Circuit Court for Washington County
Case No. C-21-CV-22-000302

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1206

September Term, 2023

IN RE: THE ESTATE OF MAVIN GOSSARD

Berger,
Nazarian,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: September 6, 2024

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

In February of 2022, Melvin Gossard filed a Petition to Caveat the will of his deceased mother, Mavin Gossard ("Decedent") in the Orphans' Court for Washington County. Melvin asserted that Decedent's will was not signed by Decedent, nor was it properly attested to by two or more witnesses.[1] Subsequently, in April of 2022, Marion Gossard, child of Decedent and sibling of Melvin, filed an Answer and Petition to Caveat restating the allegation in Melvin's original petition. Melvin and Marion ("Appellants") also filed a Joint Request to Transmit Issues to Circuit Court. Subsequently, upon an order from the orphans' court the issues asserted in the Petition to Caveat were transmitted to the Circuit Court for Washington County.

In July of 2023, the circuit court held a trial on the merits for the transmitted issues. At trial, Appellants presented Sharon Ottinger ("Ottinger") as an expert witness offered to testify regarding the authenticity of Decedent's signature on the will. Following voir dire on the issue of the witness' expertise in the area offered, the court ruled that it would not designate Ottinger as an expert on handwriting analysis and document verification, thus excluding Ottinger as an expert witness. At the conclusion of the presentation of evidence and arguments by counsel, the court found that Decedent had signed the will and that it was attested to by two credible witnesses. Subsequently, the court declared the will valid and admitted it into probate. Appellants timely noted this appeal.

Appellants present the following issue for our review:[2] Whether the circuit court

[1] For the purposes of clarity, the parties involved in this case shall be addressed using their first names. In so doing, this Court intends no disrespect.

[2] Rephrased and consolidated from:

committed an abuse of discretion in ruling that Appellants' proposed handwriting expert was not qualified to provide expert testimony as offered.

FACTUAL AND PROCEDURAL BACKGROUND

In October of 2021, Decedent was admitted to Meritus Medical Center. While admitted, on October 13, 2021, Decedent signed the challenged will in the presence of her sister, Marilyn Ashcraft ("Marilyn"), and two other individuals. The will revoked all prior wills and codicils and left the residue of the estate to Decedent's daughter Melva Rice, sibling of Appellants. The will also distributed the sum of $10.00 to both Appellants. Upon the death of Decedent on October 27, 2021, Marilyn provided the will to the Register of Wills to be registered and certified, at which point Marilyn was appointed personal representative of the estate.[3]

Appellant, Melvin, then filed a Petition to Caveat in the orphans' court alleging that the purported will was not the last will and testament of Decedent for a variety of reasons,

I. Whether Judge Boyer abused his discretion in ruling that Sharon Ottinger should not be qualified as an expert witness in the field of document examination in the absence of a counter-balancing expert, clear testimony that she had education and training in the field, had qualified as an expert in other courts in other states and in the absence of any evidence that she has not been accepted as an expert document examiner when the case at bar revolves around the central issue of whether or not the signature on the Purported Will was not that of Mavin Virginia Gossard?

II. Whether Judge Boyer's ruling not to qualify Sharon Ottinger as an expert witness in the field of document examination thereby excluding her testimony in Appellants' case in chief constitutes reversible error requiring a remand to the Circuit Court for a new trial?

[3] Marilyn Ashcraft was the sole individual named in the will as a personal representative and subsequently the sole person appointed personal representative.

including the allegation that "the [w]ill . . . was not signed by the Decedent or by some other person for her in her presence and by her express direction, nor was it attested and subscribed to in her presence by two or more credible witnesses."[4] Thereafter, Appellant, Marion, filed an answer and cross-petition, re-asserting the allegations set forth in the original Petition.

Following the filing of the referenced Petitions, Marilyn's role as personal representative was converted to special administrator of the estate. In her role as special administrator, Marilyn filed answers to the Petition and Cross-Petition, specifically denying the allegations that the will was not signed by Decedent and that the will was not attested to by two credible witnesses. Appellants then filed a Joint Request to Transmit Issues to Circuit Court without objection by Marilyn. In July of 2022, the orphans' court ordered the issues alleged in the Petition to Caveat transmitted to the circuit court.

After the conclusion of discovery, in July of 2023, the circuit court held a two-day trial on the merits. On the first day of trial, Appellants offered Sharon Ottinger ("Ottinger") as a witness for the purpose of qualifying as an expert in the field of document examination. Voir dire commenced as to expertise of the witness and Ottinger testified that she had obtained two master's degrees, one in school counseling and another in education administration, although her current profession was that of a document examiner. As a document examiner, Ottinger explained that she examines signatures to determine whether

[4] While the petition alleged seven issues, the only issue relevant to this appeal is the allegation that the purported will was not signed by the Decedent, nor was it attested to by two credible witnesses, because Appellants withdrew the other issues alleged in the original Petition.

she can authenticate that a document is signed by the named individual or someone else. Ottinger testified that she entered the field of document examination as an apprentice for two years with another document examiner, Curt Baggett ("Baggett"). Ottinger noted that following her apprenticeship she worked part-time under Baggett for 15 years, while maintaining her full-time career as a school counselor. She subsequently retired from school counseling and began working on her own as a document examiner.

Ottinger also testified about her knowledge regarding document examination, specifically addressing the standards and certifications in the industry. Ottinger noted that she "thinks there are general standards" but that "[t]here's nothing that's required, . . . nor is like a certification required at the state or national level." Ottinger then testified that she "was taught the ACE methodology to - - to analyze, compare and examine. And basically, that's what all document examiners do. So that's a - - a basis."

Ottinger provided additional background about her time working with Baggett, explaining that she "assisted Mr. Baggett for . . . those 15 years. He made the final decision, but we worked together on hundreds of cases." Ottinger then estimated that she has "probably done about 100 on my own since January of . . . 2019[,]" and stated that she has testified as an expert seven times. In each of those seven cases, Ottinger noted that the authenticity of a signature was an issue in the case.

Marilyn's counsel ("appellee's counsel") was then granted the opportunity to examine Ottinger as to her expertise. Appellee's counsel initially questioned Ottinger regarding a specific case in which she was alleged to have been qualified as an expert; however, Ottinger could not recall her opinion in the case, whether the court gave weight

to her opinion, or the final ruling as it related to the issue in that case. When Ottinger was asked about the final ruling in the case, she averred that she is "usually . . . not aware of the outcome of cases."

Appellee's counsel then inquired of Ottinger regarding her knowledge of standards and credentials in the industry, with particular focus on Ottinger's awareness of the Scientific Working Group Forensic Document Examination Standards ("SWGDOC"). While Ottinger testified that she was aware of the group, she noted that she could not recall what the acronym of the organization stood for, was not certified by the organization, nor a member of it, has not attended any of its events or conferences, and lastly, was not familiar with the "SWGDOC standard examination of handwritten items[.]"

Later, Appellee's counsel probed Ottinger regarding the methodology she applies and its development. Counsel's questions focused on Ottinger's previous testimony regarding the ACE method, specifically noting that the method Ottinger identified has since been updated to the ACE-V method. In addressing the development of the methodology, appellee's counsel asked Ottinger whether she knew that the method was developed to analyze things that are "static and not variable[,]" such as tire tracks and shoe prints, to which Ottinger testified that she "was not aware of that."

Turning to Ottinger's knowledge of foundational texts within the sphere of document examination, Appellee's counsel inquired regarding the citations, in two reports issued by Ottinger, to a treatise on handwriting examination. Ottinger testified that she has cited from Huber and Headrick, 1999 Edition, Handwriting Identification Facts and Fundamentals and acknowledged that the authors "[a]re like the fathers of document

examination[.]" She further explained that the treatise is

> basically about document examination and different ways to analyze signatures and what could possibly mean what and about the significance of differences in handwriting. And that one unexplainable difference would denote that it's not the author. That it's a forged or somehow signed but not by the original author. That differences do make a difference. Basically, an overall book about document examination, every aspect of it.

However, when pressed by appellee's counsel about her citations to the treatise, Ottinger testified that she took the quotes "from Mr. Baggett that I trained under. He had it, and I took it from there from - - that was from the book, which he said he has taken it from. So I put it in quotes."

Upon the conclusion of voir dire by both parties, the court questioned Ottinger on three areas: training, continuing education, and the Huber and Headrick text. The court inquired of Ottinger if "there [is] any sort of examination or testing that you go through to periodically ensure that what your opinion is might be correct?" to which Ottinger answered that "[n]o, sir, there's none required." The court then inquired regarding Ottinger's training with Baggett, confirming that her training was a two-year apprenticeship and that during the 15 years Ottinger worked with Baggett she did not testify as an expert. Ottinger clarified that she "just assisted him[,]" noting that they "would confer. But it - - it was his name on the letter, and it was him. There was no testimony." The court concluded by requesting that Appellant Melvin's counsel clarify Ottinger's testimony regarding the Huber and Headrick treatise.

> [Counsel]: Well, Your Honor, she has testified that there is textbook authority on what she relies. She has…
>
> [The court]: But she hasn't read the book.

[Counsel]: She hasn't read all of it, but she's read parts of it, I think she said.

Upon returning from a brief recess, the trial court ruled that Ottinger would not be qualified as an expert. In so doing, the court explained that it has "no problem with the appropriateness of expert testimony on this subject[;]" but, the "problem . . . is whether the witness is qualified as an expert by knowledge, skill, experience, training or education." In reaching its decision the court noted the following,

> I'm going to point out that while the proposed expert does have two master's, they're not in this field. They're in the field of education. I don't even know if there is a master's available in this field. The witness has done two years of apprenticeship and worked part time for 15 years as part of her training under a person named Curt Baggett. She has since January 19th, I'm sorry, since January 2019, worked solely on examination of document work upon her retirement from education. She has been qualified to testify as an expert seven different times in various jurisdictions all over the country. The testimony is also that there's no certifications required. So she has none. She has not read the treatise that she cites. She quotes the treatise and admittedly merely quoted it because Mr. Baggett has quoted it. And it sounds like she's read those sections. She was not familiar with SWGDOC, although she did acknowledge that that, I guess, that methodology or that standard existed. Her methodology and standard, she describes as the ACE method, but it's currently now the ACE-V method. I will note that unlike some other cases that I've had, she has not studied this discipline for a - - an extended period of time. She hasn't indicated that she's read any relevant books. The one book she references, she indicated she hasn't read it. I've heard nothing about any peer-reviewed studies. I've heard nothing about being published. I've heard nothing about teaching on the subject. And somewhat concerning to the Court is that the witness doesn't seem to know how well she's doing. She doesn't follow her cases. She doesn't know what the results were. It's the Court's discretion. I am not comfortable as a member of this [c]ourt designating this witness as a competent expert on document verification and handwriting analysis, and the testimony is going to be excluded on that basis.

At the conclusion of the merits hearing, the court ruled in favor of Appellees, holding that Decedent's signature on the will was authentic and the will was properly attested to by two credible witnesses. Additional facts will be included as necessary.

DISCUSSION

I. THE TRIAL COURT DID NOT COMMIT AN ABUSE OF DISCRETION WHEN IT RULED THAT APPELLANTS' EXPERT WAS NOT QUALIFIED.

Appellants contend that the court abused its discretion when it ruled that Ottinger was not competent to be qualified as an expert. In support of their contention, Appellants argue that the record does not support the trial court's reasoning. Appellants offer a line-by-line analysis challenging each finding made by the trial court in rendering its decision. In so doing, Appellants allege that the trial court's findings were "incorrect/mistaken, inaccurate, exaggerated and/or unsupported by the record." Appellants assert that the case must be remanded for a new trial due to the alleged abuse of discretion committed and that, if remanded, the case must be assigned to a new trial judge because new rulings would not be impartially decided.

Appellee disputes the claim that the court abused its discretion when it ruled that Ottinger was not qualified to testify as an expert witness in the offered field. Appellee asserts that the court properly excluded Ottinger as an expert because her education, experience, skills, and knowledge were all "objectively deficient and manifestly insufficient," placing her ability to aid the trier of fact at issue.

A. Standard of Review

The "admissibility of expert testimony is a matter largely within the discretion of the trial court," *Roy v. Dackman*, 445 Md. 23, 38–39 (2015) (citation omitted), as such the trial court is afforded "wide latitude" when determining whether a witness is qualified to testify as an expert. *Basso v. Campos*, 233 Md. App. 461, 477 (2017) (citation omitted).

Thus, this Court will only reverse the decision of the trial court if it is "founded on an error of law or some serious mistake, or if the trial court has clearly abused its discretion." *Covel v. State*, 258 Md. App. 308, 328 (2023) (quoting *Gutierrez v. State*, 423 Md. 476, 486 (2011)); *accord Butler-Tulio v. Scroggins*, 139 Md. App. 122, 135 (2001). "[A]n abuse of discretion is 'discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Levitas v. Christian*, 454 Md. 233, 243 (2017) (quoting *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241 (2011)) (emphasis omitted). Due to the amount of discretion afforded the trial court, the court's ruling on an expert "will seldom constitute a ground for reversal." *Radman v. Harold*, 279 Md. 167, 173 (1977) (citation omitted).

B. Analysis

Maryland Rule 5-702 prescribes that "[e]xpert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue." Md. Rule 5-702. Thus, to qualify as an expert, Rule 5-702 has outlined three factors that must be met to admit expert witness testimony. Md. Rule 5-702(1)-(3). The first factor specifies that the witness must be "qualified as an expert by knowledge, skill, experience, training, or education[.]"[5] Md. Rule 5-702(1).

A witness is qualified when they "have such special knowledge of the subject on

[5] The other factors identified in Rule 5-702, but not at issue in the case, are "the appropriateness of the expert testimony on the particular subject, and . . . whether a sufficient factual basis exists to support the expert testimony." Md. Rule 5-702(2)-(3).

which [they are] to testify that [they] can give the [factfinder] assistance in solving a problem for which their equipment of average knowledge is inadequate." *Blackwell v. Wyeth*, 408 Md. 575, 619 (2009) (quoting *Radman*, 279 Md. at 169–70). To make this determination, the "trial court is free to consider any aspect of a witness's background . . . including the witness's formal education, professional training, personal observations, and actual experience." *Massie v. State*, 349 Md. 834, 851 (1998). So long as the witness has "a minimal amount of competence relative to the area in which [they] purport[] to be an expert" the witness may be qualified as an expert. *Lewin Realty III, Inc. v. Brooks*, 138 Md. App. 244, 276 (2001) (citing *Wood v. Toyota Motor Corp.*, 134 Md. App. 512, 521 (2000), *cert. denied*, 362 Md. 189 (2000)).

Here, we cannot conclude that the trial court abused its discretion when it ruled that Ottinger was not qualified to testify as an expert witness. While Appellants present a litany of challenges to the court's factual findings, upon our review of the record, those challenges are not supported by the record. We do not address every argument presented by Appellants with specificity, particularly those that challenge the court's findings which are accurate recitations of Ottinger's testimony during voir dire.[6]

In reaching its decision, the trial court identified specific testimony developed during voir dire that guided the court's determination that Ottinger was not qualified to testify regarding handwriting and document examination. The court did not focus on any

[6] During oral argument, Appellant conceded that the court's factual findings—as identified *supra* page 7—were not inaccurate; however, Appellant maintained that the court's findings were insufficient to rule that Ottinger was not qualified as an expert in the field of handwriting analysis and document verification.

aspect of Ottinger's background that it found to be singularly disqualifying; instead, the court identified a variety of statements made during Ottinger's testimony regarding her education, experience, and personal observations that contributed to the court's ruling in declining to designate Ottinger as an expert. The specific reasoning relied upon by the trial court, per Ottinger's testimony, demonstrated that Ottinger did not have the minimum level of competence to aid the court, as the fact finder, in determining whether the signature was authentic. *See Wyeth*, 408 Md. at 619.

In support of its reasoning, the court identified Ottinger's education, specifying that Ottinger "ha[d] not studied this discipline for . . . an extended period of time." While Appellants assert that there was "absolutely no basis" for this finding because of Ottinger's two decades in the field of document examination, we find that Ottinger's testimony and exhibits do support the court's conclusion. Ottinger's testimony indicated that, while she had participated in the field of document examination for in excess of two decades, her initial education was a part-time apprenticeship and the only evidence of her continuing education was ambiguous testimony about a course she took on natural deviation and a list of twenty-two classes that does not contain specific information to include instructor names, descriptions of the materials covered, or dates of completion.[7] Nor did Ottinger provide detailed testimony about the apprenticeship itself. Instead, she simply indicated that she completed her apprenticeship with Baggett, who had been a document examiner

[7] We note that a printed copy of Ottinger's website that includes her resume was admitted as Respondent's Exhibit 3. The exhibit lists 29 classes; however, only 22 classes appear to be related to document examination.

for 30 years, and when asked about the instruction and training she received, Ottinger provided a vague description plagued with generalities.

> "[P]retty much everything about document examination, about how, you know, the ends and outs and the steps required and what to take notice of and what to - - how to compare documents, what to look for, what differences, similarities, pretty much everything about document examination."

The mere fact that Ottinger completed an apprenticeship and worked in the field of document examination for more than two decades does not *per se* validate her qualifications. *See Catler v. Arent Fox, LLP*, 212 Md. App. 685, 722 (2013).

The court similarly identified Ottinger's inaccurate description of the ACE method in support of its conclusion. Ottinger originally testified that she uses the "ACE" methodology for analyzing documents, noting that the acronym means "to analyze, compare and examine." When testifying about the ACE method, she identified the acronym and stated that "basically that's what all document examiners do[,]" without explaining any other aspects of the methodology or its associated background. Only when it was brought to Ottinger's attention by opposing counsel, did she acknowledge that the methodology had been updated and that it was now the ACE-V method, wherein V means verification.

The court further indicated that Ottinger's testimony regarding the Huber and Headrick Treatise contributed to its decision that she was not qualified to testify as an expert. Appellants contend that the court was inaccurate and made a contradictory statement when it found that Ottinger "had not read the [Huber and Headrick] treatise that she cites" but then stated in a subsequent sentence "it sounds like she has read those sections." Ottinger's testimony was that she has "read excerpts from the book[,]" but took

quotes attributed to the treatise "from [Baggett's report] rather than taking [the quotes] from the book." Ottinger also admitted that by taking the quotes from the report they were likely taken "out of context."

While the trial court did note that Ottinger had not read the treatise, the court provided clarifying information as to its interpretation of Ottinger's testimony regarding the treatise, particularly when the court noted that "it sounds like she's read those sections." Appellants' contention that the court was inaccurate or contradictory belies the statement taken out of context of the entirety of the analysis. It is clear that the court intended to convey that Ottinger had not read the book in full, as clearly supported by Ottinger's testimony in multiple instances that she had only read "excerpts from" the treatise.

Appellant further contends that "[l]ittle or no weight should be given to the fact that the witness has not read the 'entire' treatise." Notably, it was Ottinger who testified that the treatise is foundational in the field of handwriting examination. That she had read only excerpts from the book is certainly a fact which was evidence available for the trial court's consideration. The court was, thus, well within its discretion to consider this information, as well as her other testimony about the treatise, when deciding whether Ottinger was qualified to testify. *See Radman*, 279 Md. at 170.

In providing its analysis, the court concluded by noting that it was concerned "the witness doesn't seem to know how well she's doing. [Ottinger] doesn't follow her cases" and "doesn't know what the results were." This is a rational concern as Ottinger testified that she does not follow the cases she has testified in, does not engage in any "sort of examination or testing . . . to periodically ensure that what [her] opinion is might be

correct[,]" nor does she have any certifications, which presumably would require testing and/or continuing education, because they are not required. This testimony can reasonably be interpreted to mean that Ottinger does not engage in review or verification of her skills and opinions, particularly as no testimony was presented to support a contention that she did so.

The court's detailed explanation, and the record developed during the voir dire of the offered witness, supports our conclusion that the trial court was not "manifestly unreasonable" when it ruled that Ottinger was not qualified to testify as an expert and therefore the court did not abuse its discretion. *Levitas*, 454 Md. at 243.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.