Circuit Court for Prince George's County
Case No. CAL21-16028

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 738

September Term, 2023

ESTATE OF JAI SEONG CHO HEWICK, ET AL.

v.

WALTER HEWICK

Berger,
Zic,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: July 9, 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 with Rule 1-104(a)(2)(B). Md. Rule 1-104.

This case arises out of an action for conversion, fraud, and constructive fraud filed in the Circuit Court for Prince George's County. Jai Seong Cho Hewick ("Dr. Hewick") filed suit against her husband, Walter Hewick ("Mr. Hewick"), appellee, in 2021.[1] Dr. Hewick died on July 27, 2022. Her sole heir, Janice Kim ("Ms. Kim"), appellant, proceeded with this action individually and as personal representative of Dr. Hewick's estate, alleging that Mr. Hewick improperly transferred substantial sums of money from Dr. Hewick's bank accounts and other assets to his own personal bank accounts prior to Dr. Hewick's death. Following a bench trial, the Circuit Court for Prince George's County entered judgment in favor of Mr. Hewick. On appeal, Ms. Kim presents four questions for our review, which we rephrase slightly as follows:[2]

[1] Jai Seong Cho Hewick was a retired physician at the time of her death. We will refer to her as "Dr. Hewick" and refer to Walter Hewick as "Mr. Hewick," consistent with our 2021 opinion, *Hewick v. Kim*, No. 1144, Sept. Term 2020 (App. Ct. Md. Aug. 20, 2021) (unreported).

[2] Ms. Kim's original questions presented read as follows:

> 1. Did the Circuit Court err when it sustained Hewick's hearsay objection and refused to admit Kim's Exhibits 1-21, all of which were public business records subject to Rule 5-803(b)(8)?
>
> 2. Did the Circuit Court err when it sustained Hewick's objection to Kim's reading and introduction of his Answers to Interrogatories, pursuant to Rule 2-421?
>
> 3. Did the Circuit Court err when it sustained Hewick's objection to Kim's use of his 3/7/23 deposition, which was admissible under Rule 2-419?

I. Whether the circuit court erred in excluding Dr. Hewick's financial records, Mr. Hewick's bank records, and Dr. Hewick's medical records.

II. Whether the circuit court erred in excluding Mr. Hewick's answers to interrogatories and deposition testimony.

III. Whether the circuit court erred in excluding the Letters of Intent produced by Mr. Hewick during discovery.

IV. Whether the circuit court erred in failing to take judicial notice of the guardianship proceedings in the Circuit Court for Howard County.

For the reasons explained herein, we shall affirm, in part, and reverse, in part, the judgment of the Circuit Court for Prince George's County.

FACTS AND PROCEDURAL HISTORY

Dr. Hewick and Mr. Hewick married in 1995. The parties shared no joint accounts throughout the duration of the marriage. Although Dr. and Mr. Hewick never had children, Dr. Hewick had one child, Ms. Kim, from a prior marriage. In 2019, Dr. Hewick suffered a stroke that rendered her significantly physically and cognitively impaired. Prior to her stroke, Dr. Hewick designated Ms. Kim as her power of attorney for financial and medical purposes. Shortly after Dr. Hewick's stroke, Ms. Kim filed a petition in the Circuit Court for Howard County seeking to be appointed as guardian of her mother's person and

4. As a result of the evidentiary errors listed in nos. 1-3 above, did the Circuit Court err when it ruled that Kim had not presented sufficient proof of her conversion and fraud claims?

property. Mr. Hewick contested the petition.[3] The court ultimately appointed Ms. Kim as Dr. Hewick's guardian "for the limited purpose of authorizing the potential relocation" of Dr. Hewick from a care center in Maryland to be closer to where Ms. Kim was residing in Canada. Ms. Kim retained power of attorney and her designation as health care surrogate for her mother. This Court affirmed the Circuit Court for Howard County's judgment in the guardianship proceeding on August 20, 2021. *See Hewick v. Kim*, No. 1144, Sept. Term 2020 (App. Ct. Md. Aug. 20, 2021) (unreported).

During the course of the guardianship proceedings, Dr. Hewick and Ms. Kim allegedly discovered that Mr. Hewick had withdrawn substantial funds from Dr. Hewick's bank accounts and liquidated other assets, transferring those funds into his own personal bank accounts. Dr. Hewick -- through Ms. Kim pursuant to her powers of attorney -- filed suit against Mr. Hewick on December 9, 2021. A little over six months later, on July 27, 2022, Dr. Hewick died in Toronto, Canada. Her last will and testament named Ms. Kim as the sole beneficiary and personal representative of her estate. On March 24, 2023, Ms. Kim filed a Motion to Substitute Party pursuant to Maryland Rule 2-241(a)(l) requesting that Ms. Kim, as personal representative of Dr. Hewick's estate, be substituted as the plaintiff in the current action. The circuit court granted this motion on April 12, 2023.

Ms. Kim filed an amended complaint for conversion, fraud, and constructive fraud against Mr. Hewick both individually and in her capacity as personal representative of Dr.

[3] Mr. Hewick did not contest the validity of the powers of attorney or seek to be appointed guardian of Dr. Hewick's person and property. He merely opposed Ms. Kim's appointment as Dr. Hewick's guardian.

Hewick's estate. In her amended complaint, Ms. Kim alleges that, in 2018 and 2019, Mr. Hewick improperly withdrew $389,000 from Dr. Hewick's Bank of America account and placed those funds into his own personal bank accounts. The complaint also asserts that Mr. Hewick liquidated Dr. Hewick's IRA account held with Hartford Life Insurance Company and transferred $155,623.14 into his own personal bank accounts. Finally, Ms. Kim alleges that Mr. Hewick liquidated Dr. Hewick's State Farm life insurance policy and transferred a sum of $76,709.40 into his own personal accounts. Ms. Kim contends that these transfers constitute conversion, fraud, and constructive fraud "by either taking [the assets], or tak[ing] them at a time when Dr. Hewick was in a weakened condition and was unduly influenced." The amended complaint alleges that Dr. Hewick and Mr. Hewick were in a confidential relationship and that Mr. Hewick bears the burden of proving that the transfers were "fair and reasonable" gifts free of undue influence.

A bench trial was scheduled for June 7, 2023. Prior to trial, on May 12, 2023, Ms. Kim filed a List of Exhibits to be used at trial, as well as copies of each exhibit. These exhibits included financial records, medical records, Dr. Hewick's will, and letters allegedly signed by Dr. Hewick indicating her intent to transfer certain funds to Mr. Hewick ("Letters of Intent"). The amended complaint alleges that Dr. Hewick's signatures on the Letters of Intent are forgeries. At trial, Ms. Kim's counsel sought to introduce the

Letters of Intent into evidence, as well as the following exhibits which are also at issue on appeal:[4]

- Records of Dr. Hewick's IRA account held with Hartford Life Insurance Company and her life insurance policy held with State Farm (Exhibits 2 and 3);
- Records of Dr. Hewick's Bank of America account, including account statements and evidence of cash withdrawals (Exhibits 4, 5, 8, 9, and 10); [5]
- Records of Mr. Hewick's SunTrust Bank account and NASA Federal Credit Union account (Exhibits 13, 14, and 16);
- Medical records relating to Dr. Hewick's treatment at Sheppard Pratt Health System, MedStar Health Washington Hospital, Crofton Care & Rehabilitation Center, and Anne Arundel Medical Center (Exhibits 17 through 20);
- Physician's certifications that were produced for the guardianship proceedings in the Circuit Court for Howard County (Exhibits 21 and 22);
- Letters of Intent regarding certain monetary transfers and withdrawals (Exhibit 7).

Mr. Hewick's counsel objected to the introduction of all of these exhibits on hearsay grounds, and the court sustained all objections. Ms. Kim's counsel also asked Ms. Kim to read into evidence portions of Mr. Hewick's answers to interrogatories and deposition testimony. Mr. Hewick's counsel objected to this line of questioning and his objections

[4] All of these exhibits were included in the List of Exhibits filed by Ms. Kim on May 12, 2023. Ms. Kim also filed copies of each exhibit.

[5] We acknowledge that Ms. Kim's counsel never tried to introduce Exhibit 9 into evidence. Ms. Kim's counsel did, however, ask Ms. Kim to testify about the contents of that exhibit. The court sustained Mr. Hewick's hearsay objection to this line of questioning. In this appeal, Ms. Kim argues that the circuit court erred in sustaining this objection.

were sustained. Mr. Hewick also testified at trial and asserted that all of the transfers were gifts from his wife. He admitted that he had copied and pasted his wife's signature onto the Letters of Intent, but testified that he had done so with her permission. He testified that he believed Dr. Hewick was competent and understood her actions at the times she made the challenged withdrawals and transfers.

The circuit court held that Ms. Kim failed to meet her burden with respect to all counts of the amended complaint and entered judgment in favor of Mr. Hewick. This timely appeal followed.

STANDARD OF REVIEW

Under Maryland Rule 5-802, hearsay is generally not admissible at trial "[e]xcept as otherwise provided by [the Maryland Rules] or permitted by applicable constitutional provisions or statutes[.]" Md. Rule 5-802. "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). "[H]earsay is generally inadmissible at trial because of its inherent untrustworthiness." *Parker v. State*, 365 Md. 299, 312 (2001).

The admission or exclusion of evidence "is generally committed to the sound discretion of the trial court." *CR–RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 406 (2012) (citing *Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 619–20 (2011)). "We apply a different standard, however, when it comes to hearsay evidence." *Vielot v. State*, 225 Md. App. 492, 500 (2015). A trial court has "no discretion to admit hearsay in the absence of a provision providing for its admissibility." *Bernadyn v. State*, 390 Md. 1,

8 (2005). Accordingly, we review *de novo* whether the circuit court properly admitted hearsay pursuant to an exception to the rule against hearsay. *Id.* Any factual findings made by the trial court when evaluating whether a hearsay exception applies are reviewed for clear error. *Gordon v. State*, 431 Md. 527, 538 (2013).

DISCUSSION

On appeal, Ms. Kim contends that the circuit court erred in excluding from evidence several exhibits, which this Court divides into the following categories: financial records, medical records, Mr. Hewick's answers to interrogatories and deposition testimony, and the Letters of Intent. Ms. Kim also asserts that the trial court erred in failing to take judicial notice of the guardianship proceedings in the Circuit Court of Howard County, the judgment of which this Court affirmed. *See*, *supra*, *Hewick v. Kim,* No. 1144, Sept. Term 2020 (App. Ct. Md. Aug 20, 2021) (unreported). For the reasons described below, we affirm, in part, and reverse, in part, the judgment of the Circuit Court for Prince George's County and remand for further proceedings consistent with this opinion.

I. THE TRIAL COURT ERRED IN EXCLUDING VARIOUS FINANCIAL RECORDS AND MEDICAL RECORDS.

A. The trial court erred in excluding the financial records (Exhibits 2–5, 8–10, 13–14, and 16) because they are admissible, self-authenticated records of regularly conducted business activities.

First, we address Ms. Kim's argument that the circuit court erred in excluding various financial records from evidence at trial. The financial records that Ms. Kim sought to introduce at trial include:

- **Exhibit 2:** Records of Dr. Hewick's IRA account held with Hartford Life Insurance Company, including documents and checks confirming the full surrender and pay-out of the annuity on June 15, 2018 in the total amount of $155,623.14; and bank records of Mr. Hewick's SunTrust Bank account confirming a deposit into his account in the amount of $155,623.14 on June 28, 2018.

- **Exhibit 3:** Records of Dr. Hewick's life insurance policy held with SunTrust Bank, including documents and checks confirming the surrender and pay-out of the policy on February 7, 2019 in the amount of $76,709.40; and bank records of Mr. Hewick's SunTrust Bank account confirming a deposit into his account in the amount of $76,709.40 on February 12, 2019.

- **Exhibits 4–5 and 8–10:** Records of Dr. Hewick's Bank of America account reflecting various cash withdrawals from 2018 and 2019; checks made out to Mr. Hewick in the amounts of $10,000 on April 24, 2019, $5,000 on October 31, 2018, and $5,000 on June 4, 2019; and bank records of Mr. Hewick's SunTrust Bank account confirming he deposited these checks.

- **Exhibit 13:** Records of Mr. Hewick's SunTrust Bank account reflecting transfers from his checking account to his savings account in the amount of $150,000 on July 16, 2018; a deposit of $126,000 into his "Signature Money Market Savings" account on July 30, 2018; and a transfer from his savings account to his money market account in the amount of $100,000 on July 31, 2018.

- **Exhibit 14:** Records of Mr. Hewick's SunTrust Bank account reflecting an over-the-counter cash withdrawal from his money market account in the amount of $200,000 on December 6, 2018.

- **Exhibit 16:** Records of Mr. Hewick's NASA Federal Credit Union account reflecting a deposit via wire transfer of $200,000 and a subsequent withdrawal of $200,000 in August 2022.

Ms. Kim's counsel sought to introduce all of these exhibits as evidence of the allegedly improper withdrawals and transfers that constituted conversion, fraud, and constructive fraud.[6] Mr. Hewick's counsel objected in each instance, arguing the exhibits

[6] *See supra* note 5.

contained inadmissible hearsay. The trial court sustained all objections and the exhibits were excluded from evidence. Ms. Kim contends that these exhibits were erroneously excluded because they all constitute records of regularly conducted business activities.

Maryland Rule 5-803(b)(6) provides that records of regularly conducted business activities are not excluded by the hearsay rule even if the declarant is available as a witness. Md. Rule 5-803(b)(6). The Rule describes records of regularly conducted business activities as follows:

> A memorandum, report, record, or data compilation of acts, events, conditions, opinions, or diagnoses if (A) it was made at or near the time of the act, event, or condition, or the rendition of the diagnosis, (B) it was made by a person with knowledge or from information transmitted by a person with knowledge, (C) it was made and kept in the course of a regularly conducted business activity, and (D) the regular practice of that business was to make and keep the memorandum, report, record, or data compilation.

Id. Bank records are a commonly recognized form of records of regularly conducted business activity. *Jackson v. State*, 460 Md. 107, 125–26 (2018).

The Supreme Court of Maryland has recognized that "[t]he rationale for admitting bank records as an exception to hearsay is that bank records, particularly when the bank has no stake in the outcome of litigation, have a strong indicia of reliability." *Id.* at 125 (quoting *Bartlett v. Portfolio Recovery Assoc., LLC*, 438 Md. 255, 284 (2014)) (internal quotation marks omitted). Indeed the "trustworthiness and reliability" of bank records "arises from the fact that entries recording an act or event are made in the regular course of business and it is the regular course of business to record those entries at the time of that

fact or event or soon thereafter." *Id.* at 126 (quoting *Bartlett*, *supra*, 438 Md. at 284) (internal quotation marks omitted).

Business records such as bank records, however, "are not admissible until they have been properly authenticated[.]" *Bryant v. State*, 129 Md. App. 690, 696–97 (2000), *aff'd*, 361 Md. 420 (2000). Maryland Rule 5-803(b)(6) provides that "[a] record of this kind may be excluded if the source of information or the method or circumstances of the preparation of the record indicate that the information in the record lacks trustworthiness." Md. Rule 5-803(b)(6). This rule reflects the principle that "[a] threshold requirement of admissibility of evidence is whether the authenticity of the evidentiary matter may be established." *Jackson*, *supra*, 460 Md. at 115.

Notably, records of regularly conducted business activities may be self-authenticated under certain circumstances. Maryland Rule 5-902(12) provides:

> The original or a copy of a record of a regularly conducted activity that meets the requirements of Rule 5-803(b)(6)(A)-(D) and has been certified in a Certification of Custodian of Records or Other Qualified Individual Form substantially in compliance with such a form approved by the State Court Administrator and posted on the Judiciary website, provided that, before the trial or hearing in which the record will be offered into evidence, the proponent (A) gives an adverse party reasonable written notice of the intent to offer the record and (B) makes the record and certification available for inspection so that the adverse party has a fair opportunity to challenge them on the ground that the sources of information or the method or circumstances of preparation indicate lack of trustworthiness.

Md. Rule 5-902(12).

Ms. Kim asserts -- and Mr. Hewick does not contest on appeal -- that each of the financial records were accompanied by proper certifications of authenticity required under Rule 5-902. Based on our review of the record, we agree that all of the exhibits are certified by a custodian of records or proper equivalent.[7] Nevertheless, Mr. Hewick contends that the exhibits do not meet the requirements of properly authenticated records of regularly conducted business activities because Ms. Kim failed to give Mr. Hewick reasonable written notice of her intent to introduce the exhibits into the record. We disagree.

On May 12, 2023, multiple weeks before the scheduled trial in this matter, Ms. Kim filed a "List of Exhibits" for trial, as well as copies of each exhibit, on Maryland's electronic case filing system. In our view, this more than qualifies as sufficient notice that that Ms. Kim intended to introduce these exhibits into evidence at trial. Mr. Hewick, consequently, had a reasonable opportunity to object to the trustworthiness of the documents. Furthermore, Mr. Hewick never asserted at trial that Ms. Kim failed to give sufficient notice of her intent to introduce this evidence. Accordingly, the financial documents qualify as self-authenticated records of regularly conducted business activities

[7] Exhibits that include separate financial records from multiple institutions are all accompanied by the proper certification. For example, Exhibit 2 includes both records of Dr. Hewick's Hartford IRA account and records of Mr. Hewick's SunTrust Bank Account. The documents are accompanied by a certification by the custodian of records of Hartford Life Insurance Company and a certification by the custodian of records of SunTrust Bank. The same applies to each of the exhibits including records from separate accounts.

that are not subject to the rule against hearsay.[8] The circuit court, therefore, erred in sustaining Mr. Hewick's hearsay objections and excluding these exhibits at trial.

B. The trial court also erred in excluding Dr. Hewick's medical records (Exhibits 17–20) because they constitute self-authenticated records of regularly conducted business activities.

Ms. Kim contends that the trial court similarly erred in sustaining Mr. Hewick's objections based on hearsay when Ms. Kim's counsel sought to introduce medical records into evidence. The medical records at issue on appeal include:

- **Exhibit 17:** Medical records from Sheppard Pratt Health System with details regarding Dr. Hewick's history of psychiatric care;
- **Exhibit 18:** Medical records from MedStar Health Washington Hospital documenting details of her hospital admission in June 2019;
- **Exhibit 19:** Medical records from Crofton Care & Rehabilitation Center relating to her "medical condition, decision making, and treatment limitations" and history of treatment.
- **Exhibit 20:** Medical records from Anne Arundel Medical Center documenting details of her hospital admission in June 2019.

Similar to bank records, "[i]t is well settled that hospital records are admissible under the business record exception to the hearsay rule." *Newcomb v. Owens*, 54 Md. App. 597, 604 (1983). The four medical records at issue on appeal were also listed in the List

[8] Although Ms. Kim's counsel never sought to introduce Exhibit 9 into evidence -- *see supra* notes 5 and 6 -- we conclude that the trial court erred in preventing Ms. Kim from testifying about the contents of the exhibit. During direct examination, Mr. Kim's counsel asked Ms. Kim to review Exhibit 9 and asked her to confirm the deposit amounts reflected in that bank record. Mr. Hewick's counsel objected on hearsay grounds and the trial court sustained this objection. For the reasons explained above, Exhibit 9 constitutes a self-authenticated record of regularly conducted business activity. As such, the circuit court erred in sustaining Mr. Hewick's objection based on hearsay.

of Exhibits filed on May 12, 2023, and Ms. Kim filed copies of each exhibit. We, therefore, conclude that Mr. Hewick received sufficient notice that that Ms. Kim intended to introduce these exhibits into evidence at trial and had a reasonable opportunity to object to the trustworthiness of the documents. Moreover, we once again emphasize that Mr. Hewick never challenged the hospital records at trial on the grounds that Ms. Kim failed to provide reasonable notice. Accordingly, the medical records were properly self-authenticated and the trial court erred in excluding these exhibits because they constitute records of regularly conducted business activities.

Ms. Kim also argues that the trial court erred in excluding Exhibits 21 and 22. These exhibits are physician's certifications produced pursuant to Maryland Rule 10-202(a) in the guardianship proceedings in the Circuit Court for Howard County. These documents were produced specifically for the purpose of litigation. It is well-established that the business records exceptions to the hearsay rule "does not embrace self-serving records, made in anticipation of litigation, which lack circumstantial guarantees of trustworthiness." *Sail Zambezi, Ltd. v. Md. State Highway Admin.*, 217 Md. App. 138, 156 (2014) (citing *Hall v. Univ. of Md. Med. Sys. Corp.*, 398 Md. 67, 89 (2007). *See also In re Adoption/Guardianship No. 95195062/CAD in Cir. Ct. for Balt. City*, 116 Md. App. 443, 464 (1997) (holding that a report produced by a psychiatrist evaluating a mother's mental health for the purposes of presenting it at a CINA hearing was not admissible under the business records exception to the hearsay rule).

The two physician's certifications, Exhibits 21 and 22, do not qualify as business records under Maryland Rule 5-803(b)(6). Furthermore, Ms. Kim fails to provide any other basis by which the certifications are excluded from the rule against hearsay. This Court, therefore, concludes that the trial court erred in excluding Exhibits 17 through 20 -- which qualify as business records under Maryland Rule 5-803(b)(6) -- but did not err in excluding Exhibits 21 and 22.

II. THE TRIAL COURT ERRONEOUSLY EXCLUDED MR. HEWICK'S ANSWERS TO INTERROGATORIES AND HIS DEPOSITION TESTIMONY.

At trial, Ms. Kim's counsel asked to have Ms. Kim read sections of Mr. Hewick's answers to interrogatories and deposition testimony into the record. Mr. Hewick's counsel lodged multiple objections, all of which were sustained. For the reasons explained below, the trial court erred in sustaining these objections and preventing Ms. Kim from reading portions of these documents into the record.

Pursuant to Maryland Rule 2-421(d), "[a]nswers to interrogatories may be used at the trial or a hearing to the extent permitted by the rules of evidence." Md. Rule 2-421(d). This includes Maryland Rule 5-803(a), which provides that a statement of a party-opponent is admissible as an exception to the rule against hearsay. Md. Rule 5-803(a). A statement of a party-opponent is defined as "[a] statement that is offered against a party and is:

> (1) The party's own statement, in either an individual or representative capacity;
>
> (2) A statement of which the party has manifested an adoption or belief in its truth;

> (3) A statement by a person authorized by the party to make a statement concerning the subject;
>
> (4) A statement by the party's agent or employee made during the agency or employment relationship concerning a matter within the scope of the agency or employment; or
>
> (5) A statement by a coconspirator of the party during the course and in furtherance of the conspiracy.

Id. Under this rule, "a party is free to introduce anything an opposing party has said or done to prove the truth of the matter asserted." *Crane v. Dunn*, 382 Md. 83, 99 (2004). In *Crane v. Dunn*, the Supreme Court of Maryland recognized that a party may offer a party-opponent's answers to interrogatories into evidence "by reading those answers into evidence in the presence of a jury." *Id.* at 98.

Mr. Hewick's answers to interrogatories constitute a statement by a party-opponent and were admissible under Maryland Rule 5-803(a). Mr. Hewick's deposition testimony similarly constitutes a statement by a party-opponent. Critically, Maryland Rule 2-419(a)(2) provides that a party's deposition testimony "may be used by an adverse party *for any purpose*." Md. Rule 2-419(a)(2). Accordingly, Ms. Kim was authorized under the Maryland Rules to read Mr. Hewick's answers to interrogatories and deposition testimony into evidence. The trial court, therefore, erred in sustaining Mr. Hewick's objections and excluding these statements by a party-opponent from evidence.

III. THE TRIAL COURT ERRED IN EXCLUDING THE LETTERS OF INTENT (EXHIBIT 7) FROM EVIDENCE.

Ms. Kim also argues that the trial court erred in excluding the Letters of Intent from evidence. As briefly described above, Exhibit 7 includes letters allegedly signed by Dr.

Hewick indicating her intent to make certain pecuniary gifts to Mr. Hewick. The Letters of Intent include:

- A copy of a document dated July 29, 2018 purportedly signed "without duress" by Dr. Hewick authenticating that she "unreservedly" gave her husband "a cashier's check to the sum of $126,000 as a gift because of our excellent marriage and devoted relationship as husband and wife for over 25 years."

- A copy of a document dated November 2, 2018 purportedly signed by Dr. Hewick indicating her intent to bestow upon Mr. Hewick "the sum of $5,000 as a gifted [sic] for his travel to South Korea. It is to be used as he pleases when he arrives and travels around South Korea. Unreservedly, this gift is given to him without any hesitation and from my sound free will."

- A copy of a document dated February 14, 2019 purportedly signed by Dr. Hewick certifying that she gave Mr. Hewick "permission to use my credit cards to defray all domestic and incidental expenses affecting our family life" due to Dr. Hewick's "limited sight problems, some mobility problems, and [inability] to drive." It grants Mr. Hewick permission to "unreservedly" use her cards "for all home expenses."

- A copy of a document dated April 25, 2019 purportedly signed by Dr. Hewick certifying that she "delivered personally $10,000 in cash" to Mr. Hewick, "as a reimbursement for the purchase of some gold jewelry I instructed him to purchase for me while on his visit to Guyana." The letter confirms Dr. Hewick was in possession of the aforementioned jewelry at the time of signing this letter.

All of these letters were attached to Ms. Kim's amended complaint. The amended complaint alleges that these Letters of Intent are forgeries and that Dr. Hewick's signature was improperly copied and pasted into each of the documents. The amended complaint further notes that these documents are "fraudulent attempts by Mr. Hewick to concoct 'proof' he thinks will exonerate him" and that the Letters of Intent are "clear examples of

the inappropriate attempts that Mr. Hewick took to take [Dr.] Hewick's assets for himself."

At trial, Appellant requested that the Letters of Intent be admitted into evidence. Mr. Hewick's counsel objected on hearsay grounds, and the circuit court sustained the objections. The court did, however, permit witnesses to testify about the documents. For example, Ms. Kim made observations about Dr. Hewick's signature on each of the forms, noting that Dr. Hewick's name is "misspelled" and that each of the signatures are "exactly the same" on each document. Additionally, Mr. Hewick testified that he typed the documents and copied and pasted his wife's signature onto the documents with her express permission.

On appeal, Appellant argues that the circuit court erroneously excluded the Letters of Intent. We agree and conclude that the Letters of Intent did not constitute hearsay. As recognized above, a statement constitutes hearsay where it is offered into evidence to prove the truth of the matter asserted. Md. Rule 5-801(c). By contrast, "[a] statement will not violate the hearsay rule where *the very making of the statement*, instead of the truth or falsity *of the contents*, is the fact at issue." *Sykes v. Sykes*, 253 Md. App. 78, 105 (2021) (citing *State v. Young*, 462 Md. 159, 164-65 (2018)) (emphasis added). At trial, Ms. Kim did not seek to introduce the Letters of Intent to prove the truth of their contents. Instead, Ms. Kim sought to challenge the fact that Dr. Hewick ever signed the letters. Indeed, Ms. Kim attached the Letters of Intent to her amended complaint, which argued that Ms. Kim's signatures on the letters were all forgeries.

The trial court allowed Ms. Kim and Mr. Hewick to testify about the Letters of Intent. Notably, the witnesses' testimony did not focus on the contents of the letters. Instead, their testimony addressed the issue of whether Ms. Kim had actually signed the letters. This further demonstrates that the function of introducing the Letters of Intent at trial was to examine whether or not they were statements attributable to and signed by Ms. Kim. We, therefore, conclude that the Letters of Intent were not offered to prove the truth of their contents. Accordingly, they did not constitute hearsay and the trial court erred by excluding the Letters of Intent on hearsay grounds.

IV. MS. KIM HAS FAILED TO DEMONSTRATE ON APPEAL HOW THE CIRCUIT COURT ABUSED ITS DISCRETION IN FAILING TO TAKE JUDICIAL NOTICE OF THE GUARDIANSHIP PROCEEDINGS IN THE CIRCUIT COURT FOR HOWARD COUNTY.

Ms. Kim contends on appeal that the circuit court erred in failing to take judicial notice of the guardianship proceedings that occurred in the Circuit Court for Howard County prior to the filing of this suit. The Supreme Court of Maryland has recognized that courts "may take judicial notice of additional facts that are either matters of common knowledge or capable of certain verification." *Faya v. Almaraz,* 329 Md. 435, 444 (1993)). Notably, a court may "take judicial notice of [its] own opinions and public record documents presented to [the] Court." *Evans v. Cnty. Council of Prince George's Sitting as Dist. Council*, 185 Md. App. 251, 255 n.2 (2009); *see also Abrishamian v. Wash. Med. Grp., P.C.*, 216 Md. App. 386, 413 (2014) ("Many different types of information can fall under the umbrella of judicial notice, most commonly public records such as court documents[.]").

Maryland Rule 5-201 addresses a court's authority to "take judicial notice of adjudicative facts." Md. Rule 5-201(a). The Rule defines an "adjudicative fact" as "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 be easily questioned." Md. Rule 5-201(b). Maryland courts have two distinct types of authority to take judicial notice of such facts: discretionary and mandatory. Md. Rule 5-201(c), (d). Under Maryland Rule 5-201(c), a court may, in its discretion, "take judicial notice, whether requested or not." Md. Rule 5-201(c). By contrast, pursuant to Maryland Rule 5-201(d), "[a] court *shall* take judicial notice *if requested by a party and supplied with the necessary information*." Md. Rule 5-201(d) (emphasis added).

There is nothing in the record to suggest that Ms. Kim requested the circuit court take judicial notice of the judgment of the Circuit Court for Howard County in the guardianship proceedings or this Court's affirmance of that judgment. As such, the circuit court's authority to take such judicial notice was discretionary rather than mandatory. "When this Court reviews a trial court's exercise of discretion, our standard is abuse of discretion, which is highly deferential *to the trial court* that is the judicial body that exercised its discretion." *Hartford Fire Ins. Co. v Estate of Robert L. Sanders*, 232 Md. App. 24, 40 (2017) (emphasis in original). We, therefore, review the circuit court's decision not to take judicial notice of the Howard County guardianship proceeding under the highly deferential abuse of discretion standard. *See Dashiell v. Meeks*, 396 Md. 149,

176–77 (2006) (concluding that the lower court's decision not to review court records from a different case was discretionary and reviewing that court's decision for an abuse of discretion).

The Supreme Court of Maryland has explained:

> [A]n abuse of discretion occurs when a decision is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable. Thus, a ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling. Whether there has been an abuse of discretion depends on the particular circumstances of each individual case.

Consolidated Waste Indus. Inc. v. Standard Equip. Co., 421 Md. 210, 219 (2011) (internal quotation marks and citations omitted). *See also Gizzo v. Gerstman*, 245 Md. App. 168, 201 (2020) (noting that "[a]n abuse of discretion may occur when no reasonable person would take the view adopted by the trial court . . . or when the ruling is clearly against the logic and effect of facts and inferences before the court").

Under the circumstances in which Ms. Kim did not request that the circuit court take judicial notice of the guardianship proceedings, Ms. Kim has failed to persuade us that the trial court abused its discretion in failing to do so. We, therefore, conclude that the trial court did not err in failing to take judicial notice of the guardianship proceedings.

V. THE CIRCUIT COURT'S ERRONEOUS EVIDENTIARY RULINGS WERE NOT HARMLESS.

We have determined that the trial court erred in excluding the financial records, medical records, Mr. Hewick's answers to interrogatories, and Mr. Hewick's deposition

testimony from evidence at trial. Nevertheless, "[i]t has long been the policy in this State that this Court will not reverse a lower court judgment if the error is harmless." *Barksdale v. Wilkowsky*, 419 Md. 649, 657 (2011) (quoting *Flores v. Bell*, 398 Md. 27, 33 (2007)). This rule "embod[ies] the principle that courts should exercise judgment in preference to the automatic reversal for 'error' and ignore errors that do not affect the essential fairness of the trial." *Id.* at 657–58. "[T]he burden is on the appellant in all cases to show prejudice as well as error." *Crane*, *supra*, 382 Md. at 91 (citing *Rippon v. Mercantile Safe Deposit Co.*, 213 Md. 215, 222 (1957)). An appellant adequately establishes prejudice "if a showing is made that the error was likely to have affected the verdict below." *Id.*

In our view, the trial court's evidentiary rulings were anything but harmless. Ms. Kim's claims of conversion, fraud, and constructive fraud are almost entirely based on the financial activity documented by the financial records excluded at trial. Ms. Kim also sought to use Mr. Hewick's answers to interrogatories and deposition testimony as further evidence of Mr. Hewick's allegedly inappropriate handling of Dr. Hewick's assets. Ms. Kim argues that these documents, combined with the financial exhibits, reveal that Mr. Hewick held a bank account with NASA Federal Credit Union and made substantial deposits to and withdrawals from that account, despite previously insisting he only had a SunTrust Bank account. Moreover, the erroneous exclusion of the Letters of Intent was not harmless. By excluding the letters, the trial court prejudiced Ms. Kim's ability to put forth evidence to prove her allegation that Dr. Hewick's signatures on the letters were

forged. Ms. Kim relied upon the Letters of Intent in her amended complaint, asserting that they served as evidence of Mr. Hewick's alleged wrongdoing.

All told, the trial court excluded more than a dozen exhibits that Ms. Kim sought to introduce at trial. Although she was able to introduce some evidence at trial, the erroneously excluded exhibits were crucial to her case. Additionally, while we affirm the circuit court's evidentiary rulings regarding the physician's certificates and conclude that the court did not abuse its discretion by failing to take judicial notice of the guardianship proceedings, the certificates and guardianship proceedings were not nearly as critical to Ms. Kim's claims as the exhibits that were erroneously excluded. Indeed, the financial records in particular were integral to exhibiting Mr. Hewick's financial activities that Ms. Kim alleges constitute conversion and fraud. By excluding these exhibits, the trial court effectively prevented Ms. Kim from presenting any evidence to support her claims, despite the fact that these exhibits were admissible under the business records exception to the rule against hearsay or as statements of a party-opponent.

Furthermore, Ms. Kim sought to introduce Dr. Hewick's medical records not for the purpose of proving conversion or fraud, but to establish what she believed to be her burden of proof at trial. Typically, a claimant of fraud or constructive fraud bears the burden of proof. When a plaintiff, however, presents "sufficient evidence to establish a confidential relationship, the burden shifts to the defendant to show the fairness and reasonableness of the transaction." *Sanders v. Sanders,* 261 Md. 268, 276 (1971). Although there exists a presumption that a confidential relationship does not exist between spouses, a court may

find a confidential relationship exists if the proponent meets its "burden of showing it exists, i.e., that by virtue of the relationship she (or he) was justified in assuming that the other spouse would not act in a manner inconsistent with her (or his) welfare." *Lasater v. Guttmann,* 194 Md. App. 431, 456–58 (2010). "Among the factors to be considered in deciding 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." *Id.* at 458 (quoting *Tedesco v. Tedesco*, 111 Md. App. 648, 671 (1996)) (internal quotation marks omitted).

Ms. Kim asserted in her amended complaint and argued at trial that Mr. Hewick and Dr. Hewick were in a confidential relationship and that Mr. Hewick bore the burden to show the fairness and reasonableness of the various monetary transaction at issue in this dispute. She sought to introduce Dr. Hewick's medical records at trial in order to provide evidence of relevant factors in determining whether a confidential relationship exists, namely Dr. Hewick's mental condition, state of health, and dependence on Mr. Hewick. The erroneous exclusion of these medical records prejudiced Ms. Kim's ability to argue what burden of proof applied at trial. Notably, the trial court never even addressed this contention. After closing arguments, the trial court merely concluded: "The Court finds that the Plaintiff has failed to meet its burden of proof with respect to all counts. Judgment for Defendant."

Maryland Rule 2-522(a) provides that, "[i]n a contested court trial, the judge, before or at the time judgment is entered, shall prepare and file or dictate into the record *a brief*

statement of the reasons for the decision and the basis of determining any damages." Md. Rule 2-522(a) (emphasis added). Without such a statement of the circuit court's reasoning, an appellate court faces difficulties in engaging in a meaningful review of the trial court's factual findings and legal conclusions. In our view, the trial court clearly failed to adequately provide a statement of the reasons for its decision. The brief statement issuing the judgment at the end of the trial failed to do so, and no written opinion was filed by the trial court. On remand, the trial court shall ensure that it specifies its reasons for its decision in compliance with Maryland Rule 2-522(a).

CONCLUSION

We, therefore, conclude that the trial court erroneously excluded the following: the financial records (Exhibits 2–5, 8–10, 13–14, and 16), Dr. Hewick's medical records (Exhibits 17–20), Mr. Hewick's answers to interrogatories and deposition testimony, and the Letters of Intent (Exhibit 7). Furthermore, we conclude that this error was not harmless. This Court, however, notes that the trial court did not err in excluding the physician's certifications (Exhibits 21–22) or failing to take judicial notice of the guardianship proceedings. Accordingly, we affirm, in part, on those limited grounds. As to all other issue raised on appeal, we reverse of the judgment of the Circuit Court for Prince George's County and remand for proceedings consistent with this opinion.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED, IN PART, AND REVERSED, IN PART. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE

PAID ONE-THIRD BY APPELLANT AND TWO-THIRDS BY APPELLEE.