

Circuit Court for Anne Arundel County  
Case No. C-02-CV-21-001597

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 637

September Term, 2023

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THE ESTATE OF ELSIE LAVERN GAITHER

v.

ASHLEY MICHELLE COOK, ET AL.

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Berger,  
Beachley,  
Hotten, Michele D.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: March 5, 2025

\* 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 Rule 1-104(a)(2)(B).

This appeal arises from a Complaint filed by Elsie Lavern Gaither, appellant, now deceased, to set aside a deed (“Deed”) to real property (“Property”) which transferred the Property to Ms. Gaither’s granddaughter, Ashley Cook. Ms. Gaither alleged that her daughter, Valerie Cook, and Ashley Cook (collectively “Appellees”) fraudulently obtained her signature on the Deed. At the conclusion of the trial in the Circuit Court for Anne Arundel County, the court entered judgment in favor of Appellees. Ms. Gaither filed post-trial motions, which were denied by the trial court. This appeal followed. Thereafter, Ms. Gaither passed away, and the Estate of Elsie Lavern Gaither was substituted in her place.

### **QUESTIONS PRESENTED**

Appellant presents two questions for our review, which we have recast and rephrased as follows:<sup>1</sup>

1. Whether the circuit court erred in placing the burden of proof on Appellant due to the alleged existence of a confidential relationship.
2. Whether the circuit court erred in denying Appellant’s post-trial motions to alter or amend judgment and for a new trial.

For the following reasons, we affirm.

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<sup>1</sup> Appellant phrased the questions as follows:

- I. Did the Circuit Court err in placing the burden of proof upon the plaintiff-appellant when the evidence at trial established a confidential relationship between the parties which required the defendant-appellees to rebut the presumption of invalidity of the transaction by clear and convincing evidence?
- II. Did the Circuit Court err in denying Appellant’s Post-Trial Motions?

## BACKGROUND

For the two years prior to her residence with Appellees, Ms. Gaither lived with another daughter, Dianna Gaither-Peterson, until the death of her husband. Following his death, Ms. Gaither resided with Appellees from September 2018 until January 2019, when Ms. Gaither was hospitalized for medical concerns. At trial, testimony was presented regarding Ms. Gaither's health at the time she resided with Appellees. Ms. Gaither testified that she had a series of medical issues and was on dialysis. Ashley Cook testified that at the time, she and her mother, Valerie, would take Ms. Gaither to her dialysis appointments. She further testified that Ms. Gaither seemed "happy" and did not seem to be "in poor health" when residing with Appellees. Although the parties disagree on the extent of Ms. Gaither's physical health problems at the time, by all accounts, Ms. Gaither's physical health was not good, and Appellees provided assistance with Ms. Gaither's medical care. Although there was ample testimony regarding Ms. Gaither's physical condition, there was no testimony indicating Ms. Gaither had diminished mental capacity at this time.

On November 14, 2018, Ms. Gaither signed a document stating "I, Elsie Lavern Gaither is of Sound, mind, and body would like to transfer [the Property] to Ashley Michelle Cook." This document contained the incorrect address for the Property. On November 15, 2018, Ms. Gaither allegedly signed the Deed, which was also signed by Valerie Cook, Ashley Cook, a witness Jacqueline Steward,<sup>2</sup> and notarized by Tara Benson. The Deed transferred the Property to Ashley Cook for consideration of \$1.00. The Deed

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<sup>2</sup> In a signed affidavit and at trial, Ms. Steward claimed that she did not sign the Deed as a witness. The trial court made no findings regarding Ms. Steward's credibility.

was recorded the same day. Ashley Cook testified that the purpose of the transfer was so that, as a military veteran, she could apply for a Veteran’s Administration (“VA”) loan in order to repair the Property, and that she needed to be the recorded owner of the Property in order to do so. On November 15, 2021, Ms. Gaither filed a complaint in which she alleged that the Deed transferring ownership of the Property from herself to Ashley Cook was obtained through fraud and forgery.

Ms. Gaither provided testimony that she both did not remember signing the Deed, and that she remembered signing what she believed was a bill. In her affidavit before trial, Ms. Gaither specifically noted that she was not comfortable signing the Deed, as “it was unlike Valerie to assist me with my bills (which was the only reason I could imagine she was asking for me to sign anything).” The affidavit additionally provided that her other daughter, Ms. Gaither-Peterson, had been managing her finances for several years. Nevertheless, at trial, Ms. Gaither testified that when she resided with Appellees, they consistently assisted with her finances, and that Valerie Cook “took care of everything,” “always took care of everything,” and that Ms. Gaither “didn’t have to worry about a thing.” In her affidavit, Valerie Cook provided: “At no time did I handle my mother’s financial affairs (such duty being assigned to someone else), nor did I direct her to transfer any property to anyone.”

Appellant also presented a handwriting expert witness who testified that only one of the signatures on the Deed belonged to Ms. Gaither, and the two others were forged by Valerie Cook. The expert additionally testified that the witness signature on the Deed was not Ms. Steward’s.

During Appellant’s closing argument, the court asked for clarification on the burden of proof required in a fraud case, stating: “when it comes to fraud, there’s a separate instruction that provides that fraud needs to be proven by clear and convincing evidence. So it’s a higher standard than a preponderance of the evidence, which is the normal standard. Do you agree that that is the appropriate standard in this case?” Appellant responded: “I agree that that’s the appropriate standard.” At no time did Appellant indicate that any different burden of proof should apply, or that the burden of proof should be shifted onto Appellees.

At the conclusion of trial, the court noted that there was inconsistent and contradictory testimony presented, and that although Ms. Gaither was credible and believable, Appellees were more credible. The court continued, noting that Appellees’ explanation for transferring the property -- to apply for a VA loan -- was reasonable. The court stated that although the expert was believable, her testimony did not outweigh the strength of Appellees’ credibility. Finally, the court concluded, stating: “since the burden in this case [to prove fraud] is much higher and it’s [a] clear and convincing standard, I’m not convinced by clear and convincing evidence that there was a fraud committed in this case. I don’t believe the elements were proven to that standard.” Accordingly, the court found in favor of Appellees.

Appellant filed a motion to alter or amend judgment and a motion for a new trial, and simultaneously filed a notice of appeal to the Appellate Court of Maryland. In the post-trial motions, Appellant for the first time argued that a confidential relationship existed between Appellant and Appellees, and alleged that the trial court erred in failing to

shift the burden of proof to Appellees to prove by clear and convincing evidence that the transfer of the Property was fair and reasonable. The court denied both motions, and the present appeal resumed.

### STANDARD OF REVIEW

“When an action has been tried without a jury, an appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). As such, we defer to the factual findings of the trial court, unless the finding is clearly erroneous and “there is no competent and material evidence in the record to support it.” *Hoang v. Hewitt Ave. Assocs., LLC*, 177 Md. App. 562, 576 (2007). “If any competent material evidence exists in support of the trial court’s factual findings, those findings cannot be held to be clearly erroneous.” *Figgins v. Cochrane*, 403 Md. 392, 409 (2008).

A trial court’s allocation of the burden of proof is a question of law which we review *de novo*. *Himes Assocs., Ltd. v. Anderson*, 178 Md. App. 504, 537 (2008). “If we find error, we only will reverse the judgment if the error caused prejudice.” *Id.* “The burden is on the complaining party to show prejudice as well as error.” *Flores v. Bell*, 398 Md. 27, 33 (2007).

A trial court’s denial of both a motion to alter or amend and a motion for a new trial are reviewed for abuse of discretion. *Halstad v. Halstad*, 244 Md. App. 342, 349 (2020); *Univ. of Maryland Med. Sys. Corp. v. Gholston*, 203 Md. App. 321, 329 (2012). “An abuse of discretion occurs when the discretion was manifestly unreasonable, or exercised on

untenable grounds, or for untenable reasons, or when no reasonable person would take the view adopted by the trial court.” *Comptroller of Maryland v. Myers*, 251 Md. App. 213, 241 (2021) (cleaned up).

## DISCUSSION

### **I. The circuit court did not err in failing to place the burden of proof on Appellees because Appellant never asked the court to determine that a confidential relationship existed.**

Appellant argues that the court erred when it imposed the burden of proof on Appellant to prove by clear and convincing evidence that Appellees induced Ms. Gaither’s signature by fraud. Appellant argues that instead, the court should have recognized that a confidential relationship existed between Ms. Gaither and Appellees, and should have shifted the burden to Appellees to prove by clear and convincing evidence that the transaction was fair and reasonable. Appellant further argues that the trial court erred in failing to find that a confidential relationship existed between Ms. Gaither and Appellees. Appellees contend that by maintaining that the burden of proof was on Appellant to show fraud by clear and convincing evidence, the court implicitly found that a confidential relationship did not exist between the parties. Because neither party raised the existence of a confidential relationship at trial and the court did not make a finding regarding the existence of a confidential relationship, we need not address whether such a relationship existed.

“In some relationships, such as attorney-client or trustee-beneficiary, a confidential relationship is, indeed, presumed as a matter of law. Otherwise, and *particularly in family relationships*, such as parent-child and husband-wife, the existence of a confidential

relationship is an issue of fact and is *not* presumed as a matter of law.” *Upman v. Clarke*, 359 Md. 32, 42 (2000) (emphasis added); *see also Sanders v. Sanders*, 261 Md. 268, 274 (1971) (“In the absence of the legal presumption which arises from certain relationships (e.g., attorney-client, trustee-cestui but not ordinarily child-parent . . .), the existence of a confidential relationship is a question of fact, not of law.”); *Walton v. Davy*, 86 Md. App. 275, 290 (1991) (“A confidential relationship must be proven and will not be presumed merely because the transaction occurred between an elderly parent and his or her child.”). That a child undertakes the responsibility of caring for an ailing parent’s medical needs does not “in and of itself . . . create a confidential relationship.” *Orwick v. Moldawer*, 150 Md. App. 528, 539 (2003).

Because a child-parent relationship is not necessarily a confidential relationship as a matter of law, the court must conduct a factual inquiry to determine whether a confidential relationship exists in each particular instance. Implicit in the understanding that the court must make a factual determination that a confidential relationship exists is the requirement that the court must be asked by one of the parties to make such a finding. *See Treffinger v. Sterling*, 269 Md. 356, 361 (1973) (“[T]here is no presumption of [a confidential] relationship in the case of a transfer from a parent to a child and the burden of demonstrating that one exists is on the party alleging it.”).

In the absence of any case law to the contrary, we reject Appellant’s contention on appeal that when a transfer of property occurs between an elderly party and a family member, the court must, without request from the parties, determine whether a confidential relationship existed.



Because the court was not asked to consider whether a confidential relationship existed between the parties, the court did not abuse its discretion by failing to conduct such an inquiry. As such, the court did not err in failing to shift the burden to Appellees to prove by clear and convincing evidence that the transaction was fair and reasonable. Rather, the burden properly remained on Appellant to prove by clear and convincing evidence that Appellees had obtained Ms. Gaither's signature on the Deed by fraudulent means. Notably, at trial, Appellant acknowledged that she needed to show by clear and convincing evidence that fraud occurred. Appellant had the opportunity to request that the court determine whether a confidential relationship existed between the parties, and did not do so. As a result, the trial court did not err in failing to undertake, without prompting, the factual inquiry to determine whether a confidential relationship existed between the parties.

**II. The circuit court did not err in denying Appellant's post-trial motions.**

Appellant additionally argues that the court erred by denying both her motion to alter or amend judgment and her motion for a new trial. In both motions, Appellant indicated that the trial court's oral ruling was not sufficient as it did not fully explain factual findings and credibility determinations, particularly with regards to the existence of a confidential relationship between the parties. Appellant further contends that the court failed to shift the burden of proof to Appellees due to the existence of a confidential relationship -- an issue which was not raised until the post-trial motions.

As noted, we review a court's denial of a motion to alter or amend judgment, and the denial of a motion for a new trial for abuse of discretion. *Halstad*, 244 Md. App. at 349; *Univ. of Maryland Med. Sys. Corp.*, 203 Md. App. at 329. Although we review the

denial of a motion to alter or amend overall for an abuse of discretion, [t]o the extent that our decision involves . . . questions of law, our review is *de novo*.” *Harrison-Solomon v. State*, 216 Md. App. 138, 146 (2014). Undoubtedly, the appropriate burden of proof is a question of law. As discussed above, the court did not err in failing to shift the burden to Appellees, as Appellant never argued at trial that a confidential relationship existed. “When a party requests that a court reconsider a ruling solely because of new arguments that the party could have raised before the court ruled, the court has almost limitless discretion not to consider those arguments.” *Schlotzhauer v. Morton*, 224 Md. App. 72, 85 (2015). As such, the court did not abuse its discretion in denying Appellant’s motions insofar as they alleged that the incorrect burden of proof was applied.

Appellant argues that the court abused its discretion in denying the motions based on the contention that it did not fully explain its factual findings and credibility determinations. As the trial court noted, the burden was on Appellant to prove by clear and convincing evidence that the transfer of the Property was perpetuated by some type of fraud. The trial court stated that it was “not convinced by clear and convincing evidence that there was a fraud committed in this case. [It did not] believe the elements were proven to that standard.” In so finding, the trial court noted the credibility of Appellant, Appellees, and other witnesses, and stated that it found that Appellees were the most credible. The court further found that Appellees’ explanation for transferring the property -- to apply for a VA loan to make home improvements -- was reasonable. Appellant contended in her post-trial motions that these factual findings were insufficient. The court denied both motions. We give great deference to the factual findings of the trial court, and will only

reverse if “there is no competent and material evidence in the record to support [the findings].” *Hoang*, 177 Md. App. at 576. There was sufficient testimony and evidence presented at trial to support the court’s credibility determinations and factual findings. As a result, we cannot say that in denying Appellant’s post-trial motions, the court exercised “manifestly unreasonable” discretion or that “no reasonable person would take the view adopted by the trial court.” *Comptroller of Maryland*, 251 Md. App. at 241.

### CONCLUSION

We hold that the court did not err when it maintained that the burden of proof was on Appellant to prove by clear and convincing evidence that the transfer of the Property from Appellant to Appellees was fraudulent. We further hold that the court was not required to determine, without request, whether a confidential relationship existed between the parties. Finally, the court did not abuse its discretion in denying Appellant’s post-trial motion to alter or amend judgment or her motion for a new trial. We, therefore, affirm.

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