UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 709

September Term, 2016

RONDA ROLAND

v.

OLUBUNMI DARAMAJA

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

JJ.

Opinion by Beachley, J.

Filed: July 11, 2017

Following a bench trial, the Circuit Court for Anne Arundel County granted appellee Olubunmi Daramaja's petition to caveat the last will and testament of Gisela Ruark. In this appeal, appellant Ronda Roland presents three questions for our review:

1. Did the circuit court err as a matter of law when it ruled [Ruark] lacked the mental capacity to execute a valid will on April 1, 2013, thereby granting the Petition to Caveat and declaring the 2013 Will invalid?

2. Did the circuit court err as a matter of law when it deprived appellant of her right to make an opening statement after granting that right to counsel for appellee?

3. Did the circuit court abuse its discretion or err as a matter of law when it denied appellant's request for a continuance to retain substitute counsel prior to trial?

We perceive no error and affirm.

FACTS AND PROCEEDINGS

Gisela Ruark died on May 22, 2013. The next day, Ruark's purported will, dated April 1, 2013 (the "2013 Will"), was filed with the Anne Arundel County Register of Wills. The 2013 Will bequeathed to appellant: Ruark's interest in a condominium located in Glen Burnie, Maryland; $20,000; and the residue of her estate. The 2013 Will also bequeathed $80,000 and tangible personal property to appellee.

Ruark had also executed a will in 2010 (the "2010 Will"). The 2010 Will bequeathed Ruark's interest in the Glen Burnie condominium, tangible personal property, and the residue of her estate to appellee. Notably, Ruark did not name appellant as a beneficiary in the 2010 Will. On June 10, 2013, the 2010 Will was filed with the Anne Arundel County Register of Wills.

On March 14, 2014, the Register of Wills issued Letters of Administration naming appellant as the personal representative, and it admitted the 2013 Will for probate. On July 15, 2014, appellee filed a petition to caveat the 2013 Will. Appellant then petitioned to transfer issues to the Circuit Court for Anne Arundel County, which the orphans' court granted on February 24, 2015.

On June 8, 2016, the circuit court held a hearing to consider the issues transmitted by the orphans' court. The orphans' court submitted eight questions to the circuit court, all addressing the validity of the 2013 Will. Relying substantially on the testimony and records of Ruark's primary physician, the circuit court determined that Ruark lacked testamentary capacity to execute the 2013 Will. The court granted appellee's caveat petition, and declared the 2013 Will invalid. As a result, the court deemed Ruark's 2010 Will valid and it appointed appellee as personal representative of Ruark's estate. Appellant timely appealed. Additional facts shall be included as necessary to resolve the issues presented.

DISCUSSION

I. Testamentary Capacity

Appellant contends that the trial court erred in finding that Ruark lacked the mental capacity necessary to execute the 2013 Will. Specifically, appellant asserts that "there was no testimony at trial that supports [the trial judge's] rationale for his ruling." Appellee disagrees, arguing that there was "sufficient evidence to support the circuit court's factual findings" and that "those factual findings were not clearly erroneous." To resolve this

issue, we review the record in search of competent and material evidence to support the trial court's fact-findings.

"'The standard, or test of testamentary capacity is a matter of law' while the question of 'whether the evidence in the case measures up to that standard is . . . a matter of fact[.]'" *Dougherty v. Rubenstein*, 172 Md. App. 269, 283 (2007) (quoting *Johnson v. Johnson*, 105 Md. 81, 85 (1907)). Accordingly, "we must employ two different standards of review." *Green v. McClintock*, 218 Md. App. 336, 367 (2014). "First, we must evaluate whether the record contains sufficient evidence to support the circuit court's factual findings." *Id.* at 367-68. "We review the [trial] court's factfinding under the clearly-erroneous standard, under which the findings will not be overturned unless there is no competent and material evidence to support them." *Id.* at 368. Further, because this action was tried without a jury, we must "give due regard to the opportunity of the trial court to judge the credibility of the witnesses." Md. Rule 8-131(c). We then must determine *de novo* whether those findings of fact support the trial court's legal conclusion. *L.W. Wolfe Enters., Inc. v. Md. Nat'l Golf, L.P.*, 165 Md. App. 339, 344 (2005).

"A will, although facially valid, cannot stand unless the testator was legally competent." *Wall v. Heller*, 61 Md. App. 314, 326 (1985). "The law presumes that every person is sane and has the mental capacity to make a valid will." *Dougherty*, 172 Md. App. at 284. "To rebut that presumption, one challenging a will for lack of testamentary capacity must prove either that the testator was suffering from a permanent insanity before [she]

made [her] will . . . or, although not permanently insane, [she] was of unsound mind when [she] made the will." *Id.* This Court has described a testator of sound mind as follows:

> [A]t the time of making the will, [the testator] had a full understanding of the nature of the business in which [she] was engaged; a recollection of the property which [she] intended to dispose and the persons to whom [she] meant to give it, and the relative claims of the different persons who were or should have been the objects of [her] bounty.

Id. (quoting *Ritter v. Ritter*, 114 Md. App. 99, 105 (1997)). This standard applies in all contexts, including when the testator exhibits signs of senile dementia. *Wall*, 61 Md. App. at 327. Accordingly, "[i]f [the testator's] mental capacity measures up to the test, [she] may make a will, even though [she] presents some symptoms of senile dementia." *Id. See also Webster v. Larmore*, 268 Md. 153, 167 (1973) (citation omitted) (acknowledging that "[t]he tendency to mental infirmity cannot per se prove the infirmity. It must be shown by facts.").

We begin our analysis by reviewing whether the trial court's findings of fact were clearly erroneous. The trial court relied extensively on the testimony of Ruark's physician, Mahesh Ochaney, M.D., who began treating Ruark in 2008. At some point prior to 2013, Dr. Ochaney noted that Ruark exhibited symptoms for mild cognitive impairment. He described mild cognitive impairment as "an initial stage where people just start losing their memory or . . . get forgetful." According to Dr. Ochaney, an individual with mild cognitive impairment has no impairment of her "social or occupational functioning" and thus can function independently. Beginning in 2010, Dr. Ochaney prescribed medications to Ruark

to counter her memory loss. Ruark's mental condition began to noticeably deteriorate, however, by March 2013.

On March 18, 2013, appellant took Ruark to see Dr. Ochaney. Appellant reported that Ruark had been having visual hallucinations, which Dr. Ochaney described as "see[ing] things that don't really exist." Based on the March 18, 2013 office visit, Dr. Ochaney formulated a "clinical impression" that Ruark had "Dementia, Alzheimer's type with hallucinations." Dr. Ochaney described that, when patients with mild cognitive impairment begin to experience hallucinations, it is medically appropriate to consider a diagnosis of "full fledged dementia."

Dr. Ochaney saw Ruark again on April 1, 2013, the date she executed the 2013 Will. He noted that Ruark continued to have visual hallucinations and that she had been "falling frequently."[1] Dr. Ochaney's medical note from the April 1, 2013 visit stated that Ruark was "not a good historian," meaning that Ruark was not able to answer questions appropriately or reliably. In his April 1, 2013 medical note, Dr. Ochaney retained his working diagnosis as "Dementia, Alzheimer's type with hallucinations." He could not, however, state with certainty whether Ruark was able to make important business decisions.

The trial court also heard testimony from William C. Trevillian ("Trevillian"), the attorney who prepared the 2013 Will. Trevillian told the court that when he met with Ruark

[1] Dr. Ochaney also noted that his records included a message from a home health care provider dated March 25, 2013 that Ruark "was hallucinating, seeing people."

to execute the 2013 Will, she appeared lucid and oriented to her surroundings. Trevillian, however, could not recall whether he had asked Ruark any questions concerning her overall mental status, including her ability to understand, on April 1, 2013, when Ruark executed the 2013 Will. The trial court ultimately gave little weight to Trevillian's testimony, finding that he "lacked some credibility because of [his] motive in testifying that the mental capacity of the testator was such that [his] actions were proper and supportive of his legal services."

Instead, the trial court relied on Dr. Ochaney's testimony concerning Ruark's mental status on April 1, 2013. The court explained:

> Now, the date on which the will was executed by the testator showed by a person in the greater capacity than Mr. Trevillian to make a finding in this regard, and that is specifically her doctors, whose medical records demonstrated in significant detail that she suffered from severe limitations to her capacity to perform and to take [sic] knowing and voluntary and clear-headed decisions.

The trial court also found:

> The evidence in that regard demonstrated that she had issues of Alzheimer's of lucidity, of the ability to understand what was going on with regard to her circumstances, including her health, her location and her environment. Moreover, she was having hallucinations of visual and auditory at that time.

Based upon our review of the record, particularly the testimony discussed *supra*, we conclude that these findings were amply supported by the record and therefore were not clearly erroneous. It was within the trial court's prerogative to evaluate the witnesses and assign the appropriate weight to their testimony. *Ryan v. Thurston*, 276 Md. 390, 392 (1975); Md. Rule 8-131(c).

Finally, we turn to the trial court's legal conclusion. As we explained above, the standard for testamentary capacity requires the testator to: understand the nature of the business in which she was engaged, to recognize the property at issue, to understand whom she intended to give that property to, and to know the relative claims of other persons who were or should have been the objects of her property. *Dougherty*, 172 Md. App. at 284. Here, the trial court, while acknowledging the presumption of mental capacity, nevertheless found that Ruark "was not aware of or did not know the details of" the 2013 Will at the time that she executed it. These findings sufficiently rebutted the presumption that "every person is sane and has the capacity to make a valid will." *Id*. Accordingly, we see no error in the trial court granting appellee's petition to caveat the 2013 Will.

II. Opening Statement

Appellant next contends that the trial court erred as a matter of law by depriving her of the right to make an opening statement after granting that right to counsel for appellee. We disagree.

At trial, following appellee's counsel's opening statement, the following colloquy occurred:

> [The Court]: What do you believe that you will demonstrate in this case, ma'am? Please stand up.
> [Appellant]: I'm just here just to honor Ms. Ruark's last will. She --
> [The Court]: Well, you can't tell me --
> [Appellant]: Oh, I'm sorry.
> [The Court]: -- what your evidence is going to be. You just want the more recent document enforced, right?
> [Appellant]: Yes.
> [The Court]: Okay. Anything else?
> [Appellant]: That's --

> [Court]: No, ma'am. You're trying to -- Sir, have a seat, please. You're not -- unless you're a member of the Maryland bar. Sir?
> [Mr. Harrell][2]: Yes.
> [Court]: Are you a member of the Maryland Bar?
> [Mr. Harrell]: No, I am not.
> [Court]: You're not an attorney? Okay. Thank you. Okay, You can't get legal advice from a non-lawyer --
> [Appellant]: Okay.
> [Court]: -- in the middle of a trial. Okay. *Anything else, ma'am?*
> [Appellant] *No, sir.*
> [Court]: All right. Great. Please call the first witness then.

(Emphasis added).

Appellant contends that she was "denied her right to make an opening statement when the [trial judge] immediately cut her off, erroneously telling Appellant that she could not give the fact-finder the evidence she planned to present." We note that at the end of the colloquy quoted above, the trial court asked appellant, "Anything else, ma'am?" to which appellant replied, "No, sir." Given this exchange, we fail to see how the trial court deprived appellant of the right to make an opening statement.[3]

In any event, we cannot discern any prejudice to appellant. She was allowed to present evidence, call and cross-examine witnesses, and present a closing argument. We therefore perceive no error.

[2] This individual was apparently attempting to assist appellant.

[3] We further note that appellee's opening statement was brief, consisting of a mere three pages in the transcript. We are convinced that the trial court understood the issues to be tried.

III. Request for Continuance

Finally, appellant argues that the trial court erred in denying her pre-trial request for a continuance to obtain substitute counsel. We disagree.

On February 26, 2016, appellant's trial counsel notified her that he would be filing a motion to withdraw from the case due to a conflict of interest. Notably, the court had already assigned trial for June 8-9, 2016. On April 26, 2016, the trial court granted counsel's motion to withdraw and strike appearance. That same day, the circuit court sent appellant a notice to employ new counsel pursuant to Maryland Rule 2-132(c). The notice alerted appellant that "unless new counsel enters his/her appearance in this case within fifteen (15) days after service upon you of this notice, your lack of counsel shall not be grounds for postponing any further proceedings concerning the case." On May 17, 2016, appellant filed a motion for postponement, stating that her counsel had withdrawn and that she "need[ed] time to mount a defense." On June 2, 2016, the trial court denied appellant's motion without a hearing.

"[W]hether to grant a continuance is in the sound discretion of the trial court, and unless [the court] acts arbitrarily in the exercise of that discretion, his [or her] action will not be reviewed on appeal." *Das v. Das*, 133 Md. App. 1, 31 (2000) (internal quotation marks omitted) (quoting *Thanos v. Mitchell*, 220 Md. 389, 392 (1959)). We have described an abuse of discretion as "where no reasonable person would take the view adopted by the court," and when the court acts "without reference to any guiding rules or principles." *North v. North*, 102 Md. App. 1, 13 (1994). Accordingly, reversal of a trial court's decision

to deny a continuance "occurs only in exceptional instances where there was prejudicial error." *Das*, 133 Md. App. at 31 (citation and quotation marks omitted).

Serio v. Baystate Properties, LLC, 209 Md. App. 545 (2013), is instructive on this point. In that case, Serio, the defendant, was informed on May 12, 2009, that his trial counsel was withdrawing from his case scheduled for trial on July 22, 2009. *Id.* at 557. Serio did not obtain new counsel. On the day of trial, the circuit court granted counsel's motion to withdraw and then denied Serio's request for a continuance. In denying Serio's request for a continuance, the circuit court found that Serio's failure to secure replacement counsel during the two months he had been on notice of the motion to withdraw was unreasonable. *Id.* On appeal, this Court held that "[u]nder these circumstances, we are not persuaded that the circuit court's . . . denial of Serio's request for a continuance constituted an abuse of discretion." *Id.* at 558.

Here, as in *Serio*, appellant had sufficient notice to secure new counsel. Indeed, the appellant here received the Rule 2-132(c) notice to retain new counsel nearly four months prior to trial, giving her substantially more time than Serio to retain counsel. We see no abuse of discretion in the trial court's denial of appellant's motion for continuance.

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