Circuit Court for Anne Arundel County
Case No. C-2-CV-16-000876

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1234

September Term, 2017

ON MOTION FOR RECONSIDERATION

SADIE M. CASTRUCCIO

v.

DARLENE BARCLAY

Berger,
Friedman,
Beachley,

JJ.

Opinion by Berger, J.

Filed: December 17, 2018

This case is one of several lawsuits, the sixth to come before this Court on appeal,[1] relating to the estate (the "Estate") of the appellant's husband, Peter Castruccio ("Peter").[2] This appeal represents the second time that this Court has been presented with issues relating to the transfer of certain properties that had previously been titled jointly in both Sadie and Peter Castruccio's names to Peter individually. In the case giving rise to this appeal, Sadie Castruccio ("Sadie"), appellant, sought damages for Darlene Barclay's ("Darlene") alleged negligent breach of notarial duty in connection with the transfer of the properties. The circuit court entered summary judgment on behalf of Darlene, determining that the doctrines of collateral estoppel and *res judicata* applied and that the claim was barred by the statute of limitations.

[1] Prior cases relating to the administration of Peter's estate include: *Castruccio v. Estate of Peter Adalbert Castruccio*, No. 2622, September Term 2014 (filed Feb. 3, 2016), *cert. denied* 447 Md. 298 (addressing the validity of several deeds conveying parcels of land from Peter and Sadie as tenants by the entirety to Peter alone); *Castruccio v. the Estate of Peter Adalbert Castruccio*, 230 Md. App. 118, 128-29 (2016), *aff'd* 456 Md. 1 (2017) (addressing the validity of Peter's will); *Castruccio v. Estate of Peter A. Castruccio*, No. 862, September Term 2015 (filed December 20, 2016) (addressing contempt sanctions and awards of attorney's fees against Sadie and her attorneys, for the benefit of the Estate); *Estate of Castruccio v. Castruccio*, No. 623, September Term 2015 (filed July 11, 2017) (addressing Sadie's attempt to have John Greiber, Esq., removed as personal representative); and *Castruccio v. Estate of Peter A. Castruccio, et al.*, ___ Md. App. ___, No. 2431, September Term 2016 (filed August 31, 2018) (addressing the proper interpretation of Peter's will and whether extrinsic evidence could be considered in construing the will). Sadie has not prevailed in any of these cases.

[2] Because various individuals involved in this case share a surname, we shall refer to them by their first names for purposes of clarity and out of no disrespect.

On appeal, Sadie asserts that the circuit court erred by applying the doctrines of collateral estoppel and *res judicata* and determining that the statute of limitations precluded Sadie's claim. For the reasons explained herein, we shall affirm.

FACTS AND PROCEEDINGS

While setting forth the underlying facts and proceedings relevant to this appeal, we draw from previous opinions in related cases.

> Peter and Sadie Castruccio were married for 62 years. They did not have any children together. On February 19, 2013, Peter died at the age of 89. Sadie was 92 years old.
>
> On February 27, 2013, Peter's Last Will and Testament, dated September 29, 2010, and a codicil thereto, dated July 13, 2012, were admitted to probate in the Orphans' Court for Anne Arundel County. John [Greiber], Jr., an attorney who had worked for Sadie and Peter for nearly twenty years, was named in the Will as the personal representative of the Estate. In his Will, Peter made three cash bequests and bequeathed the "rest and remainder of [his] estate" to Sadie provided that she survived him "and . . . has made and executed a Will prior to [his] death." In a "Residuary Clause," Peter specified that if, at the time of his death, Sadie did not "have a valid Will filed with the Register of Wills in Anne Arundel County dated prior thereto these," the remainder of his estate would go to one Darlene Barclay ("Darlene"), his long-time office manager.[3]

[3] We addressed this rather unusual provision in *Castruccio v. the Estate of Peter Adalbert Castruccio*, 230 Md. 118, 123 n.2 (2016), *aff'd* 456 Md. 1 (2017), explaining:

> According to Mr. Greiber, Dr. Castruccio was concerned that Mrs. Castruccio would leave her estate to certain family members of whom he did not approve. He wanted assurances that Mrs. Castruccio would not leave her assets, or at least the assets that she received from him, to those family members. Consequently, his will conditioned Mrs. Castruccio's rights on her having made and filed a will that disclosed whether she intended to make testamentary gifts to those family members.

> Sadie did not have a will on file with the Register of Wills when Peter died and, as such, the Estate took the position that Darlene was the beneficiary under Peter's Will pursuant to the Residuary Clause. On March 27, 2013, Sadie initiated a caveat proceeding in the probate matter.[4]
>
> On April 16, 2013, Sadie filed a "Complaint to Quiet Title and for Injunctive Relief" in the [Deed Case], which she twice amended.

Castruccio v. Estate of Peter Adalbert Castruccio, No. 2622, September Term 2014, slip op. at 1-3 (filed as corrected Feb. 3, 2016), *cert. denied* 447 Md. 298 ("*Castruccio I*" or the "Deed Case") (original footnote omitted).

In the Deed Case, "Sadie contested the Estate's claim of ownership to eight parcels of real estate based upon seven deeds conveying the parcels from Peter and Sadie to Peter ('the Challenged Deeds')." *Id.*, slip op. at 1. The parties stipulated that Peter had signed Sadie's name on the Challenged Deeds. The Estate argued that Sadie had authorized Peter to sign her name, while Sadie argued that she never authorized Peter to sign the Challenged Deeds.

> According to Mrs. Castruccio, Dr. Castruccio did not inform her that she would receive the balance of his estate only if she had made and filed a will before the date of his death.

[4] Sadie's challenge to the validity of Peter's will was rejected by the circuit court, the Court of Special Appeals, and the Court of Appeals. *See Castruccio v. Estate of Castruccio*, 456 Md. 1, 36 (2017), *reconsideration denied* (Oct. 19, 2017) (affirming this Court and holding that the circuit court properly granted Peter's "estate's motion for summary judgment on all transmitted issues").

Given that the Deed Case is the case upon which the *res judicata* and collateral estoppel issues in this case are premised, we set forth the procedural posture, legal conclusions, and factual findings from the Deed Case in detail:

> In her second amended complaint, Sadie sought to quiet title to eight properties that were the subject of the Challenged Deeds, conveying properties held by her and Peter jointly, as tenants by the entireties, to Peter in fee simple. In Counts I through VII, Sadie asked the court to declare that she owned the eight properties titled solely in Peter's name at the time of his death; to declare that the Challenged Deeds were "null and void *ab initio*"; and to issue preliminary and permanent injunctions prohibiting the Estate from interfering with her ownership of the properties. In Count VIII, Sadie sought, in the alternative, the imposition of a constructive trust.
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> * * *
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> The case was tried to the court over three days in July of 2014. The parties stipulated that Sadie did not sign the Challenged Deeds and that Peter signed her name on those deeds. In her case, Sadie called three witnesses: Philip Blazer Catzen, an expert in digital computer forensic analysis; Darlene; and Robert Lesnevich, an expert in document and handwriting examination analysis. Sadie did not testify. She introduced 103 exhibits, all by stipulation.
>
> In its case, the Estate recalled Darlene; and called Kim Barclay ("Kim"), Darlene's daughter; Peter Rodokanakis, an expert in digital computer forensic analysis; and Donna Eisenberg, a forensic handwriting expert. By stipulation, it introduced 396 exhibits into evidence.

Id., slip op. at 2-3 (footnote omitted).

With respect to the reason why Sadie did not testify, we explained:

> Sadie conceded that her testimony about the execution of the deeds was barred by the Dead Man's Statute, codified at

> Md. Code (1973, 2013 Repl. Vol.), section 9-116 of the Courts and Judicial Proceedings Article ("CJP"). That statute states:
>
> > A party to a proceeding by or against a personal representative, heir, devisee, distributee, or legatee as such, in which a judgment or decree may be rendered for or against them, or by or against an incompetent person, may not testify concerning any transaction with or statement made by the dead or incompetent person, personally or through an agent since dead, unless called to testify by the opposite party, or unless the testimony of the dead or incompetent person has been given already in evidence in the same proceeding concerning the same transaction or statement.
>
> Sadie also took the position that [Greiber] and Darlene, were barred from testifying about the challenged transactions. As we shall explain, the court agreed and barred them from testifying about the circumstances surrounding the preparation and execution of the Challenged Deeds.

Id. at 3 n.3. There were discussions on the record about the possibility of the Estate and Sadie agreeing to mutually waive the Dead Man's Statute and allowing all parties to testify regarding the challenged transactions. The Estate agreed that it was amenable to a mutual waiver, but Sadie refused to waive the Dead Man's Statute.

Following trial, the parties submitted post-trial memoranda containing proposed findings of fact and conclusions of law. The critical question before the trial court in the Deed Case was whether the eight parcels had been properly conveyed to Peter. The circuit court issued a comprehensive 23-page memorandum opinion addressing the various factual and legal issues raised by the parties. On appeal, we summarized the circuit court's factual findings and legal conclusions as follows:

As relevant here, the court made the following findings of fact. The Challenged Deeds "were a continuation of the efforts to divide Peter's and [Sadie]'s jointly held property for tax purposes." There was evidence "going back as far as 2008" of an "on-going, albeit sporadic, plan to divide up their joint properties and other assets for tax and estate planning purposes." Peter signed Sadie's name on the Challenged Deeds. There was no evidence of a written power of attorney authorizing him to sign for Sadie. Peter and Sadie "frequently executed documents signing each other's name," however, and there "appear[ed] to be a general practice between them of doing so going back several decades, . . . includ[ing] the signing of deeds, powers of attorney, loan documents, contracts, and checks." The Estate's demonstrative timeline accurately summarized this pattern and practice and was "fully supported by the exhibits admitted into evidence at trial." There was no evidence that Sadie ever objected to this practice, or that she revoked her consent to this practice.

The court further found that, after the Challenged Deeds were recorded in the Land Records, Sadie

> received many notices that the properties involved, both the ones Peter received and the ones she received had changed title yet she took no action to challenge or protest the change of ownership for three years from the time of the filing of the deeds in 2010 until Peter's death in 2013.

During that time, Sadie paid the property tax bills "without apparent concern about the titling" and "received more than $350,000 in rental income" from the rental properties conveyed to her. Those proceeds were deposited into the Marit account at M & T Bank that, "while a joint account with Peter[,] was treated by them as hers to control."

The court rejected the testimony of Sadie's handwriting expert, Lesnevich, as "totally without any credible basis and completely unhelpful to deciding [the] case." It gave Lesnevich's testimony "no weight." Catzen's testimony was "more significant." After summarizing Catzen's testimony

and Rodokanakis's testimony rebutting it, the court stated that the

> entire focus of the forensic effort by [Sadie] seem[ed] to be to show that the documents in question were not generated or signed on October 26, 2009 as is indicated on the face of each deed but instead on some other date or dates before they were presented for recording a few months later in February 2010.

The court characterized the evidence on this point as neither "clear" nor "conclusive," but found that it was "entirely likely that the deeds may have been signed on a date other than October 26, 2009," but before the date each was recorded in the Land Records. The court was unable to make a finding as to exactly when the deeds were signed, or even whether they all were signed on the same date, but found that the Challenged Deeds all were executed at some point between October 26, 2009, and February 5, 2010, and that "[f]or whatever reason, the date of October 26, 2009, was selected as the nominal date for the transactions." (Footnote omitted.) The court commented that October 26, 2009, was not the actual date that the deeds were executed, and that it was "certainly wrong for Darlene Barclay and John [Greiber] to sign as they did without a correction of the date." The court found that any discrepancy in the date was irrelevant, however, given that there was no evidence that the transactions "did not meet [Sadie]'s interest or agreement at the time the deeds were actually signed or that she did not then acquiesce in the deeds as recorded even with the potentially erroneous certifications of the date."

The court found that Sadie had not presented "any credible rationale" for how anyone was "practically harmed" by the backdating of the Challenged Deeds or why the backdating would have been undertaken to "harm or mislead [Sadie]." In so finding, the court "factored . . . in to its evaluation" the evidence that Darlene had mishandled certain electronic evidence. The court found that Darlene's conduct did not "rise to the level to merit the more drastic sanctions" sought by Sadie, however.

In its conclusions of law, the court explained that Sadie was asking the court to void the Challenged Deeds for two independent reasons: that they were forgeries and that they did not comply with certain requirements of the Real Property Article. On the forgery argument, the court concluded that Sadie had proven the existence of a writing and its falsity, but had not proven that her name was signed by Peter or her signature was notarized by Darlene with "an intent to defraud." Rather, "[u]nder the specific facts presented in *this* case by *this* Plaintiff," the evidence did not support a finding of intent to defraud. (Emphasis in original.) The court emphasized the "ample" and "overwhelming" evidence that Sadie and Peter routinely had signed each other's names to documents and the absence of evidence that Sadie ever had objected to this practice. The court noted that, under the circumstances, Sadie was a "particularly poor litigant to pursue this claim."

The court also rejected Sadie's more generalized fraud argument -- that the "irregularities" in dating, notarizing, and witnessing the Challenged Deeds were a "fraud on the system that could have had the possibility of defrauding future purchasers and creditors, as well as the general public." The court noted that no such harm had come to pass and reiterated its finding that Sadie had benefited from the transactions and could not "upset" them for policy reasons. For all of these reasons, the court found there to be insufficient evidence supporting a finding of fraudulent intent and ruled that the Challenged Deeds were not void as forgeries.

The court then turned to Sadie's second argument, that the Challenged Deeds were void for "failure to comply with [certain] specific statutory requirements" in the Real Property Article. Sadie challenged the notarial acknowledgment as defective, under Maryland Code (1974, 2015 Repl. Vol.), section 4-109(b) of the Real Property Article ("RP"). The court ruled that that statute required that any suit filed by Sadie to challenge a defective acknowledgement in one of the Challenged Deeds had to be filed within six months of the deed's being recorded. Sadie's suit was filed long after that deadline and therefore she was not entitled to any relief.

The court rejected Sadie's third argument, that, under RP section 4-101(a), a deed must be signed by the grantor or executed by the grantor's agent, authorized in writing to sign on his or her behalf, and if not, it is void and ineffective to convey title; and the Challenged Deeds did not meet these criteria. The court concluded that oral authorization of a signature is permitted and Sadie had knowledge of and had ratified the Challenged Deeds. It emphasized that there was no "affirmative evidence" that Sadie was unaware of the Challenged Deeds and found that, to the contrary, the evidence supported a reasonable inference that she knew of the transactions. For all of these reasons, the court ruled that the Challenged Deeds were valid and entered judgment in favor of the Estate on Counts I through VII of the second amended complaint (i.e., the counts seeking declarations that each deed was void and to quiet title).

The court then turned to Count VIII, in which Sadie sought to have the court impose a constructive trust. It noted that, to be entitled to this kind of equitable relief, Sadie was required to prove by clear and convincing evidence that she had been defrauded. The court concluded that Sadie failed to meet this burden. For the reasons just discussed, it rejected Sadie's argument that the Challenged Deeds were void or invalid. With respect to Sadie's argument that she had been in a confidential relationship with Peter, the court found that, even if that was true, there was no evidence that Peter was not acting in Sadie's best interest when he executed the Challenged Deeds as part of their "ongoing tax or estate planning." The court reasoned that, given that Sadie received title to four "income producing residential properties," the transactions as a whole were not "inherently unfair to either party." Moreover, Sadie had failed to present evidence with regard to the estate and tax planning sufficient to permit the court to make a finding of overreaching by Peter.

The court surmised that Sadie might well have believed she would be Peter's "main if not sole beneficiary" under his Will and, accordingly, might not have been concerned about "safeguard[ing] her tenancies by the entireties." Thus, she might reasonably have entered into the transactions with the understanding that they would have "no practical effect on her

> financial situation" outside of a possible tax benefit. The court stated that, although Peter's subsequent decision to change his Will to make Darlene the potential beneficiary might appear "grossly unfair and reprehensible," it was not a proper basis on which to impose an equitable remedy with respect to the Challenged Deeds. The court noted that Sadie had chosen not to testify, even on issues "not affected by the bar of the Dead Man Statute," leaving the court with "limited evidence." It concluded that, on the limited record, Sadie had failed to make a showing by clear and convincing evidence that the deeds were the product of fraud. On this basis, the court entered judgment in favor of the Estate on Count VIII.

Deed Case, *supra*, slip op. at 18-25. Sadie appealed the circuit court's ruling to this Court, and we affirmed. The Court of Appeals denied Sadie's petition for certiorari.

While Sadie's petition for certiorari was pending, Sadie filed the complaint giving rise to the instant appeal on March 12, 2016. Sadie alleged that Darlene negligently breached her notarial duty by knowingly making a false notary certification on the Challenged Deeds and allowing them to be recorded in the land records. In her complaint, Sadie alleged that she first discovered the Challenged Deeds on March 13, 2013.

Darlene filed her answer along with a motion to dismiss, or, in the alternative, for summary judgment. Darlene argued that Sadie's claim was barred by *res judicata* and collateral estoppel. On September 27, 2016, the circuit court denied Darlene's first motion to dismiss. At that point, discovery was still ongoing. In its order denying the motion to dismiss, the circuit court cited two affidavits supplied by Sadie. The first was an affidavit submitted by Jeffrey Nusinov, Esq., one of Sadie's attorneys in the Deed Case. The affidavit provided that Sadie's counsel had refused to agree to a mutual waiver of the Dead Man's Statute in the Deed Case due to "reluctance to Darlene Barclay and John Greiber

testifying" and "concerns about potential consequences on appeal." The second affidavit was that of Mr. Catzen, Sadie's digital computer forensic analyst in the Deed Case. Mr. Catzen stated that, based upon his forensic analysis of various computer hard drives and external storage devices, he held the opinion that the Challenged Deeds could not have been executed on October 26, 2009.

Discovery continued after the circuit court denied Darlene's initial motion to dismiss. Darlene sought to determine, through discovery, whether Sadie's tort claim was premised upon any facts different from those previously litigated in the Deed Case. In addition, Darlene sought information from Sadie about her specific business practices with respect to reviewing property tax bills for various properties, including the properties conveyed by the Challenged Deeds. At deposition, Sadie testified that she monitored the tax bills for all of the properties she owned and personally made out all of the checks for the tax bills. Following the execution of the Challenged Deeds, the tax bills for the relevant properties were addressed to Peter individually.

At the close of discovery, Darlene moved for summary judgment. Following a hearing, the circuit court granted Darlene's motion for summary judgment based on three independent grounds. The circuit court observed that "Judge Sweeney's written opinion [in the Deed Case] found that [Sadie] knew Title of the properties changed in 2010, meaning the Statute of Limitations began in 2010, therefore this case is barred by the Statute of Limitations." In a footnote, the circuit court explained the basis for its determination as to the statute of limitations issue further:

> Md. Code Courts and Judicial Proceedings § 5-101 allows plaintiffs three years from the date of accrual to bring a civil action, this particular tort claim for Negligent Notarization was not filed until 2016, and Judge Sweeney found in his opinion that [Sadie] here knew, based on tax documents and other notifications, that the deeds in question changed title solely to [Peter] as far back as 2010, at which time [Sadie] should have known a harm occurred.

The circuit court further determined that "this case having been litigated and decided by the merits is barred by *res judicata*." The court explained its reasoning in a footnote as follows:

> The current case seeks to re-litigate all the facts of the previous litigation, the only differences are the Defendant, and Plaintiff's desire to testify. The Defendant could have been a party to the previous action under the same claim being brought now; additionally the Plaintiff could have testified in the original case but strategically declined.

In addition, the circuit court ruled that "this case having been litigated and decided on the merits is barred by collateral estoppel." Again, the court set forth its reasoning in a footnote, explaining that "the factual issues were previously litigated and decided upon. The facts of the Defendant's alleged negligence were put on the record and no new allegations or factual issues are in dispute after the conclusion of discovery."

This appeal followed.

STANDARD OF REVIEW

We review a trial court's decision to grant or deny a motion for judgment applying the *de novo* standard of review. *DeMuth v. Strong*, 205 Md. App. 521, 547 (2012). "In the trial of a civil action, if, from the evidence adduced that is most favorable to the plaintiff,

a reasonable finder of fact could find the essential elements of the cause of action by a preponderance standard, the issue is for the jury to decide, and a motion for judgment should not be granted." *Id.* (citation omitted). Whether the doctrine of collateral estoppel should be applied is a question of law for the court that we review *de novo*. *Elec. Gen. Corp. v. Labonte*, 229 Md. App. 187, 202, *aff'd*, 454 Md. 113 (2017).

DISCUSSION

The circuit court's factual findings from the Deed Case are critical to our determination of the statute of limitations issue. Accordingly, our holding in that case turns on the interplay between the application of collateral estoppel and the statute of limitations. For reasons we shall explain, we shall hold that Sadie's tort claim is barred by the statute of limitations, and, therefore, the circuit court properly granted Darlene's motion for summary judgment. Accordingly, we need not address the circuit court's alternative ruling that *res judicata* formed a separate basis for the entry of summary judgment.[5]

I. Collateral Estoppel

"The doctrine of collateral estoppel precludes a party from re-litigating a factual issue that was essential to a valid and final judgment against the same party in a prior action." *Shader v. Hampton Imp. Ass'n, Inc.*, 217 Md. App. 581, 605 (2014), *aff'd*, 443 Md. 148 (2015). The doctrine of collateral estoppel is premised upon the principles of

[5] Our decision not to address the *res judicata* issue should not in any way be construed as indicating that we find this issue to lack merit. Indeed, we observe that Darlene sets forth what appears to be a compelling argument as to this issue. We simply need not reach a determination as to whether Sadie's claim in this case is barred by the *res judicata* doctrine.

judicial economy and fairness. *Garrity v. Maryland State Bd. of Plumbing*, 447 Md. 359, 368 (2016). "Treating adjudicated facts as established 'protect[s] litigants from the burden of relitigating an identical issue with the same party or his privy and . . . promot[es] judicial economy by preventing needless litigation.'" *Id.* (quoting *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 (1979)). The Court of Appeals has explained:

> Collateral estoppel does not require that the prior and present proceedings have the same purpose, nor does it mandate that the statutes upon which the proceedings are based have the same goals. The relevant question is whether the fact or issue was actually litigated and decided in a prior proceeding, regardless of the cause of action or claim. If the answer to that question is yes, then, assuming that the remaining factors of the doctrine have been met, collateral estoppel bars re-litigation of the issue.

Cosby v. Dep't. of Human Res., 425 Md. 629, 642 (2012) (citations omitted).

Although collateral estoppel traditionally required mutuality of parties, meaning that an issue that was litigated and determined in one suit had preclusive effect in a second suit when the parties were the same as, or in privity with, those who participated in the first litigation, mutuality is no longer strictly required. *Garrity*, *supra*, 447 Md. at 368-69. "The mutuality requirement has been relaxed, however, so long as the other elements of collateral estoppel are satisfied." *Id.* at 369. "If either the defendant or the plaintiff in the second proceeding was not a party to the first proceeding, we refer to that application of collateral estoppel as 'non-mutual.'" *Id.*

This case involves a claim of defensive non-mutual collateral estoppel. Defensive non-mutual collateral estoppel is implicated when a defendant seeks to prevent a plaintiff

from relitigating an issue the plaintiff has previously litigated unsuccessfully in another action against a different party. *Id.* at 369-70. In this case, Darlene -- who was not a party to the Deed Case -- seeks to prevent Sadie from re-litigating factual findings from the Deed Case.

Four questions must be answered in the affirmative in order for collateral estoppel to be applied:

> 1. Was the issue decided in the prior adjudication identical with the one presented in the action in question?
> 2. Was there a final judgment on the merits?
> 3. Was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication?
> 4. Was the party against whom the plea is asserted given a fair opportunity to be heard on the issue?

Id. at 369. Because they are straightforward, we address briefly the second and third questions. There is a final judgment on the merits in the Deed Case. In addition, Sadie was the plaintiff in the Deed Case and she is the party against whom the collateral estoppel doctrine is being asserted.[6]

We next consider whether the first question is satisfied, namely, whether the issue decided in the Deed Case is identical with the one presented in the breach of notarial duty case. Sadie asserts that this question cannot be answered in the affirmative because the

[6] Indeed, although Sadie does not expressly concede that Questions Two and Three are satisfied, she offers no argument as to these factors.

issue in the Deed Case was title to the properties and enforceability of the Challenged Deeds, while the issue in this case is Darlene's alleged liability for negligence.

Collateral estoppel does not require that the same precise claim be litigated in a prior case. Rather, the "issue of fact or law [that] is essential to the judgment" in a prior case "is conclusive in a subsequent action." *Id.* at 368. In the Deed Case, the circuit court made several express factual findings relevant to Sadie's knowledge of and acquiescence to the conveyance resulting from the Challenged Deeds. As we shall explain, these express factual findings form the basis for a determination that Sadie's subsequent negligence claim is barred by the statute of limitations.

In the Deed Case, the circuit court was presented with Sadie's arguments that (1) the Challenged Deeds were forgeries, and (2) the Challenged Deeds were rendered invalid because the formal requirements of deed execution were not followed. In support of her arguments, Sadie presented evidence including expert testimony from a forensic document examiner regarding whether some of the signatures were signed at different times or with different writing implements and from computer forensic expert Mr. Catzen, who testified about when the Challenged Deeds were prepared. The circuit court rejected Sadie's arguments, specifically determining that Sadie consented to the conveyance of the properties via the Challenged Deeds. Specific findings of the circuit court in the Deed Case include:

- "[Sadie] did not present any testimony or evidence that [Sadie] prior to Peter's death ever objected to the pattern and practice of Peter signing her name to documents or took

any action to protest, challenge or revoke her consent to this practice."

- "After the deeds were filed, [Sadie] received many notices that the properties involved, both the ones Peter received and the ones she received had changed title yet she took no action to challenge or protest the change of ownership for the three years from the time of the filing of the deeds in 2010 until Peter's death in 2013. During this period of time, [Sadie], although in her [nineties], was actively involved in transactions involving the properties. For example, [Sadie] took responsibility for paying the property tax bills and she did so without apparent concern about the titling which was apparent on the fact of the bills. After the deeds were filed and recorded, [Sadie] received the income from the properties that were producing income. As the estate notes she received more than $350,000 in rental income from the four residential properties during the three years in question which she deposited into an account at M&T Bank that while a joint account with Peter was treated by them as hers to control."

- "[T]here was ample, indeed overwhelming, evidence that [Sadie] and her husband frequently signed each other's names to contracts, checks and other documents often without concern for formalities such as written powers of attorney."

- "[T]he evidence shows that **[Sadie] knew about what Peter did and enjoyed the monetary fruits of the transactions** without any objection that is apparent from this record."

- "From the totality of the available evidence, the Court has also concluded that **[Sadie] knew that Peter was signing her name as part of this transaction and did not object to it**. [Sadie] accepted the benefits of the transactions for years and this is strong evidence that she should not now be allowed to repudiate the deeds that brought her the benefits."

- "[T]he evidence indicates **that [Sadie] knew or should have known what was going on, acquiesced in the**

> **transaction and accepted the benefits of it for several years** before deciding to challenge the deeds."

(Footnotes omitted and emphasis supplied.)

The precise circumstances surrounding the execution of the Challenged Deeds were essential to the circuit court's ultimate conclusion in the Deed Case. Furthermore, Sadie's knowledge of and acquiescence to Peter's signing of her name on the Challenged Deeds is relevant to the present case, and, specifically, to Darlene's statute of limitations defense. Because the issues regarding Sadie's knowledge of and acquiescence to Peter's signing of her name on the Challenged Deeds are identical in both the Deed Case and the breach of notarial duty case, we answer the first question in the affirmative.

Last, we consider whether Sadie was given a fair opportunity to be heard on the relevant issues in the Deed Case. Sadie claims that she was not given an opportunity to be heard because she was precluded from testifying by the Dead Man's Statute. We disagree. The record reflects that the Estate was inclined to mutually waive the Dead Man's Statute upon Sadie's agreement, but Sadie declined. Furthermore, Sadie could have testified on matters that were not covered by the Dead Man's Statute.

Sadie's strategic decision not to waive the Dead Man's Statute does not in any way suggest that she was deprived of a fair opportunity to be heard in the Deed Case. Indeed, Sadie had every reason to pursue her claim as zealously as possible in the Deed Case and there is no suggestion that her motivation to prove that she was unaware of the circumstances relating to the signing of the Challenged Deeds was somehow less strong in the Deed Case than in the negligence case. Sadie asserts that this Court may not draw a

negative inference from her decision not to testify in the Deed Case. We draw no such inference, nor did the circuit court in granting Darlene's motion for summary judgment. Rather, we acknowledge that Sadie made a strategic decision not to testify in the Deed Case and that this strategic decision did not deprive her of a full and fair opportunity to be heard.

Because the four requirements for the application of collateral estoppel have been satisfied, we will not permit Sadie to re-litigate the issues relating to her knowledge of and acquiescence to the signing of the Challenged Deeds.[7] We, therefore, shall turn our attention to the statute of limitations issue.

[7] In their briefs, both parties discuss at some length the case of *Shields v. Reader's Digest Ass'n, et al.*, 173 F. Supp. 2d 701 (E.D. Mich. 2001). *Shields* is factually similar to this case in that it involved the application of collateral estoppel in a case alleging negligent notarization. The factual background of the *Shields* case involved a surviving wife's application for survivor's benefits under her recently-deceased husband's retirement plan, which was denied by the husband's former employer. *Id.* at 702. First, the wife sued the husband's former employer, alleging that her claim had been improperly denied. *Id.* The wife failed to prevail in the first case and the court found that a notarized benefits waiver form had been signed by the wife. *Id.*

In a second case, the wife brought a claim against the notary and the notary's employer alleging that the waiver form had been negligently and/or fraudulently notarized. *Id.* The court granted the defendant's motion for summary judgment in the second case, concluding that the authenticity of the waiver had been determined in the first case and precluded the wife's recovery in the second case. *Id.* at 707.

While recognizing that this case is not binding on this Court, it is nonetheless persuasive and consistent with our reasoning. Sadie attempts to distinguish *Shields* because, in *Shields*, the first case involved a specific finding that the waiver was validly notarized, while the circuit court made no such finding in the Deed Case. We recognize the factual distinction Sadie attempts to draw, but, in our view, *Shields* is still relevant. The first case in *Shields* involved a claim against the husband's employer while the second case involved a claim against the notary. Therefore, fact-finding from the first case was deemed to preclude the success of the second case. We similarly hold that the circuit court's fact-finding in the Deed Case is relevant to our determination of the negligence case.

II. Statute of Limitations

Darlene asserts that Sadie is barred from bringing the negligence claim by the statute of limitations. The applicable statute of limitations in this case is three years from the date the claim accrues. Md. Code (1973, 2013 Repl. Vol.), section 5-101 of the Courts and Judicial Proceedings Article ("CJP"). A claim "accrues when (1) it comes into existence, i.e., when there is a negligent act, causation, and damage sufficient to constitute a tort, and (2) the claimant acquires knowledge sufficient to make inquiry, and a reasonable inquiry would have disclosed the existence of the allegedly negligent act and harm." *Edwards v. Demedis*, 118 Md. App. 541, 566 (1997).

Although Maryland courts historically held the accrual date for limitation purposes to be the date that the harm occurred, *Doe v. Archdiocese of Washington*, 114 Md. App. 169, 176-77 (1977) (citing *Hahn v. Claybrook*, 130 Md. 179, 182 (1917)), this rule has been relaxed over time in favor of the discovery rule. *Id.* at 177 (citing *Doe v. Maskell*, 342 Md. 684, 690 (1996)) ("Recognizing the harshness of this rule, however, the Court of Appeals replaced the 'date of wrong' rule with the 'discovery rule' in civil cases . . . ."). The discovery rule provides that a claim "accrues when the claimant in fact knew or reasonably should have known of the wrong." *Poffenberger v. Risser*, 290 Md. 631, 636 (1981) ("[W]e now hold the discovery rule to be applicable generally in all actions and the cause of action accrues when the claimant in fact knew or reasonably should have known of the wrong.").

The circuit court expressly found in the Deed Case that Sadie "knew about what Peter did" in signing the Challenged Deeds "and enjoyed the monetary fruits of the transactions." The circuit court further found that Sadie "knew that Peter was signing her name as part of this transaction and did not object to it." Although the Deed Case court was unable to pinpoint the exact date of the transaction, the circuit court expressly found that the Challenged Deeds were executed at some point between October 26, 2009, and February 5, 2010. The circuit court further found that Sadie received benefits from the conveyed properties in the form of rental income during the years following the execution of the Challenged Deeds and that Sadie, in the years following the transaction, received and subsequently paid property tax bills that showed Peter to be the sole owner of the properties. Although unable to identify a specific date upon which Sadie knew about the signing of the Challenged Deeds, the circuit court in the Deed Case determined that Sadie knew of and acquiesced to the signing of the Challenged Deeds at the time they were signed sometime between October 26, 2009, and February 5, 2010. Accordingly, we hold that the negligent notarization claim accrued no later than February 5, 2010.[8]

Sadie filed the complaint giving rise to the instant appeal on March 12, 2016. Although Sadie alleged in her complaint that she first discovered the Challenged Deeds on

[8] Sadie asserts that her negligence action did not accrue until she was determined not be the owner of the properties or the residuary beneficiary under Peter's will. We are unpersuaded by this argument. The critical harm for accrual purposes is Sadie's loss of the properties conveyed via the Challenged Deeds. That Sadie failed to appreciate the nature of the harm because she expected to inherit the properties after Peter's death is irrelevant for limitations purposes.

March 13, 2013, the circuit court's factual findings in the Deed Case demonstrate that Sadie knew about the execution of the Challenged Deeds several years earlier. Accordingly, Sadie's negligence claim is barred by the statute of limitations.[9]

JUDGMENTS OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[9] Although not relevant to the disposition of the issues before us in this appeal, we observe that Sadie is not left with no assets. We explained in a prior case:

> In the several years before [Peter's] death, [Peter and Sadie] divided a multi-million dollar investment account between themselves. In addition, [Peter] conveyed his interest in millions of dollars of jointly-owned real estate to her during that time. Finally, [Sadie] has preserved her right to an elective share of her late husband's estate under Title 3, Subtitle 2, of the Estates and Trusts Article, though Ms. Barclay disputes the adequacy of those steps. Under § 3-203(b) of the Estates and Trusts Article, she would be entitled to half of his net estate, because they have no surviving children.

Castruccio v. Estate of Peter A. Castruccio, et al., ___ Md. App. ___, No. 2431, September Term 2016 (filed August 31, 2018), *on motion for reconsideration*, ___ Md. App. ___, No. 2431, September Term 2016 (filed November 14, 2018), slip op. at 34 n.11.