Circuit Court for Harford County
Case No. 12-C-15-002592

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0048

September Term, 2019

JOSEPH G. RAYMAN, III

v.

WAYNE D. RAYMAN

Beachley,
Gould,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Gould, J.

Filed: March 30, 2021

*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 intrafamily dispute involves the disposition of various assets upon the death of Mary S. Rayman, the matriarch of the Rayman family. According to Mary's[1] son, Wayne, his nephew, Joe III, improperly distributed funds from various bank accounts and death benefit proceeds from a life insurance policy on Mary's life. After a five-day bench trial, the Circuit Court for Harford County found in Wayne's favor on all but one of the issues and entered judgment against Joe III. Joe III appealed, and Wayne cross-appealed.

Finding no reversible error, we affirm the judgment of the circuit court, with one exception. Because it appears that the court double counted certain payments taken by Joe III in fashioning its relief in favor of Wayne, we remand for the limited purpose of correcting the judgment to ensure that no payment is accounted for more than once.

BACKGROUND

To better understand the underlying facts and analyze them in their proper context, we have organized our background discussion around the specific assets at issue in this appeal. The briefs of the parties include much information about events and facts that, given the circuit court's resolution and the standard of review we must apply, are extraneous to the issues at hand. We will concentrate on the facts and issues on which this appeal turns, beginning with the relationships among the various people involved in the underlying transactions and events.

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[1] For the sake of clarity and simplicity, and with no disrespect intended to the parties, we will use the first names of the members of the Rayman family discussed in this opinion.

THE RAYMAN FAMILY TREE

Joseph G. Rayman, Sr. ("Joe Sr."), the patriarch of the family, died in 1987. His widow and matriarch of the family, Mary Rayman, died on April 14, 2014.

Mary and Joe Sr. had two sons, Joseph G. Rayman ("Joe Jr.") and appellee Wayne Rayman.

Joe Jr. and his wife, Ilene Nancy ("Nancy") had two sons, appellant Joseph G. Rayman III ("Joe III") and John Rayman.

Joe Jr. died in 2006.

THE FALLSTON BUILDING

Prior to Joe Sr.'s death, Joe Sr., Joe Jr., and Wayne were partners in the Fallston Building Partnership (the "Partnership"). The Partnership was in the business of owning, renting, and maintaining real property in Fallston, Maryland, including a building known as the Fallston Building. Each partner held a one-third interest in the Partnership.

After Joe Sr. died, his interest in the Partnership passed to his widow, Mary. Upon Joe Jr.'s death, his interest passed to his widow, Nancy. Thus, after Joe Jr.'s death in 2006, the three partners were Mary, Nancy, and Wayne.

Mary wanted the Partnership to pass to the next generation, that is, to Joe III and John. To accomplish this, Mary convinced Wayne to sell his interest to John or Joe III. In October 2007, the partners converted the Partnership into a limited liability company called Fallston Building, LLC (the "Fallston LLC"), with each partner acquiring an equal interest in it. Simultaneously with that conversion, Mary, Nancy, and Wayne agreed to

assign their membership rights in the Fallston LLC, with the intended result of Joe III and John becoming the sole members.

Specifically, Wayne sold his interest to John for $345,666. Mary purported to sell her interest to Joe III for that same amount. Nancy gifted her interest to Joe III and John.[2]

As a result of these transactions, Joe III and John each owned 50 percent of the membership interests in the Fallston LLC.

Wayne felt duped by the fact that, the purchase price of $345,666 notwithstanding, Mary gifted her interest to Joe III. Wayne claimed that he only agreed to sell his interest for that price because he understood that Mary's revocable trust—described in detail below and of which Wayne became a beneficiary on Mary's death—would be paid $345,666 by Joe III for Mary's interest. This transaction was the subject of the claim asserted by Wayne that the court rejected, and is the subject of Wayne's cross-appeal.

THE VOYA POLICY

In 1979, a life insurance policy—referred to as the "Voya Policy"—on Mary's life was purchased by Joe Jr. and Wayne, and both Joe Jr. and Wayne were named as equal co-beneficiaries. As noted above, Joe Jr. pre-deceased Mary by approximately eight years, leaving Wayne as the sole beneficiary. Joe Jr.'s estate never asserted any rights to the Voya Policy. After Mary died, Joe III filed a claim for the death benefits. The insurance

[2] Nancy transferred her interest in the Fallston LLC to Joe III and John as a gift. The record reflects that, for reasons unknown, one day later, Joe III and John transferred the one-third interest back to Nancy. Moreover, notwithstanding this purported transfer, the court found that John and Joe III were 50/50 owners of the Fallston LLC. Because neither party challenged this finding on appeal and it does not bear on the issues here, we will proceed on the assumption that the court's finding was correct.

company paid the claim in the amount of $100,217.25, of which Joe III sent 50 percent to Wayne, and kept the other 50 percent for himself and John. The insurance company later took the position that all of the insurance proceeds should have been paid only to Wayne, as the sole beneficiary.

The circuit court ordered Joe III to distribute all of the proceeds to Wayne, the sole surviving beneficiary, and awarded Wayne prejudgment interest as well. On that basis, the court entered judgment against Joe III in Wayne's favor for $50,217.25, with prejudgment interest in the amount of $13,909.49. This ruling is one of the issues raised by Joe III in his appeal.

WELLS FARGO ACCOUNT-TITLED IN THE NAMES
OF JOE III AND WAYNE, AS TENANTS IN COMMON

In 2008**,** Joe III opened a Wells Fargo bank account in his and Wayne's names, as tenants in common (the "First Wells Fargo Account"). Joe III contended that John was also an owner of this account, which was created to provide a mechanism for Joe III, John, and Wayne to contribute to the cost of Mary's long term health care. Joe III maintained that John was not named on the account as an owner because the bank only permitted two owners to be listed, but that John was considered an owner, nevertheless. Joe III also asserted, and Wayne did not contest, that only the Fallston LLC contributed funds to this account.

The court determined that the balance of the account--$83,056--should be split evenly between its two owners, Joe III and Wayne. This ruling is one of the issues raised by Joe III in his appeal.

WELLS FARGO ACCOUNT-TITLED
IN THE NAME OF THE MARY S. RAYMAN REVOCABLE TRUST

On June 14, 1994, Mary established The Mary S. Rayman Revocable Trust (the "Trust"). She was the initial trustee and beneficiary of the Trust with virtually unfettered discretion over the assets of the Trust, and Wayne and Joe Jr. were the successor trustees and beneficiaries.

Article 4.1.1 of the Trust provided that upon the death of Mary, distributions would be made as follows:

> The principal and accumulated income then in the hands of the Trustee shall [be] divided into as many shares as there are then living children of the Settlor plus deceased children of the Settlor whose descendants shall have survived the Settlor, and the Trustee shall distribute one such equal share to each then-living child of the Settlor, free and clear of the trust, and one share to the then living descendants of a deceased child of the Settlor, per stirpes[3] and not per capita. The children of the Settler who are now living are JOSEPH G. RAYMAN, JR. and WAYNE RAYMAN.

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[3] *Per stirpes* means that:

> (1) . . . the property shall be divided into as many equal shares as there are children of the decedent who survives the decedent and the children of the decedent who did not survive the decedent but of whom issue did survive the decedent.
>
> (2) Each child of the decedent who did survive the decedent shall receive one share and the issue of each child of the decedent who did not survive the decedent but whom issue did survive the decedent shall receive one share apportioned by applying to the children and other issue of each nonsurviving child of the decedent the pattern of representation provided for in this subsection for the children and other issue of the decedent and repeating that pattern with respect to succeeding generations until all shares are determined.

Md. Code Ann., (1975, 2017 Repl. Vol) Estates and Trust Article ("ET") § 1-210(b).

Mary amended the Trust in May 2006 and then again in February 2014. As a result of the latter change, Joe III was the sole trustee when Mary died.[4]

As a beneficiary of the Trust after Mary's death, Wayne took issue with two payments Joe III made to himself out of a Wells Fargo account belonging to the Trust (the "Second Wells Fargo Account"). The first was a payment described either as a "trustee executor" fee or a "commission" in the amount of $25,557 that Joe III purportedly took as compensation for serving as the trustee. The second was a $30,000 "holdback" that Joe III purportedly set aside in his personal bank account to pay for expenses associated with fixing up and selling a condominium owned by the Trust.[5] The court agreed with Wayne that both payments were unsubstantiated and ordered Joe III to return those monies to the Trust and then disburse 50 percent of the Second Wells Fargo Account to Wayne. Joe III argues on appeal that the court erred in disallowing these payments.[6]

THE M&T BANK ACCOUNT

The Trust also had an account with M&T Bank (the "M&T Account"). The bank statement admitted into evidence identifies the Trust as the owner of the account. At the

[4] Joe III alleges that Mary removed Wayne as a successor trustee because she was unhappy with the way that Wayne treated her after he moved to Florida.

[5] As explained below, Joe III did not actually take payments in those amounts; rather, in accounting for withdrawals from the Trust's account in various other amounts totaling $123,192.11, Joe III attributed $25,557 to the so-called "commission," and $30,000 to the so-called "holdback."

[6] The court also ordered that the Second Wells Fargo Account be divided 50 percent to Wayne and 50 percent to Joe Jr., *per stirpes*, which meant that Joe III and John would each receive 25 percent. The court calculated that Wayne's share from this account was $64,646.

time of the trial, the most recent bank statement in evidence was dated December 19, 2016 and showed a balance of $1,942.05. Based on that statement, the court ordered that Wayne was entitled to $971.02 from this account. Joe III argues on appeal that the court improperly relied on this statement, which was more than two years old, instead of the "real time" balance of $873.25 that he obtained "on his cell phone" during the trial.

THE LITIGATION

Joe III and Wayne were unable to resolve their differences regarding the distribution of the foregoing assets. As a result, in September 2015, Wayne filed suit against Joe III for an accounting and to remove him as trustee of the Trust. Wayne later amended the complaint, and sued Joe III for trover and conversion, misrepresentation, concealment, negligent misrepresentation, breach of fiduciary duty, and unjust enrichment. Wayne alleged that he was entitled to all of the proceeds from the Voya Policy, and that Joe III otherwise misappropriated and/or failed to properly make distributions of bank accounts and funds belonging to the Trust. Wayne also alleged that Joe III failed to pay the Trust for his acquisition of Mary's interest in the Fallston LLC.

In response, Joe III argued that Wayne lacked standing to make his claims, that the circuit court lacked jurisdiction to hear Wayne's claims, and that not only did he not short Wayne of any payments, but Wayne received more than his proper share.

After a five-day bench trial, the court issued a Memorandum Opinion and a Final Order setting forth its rulings. To recap:

(1) The court determined that Wayne was entitled to the death benefit proceeds from the Voya Policy, and on that basis entered judgment against Joe III in favor of

Wayne in the amount of $50,217.25, plus prejudgment interest of $13,909.49 for a total amount of $64,126.74;

(2) The court disallowed the $25,557 "commission" and the $30,000 withdrawal taken by Joe III, and required Joe III to place those funds into a Trust account and then distribute 50 percent to Wayne, and 25 percent each to himself and John;

(3) The court determined that the First Wells Fargo Account should be split evenly, thereby entitling Wayne to $41,528 from that account;

(4) The court determined that Wayne was entitled to $971.02 from the M&T Account;

(5) The court ordered Joe III to distribute to Wayne $64,646.00 for Wayne's share in the Second Wells Fargo Account;

(6) The court rejected Wayne's claim that Joe III must pay the Trust for Mary's transfer of her interest in the Fallston LLC.

THE APPEAL AND CROSS-APPEAL

On appeal, Joe III raises six questions, which we have rephrased slightly:[7]

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[7] Joe III's questions were:

1. Did Appellee have standing to file suit and did the circuit court have jurisdiction to hear Appellee's case?

2. Did the court err in awarding Appellee the entirety of the proceeds of the Decedent's Voya life insurance policy, including pre-judgment interest, when it was a key-man policy whose premiums were paid by Fallston Building LLC, the policy listed Appellant's father as a co-beneficiary, and the policy terms did not state that the policy would be disbursed *per capita*?

3. Did the court err in ruling that Appellee is entitled to half of a Wells Fargo bank account that was never owned by the Trust or the Decedent?

4. Did the circuit court err in calculating the amount owed to Appellee from the M&T Bank Account?

1. Did Wayne have standing to file suit and did the circuit court have jurisdiction to hear this case?

2. Did the court err in awarding Wayne all of the proceeds of the Voya Policy?

3. Did the court err in ruling that Wayne was entitled to half of the First Wells Fargo Account?

4. Did the court err in calculating the amount due to Wayne from the M&T Account?

5. Did the court err in ruling that Joe III was not entitled to any commission?

6. Did the court err in failing to consider "the unreimbursed expenses endured by [Joe III] or the fact that [Wayne] has been overdistributed?"

In his cross-appeal, Wayne asks one question:

> Did the trial court err in finding that the Appellant does not owe the Trust a sum equal to the one-third interest in the Fallston Building . . . where that interest remained in the Trust at the time the Members of the Fallston Building, LLC assigned their respective interests and the Appellant as assignee was contractually obligated to pay $345,666.00 for such interest?

DISCUSSION

I.

STANDARD OF REVIEW

This court "will not set aside the judgment of the trial court on the evidence unless clearly erroneous." Md. Rule 8-131(c). We give deference to the trial court's factual

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5. Did the circuit court err in ruling that Appellant was not entitled to any commission for acting as Trustee?

6. Did the circuit [court] err in failing to consider "the unreimbursed expenses endured by [Joe III] or the fact that [Wayne] has been overdistributed?"

findings and reverse such findings only for clear error. *Mercy Med. Ctr., Inc. v. United Healthcare of the Mid-Atlantic, Inc.*, 149 Md. App. 336, 354-55 (2003); *Knapp v. Smethurst*, 139 Md. App. 676, 695 (2001). "A finding of a trial court is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion." *Lemley v. Lemley*, 109 Md. App. 620, 628 (1996). The legal conclusions of the circuit court are reviewed without deference. *L.W. Wolfe Enters., Inc. v. Maryland Nat'l Golf, L.P.*, 165 Md. App. 339, 344 (2005).

II.

STANDING AND JURISDICTION

Citing to ET Sections 5-102 and 1-301, Joe III argues that because Wayne did not bring this action as the personal representative of Mary's estate, he does not have standing to sue. According to Joe III's reasoning, Mary's will provides that all assets were to be distributed to the Trust, and the will was not effective because it was not probated. Joe III therefore argues that no assets could have been transferred from Mary's estate to the Trust, and that the Trust has no assets. Additionally, Joe III claims that the circuit court did not have subject matter jurisdiction over the case and jurisdiction instead belonged in the orphans' court.

"[A] litigant must have standing to invoke the judicial process in a particular instance. Standing rests on a legal interest such as one of property, one arising out of a contract, one protected against tortious invasion, or one founded on a statute which confers a privilege." *Long Green Valley Ass'n v. Bellevale Farms, Inc.*, 205 Md. App. 636, 652 (2012) (cleaned up), *aff'd.* 432 Md. 292 (2013). Joe III's standing arguments are without

merit. Wayne had standing to bring suit on the Voya Policy because he was a named beneficiary under the policy. Wayne had standing to bring suit regarding the bank accounts held by the Trust because he was a named beneficiary of the Trust. Wayne had standing to bring suit on the First Wells Fargo Account titled in his and Joe III's name because, well, it was titled in his name. None of the assets that are the subject of Joe III's appeal were titled in Mary's name, and therefore, all passed outside of the probate process.[8]

III.

ANALYSIS

A.

THE VOYA POLICY

As we stated above, Joe III distributed half of the proceeds of the Voya Policy to Wayne and the other half was split between Joe III and John. The circuit court disagreed with Joe III's distribution. The court found that Wayne was entitled to the entirety of the proceeds of the Voya Policy, plus prejudgment interest. The court based its decision on the terms of the Voya insurance policy document and found support in the public policy reflected in ET § 16-107 and Section 1-204(d) of the Financial Institutions Article ("FI") of the Maryland Annotated Code (1980, 2011 Repl. Vol).

[8] Likewise, we reject Joe III's contention that the orphan's court, not the circuit court, had subject matter jurisdiction over Wayne's claims. Mary's estate was not a party to Wayne's claims—he sued Joe III, not Mary's estate, and he sued on his own behalf, not on behalf of Mary's estate. The circuit court, therefore, had subject matter jurisdiction over these claims.

Joe III argues that that decision was in error because: (1) the court improperly considered letters from Voya that were hearsay; (2) the policy should have been distributed solely to the Fallston LLC; (3) in the alternative, payment should have been made *per stirpes* to Wayne and Joe Jr.'s heirs; and (4) the court erred in awarding prejudgment interest.[9] We disagree.

An insurance policy is a contract and must be construed as such. *Little v. First Federated Life Ins. Co.*, 267 Md. 1, 5 (1972); *see also* Md. Code Ann. (1996, 2017 Repl. Vol.) Insurance Article ("Ins.") § 16-204.[10] The circuit court found, and Joe III does not dispute, that Joe Jr. and Wayne were the owners and beneficiaries under the Voya Policy. There were no contingent beneficiaries. Thus, when Joe Jr. died, Wayne became the sole beneficiary.

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[9] In his brief, Joe III presented these arguments with his hearsay argument first. However, we need not address this issue because, as a matter of law, we conclude that the court correctly construed the insurance policy without regard to the alleged hearsay statements attributed to ReliaStar Insurance Company's ("ReliaStar"), the company that administered the Voya Policy.

[10] Ins. § 16-204 provides:

> (a) Each policy of life insurance shall contain a provision that the policy, or the policy and the application for the policy if a copy of the application is endorsed on or attached to the policy when issued, constitute the entire contract between the parties.
>
> (b) If the application is made part of the policy, the policy shall contain a provision that the statements in the application, in the absence of fraud, are considered representations and not warranties.

The Voya Policy provides as follows under the heading "Determination of Beneficiary":

> The Beneficiary is as designated in the application for this Policy unless otherwise provided by endorsement at issue or unless subsequently changed as provided in provisions that follow. Any proceeds payable because of the death of the insured will be paid to the Beneficiary subject to the provisions of this Policy.
>
> If any Beneficiary shall die simultaneously with the Insured or within 15 days after the Insured but before due proof of the Insured but before due proof of the Insured's death has been received at the Home Office of the Company, the proceeds of this Policy shall be payable as if such Beneficiary had died before the Insured.
>
> In the absence of an effective designation of any Beneficiary the Owner shall be deemed to be the Beneficiary. If the Owner is the Insured, any benefits otherwise payable to the Owner in accordance with this paragraph shall be paid to the estate of the Insured.

Applying this provision here, as a matter of contract law, Wayne, as the only Beneficiary at the time of Mary's death, was entitled to the death benefits. It makes no difference under this or any other provision of the policy that the Fallston LLC paid the premiums.

Joe III urges us to disregard the designations of the owners and beneficiaries of the policy because the "Fallston Building maintained multiple life insurance policies on the lives of key members within the Rayman family, including Joe Jr. and [Joe III]" and that one such policy was the Voya policy. Joe III points to his and Mary's estate planning attorney's testimony that the Voya policy "was intended to be a key-man policy for the company, Fallston Building LLC." Joe III also claims that, based on the estate planning attorney's testimony, Mary "intended for the Voya Policy to be included in her transfer of the LLC to Appellant." Joe III contends that Joe Jr. and Wayne owned the Voya Policy as

a "bare nominee" and because it is a "key man" policy, the "proceeds from the Voya Policy therefore belong solely to the LLC."

Joe III's reasoning is difficult to follow. Joe III characterizes the Voya Policy as a "key man" policy, but makes no argument that Mary was a key person with respect to the Fallston Building at any time, let alone after the Partnership was converted to Fallston LLC (at which time Mary ceased to own an interest in the Fallston building). Joe III's assertion that Mary intended to assign the Voya Policy to him along with her interest in the Fallston LLC is puzzling as well for several reasons. *First*, Mary didn't own the Voya Policy, so it's not clear how Mary could have intended to convey something she didn't own. *Second*, the Fallston LLC didn't own the Voya Policy, and even if it owned it, Mary's assignment of her *interest* in the Fallston LLC was just that: an assignment of an interest in the company, not an assignment of the assets of the company. Third, even if we accept Joe III's construct of events, the Voya Policy would no longer have been a "key man" policy once Mary conveyed her interest to him because: (a) Joe III, not the company would have been the owner of the policy; and (b) Mary was no longer a key person within the company.

At bottom, Joe III is trying to use the concept of a "key man" policy to have us disregard the actual ownership and beneficiary designations in the Voya Policy. It doesn't work that way. The case relied upon by Joe III, *U.S. Life Ins. Co. in the City of New York v. Logus Mfg. Corp.*, 845 F. Supp. 2d 1303 (S.D. Fla. 2012), does not permit an insurance company to ignore the ownership and beneficiary designations on a "key man" policy as Joe III would have us do here. Rather, the court in *Logus* strictly enforced the beneficiary and ownership designations and rejected an attempt to change those designations that did

not comply with the terms of the insurance policy. *Id.* at 1312-13. The court in *Logus* did not, as Joe III would have us do, exalt the alleged purpose of the policy ("key man") over the substantive provisions of the policy.[11] *Id.*

Similarly, the contract precludes Joe III's alternative theory that the death proceeds should have been distributed "*per stirpes*" to himself and John. In that regard, Joe III contends that when Joe Jr. died, his estate effectively became the co-owner and co-beneficiary with Wayne on the policy, and as Joe Jr.'s heirs, he and John were entitled to Joe Jr.'s share of the death benefit, *per stirpes*. But the policy clearly states that the "Beneficiary" is the one so designated in the insurance application or in a subsequent endorsement. Here, there is no evidence that Joe Jr.'s estate was appointed in the application or in a subsequent endorsement as a contingent beneficiary in the event of Joe Jr.'s death, and Joe III points us to no legal authority in support of his "*per stirpes*" theory.[12]

Joe III argues that that the policy does not "state, in any way, that a beneficiary or owner who predeceases an insured forfeits his or her heirs' rights to proceeds, let alone when a beneficiary is an equal policy owner." This argument lacks merit. A right cannot be forfeited if it doesn't exist in the first place. Here, the policy does not confer any rights to the heirs of a beneficiary. Thus, under the court's ruling, no rights were forfeited.

[11] In any event, the Fallston LLC didn't attempt to claim the death benefits; Joe III did.

[12] Moreover, Joe III did not purport to claim the death benefit on behalf of Joe Jr.'s estate, so even if there had been some validity to the *per stirpes* theory, Joe III did not properly avail himself of it.

Moreover, the policy *does* provide what happens when the beneficiary predeceases the insured. Under the third paragraph of the above provision, the owner of the policy becomes the beneficiary "[i]n the absence of an effective designation of any Beneficiary[.]" Here, there was an effective designation—Wayne was a beneficiary before Joe Jr. died and remained a beneficiary after Joe, Jr. died.

Joe III takes issue with the court's reference to ET § 16-107 and FI § 1-204 in its analysis of the policy.[13] As noted above, the court said:

> the policy document required payment to the sole surviving beneficiaries of the policy. This was in line with the Maryland public policy found in the law within the Financial Institutions Article Section 1-204(d) and the Estates and Trusts § 16-107.

Joe III is overstating the significance the court placed on ET § 16-107 and FI § 1-204. In context, it is clear to us that in determining that Wayne was entitled to the death benefits, the court was relying on its contractual analysis, and only referred to ET § 16-107

[13] ET § 16-107(a) provides that: "On death of a sole owner or the last to die of all multiple owners, ownership of securities registered in beneficiary form passes to the beneficiary or beneficiaries who survive all owners." ET § 16-101(i)(1) defines a security as "a share, participation, or other interest in property, in a business, or in an obligation of an enterprise or other issuer," and ET § 16-101(i)(2) states that security "includes a certificated security, an uncertified security, and a security account." ET § 16-101(f) defines property to include "both real and personal property or any interest therein and means anything that may be the subject of ownership."

FI § 1-204(d)(1) provides that: "Upon the death of a party to a multiple-party account, the right to any funds in the account shall be determined in accordance with the express terms of the account agreement" and FI § 1-204(d)(2) provides that: "If the account agreement does not expressly establish the right to funds in the account upon the death of a party, or if there is no account agreement, any funds in the account upon the death of a party shall belong to the surviving party or parties."

and FI § 1-204 for public policy support. The court's contractual analysis stood on its own and required no appeal to public policy arguments.

Joe III argues that the court instead should have relied on Ins. § 16-211 as well as *Thomas v. Cochran*, 89 Md. 390 (1899), *Click v. Click*, 204 Md. App. 349, 362 (2012), *Weller v. Sokol*, 271 Md. 420, 427 (1974); and *Clarke v. Clarke*, 222 Md. 153, 166 (1960). However, Ins. § 16-211(a) provides that "[e]ach policy of life insurance shall contain a provision that when benefits become payable because of the death of the insured, settlement shall be made on receipt of proof of death and, at the insurer's option, on surrender of the policy, proof of the interest of the claimant, or both." We don't see how this provision alters the analysis.

Similarly, the cases cited by Joe III are unavailing. In *Thomas*, the Court determined that the estate of a deceased beneficiary was entitled to proceeds of an insurance policy when there were no living beneficiaries. 89 Md. at 405. Here, there is a living beneficiary: Wayne. Further, in *Click*, the issues before the Court were whether particular wording in a will, specifically, the term "surviving members in order of succession," was ambiguous and further, how the term should be interpreted. 204 Md. App. at 362. According to the Court, "a will's reference to a group of family 'members' should be construed as *per stirpes*," and a court "must give full effect to all 'technical words [in the document] unless subsequent inconsistent words it is made perfectly clear that the testator meant otherwise." *Id.* Here, the beneficiary designation identified two specific individuals, not a "group of family members." Unlike in *Click*, therefore, no interpretation is required to ascertain the

intent of the policy holders.[14] As such, the court's finding that Wayne was the sole surviving beneficiary entitled to the death benefit proceeds was legally correct.

We turn now to Joe III's claim of error in the court's award of prejudgment interest. Citing to *I.W. Berman Props. v. Porter Bros. Inc.*, 276 Md. 1, 24 (1975), Joe III argues that because there was significant testimony about the Voya Policy being a "key man" policy and also significant testimony that the distribution of proceeds should have been *per stirpes*, there were no liquidated or undisputed damages; therefore, Joe III argues that prejudgment interest should not have been awarded. Further, Joe III argues that because the Fallston LLC paid all of the premiums, it is inequitable to also award prejudgment interest to Wayne.

Wayne argues that he is entitled to prejudgment interest because not only was the amount of the proceeds certain, but, relying on ReliaStar's counsel's letter, the date when the proceeds were due was certain: "the time of the death of the Decedent."

In *Selective Way Ins. Co. v. Nationwide Property and Casualty Ins. Co.*, 242 Md. App. 688, 744-45 (2019), we summarized the guidelines for awarding prejudgment interest as follows:

> [Prejudgment] interest as a matter of right is the exception rather than the rule. The question of whether a party is entitled to [prejudgment] interest generally is left to the discretion of the fact finder. . . . [Prejudgment] interest is allowable as a matter of right when the obligation to pay and the amount

[14] The other two cases cited by Joe III, *Weller*, 271 Md. 420, and *Clarke*, 222 Md. 153, are similarly unavailing. Joe III cites both cases for the proposition that "in the absence of an expression of contrary intent, 'the direction that a distribution be made per stirpes will result in the distribution which would have been made under the statute of distribution. . .'" Here, the beneficiary designation does not require a *per stirpes* distribution, thus the proposition for which Joe III cites these two cases is not relevant.

> due had become certain, definite, and liquidated by a specific date prior to judgment so that the effect of the debtor's withholding payment was to deprive the creditor of the use of a fixed amount as of a known date. A plaintiff may be entitled to prejudgment interest as a matter of right under written contracts to pay money on a day certain, such as bills of exchange or promissory notes, in actions on bonds or under contracts providing for the payment of interest, in cases where the money claimed has actually been used by the other party, and in sums payable under leases as rent. On the other hand, prejudgment interest is not permitted in tort cases where the recovery is for bodily harm, emotional distress, or similar intangible elements of damage not easily susceptible of precise measurement. Most contract cases fall somewhere in between these two extremes, leaving the decision of whether to award prejudgment interest well within the discretion of the finder of fact.

(cleaned up)

We conclude that this is one of the cases "between [the] extremes," that the decision was committed to the sound discretion of the court, and that the court did not abuse its discretion. *First*, as discussed above, as a matter of contract law, Wayne was entitled to 100 percent of the death benefits. That Joe III mustered up some arguments to try to convince the court otherwise did not require the court to reject the request for prejudgment interest. Moreover, the evidence that Joe III acted deceitfully in applying for the death benefits provided additional support for the court's award of prejudgment interest, particularly given that Joe III's application for the death benefits wasn't consistent with his litigation positions that either the Fallston LLC or Joe Jr.'s estate was entitled to the proceeds.

Finally, Joe III's argument that it would be unfair to award Wayne prejudgment interest because the Fallston LLC paid the premium payments is not persuasive. The court determined, and we agree, that Wayne was entitled to all of the proceeds regardless of who

paid the premiums. Moreover, the ramifications of the Fallston LLC's premium payments is an issue between the Fallston LLC and Wayne, not between Joe III and Wayne. We perceive no abuse of discretion in the court's award of prejudgment interest.

B.

THE FIRST WELLS FARGO ACCOUNT

The circuit court stated that because the First Wells Fargo Account was "in both parties' names, that account shall be split evenly" between Joe III and Wayne. Joe III argues that the court erred in awarding $41,528.30 from this account to Wayne because (1) Mary's will had not yet been probated; and (2) this account was not properly part of the Trust. Those arguments make no sense. The First Wells Fargo Account was owned by Joe III and Wayne, not Mary. Mary's estate has no legal interest in this account. Similarly, that the account was not part of the Trust is irrelevant: Wayne's interest in the account lies in his status as a co-owner of the account, not as a beneficiary of the Trust.

Moreover, Joe III's testimony precludes his argument that Wayne is not entitled to any share of the balance in the First Wells Fargo Account. At trial, Joe III testified about this account as follows:

> [WAYNE'S COUNSEL]: And who does that money belong to?
> [WITNESS]: That belongs to Wayne and myself, and I would have to split my portion out to Joe.
> [WAYNE'S COUNSEL]: I'm sorry. Wayne and yourself. So, Wayne would have half of that?
> [WITNESS]: Absolutely.
> [WAYNE'S COUNSEL]: And you say yourself. Did you also include John in that?
> [WITNESS]: Yes. John, correct.

This testimony aligned with how the account is titled on paper. Such evidence amply supported the court's finding that Wayne was entitled to 50 percent of the balance in this account.

C.

THE M&T ACCOUNT

The court similarly ruled that the M&T Account should be divided between the parties listed on the account. Because Wayne and Joe Jr. were listed on the account, the court ordered this account to be split between Wayne and Joe Jr.'s heirs, *per stirpes*. Here, Joe III does not contend that the court erred in making this determination, but rather argues that the court erred in its determination of the amount to be distributed.

In determining the balance of the M&T Account, the court relied on a copy of a bank statement, which Wayne had submitted as a trial exhibit and which showed a total of $1,942.05 in the account. In the middle of his testimony, Joe III took out his phone and checked the balance of the M&T Account, announcing that the balance was only $873.25. Joe III argues that the court should have used this number and its failure to do so was clearly erroneous.

We disagree. As the fact finder, and in the absence of any explanation for the discrepancy between the account balance reflected in the bank statement and the one Joe III obtained via his cell phone while testifying, the court was entitled to credit the bank statement and disregard Joe III's testimony regarding the account balance.

D.

THE SECOND WELLS FARGO ACCOUNT

Joe III advances three arguments regarding the Second Wells Fargo Account which, as noted above, was owned by the Trust.

First, Joe III argues that the court erred in disallowing his executor/trustee fee (a/k/a his "commission") in the amount of $25,557. The court disallowed this because Joe III did not follow the appropriate procedure. On appeal, Joe III doesn't argue that he followed the proper procedure, but instead contends that his entitlement to this fee is grounded in both the terms of the Trust and in ET § 14.5-708(a)(1)(i), which provides that a trustee is entitled to commissions for his services. He claims he earned a "commission" because of the time he spent collecting and distributing assets, working with realtors, paying funeral expenses, and defending this action. As to the amount of the withdrawal, Joe III contends that he consulted with an accountant before determining that $25,557 was reasonable.

Again, we are not persuaded by Joe III's arguments. Further, while it is correct that ET § 14.5-708(a)(1)(i) states that a trustee is "entitled to commissions" for "administering the trusts," the statute additionally provides for a schedule of rates for a commission and requires notice to the beneficiaries. ET §§ 14.5-708(a)(2), (b), (c), (d), (e), (g), (h), (j). Based on the evidence before it, the court had no way of knowing how much, if any, from this amount was justified or reasonable. Instead, the evidence supports the circuit court's conclusion that Joe III failed to "follow proper procedure" and displayed an "overall failure to prove the basis and entitlement to commission in that amount."

Second, Joe III argues that the court erred in disallowing the $30,000 "holdback" he withdrew to cover costs associated with the repairs to and sale of the condominium owned by the Trust. Joe III characterizes the $30,000 "holdback" as unreimbursed expenses. Joe III argues that he advanced the $30,000 to himself, pursuant to the Trust, "for the protection of property held by the Trust and for all expenses incurred in the protection and maintenance of such property," to maintain and renovate the condominium. Further, Joe III argues on appeal that the Trust authorized him to use funds for attorneys, and that because Wayne sued him "in his individual capacity as a beneficiary to the Trust and . . . nam[ed] as a defendant in his capacity as Trustee," he was entitled to use the Trust funds for his defense of this action.

We reject Joe III's argument that he was entitled to use the $30,000 to fund his defense for this action. At trial, Joe III testified that he took the $30,000 for "potential repairs of the condominium to make sure it could sell." Joe III did not preserve the argument he now makes on appeal that the $30,000 can be retained to reimburse his legal expenses. *See* Maryland Rule 8-131(a).

Further, Joe III testified at trial that the $30,000 was still in his account at the time of trial, and that he rented the condominium instead of selling it. Thus, even if the Trust permitted him to use Trust funds to fix the property and hire legal professionals, the fact remains he didn't use the funds for such purposes—he transferred the funds from the Trust account to his personal account, where they remained at the time of trial. The court had an ample evidentiary basis to disallow that payment.

Third, Joe III argues that the court double counted the $30,000 "holdback" by: (1) requiring him to put the $30,000 back into a Trust account and then distribute 50 percent to Wayne; and (2) separately ordering him to put $64,646 into the Second Wells Fargo Account and then disburse that amount to Wayne.

From our review of the record, we believe Joe III's argument has merit and that, in addition, the $25,557 "commission" appears to have also been double counted. The two relevant entries from the court's final Order state as follows:

> ORDERED that with respect to the "commission" in the amount of $25,557.00 the Defendant paid himself and the $30,000 the Defendant withdrew from the Trust, the Defendant shall deposit these monies (totaling $55,557.00) into the Trust account (or an account jointly owned by the Plaintiff and the Defendant) and split that amount evenly between the parties such that the Plaintiff receives one-half (1/2) of said balance and Joseph G. Rayman, Jr. (*per stirpes*) receives the other half; and it is further
>
> ORDERED that with respect to the monies previously held in Wells Fargo account number xxxx-9410, the Defendant shall pay the Plaintiff $64,646.00 by making a deposit in (that amount in the Trust account (or an account jointly owned by the Plaintiff and the Defendant) and disburse $64,646.00 to the Plaintiff;

From these two separate entries in the Order, it appears that the court treated Wayne's 50 percent share of the two payments--$25,557 and $30,000—as separate from and in addition to the $64,646 payment to Wayne required of Joe III in the next entry. The court did not explain how it arrived at the $64,646 figure, but from what we can tell, it appears the court made the following calculation based on the balance of the account on June 1, 2014 as reflected in plaintiff's exhibit 21:

Account balance as of June 1, 2014:	$258,897
Wayne's 50% share of account balance:	$129,448.50
Minus amount Wayne received from account:	($64,803)
Due to Wayne (rounded up):	$64,646.00

If we compare the court's calculation to Joe III's accounting of the transactions from that account, it is evident that the court double counted Wayne's share of the $25,557 "commission" and $30,000 "holdback" that Joe III claims to have taken.

From the relevant bank statement and Joe III's testimony, here's how we understand Joe III's accounting for the transfers out of the account:

- Although the account balance on June 1, 2014 was 258,897.78, the total amount subsequently transferred out of the account that month was $253,652.75.

- Of the $253,652.75 transferred out of the account that month, a $25,557 fee or "commission" was paid to Joe III in his capacity as a trustee, and $30,000 was withdrawn by Joe III in his capacity as a trustee to be used to fix up and sell the condominium. In other words, according to Joe III, a total of $55,557 of the $253,652.75 was transferred to himself in his capacity as a trustee, and the remaining $198,095.33 was disbursed Joe III, John, and Wayne as beneficiaries of the Trust.

- Of the $198,095.33 transferred to Joe III, John, and Wayne as beneficiaries of the Trust, Joe III received $67,635.11, John received $65,657.22, and Wayne received $64,803.00. According to Joe III, these amounts reflected a mistake made by Wells Fargo. Joe III claimed that he had instructed Wells Fargo to distribute 50 percent of the account to Wayne, and 25 percent each to Joe III and John, but Wells Fargo mistakenly distributed one-third to each of them.[15]

- Of the $253,652.75 transferred out of the account on June 16, 2014, Joe III received $55,557 in his capacity as a trustee and an additional $67,635.11 in his capacity as a

[15] Notably, even under Joe III's accounting, the beneficiaries' distributions were not divided into equal shares of one-third each. This is another reason the court had a basis for not crediting Joe III's explanation.

beneficiary, for a total of $123,192.11. Joe received those monies in three separate transfers on June 16, 2014 in amounts of $50,448.18, $19,341.43, and $53,362.50.[16]

- Had Wells Fargo distributed 50 percent to Wayne (per Joe III's instructions), Wayne would have received $99,047.67, which means that Wayne was shorted in the amount of $34,244.67.[17]

The upshot of the foregoing analysis is that in determining that Wayne was entitled to 50 percent of the balance of the Second Wells Fargo Account as of June 1, 2014 (that is, 50 percent of $258,897.78), the court was rejecting Joe III's accounting for that account and effectively requiring Joe III to put back all of the money he had distributed from that account to restore the June 1, 2014 balance of $258,897.78. Thus, Wayne was being compensated for his share of the "commission" and "holdback" in *both* entries from the final Order identified above. It appears, therefore, that the court double counted those two payments and thereby overcompensated Wayne. A remand is necessary for the court to clarify and/or correct its calculations to ensure that no item is counted more than once.

E.

WAYNE'S CROSS-APPEAL

In his cross-appeal, Wayne seeks to revisit the transactions that took place in 2007, when he assigned his interest in the Fallston LLC to John, and Mary assigned her interest

[16] That Joe III did not make separate transfers for the $25,557 "commission" and the $30,000 "holdback" is additional evidence supporting the court's disallowance of those payments. One would think that if Joe III had earned a $25,557 "commission" from the Trust, he would have caused a transfer in that amount so the funds could be easily traced and accounted for. The same goes for the $30,000 so-called "holdback."

[17] In his testimony, Joe III acknowledged that Wayne received less than his rightful share, and he estimated the amount owed to Wayne was $34,000, which he called a "discrepancy" due to Wells Fargo's mistake.

to Joe III. Wayne alleges that Joe III never paid for his interest. Wayne also alleges that although the assignment agreement identified Mary as the seller, the interest attributed to Mary was actually owned by the Trust. Thus, Wayne's argument goes, Joe III owes the Trust for the purchase price of $345,666, and as a 50 percent beneficiary of the Trust, Wayne was damaged.

The court properly rejected this claim. According to the assignment agreement, Mary—not the Trust—was the assignor of the interest to Joe III. Although Wayne points to evidence that Mary had *intended* to transfer her interest to the Trust, that doesn't mean she did. As the court pointed out, under the Trust agreement she had the right to unilaterally change her mind and not transfer assets to the Trust or to remove assets from the Trust. As a contingent beneficiary of the Trust whose interest didn't vest until Mary, as the settlor, died, Wayne had no standing to complain if Mary decided not to collect the purchase price from Joe III. *See Grueff v. Vito*, 229 Md. App. 353, 379–80 (2016), *aff'd,* 453 Md. 88 (2017). Put simply, if Mary wanted to give away her or the Trust's interest to Joe III for free, that was her prerogative.

JUDGMENT OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED IN PART AND VACATED IN PART. CASE REMANDED FOR FURTHER PROCEEDINGS AS DISCUSSED IN THIS OPINION; 75 % OF THE COSTS TO BE PAID BY APPELLANT; 25% OF THE COSTS TO BE PAID BY APPELLEE.