

Circuit Court for Montgomery County  
Case No. FL 139756

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 2166

September Term, 2018

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KELLY PIEDRAHITA

v.

WILLIAM PIEDRAHITA

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Berger,  
Reed,  
Wilner, Alan M.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Reed, J.

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Filed: May 17, 2019

\*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.

Kelly Piedrahita (“Appellant”) and William Piedrahita (“Appellee”) allegedly signed a Separation and Property Settlement Agreement (“the Agreement”) on September 21, 2016. Appellant subsequently filed a Complaint for Limited Divorce to Establish Child Support and Custody by Consent and Related Relief on October 7, 2016, attaching the Agreement. After the expiration of the one-year separation period required by Maryland law, Appellant filed a Supplemental Complaint for Absolute Divorce on December 12, 2017.

At a hearing on February 13, 2018, Appellee claimed that he did not sign the Agreement. Appellee then filed a Motion to Modify Child Support. Appellant responded by filing a Motion to Enforce the Agreement, which resulted in Appellee filing a Motion to Set Aside the Agreement. In his Motion to Set Aside, Appellee argued that the Agreement was not authentic, was unconscionable, and was invalid due to fraud. Appellee also contended that he and Appellant were in a confidential relationship at the time of the Agreement, and that the Agreement was never ratified.

A single hearing was held on July 12, 2018 in the Circuit Court for Montgomery County to determine the merits of Appellant’s Motion to Enforce and Appellee’s Motion to Set Aside after both cases were consolidated. The trial court ultimately found that a confidential relationship existed between the two parties at the time of the Agreement, denying Appellant’s Motion to Enforce and granting Appellee’s Motion to Set Aside. It is from the trial court’s decision that Appellant brings this timely appeal.

In bringing her appeal, Appellant presents three questions for our review, which we have rephrased:<sup>1</sup>

- I. Did the trial court err in rescinding the Agreement?
- II. Did the trial court err in finding that a confidential relationship existed between the parties on September 21, 2016?
- III. Did the court err in finding that the Agreement was unfair?

For the following reasons, we vacate the judgment of the Circuit Court for Montgomery County and remand for proceedings consistent with this opinion.

#### **FACTUAL AND PROCEDURAL BACKGROUND**

*i. Background*

Kelly Piedrahita (“Appellant”) and William Piedrahita (“Appellee”) were married on December 24, 1991. The parties shared two minor children at the time of the hearing: Katelyn (17) and Ava (13).

Appellee was fifty-seven (57) years old at the date of the hearing. Appellee attended high school but dropped out at the age of seventeen (17) after completing two years of high school. Appellee then joined the Marine Corps, serving four years as a weapons repairman

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<sup>1</sup> Appellant presents the following questions:

1. Did the Court Err in Rescinding the September 21<sup>st</sup> Agreement Where Appellee Ratified the September 21<sup>st</sup> Agreement by His Acceptance of Benefits of the Agreement and Failure to Offer to Restore the Parties to their Original Position?
2. Did the Court Err in Finding that a Confidential Relationship Existed Between the Parties on September 21, 2016?
3. Did the Court Err in Finding that the Parties’ Agreement Was Unfair?

until he was honorably discharged. While serving our country, Appellee obtained his GED. After his four years of service, Appellee moved to the District of Columbia to join the D.C. Fire Department, where he served as a Firefighter EMT for twenty-five (25) years. Appellee retired from the D.C. Fire Department in late 2016 or early 2017 and began receiving a monthly pension of approximately \$4,000 per month gross. Prior to retiring, Appellee earned a salary of \$83,197. Appellee has not sought work since retiring, although he admitted that he does not suffer from a disability that prevents him from working.

Appellant was forty-eight (48) years old at the date of the hearing. At the time of her marriage with Appellee, Appellant was unemployed. Shortly after their wedding, Appellee began working and going to school to study pharmacology. Appellant ultimately completed her schooling and received a doctorate degree in pharmacology. For the past several years, Appellant has worked as a pharmacist at Weis market. During those years, Appellant worked as a staff pharmacist, was promoted to pharmacy manager, and then demoted to staff pharmacist. Appellant alleges that she requested the demotion in order to be closer to her home due to childcare reasons. At the time of the hearing, Appellant earned approximately \$120,000 annually from her staff pharmacist position at Weis.

Appellant had a 401(k) account at Weis, which had a balance of \$184,822.25 as of September 30, 2016. Appellant also had a Vanguard IRA, which was worth \$95,464 in September 2016. Appellant stated she was unaware of her entitlement to any pension plan and testified that she had approximately \$15,000 in her bank accounts at the time of the hearing.

During their marriage, Appellant and Appellee bought a home in Laytonsville, Maryland for \$880,000 (“Marital Home”). The parties used the sales proceeds from the sale of a prior home to pay a portion of the purchase price and borrowed an additional \$300,000 to pay the remainder of the purchase price.

Both parties agreed that Appellant handled the parties’ finances during the marriage. In the earlier part of the marriage, both parties deposited their paychecks into a joint account, which Appellant used to pay the family’s bills.

Appellee testified that, during this time, he had an allowance and a credit card in his name, for which Appellant paid the bill. Appellant opened Vanguard retirement accounts for both parties in 2000. Each year, Appellant made contribution to both accounts in the same amount, and as of September 2016, the parties had similar account balances. Both parties seemingly forgot about the Vanguard retirement accounts until they began negotiating the terms of their separation.

Appellant also created a revocable living trust for herself and Appellee. Appellant, however, was not sure how she created it, did not remember whether she signed any documents, was not sure whether she had to sign anything, and had forgotten that she created a trust at all.

*ii. Separation*

Appellee testified that in November 2012, he believed that Appellant had an affair with their daughter’s gymnastics coach. As a result, the parties moved into separate bedrooms. This began a four-year period in which the parties entered into numerous agreements regarding their separation.

*a. May 29<sup>th</sup> Agreement*

On May 29, 2013, the parties entered into an agreement stating that each party would establish separate bank accounts and equally divide the household expenses, and that each party was responsible for his or her own credit card debt. The parties' signatures were notarized at M&T Bank.

Appellee stated that the May 29<sup>th</sup> Agreement was the result of his discovery that Appellant was continuing to see her daughter's gymnastics coach despite her promise not to do so. Appellant testified that the Agreement was motivated by Appellee's desire to handle his own money and to receive one-half of the parties' HSBC savings account. Following the May 29<sup>th</sup> Agreement, the parties divided the HSBC account, allotting \$20,000 to each of the parties, and allocating the remaining \$35,000 to be split between 529 accounts for their children, Kaitlyn and Ava.

After the May 29<sup>th</sup> Agreement, the parties opened their own bank accounts and deposited their paychecks into their individual account. The parties continued to contribute a portion of their funds to their joint account to pay family expenses, which continued to be managed by Appellant. Appellee managed his own bank account; there is no evidence that Appellee had any difficulty managing his own account despite his own admission that he was bad with math.

Appellant provided Appellee with the monthly portion he was expected to provide to the joint account for family expenses. The parties dispute whether Appellant gave Appellee a detailed breakdown of those expenses, but there is no evidence that Appellee ever sought a detailed breakdown from Appellant. Once Appellee retired, the parties agreed

that Appellee would pay one-third of the family's expenses, while Appellant would bear responsibility for the remaining two-thirds.

Appellee decided to leave the marriage in November 2015, when he allegedly came back to the Marital Home to find Appellant fighting with her alleged paramour, the gymnastics coach. The parties ultimately began discussing separation in 2016.

*b. September 8<sup>th</sup> Agreement*

As a result of the parties' pending separation, Appellee expressed the desire to return to his native county, Colombia. Concerned she could not afford the Marital Home on her own, Appellant negotiated a second agreement with Appellee on September 8, 2016. The agreement had four terms: (1) Appellant would buy out Appellee's interest in the Marital Home for \$150,000 and refinance the mortgage on the Marital Home, thus relieving Appellee of any liability; (2) Appellee would continue to provide medical insurance for their minor children, Kaitlyn and Ava; (3) Appellee would receive \$100,000 in a Vanguard Roth IRA account; and (4) Appellee would pay Appellant \$1,600 per month for child support and children's activities.

Both parties agreed to the Marital Home's purchase price based on Appellant's ability to pay the mortgage. The child support payments were based on the children's expenses and cost of their activities. Both the Marital Home's purchase price and the child support payments were based off figures determined by Appellant. At no time did Appellee request any financial documents from Appellant.

Though Appellee signed the September 8<sup>th</sup> agreement, the parties later agreed that in order to effectuate the buy-out and refinancing of the Marital Home, both parties needed

to sign another separation agreement. As such, the two parties had preliminary discussions regarding the third agreement that was signed on September 21<sup>st</sup>.

*c. September 21<sup>st</sup> Agreement (The Agreement)*

Appellant took the terms of the September 8, 2016 Agreement to her attorney, who incorporated them into a comprehensive settlement agreement resolving all issues arising out of the marriage. Appellant first received the comprehensive agreement on September 21, 2016 (hereinafter, “the Agreement”). Appellant signed the Agreement in her attorney’s office that day.

Appellant requested Appellee meet her at M&T Bank to have his signature notarized as it had been for the May 29<sup>th</sup> Agreement. Appellant brought five (5) originals of the Agreement with her to M&T Bank, where the parties had to wait approximately fifteen minutes for a notary. Appellant testified that Appellee flipped through the pages of all five originals, initialing at the bottom of each page and signing the last page of the Agreement. Appellee, on the other hand, testified that he has no recollection of being at M&T Bank or signing the Agreement, despite the notary testifying in court and producing his written report that indicated Appellee had been at M&T Bank on September 21, 2016. Furthermore, the notary testified that he recognized both Appellant and Appellee as the parties who came to the bank to have Appellee’s signature notarized.

Appellant ultimately sent two (2) of the original documents to her attorney, left one with Appellee, and kept the remaining two (2).

*iii. Performance of the Agreement*

On October 20, 2016, Appellant and Appellee each visited the title attorney’s office

to sign legal documents relating to the buy-out of the Marital Home. After Appellee signed a deed transferring his interest in the home to Appellant, he received a check for \$146,059. Shortly thereafter, Appellee moved to Columbia. Between Appellee's move to Columbia in late 2016/early 2017 and the date of the hearing in this matter, Appellee spent all of the \$146,059 he received for his interest in the Marital Home and the \$100,000 he received from liquidating his Vanguard account.

As further performance under the Agreement, the parties entered into the Consent Earnings Withholding Order ("EWO") to provide for the withholding of child support payments from Appellee's pension payments. During trial, Appellee claimed that he did not approve the automatic child support payments being taken out of his pension payments, and that he never received an email from Appellant's counsel regarding the Amended EWO. However, Appellee admitted receiving a June 22, 2017 letter discussing the Amended EWO and informing Appellee that he should seek legal representation if he had any problems with the Amended EWO. Appellee took no legal action until February 2018.

In December 2017, Appellant attempted to file a Supplement Complaint for Uncontested Divorce. At this time, Appellee responded by stating in an email that the divorce would in fact be contested if Appellant refused to pay Appellee \$50,000. At a February 2018 hearing regarding Appellant's Supplemental Complaint, Appellee claimed for the first time that he never signed the September 21<sup>st</sup> Agreement.

*iv. Procedural History*

Two months later, on April 13, 2018, Appellee filed a Motion to Set Aside the Agreement, claiming that the parties had a confidential relationship and that the Agreement

is invalid due to unfairness. Appellant filed a Motion to Enforce the Agreement on April 5, 2018, arguing that Appellee waived any defenses by implicitly ratifying the Agreement. Furthermore, Appellant argued that a confidential relationship did not exist, and if one did exist, the Agreement was still fair.

After a lengthy hearing, the trial court granted Appellee's Motion to Set Aside and denied Appellant's Motion to Enforce. In so doing, the trial court found that while there was no evidence of fraud or unconscionability regarding the Agreement, a confidential relationship between the parties existed. Specifically, the court discussed the educational disparity between Appellant and Appellee, the financial requirements, or lack thereof, between both parties' jobs, and the financial responsibilities of the parties during the course of the marriage. The court placed emphasis on Appellant's actions in setting up a Vanguard retirement account for Appellee without his knowledge, illustrating the fact that she had his best interests in mind. Furthermore, the court referenced Appellee's actions to show that he subjectively trusted Appellant, citing to Appellee's failure to ever ask for any financial information from Appellant even after they separated. Finally, the trial court reached its conclusion:

So all of the evidence except for maybe [Appellee] having his own bank account -- we don't know that he really did anything with it except write checks to [Appellant] -- all of the evidence shows that in their relationship, not only was [Appellant] the money manager, the payer of the bills, the investor, the planner, everything -- but he was not substantially involved in that. And so he in fact, if she said sign it, he signed it. And he benefitted from it.

And so once again, there is that notion of somehow being dependent upon her to manage the ship, the financial ship. So the Court finds that there was in fact a confidential relationship between the parties.

After concluding the existence of a confidential relationship, the trial court discussed the fairness of the Agreement. Relying on Appellant’s failure to disclose her retirement accounts with Weis Markets, which totaled more than \$184,000.00, the trial court found that there had not been full and frank disclosure regarding the financial assets between the two parties. As such, the court held that the Agreement was not fair and should therefore be set aside. Thus, the court granted Appellee’s Motion to Set Aside and denied Appellant’s Motion to Enforce the Agreement.

This appeal followed.

#### STANDARD OF REVIEW

When an action has been tried without a jury, this Court will review the case on both the law and the evidence. *See* Maryland Rule 8–131(c). It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses. *Id.* “‘If any competent material evidence exists in support of the trial court’s factual findings, those findings cannot be held to be clearly erroneous.’” *Figgins v. Cochrane*, 403 Md. 392, 409 (2008) (quoting *Schade v. Maryland State Bd. of Elections*, 401 Md. 1, 33 (2007)).

When reviewing mixed questions of law and fact, “‘we will affirm the trial court’s judgment when we cannot say that its evidentiary findings were clearly erroneous, and we find no error in that court’s application of the law.’” *Conrad v. Gamble*, 183 Md. App. 539, 551 (2008) (quoting *Storetrax.com, Inc. v. Gurland*, 168 Md. App. 50, 81 (2006), *aff’d*, 397 Md. 37 (2007) (citations omitted)). On the other hand, regarding pure

questions of law, “the trial court “enjoys no deferential appellate review,” and the appellate court “must apply the law as it discerns it to be.”” *Id.* (quoting *Storetrax.com, Inc.*, 168 Md. App. at 81 (citations omitted)). Finally, “an appellate court may affirm a trial court’s decision on any ground adequately shown by the record even though the ground was not relied upon by the trial court or the parties.” *YIVO Inst. for Jewish Research v. Zaleski*, 386 Md. 654, 663 (2005) (citing *Offutt v. Montgomery Co. Bd. of Edu.*, 285 Md. 557, 563 n. 3 (1979) (citations omitted)).

## DISCUSSION

### *i. Rescission & Ratification*

#### **A. Parties’ Contentions**

Appellant contends that Appellee cannot have the Agreement set aside because he ratified it by accepting its benefits and failed to offer to return the parties to their original position. Appellant argues that Maryland case law holds that the retention of benefits from an agreement constitutes ratification of an agreement, thereby preventing later rescission. Appellant further asserts that ratification can also occur by an individual’s failure to act until the opposing party has acted in reliance of their contract and changed their position in such a way that they cannot be restored to their former state. Appellant cites to Appellee’s acceptance of nearly \$250,000 for his interest in the Marital Home and Vanguard account, as well as Appellee’s deed transfer of his interest in the Marital Home, to support her contention that Appellee ratified the Agreement.

Appellee argues that when an agreement is voidable for fraud, restitution of the consideration that passed under the agreement may be made by set-off and need not be

made by an offer for restoration. Appellee also asserts that ratification of an agreement through acceptance of the benefits cannot occur until he/she is aware of the ground for rescission of the agreement. Here, Appellee contends that he was not aware he signed the Agreement until February 2018, nearly a year a half after its execution. As such, Appellee raised proper grounds for rescission of the Agreement on April 13, 2018.

Furthermore, Appellee states that he did not accept any new benefits or payments from Appellant after learning of the Agreement in February 2018. Additionally, because Appellee squandered all \$250,000 prior to February 2018, Appellee asserts that he had no ability to restore the parties to their original positions once learning of grounds for rescission of the Agreement. However, because the Agreement was “grossly inequitable,” restitution of the benefits need not be made and can simply be made by a set-off of what Appellant is fairly owed from the separation of the parties.

### **B. Analysis**

Separation agreements are contracts between parties and as such are subject to the same general rules governing construction as are other contracts. *See Saggese v. Saggese*, 15 Md. App. 378 (1972). As such, separation and settlement agreements not disclosing on their face any injustice or inequity are presumptively valid and the burden to prove that their execution was caused by fraud is upon the party making the allegation. *Eaton v. Eaton*, 34 Md. App. 157, 162 (1976) (citing *Jackson v. Jackson*, 14 Md. App. 263, 269); *see also Cronin v. Hebditch*, 195 Md. 607, 618 (1950).

When a spouse discovers the true facts with respect to a separation agreement and such facts indicate fraud, it is incumbent on the spouse to promptly assert his/her rights.

*Faller v. Faller*, 247 Md. 631, 637 (1967); *see also Taylor v. Whitehurst*, 151 Md. 621 (1926) (“An injured party, wishing to avail themselves of the fraud to avoid a contract, must, upon the delivery of such fraud, exercise their right of rescission without delay.”). Even if an agreement had been executed by a party under circumstances amounting to duress, undue influence, or fraud, the contract would be, at best, voidable and not void. *See Saggese*, 15 Md. App. 388 (citing *Nusbaum v. Nusbaum*, 280 App. Div. 315, 113 N.Y.S.2d 440, 444 (1952)). And in instances involving a fraudulently induced separation agreement, the deception may be waived. *Faller*, 247 Md. at 637.

Such waiver can occur by ratification of the complaining party. However, express ratification is not necessary. “Any act of recognition of the contract . . . has the effect of an election to affirm. Acts of dominion exercised over the property received under the contract ‘after knowledge of the ground of rescission’ amount to a ratification.” *Faller v. Faller*, 247 Md. 631, 637 (1967) (quoting *Hughes v. Leonard*, 181 P. 200, 203 (1919)).

With that said, this Court “[o]rdinarily ... will not decide any ... issue unless it plainly appears by the record to have been raised in or decided by the trial court....” *See* Maryland Rule 8–131(a). Use of the word “ordinarily” connotes that the appellate court has discretion to consider issues that were not preserved. This discretion is exercisable by each appellate court, independently. *Squire v. State*, 280 Md. 132, 134–35 (1977). However, “the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.” Md. Rule 8-131(a).

In this case, while Appellant noted during the hearing that Appellee failed to raise any objection to the Agreement prior to the February 2018 hearing, there exists no

indication that Appellant was contending that Appellee had ratified the Agreement through waiver. Furthermore, in its final order, the trial court only answered whether there was non-execution of the Agreement, whether there was any fraud or unconscionability in the procurement of the agreement, whether a confidential relationship existed, and whether the Agreement was fair in light of a confidential relationship existing. Because Appellant failed to adequately raise the issue of ratification by waiver during the hearing, and because the trial court did not address such an argument in its order, this Court finds that it is inappropriate for this Court to properly review this issue.

*ii. Confidential Relationship*

**A. Parties' Contentions**

Appellant asserts that the trial court was clearly erroneous in finding that the parties shared a confidential relationship on the September 21, 2016. Appellant first argues that the trial court applied the wrong standard by relying on the preponderance of the evidence. Appellant then contends that the *Bell* factors, discussed supra, indicate that Appellee was not dependent on Appellee or justified in assuming that Appellant would act in a manner consistent with his welfare. In so doing, Appellant emphasizes that Appellee set up his own bank account after the parties separated and that the education and sophistication disparity between the parties was not as great as required by Maryland case law. Appellant also argues that there is no evidence that she exploited any physical or emotional weaknesses of Appellee in procuring the agreement. Finally, Appellant argues that the parties' separation, centered on Appellant's alleged affair, and the parties' actions following the separation cannot support the trial court's finding that a confidential relationship existed at

the time the Agreement was reached.

Appellee contends that the trial court did not err in setting aside the Agreement. Appellee argues that even after Appellant's affair, Appellant still acted in a manner consistent with Appellee's welfare; as such, Appellee continued to trust Appellant in regards to financial decisions. Furthermore, Appellee asserts that the trial court properly weighed the *Bell* factors, noting that an educational disparity existed between the parties, as well as a sophistication disparity illustrated by Appellee's lack of financial prowess. Appellee also contends that, based on his lack of education and sophistication, Appellee's failure to monitor the family's finances cannot be relied upon to argue a confidential relationship did not exist.

### **.B. Analysis**

It is well-established that spouses may enter into a valid and enforceable separation agreement resolving disputes over marital property and alimony. *See* Md. Code, FL § 8–101. A separation agreement is “subject to interpretation in light of the settled and oft-repeated principles of objective construction.” *Goldberg v. Goldberg*, 290 Md. 204, 211 (1981). A separation agreement may be set aside upon a finding that the terms of the agreement are so unconscionable as to shock the conscience of the court. *Williams v. Williams*, 306 Md. 332, 340–41 (1986). A separation agreement also may be set aside upon a finding that it was procured by fraud. *See Cannon v. Cannon*, 156 Md.App. 387, 421 (2004), *aff'd*, 384 Md. 537 (2005). If the party seeking to set aside the agreement was the dependent party in a confidential relationship, the burden shifts to the dominant party to

show that the agreement was not procured by fraud. *See Lasater v. Guttman*, 194 Md. App. 431, 458 (2010).

“Ordinarily the relationship of husband and wife is a confidential one. Of course, in any given case it is a question of fact whether the marital relationship is such as to give the husband dominance over his wife or to put him in a position where words of persuasion have undue weight.” *Gurley v. Gurley*, 245 Md. 393 (1967) (quoting *Manos v. Papchrist*, 199 Md. 257, 262 (1952)). In order to establish a confidential relationship, the wife must prove that she justifiably assumed that her husband would only act in a manner consistent with the wife's welfare. However, Maryland law does not permit a presumption of such a confidential relationship between spouses. Absent proof of the relationship, a separation agreement is presumed to be valid. *See Cronin v. Hebditch*, 195 Md. 607 (1950).

A confidential relationship between a husband and wife entering a post-marital agreement made with the intent of limiting the marital rights provided by statute is a question of fact that may be proven by the party seeking to attack the agreement in order to shift the burden of proof to the party seeking to enforce the agreement. West's Ann. Md. Code, Family Law, § 8–101; *see also Cannon v. Cannon*, 384 Md. 537 (2005). Factors to be considered in determining whether a confidential relationship exists are the age, mental condition, education, business experience, state of health, and degree of dependence of the spouse in question. *Bell v. Bell*, 38 Md. App. 10, 13-14 (1977).

Here, the trial court placed emphasis on the educational background of Appellee in comparison to Appellant, finding that Appellant exerted intellectual dominance over Appellee, who worked a job that required no financial knowledge. The trial court also

valued the nearly 25 years the Appellant had handled the couple's finances, which included her establishing a Vanguard account for Appellee without his knowledge, illustrating Appellant's past history of taking into account Appellee's best interests. As such, the trial court ruled that the evidence showed that Appellee subjectively believed that Appellant would look after his best interests, and such a belief was not in error. Though the burden was on Appellee to prove a confidential relationship existed, the trial court weighed numerous factors, including those detailed in *Bell*, to determine that a confidential relationship existed at the time of the Agreement.

However, the trial court erred in the standard it applied to those factors. The Court of Appeals discussed the proper standard in *Wimmer v. Wimmer*:

A confidential relationship will not be presumed from a marital relationship, but must be established by convincing evidence. Once a confidential relationship is shown, a presumption arises that confidence was placed in the dominant party and that the transaction complained of resulted from fraud or undue influence and superiority or abuse of the confidential relationship by which the dominant party profited.

287 Md. 663, 668-69 (1980) (internal citations omitted).

As such, the court was required analyze the *Bell* factors through a “clear and convincing” lens to determine whether a confidential relationship existed at the time of the Agreement. To be clear and convincing, evidence should be “clear” in the sense that it is certain, plain to the understanding, and unambiguous and “convincing” in the sense that it is so reasonable and persuasive as to cause you to believe it. *See Weisman v. Connors*, 76 Md. App. 488, 505 (1988).

Here, in ruling that a confidential relationship existed based on the *Bell* factors, the trial court stated:

Now, in this particular case, there is much evidence -- ample evidence in the Court's view to prove *by a preponderance of the evidence* that there was in fact a confidential relationship. (emphasis added).

As such, this Court finds that the trial court erred in applying a preponderance standard when it should have applied the more stringent “clear and convincing” standard. With that said, this Court believes that enough evidence exists in the record to allow the trial court to simply review the evidence and apply the correct standard without engaging in additional fact-finding. Accordingly, we vacate the court's judgment and remand for the trial court to review the record and properly determine if a confidential relationship exists under the “clear and convincing” standard.

### *iii. Fairness*

#### **A. Parties' Contentions**

Appellant argues that even if the parties were in a confidential relationship on September 21, 2016, the Agreement was fair. Appellant contends that the \$250,000 Appellee received for his interest in the Marital Home and his Vanguard account, along with the release from any liability associated with the Marital Home's mortgage, was sufficient. As such, Appellant does not believe that Appellee can argue the Agreement's fairness only after he spent all of the money he received from the Agreement.

Appellee contends that the trial court was correct in finding the Agreement unfair, as Appellant failed to give Appellee adequate time to review the Agreement and failed to fully disclose her financial assets prior to reaching the Agreement. Appellee emphasizes

the rushed manner in which Appellant presented him with the Agreement, as well as the lack of disclosure regarding Appellant's retirement accounts with her employer, Weis Markets.

### **B. Analysis**

In situations where a confidential relationship does exist, the burden is then placed on the party seeking to validate the agreement to show that the agreement was fair to the subservient party in all respects. *See Bell*, 38 Md. App. at 10; *Hale*, 74 Md. App. at 555. The correct standard for determining the validity of a separation agreement is whether there is an “overreaching, that is, whether in the atmosphere and environment of the confidential relationship there was unfairness or inequity in the result of the agreement.” *Hartz*, 248 Md. at 57. One way of justify the validity of an agreement is to show lack of fraud and unconscionability, and by showing that there was a “full, frank, and truthful disclosure of his or her assets and their worth” at the time the agreement is reached. *Cannon v. Cannon*, 384 Md. 537, 573 (2005).

While the trial court found that the agreement was not induced by fraud and there was no unconscionability in the procurement of the agreement, the trial court found that the agreement was unfair. Here, the court ruled that while a number of things were agreed to upon the parties, including the buy-out of the Marital Home and child support, there were “significant” things that were not agreed upon by the parties in reaching the Agreement. Namely, the trial court noted the lack of any discussion regarding Appellant's retirement accounts, which contained around \$184,000.

Relying on both parties' testimony, the court placed emphasis on the fact that Appellee never asked for any financial information nor was offered any financial information by Appellant before signing the Agreement. While there is no evidence that Appellant shielded such information from Appellee, the existence of a confidential relationship requires a full and frank disclosure of all relevant information for a separation agreement to be deemed fair. As certain "significant" information was not disclosed to Appellee, the trial court did not err in holding that the Agreement was unfair. As such, if the trial court finds that a confidential relationship exists after applying the correct standard, the court's ruling that the Agreement is unfair would be proper.

Accordingly, the judgment of the Circuit Court for Montgomery County is vacated. The case is remanded to the trial court for the sole purpose of applying the correct standard of review in order to determine whether a confidential relationship existed between the parties at the time the Agreement was procured. This Court finds that adequate evidence exists in the record for the trial court to make such a determination. As such, no further fact-finding should be engaged in by the trial court, and the court should not address any arguments relating to Appellant's contention that Appellee ratified the Agreement by accepting its benefits.

**JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED; CASE REMANDED TO CIRCUIT COURT FOR FURTHER PROCEEDINGS IN ACCORDANCE WITH THIS OPINION; COSTS TO BE SPLIT BY THE PARTIES.**