Circuit Court for Prince George's County
Case No. CAL 15-37018

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 509

September Term, 2018

BERTHA L. PAIGE

v.

MECALE H. McCORKLE

Meredith,
Kehoe,
Berger,

JJ.

Opinion by Kehoe, J.

Filed: March 3, 2020

*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. *See* Md. Rule 1-104.

Michael A. Paige ("Decedent") died intestate on July 1, 2013, at the age of 56. He was survived by his mother, Bertha L. Paige; his daughter, Je'Neice Perkins; and his fiancée, Mecale H. McCorkle. At the time of his death, and among other assets, Decedent owned two life insurance policies and four bank accounts, the value of which totaled approximately $750,000. The proceeds of the bank accounts and the two policies were paid to McCorkle after Decedent's passing. This appeal arises from a dispute over who should receive the proceeds from his life insurance policies and the money in his bank accounts.

Paige filed a civil action against McCorkle alleging constructive fraud, conversion, and constructive trust in the Circuit Court for Prince George's County. After a four-day jury trial, Paige's constructive fraud and conversion claims were submitted to the jury, which returned a verdict in favor of Paige. Meanwhile, the trial court made its own findings of fact regarding Paige's request that the court exercise its equitable powers to impose a constructive trust on funds in Decedent's bank accounts. On that count, the court found in McCorkle's favor. McCorkle then filed a motion for judgment notwithstanding the verdict on the constructive fraud and conversion claims, which the court granted. Paige appealed, and presents the following issues for our review, which we have reworded and rephrased:

> 1. Did the trial court err by granting McCorkle's motion for judgment notwithstanding the verdict for constructive fraud?
>
> 2. Did the trial court err by granting McCorkle's motion for judgment notwithstanding the verdict for conversion?
>
> 3. Did the trial court err by ruling in McCorkle's favor on Paige's constructive trust claim?

We perceive no error in the court's rulings and will affirm the judgment.

Background

At trial, Paige testified and called four additional witnesses: Je'Neice Perkins, Decedent's adult daughter; Ronald Rubin, Paige's and Decedent's insurance agent; Stacey Brown, Decedent's cousin; and John W. Hargett, who testified as a handwriting expert for Decedent's life insurance documents. McCorkle also testified and called two additional witnesses: Tarcelie Holloway, McCorkle's close friend and hair dresser; and Nayyirah Naseem, an employee at SunTrust bank where Decedent maintained three accounts. We summarize the pertinent evidence.

The Parties' Relationships and Decedent's Illness and Death

Decedent and McCorkle began dating in 2001. A year later, Decedent sold his house and moved in with McCorkle at her New Carrollton home, where he resided until his death.

During this time, McCorkle worked as a government contracts specialist at the White House. Once Decedent moved in, the two commingled their funds and shared expenses. For nearly all of the time that Decedent and McCorkle were together, he worked two jobs. During the day, he was a rail car technician for the Washington Metropolitan Area Transit Authority ("Metro") and, in the evenings, he was a messenger transporting medical records and files for the National Institutes of Health. As a result, Decedent and McCorkle only saw each other for brief moments of the day until the weekend came. When they had time, they took vacations together. During one such vacation, in October 2004, Decedent and

McCorkle became engaged. Also, despite his busy schedule, he visited Paige, his mother, every weekend at her home in Washington, D.C.

In June 2012, Decedent began to exhibit symptoms of what turned out to be amyloidosis, a rare blood disease which claimed his life thirteen months later. Decedent was not diagnosed as having amyloidosis until January 2013. From that time until his death, Decedent was continuously in and out of the hospital. Nonetheless, he managed to continue his weekly visits to Paige's home and, for a time, continued working, although he eventually retired from both jobs in March 2013.

In January 2013, Decedent and McCorkle went to Paige's home with Decedent's test results and informed her that he had been diagnosed with amyloidosis. From there on out, Decedent called Paige and notified her whenever he entered the hospital, and Paige regularly visited her son in the hospital. Paige was also involved in Decedent's care. In one instance in March 2013, McCorkle could not convince Decedent to go to the hospital to receive treatment, so she called Paige hoping that Paige could convince Decedent to go. On that occasion, Paige traveled to McCorkle's home in New Carrollton, succeeded in convincing Decedent to go to the hospital, and even rode in the ambulance with him.

During this period, McCorkle took Decedent to most of his hospital visits, and paid for his medication. She frequently discussed Decedent's medical condition with Paige when she visited. When Decedent would not respond to Paige because of his illness, McCorkle

communicated with Paige on his behalf. Stacey Brown, Decedent's cousin, also was aware of his illness and visited him in the hospital.

Decedent entered hospice care in late June 2013. Paige and McCorkle both participated in the process by which Decedent entered hospice care. Although McCorkle made the actual arrangements, Paige traveled to the hospice center on the day that he was admitted. When Decedent passed away on July 1, Paige was present at his bedside. Subsequently, Paige assisted McCorkle in planning Decedent's funeral, but McCorkle paid for the funeral arrangements with money left behind by Decedent. Paige described Decedent as "his own man," who made his own decisions and who was a "strong-willed person."

Je'Neice Perkins is Decedent's daughter from a previous relationship. Her relationship with Decedent was strained, and McCorkle sometimes acted as a liaison between the two. On several occasions, Decedent told Paige that he would not leave Perkins anything when he died. Decedent never discussed his illness with Perkins. She did not know Decedent was ill until spring 2012 when Paige mentioned it to her. In fact, Perkins did not know the seriousness of Decedent's condition until several weeks before he died.

Decedent Transfers Assets to McCorkle Prior to his Death

In the months prior to his death, Decedent and McCorkle entered into a series of financial transactions that form the factual basis of Paige's claims against McCorkle.

a. Decedent's Bank Accounts Are Changed to Joint Accounts with McCorkle

On April 13, 2013, Decedent drove himself and McCorkle to SunTrust Bank, where they met with Nayyirah Naseem, a SunTrust employee. Naseem was familiar with Decedent because he was a regular customer at that branch. At that meeting, Decedent took a durable power-of-attorney from his bag that designated McCorkle as his attorney-in-fact. According to McCorkle, she knew nothing about the power-of-attorney before that point. The power-of-attorney was signed by Decedent and notarized by Naseem.

While at that meeting, Decedent requested that McCorkle be added as a joint owner to his three SunTrust bank accounts. Naseem explained the process of adding a joint owner to Decedent, and prepared three signature cards. In accordance with Decedent's instructions, Naseem listed McCorkle as a joint owner on the accounts, and, on each card, Naseem marked the box labeled "with survivorship." McCorkle was present during, but took no part in, this process. McCorkle testified that she was unaware that Decedent maintained any accounts with SunTrust until that day.[1]

In May 2013, a signature card for one of the SunTrust accounts (the "SunTrust 7475 Account") was duplicated so that the Decedent and McCorkle could acquire new checks with both of their names. On this duplicate card, neither the "with survivorship" nor the "without survivorship" box was marked. At the time of Decedent's death, the SunTrust

[1] We observe that the statements for the SunTrust accounts had been mailed to McCorkle's address both prior to and subsequent the changes.

7475 Account had a balance of $5,287.99. The remaining SunTrust accounts had combined balances $160,710.

On the same day that the parties first went to SunTrust, McCorkle drove Decedent to Bank of America branch office at Decedent's instructions. There, Decedent added McCorkle as a joint owner to his Bank of America account. At the time of Decedent's death, the account had a balance of $21,933. Again, McCorkle testified that she did not know that Decedent maintained an account with Bank of America until that day.[2]

After Decedent died, McCorkle closed the SunTrust and Bank of America accounts and transferred the proceeds to her own bank account.

b. McCorkle Becomes the Beneficiary of Life Insurance Policies owned by Decedent

At the time of his death, Decedent had two life insurance policies through the Metropolitan Life Insurance Company ("MetLife").[3] Decedent had acquired these policies in the late 1990s with the assistance of Ronald P. Rubin, his and Paige's life insurance agent for over 30 years. When he first purchased the MetLife policies, Decedent designated Paige and Perkins as the joint beneficiaries. They remained so until the spring of 2013, when Decedent signed two change of beneficiary forms designating McCorkle as the sole

[2] The statements for the Bank of America accounts had previously been mailed to Paige's residence in Washington, D.C., but, after the changes, were mailed to McCorkle's residence.

[3] There was evidence that Decedent had at least one other life insurance policy but this policy was not at issue at trial.

beneficiary of each policy. Decedents' signature on each form was witnessed by Tarcelie Holloway, McCorkle's hair stylist and her close friend for twelve years.

On April 30, 2013, Holloway stopped by McCorkle's residence for a visit and to drop off a fruit tray. She knew that Decedent was ill. (In fact, by this time, Decedent was on dialysis.) When Holloway arrived, McCorkle was in the kitchen and Decedent, who had noticeably lost weight, was sitting at the dining room table and, in Holloway's words, was "looking through papers." The papers turned out to be a MetLife form changing the beneficiary of one of Decedent's MetLife policies from Paige and Perkins to McCorkle. Decedent asked Holloway to witness his signature on the form and informed her only that the document was his "insurance policy." Decedent then signed the document in the presence of Holloway, who witnessed the signature on the last page and signed her own name. Holloway did not review the first four pages of the form, which had already been filled out by McCorkle. In place of Decedent's phone number, McCorkle's cell phone number was listed. Also, the form indicated that McCorkle was Decedent's "fiancée." It did not provide for any contingent beneficiaries.

Holloway stopped by McCorkle's residence a second time on May 24, 2013. When she arrived, McCorkle and Decedent were seated in the dining room and had just finished eating dinner. Holloway joined them and chatted for a bit. At one point during the conversation, Decedent left the room and returned with a change of beneficiary form for his other MetLife Policy. Again, Decedent informed Holloway that it was his "insurance

policy," and asked her to witness his signature. She agreed to do so. As with the previous visit, Holloway did not review the first four pages of the form, which had been filled out by McCorkle and designated her as the sole beneficiary. Once again, the form listed McCorkle's cell phone number as the phone number for Decedent, and provided for no contingent beneficiaries. McCorkle was in the room when Decedent signed the form, but said nothing regarding the signing. According to McCorkle, she and Holloway never discussed the change-in-beneficiary forms.

John Hargett, a handwriting expert and forensic document examiner, reviewed the change in beneficiary forms for the MetLife Policies. He concluded that the signatures on the forms were "probably genuine signatures of [Decedent]," but that McCorkle filled out the forms herself.

The change-in-beneficiary form for each MetLife Policy was faxed the day after each was signed. As to the form signed on April 30, Decedent traveled to McCorkle's office at the White House with the intention of faxing the form there. Decedent used a fax cover page from her office and started to send the fax when McCorkle stopped him. She explained to Decedent that, by using a cover page from her office and faxing the form there, the documents would be part of the Presidential record. Thus, Decedent changed his mind about sending the forms from McCorkle's office. Instead, McCorkle copied the information from the cover page onto a clean piece of paper, had Decedent sign his name on the cover page, and then placed the original cover page in a "burn bag." McCorkle listed

her cell phone number on the new cover page because, according to McCorkle, Decedent had been using her cell phone regularly since he had been sick. Together, they left her office and traveled to the library to fax the form. When the computer at the library failed to work, they went to Staples and faxed the form there. The change-in-beneficiary form for the other, dated May 24, 2013, was also faxed to MetLife on the following day. When Decedent died, the MetLife Policies had a combined value of $585,163.74.

Ronald Rubin testified that he had been Decedent's life insurance agent for approximately thirty years. He was not consulted before Paige and Perkins were removed as beneficiaries and McCorkle was added as the sole beneficiary. In light of his history of working with the family, he was surprised that the changes were made without his consultation. Indeed, Rubin only learned of Decedent's death when payment to his policy bounced and he contacted Paige. Paige was also unaware of these changes, as well as Decedent's changes to his bank accounts and retirement benefits.

c. The Survivorship Interest in Decedent's Retirement Benefits

Decedent had accrued retirement benefits through the Federal Employee Retirement System ("FERS"). On April 21, 2013, Decedent removed Paige and Perkins as beneficiaries and named McCorkle in their stead. McCorkle was listed on the change of beneficiary form as Decedent's "fiancée." The change was witnessed by McCorkle's parents. Paige does not challenge the change to Decedent's retirement benefits.

Decedent's Marital Status

The issue of marital status between Decedent and McCorkle also came up at trial. On direct examination, McCorkle testified that the two never got married in a formal ceremony, nor had any sort of wedding. McCorkle stated that it was her understanding that they were in a common law marriage based on a conversation she had had with a social worker in the days leading up to Decedent's death, and that she verified that fact through legal counsel.[4]

McCorkle handled Decedent's funeral arrangements. On the contract with the funeral home, McCorkle listed herself as Decedent's "wife." Additionally, a death certificate was issued for Decedent on July 3, 2013. On it, McCorkle was listed as his "surviving spouse." It was only later, in September 2014 in proceedings before the Orphans' Court, that McCorkle learned she had not been in a common law marriage with Decedent. As a result, on December 30, 2014, McCorkle amended Decedent's death certificate to "never married."

[4] McCorkle did not identify the lawyer who gave her this advice. She testified that she had been told that she was Decedent's "common law spouse because we had lived together [for] over 10 years and held ourselves out as husband and wife and did so in a jurisdiction that recognized common law." But the only place where McCorkle and Decedent lived together was her residence in Maryland and Maryland does not recognize common law marriages. *See Port v. Cowan,* 426 Md. 435, 445 (2012) ("Maryland law prohibits the formation of common law marriages within the State.").

During his cross-examination of McCorkle as to her reason for amending the death certificate during, Paige elicited some additional information. McCorkle was listed as the beneficiary for Decedent's retirement benefits. When McCorkle submitted a claim for those retirement benefits to the Office of Personnel Management, she included Decedent's death certificate which listed her as his surviving spouse. The Office refused to pay the benefits without a marriage license because the death certificate stated that Decedent was married. That prompted McCorkle to amend the death certificate and reapply for the retirement benefits, which were eventually granted to her. McCorkle, for her part, fiercely disputed this fact at trial.

Paige also had a different story to tell. She testified that, after seeing that Decedent was listed as "married" on his death certificate, she called McCorkle several times to inquire about the alleged marriage until McCorkle finally returned her calls. According to Paige, in the conversation that followed, McCorkle told her that they were married in May by her pastor at her home in New Carrolton. Further, McCorkle explained to Paige that Decedent did not want anyone to know that they were married. During her testimony, McCorkle denied having a marriage ceremony with Decedent.

The Administration of Decedent's Estate

On August 16, 2013, McCorkle filed a petition for administration of a small estate in the Orphans' Court for Prince George's County (hereinafter, the "Estate"). On the petition, McCorkle listed herself as Decedent's "surviving spouse" and requested that funeral

expenses and a family allowance paid to her from the Estate's assets. McCorkle listed Perkins, but not Paige, as an interested person in the Estate. The only assets listed in the petition were three older automobiles owned by Decedent. Based on those assertions, the Orphans' Court appointed McCorkle as the personal representative of the Estate.

On September 25, 2014, Paige filed a petition to re-open the Estate, challenging McCorkle's appointment as personal representative. Ultimately, the Orphans' Court found that McCorkle was not married to Decedent, removed her as personal representative of the Estate, and appointed Paige as the successor personal representative.

Procedural Background

On November 30, 2015, Paige, on her own behalf and as personal representative of the Estate,[5] filed a complaint in the Circuit Court for Prince George's County against McCorkle and MetLife. Eventually, the case came to trial based upon Paige's second amended complaint, which set out claims against McCorkle for breach of fiduciary duty, constructive fraud, and conversion, as well as a request for the imposition of a constructive trust as to any monies and/or property obtained by McCorkle from Decedent's assets or his estate.[6] Paige asserted that McCorkle had a fiduciary duty to Decedent because she took

[5] Perkins was also a named plaintiff. At trial, after the conclusion of plaintiff's case, the court found that Perkins lacked standing and dismissed all of her claims against McCorkle. Neither Perkins nor Paige appeal that ruling.

[6] The second amended complaint also set out several claims against Met Life but these were resolved prior to trial.

ownership and control over Decedent's bank accounts, as well as by becoming the beneficiary of Decedent's MetLife Policies.

A four-day jury trial began on August 28, 2017. Prior to trial, plaintiffs proffered that they would not present any evidence that Decedent was mentally incompetent at the time the disputed transactions occurred. At the close of Paige's case in chief, McCorkle moved for judgment on all counts. The court granted judgment in McCorkle's favor as to punitive damages. The court ordered that Paige's constructive trust claim, as an equitable remedy, would be decided by the court and not be submitted to the jury. Next, the court reserved judgment as to constructive fraud and conversion.

Trial concluded on August 31, 2017. The jury found by clear and convincing evidence that McCorkle had committed constructive fraud and awarded Paige $600,000. The jury also found by a preponderance of the evidence that McCorkle had converted funds from Decedent's SunTrust 7475 Account, which was the account that had a duplicate signature card made which was not marked "with survivorship," and awarded Paige $5,287.99, as well as interest and costs.

On September 5, 2017, a hearing was held during which the trial court issued its ruling on Paige's constructive trust claim. The court, relying primarily on *Sanders v. Sanders*, 261 Md. 268 (1971), and *Midler v. Shapiro*, 33 Md. App. 264 (1976), ruled in favor of McCorkle. The court observed that Paige was required to show, by clear and convincing evidence, that a confidential relationship existed between Decedent and McCorkle, and, if

she did, the burden shifted to McCorkle to demonstrate that the transaction was fair and reasonable and not the result of fraud or undue influence.

After it explained what constitutes a confidential relationship, the court concluded that there was no evidence that a confidential relationship existed between Decedent and McCorkle. First, relying on *Sanders*, 261 Md. 268, the court found that the durable power of attorney did not create a *per se* confidential relationship existed between Decedent and McCorkle.

Second, the court found that the evidence elicited at trial did not support a finding of a confidential relationship. Specifically, the court found:

> Evidence, as this Court finds it, is that the Defendant was his own man. He did things the way he wanted to do them. Decedent's family reached out to the Defendant to . . . run interference, if you will.
>
> There was testimony from Ms. Paige, the mom, the Plaintiff, that she reached out to the Defendant in situations where the Decedent didn't call her back or didn't return her phone calls, or if she wanted to make sure everything was going all right with him because she hadn't heard from him in a while.
>
> And with regard to [Perkins], the Decedent's daughter, [she] testified that they had been estranged and that she reached out to [McCorkle] at times when she and her father weren't getting along to assist with that relationship. The Decedent and [McCorkle] lived together and referred to each other as husband and wife, and there was certainly corroborating testimony in that regard.
>
> * * *
>
> No evidence [was presented] that [McCorkle] was orchestrating any of these transactions. The testimony from Ms. Holloway and Ms. Naseem was that the conversations surrounding the signatures was between them and the decedent, that there was no indication to them that he was being coerced.

> Their observations were that he was conducting his own business. There is no evidence to suggest the Decedent was incompetent, because I think clearly that would be probably the biggest factor that could cause the constructive trust or to suggest, I should say, undue influence. But there is simply no evidence to suggest he was incompetent.
>
> This Court is not persuaded that at the time the Decedent made his decisions that there was undue influence by [McCorkle]. Evidence from Plaintiff's case was that the Decedent had expressed . . . to her . . . that he wanted to not leave his daughter anything.
>
> This Court is not persuaded that his illness caused him to be weak or not able to make decisions or that he was susceptible to pressure.
>
> It is not difficult to infer from his actions that because of his illness and uncertainty of his prognosis perhaps that he wanted to make sure that the person he considered to be his wife, who had been there with him for 11 years, who had taken care of him, was clearly—that he wanted to make sure she was taken care of. Clearly, they had taken care of each other.
>
> This Court is satisfied that based on all the evidence presented there was no abuse of the alleged confidential relationship, that adding [McCorkle] to the bank accounts and to . . . change the beneficiaries . . . were fair and proper and reasonable under the circumstances.
>
> Additionally, there is absolutely no evidence that [McCorkle] failed to exercise her power as attorney in fact under the power of attorney or in an unlawful manner. In fact, there is no evidence that she conducted any business on behalf of the decedent under the power of attorney.

On September 15, 2017, McCorkle filed a motion for judgment notwithstanding the verdict ("JNOV motion") arguing that the jury's verdicts for constructive fraud and conversion were not supported by the evidence.

McCorkle presented four arguments challenging the jury's verdict as to constructive fraud. First, McCorkle contended there was no evidence of deception on her part.

According to McCorkle, there was no evidence that she misled or deceived Decedent in conducting any of the transactions at issue. Rather, the evidence showed that Decedent entered the transactions intentionally and knowingly.

Second, McCorkle argued that there was no evidence a confidential relationship existed between Decedent and McCorkle. In doing so, McCorkle explicitly mentioned the court's own finding that no confidential relationship existed for its ruling on the constructive trust claim. McCorkle reiterated that there was no evidence that Decedent relied on her in any way, and that the testimony showed that Decedent was an independent person who made his own decisions. Further, McCorkle asserted that the power of attorney, alone, was insufficient to establish a confidential relationship.

Third, McCorkle contended that there was no evidence of a breach of fiduciary duty. In support of this argument, McCorkle cited to large portions of the court's findings for the constructive trust claim.

Finally, McCorkle asserted that there was insufficient evidence of damages for the constructive fraud claim. Specifically, she maintains that the was no evidence as to the exact value of the MetLife Policies. Rather, the only evidence of valuation came from Rubin, who estimated the value of policies between $600,000 and $650,000.

Then, McCorkle presented two arguments as to why the jury erred in returning a verdict in Paige's favor on her conversion claim. First, she contended that Paige did not present any evidence that the Estate was entitled to the funds in the SunTrust 7475 Account.

McCorkle maintained that, pursuant to Md. Code (1980, 2011 Repl. Vol.), Financial Institutions ("Fin. Inst."), § 1-204(d)(1), the funds in that account passed directly to McCorkle upon Decedent's death and so did not become part of the Estate.

Second, McCorkle argued that Paige's conversion claim failed because the funds in SunTrust 7475 Account have been commingled with McCorkle's money. She pointed to evidence that, after Decedent's death, McCorkle withdrew money from the SunTrust 7475 Account and deposited that money in her own accounts. McCorkle attached the transcript of the court's ruling on Paige's request a constructive trust as an exhibit to its JNOV motion.

On April 10, 2018, a hearing was held on McCorkle's JNOV motion. As we will explain in more detail in our analysis, the circuit court granted McCorkle's JNOV motion.

On May 8, 2017, Ms. Paige filed this timely appeal.

Analysis

We begin our analysis by determining whether the trial court erred in granting McCorkle's JNOV motion.

Maryland Rule 2-532(e) provides that, if the jury has returned a verdict, the court may "set aside any judgment entered on the verdict, and direct the entry of a new judgment" upon a motion for judgment notwithstanding the verdict. "A motion for judgment notwithstanding the verdict under Rule 2–532 'tests the legal sufficiency of the evidence.'" *Gallagher v. H.V. Pierhomes, LLC*, 182 Md. App. 94, 101 (2008) (quoting *Impala*

Platinum, Ltd. v. Impala Sales (USA), Inc., 283 Md. 296, 326 (1978)). The court "must assume the truth of all credible evidence on the issue and all inferences fairly deducible therefrom in the light most favorable to the party against whom the motion is made." *Gallagher*, 182 Md. at 101.

We review a judgment notwithstanding the verdict under the same standard as a judgment granted on motion during trial; *i.e.*, *de novo*. As we have previously observed:

> [W]e are concerned with the dichotomy between the role of the judge, to apply the law, and the role of the jury, to decide the facts. . . . Only where reasonable minds cannot differ in the conclusions to be drawn from the evidence, after it has been viewed in the light most favorable to the plaintiff, does the issue in question become one of law for the court and not of fact for the jury. Although we review the circuit court's legal findings *de novo*, we must determine whether on the evidence presented a reasonable fact-finder could find the elements of the cause of action by a preponderance of the evidence.

Blue Ink, Ltd. v. Two Farms, Inc., 218 Md. App. 77, 91 (2014).

1. Constructive Fraud

We will first address whether the trial court erred when it granted the JNOV on Paige's constructive fraud claim. For that claim, the jury was instructed (emphasis added):

> To establish constructive fraud, the plaintiff must prove by *clear and convincing evidence that the Decedent and defendant were in a confidential* relationship such that the defendant had a duty to act in Decedent's interest. That the defendant breached her duty to the Decedent and that the defendant's actions deceived or misled the decedent and that the decedent's estate sustained damages as a natural and proximate consequence of his reliance on defendant.
>
> To establish a confidential relationship, the plaintiff must prove by *clear and convincing evidence* that the defendant gained the Decedent's trust and

> confidence and that she purported to act or advise the Decedent with Decedent's interest in mind such that *Decedent was justified in depending on the defendant to act in his interest and for their benefit*.

The jury found that McCorkle committed constructive fraud and awarded Paige $600,000 in compensatory damages.

The trial court, however, overturned that verdict, concluding that the evidence presented at trial did not support the jury's verdict for constructive fraud. It determined that there was no basis for the jury's verdict on that claim. Although our analysis differs in part from that of the trial court, we conclude that, considering the evidence and all reasonable inferences from that evidence in the light most favorable to Paige, the trial court did not err in granting the motion.

At the heart of the trial court's ruling was its conclusion that Paige did not present clear and convincing evidence that there was a confidential relationship between McCorkle and Decedent at the time that the disputed transactions occurred. The critical dates were: (1) April 13, 2013, when Decedent and McCorkle went to the SunTrust and Bank of America branch offices to retitle his bank accounts; (2) April 30, 2013, when Decedent signed the first MetLife change of beneficiary form; and (3) May 24, 2013, when Decedent signed the second MetLife form.

Paige presents two theories as to why the trial court erred.

First, Paige argues that there was sufficient evidence in the record to concluded that a confidential relationship existed between Decedent and McCorkle. She asserts that because

Decedent was "dependent upon Ms. McCorkle for his entire well-being" and relied upon her to maintain his "deepest and darkest secret" (that he was gravely ill), the jury could reasonable conclude that there was a confidential relationship between Decedent and McCorkle. For support, Paige relies primarily on McCorkle's testimony, namely that that the two lived together for approximately twelve years; that the two held themselves out as husband and wife throughout their relationship; and that from the onset of Decedent's symptoms in June 2012, McCorkle took Decedent to and from his medical appointments and was the primary, if not sole, caregiver of Decedent during that time. Paige alleges that Decedent kept his illness from his family, and so, as a result, he could only rely on McCorkle for assistance.

Second, Paige argues that a confidential relationship existed between Decedent and McCorkle by virtue of the durable power of attorney executed by Decedent during the visit to the SunTrust office. Neither of Paige's contentions is persuasive, for the reasons that we will now explain.

Constructive fraud is found "where the defendant 'breach[es] a legal or equitable duty' to the plaintiff in a way that 'tend[s] to deceive others, to violate public or private confidence, or to injure public interests.'" *Thompson v. UBS Financial Services*, 443 Md. 47, 69 (2015) (quoting *Canaj, Inc. v. Baker & Div. Phase III, LLC*, 391 Md. 374, 421–22 (2006)). As we explained in *Chassels v. Krepps*, 235 Md. App. 1 (2017), the duty a defendant owes to a plaintiff:

> [G]enerally arises in a context of trust or confidence, such as a fiduciary duty or confidential relationship. When such a duty is breached by deceptive conduct, it doesn't matter whether the culpable party had a dishonest purpose or intent to deceive. Instead, this breach of duty is fraudulent because of its tendency to deceive others, to violate public or private confidence, or to injure public interests. Mere non-compliance with a legal duty is not necessarily constructive fraud, though.

235 Md. App. at 16 (cleaned up).

A defendant owes an equitable duty to a plaintiff only where the parties are in a confidential relationship to one another. *Thompson*, 443 Md. App. at 69; *see also Md. Envtl. Trust v. Gaynor*, 370 Md. 89, 98-99 (2002). In *Buxton v. Buxton*, 363 Md. 634 (2001), the Court of Appeals explained:

> A confidential relation exists between two persons when one has gained the confidence of the other and purports to act or advise with the other's interest in mind. A confidential relation may exist although there is no fiduciary relation; it is particularly likely to exist where there is a family relationship or such a relation of confidence as that which arises between physician and patient or priest and penitent.

363 Md. at 654-55 (quoting 1 SCOTT & FRATCHER, THE LAW OF TRUSTS, § 2.5). "For example, a plaintiff and a defendant are in a confidential relationship where the parties "stand in such a relation to each other that [the plaintiff] must necessarily repose trust and confidence in the [defendant's] good faith and integrity[.]" *Thompson*, 443 Md. at 70 (quoting *Upman v. Clarke*, 359 Md. 32, 42 (2000)) (citation and internal quotation marks omitted). Further, the Court has found a confidential relationship to exist "only if the plaintiff depends on the defendant," *Thompson*, 443 Md. at 70, and "there must appear at least a condition from which dependence of the [plaintiff] may be found[.]" *Upman*, 359

Md. at 41–42 (2000) (citation and internal quotation marks omitted). But "where a confidential relationship exists, the courts will not allow a transaction between the parties to stand unless there is a full and fair explanation of the whole transaction." *Id.* at 43 (cleaned up).

In relationships such as a husband and wife, or parent and child," the existence of a confidential relationship is an issue of fact and is not presumed as a matter of law." *Id*. at 42. When considering whether a confidential relationship exists between spouses, we look to factors such as "the age, mental condition, education, business experience, state of health, and degree of dependence of the spouse in question." *Lasater v. Guttmann*, 194 Md. App. 431, 458 (2010). In the context of the parent-child relationship, Maryland courts have looked to such factors as the advanced age, physical debility, or mental feebleness of the plaintiff. *McCoy v. Clark*, 21 Md. App. 198, 205 (1974). No one factor is "necessarily conclusive, but any one of which may have weight in determining whether the relationship as a fact existed." *Figgins v. Cochrane*, 403 Md. 392, 410 (2008). Additionally, in *Upman*, the Court "regarded dependence as the key factor, holding that '[t]o establish such a relationship there must appear at least a condition from which dependence of the grantor may be found.'" 359 Md. at 41-42 (quoting *Snyder v. Hammer*, 180 Md. 690, (1942)). Some types of relationships, *e.g*., between an attorney and a client or a fiduciary and a beneficiary, are presumed to be confidential. *UBS Fin. Servs., Inc. v. Thompson*, 217 Md. App. 500, 517 (2014), *aff'd*, 443 Md. 47 (2015). In other situations, and specifically in

cases in which it is alleged that a confidential relationship exists between spouses or family members, the existence of the relationship must be established by clear and convincing evidence. *Chassels*, 235 Md. App. at 17; *UBS Fin. Servs.*, 217 Md. App. at 517; *Shih Ping Li v. Tzu Lee*, 210 Md. App. 73, 110 (2013), *aff'd*, 437 Md. 47 (2014).

"To be clear and convincing, evidence should be 'clear' in the sense that it is certain, plain to the understanding, and unambiguous and 'convincing' in the sense that it is so reasonable and persuasive as to cause one to believe it." *Mathis v. Hargrove*, 166 Md. App. 286, 312 (2005).

Applying these factors to the facts produced at trial, we conclude that there was insufficient evidence from which the jury could conclude by clear and convincing evidence that a confidential relationship existed between Decedent and McCorkle at the time that the bank accounts were re-titled and the beneficiaries changed on the MetLife policies.

For the purposes of our analysis, we will assume that Decedent and McCorkle were, for all practical purposes, married. Paige suggests that the confidential relationship arose out of this quasi-marital relationship status. That Decedent and McCorkle were married, or at least involved in a relationship that was very close to marriage, does not, in and of itself, give rise to a confidential relationship as. *See Lasater*, 194 Md. App. at 457 ("Maryland law also makes plain that a husband and wife are presumed not to occupy a confidential relationship."); *see also Thompson v. UBS Financial Services, Inc.*, 443 Md. 47, 71 (2015) ("A family relationship is not necessarily a confidential relationship[.]"). Rather, in order

for Paige to establish a confidential relationship between Decedent and McCorkle, she must have proven that McCorkle "gained the [Decedent's] confidence . . . and purport[ed] to act or advise with the [Decedent]'s interest in mind." *Thompson*, 433 Md. at 70. Dependence is a key factor in determining whether a confidential relationship exists. *See Upman*, 359 Md. at 42.

There is no evidence, much less clear and convincing evidence, that Decedent and McCorkle were in a confidential relationship when he retitled the bank accounts. Decedent drove himself and McCorkle to SunTrust, and instructed McCorkle to drive him to Bank of America. Decedent, and not McCorkle, gave instructions on how the accounts were to be retitled. At the SunTrust office, in addition to instructing the bank's representative to prepare new signature cards, Decedent asked Naseem to notarize his signature. According to McCorkle, she knew nothing of the bank accounts or the power-of-attorney until that day. To be sure, the jury was not required to credit McCorkle's testimony as to her knowledge and state of mind when the paperwork was signed—and, in light of its verdict, the jury clearly didn't believe McCorkle. But "[t]he jury's prerogative not to believe certain testimony . . . does not constitute affirmative evidence of the contrary." *VF Corp. v. Wrexham Aviation Corp.*, 350 Md. 693, 711 (1998) (citing *Attorney Grievance Comm'n v. Clements*, 319 Md. 289, 298 (1990), ("A refusal to believe evidence of a [defendant], however, does not, of itself, supply affirmative evidence of the dishonesty, fraud, deceit,

or misrepresentation charged. The issue is whether [the plaintiff] presented sufficient evidence of the charge to meet the clear and convincing standard of proof.").

The picture is a bit more complicated when we consider the execution of the change of beneficiary forms for the MetLife Policies. These took place in McCorkle's and Decedent's home. In both instances, Decedent was clearly gravely ill, but he initiated each conversation with Holloway by asking her to witness his signature. There was no evidence that Decedent was coaxed or goaded by McCorkle to change the beneficiary designations. It is true that McCorkle was aware that Decedent wished to change the beneficiaries because she filled out the forms for Decedent and it is also true that Rubin, the Paige family's insurance agent, testified that he was surprised that he had not been consulted about the changes but these two facts do not constitute sufficient evidence for a fact-finder to reasonably conclude that that McCorkle's relationship to Decedent was such that he depended upon her "to act or advise [him] with [his] interest in mind." *Buxton*, 363 Md. at 654–55. Clearly, the jury did not believe McCorkle's version of the events but, as we have explained, this does not constitute positive evidence supporting Paige's case.

Looking at the larger picture, while McCorkle was Decedent's primary caregiver, she did not seclude Decedent from others. Paige maintained her relationship with Decedent during the months leading up to his death. Despite his symptoms, Decedent continued his weekend visits to Paige's home in Washington, D.C. Paige visited Decedent regularly when he was in the hospital and, on one occasion, when Decedent was reluctant to go to

the hospital to receive his treatment, it was Paige who ultimately convinced him otherwise, going so far as to ride in the ambulance with him. Additionally, Paige was present when the decision was made to transfer Decedent to hospice, traveled with him there, and was at his bedside when he died. Paige's assertion that Decedent kept his illness from others as a his "deepest, darkest secret" is incorrect.

Nor do any other factors weigh in favor of the existence of a confidential relationship between Decedent and McCorkle. We consider "the age, mental condition, education, business experience, state of health, and degree of dependence of the spouse in question." *Lasater*, 194 Md. App. at 458 (2010). At 56 years old, Decedent was relatively young when he died. Although the evidence is scant as to his education and business experience, we do know that Decedent worked two jobs. One position involved transporting medical records and files for the National Institute of Health, and the other was a rail car technician for the Metro. Decedent had technical, vocational skills that he utilized outside of his job with the Metro by fixing cars and electronics. Then, as the parties proffered prior to trial, Decedent was not mentally incompetent, even during the months leading up to his death.

There was ample evidence presented regarding Decedent's state of health. Decedent was constantly in and out of the hospital during the time the events at issue took place. He was so ill that, in March 2013, Decedent had to retire from his two jobs. He suffered from seizures, and, at some point in April and May 2013, Decedent was on dialysis. Thus, it is

undisputed that Decedent was in a severely weakened physical state during the first-half of 2013, which only became worse as time progressed.

Certainly, that a spouse is not physically well is a *factor* in determining whether a confidential relationship exists. In *Hale v. Hale*, 74 Md. App. 555 (1988), we affirmed a circuit court's finding that a confidential relationship existed between husband and wife where the wife suffered from "great emotional distress[,] . . . difficulty eating and sleeping and developed an ulcer" from learning of husband's extramarital affairs. 74 Md. App. at 565. But we also noted other factors pointing to a confidential relationship, such as the wife's limited education (one year of community college), the husband's control over the wife's finances, and that it was standard practice for wife to sign documents because husband "told her to." *Id*. As we have just explained, none of these additional factors are present in this case. Decedent had ample vocational and business skills, kept his own bank accounts, and, as both Paige and McCorkle testified, "was his own man." *See, e.g.*, *Orwick v. Moldawer*, 150 Md. App. 538, 539 (holding that no confidential relationship existed between father and daughter merely because daughter took care of father's medical needs).

Overall, the evidence demonstrates that Decedent was, generally, an independent person who did not entirely rely on McCorkle, or any other particular person for that matter, with regard to the sorts of decisions at issue in this case.

We also disagree with Paige's second theory—that the durable power of attorney created a *per se* confidential relationship between Decedent and McCorkle pursuant to *Sanders v. Sanders*, 261 Md. 268 (1971).

On this issue, the circuit court was "not persuaded that *Sanders* creates a *per se* confidential relationship solely on the existence of a power of attorney." In *Sanders*, the decedent executed a will, dividing his assets among his six children equally. 261 Md. at 269. Almost a year later, the decedent moved in with his son, Neil, where he lived for the next five years (excluding a brief five-week period where the decedent lived with this other son, Francis). *Id*. The day the decedent moved into Neil's home, he executed a power-of-attorney, designating Neil as his attorney-in-fact. *Id*. at 270. That same day, the decedent opened a checking account, over which Neil had a power of withdrawal. *Id*. Then, a year after the two had lived together, the decedent added Neil as a joint owner of his savings account and various savings bonds he owned, and designated Neil as the beneficiary of his life insurance policy. *Id*. These transactions were made at the bank Neil worked at, and, although Neil was present when they were made, he did not participate in them. *Id*. Several years later, Neil drew $3,000 from the joint savings account. *Id*. Then, a little over a week later, Neil withdrew $21,000 from that account and transferred it to an account in his name alone. *Id*.

Francis, the decedent's other son, challenged these transactions after decedent's death, asking the court to impose a constructive trust. 261 Md. at 271. Addressing whether a confidential relationship existed between the decedent and Neil, the court observed:

> At the conclusion of Francis' case, Neil moved to dismiss, contending that no confidential relationship had been established. The chancellor denied the motion, and we think quite properly, on the ground that the designation of Neil as Mr. Sanders' attorney in fact under the power of attorney established just such a relationship. The effect of this was to shift to Neil the burden-which is a heavy one under the cases later to be cited-of proving that there had been no abuse of the relationship.

Id.

We agree with the circuit court in this case, that the *Sanders* case had factors *in addition to* the power of attorney from which the court could conclude the existence of a confidential relationship. Importantly, Neil had access to and control of the decedent's checking account, savings account, savings bonds, as well as being listed as the beneficiary of the life insurance policy. Further, Neil actually withdrew substantial funds from those accounts during the decedent's lifetime. These transactions were conducted years before the decedent's death. In contrast, Decedent added McCorkle as a joint owner to his bank accounts (which McCorkle did not know existed until then) just months prior to his death. McCorkle withdrew funds from those account to pay for Decedent's funeral expenses and some of his medical bills. McCorkle only took complete control over those funds upon Decedent's death. This evidence is in light of the fact that, although McCorkle was designated as Decedent's attorney-in-fact, she never exercised those powers. Indeed, no

evidence was presented to the jury that McCorkle acted as Decedent's attorney-in-fact, particularly for changes made to Decedent's bank accounts and the MetLife Policies at issue. Therefore, we hold that the power of attorney present in this case did not create a *per se* confidential relationship between Decedent and McCorkle.

Because we conclude that Paige failed to prove that a confidential relationship existed between Decedent and McCorkle, we do not need to reach the remaining elements of constructive fraud. Nor will we address whether Paige sufficiently pled compensatory damages for constructive fraud.

2. Conversion

Paige next challenges the court's grant of McCorkle's JNOV motion as to the jury's verdict on conversion. On that claim, the jury found in Paige's favor, and awarded her $5,287.99 in damages.

The court set that verdict aside on two grounds. First, the court concluded that the changes made to the SunTrust 7475 Account were made by Decedent without any influence by McCorkle. In doing so, the court found that Decedent was an independent person. The court noted that it was Decedent who drove himself and McCorkle to SunTrust to make McCorkle a joint owner on his bank accounts, and that this occurred after a discussion with Naseem, a SunTrust employee. Further, the court indicated that there was no evidence that McCorkle orchestrated any of the changes to Decedent's bank accounts.

Second, the court found that damages were not proven with any specificity as the SunTrust 7475 Account. To that effect, the court merely stated "[t]here was testimony about accounts. There was some evidence presented about accounts. As to this specific account the court is not persuaded that the evidence presented established the damages."

The court also addressed McCorkle's argument that a conversion could not apply here because McCorkle had commingled the funds in the SunTrust 7475 Account with funds in a separate bank account. The court did not find this argument persuasive because, per the court's view, any commingling occurred *after* the funds in the SunTrust 7475 Account had been allegedly converted by McCorkle.

On appeal, Paige argues that the jury's verdict was proper because, as the evidence demonstrates, the SunTrust 7475 Account, as of May 22, 2013, was not denoted "with survivorship," and so the funds the funds remaining in that account should not have passed to McCorkle. As to the court's reasoning that damages were not proven, Paige indicates that Plaintiff's Exhibit 8, a copy of a statement for the SunTrust 7475 Account, clearly shows that the account had a balance of $5,287.99 at the time of Decedent's death.

For her part, McCorkle asserts that there was never any intention of changing the original designation on the first signature card, and so that card should control. *See* Md. Code (1980, 2011 Repl. Vol.), Financial Institutions ("Fin. Inst."), § 1-204. Alternatively, McCorkle contends that the conversion claim fails because the funds held in the SunTrust 7475 Account have since been commingled with funds in a different bank account.

Conversion is "an intentional tort that requires an exertion of ownership or dominion over another's personal property in denial of or inconsistent with the owner's right to that property." *Nickens v. Mount Vernon Realty Group, LLC*, 429 Md. 53, 77 (2012); *see also Allied Investment Corp. v. Jasen*, 354 Md. 547, 560 (1999). An act of ownership is evidenced by:

> "[I]nitially acquiring the property or by retaining it longer than the rightful possessor permits," and includes the destruction of another's property as well as a "wrongful, tortious or unlawful taking of property from the possession of another by theft, trespass, duress, or fraud and without [the owner's] consent or approbation, either express or implied." Wrongful deprivation of property to which another is entitled, and not merely wrongful acquisition of that property, is the essence of conversion.

429 Md. at 77. (quoting *Darcars Motors of Silver Spring, Inc. v. Borzym*, 379 Md. 249, 262 (2004). (internal citations omitted).

Monies are considered intangible property; as such, "[t]he general rule is that monies are . . . not subject to claim for conversion." *Id*. at 564. Generally, conversion claims are "'recognized in connection with funds that have been or should have been segregated for a particular purpose or that have been wrongfully obtained or retained or diverted in an identifiable transaction.'" *Id*. (quoting Fowler V. Harper *et al*., The Law of Torts, § 2.13, at 2:56 (3d ed.1986)). In other words, funds must be "sufficiently identifiable" so that the plaintiff can describe the funds "with such reasonable certainty that the jury may know what money is meant." *Id*. at 565. (quoting *Limbaugh v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 732 F.2d 859, 862 (11th Cir. 1984). *See Lasater v. Guttmann*, 194 Md. App.

431, 447 (2010) ("The general rule is that monies alleged to have been converted are specific segregated or identifiable funds."). The *Limbaugh* Court cautioned that "the money at issue must be 'described with such reasonable certainty that the jury may know what money is meant and the defendants protected from another action based upon the same grounds.'" 732 F. 2d at 862. (quoting *Russell v. The Praetorians, Inc.*, 28 So. 2d 786, 789 (1947)).

First, we address Paige's argument that the funds in the SunTrust 7475 Account reverted to the Estate upon Decedent's death because the second signature card for that account was not marked "with survivorship." Fin. Inst. § 1-204 provides, in pertinent part (emphasis added):

> (a) A provision in an account agreement for a transfer on death in compliance with this section is nontestamentary and shall be effective according to the provisions of this section. Transfers pursuant to this section are effective in the form and manner prescribed by this section and are not to be considered testamentary.
>
> * * *
>
> (d)(1) 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.
>
> (2) *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*.
>
> * * *
>
> (4) No payment from a multiple-party account may be made to the personal representative of a deceased party unless:

> (i) Proof is presented to the depository institution showing that the deceased party was the last surviving party; or
>
> (ii) There is no right of survivorship under this section.

There is, no doubt, some confusion surrounding the second signature card executed for the SunTrust 7475 Account. Neither "with survivorship" nor "without survivorship" was marked on that card. While Paige interprets this oversight to imply that McCorkle has no express right to the funds, McCorkle chalks it up as a scrivener's error, and instead looks to the original intention of Decedent in executing the April 13 signature card. In our view, neither of these arguments is on point. The plain language of Fin. Inst. § 1-204 provides the answer we seek.

The statute's default rule is that, if the account agreement does not establish who has a right to the funds in the account upon a death of a party to the account, "any funds in the account upon the death of a party *shall belong to the surviving party* or parties." Fin. Inst. § 1-204(d)(2) (emphasis added). So, in a situation as we have here, where there are two parties to a bank account, and the signature card does not specify "with" or "without" survivorship, any remaining funds in the account belong to the surviving party to the account. In this case, that is McCorkle. Because Fin. Int. § 1-204 creates a remedy for this issue, and because Paige's argument for conversion rests solely upon the fact that the signature card was not marked "with survivorship," Paige's argument must fail as a matter of law. Therefore, we affirm the circuit court's grant of McCorkle's JNOV motion as to

conversion, albeit on different grounds. *See Nottingham v. State*, 227 Md. App. 592, 614 n. 9 ("We may . . . affirm a judgment on any ground apparent from the record[.]").

Because we are affirming the trial court's decision, we need not reach whether Paige proved damages for conversion or whether a conversion claim fails here because the funds were commingled with other funds belonging to McCorkle.

3. Constructive Trust

Finally, we address Paige's argument that the circuit court erred in ruling that she was not entitled to a constructive trust.

The court ruled in McCorkle's favor for two reasons. First, it found that, pursuant to *Sanders*, 261 Md. 268, the durable power of attorney did not create a *per se* confidential relationship existed between Decedent and McCorkle. Second, the court found that the evidence elicited at trial did not support a finding of a confidential relationship. Specifically, the court found that there was no evidence that McCorkle orchestrated the changes Decedent made to his MetLife Policies, or that Decedent was otherwise being coerced by McCorkle. Rather, the court found that the changes were made by Decedent's own volition, which "were fair and proper and reasonable under the circumstances."

Paige argues that the trial court's ruling was erroneous for two reasons. First, she argues that the power of attorney created a *per se* confidential relationship because such an instrument creates a principal-agent relationship, which carries a legal presumption of

confidentiality. Similar to her arguments regarding a confidential relationship above, Paige cites to the *Sanders* case for support.

Then, relying on *Midler v. Shapiro*, 33 Md. App. 264 (1976), Paige contends that because a confidential relationship existed between Decedent and McCorkle, the burden shifted to McCorkle to demonstrate that "'a fair and reasonable use has been made of the confidence, that the transfer of the property was the deliberate and voluntary act of the grantor and that the transaction was fair, proper, and reasonable under the circumstances.'" *Midler*, 33 Md. App. 273 (1976) (quoting *Sanders*, 261 Md. at 277). Paige cites to multiple factors the court must consider when determining whether a transaction was fair and reasonable, including:

> (1) the voluntariness of the act; (2) the stripping of the donor of his or her assets vis-a -vis the incidence of control retained by the donor; (3) the motive of the person in whom the confidence was reposed; (4) the degree to which the donor heeded the advice of the person possessed of the donor's confidence; (5) whether the donor acted upon independent advice; and (6) the comprehension of the donor of what he or she was doing.

Midler, 33 Md. App. at 273-74 (internal citations omitted). According to Paige, an analysis of the facts under these factors shows that McCorkle has failed to meet her burden of rebutting the presumption by clear and convincing evidence, so we should reverse the court's ruling.

"A constructive trust is the formula through which the conscience of equity finds expression." *Robinette v. Hunsecker*, 212 Md. App. 76, 117 (2013) (cleaned up). It is a "'device used by [a court] to compel one who unfairly holds a property interest to convey

that interest to another to whom it justly belongs.'" *Figgins v. Cochrane*, 403 Md. 392, 409 (2008) (quoting George G. Bogert & George T. Bogert, *The Law of Trusts and Trustees*, § 471 (2d. ed. 1978)). A constructive trust is not designed to "right every wrong," and "in most cases, unless there is an acquisition of property in which another has some good equitable claim, no constructive trust may be imposed." *Wimmer v. Wimmer*, 287 Md. 663, 671 (1980).

A constructive trust "is applied by operation of law where property has been acquired by fraud, misrepresentation, or other improper method, or where the circumstances render it inequitable for the party holding the title to retain it." *Wimmer*, 287 Md. at 668; *see also Jahnigen v. Smith*, 143 Md. App. 547, 557 (2002). However, the presence of fraud is not necessary to create a constructive trust. *See Hartsock v. Strong*, 21 Md. App. 110, 118 (1974). Rather, "[i]t is enough that the 'conscience' of a court of equity would be traumatized if the legal title holder were allowed to deprive the beneficial owner of that which in good conscience belongs to the beneficial owner." *Hartsock*, 21 Md. App. at 118.

The presence of a confidential relationship is not a necessary element of constructive fraud, "although its presence makes it easier for one to be imposed." *U.S. for Use and Benefit of Allied Bldg. Products Corp. v. Federal Ins. Co.*, 729 F. Supp. 477, 478 (U.S. Dist. Md. 1990); *see also Wimmer*, 287 Md. at 668. "However, where a confidential relationship exists, the rules are somewhat different." *Wimmer*, 287 Md. at 668. A constructive trust is imposed on property "where the holder of legal title of a property, the

'dominant party,' was in a confidential relationship with the prior owner, the 'trusting party.'" *Figgins*, 403 Md. at 410. If the dominant party breaches or abuses the confidential relationship by transferring property from the trusting party to the dominant party, the court may order a constructive trust. *Id*. A confidential relationship must be established by clear and convincing evidence. *Wimmer*, 287 Md. at 669. The existence of a confidential relationship "shifts the burden to defendant to show the fairness and reasonableness of the transaction." *Id*. (citing *Sanders*, 261 Md. 268, 276).

Paige's constructive trust claim was not submitted to the jury. Therefore, we "review the case on both the law and the evidence. [We] will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Rule 8-131(c). "'If any competent material evidence exists in support of the trial court's factual findings, those findings cannot be held to be clearly erroneous.'" *Figgins*, 403 Md. at 409 (quoting *Schade v. Maryland State Bd. of Elections*, 401 Md. 1, 33 (2007)).

As we have discussed, Paige's constructive trust arguments are premised on the existence of a confidential relationship between Decedent and McCorkle. She asserts that a confidential relationship existed as a matter of fact and as a matter of law. We have analyzed both of these arguments at length earlier in this opinion. At this juncture, we will reiterate that, just as there was insufficient evidence before the jury for it to find by clear and convincing evidence that there was a confidential relationship between Decedent and

McCorkle, so too there was insufficient evidence of a confidential relationship before the trial court in its role as fact-finder in regard to the constructive trust claim. Additionally, for the reasons previously discussed, we do not agree with Paige's argument that the existence of a power of attorney equates to a confidential relationship. In our view, the law of Maryland is that a power of attorney is one factor that is relevant, but not dispositive, in determining whether a confidential relationship exists.

Conclusion

For the reasons set out above, we hold that the trial court did not err when it granted McCorkle's motion for a judgment notwithstanding the verdict on the constructive fraud and conversion claims. We also hold that the trial court did not err when it declined to impose a constructive trust in this case.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. APPELLANT TO PAY COSTS.