Circuit Court for Baltimore City
Consolidated Case Nos.: 24-C-17-003720 and
24-C-17-003638

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2685

September Term, 2018

KAREN V. MCINTYRE, ET AL.

v.

KEVIN L. MCINTYRE, ET AL.

Fader, C.J.,
Leahy,
Eyler, Deborah S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: September 3, 2020

This appeal arises out of two consolidated cases filed in the Circuit Court for Baltimore City. On July 11, 2017, Kevin L. McIntyre filed a petition, and later a supplemental petition, requesting that the court assume jurisdiction over the Charles T. McIntyre Irrevocable Trust ("the Trust"). Several days later, Karen V. McIntyre and Carolyn E. Wilson, (also, "Appellants" or "Plaintiffs"), filed a complaint, and later an "Amended Complaint/Petition for Removal of Fiduciary," against appellee, Kevin L. McIntyre, individually and in his capacity as trustee of the Trust, and Ronald E. McIntyre,[1] individually. In the complaint, Plaintiffs alleged that: 1) Kevin induced their father, Charles T. McIntyre, to create the trust; 2) induced their father to sign a deed conveying his house to the trust; 3) failed to meet other duties required of him by the trust; 4) "engaged in misconduct inconsistent with his duties as a fiduciary," sometimes in concert with his brother Ronald; and 5) failed to provide adequate accountings to the beneficiaries of the trust. The cases were consolidated by order of the circuit court on January 18, 2018.

A bench trial was held from August 22-24, 2018. At the conclusion of the evidence presented by Karen and Carolyn McIntyre, the court entered judgment in favor of Ronald E. McIntyre and Kevin L. McIntyre, individually. In a written order filed on August 24, 2018, the court denied the request that Kevin L. McIntyre be removed as trustee, entered judgment in favor of Kevin L. McIntyre, as trustee, assumed jurisdiction over the Trust, and ordered that a final accounting be submitted. Karen V. McIntyre and Carolyn E.

[1] Ronald declined to hire counsel or defend his case at trial. He similarly did not participate in this appeal.

Wilson filed a motion for new trial. They filed a timely appeal from the court's judgment after the motion was denied.

Appellants, who are proceeding pro se, present three questions for our consideration which we have rephrased as follows:[2]

I. Did the circuit court err in granting judgment in favor of Ronald E. McIntyre?

II. Did the circuit court err in granting judgment in favor of Kevin L. McIntyre individually?

III. Did the circuit court err in granting judgment in favor of Kevin L. McIntyre as Trustee of the Charles T. McIntyre Irrevocable Trust?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL BACKGROUND

The following factual history is distilled from the testimony offered at the bench trial, as well as the documents submitted and accepted into evidence.

[2] Appellants' present their questions as follows:

"1. Did Trial Court err in granting Defendants' oral Motion for Judgment, offered on the record in open court on August 23, 2018, dismissing the complaint brought against Ronald E. McIntyre, based on the credibility of his testimony stating that there was no evidence of his role as any type of trustee."

"2. Did Trial Court err in granting Defendants' oral Motion for Judgment, offered on the record in open court on August 23, 2018, dismissing the complaint brought against Kevin L. McIntyre, in his individual capacity."

"3. Did Trial Court err in entering a judgment on October 5, 2019 in favor of Kevin L. McIntyre, as trustee of the Charles T. McIntyre Irrevocable Trust, finding that 1) he in no way breached his duties as fiduciary of the trust, and 2) allegations of fraud were baseless."

This appeal has its genesis in a family dispute between some of the children of Charles T. McIntyre ("Mr. McIntyre") regarding the Trust. Mr. McIntyre, a resident of Baltimore City, died on October 27, 2012. He had seven children:[3] Carolyn Wilson, Charles E. McIntyre, Edmond T. McIntyre, Ronald E. McIntyre, Vernon R. McIntyre, Karen V. McIntyre, and Kevin L. McIntyre. With the exception of Charles, who pre-deceased his father, the children were adults at all times relevant to this appeal.[4]

Prior to his death, Mr. McIntyre owned a home at 3623 Columbus Circle in Baltimore City and a 1998 Toyota sedan. He had bank accounts and certificates of deposit ("CD"s) at Bank of America and Freedom Federal Credit Union. At some point prior to 2012, Mr. McIntyre gave powers of attorney to Vernon and Karen, and, in about 2010, Vernon "assumed the role of primary caretaker" for his father. Vernon "orchestrated the in-home health care" and paid his father's bills. At some point, Vernon began refusing to allow his siblings access to their father. According to Karen, Kevin asked Vernon to provide an accounting of their father's money, but Vernon refused and, when pressed, stated that he "was going to remove himself as power of attorney."

The McIntyres held a family meeting, in July 2012, at which Mr. McIntyre "indicated that he was very dissatisfied with Vernon." Vernon responded, "Well, then I'm

[3] Meaning no disrespect, we shall refer to each of Mr. McIntyre's children by their first names for clarity.

[4] Edmond T. McIntyre suffered from a mental disability and, after a guardianship proceeding, had an attorney appointed to serve as the guardian of his property. He died on or about April 27, 2017. Vernon R. McIntyre was disinherited by his father and excluded from the Trust.

done." At the time of the meeting, Mr. McIntyre's health had deteriorated to the point where he required constant care. According to Kevin, the home on Columbus Drive was not clean, "was in disrepair," and "was not a suitable place for someone to live, particularly someone" in his father's condition. He testified that the house had "rodent droppings" and was "insect infested." In addition, there had been a sewer back up in the basement that necessitated repairs and the removal of a portion of the paneling. Mr. McIntyre's children discussed their father's situation and agreed that it would be best for him not to live alone and to stay with Kevin. The children made arrangements for in-home health care to be provided for Mr. McIntyre at Kevin's house.

Carolyn testified that the agreement was for Mr. McIntyre to spend one week with Kevin, and then the next week at his own home in Baltimore City, and that they would continue to switch "back and forth" in that manner. Karen testified that she "talked" Kevin into taking Mr. McIntyre out of the house "for a period of time" so that they could change the locks and "get Vernon's power of attorney revoked." She believed that when her father could feel secure in his home, he would return there. In September 2012, Karen learned from Ronald that he and Kevin had made a joint decision not to let their father return to his own home. Kevin acknowledged that Karen had "some angst" about their father staying at Kevin's home rather than at his own house. Nevertheless, he and Karen were working together to care for Mr. McIntyre, and both had powers of attorney and access to their father's bank accounts. Karen testified that she had the locks changed at her father's house, and she and Carolyn made arrangements for Mr. McIntyre to sign a notarized form to revoke Vernon's power of attorney and filed it with the Register of Wills.

At some point, Mr. McIntyre decided to look into creating an irrevocable trust. Kevin and Mr. McIntyre met with attorney Cheryl Chapman Henderson, who would later become a witness in Plaintiffs' case-in-chief, and who drafted the documents to establish the Trust. Ms. Henderson testified that the Trust was established for the purpose of allowing Mr. McIntyre "to qualify for the Veterans Aid and Attendance benefit" that "was available but for his resources." Ms. Henderson met with Mr. McIntyre, reviewed the provisions of the trust instrument with him "section by section," took steps to make sure he understood the provisions, and answered his questions. Mr. McIntyre initially intended for Karen and Kevin to serve as joint trustees, but Karen failed to attend two meetings to discuss and execute documents. According to Kevin, Mr. McIntyre "became very upset, disappointed," and "angry," and decided that Kevin alone would serve as the trustee.

The Trust was established on September 17, 2012. On the same date, the deed for Mr. McIntyre's home on Columbus Drive was transferred to the Trust, and Mr. McIntyre executed a new will. The Trust was funded with $10, a formality due to the fact that the Trust was required to be funded at the time of execution, and an assignment of tangible personal property. Ms. Henderson also prepared a funding table that listed the property that was to be included in the Trust. The funding table included, among other things, treasury bonds having a value of $50,000. At trial, Ms. Henderson testified that she did not know where those bonds were located, just that Mr. McIntyre reported to her that he had them. Mr. McIntyre also reported that he had a term life insurance policy with Federal Employee's Group Life Insurance ("FEGLI"), through his employment with the federal government.

Ms. Henderson testified that the purpose of setting up the irrevocable Trust was, in part, so that Mr. McIntyre's trustee and/or children would help take care of him. She explained:

> At that time, he was – he had a caregiver. It was expected that the cost of caring for him would increase and so in order to completely separate himself, Mr. McIntyre, which he had to do, he was well aware of that, I advised Kevin McIntyre, trustee, that to the extent that distributions would be made, and the trust is designed so that distributions could be made to any one of the named lifetime beneficiaries, as a practice, we want to make sure that those funds are going to be – to go to someone who would be advancing funds for the grantors or Mr. McIntyre's care.
>
> So we – I advised [Kevin] to set up a – an account in his name separate from his other accounts, so that if he made distributions to himself, so that he could reimburse himself for any care costs, that he'd have it in a separate account.
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> * * *
>
> Typically, when we prepare these types of trusts, we want to make sure that the person who's receiving the funds will use those funds for the benefit of the grantor, although they were legally not required to, and so it is important to identify someone who is going – that we know is going to use those funds for Mr. McIntyre. Well, reimburse or advance for Mr. McIntyre's care, although they're not legally required to.

Ms. Henderson acknowledged that there were mistakes on certain forms that were filed with respect to the Trust. For example, on the Land Instrument Intake Sheet, a box was checked indicating that the house was being conveyed "father to son" and that the property being conveyed was the "grantee's" principal residence. The form properly reflected, however, that the house was being conveyed to "Kevin L. McIntyre, Trustee." Ms. Henderson testified that she did not think the forms were capable of dealing with irrevocable trusts and that the box indicating a transfer from "father to son" might have been correct because Kevin was the trustee.

After being appointed trustee, Kevin opened three trust accounts at Bank of America -- a checking account, a savings account, and a money market account. On the advice of Ms. Henderson, he also opened a joint checking account with Ronald, at Bank of America, ending in -3123. The Bank of America account was opened for the purpose of paying Mr. McIntyre's expenses. Ronald testified that the account was to be used for his father's personal care and incidentals and that he was a joint owner so that if Kevin became unavailable, he would be able to access the money "for the purposes of caring for [his] father." Kevin testified that the account "was not used for any personal expenses for [himself] or for [his] brother or for any of [their] relatives," and that he provided source materials and documents for all expenses paid from the account to Jonathan Swerdloff, the accountant for the Trust.

In August 2012, Karen learned that her father had a balance of $165,000 in an account at Freedom Federal Credit Union and $163,000 in an account at Bank of America. Later, she learned that another $45,000 CD at Bank of America had been withdrawn. Thereafter, she received a copy of the Trust and her father's Will. As a result, she requested that Kevin provide financial information to corroborate his accounting of the Trust.

During the time that Mr. McIntyre was staying at Kevin's house, Karen hired Phil Hart to renovate the kitchen and do some plumbing work at her father's house. On about October 16, 2012, she withdrew $2,200 from Mr. McIntyre's checking account to pay the deposit to Mr. Hart. When Mr. McIntyre became aware of the work being done at his home, he was "surprised," expressed displeasure, and requested that the work stop. He asked Kevin to move all of the funds out of his checking account to which Karen had

access. Kevin withdrew $6,901.26 from Mr. McIntyre's checking account and deposited that sum in a new account.

After Mr. McIntyre died, Vernon opened an estate and filed a will. There was evidence that Vernon had posted a bond as personal representative, but Kevin testified that he was not aware that a bond had been posted. A short time later, Kevin went to the orphans' court and filed the will that had been prepared at the time the Trust instrument was executed, which superseded the will filed by Vernon. It is undisputed that, after Mr. McIntyre's death, Kevin closed the joint account that he opened with Ronald.

Because there was some concern that Vernon would challenge the Trust, Kevin waited until the 3-year statute of limitations had run before making a distribution. Karen disagreed with that version of events and testified that the concern was that Vernon would contest the will, not the Trust. Karen took the position that there was no order mandating that Kevin wait for 3 years before making the initial distribution from the Trust.

Plaintiffs presented evidence that, on February 14, 2013, Vernon took $6,901.26 from his father's checking account ending in -8361 at Freedom Federal Credit Union. He also took $1,232.10 from Mr. McIntyre's savings account ending in -1261. Karen thought that Kevin should pursue Vernon for the return of that money. Kevin testified that, after receiving advice from counsel, he decided it was not prudent to pursue Vernon for such a small percentage of the total value of the Trust. He explained that to do so would be expensive and difficult because Vernon had moved without leaving a forwarding address, had resisted attempts by family and friends to contact him, and it would be difficult to collect a judgment against him. Kevin did not include the $8,142.55 on the accounting he

prepared on November 15, 2016, but he did include it on an accounting prepared on September 30, 2017, because his sisters had raised it as an issue in the instant litigation.[5]

Kevin provided an accounting of the Trust to Karen in March and July 2013 and bank statements in April 2013. Thereafter, on or about September 5, 2013, Karen and Carolyn filed a tort action against Kevin and Ronald in the Circuit Court for Baltimore City, Case No. 24-C-13-5487, seeking virtually the same relief they seek in the instant case and five million dollars in damages. On November 5, 2013, the day before the hearing, Kevin's attorney provided Karen with copies of 44 bank statements from the trust accounts at Bank of America and the joint bank account ending in -3123. The court determined that Kevin, as trustee, had provided a sufficient accounting, and the tort action was dismissed.[6]

In 2014, Kevin, as trustee, engaged a real estate agent who suggested that certain repairs be made to Mr. McIntyre's house before it was listed for sale. The house had been configured as a duplex, and, after obtaining counsel from the real estate agent, Kevin decided to convert the house back into a single-family home. He considered selling the house "as is," but chose not to do so because the other houses in the neighborhood were selling for $100,000 to $125,000, and the best offer he had received was in the range of $55,000 to $60,000. Karen disagreed. She felt it would have been better to sell the house

[5] It appears that Karen may have filed an action in the Orphan's Court for Baltimore City seeking to recover the money taken by Vernon.

[6] In the instant case, the circuit court ruled that the court had already "found that there was a sufficient accounting prior to November 6, 2013, and so I'm not going to go back and unfind it."

"as is." According to Karen, her father "wanted the house sold as is." Karen took the position that "a whole lot of money went into the house, including additional fees, gas and electric bill[s], insurance bills, accounting fees, tax[es]," and that "all that money [that] was spent during the time that the house was improved . . . could have been distributed to the benefit of the beneficiaries."

Kevin entered a new contract with Phil Hart to complete the kitchen renovation and perform additional work on the house. After consulting a real estate agent and a home inspector, Kevin also entered agreements with other contractors, including Clayton Stevenson, to perform additional work to prepare the house for sale. After the work was completed, Kevin retained a home inspector, who suggested some additional repairs, and an appraiser, who appraised the property at $110,000. The total amount spent on the work to prepare Mr. McIntyre's house for sale was $49,629.13. The proceeds from the sale of the house totaled $100,441.87.

Kevin made an initial distribution from the Trust in December 2015, and each of Mr. McIntyre's beneficiaries received $30,000. In November 2016, Kevin attempted to make a final distribution. On or about November 19, 2016, he provided his siblings with a final accounting and a release that was required to be signed before the final distribution would be made. That was the first accounting after the November 6, 2013 hearing in the tort action filed by Karen and Carolyn. Karen refused to sign the release even though she was aware that the Trust instrument allowed Kevin to request that she sign one. She requested that Kevin "prove and verify" the figures in the accounting. She would "not agree to sign an accounting that's unverified, uncorroborated, and that mandate[d] that

[she] relinquish any right for litigation, any future litigation[.]" Karen complained that Kevin never invited her or Carolyn to his house, opened his books, or made records available for inspection.

Jonathan Swerdloff, a certified public accountant and investment advisor, prepared account summaries and tax returns for the Trust. He testified that the only income for the Trust was the interest from bank accounts. Mr. Swerdloff included on the general ledger an entry dated September 30, 2017, showing that Vernon owed the Trust an estimated amount of $8,142.55 as well as information about the joint bank account with Ronald. He testified that Kevin provided source documents for each transaction. In 2012, about eleven expenses were paid from that account including the cost of Mr. McIntyre's in-home health care worker and funeral expenses. The following year, expenses from that account included Baltimore Gas and Electric, attorneys' fees, payments to Kevin Timmons who cut the grass at Mr. McIntyre's home, contractor Phil Hart, insurance, and various other expenses for the property. Kevin testified that he was not aware of any treasury or war bonds owned by his father, nor was he aware of any FEGLI life insurance.

Circuit Court's Rulings

At the close of Karen and Carolyn's case, the trial court granted judgment in favor of Ronald and Kevin individually. At the conclusion of Kevin's case, the trial court, ruling from the bench, concluded that it was "the family dynamic" that was "driving this litigation, not so much an honest belief that Mr. Kevin McIntyre has done anything untoward[.]" The court, applying the preponderance of the evidence standard, reviewed each paragraph of the amended complaint/petition for removal of fiduciary, and made

findings of fact. The court found no factual or legal basis to support Karen and Carolyn's request to remove Kevin as the trustee or to appoint a substitute trustee. The court denied their requests to appoint an auditor or examiner, for an equitable accounting, for compensatory and exemplary damages, and for attorney's fees, and entered judgment in favor of Kevin, in his capacity as trustee. The court granted Kevin's petition for assumption of jurisdiction of the Trust and ordered him to provide a final accounting. The court's rulings from the bench were set forth in a written order filed on August 24, 2018. On September 4, 2018, Karen and Carolyn filed a motion for new trial which was denied on October 5, 2018.

This appeal timely followed.

Standard of Review

The trial court granted judgment in favor of Ronald and Kevin, individually, pursuant to Maryland Rule 2-519(b), which 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 cases, we review the trial court's judgment in accordance with Maryland Rule 8-131(c). *Cattail Assocs., Inc. v. Sass*, 170 Md. App. 474, 486 (2006). *See also Boyd v. Bowen*, 145 Md. App. 635, 650 (2002).

As this case was tried without a jury, we "will review the case on both the law and the evidence." Md. Rule 8-131(c). We "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." *Id*. "If any competent material evidence exists in support of the trial court's factual findings, those findings cannot be held to be clearly erroneous." *Figgins v. Cochrane*, 403 Md. 392, 409 (2008). Absent an abuse of discretion, "we may not substitute our judgment for that of the fact finder, even if we might have reached a different result[.]" *Gordon v. Gordon*, 174 Md. App. 583, 626 (2007) (citation omitted). We must also consider evidence produced at the trial "'in a light most favorable to the prevailing party[.]'" *Estate of Zimmerman v. Blatter*, 458 Md. 698, 717 (2018) (citation omitted). On the other hand, we conduct an independent appraisal of the trial court's application of the law. *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 344 (2005) ("[W]here the order involves an interpretation and application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are 'legally correct' under a *de novo* standard of review.") (citation omitted).

DISCUSSION

I.

Ronald

a. Parties' Contentions

Appellants contend, first, that the trial court erred in granting judgment in favor of Ronald, individually. Specifically, they assert that Ronald's testimony at trial "provided clear and convincing evidence" that he "willfully, deliberately and fraudulently" concealed from them the existence of "both the checking and money market accounts," that he was "fully aware of the illegal purpose for which these accounts were opened," and that he "serve[d], fraudulently, in the role of constructive trustee." They assert that Ronald acted

as a constructive trustee and that he and Kevin conspired to commit fraud by withholding knowledge of the checking account ending in -3123. They also argue that the trial court erred in granting judgment in favor of Ronald because he was not represented by counsel and failed to initiate his own motion for judgment at the close of Plaintiffs' case. Kevin responds that the trial judge correctly found that there was no evidence in the record to support an assertion that Ronald owed any duty to the Appellants with regard to the trust accounts.

b. Analysis

In their amended complaint/petition for removal of fiduciary, Appellants alleged that "Kevin, sometimes in concert with his brother/defendant Ronald . . . engaged in misconduct inconsistent with his duties as fiduciary[.]" The specific allegations of misconduct included, but were not limited to: failing to expeditiously liquidate the Trust corpus; misappropriating Trust funds for the supposed purpose of improving Mr. McIntyre's house in anticipation of its sale; selling the house "below value"; transferring funds from Trust accounts to Kevin's "own private and separate accounts, sometimes in concert with Ronald"; converting Trust funds and property to the personal use of Kevin and Ronald; waste of Trust assets; failing to provide an accounting; and deceiving appellants as to the administration of the Trust both before and after Mr. McIntyre's death. Appellants sought, among other things, a money judgment against Ronald and exemplary damages "to the extent that the court finds willful malfeasance on the part of" Ronald.

At the close of the Appellants' case, the trial court granted judgment in favor of Ronald stating that there was no evidence that he served as a trustee. In doing so, the court

credited his testimony that he did not exercise control over the bank account and "understood that his name was on there solely so that if anything happened and his father needed care he could step up and do what needed to be done with respect to making sure that dad's monthly needs were met."

Appellants' complaint/petition to remove fiduciary did not set forth a claim for fraudulent concealment and, as a result, that claim is not properly before us.[7] Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

We conclude that the trial court's findings of fact with regard to the claims against Ronald were not clearly erroneous. Ronald testified that he was aware of the joint checking account and that Kevin opened it with his consent, in October 2012, prior to the death of their father. Ronald acknowledged that in his answers to interrogatories, he stated that the purpose of the checking and money market accounts "was to assist Kevin with

[7] Even if such a claim had been included in the complaint, appellants would not prevail. The essential elements of a claim of fraudulent concealment include:

> (1) the defendant owed a duty to the plaintiff to disclose a material fact; (2) the defendant failed to disclose that fact; (3) the defendant intended to defraud or deceive the plaintiff; (4) the plaintiff took action in justifiable reliance on the concealment; and (5) the plaintiff suffered damages as a result of the defendant's concealment.

E.g., *Blondell v. Littlepage*, 413 Md. 96, 119 (2010) (internal quotations and emphasis omitted). A plaintiff bears the burden of establishing the elements of fraudulent concealment "by clear and convincing evidence." *Md. Envtl. Trust v. Gaynor*, 370 Md. 89, 97 (2002). We need not examine all of the required elements of fraudulent concealment because Appellants failed to show that they suffered damages as a result of any concealment by Ronald.

consolidation of all known assets for management and accounting purposes." He clarified, however, that his answer "mischaracterized" the intent in creating the checking account and that the checking account was not intended "to become a repository for all of the assets" of the Trust. Although his name was included on the account, Ronald did not have any involvement with it, did not sign any checks, did not conduct any electronic transactions, did not receive any money from it, and had no knowledge as to what payments were made from it.

Ms. Henderson testified that she advised Kevin to open "an account in his name separate from his other accounts so that if he made distributions to himself . . . he could reimburse himself for any care costs[.]" Although the Trust was "designed so that distributions could be made to any one of the named lifetime beneficiaries," the idea was that the funds would go to someone who would be advancing funds for Mr. McIntyre's care. The checking account was set up so that either Kevin or Ronald could reimburse themselves for any care costs incurred on behalf of their father. Kevin similarly testified that the checking account was funded by the trust to pay his father's living expenses and expenses related to the Trust. After his father's death, the balance remaining in the checking account was transferred back into a trust account. Additionally, the accountant, Mr. Swerdloff, included information about the checking account on the general ledger and testified that Kevin provided source documents for each transaction.

There is no evidence in the record before us that Ronald engaged in fraudulent concealment, took any money from the checking account, or was included as a joint owner of the checking account for an improper purpose. Nor is there any evidence that he acted

as a constructive trustee or participated in a conspiracy. The record is also devoid of evidence that any funds from the checking account were used improperly.[8] Although Appellants challenge Ronald's credibility, the trial court credited his testimony, and we must give due regard to the opportunity of the trial court to judge his credibility. Md. Rule 8-131(c). For all these reasons, we find no error in the trial court's decision to grant judgment in favor of Ronald.[9]

[8] Even assuming, *arguendo*, that it was improper for Kevin and Ronald to put money from the Trust accounts into the checking account, the evidence showed that the money was used for the care of Mr. McIntyre and Trust-related expenses and, following Mr. McIntyre's death, the balance was transferred to a Trust account.

[9] Appellants complain that throughout the case, Ronald, who appeared below and on appeal in proper person, relied on the filings and arguments offered by counsel for Kevin. Without offering any legal citation, they argue that the motion for judgment with respect to Ronald "should have been struck down by Trial Court, as it was not legally and properly offered." That argument is completely without merit.

In his argument in support of the motion for judgment, counsel for Kevin mentioned the failure of evidence as to Ronald in passing, stating:

> What is more, there's no evidence of individual liability on the part of Mr. Kevin McIntyre. The Court ruled, note, that he has been sued individually and as the Trustee. And for that matter, there's no evidence of any individual liability on behalf of Mr. Ronald McIntyre. The inclusion of Mr. Ronald McIntyre seems to be only because his name appears on that account ending in 3123. What the objection about that account is I don't know.

Before announcing its decision at the close of the case, the trial court specifically addressed this issue, stating:

> I've excused Mr. Ronald McIntyre from attending today and that was appropriate considering the fact that I granted judgment in his favor upon a motion really lodged by Mr. Kevin McIntyre which I found to be applicable to Mr. Ronald McIntyre and through that ruling judgment was granted to Mr.

II.

Kevin, as Individual

a. Parties' Contentions

Appellants contend that the trial court erred in granting judgment in favor of Kevin, individually. They argue that they "presented a substantial body of evidence" to demonstrate that, acting in his individual capacity, Kevin engaged in "fraudulent self-dealing, fraudulent concealment, constructive fraud, and conspiracy to commit fraud." We note that Appellants' amended complaint/petition for removal of trustee did not specifically set forth claims of fraud or conspiracy. Nevertheless, in support of their arguments, Appellants assert that Kevin: 1) "secretly liquidated 4 CDs, amounting to over $45,000, and did not deposit them into any known account in [Mr. McIntyre's] name, prior to the creation of the [T]rust"; 2) wrongfully "withdrew $295,000+ from [Mr. McIntyre's] financial accounts to illegally fund [T]rust accounts[]"; 3) "transferred $6,901.26 of [Mr. McIntyre's] funds into a new [Bank of America] account he himself opened[]"; 4) misappropriated funds by "acting in his capacity as trustee to a) fraudulently transfer title of [Mr. McIntyre's] residence to himself, and b) transfer trust funds to Ronald's and his personal checking account," and spend "over $49,000 of [T]rust funds to improve the house"; 5) "acting in [his] individual capacity . . . had the house improved without

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McIntyre and there's nothing outstanding with respect to him at this point in time.

Given the lack of evidence to support any claim against Ronald, the trial court acted properly in granting judgment in his favor at the close of Appellants' case.

executing any legally recognizable contractual agreements[]"; and 6) committed fraudulent concealment when he "did not disclose all of [Mr. McIntyre's] property when he probated his estate," and instead "filed a Schedule B form, and opened a small estate in [Mr. McIntyre's] name, thereby concealing the sum total of all [Mr. McIntyre's] property from probate.

Kevin responds that all the actions alleged above were proper and done with the knowledge and permission of Mr. McIntyre or under the powers granted to him as trustee.

b. Analysis

The evidence at trial established that three of Mr. McIntyre's CDs, totalling $45,239.81, were closed on September 27, 2012 and deposited into a new CD. That CD was combined with another CD in the amount of $50,779.99 and added to additional funds, all of which were deposited into the Trust account on September 27, 2012. In turn, the money from Mr. McIntyre's several bank and credit union accounts was deposited into the Trust account during his lifetime, and Appellants did not dispute that a combined total of $295,045.54 was deposited into the Trust account. There is no evidence to support Appellants' contention that funding the Trust account with the $295,045.54 was illegal.

Kevin acknowledged that he withdrew $6,901.26 from Mr. McIntyre's checking account ending in -9690 and deposited it into a checking account ending in -8361. The evidence established that the Bank of America accounts belonged to Mr. McIntyre. Karen admitted that on October 12, 2012, she withdrew money from her father's account to pay for the contract she executed with Mr. Hart. Kevin testified that he moved the money to the account ending in -8361 at his father's request because he was upset that Karen had

paid Mr. Hart to perform home improvement work without his knowledge or consent and wanted his money out of Karen's reach.

There is no support in the record for Appellants' allegation that Kevin either individually or as trustee, transferred title of Mr. McIntyre's residence to himself, that he misappropriated the money spent on home improvements in anticipation of the sale of the property, or that he had the house improved without executing "any legally recognizable contractual agreements." The deed to the house was executed on the same day that the Trust was executed. The Trust was funded by 1) $10, which was listed on Schedule A of the Trust instrument; 2) the house, which was conveyed to Kevin as trustee, and 3) personal property as listed in an assignment of personal property executed by Mr. McIntyre.

Kevin never held title to the house in his individual capacity. The evidence established that Kevin entered into several contracts for work in preparation for the sale of the home, and the record is devoid of evidence to show that the various contracts were not "legally recognizable." When the home was sold, the proceeds were deposited into a Trust account. As for Kevin's decision to renovate the house in anticipation of the sale, § 10.16 of the Trust instrument specifically authorized Kevin, as trustee, *inter alia*, to "manage, alter, improve, and in general deal in and with real property" and "manage real estate in any manner considered best," and to "exercise all other real estate powers necessary to effect this purpose."

Lastly, there is no support for Appellants' assertion of fraudulent concealment with respect to the disclosure of property in the probate of Mr. McIntyre's estate. Appellants' amended complaint/petition for removal of fiduciary did not set forth a specific claim of

fraudulent concealment and, as a result, that issue is not properly before us.[10] Md. Rule 8-131(a). For all these reasons, the trial court did not err in granting judgment in favor of Kevin, individually.

III.

Kevin, as Trustee

Appellants challenge the trial court's finding that there was "absolutely no basis for removing" Kevin as the trustee, that he did not engage in any self-dealing, that he operated in good faith, and that he exercised the rights he was entitled to exercise pursuant to the Trust instrument. At trial, the court made findings as to each count of Appellants' amended complaint/petition for removal of fiduciary. Appellants contend that the court's findings with respect to paragraphs 5, 8, 10, 13, 18a, and 18g were erroneous. In addition, they include in their Brief a series of allegations that Kevin breached his duties as trustee by his actions and by his failure to act. Appellee responds that "virtually all of the Appellant's

[10] Even if the issue were properly before us, Appellants would fare no better. At the time Mr. McIntyre's estate was opened in December 2013, virtually all of his property had been transferred to the Trust. In addition, § 2.01 of Mr. McIntyre's Last Will and Testament specifically provided for pour-over to the Trust as follows:

> I give all of my probate estate, excluding any property over which I have a power of appointment, after expenses and taxes are paid under this Will, to the then-acting Trustee of the Charles T. McIntyre Irrevocable Trust dated September 17, 2012 and executed before this Will to be added to the property of that trust. I direct that the Trustee administer the property according to the trust and any amendments made prior to my death.

Accordingly, Appellants failed to establish any damages with regard to their allegation that Kevin fraudulently concealed property by failing to disclose it at the time Mr. McIntyre's estate was probated.

complaints against [Kevin, as trustee] are within the explicit discretion conferred upon the Trustee by the Settlor." We shall address each of Appellants' contentions *seriatim*.

A. Court's Findings with Respect to Specific Paragraphs

Paragraphs 5 and 8

Appellants challenge the trial court's findings with respect to paragraphs 5 and 8 of their amended complaint/petition for removal of fiduciary. In paragraphs 5 and 8, Appellants alleged that Kevin induced Mr. McIntyre to create the Trust and to convey his house to Kevin. According to Appellants, the evidence established that Kevin and Ms. Henderson were "guilty of conspiracy to commit fraud, subjecting [Mr. McIntyre] to undue influence on the day the trust was created." In support of that argument, they point to Kevin's testimony that Ms. Henderson tried to convince Mr. McIntyre to include Vernon in the Trust and will and that Mr. McIntyre was "agitated" and "angry" after a meeting with Ms. Henderson.

Appellants assert that their father did not want "any of his property to be an asset of the trust predeath" and that the trust was unfunded. Appellants point out that the Trust was established on September 17, 2012, but Karen did not withdraw the money for the contract she entered with Mr. Hart for repairs on Mr. McIntyre's house until October 12, 2012. They also complain that the forms completed in conjunction with the filing of the deed for Mr. McIntyre's house support their contention that Kevin deeded the house to himself.

Kevin responds that Ms. Henderson's testimony "overwhelms the fabricated contention of undue influence."

We begin our analysis with the fact that Appellants' amended complaint/petition for removal of fiduciary did not set forth a claim for fraud, fraudulent inducement, or conspiracy. As such, those claims are not properly before us. Md. Rule 8-131(a). To the extent that the "inducement" referenced in paragraphs 5 and 8 could be viewed as a claim for fraudulent inducement, the trial court acted properly in granting judgment in favor of Kevin, as trustee.

We have explained that "[t]he tort of fraudulent inducement 'means that one has been led by another's guile, surreptitiousness or other form of deceit to enter into an agreement to his [or her] detriment." *Rozen v. Greenberg*, 165 Md. App. 665, 674 (2005) (citation omitted). In *First Union Nat'l Bank v. Steele Software Sys. Corp.*, 154 Md. App. 97 (2003), we stated that in order for a plaintiff to recover in a claim of fraudulent inducement, it must be shown by clear and convincing evidence:

> (1) that the representation made is false; (2) that its falsity was either known to the [defendant], or the misrepresentation was made with such a reckless indifference to the truth as to be equivalent to actual knowledge; (3) that it was made for the purpose of defrauding the [plaintiff]; (4) that [the plaintiff] not only relied upon the misrepresentation, but had a right to rely upon it in the full belief of its truth, and that [the plaintiff] would not have done the thing from which the injury resulted had not such misrepresentation been made; and (5) that [the plaintiff] actually suffered damage directly resulting from such fraudulent misrepresentation.

Id. at 134 (citation omitted).

The concept of undue influence frequently arises in the context of *inter vivos* gifts and wills. In the context of a will, it has been defined as "physical or moral coercion that forces a testator to follow another's judgment instead of his [or her] own." *Moore v. Smith*, 321 Md. 347, 353 (1990) (citation omitted). It is not enough to show mere suspicion of

undue influence, or even that a person had "'power unduly to overbear the will of a testator,'" but rather "'it must appear that the power was actually exercised, and that by means of its exercise the supposed will was produced.'" *Zook v. Pesce*, 438 Md. 232, 249 (2014) (citation omitted). The Court of Appeals has identified the following seven elements characteristic of undue influence:

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

Moore, 321 Md. at 353. A caveator need not prove the presence of all seven factors, but we have observed that the first and seventh factors are crucial and appear to be necessary to a finding of undue influence. *Green v. McClintock*, 218 Md. App. 336, 369 (2014).

Because the record in this case is devoid of evidence that Mr. McIntyre was highly susceptible to undue influence, we need not discuss each of the seven elements characteristic of undue influence. Although, for that reason alone, we need not comment any further on Appellants' allegation of undue influence, we will offer some brief thoughts on the trial judge's findings.

The trial judge explained that Appellants did not introduce any evidence that Kevin exerted undue influence on Mr. McIntyre. She properly inferred, based on the evidence presented, that Mr. McIntyre's decisions with regard to the Trust, and his decision to move

some of his money from Karen's reach, were influenced by his displeasure at Vernon[11] and Karen's use of his money for purposes he was not aware of and did not approve. She did not find that there was any "inducing or cajoling or anything else" on Kevin's part that precipitated execution of the Trust. She also noted that the fact that Mr. McIntyre was present at the bank when Kevin was conducting the banking transactions indicated that he knew what Kevin was doing. Additionally, the judge highlighted that Mr. McIntyre met with his attorney outside of Kevin's presence to discuss the implications of his estate planning transactions, which suggests that the decisions he made were voluntary.

The trial judge found the allegation that Kevin induced Mr. McIntyre to convey his house to him unpersuasive for many of the same reasons. The court credited Ms. Henderson's testimony that the conveyance was done at her behest and is "a natural consequence of the decision to have a trust agreement[.]" Ms. Henderson testified that Mr. McIntyre was her client, that she prepared the trust instrument and other documents at his request, that the assignment of personal property was prepared in consultation with him, that she reviewed the provisions of the trust instrument with Mr. McIntyre and answered

[11] Kevin testified that during meetings with Ms. Henderson to set up the Trust, Ms. Henderson called in one of her colleagues to witness the proceedings. That step was taken because there was a concern that Vernon, who was disinherited, might challenge the Trust. According to Kevin, Ms. Henderson and her colleague took Mr. McIntyre in another room and spoke with him privately. When they came out, Kevin described his father as "obviously agitated." Ms. Henderson told Kevin that she had explained to Mr. McIntyre the implications of "writing Vernon out of the trust," and that she "tried repeatedly" to get him to keep Vernon in the Trust and "to stick with his plan of who his trustees would be." Kevin explained that his father "was angry" and that even after the documents were executed, Mr. McIntyre's plans regarding Vernon did not change.

his questions, and that she again reviewed the trust instrument "almost section by section" at the time the documents were executed.[12]

The trial court's finding that neither Kevin nor Ms. Henderson exerted any undue influence over Mr. McIntyre is clearly supported by evidence that was introduced at trial. As we noted previously, we will not question the trial judge's decision to credit evidence introduced at trial absent a clear abuse of discretion. Accordingly, we find no error in the trial judge's findings with regard to Paragraphs 5 or 8 of the amended complaint/petition for removal of fiduciary.

Paragraph 10

Appellants next contend that the trial judge erred in her findings with respect to paragraph 10 of the amended complaint, in which Appellants alleged:

> 10. Under the terms of the trust as of its creation, the only property specifically directed as trust property was $10.00, within an exhibit of the trust instrument.

With respect to that paragraph, the trial judge found, based on Ms. Henderson's testimony, that, once the trust agreement was executed, "all of Mr. McIntyre's property

[12] Ms. Henderson's testimony makes clear that she met with Mr. McIntyre, prepared the Trust instrument and deed at his request, and that the house was to become property of the Trust. Appellants' assertion that the Trust was unfunded is unsupported by the record. Ms. Henderson acknowledged that there were some errors on the forms that were completed in conjunction with the recordation of the deed. Although one form indicated that the house was being conveyed "father to son" and another indicated that Kevin, as trustee, was the grantee, Ms. Henderson explained that these were mistakes and that the forms were not "capable of dealing with" irrevocable trusts. The court was free to credit Ms. Henderson's testimony. Moreover, the house was, in fact, conveyed to Kevin, as trustee, and later sold. Thereafter, the proceeds from the sale were deposited into a Trust account.

became property of the trust." The judge relied on ET § 14-402, stating that "the trustee holds title to the trust property but once that trust is created the title shifts and the trustee holds property."

> Section 4-404 which pertains to creation of the trust indicates a person may create a trust by transferring property in writing to another person. If the document transfers property in a legally recognized manner and, one, identifies the recipient of the property as the trustee. Two, identifies the beneficiary of the trust. And, three, identifies the properties being transferred under the Maryland Discretionary Trust Act.
>
> A trust is created by written declaration. If it identifies the property to be held in trust, identifies the beneficiary of the trust, identifies the declarant as trust and title holder and identifies the property as being held in trust under the Maryland Discretionary Trust Act. So whether one looks at the trust document itself or whether one looks at the transfer document with respect to what property, mainly the home, the satisfaction of that requirement is just met by doing the act which was done. So, the Court does not find and did not receive any legal support for the theory that certain things have to be done. You have to take certain steps, that just is not found in any law that I was able to find and certainly no one was provided to me. So, paragraph 10 was not proven by a preponderance of the evidence.

Appellants complain that the trial court gave more weight to Ms. Henderson's testimony than to the language of the Trust instrument. To the extent that Appellants ask us to re-weigh the evidence that was presented to the trial court and come to a different conclusion, we cannot. The relative weight to give evidence is committed to the sound judgment of the trial court. *Petrini v. Petrini,* 336 Md. 453, 473 n.14 (1994).

Appellants also maintain that the only property identified to be transferred to the Trust was the ten dollars in cash listed on Schedule A, which was attached to the Trust instrument. That assertion is not supported by the evidence. The Trust clearly included property in addition to the ten dollars used to establish it. Ms. Henderson testified, and

indeed Appellants' Exhibit 15 shows, that on the same date that the Trust instrument was executed, Mr. McIntyre executed an Assignment of Personal Property, transferring all of his "right, title, and interest in all of [his] tangible personal property" to Kevin, as trustee. Also, on the same day the Trust instrument was executed, Mr. McIntyre executed the deed that was eventually recorded, transferring his home to Kevin, as trustee. Finally, Mr. McIntyre's bank accounts were transferred into Trust accounts during his lifetime. Appellants failed to offer proof that anything more was required. Accordingly, we find no error in the trial court's findings of fact with regard to paragraph 10.

Paragraph 13

In paragraph 13 of their amended complaint, Appellants alleged that:

> 13. On September 27, 2012, using his above-referenced power of attorney, Kevin liquidated certain CDs, and withdrew $295,045.52 from [Mr. McIntyre's Bank of America] account, and deposited it into one of the above-referenced new [Bank of America] trust accounts.

Appellants complain that the trial court did not make specific findings of fact concerning this allegation. Kevin acknowledged that he used his power of attorney to transfer funds from his father's bank accounts to newly opened trust accounts. Appellants argue that trust documentation was required to fund the Trust, that Kevin's transfer of funds was contrary to the terms of the trust and in violation of § 14.5-808(b)(1) of the Estates and Trust Article, and that "nowhere in the trust agreement does it stipulate that Kevin had the authority to fund trust accounts with the specific amount of $295,045.52." We are not persuaded.

Consistent with the purpose of the Trust, Kevin deposited all of the challenged funds into the Trust accounts. Section 14.5-808(b) pertains to advisors who are given powers to direct, consent to, or disapprove decisions of a trustee. That section does not apply here. Kevin was appointed trustee of Mr. McIntyre's irrevocable trust. Even if Kevin had not transferred his father's money into Trust accounts, the money would have ended up in the same place by virtue of the pour-over provision in Mr. McIntyre's will.[13] Lastly, we point out that Appellants failed to establish that they were harmed in any way as a result of Kevin's transfer of money into the Trust accounts.

Paragraph 18a

In paragraph 18a of the amended complaint, Appellants allege that:

> 18. During the period of administration of the trust, and subsequent to the death of the Settlor, Kevin, sometimes in concert with his brother/defendant Ronald, has engaged in misconduct inconsistent with his duties as fiduciary, including, but not limited to –
>
> a. Failing and refusing to expeditiously liquidate the trust corpus, and distribute to beneficiaries (or, in the case of Edmond, his personal representative). Trust paragraph 6.03 [sic][.]

Appellants assert that the trial court's finding that the house was a hold-up to closing this estate was "not supported by evidence presented by way of the trust agreement and the deed transfer" because the house was never supposed to become an asset of the Trust. They maintain that Trust funds should not have been used to repair and improve the house and

[13] A pour-over provision in a will assures that anything that is titled in the name of the testator at the time of death instead of the trust "pours over" into the trust, so that all remaining property ultimately ends up in the trust.

that Kevin transferred funds into the joint checking account held with Ronald for the purpose of making improvements to the house.

We observe that, to the contrary, the deed transferring the house to Kevin, as trustee, was signed on the same day as the Trust instrument and was recorded. The undisputed evidence established that Kevin, after consulting with real estate professionals, decided that the house should be improved in anticipation of sale. Section 10.16 of the Trust instrument gave Kevin, as trustee, the power to, inter alia, alter, improve, and sell "and in general deal in and with real property in the manner and on the terms and conditions" he desired. In addition, Kevin, as trustee, was authorized to "manage real estate in any manner considered best, and may exercise all other real estate powers necessary to effect this purpose." The parties do not dispute that there was a partial distribution in 2015, which Appellants accepted. Kevin, as trustee, has been unable to make a final distribution. We perceive no error in the trial judge's findings "that the one hold-up to closing this estate was the condition of the house[]" and that Kevin was within his rights as trustee to convert the house back to a single-family dwelling and remodel the entire house to prepare it for sale.

Paragraph 18g

In paragraph 18g of the amended complaint, Appellants alleged that Kevin, as trustee, engaged in misconduct inconsistent with his duties as fiduciary by "[f]ailing and refusing to provide any accounting to the beneficiaries, as would have been required under trust paragraph 9.11 as well as by Maryland law[.]" Appellants maintain that Kevin failed

to provide an accounting as required by Section 9.11 of the Trust, which provides, in relevant part:

> My Trustee must make the trust's financial records and documents available to beneficiaries at reasonable times and upon reasonable notice for inspection. My Trustee is not required to furnish any information regarding my trust to anyone other than a beneficiary. My Trustee may exclude any information my Trustee determines is not directly applicable to the beneficiary receiving the information.

The trial court found, by a preponderance of the evidence, that Kevin did not fail or refuse to provide an accounting. The trial judge noted that "with the exception of working on the house" nothing more was going to happen with the Trust, so "there was little more to report." Although Karen and Carolyn were unsatisfied with the accounting Kevin provided, the judge found that it was reasonable. The judge went on to say:

> I think [Ronald] probably waxed the most eloquent . . . because he said, . . . what's reasonable is pretty much in the eye of the beholder. One person may believe it's reasonable, one may not. But, he also indicated that family dynamics certainly played a role in the level of communication between the parties and the willingness to communicate between the parties[.]
>
> . . . Certainly by the time of discovery in this case, everything had been provided.

The record supports the trial court's finding that Kevin did not fail to provide an accounting and, although he did not provide supporting documentation until discovery, everything was provided to Appellants. It is unclear what more they are seeking.

B. Alleged Breach of Trust

Appellants include in their Brief a series of allegations that Kevin, as trustee, violated the duty of trust he owed to the beneficiaries by failing to act as follows:

1. Kevin did not create The Principal Residence Trust and the Nongrantor Trust instruments, as required under Sections 1.01 and 5.03 of the trust agreement.

2. After Settlor's death, Kevin did not distribute to Karen and Carolyn their shares "outright and free of trust," as mandated in Article 6, Sections 6.02 and 6.05.

3. Kevin did not create a trust for Edmond after Settlor's death, as prescribed in Section 2.02 of the will.

4. After Edmond's death, Kevin did not distribute Edmond's share of the trust to the remaining beneficiaries as required in Section 6.03 of the trust.

5. Kevin failed to provide Karen the accounting she requested in her November 30, 2012 certified letter, as required by Maryland Code 14.5-813(a).

6. Kevin failed to comply with Karen [sic] demand for the accounting mandated in Section 9.11 of the trust agreement, when she refused to accept the stipulations in his November 19, 2016 email.

7. Kevin failed to comply with the accounting requested by Plaintiffs' counsel, in the May 2017 letter.

Appellants also include a summary of "evidence presented at trial" which they claim "demonstrated that Kevin did breach his duties as trustee both by reason of action and by reason of a failure to act."

Kevin responds that the untimely death of the parties' father rendered Sections 1.01 and 5.03 of the trust agreement moot. He also notes that Edmond died before the provision regarding his trust had to be implemented, and, in any event, there was a guardianship in place to protect his property. With regard to the various contentions that he failed to provide accountings, Kevin notes that he provided all of the documents for inspection at

pre-trial discovery, which was an appropriate response given the "history and threat of litigation in this case."

The applicable statute, ET § 14.5-901, defines breach of trust as follows:[14]

> (a)(1) A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust.
>
> (2) A breach of trust under this subsection may occur by reason of an action or by a failure to act.

With respect to alleged breaches of trust by Kevin, Appellants, relying on ET §14.5-808(b)(1)(ii), [15] claim that Kevin used his powers as trustee to: 1) transfer title of Mr.

[14] The remedy for breach of trust is established by ET § 14.5-901(b), which provides:

> (b) To remedy a breach of trust by the trustee that has occurred or may occur, the court may:
>
> (1) Compel the trustee to perform the duties of the trustee;
> (2) Enjoin the trustee from committing a breach of trust;
> (3) Compel the trustee to redress a breach of trust by paying money, restoring property, or other means;
> (4) Order a trustee to account;
> (5) Appoint a special fiduciary to take possession of the trust property and administer the trust;
> (6) Suspend the trustee;
> (7) Remove the trustee as provided in § 14.5-706 of this title;
> (8) Reduce or deny compensation to the trustee;
> (9) Subject to § 14.5-909 of this subtitle, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or proceeds from the property; or
> (10) Order other appropriate relief.

[15] Section 14.5-808(b)(1) governs advisers given powers to direct, consent to, or disapprove decision of a trustee. It provides:

McIntyre's house to himself; 2) transfer funds from the trust to a personal joint checking account he held with Ronald and illegally give Ronald access to trust funds; and 3) list Vernon as an heir of the estate in violation of Mr. McIntyre's will. Appellants also accused Kevin of perjury in giving testimony that "he never sought to make Vernon an heir of the estate."

Some of the specific allegations raised in Appellants' Brief were the subject of paragraph 18 of their amended complaint/petition for removal of fiduciary or were otherwise raised below and addressed by the trial court. We note, however, that Appellants' amended complaint/petition for removal of fiduciary did not reference either ET § 14.5-901 or ET § 14.5-808(b)(1)(ii).[16] Because this issue does not "plainly appear[] by the record to have been raised in or decided by the trial court" we will not address it on

> (b)(1)(i) Except as provided in paragraph (2) of this subsection, if the terms of a trust confer on one or more persons, other than the settlor of a revocable trust, a power to direct, consent to, or disapprove the actual or proposed investment decisions, distribution decisions, or other decisions of the trustee, the persons shall be considered advisers and fiduciaries that, as such, are required to act reasonably under the circumstances with regard to the purposes of the trust and the interests of the beneficiaries.
> (ii) The trustee may not act in accordance with an exercise of the power if:
> 1. The attempted exercise is manifestly contrary to the terms of the trust, unless expressly waived in writing by the settlor; or
> 2. The trustee knows the attempted exercise would constitute a breach of a fiduciary duty that the person holding the power owes to the beneficiaries of the trust.

[16] Count I of appellants' amended complaint/petition for removal of fiduciary specifically referenced ET § 15-112, dealing with the grounds and procedures for the removal of a fiduciary, and Md. Rule 10-7112(b) [sic]. Maryland Rule 10-712 also addresses the removal of a fiduciary.

appeal. *See* Md. Rule 8-131(a). With that in mind, we turn to appellants' contentions of breach of trust.

1. Breach of Trust by Failure to Act

Creation of Principal Residence Trust and Nongrantor Trust

Appellants contend that Kevin failed to create the Principal Residence Trust and the Nongrantor Trust under Sections 1.01 and 5.03[17] of the Trust document. Kevin does not dispute this allegation. Nor does he dispute the fact that the Trust was created on September 17, 2012, and that Mr. McIntyre died the following month, on October 27, 2012.

[17] Section 1.01 of the Trust document, which identifies the Trust, provides, in part, as follows:

> My principal Residence must be held according to the Principal Residence Trust provisions. All other assets of my trust must be held according to the Nongrantor Trust provisions. This is so, even if the title of the asset identifies the other sub-trust.

Article Five of the Trust document governs administration of the Trust during Mr. McIntyre's lifetime. Section 5.02 provides:

> During my lifetime, my Trustee shall administer my Principal Residence as follows:
>
> (a) **No Rental or Principal Residence**
> My Trustee may not rent or lease my Principal Residence to anyone.
> (b) **Sales Proceeds of Principal Residence**
> Upon sale of my Principal Residence, the proceeds immediately become the property of the Nongrantor Trust and shall be held and administered by those provisions.

Section 5.03 of the Trust document sets forth Mr. McIntyre's intent as to estate inclusion and grantor trust status. Section 5.04 provides that upon Mr. McIntyre's death, "the interests of the lifetime beneficiaries shall terminate, and my Trustee shall administer the remaining trust property as provided in the Articles that follow."

The trial court found nothing improper about the handling of the sale of the house. The court found that there is "absolutely no basis for the complaint" against Kevin, and "no basis to remove him as trustee." Appellants failed to direct our attention to any evidence to show that the trial court's findings were in error. Moreover, the plain terms of the Trust document make clear that Mr. McIntyre's death rendered the provisions referenced by Appellants moot.

Distribution of Shares Outright and Free of Trust

Ms. Henderson explained that the provision in Section 6.02 of the Trust, that the trustee shall distribute Carolyn and Karen's shares "outright" and "free of trust" meant that "once the trustee has completed administration of the trust, making sure all the expenses are paid," then he would make distributions. The court credited Ms. Henderson's testimony. As we have already discussed, the decision to renovate the house in anticipation of its sale was Kevin's to make. There is no dispute that Kevin made a partial distribution in 2015, and Appellants accepted it. Kevin attempted to make a final distribution, but Appellants refused to sign the release Kevin rightfully requested. Kevin, as trustee, was unable to make a final distribution, in part because of Appellants' litigation of the instant case. The trial court determined that Kevin's decision to request the court assume jurisdiction over the Trust was reasonable under the circumstances, which include not only the instant case, but prior litigation by Appellants, and we find no error in that conclusion.

Edmond's Share of the Trust

Appellants assert that, after Mr. McIntyre's death, Kevin failed to create a trust for their brother Edmond, who suffered from a mental illness, and failed to distribute

Edmond's share of the Trust upon his passing. Kevin acknowledged that he did not create such a trust prior to Edmond's death and testified that Edmond's share remains in the Trust. The trial court specifically found that Appellants did not prove by a preponderance of the evidence that Karen was the personal representative of Edmond's estate. Appellants, in their individual capacities, do not have standing to make arguments on behalf of Edmond.[18] Even assuming that either Karen or Carolyn had standing, the trial court properly found that Kevin has not been able to make a final distribution in part because of Appellants' litigation.

Failure to Provide Accountings

In their fifth, sixth, and seventh allegations, Appellants allege that Kevin committed a breach of trust by failing to provide accountings that were requested in 2012, 2016, and 2017. The trial judge specifically found that Kevin "provided the accounting," that "he did report an accounting to this Court's satisfaction," and that she "did not find there was a failure to provide an accounting." The court also noted that "[c]ertainly by the time of discovery in this case, everything had been provided." There is absolutely nothing before us to suggest that the trial court's findings are erroneous.

[18] "'Generally, whether a party has standing to sue depends on whether that party has an actual, real and justiciable interest susceptible of protection through litigation.' A person has "standing in the sense that [he or she] is entitled to invoke the judicial process in a particular instance." *Howard v. Montgomery Mut. Ins. Co.*, 145 Md. App. 549, 556 (2002) (internal citations omitted).

2. Alleged Breach of Trust by Actions

In their brief, Appellants assert that Kevin, as trustee, committed a breach of trust by taking the following actions: transferring title of the house to himself, individually, transferring Trust funds to a joint checking account he held with Ronald, and, listing Vernon as an heir of the estate and committing perjury on that point at trial. To the extent that these allegations were raised and addressed below, we find no error in the trial court's rulings.

As we have already explained, there was no evidence that Kevin transferred title of the house to himself, individually. The plain language of the deed shows that the house was conveyed to Kevin, as trustee, and Kevin treated the house as property of the Trust. The trial court found that Kevin opened a joint checking account with Ronald but determined that it was "opened to handle expenses when [Mr. McIntyre] was alive," such as reimbursing himself for payments made to Mr. McIntyre's caretaker. There was no loss to the Trust resulting from the use of that account. The trial court found no evidence that funds were misappropriated as Appellants believe, and our review of the record does not reveal any such evidence. Lastly, with respect to Vernon being listed as an heir to Mr. McIntyre's estate, that is not relevant to the case at hand. In any event, by statute, Vernon was an heir. *See* ET § 1-101(h) and (i); Md. Rule 6-202. Appellants' allegations are insufficient to support a claim for breach of trust based on these actions.

For all the reasons discussed above, we find no error in the trial court's findings or its conclusion that there was "absolutely no basis for the complaint against Mr. Kevin McIntyre" and "no basis to remove him as a trustee."

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS TO BE PAID BY APPELLANTS.