Circuit Court for Baltimore County
Case No. 03-T-17-000041 and 03-C-17-008716

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2660

September Term, 2018

JOHN STRALKA, et al.

v.

STEPHEN STRALKA

Meredith,
Leahy,
Beachley,

JJ.

Opinion by Meredith, J.

Filed: October 28, 2019

This appeal is from an order of the Circuit Court for Baltimore County that appointed Stephen Stralka as a guardian of the property and John Stralka as a guardian of the person for their mother, Wanda Marie Stralka ("mother" or "Ms. Stralka"). The circuit court did not hold an evidentiary hearing to adjudicate the allegations contained in the guardianship petition as required by Maryland Code (2001, 2019 Repl. Vol.), Estates and Trusts Article ("ET"), § 13-705 and Maryland Rule 10-205 before it appointed the guardians. The circuit court's order was based upon a purported settlement agreement negotiated among Ms. Stralka's five adult children relative to their mother's guardians and what her estate plan should be.[1] That settlement agreement was documented in a written memorandum of terms the Stralka children refer to as the "Term Sheet."

QUESTIONS PRESENTED

John, Daniel, and M. Christine present the following questions for our review:

1. Did the trial court err by appointing guardians of the person and property of Wanda Stralka without an evidentiary hearing or making factual findings that she suffered from an eligible disability?

2. Did the trial court err in entering an order enforcing the Term Sheet contradicting her most recent will and any prior testamentary expression?

For the reasons set forth herein, we shall vacate the circuit court's judgments and remand Case Nos. 03-T-17-000041 and 03-C-17-008716 for further proceedings consistent with this opinion.

[1] Ms. Stralka's five adult children were: John Stralka, Daniel Stralka, M. Christine Stralka, and Kathleen A. Stralka (who passed away shortly after noting this appeal), appellants; and Stephen Stralka, appellee.

FACTUAL AND PROCEDURAL BACKGROUND

Ms. Stralka, born in September 1930, is widowed. She has substantial assets. On February 15, 2017, her son John filed a petition seeking to be appointed guardian of her property and person pursuant to ET §§ 13-201 and 13-705. That case was docketed as Case No. 03-T-17-000041 in the Circuit Court for Baltimore County ("the Guardianship Case"). In his petition, John alleged that Ms. Stralka was a "disabled person" as defined in ET §§ 13-201(c) and 13-705(b) due to her mental disability because she could not "care for herself independently," "was unable to make decisions for herself," and often forgets "whether she has eaten" and "has taken medications." John also alleged that Ms. Stralka's mental disability prevented her from exercising "executive function to assist in managing her income and assets."

Attached to John's petition were the certificates of a doctor and a psychologist who had examined Ms. Stralka in February 2017. Also attached were consents to John's petition signed by three of Ms. Stralka's children (namely, Kathleen, Daniel and M. Christine).

Stephen opposed John's guardianship petition. Stephen asserted that Ms. Stralka had already appointed him to be her attorney-in-fact and had designated him to be her preferred guardian of her property pursuant to a durable power of attorney that she had executed on September 13, 2016.

On February 27, 2017, the circuit court appointed attorney Marie Caruso to serve as Ms. Stralka's court-appointed attorney in the Guardianship Case. The circuit court

scheduled a hearing for May 11, 2017, for Ms. Stralka to show cause why John's guardianship petition should not be granted.

On May 11, 2017, Ms. Caruso, Barrett King (John's attorney), and Alexander McMullen (Stephen's attorney) appeared in the circuit court. At the start of the hearing, Mr. McMullen made an oral motion to postpone the hearing on the guardianship petition due to a scheduling conflict. He also informed the circuit court that he wanted to work with opposing counsel to determine whether they could agree on a less restrictive form of intervention for Ms. Stralka. Mr. King, in response, informed the circuit court that he had just met Mr. McMullen and that "things have been amicable thus far" and he had "no reason to believe that would change." The circuit court granted Mr. McMullen's motion, and the hearing on the guardianship petition was rescheduled to October 2-3, 2017.

On July 27, 2017, Ms. Caruso filed an answer on behalf of Ms. Stralka. In her answer to the petition, Ms. Stralka admitted that she did "not know at this time who would be in her best interest to serve as guardian." She asked the circuit court to:

> A. Appoint a Guardian of the Person and Property if the Court deems by clear and convincing evidence that the Respondent lacks sufficient capacity to make or communicate responsible decisions; and
>
> B. Grant a hearing on this matter to determine whom shall serve on [sic] her guardian[.]

On September 6, 2017, John filed a new suit in which he petitioned the circuit court for construction of a power of attorney, pursuant to ET § 17-103, and to review the conduct of Stephen, who appeared to be named Ms. Stralka's attorney-in-fact pursuant to a power of attorney signed on September 13, 2016. The suit also asked the court to issue

a declaratory judgment and assume jurisdiction over Ms. Stralka's trust. This new suit was docketed as Case No. 03-C-17-008716 in the Circuit Court for Baltimore County ("the Trust Case"). In his complaint, John alleged that Stephen had unduly influenced Ms. Stralka into signing a durable power of attorney on September 13, 2016, and a last will and testament on October 11, 2016, which caused unwarranted changes to her then-existing estate plan. John's complaint alleged that, on June 27, 2006, Ms. Stralka had executed a last will and testament in which the Stralka children were legatees. In her June 2006 will, Ms. Stralka bequeathed all her assets to the Stralka children in five equal shares. But, on October 11, 2016, Ms. Stralka had executed a will which purported to revoke the will she had executed on June 27, 2006, and bequeathed all of her assets, other than tangible personal property, to charity. In the October 2016 will, the Stralka children were no longer legatees of anything other than their mother's tangible personal property.

On September 6, 2017, John also filed a motion to continue the hearing on the guardianship petition due to a conflict with his attorney's schedule. (The circuit court eventually consolidated the Trust Case with the Guardianship Case on January 19, 2018.)

On September 11, 2017, John filed, in the Guardianship Case, an emergency motion to preserve his mother's property and a petition for appointment of a temporary guardian of her property, all pursuant to ET § 13-203. In his emergency motion, John alleged that Stephen had, after being served with John's petition for guardianship, "transferred $252,756.00 from Ms. Stralka's estate to the Stralka Legacy Fund Trust, a charitable trust over which Ms. Stralka cannot exercise legal control of assets." John

further alleged that, without the circuit court's intervention, Stephen would continue to transfer more of their mother's assets. John also requested that Mary McCarthy Campbell be appointed as the temporary guardian of Ms. Stralka's property pending an adversarial hearing.

In Stephen's response to John's emergency motion, Stephen asserted that John, with Ms. Caruso's help, was "attempting to supplant" the documents executed by Ms. Stralka in 2016, and was motivated by John's "personal desires to enrich himself." Stephen reasserted that he was nominated to be the guardian of the property pursuant to the durable power of attorney executed by their mother on September 13, 2016. Stephen asserted that he was also authorized to make decisions regarding their mother's health on her behalf pursuant to an advanced medical directive she executed on March 23, 2016.

On October 2, 2017, Ms. Stralka's attorney, Stephen's attorneys, and John's attorney appeared in the circuit court for a hearing on John's emergency motion. At the start of the hearing, the circuit court made a statement explaining that it had held a telephone conference off-the-record at the end of September 2017 on the motion to continue the hearing on the guardianship petition that had previously been scheduled for October 2, 2017. The circuit court explained it had granted the motion for postponement,

over Stephen's counsel's objection, during the telephone conference. It does not appear a new date was ever assigned for the hearing on John's guardianship petition.[2]

At the end of the hearing on John's emergency motion, the circuit court placed some oral findings on the record, and urged the parties to cooperate:

> [T]he Court may not exercise the power conferred by Section A of [ET § 13-203] unless it appears from specific facts that immediate, substantial and irreparable injury will result to the disabled person before an adversary hearing can be held. Petitioners have not met that burden. I do not find upon the facts that have presented to me that there will be immediate, substantial and irreparable injury. Even if I did, the best that I could do would be to appoint somebody to preserve the charitable trust, not to put everything back into the family trust. That's not before me yet today. That's the other case and that has to go through the regular litigation process. However, I think a lot of this could be resolved if documents pursuant to discovery requests . . . were produced and there was some encouragement of cooperation between the parties. . . . I know that's a huge ask in this case and I know there's a lot of distrust and you all have to work that out. But I would ask counsel to please, in an attempt to at least expedite the litigation process in the civil case . . . . Let's see if we can't at least smooth out the process a little bit and maybe at the same token, smooth a few feathers while we're at it.

The order denying John's emergency motion was entered on October 5, 2017.

The Mediation Conference

On December 4, 2017, the Stralka children voluntarily attended a mediation conference conducted by a retired judge who attempted to negotiate a settlement of the Guardianship and Trust Cases. Neither Ms. Stralka nor her attorney were present. After

[2] This may be due to a discrepancy in the circuit court's order dated September 28, 2017, which indicates the circuit court "denied" the motion, even though the circuit court stated on the record on October 2, 2017, that it had granted the motion.

thirteen hours, the Stralka children all signed a memorandum of terms to which they had agreed. The parties refer to that memorandum as the "Term Sheet."

In the Term Sheet, the Stralka children agreed that John would be the guardian of the person of Ms. Stralka, and Stephen would be the guardian of the property for Ms. Stralka. With respect to their mother's estate, the Stralka children agreed among themselves that they would each receive an equal distribution of $450,000.00 of their mother's assets upon her death, and that the balance of her assets would be used for her caretaking and donations to charity.

On December 27, 2017, John, Stephen, and Ms. Stralka's court-appointed attorney filed a "Joint Motion to Stay Proceedings." In that motion, they represented

> 7. Ms. Stralka's children, including Petitioner [John] and Interested Person/Respondent Stephen Stralka, voluntarily attended a single mediation session on December 4, 2017, which lasted more than thirteen hours, in an attempt to resolve all of the issues in both matters.
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> 8. At the conclusion of the mediation session, Ms. Stralka's children, by and between themselves, reached a settlement in principle on all of the issues associated with the litigation in both matters.
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> 9. The settlement between all Parties is intended to forever settle any and all claims all Parties to the above actions and any and all claims that all Interested Persons may currently hold and may hold in the future in the current assets and future assets of Raymond Stralka, Wanda Stralka, the Estate of Raymond Stralka and the Estate of Wanda Stralka.
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> 10. Counsel for Petitioner in both actions is currently drafting a formal settlement agreement that will adopt the terms of the settlement in principle and will be reviewed by all the Parties, including counsel for Ms. Stralka.

> 11. The Parties believe that a stay of proceedings while the Parties negotiate the final language of the formal settlement agreement and Consent Order is in the best interest of all of the litigants.

They asked the circuit court to stay all proceedings while John's attorney drafted a formal settlement agreement incorporating the provisions in the Term Sheet to be reviewed by all the Stralka children and counsel for Ms. Stralka. The motion for stay was granted by the circuit court on January 5, 2017, and that order was docketed on January 8, 2018.

The Discovery of Another Will

After the circuit court stayed all proceedings, the Stralka children discovered that Ms. Stralka had purportedly executed yet another last will and testament on December 16, 2017, with the aid of Tracy Blumberg (the wife of Ms. Stralka's nephew, Frank Sharkowicz) and attorney Dennis Hodge.

According to Ms. Blumberg's affidavit, at a Thanksgiving dinner at John's house in November 2017, Ms. Stralka told Ms. Blumberg that "she was upset that there was discord between her children related to her estate planning," and "she wanted her assets to go back to the way they were where all her assets were divided equally among her children." Ms. Blumberg further stated that she "suggested to Ms. Stralka she needed to write down exactly what she wanted," and Ms. Stralka wrote "in her own hand and with minimal assistance" a three-page document that was dated November 23, 2017, and was attached to Ms. Blumberg's affidavit. The document stated:

I would like to make a new will. When we retired[,] my husband Ray and I had wills written in 2006 where our money was in a family account.

Our 5 children Kathleen, Stephen, Daniel, Christine and John were to receive our money when we both die equally.

Kathleen, Christine, and John were listed as executors. I also had a durable power of attorney listed my husband, Kathleen, Christine and John[.] Near the end of 2016 my husband was found to have cancer, so he decided he wanted to do our wills. An attorney came over to our new apartment at Brightstone [sic] the same day we moved in to sign our wills that he had made.

I am finding out what I signed is not what I wanted to happen. My will states that all the money we earned was now going to charity when he died. Also, my son Stephen, who lives in Anchorage, Alaska is in charge of all my money and will. He lives too far away and I wish when I die that Kathleen, Christine and John, who live near me take care of my money and whatever I need now and every day.

In the meantime I wish for Kathleen, Christine and John to be my durable power of attorney.

My husband died in January of this year. I have not seen his will although is probably the same as mine. I asked one of my children for a copy of my wills. Stephen is in charge, but I understand he has not filed his father's will yet like he was supposed to do.

Please make me a new will as the same as the 2006 will and same durable power of attorney. I wish for our money to go to our children and not to a charity.

Wanda M. Stralka
Nov. 23, 2017

(Emphasis in original.)

Ms. Blumberg stated in her affidavit that she made an appointment with Mr. Hodge and took Ms. Stralka to meet with Mr. Hodge; Ms. Stralka conveyed her wishes to Mr. Hodge, who subsequently prepared a will and a durable power of attorney.

On December 16, 2017, Ms. Stralka executed the will and durable power of attorney prepared by Mr. Hodge. This will stated that it revoked the wills she had previously executed, eliminated her charitable bequests entirely, and provided that her assets would all go to her children in five equal shares. In the December 2017 durable power of attorney, Ms. Stralka designated Kathleen as her attorney-in-fact and M. Christine as the alternate. Similarly, the document nominated Kathleen to serve as her guardian if one was needed, and nominated M. Christine as the alternate person to serve as her guardian.

On December 21, 2017, Ms. Stralka executed a document captioned Revocation of Power of Attorney which purported to revoke the durable power of attorney she had granted to Stephen on September 16, [sic] 2016.

After Stephen learned of the new documents, he filed an emergency motion for preliminary injunction on January 11, 2018.

When Ms. Caruso learned of the new documents, she sent an e-mail, dated January 15, 2018, to John's and Stephen's attorneys, stating:

> Counsel,
>
> I wanted to let you know what my thoughts are regarding the most updated information I have received from Sharon regarding the POA.

1. I am very concerned and upset that someone thought it was appropriate to take my client to an attorney to execute a POA. This complicates an already very complex case and to say the least, extremely inappropriate action considering the facts of this case.

* * *

4. I will be asking Judge King for a phone conference so that we collectively can decide what the next step is as a result of recent actions. Unfortunately, his chambers is closed today due to the holiday[.]

5. **I believe everyone is aware that I can not agree to the all the terms of the agreement reached in mediation**, specifically that my client's remaining money after what is needed for her care and some contribution to her children, go to charity.

6. I will also be filing a motion for interim attorney fees, as this case has been extremely time consuming, as you all know. Moving forward, I may ask that there be a retainer to my office, as I believe this case is headed to litigation.

(Emphasis added.)

On January 22, 2018, the circuit court held a scheduling conference in the Guardianship Case. At the scheduling conference, the circuit court scheduled Stephen's emergency motion for a hearing, struck Ms. Caruso's appearance, and appointed Carl Gold, Esq., to serve as Ms. Stralka's attorney. The circuit court also explained it was not inclined to hear the matters in the Trust Case until the "capacity issue resolved[,]" further stating: "I think that's sort of a, threshold question we need to answer before we go into further litigation on the, on the civil matter."

During the course of the conference, the circuit court made several comments regarding the importance of determining the capacity of Ms. Stralka, including: "The

guardianship requires there to be a determination as to whether she has the capacity to truly understand, or, or be involved in any of these things." "But in order, in order to make that determination—we have would have to, first of all, I would have to have a report." "And, and secondly, there would have to be testimony in that regard—perhaps even expert testimony." "I think the problem is that there's—if there is some confusion on the, on the part of counsel as to whether or not the potential ward has capacity, then it's, it's going to—that, that finding has to be made before we can decide whether or not the, the ward should be participating in any of this."

The circuit court scheduled a bench trial on the guardianship petition for April 3-6, 2018, and subsequently ordered the Office of the Court Psychiatrist to perform a psychiatric evaluation of Ms. Stralka.

On February 8, 2018, Mr. Gold submitted an interim report to the circuit court based on his visit with Ms. Stralka on January 26, 2018. He reported that he had visited Ms. Stralka at the assisted living facility where she resided, and had spoken with the director of the Dementia Care Unit there, who "volunteered immediately that Ms. Stralka was not ready for the Dementia Care Unit, and that 'she's with it.' She explained that Ms. Stralka is oriented to time, place and manner and is not forgetful. She said she's 'up to par' and a great lady."

Mr. Gold had also spoken with the head nurse in Ms. Stralka's unit, who confirmed that Ms. Stralka "was a delightful resident who knew where she was, what she was doing, and what she wanted."

Mr. Gold's report continued:

> I then went to Room [redacted] at the facility to see Ms. Stralka. Her apartment was clean, beautiful and well decorated. It is a one bedroom apartment with a nice size living room and kitchenette. There was not one item out of place. The kitchen was sparkling, and there were no tripping hazards. Ms. Stralka happily let me into her apartment while holding Archimedes, whom I later learned was a robotic cat. When I entered the room, the TV was on very loud. Ms. Stralka immediately recognized we could not talk with the TV at that volume so she turned it off. Later she told me that she just had the TV on for noise because "there's not really much on." . . .
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> * * *
>
> Ms. Stralka was able to answer my questions articulately and intelligently. She understood what I was asking her. . . .
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> * * *
>
> I explained her rights pursuant to the Guardianship Proceeding including the fact that she had the right to have this matter heard in open Court before a jury trial or a judge, that she could contest the matter, that I could call witnesses on her own behalf and cross examine the witnesses that would have to be produced against her. I explained to her that I could call doctors to testify for her and challenge the doctors that would testify to support a claim she was not competent. She made it clear that she did not want to go to Court and did not want to have a jury trial. She said "let the kids work it out." She told me, "I have everything I want."
>
> * * *
>
> As noted above, she was pleasant, engaged and presented as younger than her age. Her speech was goal oriented and her answers were appropriate to the questions. Her eye contact and hygiene were excellent. She was not confused and her comments to me were linear.

In the conclusion of the report, Mr. Gold stated that "it may be appropriate to have either new Physician's Certificates provided or an examination of Ms. Stralka performed by the Office of the Court Psychiatrist."

On March 26, 2018, Mr. Gold submitted a supplemental report to the circuit court based on his March 16 visit with Ms. Stralka. This report stated in part:

> We reviewed the settlement agreement reached by all of her children memorialized in what the parties refer to as the "term sheet." It divides her assets among the parties and a charitable fund. She clearly and unequivocally stated that she was fine with that disposition of her assets. She understood that it meant that each child would get a significant sum of money, but that a charitable fund would also get a significant sum of money.

On March 26, 2018, the circuit court entered a new scheduling order in which it scheduled a motions hearing for April 26, 2018, and rescheduled the merits hearing on the guardianship petition for November 26-29, 2018.

On April 24, 2018, the Office of the Court Psychiatrist submitted a report authored by Dr. Stephen W. Siebert based upon his examination of Ms. Stralka on March 27, 2018. Dr. Siebert's ten-page report contained the following "summary and opinions":

> *a. Does Wanda Marie Stralka require, at present, a guardian over her person and property?*
>
> Yes. Ms. Stralka is significantly cognitively impaired at the present time and her condition is expected to progress. There is significant impairment of short-term and long-term memory. . . . She is not competent to give informed consent for medications or medical procedures. . . . She is impaired with regard to basic financial concepts and does not have the capacity to understand or pay her own expenses.
>
> * * *
>
> My opinion is that Ms. Stralka understands the general concept of, and is in agreement with, the proposal to give half of her estate to charity and divide the other half equally among the children.

> *b. Did Wanda Marie Stralka, in the Fall of 2016, have testamentary capacity to execute an Advanced Medical Directive, Financial Power of Attorney and Last Will & Testament?*
>
> Yes. My opinion is that her cognitive impairment, although present, did not impair her capacity to understand the conceptual basis for an Advanced Medical Directive, Financial Power of Attorney and Last Will & Testament. . . . There is no medical evidence that Ms. Stralka was impaired to the point where she was not competent to execute these documents.
>
> *c. Did Wanda Marie Stralka, in December 2017, have testamentary capacity to execute a Revocation of her September 2016 Power of Attorney, a Financial Power of Attorney, and Last Will & Testament?*
>
> No. There is clear evidence that Ms. Stralka had an overall worsening of her cognitive capacity . . . .
>
> At the present time, Ms. Stralka does not comprehend that these documents exist and she has no recollection of meeting with Tracy Blumberg and cannot even identify who Ms. Blumberg is. My opinion is that Ms. Stralka was, more likely than not, too cognitively impaired to understand what she was signing in December of 2017, and that it was unlikely that she would have initiated this legal action.

The docket entries reflect that, on April 25, 2018, the circuit court entered a "chambers order" that cancelled the motions hearing and ordered the parties to appear on April 26, 2018, for a settlement conference.

On April 26, 2018, counsel for the parties and Margot Roberts, the circuit court's guardianship case manager, appeared for the settlement conference. The circuit court provided a copy of Dr. Siebert's report to all counsel. The circuit court encouraged the parties to resolve the matters in light of Dr. Siebert's report.

Stephen's Motion to Enforce the Settlement Agreement

On June 1, 2018, Stephen moved to enforce the Term Sheet the Stralka children had signed on December 4, 2017. In his motion, Stephen asserted that the Term Sheet was a valid and binding agreement among the Stralka children. He also argued that, "even if Ms. Stralka had been present [at the mediation on December 4, 2017], she would not have had the capacity to assent to the Terms Sheet," and, he contended, her court-appointed attorney, Mr. Gold, later ratified the Term Sheet. With the motion, Stephen filed an affidavit dated May 31, 2018, in which attorney Gold affirmed:

> 4. On March 16, 2018 I reviewed with Ms. Stralka the Terms Sheet which memorialized agreements reached at the December 4, 2017 mediation and was signed by Petitioner, John Stralka, and Interested Parties Stephen Stralka, Kathleen Stralka, Daniel Stralka, and M. Christine Stralka;
>
> 5. On March 16, 2018 Ms. Stralka clearly and unequivocally stated that she was fine with the Terms Sheet and the disposition of her assets;
>
> 6. I approve the agreement memorialized in the Terms Sheet on behalf of my client, Ms. Wanda Stralka.

Kathleen opposed Stephen's motion. In her opposition, Kathleen claimed that the Term Sheet was not intended as a binding agreement without their mother's approval. Kathleen argued that "the signers all specifically intended that the agreement would not be valid unless Wanda [Stralka] was also on board, as the terms affected her directly." Kathleen also disagreed with Stephen's contention that Mr. Gold had ratified the Term Sheet on their mother's behalf. She asserted that, even if a court-appointed attorney could agree to a settlement, Ms. Caruso had communicated their mother's rejection of the Term Sheet on January 15, 2018, via the e-mail Ms. Caruso sent to Stephen's and John's

attorneys, and, if Ms. Stralka "is incapacitated, she is incapable of providing such authority." Kathleen also pointed out that the circuit court had not yet held a hearing on their mother's mental competency, and she argued that the psychiatric evaluation by Dr. Siebert was not a dispositive determination of her mother's alleged mental incapacity, citing *In re Lee*, 132 Md. App. 696, 715 (2000) ("a hearing must be held on that issue"). Daniel adopted all of Kathleen's arguments by reference in his opposition.

In Stephen's reply to Kathleen's and Daniel's opposition, Stephen argued that the Term Sheet was not contingent on their mother's acceptance or approval, but he acknowledged that it was contingent upon the approval of the circuit court. Stephen also attached excerpts of a deposition of Dr. Siebert, taken June 20, 2018.

Without holding a hearing, the circuit court granted Stephen's motion to enforce settlement agreement on June 25, 2018 (docketed June 28, 2018), and ordered the following:

> ORDERED, that [Stephen] Stralka is hereby directed to prepare a settlement agreement and release of all claims consistent with the December 4, 2017 signed Terms Sheet; and it is further
>
> ORDERED, that Counsel for [Stephen] Stralka shall distribute copies of the prepared settlement to counsel for all represented parties and directly to any unrepresented parties; and it is further
>
> ORDERED, that within five days of receipt, all parties shall execute the settlement agreement and return the executed settlement agreement to [Stephen] Stralka for submission and final approval by this Court; and it is further
>
> ORDERED, that this Court shall, within ten days of approving the settlement agreement, enter a final order dismissing with prejudice Case Nos. 03-T-17-000041 and 03-C-17-008716; and it is further

ORDERED, that the Clerk shall mail a copy of this Order to all parties and/or counsel of record.

Stephen prepared a proposed consent order and release, and then filed a motion for approval and entry of the consent order and release, which John, Daniel, and Kathleen opposed.

Before any ruling had been made on Stephen's motion for approval and entry of consent order, John, Kathleen, and Daniel filed motions for the circuit court to reconsider its decision of June 28, 2018, that enforced the Term Sheet. In John's motion for reconsideration, filed on August 9, 2018, John asserted that the circuit court's decision was premised upon multiple irregularities of procedure. He argued that a hearing on the issue of their mother's competency had not yet been held, and the circuit court's findings relative to their mother's competency would bear on the enforcement of the Term Sheet and Ms. Stralka's alleged approval of it. John cited Maryland Rule 10-205(b) and *In re Lee*, *supra*, 132 Md. App. 696, in support of his argument that the circuit court was required to hold an evidentiary hearing on Ms. Stralka's competency. Kathleen and Daniel filed a joint motion to reconsider on August 29, 2018. They argued the circuit court should reconsider its decision because it abdicated its duty to "hold a hearing as to [Ms. Stralka's] competency and need for a guardian before requiring that [she] lose [her] rights through a guardianship proceeding." Stephen's opposition to the motion for reconsideration was filed August 29, 2018.

Without holding a hearing, by orders dated August 31, 2018, docketed on September 4, 2018, the circuit court denied all motions to reconsider, granted Stephen's

motion for approval and entry of consent order, dismissed the Trust Case with prejudice, and cancelled the November 2018 trial dates on the guardianship petition. As requested by Stephen, the circuit court entered an order that appointed John and Stephen as legal guardians, and provides in part:

Recitals

> Whereas, Petitioner, John Stralka, filed a Petition for Guardianship of the Person and Property for his mother, Wanda Marie Stralka, in the Circuit Court for Baltimore County, Maryland, *In the Matter of: Wanda Marie Stralka*, Case No. 03-T-17-000041, and a Petition for Constructive Power of Attorney, an action for Declaratory Judgment, and Petition for Assumption of Jurisdiction of Trust in the Circuit Court for Baltimore County, Maryland, *In the Matter of: John Stralka*, Case No. 03-C-17-008716 (herein, the "Consolidated Actions");
>
> Whereas, Petitioner claimed that Ms. Stralka meets the requirements set forth in Maryland Code Ann., Estates & Trusts §§ 13-201(c) & 13-705(b);
>
> Whereas, Petitioner and Interested Persons Stephen Stralka, Kathleen Stralka, Daniel Stralka, and M. Christine Stralka (hereinafter "Released Parties"), in an effort to avoid the legal costs, risks, and inconvenience of future litigation, attended and participated in a fourteen-hour mediation on December 4, 2017, wherein they signed a binding and enforceable agreement (i.e., the "Terms Sheet") that expressly required that the agreement would be reduced to writing and be submitted to this Honorable Court for final approval in the form of a Consent Order with a full release resolving all matters in consolidated Case Nos. 03-T-17-000041 and 03-C-17-008716, as well as any future litigation involving Ms. Stralka's estate; and
>
> * * *
>
> [I]t is this 31st day of Aug., 2018, by the Circuit Court for Baltimore County, Maryland, Ordered as follows:
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> * * *

Definitions

A. The term "Petitioner" means John Stralka and his heirs, executors, administrators, successors, and assignees.

B. The term "Interested Persons" means Stephen Stralka, Kathleen Stralka, Daniel Stralka, and M. Christine Stralka, their heirs, executors, administrators, successors, and assignees.

C. The term "Released Parties" includes Petitioner, Interested Persons, and their respective heirs, executors, administrators, successors, and assigns.

* * *

Settlement, Release, and Other Terms

1. **Guardianship of the Person.** Petitioner shall serve in the capacity as Guardian of the Person for Wanda Marie Stralka as defined by Md. Code Ann., Est. & Trusts § 13-201 *et seq.* and shall possess, subject to the limitations in this Order, all of the powers and duties prescribed therein.

2. **Guardianship of the Property.** Interested Person Stephen Stralka shall serve in the capacity as Guardian of the Property for Wanda Marie Stralka as defined by Md. Code Ann., Est. & Trusts § 13-201 *et seq.* and shall possess, subject to the limitations in this Order, all of the powers and duties prescribed therein.

3. **Access to Medical Providers.** Interested Person Stephen Stralka shall have access to all medical provider charts, notes, and records, whether electronically stored or not, for Wanda Marie Stralka. Interested Person Stephen Stralka shall have the ability to talk to all medical providers directly, but for the receipt of information only and not for the purpose of making decisions or making, amending, or cancelling appointments.

* * *

10. **Discretionary Fund.** Interested Person Stephen Stralka shall create a Discretionary Fund for Petitioner to pay for Wanda Marie Stralka's expenses and personal needs. The Discretionary Fund shall contain $5,000.00 per year. If the Discretionary Fund is depleted, it can be replenished upon presentation of receipts by Petitioner to, and subject to reasonable approval by, Interested [Person] Stephen Stralka. Petitioner

agrees to provide for an accounting of the Discretionary Fund, including statements, to Interested Person Stephen Stralka on an annual basis.

* * *

13. **Reservation of Funds.** Released Parties agree to the following preservation of funds and ultimate disposition of funds upon the death of Wanda Marie Stralka:

a. Fund #1. A total of $2,250,000.00 of Wanda Marie Stralka's assets shall be apportioned equally among Released Parties. These funds shall only be invaded with Court permission and after the dissipation of Fund #2, referred below at ¶[13]b. Interested Person Stephen Stralka shall invest for Petitioner and Interested Persons Kathleen Stralka, Daniel Stralka, and M. Christine Stralka each $450,000.00 from Wanda Marie Stralka's assets (a total of $1,800,000.00) in a tax-free money market account determined by him, to be distributed upon Wanda Marie Stralka's death. Interested Person Stephen Stralka shall provide quarterly reports to Petitioner and Interested Persons Kathleen Stralka, Daniel Stralka, and M. Christine Stralka. Interested Person Stephen Stralka shall invest his $450,000.000 from Wanda Marie Stralka's assets as he sees fit.

b. Fund #2. The balance of Ms. Stralka's assets shall be placed in accounts for Wanda Marie Stralka's care. Upon her death, these funds will be distributed to charity. Interested Person Stephen Stralka will continue to conservatively invest these funds. Interested Person Stephen Stralka shall contribute no more than 8% of the principal funds per year for charitable purposes. If there is a negative return on assets excluding expenses, there shall be no such charitable contributions except for qualified charitable distributions. If the principal falls below $1 million, then there shall be no more contributions for charitable purposes. All expenses for the care of Wanda Marie Stralka shall be paid first from Fund #2.

* * *

16. **Dismissal by the Court.** Within ten days of approving the Order, the Court shall enter a final order dismissing with prejudice Case No [Redacted] [redacted] 03-C-17-008716.

(Redaction in original.)

On October 1, 2018, John, Daniel, Kathleen, and M. Christine filed a joint notice of appeal in the Guardianship Case.

On October 9, 2018, the circuit court amended the September 4, 2018, order by making the redaction depicted above, which removed "Case No. 03-T-17-000041" from paragraph 16. On October 25, 2018, John, Daniel, Kathleen, and M. Christine filed a "Second Joint Notice of Appeal." As previously stated, Kathleen passed away shortly after noting the appeal.

STANDARD OF REVIEW

Although our review of the circuit court's decision to enforce the Term Sheet and appoint guardians of the person and property is for abuse of discretion, that discretion is "always tempered by the requirement that the court correctly apply the law applicable to the case." *Rose v. Rose*, 236 Md. App. 117, 130 (2018) (citing *Arrington v. State*, 411 Md. 524, 552 (2009)). *See also Shih Ping Li v. Tzu Lee*, 210 Md. App. 73 (2013), *aff'd*, 437 Md. 47 (2014). The Court of Appeals has recognized that "a failure to consider the proper legal standard in reaching a decision constitutes an abuse of discretion." *Wilson-X v. Dep't of Human Res*., 403 Md. 667, 675-76 (2008). Here, the applicable law concerns the appointment process for guardians of the person and property of a person under an alleged mental disability.

DISCUSSION

I. Did the circuit court err by appointing guardians of the person and property of Wanda Stralka without an evidentiary hearing or making factual findings that she suffered from an eligible disability?

The Guardian of the Person

John, Daniel, and M. Christine contend that both ET § 13-705 and Maryland Rule 10-205 require the circuit court to hold a hearing before appointing a guardian of the person. Because the circuit court failed to do so, they contend it committed reversible error.

Stephen contends that John, Daniel, and M. Christine lack standing to assert Ms. Stralka's constitutional rights in this Court because that role belongs exclusively to Mr. Gold. Stephen's argument, however, overlooks the fact that John, Daniel, and M. Christine are interested persons under ET § 13-101(k) because they are seeking to be "eligible to serve as guardian of the disabled person." Therefore, they have standing in their own right under Maryland law to assert that the law governing the appointment of a guardian be properly followed. *In re Lee, supra*, 132 Md. App. at 709-10.

In addition to challenging his siblings' standing, Stephen also contends that, because "strong public policy militates in favor of settlement agreements," this Court should affirm the circuit court's decision to bring finality to this case. Relying on *Smelkinson Sysco v. Harrell*, 162 Md. App. 437, 448-49 (2005), Stephen asserts that the circuit court looked favorably upon the compromise of the parties and made its decision "in the interest of efficiency and economical administration of justice and the lessening of friction and acrimony." He argues, therefore, that the circuit court was not required to conduct a hearing because the parties reached a binding settlement agreement on who would serve as her guardians.

The fact that courts encourage settlements does not relieve the circuit court of the requirement to conduct a hearing; both ET § 13-705(b) and Rule 10-205(b) mandate that it "shall" do so.[3]

Decisions to appoint a guardian of the person and the property "must be made in accordance with applicable law and the procedural safeguards provided for [the alleged disabled person's] protection." *In re Lee, supra*, 132 Md. App. at 723. The appointment process for a guardian of the person is set forth in ET § 13-705, which provides in part:

> **§ 13-705. Appointment process for disabled persons**
>
> **Petition, notice, and hearing**
>
> (a) On petition **and after** any notice or **hearing prescribed by law or the Maryland Rules**, a court may appoint a guardian of the person of a disabled person.
>
> **Cause for appointment**
>
> (b) A guardian of the person shall be appointed **if the court determines from clear and convincing evidence** that:
>
> (1) A person lacks sufficient understanding or capacity to make or communicate responsible personal decisions, including provisions for health care, food, clothing, or shelter, **because of any mental disability**, disease, habitual drunkenness, or addiction to drugs; and
>
> (2) No less restrictive form of intervention is available that is consistent with the person's welfare and safety.
>
> **Procedures and venue**

[3] Recent amendments to Rule 10-205 did not affect section 10-205(b). We also note that recent amendments to ET § 13-705 were technical and stylistic changes that did not affect our analysis of the issue on appeal.

> (c)(1) Procedures and venue in these cases shall be as described by Title 10, Chapters 100 and 200 of the Maryland Rules.

(Emphasis added.)

In *In re Lee*, we commented that ET § 13-705(b) clearly requires an evidentiary hearing:

> In other words, a guardianship will only be imposed when a court finds, based on clear and convincing evidence, that: (1) the alleged disabled person lacks sufficient capacity to make or communicate responsible decisions about his basic needs; and (2) "no less restrictive form of intervention is available." The Maryland Rules, though arguably once ambiguous on this point, now clearly indicate that a petition for guardianship alone cannot satisfy the "clear and convincing evidence" test; a hearing is required.

132 Md. App. at 711-12 (footnote omitted).

With respect to the Maryland Rules, we stated in *In re Lee* that Maryland Rule 10-205 "clearly contemplates that a hearing will be held and evidence taken on the issue of competency." *Id*. at 712-13. The rule states in part:

> **RULE 10-205. HEARING**
>
> * * *
>
> **(b) Guardianship of Alleged Disabled Person.** When the petition is for guardianship of the person of an alleged disabled person, the court shall set the matter for jury trial. The alleged disabled person or the attorney representing the person may waive a jury trial at any time before trial. If a jury trial is held, the jury shall return a verdict pursuant to Rule 2-522 (b)(2) as to any alleged disability. . . . If the alleged disabled person asserts that, because of his or her disability, the alleged disabled person cannot attend a trial at the courthouse, the court may hold the trial at a place to which the alleged disabled person has reasonable access.

We explained in *In re Lee* that our review of the records of the Rules Committee

> eliminated any question as to whether a competency hearing could be waived. We therefore conclude that a hearing on competency cannot be waived and must always be held for the petitioner to establish by "clear and convincing evidence" that the alleged disabled person is in need of a guardian.

132 Md. App. at 714. We vacated the court's judgment in *In re Lee* and remanded for further proceedings because, even though the court *had* conducted an evidentiary hearing to determine *who* should be the guardian, the court had not conducted the requisite evidentiary hearing regarding competency and the need for a guardian.

In this case, John alleged that Ms. Stralka had been diagnosed with dementia and that she "suffers from impaired memory, impaired executive function, attention, comprehension and visuospatial skills." He further alleged that her dementia had diminished her ability to make responsible decisions about her personal needs and her financial affairs. But the statute makes clear that a hearing was required to afford Ms. Stralka, and all other interested parties, a full and fair opportunity to testify, present evidence, cross-examine witnesses, and contest opinions—including Dr. Siebert's—about the extent of Ms. Stralka's alleged mental disability and whether she needs a legal guardian. *In re Lee*, 132 Md. App. at 712 ("[A] petition for guardianship alone cannot satisfy the 'clear and convincing' test; a hearing is required.").

Because the circuit court did not hold a hearing on the issue of Ms. Stralka's alleged mental disability, the record does not reflect the required findings and determination that she is a "disabled person" as defined in the statute. The record additionally fails to reflect a consideration of ET § 13-705(b)(2) that "no less restrictive

form of intervention" was available than appointment of a guardian of the person. Because the circuit court did not follow the applicable law for appointing a guardian of the person as set forth in ET § 13-705, it abused its discretion in appointing John to serve as guardian of the person, and a remand for further proceedings is necessary.

The Guardian of the Property

John, Daniel, and M. Christine also contend that an evidentiary hearing was necessary before the circuit court appointed a guardian of the property. They argue that, when Ms. Stralka requested a hearing in her answer to the guardianship petition, the circuit court was required to hold a hearing to determine whether she was unable to manage her property effectively, and whether she has or may be entitled to property or benefits which require proper management, pursuant to ET § 13-201.

The appointment process for a guardian of the property set forth in ET § 13-201 provides in part:

§ 13-201. Grounds for appointment of guardian

Guardian of property of minor or disabled person

> (a) Upon petition, and after any notice or hearing prescribed by law or the Maryland Rules, the court may appoint a guardian of the property of a minor or a disabled person.
>
> * * *
>
> **Guardians appointed for disabled persons**
>
> (c) A guardian shall be appointed **if the court determines that**:
>
> (1) The person is unable to manage his property and affairs effectively **because of physical or mental disability**, disease, habitual

> drunkenness, addiction to drugs, imprisonment, compulsory hospitalization, detention by a foreign power, or disappearance; and
>
> (2) The person has or may be entitled to property or benefits which require proper management.

(Emphasis added.)

Here, the circuit court erred for similar reasons in appointing a guardian of the property. The record does not indicate the circuit court made findings pursuant to ET § 13-201(c) or determined that Ms. Stralka was in fact a disabled person as defined in the statute. In view of the request for a hearing in Ms. Stralka's answer and the controversy pervading this case, the circuit court was obligated to hold a hearing and make the findings required by ET § 13-201 to support the appointment of a guardian of the property.[4] Because the circuit court did not conduct a hearing on Ms. Stralka's competency before appointing a guardian of her property, the court abused its discretion in appointing Stephen to serve as the guardian of Ms. Stralka's property, and a remand for further proceedings is necessary.

Further Proceedings on Remand

On remand, Ms. Stralka is entitled to a jury trial on the petition for guardianship. If she waives the option of having a jury trial at any time before trial, then the circuit court shall set an evidentiary hearing or bench trial with proper notice given to all interested parties. Rule 10-205; Rule 10-304; *In re Lee*, 132 Md. App. at 712-14.

[4] We also note that Maryland Rule 10-304(a) has now been amended to expressly require a hearing before a court rules on a petition to appoint a guardian of property.

As part of the further proceedings on remand, the circuit court shall make and expressly state its findings on the grounds for appointing a guardian of the person and of the property, including, but not limited to, findings on the presence of any mental disability and the point in time she lacked sufficient capacity to enter into legally binding documents and agreements. ET §§ 13-705(b); 13-201(c). *See also Ritter v. Ritter*, 114 Md. App. 99, 101 (1997). The circuit court shall also expressly state whether any less restrictive form of intervention is available. ET § 13-705(b)(2).

With respect to the various wills and powers of attorney that have been signed by Ms. Stralka, the circuit court shall also expressly make pertinent findings on which, if any, of the following legal instruments are of any continuing legal effect: the revocation of durable power of attorney executed on December 21, 2017; the durable power of attorney executed on December 16, 2017; the will executed on December 16, 2017; the will executed on October 11, 2016; the durable power of attorney executed on September 13, 2016; the Maryland Advance Directive executed on March 23, 2016; and, if necessary, the will executed on June 27, 2006.

II. Did the circuit court err in entering an order enforcing the Term Sheet contradicting her most recent will and any prior testamentary expression?

The circuit court did not develop the factual record necessary for us to decide this question. The findings that the circuit court must make with respect to Ms. Stralka's legal capacity and her testamentary capacity will have a major impact on the question of what, if any, effect the circuit court must give to the Term Sheet.

Despite the circuit court's laudable goal of trying to put an end to a rancorous family dispute, the circuit court's order to enforce the Term Sheet, entered without any evidentiary hearing, skipped over several factual issues that needed to be resolved before making a ruling regarding the enforceability of that document. Our remand will provide an opportunity for the court to make the necessary findings of fact.

The Term Sheet is a purported agreement among persons who were named as beneficiaries under one or more wills that were signed by their mother. The circuit court needed to make findings, after affording the interested parties an opportunity to present evidence, regarding Ms. Stralka's mental competence and testamentary capacity at the time she purportedly executed the various documents. *See Dougherty v. Rubenstein*, 172 Md. App. 269, 283 (2007) ("A will, although facially valid, cannot stand unless the testator was legally competent."). *See also O'Hara v. O'Hara*, 185 Md. 321, 325 (1945) ("The testator can revoke his declared intention and alter his will as long as he possesses testamentary capacity.").

Even though legatees under a will could theoretically agree among themselves to divide the deceased's property in a manner different from the directives in the last will and testament of the deceased, the circuit court made no determination in this case as to when Ms. Stralka had testamentary capacity and which of the various documents signed by Ms. Stralka could be enforceable as her last will and testament upon her death. And, because we do not know that key fact, we do not know whether the Stralka children who negotiated the Term Sheet will be legatees, let alone the sole legatees, under that will.

On remand, the circuit court will need to determine which, if any, of the purported wills executed by Ms. Stralka is enforceable as her last will and testament. And, if the circuit court determines that the Stralka children are the sole beneficiaries under the will, then the circuit court will need to determine whether the Term Sheet is enforceable among the children in the absence of their mother's agreement. *See Shrimp v. Shrimp*, 287 Md. 372, 383 (1980) ("Contracts to devise are subject to the same rules as to validity as are other contracts."). Although Ms. Stralka had not died, she was not included in the negotiations leading to the creation of the Term Sheet. If the mother's agreement was a condition precedent to the enforceability of the Term Sheet, the circuit court will need to determine whether such consent was ever granted, although it may be difficult to square the opinion of Dr. Siebert—who opined that Ms. Stralka lacked capacity to execute a will, power of attorney, and a revocation of power of attorney in December 2017—with Mr. Gold's assessment that, at a *later* date in March 2018, Ms. Stralka knowingly consented to the Term Sheet. And, if the version of the will that appears to be the last one executed by Ms. Stralka at a time she possessed mental competence and testamentary capacity was one in which her children were not named as sole beneficiaries, then the Term Sheet might be found to be moot unless the circuit court concludes that the assets needed to fund the Term Sheet's distributions to the children can be transferred and removed from Ms. Stralka's estate before her death. *See Keys v. Keys*, 148 Md. 397, 505 (1925) ("the transfer of a mere possibility or expectancy, not coupled with an interest, is void"). But Stephen's brief states that "the siblings agreed to **a specific distribution of**

Ms. Stralka's estate upon her death." (Emphasis added.) And the Term Sheet described those funds as portions "to be distributed equally upon Wanda's death that will be in Wanda's name." If the provisions regarding the monies earmarked to pass to the Stralka children upon Ms. Stralka's death require the funds to remain part of Ms. Stralka's estate until her death, that would create a situation in which the charities named as beneficiaries in the 2016 will could contest any portions of those assets being distributed to the children after their mother's death. That does not appear to be the result intended by the circuit court, and is a point that needs to be clarified on remand.

In our view, key facts remain to be litigated and determined, and our remand will give the court the opportunity to reevaluate the legal significance of the Term Sheet.

III. Case No. 03-C-17-008716 Re-opened On Remand

In Case No. 03-C-17-008716 (the Trust Case), Stephen filed a motion to dismiss, and also filed an emergency motion for preliminary injunction. He requested a hearing on each of the motions he filed. But the motion to dismiss was summarily granted in the court's order docketed on September 4, 2018 (revised October 9, 2018). Because the circuit court dismissed Case No. 03-C-17-008716 with prejudice in that order that we are vacating for the reasons set forth above, Case No. 03-C-17-008716 must be re-opened for further proceedings consistent with this opinion.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED; CASES REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.