

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1655

September Term, 2015

RHONDA I. FRAMM

v.

ROBERT L. WILSON, JR. ET AL.

Krauser, C.J.,
Berger,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, James R., J.

Filed: January 13, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal has its genesis in a divorce proceeding filed in the Circuit Court for Baltimore County by Robert L. Wilson, Jr., appellee, against his wife, Jennifer L. Wilson. The Wilsons entered into a settlement agreement, and on June 24, 2010, a judgment of absolute divorce was entered in favor of Mr. Wilson. Thereafter, Mr. Wilson sought to vacate the settlement agreement and judgment of absolute divorce, and he retained attorney Rhonda I. Framm, appellant, to represent him in that effort. Ms. Framm filed a motion to vacate the settlement agreement and judgment of absolute divorce on the ground that Mr. Wilson lacked informed consent and the capacity to enter into the settlement agreement. After a hearing on February 13, 2013, the circuit court orally vacated the judgment of absolute divorce, stating:

Everything that was done previously is now null and void as if it had not happened at all. I have found – indeed, I do find as a fact for purpose of these proceedings or any other, I find as a fact that Mr. Wilson is incompetent to enter into a legal agreement, a contractual agreement, or to enter into a settlement agreement or to even file a petition for divorce.

No written order was entered with respect to this ruling.

Nearly two years later, on January 22, 2015, Mr. Wilson, through new counsel, filed a “Motion for Appropriate Relief” in which he sought, among other things, a written order with regard to the circuit court’s February 13, 2013 ruling. Ms. Framm filed a motion to intervene as an interested party, which the court granted. Ms. Framm opposed Mr. Wilson’s motion. After a hearing on August 18, 2015, the circuit court entered a written memorandum and order vacating and striking the judgment of absolute divorce, “*nunc pro*

tunc as of February 13, 2013 as per the Court’s oral ruling on February 13, 2013.” This timely appeal followed.¹

ISSUE PRESENTED

On appeal, appellant contends that the circuit court’s ruling regarding Mr. Wilson’s ability to understand the settlement agreement in the divorce case must be limited to that issue and cannot be used to establish Mr. Wilson’s incompetency generally between 2010 and 2013. The issue is important because of the potential effect of the circuit court ruling in other suits by Mr. Wilson against appellant. We do not reach the merits of that issue. For the reasons set forth below, we shall affirm the judgment on the ground of judicial estoppel.

FACTUAL BACKGROUND

The Wilsons were married in Baltimore County on January 15, 1995. At some point either before or after the parties were married, Mr. Wilson suffered a stroke.² In 2008, Mr. Wilson, through counsel, filed in the Circuit Court for Baltimore County a complaint for absolute divorce, and Mrs. Wilson filed a counter-complaint for absolute divorce. The parties reached a settlement agreement with respect to all the issues between them except for the manner in which Mr. Wilson would pay to Mrs. Wilson a marital award in the

¹ On appeal, a brief was filed on Mr. Wilson’s behalf by his “next friend and cousin” Kevin Griggs. Ms. Framm filed a motion to strike that brief, which we granted.

² The record contains conflicting information on this point. A statement contained in a preliminary report prepared by Morris S. Lasson, Ph.D., a clinical psychologist who examined Mr. Wilson on June 28, 2010, suggests that Mr. Wilson “suffered a stroke in 1964 (‘or somewhere around there’) which has affected his speech and memory.” Dr. Stephen Siebert of the Office of the Court Psychiatrist for the Circuit Court for Baltimore County, in a psychiatric evaluation prepared by him, states that Mr. Wilson’s stroke occurred on February 11, 2007.

amount of \$55,000. After a hearing on June 17, 2010, the circuit court approved the parties' separation agreement, entered a judgment of absolute divorce, and ordered, *inter alia*, that Mr. Wilson pay the marital award to Mrs. Wilson either by way of a single payment of \$50,000 made within sixty days of the entry of the court's order, or by annual payments of \$11,000 for five consecutive years, beginning on July 1, 2011.

Within days of the court's order, Mr. Wilson sought to vacate the settlement agreement and judgment of absolute divorce. He discharged prior counsel and retained Ms. Framm to represent him in that effort. On July 1, 2010, Ms. Framm entered her appearance. On the same day, she filed a motion to vacate the judgment of absolute divorce and the settlement agreement, a motion for new trial, and a request for an extension of time to allow for a "thorough psychological evaluation of competency and the appointment of [sic] guardian over the property of Mr. Wilson[.]" In support of the motion to vacate, Ms. Framm argued that Mr. Wilson lacked the capacity to understand the settlement agreement and could not consent to it. She maintained that, prior to the June 17, 2010 hearing, Mr. Wilson had suffered a stroke that "severely and permanently affected his ability to retrieve and focus on any information," and that at the time of the hearing, his "mental abilities were so compromised that he could not process information."

Ms. Framm further argued:

4. That it is believed that at the time of the hearing, the Court taking the voir dire of Mr. Wilson had concerns regarding Mr. Wilson's competency and understanding of the terms. The court was informed by Mr. Wilson's counsel that his difficulties were limited to his speech. Mr. Wilson, however, suffers from aphasia and, as set forth by the enclosed preliminary report of Dr. Lasson, (exh. 1), Mr. Wilson, JR., [sic] can not process information fluidly. Mr. Wilson can not understand complex information. Mr. Wilson

has a neuro-cognitive disorder which interferes [sic] his understanding of any details. He can not recite the alphabet correctly.

5. That at the time of the appearance of the parties before this court, even the Court voiced concern arising from the confused demeanor of the Plaintiff. The Court's voiced concern was met with the unresponsive and repeated statement of the Plaintiff that he "had to do what his attorney tells him". The Plaintiff's failure to comprehend details (exh. 1) resulted in his inability to understand the complex information involved in that an agreement reached would be dispositive of all claims between the parties arising out of the marriage, including his claim that his wife agreed to pay him 3 years of rent and repay him for the credit cards.

Ms. Framm asserted that additional time might be needed "to allow Dr. Lasson to subject [him] to lengthy testing to determine whether [he] needs to have appointed on his behalf a guardian for the person, for the property or both." Included in the motion was the following statement:

That it is your undersigned's intention upon this Judgment being vacated to submit the facts of this matter to the guardian to be appointed by the equity court for Mr. Wilson, and to have the guardian for Mr. Wilson's property (or person as well if such is deemed needed) instruct Counsel as to the best interests of Mr. Wilson, Jr.

The preliminary report of Morris Lasson, Ph.D., referred to in Ms. Framm's motion on behalf of Mr. Wilson, was an initial psychological evaluation performed on June 28, 2010, in which it was determined that Mr. Wilson's "memory was flawed," that he "showed difficulty with encoding, retrieval and focusing skills" and "cannot process information fluidly and has sensory integration problems." Dr. Lasson concluded that "[w]ith reasonable psychological certainty," Mr. Wilson had "a neuro-cognitive disorder and cannot be held responsible to fully understand complex information and details."

Subsequently, “Dr. Lasson conducted a complete evaluation of Mr. Wilson and issued a report, dated August 9, 2010, in which he opined that Mr. Wilson should have a legal guardian.” *Attorney Grievance Commission of Maryland v. Framm*, 449 Md. 620, 633 (2016). “Dr. Lasson explained that Mr. Wilson has a cognitive impairment that affects ‘his ability to understand and comprehend both the written and spoken word. He should be counseled constantly not to sign any documents and, even in a verbal encounter, he should have guidance and direction to be absolutely certain that he understands to the best of his ability[.]’ *Id.*

The circuit court ordered Mr. Wilson to submit to a psychiatric evaluation by the Office of the Court Psychiatrist. That evaluation was conducted by Dr. Stephen W. Siebert, who, in a report dated December 28, 2012, stated, in part, as follows:

Forensic Opinions – At the present time, Mr. Wilson has clear evidence for impairment of cognitive and memory, with overall low-average intelligence and impaired verbal IQ, concrete thinking, and evidence for brain injury most likely secondary to his stroke in 2007. He is unable to explain, in lay terms, the nature of the current legal dispute and has clear evidence for impaired short-term verbal memory.

In functional terms, Mr. Wilson cannot retain verbal information and then repeat the content of the information after several minutes. My opinion is that this impairs his competency to understand and sign an agreement, even after this has been discussed or explained to him. My opinion is that he is not competent, at this time, to sign a settlement agreement regarding his property or alimony.

After reviewing the medical records, the June 2010 evaluation of Dr. Lasson, and the transcript of the hearing on 6/17/10, my opinion is that Mr. Wilson had the same cognitive impairments in June 2010 that he has at the present time. There is no evidence that he has deteriorated from a higher level of functioning in the past two years such that he was competent in 2010 and has had the onset of impairments since that time. Based on all of the above, my opinion is that Mr. Wilson was not competent to consent to a settlement

agreement on June 17, 2010 or to sign the June 23, 2010 settlement agreement.

At a hearing on February 13, 2013, the court found that Mr. Wilson was “incompetent to enter into an agreement, a legal agreement at the time of the divorce proceedings back in 2010 before this Court.” The court went on to state that “as a fact for purpose of these proceedings or any other, I find as a fact, that Mr. Wilson is incompetent to enter into a legal agreement, a contractual agreement, or to enter into a settlement agreement or to even file a petition for divorce.” The court vacated the judgment of absolute divorce and granted Ms. Framm’s motion to withdraw her appearance on behalf of Mr. Wilson. The docket entry for the date of the hearing provided:

February 13, 2013. Hon. Sherrie R. Bailey. Hearing had in re: Motions. Motion to strike attorney appearance of Rhonda Framm-granted. Court finds that plaintiff Robert L. Wilson, Jr. was incompetent to sign settlement agreement. Judgment of Absolute Divorce signed 06/23/10 pleading #33000 Vacated. Order to be filed.

On April 20, 2011, while the motion to vacate was pending, Ms. Framm filed in the circuit court a petition seeking the appointment of a guardian of the property of Mr. Wilson. Mr. Wilson was listed as the petitioner and his cousin, Kevin Griggs, was listed as the person he wished to have appointed as his guardian. *Framm*, 449 Md. at 633. The circuit court dismissed the petition for failure to comply with the Maryland Rules. *Id.* at 634. On November 18, 2011, Ms. Framm filed another petition for guardianship naming Mr. Griggs as the petitioner. *Id.* That petition was also rejected for failure to comply with the Rules. *Id.* at 634-35. On January 10, 2012, after amended certificates by physicians were provided, the court accepted the petition and appointed attorney Katherine Linzer to represent Mr.

Wilson in the guardianship proceeding. *Id.* at 635. Ms. Linzer opposed the petition and sought to have it dismissed on the ground that Mr. Wilson was not disabled. *Id.*

Ms. Framm filed an opposition on behalf of Mr. Griggs, arguing that Mr. Wilson was incapable of making decisions on his own and required a guardian to act on his behalf. *Id.* Ms. Framm asserted that, “contrary to the assertions made by attorney Katherine Linzer on Mr. Wilson’s behalf, Mr. Wilson suffers from a mental disability that his psychologist states causes cognitive and processing deficiencies that render Mr. Wilson incapable of both comprehending and making decisions on his own.” *Id.* She further argued that “Mr. Wilson presently cannot sufficiently process nor make decisions concerning the management of his property and investments when [the] same involve holding several facts in [his] mind,” nor is it “clear that Mr. Wilson would even have sufficient capacity to designate a power of attorney.” *Id.* Eventually, Mr. Griggs and Mr. Wilson decided they no longer wished to pursue the guardianship, and Ms. Framm filed a motion to withdraw the petition, which was granted. *Id.* at 636. There is no evidence before us that a guardian of the person or property has been appointed for Mr. Wilson.

On July 30, 2013, Ms. Framm filed suit against Mr. Wilson in the District Court of Maryland, sitting in Baltimore County, seeking unpaid legal fees relating to the motion to vacate the judgments in the divorce proceeding (“the fee case”). Mr. Wilson filed a notice of intention to defend and proceeded in proper person, with his cousin, Mr. Griggs, and his friend, Sandra McLean-Stewart, assisting in his defense. *Framm*, 449 Md. at 641. After a trial on October 22, 2013, the court awarded Ms. Framm \$30,000 plus interest. Ms. Framm collected that judgment via writs of garnishment issued for Mr. Wilson’s bank accounts.

In its recent decision arising out of an attorney disciplinary proceeding involving Ms. Framm’s representation of Mr. Wilson, the Court of Appeals discussed the fee case, in part, as follows:

[The hearing judge found] that [Framm], who had testified at the trial [in the fee case] before Judge Russell, had misrepresented Dr. Lasson’s opinion of Mr. Wilson’s mental capacity by testifying in the fee case that Dr. Lasson had concluded that Mr. Wilson “can certainly deal with his day-to-day events and simple contracts,” and that Dr. Lasson’s “report didn’t indicate he couldn’t understand normal contracts he entered into.” [Framm] also misrepresented that she “was aware that not only does Mr. Wilson have a fairly good capacity to understand agreements . . . but he has people who have resources[.]” The hearing judge found that [Framm] in her testimony in the fee case, at best, “continually understated the extent to which Wilson had a serious and permanent cognitive disorder.” The hearing judge found that [Framm’s] failure to testify specifically that Judge Bailey had found Mr. Wilson incompetent further contributed to her misrepresentation as to Mr. Wilson’s capacity. The hearing judge rejected [Framm’s] argument that Judge Russell was made fully aware of Judge Bailey’s finding because Mr. Wilson had informed Judge Russell of this fact in his interrogatory answer.

* * *

The hearing judge found, in addition, that [Framm] intentionally misrepresented Dr. Siebert’s opinion. [Framm] had testified in the fee case that “Dr. Siebert thankfully agreed with us, and he said, ‘this is way too complicated of an issue for this gentleman to be able to work through without assistance.’” The hearing judge found that, because [Framm] knew the details of Dr. Siebert’s report, she should have related his findings accurately. The hearing judge found as well that [Framm] made misrepresentations by omitting relevant medical information, including Dr. Lasson’s and Dr. Siebert’s reports and Dr. Lasson’s deposition testimony. Respondent also failed to inform Judge Russell that she had filed an opposition to Mr. Wilson’s answer to the second petition for guardianship.

Framm, 449 Md. at 643.

Mr. Wilson, proceeding in proper person, filed two lawsuits against Ms. Framm, one on December 5, 2013, in the Circuit Court for Baltimore County, and the other, on

January 22, 2014, in the District Court of Maryland, sitting in Baltimore County. Mr. Wilson retained attorney Wendell H. Grier to represent him in the circuit court case. Mr. Grier filed an amended complaint, and later a second amended complaint, asserting claims of, among other things, legal malpractice and breach of fiduciary duty arising out of Ms. Framm’s representation of Mr. Wilson.

During discovery in the legal malpractice action, Mr. Grier became aware of the circuit court’s prior ruling in the divorce case with respect to Mr. Wilson’s competency. Mr. Grier filed a motion for protective order, claiming that Mr. Wilson was incompetent and, as a result, could not respond to Ms. Framm’s written discovery. Ms. Framm opposed the motion for protective order on the ground that the circuit court’s February 13, 2013 ruling did not constitute a finding of general incompetence and could not provide the basis for Mr. Wilson to claim that he was incompetent to participate in discovery in a case that he had initiated. Ms. Framm argued that the court’s 2013 ruling was limited to Mr. Wilson’s capacity to understand the June 2010 settlement agreement in the divorce case. The circuit court denied Mr. Wilson’s motion for protective order.

On Mr. Wilson’s behalf, Mr. Grier filed a “Motion for Appropriate Relief” in the divorce case. Noting that no “written Order establishing the limitations or scope of [Mr. Wilson’s] incompetency” appeared in the court file, the motion asked the court to give “further direction as to [Mr. Wilson’s] competency to act as a Plaintiff in subsequent court cases.”

Ms. Framm filed a motion to intervene in the divorce action arguing that Mr. Wilson’s “sole purpose in filing his Motion for Appropriate Relief” and seeking “further

direction” from the court was to obtain an order that could be used to establish his civil claims against her. Ms. Framm’s motion to intervene was granted. As an intervenor, Ms. Framm focused on the scope of the order, arguing that the court should limit its finding with respect to Mr. Wilson’s competency to the divorce proceeding as opposed to a more general finding of incompetency.

A hearing on the motion for appropriate relief was held on August 18, 2015. The court issued a memorandum opinion in which it stated, in part:

The evidence received by the Court in 2013 indicated a lack of competence of a longstanding duration, as opposed to simply a difficulty in speech, related to the prior stroke(s). This Court found that Plaintiff was incompetent to file the initial complaint, to enter into the settlement agreement in 2010 and incompetent at the time of the early 2013 hearing.

The court also stated that it could not determine whether Mr. Wilson was or was not competent in 2015, at the time of the hearing, “without appropriate examination.”

In a written order dated August 24, 2015, the court vacated the judgment of absolute divorce, *nunc pro tunc*, as of February 13, 2013, thereby reaffirming the court’s oral ruling.

DISCUSSION

Ms. Framm contends that the circuit court erred in finding that Mr. Wilson was generally incompetent, arguing that the only issue before the court was the validity of the settlement agreement. She maintains that the divorce proceeding was not a competency hearing in accordance with Title 10 of the Maryland Rules, which governs guardians and other fiduciaries, and as a result, the court erroneously found on February 13, 2013 that Mr. Wilson was, “for purpose of these proceedings or any other . . . incompetent to enter into a legal agreement, a contractual agreement, or to enter into a settlement agreement or

to even file a petition for divorce[.]” In addition, Ms. Framm contends that, in its August 25, 2015 memorandum opinion, the circuit court erred in declaring its intent “to make findings relating to Mr. Wilson’s general capacity to enter into any and all legal agreements and to participate in litigation generally between 2010 and the February 2013 hearing.”

A. Jurisdiction

Preliminarily, we pause to comment on our jurisdiction to consider this appeal. Under Maryland Rule 8-202(a), a “notice of appeal shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.” The entry of a final judgment is not effective unless it is set forth in a “separate document” pursuant to Md. Rule 2-601(a) and is entered on the docket pursuant to Rule 2-601(b).³ “The date on which the separate

³ At all times relevant to this case, Maryland Rule 2-601 provided, in part:

(a) **Prompt entry. – Separate document.** Each judgment shall be set forth on a separate document. Upon a verdict of a jury or a decision by the court allowing recovery only of costs or a specified amount of money or denying all relief, the clerk shall forthwith prepare, sign, and enter the judgment, unless the court orders otherwise. Upon a verdict of a jury or a decision by the court granting other relief, the court shall promptly review the form of the judgment presented and, if approved, sign it, and the clerk shall forthwith enter the judgment as approved and signed. A judgment is effective only when so set forth and when entered as provided in section (b) of this Rule. Unless the court orders otherwise, entry of the judgment shall not be delayed pending determination of the amount of costs.

(b) **Method of entry – Date of judgment.** The clerk shall enter a judgment by making a record of it in writing on the file jacket, or on a docket within the file, or in a docket book, according to the practice of each court, and shall record the actual date of the entry. That date shall be the date of the judgment.

document is docketed triggers the 30-day deadline for filing a notice of appeal under Rule 8-202(a).” *Hiob v. Progressive American Ins. Co.*, 440 Md. 466, 472 (2014).

In the instant case, although the docket entry for February 13, 2013 shows that the court found Mr. Wilson to be incompetent to sign the settlement agreement and vacated the judgment of divorce, no “separate document” was entered with respect to that ruling. It was not until August 24, 2015, when the court entered a written order vacating the judgment of absolute divorce, *nunc pro tunc*, as of February 13, 2013, that a final appealable judgment was entered. As Ms. Framm filed a timely notice of appeal from the August 24, 2015 judgment, we have jurisdiction to consider this appeal.

B. Judicial Estoppel

Although we have jurisdiction to consider this appeal, we shall not consider the merits of the issue presented by Ms. Framm because her argument is precluded by the doctrine of judicial estoppel. Judicial estoppel, also known as the “doctrine against inconsistent positions” and “estoppel by admission,” is a principle that precludes a party from taking a position in a subsequent action inconsistent with a position taken by him or her in a prior action. *Underwood-Gary v. Mathews*, 366 Md. 660, 667 n.6 (2001)(citing *WinMark Ltd. P’ship v. Miles & Stockbridge*, 345 Md. 614 (1997)); *Abrams v. American Tennis Courts, Inc.*, 160 Md. App. 213, 225 (2004); *Gordon v. Posner*, 142 Md. App. 399, 424 (2002). In *Eagan v. Calhoun*, the Court of Appeals stated that “Maryland has long recognized the doctrine of estoppel by admission, derived from the rule laid down by the English Court of Exchequer . . . that ‘[a] man shall not be allowed to blow hot and cold, to claim at one time and deny at another.’” *Eagan*, 347 Md. 72, 87-88 (1997)(internal citation

omitted). Stated otherwise, litigants cannot be permitted to “play fast and loose” in this way. *Kramer v. Globe Brewing Co.*, 175 Md. 461, 469 (1938).

Judicial estoppel is applicable “when it becomes necessary to protect the integrity of the judicial system from one party who is attempting to gain an unfair advantage over another party by manipulating the court system.” *Dashiell v. Meeks*, 396 Md. 149, 171 (2006). Although application of the doctrine is harsh, judicial estoppel ensures the “integrity of the judicial process by prohibiting parties from deliberately changing positions according to the exigencies of the moment[.]” *Gordon*, 142 Md. App. at 425 (internal quotations and citation omitted). Because the doctrine is designed to protect the integrity of the courts, it can be raised *nostra sponte*. *Brown v. Mayor and City Council*, 167 Md. App. 306, 325 (2006)(citing *Gordon*, 142 Md. App. at 424-33).

To apply judicial estoppel, three circumstances must be present: “(1) one of the parties takes a factual position that is inconsistent with a position it took in previous litigation, (2) the previous inconsistent position was accepted by a court, and (3) the party who is maintaining the inconsistent position must have intentionally misled the court in order to gain an unfair advantage.” *Dashiell*, 396 Md. 149, 171 (2006)(citing *Standard Fire Ins. Co. v. Berrett*, 395 Md. 439, 464 (2006)(citing *Pittman v. Atlantic Realty Co.*, 359 Md. 513, 529 n.9 (2000)); *Dynacorp Ltd. v. Aramtel Ltd.*, 208 Md. App. 403, 472 (2012); *Mona v. Mona Elec. Group, Inc.*, 176 Md. App. 672, 726 (2007). These factors are not inflexible prerequisites, but serve as guidelines; indeed, there may well be other considerations that apply in individual cases. *Abrams*, 160 Md. App. at 225-26; *Vogel v. Touhey*, 151 Md. App. 682, 708-09 (2003).

Our review of the facts and circumstances giving rise to this appeal reveal that Ms. Framm has taken different positions with respect to the issue of Mr. Wilson’s competence, deliberately changing her position when it suited her. Initially, in her motion to vacate the judgment in the divorce action, Ms. Framm requested an extension of time to allow for a “thorough psychological evaluation of competency and the appointment of [sic] guardian over the property of Mr. Wilson[.]” She advised the court that Mr. Wilson’s stroke “severely and permanently affected his ability to retrieve and focus on any information,” and that at the time of the hearing, his mental abilities “were so compromised that he could not process information.” Ms. Framm asserted that Mr. Wilson lacked the capacity to understand the settlement agreement and could not consent to it. She supported the motion to vacate with Dr. Lasson’s preliminary finding that Mr. Wilson suffered from “a neuro-cognitive disorder and cannot be held responsible to fully understand complex information and details,” and that he “cannot process information fluidly and has sensory integration problems.” In addition, Ms. Framm advised the court of her intent to seek a guardian of Mr. Wilson’s property and, if necessary, his person.

Even if Ms. Framm intended to argue only that Mr. Wilson was incompetent at the time he filed for divorce and entered into the settlement agreement, she clearly asserted general incompetency in the guardianship proceeding. In that proceeding, Ms. Framm represented Mr. Wilson’s cousin, Mr. Griggs, who sought to serve as the guardian. Mr. Wilson’s court-appointed attorney opposed the appointment of a guardian on the ground that Mr. Wilson did not need or want one. Up until the time that Mr. Wilson and Mr. Griggs decided to dismiss the petition for guardianship, Ms. Framm took the position that Mr.

Wilson was incompetent and in need of a guardian. In fact, on April 10, 2012, Ms. Framm filed, on behalf of Mr. Griggs, an opposition to Mr. Wilson’s answer in which she argued that Mr. Wilson was “incapable of making decisions on his own and requires a guardian to act on his behalf.” *Framm*, 449 Md. at 635. She maintained that Mr. Wilson suffered from a mental disability that rendered him incapable of comprehending and making decisions on his own and that he was unable to make decisions concerning the management of his property and investments when those decisions required him to hold several facts in his mind. *Id.* (internal quotations omitted).

Ms. Framm’s position in the fee case against Mr. Wilson was quite different. In that suit, Ms. Framm sought legal fees related to the filing of the motion to vacate the judgment of divorce and settlement agreement. The motion to vacate was filed on July 1, 2010, just days after the judgment of absolute divorce had been entered. Although Ms. Framm was well acquainted with Mr. Wilson’s situation, and the opinions of Drs. Lasson and Siebert, she misrepresented the opinions of both doctors to the court and “continually understated the extent to which Wilson had a serious and permanent cognitive disorder.” *Framm*, 449 Md. at 643. In addition, Ms. Framm’s failure to testify specifically that Mr. Wilson had been found incompetent in the divorce action further misrepresented Mr. Wilson’s capacity. Clearly, Ms. Framm’s position in the fee action was that Mr. Wilson was competent to enter into an attorney-client relationship and fee agreement with her and to defend himself against her claim for legal fees.

Subsequent to the fee action, Ms. Framm moved to intervene as an interested party with respect to the Motion for Appropriate Relief filed in the divorce case by the attorney

representing Mr. Wilson in the legal malpractice action against Ms. Framm. As an intervenor, and again in the instant appeal, Ms. Framm backed off her previous position that Mr. Wilson’s stroke “severely and permanently affected his ability to retrieve and focus on any information” and that a guardian should be appointed for him, and argued that the finding of Mr. Wilson’s incompetence in the divorce action was limited to his incapacity to file for divorce and enter into a settlement agreement in that particular case.

Ms. Framm cannot argue in one action that Mr. Wilson was incompetent to file the divorce action and enter into a settlement of that case, in another action assert that he was in need of a guardian, and in a third action maintain that, just days after the settlement of the divorce case, he was competent to enter into an attorney-client relationship and fee agreement and that he was competent to defend himself in the fee case. By failing to advise the court in the fee action that Mr. Wilson had been recently found incompetent, Ms. Framm allowed the court to proceed as if there was no significant issue pertaining to his competence. By failing to disclose to the court the prior finding that Mr. Wilson was incompetent, Ms. Framm intentionally misled the court in order to gain an unfair advantage for herself. Accordingly, we hold that Ms. Framm is judicially estopped to make any argument on appeal with respect to Mr. Wilson’s competence or lack thereof.

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