Circuit Court for Prince George's County
Case No. CAL14-10836

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2231

September Term, 2015

ESTATE OF JOHN MOORE THROUGH JEANNE ELLIS, PERSONAL REPRESENTATIVE

v.

SAMIRA JONES

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

JJ.

Opinion by Leahy, J.

Filed: January 5, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The underlying action that gives rise to this appeal is one of two ongoing lawsuits over the estate of Mr. John Moore ("the Estate" or "Appellant"). The main actors are Mr. Moore's biological daughter, Ms. Jeanne Ellis, and his great-grandniece through marriage, Ms. Samira Jones ("Appellee").

Mr. Moore executed three wills between 2010 and 2012, prior to passing away on April 21, 2012. The first will ("2010 Will") named Ms. Ellis the personal representative of his estate and bequeathed the majority of his assets to her; the latter two ("2011 Will" and "2012 Will," respectively) named Ms. Jones as trustee and executor of his estate and bequeathed the majority of his assets to Ms. Jones instead of Ms. Ellis. He also executed two powers of attorney—one in May and the other in August 2011—naming Ms. Jones as his agent.

After Mr. Moore's death, Ms. Ellis, as personal representative of the Estate under the 2010 Will, filed the underlying action in the Circuit Court for Prince George's County. In her complaint for breach of fiduciary duty and wrongful conversion, Ms. Ellis alleged, *inter alia*, that Ms. Jones abused her authority pursuant to a power of attorney as Mr. Moore's agent and attorney-in-fact by spending his assets in her own self-interest. The case was tried before the court. After a four-day trial, the court ruled that a fiduciary relationship existed between Ms. Jones and Mr. Moore based on the power of attorney and the care that Ms. Jones provided Mr. Moore toward the end of his life. The circuit court found, however, that the Estate had not proved that Ms. Jones lacked the authority to spend the money from Mr. Moore's accounts, and entered judgment in favor of Ms. Jones on

Count I. The court then found that Count II for wrongful conversion was moot. The Estate appealed to this court, presenting two questions for our review:

I. "Did the trial court err in failing to award damages to the Estate based on Samira [Jones'] breach of confidential and fiduciary duties to Moore?"

II. "Did the trial court err and violate the Estate's right to due process of law by rendering judgment at the end of a four-day trial without allowing the Estate to make a closing argument?"

In regard to the first issue presented, we hold that the circuit court determined correctly that the power of attorney created a fiduciary duty owed by Ms. Jones to Mr. Moore. Following the evidence presented by the Estate, however, the burden of persuasion should have shifted to Ms. Jones to account for the funds that she spent as Mr. Moore's agent and to establish that her use of those funds was fair and reasonable. The question was not whether the power of attorney authorized Ms. Jones to conduct the transactions, but whether the *exercise* of that authority constituted a breach of fiduciary duty. Accordingly, we remand the case to the circuit court to consider whether Ms. Jones satisfied her "burden of showing that a fair and reasonable use has been made of the confidence, 'that the transfer of the property was the deliberate and voluntary act of the grantor and that the transaction was fair, proper and reasonable under the circumstances[.]" *Sanders v. Sanders*, 261 Md. 268, 276-77 (1971) (citations omitted). As to the second issue presented, we hold that Ms. Ellis has not demonstrated that her right to due process of law was violated by the circuit court's decision to issue its ruling without closing arguments.

BACKGROUND

A. Mr. Moore's Financial Affairs

In 2008, at approximately 82 years of age, Mr. John Moore began ordering his financial affairs in preparation of his eventual passing. That year, he purchased a life insurance policy from Allstate ("Allstate Policy" or "Policy") for an initial price of $39,975.00, naming as the beneficiary his only child, Ms. Ellis. The next year, on April 5, 2009, Mr. Moore signed a quitclaim deed that Ms. Ellis prepared conveying his home on Linwood Street in Hyattsville, Maryland ("the Linwood home") to himself and Ms. Ellis jointly. He also opened four bank accounts with Ms. Ellis at Bank of America ("BOA Joint Accounts"), depositing $94,824.04 total in those accounts. Another year later, around April 2010, Mr. Moore executed the 2010 Will naming Ms. Ellis as his personal representative and bequeathing to her his remaining interest in the Linwood home, the items contained within it, and any "residuals" remaining after a few other specific bequests.

Ms. Ellis was born in 1956, and although she was Mr. Moore's biological daughter, she did not learn that Mr. Moore was her father until 1973 when she was 17 years old. After Mr. Moore's wife died in 2002, Ms. Ellis began to attend family functions with Mr. Moore and develop a personal relationship with him. In the second, related action, Ms. Jones challenged Ms. Ellis' ability to take under Mr. Moore's will, alleging that Ms. Ellis' stepfather had actually adopted her as a child.[1] In 2011, Ms. Olivia Washington, a

[1] *Ellis v. Jones*, No. 2238, September Term 2015, slip. op. at 2-6 (filed March 6, 2017) (unreported).

childhood friend and confidant of Mr. Moore, encouraged Mr. Moore to remove Ms. Ellis' name from all of his accounts because she did not believe that Ms. Ellis was his biological child.

B. Ms. Jones' Service as Attorney-in-Fact

On May 1, 2011, around the same time of Mr. Moore's conversation with Ms. Washington, Mr. Moore signed a general power of attorney ("General POA"), appointing as his attorney-in-fact his great-grandniece, Ms. Jones, the actions of whom form the basis of the underlying case. Less than 48 hours after becoming Mr. Moore's attorney-in-fact, Ms. Jones began remediating the steps that Mr. Moore had taken over the prior three years to provide for Ms. Ellis following his death. On May 3, 2011, Ms. Jones went to Bank of America and withdrew a large sum of the balance of the BOA Joint Accounts—which still contained the full amount Mr. Moore deposited the year prior—and brought that money to PNC Bank, where Ms. Jones created a money market account ("7157 PNC Account") jointly with Mr. Moore. Ms. Jones deposited $73,634.01 of that money into the 7157 PNC Account on May 4, 2011, and another $20,300.54 13 days later.

In addition to withdrawing funds from the BOA Joint Accounts, Ms. Jones inquired into changing the Allstate Policy. On May 17, 2011, Ms. Jones used her power of attorney to request from Allstate a fixed annuity distribution of the Policy and requested that Allstate *not* withhold the federal and state income taxes. Allstate distributed $6,753.46 of the Policy's $45,023.08 into a SunTrust account held by Mr. Moore (and to which Ms. Jones had access). In June, Ms. Jones attempted to substitute herself for Ms. Ellis as the Policy's

beneficiary, but Allstate denied the request in a letter addressed to Mr. Moore stating that "[t]he Power of Attorney paperwork submitted does not grant your Attorney in Fact the authority to change beneficiaries." In July, Ms. Jones tried again to substitute herself as the beneficiary—this time including Mr. Moore's signature on the form. Allstate substituted Ms. Jones as the beneficiary on July 8, 2011. Then, on August 23, 2011, a form bearing Mr. Moore's signature was submitted to Allstate requesting distribution of the Policy's remaining annuity value. Two days later, Allstate distributed into the 7157 PNC Account the Policy's remaining $38,536.35 minus a withdrawal charge of $2,312.18. On August 31, 2011, Mr. Moore executed a second, durable power of attorney ("Durable POA") granting Ms. Jones more explicit authority.

With the Durable POA in hand, Ms. Jones quickly depleted the funds in the bank account she now held jointly with Mr. Moore. The 7157 PNC Account, which had an initial balance of $93,962.69 in May 2011 carried a $0 balance at the end of each statement period from November 2011 until Mr. Moore's death in April 2012. In less than a year, Ms. Jones transferred $161,514.63 from the 7157 PNC Account to her own personal PNC Account ("1471 PNC Account"). Another $8,749.49 was withdrawn from the 7157 PNC Account at ATMs or via checks and $34,611.60 was otherwise deducted. In the six months prior to becoming Mr. Moore's attorney-in-fact, Ms. Jones carried an average monthly balance of less than $500 in her 1471 PNC Account. Then she became Mr. Moore's attorney-in-fact, and despite being unemployed during 2011, Ms. Jones spent nearly $190,000 from her 1471 PNC Account over the next 11 months, including over

$107,000.00 in the first three months alone. Mr. Will Jones, Ms. Jones' then-estranged husband, testified at trial that he had not given her any money that could have accounted for the money she deposited into the 1471 PNC Account that year. The most he gave her was money for groceries. Ms. Jones claimed at trial that $10,000 of the money she deposited into the 1471 PNC Account was a gift to her from her "Aunt Elaine," but the Estate presented bank records that showed the $10,000 check Ms. Jones deposited was from MetLife to Mr. Moore. At that point, she admitted the deposit did not come from her aunt, but claimed Mr. Moore "told [her] it was for [her] children."

At trial, Ms. Jones testified that at some point during the summer of 2011, she told Ms. Ellis that Mr. Moore wanted to remove Ms. Ellis from the title to the Linwood house and that Ms. Jones attempted to facilitate that removal. Ms. Ellis had planned to move into the Linwood house with Mr. Moore to help care for him as his age advanced. That October, Ms. Jones sent a text message to Ms. Ellis warning her that if Ms. Ellis came to visit her father, Ms. Jones would call the police and file for a restraining order. A declaration of trust that Mr. Moore signed in 2012 shortly before his death stated that Ms. Ellis "failed to fulfill her commitment" to care for Mr. Moore "in exchange that [his] home be left to her."

C. Mr. Moore's Declining Health and Mental Capacity

At trial, the Estate presented evidence that, coinciding with the change in Mr. Moore's relationship with his daughter and his naming of Ms. Jones as his attorney-in-fact, Mr. Moore's mental and physical health deteriorated as 2011 progressed. Medical documents admitted at trial indicated that Mr. Moore suffered from dementia by at least April 15, 2011, and showed he was "chronically ill" by October 11, 2011. On October 21,

2011, Mr. Moore suffered congestive heart failure and was admitted to Carroll Manor Nursing & Rehabilitation Center, where he remained until November 9, 2011. Upon his admission, Mr. Moore's diagnoses included senile dementia, depressive disorder, and "other anxiety states[.]" His paperwork also indicated that he had been medicated with hypnotic and antidepressant prescription drugs.

The Estate also presented four witnesses to testify about their observations of Mr. Moore's deteriorating mental capacity between 2010 and spring 2011. Ms. Ellis testified that by April 2011, her father began to "exhibit forgetfulness about appointments [] and dates[,]" including one time when she went to his house and he was ready to go to a birthday party that was not scheduled for that date. Mr. Moore's neighbors, Mrs. Faye Brown and Mr. Lionel Brown, also testified to their observations of Mr. Moore's failing health. Mr. Brown suggested that Mr. Moore began to lose his mental capacity in late 2010, and Mrs. Brown testified that Mr. Moore's health began to fail in early 2010 and that he was hallucinating by 2011. Similarly, Will Jones testified that Mr. Moore began losing his mental capacity "a couple of years before he died[,]" "around 2011, 2010," further stating that Mr. Moore would call him during that time frame but forget why he called or would not know where he was. Ms. Jones, on the other hand, testified that Mr. Moore retained his mental capacity until the end of 2011.

On January 6, 2012, Mr. Moore was admitted to Elkton Center, where he would remain until his death. A physician assessed Mr. Moore on January 11 after he was unable to state his name, situation, location, or the time. Doctors prescribed him the anti-psychotic

drug Zyprexa after a week of observations. Over the next several weeks, Mr. Moore's condition worsened to include paranoia and hallucinations.

On February 8, 2012, one of the days that the medical staff observed Mr. Moore hallucinating, Ms. Jones visited Mr. Moore at Elkton Center and had him sign the 2012 Will and the 2012 declaration of trust. Later that month, on February 28, two physicians officially declared Mr. Moore mentally incompetent. He spent nearly every day of his final four months receiving in-patient medical care for these symptoms at Genesis Healthcare Elkton Center and then Laurelwood Care Center at Elkton. Mr. Moore died on April 21, 2012.

D. Orphans' Court Proceedings

On May 3, 2012, Ms. Jones filed with the Register of Wills for Prince George's County a regular estate petition for administration for Mr. Moore's estate, as well as the 2012 Will and 2012 declaration of living trust that Mr. Moore had signed on February 8, 2012. These documents named Ms. Jones as his trustee and the executor of his will and bequeathed to Ms. Jones all of Mr. Moore's real and personal property—including the Linwood home, in which Ms. Ellis still possessed an ownership interest—except for one vehicle, a pool table, DJ equipment, family photos, two rings, a tool box, and a MetLife Total Control Account. The 2012 Will included a "Special Directives" section that stated simply: "It is requested that Jeanne Ellis be disinherited from my will." The Register of Wills appointed Ms. Jones as the Estate's personal representative.

Ms. Ellis filed a petition to caveat the 2012 Will in the Orphans' Court for Prince George's County on June 12, 2012, which she amended on November 15, 2012. Ms. Jones

moved to dismiss the caveat on the grounds that Ms. Ellis had been legally adopted. Following a hearing on February 25, 2014, the orphans' court granted Ms. Ellis' caveat to not admit the 2012 Will to probate, removed Ms. Jones as the Estate's personal representative, and appointed Ms. Ellis as the successor personal representative. Ms. Jones appealed that order to the circuit court without a certificate of service (first appeal). While the first appeal was pending, she moved to admit the 2011 Will to probate in the orphans' court, which that court denied. She filed an appeal of that order to the circuit court (second appeal) but failed to pay the requisite filing fee.

The circuit court denied Ms. Ellis' motion to dismiss the first appeal for failure to include a certificate of service, and after determining that Ms. Ellis was adopted, remanded the case on the second appeal for further proceedings in light of its ruling on the adoption issue. In an appeal from those actions, this Court issued an unreported opinion on March 6, 2017, holding the following: (1) the circuit court erred by denying Ms. Ellis' motion to dismiss Ms. Jones' first appeal from the orphans' court to the circuit court (challenging the caveat ruling) for lack of certificate of service; (2) Ms. Jones' notice of appeal in the second appeal (challenging the orphan's court's decision not to admit the 2011 Will to probate) was timely despite her failure to pay the filing fees for the appeal; and (3) the circuit court did not abuse its discretion by denying Ms. Ellis' motion to dismiss Ms. Jones' second appeal due to the record not being transmitted in the requisite time period. *Ellis v. Jones*, No. 2238, September Term, 2015, slip op. at 10-15 (filed March 6, 2017) (unreported). Having determined that only the second appeal was properly before this Court, and that the issue relating to Ms. Ellis's adoption was not properly before this Court or the circuit court,

we did not reach the merits of Ms. Ellis' adoption issue. *Id.* at 15. We remanded the case to the circuit court "for the limited purpose of considering the narrow issue raised in Jones' second appeal, namely, whether the orphans' court erred by denying Jones' motion to admit the 2011 Will to probate." *Id.* at 16.

E. Trial Court Proceedings

Ms. Ellis, as the Estate's personal representative, filed a complaint against Mr. and Ms. Jones in the Circuit Court for Prince George's County, alleging two claims: (1) breach of confidential and fiduciary duty and (2) wrongful conversion. The Estate complained, *inter alia*, that Mr. Moore lacked the capacity to grant power of attorney to Ms. Jones; that the document purporting to grant her that authority conferred on Ms. Jones a fiduciary duty to act in Mr. Moore's best interests; and that Ms. Jones systematically violated that trust and duty by using his finances for her own personal benefit. The Estate claimed damages exceeding $200,000.00 and sought compensatory damages in excess of $75,000.00 plus pre-judgment interest, punitive damages, costs, and fees. The Joneses answered with a general denial that included 13 affirmative defenses.

In its pre-trial statement, the Estate alleged that beginning in early 2011, Mr. Moore experienced deleterious mental and physical health problems, which eventually required his hospitalization and ultimately led to his passing. It was during this time, the allegations continued, that Ms. Jones secured power of attorney from Mr. Moore, a power that she then used to divert from Mr. Moore over $200,000.00 to use for her own personal benefit—financing Caribbean cruises, shopping sprees, and renovations on her Northwest, Maryland home.

The trial occurred over four days, August 17 through 19 and September 8, 2015. On the second day, the Estate moved to dismiss its claims against Mr. Jones, and the court granted the motion over Ms. Jones' objection. Over the course of trial, the Estate called seven witnesses and admitted twenty-nine exhibits, including certified bank records from Ms. Jones' personal and joint accounts. At the close of the Estate's case, Ms. Jones moved for dismissal, arguing that the Estate failed to state a claim because: (1) there is no universal or omnibus tort for breach of fiduciary duty and the action will only lie in equity, not for compensatory damages; and (2) money is not subject to a claim of conversion unless the plaintiff names a specific, identifiable fund, and the funds in question were comingled with Ms. Jones' own money. Ms. Jones also argued that the General POA—which the Estate claimed to be void—was the only thing that created the alleged fiduciary relationship.

The Estate responded that the power of attorney created a fiduciary duty that Ms. Jones violated by not acting solely for the principal's benefit and that its conversion claim was still available because the testimony, viewed in the light most favorable to the Estate, did not establish that Ms. Jones comingled any of her own funds into the 7157 PNC account.[2]

The court reserved its ruling on Ms. Jones' motion, and she then presented her case-in-chief. Ms. Jones testified on her own behalf.[3] She stated that she disagreed that the

[2] Ms. Jones' motion was not for judgment as a matter of law, but to dismiss the complaint entirely for its failure to state a claim. It seems clear, however, that the court treated Ms. Jones' motion as a motion for judgment.

[3] Ms. Jones was also called as a witness in the Estate's case.

power of attorney required her to act for Mr. Moore's use and benefit and admitted that she did not keep an accounting of the transactions in which she engaged on his behalf. She claimed that she did not have to do so: "It was my money when [Mr. Moore] made it a joint account and told me it was my money." She admitted on cross-examination that Mr. Moore did not approve her expenditures: "He didn't have to. He gave it to me." Further, Ms. Jones admitted that she withdrew money from the 7157 PNC Account and deposited it into her 1471 PNC Account and that she transferred $78,000 from the joint account to her personal account within three months of gaining power of attorney. When the trial court asked why she moved the money from their joint account to her personal account, Ms. Jones responded, "Not to be smart, Judge, because I wanted to. I had that right and it was mine and that's all." She also testified, "[W]hen he gave me that money, hell yeah I was happy, okay? Who wouldn't have been? Yes, I went and spent it. I wouldn't have had 90 some thousand dollars, but he gave it to me. I spent it. It was mine. He gave it to me." When asked how quickly she spent the money, Ms. Jones stated, "I don't know how long it was but, yeah, I spent it. I got a deck, I told you that, got the patio done, yes."

She also acknowledged that she took money from the BOA Joint Accounts that Ms. Ellis held with Mr. Moore, and spent that money on herself. She testified that a $1,600 withdrawal was, in part, to pay for Mr. Moore's groceries, and a $27,048.48 withdrawal was to renovate her home. Both the 7157 and 1471 PNC Accounts had a $0 balance at the time of Mr. Moore's death.

Ms. Jones called Ms. Olivia Washington, who testified that she was a childhood friend and confidant of Mr. Moore. Ms. Washington testified that in 2011 she encouraged Mr. Moore to remove Ms. Ellis' name from all of his accounts and the deed to his house. On cross-examination, she admitted that she did so because "I don't believe she's his daughter, I really don't." "I told him to take her name off everything and he took her name [off]." When asked why she would have a problem with Ms. Ellis having power of attorney over his estate, Ms. Washington responded, "She is not his biological child like my children."

Again, at the end of her case and the Estate's rebuttal evidence, Ms. Jones renewed her motion for judgment. Ruling from the bench, the court found that: (1) the Estate had established that a fiduciary relationship of confidence existed between Ms. Jones and Mr. Moore based on both the power of attorney and the care Ms. Jones provided Mr. Moore toward the end of his life; (2) the Estate had not convinced the court that "Ms. Jones[] did not have the authority to do what she did" and that the court needed "to be persuaded by a preponderance of the evidence that there was a breach to find a breach of fiduciary duty"; and (3) the court did not need to reach the wrongful conversion claim because it did not find that Ms. Jones committed any breach.

The Estate's counsel then asked the court to clarify whether the court granted Ms. Jones' motion for judgment or issued its own final judgment. The court responded, "I'm just going to grant judgment and just, and decide the case at the conclusion of the case." The court explained that the parties were not given an opportunity to present closing arguments because "I didn't want to waste, I didn't think it was necessary." Again, counsel

for the Estate asked, "whether you are finding . . . as a matter of law you can or you can't [have a standalone breach of fiduciary duties for monetary damages] so we can frame that for possible appellate review." The court responded, "I don't think I need to make a finding of that because I don't say that there was a breach[,]" and then the court clarified that it was entering judgment without letting the parties make closing arguments, not granting Ms. Jones' motion for judgment as a matter of law. Once the court clarified its ruling, the Estate objected to the court not permitting its counsel to present closing arguments. This appeal followed.[4]

Additional facts are included as necessary below.

DISCUSSION

I.

Standing

As a threshold matter, Ms. Jones contends in her brief on appeal that Ms. Ellis lacks standing to bring this action because she was adopted by a third party and was not named as a legatee in the 2011 or 2012 Will. The adoption issue is foreclosed as it was originally raised and decided in the caveat proceeding when the orphans' court denied admission of the 2012 Will to probate and appointed Ms. Ellis as personal representative of the Estate. As explained above, in a separate opinion, this Court held that Ms. Jones' first appeal of the caveat proceeding, in which she challenged the orphans' court's ruling regarding the

[4] The Estate also filed a motion for new trial on September 17, 2015, before eventually noting its appeal on December 14, 2015. The circuit court denied the Estate's motion on March 15, 2016.

adoption of Ms. Ellis, was not filed properly with a certificate of service within thirty days. *Ellis v. Jones*, *supra*, slip op. at 15. Regardless, Ms. Jones acknowledges that the orphans' court appointed Ms. Ellis as the Estate's personal representative after the hearing on February 25, 2014, and that she did not appeal that decision. At oral argument before this Court, Ms. Jones conceded that there is actually no issue regarding Ms. Ellis' standing, in her capacity as personal representative, to bring the underlying complaint. A personal representative "may prosecute, defend, or submit to arbitration actions, claims, or proceedings in any appropriate jurisdiction for the protection or benefit of the estate[.]" Maryland Code (1974, 2011 Repl. Vol.), Estates and Trusts Article ("E&T") § 7-401(y). In such a situation, "a personal representative steps in the shoes of decedent" when pursuing claims on behalf of the estate. *ACandS, Inc. v. Asner*, 104 Md. App. 608, 644 (1995), *rev'd on other grounds*, 344 Md. 155 (1996). Therefore, we hold that as the personal representative, Ms. Ellis has standing to file the underlying complaint on behalf the estate of Mr. Moore.[5]

[5] Following this Court's remand order in *Ellis v. Jones*, *supra*, No. 2238, September Term, 2015, the circuit court issued an order reversing the orphans' court decision denying the admission of the 2011 Will to probate and remanded the case to the orphans' court. Case No. CAL14-17989. The circuit court then stayed the execution of its order 30 days "should the Estate through Personal Representative Jeanne Ellis, elect to file a timely appeal to the Court of Special Appeals." Ms. Ellis, as personal representative of the Estate, has appealed those orders to this Court. *Estate of Moore v. Jones*, No. 1426, September Term, 2017. We note that our decision on Ms. Ellis' standing to sue on behalf of the Estate may be impacted by the outcome of that appeal and whether, if remanded to the orphans' court, that court eventually admits the 2011 Will to probate and removes Ms. Ellis as personal representative of the Estate.

II.

Breach of Fiduciary Duty

The Estate argues that the circuit court erred as a matter of law by failing to recognize that its finding of a "relationship of trust" between Mr. Moore and Ms. Jones created a presumption that any of Mr. Moore's money that Ms. Jones spent on herself resulted from undue influence. The Estate contends that Ms. Jones did not even attempt to meet the "heavy" burden of this presumption against her. The Estate also avers that it alleged sufficiently, but the circuit court failed to consider, that Ms. Jones breached her statutory duties that a power of attorney imposes on an agent, including the duties to: "(1) Act loyally for the principal's benefit;" and "(3) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal." E&T § 17-113(b).

Ms. Jones responds that the Estate fails to recognize that identifying a breach of fiduciary duty only begins an analysis, rather than concludes it. Unlike in equity, Ms. Jones argues, an action at law for monetary damages based on an alleged breach of fiduciary duty is only available if the breach gives rise to a separate cause of action. Ms. Jones contends that the Estate failed to identify any specific conduct that gave rise to a breach, thereby limiting any claim for breached fiduciary duty to an action in equity.

Both parties rely on the seminal case, *Kann v. Kann*, which held that "there is no universal or omnibus tort for the redress of breach of fiduciary duty by any and all fiduciaries." 344 Md. 689, 713 (1997). The Court added that "[t]his does not mean that there is no claim or cause of action available for breach of fiduciary duty." Further, the court clarified that identifying a breach of fiduciary duty is the beginning of the analysis.

"Counsel are required to [(1)] identify the particular fiduciary relationship involved[; (2)] identify how it was breached[; and (3)] consider the remedies available, and select those remedies appropriate to the client's problem." *Id.*; *see also Lyon v. Campbell*, 120 Md. App. 412, 439 (1998). Then the Court explained that "[w]hether the cause or causes of action selected carry the right to a jury trial will have to be determined by an historical analysis. Counsel do not have available for use in any and all cases a unisex action, triable to a jury." *Kann*, 344 Md. at 713.

Although the Estate drafted Count I under the general title "Breach of Confidential and Fiduciary Duty," the allegations make clear that the claim is against Ms. Jones for breach of duties conferred upon her under the General POA signed by Mr. Moore. In paragraph 21, the Estate asserts that, even though any power of attorney signed by Mr. Moore in favor of Ms. Jones in 2011 was void because he lacked the capacity to knowingly and voluntarily sign such a document, "any document bearing his signature conferred upon [Ms. Jones] a fiduciary duty to act in Moore's best interests, as more fully described below." Accordingly, under *Kann*, whether the Estate could maintain an action at law for fiduciary breaches would depend on an analysis of the type of fiduciary duty at issue and the remedies available.[6] 344 Md. at 707, 710. The fiduciary relationship that a power of

[6] Ms. Jones urges that under *Kann*, 344 Md. at 713, Maryland does not recognize an action at law for a standalone claim of breach of fiduciary duty and that any claim for money damages based on a breach of fiduciary duty must accompany a separate cause of action. The Court of Appeals in *Kann* considered whether the beneficiary of a trust could maintain an action at law against the trustee of the trust based on alleged breaches of the trustee's fiduciary duty to the trust. 344 Md. at 702-03. The Court explained that whether an action for breach of fiduciary duty sounds in law or equity depends on the type of fiduciary relationship at issue and the remedy available. *Id.* at 707, 710. The Court

attorney creates is one of principal-agent, *Figgins v. Cochrane*, 403 Md. 392, 415 (2008), which, as the Court noted in *Kann*, ordinarily sounds in law. 344 Md. at 707; *see also Latty v. St. Joseph's Soc. of Sacred Heart, Inc.*, 198 Md. App. 254, 268 (2011) (listing "principal-agent" as the type of relationship that "give[s] rise to a [fiduciary] duty presumed as a matter of law"). This was the case in *King v. Bankerd*, 303 Md. 98 (1985), in which the Court of Appeals considered an appeal from an action at law that sought compensatory damages for a breach of the fiduciary duties that a power of attorney imposed on an attorney-in-fact. *Id.* at 104-05. There, the Court noted that a power of attorney "delineates

reasoned that "the remedy is not the same for any breach by every type of fiduciary. For some breaches the remedy may be at law, for others it may be exclusively in equity, and for still others there may be concurrent remedies." *Id.* at 710. A trustee's alleged breach of duty to the trust, the Court explained, has sounded in equity as a historical matter and, thus, carries no right to a jury trial. *Id.* at 707. In so holding, however, the Court noted that "'the remedy of a principal against an agent is ordinarily at law.'" *Id.* (quoting Restatement (Second) of Torts § 874, cmt. b).

Ms. Jones also relies on *George Wasserman & Janice Wasserman Goldsten Family LLC v. Kay*, 197 Md. App. 586 (2011)—a case readily distinguishable on its facts. In *Wasserman*, the plaintiffs were partners in two real estate investment LLCs that served as investment vehicles; they brought suit against Mr. Kay, the managing member of one of the LLCs and the de facto managing member or partner of the other investment vehicles, as well as Mr. Kay's management company and investment company. *Id.* at 592. In Count II of their complaint, the plaintiffs alleged that Mr. Kay breached his fiduciary duties to the investment vehicles and each of the partners. *Id.* at 630. We held that although the plaintiffs had "adequately alleged that Mr. Kay owed them fiduciary duties," they had failed to allege a "stand alone nonduplicative cause of action" that could constitute a cause of action in addition to the counts of fraud, tortious interference, breach of contract, and negligence which they also alleged in their complaint. *Id.* at 631. Here, the Estate alleged that the General POA that Mr. Moore signed conferred on Ms. Jones certain fiduciary duties, including that of loyalty, to maintain an accounting, to properly invest his funds, and to disclose material facts to persons having an interest in Mr. Moore's affairs. Unlike in the *Wasserman* case, Count I of the complaint for breach of fiduciary duty based on the powers conferred on Ms. Jones under the power of attorney is not duplicative of any other count contained in the complaint. *See id.*

the extent of an agent's authority, is a contract of agency that creates a principal-agent relationship[,]" and it upheld the trial court's grant of summary judgment and damages in favor of the principal. *Id.* at 105, 113 (citations omitted) (holding that the power of attorney did not, implicitly, grant the attorney-in-fact authority to gift property on the principal's behalf).

Here, the circuit court found the following: (1) that a fiduciary relationship existed between Ms. Jones and Mr. Moore beginning with the General POA executed in May 2011 and continuing to the time of Mr. Moore's death, based in part on the care for Mr. Moore that Ms. Jones claimed to provide during the final four months of his life;[7] (2) that the Estate did not prove that Ms. Jones did not have the authority to do what she did, and therefore failed to show by a preponderance of the evidence that Ms. Jones breached her duty; and (3) because the court found no breach, it did not reach whether or not damages resulted from the breach.

Maryland Rule 8-131(c) instructs us to review both the law and evidence in an appeal of a case tried before the court. In doing so, "[w]e accept the trial court's fact findings unless they are clearly erroneous[,]" and "we review the trial court's conclusions of law and application of law to facts without deference to the trial court." *Cane v. EZ*

[7] On the record before us, however, it is unclear as to whether and when the circuit court found that the General POA, Durable POA, or both powers of attorney established a fiduciary relationship between Ms. Jones and Mr. Moore. We note that a fiduciary duty of trust based on end-of-life care may impose a different type of fiduciary duty and thus leave the plaintiff with a different set of remedies. The circuit court should determine on remand the source and scope of Ms. Jones' duties to Mr. Moore and the remedies available to the Estate for an alleged breach of those duties.

Rentals, 450 Md. 597, 613 (2016) (citations omitted). We conclude that the trial court was correct in its determination that a fiduciary relationship existed between Mr. Moore and Ms. Jones, but that it committed legal error by applying an incorrect analysis of whether Ms. Jones breached the resultant fiduciary duty she had to Mr. Moore.

A. The Existence of a Fiduciary Relationship

The court found that the General POA created a principal-agent fiduciary duty to Mr. Moore beginning on May 1, 2011, and that Ms. Jones' end-of-life care for Mr. Moore also created a relationship of trust, which imposed additional fiduciary duties on Ms. Jones continuing to the time of Mr. Moore's death.[8] Neither party contests on appeal the circuit court's finding that a fiduciary relationship existed between Ms. Jones and Mr. Moore. The Court of Appeals has explained that "[i]n the absence of the legal presumption which arises from certain relationships (e.g., attorney-client, trustee-cestui but not ordinarily child-parent), the existence of a confidential relationship is a question of fact, not of law." *Sanders*, *supra*, 261 Md. at 276 (internal citations omitted); *see also Fink v. Pohlman*, 85 Md. App. 106, 117 (1990). Accordingly, we review for clear error the trial court's findings concerning whether Ms. Jones had a fiduciary relationship with Mr. Moore. Md. Rule 8-131(c).

[8] On August 31, 2011, Mr. Moore executed the Durable POA, which also named Ms. Jones as his attorney-in-fact. By this point, his mental competency was questionable, but considering that both documents named Ms. Jones as attorney-in-fact and neither party disputes the issue, we will assume that even if the second document was void or voidable, the General POA from May 2011 would remain in force.

"Powers of attorney, which create a principal-agent relationship, are written documents by which one party, a principal, appoints another as attorney-in-fact and confers upon the latter the authority to perform certain specified acts on behalf of the principal." *Figgins*, 403 Md. at 415 (citation omitted).[9] "An agency is 'the *fiduciary relation* which results from the manifestation of consent by one person [the principal] to another [the agent] that the other shall act on his behalf and subject to his control and consent by the other so to act.'" *Schinnerer v. Maryland Ins. Admin.*, 147 Md. App. 474, 486 (2002) (quoting *Ins. Co. of N. Am. v. Miller,* 362 Md. 361, 373 (2001) (emphasis in *Schinnerer*; alterations in *Miller*)); *cf. Latty*, 198 Md. App. at 268 (listing "principal-agent" as the type of relationship that "give[s] rise to a [fiduciary] duty as a matter of law"). Additionally, even without a power of attorney, a relationship of fiduciary trust may arise based on the relationship between the elderly and their familiar caregiver. The Court of Appeals has explained that the "influence of time" reverses a parent and a child's "natural position" when

> the parent on account of old age and infirmity relies heavily upon the child for care and protection or for guidance in business affairs, then there exists a confidential relationship where the child acts as a guardian for the parent, *and if there is an improvident gift from the parent to the child the court presumes that it was obtained by fraud, and will hold the conveyance void*, unless the child shows such facts as will satisfy the court that he understood the effect of his act and there was no imposition.

[9] The circuit court found that a fiduciary relationship existed based on the General POA from May 1, 2011, until Mr. Moore revoked the power of attorney. However, we could not find evidence in the record of this revocation. Regardless, the court found that the fiduciary relationship continued without the power of attorney, based instead on the relationship of trust created through Ms. Jones' care for Mr. Moore during the final months of his life.

Williams v. Robinson, 183 Md. 117, 120 (1944) (emphasis added); *see also Figgins*, 403 Md. at 410.

Mr. Moore executed the General POA on May 1, 2011, naming Ms. Jones as his attorney-in-fact. The document gave Ms. Jones "full power and authority to act on [Mr. Moore's] behalf." This document created a principal-agent relationship between Mr. Moore and Ms. Jones and imposed on Ms. Jones the corresponding fiduciary duty to "act on [Mr. Moore's] behalf and subject to his control and consent by the other so to act.'" *Schinnerer*, 147 Md. App. at 486.[10] The circuit court also found that a fiduciary relationship of trust existed between Mr. Moore and Ms. Jones because Ms. Jones assumed the responsibility of Mr. Moore's care up until his death—a finding Ms. Jones does not contest. Accordingly, we discern no error in the court's determination that Ms. Jones owed a fiduciary duty to Mr. Moore.

B. Breach of the Fiduciary Duty

The Estate argues that the circuit court erred by failing to appreciate that the existence of a fiduciary relationship, once proven, places on the fiduciary a heavy burden of establishing that the fiduciary's actions were for the principal's benefit. The Estate adds that E&T § 17-113(b) "conferred upon [Ms. Jones] as agent specific duties, including a duty to act for the principal's benefit and a duty to keep records" and alleges that Ms. Jones did not even attempt to prove that the money she used was spent for Mr. Moore's benefit.

[10] The Durable POA, which Mr. Moore executed on August 31, 2011, also named Ms. Jones as his attorney-in-fact. This document required his attorney-in-fact to "provide an accounting for all funds handled and all acts performed as [his] attorney-in-fact" at his own request or that of his personal representative.

Ms. Jones responds simply that, after considering all the evidence, the circuit court could not identify what conduct by Ms. Jones would constitute a breach and that "[t]he question remains . . . what did she do?" At oral argument, her counsel admitted that the court should have shifted the burden but did not seem to do so.

Once the Estate established that a fiduciary relationship existed between Mr. Moore and Ms. Jones pursuant to the General POA, and then produced evidence that Ms. Jones used the General POA to divert monies to her own personal use, it was Ms. Jones' burden, as Mr. Moore's fiduciary/agent, to account for the transactions she made. "The existence of the confidential relation creates a presumption of influence which imposes upon the one receiving the benefit the burden of proving an absence of undue influence by showing that the party acted upon competent and independent advice of another, or such facts as will satisfy the court that the dealing . . . was had in the most perfect good faith on his part and was equitable and just between the parties." *Gaggers v. Gibson*, 180 Md. 609, 613 (1942) (citations and internal quotations omitted); *see also Figgins*, 403 Md. at 413. "'If confidence is reposed, it must be faithfully acted upon and preserved from any intermixture of imposition. If influence is acquired, it must be kept free from the taint of selfish interest, and cunning, and overreaching bargains.'" *Williams*, 183 Md. at 119 (quoting 1 Joseph Story, Equity Jurisprudence, 12th Edition, sec. 308).

"[O]nce a plaintiff has adduced sufficient evidence to establish a confidential relationship, the burden shifts to the defendant to show the fairness and reasonableness of the transaction[.]" *Sanders*, 261 Md. at 276 (citations omitted). This presumption relieves the plaintiff "from the necessity of proving 'the actual exercise of overweening influence,

misrepresentation, importunity, or fraud,'" and shifts *to the defendant* "the burden of showing that a fair and reasonable use has been made of the confidence, 'that the transfer of the property was the deliberate and voluntary act of the grantor and that the transaction was fair, proper and reasonable under the circumstances[.]'" *Id.* at 276-77 (citations omitted). "Whether the defendant meets this burden, which is a heavy one, depends on the facts in each case." *Id.* at 277. Accordingly, we review *de novo* the standard of law that the circuit court applied, but review for clear error the factual determination of whether Ms. Jones met her "heavy" burden. *See* Md. Rule 8-131(c).

In the instant case, rather than require Ms. Jones to establish that the transactions she conducted were fair and reasonable, *Sanders*, 261 Md. at 276, the circuit court, instead, decided that it was "not persuaded that she, Ms. Jones, did not have the authority to do what she did." The issue that the court needed to decide at that juncture, however, was not whether the General POA authorized Ms. Jones to conduct the transactions, but whether the *exercise* of authority constituted a breach of fiduciary duty. *See id.*

Based on its conclusion that the Estate failed to demonstrate that Ms. Jones' use of Mr. Moore's money was not unauthorized, the court decided there was no breach because the court "ha[s] to be persuaded by a preponderance of the evidence that there was a breach to find a breach of fiduciary duty." In so holding, the court noted that *the Estate* did not account for all the money Ms. Jones spent, even though the court recognized that "it hasn't been clear even from Ms. Jones' standpoint where all this money went." Additionally, the court found that not all of the money was used for Mr. Moore's benefit. The court conceded that "[i]t doesn't look good the way [Mr. Moore's joint account with Ms. Jones] was

managed," especially considering that the evidence demonstrated that "Mr. Moore would not have, during the entire time this account was active, would not have been of sound mind each and every day to account and keep up with [] the monies, but on the other hand[,]" the court reasoned, "this was a joint account." The court also found it troubling that Ms. Jones had Mr. Moore sign documents while he was hospitalized for dementia and hallucinations.

We hold that the court should have decided whether Ms. Jones met the heavy burden of demonstrating that her *exercise* of authority did not constitute a breach of fiduciary duty. *Sanders*, 261 Md. at 276 (citations omitted). Consequently, we will remand this case to the circuit court with instructions to consider whether or not Ms. Jones satisfied her "burden of showing that a fair and reasonable use has been made of the confidence, 'that the transfer of the property was the deliberate and voluntary act of the grantor and that the transaction was fair, proper and reasonable under the circumstances[.]'" *Id.* at 276-77 (citations omitted).

III.

Closing Arguments

At the close of the Estate's evidence, Ms. Jones moved the court to dismiss the Estate's action essentially for failure to state a claim upon which relief could be granted, arguing that she could not have filed the motion prior to receiving discovery and hearing the Estate's arguments. The court took this motion under advisement and trial proceeded. At the end of her case-in-chief, but before closing arguments, Ms. Jones renewed her motion, this time referring to it as a "motion for judgment for a defendant." Without ruling

on the motion before the court, but also without allowing the parties to make closing arguments, the court instead issued its final judgment, ruling from the bench.

The Estate now argues that this procedure was defective and deprived it of due process of law. The Estate contends that the plain text of Maryland Rule 2-519, which provides for motions for judgments, only permits a party to renew its motion for judgment at the close of evidence in jury trials—not during cases tried before the court. The Estate also seems to suggest that the circuit court should have, but did not, consider the evidence in the light most favorable to the non-moving party. And, further, it asserts that Ms. Jones did not state grounds upon which the circuit court could have granted her motion for judgment. Finally, the Estate contends that the circuit court violated the Estate's right to due process by failing to permit it to make a closing argument.[11]

Ms. Jones responds that Rule 2-519 may apply at the end of jury and bench trials alike. Ms. Jones contends that Rule 2-519 should be paired with Rule 8-131, which limits

[11] The Estate suggests that the circuit court violated its "right to due process" without specifying whether the right in question derives from the United States or Maryland Constitution. In support of its argument that a due process right to closing arguments should exist in all civil proceedings, the Estate relies primarily on the Court of Appeals' decision in *In re Emileigh F.*, 353 Md. 30, 41 (1999), which held that litigants in CINA proceedings ordinarily have a right to present closing arguments. *Id.* at 41. The Court in *In re Emileigh*, however, stated explicitly that this right—which exists in the narrow context of CINA proceedings—is a common law right and not one found in the Constitution. *Id.* In the broader context of civil proceedings, there is no constitutional right to present closing argument. *Cf. Blue Cross of Md., Inc. v. Franklin Square Hosp.*, 277 Md. 93, 103-04 (1976) ("With respect to legal issues, due process does not necessarily require that parties be given an opportunity to present argument."); *Fritts v. Fritts*, 11 Md. App. 195, 199 (1971) ("[A]rgument by counsel upon submission of a civil case tried without a jury is a matter within the discretion of the trial court. We find no abuse of discretion in the circumstances here."). Accordingly, we find no merit in the Estate's argument that the circuit court violated its right to due process.

our standard of review of the trial court's grant of the motion to that of clear error. Ms. Jones counters the Estate's contention that she did not plead with particularity her motion for judgment, arguing that the Estate could not be prejudiced by the lack of a fair opportunity to respond to the motion because Ms. Jones made the same motion on the third day of trial, August 19, 2015, and simply renewed it—weeks later—on the fourth day of trial on September 8, 2015. Ms. Jones argues that if closing arguments were guaranteed, motions for judgment as a matter of law would not exist. And regardless, she adds, closing arguments do not allow for the presentation of new evidence.

In *Cattail Associates, Inc. v. Sass*, 170 Md. App. 474, 486 (2006), this Court stated:

> Pursuant to Maryland Rule 2-519(a), "[a] party may move for judgment on any or all of the issues in any action at the close of the evidence offered by an opposing party." Maryland Rule 2-519(b) provides that, "[w]hen a defendant moves for judgment at the close of the evidence offered by the plaintiff in an action tried by the court, the court may proceed, as the trier of fact, to determine the facts and to render judgment against the plaintiff or may decline to render judgment until the close of all the evidence." ***In such a case, we review the circuit court's judgment in accordance with Maryland 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.
>
> *See also Boyd v. Bowen,* 145 Md. App. 635, 650, 806 A.2d 314 (2002) (stating that "we review the trial court's decision to grant a defendant's motion for judgment at the close of the plaintiff's case in a court trial under Md. Rule 8-131(c)").

(Emphasis added). Thus, at the close of evidence in a case tried before the court—unlike in a jury trial—Rule 2-519(b) does not require the trial judge to consider evidence in the light most favorable to the non-moving party. Md. Rule 2-519(b). And, given our standard of review under Md. Rule 8-131(c), it is clear that the circuit court's characterization of its ruling as a grant of judgment rather than a grant of the Ms. Jones' motion for judgment as a matter of law is a distinction without a difference. As explained in *Sass*, this Court reviews a trial court's grant of judgment as a matter of law in a case tried before the court by the same standard that we apply to a trial court's judgment entered after closing arguments in a bench trial. 170 Md. App. at 486.

IV.

In conclusion, we remand this case to the circuit court with instructions to consider whether or not Ms. Jones made an accounting sufficient to satisfy her burden of showing that by her exercise of the powers conferred upon her under the power of attorney, the "transfers of the property was the deliberate and voluntary act of the grantor and that the transaction was fair, proper and reasonable under the circumstances[.]'" *Sanders*, 261 Md. at 276 (citations omitted). On remand, the court may, in the exercise of sound discretion, permit additional evidence and argument.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED. CASE REMANDED FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.