Circuit Court for Baltimore County
Case No. 03-C-18-001742

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3066

September Term, 2018

ROULA PATERAKIS

v.

WILLIAM PATERAKIS, ET AL.

Meredith,
Arthur,
Gould,

JJ.

Opinion by Arthur, J.

Filed: August 20, 2020

This case involves the estate of John Paterakis Sr., the noted Baltimore businessman and real estate entrepreneur.

Mr. Paterakis's second wife, Roula Paterakis ("Roula"), exercised her statutory right to reject the terms of her late husband's will and to "take a one-third share of the net estate." *See* Md. Code (1974, 2017 Repl. Vol.), § 3-203(b) of the Estates and Trusts Article ("E&T"). Roula alleges that, at the instigation of several of his children from his first marriage, Mr. Paterakis wrongfully depleted his net estate (and thus reduced what she would receive) through what she characterizes as "sham" transfers of millions of dollars of assets into revocable trusts. Roula also contends that Mr. Paterakis kept "millions" of dollars in "cash hoards" that should be part of his net estate, but that several of the children "raided" the "hoards" and misappropriated the cash before his death. Finally, Roula contends that several of the children tortiously interfered with an expected inheritance of $20 million that, she says, Mr. Paterakis promised to leave to her.

The Circuit Court for Baltimore County summarily disposed of Roula's allegations on a motion to dismiss or, alternatively, for summary judgment. She appealed. For the reasons stated herein, we shall vacate the judgment in part, affirm it in part, and reverse it in part.

FACTUAL AND PROCEDURAL BACKGROUND

As discussed in greater detail below, the circuit court disposed of most of Roula's claims on a motion to dismiss for failure to state a claim upon which relief can be granted, but disposed of others on summary judgment. Thus, in recounting the factual background of this case, we shall assume the truth of all well-pleaded factual allegations

and the reasonable inferences that may be drawn therefrom. *See, e.g.*, *Parks v. Alpharma, Inc.*, 421 Md. 59, 72 (2011). To the extent that our account of the factual background requires us to go beyond the factual allegations in the complaint and to consider evidence developed in discovery, we consider the record in the light most favorable to Roula and construe any reasonable inferences against her adversaries. *See, e.g.*, *Blackburn Ltd. P'ship v. Paul*, 438 Md. 100, 107-08 (2014).

A. John Paterakis

John Paterakis was the son of Greek immigrants. Over the course of his lifetime, he built a business and real estate empire and accumulated enormous wealth.

In 1943, Mr. Paterakis's father, Isidoros, co-founded H&S Bakery in Baltimore. Mr. Paterakis began working at the bakery in 1947, when he was about 18 years old. When his father died in 1954, Mr. Paterakis acquired his father's share and took over the business operations. Over the next several decades, Mr. Paterakis gradually built a successful enterprise of affiliated businesses.

Mr. Paterakis also owned interests in valuable real estate and other assets. Most significantly, Mr. Paterakis developed Harbor East, a mixed-use development in downtown Baltimore, and owned interests in a number of ventures there.

Mr. Paterakis married his first wife in 1950. Six children were born of the marriage, including Mr. Paterakis's oldest son, William Paterakis ("Bill"), and his daughters, Venice Paterakis Smith ("Venice") and Karen Paterakis Phillipou ("Karen").

Mr. Paterakis separated from his first wife in 1991 and was divorced from her in 1995. In approximately 1997, Mr. Paterakis began a relationship with Roula. Roula

moved into Mr. Paterakis's residence in 2001 or 2002. She and Mr. Paterakis were married on August 2, 2015.

Mr. Paterakis died 14 months later, on October 16, 2016, at the age of 87. He was survived by his six adult children from his first marriage and by Roula.

B. Mr. Paterakis's Will

On May 10, 2002, Mr. Paterakis executed a last will and testament through which he conveyed all of his tangible personal property to a revocable trust for the benefit of his daughters, Venice and Karen. In the final version of his will, dated October 12, 2015, Mr. Paterakis named two of his children, Bill and Venice, as personal representatives of his estate. The will bequeathed all of Mr. Paterakis's tangible personal property to the revocable trust, of which Mr. Paterakis was the named trustee during his lifetime. Mr. Paterakis appointed Bill and Venice as the trustees of the revocable trust upon his death.[1]

Over the years, Mr. Paterakis executed various amendments to the revocable trust agreement, the last on July 1, 2014. As amended, the revocable trust generally provided that, upon Mr. Paterakis's death, the trustees should distribute to Roula $250,000, an IRA account, and the house in which she and Mr. Paterakis lived.

[1] Although Roula did not attach Mr. Paterakis's will or revocable trust agreement to her complaint, she referred to them in her pleadings. In response, Bill and Venice attached both documents to their motion to dismiss or, alternatively, for summary judgment. Because there does not appear to be a dispute regarding this extraneous material, "we shall regard the exhibits . . . as simply supplementing the allegations in the complaint and consider the relevant facts pled in the complaint, as so supplemented." *Smith v. Danielczyk*, 400 Md. 98, 105 (2007); *see also Advance Telecom Process LLC v. DSFederal, Inc.*, 224 Md. App. 164, 175 (2015); *Margolis v. Sandy Spring Bank*, 221 Md. App. 703, 710 n.4 (2015).

C. The "Sham" Trusts and Alleged Theft of Cash

Roula alleges that Mr. Paterakis's affection for her engendered the resentment of Bill and Venice, who "embarked on a campaign" to deprive Roula of benefits that she might obtain from Mr. Paterakis's estate upon his death.

(1) The 2011 and 2012 Trust Agreements

Roula claims that in 2011 and 2012 Bill and Venice, acting through "Lawyers A and B,"[2] induced Mr. Paterakis to create trusts and to transfer assets to and among those trusts by misrepresenting to Mr. Paterakis the nature and purpose of documents he was signing. These new trusts included: a Business Trust Agreement dated December 31, 2011; the 2012 Venice Paterakis Smith Trust; and the 2012 Karen Paterakis Phillipou Trust. The trustees of the Business Trust are Bill Paterakis; his brother-in-law, George Phillipou (Karen's husband); and Peter R. Grimm, Mr. Paterakis's business associate. The trustees of the Venice Paterakis Smith Trust and the Karen Paterakis Phillipou Trust are Bill and Venice.

According to Roula, Bill and Venice induced Mr. Paterakis to engage in sham transactions in which he appeared to transfer his ownership and control of the H&S Bakery business, the entities that owned the Harbor East development, and other assets. Specifically, she claims that they "caused" Mr. Paterakis to execute documents that

[2] Roula's complaint contains several allegations involving two of Mr. Paterakis's attorneys, who are repeatedly referred to as "Lawyers A and B." According to Roula, Lawyers A and B were "nominally Mr. Paterakis's attorneys," but Bill and Venice "importuned" them to abandon the loyalty that they owed to Mr. Paterakis "and, instead, to take their instructions from [Bill and Venice] and to manipulate [Mr. Paterakis] to sign documents and take actions for the benefit" of Bill and Venice.

purported to transfer interests in one or more real estate entities to the 2012 Venice Trust and the 2012 Karen Trust, to make and forgive $3 million in loans to those trusts, and to transfer $2 million to the 2011 Business Trust. Roula alleges that Bill and Venice were able to persuade Mr. Paterakis to enter into these transactions by assuring him that they had no economic substance, that Mr. Paterakis retained dominion and control over all assets that were the subject of the transactions, and that the transactions were merely "shams" that would be used for tax savings.

Roula alleges that, until his death, Mr. Paterakis exercised "complete control" over the H&S empire, with all the rights and powers of a sole owner.[3] While she concedes that Mr. Paterakis "put interests" in the names of his four sons and several grandchildren, she maintains that he kept all voting shares for himself during his lifetime.

(2) The Alleged Seizure of Mr. Paterakis's "Cash Hoards"

According to Roula, Mr. Paterakis took "tens of millions of dollars in cash from the bakery's operations" from the time when he first assumed control of H&S until his death. Mr. Paterakis allegedly used some of the cash for personal expenditures, gambling, and other payments that advanced his personal and business interests. Roula alleges that Mr. Paterakis kept the rest of the cash in various "hoards," including in his office safe and several safe deposit boxes. She also alleges that Mr. Paterakis held

[3] At some point, Mr. Paterakis entered into an agreement with the bakery's co-founder (his uncle) that increased the Paterakis share in H&S to 80 percent. Mr. Paterakis allegedly stated that he "ran the whole place" and that his uncle simply "went along for the ride." Mr. Paterakis purchased the remaining interest in H&S in 2014.

"millions" in what he described as his "play money" accounts at Harbor Bank and other financial institutions.

In 2013, Mr. Paterakis became seriously ill and was hospitalized for an extended period. According to Roula, while Mr. Paterakis was in the hospital, Bill and Venice "raided the cash hoards" that Mr. Paterakis kept in his office safe and safe deposit boxes, to which they had access. In addition, Bill and Venice allegedly took possession of the balances of Mr. Paterakis's "play money" accounts. After "raiding" the safe deposit boxes, Bill, Venice, and their sister, Karen, allegedly divided the cash into equal parts to keep for themselves.

Roula alleges that, after Mr. Paterakis recovered, he discovered what Bill and Venice had done. According to Roula, Mr. Paterakis complained about their actions and demanded that his children return his cash and account balances. Roula claims that Bill and Venice falsely assured Mr. Paterakis that they had returned his cash and restored the balances to his "play money" accounts.

(3) The 2014 Irrevocable Trust

Roula claims that in August 2014 Bill and Venice, allegedly acting out of fear that Mr. Paterakis and Roula might soon marry, schemed to create the John Paterakis Irrevocable Trust, of which Mr. Paterakis was the settlor and Bill and Venice were trustees. Thereafter, she alleges, Bill and Venice caused the transfer of approximately $23 million of Mr. Paterakis's assets into the trust. Roula alleges that Bill and Venice obtained Mr. Paterakis's acquiescence by assuring him that these transactions "had no economic substance" and were "tax contrivances."

D. Mr. Paterakis's Marriage to Roula

Mr. Paterakis married Roula on August 2, 2015. Roula alleges that the marriage "angered and disappointed Venice" and other members of Mr. Paterakis's family. Venice allegedly told Roula, "Whether you marry or not, you're not getting any more money."

E. Mr. Paterakis's Alleged Promise to Give $20 Million to Roula

Sometime in early 2016, Mr. Paterakis allegedly promised Roula that he would give her $20 million when he died. In late September 2016, Mr. Paterakis allegedly memorialized his promise in a document that he handwrote and signed. According to Roula, when Bill and Venice learned of Mr. Paterakis's alleged promise, "they determined to employ whatever means necessary, whether unlawful, dishonest or tortious" to prevent him from going through with it. Roula alleges that Bill and Venice attempted to persuade their father to divorce her and endeavored to destroy his trust and confidence in her. Similarly, she alleges that Bill and Venice tried to induce her to agree to forgo any interest in any gift or inheritance from Mr. Paterakis if she instituted or threatened to institute a lawsuit against a Paterakis family member, a trust pertaining to a family member, or any of the family enterprises. She also alleges that Venice's son engaged in an "unremitting" campaign of defamation against her.

Roula claims that, shortly before Mr. Paterakis's death in October 2016, Lawyers A and B came to the home where she lived with Mr. Paterakis, at the request of Bill and Venice. According to Roula, Mr. Paterakis trusted that his lawyers would formalize his promise to give $20 million to Roula, but Lawyers A and B, allegedly acting in

"collusion" with Bill and Venice, left the home without any indication that they would act on Mr. Paterakis's alleged wishes.

F. Mr. Paterakis's Death

Mr. Paterakis died on October 16, 2016. Roula claims that, in anticipation of Mr. Paterakis's death or shortly after Mr. Paterakis died, Bill and Venice seized control of Mr. Paterakis's remaining "cash hoards" and moved the funds in Mr. Paterakis's "play money" accounts to other accounts.

G. Estate Administration

The Orphans' Court for Baltimore County admitted Mr. Paterakis's will to probate on October 24, 2016. Bill and Venice were appointed as the personal representatives.

On February 27, 2017, Bill and Venice filed an inventory of Mr. Paterakis's estate. According to Roula, the inventory falsely and fraudulently represented that the entire value of Mr. Paterakis's estate was $116,866.56.[4] Roula alleges that the inventory was false because it purported to list all of Mr. Paterakis's assets, but failed to include as part of Mr. Paterakis's estate the millions of dollars he maintained in cash "hoards" and personal accounts, his significant business and real estate interests, and other assets that were transferred into the "sham" trusts.

On November 9, 2017, Roula renounced her inheritance under Mr. Paterakis's will and elected to take her statutory share of his net estate, pursuant to E&T § 3-203.

[4] According to Roula, on July 19, 2017, Bill and Venice filed a fraudulent first administration account that falsely incorporated the previously represented inventory, but amended the worth of Mr. Paterakis's estate to $155,354.87.

H. The Circuit Court Complaint

On November 13, 2017, Roula filed a complaint against Bill, Venice, and others in the Circuit Court for Baltimore City, to recover what she alleges is her rightful share of cash and other assets that properly belong to Mr. Paterakis's estate.[5] She amended the complaint on January 25, 2018. On February 8, 2018, the parties jointly consented to transfer the case to Baltimore County, where Mr. Paterakis's estate was being probated.

Roula's amended complaint demands, among other things, a declaratory judgment regarding the ownership of, and title to, two groups of assets that she alleges belong to Mr. Paterakis's probate estate: the "cash hoards" and the interests transferred into the 2011, 2012, and 2014 trusts. With respect to the trusts, she alleges that Mr. Paterakis was persuaded to engage in sham transactions in which he appeared to part with control over assets, but actually retained full control and ownership.

In addition to her claim for declaratory relief (Count 1), Roula asserts that the "sham" trusts and stolen "cash hoards" entitle her to have any *inter vivos* trust transfers invalidated and to have a constructive trust imposed on them (Count 2), damages for unjust enrichment (Count 3), and an accounting (Count 4). In Count 5, she sets forth an

[5] Roula also named as defendants: Mr. Paterakis's other children (Stephen, John Jr., Charles, and Karen); Peter R. Grimm, one of Mr. Paterakis's business associates; George Philippou, Mr. Paterakis's son-in-law and the general counsel for some of Mr. Paterakis's businesses; and Venice's son, Alexander F. Smith. In addition, Roula named over 20 other trust beneficiaries as "interested persons." Aside from the claims against Venice's son, which Roula voluntarily dismissed, and Karen, who was involved in withdrawing cash from a safe deposit box in 2013, the amended complaint makes little more than a nominal reference to the other defendants. Accordingly, the most relevant parties for purposes of this appeal are Bill and Venice.

alternative cause of action for tortious interference with an alleged $20 million inheritance. Counts 6 and 7 allege defamation and false light invasion of privacy.

I. The Evidence Developed in Discovery

In discovery, Bill and Venice established that Roula herself had no factual basis for her allegation that Mr. Paterakis had amassed millions of dollars in his safe deposit boxes or that Bill and Venice had possession of millions of dollars from Mr. Paterakis's "cash hoards." Roula never saw the interior of Mr. Paterakis's office safe, so she had no idea about how much cash it ever contained. She did not know which of the six children might have taken cash from the office safe or how much cash was allegedly taken. At most, she could say that, according to Mr. Paterakis, there was, at some point, "a lot."

Roula testified that Mr. Paterakis spent thousands of dollars a week in cash. Beginning in 2014, he would give her two or three thousand dollars in cash every week, some of which went to pay bills. He made cash gifts to family members. Until about a year before he died, he spent thousands of dollars in cash in his weekly poker games. He paid cash (perhaps as much as $30,000 at a time) to fly on private jets. He and Roula would fly to Las Vegas, where they would gamble and spend cash.

Discovery revealed that Mr. Paterakis had a total of four safe deposit boxes – three at Bank of America and one at Harbor Bank. Mr. Paterakis was not the sole tenant on the boxes: his children Bill, Venice, and Karen were the co-tenants. As co-tenants of the safe deposit boxes at Bank of America, Bill, Venice, and Karen were each entitled to access the boxes and to remove their contents.

According to the records produced by the banks in discovery, no one gained access to any of the four safe deposit boxes between August 16, 2000, and November 29, 2012. Presumably, therefore, no one deposited any cash in or removed any cash from the boxes during that 12-year period.

In his deposition, Bill testified that on November 29, 2012, he accompanied his father to Harbor Bank, at his father's request, because his father was in declining health and using a walker. According to Bill, Mr. Paterakis removed all of the cash from the safe deposit box at Harbor Bank and kept it. Harbor Bank's records reflect that Bill accessed the account on November 29, 2012, but do not reflect whether Mr. Paterakis accompanied his son on that date.

In her deposition, Venice testified that, in December 2013, when her father was seriously ill, she and her sister Karen emptied the safe deposit boxes at Bank of America and removed $570,000 in cash. According to Venice, her father had instructed her that the contents of the boxes belonged to her and her sister and that, if he ever became gravely ill, she should remove them. Venice, Karen, and Bill divided the cash equally among themselves.

Bill testified that, after his father got out of the hospital in December 2013, he heard that his father was angry at Bill and his sisters. On two or three occasions, Bill asked his father what the problem was. Mr. Paterakis responded by asking what happened to the cash in the lock box or boxes. Bill testified that, on the first occasion, he explained that Venice and Karen had withdrawn the money from the safe deposit boxes. According to Bill, his father said, "great." On the subsequent occasions, Bill testified that

his father had become "disoriented and confused" because of his debilitating illness, and had to be reminded of what had happened.

By contrast, Roula testified that Mr. Paterakis complained about his "greedy and selfish children," who had gone "into his safe" and taken "all his money" when "he was in the hospital," and "[t]hey thought he was going to die." According to Roula, however, Mr. Paterakis said that "his kids gave him the money back." Her "understanding from [her] husband [was] that they returned whatever was taken."

J. The Motion to Dismiss or, Alternatively, for Summary Judgment

On March 2, 2018, Bill and Venice moved to dismiss or, alternatively, for summary judgment with respect to Counts 1 through 5 of Roula's complaint. On June 27, 2018, after a hearing on the motions, the Circuit Court for Baltimore County rendered an oral ruling granting the motion.

In its ruling, the court began with Count 5, which alleges tortious interference with an expected inheritance. The court reasoned, as of that date, Maryland had not yet recognized a cause of action for tortious interference with an expected inheritance.[6] Accordingly, the court stated that it would "dismiss" Count 5.

[6] In *Anderson v. Meadowcroft*, 339 Md. 218, 227 (1995), the Court of Appeals declined to decide whether Maryland recognized a claim for tortious interference with an expected inheritance, because the complaint did not adequately allege undue influence, which, the Court said, forms the basis for the claim. In *Geduldig v. Posner*, 129 Md. App. 490, 508-09 (1999), this Court predicted that the Court of Appeals would recognize a claim for tortious interference with an expected inheritance "if it were necessary to afford complete, but traditional, relief." This Court declined to recognize the tort insofar as it might permit the recovery of damages that were unavailable in equity, such as damages for emotional distress or harm to reputation, and punitive damages. *Id*. at 509.

The court turned to Counts 2 through 4, which challenged the *inter vivos* transfers (the transfers of assets into trust and the alleged misappropriation of "cash hoards") that diminished the size of Mr. Paterakis's net estate and, thus, diminished the size of Roula's elective share of the estate as his surviving spouse.

The court recognized that, under Maryland law, a surviving spouse may set aside a transaction in which the decedent spouse attempted to frustrate the statutory right to an elective share by purporting to convey assets in a sham transaction in which the decedent parted with ownership in form only. *See generally Karsenty v. Schoukroun*, 406 Md. 469 (2008). The court also recognized, however, that the surviving spouse may challenge such a transaction only if it occurred during the marriage, or on the eve of the marriage, or when marriage was contemplated. *See, e.g.*, *Collins v. Collins*, 98 Md. 473 (1904). Because the transfers into trust in this case all occurred before Roula and Mr. Paterakis were married on August 2, 2015, the court concluded that Roula had no right to challenge them. The court phrased its conclusion in terms of "standing": Roula, the court said, had no "standing" because she could not "assert an injury resulting from a transaction in which she had no interest."

The court proceeded to discuss the allegations concerning the alleged expropriation of the "cash hoards." Here, the court seemed to identify a potential failure of proof:

> We don't know and I don't know that we ever could know what cash was sequestered away. And even if we did then how, how do we ever know what happened to that cash over the course of years?

Similarly, a few moments later, the court said:

> [T]his cash scheme was going on for fifty years, when he was still married to wife #1. Again, we don't know what happened to the cash. Cash is cash. You walk around with cash. You gamble with cash. You go to your poker games with cash. There is just no way to replicate what happened to that cash.

On both occasions, however, the court drew back from that line of reasoning, saying that it was getting ahead of itself and that it did not need to get to that analysis. Roula, in the court's view, did not have "the right to contest what happened to that cash."

The court observed that Mr. Paterakis "was very strong[-]willed, very bright." "If he wanted that cash back," the court had "no doubt it would have been back." Moments later, the court added that "Mr. Paterakis could certainly have demanded it back." He "[c]ould have secured it in . . . a way that was outside of his children's reach during his lifetime," but "[h]e never chose to do that." Referring to the removal of the $570,000 from the Bank of America safe deposit boxes in December 2013, the court observed that this occurred two years before the marriage, before the marriage "was even contemplated." On these bases, the court concluded that Roula lacked "standing" and had no "viable cause of action" relating to the allegations in Counts 2 through 4.

The following day, the court entered a written order stating that, "for the reasons set forth . . . on the record during the hearing," Counts 1 through 5 of the complaint were "**DISMISSED** for failure to state a claim upon which relief could be granted." Despite Roula's request for a declaratory judgment in Count 1, the court did not declare the parties' rights.

On November 13, 2018, to make the circuit court's ruling final and appealable, the parties entered into a stipulation for voluntary dismissal of the remaining two counts, with prejudice. Roula noted a timely appeal thereafter.

QUESTIONS PRESENTED

Roula presents this Court with three issues on appeal:

1. Where the Complaint alleges that the children of the decedent's first marriage stole millions of dollars of cash from the decedent's cash hoards and owed the decedent the obligation to repay the cash at the time of the decedent's death, did the circuit court err in holding that the decedent's second wife, who elected to take her statutory share of the decedent's probate estate, lacked standing to compel the repayment or obtain other relief solely because the theft had taken place prior to her marriage to the decedent?

2. Where the Complaint alleges that the children of the decedent's first marriage induced the decedent to create trusts and to transfer valuable assets to the trusts, in contemplation of the decedent's prospective marriage to his second wife, and that the trust transactions were mere fictions, contrivances and shams that changed nothing except how the decedent's property passed at his death, did the circuit court err in holding that the decedent's second wife, who elected to take her statutory share, lacked standing to challenge the fictitious trust transactions solely because the transactions occurred prior to her marriage to the decedent?

3. Does Maryland recognize the tort of tortious interference with inheritance under the facts averred in the Complaint?

Bill, Venice, and their family members dispute Roula's contention that the court dismissed the amended complaint for failure to state a claim upon which relief can be granted. They phrase the issues in this way:

1. Does Maryland law authorize a surviving spouse to set aside a decedent's legitimate transfers to *inter vivos* trusts where the transfers

were made long before the marriage, no marriage was planned or anticipated, ample provision has been made for the surviving spouse, and the transfers were intended to minimize taxes and provide for the children and grandchildren from the decedent's first marriage?

2. Did the trial court correctly enter judgment on claims of misappropriation where the undisputed evidence proved the allegations completely unfounded?

In her reply brief, Roula insists that the court had dismissed her amended complaint for failure to state a claim upon which relief could be granted and had not granted a motion for summary judgment. If, however, the court had granted summary judgment, Roula argued that she would have demonstrated that the court erred.

For the reasons stated below, we shall affirm the judgment in part, reverse it in part, and vacate it in part. Specifically, we shall vacate the dismissal of Count 1 (for declaratory relief) and remand with instructions for the court to declare the parties' rights, as it is required to do. Insofar as Counts 2 through 4 concern the transfers of assets into the various trusts before Mr. Paterakis's marriage to Roula on August 2, 2015, we shall affirm the court's conclusion that the amended complaint failed to state a claim upon which relief can be granted. Insofar as Counts 2 through 4 concern the cash that was removed from the safe deposit boxes at Bank of America, we shall conclude that the court granted summary judgment against Roula and that it erred in doing so. Consequently, we shall reverse that aspect of the judgment and remand the case for further proceeding consistent with this opinion. Finally, in light of the Court of Appeals' recent decision in *Barclay v. Castruccio*, ___ Md. ___, 2020 WL 3526022 (June 30, 2020), which formally recognized the tort of intentional interference with an expected

inheritance, we shall reverse the dismissal of Count 5 and remand the case for consideration of whether Roula has adequately alleged the elements of that tort.

WHAT DID THE COURT DECIDE?

Before we proceed to the merits, we must ascertain what the circuit court did. Did the court grant a motion to dismiss for failure to state a claim upon which relief can be granted, as Roula insists? Or did it grant a motion for summary judgment, as Bill, Venice, and their family members claim? Or did it do both, as to some or all of the allegations? Until we ascertain whether the court granted a motion to dismiss or a motion for summary judgment, we cannot identify the applicable standard of review.

On Count 5, which alleged a claim for tortious interference with an expected inheritance, it is obvious that the court granted a motion to dismiss for failure to state a claim. The court did not consider anything outside Roula's amended complaint. It tacitly assumed the truth of Roula's factual allegations, but concluded that she failed to state a claim upon which relief could be granted because, it said, Maryland had not yet recognized a claim for tortious interference with an expected inheritance. The court did not dispose of Count 5 on summary judgment.

To the extent that Counts 2 through 4 concerned the transfers into the "sham" trusts, it is equally obvious that the court granted a motion to dismiss for failure to state a claim. The court reasoned that a surviving spouse can challenge the decedent spouse's *inter vivos* transfers on the ground that they wrongfully reduce the elective share, but only if the transfers occur during the marriage, or on the eve of marriage, or when marriage was contemplated. Roula did not allege that the transfers into the "sham" trusts

occurred during the marriage, or on the eve of marriage, or when marriage was contemplated. Therefore, the court concluded that she failed to state a claim upon which relief could be granted. The court did not enter summary judgment insofar as Counts 2 through 4 concerned the transfers into the "sham" trusts.

To the extent that Counts 2 through 4 concerned the alleged misappropriation of the "cash hoards," however, the court took a different approach. In referring to the difficulty in tracing cash transactions and computing how much might have been misappropriated and when, the court referred to evidence in the record regarding what Mr. Paterakis did with his cash, such as gambling and playing poker. The court declined to place its decision on that ground, but it nonetheless proceeded to refer to other evidence in the record, such as Mr. Paterakis's strong will and his alleged failure to demand that the cash be returned when he learned that the children had removed it. Clearly referring to the $570,000 that, discovery revealed, had been withdrawn from the safe deposit boxes at Bank of America in December 2013, the court implicitly concluded that Mr. Paterakis had either given that money to his children or had acquiesced in or ratified what they had done in withdrawing it. Because that gift or transfer had occurred before the marriage was even contemplated, the court stated that Roula had no "viable cause of action" to challenge the alleged misappropriation of the "cash hoards." Although the court may have used the language of a motion to dismiss for failure to state a claim in disposing of those allegations, its reasoning reflects that it was granting summary judgment. *See* Md. Rule 2-322(c) ("[i]f, on a motion to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the

pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 2-501").

In summary, the circuit court dismissed Count 5 for failure to state a claim upon which relief can be granted. In addition, the circuit court concluded that some of the allegations of Counts 2 through 4 were legally insufficient on their face and dismissed them for failure to state a claim. But to the extent that the court disposed of Roula's allegations concerning the alleged misappropriation of the "cash hoards," it effectively directed the entry of summary judgment against her.

STANDARD OF REVIEW

In ruling on a motion to dismiss for failure to state a claim, the circuit court considers only the facts alleged in the complaint and any supporting exhibits incorporated into the complaint. *RRC Northeast, LLC v. BAA Maryland, Inc.*, 413 Md. 638, 643 (2010) (citing *Converge Servs. Grp., LLC v. Curran*, 383 Md. 462, 475 (2004)). Dismissal is proper if, even after assuming the truth of all well-pleaded factual allegations and after drawing all reasonable inferences from those allegations in favor of the pleader, the pleader would still not be entitled to relief. *See, e.g.*, *O'Brien & Gere Eng'rs, Inc. v. City of Salisbury*, 447 Md. 394, 403-04 (2016).

On review of the grant of a motion to dismiss, the appellate court analyzes whether the trial court's ruling was legally correct, without any deference to that court's legal conclusions. *Patton v. Wells Fargo Fin. Maryland, Inc.*, 437 Md. 83, 95 (2014). This Court may affirm the dismissal of a complaint on any ground adequately shown by the record, regardless of whether the trial court relied on that ground or whether the

parties raised that ground. *Mostofi v. Midland Funding, LLC*, 223 Md. App. 687, 695-96 (2015) (citing *Monarc Constr., Inc. v. Aris Corp.*, 188 Md. App. 377, 385 (2009)).

When a party moves for summary judgment, the court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f).

The issue of whether a trial court properly granted summary judgment is a question of law. *Butler v. S & S P'ship*, 435 Md. 635, 665 (2013) (citation omitted). In an appeal from the grant of summary judgment, this Court conducts a *de novo* review to determine whether the circuit court's conclusions were legally correct. *See D'Aoust v. Diamond*, 424 Md. 549, 574 (2012). The relevant inquiry is well known:

> When reviewing a grant of summary judgment, we determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. This Court considers the record in the light most favorable to the nonmoving party and construe[s] any reasonable inferences that may be drawn from the facts against the moving party.

Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 107-08 (2014) (citations and quotation marks omitted).

DISCUSSION

I. Standing

In arguing that the circuit court erred, Roula focuses on the court's repeated assertion that she lacked "standing." Although Bill and Venice had urged the court to conclude that Roula lacked "standing," they tacitly acknowledge that the use of that term

was a mistake. In their view, the court was not deciding whether Roula had standing (in the sense of having a justiciable interest in the controversy), but whether her claims had any legal validity. Because the question of standing has implications for other issues in the case, we must first decide what the court meant when it said that Roula had no "standing."

"In order to have standing, a party must demonstrate an 'injury-in-fact,' or 'an actual legal stake in the matter being adjudicated.'" *Norman v. Borison*, 192 Md. App. 405, 420 (2010) (quoting *Hand v. Mfrs. & Traders Tr. Co.*, 405 Md. 375, 399 (2008)). Thus, for example, the owner of an LLC lacked "standing" to sue for the damage that the entity allegedly suffered when it was defamed. *Id.* at 423. Similarly, a shareholder ordinarily lacks "'standing to sue to redress injury to a corporation.'" *Id.* at 422 (quoting *Mona v. Mona Elec. Grp., Inc*., 176 Md. App. 672, 698 (2007)). And when debtors file for protection from their creditors under Chapter 7 of the federal bankruptcy code, all of their property, including their causes of action, become the property of the bankruptcy estate, so that only the trustee in bankruptcy has "standing" to assert them. *See generally Morton v. Schlotzhauer*, 449 Md. 217, 223-26 (2016).[7]

"Standing . . . focuses on the question of whether the litigant is the proper party to fight the lawsuit." BLACK'S LAW DICTIONARY 1260 (5th ed. 1979). A party's "standing" "'must not be confused with the apparent merit or lack of merit in [the]

[7] A debtor, however, may reacquire "standing" if the trustee abandons a claim or the claim is determined to be exempt from the claims of creditors. *See Morton v. Schlotzhauer*, 449 Md. at 234-35.

challenge.'" Bryan A. Garner, *A Dictionary of Modern Legal Usage* 515 (1987) (quoting *Hill v. City of Houston*, 764 F.2d 1156, 1159 (5th Cir. 1985)).

In context, it is clear that, in referring to Roula's "standing," the circuit court judge did not mean that Roula, as Mr. Paterakis's surviving spouse, had no actual legal stake in whether her late husband had engaged in sham transactions that were designed to frustrate her statutory right to her spousal share of his net estate or whether the net estate had been wrongfully depleted because his children had misappropriated his cash. Instead, the court was referring to the apparent merit or lack of merit in her challenge.

In short, despite the imprecise use of language in its extemporaneous, oral opinion, the court did not base its decision on the premise that Roula lacked "standing." The question before us is whether the circuit court was legally correct in determining that Roula's claims had no merit, not whether Roula had no actual legal stake in the controversy before the court.

II. Declaratory Judgment

"[A] court may grant a declaratory judgment . . . if it will serve to terminate the uncertainty or controversy giving rise to the proceeding," and if the assertion of a "legal relation, status, right, or privilege . . . is challenged or denied by an adversary party." Md. Code (1974, 2013 Repl. Vol.), § 3-409(a) of the Courts and Judicial Proceedings Article ("CJP"). "In an action properly brought under the Declaratory Judgments Act,

the court ordinarily must declare the rights of the parties in light of the issues raised." *Jennings v. Gov't Emps. Ins. Co*., 302 Md. 352, 355 (1985).

"'[D]ismissal is rarely appropriate in a declaratory judgment action.'" *Hanover Invs., Inc. v. Volkman*, 455 Md. 1, 17 (2017) (quoting *Christ ex rel. Christ v. Maryland Dep't of Nat. Res*., 335 Md. 427, 435 (1994)); *accord Glover v. Glendening*, 376 Md. 142, 154-55 (2003); *see also Allied Inv. Corp. v. Jasen*, 354 Md. 547, 556 (1999) ("[g]ranting a motion to dismiss a declaratory judgment action without declaring the rights of the parties rarely is appropriate"); *Broadwater v. State*, 303 Md. 461, 465-66 (1985) ("[l]egions of our cases hold that a demurrer, the type of motion to dismiss here involved, is rarely appropriate in a declaratory judgment action").

In general, a circuit court may dismiss a complaint for a declaratory judgment only if the plaintiffs are not entitled to a declaration of their rights. For example, "if there were no justiciable controversy a motion to dismiss would lie." *Broadwater v. State*, 303 Md. at 467. A motion to dismiss may also lie when the case is moot (*see, e.g*., *id*. at 468), when the plaintiffs lack standing (*Christ ex rel. Christ v. Maryland Dep't of Nat. Res*., 335 Md. at 435), when the plaintiffs have failed to join a necessary party (*Broadwater v. State*, 303 Md. at 469), or when the same issues are awaiting decision in another common-law proceeding. *See, e.g*., *Haynie v. Gold Bond Bldg. Prods*., 306 Md. 644, 650-54 (1986).

In short, a court ordinarily may dismiss a complaint for a declaratory judgment only when the plaintiffs have no right to a declaration at all – even a declaration that they are wrong. *Allied Inv. Corp. v. Jasen*, 354 Md. at 556 ("'[t]he test of the sufficiency of

the [complaint for declaratory judgment] is not whether it shows that the plaintiff is entitled to the declaration of rights or interest in accordance with his theory, but whether he is entitled to a declaration at all; so, even though the plaintiff may be on the losing side of the dispute, if he states the existence of a controversy which should be settled, he states a cause of suit for a declaratory decree'") (quoting *Shapiro v. Board of Cty. Comm'rs*, 219 Md. 298, 302-03 (1959)); *see also Lovell Land, Inc. v. State Highway Admin*., 408 Md. 242, 256 (2009) (when a court adjudicates a request for declaratory relief, it must declare the rights of the parties, in writing, "even if the action is not decided in favor of the party seeking the declaratory judgment"); *Christ ex rel. Christ v. Maryland Dep't of Nat. Res*., 335 Md. at 436 ("'where a plaintiff seeks a declaratory judgment that a particular legal provision is valid (or invalid), and the court's conclusion regarding the validity of the provision is exactly opposite from the plaintiff's contention, nevertheless the court must, under the plaintiff's prayer for relief, issue a declaratory judgment setting forth the court's conclusion as to validity'") (quoting *East v. Gilchrist*, 293 Md. 453, 461 n.3 (1982)).

In this case, the circuit court determined that Roula was not entitled to recover any portion of assets that Mr. Paterakis transferred into trust in 2011, 2012, and 2014 or any of the cash that was removed from the safe deposit boxes. The court, therefore, should not have purported to "dismiss" the count for a declaratory judgment in this case. Instead, it should have embodied its resolution of the merits in a written declaration.

Rule 2-601(a) "requires that '[e]ach judgment shall be set forth on a separate document.'" *Allstate Ins. Co. v. State Farm Mut. Auto. Ins. Co*., 363 Md. 106, 117 n.1

(2001) (quoting Md. Rule 2-601(a)). Therefore, "[w]hen entering a declaratory judgment, the court must, in a separate document, state in writing its declaration of the rights of the parties, along with any other order that is intended to be part of the judgment." *Id.*

The circuit court erred by not declaring the rights of the parties to this case. The error, however, is procedural, and not jurisdictional. *See, e.g.*, *Baltimore County v. Baltimore Cty. Fraternal Order of Police Lodge No. 4*, 439 Md. 547, 566 (2014). In our discretion, we may review the merits and remand for the entry of an appropriate declaratory judgment. *Id.* Accordingly, we shall proceed to the merits.

III. Violation of Marital Rights

Maryland's elective share statute, E&T § 3-203, entitles a surviving spouse to renounce the inheritance (if any) under the decedent spouse's will and instead to claim an elective one-third share of the decedent's net estate. The term "net estate," as it is used in the statute, "means the property of the decedent passing by *testate succession*." E&T § 3-203(a) (emphasis added). Accordingly, the net estate generally excludes assets that are disposed of by non-probate arrangements, such as trusts. *Karsenty v. Schoukroun*, 406 Md. 469, 488 & n.13 (2008) (citing Angela M. Vallario, *Spousal Election: Suggested Equitable Reform for the Division of Property at Death*, 52 CATH. U. L. REV. 519, 536 (2003)).[8]

[8] In 2019, while the present case was pending, the General Assembly amended Maryland's elective share statute, effective October 1, 2020. *See* 2019 Md. Laws, Ch. 435. The statute broadens the elective share to encompass an "augmented estate," which can include some property transferred before marriage. Notably, however, the

A spouse, in the absence of statutory regulation, has an unqualified right to give away personal property during his, her, or their lifetime, even though the effect is to deprive the surviving spouse of the statutory share. *See Allender v. Allender*, 199 Md. 541, 550 (1952). Under limited circumstances, however, Maryland has recognized that a court may invalidate a deceased spouse's *inter vivos* transfers of property as a violation of the surviving spouse's "marital rights."[9] *See, e.g.*, *Karsenty v. Schoukroun*, 406 Md. at 489-90; *Knell v. Price*, 318 Md. 501, 512 (1990); *Winters v. Pierson*, 254 Md. 576, 584-85 (1969); *Whittington v. Whittington*, 205 Md. 1, 10-14 (1954); *Allender v. Allender*, 199 Md. at 549; *see also* Melvin J. Sykes, *Inter Vivos Transfers in Violation of the Rights of Surviving Spouses*, 10 MD. L. REV. 1 (1949), and the cases cited therein.

To bring an action for violation of marital rights, a surviving spouse must allege and prove that the decedent spouse made an *inter vivos* transfer, that the decedent retained dominion and control over the property that was transferred, and that the transfer was a contrivance or sham. *See Allender v. Allender*, 199 Md. at 550 (citing *Hays v. Henry*, 1 Md. Chan. 337 (1851)).

Legislature exempted transfers made to irrevocable trusts more than two years before death. The amendment is not retroactive and does not apply to this case.

[9] Although the Court of Appeals has referred to this judicial authority as the doctrine of fraud on marital rights, its purpose, more aptly stated, is "'to balance the social and practical undesirability of restricting the free alienation of personal property against the desire to protect the legal share of the spouse.'" *See Karsenty v. Schoukroun*, 406 Md. at 505-06 (quoting *Knell v. Price*, 318 Md. 501, 512 (1990)) (further citations omitted).

Roula bases several counts of her complaint on allegations that Mr. Paterakis made *inter vivos* transfers into trusts, while retaining "dominion and control" over the property. She claims that these are "sham" transactions and that she has a legal right to invalidate them and have their contents placed in a constructive trust (Count 2), to collect damages because of them (Count 3), and to obtain an accounting (Count 4). By demanding various forms of relief based on Mr. Paterakis's *inter vivos* transfers, she attempts to claim a violation of her marital rights without classifying it as such.

The fundamental flaw in Roula's claim is that the "sham" transfers occurred in 2011, 2012, and 2014, well before her marriage to Mr. Paterakis in August 2015. Her claim has no basis in Maryland law.

Absent an agreement to the contrary, one spouse acquires marital rights in the other spouse's property once the marriage has occurred. *Waters v. Tazewell*, 9 Md. 291, 306 (1856) ("marital rights attach by or during the coverture"). A person, however, generally does not acquire marital rights in property that a spouse conveyed before the marriage. *See, e.g.*, *Winters v. Pierson*, 254 Md. at 584 (rejecting a claim for interference with marital rights where the decedent "made the bulk of the transfers before his marriage was even contemplated, some six years before his marriage").

Only once have Maryland courts held that a decedent's premarital transfer of property violated a surviving spouse's marital rights. In that case, *Collins v. Collins*, 98 Md. 473 (1904), the transfer was made in explicit contemplation of marriage. The decedent transferred all his real and personal property on the "eve" of marriage, just 20 days before the ceremony. *Id*. at 474. Moreover, "the decedent's motives revealed

themselves in the fact that he led his surviving wife to believe that he continued to own the property outright and that she would receive a share of it when he died." *Karsenty v. Schoukroun*, 406 Md. at 517 (discussing *Collins v. Collins*).

The *Collins* Court stressed the limited scope of its holding, stating:

> Nothing that we have said, however, is to be understood as going beyond the case before us, or as laying down the rule more broadly than to protect the wife against a voluntary conveyance by the husband of *all his estate*, made on the *eve* of marriage, *without her knowledge*, and with the *intent of defeating* her marital right.

Collins v. Collins, 98 Md. at 484 (emphasis added).[10]

The details of the present action do not fit within the narrow exception established by *Collins*.

First, Roula's amended complaint does not allege Mr. Paterakis made the challenged transactions on the eve of his marriage to Roula in August 2015, or even at a time when he was contemplating marrying her. To the contrary, the transfers occurred in 2011, 2012, and 2014, well before he and Roula were married on August 2, 2015. Although Roula alleges that Mr. Paterakis's children were motivated by a concern that she might marry their father at some indefinite point in the future, her complaint contains

[10] In *Gianakos v. Magiros*, 234 Md. 14, 28-29 (1964), the Court assumed, without deciding, that a second wife could challenge transfers that occurred two months before the marriage, when the decedent "was contemplating the possibility of remarriage, even though he was not engaged and had not even decided whom he wanted to marry, if he should marry at all." Before indulging that assumption, the Court expressed doubt about whether the wife had the right to challenge pre-marital transfers: "There is room for question as to whether the situation then was such as to make the rules respecting fraud on marital rights applicable at all." *Id.* at 29. The Court entertained the assumption only because the wife's adversaries had "not strenuously contended to the contrary." *Id.*

no factual allegations from which one could reasonably infer that Mr. Paterakis himself contemplated marrying her until on or shortly before the date of the marriage itself.

Second, Roula's complaint is devoid of any suggestion that Mr. Paterakis, like the decedent in *Collins*, kept his estate plan a secret from her. To the contrary, she alleges that in 2016 Mr. Paterakis told her and his friends that he had decided to leave her $20 million (though she also alleges that the children interfered with that alleged promise). In addition, she alleges that, even before Mr. Paterakis's death, she and the children were preparing for a legal contest over her rights.

Finally, although Roula disparages the alleged motivations of Mr. Paterakis's children, she does not allege that Mr. Paterakis moved his assets into the trusts with the intention of defeating her marital rights. Rather, her complaint acknowledges that Mr. Paterakis created the trusts and transferred assets into them with the understanding that they would assist in reducing tax liabilities after his death. *See Karsenty v. Schoukroun*, 406 Md. at 511 (explaining that where a decedent had a valid alternative basis for placing property in trust, a claim for violation of marital rights will not succeed).

In short, when Mr. Paterakis created and allegedly transferred assets into the 2011, 2012, and 2014 trusts, he changed the legal title of that property from a probate asset (subject to Maryland's elective share statute) to a non-probate asset (beyond the then-current elective share statute). Courts have allowed a surviving spouse to invalidate the decedent's *inter vivos* transactions and make transferred assets available for the elective share only when the surviving spouse can prove the transfers violated marital rights. *See Knell v. Price*, 318 Md. at 512; *Mushaw v. Mushaw*, 183 Md. 511, 519 (1944); *Collins v.*

Collins, 98 Md. at 484; *Sanborn v. Lang*, 41 Md. 107, 118 (1874); *Hays v. Henry*, 1 Md. Chan. at 341. Roula does not adequately allege that she had a marital right to the assets in the "sham" trusts that she challenges.[11]

Therefore, we hold that the circuit court did not err in dismissing Counts 2 through 4 of Roula's complaint for failure to state a claim insofar as those counts challenged the transfer of assets into the "sham" trusts. Having so determined, we need not reach Roula's arguments regarding the "sham" nature of the trust transactions or the impact of Mr. Paterakis's alleged continued dominion and control over his assets.[12]

In her brief, Roula argues that, apart from her marital rights, she has a right to challenge the validity of Mr. Paterakis's trusts as a person "interested" in the estate. She argues that she should be permitted to prove that Mr. Paterakis did not actually intend for his assets to be placed in trust. Roula did not make this argument in the circuit court and therefore has not preserved it for appeal. *See* Md. Rule 8-131(a).

Even if Roula had preserved the argument, we would reject it. Because she elected against Mr. Paterakis's will, Roula's only interest in the estate is in the rights

[11] Roula cites *Shimp v. Huff*, 315 Md. 624, 646 (1989), for the unequivocal proposition that a court may set aside "transfers made prior to the marriage." The sole case that *Shimp* cited for that proposition is *Collins*. *Shimp*, therefore, is no broader than *Collins*. In any event, the statement in *Shimp* is dicta, because *Shimp* does not concern an alleged inter vivos transfer in derogation of a spouse's marital rights. *Shimp* holds that the decedent's second wife could obtain her elective share of his estate even though the decedent, in a joint will with his first wife, had promised to convey all of his assets to others. *See id.* at 647.

[12] Nonetheless, it is well settled that the use of revocable *inter vivos* trusts does not, in itself, violate a surviving spouse's marital rights. See *Karsenty v. Schoukroun*, 406 Md. at 492-97, and cases cited therein.

protected by the elective share statute. *See Downes v. Downes*, 388 Md. 561, 573 n.5 (2005) (noting that the "right of a spouse to take a share of an [e]state in contravention of a [w]ill . . . [is] entirely statutory"); *see also* E&T § 3-203(b) (stating that "*[i]nstead* of property left to the surviving spouse by will," the spouse may elect to take a one-third share of the net estate if there is also a surviving issue) (emphasis added). The transfers into trust have not impaired that interest.

IV. Misappropriation of Funds

Counts 2 through 4 of Roula's complaint allege that Bill and Venice expropriated millions of dollars from Mr. Paterakis's various "cash hoards" and "play money" accounts, which Mr. Paterakis demanded they return, but never did. In discovery, it became apparent that Roula had no factual basis for her allegations, except insofar as they concerned the removal of cash from the safe deposit boxes.

As previously stated, we interpret the circuit court's decision as the grant of summary judgment against Roula on the allegations regarding the misappropriation of the "cash hoards," because the court considered and did not exclude materials beyond the four corners of the amended complaint. The court tacitly limited the scope of the alleged misappropriation to the $570,000 that Venice and Karen removed from the safe deposit boxes at Bank of America when Mr. Paterakis was hospitalized and in extremis in December 2013. It reasoned that Mr. Paterakis had either authorized the removal of the cash in advance (by placing it in safe deposit boxes to which some of his children had access, and directing them to remove it if he became gravely ill) or that he ratified the removal of the cash by not demanding that it be returned after he learned that it had been

taken. In either event, the court reasoned that Mr. Paterakis consented to the transfers long before the marriage to Roula was even contemplated. Thus, under *Collins*, the court concluded that Roula could not complain of the transfers.

Notwithstanding the court's reasoning, both Bill and Roula testified that Mr. Paterakis did object to the removal of money after he learned that it had occurred. According to Bill, his father accepted the explanation that Venice and Karen had withdrawn the money from the safe deposit boxes. Although Mr. Paterakis objected to the removal of the money on several subsequent occasions, Bill attributed the objections to his aged and infirm father's mental decline. Mr. Paterakis, Bill said, accepted his explanation on each of the subsequent occasions.

According to Roula, Mr. Paterakis had complained that his "greedy and selfish children" had gone "into his safe" and taken "all his money" when "he was in the hospital," and "[t]hey thought he was going to die." From what her husband told her, however, Roula was under the impression that the children had returned whatever they had taken.

Viewing these facts in the light most favorable to Roula, a reasonable jury could find that Mr. Paterakis objected to the removal of the money from the Bank of America safe deposit box in December 2013, that he did not ratify or acquiesce in the removal of the money, and that he ceased to object because he had been led to believe that the money had been returned. If, in fact, the money had not been returned, then it, or at least a claim for its return, might be included among the assets of his estate upon his death. In that event, Roula might have the right to her elective share of a portion of it.

In these circumstances, we conclude that the court erred in employing summary judgment to dispose of Roula's claim concerning the cash that Venice and Karen removed from the safe deposit boxes at Bank of America.[13] It may well be that Mr. Paterakis objected to the removal of the cash only because he was disoriented and confused, and that he accepted his son's explanation. It may also be that Roula is incorrect in saying that her husband believed that the cash had been returned. But because there are competing inferences about whether and why Mr. Paterakis acquiesced in the removal of the cash, the court should not have entered summary judgment on the record as it stands.[14]

[13] Because Roula insists that the court granted a motion to dismiss for failure to state a claim upon which relief can be granted, she does not actually argue on appeal that the court erred in granting summary judgment. At most, she argued, in her reply brief, that if, hypothetically, the court had granted summary judgment, she would have shown that it erred. An appellate court typically does not consider arguments that appear for the first time in a reply brief. *See, e.g.*, *Gazunis v. Foster*, 400 Md. 541, 554 (2007). Thus, in concluding that the circuit court erred in granting summary judgment, we rely on our review of the materials that the parties presented to the circuit court in connection with the motion to dismiss or, alternatively, for summary judgment. *Cf. Thompson v. Baltimore County*, 169 Md. App. 241, 251-52 (2006) (holding that an appellate court may reverse even an unopposed motion for summary judgment if the record reflects a genuine dispute of material fact).

[14] Because Roula insists that the court dismissed her claims and did not grant summary judgment against her, her opening brief does not argue that the court erred in granting summary judgment. In her reply brief, Roula contends that there is a genuine dispute of material fact concerning whether Mr. Paterakis accompanied Bill to Harbor Bank in November 29, 2012 when, Bill said, his father removed the contents of a safe deposit box. The circuit court did not expressly reject that contention in its oral opinion. Because this case must return to the circuit court, we leave it to that court to decide, in the first instance, whether there is a genuine dispute of a material fact on this subject.

V. Tortious Interference with Expected Inheritance

The circuit court dismissed Roula's claim for intentional interference with an expected inheritance (Count 5) on the basis that Maryland has not formally adopted this cause of action. Subsequent events have overtaken the court's ruling.

While this case was pending on appeal, the Court of Appeals formally recognized a cause of action for intentional interference with an expected inheritance. *Barclay v. Castruccio*, ___ Md. ___, 2020 WL 3526022, at *6 (June 30, 2020). In recognizing the cause of action, the Court reasoned that intentional interference with an expected inheritance is "a species" of the tort of intentional or malicious interference with economic relationships (*see id*.), which Maryland has long recognized. *See id.* at *3 (citing *Alexander & Alexander, Inc. v. B. Dixon Evander & Assocs., Inc.*, 336 Md. 635 (1994); *Macklin v. Robert Logan Assocs.*, 334 Md. 287 (1994); *K&K Mgmt., Inc. v. Lee*, 316 Md. 137 (1989); *Willner v. Silverman*, 109 Md. 371 (1909)).

The elements of the new tort are those contained in section 19 of the Restatement (Third) of Torts (2020), which provides:

> (1) A defendant is subject to liability for interference with an inheritance or gift if:
>
> (a) the plaintiff had a reasonable expectation of receiving an inheritance or gift;
>
> (b) the defendant committed an intentional and independent legal wrong;
>
> (c) the defendant's purpose was to interfere with the plaintiff's expectancy;
>
> (d) the defendant's conduct caused the expectancy to fail; and
>
> (e) the plaintiff suffered injury as a result.

> (2) A claim under this Section is not available to a plaintiff who had the right to seek a remedy for the same claim in a probate court.

Because the circuit court was incorrect in its prediction about whether the Court of Appeals would recognize the tort of intentional interference with an expected inheritance, we must reverse the judgment insofar as it dismisses Count 5 of Roula's amended complaint. On remand, the court shall consider whether that count adequately alleges the elements that the Court of Appeals has now established for the tort of intentional interference with an expected inheritance. We express no view as to whether it does or does not.

CONCLUSION

The circuit court erred in dismissing Count 1 of the amended complaint (the claim for declaratory relief) without declaring the rights of the parties. The circuit court also erred in dismissing Count 5 (the claim for intentional interference with an expected inheritance) for failure to state a claim upon which relief may be granted. The court correctly concluded that Counts 2 through 4 of the amended complaint failed to state a claim upon which relief can be granted insofar as they challenged the transfer of assets into the trusts in 2011, 2012, and 2014. The court erred, however, in granting summary judgment as to allegations in Counts 2 through 4 concerning the removal of cash from the safe deposit boxes.

We remand the case for further proceedings in accordance with this opinion. We recognize that the court cannot declare the parties' rights until it has fully adjudicated Counts 2 through 4.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED IN PART, AFFIRMED IN PART, AND REVERSED IN PART; CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; APPELLANT SHALL PAY ONE-HALF OF THE COSTS; APPELLEES SHALL PAY ONE-HALF OF THE COSTS.