

Circuit Court for Prince George's County
Case No. CAD16-40619

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0802

September Term, 2020

MEE RAN YU MORGAN

v.

LARRY MORGAN

Berger,
Nazarian,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: August 3, 2021

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

Mee Ran Yu Morgan, appellant, and Larry Morgan, appellee, married on January 6, 2010. Soon after they were married, the parties separated in April 2010. As a result of the separation, the parties entered into a Separation and Property Settlement Agreement (“First Agreement”). After resuming marital cohabitation, the parties agreed to terminate the First Agreement in 2012. In July 2015, however, the parties separated again and entered into a second separation agreement (“Second Agreement”).

On November 1, 2016, Mr. Morgan filed a complaint for absolute divorce in the Circuit Court for Prince George’s County and requested that the Second Agreement be merged into the final divorce decree. Ms. Yu filed a counter-complaint for limited divorce and later moved to set aside the Second Agreement, arguing that the agreement was unconscionable and obtained by abuse of a confidential relationship between the parties. On October 30, 2017, at the conclusion of a hearing to address the complaint, counter-complaint, and pending motions in the divorce action, the circuit court granted Mr. Morgan an absolute divorce. The court held that there was no confidential relationship between the parties and that the agreement was not unconscionable. The court entered its judgment of absolute divorce on November 9, 2017 and incorporated the Second Agreement into the divorce decree.

Ms. Yu appealed to this Court. *Morgan v. Morgan*, No. 1946, September Term, 2017 (filed July 22, 2019) (“*Morgan I*”). In that appeal, Ms. Yu presented two questions for our review: 1) “Did the court err by first considering whether confidential relationship existed between the parties before considering whether there existed unconscionability?”;

and 2) “Did the court err by looking at dominance as the only factor in considering whether a confidential relationship existed?” *Id.* at 1-2. We held that the circuit court did not err in addressing, preliminarily, the issue of whether a confidential relationship existed between the parties. *Id.* However, we determined that the circuit court did err in concluding that no confidential relationship existed between the parties **without considering** the factors outlined in *Bell v. Bell*, 38 Md. App. 10, 14 (1977) (“*Bell* factors”). *Id.* (emphasis added). Accordingly, we vacated the judgment of the circuit court and remanded the case for proceedings “consistent with the opinion.” *Id.*

On remand, Ms. Yu moved to re-open the case in the circuit court on August 14, 2019. Soon thereafter, on March 5, 2020, Mr. Morgan filed “Plaintiff’s Motion for Appropriate Relief” requesting, among other things that the circuit court issue an Order explaining how the *Bell* factors were considered in its original decision, based on the existing record. Ms. Yu filed a form request for a hearing on March 26, 2020 and checked the box for a pendente lite hearing. She filed a second request for a hearing on April 23, 2020,¹ this time checking the box for a “trial on the merits.” Several months later, she filed a motion to bifurcate the trial.

On September 22, 2020 the circuit court issued the underlying “Memorandum and Order of Court.” In her memorandum opinion, the trial judge reviewed the record, including the testimony from the hearing held on October 30, 2017, and addressed each of

¹ The record reflects that the circuit court did not issue a ruling pertaining to Ms. Yu’s requests for hearings filed on March 26, 2020 and April 23, 2020.

the *Bell* factors before granting the absolute divorce. The memorandum also explained that the court would incorporate, but not merge, the Second Agreement into the absolute divorce. Finally, the court found that Ms. Yu’s motion to bifurcate the trial was moot.

Ms. Yu filed a motion to reconsider and Mr. Morgan filed an opposition. Before the circuit court ruled on the motion to reconsider, Ms. Yu timely filed her Notice of Appeal. Ms. Yu presents two questions for our review, which we have reordered as follows:

1. “Did the Circuit Court err by not conducting any further proceedings to ascertain the facts of the case?”
2. “Did the Circuit Court err in its 2020 Order by contradicting the finding of the Opinion [in *Morgan I*] ?”

BACKGROUND

We begin by incorporating the relevant facts and procedural history recited in *Morgan I*.

A. SEPARATION AGREEMENTS

The First Separation Agreement

Prior to the parties’ marriage, Ms. Yu had emigrated from Korea to the United States in 2004. *Morgan I* at 2. Six years later, Mr. Morgan and Ms. Yu married on January 6, 2010 and then quickly separated sometime in April. *Id.* The couple had no children together. *Id.* On June 2, 2010, Ms. Yu and Mr. Morgan entered into the First Agreement. *Id.* The First Agreement stated it, “[wa]s not executed for the purpose of [the parties] obtaining a divorce from each other, nor [wa]s it an agreement or consent by either party for the other to obtain a divorce[.]” *Id.* At the time of the First Agreement, the parties

lived together in an apartment, and the terms reflected the circumstances of the parties at the time:

Under the agreement, Ms. Yu could remain in the apartment, provided she assumed full responsibility for the lease and paid all the rent, but Mr. Morgan would retain sole ownership of real property in Illinois (“Illinois Property”) that he had acquired prior to the marriage. The First Agreement provided that the parties would retain ownership of personal property owned prior to the marriage and divide any such property acquired during the marriage. Accordingly, Ms. Yu would keep her 2000 Toyota Camry and Mr. Morgan would keep his 1998 Mitsubishi; both parties agreed to maintain their own car insurance as of the date of the agreement. The parties also agreed to release any claim to property divided pursuant to the agreement.

Mr. Morgan agreed to provide Ms. Yu with health, dental, and vision insurance until the entry of any divorce decree. The First Agreement also provided that Ms. Yu would acquire the entirety of the funds in the parties’ joint savings account with TD Bank but that all other financial accounts and “[a]ny and all pension, retirement, employee stock ownership, profit sharing plans, annuities or the like shall be the sole and separate property of the party whose name it is in[.]” Mr. Morgan agreed, further, to refrain from interfering with Ms. Yu’s ability to obtain U.S. citizenship but would “not agree to support her financially in the event that she is not able to support herself.”

Id. at 3. After the parties resumed marital cohabitation, they “agreed to ‘terminate, void and nullify’ the First Agreement on June 7, 2012.” *Id.*

The Second Separation Agreement

Five years later, in July 2015, the parties entered into the Second Agreement. At the time, Mr. Morgan was working as an engineer earning a yearly income in excess of \$100,000 while Ms. Yu was earning \$8 per hour as a personal care assistant. On July 3, 2015, Mr. Morgan’s attorney, Brandon Bernstein, sent Ms. Yu a written letter advising her of his representation of Mr. Morgan in negotiating and formalizing the parties’ separation. He clarified that he represented Mr. Morgan, only, and advised Ms. Yu to retain her own legal counsel to represent her in the matter. Mr. Bernstein attached a written copy of the Second Agreement to the letter for Ms. Yu’s signature in the event that she was “satisfied with the [Second Agreement] in its current form[.]” Both parties signed the Second Agreement on July 12, 2015.

The Second Agreement expressed its purpose as follows:

WHEREAS, the Parties agree to separate on or about July 15th, 2015, with the express purpose and intent of ending their marriage, and [] shall thereafter live separate and apart without cohabitation. There is no reasonable expectation of reconciliation; and

WHEREAS, the Parties desire to settle and determine all obligations to each other, including their support obligations to one another, property rights, and all other rights, claims, relationships or obligations between them arising out of the marriage relationship or otherwise, making this their final and absolute Agreement.

The parties waived any right to receive alimony. Mr. Morgan would provide Ms. Yu health insurance through his employer-provided insurance plan only until December 30, 2015, rather than until the entry of the divorce decree, as per the First Agreement.

Under the Second Agreement, just as under the First Agreement, Mr. Morgan would retain sole ownership of the Illinois Property, which he acquired prior to the parties' marriage. Unlike the First Agreement, which entitled Ms. Yu to the entirety of the funds in their joint savings account with TD Bank, the Second Agreement related that the parties would "evenly divide" the funds in the account. Otherwise, the agreement stated that the parties had no other joint assets, and that each party would retain "as his or her sole and separate property any checking and savings accounts, retirement assets, pensions, Thrift Savings Plans, 401(k) accounts, stocks, certificates of deposit, bonds, mutual funds, or other financial assets titled in his or her individual name." The parties waived any interest in the other party's retirement interests and other future expectancies or interests, such as death benefits.

Mr. Morgan would receive the 2011 Hyundai, 1998 Mitsubishi, and 1987 Mazda, and Ms. Yu would have the same 2000 Toyota that she was promised under the First Agreement. With respect to furnishings and personal belongings, the parties agreed to retain that which he or she owned prior to the marriage and evenly divide that which the parties acquired during the marriage. The agreement also indicated that the parties would be responsible for their respective debts, including future debts. The agreement stated that each party was satisfied with one another's financial disclosures, and waived their rights to compel any discovery or inspection of the other's financial records and also any right to an appraisal to evaluate the other's

“assets, income, debts, or property prior to entering into th[e Second Agreement].”¹ Finally, each party also waived the right to a trial by jury in any future legal proceeding arising out of the Second Agreement.

Id. at 3-5.

B. THE UNDERLYING DIVORCE ACTION

On November 1, 2016, Mr. Morgan filed a complaint for absolute divorce. *Id.* at 5. In his complaint, Mr. Morgan averred that the parties had entered into the Second Agreement and had been living separate from one another since July 15, 2015. *Id.* As a result, Mr. Morgan requested that the Second Agreement be incorporated, but not merged, into the final divorce decree. *Id.* at 6. In her answer and countercomplaint for limited divorce, Ms. Yu alleged that she did not recall any agreement, including the First and Second Agreement, that resolved the rights and liabilities arising out of the marriage. *Id.* Furthermore, she asserted that even if she had, any such agreement was “void and unenforceable as it is unconscionable, inequitable, against public policy, contains bilateral mistake, and is secured by fraud or duress.” *Id.* Accordingly, Ms. Yu requested alimony, division of marital property, and attorney’s fees. *Id.*

Motions

On December 21, 2016, Mr. Morgan filed multiple motions before the circuit court. *Id.* at 6-8. Relevant to the instant case, Mr. Morgan filed a motion to enforce the Second Agreement. *Id.* at 6. In pertinent part, Mr. Morgan argued that Ms. Yu’s answer and counter-complaint sought relief on matters that the Second Agreement had already resolved. *Id.* Accordingly, he asserted that the Second Agreement should be enforced

given that Ms. Yu had neither filed a motion to set aside the agreement, nor advanced any “valid reason to justify setting aside” the agreement. *Id.* at 7. On January 24, 2017, the circuit court denied Mr. Morgan’s motion. *Id.* He filed a renewed motion to enforce the agreement on August 3, 2017. *Id.* at 8.

While Mr. Morgan’s motion to enforce the Second Agreement was pending, Ms. Yu filed a motion to set aside the Second Agreement and requested a hearing. *Id.* She sought to set the agreement aside on three grounds: “(1) substantive unconscionability; (2) procedural unconscionability; and (3) abuse of confidential relationship.” *Id.* at 8. In support of her first ground, she claimed the terms were “heavily one-sided” and inequitable and presented a table detailing the money and property that each party was to receive under the Second Agreement. *Id.* To establish “procedural unconscionability,” Ms. Yu asserted that Mr. Morgan fraudulently misrepresented that the Second Agreement was “the same thing” as the First Agreement, and then set out the distinctions between the two agreements. *Id.* at 9. She also claimed that Mr. Morgan fraudulently misrepresented that he had made voluntary financial disclosures to her. *Id.* Finally, Ms. Yu asserted that the parties had a confidential relationship, pointing out, among other things, that Mr. Morgan had a B.S. in Avionics while Ms. Yu was only a high school graduate and that she depended heavily on Mr. Morgan financially. *Id.* at 10.

On October 23, 2017, Mr. Morgan filed a detailed opposition, pointing out, among other things, that he never presented the Second Agreement to Ms. Yu but that his attorney personally sent the agreement to her with a letter that contained no misrepresentations. *Id.*

at 11. Soon thereafter, a hearing was set on the motions and to simultaneously address the complaint for absolute divorce filed in the circuit court. *Id.* at 12.

The Hearing

The circuit court held a hearing on October 30, 2017. *Id.* at 12. The parties presented the following arguments:

Largely reiterating her position in the written motion, Ms. Yu argued that the Second Agreement was substantively and procedurally unconscionable, and that Mr. Morgan abused the confidential relationship between the parties. Ms. Yu elaborated that she had to rely on Mr. Morgan because she “was a high school grad with limited English” and could get work that paid only about \$10 to \$12 per hour. Significantly, Ms. Yu asked the court to rule as follows: “to the extent that the [c]ourt finds that there was a confidential relationship, then the [c]ourt must rule [] on whether the separation agreement was fair in all respect[s].” (Emphasis added).

Mr. Morgan, who also reiterated the arguments in his written motion, rebuffed Ms. Yu’s claims of substantive and procedural unconscionability by emphasizing that Ms. Yu received the agreement from his attorney and that Mr. Morgan “subsidiz[ed] all of Ms. Yu’s expenses” during their marriage while Ms. Yu kept all of her own earnings and other assets she acquired. With respect to the existence of a confidential relationship, Mr. Morgan countered that there was no confidential relationship because “the parties were estranged” and Ms. Yu controlled her own finances at the time of the Second Agreement, which she signed without asking any questions. Mr. Morgan concluded by re-emphasizing his ratification argument.

Id. at 13.

After hearing both of the parties’ legal arguments, the court allowed Ms. Yu to call Mr. Morgan to testify as a witness and allowed Ms. Yu to testify on her own behalf. *Id.*

1. Mr. Morgan’s Testimony

Mr. Morgan testified that “the First Agreement was drafted in Virginia with the purpose of allowing the parties to be legally separated but still live under the same roof, as

he could not afford to live on his own at the time.” *Id.* at 14. He also pointed out to the court that “unlike his intentions in entering into the First Agreement, his intention at the time of the Second Agreement was to obtain a divorce.” *Id.* Although Mr. Morgan expressed that his intentions were different between the First Agreement and the Second Agreement, he still asserted that the agreements were “the same.” *Id.*

Next, Mr. Morgan explained to the court what his financial situation was at the time that the Second Agreement was signed. He related that he

was working as an engineer earning around \$108,000 in annual income. He had a 401(k) account with a balance of about \$49,000 as of June 2017, which consisted, in part, of funds that he had earned prior to marrying Ms. Yu. He testified about having a SAC Federal Credit Union checking account, which he described as a “working account” that he had opened prior to the marriage when he was in the Air Force, but said he was unaware how much money was in his account at the time of the Second Agreement. He opined that the parties’ joint savings account had about \$910- 950 in funds at the time of the execution of the Second Agreement. Mr. Morgan also owned real property in Illinois, which he had purchased in 1997, prior to the parties’ marriage. Besides the Illinois Property, Mr. Morgan testified that he did not own any other real property.

Id. at 15. With respect to sharing his financial information with Ms. Yu, Mr. Morgan admitted that he kept in his financial documents and other “important records” in a locked file cabinet, but explained that, “[a]nytime [he] discussed any type of financials with her, [she said] it made her head hurt.” *Id.* He also admitted that he took out a \$19,300 loan from his 401(k) account, but insisted that “he ‘absolutely’ told Ms. Yu about the loan prior to borrowing the money because he had explained to her that the loan was necessary to make repairs to their home.” *Id.* at 15-16.

2. Ms. Yu's Testimony

Ms. Yu testified that she was employed full-time when she signed the Second Agreement and that Mr. Morgan told her that “the [S]econd [Agreement] was the same as the first one.” *Id.* She explained that she believed Mr. Morgan when he told her that the two agreements were the same. *Id.* She claimed that Mr. Morgan never disclosed any financial information or documents to her and that

she did not know that Mr. Morgan had taken out a loan from his 401(k) account. Ms. Yu said that Mr. Morgan disliked when she asked him about financial information and reprimanded her once for asking about his salary early in their marriage. Other than that, she never asked Mr. Morgan about financials during their marriage. With regard to the Second Agreement, besides asking what the agreement was about, Ms. Yu never asked Mr. Morgan for any financial documents prior to signing the agreement.

Ms. Yu also testified about the extent of her dependence on Mr. Morgan. According to Ms. Yu, she immigrated to the United States in 2004 and later obtained a green card after marrying Mr. Morgan. Ms. Yu explained that Mr. Morgan handled her green card application, including payment of the application fees, because she did not understand the documents and “trust[ed] [her] husband.

Id. at 16-17. Ms. Yu related that she attended school during the marriage and eventually became a licensed personal care assistant after passing a test that was administered in English. *Id.* at 17. She deposited her earnings into a bank account solely titled in her name, which had a balance in excess of \$7,000, around the time the Second Agreement was in September 2015. *Id.* Ms. Yu testified, further, that

during the parties' marriage, she received an \$8,000 money judgment from a personal injury case, in which she was represented by a lawyer she personally retained without Mr. Morgan's help, and also established a life insurance policy that was worth “a few thousand dollars” at the time of the hearing.

She confirmed that, as a result of the parties' separation, she acquired all of the funds from their joint savings account, kept her Toyota, and

continued to receive coverage under Mr. Morgan’s health insurance because “he promised to do so.”

Id. at 17-18.

Court’s Ruling

At the conclusion of the hearing, the court issued its ruling. *Id.* at 18. The judge explained: “the first thing we have to decide is whether or not there is a confidential relationship that exist[s] between these parties.” *Id.* The judge determined that based on her observations of both parties, the nature of their relationship, and the testimony given:

I do not find that [Mr. Morgan] was the dominant one and that he had undue influence over the wife to the extent that the [c]ourt can find that a confidential relationship existed.

Id.

Next, the judge gave her reasoning. Crediting Mr. Morgan’s testimony, she found that he offered financial information to Ms. Yu, who “waived the right to see it . . . and as such still entered into this agreement.” *Id.* The judge found, further, “that Ms. Yu had taken and passed a Health Professional Assistant Test in English and, therefore, had ‘significant understanding of the English language so that it would not interfere with her ability to communicate with her husband when it came to this [] settlement agreement.’” *Id.* The court also found that “the fact that [Ms. Yu] didn’t obtain an attorney doesn’t make this agreement void’ because it was uncontradicted that Mr. Morgan’s attorney mailed Ms. Yu a letter, along with the Second Agreement, advising her to retain her own legal counsel and ‘after having received this letter, . . . the wife signed the agreement.’” *Id.*

The court concluded that based on these findings, “neither undue influence in negotiating the agreement ha[d] been demonstrated, nor d[id] [it] find that the agreement itself [wa]s unconscionable.” *Id.* at 19. Therefore, the court denied Ms. Yu’s motion to set aside the Second Agreement and granted Mr. Morgan’s motion to enforce the Second Agreement. *Id.* The court then proceeded on the merits of the divorce action and ultimately granted Mr. Morgan an absolute divorce. *Id.* The court entered its judgment, which incorporated the Second Agreement, on November 9, 2017. *Id.* Ms. Yu subsequently noted her timely appeal to this Court on November 29, 2017. *Id.*

C. *MORGAN I*

In our earlier opinion in *Morgan I*, we first addressed Ms. Yu’s assertion that “the court erred by addressing the issue of whether a confidential relationship existed prior to determining whether the agreement was fair.” *Id.* In our analysis, we highlighted that in Maryland, “separation agreements . . . are generally favored by the courts as a peaceful means of terminating marital strife and discord so long as they are not contrary to public policy.” *Id.* at 21 (quoting *Young v. Anne Arundel Cnty*, 146 Md. App. 526, 595 (2002)). We also pointed out that, under *Bell v. Bell*, 38 Md. App. 10, 13-14 (1977), “[w]hether a confidential relationship exists between husband and wife [is] a question of fact” and the proponent must show that, ‘by virtue of the relationship between them, he [or she] is justified in assuming the other party will not act in a manner inconsistent with his or her welfare.’” *Id.* at 21-22 (quoting *Bell*, Md. App. at 13-14). We explained that, in order to determine whether a confidential relationship exists a circuit court must consider the *Bell*

factors, which includes: “age, mental condition, education, business experience, state of health, and degree of dependence of the spouse in question.” *Id.* at 22 (citing *Bell*, 38 Md. App. at 14). After reviewing the facts relied upon by the court, as well as the grounds articulated by the court for its ruling, *id.* at 22-26, we held:

[T]he circuit court did not err in addressing preliminarily the issue of whether a confidential relationship existed between the parties. Regardless, Ms. Yu invited any such error and is foreclosed from raising her first issue on appeal. The circuit court did err, however, by concluding that no confidential relationship existed between the parties *without considering the Bell factors*. We, therefore, *vacate* the judgment of the circuit court and remand the case for further proceedings consistent with this opinion.

Id. at 30 (emphasis added).²

D. ON REMAND TO THE CIRCUIT COURT

On August 14, 2019, Ms. Yu filed a “Motion to Re-Open Case” in the circuit court. In her motion, Ms. Yu stated that “[o]n July 22, 2019, the Court of Special Appeals vacated the Judgment of this Court and remanded the matter for further proceeding[s].” Ms. Yu requested that the “case be Re-opened; and, for such other relief deemed just and proper.”

On March 5, 2020, Mr. Morgan filed “Plaintiff’s Motion for Appropriate Relief.” In Mr. Morgan’s motion, he explained to the court:

² The Mandate from this Court, filed in the Circuit Court of Prince George’s County on October 24, 2019, read:

On the 22nd day of July, 2019, it was ordered and adjudged by the Court of Special Appeals:

Judgment of the Circuit Court of Prince George’s County vacated; case remand for further proceeding consistent with this opinion. Costs to be paid by appellee.

[T]he Court considered in detail relevant facts, as reflected in the record, to support the Circuit Court’s conclusion in view of the entire Bell factor analysis. Therefore, this Court’s entry of its Judgment of Absolute Divorce issued on October 31, 2017, hearing contains sufficient evidence and findings for a complete *Bell* factor analysis. The Plaintiff thus requests that the Court issue an Order expanding upon the Bell factors, as supported by the existing record.

On March 26, 2020, counsel for Ms. Yu sent a letter to the Clerk of the Circuit Court for Prince George’s County requesting a hearing or proceeding on the matter. The letter also had a form attached entitled “Request for Hearing or Proceeding” which was also addressed to the circuit court. Ms. Yu elected to request both a “scheduling conference” and a “pendente lite hearing” on the form. On April 23, 2020, Ms. Yu submitted another letter and form to the circuit court requesting a hearing or proceeding. On the form attached to that letter, Ms. Yu requested a “trial on the merits.” Neither of these requests for a hearing was ruled upon by the circuit court.

On July 21, 2020, Mr. Morgan filed a “Request for Ruling on Plaintiff’s Motion for Appropriate Relief.” Mr. Morgan also asserted that his motion was filed on March 5, 2020, and that Maryland Rule 2-311(b) “provides that if a party fails to file a response, then the court may proceed to rule on the motion.” Because Ms. Yu had not filed a response to the motion, he urged, it was ripe for a ruling and requested that the court issue an order on the matter.

On July 23, 2020, Ms. Yu filed a “Motion to Bifurcate Trial.” In the motion Ms. Yu argued that the trial should be bifurcated “based on two distinct issues: (1) one to

determine the validity of the [parties' Property Settlement Agreement]; and, (2) to determine other divorce matters such as equitable distribution and spousal support.”

On September 22, 2020, the circuit court issued an order rendering the motion to bifurcate trial “moot.” On the same day it entered its “Memorandum and Order of Court” entering a judgment in the divorce proceeding. In her memorandum opinion, the judge stated:

The Court of Special Appeals found that the [c]ircuit [c]ourt did not err in preliminarily addressing the issue of whether a confidential relationship existed between the parties. However the Court of Special Appeals held that the [c]ircuit [c]ourt did err by concluding that no confidential relationship existed between the parties without considering the factors enumerated in *Bell v. Bell*, 38 Md. App, 10, 379 A.2d 419 (1977).

The court noted that Maryland Rule 8-604(d), establishes that “[u]pon remand, the lower court shall conduct any further proceeding necessary to determine the action in accordance with the opinion and order of the appellate court.” The court then observed:

Having found that the substantial merits of the case could not be determined by affirming, reversing or modifying the October 21, 2017 Judgment of Absolute Divorce, the Court of Special Appeals of Maryland vacated, and remand[ed], in part, such judgment in order for the Circuit Court to review the limited issue of whether a confidential relationship existed between Appellant and Appellee and to state such findings according to the factors enumerated in *Bell v. Bell* 38 Md. App. 10, [] (1977).

Turning next to the *Bell* factors, the court acknowledged that determining whether a confidential relationship exists is a “question of fact” and in order to resolve such question of fact, “the Court must consider various factors . . . which includes the age, mental, condition, education, business experience, state of health, and degrees of dependence of the spouse in question.”

Accordingly, the court first addressed Ms. Yu’s age. The court observed that Ms. Yu “provided no evidence to demonstrate that her age (1) made her susceptible to a confidential relationship or (2) affected her ability to understand or negotiate the terms of the Second Agreement.” The court found that Ms. Yu bore the burden to show “that age was a factor in the development of a confidential relationship” and that she failed to do so.

Next, the court analyzed Ms. Yu’s mental condition, noting that “[t]here is ample evidence in the record to demonstrate that Ms. Yu was mentally stable when the parties entered into the Second Agreement.” The court was not persuaded by Ms. Yu’s argument that she had a limited understanding of the Second Agreement because of a language barrier. The court reasoned that Ms. Yu “did have a significant understanding of the English language such that it did not interfere with her ability to communicate with [Mr. Morgan] for the purposes of entering into the Second Agreement.” The court further explained that “[t]he record demonstrates that [Ms. Yu] was capable of engaging in complex activities and transactions, which required proficiency of the English language.” To support this contention, the court specifically pointed out that “during the course of the parties’ marriage, [Ms. Yu] obtained a green card and took English Second Language (ESL)”, “she obtained accreditation to become a personal care aide, which required her to pass an English Language Test”, and she “also had the English proficiency to procure a life insurance policy and she opened and maintained her own bank account.”

After discussing Ms. Yu’s mental condition, the court addressed her education level. The court differentiated Ms. Yu’s education level from the wife’s education level in *Bell*.

The circuit court discussed “[i]n *Bell*, upon consideration of the parties’ educational background, that Court [of Appeals] noted that the wife immigrated to the United States from Europe and possessed no more than the requisite education to work as a beautician, the Court found that no confidential relationship existed between the parties as a result of the wife’s ability to participate in the formation of the agreement.” The court reasoned that Ms. Yu’s case was different from the circumstances presented in *Bell* because Ms. Yu “went to school during her marriage and attended ESL classes” and that she also passed an accreditation test in English in order to become a health professional aide and that she had a “specialized education in healthcare.” The court also highlighted that, “[Ms. Yu] testified that while she was employed, her pay increased from \$8 per hour to \$13 per hour. With a capacity to earn overtime at \$19.50 per hour. [Ms. Yu’s] increase in pay demonstrates her ability to advance professionally and her sophistication of the English language.” Based on that reasoning, the court determined that Ms. Yu’s “education level and background did not make her susceptible to a confidential relationship when the parties entered into the Second Agreement.”

The court then turned to Ms. Yu’s business experience. The court reasoned that this case should be analyzed similar to *Bell* because “there is sufficient evidence in the record to demonstrate that [Ms. Yu]’s business experience was sufficient to allow her to navigate discussion and possess the ability to negotiated and ask questions in forming the Second Agreement.” The court pointed out that:

[Ms. Yu] was a certified and qualified health professional aide and was employed full-time when the parties signed the Second Agreement. [Ms.

Yu] had her own bank account, deposited earnings independently, and managed the account on her own. Further, [Ms. Yu] possessed the ability to secure a life insurance policy in her own name and hire three different lawyers for unrelated legal matters, each time without the assistance of the Appellee.

Based on these facts, the court concluded that Ms. Yu “was capable of making shrewd and deliberate business decisions to further her financial and legal interests.”

Lastly, the court addressed Ms. Yu’s state of health and degree of dependence. The court stated that “[u]pon consideration of the evidence and testimony presented, [Ms. Yu] failed to demonstrate that her state of health made her susceptible to a confidential relationship.” When discussing the degree of dependence, the court pointed out that “[Ms. Yu] testified that she was employed full time when she entered into the Second Agreement” and that Ms. Yu had the “ability to handle her own finances at the time the parties executed the agreement, including managing her bank account and other financial matters.” The court also explained that, although Ms. Yu argued that Mr. Morgan had exclusive control over the couple’s finances, “[t]here is ample evidence in the record to demonstrate that if [Ms. Yu] had any lack of control over the finances of the household it was a result of her own actions.” Therefore, the court found that both factors did not support the existence of a confidential relationship.

In conclusion, the court found that:

both parties were of adult age, had the mental capacity to enter into a separation agreement, possessed the educational background to avoid susceptibility to a confidential relationship, had the ability to make shrewd and deliberate business decisions to further their legal and financial interests, were in good health, and were substantially independent at the time they entered in the Second Agreement.

Following the memorandum and order, on September 22, 2020, the circuit court issued its “Judgment of Absolute Divorce” in favor of Mr. Morgan and ordered that “the terms and conditions of the parties’ Marital Settlement Agreement dated July 12, 2015 be and hereby are incorporated but not merged into this Judgment of Absolute Divorce.”

On September 28, 2020, the Ms. Yu filed a motion to reconsider, which was opposed by Mr. Morgan. Before the circuit court ruled on the motions, on October 7, 2020, Ms. Yu filed her Notice of Appeal.

DISCUSSION

Standard of Review

When an action is tried without a jury, “the appellate court will review the case on both the law and the evidence.” *Shih Ping Li v. Tzu Lee*, 437 Md. 47, 57-58 (2014) (citing Md. Rule 8-131(c)). While this Court “will not set aside the judgment of the trial court on the evidence unless clearly erroneous, the legal analysis of the lower court enjoys no deferential appellate review.” *Id.* (cleaned up).

Parties’ Contentions

Ms. Yu asserts that circuit court’s Memorandum and Order “does not comply with the mandate” issued by this Court in *Morgan I*. She claims that our opinion “mandated that a further proceeding shall be held.” Ms. Yu also contends that “[a] proceeding does not have to be limited to the review of the evidence in the record alone” and that “[a]n evidentiary hearing was not outside the realm” of what was mandated by this Court. Relying on Maryland Rule 1-202, Ms. Yu also argues that a “‘proceeding’ is any part of

an action, which encompasses ‘all steps by which a party seeks to enforce any right in a court.’” Ms. Yu further asserts that “[a]n evidentiary hearing was needed to address many of the *Bell* factors, including the age and more.” Although Ms. Yu acknowledges that “not all actions upon remand require additional findings of fact” based on Maryland Rule 8-604(d)(1), she contends that, in the instant case, “there were too many pieces missing” and, as a result, an additional hearing should have been held.

To the contrary, Mr. Morgan asserts that an evidentiary hearing was not required to satisfy the remand order issued by this Court. He asserts that “[u]pon remand, the [t]rial [c]ourt reviewed the record and issued its ten-page Memorandum and Order of Court clearly addressing each of the *Bell* factors and the evidence upon which the court relied in reaching its findings of fact.” Mr. Morgan contends that “[r]emand is not an opportunity for [Ms. Yu] to relitigate facts which she had every opportunity to present, but failed to do so either through testimony or exhibits more than three years ago.”

Ms. Yu replies that, at the original trial, Mr. Morgan “objected to just about all questions related to the *Bell* factors and the [c]ircuit [c]ourt sustained almost all of them.” Therefore, Ms. Yu avers that “she was unable to delve into any of the [*Bell*] factors in a meaningful way” and she requests that this Court vacate the circuit court’s order and remand the action allowing for discovery and pendente lite relief.

I.

Additional Proceedings in the Circuit Court

Maryland Rule 8-604 establishes: “[a]s to each party to an appeal, the Court *shall* dispose of an appeal in one of the following ways:”

- (1) dismiss the appeal pursuant to Rule 8-602;
- (2) affirm the judgment;
- (3) vacate or reverse the judgment;
- (4) modify the judgment;
- (5) remand the action to a lower court in accordance with section (d) of this Rule; or
- (6) an appropriate combination of the above.

Md. Rule 8-604(a) (emphasis added).

The Rule also allows this Court to conclude that error affects a “severable part of the action.” Md. Rule 8-604(b). “[T]he Court, as to that severable part, may reverse or modify the judgment or remand the action to a lower court for further proceedings and, as to the other parts, affirm the judgment.” *Id.* The Rule further specifies:

If the Court concludes that the substantial merits of a case will not be determined by affirming, reversing or modifying the judgment, or that justice will be served by permitting further proceedings, the Court may remand the case to a lower court. In the order remanding a case, the appellate court shall state the purpose for the remand. The order of remand and the opinion upon which the order is based are conclusive as to the points decided. Upon remand, the lower court shall conduct **any further proceedings necessary** to determine the action in accordance with the opinion and order of the appellate court.

Md. Rule 8-604(d)(1) (emphasis added).

We conclude that the circuit court did not err or abuse its discretion by deciding not to hold an additional hearing on remand. In our prior opinion, we vacated the judgment

and remanded the case to the circuit court for the limited purpose of conducting an analysis under the *Bell* factors to determine whether a confidential relationship existed between the parties. *Morgan I* at 2, 30. We explained that under *Bell v. Bell*, 38 Md. App. 10, 14 (1977), “[s]eparation agreements are presumptively valid except when an agreement is unjust or inequitable on its face or when a confidential relationship exists between the parties.” *Id.* at 21. We highlighted that *Bell* established that the following factors must be considered when determining whether a confidential relationship exists: “age, mental, condition, education, business experience, state of health, and degree of dependence of the spouse in question.” *Id.* at 22 (citing *Bell*, 38 Md. App. at 14). Rather than reverse the judgment of the circuit court, we vacated the judgment and remanded the case “for further proceedings consistent with this opinion.” *Id.* And we left it within the court’s discretion to decide whether another hearing was necessary in order to determine whether a confidential relationship existed by applying the *Bell* factors.

On remand, the judge outlined our instructions correctly, and apparently, having presided over the case since its inception, decided that another hearing was not necessary in order to apply the *Bell* factors as required by our order and mandate in *Morgan I*. Although, we understand that Ms. Yu would have preferred to have additional hearings on the matter, it was within the circuit court’s discretion to determine what “further proceedings [were] necessary.” Md. Rule 8-604(d)(1). Ms. Yu’s belated claim that Mr. Morgan “objected to just about all questions related to the *Bell* factors and the [c]ircuit [c]ourt sustained almost all of them” was not raised in the first appeal and is, therefore,

barred by law of the case, *Holloway v. State*, 232 Md. App. 272, 284 (2017), and is not preserved under Maryland Rule 8-131(a), *Miller-Phoenix v. Balt. City Bd. of Sch. Comm'rs*, 246 Md. App. 286, 307 (2020).

II.

Clearly Erroneous Review

We “will not set aside the judgment of [a] trial court on the evidence unless clearly erroneous.” *Bontempo v. Lare*, 217 Md. App. 81, 111 (2014) (quoting Md. Rule 8-131(c)), *aff'd*, 444 Md. 344 (2015)).

The circuit court recognized that under *Bell*, determining whether a confidential relationship exists is a “question of fact” which required the court to consider all of the facts presented under each of the applicable factors. In her 10-page memorandum opinion, the court methodically addressed each of the *Bell* factors and the evidence upon which the court relied in reaching its findings of fact and conclusions of law.

First, the court addressed Ms. Yu’s age and correctly noted that Ms. Yu bore the burden to show “that age was a factor in the development of a confidential relationship.” Given that both parties were mature adults at the time of their divorce and only several years apart in age, the trial court reasonably concluded that Ms. Yu “provided no evidence to demonstrate that her age (1) made her susceptible to a confidential relationship or (2) affected her ability to understand or negotiate the terms of the Second Agreement.”

Next, the court analyzed Ms. Yu’s mental condition and, based on the record evidence and having heard and observed Ms. Yu testify, determined that Ms. Yu “was

capable of engaging in complex activities and transactions, which required proficiency of the English language.” The court pointed out that during the parties’ marriage Ms. Yu: obtained a green card; completed ESL courses; obtained accreditation to become a personal care aide; procured a life insurance policy; and opened and maintained her own bank account.

In reviewing Ms. Yu’s education level, the court distinguished Ms. Yu’s case from the circumstances presented in *Bell*, where the wife “left school at the age of 15” and was “employed as a beautician.” *Bell*, 38 Md. App. at 14. The court found that Ms. Yu, by contrast, “went to school during her marriage and attended ESL classes,” and passed an accreditation test in English in order to become a health professional aide. The court also noted that Ms. Yu had obtained an increase in pay as a professional aide which it reasoned “demonstrate[d] her ability to advance professionally and her sophistication of the English language.” Based on these circumstances, the court determined that Ms. Yu’s “education level and background did not make her susceptible to a confidential relationship when the parties entered into the Second Agreement.”

Turning to the question of Ms. Yu’s business experience, the court noted that Ms. Yu was a certified and qualified health professional aide and was employed full-time when the parties signed the Second Agreement. The court also pointed out, again, that Ms. Yu had her own bank account, deposited earnings independently, and had the ability to secure a life insurance policy in her own name and hire three different lawyers for unrelated legal

matters. Therefore, the court concluded, Ms. Yu “was capable of making shrewd and deliberate business decisions to further her financial and legal interests.”

Lastly, the court determined that Ms. Yu failed to demonstrate that her state of health made her susceptible to a confidential relationship. In conclusion, after reviewing and applying each *Bell* factor, the court found that “both parties were of adult age, had the mental capacity to enter into a separation agreement, possessed the educational background to avoid susceptibility to a confidential relationship, had the ability to make shrewd and deliberate business decisions to further their legal and financial interests, were in good health, and were substantially independent at the time they entered in the Second Agreement.”

Discerning no error or abuse of discretion, we affirm the decision of the circuit court.

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