There, after a decedent devised her home to a church rather than to her surviving relatives, the decedent's four siblings and a daughter of a deceased sibling filed a caveat petition and alleged, among other things, that the pastor of the church had exerted undue influence on the decedent. *Id*. at 63. At trial, the court granted a directed verdict against the caveators, who appealed. On appeal, the Court of Appeals recounted, in a light most favorable to the caveators, the evidence relevant to the relationship between the decedent and the pastor:

> The testatrix was evidently a devoted member of the Bethel Church. She was frequently visited by the Rev. Mr. Qualls after he came to that Church as pastor in 1946. Customarily, he talked with her alone on these

> visits and she usually seemed somewhat nervous and upset after his visits. She lent him $2,000 on quite liberal terms, and she entrusted the management of a large part of her business affairs to Mr. Qualls early in 1948. Her will was drawn by an attorney selected by Mr. Qualls, and was actually typewritten at the home of Mr. Qualls just before its execution. On the day before the execution of the will Mr. Qualls had a long and private conversation with the testatrix, which lasted two hours and seemed to upset her. On the day of the execution of the will, the testatrix went to the home of the Qualls. Either Mr. or Mrs. Qualls (there is a dispute as to which) called for Mrs. Dunn and took her over to the Qualls' home. The attorney was already there or arrived shortly afterwards pursuant to an arrangement made by Mr. Qualls. The only other person present in addition to the Qualls, Mrs. Dunn and the attorney was Mr. Martin, a deacon of Mr. Qualls' church. He came at the request of Mr. Qualls shortly before the will was executed and he and the attorney acted as witnesses of the will. After it was executed it was delivered to Mr. Martin and was placed and kept in the safe of the Bethel Church.
>
> Mr. Qualls evidently enjoyed the confidence of the testatrix, and he so testified himself. On the occasion of the $2,000 loan he obtained the money from her bank in accordance with a letter or other authorization from her, and he handled other matters between her and the bank. He assisted her in sales of some pieces of property (as already stated) and he sometimes took her to see a doctor. At one time he briefly had possession of the savings bonds which the testatrix later turned over to Mr. Cavey. According to his testimony this was merely for the purpose of putting them in the church safe for safekeeping, where they were in the custody of the treasurer. Mr. Qualls described them as 'enough to choke a cow.' This may have been accounted for by the fact that many of them seem to have been of small denominations.

Id. at 69-70.

The Court of Appeals affirmed the circuit court's grant of a directed verdict in favor of the caveatees.[10] *Id.* at 74. Pointing to instances where the decedent did not take the

[10] "[T]he summary judgment standard is akin to that of a directed verdict, *i.e.*, whether a fair-minded jury could return a verdict for the plaintiff on the evidence presented." *Baker v. Baker*, 221 Md. App. 399, 407 (2015) (quoting *Seaboard Sur. Co. v. Richard F. Kline, Inc.*, 91 Md. App. 236, 244 (1992)). "Thus, [in a motion for summary

advice of the pastor to exchange or sign away property, the Court observed that the pastor's "power to control [the decedent]'s disposition of her property tends to show that his alleged control was far from complete." *Id.* at 70. The Court concluded:

> After a careful review of the evidence we have reached the conclusion that although there were circumstances which would give rise to suspicion on the question of undue influence, they were not sufficiently weighty, either separately or taken together, to support more than suspicion that the will was the product of undue influence, and hence that the trial court was correct in its ruling directing a verdict in favor of the *caveatees* on this issue.

Id. at 74 (emphasis in original).

Here, the circuit court found that appellee had a very close and confidential relationship with Larry.[11] The court, however, found that appellants failed to introduce sufficient evidence that Larry was highly susceptible to undue influence. Because the circuit court found that appellants had failed to establish the presence of a crucial factor in an undue influence case, the court granted summary judgment in favor of appellee.

Appellants argue on appeal that the evidence was sufficient to create a genuine dispute as to whether Larry was highly susceptible to undue influence. Specifically,

---

judgment] a court must view the facts, and all reasonable inferences that may be drawn from them, in the light most favorable to the non-moving party." *Id*. Similarly, in a motion for a directed verdict, "[if] there is any legally relevant and competent evidence, however slight, from which a rational mind could infer a fact in issue, then a trial court would be invading the province of the jury by declaring a directed verdict." *Smithfield Packing Co., Inc. v. Evely*, 169 Md. App. 578, 592 (2006) (quoting *Houston v. Safeway Stores, Inc.*, 346 Md. 503, 521 (1997)).

[11] There is no dispute that Larry and appellee had a confidential relationship. Through multiple powers of attorney and health care directives dating back to 1993, appellee was Larry's attorney-in-fact and health care agent.

appellants contend that: Larry was timid and fearful of disobeying appellee due to appellee's dominating personality; Larry suffered from significant and longstanding bouts of anxiety and was dependent on Xanax; Larry's physical health was deteriorating; and that appellee influenced many of Larry's decisions and, after Nora died, appellee's influence over Larry increased.

We disagree. Even viewing the evidence and reasonable inferences therefrom in a light most favorable to appellants, we hold that the circuit court correctly granted summary judgment in favor of appellee. In our view, the facts in *Sellers* present a much stronger case for undue influence than those in the case at bar, yet the *Sellers* Court held, as a matter of law, that the facts there were insufficient to support a finding of undue influence. We will address each of appellants' contentions to demonstrate that appellants' contentions—individually and cumulatively—are insufficient as a matter of law to establish undue influence.

Larry's Fear of Appellee and Appellee's Dominating Personality

According to appellants, Larry was a timid and passive person who suffered from anxiety, was dependent on Xanax, and feared appellee. Appellants characterize appellee, in contrast, as an aggressive, obdurate, and controlling person with a bad temper. Appellants primarily point to two incidents as proof that Larry was afraid to go against appellee's wishes: first, while Nora had cancer, there was an occasion where appellee called Larry and asked him to go the racetrack, and despite Nora's request that Larry not go, Larry went anyway; second, after Larry moved in with Rose, his doctor suggested that

he enter an assisted living facility, but Larry declined because he thought appellee would not approve of it.

We initially note that Larry's decision not to enter an assisted living facility because of appellee's disapproval occurred in 2012 or 2013, long after the execution of the 2008 will. Similarly, assuming that appellee convinced Larry to go to the racetrack against Nora's wishes, that incident occurred years before the execution of the 2006 and 2008 wills. We also note that according to Rose, Larry "lived for the horses" and "loved the racetrack."

More significant to our analysis are the instances where Larry went against appellee's wishes. For example, appellant Charles testified that Larry loaned him money in 2008 despite Charles's opinion that appellee would not approve of the transaction. Furthermore, Larry sold a Jeep in 2011 without consulting appellee. We note that in 2004, Larry was advised by doctors that if he did not have heart bypass surgery, he would risk a heart attack and death. Appellee unsuccessfully attempted to convince Larry to have the operation. It was only in the following year, after appellant Daniel and appellee both sat down with Larry, that Larry agreed to have the surgery.

Even assuming that Larry was fearful of appellee and frequently acquiesced to his wishes, Larry's demonstrated capability of independently making decisions on important health and financial matters—and at least once contrary to appellee's advice—demonstrates that appellee's alleged control over Larry was, in the parlance of *Sellers*, "far from complete." 206 Md. at 70.

Larry's Anxiety and Dependency on Xanax

Appellants concede that dependency on Xanax alone is not sufficient to show that a person is highly susceptible to undue influence. Appellants argue, however, that Larry's anxiety condition should be viewed in concert with other evidence. Specifically, appellants point to notes from Dr. John Burton, Larry's physician, which indicate that Larry had not taken Xanax for a long period of time before he executed the 2008 will.

We are not persuaded. Appellant Rose testified that Larry suffered from anxiety for as long as she could remember, which would encompass not only Larry's 2006 and 2008 wills, but also his 1993 and 2004 wills. More significant in our view is the absence in the record of expert medical testimony concerning the likely effect of Larry taking, or not taking, Xanax. Nor was there any medical evidence that Larry's chronic anxiety became more severe in 2006 or 2008. In short, there was no evidence to suggest that Larry was more or less susceptible to influence as a result of his anxiety.

Deterioration of Physical Health

Though appellants contend that Larry's deteriorating physical health contributed to his susceptibility to appellee's undue influence, there is no evidence to support that contention. It was not until after an emergency surgery in late August 2011, years after all of Larry's wills had been executed, that he moved in with his sister, appellant Rose, who cooked, cleaned, did laundry, and helped him bathe on occasion. According to Dr. Burton's notes, Larry continued to manage his own finances even after he moved in with

Rose.[12] Larry also continued to drive a vehicle without assistance through 2011. Accordingly, appellants failed to present any facts tending to show that Larry's physical condition made him more reliant on appellee, or more susceptible to appellee's influence.[13]

Timing of Nora's Death

Appellants also argue that, following Nora's death in 2003, Larry "did everything that [appellee] wanted him to do." The record does not support appellants' contention. As stated *supra*, following Nora's death in 2003, appellee could not convince Larry to have an important bypass surgery. Notably, one of the incidents that appellants rely on to show appellee's influence over Larry—the time when Larry went against Nora's wishes and went to the racetrack with appellee—obviously occurred before Nora passed away in 2003, years before Larry executed the challenged 2006 and 2008 wills. Simply stated, the record does not support appellants' contention that Nora's death significantly changed the relationship between appellee and Larry.

[12] According to Dr. Burton's notes, Appellant Rose accompanied Larry to an appointment in December 2011. There, it was suggested that Larry have someone help him with his bills. Appellant Rose testified that she urged Larry to let appellee handle Larry's bills, and that she asked appellee to take Larry's checkbook and take care of Larry's bills because she had too many other things to do.

[13] By contrast, the Court of Appeals in *Moore* held that a decedent was highly susceptible to undue influence when the decedent was illiterate, partially paralyzed, partially blind, and reliant on the beneficiary to attend to his physical needs and financial affairs. 321 Md. at 357-58.

Summary of Larry's Susceptibility to Undue Influence

While there is evidence that appellee may have influenced Larry on occasion, appellants also testified that Larry loved appellee, that the two brothers got along well, and that they enjoyed many of the same interests, including hunting, fishing, and visiting the racetrack. Moreover, Larry and appellee worked at and managed the family grocery store together for many years, and they also owned rental properties together. While it is understandable that Larry would rely on appellee's advice given their close relationship, the record indicates that Larry was capable of resisting appellee's wishes.

We conclude, as a matter of law, that appellants failed to generate the requisite dispute of material fact. Viewing the evidence in the light most favorable to appellants, we hold that there was insufficient evidence to show that Larry was highly susceptible to undue influence from appellee.[14]

Assuming *arguendo* that Larry were highly susceptible to appellee's influence, we note that even if a person possesses "power unduly to overbear the will of a testator . . . it must appear that the power was actually exercised, and that by means of its exercise the

[14] Appellants also argue that it was commonly understood in the Zannino family that Larry, Sr. and Theresa intended for the Cecil County farm to eventually be devised to all of the siblings upon Larry's death, and appellant Rose testified that Larry told her at some point in time that this would indeed happen. First, the intentions of appellants' parents for disposition of the farm are immaterial. *See Green v. Michael*, 183 Md. 76, 82-83 (1994). Moreover, it is unclear when Larry mentioned that his siblings would share the farm upon his death, and appellants presented no evidence that Larry's intentions did not simply change over the years by virtue of his own free will. *See Koppal*, 189 Md. at 350-51 ("We do not conceive that a change of intention is *per se* an indication of undue influence, when there is nothing to show that the change of mind was due to improper constraint.").

supposed will was produced." *Koppal*, 189 Md. at 351. The influence "must be exerted to such a degree as to amount to force or coercion, destroying free agency[.]" *Id*. (citations omitted); *see also Geduldig v. Posner*, 129 Md. App. 490, 511 (1999) (evidence must be legally sufficient that the undue influence "actually affected the testator").

Here, there is no evidence that appellee exercised influence "to such a degree as to amount to force or coercion" in the making of Larry's 2006 or 2008 wills. Larry's attorney, Alfred Brennan, testified that when Larry came to his office to revise his will in 2006, he was driven to the office by appellee and appellee's family. Mr. Brennan testified that Larry appeared to be "fine," and although appellee's family arrived with Larry, appellee and his family left before Larry met with Mr. Brennan to review his will. *See Zook*, 438 Md. at 254 (exhibiting no concern where caveatee drove the decedent to attorney's office, when caveatee was excluded from the room during the discussion and execution of the will). As for Larry's 2008 will, Mr. Brennan testified that Larry was living independently at the time, and that he came into Mr. Brennan's office alone. We further note that Larry and Mr. Brennan had a long-term attorney-client relationship as Mr. Brennan also prepared the 1993 and 2004 wills and represented Larry in several other matters.[15]

In summary, we view the facts here as less egregious than those present in *Sellers*, *supra*. Unlike the situation in the case at bar, the decedent's will in *Sellers* was prepared

[15] Mr. Brennan represented appellee for many years as well. Appellants do not allege that Mr. Brennan's attorney-client relationship with Larry was compromised as a result of his representation of appellee.

by an attorney selected by the caveatee and typed at the caveatee's home just before its execution. 206 Md. at 69. Moreover, either the caveatee or his wife in *Sellers* arranged for the decedent's transportation to the caveatee's home where the attorney was also present at the caveatee's request. *Id.* Here, Mr. Brennan's involvement in the drafting and execution of Larry's wills is less suspicious than the events surrounding the execution of the testatrix's will in *Sellers*. Significantly, Mr. Brennan consulted only with Larry in relation to the preparation of the 2006 and 2008 wills, and he had been Larry's attorney for many years prior to their execution. We conclude, as did the *Sellers* Court, that "although there were circumstances which would give rise to suspicion on the question of undue influence, they were not sufficiently weighty, either separately or taken together, to support more than suspicion that the will was the product of undue influence[.]" *Id*. at 74. Accordingly, we affirm the circuit court's grant of summary judgment on this issue.

II. Fraud, Duress, and Lack of Mental Incapacity

In their amended petition to caveat, appellants generally claimed that Larry's 2006 and 2008 wills were "procured" by fraud and/or duress, and that Larry lacked the capacity to execute those wills. We initially note that, while appellants did not expressly abandon these claims below, they failed to present any serious argument on them during the summary judgment hearing. At the beginning of his argument opposing summary judgment, appellants' counsel stated that he intended "to focus on undue influence, because [he] would agree with [appellee's counsel] that that is the crux of this case." Consistent with that statement, the vast majority of appellants' argument at the summary judgment

hearing related to their claim of undue influence. And on appeal, appellants devote approximately one page of their thirty-one page brief to their fraud, duress, and lack of capacity claims.

Before we address appellants' contentions, we begin with the observation that appellants failed to provide any citation of legal authority, be it case law, statute, or rule, to support their fraud, duress, and lack of testamentary capacity claims. As we observed in *Collins v. Collins*, it "is not our function to seek out the law in support of a party's appellate contentions." 144 Md. App. 395, 438 (2002) (quoting *Anderson v. Litzenberg*, 115 Md. App. 549, 578 (1997)). Although "we are not obliged to consider [appellants'] arguments," we shall exercise our discretion to address them briefly. *Benway v. Md. Port Admin.*, 191 Md. App. 22, 32 (2010).

A. Fraud

In *Wall v. Heller*, 61 Md. App. 314, 332 (1985) we noted that "fraud connotes that the testat[or] either did not know that [he] was signing a will, or that [he] was misled or deceived as to the provisions of the will." In *McClintock*, 218 Md. App. at 372-73, we recognized that the concept of fraud also includes fraudulent inducement as a ground for invalidating a will. We conclude that appellants failed to allege fraud as recognized by Maryland law.

In their brief, appellants "concede that there is no direct evidence of what occurred on the two dates when the Wills were executed, other than the fact that [appellee] brought Larry to Mr. Brennan's offices for purposes of changing the 2006 Will." Appellants

contend, however, that there was sufficient evidence to show that "[appellee's] control over Larry was so complete and oppressive that Larry could no longer distinguish his own will from that of his brother, his own desires from those of his brother, such that he was deceived by [appellee] into signing the Wills." We discern that appellants' fraud claim, as articulated in their brief, is merely a restatement of their undue influence arguments, which we have rejected *supra*.

B. Duress

Appellants did not argue duress in their brief. Accordingly, we shall not address it. *See* Md. Rule 8-504(a)(6) (providing that an appellate brief shall include "[a]rgument in support of the party's position on each issue").

C. Lack of Mental Capacity

Regarding appellants' claim that Larry lacked mental capacity when he executed the 2006 and 2008 wills, we initially note the presumption of testamentary capacity:

> The law presumes that every person is sane and has the mental capacity to make a valid will. To rebut that presumption, one challenging a will for lack of testamentary capacity must prove either that the testator was suffering from a permanent insanity before he made his will, and therefore would have been insane when he made the will; or, although not permanently insane, he was of unsound mind when he made the will.

Dougherty v. Rubenstein, 172 Md. App. 269, 284 (2007) (citations omitted); s*ee also Zook*, 438 Md. at 245-46. Moreover,

> Whether a testator had sufficient mental capacity is determined by a consideration of his external acts and appearances. It must appear that at the time of making the will he had a full understanding of the nature of the business in which he was engaged; a recollection of the property of which he intended to dispose and the persons to whom he meant to give it, and the

> relative claims of the different persons who were or should have been the objects of his bounty.

Zook, 438 Md. at 245–46 (quoting *Sellers v. Qualls*, 206 Md. at 66). The Court of Appeals has specifically addressed what is legally insufficient to rebut the presumption of testamentary capacity:

> Evidence sufficient to show lack of testamentary capacity cannot be based on the fact that the testator drooled, was incontinent and needed support when walking and had other physical debilities [*Jones v. Collins*, 94 Md. 403, 51 A. 398 (1902)]; nor on the fact he spilled food and cigar ashes on himself [*Sellers v. Qualls*, *supra*]; nor on the fact he was not clear and precise in his speech [*Gesell v. Baugher*, 100 Md. 677, 60 A. 481 (1905)]; nor on the fact he answered questions with a grunt or mumbled and slurred his words [*The Berry Will Case, supra; Plummer v. Livesay, supra*]; nor on the fact he would converse with his valet but refused to engage in conversation with his nurses [*Acker v. Acker*, 172 Md. 477, 192 A. 327 (1937)]; nor on the fact he would ask a question over again within a brief period [*Davis v. Denny*, 94 Md. 390, 50 A. 1037 (1902)]; nor on the fact he had a shuffling gait [*Scheller v. Schindel*, 153 Md. 547, 138 A. 415 (1927)]; nor on the fact he wanted three televisions operating at the same time [*Cf. Grant v. Curtin*, *supra*]; nor on the fact he disliked to stay alone at night and had an aversion to heat—assuming such dislikes are eccentric instead of normal [*Sellers v. Qualls*, *supra*].

West v. Fidelity-Baltimore Nat. Bank, 219 Md. 258, 267–68 (1959).

Here, there was evidence that Larry was able to drive a motor vehicle through 2011, and there is no evidence that he suffered from any mental incapacity that prevented him from understanding important events in his life, or from understanding what he was signing when he executed his 2006 and 2008 wills. Larry's attorney, Mr. Brennan, testified that Larry seemed "fine" when he executed his 2006 will. Regarding Larry's 2008 will, Mr. Brennan testified that Larry called him, mentioned that something had happened at the

beach, and said he wanted to change his will. Following that conversation, Larry went to Mr. Brennan's office unaccompanied.

Additionally, the medical records do not support appellants' contention that Larry lacked capacity between 2006 and 2008. We have scoured the 2006 and 2007 medical records and see nothing that would create a question of Larry's mental capacity. As for 2008, Dr. Burton saw Larry on February 14, 2008 and described him as "alert and lucid, upbeat and positive." On October 28, 2008 (five days after Larry signed the 2008 will), Dr. Burton noted that Larry had a difficult day and had not taken Xanax for a long period of time, but still described Larry as being "alert and lucid." In addition, during each of his visits with Larry in 2006 and 2008, Dr. Burton performed neurological screening and found Larry to be "within normal limits."[16]

Nor does appellants' testimony raise any substantial concerns about Larry's testamentary capacity during the relevant time period. Appellant Rose testified that after Larry started living with her in 2011, "sometimes he would do crazy things," but also testified that she did not know what was going on with Larry in 2006 and 2008 because she was not around him much during those years; appellant Jeanette merely asserted that Larry "couldn't have been in his right mind" when he signed his 2006 and 2008 wills; appellant Charles testified that Larry experienced some loss of memory after 2011, but provided no evidence of Larry's testamentary capacity in 2006 and 2008; and appellant

[16] The record does not contain Dr. Burton's neurological screening notes from Larry's appointments in 2007.

Daniel testified that he did not know whether Larry had the capacity to enter into a contract in 2008, but that when he spoke to Larry about the concept of challenging a will in 2010 or 2011, he did not observe anything unusual about Larry's behavior. Put simply, appellants failed to introduce sufficient evidence to rebut the presumption that Larry possessed the requisite mental capacity to execute his 2006 and 2008 wills.[17]

CONCLUSION

For the foregoing reasons, we hold that the circuit court correctly granted summary judgment in favor of appellee.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANTS.

[17] Indeed, at oral argument appellants acknowledged that there was minimal evidence in the record concerning Larry's testamentary capacity.