

Circuit Court for Montgomery County
Case No. 155029FL

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0435

September Term, 2023

IN THE MATTER OF IVA JOHNSON

Nazarian,
Zic,
Robinson,
(Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: September 20, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This appeal returns to us following the Circuit Court for Montgomery County’s April 21, 2023 order to remove appellant, Kevin Johnson, as trustee of the Iva E. Johnson Revocable Trust (“Trust”).

In his first appeal, Mr. Johnson challenged the circuit court’s March 8, 2021 order removing him as trustee and appointing the present appellee, Robert McCarthy, Esq., as the substitute trustee. This Court vacated the decision and remanded the case to the circuit court to comply with procedural requirements. After remand, the circuit court conducted a show cause hearing and found that Mr. Johnson’s failure to administer the Trust effectively and competently, failure to follow court orders, and failure to perform fiduciary duties warranted his removal as trustee. In the same order, the circuit court appointed Mr. McCarthy as the substitute trustee. Mr. Johnson now appeals this order.

As we explain below, we agree with the circuit court’s ruling to remove Mr. Johnson as trustee of the Trust and affirm the judgment of the circuit court.

QUESTIONS PRESENTED

Mr. Johnson presents two questions for our review, which we have recast and rephrased into three:¹

1. Did the circuit court err in taking judicial notice of certain

¹ Mr. Johnson phrased the questions as follows:

1. Did the trial court err in taking judicial notice of disputed facts contained in pleadings in the court file and eroding [Mr. Johnson]’s due process when it stepped out of its role of impartial trier of fact?
2. Did the trial court err in removing [Mr. Johnson] as trustee of his mother’s Revocable Trust on the merits?

documents in the court record?

2. Did the circuit court err in removing Mr. Johnson as trustee of the Trust?
3. Did the circuit court step out of its role as impartial trier of fact?

For the following reasons, we affirm the circuit court.

BACKGROUND

Procedural History

This case stems from a petition by Iva E. Johnson’s son, Mr. Johnson, for appointment as guardian of Ms. Johnson’s property and person. Omitting this case’s full procedural history here, however, the proceedings relevant to the instant appeal begin with this Court’s November 2022 opinion, *In the Matter of Johnson*, No. 0067, Sept. Term 2021, 2022 WL 16960578 (Md. App. Nov. 6, 2022), which vacated a portion of the March 8, 2021 order removing Mr. Johnson as trustee. In that opinion, we held that the circuit court did not follow proper procedure for removing a fiduciary, and remanded the case for additional proceedings. *In the Matter of Johnson*, 2022 WL 16960578, at *11-12.

The February 2023 Show Cause Hearing

Shortly after this Court’s remand, Mr. McCarthy again requested that the circuit court remove Mr. Johnson as trustee. Ms. Johnson petitioned separately to remove Mr. Johnson as trustee, and on December 6, 2022, the circuit court issued a show cause

order.² After filing an opposition, Mr. Johnson submitted a motion *in limine* requesting that the court “preclude . . . [Mr.] McCarthy . . . from introducing documentary evidence or testimony at the [] hearing . . . because [Mr. McCarthy] failed and refused to produce any documents in response to [Mr. Johnson’s] discovery requests and to sufficiently answer interrogatories. . . .”³

Mr. Johnson’s counsel argued the motion *in limine* at the outset of the show cause hearing on February 28, 2023. Mr. McCarthy clarified that he was “not going to enter any documents [into evidence at the hearing]”; rather, he “was asking the [c]ourt to take judicial notice of the entire court file and documents there, as well as the docket entries.”⁴ Mr. Johnson’s counsel agreed that the court could take judicial notice of docket entries, but not the entire court file. The court did not grant or deny Mr. Johnsons’ motion, and instead asked both parties to continue and make any objections as they arose.

During the proceeding, Mr. Johnson’s counsel objected twice to Mr. McCarthy’s “request[s] to take judicial notice of the court record,” relying both times on the motion *in limine*: first, in response to Mr. McCarthy’s testimony about one of the Adult Protective Services (“APS”) complaints filed against him, and second, after Mr. McCarthy

² The circuit court later issued an Amended Show Cause Order on February 9, 2023, to ensure the parties had notice that Ms. Johnson’s Motion to Remove Trustee, filed February 21, 2019, may be discussed at the show cause hearing.

³ While Mr. Johnson’s motion *in limine* indicates it was electronically filed on February 17, 2023, the circuit court explained that the motion was not filed appropriately and, consequently, was not received by chambers until the evening of February 27, 2023.

⁴ Notably, at the February 2, 2024 oral argument before this Court, Mr. McCarthy’s counsel clarified that he did not think “judicial notice [was] [] the right term to apply here, particularly when it c[a]me[] to [the records the court reviewed].”

referenced a videotape relating to an incident involving Mr. Johnson’s former attorney. In the second objection, Mr. Johnson’s counsel requested a continuing objection for the motion *in limine*. The court overruled both objections and continued to use the Maryland Electronic Courts (“MDEC”) electronic filing system to review prior case events, noting that the court “doesn’t have files anymore” and in any event, there were “45 pages of entries for [the] case[] . . . [all together totaling] 4,297 [pages].”

Following the show cause hearing, the circuit court issued a 22-page memorandum opinion and order finding that the removal of Mr. Johnson “is in Ms. Johnson’s best interest.” The court’s relevant factual findings in its opinion are summarized below.

The Circuit Court’s Findings: Catherine McQueen’s Tenure

The court’s opinion first finds that Catherine McQueen, Esq.—who was appointed by the court in 2020 as the guardian of Ms. Johnson’s property—and Mr. Johnson “maintained a cordial relationship,” but that their relationship “began to deteriorate almost immediately[.]” In support of this, the court found Mr. Johnson “refused to” agree with Ms. McQueen as to how to pay an appointed investigator, and that “as a result,” the investigator “was not paid for a year.”

The court also found that Mr. Johnson and Ms. McQueen’s relationship further deteriorated as Ms. Johnson was left with very little net income after paying her monthly expenses. Ms. Johnson repeatedly notified Ms. McQueen about not having enough money for groceries and medication, so Ms. McQueen requested that Mr. Johnson, as representative payee of Ms. Johnson’s social security pension, pay Ms. Johnson more income so she could afford her daily needs.

Meanwhile, Michelle Lancaster, Ms. Johnson’s daughter and Mr. Johnson’s sister, began paying out of her own pocket to pay for her mother’s groceries and medication. Ms. Lancaster would then submit requests for reimbursement from the Trust, but Mr. Johnson never granted the requests for reimbursement or paid Ms. Johnson an increased allotment of income. When Mr. Johnson directly refused to provide additional funds, Ms. McQueen requested the court to appoint her as representative payee, but Mr. Johnson refused to consent to this solution as well. The court found that as a result of Mr. Johnson’s actions, Ms. McQueen was struggling to manage Ms. Johnson’s expenses and remaining assets.

The circuit court additionally found that Mr. Johnson resisted Ms. McQueen’s efforts to manage the estate taxes. After Ms. McQueen and Ms. Johnson’s former accountant reviewed the tax returns and secured Ms. Johnson’s signature, Mr. Johnson disagreed with it and “declared that he wished to file separate taxes for the Trust.” Ms. McQueen cautioned Mr. Johnson against doing so, given that the Trust did not have a tax identification number and there could be possible financial consequences, but Mr. Johnson filed a separate return anyway.

Overall, the court determined that “Ms. McQueen was caught in the middle of turbulent conflict” and it was difficult for Ms. McQueen “to determine who was telling the truth.” Ms. McQueen received many complaints from Ms. Johnson regarding Mr. Johnson’s actions as trustee. Mr. Johnson accused Ms. Lancaster as “feeding lies” to Ms. Johnson, prompting the complaints. He also accused Ms. McQueen of “chronic financial mismanagement.”

As to Ms. McQueen’s resignation, the court observed that Ms. McQueen hesitated to say that she resigned because of Mr. Johnson “due to her professionalism.” The court found that Ms. McQueen was hesitant to “blame one individual, despite one individual consistently and relentlessly hindering her ability to serve as an effective guardian, that being Mr. Johnson.” The court also noted that this was the first time in 12 years that Ms. McQueen was forced to resign from a case, and that even after her resignation, Mr. Johnson filed a complaint against Ms. McQueen. The complaint was ultimately dismissed.

The Circuit Court’s Findings: Mr. McCarthy’s Tenure

Similarly, the circuit court found that Mr. Johnson was “unduly hostile” with Mr. McCarthy, who was appointed by the court as Ms. McQueen’s successor in August 2020. As an example, the court noted that Mr. Johnson interfered with Mr. McCarthy’s duties when Mr. Johnson refused to release money from the Trust “unless he approved of the way Mr. McCarthy was acting as guardian.”

The court credited Mr. McCarthy’s testimony that Mr. Johnson failed to comply with the court’s March 2021 order, which required Mr. Johnson to resign as representative payee, close all accounts titled in the Trust’s name, and deliver the remaining funds to Mr. McCarthy. The court’s opinion further acknowledges that Mr. Johnson sent a letter to two account holders explaining the court ordered resignation, but that Mr. Johnson took no additional action.

When Mr. Johnson failed to comply with the circuit court’s March 2021 order, Mr. McCarthy filed a request for instructions from the court for guidance on how to

proceed. Mr. McCarthy testified that he contacted multiple payors personally, requesting they appoint him as representative payee, even spending “hours on the phone” with one payor throughout the process. The court found that because of “Mr. Johnson’s refusal to cooperate and follow instructions[,]” the Trust “incurred unnecessary fees because” Mr. McCarthy was forced to change the accounts himself.

The circuit court further noted that Mr. McCarthy continued to receive late payment notices from Ms. Johnson’s creditors after he became the trustee. Despite Mr. McCarthy informing the creditors of the address change to Mr. McCarthy’s address rather than Mr. Johnson’s address, the creditors still sent the bills to Mr. Johnson’s home. Because the creditors confirmed the address that they had on file was Mr. McCarthy’s, Mr. McCarthy suspected someone was intentionally altering the address in the creditors’ online portals to Mr. Johnson’s address before the bills were sent out, then subsequently reverting it back to Mr. McCarthy’s address. The court’s opinion characterizes this evidence as “striking.”

Additionally, the court summarized testimony regarding two complaints to APS made against Mr. McCarthy by Ms. Johnson. Mr. McCarthy and Ms. Lancaster testified that Ms. Johnson would not know how to file a complaint with APS without help due to her cognitive decline, and suggested that Mr. Johnson was responsible for the complaints. Mr. McCarthy also testified that an APS worker would not reveal who initiated the complaint but suggested that Mr. McCarthy file an investigation against Mr. Johnson. Both APS complaints were ultimately dismissed, and Mr. McCarthy declined to file an investigation against Mr. Johnson.

After the APS complaints were dismissed, Mr. Johnson filed complaints against Mr. McCarthy with three separate government agencies, alleging fraud and mismanagement of the Trust and Ms. Johnson’s assets. Each of the three complaints were dismissed.

The Circuit Court’s Findings: Mr. Johnson’s Relationship With Ms. Lancaster

The circuit court’s opinion credits Mr. McCarthy’s and Ms. Lancaster’s testimony regarding a “general lack of cooperation” between Mr. Johnson and Ms. Lancaster. In its findings, the court referenced testimony regarding prior altercations between the two. While determining it had “insufficient” detail on these events, the court used the testimony as evidence of “the inability of Mr. Johnson and Ms. Lancaster to work together effectively.”

The Circuit Court’s Findings: Mr. Johnson’s Relationship With Ms. Johnson

Finally, the court acknowledged testimony regarding Ms. Johnson’s fear that she would lose her home, which resulted in her experiencing “extreme distress.” Although Mr. Johnson first testified that “he did not know how Ms. Johnson got the idea that her home was at risk,” he later stated that he told Ms. Johnson foreclosure was a “conceivable possibility.” However, the court found no evidence “to corroborate [that] Ms. Johnson’s home was near foreclosure.”

The Circuit Court’s Conclusion

Considering its factual findings, the circuit court ultimately found that “there are grounds for [Mr. Johnson’s] removal as trustee.” The court’s opinion specifically

concludes that Mr. Johnson failed to administer the Trust effectively, failed to obey court orders, and breached his fiduciary duties. Accordingly, the court determined that removing Mr. Johnson as trustee “is in Ms. Johnson’s best interests” and appointed Mr. McCarthy as trustee of the Trust.

Mr. Johnson’s timely notice of appeal followed.

DISCUSSION

I. THE CIRCUIT COURT DID NOT ERR IN REVIEWING THE COURT FILE.

On appeal, Mr. Johnson argues that the circuit court erred by taking judicial notice of the entire record and disputed facts within the court file.⁵ Notably, at oral argument, Mr. Johnson’s counsel could not identify any specific document or disputed fact of which the circuit court took judicial notice of but should not have. Mr. Johnson’s counsel instead argued that the court did not state or explain what documents the court did or did not take judicial notice of in the court file, and therefore, did not provide notice of what evidence had been admitted.

Mr. McCarthy contends that the circuit court only took notice of records that had been accepted as evidence in a previous hearing, and, citing to *James v. State*, 31 Md. App. 666, 687 (1976), argues that Maryland jurisprudence allows judicial notice of official court records when not doing so would “hinder” and “needlessly prolong litigation.”

⁵ After the hearing, the court denied the motion *in limine* as moot. Mr. Johnson does not explicitly appeal the court’s finding that his motion is moot. Mr. Johnson only makes an argument that “the trial court erred in taking judicial notice of disputed facts[.]” Accordingly, we focus our analysis on this issue only.

We hold that the court did not err. As we explain, in our review of the circuit court’s memorandum opinion there is no instance of the court taking judicial notice, and the court properly reviewed the court file before filing its memorandum opinion and order.

A. Discussion

We review a circuit court’s ruling on a request to take judicial notice under the clearly erroneous standard, keeping in mind “[t]he principle that there is a legitimate range within which notice may be taken or declined and that there is efficacy in taking it, when appropriate[.]” *Smith v. Hearst Corp.*, 48 Md. App. 135, 141 (1981) (quotes and citation marks omitted). As “[t]he first step to wisdom is calling a thing by its right name,” *Roulette v. City of Seattle*, 78 F.3d 1425, 1426 (9th Cir. 1996), however, we begin by reviewing terminology.

Maryland Rule 5-201 governs judicial notice of adjudicative facts, providing in relevant part:

(a) *Scope of Rule.* This Rule governs only judicial notice of adjudicative facts. Sections (d), (e), and (g) of this Rule do not apply in the Appellate Court or the Supreme Court.

(b) *Kinds of Facts.* A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

[. . .]

(e) *Opportunity to Be Heard.* Upon timely request, a party is entitled to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In

the absence of prior notification, the request may be made after judicial notice has been taken.

(f) *Time of Taking Notice*. Judicial notice may be taken at any stage of the proceeding.

The Supreme Court of Maryland has distinguished “adjudicative facts” from “legislative facts,” defining the former as facts “about the parties and their activities, businesses and properties. They usually answer the questions of who did what, where, when, how, why, with what motive or intent while legislative facts do not usually concern the immediate parties but are general facts which help the tribunal decide questions of law and policy and discretion.” *Dashiell v. Meeks*, 396 Md. 149, 175 n.6 (2006) (quoting *Montgomery County v. Woodward & Lothrop, Inc.*, 280 Md. 686, 711-12 (1977)). “The doctrine of judicial notice substitutes for formal proof of a fact ‘when formal proof is clearly unnecessary to enhance the accuracy of the fact-finding process.’” *Lerner v. Lerner Corp.*, 132 Md. App. 32, 40 (2000) (quoting *Smith*, 48 Md. App. at 136). Significantly, “[n]oticing pleadings does not mean accepting what they say as true, only that they exist as public records.” *Abrishamian v. Washington Med. Grp., P.C.*, 216 Md. App. 386, 415-16 (2014).

Here, during the February 28, 2023 hearing, Mr. McCarthy requested that the circuit court take “judicial notice” of the record as it appeared on MDEC. The court agreed to review the electronic file, and noted in its opinion that it “reviewed the entire record in this matter.” While Mr. Johnson argues that the court erroneously took judicial notice of the record, our analysis of the circuit court’s memorandum opinion revealed no instance of the court relying on any adjudicative fact not testified to during the hearing.

To the extent the court’s opinion references items within the record, it does so only to create a timeline—not to “accept[] what [the record items] say as true[,]” *Abrishamian*, 216 Md. App. at 416, or to support its decision. Therefore, because Mr. Johnson does not point to any disputed fact relied upon by the circuit court to remove him as trustee, we conclude that the circuit court did not take judicial notice or otherwise err in reviewing the electronic case file.

II. THE CIRCUIT COURT DID NOT ERR IN REMOVING MR. JOHNSON AS TRUSTEE OF THE TRUST.

A. The Parties’ Contentions

In its memorandum opinion, the circuit court found that Mr. Johnson’s removal was warranted because he failed to administer the Trust effectively and competently, failed to follow court orders, and failed perform his fiduciary duties as trustee. Mr. Johnson argues on appeal that the circuit court erred in “disregard[ing]” testimony and evidence supporting Mr. Johnson. Summarily, he disagrees with the credibility judgment of the circuit court. His specific arguments are as follows.

Mr. Johnson first argues that the court “mistakenly credited” Mr. McCarthy’s testimony about the financial circumstances of the Trust, yet failed to credit the fact that Mr. Johnson was not held in contempt. Mr. Johnson next argues that a lack of cooperation between parties is not a sufficient ground for removal of a trustee, and alternatively, that even if it is a sufficient ground, the evidence does not support the

court’s conclusion.⁶ Finally, Mr. Johnson claims that the court incorrectly “ignored the testimony of [Ms. Johnson’s sister,] who refuted all of [Mr. McCarthy’s] arguments.”

In response, Mr. McCarthy maintains that the circuit court correctly supported its discretionary decision to remove Mr. Johnson as trustee with substantial evidence in the record, and therefore, there were no clearly erroneous factual findings and no incorrect legal conclusions. Accordingly, Mr. McCarthy argues, the evidence supports a finding of removal.

B. Standard of Review

The decision whether to remove a trustee is a matter for the circuit court’s discretion. *Schmidt v. Chambers*, 265 Md. 9, 34 (1972). In cases that turn on a judge’s exercise of discretion, this Court reviews the circuit court’s factual findings for clear error and its legal analysis under the *de novo* standard. *In re Adoption of Ta’Niya C.*, 417 Md. 90, 100 (2010). Importantly, “[b]ecause trial judges are presumed to know the law, not every step in their thought process needs to be explicitly spelled out.” *Zorich v. Zorich*, 63 Md. App. 710, 717 (1985).

Mr. Johnson’s challenge to his removal as trustee depends on the circuit court’s factual findings. “We defer to the fact finder’s ‘opportunity to assess the credibility of the witnesses, weigh the evidence, and resolve conflicts in the evidence.’” *Neal v. State*, 191 Md. App. 297, 314 (2008). We accordingly review the court’s three reasons for

⁶ In relevant part, Mr. Johnson contends that Ms. McQueen’s testimony was not reliable, and that any disharmony between Mr. Johnson and Ms. Lancaster did not necessitate his removal as trustee.

removing Mr. Johnson separately and for clear error. *See In re Ta’Niya C.*, 417 Md. at 100.

1. Failure to Administer the Trust Effectively and Competently

Under Md. Code Ann., Est. & Trusts (“ET”) § 15-112(a)(1)(iii), a trial court “shall” remove a trustee who has “[s]hown to be incapable, with or without fault to properly perform” fiduciary duties. A court “may” remove a trustee who has “[f]ailed to perform any fiduciary duty, or to competently administer the fiduciary estate,”

ET § 15-112(a)(2)(iii), or under § 14.5-706(2), when:

- (i) The trustee has committed a serious breach of trust;
- (ii) Lack of cooperation among cotrustees substantially impairs the administration of the trust; [or]
- (iii) Because of unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries[. . .]

Here, the circuit court found that Mr. Johnson failed to administer the Trust effectively and competently because Mr. Johnson failed to cooperate, was incapable of properly performing the duties of the fiduciary, and substantially impaired the administration of the Trust. The court detailed “ample evidence of the inability” of Mr. Johnson to cooperate with Ms. McQueen, Mr. McCarthy, Ms. Johnson, and Ms. Lancaster in the administration of the Trust. The court found that Mr. Johnson “deliberately def[ied]” and “intentionally sought to cause animosity” between the guardians, so that he “failed to administer the [T]rust[.]” Specifically, the court found, Mr. Johnson defied Ms. McQueen’s direction not to file separate taxes for the Trust, refused to pay the investigator, delayed the payment of fees, refused to extend enough of

the Trust’s funds for Ms. Johnson to pay for her daily needs, failed to follow court orders causing “Mr. McCarthy [] to spend time correcting Mr. Johnson’s actions,” caused the Trust to suffer unnecessary fees, and “frequently initiated frivolous and baseless complaints” against Mr. McCarthy and Ms. McQueen.

The circuit court supported its conclusion that Mr. Johnson failed to administer the Trust effectively and competently by crediting relevant testimony presented at the hearing. Reviewing the court’s factual findings for clear error, we see none. Accordingly, we hold that the circuit court did not err in finding that removal of Mr. Johnson as trustee serves the best interests of Ms. Johnson.

2. *Failure to Follow Court Orders*

A court “shall” remove a trustee who has willfully disregarded a court order but “may” remove a trustee who has negligently failed to obey an order of the court. ET §§ 15-112(a)(1)(ii), (a)(2)(ii). Here, the circuit court identified two instances where Mr. Johnson negligently failed to follow an order of the court.

First, the court found that Mr. Johnson disobeyed the October 25, 2019 order to pay the investigator’s fee from the assets of the estate “and/or” the Trust within 21 days of the order. The court acknowledged that the October 2019 order determined the Trust had sufficient fees to pay the investigator while Ms. Johnson’s estate did not. But the court found that Mr. Johnson refused to pay the fee from the Trust’s funds, instead “forcing” Ms. McQueen to sell Ms. Johnson’s car to cover the expense.

Second, Mr. Johnson did not follow the June 21, 2021 order to “take all steps necessary to resign as Representative Payee on behalf of Iva E. Johnson with the Social

Security Administration[,] including but not limited to signing all appropriate documentation and submitting notice of resignation by June 24, 2021.” The court found that the letters sent by Mr. Johnson to the creditors were not sufficient to comply with this order.⁷

“We give ‘due regard’” to the circuit court’s role as fact finder, *State v Smith*, 374 Md. 527, 534 (2003) (citations omitted). We hold that there are evidentiary facts sufficiently supporting the inference made by the trial court, and we defer to the circuit court’s finding that Mr. Johnson violated court orders. *Neal*, 191 Md. App. at 314.

3. Failure to Perform Fiduciary Duties

Under ET § 15-112(a)(1)(iv), a court “shall” remove a trustee who has breached the duty of good faith or loyalty to the fiduciary estate. Here, the circuit court found that Mr. Johnson breached his duty of care by failing to provide Ms. Johnson with enough income to support her daily needs, by delaying the payment of the investigator’s fee, and by filing separate taxes despite being informed about possible financial consequences of

⁷ The court’s memorandum opinion states that “Mr. Johnson informed the recipients that he did not know how to follow the Court’s order [removing him as representative payee].” The letters do not appear to indicate Mr. Johnson did not know how to follow the court’s order. Rather, one of the letters states his request that the recipients notify him of the “next steps to effectuate th[e] order.” And, while the letters explain the court’s order requiring Mr. Johnson’s recusal, Mr. Johnson took no further action beyond mailing the letters. The circuit court’s characterization that Mr. Johnson stated he “did not know how to follow the Court’s order” does not appear to be supported by the letter, but is harmless.

doing so. The court found that each instance illustrated Mr. Johnson’s continual refusal to act in the best interest of the Trust and Ms. Johnson.⁸

The court also found that Mr. Johnson breached the duty of loyalty and good faith. The court explained that since Mr. Johnson is a future beneficiary of the Trust, serving as trustee could pose a conflict of self-interest. Given that Mr. Johnson previously refused to payout Trust money—which conflicted with Ms. Johnson’s best interests—the court concluded that it is in Ms. Johnson’s “best interests that she maintains a strong cohesive relationship with the guardians of the property.” Mr. Johnson’s refusal to cooperate with Ms. McQueen and Mr. McCarthy demonstrated his threat to maintaining these relationships. Additionally, the court found that Mr. Johnson also worked against Ms. Johnson’s best interest by informing Ms. Johnson that she may lose her home, thereby causing her distress, when no evidence was presented to support the possibility of foreclosure.

Overall, substantial evidence was presented in the show cause hearing to support the conclusion that Mr. Johnson failed to perform his fiduciary duties. *See Neal*, 191 Md.

⁸ Mr. Johnson cites to *Miller v. Rosewick Road Development, LLC*, 214 Md. App. 275 (2013) to support that his actions did not arise to a breach of his fiduciary duty. But *Miller* is not analogous to the instant dispute. In *Miller*, this Court held that the trial court erred in removing trustees for failure to sell a piece of property when the trustees worked to enhance the property value, inspected the property, sought legal advice for the sale, appraised the home, and negotiated with government officials. *Id.* at 306-309. Unlike the trustees and property in *Miller*, however, the circuit court here found that Mr. Johnson intentionally breached his fiduciary duties to Ms. Johnson by refusing her enough money to support her daily needs, paying taxes under the Trust, and refusing to cooperate with the property guardians.

App. at 314. Therefore, we hold that the circuit court did not clearly err in its assessment of the evidence, and affirm the court’s removal of the Mr. Johnson as trustee.

III. MR. JOHNSON DID NOT PRESERVE THE ISSUE OF JUDICIAL BIAS FOR APPELLATE REVIEW.

Mr. Johnson also claims that the circuit court “eroded [his] due process at the hearing when it stepped out of its role[s] as impartial trier of fact” and “neutral arbiter.”⁹

“Ordinarily, an 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[.]” Md. Rule 8-131(a). A party must object or otherwise raise the issue of judicial bias absent “very extenuating circumstances” to preserve the issue for review. *Scott v. State*, 110 Md. App. 464, 486 (1996); *Azquah v. State*, 113 Md. App. 29, 61 (1996) (“[i]n order to preserve this issue for appeal, [defendant] must first have objected to the individual instances of improper conduct.”).

Mr. Johnson did not raise or object to the issue of judicial bias before the circuit court. Therefore, Mr. Johnson did not preserve this issue for our review and we do not reach it here.

CONCLUSION

Accordingly, we hold that the circuit court did not err in reviewing the court record in the case at-issue, and we affirm the circuit court’s order removing Mr. Johnson as trustee of the Trust under ET § 15-112.

⁹ While the record demonstrates that Mr. Johnson’s counsel did contemporaneously object to Mr. McCarthy’s use of notes on evidentiary grounds, no objection was made for the judicial bias alleged on appeal.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED; COSTS TO BE PAID BY
APPELLANT.**