Circuit Court for Baltimore County
Case No. C-03-CV-22-002095

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 477

September Term, 2023

IN RE: ESTATE OF FRED F. MIRMIRAN

Berger,
Nazarian,
Ripken,

JJ.

Opinion by Nazarian, J.

Filed: March 7, 2025

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

Fred F. Mirmiran was an engineer who immigrated to the United States from Iran. He was the president of an engineering firm headquartered in Baltimore County and over the years he married three times and had four children. About a year before his death in June 2019, he executed a Last Will and Testament (the "Will") that left his entire estate to his wife of nearly thirty-two years, Farideh Mirmiran ("Wife"). His daughter, Sheilah Brous ("Daughter"), petitioned to caveat the Will in the Orphans' Court for Baltimore County, alleging that Wife had procured the Will through undue influence and fraud. The orphans' court transmitted the case to the Circuit Court for Baltimore County and that court entered summary judgment for Wife. Daughter appeals the summary judgment order, as well as other rulings, and we affirm.

I. BACKGROUND

Daughter and her sister, Sherine, are Mr. Mirmiran's daughters from his first marriage. His daughter, Sholeh, was born of his second marriage and he adopted Wife's son, Arshia, when they married in 1987. His relationships with his children varied. Mr. Mirmiran had a contentious relationship with Sherine, but he and Wife regularly spent time with Arshia, Sholeh, and their children, and, like him, Arshia and Sholeh became engineers. Mr. Mirmiran connected with Daughter by phone and when they met for lunch from his office, a function of her strained relationship with Wife.

On September 28, 2004, Mr. Mirmiran executed a will (the "prior will") granting Wife all his tangible personal property and 40% of his residuary property and granting Daughter, Sherine, Sholeh, and Arshia 15% each of his residuary property. On August 27,

2013, he executed a codicil to the prior will and a limited power of attorney designating Wife as his agent in fact.

Thirteen years after executing the prior will, Mr. Mirmiran met with estate attorney Jeffrey Glaser to discuss a new will. He had been referred to Mr. Glaser by his longtime attorney, Marshall Paul. When they met, Mr. Glaser had no concerns about Mr. Mirmiran's capacity or competence to make a will, nor any doubt that he was acting of his own free will. On November 17, 2017, Mr. Glaser sent him draft estate planning documents, including a will and a durable general power of attorney, naming Wife as his agent. Mr. Mirmiran did not take further action at that time.

On June 21 and 25, 2018, Mr. Mirmiran met with his internist, Heather Sateia, M.D., in preparation for a surgery to repair his hernia. Dr. Sateia had no concerns about his cognitive abilities or mental competence. She found him oriented to time, place, and person, and she found his mood, affect, behavior, and thought content normal. She ordered bloodwork and a urinalysis, and both showed stable results. She cleared him for surgery. He was placed under general anesthesia and his hernia was repaired on July 6, 2018. At a post-operative examination, Mr. Mirmiran presented no complaints and his wound was healing. On July 10, 2018, Mr. Mirmiran retrieved the will Mr. Glaser had sent him, signed it, and had his co-worker, Richard Smulovitz, and his assistant, Katherine Hammel, subscribe the Will as witnesses. On June 20, 2019, he had a heart attack while driving with a work associate and passed away.

The Orphans' Court of Baltimore County appointed Wife as the Personal

Representative of Mr. Mirmiran's estate. She filed a petition to probate the Will with the Baltimore County Register of Wills. On February 28, 2020, Daughter petitioned to caveat the Will. On September 29, Wife moved for summary judgment, which the orphans' court denied. Daughter petitioned to transmit the case to the Circuit Court for Baltimore County on October 2, 2020. After an appeal to this Court of the original issues for transmission, the orphans' court filed an amended order on May 31, 2022, that transmitted six issues to the circuit court:

> a) Was the paper writing dated July 10, 2018, purporting to be the Last Will and Testament of Fred F. Mirmiran, attested and subscribed in his presence by two or more credible witnesses?
>
> b) Were the contents of the paper writing dated July 10, 2018, purporting to be the Last Will and Testament of Fred F. Mirmiran, read to him, or known to him at or before the time of the execution of this document?
>
> c) Was the paper writing dated July 10, 2018, purporting to be the Last Will and Testament of Fred F. Mirmiran, executed by him when he was legally competent to make a valid Will?
>
> d) Was the paper writing dated July 10, 2018, purporting to be the Last Will and Testament of Fred F. Mirmiran, procured by undue influence exercised and practiced upon him by Farideh Mirmiran, and/or by some other person at her direction?
>
> e) Was the paper writing dated July 10, 2018, purporting to be the Last Will and Testament of Fred F. Mirmiran, procured by fraud and deceit exercised and practiced upon him?
>
> f) Is the paper writing dated July 10, 2018 the Last Will and Testament of Fred F. Mirmiran?

The case moved to the circuit court and litigation ensued. On October 14 and 17, 2022, the court granted Wife's motions for a protective order and to seal Dr. Sateia's affidavit. On March 9, 2023, the court entered an order granting her motion for summary judgment. The summary judgment ruling also disposed of Daughter's motion to compel discovery and her motion to consolidate the caveat dispute with a separate tort action she had brought against Wife and Arshia, and the court granted Wife's motion to quash Daughter's subpoenas. Daughter moved to alter or amend the court's summary judgment, which the court denied, and she appealed that denial to this Court. We will provide additional facts in the discussion.

II. DISCUSSION

Daughter raises five major issues on appeal[1], which we recast: (1) whether the court

[1] Daughter's brief lists the Questions Presented as follows:

> 1. In granting appellee's motion for summary judgment, did the court abuse its discretion, err as a matter of law, deny appellant due process of law, and not act in a fair and impartial manner when it: (i) failed to permit appellant to conduct discovery essential to respond to that motion; (ii) failed to timely rule on two discovery motions which prevented appellant from obtaining factual information essential to respond to that motion; (iii) failed to hold the scheduled hearing on that motion so that appellant could present evidence obtained during discovery, including an affidavit of her expert witness, and also her arguments concerning the new evidence submitted by appellee; (iv) failed to honor the pre-trial dates set by it for the case; (v) failed to view the disputed material facts in a light most favorable to appellant; (vi) failed to apply controlling law

Continued . . .

erred in granting Wife's motion for summary judgment on the transmitted issues of undue influence and fraud; (2) whether the court abused its discretion when it denied Daughter's motion to consolidate; (3) whether the denial of her motion to alter or amend its summary judgment order was an abuse of discretion; (4) whether the court abused its discretion in granting Wife's motions for protective orders; and (5) whether the court failed to act fairly and impartially overall.

A circuit court's grant of summary judgment receives non-deferential review. *Board of Cnty. Comm'rs of St. Mary's Cnty. v. Aiken*, 483 Md. 590, 616 (2023) (*quoting Gambrill v. Bd. of Educ. of Dorchester Cnty.*, 481 Md. 274, 297 (2022)). We see for ourselves

---

on undue influence and fraud; and (vii) failed to follow the law of the case doctrine?

2. Did the court abuse its discretion in failing to timely rule upon and then denying appellant's motion to consolidate this case with another case that involved common facts and law including undue influence, particularly regarding the fact intensive issues of the existence of a confidential relationship and testator's susceptibility to undue influence?
3. Did the court abuse its discretion and commit legal error when it denied appellant's post-judgment motion to alter or amend, and also refused to consider appellant's reply?
4. Did the court abuse its discretion and commit legal error in permitting appellee to selectively seal relevant records, when appellee failed to demonstrate good cause, produce evidence to meet her Rule 2-403 burden, failed to comply with Rule 2-311 and previously waived confidentiality?
5. Did [the circuit court] fail to act in a fair and impartial manner, both in fact and in appearance?

Wife's brief did not list any Questions Presented.

whether a dispute of material fact exists; if it doesn't, then we consider whether the court's judgment was correct legally. *Hartford Ins. Co. v. Manor Inn of Bethesda, Inc.*, 335 Md. 135, 144–45 (1994) (citations omitted). To answer these questions, we review the record in the light most favorable to the non-moving party and construe any reasonable inferences from the facts against the movant. *Reiter v. Pneumbo Abex, LLC*, 417 Md. 57, 67 (2010) (*citing Jurgensen v. New Phoenix*, 380 Md. 106, 114 (2004)). We limit this legal review to the grounds on which the court relied in granting summary judgment. *Barclay v. Briscoe*, 427 Md. 270, 282 (2012) (*quoting MRA Prop. Mgmt., Inc. v. Armstrong*, 426 Md. 83, 104 n.17 (2012)).

We review rulings on motions to consolidate, to alter or amend the judgment, and for protective orders for abuse of discretion. *See Jenkins v. City of Coll. Park*, 379 Md. 142, 164 (2003) (citations omitted); *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 362 (2022); *Tanis v. Crocker*, 110 Md. App. 559, 573 (1996).

A. The Circuit Court Granted Summary Judgment And Resolved Daughter's Motion To Consolidate Properly Because There Was No Genuine Dispute Of Material Fact On The Issues Of Undue Influence Or Fraud.

Daughter relies on four main arguments to challenge the circuit court's entry of summary judgment in this case. She argues *first* that the court erred as a matter of law when it granted summary judgment on her claims of undue influence and fraud; *second*, that the court didn't rule on and grant her motion to compel discovery in a timely manner; *third*, that the court didn't rule on and deny Wife's motion to quash her subpoenas in a timely manner; and *fourth* that the court denied her right to conduct and complete discovery.

1. The circuit court found properly that there was no genuine dispute of material fact on the issues of undue influence and fraud and the decision to grant summary judgment was correct legally.

Daughter contends that the court misapplied controlling case law on undue influence and fraud when it granted summary judgment in Wife's favor. She argues further that the court failed to view the facts in the light most favorable to her, overlooked disputed material facts, and failed to observe the law of the case doctrine. We disagree.

The party moving for summary judgment must establish the basis for its motion and demonstrate the absence of any genuine issues of material fact. *Mohammad v. Toyota Motor Sales, U.S.A., Inc.*, 179 Md. App. 693, 703 (2008) (*citing Bond v. NIBCO, Inc.*, 96 Md. App. 127, 136 (1993)). To avoid summary judgment, the opposing party must identify disputed material facts with precision. *Warsham v. James Muscatello, Inc.*, 189 Md. App. 620, 634 (2009) (*citing Ecology Servs., Inc. v. Clym Env't Servs., LLC*, 181 Md. App. 1, 11–12 (2008)); *see also* Md. Rule 2-501(b) (requiring party opposing summary judgment to identify with particularity each material fact in genuine dispute and provide support for its contentions). Indeed, they "'must do more than simply show there is some metaphysical doubt as to the material facts.'" *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 738 (1993) (*quoting Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)). The mere submission of an affidavit or evidence opposing a summary judgment motion doesn't necessarily generate a triable issue of fact. *Utica Mut. Ins. Co. v. Miller*, 130 Md. App. 373, 391 (2000). And even when factual disputes exist, they may not prevent summary judgment if the resolution of those disputes makes no difference in answering

the legal question. *Id.* (*quoting Seaboard Sur. Co. v. Richard F. Kline, Inc.*, 91 Md. App. 236, 247 (1992)). A fact is material only if it stands to affect the outcome of the case depending on how it's decided. *Mandl v. Bailey*, 159 Md. App. 64, 82 (2004) (*citing Arroyo v. Bd. of Educ. of Howard Cnty.*, 381 Md. 646, 654 (2004)). The existence of a genuine issue of material fact means that '"the evidence, or the inferences deducible therefrom, is sufficient to permit the trier of fact to arrive at more than one conclusion . . . in [the civil] context, [it is] the equivalent of meeting a preponderance of the evidence standard at trial.'" *Sadler v. Dimensions Healthcare Corp.*, 378 Md. 509, 535 (2003) (*quoting Goodwich v. Sinai Hosp. of Balt., Inc.*, 343 Md. 185, 207 (1996)); *see also Warsham*, 189 Md. App. at 635 (facts capable of more than one reasonable inference should be submitted to the trier of fact (*quoting Hill v. Cross Country Settlements, LLC*, 402 Md. 281, 294 (2007))).

The material fact at issue here is whether the Will was procured by undue influence exercised by Wife. To demonstrate a genuine dispute of material fact, Daughter must produce evidence that could prove that Wife exerted undue influence on Mr. Mirmiran relative to his testamentary intentions and that her influence effectively forced him to make the Will.

Undue influence is "physical or moral coercion that forces a testator to follow another's judgment instead of his own" when devising their estate. *Moore v. Smith*, 321 Md. 347, 353 (1990). The influence must be exerted to such a degree as to destroy the testator's free agency. *Zook v. Pesce*, 438 Md. 232, 249 (2014) (*quoting Koppal v. Soules*, 189 Md. 346, 351 (1947)); *see also Sellers v. Qualls*, 206 Md. 58, 70–71 (1954) (finding

no undue influence in devise to church, in part, where testatrix questioned and did not follow pastor's advice for distributing her property, showing that pastor's control over her was "far from complete").

In *Moore v. Smith*, our Supreme Court identified seven elements of undue influence:

1. The benefactor and beneficiary are involved in a relationship of confidence and trust;
2. The will contains substantial benefit to the beneficiary;
3. The beneficiary caused or assisted in effecting execution of a will;
4. There was an opportunity to exert influence;
5. The will contains an unnatural disposition;
6. The bequests constitute a change from a former will; and
7. The testator was highly susceptible to the undue influence.

321 Md. at 353. The person challenging a will need not prove that all seven factors apply but must prove, at a minimum, that there was a confidential relationship and that the testator was highly susceptible to undue influence. *Green v. McClintock*, 218 Md. App. 336, 369 (2014) (*citing Orwick v. Moldawer*, 150 Md. App. 528, 534 (2003)). After establishing undue influence, the challenger next must prove that "'the power was actually exercised, and that by means of its exercise the supposed will was produced.'" *Zook*, 438 Md. at 249 (*quoting Koppal*, 189 Md. at 351). The challenger must prove both elements to prevail on an undue influence claim. *Id.* (*quoting Koppal*, 189 Md. at 351)

After considering the record and case law, including the *Moore* factors, the circuit court found no genuine factual dispute about whether the Will had been procured by undue influence. The court did not find a confidential relationship between Mr. Mirmiran and

Wife because Mr. Mirmiran was not dependent upon her to the degree required to create such a relationship. It also found that Daughter had not presented evidence that could lead to a reasonable conclusion that Mr. Mirmiran was highly susceptible to Wife's undue influence.

a. The record does not support the existence of undue influence.

"[A] confidential relationship *may* be presumed whenever two persons stand in such a relation to each other that one must *necessarily* repose trust and confidence in the good faith and integrity of the other." *Green v. Michael*, 183 Md. 76, 84 (1944) (emphasis added). It is presumed as a matter of law in certain relationships, like the attorney-client or trustee-beneficiary relationship. *Upman v. Clark*, 359 Md. 32, 42 (2000). In spousal relationships, however, a confidential relationship is an issue of fact that must be found. *Id.*; *see Bell v. Bell*, 38 Md. App. 10, 14 (1977); *Hoffman v. Rickell*, 191 Md. 591, 598 (1948) ("In each case there is a question of fact whether the relationship is such as to give one party dominance over the other, or to put him in a position where words of persuasion have undue weight.").

Relying on *Sanders v. Sanders*, 261 Md. 268 (1971), Daughter argues *first* that Mr. Mirmiran's execution of a power of attorney in 2013 naming Wife as his agent, established a confidential relationship as a matter of law. *Id.* at 271. We disagree.

In *Sanders*, a father moved in with his son, designated him as his agent under a power of attorney, made him a joint owner of father's savings account, named the son as a beneficiary of his life insurance policy, and gifted the son his money while he was alive.

Id. at 270, 277–78. The son acted under the power of attorney at the father's direction. *Id.* at 277. The Court credited the existence of a confidential relationship between them to the power of attorney. *Id.* at 271. *Sanders* differs from this case, however, because the father and the son were in an active power of attorney relationship that facilitated the *inter vivos* transfers at issue in that case.[2] *Id.* at 270. Here, it is undisputed that Mr. Mirmiran named Wife as his agent under a limited power of attorney on August 27, 2013. But Daughter has not produced any evidence that Wife exercised any authority under that power of attorney.

This second step matters because a power of attorney doesn't demonstrate dependency by itself. Whether the power of attorney is used and how it is used are facts that reveal any degree of dependency, which is core to the confidential relationship inquiry. In *Todd v. Grove*, 33 Md. 188 (1870), for example, our Supreme Court held that there was a confidential relationship between the donor and his brother. *Id.* at 191–92. The donor was blind, disabled, and of advanced age. *Id.* at 190. His brother was his agent and was responsible for "the *whole care and custody* of all [donor's] large, real and personal estate, and acted as his *agent* in *the transaction of all [donor's] business*" during the months leading to the donor's death, the same period that the *inter vivos* gifts at issue were made. *Id.* at 191. The activities undertaken by the donor's brother in his capacity as agent were a

[2] In a challenge to an *inter vivos* transfer, the existence of a confidential relationship shifts the burden of proof to the recipient to show that the transaction was reasonable and fair. *Upman*, 359 Md. at 42. But that burden-shifting framework doesn't apply in caveat disputes: "When the gift is testamentary . . . the existence of a confidential relationship . . . is simply one suspicious circumstance to be considered; it does not, of itself, give rise to a presumption of [will] invalidity, and the burden remains with the [challenger] to prove a substantially overbearing undue influence." *Id.* at 35.

testament to the confidential relationship between them. *See also Matter of Jacobson*, 256 Md. App. 369, 403–04 (2022) (upholding circuit court's dismissal for failure to state a claim, in part, by stating that the petitioner "could not bootstrap her way to a confidential relationship" by pointing to the existence of a power of attorney).

The existence of a power of attorney doesn't truncate the confidential relationship analysis. In *Orwick v. Moldawer*, the challenger attempted to prove a confidential relationship by highlighting that the beneficiary had moved in with the testator, cared for his medical needs, and was designated as his power of attorney. 150 Md. App. at 539. We concluded that the challenger had not proven a confidential relationship, noting the absence of evidence that the beneficiary even knew the power of attorney existed. *Id.* In *Green v. McClintock*, the Court recognized a confidential relationship due to the testator's "severely weakened" state, "house bound" condition, and total dependence on the beneficiary "for food, personal hygiene and a roof over his head" in addition to needing the beneficiary to manage his finances through a power of attorney. 218 Md. App. at 369–70.

In *Figgins v. Cochrane*, 403 Md. 392 (2008), the circuit court evaluated the relationship between a father and his daughter. The daughter was present at the meeting where the father executed a durable power of attorney appointing her as his attorney-in-fact. *Id.* at 398. Later on, the father executed a codicil to his will that included a bequest to the daughter of the exclusive right to occupy and purchase their family home. *Id.* at 399. She didn't exercise the power of attorney until after he fell into a coma, when she used it to gift herself the house. *Id.* at 395. The Court concluded that the circuit court

had found a confidential relationship between them properly, but not because of the power of attorney:

> The evidence reflected that [daughter] had lived with her parents for most of her life. In 2004, [father] turned seventy-two years old, and was confined to a wheelchair. As a result of his physical debilitation, [mother and daughter] were his primary caretakers. After [mother's] health began to deteriorate, [daughter] assumed the primary role of [father's] caretaker, feeding him, taking him out for doctor's appointments, church services, lunches and rides, administering medication, doing laundry, as well as reviewing mail and paying bills. [Daughter] occupied this intensely intimate role for the final seven months of [father's] life.

Id. at 410–11.

The record in this case reveals no evidence that Mr. Mirmiran relied on or even asked Wife to act under the power of attorney. As such, Mr. Mirmiran didn't rely on or "'necessarily repose trust and confidence'" in Wife to manage his financial and business affairs, *Green*, 218 Md. App. at 369 (*quoting Upman*, 359 Md. at 42), and we share the circuit court's disinclination to presume a confidential relationship based solely on the instrument's existence.

We now review whether a confidential relationship existed otherwise between Mr. Mirmiran and Wife under *Moore*. "[A]ge, mental condition, education, business experience, state of health, and degree of dependence of the spouse" are all factors relevant to the confidential relationship inquiry. *Bell*, 38 Md. App. at 14. But dependence is the key indicator. S*ee Green*, 183 Md. at 84 ("'To establish [a confidential] relationship there must appear at least a condition from which dependence of the grantor may be found.'" (*quoting*

Snyder v. Hammer, 23 A.2d 653, 655 (Md. 1942))); *Treffinger v. Sterling*, 269 Md. 356, 361 (1973) (A confidential relationship between parent and their adult child is established "only when, as a result of debility or feebleness, a parent becomes dependent on his child for aid and counsel . . . .").

Maryland courts have decided consistently that substantial reliance on others for advice, the conduct of affairs, assistance with activities of daily living, and meeting basic needs supports the existence of a confidential relationship. In *Moore*, our touchstone case, the testator had suffered a stroke that left him "partially paralyzed, virtually immobile, and partially blind." 321 Md. at 357. He needed others to help him wash and dress himself, prepare his meals, and ambulate in his house. *Id.* He depended on others to manage his financial affairs because he couldn't read or write. *Id.* The Court held that there was a confidential relationship due to the combination of the testator's physical limitations and his reliance on the beneficiary to meet his personal and physical needs and manage his financial affairs. *Id.* at 358.

In *Gaver v. Gaver*, 176 Md. 171 (1939), the confidential relationship arose because the mother's dependence on her son left her with little choice but to place faith and trust in his good faith and integrity:

> The conclusion that [son] stood in a confidential relationship to his mother seems unavoidable. Assuming that her mind was clear, physically she was helpless. [Son] was her only available contact with the world beyond her room. She relied upon him for the management of her affairs. She signed checks, but he drew them, she made no investments except upon the advice of her [two] sons, . . . [son] deposited her money in bank, and while she signed checks she signed them in reliance upon the

> information and advice of others . . . . [Son] managed the farm and sold the crops. . . . [Son] kept her bank books.

Id. at 185–86; *see also Sellers*, 206 Md. at 69, 71 (confidential relationship existed where testatrix relied on her pastor to manage a large part of her business affairs).

If the testator does not depend on the beneficiary substantially, the parties are not in a confidential relationship. In *Treffinger v. Sterling*, a father who faced a potential lawsuit and feared that he would lose his summer residence directed his daughter to go to his attorney and seek legal counsel on his behalf. 269 Md. at 358. She did and returned with the attorney's advice that her father transfer the property to her to protect it from a potential judgment. *Id.* He sold the property to his daughter; after he died, her siblings brought an equity action to void the deed, alleging it had been procured by her undue influence. *Id.* at 358–59.

The Court determined that the siblings' proof of a confidential relationship was inconclusive at best. *Id.* at 362. It considered that the father was very old and had limited mobility due to his advanced age but noted that he lived alone and did not rely on the daughter for financial support. *Id.* Even though the daughter helped the father with errands, her aid was not done "out of necessity to fulfill his needs." *Id.* Her assistance with bank deposits, withdrawals, and even signing checks didn't disturb the Court's overall conclusion that the father was independent and, when faced with a crisis, sought counsel from his attorney, not his daughter. *Id.* Like *Treffinger*, the dependence essential to finding a confidential relationship is not present in this case.

Examining the record here in the light most favorable to Daughter, we fail to see any factual basis, let alone factual dispute, that could support a conclusion that Mr. Mirmiran was forced to place his trust in Wife's confidence and integrity. His circumstances did not compel him to rely on her for advice or for managing his financial or business affairs in any remarkable way. His lawyer referred him to a new estate lawyer, Mr. Glaser, for assistance with preparing a new will. He met privately with Mr. Glaser on September 28, 2017, shared his testamentary wishes, and gave instructions for drafting the Will. On November 17, Mr. Glaser sent him the draft Will and a durable general power of attorney. The draft power of attorney named Wife as his agent to handle his financial affairs. Mr. Glaser's letter advised Mr. Mirmiran that the power of attorney did not require him to be incapacitated and would take effect as soon as he signed it and gave it to her. On July 10, 2018, Mr. Mirmiran printed the Will, signed it, and brought the document to Ms. Hammel and Mr. Smulovitz to attest to his signature. There is no evidence that he moved forward with the durable general power of attorney.

The record illustrates Mr. Mirmiran's independence and autonomy in conducting his affairs in other ways too. In 2018 and 2019, he attended four meetings with his personal accountant about his financial matters on his own. He worked independently with his financial advisor for many years to transact business for his charitable foundation. Around 2017, Wife became more involved in the foundation, and by then had assumed more control of the couple's finances. But her enhanced participation doesn't support a reasonable inference that Mr. Mirmiran was limited or *needed* her help.

To the contrary, the record reveals that Mr. Mirmiran appeared to have an active life both within and outside of his marriage. He traveled and gathered regularly with his family He played golf and spent time with friends. He went to work at his office during the week, advised his son on business matters, drove his own car, and attended his own medical appointments.[3] He had a safe at his office for important items. Although Wife controlled the cash flow in their marriage, Mr. Mirmiran maintained access to bank accounts, was never without money, and regularly took Ms. Hammel and Daughter out to lunch. Over time, some people in his life thought he had become quieter, less social, less able to comprehend documents, more depressed, and reliant on a hearing aid as he aged. Others observed him to be intelligent, capable, and highly functional until the time of his death. Even with these differing observations, the record does not draw a portrait of helplessness.

Mr. Mirmiran was an older adult, but advanced age, by itself, is insufficient to demonstrate a confidential relationship. *See Treffinger*, 269 Md. at 363 (*citing Henkel v. Alexander*, 198 Md. 311 (1951)). Shortly before executing the Will, he did not present symptoms of cognitive impairment to Dr. Sateia and had no history of a dementia diagnosis. He didn't need Wife to help him perform any activities of daily living (dressing, walking, toileting) or meet his basic needs (food, shelter, clothing). He was healthy physically. On June 21, 2018, weeks before he executed the Will, he had a medical

[3] Wife attended at least two medical appointments with Mr. Mirmiran. In July 2013, she attended part of his second appointment with his psychiatrist, Dr. Abdul Malik. Mr. Mirmiran saw Dr. Malik on his own sixteen more times until his death. In June 2018, she attended Mr. Mirmiran's appointment with Dr. Francis Rotolo, where they discussed his hernia and medical options.

appointment with Dr. Rotolo to discuss his hernia and presented as normal. In anticipation of his hernia surgery, Dr. Sateia performed a pre-operative examination of him a few days later, on June 25, 2018. That process entailed a physical examination, medication review, bloodwork, and urinalysis. All test results came back normal and Dr. Sateia cleared him for surgery. The surgery took place with Mr. Mirmiran under general anesthesia without complication on July 6, 2018—four days before he executed the Will. He was discharged with additional medications and no medical issues were observed at his post-operative visit on July 19, nine days after he executed the Will.

Citing *Mattingly v. Mattingly*, 92 Md. App. 248 (1992), Daughter asserts that the circuit court failed to consider Mr. Mirmiran's deep psychological dependency on Wife when assessing whether they were in a confidential relationship. In that case, Mr. Mattingly executed two no-consideration deeds conveying all his ownership interests in his family's real property to his brother and sold his interest in the family business to his brother. *Id.* at 252. He also released his brother from all liability for any claims or demands arising from his brother's running of the family business. *Id.* at 252–53. A forensic psychiatrist later diagnosed Mr. Mattingly with dependent personality disorder. *Id.* at 253.

Mattingly does not stand for the proposition that the presence of a mental health diagnosis, even one defined by excessive reliance on others, is sufficient by itself to establish a confidential relationship. The Court, in that case, concluded that a fact finder could rely on an abundance of evidence in the record, including Mr. Mattingly's diagnosis, to conclude that he depended heavily on and reposed confidence in his brother. *Id.* at 264.

Mr. Mattingly had depended on his brother to handle all the day-to-day business and financial affairs of their farming and excavation business while he took care of the physical labor. *Id.* at 251. Mr. Mattingly's brother had complete control over his livelihood. *Id.* He paid Mr. Mattingly three hundred dollars a month for a year, then reduced his earnings to intermittent payments amounting to "a few hundred dollars . . . once or twice a year." *Id.* The Court further concluded that the brothers' fiduciary relationship as business partners created a confidential relationship as a matter of law. *Id.* at 264. At most, *Mattingly* tells us that psychological dependency can be one circumstance that could compel a person to repose their trust and confidence in another to meet their essential needs, making it relevant to the greater inquiry.

Mr. Mirmiran did not—either through an untreated mental health diagnosis or his actions—present a psychological dependency remotely like that presented in *Mattingly*. True, Mr. Mirmiran lived with anxiety, a mood disorder he'd had since as early as 2001, and he took several medications for it. He lived with anxiety when he executed his uncontested will in 2004, his uncontested codicil to that will and other advance directives in 2013, and when he executed the Will in 2018. Daughter has not met her burden of proving why his anxiety in 2018 was any different or worse to amount to a psychological dependency on Wife that culminated in undue influence. According to Ms. Hammel and Daughter, he complained about his marriage and was afraid Wife would leave him and he would end up alone. Even if admissible, this evidence would be insufficient for a jury to conclude reasonably that Mr. Mirmiran's frustration or fear forced him to repose

confidence and trust in Wife to meet his essential needs and doesn't create a genuine issue of material fact on that point.

Like the confidential relationship factor, a person's susceptibility to undue influence rests on their dependence on others. *Green*, 218 Md. App. at 370. Daughter argues that Mr. Mirmiran was in a deteriorated mental state that rendered him highly susceptible to undue influence. She relies on Ms. Hammel's statements that Mr. Mirmiran was "unstable," "going downhill," said he didn't want to live anymore and had a diminished intellectual capacity. On the other hand, Ms. Hammel also stated that Mr. Mirmiran didn't ask for help reviewing business contracts and marketing proposals, and she described him as a "very strong-willed independent man" who could not be stopped from doing what he wanted to do. That characteristic surfaced in other parts of the record, too. According to Daughter, Wife forbade her from calling or coming to the Mirmirans' house, and she attempted to keep Daughter away from her father. But she also describes how Mr. Mirmiran stayed connected to her and would see her anyway. We also know that he gifted Daughter $750,000 despite the contentious relationship she had with Wife. In another instance, Mr. Mirmiran openly dissented from Arshia and Wife's position on certain invoice payments and they deferred to him.

None of Ms. Hammel's observations speak to Mr. Mirmiran's mental condition immediately before or after he executed the Will. Wife produced ample evidence that he possessed his mental faculties during that critical time, which the court rightly credited as relevant to its finding that the evidence could not support a reasonable conclusion that he

was highly susceptible to undue influence.[4] Indeed, this record reveals no basis on which Mr. Mirmiran could have been found especially dependent or vulnerable. *See Moore*, 321 Md. at 360 ("[T]he quantum of proof necessary to establish undue influence varies according to the susceptibility of the testator . . . ."). His state of functioning at the time he executed the Will enhances the quantum of proof Daughter would have had to establish, *see id.*, and she hasn't met her burden to demonstrate a genuine issue of material fact on this point.

b. The record does not show that the exercise of undue influence resulted in the Will.

To justify sending the question of undue influence to a jury, there must be admissible evidence from which a rational jury could infer that when the testator made the will, he was dominated by an influence that overpowered his own judgment. Philip L. Sykes, *Contest of Wills in Maryland* 146–47 (1941). It is a fine line—influence is permissible, but not when it subjugates the testator's free will—and the undue influence must give rise to the will:

> Mere conjecture or a suspicious circumstance, or even an influence or constraint, if not directly connected with the will in the sense of being its procuring cause, will not be sufficient to carry the question to the jury. Nor is it sufficient to show that there was influence which affected the testator's disposition of his property.

Id. (footnote omitted).

[4] Daughter does not challenge the court's summary judgment finding that she hadn't produced evidence creating a genuine dispute of material fact that Mr. Mirmiran lacked testamentary capacity on July 10, 2018.

Daughter relies on *Thomas v. Cortland*, 121 Md. 670 (1913), to argue that undue influence can occur not only at the moment a will is executed, but beforehand as well. *Id.* at 677. In *Thomas*, the challengers disputed the rejection of their proposed jury instruction that a will can be procured by undue influence even if the influence was not "immediately and directly exerted at the particular time at which the will was made." *Id.* at 674–75. There, the testator's son disagreed with the testator's plan to leave his estate to his grandchildren and told the testator to leave his estate to him instead, assuring that he would provide for the grandchildren. *Id.* at 673. The testator executed a will reflecting the son's wishes. *Id.* at 672. On the day of execution, the son accompanied the testator to the office of the estate attorney and waited for him outside. *Id.* at 674. The Court remanded the case for a new trial, concluding that the challengers' prayer instructed properly that it was not necessary to find undue influence in the moment the will was executed. *Id.* at 677.

But *Thomas* also teaches us that the influence exerted, whether at the time of will execution or before, must concern the testamentary disposition. *Id.* at 675 ("[U]nless the influence . . . was effective at the time the will was executed, the will cannot be said to be the product of that influence . . . ."). And Daughter has not produced evidence from which a jury could find reasonably that Wife was involved with the Will or had a desire to change her husband's prior will.[5] Based on the record before this Court, Mr. Mirmiran approached

[5] In her line supplementing her opposition to Wife's motion for summary judgment, Daughter submitted an asset transfer agreement to which Mr. Mirmiran agreed in 2016 against the advice of his attorney at the time, Alex Hassani. Mr. Hassani had asked to

Continued . . .

Mr. Glaser independently, met with him, and later received draft documents and legal information from his attorney about the estate plan they had discussed. Seven months passed. Then, days after his successful surgery, Mr. Mirmiran retrieved the Will, signed it, and had it subscribed by two witnesses. Daughter has not demonstrated that his actions were anything other than self-directed. The circumstances on which she relies raise no more than a suspicion that the Will resulted from undue influence, *see Zook*, 438 Md. at 249 (*quoting Koppal*, 189 Md at 351), and we cannot conclude that Mr. Mirmiran was so dominated by Wife's influence that he could not exercise his own judgment when he made it. *See Wall v. Heller*, 61 Md. App. 314, 330 (1985) (*quoting Arbogast v. MacMillan*, 221 Md. 516, 521 (1960)). The circuit court found properly that there was no genuine dispute of material fact that the Will was procured by undue influence and its legal decision was

confirm with outside experts that Mr. Mirmiran's choice was the result of his free will rather than any undue influence. Maryland law observes different evidentiary standards for proving undue influence relative to an *inter vivos* transfer and undue influence in a testamentary disposition:

> In the cases of gifts or other transactions *inter vivos* . . . the natural influence which [marital] relations . . . involve, exerted by those who possess it, to obtain a benefit for themselves, is an undue influence. The law regarding wills is very different from this. The natural influence of the [spouse] . . . may lawfully be exerted to obtain a will or legacy, so long as the testator thoroughly understands what he is doing and is a free agent.

Anderson v. Meadowcroft, 339 Md. 218, 228 (1995) (*quoting Griffith v. Diffenderffer*, 50 Md. 466, 484 (1879)). As a result, the asset transfer agreement has little to no bearing on the undue influence question in this caveat dispute.

correct. And because we affirm the circuit court's ruling on the first and seventh *Moore* factors, which are dispositive, we need not discuss the others.

c. There is no genuine dispute of material fact about whether the Will was procured by fraud or deceit.

Procurement of a will by fraud or deceit occurs when a testator does not know that they are signing a will or has been misled or deceived about the will's provisions. *See Wall*, 61 Md. App. at 332. Daughter asserts that Wife alienated her father from her, which, if proven, would be sufficient to establish fraud.

In *Krouse v. Krouse*, 94 Md. App. 369 (1993), which Daughter cites as support, the circuit court had instructed the jury that "[f]raud may take the form of false accusations which alienate the testator from the natural objects of his bounty." *Id.* at 375. Even taking the facts in the light most favorable to Daughter, though, this record cannot support a reasonable inference that Mr. Mirmiran had been alienated from her. By her own words, she was not welcome to call or visit the Mirmirans' house, but she and her father nevertheless "went on to have a deep and genuine relationship" and met up during business hours at his office and spoke on the phone. According to Ms. Hammel, they had "a close relationship." Daughter went to Mr. Mirmiran's office and they went out to lunch together. In *Krouse*, the jury was also instructed that "[f]raud will often occur when one of the beneficiaries under a will makes a false statement to the testator to induce the execution of the will in a certain manner." *Id.* Daughter has produced no evidence of any such statements by Wife. The circuit court found rightly that there was no genuine dispute of material fact that the Will was procured by fraud or deceit.

d. The law of the case doctrine did not preclude the circuit court from deciding Wife's motion for summary judgment.

In general, the law of the case doctrine means that an appellate court's ruling on an issue appealed becomes binding on the parties and the courts in the ongoing life of that case. *See MAS Assocs., LLC v. Korotki*, 475 Md. 325, 382 (2021) (*quoting Garner v. Archers Glen Partners, Inc.*, 405 Md. 43, 55 (2008)). The doctrine covers appeals from final judgments of the orphans' court, but not interlocutory orders. Md. Code (1974, 2020 Repl. Vol.), § 12-501(a) of the Courts and Judicial Proceedings Article; *see Hall v. Coates*, 62 Md. App. 252, 255–56 (1985) (final orders settle the rights of parties). This Court has not issued any prior rulings on Wife's motion for summary judgment because she didn't appeal the orphans' court's denial of her motion in 2020. And the doctrine typically does not apply to a circuit court decision because a trial judge normally isn't bound by prior rulings made in the same case by another judge of the court. *Electrical Gen. Corp. v. Labonte*, 454 Md. 113, 140 (2017) (*quoting Scott v. State*, 379 Md. 170, 184 (2004)); *see also Gertz v. Anne Arundel Cnty.*, 339 Md. 261, 272–73 (1995) (holding that circuit court's grant of partial summary judgment was not binding on subsequent circuit court judge).

Relying on *Ralkey v. Minnesota Mining & Manufacturing Co.*, 63 Md. App. 515 (1985), Daughter argues that "a trial court ruling also may stand as the law of the case when no appeal is taken from it." *Id.* at 521. Yet the sentence before this quote reminds us that finality is embedded in the doctrine: "In effect, the decision which *finally* disposes of the matter becomes the law of the case in subsequent proceedings. Ordinarily, this refers to an

appellate holding, but a trial court ruling may stand as the law of the case when no appeal is taken from it." *Id.* (emphasis added). A trial court ruling can be binding if it is a final judgment that is not appealed. *Id.* at 522.

Like this case, in *Ralkey* the appellee's first motion for summary judgment was denied by the court and wasn't appealed. *Id.* at 519. The appellee filed a second summary judgment motion later before a different judge of the circuit court, and the court granted that motion. *Id.* at 520. This Court considered whether the law of the case doctrine made the circuit court's initial denial of summary judgment binding. *Id.* at 522. We concluded that it didn't because a denial of summary judgment is not a final judgment—"it merely permits the case to proceed based on the finding that a dispute concerning a material fact exists." *Id.* at 523; s*ee also Azarian v. Witte*, 140 Md. App. 70, 85 (2001), *aff'd*, 369 Md. 518 (2022) (quotations omitted). And such a ruling does not bar a different judge from finding later that no genuine dispute exists. *Ralkey*, 63 Md. App. at 523.

Although we appreciate that a "final judgment" presents differently in the orphans' court context, *see Hegmon v. Novak*, 130 Md. App. 703, 708–11 (2000), we remain unmoved by Daughter's argument here. In an orphans' court, a final judgment means "those judgments, orders, decisions, etc. which, in caveat proceedings, *finally* determine the proper parties, the issues to be tried and the sending of those issues to a court of law." *Schlossberg v. Schlossberg*, 275 Md. 600, 612 (1975) (emphasis added). Examples of "final judgments" in caveat proceedings include an orphans' court order "'granting or refusing to grant'" issues for transmission to the circuit court. *Banashak v. Wittstadt*, 167 Md. App.

627, 658 (2006) (*quoting* 1 Philip L. Sykes, *Probate Law and Practice* § 243, at 251–52 (1956)). An order granting or refusing to grant issues for transmittal is not the same as an order denying a motion for summary judgment.

In *Banashak*, this Court concluded that an orphans' court's denial of a motion to dismiss a petition for attorneys' fees was not a final judgment because the effect of its action was, in essence, interlocutory:

> But for this appeal, the Orphans' Court would have proceeded forthwith to conduct a hearing on the merits of the fee petitions. Once awards are made, or denied, those awards will, in the fullness of time, be appealed to [this Court] as proper final judgments. The argument the appellants now make on the merits of the fee petitions may be made at that time and will not in any way be compromised by intervening events.

167 Md. App. at 659.

We reach a similar conclusion here because, like *Banashak*, the orphans' court's denial of summary judgment had the same effect as an interlocutory appeal. After that denial, the parties naturally moved on to circuit court to pursue final judgment on the issues. Both courts can entertain a motion for summary judgment under this process. *See, e.g.*, *id.* at 682 ("[T]he prerogatives of the circuit court judge include that of taking an issue away from the jury if the evidence is not legally sufficient to support a finding." (*citing McIntyre v. Saltysiak*, 205 Md. 415, 424 (1954))); *Kao v. Hsia*, 309 Md. 366, 379 (1987) ("The circuit court may, in an issues case, direct a verdict, grant a new trial, or grant summary judgment." (cleaned up)); Md. Rule 6-461(b) (Maryland Rule 2-501, regarding motions for summary judgment, applies to orphans' court proceedings). And because interlocutory

rulings don't settle the law of the case, the orphans' court's denial of summary judgment didn't bind the circuit court to decide the merits of Wife's renewed motion in any particular way.

Based on our review of the record, the circuit court appropriately found an absence of a genuine dispute of material fact and its entry of summary judgment was correct legally. Because the court's summary judgment ruling terminated the litigation, it denied Daughter's pending motions to consolidate and to compel discovery and granted Wife's motion to quash her subpoenas rightly.

2. The timing of the court's summary judgment ruling was not an abuse of discretion, did not prejudice Daughter, and did not offend procedural due process.

Daughter argues that by ruling on summary judgment before the close of the discovery period, the court abused its discretion, committed prejudicial error, and violated her procedural due process rights. Wife counters that Daughter had sufficient opportunity to discover relevant, admissible evidence. She asserts that even after obtaining Mr. Mirmiran's medical records, Daughter still couldn't identify an evidentiary source that could contradict the undisputed facts around the preparation and execution of the Will. Wife has it right.

A party opposing summary judgment can respond with an affidavit explaining why a defense to the motion is not yet available. Md. Rule 2-501(d). The affidavit must explain why facts essential to justifying opposition to the motion cannot be presented at that time and the reasons, including the need for additional discovery. *Id.* If the court is satisfied that

essential facts cannot be provided, the court can postpone ruling on the motion to allow further discovery. *Id.* In this case, Daughter requested a continuance of the court's summary judgment ruling under Maryland Rule 2-501(d) so she could conduct more discovery. A decision to grant or deny a continuance under Maryland Rule 2-501(d) is a discretionary call made by the circuit court that we review for abuse of discretion. *Piney Orchard Comty. Ass'n, Inc. v. Piney Pad A, LLC*, 221 Md. App. 196, 220 (2015) (*quoting Chaires v. Chevy Chase Bank*, 131 Md. App. 64, 88 (2000)); *Century Nat'l Bank v. Makkar*, 132 Md. App. 84, 98–99 (2000) (reviewing denial of a continuance under Maryland Rule 2-501(d) for abuse of discretion). And abuse of discretion is a high standard, reserved for extraordinary, exceptional, or egregious circumstances. *Wilson v. Crane*, 385 Md. 185, 198–99 (2005) (*quoting In re: Adoption/Guardianship No. 3598*, 347 Md. 295, 312–13 (1997)). It applies '"where no reasonable person would take the view adopted by the [court] . . . or when the court acts without reference to any guiding principles.'" *Id.* (*quoting In re Adoption/Guardianship No. 3598*, 347 Md. at 312).

A decision to deny a continuance pending further discovery is not an abuse of discretion if the court had sufficient information before it to rule on the pending legal issues. *Chaires*, 131 Md. App. at 88–89. And that was the case here. Wife's motion for summary judgment was the first of at least ten separate, related filings submitted to the court between August 8, 2022, and March 9, 2023. Those filings came with roughly forty-seven exhibits and sub-exhibits—affidavits, declarations, deposition testimony, medical records, photos, correspondence, estate planning documents, orphans' court

records, discovery responses, and contractual agreements. These documents supplemented extensive arguments that the circuit court heard on September 16 and October 17, 2022, relative to discovery and summary judgment. From that record, the court walked through each transmitted issue and sub-issue, analyzed the disputed and undisputed facts against the case law, and drew its conclusions. *See Maddox v. Stone*, 174 Md. App. 489, 502 (2007) (a reviewing court must be able to discern from the record how the court's analysis led to the discretion exercised). To the parties' credit, the court had a substantial and sufficient body of information from which to analyze the issues.

The court found that allowing more discovery would have prolonged the resolution of this case unnecessarily, and we can't disagree. *See Chaires*, 131 Md. App at 89. By the time of its ruling, litigation between the parties had been ongoing for three years. In that time, Daughter had more than a year to discover more evidence and had conducted informal discovery through a private investigator. *See Dorsey v. Nold*, 362 Md. 241, 251 (2001) (Parties to a litigation are not limited to formal discovery procedures and can "make any lawful investigations they choose"). A trial court may deny summary judgment and give the non-moving party more time to develop a "more complete factual record . . . , [but] it is not reversible error if the court chooses not to do so." *A.J. Decoster Co. v. Westinghouse Elec. Corp.*, 333 Md. 245, 262–63 (1994). Here, although the court denied Daughter's request to refrain from ruling until after the closing date for discovery, it did hold the summary judgment motion *sub curia* for over four months, which also had the effect of

giving her more time. Once the court had enough information before it to rule on the legal issues, however, it was entitled to do so.

We also are not persuaded that the court abused its discretion when it didn't issue an amended scheduling order. The court set an amended schedule in open court, on the record, with the participation and agreement of both parties. True, the court didn't issue a new order in writing (it also didn't enter a separate order granting Daughter's motion to modify the same), but Daughter wasn't prejudiced by this oversight. And we reject the position that technical errors of this kind should amount to an abuse of discretion. *See, e.g.*, *Taliaferro v. State*, 295 Md. 376, 390–91 (1983) (when reviewing a court's exclusion of alibi witness's testimony for abuse of discretion, one of the relevant factors is whether the alibi disclosure violation was technical or substantial).

Daughter argues *next* that the court's decision to rule on summary judgment before the scheduling order dates for completing discovery and hearing pretrial motions was a prejudicial error that violated her procedural due process rights. Citing *Mayor and City Council of Baltimore City v. Valsamaki*, 397 Md. 222 (2007), she contends that she had a due process right to complete discovery and that the circuit court violated it. In *Valsamaki*, the Baltimore City Council and Mayor filed a petition for quick-take (expedited) condemnation and immediate possession and title of Mr. Valsamaki's property as part of its economic development plan for the North Charles area of the City. *Id.* at 226–29. Unlike a regular condemnation action, a quick-take condemnation drastically limits the property owner's ability to defend against the taking. *Id.* at 231 n.8. Local law dictated that if the

property owner didn't file an answer within ten days of receiving the petition, title in the property would vest in the city. *Id.* at 226. If the property owner filed a timely answer, the court was obligated to schedule a hearing within fifteen days of the answer being filed, a total of twenty-five days after the original condemnation petition. *Id.* at 231 n.8.

The Court noted that the quick-take process effectively blocked property owners from discovering evidence under the Rules, which allow parties thirty days to respond to discovery requests. *Id.* Mr. Valsamaki had submitted interrogatories and notices of deposition to his opponent and tried to overcome this challenge by moving the circuit court to shorten the time for discovery responses so he could walk into the hearing with some evidence. *Id.* at 231–32. The court denied his motion and he had to litigate without the benefit of any discovery. *Id.* at 232. The procedural due process problem in that case was that Mr. Valsamaki was deprived of *any* opportunity to discover evidence to aid his defense against condemnation. *Id.*

The due process deprivation in *Valsamaki* was nothing like Daughter's situation here. Daughter had ample opportunity to conduct discovery throughout the life of this litigation. She first petitioned to caveat the Will on February 28, 2020. On March 23 of that year, the orphans' court entered a scheduling order giving the parties until September 23 (six months) to conduct discovery. On November 2, Daughter responded to Wife's discovery requests and identified seventeen witnesses who possibly had discoverable information, and at least seventeen potential fact or expert witnesses. Daughter did not serve discovery requests on Wife during the six-month discovery period in orphans' court,

however. She told the court that she planned to take the case to circuit court and conduct discovery there. But then on November 23, 2020, two months after discovery closed, Daughter asked for additional time to conduct discovery and the orphans' court denied that request. Regardless of the reasons she didn't begin discovery in that court, the opportunity for discovery was there and she didn't take it. *See Wall*, 61 Md. App. at 336–37.

After the case reached the circuit court, the scheduling order gave Daughter seven more weeks for discovery. She filed a motion to modify the scheduling order. The court responded by holding its ruling *sub curia* until the parties' scheduling conference on September 16, 2022, giving Daughter eight additional weeks. At the scheduling conference, the court granted her motion and extended discovery until April 14, 2023. In total, she had more than a year to discover evidence.

Daughter also contends that the court violated her procedural due process rights by ruling on summary judgment before the date scheduled for hearing summary judgment and other pretrial motions. More specifically, she asserts that, consistent with *Briscoe v. Mayor and City Council of Baltimore*, 100 Md. App. 124 (1994), courts must hold an oral hearing on dispositive motions if a hearing is requested. *See also* Md. Rule 2-311(f).

In *Briscoe*, the court granted the City of Baltimore's motion to dismiss without a hearing even though Mr. Briscoe had asked for one. 100 Md. App. at 126. This Court held that not granting Mr. Briscoe an oral hearing was erroneous. *Id.* at 128. Like *Valsamaki*, the procedural due process problem was that the court wholly denied Mr. Briscoe the opportunity to have his opposition to the motion heard.

Again, that is not the situation in this case. Unlike in *Briscoe*, the circuit court in this case heard Daughter's opposition to the summary judgment motion. When Wife moved for summary judgment, Daughter requested an oral hearing, and the court scheduled one for October 17, 2022. Before the hearing, Daughter filed an opposition and a supplemental opposition to the summary judgment motion. After the hearing, she filed an opposition to two supplemental exhibits that Wife had submitted to augment the summary judgment motion. We recognize that when there has been a request for a hearing on a dispositive motion, procedural due process requires that the court hold a hearing. 100 Md. App. at 127; *see also* Md. Rule 2-311(f). In this case, the court observed those rights by hearing both parties' summary judgment arguments at Daughter's request.

Daughter didn't ask for a second summary judgment hearing and she wasn't entitled to one. It's true that earlier the court had set June 6, 2023, as the date for hearing pre-trial motions, including any other summary judgment motions. But the circuit court's decision to rule on summary judgment before then cannot be likened reasonably to ignoring a request for an oral hearing under Maryland Rule 2-311(f) by rendering a dispositive decision on the papers. The circuit court was not limited by the scheduling order in deciding whether and when to grant the motion for summary judgment. *Clark v. O'Malley*, 169 Md. App. 408, 421 (2006), *aff'd*, 404 Md. 13 (2008). And the court wasn't obligated to hold a second hearing when, as we concluded above, it already had sufficient information before it to rule on the legal issues.

B. The Court Did Not Abuse Its Discretion When It Denied Daughter's Motion To Alter Or Amend The Judgment Or When It Granted Wife's Motion For Protective Orders.

1. The court denied Daughter's motion properly because her expert affidavit, even if considered, would not have changed its judgment.

Having addressed her universal challenges to the circuit court's application of the law and exercise of discretion in granting summary judgment, we consider Daughter's arguments about her motion to alter or amend that judgment. She asserts that the circuit court abused its discretion when it did not consider the expert affidavit she filed with that motion, when it didn't state a basis for its ruling, and when it ruled on the motion before she could file a reply to Wife's opposition. Wife argues that the arguments Daughter made in reliance on the expert affidavit could and should have been raised before the summary judgment ruling, that the expert affidavit, even if considered, would not have generated a genuine dispute of material fact that the Will was the product of undue influence, and that the motion did not identify an actual legal error made by the court. We agree with Wife.

In response to a motion to alter or amend a judgment, the circuit court "may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment." Md. Rule 2-534. The key word there is "may": the court has broad discretion to grant or deny a Maryland Rule 2-534 motion. *Benson v. State*, 389 Md. 615, 653 (2005). Our review of that discretion, however, is limited in scope—we review only whether the court abused its discretion in not changing its mind. *Rose v. Rose*, 236 Md. App. 117, 129 (2018) (*citing*

Schlotzhauer v. Morton, 224 Md. App. 72, 84 (2015), *aff'd*, 449 Md. 217 (2016)). As we stated earlier, abuse of discretion refers to instances where "'no reasonable person would take the view'" of the circuit court, the court acts "'without reference to any guiding rules or principles,'" or its ruling defies "'the logic and effect of facts and inferences'" before it. *Wilson*, 385 Md. at 198–99 (*quoting In re Adoption/Guardianship No. 3598*, 347 Md. at 312). Moreover, Maryland Rule 2-534 motions are not a "do over." The court has "boundless discretion" to reject issues or arguments that could have been raised earlier but weren't. *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002). Parties can use these motions to bring new evidence to the court's attention that may justify a different, more appropriate judgment. *Renbaum v. Custom Holding*, 386 Md. 28, 45–46 (2005).

In this case, Daughter attached to her motion to alter or amend a provisional expert opinion on undue influence from Tyler Dowling, M.D., based on his review of the same record that had been considered by the circuit court. The affidavit is not based on new information or events occurring before summary judgment and could have been presented to the court before its ruling. Daughter designated Dr. Dowling as her potential expert on December 31, 2022, two months after the court heard Wife's summary judgment motion and held its ruling *sub curia*. While that ruling was pending, she relied on an affidavit from Dr. Dowling to oppose Wife's motion to quash subpoenas. Days later, on January 31, 2023, Wife submitted additional medical records to support her summary judgment motion. Daughter did not submit any more exhibits and the record before the court was complete, but it didn't have to be. She could have brought Dr. Dowling's opinion on confidential

relationship and susceptibility to the court's attention as a supplemental exhibit and she didn't. The court was well within its discretion to decline considering the affidavit when it appeared as part of her Rule 2-534 motion.

If a motion to alter or amend a judgment doesn't offer evidence or information that would have changed the court's judgment, there can be no "reasonable doubt that justice has not been done" and no abuse of discretion. *See Benson*, 389 Md. at 653 ("'[W]hether the court entertained a reasonable doubt that justice had not been done is an appropriate basis for the exercise of that discretion.'" (*quoting Board of Nursing v. Nechay*, 347 Md. 396, 408 (1997))). And even if Dr. Dowling's affidavit had made a difference regarding the existence of undue influence, it couldn't create a genuine factual dispute over whether Wife exercised undue influence or whether that influenced Mr. Mirmiran's decision to execute the Will. There is nothing in the record to show that Wife was involved in any way with Mr. Mirmiran's procurement and execution of the Will, and Dr. Dowling's affidavit doesn't change that.

We also are unpersuaded by Daughter's objections that the court failed to state a basis for denying the motion to alter or amend and to the timing of its ruling. In this case, the circuit court denied her post-judgment motion summarily. Denial of a post-judgment motion without explanation is not enough, however, to show abuse of discretion. *See, e.g.*, *Steinhoff*, 144 Md. App. at 483–84; *Friends of the Ridge v. Balt. Gas & Elec. Co.*, 120 Md. App. 444, 490, 493 (1998), *vacated on other grounds*, 352 Md. 645 (1999). While her motion was pending, Daughter notified the court of her plan to reply to Wife's opposition

motion. The court acknowledged this in its ruling but ultimately found that further briefing and argument was unnecessary given the ground Daughter had already covered in her detailed, forty-four-page motion. This was not a legal error. Unless the court orders otherwise, a party opposing a motion to alter or amend a judgment is not even required to file a response. Md. Rule 2-311(b). And if they do, the rules do not entitle the movant to file a reply. *See id.*; *see also Miller v. Mathias*, 428 Md. 419, 448 (2012) (holding that even if the court erred by granting a Maryland Rule 2-535 motion before expiration of the response period and without an *answer*, the error was harmless). We see no basis to conclude that the court abused its discretion, which is "virtually without limit," by ruling on the papers, especially on these papers. *Steinhoff*, 144 Md. App. at 484.

2. Granting Wife's motions for protective orders was not an abuse of discretion because the motions were supported by good cause.

On July 6, 2022, Wife moved for a protective order to designate as confidential discoverable information associated with Mr. Mirmiran's medical records and his communications with Mr. Hassani. A month later, she moved to seal the fourth exhibit to her summary judgment motion, Dr. Sateia's affidavit, in anticipation that the court would grant that protective order. After hearing the parties' arguments, the court granted both motions. Daughter contends that Wife's motions violated the Maryland Rules and granting them was an abuse of discretion. We disagree.

Daughter asserts *first* that the motions were comprised of general, conclusory statements, unsupported by good cause, and failed to state supporting factual grounds and

legal authorities with particularity. Protective orders are "'a grant of power to impose conditions on discovery in order to prevent injury, harassment, or abuse of the court's processes.'" *Forensic Advisors, Inc. v. Matrixx Initiatives, Inc.*, 170 Md. App. 520, 531 (2006) (*quoting Tanis*, 110 Md. App. at 575). The court's power to grant a protective order relating to discovery is broad, *Maryland-National Capital Park & Planning Commission v. Mardirossian*, 184 Md. App. 207, 217 (2009), and we will not disturb its discovery decision absent a showing of abuse of discretion. *Baltimore Transit Co. v. Mezzanotti*, 227 Md. 8, 13–14 (1961).

Maryland Rule 2-403 empowers a court to "enter any order that justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense" on good cause shown. Md. Rule 2-403(a). The party seeking a protective order carries the "'burden of making a particular and specific demonstration of fact'" that reveals a prejudice or harm that will result if protection isn't granted. *Forensic Advisors*, 170 Md. App. at 530 (*quoting Tanis*, 110 Md. App. 574). This expectation aligns with Maryland Rule 2-311,[6] which requires that written motions "state with particularity the grounds and the authorities in support of each ground." Md. Rule 2-311(c).

Wife's Rule 2-403 motion referenced the need to protect information in Mr. Mirmiran's attorney-client communications with Mr. Hassani, his medical records, and

[6] Daughter objects further that Wife did not file a Maryland Rule 2-311 affidavit with her motion. That rule states that a motion "based on facts not contained in the record shall be supported by affidavit and accompanied by any papers on which it is based." Md. Rule 2-311(d). But Daughter hasn't specified which facts outside of the record triggered this obligation and we decline to speculate on that point.

other confidential information that she would have to produce in response to Daughter's discovery requests. She sought a process that would allow the parties and any third parties replying to discovery requests to designate materials they considered confidential or proprietary, so long as the information was not materially related to any facts that needed to stay public. For this reason, she had also moved to seal Dr. Sateia's affidavit when she filed her summary judgment motion. She didn't ask to withhold confidential information from Daughter and proffered that Daughter could challenge any confidentiality designation under her proposed procedure.

At the motion hearing, Wife's counsel gave an example to support why a protective order was necessary:

> [T]his is an e-mail exchange . . . in which Mr. Arshia Mirmiran, who [has] a real estate development company, has an e-mail exchange with his father where he is sending him a financial statement for a company that has nothing to do with this case that . . . Arshia Mirmiran's company, was looking at as a possible tenant in a real estate project. . . . So here is his son sending him this financial statement for an engineering company that has nothing to do with this case which was provided to them confidentially in connection with considering whether to make a lease agreement with this company . . . . We would like to use that document because it is a financial statement, shows that here is a document that was sent to Mr. Fred Mirmiran after the date that he executed his will, that he, at least from his own e-mail exchange, he obviously was able to understand the e-mail, that he was able to understand the financial statement and comment . . . on it to his son and we think that because it is proprietary information belonging to a fourth party to this case, that . . . ought to be something that we can designate as confidential so that it is not . . . a matter of public record when it has nothing to do with this case.

Her counsel provided additional examples pertaining to Mr. Mirmiran's medical records and privileged documents Mr. Hassani possessed:

> [The Sateia affidavit] that we asked to seal . . . goes on at length about matters of Mr. Fred Mirmiran's medical history and his prescription history, which [] we think that that is the type of information that ought to be maintained confidentially; that obviously the other side will have full access to it, they already do, and they can make with it what they will, but we don't think that needs to be part of the public record. . . . [T]he last example are records of confidential attorney-client communications that Mr. Fred Mirmiran had with his counsel, his former counsel, Alex Hassani. . . . We produced them back in June. We produced all of his files . . . and we designated them confidential in anticipation that Your Honor would enter this order. . . . [T]hey include discussions of Mr. Mirmiran's thoughts and feelings about personal matters when he was having those conversations with Mr. Hassani. . . . [O]n their face it is clear they are not things that he would want to have filed in this court for anybody to come and see. . . . And we filed the motion to seal Dr. [Sateia's] affidavit containing the references to what we consider confidential information relating to Mr. Mirmiran's medical history which we would have designated confidential in the event that this order had already been issued.

The court heard next from Daughter's counsel on her position that all information should be open to the public. The court asked whether there were any issues, beyond public interest considerations, that should weigh against entering the protective order. Counsel referred to Daughter's constitutional arguments about the public's right to see court files; in reply, the court noted its authority to find countervailing factors to overcome any constitutional issues. Counsel argued that confidential designations would impede trial preparation, a point that was persuasive to the court and later incorporated as a term of the order. The court asked directly what interest the public had in seeing Mr. Mirmiran's

attorney-client communications with Mr. Hassani, and that question was not answered. The court asked what legitimate public interest lay in the affairs of Mr. Mirmiran, now deceased. Counsel replied that a fact about Mr. Mirmiran could conceivably become revealed to a witness with personal knowledge.

The court then asked Daughter's counsel what other terms would be acceptable if it were inclined to grant the order. Counsel asked the court to reject confidentiality designations of any third-party financial records unless supported by good cause and documentation of prejudice, and asked that proposed designations be submitted to the court on a document-by-document basis with Daughter having the right to object. The court then heard her objections to the protective order being overly broad and lacking a factual predicate in Wife's motion.

The court turned back to Wife's counsel about the possible terms of an order. On Daughter's request to share confidential documents with witnesses for trial preparation, Wife argued for a rational relationship between the witness and the documents. The court set that as the outermost limit it would place on using confidential information:

> I don't think anybody can restrict it more than that and there may be matters that are confidential that are private that Mr. Mirmiran, were he alive, would not want to see divulged but his estate finds itself in a lawsuit and there are matters that do get disclosed and may go further than what he would have liked. Nobody likes to have private matters disclosed. But [this use is permissible] if it is for legitimate trial preparation purposes . . . in connection with this case.

After hearing from both sides, the court made an oral ruling granting the protective order. The court found that there were financial records in the case that didn't relate to the

issues and "could be potentially damaging to the individuals or corporations that supplied that information." The court determined further that, absent a good reason, it would protect Mr. Mirmiran's attorney-client communications from public view. With regard to his medical records, the court found that the information not only reflected on Mr. Mirmiran's conditions but could also reflect on and affect those who survived him. The court concluded that there was a sufficiently compelling interest in protecting the privacy rights in those documents. The court further allowed Daughter's request that designated documents could be shown to witnesses and experts for legitimate trial preparation purposes. The court entered orders granting Wife's motion for a protective order and her motion to seal Dr. Sateia's affidavit on October 14 and 17, 2022.

In general, the public may not inspect court records that contain reports or records from a physician and medical information about a person. Md. Rule 16-914(i)(1). The rules similarly prohibit public inspection of court records that would reveal confidential commercial or financial information. Md. Rule 16-915(f). We note as well, as the circuit court did, that Wife had produced the confidential discovery information at issue to Daughter rather than seeking a protective order to keep it from her. *See Baltimore Transit Co.*, 227 Md. at 13 ("If all of the parties have knowledge of all of the relevant, pertinent and non-privileged facts, or the knowledge of the existence or whereabouts of such facts, the parties should be able properly to prepare their claims and defenses . . . ."); *Tanis*, 110 Md. App. at 576 (concluding that discovery request was not oppressive or unduly burdensome where it sought documents that could have provided appellant with

information she did not have, making the trial court's grant of a protective order an abuse of discretion). And the court limited any potential prejudicial impact the order might have had on Daughter by granting her request to share confidential information with witnesses and experts for legitimate trial preparation purposes.

We agree with the circuit court that there was ample good cause to grant Wife's motions. Wife described the manner and extent of the reasons why protective orders were necessary and appropriate under the circumstances. True, her written motion did not detail every confidential item that required protection and explain exhaustively why it did, but she supplied the court with sufficient detail at the motion hearing, plus her later motion to seal Dr. Sateia's affidavit provided further legal and factual bases. She also shared a draft joint protective order with Daughter before seeking relief from the court, which offered insight into the confidential materials of concern.

Citing *Buzbee v. Journal Newspapers, Inc.*, 297 Md. 68 (1983), Daughter asserts that the court's actions violated the First and Fourteenth Amendments of the United States Constitution and Article 40 of the Maryland Declaration of Rights because Wife did not prove that restricted access was necessitated by a compelling governmental interest and narrowly tailored to serve that interest. We fail to see how the circuit court should have relied on that case—which holds that the media has a qualified right to access pretrial criminal proceedings—to find a constitutional problem with a proposed process in a caveat proceeding to designate discovery materials as confidential and file them under seal. *Id.* at 70. *Buzbee* is further distinguishable because it involved a series of rapes in the same area

of Montgomery County that had generated intense community and press interest in the criminal proceeding. *Id.* at 71–72. Here, despite the court's multiple requests, Daughter could not identify any particular or remotely heightened interest that the public would have in Mr. Mirmiran's estate distribution.

Lastly, Daughter argues that Wife waived the confidentiality protections that attached to Mr. Mirmiran's assets and to his communications with Mr. Hassani and Dr. Sateia when she filed papers about them in the orphans' court. We focus on Daughter's contention relative to Dr. Sateia's affidavit because that is the only one preserved for appellate review. *See* Md. Rule 8-131(a) ("[A]n appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . ."). Wife filed an affidavit from Dr. Sateia in the orphans' court with her first summary judgment motion. It was a single-page document comprised of two statements about her husband's health: Dr. Sateia's opinion that he was "cognitively intact" and "functioning at a very high level" and her report that Mr. Mirmiran had never been diagnosed with dementia or exhibited symptoms of dementia or cognitive impairment. This affidavit barely scratched the surface of Mr. Mirmiran's medical conditions or history. In the circuit court, Wife filed, under seal, a confidential affidavit from Dr. Sateia with her renewed summary judgment motion. That affidavit provided extensive detail about Mr. Mirmiran's cognitive health, mental health, prescription medication history, and medical and mental health challenges.

In Maryland, the holder of a privilege that protects confidential communications may waive that protection. *See, e.g.*, *Harrison v. State*, 276 Md. 122, 135 (1975) (defining the attorney-client privilege (citation omitted)). Maryland statutory law imposes confidentiality requirements on the disclosure of medical and mental health records, Md. Code (2000, 2023 Rep. Vol.) § 4-302 of the Health – General I Article, but there is no common law privilege protecting communications between a physician and their patient. *Butler-Tulio v. Scroggins*, 139 Md. App. 122, 135–36 (2001). The waiver doctrine does not apply to this case, and the only legal authority Daughter cites to support her position is a case applying that doctrine relative to the attorney-client privilege. *See CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 431–54 (2012). We see no abuse of discretion in the circuit court's decision to reject these arguments.

C. The Circuit Court Administered This Caveat Litigation In A Fair And Impartial Manner.

Lastly, Daughter argues that the circuit court, both in fact and in appearance, failed to act in a fair and impartial manner. As support for her contention, she references fourteen instances that mostly amalgamate objections we have addressed (and rejected) above. Based on the rulings made in favor of both parties throughout these proceedings and our review of the transcripts, including lengthy interactions between Daughter's counsel and the court, we conclude that the court maintained an impartial, balanced approach in its administration of this highly contentious case.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. APPELLANT TO PAY COSTS.