UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2622

SEPTEMBER TERM, 2014

ON MOTION FOR RECONSIDERATION

SADIE M. CASTRUCCIO

v.

THE ESTATE OF PETER ADALBERT CASTRUCCIO, ET AL.

Eyler, Deborah S.,
Arthur,
Salmon, James P. (Retired,
Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: February 3, 2016

In the Circuit Court for Anne Arundel County, Sadie M. Castruccio, the appellant, filed suit against the estate of her late husband, Peter Adalbert Castruccio ("the Estate"), the appellee, contesting the Estate's claim of ownership to eight parcels of real estate based upon seven deeds conveying the parcels from Peter and Sadie to Peter ("the Challenged Deeds").[1] Following a bench trial, the circuit court entered judgment in favor of the Estate on all eight counts of Sadie's second amended complaint. Sadie appeals, presenting four questions for review, which we have combined and rephrased:

I. Did the circuit court err by finding that the Challenged Deeds were presumptively valid and were not forgeries, and that the imposition of a constructive trust was not warranted?

II. Did the circuit court err by not drawing negative inferences against the Estate based upon spoliation of evidence and by drawing a negative inference against Sadie for her failure to testify?

For the following reasons, we answer these questions in the negative and shall affirm the judgment of the circuit court.

FACTS AND PROCEEDINGS

Peter and Sadie Castruccio were married for 62 years. They did not have any children together. On February 19, 2013, Peter died at the age of 89. Sadie was 92 years old.

On February 27, 2013, Peter's Last Will and Testament, dated September 29, 2010, and a codicil thereto, dated July 13, 2012, were admitted to probate in the Orphans'

[1] For ease of discussion we shall refer to Sadie Castruccio and Peter Castruccio by their first names.

Court for Anne Arundel County. John Grieber, Jr., an attorney who had worked for Sadie and Peter for nearly twenty years, was named in the Will as the personal representative of the Estate. In his Will, Peter made three cash bequests and bequeathed the "rest and remainder of [his] estate" to Sadie provided that she survived him "and . . . has made and executed a Will prior to [his] death." In a "Residuary Clause," Peter specified that if, at the time of his death, Sadie did not "have a valid Will filed with the Register of Wills in Anne Arundel County dated prior thereto these," the remainder of his estate would go to one Darlene Barclay ("Darlene"), his long-time office manager. Sadie did not have a will on file with the Register of Wills when Peter died and, as such, the Estate took the position that Darlene was the beneficiary under Peter's Will pursuant to the Residuary Clause. On March 27, 2013, Sadie initiated a caveat proceeding in the probate matter.[2]

On April 16, 2013, Sadie filed a "Complaint to Quiet Title and for Injunctive Relief" in the case at bar, which she twice amended. In her second amended complaint, Sadie sought to quiet title to eight properties that were the subject of the Challenged Deeds, conveying properties held by her and Peter jointly, as tenants by the entireties, to Peter in fee simple. In Counts I through VII, Sadie asked the court to declare that she

[2] That action ultimately was removed to the Circuit Court for Anne Arundel County where, after a bench trial, the court found in favor of the Estate. Sadie's appeal in that matter is pending in this Court. *See Sadie M. Castruccio v. The Estate of Peter Adalbert Castruccio, et al.*, No. 1665, Sept. Term 2014.

owned the eight properties titled solely in Peter's name at the time of his death; to declare that the Challenged Deeds were "null and void *ab initio*"; and to issue preliminary and permanent injunctions prohibiting the Estate from interfering with her ownership of the properties. In Count VIII, Sadie sought, in the alternative, the imposition of a constructive trust.

The Bench Trial

The case was tried to the court over three days in July of 2014. The parties stipulated that Sadie did not sign the Challenged Deeds and that Peter signed her name on those deeds. In her case, Sadie called three witnesses: Philip Blazer Catzen, an expert in digital computer forensic analysis; Darlene; and Robert Lesnevich, an expert in document and handwriting examination analysis. Sadie did not testify.[3] She introduced 103 exhibits, all by stipulation.

[3] Sadie conceded that her testimony about the execution of the deeds was barred by the Dead Man's Statute, codified at Md. Code (1973, 2013 Repl. Vol.), section 9-116 of the Courts and Judicial Proceedings Article ("CJP"). That statute states:

> 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.

Sadie also took the position that Grieber and Darlene, were barred from testifying about the challenged transactions. As we shall explain, the court agreed and

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In its case, the Estate recalled Darlene; and called Kim Barclay ("Kim"), Darlene's daughter; Peter Rodokanakis, an expert in digital computer forensic analysis; and Donna Eisenberg, a forensic handwriting expert. By stipulation, it introduced 396 exhibits into evidence.

The evidence adduced showed the following. Sadie and Peter jointly owned more than 40 properties during their marriage. They developed and rented these properties, realizing significant income from their investments. Most of this income was deposited into a jointly titled account at M&T Bank that was associated with Marit Incorporated, a real estate investment business started by Sadie during the marriage. In a financial statement prepared on January 31, 2012, just over a year before Peter's death, the Castruccios held assets in excess of $17 million, including real estate valued at more than $10 million.

All of Peter and Sadie's business was conducted from a jointly owned building on Dicus Mill Road in Millersville. Peter and Sadie each had an office there. In 1984, they hired Darlene as their office manager. She later became their property manager. Beginning in the late 1990s, they retained Grieber to perform legal services for the business. Finally, around 2003, Kim was hired as an administrative assistant. The

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barred them from testifying about the circumstances surrounding the preparation and execution of the Challenged Deeds.

Castruccios also employed Ernest Stinchcomb ("Danny") as a repairman for their rental properties.

Darlene was responsible for drafting documents for Peter and Sadie, often under Grieber's supervision. She used a desk top computer at the office. She paid bills, deposited checks, prepared tax returns, and generally managed the financial aspects of Sadie and Peter's business interests. She also was a notary public. Kim was responsible for running errands, answering phones, and filing papers.

Throughout most of their marriage, all of Sadie and Peter's bank accounts were jointly titled. They maintained an investment account at Smith Barney. In August of 2008, the account had a value of more than $3.6 million. By letter dated September 17, 2008, Peter and Sadie authorized Smith Barney to "split their holdings into their individual names, i.e., 50% to each." Peter signed his name and Sadie's name on this letter.

About a year and a half later, on February 5, 2010, the Challenged Deeds all were recorded in the Land Records for Anne Arundel County. They were drafted by Darlene. Each was titled "Deed" and was dated "October 26, 2009." The deeds conveyed property "from "PETER A. CASTRUCCIO and SADIE M. CASTRUCCIO, husband and wife, Grantors, to PETER A. CASTRUCCIO, Grantee" and specified that "[t]he Grantor and Grantee, wife and husband, hold the property . . . as tenants by the entireties. . . . [and] desire to vest the entire title of that property solely in the Grantee, PETER A. CASTRUCCIO." The deeds all bear a signature of "Sadie M. Castruccio," but, as

mentioned, the parties stipulated that Peter actually signed Sadie's name on each deed. Kim signed each deed as a witness to Sadie's signature. Darlene notarized the deeds as having been executed by Sadie in her presence on October 26, 2009. Grieber signed each deed certifying that it was prepared at his direction.

The eight properties conveyed to Peter by the Challenged Deeds were:

- Lots 52, 53, and 54 in the Sloop Cove Landing subdivision in Glen Burnie. Lots 52 and 54, with addresses of 8226 and 8227 Anglers Edge Trail, were vacant lots that were ready to be developed, and Lot 53, with an address of 8229 Anglers Edge Trail, was Peter and Sadie's home from 2009 forward. In 2012, these properties were valued at $1.8 million. The outstanding balance on Peter and Sadie's purchase money mortgage on Lot 53 was $414,000.

- Lots 38A and 38S in the Lennox Park subdivision in Hanover, which was Peter and Sadie's former home on Reavis Road and an adjoining lot. In 2012, these properties were valued at $445,000.

- Lots 2 and 3 in the Mill Creek Landing subdivision in Annapolis, which were two vacant waterfront lots. In 2012, these properties were valued at $825,000.

- 600 Baltimore and Annapolis Boulevard ("600 B&A"), a commercial building in Severna Park. 600 B&A was the property earning the most rental income for Peter and Sadie. In 2012, this property was valued at $1.7 million.

Four other deeds dated October 26, 2009, also were recorded in the Land Records in 2010 ("the Quitclaim Deeds"). These deeds conveyed Peter's interest in four jointly titled properties to Sadie. Each was titled "INTER-SPOUSAL QUITCLAIM DEED" and conveyed property "from PETER A. CASTRUCCIO, Grantor, Inter-Spousal to his wife, SADIE M. CASTRUCCIO, Grantee." Each deed was signed by Peter, witnessed by

Kim, and notarized by Darlene. Grieber certified that the Quitclaim Deeds were prepared at his direction. The four properties conveyed to Sadie by the Quitclaim Deeds were:

- A single-family rental home at 616 Mayo Road in Glen Burnie. In 2012, this property was valued at $285,000.
- A lot on Dicus Mill Road in Millersville improved with the Castruccios' office, two apartments, and several houses and trailers rented to tenants. In 2012, this property was valued at $1.5 million.
- A rental property at 800 North Shore Drive in Glen Burnie. In 2012, this property was valued at $750,000.
- A multi-family home at 103 Reavis Road in Hanover, which was rented out to three tenants. In 2012, this property was valued at $295,000.

The Quitclaim Deed conveying the first property was recorded in the Land Records on March 15, 2010, and the Quitclaim Deeds conveying the last three properties were recorded in the Land Records on March 31, 2010.

Following the recordation of the Challenged Deeds and the Quitclaim Deeds, the Anne Arundel County Office of Finance issued property tax bills addressed to Peter for the properties conveyed to him and issued property tax bills addressed to Sadie for the properties conveyed to her. Some of the bills for utilities and other county taxes, however, were addressed to Sadie and Peter jointly and did not reflect any change in ownership.

Sadie and Peter continued to treat the properties as joint properties. They jointly entered into lease agreements with tenants for several of the properties without regard to ownership. Tenants in the B&A building continued to send rent checks made out to Sadie even though that property was titled solely in Peter's name. Rental income from

the properties conveyed to Sadie by the Quitclaim Deeds continued to be deposited into the Marit account, which was a jointly titled account.

Sadie presented testimony from two expert witnesses that was intended to show that the Challenged Deeds and the Quitclaim Deeds could not have been, and were not, executed on October 26, 2009, but were executed on some date after that, but before their recordation. Because, as we shall discuss, the court rejected the testimony of Sadie's handwriting analyst, we only shall discuss the testimony of Catzen, her digital computer forensic analysis expert.

Catzen testified that he had examined three electronic devices used to prepare and store business documents at the Castruccios' office: a Dell Inspiron desktop computer ("the Dell") used by Darlene at the Castruccios' office from May 2010 forward; a USB thumb drive ("USB") provided to him by Darlene during discovery; and an HP Pavilion desktop computer ("the HP") used by Darlene at the Castruccios' office between 2007 and May 2010. Catzen used a forensic disc duplicator on the Dell and the HP to create mirror images of their hard drives, which he then analyzed.

Catzen's analysis of the Dell revealed that certain files that included the word "deed" in the filename had been accessed from a SanDisk Cruzer thumb drive ("Cruzer"). As we shall discuss, the Cruzer could not be analyzed because it had been destroyed by Darlene. Counsel for Darlene provided Catzen with the USB, which Darlene was claiming contained copies of all the business files from the Cruzer. Catzen opined,

however, that the USB could not have been an exact copy of the Cruzer because there were files that had been accessed from the Cruzer on the Dell that were not on the USB.

With respect to the HP, Catzen observed that the computer had been in use until May 6, 2010, and that, then, on May 7, 2010, the operating system on the computer had been reinstalled. The reinstallation had the effect "at the user level" of "delet[ing] all the contents that existed prior to the operating system reinstall." Catzen recovered the "master file table record" ("MFT record") for the HP, which he described as a table of contents for the file system. The MFT record showed the path and filename, the creation date, the last modification date, and the last access date for the files. Catzen explained that the "creation date" for a file is not always reliable because, if a file was created on one computer and then copied onto another computer, the creation date reflected in the MFT record of the second computer will be the date it was copied, not the date it originally was created. The last modification date is the last time the file ever was modified on that computer, however.

Catzen further explained that the files listed in the MFT record no longer were in the specified location on the hard drive, having been overwritten when the operating system was reinstalled. Using a process called "carving," he was able to search the "deleted or unallocated space of the hard drive" and locate files he believed to be the same files listed in the MFT record. Two of those files appeared to be identical to the two Challenged Deeds conveying Lots 52 and 54 in Sloop Cove Landing. Catzen testified that both deeds were created on the HP on January 8, 2009, and were not

accessed again until January 27, 2010, which also was the date the files were last modified.

Catzen also located a Word Perfect document that appeared to be identical to the Quitclaim Deed conveying the rental property at 616 Mayo Road to Sadie. The file name for that document was "616 Mayo quit claim deed 2/23/10." The date in the file name matched the "created" date on the HP computer, February 23, 2010. The document last was modified on March 2, 2010. Catzen opined that, if the deed was printed from the HP computer, it could not have been executed on October 26, 2009.

Catzen further opined about "index.dat" records he recovered from the HP. Those records reflected the date any file was opened and the name of the file at the time it was accessed. Catzen explained that a group of Word Perfect documents stored in a folder entitled "PAC [Peter's initials] SMC [Sadie's initials] Deeds 2-19-09" included file names consistent with deeds for many of the properties conveyed by the Challenged Deeds and by the Quitclaim Deeds. The Word Perfect files all had been accessed, on November 23, 2009, however, which was after the date each purportedly had been executed. At the time the files were accessed, the deeds also had file names that included the name of the lot number or address of the property being conveyed and the date "1-8-09." The dates in the file names for these documents all had been changed to "10-26-09," however. Catzen opined that these files only could have been renamed to include the "10-26-09" date on or after November 23, 2009.

Catzen also opined that, if he had access to the Cruzer that Darlene had destroyed, he would have expected to find the deed files, including the "metadata" associated with those deed files. In addition, if he had been given access to the computer Darlene used to copy the files from the Cruzer to the USB, he would have been able to determine which files were copied, the date the copies were made, and the names of any files that were accessed from the Cruzer, but not copied onto the USB.

On cross-examination, Catzen acknowledged that he had not analyzed any CDs or floppy disks present in the Castruccios' office at the time of Peter's death, nor had any been provided to him. He also testified that he had not prepared any analysis of three other computers used in the Castruccios' office, although he was given access to them. Finally, he acknowledged that documents accessed from the HP's hard drive by means of the "carving" process were "devoid of names" and only could be matched up to known files by comparing the file size and its content; and that the reinstallation of the operating system on the HP "did damage" and overwrote numerous files, making them unrecoverable.

In Sadie's case, Darlene's testimony was limited to the subject of her handling of certain digital devices after Peter's death. Sadie had filed pre-trial motions to compel Darlene to turn over digital devices in her possession and for sanctions against her and against the Estate for spoliation, all of which had been reserved for trial. Darlene explained that she had used the HP for the Castruccios' business files during 2008, 2009, and part of 2010. In the spring of 2010, the HP "crashed" and she could not get it to

"boot up." She took it to Office Depot in an attempt to access the files she "could no longer access." According to Darlene, Office Depot also was unable to recover the files. Thereafter, she purchased the Dell, which she used from that time forward.

Darlene testified that, once she began using the Dell, she also began saving files to the Cruzer, instead of saving the files to the Dell's hard drive. She also intermittently used a second flash drive to save personal files. Within a few days of Peter's death, she realized that Sadie and her extended family would "be asking for [the Cruzer]" in relation to the legal proceedings. At that point, she decided, without consulting Grieber or anyone else, that she would copy the business files from the Cruzer onto the USB, copy her personal files from the Cruzer onto a different flash drive, and destroy the Cruzer. She used her personal laptop computer to copy the files from the Cruzer onto the USB and the second flash drive. She destroyed the Cruzer by breaking it open and cutting the memory card in half with wire clippers. Darlene testified that she "wasn't hiding anything" and she "didn't see what the big deal was."

Darlene went on to testify that she no longer had her personal laptop. She had lent it to one of her daughters on November 16, 2013. The next day, that daughter died from a drug overdose. According to Darlene, her deceased daughter's ex-boyfriend stole items from her daughter's apartment in the aftermath of her death. Darlene's laptop was one of the items that was stolen. Darlene did not disclose the theft of her laptop until February 20, 2014, however, the day before a scheduled hearing on Sadie's motion to compel.

The documentary evidence introduced by Sadie included the Challenged Deeds; the Quitclaim Deeds; bills for utilities and taxes for the properties conveyed in those deeds that did not reflect the change in title; a 2012 listing agreement executed by Peter for a property conveyed to Sadie in the Quitclaim Deeds; medical records for Sadie and Peter related to hospitalizations in 2009; financial statements prepared by the Castruccios valuing the properties and other jointly owned assets; and letters exchanged between Sadie's counsel and Grieber concerning the administration of Peter's Estate.

At the close of Sadie's case, the Estate moved for judgment on all eight counts of the second amended complaint, arguing that Sadie had not met her burden of production or her "clear and convincing burden of persuasion" to overcome the presumption that the Challenged Deeds were valid. The court denied the motion.

In the Estate's case, Kim testified that she worked for the Castruccios for close to ten years, ending on the day Peter died. During that time, she witnessed signatures on deeds and other documents "hundred and hundreds of times." The way she "knew it was okay to witness [a signature]" was that she either "overhear[d] a conversation from the person [whose signature she was witnessing] or [Peter] would tell [her] it was okay to sign it." She never witnessed a signature without first making sure "it was okay to witness that signature." She made sure by either being "told it was okay" or by "see[ing] somebody sign it." She did not recall ever seeing Peter sign Sadie's name on a document or Sadie signing Peter's name. She had no specific recollection of witnessing the signatures on the Challenged Deeds or the Quitclaim Deeds.

As noted, the Estate recalled Darlene in its case. Darlene testified about her role as office manager and property manager for the Castruccios. She explained that Marit was Sadie's business and Peter was not very involved in it. Through Marit, Sadie managed approximately 40 properties, all of which were rental properties. Sadie and Peter maintained a bank account at M&T Bank for Marit, but, as a practical matter, the Marit account was treated as Sadie's account. Before November of 2009, property tax bills for Marit properties were mailed to Sadie at the Castruccios' home on Reavis Road in Hanover. In November of 2009, Sadie and Peter moved to their new home on Anglers Edge Trail in Glen Burnie. From that time forward, all of the property tax bills were mailed to a P.O. Box in Gambrills and either Darlene or Danny picked them up. Ordinarily, Darlene wrote the checks for the bills, but after she had paid the property tax bills, she returned the bills to Sadie for her to review. Sadie returned the bills to Darlene after she had completed her review. Sadie handled all of her own banking.

Darlene had seen Peter sign Sadie's name on documents on "several occasions." Darlene signed Peter's name on documents at his direction and, on occasion, signed Sadie's name on documents. Darlene frequently notarized documents signed by Peter and Sadie. Her "practice was either [Peter] signed it in front of me . . . [o]r if it had both signatures, I said [']does Sadie know about this?['] And he would say [']yes[']."

Darlene testified about each of the properties conveyed by the Challenged Deeds and the Quitclaim Deeds. She explained that 600 B&A produced about $9,000 per month in rental income. She estimated that the four properties conveyed to Sadie by Peter in the

Quitclaim Deeds cumulatively earned approximately $9,000 per month as well. According to Darlene, there was a file folder in the Castruccios' office in which all the original deeds were kept after each was recorded in the Land Records. That folder was in the office on February 19, 2013, the day Peter died. On that date, Sadie changed the locks to the office. Darlene was allowed back into the office one time since then—in July 2013—as part of a visit ordered by the Orphans' Court. On that date, she observed that the deed file had been removed. The deed file was neither produced during discovery nor introduced into evidence at trial.

During Darlene's direct examination, the court permitted counsel to place on the record a proffer of what her testimony would have been regarding the preparation of the Challenged Deeds, the Quitclaim Deeds, and the events of October 26, 2009. At the conclusion of Darlene's testimony, the court also permitted the Estate to place on the record a proffer of Grieber's testimony on the same subject.[4]

The Estate's digital forensic expert, Rodokanakis, testified that he had been asked to examine the same materials Catzen had examined, to read Catzen's report, and to "attempt to verify the provability of [Catzen's] opinions" or offer a differing opinion. He agreed with Catzen's analysis of the "Jumplist" on the Dell and verified that documents

[4] Both would have testified that they heard Sadie and Peter discuss the Challenged Deeds and the Quitclaim Deeds and agree that splitting some of their jointly titled property would be beneficial for estate planning purposes. They also both would have testified that, on October 26, 2009, Sadie, Peter, Darlene, Kim, and Grieber all were present in the office. Sadie sat on one side of a desk and Peter sat on the other while he signed all of the deeds.

had been copied onto the Cruzer from that computer. He otherwise disagreed with the methods Catzen used to analyze the electronic devices and with the opinions Catzen derived from his analysis.

Rodokanakis opined that the recovered MFT record for the HP was not a reliable source of information because the reinstallation of the operating system had deleted all the files referenced in the recovered MFT record. In his view, without a means to connect the information in the MFT record with the actual file, the MFT record itself was not an accurate source of information because the reinstallation of the operating system likely deleted MFT records as well. As an example, he explained that if a user opened an existing Word Perfect document to use as a template, modified the document, and then used the "Save As" function to save it, but saved it under the same file name, the MFT record would reflect that a new document had been created on that date with the same file name. If the operating system subsequently was reinstalled and the record of the first document was lost, then the MFT record only would contain a reference to the second document and one mistakenly could conclude that the only version of that file had been created on the later creation date.

Rodokanakis also disagreed with Catzen's opinions with regard to the "index.dat" records on the Dell. He explained that an index.dat record only will be created for a Word Perfect file if the user opens it through Windows Explorer, not if the user opens it through Word Perfect. Thus, there was no way to tell from looking at an index.dat record the last time a document was opened on the computer.

Rodokanakis testified that Catzen's reliance on naming conventions was misplaced because users are notoriously inconsistent in naming files and because there were actual examples in files on the USB where a filename bore a date that was inconsistent with the internal date in the actual file. In Rodokanakis's opinion, there was no way to determine whether a file referenced only in an index.dat record with a date in the file name actually was internally dated consistent with the file name.

The Estate's handwriting expert testified that Sadie signed Peter's name on at least 19 documents over thirty years and that Peter signed Sadie's name on at least 22 documents. She opined that neither Sadie nor Peter ever attempted to disguise his or her signature as that of the other. Rather, each signed the other's name in his or her "own natural handwriting."

The documentary evidence introduced by the Estate included Peter's Will and the Codicil thereto; dozens of checks deposited into the Marit account at M&T bank before and after the recordation of the Challenged Deeds; property tax levies on the properties conveyed in the Challenged Deeds and the Quitclaim Deeds before and after the recordation of those deeds that reflect the change in title; investment account statements; and deeds,[5] promissory notes, and other documents upon which Peter had signed Sadie's name.

[5] One such deed was executed on January 10, 2009, just under ten months before the Challenged Deeds recite that they were executed. The deed conveyed 21 acres of land owned by Sadie and Peter as tenants by the entireties to Ronald and Barbara Sines. That

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At the conclusion of its case, the Estate renewed its motion for judgment on the same bases argued previously. The court denied the motion.

Sadie recalled Catzen as a rebuttal witness. Catzen testified that Rodokanakis was incorrect that an index.dat record will not be created for a Word Perfect document opened through the Word Perfect application (as opposed to through Windows Explorer). He explained that an index.dat record is created every time a Word Perfect document is opened, regardless of how it is opened.

Post-Trial Briefs and Court's Decision

The court directed the parties to submit proposed findings of fact and conclusions of law and scheduled closing arguments for August 29, 2014 (later postponed until September 17, 2014). In her post-trial brief, Sadie asked the court to find, *inter alia*, that she never authorized Peter to sign the Challenged Deeds; that Kim did not witness her sign the Challenged Deeds; that Darlene's notarization of the Challenged Deeds was false; that all the Challenged Deeds were created in Word Perfect on the HP by Darlene on January 8, 2009, and, thereafter, none of them were "accessed on the HP until November 23, 2009, or later"; that none of the Challenged Deeds could have been executed on October 26, 2009; that Darlene intentionally destroyed the Cruzer to

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same day, the Sineses executed a document authorizing a take-back mortgage in favor of Sadie alone in the amount of $270,000. Peter signed Sadie's name on that deed. Sadie received monthly mortgage payments in the amount of $2,000 from the Sineses from January 2009 through May 2013.

"prevent [it] from being produced in litigation" and intentionally withheld other electronic devices, including her laptop computer; and that, had those electronic devices been available, "they would have contained evidence unfavorable to Darlene's position to inherit [the properties conveyed by the Challenged Deeds]." Sadie asked the court to declare the Challenged Deeds void *ab initio* or, in the alternative, to impose a constructive trust over the properties they conveyed.

In its post-trial brief, the Estate asked the court to find that, beginning in 2008, Sadie and Peter began dividing their jointly held property for estate tax purposes and that the Challenged Deeds and the Quitclaim Deeds were part of that plan; that Sadie authorized Peter to sign her name on all of the Challenged Deeds; that her authorization "adhered to a longstanding practice of the Castruccios as spouses and business partners, coupled with Sadie's knowing acceptance of benefits that flowed from the [Challenged Deeds]" and amounted to a "ratification of Peter's signing of [her name]"; and that Sadie had "contemporaneous knowledge of each transaction" given that she "carefully reviewed the property tax bills, contemporaneously saw the title changes from joint to individual ownership" and continued to pay the property tax bills for many years, which was undisputed evidence establishing knowledge, acquiescence, and ratification of the Challenged Deeds.

The Estate also asked the court to find that, before the date on which he executed the Challenged Deeds, Peter had signed Sadie's name on documents creating charitable unitrusts, a document authorizing the division of their jointly held investment account,

two deeds conveying jointly-owned property to third parties, and the posting of real property as a bail bond; and that Sadie had been contemporaneously aware of, and had benefited from, each transaction. The Estate attached to its post-trial brief a demonstrative timeline reflecting relevant transactions and conveyances by and between Peter and Sadie from 1972 to 2013.

On September 17, 2014, the court heard closing arguments. On January 7, 2015, it issued a 23-page memorandum opinion. As relevant here, the court made the following findings of fact. The Challenged Deeds "were a continuation of the efforts to divide Peter's and [Sadie]'s jointly held property for tax purposes." There was evidence "going back as far as 2008" of an "on-going, albeit sporadic, plan to divide up their joint properties and other assets for tax and estate planning purposes." Peter signed Sadie's name on the Challenged Deeds. There was no evidence of a written power of attorney authorizing him to sign for Sadie. Peter and Sadie "frequently executed documents signing each other's name," however, and there "appear[ed] to be a general practice between them of doing so going back several decades, . . . include[ing] the signing of deeds, powers of attorney, loan documents, contracts, and checks." The Estate's demonstrative timeline accurately summarized this pattern and practice and was "fully supported by the exhibits admitted into evidence at trial." There was no evidence that Sadie ever objected to this practice, or that she revoked her consent to this practice.

The court further found that, after the Challenged Deeds were recorded in the Land Records, Sadie

> received many notices that the properties involved, both the ones Peter received and the ones she received had changed title yet she took no action to challenge or protest the change of ownership for three years from the time of the filing of the deeds in 2010 until Peter's death in 2013.

During that time, Sadie paid the property tax bills "without apparent concern about the titling" and "received more than $350,000 in rental income" from the rental properties conveyed to her. Those proceeds were deposited into the Marit account at M&T Bank that, "while a joint account with Peter[,] was treated by them as hers to control."

The court rejected the testimony of Sadie's handwriting expert, Lesnevich, as "totally without any credible basis and completely unhelpful to deciding [the] case." It gave Lesnevich's testimony "no weight." Catzen's testimony was "more significant." After summarizing Catzen's testimony and Rodokanakis's testimony rebutting it, the court stated that the

> entire focus of the forensic effort by [Sadie] seem[ed] to be to show that the documents in question were not generated or signed on October 26, 2009 as is indicated on the face of each deed but instead on some other date or dates before they were presented for recording a few months later in February 2010.

The court characterized the evidence on this point as neither "clear" nor "conclusive," but found that it was "entirely likely that the deeds may have been signed on a date other than October 26, 2009," but before the date each was recorded in the Land Records. The court was unable to make a finding as to exactly when the deeds were signed, or even whether they all were signed on the same date, but found that the Challenged Deeds all were executed at some point between October 26, 2009, and February 5, 2010, and that "[f]or whatever reason, the date of October 26, 2009, was

selected as the nominal date for the transactions." (Footnote omitted.) The court commented that October 26, 2009, was not the actual date that the deeds were executed, and that it was "certainly wrong for Darlene Barclay and John Grieber to sign as they did without a correction of the date." The court found that any discrepancy in the date was irrelevant, however, given that there was no evidence that the transactions "did not meet [Sadie]'s interest or agreement at the time the deeds were actually signed or that she did not then acquiesce in the deeds as recorded even with the potentially erroneous certifications of the date."

The court found that Sadie had not presented "any credible rationale" for how anyone was "practically harmed" by the backdating of the Challenged Deeds or why the backdating would have been undertaken to "harm or mislead [Sadie]." In so finding, the court "factored . . . in to its evaluation" the evidence that Darlene had mishandled certain electronic evidence. The court found that Darlene's conduct did not "rise to the level to merit the more drastic sanctions" sought by Sadie, however.

In its conclusions of law, the court explained that Sadie was asking the court to void the Challenged Deeds for two independent reasons: that they were forgeries and that they did not comply with certain requirements of the Real Property Article. On the forgery argument, the court concluded that Sadie had proven the existence of a writing and its falsity, but had not proven that her name was signed by Peter or her signature was notarized by Darlene with "an intent to defraud." Rather, "[u]nder the specific facts presented in *this* case by *this* Plaintiff," the evidence did not support a finding of intent to

defraud. (Emphasis in original.) The court emphasized the "ample" and "overwhelming" evidence that Sadie and Peter routinely had signed each other's names to documents and the absence of evidence that Sadie ever had objected to this practice. The court noted that, under the circumstances, Sadie was a "particularly poor litigant to pursue this claim."

The court also rejected Sadie's more generalized fraud argument—that the "irregularities" in dating, notarizing, and witnessing the Challenged Deeds were a "fraud on the system that could have had the possibility of defrauding future purchasers and creditors, as well as the general public." The court noted that no such harm had come to pass and reiterated its finding that Sadie had benefited from the transactions and could not "upset" them for policy reasons. For all of these reasons, the court found there to be insufficient evidence supporting a finding of fraudulent intent and ruled that the Challenged Deeds were not void as forgeries.

The court then turned to Sadie's second argument, that the Challenged Deeds were void for "failure to comply with [certain] specific statutory requirements" in the Real Property Article. Sadie challenged the notarial acknowledgment as defective, under Maryland Code (1974, 2015 Repl. Vol.), section 4-109(b) of the Real Property Article ("RP"). The court ruled that that statute required that any suit filed by Sadie to challenge a defective acknowledgement in one of the Challenged Deeds had to be filed within six months of the deed's being recorded. Sadie's suit was filed long after that deadline and therefore she was not entitled to any relief.

The court rejected Sadie's third argument, that, under RP section 4-101(a), a deed must be signed by the grantor or executed by the grantor's agent, authorized in writing to sign on his or her behalf, and if not, it is void and ineffective to convey title; and the Challenged Deeds did not meet these criteria. The court concluded that oral authorization of a signature is permitted and Sadie had knowledge of and had ratified the Challenged Deeds. It emphasized that there was no "affirmative evidence" that Sadie was unaware of the Challenged Deeds and found that, to the contrary, the evidence supported a reasonable inference that she knew of the transactions. For all of these reasons, the court ruled that the Challenged Deeds were valid and entered judgment in favor of the Estate on Counts I through VII of the second amended complaint (*i.e.*, the counts seeking declarations that each deed was void and to quiet title).

The court then turned to Count VIII, in which Sadie sought to have the court impose a constructive trust. It noted that, to be entitled to this kind of equitable relief, Sadie was required to prove by clear and convincing evidence that she had been defrauded. The court concluded that Sadie failed to meet this burden. For the reasons just discussed, it rejected Sadie's argument that the Challenged Deeds were void or invalid. With respect to Sadie's argument that she had been in a confidential relationship with Peter, the court found that, even if that was true, there was no evidence that Peter was not acting in Sadie's best interest when he executed the Challenged Deeds as part of their "ongoing tax or estate planning." The court reasoned that, given that Sadie received title to four "income producing residential properties," the transactions as a whole were

not "inherently unfair to either party." Moreover, Sadie had failed to present evidence with regard to the estate and tax planning sufficient to permit the court to make a finding of overreaching by Peter.

The court surmised that Sadie might well have believed she would be Peter's "main if not sole beneficiary" under his Will and, accordingly, might not have been concerned about "safeguard[ing] her tenancies by the entireties." Thus, she might reasonably have entered into the transactions with the understanding that they would have "no practical effect on her financial situation" outside of a possible tax benefit. The court stated that, although Peter's subsequent decision to change his Will to make Darlene the potential beneficiary might appear "grossly unfair and reprehensible," it was not a proper basis on which to impose an equitable remedy with respect to the Challenged Deeds. The court noted that Sadie had chosen not to testify, even on issues "not affected by the bar of the Dead Man Statute," leaving the court with "limited evidence." It concluded that, on the limited record, Sadie had failed to make a showing by clear and convincing evidence that the deeds were the product of fraud. On this basis, the court entered judgment in favor of the Estate on Count VIII.

By order entered February 3, 2015, the court granted judgment in favor of the Estate and against Sadie on all eight counts of the second amended complaint. This timely appeal followed.

STANDARD OF REVIEW

When, as here, a matter is tried to the court, our standard of review is established by Rule 8-131(c):

> When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.

As the Court of Appeals has explained, under this standard we

> give due regard to the trial court's role as fact-finder and will not set aside factual findings unless they are clearly erroneous. *State Security v. American General*, 409 Md. 81, 110–111, 972 A.2d 882, 899 (2009); *Banks v. Pusey*, 393 Md. 688, 697, 904 A.2d 448, 453 (2006); *$3,417.46 U.S. Money v. Kinnamon*, 326 Md. 141, 149, 604 A.2d 64, 67–68 (1992). "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." *Ryan v. Thurston*, 276 Md. 390, 392, 347 A.2d 834, 835–36 (1975) (citations omitted); *$3,417.46 U.S. Money*, 326 Md. at 149, 604 A.2d at 67. Questions of law, however, require our non-deferential review. *State Security*, 409 Md. at 111, 972 A.2d at 899; *Banks*, 393 Md. at 697, 904 A.2d at 453–54. When the trial court's decision "involves an interpretation and application of Maryland statutory and case law, [this] Court must determine whether the lower court's conclusions are legally correct...." *White v. Pines Community Improvement Ass'n, Inc.*, 403 Md. 13, 31, 939 A.2d 165, 175 (2008) (quoting *YIVO Inst. for Jewish Research v. Zaleski*, 386 Md. 654, 662, 874 A.2d 411, 415–16 (2005)). Where a case involves both issues of fact and questions of law, this Court will apply the appropriate standard to each issue. *Dickerson v. Longoria*, 414 Md. 419, 432, 995 A.2d 721, 730 (2010); *see Diallo v. State*, 413 Md. 678, 695, 994 A.2d 820, 830 (2010).

Clickner v. Magothy River Assoc., Inc., 424 Md. 253, 266-67 (2012).

DISCUSSION

I.

Sadie contends, as she did below, that the Challenged Deeds are invalid and of no legal effect because they did not satisfy numerous applicable provisions of the Real Property Article. Specifically, they were not executed by the grantor (Sadie) or by her agent authorized in writing as required by RP sections 3-101(a) and 4-107; they did not comply with RP section 4-108(b), pertaining to grants of property held as tenants by the entireties; and Darlene's acknowledgement did not comply with RP section 4-109 because Sadie did not appear before her to execute the Challenged Deeds. She argues, moreover, that there was no evidence to support the trial court's findings that Sadie authorized Peter to sign the Challenged Deeds, that she adopted the signature on those deeds as her own, or that she ratified the deeds subsequent to their execution and recording by receiving benefits. Also, as she argued below, Sadie contends, for the same reasons, that the Challenged Deeds are void as forgeries. She maintains that the court erred by not declaring the deeds void and by denying her request for the court to impose a constructive trust.

The Estate counters that the Challenged Deeds were presumptively valid upon their recordation in the Land Records and Sadie failed to satisfy her burden to overcome that presumption. It maintains that Maryland law permits "oral authorization of signatures on legally binding documents" and "the only evidence presented at trial was that Peter signed Sadie's name to the [Challenged Deeds] with her express authorization." It points to the "pattern and practice" evidence and to Kim's testimony that she only ever signed as a witness on a deed after receiving assurances that the

signature was authorized. It emphasizes that, because Sadie did not testify, there was "no evidence that she did not authorize Peter to sign her name to the [Challenged Deeds]."

RP section 3-101(a) states that, as a general rule, "no estate of inheritance or freehold, declaration or limitation of use, estate above seven years, or deed may pass or take effect unless the deed granting it is executed and recorded." Title 4 of the Real Property Article pertains to the "requisites of valid instruments." RP section 4-101(a) states that a deed is sufficient if it contains "the names of the grantor and grantee, a description of the property sufficient to identify it with reasonable certainty, and the interest or estate intended to be granted" and is "executed, acknowledged, and, where required, recorded." "If a deed is executed, acknowledged, and, if required, recorded, *the validity of the deed in respect to its execution and delivery by the grantor to the grantee is presumed*." RP § 4-103(a) (emphasis added).

In the instant case, the Challenged Deeds were executed, acknowledged, and recorded, according them a presumption of validity. To rebut that presumption and set aside the deeds, Sadie had to "establish[] by the clearest and most satisfactory proof" that the execution or acknowledgment for each deed was imbued with fraud. *Cox v. Tayman*, 182 Md. 74, 79 (1943). She argues that she satisfied that high burden by introducing into evidence the joint stipulation that Peter had signed her name. We disagree.

In *Fisher v. McGuire*, 282 Md. 507, 507-08 (1978), the Court of Appeals considered whether a deed "can transfer title, through subsequent acknowledgement and delivery by the grantor, when the name of the grantor was actually placed on the

document by another." Julius Fisher, the owner of a one-half interest in a farm, brought an action to invalidate a deed as a forgery. The deed had conveyed the other one-half interest in the farm from Fisher's aunt to the aunt's niece and the niece's husband. The deed was acknowledged and recorded during the aunt's lifetime. After the aunt's death, Fisher examined the deed, discovered that his aunt's signature on the deed was not genuine, and filed suit to set aside and cancel the deed. At trial, the attorney who had prepared the deed testified that he did so at the aunt's direction and the notary testified that the aunt appeared before her with the signed deed and acknowledged the deed as her own. The circuit court found on these facts that the aunt had validated the deed even though she may not have signed it.

The case reached the Court of Appeals, which agreed. It held that Maryland law was clear that "a person's name, whether signed by another or mechanically printed, constitutes a valid signature of that person when he [or she] recognizes and appropriates it as his [or hers]." *Id*. at 512. In those circumstances, it is "as effective as if the person's hand had guided the pen over the paper." *Id*. *See also Nye v. Lowry*, 82 Ind. 316, 320 (Ind. 1881) ("the signature of the grantor in a deed, written by another at his request, or, though written without his knowledge, if adopted by him as his own, has the same validity as if written by his own hand . . . and the deed so signed is of the same validity as if written by his own hand; and the deed so signed, acknowledged and delivered, if subject to no other vice, is in all respects effective").

In the case at bar, it was a stipulated fact that Peter signed Sadie's name on the Challenged Deeds. Sadie's theory of prosecution was that Peter signed her name on the Challenged Deeds for a fraudulent purpose—to divest her of title to eight properties without her knowledge or consent. Her only proof was expert testimony that, if credited, tended to show that the Challenged Deeds could not have been executed on October 26, 2009; evidence that Darlene had intentionally destroyed digital devices that may have contained evidence showing when the deeds were executed; and documentary evidence showing that the titling of the properties conveyed by the Challenged Deeds was not always made clear in subsequent billing by various governmental agencies.

Because Sadie invoked the Dead Man's Statute to prevent Grieber and Darlene from testifying about the transaction in which Peter executed the Challenged Deeds, she too presented no evidence bearing on whether she was or was not present when the Challenged Deeds were executed. She did not offer any evidence about her knowledge, if any, of the Challenged Deeds after they were executed and recorded. Although she was barred from testifying about the execution of the Challenged Deeds, she could have testified, for instance, about whether she reviewed property tax bills for the properties transferred in the Challenged Deeds in 2010, 2011, and 2012, and about whether she and Peter were dividing their properties for estate planning purposes.

The trial court rejected what little evidence Sadie presented and credited the Estate's evidence that the Challenged Deeds, together with the Quitclaim Deeds, were executed as part of a general plan to divide Sadie and Peter's jointly held assets for estate

tax purposes, and that Sadie received four income producing properties as part of the transaction. The court found there was "ample" and, indeed, "overwhelming" evidence showing that Sadie and Peter had a longstanding practice of signing each other's names on legally binding documents. The court found as a fact that Sadie had knowledge of the property tax bills for the eight properties conveyed in the Challenged Deeds for three years after the deeds were executed and recorded and never objected to the change in title to those properties apparent on the face of the bills. None of these findings were clearly erroneous and all supported the reasonable inference the court drew that Peter signed the Challenged Deeds with Sadie's express authorization. Having so found, the court correctly determined that Sadie's signature on the Challenged Deeds was to be treated as if her hand had guided Peter's pen over the paper.

In light of these findings, Sadie is incorrect that the Challenged Deeds were defective for failure to satisfy RP section 4-107. Under that statute, when a deed is executed by an agent or attorney for the grantor, the agent or attorney must "sign the deed as agent or attorney," *i.e.*, in the agent or attorney's own name, and record a writing memorializing the authorization to sign for the grantor that is "executed in the same manner as a deed and recorded." Here, the court found that Peter did not sign the Challenged Deeds as Sadie's agent; rather, he placed her signature on the Challenged Deeds with her express authorization. As the *Fisher* Court noted, compliance with RP section 4-107 is not at issue under those circumstances. 282 Md. at 513 n. 4.

The Challenged Deeds also were effective to sever the Castruccios' tenancy by the entireties. RP section 4-108(b) governs grants of property held as tenants by the entireties. It provides, in derogation of the common law requirement that a straw man be used, that

> [a]ny interest in property held by a husband and wife in tenancy by the entirety may be granted, (1) by both acting jointly, to themselves, to either of them, individually, or to themselves and any other person, in joint tenancy or tenancy in common; (2) by both acting jointly, to either husband or wife and any other person in joint tenancy or tenancy in common; and (3) by either acting individually to the other in tenancy in severalty, without the use of a straw man as an intermediate grantee-grantor. These grants, regardless of when made, are ratified, confirmed, and declared valid as having created the type of ownership that the grant purports to grant.

RP § 4-108(b).

Sadie argues that, because the Challenged Deeds include Peter's name *and* her name as the grantors, she and Peter were purporting to act jointly, pursuant to section 4-108(b)(1). Thus, because Peter did not sign the deeds, the attempted joint conveyance of the properties to Peter individually was ineffective to sever their tenancy by the entireties. Sadie overlooks, however, that RP section 4-108(b)(3) permits "either [spouse] acting individually" to convey tenants by the entireties property to "the other in tenancy in severalty." The absence of Peter's signature on the Challenged Deeds did not make the conveyances ineffective; it simply brought the deeds within section 4-108(b)(3) instead of section 4-108(b)(1).

Finally, Sadie argues that the trial court erred in ruling that she could not attack the validity of the Challenged Deeds based upon Darlene's acknowledgements on them. RP

section 4-109(b) provides that a deed that is recorded "on or after January 1, 1973" and that would be defective for "failure to comply with . . . formal requisites," including by having a "defective acknowledgement," not having a notary seal, or not having the required attestation, must be "challenged in a judicial proceeding commenced within six months after [the deed] is recorded." Sadie did not file suit to set aside the Challenged Deeds for more than three years after they were recorded, well beyond the six-month period for doing so. Sadie maintains that the six-month deadline only applies to defects in the required formalities, not to falsities. She points to the notarial certificates that Darlene signed, acknowledging that Sadie appeared before her and signed the Challenged Deeds on October 26, 2009, and asserts that they were false under the court's findings that, more likely than not, the Challenged Deeds were executed on a date sometime after October 26, 2009, and the parties stipulated that the deeds were signed by Peter, not Sadie.

Because of Sadie's strategic invocation of the Dead Man's Statute to prevent Grieber and Darlene from testifying about the transaction in which Peter signed the deeds, she rendered herself unable to offer any evidence that she was *not* present when the Challenged Deeds were executed by Peter or that she did not expressly authorize Peter to sign her name to those deeds. Darlene testified that it was her practice to notarize signatures only after assuring herself that the signatory had signed the document or authorized his or her signature to be signed on the document. To be sure, the trial court found that it was likely that the date on the notary certificate was not correct. Such

an error is in the nature of a defect in the formal requisites, not in the nature of a falsity, and therefore the court property ruled that Sadie's challenge had to be filed within the six month limitations period in RP section 4-109(b).

For the same reasons that Sadie failed to adduce evidence to rebut the presumption of validity of the Challenged Deeds, she also failed to prove that the deeds were forgeries. A forgery is "'the false making or material alteration, with intent to defraud, of any writing which, if genuine, might apparently be of legal efficacy or the foundation of a legal liability.'" *Reddick v. State*, 219 Md. 95, 98 (1959) (quoting 2 Wharton, C*riminal Law and Procedure* (Anderson's ed.) § 621). A forged deed is treated as a nullity and is void *ab initio*. *See, e.g.*, *Harding v. Ja Laur Corp.*, 20 Md. App. 209, 215 (1974). In the case at bar, the trial court found that Sadie proved the existence of a writing and that her signature was not genuine, but that she failed to prove intent to defraud. For the reasons already discussed, the trial court made non-clearly erroneous findings that the Challenged Deeds and the Quitclaim Deeds were executed as part of a unitary transaction for the mutual benefit of Sadie and Peter, with Sadie's knowledge, and with her consent. Accordingly, the court did not err in ruling that the deeds were not void as forgeries.

Finally, the trial court did not err in denying Sadie's request for the imposition of a constructive trust. In *Wimmer v. Wimmer*, 287 Md. 663, 668 (1980), the Court of Appeals explained that

> [a] constructive trust is the remedy employed by a court of equity to convert the holder of the legal title to property into a trustee for one who in good conscience should reap the benefits of the possession of said property. The remedy is applied by operation of law where property has been

> acquired by fraud, misrepresentation, or other improper method, or where circumstances render it inequitable for the party holding the title to retain it.

(Citations omitted.) Its "purpose . . . is to prevent the unjust enrichment of the holder of the property." *Id*. Sadie argues that she was entitled to this extraordinary remedy because the Estate acquired title to the properties through recordation of void or invalid deeds and/or that the execution of the Challenged Deeds constituted an abuse of a confidential relationship. As we already have held, however, the trial court did not err in concluding that the Challenged Deeds were not void or invalid. Moreover, as Sadie acknowledges, a confidential relationship is not presumed between a husband and wife, but must be proved. *Lasater v. Guttman*, 194 Md. App. 431, 463 (2010). Sadie presented no evidence that Peter and she were in a dominant/subservient relationship with respect to their business affairs. To the contrary, the evidence showed that Sadie was an astute businesswoman who managed a real estate enterprise in partnership with Peter. On these facts, the trial court did not err in rejecting the notion that a confidential relationship existed.

II.

Sadie contends the trial court erred by not drawing any negative inferences against Darlene and/or the Estate for spoliation of evidence and by drawing a negative inference against her for not testifying.

As discussed, Sadie presented evidence that Darlene had intentionally destroyed the Cruzer and had refused to turn over her personal laptop. Darlene admitted destroying the Cruzer, but denied having done so for any improper purpose, explaining that all the

files on the Cruzer relevant to the litigation had been copied onto the USB and turned over to her attorney. She also testified that she did not turn over her laptop because it had been stolen. The trial court observed Darlene testifying and was not persuaded that Darlene had spoilated the electronic evidence. As this Court has explained, "[a]lthough it is not uncommon for a fact-finding judge to be clearly erroneous when he is affirmatively **PERSUADED** of something, it is, as in this case, almost impossible for a judge to be clearly erroneous when he is simply **NOT PERSUADED** of something." *Bricker v. Warch*, 152 Md. App. 119, 137 (2003) (emphasis in original). The trial court's finding that Darlene had mishandled, but not spoilated, the electronic evidence was not clearly erroneous.

Sadie points to two instances in the court's lengthy memorandum opinion in which the court commented on the fact that she did not testify. In the first, the court refers to the lack of any "testimony or evidence that [Sadie] . . . ever objected to the pattern and practice of Peter signing her name to documents or took any action to protest, challenge, or revoke her consent to this practice." In the second, the court notes that Sadie presented "no credible rationale for how [she] or anyone else was practically harmed" by the alleged backdating of the Challenged Deeds. According to Sadie, because she was barred under the Dead Man's Statute from testifying about "any matters related to the existence or non-existence [of] transactions with her husband," this was improper.

We disagree that either example provided by Sadie was a negative inference drawn by the court, much less an improper one. The court was permitted to comment on

the absence of evidence, particularly given that Sadie bore the burden of overcoming the presumption of validity accorded to the Challenged Deeds. We perceive no error.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.