

Circuit Court for Anne Arundel County
Case No. C-02-FM-20-001320

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 521

September Term, 2023

MARK C. REISINGER

v.

STEPHANIE CHASE SAMS

Graeff,
Zic,
Wilner, Alan M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: March 18, 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 persuasive value only if the citation conforms to Md. Rule 1-104(a)(2)(B).

This appeal arises from a judgment of the Circuit Court for Anne Arundel County granting appellee, Stephanie Chase Sams (“Wife”), a divorce from appellant, Mark C. Reisinger (“Husband”). The order incorporated a marital settlement agreement signed by the parties on February 26, 2020.

On appeal, Husband presents the following questions for this Court’s review, which we have consolidated and rephrased slightly, as follows:

1. Did the circuit court properly apply the law in concluding that there was no confidential relationship between the parties?¹
2. Did the circuit court properly apply the law in concluding the marital separation agreement(s) in this case were not unconscionable?
3. Did the circuit court properly apply the law in concluding that the agreement(s) were not the product of duress?
4. Did the circuit court err in finding that Wife adequately disclosed financial information to Husband prior to the execution of the agreements?
5. Did the circuit court err in excluding evidence and failing to consider that evidence in its findings of facts and legal ruling?

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

FACTUAL AND PROCEDURAL BACKGROUND

I.

Events Leading to Litigation

On April 19, 1997, Husband and Wife were married. They have one adult child.

¹ Husband also lists as a question whether the court erred “in concluding that Wife was not the dominant spouse in the parties’ relationship.” Because that is part of the analysis involved in the issue whether there was a confidential relationship, we combine the two questions.

In the summer of 2019, the party's relationship began to deteriorate after Wife found out that Husband "was engaging in multiple extracurricular relationships with other women." Husband testified that Wife was "very agitated" with him and made him move out of the main bedroom into the guest bedroom.

On December 31, 2019, Husband sent a text message to Wife stating: "[I]f you want a divorce, just ask for it." On February 14, 2020, Husband and Wife entered into a listing agreement with Coldwell Banker Residential Brokerage to sell their marital residence.

On February 16, 2020, the parties executed a document titled Absolute Divorce with Consent Separation Agreement (the "Separation Agreement"). They each signed the document and initialed each page. The Separation Agreement provided that the date of separation would be July 6, 2020. It included provisions for tax filings in 2019 and 2020.

The Separation Agreement also provided that the parties would list their marital home for sale and split the proceeds after the home was sold and the remaining mortgage was paid. The party's rental property, a condo in Ocracoke, North Carolina (the "Vacation Property"), would not be sold, and Wife would assume the mortgage debt after the house was refinanced in her name, retaining full ownership. Husband could use the Vacation Property with specified conditions.

The Separation Agreement further outlined the parties' division of assets and liabilities, with Wife retaining 49% of the assets and Husband retaining 51%, and Wife assuming 75% of the liabilities, with Husband assuming 25%. Wife would pay for son's college tuition, room, board, cell phone, and Apple Watch until his college graduation. She

also would pay off any student loans that son obtained. The Separation Agreement further addressed provisions for Husband to continue with Wife's health insurance for a period of time.

The parties agreed that Husband would retain full ownership of his boat and would be responsible for insurance if it was not sold by June 29, 2020. Husband also would retain full ownership of his two vehicles, the Jeep Cherokee and Jeep Commander, which were paid in full, and Wife would retain full ownership and assume the debt in the amount of \$31,634.09 of the Tiguan vehicle. Son would retain the Jetta vehicle, and Wife would assume the debt in the amount of \$14,344.82, as well as insurance costs. The Separation Agreement stated that "[b]oth parties agree to keep their individual retirements savings accounts to date with no future benefit from either party as [Wife] is assuming household debt and commitments of \$576,302."² It further provided that the parties would keep their

² Under the "Retirement Savings" section of the February 16, 2020 Separation Agreement, it stated:

- a. Both Parties will reach full SS retirement age at 67 – 13 years of earning potential.
- b. As both parties are fully employed, both have access and means to accumulate retirement savings over the next 13 years.
- c. Both parties agree to keep their individual retirement savings accounts to date with no future benefit from either party as [Wife] is assuming household debt and commitments of \$576,302 based on:
 - I. [Wife] assumes 75% of existing marital debt;
 - II. [Wife] commits to support their son until college graduation at an estimated cost of at least \$94,000 plus repay student loans of \$20,041 over the next three years; and

own life insurance policies and bank accounts. Household contents would be split between the parties.

On February 26, 2020, the parties executed a more detailed, notarized Marital Settlement Agreement (the “Agreement”), memorializing the terms of the previous Separation Agreement. It outlined the previous stipulations from the February 16, 2020 Separation Agreement regarding the distribution of marital property, personal property, health insurance, taxes, and retirement assets, and both parties waived the right to alimony.³

On March 27, 2020, Husband moved out of the marital residence, and both parties relocated their personal property to storage. Husband also changed his driver’s license address to a new Pasadena, MD address.

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- III. A gift of \$32,000 from [Wife’s] father to purchase a new car that was used to cover household bills during 2019 when [Husband’s] income declined thus leaving her with a note on the Tigan[;]
 - IV. \$38,000 was taken out of college savings in the last 8 months to cover monthly expenses due to [Husband’s] drop-in income – See attached[;]
 - V. In the past 24 months [Husband] has withdrawn \$19,501 in cash from bank accounts with no support for how the cash was spent; however, there is evidence of illicit sexting that included requests for cash gift cards[;]
 - VI. Sometime between May and July 2019, [Husband] sent a laptop to an online chat account.

³ With respect to “Retirement Assets,” the Agreement stated that the parties waived any legal right to any retirement account, including a pension plan, and the parties had “received full disclosure of any and all pension, 401K, annuity, and profit sharing plans for each party and have received full disclosure from the other.”

II.

Complaint

On May 21, 2020, Husband filed a Complaint For Limited Divorce, Alternatively, Absolute Divorce; To Set Aside Marital Settlement Agreement; Motion To Bifurcate And Other Relief. He asserted that he signed the Agreement without “understand[ing] his legal rights” because Wife “coerced and threatened” him through “undue influence, misrepresentation, and concealment of material facts as to the amount and value of property titled in Wife’s name alone.” Husband alleged that he “could not and did not choose to accept the terms of the alleged agreement, and thus did not execute it in a voluntary fashion with full knowledge and meaning of effect.” He further asserted that “Wife took advantage of [his] mental and emotional disability, bullied him, and repeatedly threatened him.” Husband contended that the Agreement should be set aside because the terms were “so unfair and inequitable or unconscionable.” Husband requested that he be awarded a limited or absolute divorce and alimony, and he requested a bifurcated hearing “to determine if the alleged agreement should be set aside.”

On June 25, 2020, Wife filed an answer alleging that Husband “voluntarily entered into the agreement with full knowledge of the contents of the agreement as he had negotiated the terms with extensive review of the financial records.” Wife alleged that Husband “did not sign the documents under duress or undue influence,” and he “was not threatened, nor forced to enter into the [A]greement.” Wife asserted that “there was no

confidential relationship between the parties” after they separated, more than seven months before the agreements were signed.

III.

Hearing on the Agreements

On February 21-22, March 31, and April 10, 2023, the circuit court held hearings on Husband’s complaint to set aside the Agreement. Husband testified that he did not have a college degree, but he attended a few years of college. At the time of the hearing, he worked for Prudential Advisors, where he sold “life insurance, long-term care, mutual funds, [and] some annuities.” He held a “Series 6 license and Series 63 license” as a sales associate or financial advisor. He previously worked at Allstate Financial, where he received “commissions and also some trails.”⁴ In 2019, his salary was \$80,000, and in 2020, his salary was \$50,000 or \$60,000. At Prudential, he was eligible for a bonus if he “hit a certain production at the end of the quarter,” but he had not earned a bonus since 2020. Prudential had awarded him a signing bonus of “about \$29,000,” but Wife “swept that out of the account.”

Husband stated that Wife “controlled 100-percent” of the family finances throughout their marriage. She said that she was a CPA and wanted to keep the household

⁴ Husband explained that “trails” come from commissions, such as “life insurance and mutual funds and annuities [that] have some partial income based on the residual.”

budget to herself.⁵ She told him not to open the bills when they were delivered; she said to “[k]eep them in a certain spot so they don’t get disorganized or lost.” She took the pay in his account and left an allowance of approximately \$200 for gas, food, and other expenses. He had several credit cards and a single checking account to write checks “to the housecleaner on a weekly basis,” as well as for the dry cleaning and “one guy who comes over to the house and some handyman stuff.” Husband asserted that he did not have online access to any shared bank accounts, credit card accounts, or loan accounts.

Wife decided that they should use their income to fund her work 401(k) because she had matching contributions from work. He did not know how much was in it. He knew she had a pension with work, but she refused to discuss details, saying “we’re fine.” Husband testified that Wife completed his personal taxes. In 2020, he asked Wife to see his 2019 tax return several times, but she refused, so he never signed the tax return.

Counsel showed Husband the Agreement from February 26, 2020, signed by both parties. Husband confirmed that the Agreement did not provide for him to receive any of Wife’s pension or retirement accounts. He retained an expert to value Wife’s pension after obtaining counsel and filing for divorce. He was “very blown away” by the value of Wife’s pension, and he would not have signed the Agreement, waiving his right to participate in her pension, if he was privy to the value of her pension.

⁵ A Certified Public Accountant (“CPA”) is “[a]n accountant who has sustained the statutory and administrative requirements to be registered or licensed as a public accountant.” *CPA*, BLACK’S LAW DICTIONARY (11th ed. 2019).

Husband testified that he had been treated for mental health issues for many years, including in 2019. He experienced depression and “had anxiety from the arguments.” Husband “was being treated for panic attacks where [he] would have complete mental breakdowns.” He was seeing a psychologist monthly for medication management, and he attended weekly therapist appointments. In 2019, he also saw a psychiatrist.

In July 2019, Husband suffered a “complete mental breakdown,” with bad panic attacks. That month, Wife discovered on his cell phone sexual text messages and photographs from other women. He and Wife had a bad argument. He then grabbed a bag with a handgun from his house and planned on shooting himself at his office. Husband called his son from his office “to say goodbye.” His son drove to pick up Husband and took him to Annapolis Medical Center. Husband then went to Sheppard Pratt hospital for approximately 12 days. Wife visited him “once or twice.” Following discharge, Husband lived in the guest bedroom of the marital home and reported his depression and anxiety worsening.

Counsel offered into evidence Husband’s psychological evaluation report, written by Dr. Bruce Turnquest, a licensed psychologist, on November 18, 2019. Dr. Turner wrote in the report that Husband “suffers from continued and significant symptoms of depression and anxiety” that is “related to both external factors (e.g. marital stress) and internal factors.” Dr. Turnquest diagnosed Husband with major depressive disorder, general anxiety disorder, and attention deficit hyperactivity disorder.

In January 2020, Wife told him that she wanted a divorce, and they needed to sell the marital home. In February 2020, he and Wife met with a realtor to discuss selling the marital home. At that point, he and Wife had only discussed selling the marital home; they had not discussed any other assets, debts, retirement plans, or pensions.

On February 16, 2020, Wife “slapped” the Separation Agreement in front of him at the kitchen table. “She was extremely forceful, yelling, [and] very argumentative.” Wife showed him several pictures from his email account or on his cell phone, including “sexual and graphic and salacious photos and conversations.” Wife accused Husband of cheating and asked him to sign the Separation Agreement. Husband asked Wife to look at the document, but “she threw pictures of . . . the texts and the pictures down” and asked how his mother would feel seeing the inappropriate texts and pictures. She said that if he did not sign the Separation Agreement, she would send them to his mother and his employers. Husband did not want that to happen, and he “was going to throw a panic attack,” so he signed the Separation Agreement. He was hyperventilating, crying, and shaking. Husband did not want his parents or employer to see the texts and photographs.⁶ He had not seen any of the information in the Separation Agreement prior to signing it. He did not contribute anything to the document, nor had he consulted with an attorney.

On February 26, 2020, Wife came to the marital home hysterical and mad. She asked Husband to “follow her to get something notarized.” Husband followed Wife to a

⁶ Even though he signed the Separation Agreement, Wife still sent some of his texts and pictures to his parents that evening.

notary located in a retail shopping center on Bay Ridge Avenue. Wife was holding the Agreement, and he asked to see it, but she said that he could see it when he signed it. Husband then walked out of the building, and Wife followed him to his car, stood behind his car so he could not escape, and began yelling at him.

Husband asked Wife to see the Agreement for a second time, but she refused. Wife then showed him “a text of what she was going to send to [his] employer,” so he decided to go back inside the notary’s office. Husband was crying and his “anxiety was through the roof.” He signed the document because he did not want anything sent to his employer. He was not fit to sign the Agreement.

On approximately March 18, 2020, Husband retained an attorney. He then sent Wife an email stating that he had retained an attorney and asking to terminate the Agreement because he believed that he had been forced into signing it. Wife was mad that he got an attorney involved.

Wife subsequently sent Husband an email asking if he was “going to be the one to tell [their son] that he [would] have to drop out of college because all of the college savings [would] be used on legal fees in a contested divorce” and that it was Husband’s fault. Wife further wrote: “[Y]ou have a sick addiction and threw away your family for sexual pleasures . . . face it and be a man.” Wife attached a document to the email that asked Husband to sign and affirm that “the written marital settlement agreement, executed on February 26th, is valid.” Husband did not sign that emailed document.

Husband testified regarding various text messages between him and Wife, which were admitted into evidence. One text message from Wife stated: “[J]ust remember Prudential doesn’t know about your dirty little secret,” which Husband stated referred to his “inappropriate texts and pictures.” Later text messages stated: “[I]f your parents bankroll you I will make sure that [our son] knows that they are at fault for him losing his future as well,” and “someone other than me needs to know how mentally ill you are.” Additional text messages stated: “[Y]our mom would be appalled if you told her the truth. You are a piece of shit and waste of oxygen.” On January 24, 2020, Wife texted Husband that he was “vile” and that “this is how you treat the one person that pays your mortgage, pays for your car, pays the utilities, pays for the food that you eat. You are a vile individual with no morals.” On February 29, 2002, Wife texted Husband: “Just remember, dear, before you go too far with your insults. Your work doesn’t know what a fucking stupid idiot you are when it comes to money nor your morals?”

Husband testified that, after the separation, Wife drove by the house “all the time.” In May 2020, tacks were placed under the tires of his vehicle. In June 2020, he called the police after his Wife drove by his house “yelling” at him because she thought he was selling the couple’s refrigerator.

With his Series 6 license, he “could sell variable products like mutual funds, variable annuities, variable life,” and with the Series 63 exam, he could sell to states outside Maryland. Husband signed a contract with his current employer, Prudential, during the fall

of 2019 and received a signing bonus of approximately \$30,000. He stated that Wife took his bonus, but he agreed that he had not traced that missing \$30,000.

On February 10, 2020, Husband opened his own checking account, separate from Wife. Two weeks after opening the account, Prudential deposited \$19,067.44 into the account.

Husband testified that, at the time he executed the agreements, he “lacked capacity,” stating that he was on “multiple medical drugs.” On February 14, 2020, when the realtor came to the marital home to discuss the future sale, he “thought we were just going to talk about her being potentially hired and then all of a sudden she pulls out some contracts that I never saw before.” He did not read the contract and did not say anything because, constantly through the years, Wife yelled at him that she was a CPA and knew more than he did. Several weeks later, Husband went to the realtor and asked her “to put things on hold.” The realtor then “tore up the contract.” Husband testified that he never informed his employer, Prudential, that he was suffering from mental health issues.

Counsel for Wife then showed Husband an email from Wife to Husband on February 16, 2020, with a document attached called “absolute divorce with consent agreement.” Husband testified that he had never seen the document before. It was possible that Wife did send him that email, but he never opened it.

On re-direct, Husband identified a bank statement from September 13, 2019, which showed a deposit of Husband’s Prudential bonus of \$29,552. The statement also showed a transfer of \$21,000 to an account Husband testified was Wife’s account.

Michael Goldberg, a tax attorney whom the court accepted as an expert witness, testified that Husband retained him as an expert in 2020 to review the parties' asset split and to review Wife's pension. He opined that the present value of Wife's pension plan was \$2,776,441, with a monthly payment of \$9,251.95.

Robert Reisinger, Husband's father, noticed that Husband and Wife began having marital difficulty in February or March of 2020. He received multiple email communications from Wife in February 2020, which consisted of "anything she could get ahold of to disparage [Husband]," such as photographs and "sexual communications with other women." She also discussed Husband's mental health issues.

Ms. Alex Sears, a realtor, testified that she met Husband and Wife at their marital home on February 14, 2020, to discuss listing the parties' property. The meeting was "one hundred percent professional," and "[e]verybody was . . . very pleasant." Although there were "obvious tensions in the household . . . there was no indication in any way that there was hesitation in, in signing the agreement." Both Husband and Wife signed the listing agreement during the meeting. Ms. Sears did not recall Husband ever coming to her office to rescind the contract. She never tore up the contract. The parties' marital home was never listed for sale, however, because the parties never decided on a "list price."⁷

Wife testified that she received her undergraduate degree at UNC-Chapel Hill in 1988 and her graduate degree, a Master of Business Administration, from Norwich University in 2004. She was a licensed certified public accountant, working for the

⁷ Husband subsequently testified that the house was in the process of foreclosure.

International Monetary Fund as a senior risk and controls officer, where she had worked for the past 23 years.

A typical day throughout her marriage involved waking up at 4:30 a.m. to arrive to her office in Washington, D.C., by 5:30 a.m. Later in the afternoon, she would pick up her son from school and “get him to his activities.” Husband “had morning duty with the son.” After waking up their son and taking him to school, Husband “basically set his own schedule for the rest of the day running appointments all day long.”

Beginning in 2016, Wife’s marriage began to break down due to co-parenting and financial struggles. She was “the saver type,” but Husband “was more of a spender,” who “basically put everything on a credit card and worried about how he was gonna pay the credit card off later.”

The parties were “cash-positive” through 2007, until the financial and banking crisis. The Vacation Property in North Carolina was intended as an investment property, but “it’s rented at a loss of about \$8,000 a year since [the parties] have owned it.” During Husband’s most financially successful year, he financed a boat in his name alone.

Wife stated that the last time she had marital relations with Husband was 2018. She was suspicious that Husband was still sexually active with other women, however, because “he continued to get his Viagra refilled up through 2019.” In July 2019, Wife noticed through bank statements and credit card statements that Husband had “withdrawn a total of . . . almost \$20,000 in cash out of one of the bank accounts” and spent “thousands of dollars [] buying gift cards” for places such as Home Depot and Staples.

On July 6, 2019, Wife saw a text message on Husband's phone stating: "[H]ello, my love. I just want to hear your voice." When Wife confronted Husband, he told her that it was a wrong number. Wife told Husband to spend the night on his boat, which he refused. Husband then gave Wife his phone, where she discovered that he had text messages from multiple women with "a lot of salacious pictures" that Wife stated "were so vile." Wife spent the night in a hotel, and when she returned, she told Husband to start sleeping in the guest bedroom.

On July 13, 2019, Husband admitted himself to Anne Arundel County Medical Center. Husband then went to Howard County Sheppard Pratt Center for approximately 12 days. During this time, Husband gave his son his phone to hold onto. Wife and son then went through Husband's phone and learned that he "was engaging in online relationships, multiple of them, with women that were younger than [their] son." After Husband was discharged, the parties attended two joint therapy sessions for Husband's sexual addiction. Wife stated that, at that point, the trust issues "were huge."

Soon after Husband was discharged from the hospital, he obtained employment with Prudential. Husband's bonus from Prudential was deposited into his Capital One checking account and "was used to pay taxes due." Wife did not misuse those funds, and approximately \$4,000 was set aside in Husband's boat savings account to offset some of the cost of the boat.

On December 31, 2019, Husband texted Wife: "[I]f you want a divorce, just ask for it." The next morning, she and Husband began to negotiate a settlement for divorce. They

began “dividing the household items” and discussing “who wanted what and what was considered marital property.” Negotiating the settlement for divorce was a smooth process “[f]or the most part” because “it was very obvious who was gonna want what in the house.”

By January 11, 2020, she and Husband had “started finalizing what to do with the household items.” Because their “cash flow was so strapped,” they wanted to avoid a costly divorce. Wife approached Husband about pursuing a collaborative divorce, where the parties amicably divide up their marital assets and liabilities, which reduces the legal cost. Husband agreed, so they began figuring out what needed to be divided. At that time, they had approximately \$300,000 in equity in the marital home, but the Vacation Property, was “a distressed asset.”

Wife and Husband began drafting the Separation Agreement in a Word document by addressing several topics, including taxes, houses, insurance, retirement, and bank accounts. She and Husband would talk over dinner from January 11, 2020, until the first Separation Agreement on February 16, 2020, to discuss the division of expenses and assets.

At the time the first Separation Agreement was executed on February 16, 2020, the parties had approximately \$850,000 of debt. She changed the total debt to \$790,000 in the final Agreement because:

[Husband] was very worried about cash flow and being -- working with Prudential, the fact that his cash flow was not, not being as good. So we agreed that we would split the house -- the proceeds from the house 50 percent. With [the Vacation Property], we, we came up with two options. There was of course 50/50 option, which meant that both of us would have to contribute to the mortgage and both of us would have to contribute to the loss to bring that, to bring that whole because it was a vacation rental property and so we had to keep the lights on and we had to keep everything working

down there. Ultimately, [Husband] did not want to be -- take responsibility for the debt [at the Vacation Property], and so I just -- I agreed to take that on. That alone was almost a half a million dollars in debt. I agreed to take on the obligations for [son], his tuition, his student loans. [Husband] rode the route of, he's 18. I'm not responsible for him anymore, so I don't want to pay for anything related to him. With the cars, we had four cars. Two were paid off. [Husband] took the two that were paid off. I assumed the payments for the two that had notes on them. I'm trying to think of what else. What else was there in debt? The operating loss, the credit -- we split the credit cards. The decision there was to split them. Whoever had taken out the card and it was legal in their name would service that debt going forward.

Wife explained that she "agreed to take on the bulk, almost 80 percent, of the marital debt."

Wife further explained the process of how her pension allocation was written in the final Agreement:

So this being three years ago, at that point we, we realized that both of us have, you know, 15, 16, 17 years to work in the future to earn money. I'm a salaried employee. I don't have -- I don't get bonuses. I get very small raises. There is no profit-sharing at the International Monetary Fund. So I, I, I'm doing good if I get a, a one percent raise a year there. That's -- I think that's -- we're a quasigovernmental agency.

[Husband], on the other hand, is commission-only. He has the potential to earn two and three times the amount of money I did. And so [Husband] traded future cash flow for having cash flow upfront and being able to not have to -- have to pay off this -- all this debt that we had, had built up over time. So the offset was that he would keep his retirement vehicles that he had. He had three at the time. There was a supp. Prudential offered a pension, and he had something else called an RMA that to this day I don't even understand what it is, but he said it was part of his retirement package.

I get a pension from the IMF. There's a mandatory contribution to that. I have no say-so or control over how that pension works. And then there was a, an annuity that were dribs and drabs of, you know, money I have accumulated from previous employment then that [Husband] had actually invested for us. So we agreed that we -- both of us would keep our pensions. And so the -- my pension would be the offset to taking on the debt for [son], which we calculated at that time was almost \$100,000 over his education

'cause he was just a freshman at that point in time, plus the negative cash flow from the mortgages and other -- and student loans and everything else that we had.

Wife testified that Husband's testimony that "he did not have access to bank accounts other than the one checking account with a debit card" was inaccurate; the parties had three joint checking accounts. Husband did not tell her "what he was going to spend or what he had spent or what he had purchased on his American Express account," nor his credit card account with Capital One. The reason why she assisted Husband with payments to his credit card accounts was because Husband did not like administrative tasks.

Regarding Husband's testimony that Wife would take his money and move it into different accounts after he was paid, she stated:

[W]e had three joint checking accounts. His commissions came into one particular checking account that was the one tied to his debit card. We paid all of our family bills from a different joint checking account, so of course we had to move his, his income -- his money when it came in from his debit card account to the family bills account in order to pay his -- all of our bills, including his credit card bills.

Husband "always had access to cash," and she did not assist Husband with purchasing his Jeep Grand Cherokee, his Jeep Commander, or his Volkswagen Jetta. She asserted that, throughout her marriage with Husband, she had never "been able to control, direct or manage [Husband's] actions or behaviors." Moreover, since 2004, Wife completed the family's taxes through TurboTax, which was accessible to Husband through the family computer and was not locked through passwords or any other lock restrictions.

Counsel for Wife showed her the “Proposal for Collaborative Divorce” from January 19, 2020. Wife explained that this proposal was the “first pass of” splitting up “all the other assets and liabilities,” such as

tax filings; what we’re gonna do with the house; how we’re going to support our son []; health insurance; let’s see, club memberships. At the, the second page there’s also all the other things that we hadn’t added to this document yet. So that was dealing with the credit cards, with [the Vacation Property], what we were gonna do with the motor yacht, what we were gonna do with the cars, retirements and so forth.

Counsel for Wife then showed her the “Revised, January 2020, Proposal for Collaborative Divorce.” Wife stated that the revised version was “the result of the . . . conversations that we had on the 19th” and was “expanded to talk more about the other assets and liabilities.” Among other things being discussed was how to divide the Vacation Property, how the vehicles would be divided, and what to do with life insurance policies.

Counsel for Wife then showed her the “Proposal for a Collaborative Divorce” from February 9, 2020, which Wife asserted was drafted “between the 20th of January and the 9th of February.” She and Husband were still discussing items and negotiating to get to an agreement on how to divide things, “but the biggest change was that [Husband] did not want to take on any of the debt of the [Vacation] property, so [Wife] had agreed to take on that debt and the negative cash flows.” Moreover, the parties agreed that “[Husband] would keep the boat and if he chose to sell it, then he would just keep the proceeds from the sale for himself,” which they “estimated could be anywhere from ten to twenty thousand dollars given the market at that time.”

The parties agreed to additional changes on February 14, 2020, as follows:

[W]e decided to not split up our retirements -- my retirement, that, that whatever retirement vehicles we had in our name we would keep. The rationale for that was twofold. One was there was significant debt I was taking on and that needed to be offset somewhere. So I'm taking on current debt for future cash flow. [Husband] was wanting to have more security now and being able to have either access through selling assets or not having to take on debt. And we -- at this point in time we -- I had also uncovered, you know, the \$20,000 in cash withdrawals, and so that needed to be offset as well.

* * *

We also went over my pension projection. This was -- I'm able to run pension projections at work, and this one was using our separation date of July 6th of 2019 showing that -- at that point in time what my pension would be, and it was considerably less than what [Husband] had been earning on average. So there was definitely an ability for him to deal with his future cash flows. On February 16, 2020, the changes had been made, so Wife and Husband decided to change the name to "Absolute Divorce with Consent Separation Agreement."

Counsel for Wife then showed Wife an email from February 3, 2020, where she sent Husband a "Revised Collaborative Divorce Settlement Agreement" from her Comcast email. She asserted that this was only "one illustration of the sending of the agreement via email" because she lost access to that email address in 2021. Wife explained that she regained access to her email account after asking Husband's counsel for assistance.

Wife disputed Husband's testimony that she "slapped" the Separation Agreement down on February 16, 2020. The day before, Husband had texted her, stating: "I will be ready to talk tomorrow." The only change Husband requested was a provision that the parties would not publicly discuss the reasons for the divorce.

After the agreement was signed, Wife asked her attorney "to review the document and to then proceed with the divorce filings." Wife's attorney added "more legalese

boilerplate [language] to the document.” She received the Agreement back from her attorney on February 26, 2020, and she and Husband reviewed it together when he returned home from work.

The Agreement needed to be notarized, so both parties drove in separate cars to the notary located on Bay Ridge Avenue. Wife disputed Husband’s testimony that she followed him out of the office, blocked his car, or threatened him. She testified that she had never blackmailed Husband, nor had she coerced Husband to obtain his signature on the agreements. Wife stated that she had never had any phone contact with Husband’s supervisors at Prudential.

Wife testified about her communications with Husband’s parents in February 2020. On February 13, 2020, her intention was to make sure that his parents were aware of the breakdown of the marriage so that he could get emotional support from them. On February 26, 2020, she emailed Husband’s parents because she had found out that Husband was sending gift cards to women, and she felt that he was being conned and she was done helping him. She “wanted to make his parents aware in case they were willing to step in and help.”

During the first six weeks after the parties signed the Agreement, Husband did not act like he was not going to honor the Agreement. Husband packed up his belongings, and the house was divided. The parties held a yard sale in early March, and Husband was “actively apartment hunting.” Husband also abided by terms of the Agreement, such as closing his bank account, separating his cell phone from the family plan, taking possession

of the two Jeeps, and moving out of the marital home. Husband made some repairs on the marital home that were suggested by the realtor, which also was consistent with the Agreement.

Husband further abided by the Agreement by allowing Wife to become responsible for the mortgage, insurance, taxes, and related fees for the Vacation Property. Husband retained the household furnishings that they divided, as well as his “motor yacht.” Wife had “no indication that anything was wrong at that point.” To her knowledge, Husband did not have a history of mental health issues, but he had expressed “anger issues every now and then” and “a little anxiety, but nothing out of the norm.”

On cross-examination, counsel for Husband questioned Wife about her knowledge of Husband’s alleged mental health issues. She admitted that, in the February 13, 2020 letter she wrote to Husband’s parents, she wrote that Husband had “downward spirals of emotional instability since [she] was pregnant with [their son],” and that, after their son went to college, Husband “seemed to slip into depression.” Although she wrote in her letter that Husband experienced “emotional instability,” and that Husband was “very ill mentally,” she “wouldn’t call it that now” because she “was in quite a traumatic state at that point in [her] life” and “very emotional.”

Counsel for Husband then admitted into evidence a payroll statement for Wife showing an annual salary of \$189,070 in 2020. Wife confirmed that she had served as an external auditor for the Per Jacobsson Foundation, fundraising chair for the Severn Sailing

Association, and the treasurer of the Annapolis Junior League. Wife testified that, throughout their marriage, she and Husband completed their taxes together.

During closing argument, counsel for Husband argued that the Agreement should be overturned because there was unconscionability, nondisclosure, and undue influence. Husband would not have waived his right to receive part of Wife's pension if she had fully disclosed all her financial assets prior to the execution of the Agreement. He asserted that Wife was the dominant person throughout the marriage because she controlled the finances, had a master's degree and a CPA license, and she had worked as an auditor in the financial services industry. He argued that, at the time that the Agreement was executed, the parties had negotiated only selling their marital property and had not negotiated any "significant other assets," such as Wife's pension, retirement assets, or her salary. Wife had not shown Husband her W-2s, 1099s, or other bank statements prior to the execution of the Agreement. He reiterated that Mr. Goldberg's assessment that Wife's pension payment would be "a little over \$11,000 per month" at her retirement was "unrebutted" and "uncontradicted."⁸

Counsel for Husband argued that Wife's finding of new documents that showed the party's negotiations and communications about the Agreement after being "in litigation for three years" was suspect. He contended that there was no evidence that Wife sent Husband

⁸ Mr. Goldberg testified that Wife's present value of her pension was \$2,776,44, which amounted to \$9,251.95 per month "based on the statement that was available at the time."

the Agreement prior to the execution, and there was no evidence that the terms of the Agreement were negotiated other than selling the marital home.

Counsel next argued that Husband signed the Agreement under duress. Wife was “aware of and took advantage of” Husband’s mental state. Moreover, Wife blackmailed Husband into signing the Agreement by threatening to send his parents and his employer his communications with other women. Wife only sent Husband “the email with the mutual consent language” after she found out that he had consulted with an attorney because “she kn[ew] she bullied him” and that “the document [wasn’t] fair” because she “took advantage of his mental state.”

Counsel next argued that the court should overturn the Agreement because it was unconscionable due to Wife’s failure to disclose her pension to Husband and because Wife bullied him to sign under duress. Counsel contended that Wife was the superior spouse who had “taken care of the family finances in support of the family,” and given the income disparity, it was unconscionable that he would not receive some alimony. Counsel argued that the Agreement had to be set aside.

Counsel for Wife first argued that the issue before the court was the validity of the settlement agreement executed on February 26, 2020. Any text messages after that date should not be given any weight. With respect to Husband’s allegation that he did not have the mental capacity to sign the Separation Agreement on February 16, 2020 or the Agreement on February 26, 2020, counsel asserted that this claim was “uncorroborated and self-serving.” Counsel argued that Husband failed to meet his burden to show incapacity,

noting that Husband failed introduce “any expert opinion of any physician, psychiatrist, other qualified provider, any therapist of any kind, nor even a lay person opinion” that he “lacked the mental capacity to contract on February 16th and February 26th of 2020.”

Counsel argued that Husband did not meet the “burden of establishing that a confidential relationship existed by clear and convincing evidence.” He stated that the evidence made clear that Husband was not a dependent spouse. Rather, he was “a proven financial professional, selling and supporting complex financial offerings.”

Regarding unconscionability, counsel stated that Husband failed to show procedural and substantive unconscionability, both of which must be shown for a court to decline to enforce a contract. Counsel argued that Husband’s testimony was not believable, noting the inconsistency between his testimony that he met with the realtor to void the contract, but the realtor had no recollection of such a meeting with Husband. Counsel further commented on Husband’s pattern of untruthfulness, including the report by Dr. Turnquist, which attributed to Husband the statement that he earned a Bachelor of Arts in Business Administration, but Husband testified that he did not have such a degree. Because there was no evidence that the agreements executed on February 16 and 26, 2020, were unconscionable due to undue influence, coercion, or duress, the Agreement should be found to be valid and enforceable.

During rebuttal, Husband contended that the court should set aside the Agreement because Wife made misrepresentations that amounted to fraud. Moreover, Husband’s

psychological evaluation was sufficient to establish that he was suffering from mental incapacity when he signed both agreements.

Counsel for Husband contended that the Agreement was both procedurally and substantially unconscionable because Wife was in control of the finances and did not fully disclose her full income or pension to Husband, despite taking responsibility for more of the marital debt. Wife's bullying of Husband to sign both agreements also amounted to duress. Finally, counsel asserted that, even if the court did not find that there was "fraud, abuse, bullying, and blackmail," it could still overturn the Agreement based on "inadequate disclosure" or "unconscionability."

The circuit court issued an oral opinion from the bench, denying Husband's motion to set aside the Agreement. As discussed in more detail, *infra*, the court held that there was no confidential relationship, unconscionability, or duress, and the parties' February 16, 2020 Separation Agreement and February 26, 2020 Settlement Agreement were valid and enforceable. The court stated that the hearing sheet would serve as the order of the court.

IV.

Divorce Hearing

On April 17, 2023, the court held an uncontested divorce hearing. Counsel for Wife then asked the court to incorporate without merging the Marital Settlement Agreement in the divorce decree. Husband testified that he did not "agree that [he] entered into or agreed to the terms that are set forth in [the Agreement]."

The court stated that it would sign the judgment of divorce submitted by Husband. On April 17, 2023, the court issued an order granting Wife’s counter-complaint for absolute divorce and incorporating but not merging the Marital Settlement Agreement dated February 26, 2020.

This appeal followed.

STANDARD OF REVIEW

The factual findings of a trial court in a divorce case are reviewed by the clearly erroneous standard. *Flanagan v. Flanagan*, 181 Md. App. 492, 521 (2008). A trial court’s factual findings are clearly erroneous when and if there is no competent and material evidence to support it in the record. *Innerbichler v. Innerbichler*, 132 Md. App. 207, 230, *cert. denied*, 361 Md. 232 (2000). We consider questions of law, however, under the *de novo* standard of review. *Flanagan*, 181 Md. App. at 521.

DISCUSSION

Husband challenges the parties’ Settlement Agreement on several grounds. Before turning to the specific contentions, we note that “separation agreements . . . are generally favored by the courts as a peaceful means of terminating marital strife and discord so long as they are not contrary to public policy.” *Turner v. Turner*, 147 Md. App. 350, 403 (2002) (quoting *Gordon v. Gordon*, 342 Md. 294, 300-01 (1996)); *see* Md. Code Ann., Family Law (“FL”) § 8-101(a) (2019 Repl. Vol.) (“A husband and wife may make a valid and enforceable deed or agreement that relates to alimony, support, property rights, or personal rights.”). A separation agreement is a contract and “is subject to the same general rules

governing other contracts.” *Rauch v. McCall*, 134 Md. App. 624, 637 (2000), *cert. denied*, 362 Md. 625 (2001).

“A postnuptial agreement is valid and enforceable, unless the agreement is unconscionable or the byproduct of fraud, duress, mistake, or undue influence.” *Lloyd v. Niceta*, 485 Md. 422, 443 (2023). “[S]eparation agreements not disclosing on their face any injustice and inequity are presumptively valid and the burden to prove that their execution was caused by coercion, fraud or mistake is upon the party making the allegation.” *Jackson v. Jackson*, 14 Md. App. 263, 269 (1972).

With that background, we turn to Husband’s specific contentions.

I.

Confidential Relationship

Husband contends that he “was dominated by Wife throughout the marriage and that a confidential relationship existed between the parties,” and the court erred in concluding to the contrary. Wife contends that the circuit court “properly applied the law concluding there was no confidential relationship between the parties” because “Wife was not the dominant spouse during the parties’ marriage.”

A confidential relationship has been described as one “where one party has dominion over the other person, and the relationship is such that the person with greater influence is expected to act in the best interest of the other person.” *Brass Metal Prods., Inc. v. E-J Enters., Inc.*, 189 Md. App. 310, 356 (2009). Maryland law does not presume the existence of a confidential relationship in transactions between husband and wife.

Lasater v. Guttmann, 194 Md. App. 431, 459 (2010), *cert. denied*, 417 Md. 502 (2011).

“Absent the presumption of a confidential relationship, Husband bears the burden of establishing that a confidential relationship existed by clear and convincing evidence.”

Shih Ping Li v. Tzu Lee, 210 Md. App. 73, 110 (2013), *aff’d*, 437 Md. 47 (2014).

In *Hale v. Hale*, 74 Md. App. 555, 564, *cert. denied*, 313 Md. 30 (1988), this Court explained:

[T]he question of whether a confidential relationship exists between husband and wife [is] a question of fact. Among the various factors to be considered in determining whether a confidential relationship exists are the age, mental condition, education, business experience, state of health, and degree of dependence of the spouse in question.

(quoting *Bell v. Bell*, 38 Md. App. 10, 14 (1977)).

A.

Circuit Court’s Ruling

In addressing whether a confidential relationship existed between the parties, the court noted that, in the context of a husband and wife, the existence of a confidential relationship is not presumed, but rather, it is an issue of fact for the court. The court noted that, “[a]mong the factors to be considered in determining whether a confidential relationship exists between spouses are the age, the mental condition, the education, the business experience, state of health, and degree of dependence upon the spouse -- of the spouse in question.”

The court found that Husband was in his middle 50s, and “he suffered, to some degree, from anxiety, from ADHD, from depression, [and] possible anger issues.” At one

point, there was an indication of suicidal ideation. Husband also had high blood pressure and diabetes. Husband is a high school graduate, with some college education.

With respect to Husband's employment, the court stated:

[H]e had been employed for a number of years in sales positions with Allstate and later Prudential, and had been continuously engaged during that time selling insurance and financial products to clients from his offices here in Anne Arundel County. As Counsel points out, he had at some times passed the Series 6 exam. And another time failed that later. He had passed the Series 65 exam. And that may, obviously, mean more to you all than it does to me, but I do know that there is some sophisticated level of study and preparation that goes into those things because those people who sell those financial products that are enabled by those exams do have a duty that they owe to their clients.

Addressing Husband's level of dependence upon Wife, the court noted that "[a] confidential relationship can exist between spouses when one spouse is dominant [and] the other one is dependent." The court found that the evidence demonstrated persuasively that Husband "was generally an independent person who did not rely entirely on [Wife] or any other particular person, for that matter, with regard to the sorts of decisions that are at issue in the negotiation of marital agreements that are the subject of this case." The court noted that Husband had been in the business of selling insurance and other financial products for a substantial period of time. Husband "devoted significant time, and talent, and treasure to market, and cultivate, and maintain client relationships, and seems to have been very effective at doing that." The court inferred from that evidence "a level of sophistication on the part of [Husband]," which led to the court's conclusion that Husband was not dependent on Wife "within the meaning of confidential relationships."

Although Wife generally managed the couple's financial responsibilities, Husband was able to make a good income selling financial products, and he "was able to negotiate the purchase and financing of at least two automobiles and a 32-foot boat during the marriage without any assistance from his [W]ife." Accordingly, the court found that there was not "a dominant dependent relationship between [Wife] and [Husband]," but rather, "the couple, like most couples, divided their labor in the execution of normal marital chores and duties according to their individual aptitudes." Husband testified that he could have paid bills and done other things for himself, but he chose not to. The court found that there was not "reliable evidence that [] amounted to her controlling him." The court acknowledged Husband's mental health difficulties, but it found that these difficulties did not "put him in a dependent position, vis-à-vis, [Wife]."

The court found that the parties had discussed the division of their property due to the dissolution of the marriage for months prior to the execution of the February agreements. It rejected Husband's assertion "that [Wife] confronted [Husband] like a bolt out of the blue with a take-it-or-leave-it agreement for the very first time on February 16, 2020." The court stated:

We have evidence that in December of 2019 he said, "If you want a divorce, ask for it." So even if that was the first moment, I know that by that point -- by the time of the February 16th agreement, they had been discussing this for at least six weeks. And I will infer that it had been for some period of time before this.

While I have no doubt that what [Husband] heard on that day was, sign this or I am going to tell your parents or your employer about what I found on your phone and in our bank records, I am convinced that [Wife's] motive in sharing some of that information with [Husband's] parents was more about

letting them know that their son needed help than it was about exacting vengeance against him for betrayal of their marriage vows or blackmail, as it has been suggested.

Accordingly, the Court finds with respect to the agreements at issue in this case, [Husband] acted as an independent person who did not entirely rely on [Wife]. Thus, there was no confidential relationship between the parties and the execution of the February 16th and February 26th agreements.

B.

Analysis

Husband acknowledges that the court addressed the requisite factors in its ruling, but he argues that the court did not give the evidence sufficient weight. Specifically, he contends that the court’s finding that he was not dependent on Wife was clearly erroneous.

We disagree. The record reflects that the court carefully reviewed the requisite factors. It noted Husband’s mental health issues, but it found that they did not “put him in a dependent position.” The court looked to Husband’s employment, and it found that there was a “level of sophistication” needed to pass the exams and to sell these complex financial instruments. In addition to his employment, Husband negotiated the purchase and financing of two automobiles and a boat during the marriage without any assistance from Wife. Husband and Wife “divided their labor in the execution of normal marital chores and duties according to their individual aptitudes.” Husband said he could have done those things, but he chose not to do them. The court also found that the parties had discussions and negotiations with respect to their property and how to allocate the marital debts. *See Bell*, 38 Md. App. at 13-14 (in a marital settlement agreement dispute, the Court affirmed

the circuit court’s finding that no confidential relationship existed between husband and wife, noting that wife had negotiated several changes in the agreement).

Based on all the evidence, the court found that Husband acted as an independent person who did not rely entirely on Wife, and therefore, there was no confidential relationship between the parties. Based on the record, we cannot conclude that the circuit court’s factual findings in this regard were clearly erroneous.

II.

Disclosure of Financial Information

Husband next contends that Wife failed to disclose financial information to him and “concealed significant assets” prior to the execution of the agreements, and the court erred in not considering this evidence. Specifically, he contends that Wife did not disclose the value of her retirement accounts, including her pension, she refused to share her income or tax returns, and she did not include bank account balances in either of the agreements.

Wife contends that “the trial court correctly found [her] financial disclosure to Husband was sufficient due to Husband’s participation, his access to the parties’ bank accounts, financial details and the contents of the iterated drafts (that included pension information) leading to the February 16, 2020 Agreement.” Wife argues that “exhaustive disclosure to Husband was provided.” She notes that the Proposal for a Collaborative Divorce, dated January 20, 2020, and introduced into evidence, provided that Wife had a pension and 50% of Wife’s pension payment was \$4,560.98.

In *Cannon v. Cannon*, 384 Md. 537, 574 (2005), the Supreme Court of Maryland explained the standard for financial disclosure, as follows:

The purpose behind a requirement of disclosure or knowledge is “so that he or she who waives can know what it is he or she is waiving.” [*Hartz v. Hartz*, 248 Md. 47, 56-57(1967)]. If this is proven by the enforcing party and insufficiently rebutted by the attacking party, there can be no overreaching and the attacking party must resort to other common law contract defenses to attack the validity of the antenuptial agreement.

The court rejected Husband’s argument that Wife did not provide adequate disclosure. The court found that the parties had negotiated prior to the time the Agreement was signed. It noted that Husband filed his taxes jointly with Wife in 2019 and signed the tax return, affirming that the information was accurate, so he had “some knowledge of [Wife’s] income” prior to signing the Agreement. The court found that his testimony that he trusted Wife was “not a reason to believe that he was working with any less knowledge than he wanted to have.” With respect to Wife’s pension assets, although they were significantly more than Husband’s, she took on 85% of the marital debt and college tuition costs for the parties’ son, while Husband only took on 15% of the marital debt, which could explain the pension waiver.⁹

Although early documents showed a situation where Husband would receive up to \$4,560.98 a month as half of Wife’s pension, the negotiations ultimately resulted in the February 16, 2020 Settlement Agreement, where the parties agreed that they would “keep

⁹ As Wife asserts, the evidence in the record shows that the parties negotiated with respect to retirement assets.

their individual retirement accounts to date with no future benefit from either party” because Wife was “assuming household debt and commitments of \$576,302.”¹⁰

The court noted that whether it was “a good deal” was not before the court. The court was within its discretion to accept the evidence by Wife that there was full disclosure and it did not abuse its discretion in rejecting Husband’s argument that Wife failed to sufficiently disclose assets prior to Husband’s signing of the Agreement.

III.

Unconscionability

Husband next argues that the Agreement was unconscionable. He asserts that the court erred in finding no procedural or substantive unconscionability.

Wife contends that “the trial court’s finding [that] the marital agreements are not unconscionable is correct.” She asserts that the court’s findings are “supported by iterations of the agreements reflecting the parties’ discussions, negotiations, and exchanges, including Wife’s agreement to accept 85% of the marital debt and sole responsibility for the parties’ son’s college costs and debts.”

¹⁰ Husband contends that the court should have disregarded the documents showing prior negotiations because Wife found them during the hearings. He asserts that her testimony that they showed prior negotiations was not credible. The credibility of a witness, however, is for the trial court, not the appellate court. *See Smith v. State*, 415 Md. 174, 185 (2010) (“Because the fact-finder possesses the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence.”).

A.

Circuit Court's Ruling

With respect to the issue whether the Agreement was unconscionable, the court found that the parties had been discussing divorce for some time, and there was no procedural unconscionability. The court also found that there was no reliable evidence to suggest that the parties' February 16 and February 26, 2020 agreements "were shockingly unfair, or unjust," and accordingly, it "decline[d] to fin[d] substantive unconscionability in this case."¹¹ The court rejected Husband's argument that the agreement distributed the marital estate in a way that would shock the conscience. With respect to the argument that the waiver of alimony was unconscionable, the court disagreed, noting that it could deny Husband alimony based on a finding that he was self-supporting.

B.

Analysis

Unconscionability encompasses both procedural and substantive unconscionability. *Walther v. Sovereign Bank*, 386 Md. 412, 426-27 (2005). *Accord Lloyd v. Niceta*, 255 Md. App. 663, 684-86 (2022), *aff'd*, 255 Md. 422 (2023); *Freedman v. Comcast Corp.*, 190 Md. App. 179, 207-09 (2010). "The burden of establishing the presence of both is on the

¹¹ The court then found that neither of the agreements were "adhesion contracts," which "exists when the parties are of such disproportionate bargaining power, that the party of the weaker bargaining strength could not have negotiated for variations in the terms of the adhesion contract." The contracts in this case, however, were not adhesion contracts because they were the product of discussion and negotiation by the parties, and "modifications made along the way." Whether the end result was a good deal was not the issue.

party challenging the . . . agreement.” *Lloyd*, 255 Md. App. at 686 (quoting *Stewart v. Stewart*, 214 Md. App. 458, 478 (2013)). “Procedural unconscionability can be found when one party lacks meaningful choice *in the formation* of the contract; substantive unconscionability is found when the terms are ‘so one-sided as to shock the conscience of the court.’” *Id.* at 685-86 (quoting *Shih Ping Li*, 210 Md. App. at 112).

Maryland courts can “void a separation agreement when its terms are so unjust and unfair as to be unconscionable.” *Williams v. Williams*, 306 Md. 332, 342 (1986). “[A] basic aspect of unconscionability is that it must ‘shock the conscience’ of the court when it considers the terms and results at the time the contract is entered.” *Cannon*, 384 Md. at 580. “Although the question of whether a contract is unconscionable is a question of law and subject to *de novo* review, the factual findings of the trial court that inform its judgment are subject to the clearly erroneous standard.” *Doyle v. Fin. Am., LLC*, 173 Md. App. 370, 391 (2007); *see* Md. Rule 8-131(c). The court found that the parties had discussions regarding the divorce for some time, and there was no procedural unconscionability. The court further found that the Agreement was not “shockingly unfair or unjust,” and therefore, the court declined to find substantive unconscionability.

The record supports these findings. As indicated, the record supports the court’s findings that there were negotiations between the parties, and although Husband waived his right to Wife’s retirement funds, this could be explained by Wife’s agreement to assume 85% of the total marital debt. Wife “took the substantial financial burdens that [Husband] owed” while Husband “walked away with zero debt,” as well as the title of two vehicles

that were already paid off. The court did not err in finding that the Agreement was not unconscionable.

IV.

Duress

Husband contends that the court erred in rejecting his argument that he “signed the Agreements under duress,” asserting that the court’s analysis was “woefully short and deficient on this important issue.” He argues that he had no meaningful choice whether to sign the Agreement because Wife bullied him with threats to inform his parents and employer about his interactions with other women online and his mental health challenges.

Wife contends that “the trial court properly found the Marital Agreements were not the product of duress.” She argues that Husband failed to offer any corroboration for his claim of duress.

A.

Circuit Court’s Ruling

In addressing Husband’s argument that he signed the agreements under duress, the court stated:

[Husband] put on a lot of argument today about the text messages that were in evidence, about [Wife] belittling him through the words of -- with some, let’s just say, less than ideal language. That language, while I don’t want to approve of it, does not shock the Court, again, because this is often, unfortunately, how divorcing people communicate. Emotions are raw, feelings are hurt. Does it look good? No, it doesn't look good. Does it rise to duress? No, I don’t think so, even in considering the fact that [Husband] does have some mental health concerns, was struggling, I think, with some guilt of his own based on the conditions that existed at the time surrounding

the dissolution of the marriage. Again, it doesn't look good, but I don't think it amounts to bullying.

I find that there was some horse trading. Again, back to that issue for a moment. While I acknowledge that [Wife's] pension assets are -- add up to a little bit more than \$3 million, or at least that is what we think at the time they were. And [Husband] had much less than that. She was taking on the marital residence, she was taking on the [Vacation P]roperty, she was taking on college debt for [the parties' son] -- or college. I don't know if it resulted in debt.

* * *

There was an apportionment of the martial debt or of debt, let's just say, whereby [Wife], again, with the dominant income, at very least, took on 85 percent-ish of that debt. And [Husband] would have taken on 130,000 or about 15 percent of that debt. And I find that that is, obviously, a benefit to him and might explain an alimony waiver, a pension waiver, and what they did as far as their real property going forward.

Is the agreement a little bit one-side? Yes, I think it is. I mean, I am not sitting up here on an ivory tower where I can't recognize that it is one-sided. But I believe that [Husband] may have negotiated better for himself had he gotten an attorney -- the right kind of attorney involved sooner. He may have negotiated more effectively for himself had he not been under the stress. I am not -- I am intentionally not calling it duress, but under the stress of his own actions, which I say, in large part, contributed to the estrangement of the parties.

Yes, [Wife] did say, why should I support you if you are in love with somebody else? And I don't think that emotion -- the emotion behind that is wrong or unfamiliar to any of us here in this room.

B.

Analysis

The test for duress includes "two elements: '(1) a wrongful act or threat by the opposite party to the transaction, . . . and (2) a state of mind in which the complaining party was overwhelmed by fear and precluded from using free will or judgment.'" *Food Fair*

Stores, Inc. v. Joy, 283 Md. 205, 217 (1978) (quoting *Plechner v. Widener College, Inc.*, 418 F. Supp. 1282, 1294 (E.D. Pa. 1976)). As this Court has explained:

Duress which permits avoidance of a contract consists of the use of coercion, the victim's loss of the ability to act independently and the entry by the victim into the contract. 17 C.J.S. Contracts § 168 (1963). The burden of proving each and every one of these elements remains with the person seeking to set aside the contract.

Blum v. Blum, 59 Md. App. 584, 595 (1983). A finding of duress is reviewed for clear error. *Bell*, 38 Md. App. at 18.

Here, in addressing the claim of duress, the circuit court noted Husband's arguments that Wife's text messages to him were belittling. The court acknowledged that the language was "less than ideal," but it noted that "this is often, unfortunately, how divorcing people communicate" when "[e]motions are raw, feelings are hurt." The court found, however, that the text messages did not amount to bullying or "rise to duress." Based on the record, we cannot conclude that the circuit court's factual findings in this regard were clearly erroneous.

V.

Excluded Evidence

Husband's final contention is that the "court erred in excluding evidence" of Wife's "pattern[s] of abusive, threatening and bullying behavior[s]" throughout the course of litigation. Among the evidence he alleges was excluded was a poster stuck to his driveway that contained Husband's inappropriate texts and pictures of women, a letter that Wife sent

to a woman she thought was Husband's girlfriend, and a phone call Wife allegedly had her lawyer make to a woman who was staying at Husband's house to watch his dog.

Wife contends that "claims of materials that were excluded by the trial court [are] false." She asserts that these items "were never offered by Husband as evidence at the hearing."

Husband did not cite to pages of the record in his initial brief in support of his claim that evidence was improperly excluded, and he did not address in his reply brief Wife's assertion that the materials were not introduced into evidence. It is not this Court's job to search the record to find evidence in support of Husband's claim. *Ruffin Hotel Corp. of Maryland v. Gasper*, 418 Md. 594, 618 (2011) ("[A]ppellate courts cannot be expected to either (1) search the record on appeal for facts that appear to support a party's position, or (2) search for the law that is applicable to the issue presented."). Husband states no valid claim for relief in this regard.

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