Circuit Court for Somerset County
Case No. C-19-CV-17-000191

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2864

September Term, 2018

RALPH MOSES, JR., ET AL.

v.

SOMERSET COMMUNITY SERVICES, INC.

Graeff,
Nazarian,
Harrell, Glenn T, Jr.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: March 26, 2020

When Lizzie Spady passed away in 1964, she left all her real property by will to Ralph Moses, Jr. and her other great-grandchildren, appellants. Decades later, appellants discovered that Somerset Community Services, Inc., appellee, was constructing a building on a section of the property they believed had been willed to them by Ms. Spady. In 2017, appellants filed a complaint in the Circuit Court for Somerset County, seeking to eject appellee from the property. Appellee responded that it had valid title to the land flowing from five deeds that Ms. Spady had executed in the 1950s to two other individuals prior to the time appellants inherited Ms. Spady's estate.

On May 3, 2018, appellants moved for summary judgment, attaching to the motion a report from a handwriting expert, who concluded that the signatures on the five deeds did not belong to Ms. Spady. The circuit court denied appellants' motion and the subsequent motion to reconsider the denial.

At trial, both sides introduced, *inter alia*, handwriting experts who arrived at somewhat different, but essentially conflicting, conclusions regarding the authenticity of Ms. Spady's signatures on the five deeds. The circuit court held that appellants had not met their burden of proof to show that they owned the land, and therefore, it found in favor of appellee. Appellants then filed a motion to alter or amend judgment, which the circuit court denied.

On appeal, appellants present the following questions for this Court's review,[1] which we have reordered and rephrased, as follows:

1. Did the circuit court err in denying appellants' Motion for Summary Judgment and Motion for Reconsideration?

2. Did the circuit court err in denying appellants' Motion to Alter or Amend Judgment?

For the reasons set forth below, we answer these questions in the negative, and therefore, we shall affirm the judgments of the circuit court.

[1] Appellants' original questions presented were as follows:

1. Was it error for the Judge to deny "Plaintiffs' Rule 2-534 Motion to Alter or Amend Judgment" when [1] their Handwriting Expert provided the only scientific certain testimony that the signatures on the deeds defendant relied on for its claim to Plaintiffs' property were not the signatures of the owner ([Ralph Moses' great-grandmother]), and [2] defendant's Handwriting Expert only gave testimony based on probability, even admitting that the signatures on the deeds could NOT be the owner? [footnote omitted]

2. Was it error for the Judge to deny Plaintiffs' Motion for Summary Judgment and Motion for Reconsideration of the Motion for Summary Judgment when defendant [i] failed to identify with particularity each material fact as to which it contended there was a genuine dispute, [ii] failed to attach the relevant portion of the specific document, discovery, response, or statement under oath that demonstrated the dispute, [iii] admitted the property in dispute belonged to Plaintiffs' [great-grandmother], the Plaintiffs were the heirs of Ms. Spady, and the Plaintiffs did not transfer the property to defendant, and [iv] failed to counter with written or verbal evidence that the five deeds relied on by the defendant for its claim to the Plaintiffs' property did NOT, with certainty, contain Ms. Spady's signature?

FACTUAL AND PROCEDURAL BACKGROUND

I.

Pretrial History

On February 21, 1944, William and Drucilla Bromley transferred by deed to Lizzie Spady 54 acres of land in Somerset County, Maryland, in exchange for nominal consideration. From 1944 until Ms. Spady's death in 1964, more than a dozen deeds bearing her signature were recorded in the Somerset County Land Records, transferring small sections of this property to various friends and family members.[2] As pertinent to this appeal, five deeds transferred land from Ms. Spady to two friends, sisters Pauline Wilson and Mollie Beacham, as follows:

1. July 27, 1954, deed from Lizzie Spady to Pauline Wilson and her heirs and assigns in fee simple, recorded at Liber B.L.B No. 164, folio 463, notarized by Dorothy Hancock, Notary Public.

2. July 27, 1954, deed from Lizzie Spady to Mollie Beacham and her heirs and assigns in fee simple, recorded at Liber B.L.B No. 164, folio 465, notarized by Dorothy Hancock, Notary Public.

3. April 23, 1955, deed from Lizzie Spady to Mollie Beachum and her heirs and assigns in fee simple, recorded at Liber B.L.B No. 170, folio 549, notarized by O.E. Wilson, Notary Public.

4. April 23, 1955, deed from Lizzie Spady to Pauline Wilson and her heirs and assigns in fee simple, recorded at Liber B.L.B No. 170, folio 551, notarized by O.E. Wilson, Notary Public.

[2] Appellants argued in the circuit court that many of the deeds were forged, but they confine their argument on appeal to the five deeds relevant to this case.

5. April 27, 1957, deed from Lizzie Spady to Molly Beacham and her heirs and assigns in fee simple, recorded at Liber B.L.B No. 181, folio 405, notarized by Betty Wilson, Notary Public.

Phillip Widdowson, a land records expert for appellee, testified that the 1954 transfers to Ms. Wilson and Ms. Beacham, i.e., the first two deeds, were adjacent rectangular plots, each measuring 35 yards by 70 yards, or approximately one-half acre. The 1955 deeds gave each sister an additional half-acre on the back of the previously conveyed land, although Mr. Widdowson testified that the deeds mistakenly resulted in mismatching front-and-back plots. The final 1957 deed to Ms. Beacham conveyed an additional plot of approximately 35 yards by 140 yards. In addition to these five deeds, Ms. Spady conveyed by recorded deed in 1963 another parcel to Ralph E. Moses and Lottie A. Moses.[3] All these deeds stated that the land conveyed therein was part of the property conveyed to Ms. Spady by Mr. Bromley in 1944.

In 1964, Ms. Spady died and left all her "property and estate, real, personal and mixed" by will, executed in 1958, to her four great-grandchildren, appellants Ralph Moses, Jr., Patricia Moses, Arnella Brittingham, and Arvenia Brittingham. The will did not describe the land Ms. Spady owned at the time of execution, but the inventory filed for her

[3] Ralph E. Moses and Lottie A. Moses were the parents of appellants, Ralph Moses, Jr. and Patricia Moses.

estate in 1967 indicated that she owned 29.92 acres—close to half of the 54 acres she had received from Mr. Bromley in 1944.[4]

Mr. Moses testified that, after his family inherited the property from Ms. Spady, neither he nor any of the other three appellants sold or gave the land that was willed to them to anyone during intervening years.[5] In fact, three of the four appellants, including Mr. Moses, still resided on the property.

On August 9, 2006, Somerset Community Services, Inc. ("SCS"), appellee, a private non-profit corporation providing services to individuals with developmental/intellectual disabilities, purchased approximately one acre of unimproved land from Robert Fern for $25,000. In 2009, the company began construction of a group home on the one-acre lot at 8150 Woods Lane. Mr. Moses, who lived one street over from the section of the property in question, noticed the building when SCS was cutting down trees on the property in 2009. He testified that he spoke with the other heirs and told them that he did not think SCS had a right to develop the land because it was part of the property they had inherited from their great-grandmother, Ms. Spady. In 2011, operating under the false impression that SCS was a state entity, the family filed a *pro se* federal lawsuit against the State of Maryland, but the lawsuit was voluntarily dismissed after the parties were alerted that the State was

[4] The inventory for Ms. Spady's estate included only the following brief description of the land: "29.92 acres more or less improved by 2 houses and 4 outbldgs. Located in Dublin Election District #4; bounded on the north by Old Rt. 13; on the east by Stanley Smith and on the west by Alice & Oscar Smith."

[5] Ralph Moses Jr. was 12 years old at the time of his great-grandmother's death, and therefore, he was not involved with her estate administration.

not the proper party. The family then worked to save money to hire counsel, experts, and surveyors.

On October 23, 2017, Ralph Moses filed an ejectment action against SCS on behalf of Ms. Spady's estate in the Circuit Court for Somerset County. This action was dismissed without prejudice for failure to join necessary parties, i.e., the other three great-grandchildren.

On March 13, 2018, the four great-grandchildren filed an amended complaint, asserting that they were the owners of the property on which SCS had constructed its group home, and they had not transferred it to SCS or anyone else. Appellants stated that they had suffered damages and loss of "mesne profits."[6] Accordingly, they requested recovery of the parcel and $10,000,000 in compensatory damages, plus interest, costs, and fees.[7]

During discovery, in response to interrogatories, SCS set forth the following chain of title from their predecessors in title, Ms. Beacham and Ms. Wilson, who acquired the title to their land from Ms. Spady in the five deeds discussed, *supra*, in the 1950s:

> When Molly Beacham (also known as Mollie Beacham) died intestate, title to her lands vested in her heirs at law, Geraldine B. Lewis and Dorothy B. Jones. They and their spouses conveyed the land they acquired from Lizzie Spady to Jess Beacham by a deed dated December 8, 1962 and recorded as aforesaid in Liber G.J.B No. 212, folio 454.
>
> Pauline Wilson died on March 9, 1976. Dorothy B. Jones (now known as Dorothy Birkett) was appointed personal representative of the

[6] "Mesne profits" is a term for damages for the value of rents and profits resulting from improvements on land. *Tongue v. Nutwell*, 31 Md. 302, 306 (1869).

[7] SCS has not raised any claim on appeal regarding the delay in filing the ejectment action.

> Estate of Pauline Wilson. Geraldine B. Lewis died on November 17, 1991 and Dorothy Birkett was also appointed personal representative of her estate. Thus, when Dorothy Birkett made a deed to Muir Enterprises, she was able to convey her personal one-half interest in the land she inherited from Molly Beacham, her sister Geraldine Lewis' one-half interest in the same land, and also all of the land that Pauline Wilson had been deed by Lizzie Spady. This deed was dated July 2, 1997 and recorded in Liber I.T.P No. 471, folio 876.
>
> Muir Enterprises, Inc. reconfigured the lands into three parcels, which are depicted in a survey by Chris Custis title "Survey of Three Parcels for Wayne Muir" and recorded in Plat Book I.T.P. No. 20, page 58.
>
> Muir Enterprises, Inc. conveyed Item Two of that property to Robert Fern by deed dated May 20, 2004 and recorded in Liber I.T.P. No. 570, folio 167. Robert Fern, in turn, conveyed this same land to [SCS] by deed dated August 6, 2006 and recorded at Liber I.T.P. No. 658, folio 434.

In its Answer to the Corrected Amended Complaint, SCS admitted that it constructed the building at 8150 Woods Lane, but it stated that it did so on land that it validly owned.

Prior to trial, appellants hired Beverley East, a forensic document examiner, to review and prepare a report on the authenticity of Ms. Spady's signatures on the five deeds to Ms. Beacham and Ms. Wilson. Comparing these signatures with "known signatures" from Ms. Spady's 1954 will and the 1963 deed to Mr. Moses' parents, Ms. East stated in her report that it was her "professional opinion that the [five deeds] were **not signed** by Lizzie Spady." The report stated that there were "numerous and significant differences" between the deed signatures and those on the known samples, and the "notable disparities are too numerous to be attributed to chance." Ms. East stated that her expert opinion was "rendered to a high degree of forensic certainty." This report was attached to appellants' pretrial motion for summary judgment, discussed in more detail *infra*, which was denied by the circuit court following a hearing.

II.

Trial

On November 8 and 9, 2018, the court held a bench trial on appellants' ejectment action. Mr. Moses testified that Ms. Spady was a caring woman who did not do business by written deed, and it "wasn't her practice to sell anybody anything[.]" He conceded on cross examination, however, that he had no personal knowledge of any of the deed transfers in question because he was born in 1952, and therefore, he was a young child at the time of the 1954–1957 deeds at issue. Mr. Moses stated, however, that he was "[v]ery familiar" with Ms. Spady's property because his father was the executor of her estate. He testified that he had been paying the taxes on the inherited property since 1975.

With respect to appellants' contention that the five deeds were not valid, Mr. Moses testified that he obtained records from the Office of the Secretary of State for Commission of Notary Public pertaining to Dorothy Hancock and Betty Wilson, two of the notaries listed on the deeds. The certified records, which were introduced into evidence, stated that the office had no record of either individual being commissioned as a Notary Public in Maryland. The records also stated, however, that the "records maintained by the Office of the Secretary of State date back to the year 1990."

Appellants then presented several expert witnesses to support their claim. David Green, an expert in property line surveying, testified that he had reviewed the plats and land descriptions in the deeds and found that SCS's building was located on land previously owned by Ms. Spady. Leroy Turner, an expert in real estate appraisals, testified that the

market value for the 8150 Woods Lane property, totaling 1.1 acres, was $146,000, and had a rental value of $1,280 per month.

Ms. East was admitted as an expert in forensic document examination. She testified that she compared Ms. Spady's signature on the five deeds to Ms. Spady's "known signatures" on certified copies of her 1958 will and the 1963 deed from Ms. Spady to Ralph Moses' parents. After examining and comparing the specific characteristics of each signature, Ms. East concluded within a degree of scientific certainty that "the signatures on the questioned document [were] not authentic."[8]

On cross-examination, appellee's counsel questioned Ms. East regarding how she ascertained that the "known signatures" on the will and deed were authentic. Ms. East responded that she normally requests a government issued identification as a "known" signature comparison, but because the signatures were old, and the author was no longer available, she "used the documents that were presented to [her] as known documents" and found those signatures to be consistent with one another.

Ms. East testified that, when presenting expert testimony, she does not use the levels of certainty scale recommended for scientists of her type in America. Instead, she prefers to express her expert opinions as it "is or it isn't" an authentic signature. She generally advocates providing a "commitment to what [she sees]" and not simply stating a

[8] Ms. East testified that she reviewed 26 characteristics, including "movement of the signature, how the signature is formed, how the letters are formed, where the spacing is, how the connection is, the line quality, [and] the baseline."

"possibility or probability." Using these principles, she testified that the deed signatures "were not signed by Lizzie Spady."

SCS then presented its case. Jeffrey Payne, an expert witness in forensic document examination, testified that he had examined the signatures on the five deeds. Using Ms. Spady's original will and certified copies of additional deeds from Ms. Spady to other individuals and institutions during the late 1950s and early 1960s located in the land records, Mr. Payne compared Ms. Spady's "known signatures" on these documents with the signatures on the five deeds at issue.[9] After examining the letter formation, baseline, and other characteristics of the signatures, Mr. Payne concluded that the author of the documents with Ms. Spady's known signature "probably wrote the signatures" on four of the five deeds. With respect to the fifth deed (the 1957 transfer to Ms. Beacham), he testified that Ms. Spady "may have written the signature," but he could not be sure because of the poor quality of the copy. On cross-examination, counsel asked whether, since his opinion was that it was "probable that Ms. Spady signed the questionable deeds," there existed a possibility that she did not sign them, and Mr. Payne replied: "There's a possibility."

[9] SCS introduced ten additional deeds, Def. Exhibits 17–26, that Mr. Payne used as known signatures. Two prior deeds, a 1954 deed from Lizzie Spady to Edward Cotman and the 1963 deed to Mr. Moses' parents, were already in evidence but were also used by Mr. Payne. In total, he used these 12 documents and the will as known signatures.

SCS questioned Mr. Payne about the different levels of certainty he generally expresses in court in his expert opinions as a certified forensic document examiner. In response, Mr. Payne stated:

> [W]e follow the scientific working group for forensic document examiners standard for expressing conclusions of forensic document examiners. And it is a nine point opinion scale and we start at no conclusion and then if we go to the right on the scale it would be indications did, probably did, very probably did, to an identification. And on the other side of the scale it would be indications did not, probably did not, very probably did not, to an elimination.
>
> For me, for probable, when I said she probably wrote, meaning that there's more evidence than not that the two bodies of writing were written by the same author.

Mr. Payne testified that this was a "standard method of expressing opinions" in his field, and it was not typical for a forensic document examiner to decline to express levels of certainty or uncertainty, as Ms. East had in her testimony.[10]

Mr. Payne explained that the high levels of opinion are considered categorical findings. He said probable in this case, "meaning that there's more evidence than not that the two bodies of writing were written by the same author."

SCS then called Philip Widdowson, a local real estate attorney who was admitted as an expert in title examination, land records, and judicial records in Somerset County. Mr. Widdowson had conducted a title examination of the property in question when SCS purchased the plot and did so again in preparation for trial.

[10] Mr. Payne also testified that, in his opinion, it is best to use as many known signatures as are available to determine the range of variation in the signatures, and to use original documents rather than copies when possible.

Mr. Widdowson testified that he had established a chain of title using the deeds for the property from Ms. Spady, who obtained it in 1944, through Robert Fern, who sold the property to SCS in 2006. First, he identified the deeds flowing from Ms. Spady's conveyances to Ms. Beacham in 1954, 1955, and 1957, i.e., three of the five deeds in question. Mr. Widdowson found that, when Ms. Beacham died intestate in 1961, the property passed to her heirs, husband Jess Beacham and their two daughters, Geraldine Lewis and Dorothy Birkett (also known as Dorothy Jones). In 1962, the daughters conveyed their interests in a recorded deed to their father, Mr. Beacham. When Mr. Beacham died in 1964, his interest passed back to his two daughters, half to Ms. Lewis and half to Ms. Birkett. Ms. Lewis died in 1991, and Ms. Birkett served as her sister's personal representative. Additionally, Ms. Birkett was personal representative for the estate of Pauline Wilson, her aunt, who died in 1976, and owner of the other portions conveyed from Ms. Spady in 1954 and 1955, i.e., the other two of the five deeds. This meant that, by 1991, Ms. Birkett controlled, either by fee simple ownership or in her capacity as personal representative, the full property conveyed from Ms. Spady to Ms. Wilson and Ms. Beacham in the 1950s.

Mr. Widdowson testified that, on July 2, 1997, Ms. Birkett conveyed the property to Muir Enterprises in a recorded deed for $25,000. The land description in the deed detailed three parcels and stated that the parcels are "the same and all the land" conveyed in the five deeds from Ms. Spady in the 1950s, and the 1962 deed from Ms. Lewis and Ms. Birkett to their father Mr. Beacham. Mr. Widdowson testified that this deed merged all the

titles previously held by Ms. Birkett's family members. Upon purchasing the land, Muir Enterprises reconfigured the property into three different parcels, as evidenced by a survey plat recorded on July 8, 1997. In 2004, the northernmost of the three parcels was conveyed from Muir Enterprises to Robert Fern for $16,500. Mr. Fern then conveyed his interest in the land to SCS in 2006 for $25,000.[11]

Mr. Widdowson testified that, after establishing the chain of title by reviewing the deeds, plats, and judicial records, it was his expert opinion that SCS took good title to the property in question. Moreover, by examining Ms. Spady's will, the five deeds in question, and all other conveyances made by Ms. Spady, Mr. Widdowson determined that there were approximately 30 acres left in her estate at the time of her death.[12] This was consistent with the inventory filed for Ms. Spady's estate, which stated that her estate contained 29.92 acres of real property.

Mr. Widdowson also testified that two houses were constructed on the property in question in 1958. He could not, however, state definitively that Ms. Beacham and Ms. Wilson constructed or lived in those houses, but he testified that he assumed that they had done so based on the timing of construction, i.e., just following the conveyances from Ms. Spady, and the fact that the houses remained when the property was given to their heirs. Mr. Widdowson testified that he had reviewed the judicial records and found that no

[11] Mr. Widdowson prepared the deed from Muir Enterprises to Mr. Fern in 1997, and the deed from Mr. Fern to SCS in 2006.

[12] Mr. Widdowson also testified that one of the witnesses to Ms. Spady's will, Harry C. Dashiell, was the same attorney who prepared the deeds to Ms. Beacham.

lawsuits had been filed by Ms. Spady or her heirs against any of the other subsequent title holders in this chain of title.

SCS's final witness, Nathan Noble, an expert in land surveying, testified that he had done site work at the property and had prepared a location drawing for SCS while the building was being constructed. Mr. Noble confirmed that the footprint of the building was located entirely within the parcel that was described in the 1997 survey, i.e., the parcel conveyed from Muir Enterprises to Mr. Fern and then to SCS.

At the conclusion of trial, the court made an oral ruling from the bench. The court noted that appellants had the burden of proof in this case, but after considering all the evidence, the court was "equipoised." It stated that the experts were equal "in their qualifications, equal in their testimony," and therefore, it ultimately came down to the circumstantial evidence to support the testimony of the handwriting experts. The court stated that the evidence that Ms. Beacham and Ms. Wilson, friends of the family, lived in homes on the property shortly after the conveyances, supported the testimony that the signatures on the deed were valid.

The court also rejected appellants' argument that they had raised doubt whether the notaries on the deeds had been commissioned as notaries. It stated:

> There's no evidence that shows that the notaries that were on the deeds themselves – the only evidence that's here today in this case is that there's no record of them being notaries before – or there's no records before 1990 for notaries. There's no testimony that says that those persons that are on the deeds were not notaries here in Somerset County. So therefore, the Court – and it is the Plaintiff's burden. Therefore, the Court has to assume, unless it's contradicted, that they were notaries. And as such that the signatures that

> were affixed upon the deeds were done so in their presence in what they attested to.

The court further stated that it would be a "stretch" to believe that Ms. Wilson, Ms. Beacham, and their attorney worked together to forge the name of their friend, Ms. Spady, on the deeds to the property. Accordingly, the court concluded that it was "not persuaded beyond a preponderance of the evidence that the [appellants had] met their burden of proof in this case," and it found in favor of SCS.

Judgment for SCS was entered on November 13, 2018. On November 23, 2018, as discussed further *infra*, appellants filed an amended motion to alter or amend judgment, which was denied by the circuit court on December 4, 2018.

This appeal followed.

MOTION TO DISMISS

Before discussing the merits of this case, we first address SCS's motion to dismiss the appeal. SCS argues that we should dismiss the appeal because appellants failed to include in the record extract materials necessary for consideration of the issues on appeal. Specifically, it contends the appellants failed to include the motion to alter or amend, the motion for summary judgment, the motion for reconsideration, appellee's oppositions to these motions, the trial court orders denying the motions, and the transcript of the hearing on the motion for summary judgment. Alternatively, SCS argues that, because it included these items in its appendix, this Court should order appellants to pay the printing costs for the appendix and for the preparation of the transcript from the July 13, 2018, motions hearing. Appellants did not file a reply brief responding to this motion.

Md. Rule 8-501(c) provides that the appellant must prepare and file a record extract containing "all parts of the record that are reasonably necessary for the determination of the questions presented by the appeal." An appeal typically "will not be dismissed for failure to file a record extract in compliance with this Rule[,]" however, unless the appellee sustains prejudice. Rule 8-501(m); *McAllister v. McAllister*, 218 Md. App. 386, 399 (2014).

Here, we agree that the omitted documents are "reasonably necessary" to decide the two questions presented, and therefore, appellants failed to comply with Rule 8-501(c). SCS, however, eliminated the prejudice caused by appellants' failure to include the documents in the record extract by providing them in its appendix filed with its brief. *McAllister*, 218 Md. App. at 399. Accordingly, we will not dismiss the appeal.

We will, however, order appellants to pay the costs of printing the appendix and the preparation of the transcript of the July 13, 2018, motions hearing.

DISCUSSION

I.

Summary Judgment and Motion for Reconsideration

Appellants contend that the circuit court erred in denying their motion for summary judgment, and their motion for reconsideration, based on their expert report that the deeds on which SCS relied contained "forged/false signatures of Ms. Spady." SCS contends that the circuit court "did not abuse its discretion by denying summary judgment to the appellants where the validity of the signatures on five deeds was a material fact as to which there was a genuine dispute."

A.

Proceedings Below

On May 3, 2018, prior to trial, appellants filed a Motion for Summary Judgment, attaching Ms. East's report concluding that the signatures on the five deeds did not belong to Ms. Spady. In the motion, appellants set forth six "indisputable" facts:

> 1. Defendant built a structure on land that Lizzie Spady acquired on February 21, 1944.
>
> 2. The Plaintiffs are the heirs of Lizzie Spady and acquired the land via her Will.
>
> 3. The structure Defendant built encroached upon the Plaintiffs' land per a Formal Property Line Survey.
>
> 4. Plaintiff's property was never transferred to Defendant by them.
>
> 5. The Defendant admitted in Interrogatory Answer #10 that it acquired title to the Plaintiffs' property from five deeds, namely, deeds from Lizzie Spady to [Pauline Wilson and Mollie Beacham.]
>
> 6. Ms. Beverley East of Strokes & Slants, an International World Renown Handwriting Expert in Washington, D.C., examined the deeds upon which Defendant relies for its claim to Plaintiffs' property and found forged/falsified signatures of Ms. Lizzie Spady on each of them[.]

(Citations to pleadings and exhibits omitted.) Appellants argued that there was no dispute that the deeds upon which SCS relied contained "forged/false signatures."

On May 17, 2018, SCS filed an opposition to appellants' motion for summary judgment. It argued that the motion should be denied because it was based on the "unsworn opinion of a person who has not been accepted by [the court] as an expert witness." Moreover, it stated that Md. Rule 2-501(a), governing summary judgment, required that

the motion be accompanied by an affidavit if it is "based on facts not contained in the record." Because appellants' motion did not include an affidavit attesting to material facts, the motion must be denied. SCS argued that both the "indisputable facts" alleged and the opinion of the "purported expert" were disputed. It asserted that the authenticity of the deeds was a factual matter, and therefore, summary judgment was not warranted.

On July 13, 2018, the court held a hearing on appellants' motion for summary judgment. Appellants argued there was no dispute of material fact because the six facts listed in their motion were undisputed. They asserted that they had attached their expert witness' report to their motion, and SCS did not provide any documentation countering Ms. East's opinion that the signatures were forged. They argued that, after they had shown that there was no genuine dispute of fact in their motion, the burden shifted to SCS to prove that there were disputed facts. Because SCS failed to attach documentation of such proof, appellants were entitled to summary judgment as a matter of law.

SCS argued that there were numerous disputes of fact yet to be determined in the case. It stated that the six facts discussed by appellants were irrelevant and not admissions of anything because Ms. Spady had divested herself of SCS's parcel by the time she willed her property to appellants. In any event, SCS argued that it previously had denied the pertinent allegations, thereby creating numerous disputes of fact. SCS also asserted that summary judgment was inappropriate because the determination of the authenticity of documents is the role of the fact finder.

At the end of the hearing, the circuit court denied appellants' motion for summary judgment on the ground that there was a dispute of material fact. The court explained:

> [T]he Plaintiffs argued that the signatures on the Defendant's exhibits are forgeries. However, the Defendant does – did in their answer contest that assertion. And as I stated earlier, that question as to the authenticity will ultimately be for the finder of fact to determine at trial in the fact that, you know, Plaintiffs [have] asserted that Ms. East will be called as an expert witness in regards to forensic document examination, handwriting expert. As well as the Defense expert that will – has been named and will be called. As we all know under Maryland Rule 2-501, summary judgment is only proper where there are no genuine questions of material fact to be decided. Not that the Plaintiffs believe that all of their assertions are totally correct and the Defendant believes that those assertions are not correct, that's ultimately why we have trials is that when there are disputes as to fact, that's ultimately up to the Court in this case to decide who's right and who's wrong at the end of the day. And since material facts, at least in [t]his Court's opinion, are disputed here, summary judgment should not be granted.

The court stated that, at some later point after depositions were held, the situation might change, but at that point the court was denying appellants' motion for summary judgment.

Three days later, on July 16, 2018, appellants filed a motion for reconsideration of the denial of summary judgment pursuant to Md. Rule 2-534. They again asserted that the pleadings showed that there was no dispute of fact and that SCS had conceded certain critical facts. They renewed their contention that SCS had failed to identify or provide documents refuting their expert's report. SCS filed its opposition to the motion later that same day, reiterating its position that there were numerous genuine disputes as to the

material facts of the case. On July 17, 2018, the circuit court denied appellants' motion for reconsideration.[13]

B.

Standard of Review

In reviewing a court's ruling on a motion for summary judgment, this Court's standard of review is as follows:

> Although a trial court's decision to grant a motion for summary judgment is subject to *de novo* review on appeal, *see Harford County v. Saks Fifth Ave. Distrib. Co.*, 399 Md. 73, 82, 923 A.2d 1 (2007) (citing *Haas v. Lockheed Martin Corp.*, 396 Md. 469, 478, 914 A.2d 735 (2007)), a trial court has discretionary authority to deny a motion for summary judgment in favor of a hearing on the merits, even when the moving party "has met the technical requirements of summary judgment." *Dashiell v. Meeks*, 396 Md. 149, 164–65, 913 A.2d 10 (2006) (citations omitted). "Thus, on appeal, the standard of review for a denial of a motion for summary judgment is whether the trial judge abused his [or her] discretion and in the absence of such a showing, the decision of the trial judge will not be disturbed." *Id.* (citations omitted).

[13] Following this denial, appellants continued to argue that the court's failure to enter summary judgment in their favor was improper. On July 27, 2018, ten days after the circuit court had denied the motion for reconsideration, appellants filed a reply to SCS's opposition to the motion for reconsideration in which they repeated the argument that Ms. East's report showed that there was no genuine dispute of fact.

On November 7, 2018, the day before trial, appellants filed a "Trial Brief," which renewed the motion for summary judgment on the same grounds asserted in the previous motions and incorporated additional evidence obtained that would be introduced or established at trial the next day. SCS filed a reply motion, arguing this request should be struck as untimely. On the first day of trial, before turning to the merits of the case, the court denied this renewed motion for summary judgment. Appellants continued to argue that the court should have granted summary judgment in their post-trial motion to alter or amend judgment, discussed *infra*.

Fischbach v. Fischbach, 187 Md. App. 61, 75 (2009). Accordingly, we review the denial of summary judgment by the circuit court in this case under an abuse of discretion standard. *Id.*

"An abuse of discretion occurs 'where no reasonable person would take the view adopted by the [trial] court' or when the court acts 'without reference to any guiding rules or principles.'" *Johnson v. Francis*, 239 Md. App. 530, 542 (2018) (quoting *Powell v. Breslin*, 430 Md. 52, 62 (2013)), *cert. denied*, 463 Md. 155 (2019). Because "[q]uestions within the discretion of the trial court are 'much better decided by trial judges than by appellate courts,'" an abuse of discretion "should only be found in the extraordinary, exceptional, or most egregious case." *Wilson v. John Crane, Inc.*, 385 Md. 185, 198–99 (2005) (quoting *In Re Adoption/Guardianship No. 3598*, 347 Md. 295, 312–13 (1997)).

C.

Analysis

Appellants argue that the circuit court erred in denying their pretrial motion for summary judgment, and the motion to reconsider that denial, because there was no dispute of material fact that they owned the property claimed by SCS. This is so, they assert, based on Ms. East's report that the deeds SCS relied on contained falsified signatures of Ms. Spady and because SCS failed to provide an expert report to counter Ms. East's report.

Md. Rule 2-501(f), governing summary judgment, provides that the circuit court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose

favor judgment is entered is entitled to judgment as a matter of law." If a material fact is in dispute, however, summary judgment is not appropriate. *Debbas v. Nelson*, 389 Md. 364, 373 (2005).

The moving party "shoulders the burden of proof that no genuine dispute of material fact exists." *Clark v. O'Malley*, 169 Md. App. 408, 423 (2006), *aff'd*, 404 Md. 13 (2008). This can be established either by identifying parts of the record that show a lack of genuine issue of fact or by providing admissible facts to support the lack of a genuine dispute. *Id.*

We agree with SCS that the circuit court did not abuse its discretion in denying appellants' motion for summary judgment and the motion to reconsider that denial. As SCS argues, and the trial court properly found, the validity of the signatures on the deeds was a genuine dispute of material fact for the court to resolve at trial.

The trial court was not required to accept as true the contents of Ms. East's report, especially as to ultimate conclusory facts, deducible only after weighing the opinion of an expert, which conflicted with SCS's assertions in their answer and interrogatories. *See Bagwell v. Peninsula Reg'l Med. Ctr.*, 106 Md. App. 470, 488 (1995) ("In resolving a motion for summary judgment, the trial court may not determine the credibility of witnesses."), *cert. denied*, 341 Md. 172 (1996). And because the authenticity of the signatures was in dispute and was a factual issue for the court to determine at trial, the court did not abuse its discretion in denying appellants' motion for summary judgment or the motion to reconsider that denial. *See Fenwick Motor Co. v. Fenwick*, 258 Md. 134, 140 (1970) ("[I]n a summary judgment proceeding where there is a reasonable basis for a

dispute over material factual inferences, it is not the function of the court to resolve them as a matter of law.").

II.

Motion to Alter or Amend Judgment

Appellants contend that the circuit court erred in denying their motion to alter and amend judgment for numerous reasons. In addressing this argument, which primarily challenges the weight of the evidence elicited at trial, we note that appellants do not appeal the judgment itself, but only the denial of the motion to alter or amend that judgment.

A.

Proceedings Below

On November 23, 2018, shortly after judgment was entered in SCS's favor, appellants filed a motion to alter or amend judgment pursuant to Md. Rule 2-534.[14] In this motion, appellants reviewed the evidence both parties had presented at trial. They noted the different standards used by the handwriting experts, stating that Mr. Payne used the term "probable," in contrast to Ms. East's testimony that she was "certain" the signatures were not Ms. Spady's. Appellants asserted that Ms. East's testimony proved with certainty that the signatures on the five deeds were forged, and therefore, SCS's expert testimony was "of no consequence."

[14] Appellants filed a motion to alter or amend on November 19, 2018, but then submitted an amended version to fix a minor error.

Appellants also argued that they had uncovered new evidence post-trial relating to the notaries that "back[ed] up" the Secretary of State documents introduced at trial. They stated that, after following up with the Maryland State Archives after trial, the Archives also had no record of two notaries listed on the deeds.

On November 30, 2018, appellants filed a supplement in support of their motion to alter or amend, stating that the Maryland State Archives, after a formal request "to do a search of records deposited by Worcester County Circuit Court about notaries in the 50s," had located the record of Ms. Hancock's notary commission, but there was "no entry was found for a Betty Wilson." Appellants also included a certified record produced by the Archives showing the entry pages for the commissions from 1956 to 1958, which listed two other individuals named "Betty," but did not list Betty E. Wilson. Accordingly, appellants argued that three of the deeds were not only forged, but also "bear a non-existent notary signature and seal," which supported their evidence that the deeds did not pass valid title.

On December 3, 2018, SCS filed an opposition to appellants' motion to alter or amend the judgment. SCS argued that the circuit court was not required to accept Ms. East's expert opinion over Mr. Payne's opinion, but it was entitled to give the expert opinions the weight it believed the opinions deserved. SCS argued that appellants did not establish that the deeds were forged.

With respect to the notaries, SCS argued that the issue was irrelevant because the Curative Act, Md. Code (Repl. Vol. 2015) § 4-109(a) of the Real Property Article ("RP"),

barred consideration of whether notaries were properly commissioned for deeds prior to 1973. Because the deeds in question were from the 1950s, the Curative Act saved the deeds and "limit[ed] the impeachment of issues concerning notaries." In any event, SCS argued that appellants' records failed to establish that the individuals in question were not notaries. With respect to appellants' post-trial evidence that the Maryland State Archives found no record of Betty Wilson's commission, SCS noted that the search pertained only to Worcester County and Ms. Wilson would have been commissioned in Somerset County.[15] To remove any doubt, SCS located and attached certified records from the Clerk of the Court for Somerset County, which demonstrated that Betty Wilson and O.E. Wilson were commissioned in 1957 and 1953, respectively.[16] SCS argued that this evidence showed that "all three notaries were in fact notaries at the time the deeds were acknowledged before them by Lizzie Spady."

On December 4, 2018, the circuit court denied appellants' motion to alter or amend judgment without a hearing.

B.

Standard of Review

Md. Rule 2-534 provides, in pertinent part, that,

[15] SCS also argued that appellants improperly delayed in obtaining pertinent state records that were available to them during discovery.

[16] The Somerset County record showed that Betty Wilson's commission started on April 26, 1957, the day before she notarized the deed from Ms. Spady to Ms. Beacham. O.E. Wilson was commissioned two years before the 1955 deeds he notarized, and his commission was still valid at the time.

> [i]n an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment.

We review the denial of a motion to alter or amend judgment filed pursuant to Md. Rule 2-534 for an abuse of discretion. *Spaw, LLC v. City of Annapolis*, 452 Md. 314, 363 (2017). Under this standard, "[s]o long as the Circuit Court applies the proper legal standards and reaches a reasonable conclusion based on the facts before it, an appellate court should not reverse a decision vested in the trial court's discretion merely because the appellate court reaches a different conclusion." *Id.* (quoting *Neustadter v. Holy Cross Hosp. of Silver Spring, Inc.*, 418 Md. 231, 241 (2011)). Although our review of the denial of appellants' motion to alter or amend judgment is for abuse of discretion, "that discretion is 'always tempered by the requirement that the court correctly apply the law applicable to the case.'" *Barrett v. Barrett*, 240 Md. App. 581, 591 (2019) (quoting *Rose v. Rose*, 236 Md. App. 117, 130 (2018)).

C.

Analysis

Appellants argue that the circuit court erred in denying their motion to alter or amend, asserting that the evidence at trial showed that SCS relied on false signatures on the deeds as the basis for their claim on appellants' property. In support, they note that Mr. Moses testified that it would have been uncharacteristic of Ms. Spady to sell her property, and this testimony was uncontradicted. The trial court, however, gave this testimony

limited weight, as was its province, based on Mr. Moses' young age at the time these deeds were executed.

Appellants also note that Ms. East testified, with scientific certainty, that the deed signatures were not Ms. Spady's signatures. The trial court, as fact finder, weighed that testimony against the testimony of SCS's expert that the signatures probably were Ms. Spady's signatures, and the court was not persuaded by Ms. East's testimony.

We agree with SCS that the circuit court was not required to accept as true Ms. East's opinion merely because she expressed it using a different level of certainty than Mr. Payne. Ms. East chose not to use degrees of certainty and opted for a simple "yes" or "no," whereas, Mr. Payne elected to use the nine possible degrees of certainty established by the scientific working group for forensic document examiners.

It is well settled law in Maryland that "the fact finder need not accept [an] expert's opinion." *Walker v. Grow*, 170 Md. App. 255, 275, *cert. denied*, 396 Md. 13 (2006). "The weight to be given the expert's testimony is a question for the fact finder." *Id.* Moreover, "[t]he trier of fact may believe or disbelieve, accredit or disregard, any evidence introduced." *Id.* (quoting *Great Coastal Express, Inc. v. Schruefer*, 34 Md. App. 706, 725 (1977)). It is not our role on appeal to usurp the court's conclusion regarding the weight attributed to the expert testimony. *Id.* at 275. *See Grimm v. State*, 232 Md. App. 382, 405–06 (2017) ("On appeal, we may not revisit the site of [the battle of the experts], recreate it in our imaginations, and resolve it for ourselves anew.") (quoting *United States v. Ludwig*,

641 F.3d 1243, 1253 (10th Cir. 2011)), *aff'd*, 458 Md. 602, *cert. denied*, 139 S. Ct. 263 (2018).[17]

We cannot conclude, on the record here, that the court abused its discretion in declining to reconsider its finding that appellants failed to meet their burden to show the deeds were forged and they possessed valid title to the property in question. The circuit court did not abuse its discretion by denying appellants' motion to alter or amend judgment.[18]

MOTION TO DISMISS APPEAL DENIED. JUDGMENTS OF THE CIRCUIT COURT FOR SOMERSET COUNTY AFFIRMED. COSTS, INCLUDING PRINTING THE APPENDIX AND THE PREPARATION OF THE JULY 13, 2018, TRANSCRIPT, TO BE PAID BY APPELLANTS.

[17] Appellants also point to the testimony of David Green, their surveyor, regarding the "level of uncertainty" regarding two of the deeds, but again, the trial court was not required to accept that testimony.

[18] Appellants did not argue in their brief that the new evidence regarding the notaries required the court to grant their motion, but they did at oral argument. We could decline to address the issue due to the failure to brief it but will state briefly that the claim is refuted by Maryland Code (2015 Repl. Vol.), § 4-109 of the Real Property Article ("RP"), the Maryland Curative Act, which provides that, "[i]f an instrument was recorded before January 1, 1973, any failure of the instrument to comply with the formal requisites listed in this section has no effect, unless the defect was challenged in a judicial proceeding commenced by July 1, 1973." RP § 4-109(c) lists "omission of a notary seal" as one of the formal requisites referred to in subsection (a). Therefore, by the plain language of the statute, even if the three notaries on the deeds were not properly commissioned, which SCS disputes, the deeds are not rendered ineffective by this fact because they were recorded before 1973.