NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

KATHERINE M. PURCELL	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
CAROLE CAPLES	:	No. 1818 EDA 2023

Appeal from the Judgment Entered June 21, 2023
In the Court of Common Pleas of Lehigh County
Civil Division at No(s): 2019-C-1929

CAROLE LEE CAPLES	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
	:	
v.	:	
	:	
	:	
KATHERINE M. PURCELL	:	No. 1963 EDA 2023

Appeal from the Judgment Entered June 21, 2023
In the Court of Common Pleas of Lehigh County
Civil Division at No(s): 2021-C-2083

KATHERINE M. PURCELL	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
CAROLE CAPLES	:	
	:	
Appellant	:	No. 1964 EDA 2023

Appeal from the Judgment Entered June 21, 2023
In the Court of Common Pleas of Lehigh County
Civil Division at No(s): 2019-C-1929

CAROLE LEE CAPLES	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
KATHERINE M. PURCELL	:	
Appellant	:	No. 1210 EDA 2024

Appeal from the Judgment Entered June 21, 2023
In the Court of Common Pleas of Lehigh County
Civil Division at No(s): 2021-C-2083

BEFORE: LAZARUS, P.J., BOWES, J., PANELLA, P.J.E., STABILE, J., DUBOW, J., NICHOLS, J., McLAUGHLIN, J., BECK, J., and NEUMAN, J.

MEMORANDUM BY PANELLA, P.J.E.: **FILED NOVEMBER 5, 2026**

In these consolidated cases, Katherine M. Purcell appeals and Carole Lee Caples cross-appeals from the judgment entered by the Lehigh County Court of Common Pleas in favor of Caples and against Purcell in the amount of $168,107 and in favor of Purcell and against Caples in the amount of $77,461.86. After careful review, we affirm.

The trial court provided a thorough recitation of the facts in this case, which properly laid out the record in the light most favorable to the verdict winner on the respective claims, as follows:

> Carole Caples (Caples) is the mother of Katherine Purcell (Purcell), Kimberly D'Alessandro (D'Alessandro), and Christine Cullen (Cullen). In 2010, Caples lived in Maryland, but wanted to downsize and live closer to family. On February 5, 2010, Caples purchased a home located at 3214 S. 5th Street, Whitehall, Pennsylvania (Whitehall Property), located less than a mile from Purcell and her family's home. The deed to the Whitehall Property was transferred to Caples and Purcell as joint tenants with the right of survivorship. Caples put Purcell on the deed because her

deceased husband believed it was good practice to put another family member's name on documents like deeds. In addition, Purcell was added to the deed so Purcell could streamline the inheritance process by selling the house and distributing the proceeds in accordance with Caples' wishes if Caples passed away. At that time, Caples wished her estate to be equally distributed between her three daughters.

Purcell advanced money to Caples to purchase the Whitehall Property; Caples immediately paid Purcell back with the proceeds of the sale of Caples' Maryland home. In addition, Caples paid all bills and utilities associated with the Whitehall Property. Purcell never resided at the Whitehall Property and never paid bills or utilities related to that home.

In 2012, Purcell began two investment companies, KP Investments, LLC (KP) and KC Property Investments, LLC (KC), the purpose of each company was to purchase, renovate and rent properties in the Baltimore, Maryland area. Caples became a 2% member in KP with an initial investment of $1,500 and a 50% member in KC with an initial investment of $75,898.89. Accounts for KP and KC were opened with the Pennsylvania State Employees Credit Union (PSECU) and Purcell and Caples were listed as authorized signers on both accounts; both were authorized signers as of April 15, 2019. On March 6, 2019, Caples sold her membership interest in KP to her grandson Corey Purcell for $2,400.

In 2018, following hip surgery and rehabilitation and a second multi-day hospitalization for illness, Caples decided she wanted to move to Fellowship Community, a continuing care retirement community. On May 11, 2018, Caples executed a Fellowship Community Independent Living Residency Agreement; she subsequently moved into independent living at Fellowship Community on July 1, 2018.

In order to enter Fellowship Community, Caples had to pay an entrance fee of approximately $203,000. Purcell agreed to loan Caples $192,850 in order for Caples to pay the entrance fee. A promissory note for $192,850 was signed by Caples and Purcell on July 1, 2018 (Note). The Note included an attached Loan Amortization Schedule Calculator that required Caples to make monthly payments to Purcell in the amount of $975.60 per month for 240 months beginning on November 1, 2018.

Also in 2018, while Caples contemplated moving into Fellowship Community, but while she still resided at the Whitehall Property, Caples requested to update her estate planning; Purcell took Caples to meet with Gail Shearer, Esquire. On May 21, 2018, a General Power of Attorney for Carol Caples was executed appointing Purcell as her agent; Purcell accepted the appointment. Caples updated her will on the same date, but maintained the same estate plan as previously documented which was to distribute her estate equally to each of her three daughters. The will included an attestation by Caples, Attorney Shearer, and Robin Kovaleski that included, in part, that Caples was of sound mind and under no constraint or undue influence.

On October 11, 2018, Stanley Vasiliadis, Esquire, prepared a new Power of Attorney for Caples appointing Purcell as her agent; Purcell accepted the appointment. In addition, a health care power of attorney was executed naming Purcell as agent and D'Alessandro and Cullen as alternative agents.

On October 15, 2018, a subsequent meeting was held at Attorney Shearer's office. Although the meeting was originally to correct mistakes on the estate planning documents related to Cullen's address, Caples decided she wanted to designate Purcell, D'Alessandro and Cullen as co-agents. A new health care power of attorney was executed appointing all three sisters as agents, not in the alternative. Purcell was unhappy about this arrangement.

While living in Fellowship Community, Caples sold her Whitehall Property and on October 18, 2018, closed on the Whitehall Property. The net proceeds from the sale of the Whitehall Property were $262,519.75. At closing, a refund for overpayment of a sewer bill was issued in the amount of $63.33. At closing, Purcell and Caples each received half of the proceeds of the sale, each receiving $131,259.88 in proceeds and each receiving $31.67 for the sewer refund. A document was signed by both Purcell and Caples at the time of closing indicating that they each received 50% of the proceeds of the sale.

After the closing and settlement on the Whitehall Property, Caples wanted to know how much she owed Purcell to pay off the Note from the Fellowship Community loan; D'Alessandro texted Purcell and requested the payoff amount, but did not receive a response.

D'Alessandro took Caples to Bank of America to deposit Caples' check and Caples again inquired how much she owed Purcell. D'Alessandro called Purcell to get the information, but Purcell did not know the amount and said she would have to check her records. Caples deposited her $131,259.87 share of the proceeds of the sale of her home into an account Caples shared jointly with D'Alessandro.

From October 18, 2018 to November 24, 2018, Purcell received communications from both D'Alessandro and Cullen requesting the payoff figure for Caples because Caples was feeling very anxious about owing Purcell money. Purcell did not respond to D'Alessandro, Cullen or Caples about the loan amount until November 24, 2018.

On November 24, 2018, Purcell invited Caples to Purcell's home. Purcell instructed Caples to write a check to Purcell for $100,000, to sign a check payable to Caples for $30,850, and for Caples to sign a new Loan Amortization Schedule Calculator. The $100,000 check was paid toward the principal of the Note. A new Loan Amortization Schedule Calculator was attached to a copy of the $100,000 check and included a new principal of $92,850, with monthly payments of $469.71, to be paid over 20 years, i.e., November 2038. A handwritten notation was added to the original Note documenting the $[100,000] payment and new Loan Amortization Schedule Calculator. The handwritten notation was signed by Purcell, Caples and Deirdre Lockman. In addition, Caples deposited $30,850 to a PSECU account in the joint names of Caples and Purcell (8699 Account) in order for monthly loan payments to be automatically paid in the amount of$469.71 from that account to Purcell's money market account for a duration of over five years.

During this time, Purcell continued to have concerns about the logistics of the three sisters being co-agents and how that could be problematic during an emergency situation. Purcell wanted the healthcare power of attorney to name only Purcell as agent with D'Alessandro and Cullen as alternative agents. Purcell's requests for such change went unanswered, and, therefore, on January 14, 2019, she resigned as health care power of attorney agent.

Thereafter, on January 20, 2019, Purcell removed $28,528.39 of the $30,850 from the 8699 Account and placed it into Purcell's personal PSECU account she held with her husband (0213

Account). The remaining balance in the 8699 Account was $1,412.35.

Purcell then made automatic monthly payments in the amount of $469.71 from that joint 8699 Account to the 0213 Account Purcell shared with her husband. Monthly payments in the amount of $469.71 were made from the 8699 Account on February 7, 2019, March 7, 2019 and April 7, 2019 to the 0213 Account. However, the 8699 Account did not have enough funds to cover the April 7, 2019 loan payment. Therefore, on April 5, 2019, Purcell transferred $469.71 from her 0213 Account to the 8699 Account; on April 7, 2019, Purcell transferred the same amount back to her 0213 Account.

On February 21, 2019, Caples, Cullen and Purcell met with William J. Fries, Esquire. At that time, the October 11, 2018 Power of Attorney naming Purcell as agent was revoked by Notice of Revocation of Power of Attorney dated February 21, 2019. In addition, a February 21, 2019 Power of Attorney appointed D'Alessandro and Cullen as agents for Caples. As of that date, Purcell was aware she was no longer Caples' agent and that D'Alessandro and Cullen were Caples' agents.

From December 2018 through February 2019, Purcell admitted that D'Alessandro and Cullen continually asked her to provide them information on Caples['] finances, but Purcell refused to provide any information. D'Alessandro, Cullen and Attorney Fries sent Purcell a letter on February 26, 2019, instructing Purcell to tum over account information; Purcell refused stating in a letter that Caples was competent and the information should be obtained from Caples. Purcell never sent any information to Caples' agents, D'Alessandro and Cullen, explaining why she was holding Caples' money.

In March of 2019, Caples moved out of Fellowship Community and moved to Alabama with D'Alessandro. D'Alessandro began to help Caples understand where her money was located. D'Alessandro and Caples discovered that Caples' name was on three PSECU accounts and she was an authorized signer on each account: the 8699 Account, the KP Account, and the KC Account.

On April 11, 2019, after discovering more than $28,000 had been removed from the 8699 Account into a personal account owned by Purcell, D'Alessandro contacted PSECU to determine Caples'

> options regarding the three PSECU accounts. After learning the accounts could not be frozen, D'Alessandro withdrew the remaining balance of $473.12 from the 8699 Account in order to prevent Purcell from taking additional funds from Caples. In addition, D'Alessandro removed $25,000 from the KP business account and $20,000 from the KC business account and put them in an account she set up in Caples' name with D'Alessandro as joint owner. Purcell was not informed that the funds had been removed. The $45,000 from the business accounts remains in the Caples and D'Alessandro PSECU account with a balance of $45,177.54.
>
> Although Purcell retained the $28,528.39 in her 0213 Account, on May 10, 2019, Purcell sent Caples' agents a letter stating Caples was in default for not making monthly loan payments. At the time of trial, no additional payments on the Note had been made.
>
> Purcell began to notice memory loss in Caples beginning in 2016. On August 27, 2018, Purcell was told by Dr. Jacobus that Caples has Alzheimer's disease without behavioral disturbance. Dr. Robert M. [Gordon], Ph.D. opined that Caples' suffered from a weakened intellect during the time Pur[c]ell served as Caples' power of attorney.

Trial Court Opinion, 6/16/23, at 3-10 (citations omitted).

The trial court further thoroughly summarized the extensive procedural history of the separate matters included in this consolidated action as follows:

> **Caples v. Purcell; 2021-C-2083 (breach of fiduciary duty) ("Caples Action")**
>
> Procedurally, this case began with the filing of a petition to compel respondent, Purcell, to file an accounting pursuant to 20 Pa.C.S.A. § 5610 at docket file number 2019-0897 in the orphans' court []. Cullen and D'Alessandro, as co-agents for Caples, requested an accounting of Purcell's activities as agent under the May 21, 2018 power of attorney of Caples, that included:
>
> > 1. The circumstances regarding the issuance of a check for $100,000 on November 26, 2018, from the checking account of Caples, including the purpose of the check and the disposition of the proceeds;

> 2. The withdrawal of funds from the PSECU account of Caples;
>
> 3. The disposition of the net settlement proceeds check of $262,519.75 received on October 18, 2018, from the sale of the Whitehall Property, including the 50% share of Caples;
>
> 4. A complete accounting and copies of all documentation regarding the limited liability corporations established for the real estate located at Barkley Street, Baltimore, Maryland;
>
> 5. A complete accounting and documentation concerning the limited liability corporation established for the real estate located at Lafayette Street, Baltimore, Maryland;
>
> 6. Documentation concerning an account that was to be established in the name of Caples for the benefit of her three children; and
>
> 7. Information concerning a "trickledown" account believed to have been established by Purcell using assets of Caples.

In addition to requesting the above accounting, Cullen and D'Alessandro asserted that Purcell acted contrary to the best interests of Caples, acted in bad faith, and beyond her scope of authority, and otherwise violated her duties as agent for the principal. Pursuant to an agreement of the parties, an order was entered requiring Purcell to provide an accounting. An accounting was filed on August 30, 2019; Cullen and D'Alessandro subsequently filed objections to the accounting on September 18, 2019. Also on September 18, 2019, Cullen and D'Alessandro filed a petition for Purcell's breach of fiduciary duties as agent for Caples. Purcell responded to both the objections and the petition.

On June 25, 2020, Purcell filed a petition for dismissal for lack of orphans' court jurisdiction of (A) Caples' objections to respondent Purcell's accounting dated August 30, 2019, and (B) petition for respondent Purcell's breach of fiduciary duties as agent for Caples. After Cullen and D'Alessandro's response to Purcell's petition and after argument held thereon, the [orphans' court], by order dated August 19, 2020, granted Purcell's petition and dismissed the objections to the accounting and the petition for breach of

fiduciary duties for lack of orphans' court jurisdiction. The dismissal of the petition for breach of fiduciary duties was without prejudice to Caples filing a civil action raising a counterclaim in any civil actions as to the same subject matter. After Cullen and D'Alessandro's motion for reconsideration was denied [], the issue of jurisdiction was appealed to the Pennsylvania Superior Court.

On August 16, 2021, the Superior Court vacated the orphans' court order that dismissed Caples' petition for breach and remanded to the orphans' court to transfer the petition for breach to the civil division of the court of common pleas of Lehigh County; the order was affirmed in all other respects.

Pursuant to the Superior Court's order and by order dated December 8, 2021, the orphans' court transferred the petition for respondent Purcell's breach of fiduciary duties as agent for Caples to the civil division of this court. The transferred civil division docket number is 2021-C-2083.

KP v. Caples, D'Alessandro; 2019-C-1595
(conversion/ theft of funds, unjust enrichment)

On May 21, 2019, KP brought suit against Caples and D'Alessandro for conversion/theft of funds and unjust enrichment. KP is a limited liability company, and as of March 27, 2019, Purcell was a 98% interest member and managing member and Corey Purcell, her son, was a 2% interest member. The lawsuit asserted that Caples and D'Alessandro illegally transferred bank funds in the amount of $25,000 from KP's business checking account with PSECU to a joint account of Caples and D'Alessandro within the same credit union.

On October 30, 2019, Caples and D'Alessandro filed an answer with new matter to Purcell's complaint. KP replied to the new matter on November 25, 2019.

KC v. Caples, D'Alessandro; 2019-C-1627
(conversion/theft of funds, unjust enrichment)

On May 23, [2019,] KC Property Investments, LLC (KC) filed suit against Caples and D'Alessandro for conversion/theft of funds and unjust enrichment. KC is a limited liability company, in which from its inception the members have been Purcell (50% interest) and Caples (50% interest). The lawsuit asserted that Caples and

D'Alessandro illegally transferred bank funds in the amount of $20,000 from KC's business checking account with PSECU to a joint account of Caples and D'Alessandro maintained at the same credit union.

On October 30, 2019, Caples and D'Alessandro filed an answer with new matter to Purcell's complaint. KC replied to the new matter on November 25, 2019.

Purcell v. Caples; 2019-C-1929 ("Purcell Action")

On June 21, 2019, Purcell filed a breach of contract action asserting that Caples borrowed $192,850 from Purcell in order for Caples to enter Fellowship Community. Caples executed a promissory note dated July 1, 2018, in the amount of $192,850; a $100,000 payment was made on the loan making the principal balance $91,587. Purcell asserted that Caples breached the terms of the Note by failing to make the monthly payments of $469.71. Purcell sought judgment in the amount of $91,948.33 as of June 18, 2019 plus pre- and post-judgment interest at the rate of 6%.

On October 30, 2019, Caples filed an answer, new matter and counterclaim claiming that Purcell unlawfully took $131,259.88 from the proceeds of the sale of the Whitehall Property and unlawfully took $31.67 from a sewer refund from the Whitehall Property. Caples asserted that at the time Purcell unlawfully took the money, Purcell was acting as Caples' power of attorney and was in a confidential relationship with her. Caples averred that Purcell's behavior was egregious and Caples was entitled to punitive damages.

Purcell replied to the new matter and filed new matter on November 25, 2019. Caples filed a counter-reply on December 16, 2019.

On October 27, 2020, Caples filed a motion to amend her counterclaim, which was granted on November 2, 2020. Caples' answer with new matter and amended counterclaim were filed on November 5, 2020 and included the following: Count I—Breach of Fiduciary Duty and Count II—Fraud/Intentional Misrepresentation. Purcell filed a reply with new matter on December 11, 2020; and Caples filed her counter-reply on December 31, 2020.

Id. at 10-14 (some citations and unnecessary capitalization omitted).

The trial court subsequently consolidated the four actions. The cases proceeded to a six-day jury trial. Prior to the jury rendering factual findings, the trial court found that Purcell's October 7, 2018 removal of $23,873.70 from a joint PSECU account she shared with Caples was not wrongful and awarded that amount to Purcell as a matter of law, thereby precluding the jury from deciding that issue. The jury otherwise made separate findings in each of the actions on January 31, 2023. Specifically, the jury found:

- Caples and D'Alessandro deprived KP of $25,000 belonging to KP, it would be inequitable for them to retain the money, and awarded KP $25,000;
- Caples and D'Alessandro deprived KC of $20,000, it would be inequitable for them to retain the money, and awarded KC $20,000;
- Caples breached the loan agreement with Purcell and awarded Purcell $61,973.06 plus interest, which it calculated to be a total of $70,201.80;
- Caples did not prove her claim of fraud against Purcell regarding the proceeds from the sale of the Whitehall Property; and
- Purcell breached her fiduciary duty with regard to the proceeds from the sale of the Whitehall Property and awarded Caples $131,291.54.

On February 9, 2023, KC, KP, and Purcell filed a motion for post-trial relief. Of relevance to this appeal, Purcell sought judgment notwithstanding the verdict ("JNOV") in favor of her and against Caples on the breach of fiduciary duty claim, or in the alternative, a new trial. KP, KC, and Purcell further argued that the amounts awarded to them should be molded to include pre- and post-judgment interest. On February 17, 2023, Caples, through Cullen and D'Alessandro, filed a motion for post-trial relief, raising numerous claims. Ultimately, the trial court granted the motion to mold the verdict raised

by KP, KC, and Purcell, and denied the motions in all other respects. Relevantly, the trial court molded the verdict in favor of Purcell to $77,461.86.

Relevant herein, in the Purcell Action, judgment was entered on June 21, 2023, in favor of Caples and against Purcell in the amount of $168,107 and in favor of Purcell and against Caples in the amount of $77,461.86. On June 21, 2023, the court entered judgment in the Caples Action in favor of Caples and against Purcell in the amount of $168,107.40. Purcell and Caples appealed and cross-appealed from the entry of these judgments.

The consolidated appeal proceeded before a three-judge panel of this Court. We subsequently granted *en banc* review, and reargument was heard by the Court *en banc* on July 22, 2026. This matter is now ripe for disposition.

As Purcell has been assigned as the designated appellant, we address her issues first. Purcell raises the following issues on appeal:

> A. Did the trial court err as a matter of law in refusing to enter [JNOV] against [] Caples on her breach-of-fiduciary duty claim premised on the mere existence of a power of attorney, when no evidence was presented that [] Purcell acted as [] Caples' agent, particularly in connection with the 50/50 equal disposition of the proceeds from the sale of a jointly-titled parcel of real estate, and there was no other legal or evidentiary basis to find the existence of a fiduciary duty owed by [] Purcell to [] Caples?
>
> B. Did the trial court err as a matter of law in submitting special verdict question No. 10 to the jury for determination ("Has Carole Caples proven her claim for breach of fiduciary duty against Katherine M. Purcell regarding the disposition of the proceeds from the sale of the Fifth Street, Whitehall Property?"), given there cannot be a claim against [] Purcell for breach of fiduciary duty, when it is undisputed she did not act as [] Caples' agent, particularly with respect to the 50/50 equal distribution of the proceeds from the sale of the jointly-titled real estate, and there

> was no other legal or evidentiary basis to find the existence of a fiduciary duty owed by [] Purcell to [] Caples?
>
> C. Did the trial court err as a matter of law in submitting a breach of fiduciary duty jury instruction, and one which was also inaccurate and misleading, absent any evidence that, during the nine-month-long period she was [] Caples' agent, [] Purcell exclusively exercised the powers granted to her, particularly with respect to the 50/50 equal distribution of the proceeds from the sale of the jointly-titled real estate, and there was no other legal or evidentiary basis to find the existence of a fiduciary duty owed by [] Purcell to [] Caples?

Appellant's Brief, at 6 (unnecessary capitalization omitted). As all three issues relate to breach of fiduciary duty, and both the trial court and Purcell have combined these issues for review, we combine them for our analysis as well.

Notably, the entry of judgment notwithstanding the verdict "is a drastic remedy. A court cannot lightly ignore the findings of a duly selected jury." ***A.Y. v. Janssen Pharmaceuticals, Inc.***, 224 A.3d 1, 12 (Pa. Super. 2019) (citation and ellipses omitted).

> A motion for [JNOV] is a post-trial motion which requests the court to enter judgment in favor of the moving party. There are two bases on which the court can grant [JNOV]:
>
> > One, the movant is entitled to judgment as a matter of law, and/or two, the evidence is such that no two reasonable minds could disagree that the outcome should have been rendered in favor of the movant. With the first, the court reviews the record and concludes that **even with all factual inferences decided adverse[ly] to the movant** the law nonetheless requires a verdict in his favor; whereas with the second, the court reviews the evidentiary record and concludes that the evidence was such that a verdict for the movant was beyond peradventure.
>
> **In an appeal from the trial court's decision to deny [JNOV],**

> **we must consider the evidence, together with all favorable inferences drawn therefrom, in the light most favorable to the verdict winner.** Our standard of review when considering motions for a directed verdict and [JNOV] are identical. We will reverse a trial court's grant or denial of a [JNOV] only when we find an abuse of discretion or an error of law that controlled the outcome of the case. Further, the standard of review for an appellate court is the same as that for a trial court.
>
> Concerning any questions of law, our scope of review is plenary. **Concerning questions of credibility and weight accorded the evidence at trial, we will not substitute our judgment for that of the finder of fact**.... **A JNOV should be entered only in a clear case.**

Id. at 11-12 (citations and quotation marks omitted; emphases added).

Here, the jury determined that Caples proved her claim for breach of fiduciary duty against Purcell regarding disposition of the proceeds from the sale of the Whitehall Property, and entered a verdict in Caples' favor.

Purcell subsequently filed a motion for post-trial relief, arguing, in relevant part, that JNOV should be entered in her favor and against Caples on Caples' breach of fiduciary duty claim based on the disposition of the proceeds from the sale of the Whitehall Property given the absence of a fiduciary duty owed by Purcell to Caples. Purcell further argued that there was no basis for a breach of fiduciary duty claim because it would have contradicted the assumption of joint ownership arising from the joint-titling of the Whitehall Property. ***See*** Purcell's Motion for Post-Trial Relief, 2/9/23, at 2-7.

As stated, the trial court denied the motion for post-trial relief. Importantly, the trial court noted "Purcell proffers the [JNOV] request as a

matter of law and not as a failure to meet the evidentiary standard for a breach of fiduciary." Trial Court Opinion, 6/16/23, at 23. This is true, as in all of Purcell's issues related to breach of fiduciary duty, Purcell is critical of whether a fiduciary duty existed as a matter of law.

The trial court concluded "the vast majority of the testimony presented at trial regarding the history of dealings between Purcell and Caples, leads this court to the conclusion that there could be no doubt that there existed a fiduciary relationship between Purcell and Caples." ***Id.*** at 28. Accordingly, the court concluded Purcell was not entitled to judgment as a matter of law as the jury's verdict was supported by the record.[1] ***See id.***

Notably, this was not a bench trial. The jury was the fact-finder in this case, and as such, was ultimately responsible for the finding that Purcell breached a fiduciary duty to Caples. Upon post-trial motions, the trial court's only role was to decide whether the jury's finding was incorrect as a matter of law, as that was the avenue pursued by Purcell in requesting JNOV. With a request for JNOV on the first basis—as a matter of law— "the court reviews the record and concludes that even with all factual inferences decided adverse[ly]

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[1] "[A trial] judge's appraisement of evidence is not to be based on how he would have voted had he been a member of the jury, but on the facts as they come through the sieve of the jury's deliberations." ***Estate of Hicks v. Dana Companies, LLC***, 984 A.2d 943, 951 (Pa. Super. 2009). With this standard in mind, as aforesaid, the experienced trial judge in this case, the Honorable Melissa T. Pavlack, denied the motion for JNOV.

to the movant the law nonetheless requires a verdict in his favor." ***A.Y.***, 224 A.3d at 11 (citation omitted).

Based on our standard of review, we conclude the trial court properly found that the evidence adduced in this case, giving all reasonable inferences to Caples as the verdict winner, is more than sufficient to support the jury's finding that Purcell owed a fiduciary duty to Caples and that Purcell breached that duty.

The trial court found Purcell's arguments were "fundamentally flawed," because Purcell only asserted that no fiduciary duty was owed by Purcell to Caples since Purcell was not acting as Caples' agent and not exercising powers as Power of Attorney (POA) at the time that the Whitehall Property was sold. Trial Court Opinion, 6/16/23, at 23.

Importantly, our Supreme Court, in ***Yenchi v. Ameriprise Financial, Inc.***, 161 A.3d 811 (Pa. 2017), as cited by the trial court, has explained that a fiduciary duty can arise in a few different circumstances, including *but not limited to* between a principal and agent:

> A fiduciary duty is the highest duty implied by law. A fiduciary duty requires a party to act with the utmost good faith in furthering and advancing the other person's interests, including a duty to disclose all relevant information. This highest duty will be imposed only where the attendant conditions make it certain that a fiduciary relationship exists.
>
> In some types of relationships, a fiduciary duty exists as a matter of law. Principal and agent, trustee and cestui que trust, attorney and client, guardian and ward, and partners are recognized examples. The unique degree of trust and confidence involved in these relationships typically allows for one party to gain easy

> access to the property or other valuable resources of the other, thus necessitating appropriate legal protections.
>
> **Where no fiduciary duty exists as a matter of law, Pennsylvania courts have nevertheless long recognized the existence of confidential relationships in circumstances where equity compels that we do so.** Our courts have found fiduciary duties in circumstances where the relative position of the parties is such that the one has the power and means to take advantage of, or exercise undue influence over, the other. **The circumstances in which confidential relationships have been recognized are fact specific and cannot be reduced to a particular set of facts or circumstances.** We have explained that a confidential relationship "appears when the circumstances make it certain the parties do not deal on equal terms, but, on the one side there is an overmastering influence, or, on the other, weakness, dependence or trust, justifiably reposed[.]" …
>
> While cases involving fiduciary relationships are necessarily fact specific, they usually involve some special vulnerability in one person that creates a unique opportunity for another person to take advantage to their benefit. This Court has recognized that while disease or advancing age "do not by themselves create a confidential relationship with another," such limitations "may support an inference of confidentiality" if they bear on a party's "capacity to understand the nature of the transaction in question." Family relationships or close personal friendships, while also not dispositive of the existence of a confidential relationship, have also often played significant roles in particular determinations.

Yenchi, 161 A.3d at 819-821 (citations and footnotes omitted) (emphases added). Accordingly, based upon the evidence presented at trial, while the jury could have found that a fiduciary duty existed based on Purcell's role as her mother's agent under the POA, that relationship was not necessarily dispositive. The jury also could have found, based upon the extensive evidence presented at trial, that Purcell and Caples were in a confidential relationship.

Notably, the test for a confidential relationship is disjunctive, needing only one of the following to show an unfair advantage: (1) overmastering influence, (2) weakness, (3) dependence, *or* (4) trust. ***See Basile v. H & R Block, Inc.***, 777 A.2d 95, 101 (Pa. Super. 2001).

Upon reviewing the record, we commend the trial court on its thorough recitation of the facts in this case, which properly laid out the record in the light most favorable to the verdict winner, as we must. ***See*** Trial Court Opinion, 6/16/23, at 3-10.

Viewing the record in this manner, there was corroborating testimony presented that it was understood by all, including Purcell, that Caples placed Purcell's name on the deed for the Whitehall Property because it was a family practice, and Caples expected this would help facilitate Purcell evenly dividing the house between the three daughters in the event their mother moved or passed away. ***See*** N.T., Jury Trial, 1/27/23, at 52 (Caples testifying that she put Purcell's name on the deed because her late husband had told her to put somebody else—one of the girls—on the deed if she were ever going to buy a house alone; and that she placed Purcell on the deed with the intent that if Caples were to pass away while still owning the house, Purcell would divide the property evenly between all three sisters); ***see also*** N.T., Jury Trial, 1/26/23, at 106 (D'Allesandro testifying, "Our understanding was that [Purcell] would be able to take care of the selling of the home and attributing the funds to Mom's estate. Where they would be divided equally … That's what

everyone's understanding was."); ***see also*** N.T., Jury Trial, 1/27/23, at 117 (Cullen testifying about a specific phone call with Purcell where "[Purcell] had mentioned or had—was telling me on the phone that her and Mom decided to put [Purcell]'s name on the 5th Street property. For inheritance tax purposes. I didn't really understand it at that time. But to make it easier to sell the house and disburse the funds if something, God forbid, were to happen to my mom."); ***see also id.*** at 119-120 (Cullen testifying that Purcell said "[t]hat if Mom owned the property by herself and she were to pass away, that the government would take a chunk of the money in inheritance tax, and it would get tied up in court and her beneficiaries would receive less. It would be more streamlined if she was on the property. And then she could sell the home and split the proceeds between my mom's children … The way Mom always wanted. A third to each of us."). It is clear the jury accepted and credited this testimony as true.

The trial evidence shows that Purcell was involved in listing the Whitehall Property for sale, selected the real estate agent of her choosing, and signed the listing agreement as Caples' agent under the POA. ***See*** N.T., Jury Trial, 1/25/23, at 224 (D'Alessandro testifying that they tried to list the house "for sale by owner", that Caples wanted a particular real estate agent, but Purcell rejected that agent and used her own agent). Purcell was also the only daughter involved at settlement.

Trial testimony showed that Caples believed she had paid part of the loan back to Purcell with half of the proceeds from the sale of the Whitehall Property, i.e. that Purcell used the proceeds from the sale to repay the loan. ***See*** N.T., Jury Trial, 1/27/23, at 60-61. However, Purcell took this money with no credit to Caples nor to her sisters. This is despite the fact that Purcell had no personal investment in the property that had been sold. While Purcell had originally advanced money to Caples to purchase the property, that money had been immediately paid back with the proceeds of the sale of Caples' Maryland home. After that, Caples paid all bills and utilities for the Whitehall Property. Purcell never resided at the Whitehall Property and never paid any bills or utilities related to the home.

Purcell's son also admitted that he had told his aunt, D'Alessandro, that the proceeds his mother received from the sale of the Whitehall Property would be used for the benefit of his grandmother, and that this was based on conversations he had with his mother on that subject. ***See id***. at 92-93. Despite this, Purcell kept the money for her own benefit. Of course, Purcell's testimony was also before the jury, and obviously discredited by the jury.

The above testimony provided at trial, construed in favor of Caples as the verdict winner, showed that Caples never intended to give the proceeds of the sale of the house to Purcell, and that Purcell's name on the deed was only for convenience and estate planning purposes to facilitate splitting

everything evenly between the three children. The evidence, read in light of the verdict winner, shows there was no intention of a gift to Purcell.

Evidence was also presented to the jury that Caples suffered from a weakened intellect during the relevant time frame. ***See*** N.T., Jury Trial, 1/25/23, at 183-87 (Dr. Daniel M. Spatz, Jr. testifying regarding Caples being a patient of his for around four years, including the time between December 2017 and February 2019, and the concerns about her memory that persisted during that time); ***see also*** N.T., Jury Trial, 1/27/23, at 126-28 (Cullen testifying about a time in late March of 2018 where Caples had become disoriented while driving to see a friend and Purcell had to go get Caples and her car off the side of the road and take her to the hospital, where Caples was treated for sepsis and pneumonia; it was after this hospitalization, her second, that the sisters discussed Caples moving into Fellowship Community); ***id.*** at 138 (testimony that during a doctor's appointment on October 27, 2018, Caples was diagnosed with Alzheimer's, late onset without behavioral disturbance, and that Purcell had called Cullen crying after the diagnosis); ***id.*** at 138-139 (testimony presented regarding Caples' declining mental health in the months leading up to that appointment, from February to October of 2018; Cullen testifying she noticed Caples was having trouble remembering things, like "Remembering to take her medicine. Remembering to eat. Getting lost a little bit."); N.T., Jury Trial, 1/25/23, at 109-11 (Purcell testifying about times in 2017 and into 2018 where she thought her mom was forgetting things or

her memory was not reliable). Further, Robert M. Gordon, Ph.D. testified extensively as an expert witness regarding his review of Caples' medical records and the report he completed in which he concluded Caples suffered from a weakened intellect. ***See, e.g.***, N.T., Videotaped Deposition of Robert M. Gordon, Ph.D., 9/8/22, at 37-38 (Dr. Gordon testifying regarding the expert report he completed in which he concluded it was clear Caples was of weakened intellect during the period of time between May 2018 to October 2018); ***see also*** N.T., Jury Trial, 1/26/23, at 184-85 (Dr. Gordon's videotaped deposition being played into the record).

Trial testimony further showed that Caples was confused by most of the financial matters with which Purcell was helping, and that she was relying on her trust in Purcell to take care of those matters in the way that she wished. ***See*** N.T., Jury Trial, 1/27/23, at 64 (Caples testifying she was confused by the promissory note paperwork for the $192,850 loan from Purcell, and she "wasn't sure what was going where, the $92,000 and the $469" but signed the paperwork at Purcell's direction because she did not want to argue about it, and *trusted* Purcell); ***see also id.*** at 56-57 (Caples intended to repay the loan as soon as she could—as soon as her house sold—and stated "I was pretty fast in repaying her."); ***id.*** at 58 (Caples affirming she expected to receive all of the proceeds from the sale of her home and that Purcell never mentioned being entitled to half of the proceeds); ***id.*** at 66 (Caples again affirming she had placed her trust in Purcell when naming her as her agent).

The testimony presented regarding Caples' confusion over the financial matters Purcell took care of for her, her unequivocal placement of trust in Purcell to take care of those matters on Caples' behalf, and testimony regarding Caples' diminishing memory, disorientation, and Alzheimer's diagnosis, were sufficient to show the undue influence or trust needed in a confidential relationship. This, along with evidence showing that Purcell was controlling financial matters for Caples, was sufficient to prove a confidential relationship existed between Caples and Purcell.

While Purcell attempted to rebut this argument, she appears to have continuously confused undue influence with testamentary capacity. ***See, e.g.***, N.T, Jury Trial, 1/25/23, at 126-30 (Purcell's attorney making much of the fact that Caples' wills and other estate planning documents were signed off as Caples being of sound mind.).

Caselaw on this issue is well established. "The weakened intellect necessary to establish undue influence need not amount to testamentary incapacity." ***In re Estate of Schumacher***, 133 A.3d 45, 52 (Pa. Super. 2016) (citing ***In re Estate of Clark***, 334 A.2d 628, 634 (Pa. 1975)). "Weakened intellect in the context of a claim of undue influence … will generally be proven through evidence more remote in time from the actual date of the will's execution." ***In re Bosley***, 26 A.3d 1104, 1111 (Pa. Super. 2011). "Although our cases have not established a bright-line test by which weakened intellect can be identified to a legal certainty, they have recognized that it is typically

accompanied by persistent confusion, forgetfulness and disorientation." ***Owens v. Mazzei***, 847 A.2d 700, 707 (Pa. Super. 2004) (citations omitted).

Upon review of the record, we find the jury's verdict is supported by sufficient evidence that Caples was in mental decline during the relevant time period. Multiple witnesses, including Caples' daughters and treating physician, testified to Caples' declining memory and confusion during the months leading up to and after the sale of the Property. Their recollections, which the jury was able to weigh in their role as fact-finder, were more than sufficient to show that Caples was experiencing a mental decline, ultimately leading to an Alzheimer's diagnosis, and that her declining mental state was apparent, not only to her doctor, but to all family members who had significant contact with her during that time.

Purcell's argument to the contrary, which relies exclusively on Caples being of sound mind to sign an estate planning document (i.e. testamentary capacity), and which is essentially a challenge to the witnesses' credibility, falls markedly short of demonstrating evidentiary insufficiency, and certainly not an error of law.

Finally, the record includes more than sufficient evidence to find a breach of a fiduciary duty granted under the POA. The record shows that Purcell accepted appointment as Caples' POA, signing acknowledgments on May 21, 2018, and again on October 11, 2018. ***See*** N.T., Jury Trial, 1/24/23, at 219; ***see also*** N.T., Jury Trial, 1/25/23, at 20-21. Once Purcell signed the

agent acknowledgements to be Caples' POA, there were automatic duties imposed on Purcell. Generally, "an agent that has accepted appointment [under a POA] shall: (1) Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, in the principal's best interest. (2) Act in good faith. (3) Act only within the scope of authority granted in the [POA]." 20 Pa.C.S.A. § 5601.3(a).

In addition, an agent appointed under a POA has the following duties:

> (1) Act loyally for the principal's benefit.
>
> (1.1) Keep the agent's funds separate from the principal's funds unless:
>
> > (i) the funds were not kept separate as of the date of the execution of the power of attorney; or
> >
> > (ii) the principal commingles the funds after the date of the execution of the power of attorney and the agent is the principal's spouse.
>
> (2) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest.
>
> (3) Act with the care, competence and diligence ordinarily exercised by agents in similar circumstances.
>
> (4) Keep a record of all receipts, disbursements and transactions made on behalf of the principal.
>
> (5) Cooperate with a person who has authority to make health care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest.
>
> (6) Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

> (i) The value and nature of the principal's property.
>
> (ii) The principal's foreseeable obligations and need for maintenance.
>
> (iii) Minimization of taxes, including income, estate, inheritance, generation-skipping transfer and gift taxes.
>
> (iv) Eligibility for a benefit, program or assistance under a statute or regulation.

20 Pa.C.S.A. § 5601.3(b).

Purcell argues that she did not sign anything as an agent, other than the listing agreement for the Whitehall Property. However, as made clear above, our law does not require a signature as the only way to act as an agent. For example, an agent can also make deposits, transfer money, draft documents, and order the principal to sign documents or take certain actions. Other than simply signing something, the record establishes many instances where the jury could have concluded that Purcell "acted" as Caples' agent.

Purcell argues that the transactions at issue were independent from her role as agent under the POA, and she therefore did not have a fiduciary duty in relation to those transactions. Based on the record, the jury was free to find there was nothing independent about these transactions, as they all involved a financial benefit to Purcell, and a financial detriment for Caples. Said another way, while having the POA, Purcell was controlling financial transactions on Caples' behalf and receiving major financial benefits. Broken down, out of the

$262,519,75 net proceeds from the sale of the Property, Purcell received the following benefits:

- $131,259.88, constituting half of the proceeds, was given directly to Purcell at settlement
- $100,000, was given to Purcell from Caples at Purcell's direction
- $31.67, constituting half of Caples' sewer bill refund, was given to Purcell, despite the fact that Purcell never paid any of the sewer bills for the Property
- 5 monthly transfers of $469.71, were paid by Purcell to herself, on behalf of Caples, from the 8699 Account, a joint account Purcell shared with her mother
- $28,528.39, was transferred by Purcell from the 8699 Account to a personal account that she shared with her husband

See N.T., Jury Trial, 1/25/23, at 58. After subtracting the above amounts, Purcell received all but $351.26 of the proceeds from the sale of her mother's house. ***See id.*** (Purcell affirming the above amounts and financial benefit from the proceeds). These amounts totaled over $250,000, despite Purcell only being owed a total of $192,850.

It is undisputed that Caples borrowed $192,850 from Purcell for her entrance fee to Fellowship Community. The original loan agreement for repayment was for monthly payments of $975.60, for 240 months, starting on November 1, 2018.

On October 18, 2018, both Caples and Purcell each received a check for $131,259.88 from the sale of the Whitehall Property.

On November 24, 2018, Purcell invited Caples to her home and directed Caples to write two checks: one for $100,000 to go towards the loan, and another for $30,850 to go into the 8699 Account, shared by Purcell and Caples, to go towards monthly payments on the loan. ***See*** N.T., Jury Trial, 1/24/23, at 142 (Purcell admitting in her testimony that after depositing the funds into the 8699 Account, she was the one who scheduled the monthly payments); ***see also id.*** at 184 (Purcell testifying she told Caples the money would be used for monthly payments so Caples would not have to pay it monthly herself).

However, on January 20, 2019, Purcell, of her own accord, and without Caples asking her to, removed $28,528.39 of the $30,850 deposit from the 8699 Account, and placed it in a personal account that Purcell shared with her husband, which earned dividends and interest. ***See*** N.T., Jury Trial, 1/25/23, at 35-36. Subsequently, on February 7, 2019, March 7, 2019, and April 7, 2019, Purcell made monthly transfers of $469.71 from the 8699 Account to her personal account she shared with her husband. ***See*** Exhibit D-47. On April 7, 2019, due to a low balance in the 8699 Account, Purcell transferred $469.71 from her personal account into the 8699 Account, and then transferred the same amount back. ***See*** Exhibit D-51.

In the meantime, on February 21, 2019, Caples had revoked Purcell's POA and appointed D'Alessandro and Cullen as POA. Nevertheless, Purcell continued to exert control over Caples' funds in the 8699 Account by making the March and February payments.

The above transactions were all directed by Purcell and are examples of Purcell controlling Caples' money, and not allowing Caples power over her own funds. As noted by the trial court, this was all being done while Purcell was ignoring D'Alessandro and Cullen's requests for information about the loan, and while Purcell was acting as POA over Caples.

Upon review of the record, and the comprehensive findings of the trial court, we find the jury's verdict is supported by compelling, indeed overwhelming, evidence. The testimony of Caples, D'Allessandro, and Cullen, which the jury was able to weigh in their role as fact-finder, and which the court found to be reliable after having sat through the entire trial, was more than sufficient to show a fiduciary duty existed between Caples and Purcell, whether through the existence of a confidential relationship and/or through Purcell's role as her mother's POA. Further, upon review of the record and based on our observations above we do not find any merit to Purcell's

challenges to the special verdict question and jury instruction provided to the jury regarding breach of fiduciary duty.[2]

In light of these conclusions, the trial court properly denied Purcell's motion for JNOV, as there is clearly more than sufficient evidence to support the jury's finding. Therefore, we affirm the judgment entered in favor of Caples and against Purcell on the breach of fiduciary duty claim.

Next, Caples raises the following issues in her cross-appeal:

> A. Whether the trial court should have granted Caples' motion for a compulsory nonsuit against Purcell on her breach of contract claim, where Purcell, not Caples, was in breach of the agreement because Purcell had directed Caples to set aside the sum of $30,850.00 in a joint account with Purcell to pay for monthly loan payments, and Purcell unlawfully removed those funds and chose not to apply them to loan payments?
>
> B. Whether Purcell's request to mold the verdict on the breach of contract claim was improperly granted because molding the verdict awarded Purcell additional interest against the jury's intent?
>
> C. Whether the trial court properly submitted the breach of fiduciary duty claim to the jury when evidence established that Purcell breached her fiduciary duties to Caples?
>
> D. Whether the trial court should have permitted Caples to present evidence at trial relevant to her claim for punitive damages, including evidence of Purcell's net worth and correspondence showing Purcell's ill-will and bad behavior, including Exhibits D-29 and D-42, and whether the trial court should have submitted the issue of punitive damages to the jury based on the overwhelming evidence presented at trial, as well as the excluded evidence,

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[2] Notably, we cannot find anywhere in the record that Purcell preserved a challenge to the special verdict question, either in the transcript or a motion for post-trial relief. Accordingly, this issue is both waived and without merit.

> which demonstrated that Purcell engaged in outrageous and willful conduct?
>
> E. Whether the trial court properly found that $23,873.70 held in a joint bank account belonging to Purcell and Caples belonged to Purcell as a matter of law?
>
> F. Whether the trial court should have permitted Caples' discovery deposition to be admitted as substantive evidence at trial when Caples was available to testify at trial and did testify?
>
> G. Whether the trial court should have limited the testimony of the former treating physician of Caples, so that he was not allowed to give his opinions and to fully testify regarding his care and treatment of Caples?
>
> H. Whether the trial court should have permitted Caples to introduce evidence related to Purcell's contacts with Caples after Caples moved to Alabama when this was highly relevant to showing Purcell's financial motivations and lack of care for her mother, as well as to impeach Purcell?

Appellee's Brief, at 2-5. For ease of disposition, we address these issues slightly out of order.

First, we note that issue C is a response to Purcell's issue regarding the breach of fiduciary duty claim being submitted to the jury, which we addressed above. As we have already concluded Purcell is due no relief on her breach of fiduciary duty claims, we need not address the matter further.

Next, we address Caples' claim that Purcell's request to mold the verdict on the breach of contract claim was improperly granted. Specifically, Caples argues that molding the verdict awarded Purcell additional interest against the jury's intent, as the jury had already included interest in its calculations on the verdict sheet. ***See*** Appellant's Brief, at 45-46.

On the verdict sheet, when asked to state the amount of money Caples owes to Purcell on the loan agreement, the jury concluded Caples owed $61,973.06 plus interest, which they calculated resulted in a total balance due of $70,201.80. ***See*** Verdict, 2/1/23, at 4.

In her motion for post-trial relief, Purcell requested the trial court mold the verdict in her favor to include pre- and post-verdict interest, at the statutory rate of 6% pursuant to 42 Pa.C.S.A. § 8101. ***See*** Purcell's Motion for Post-Trial Relief, 2/9/23, at 11. As to the breach of contract claim, Purcell contended that since the jury concluded the loan agreement was breached, pre-judgment statutory interest should have been calculated on the award amount of $61,973.06 from June 10, 2019, which is 30 days after notification of the breach, up through February 1, 2023, the date of the verdict, for a total amount of $75,552.80. ***See id.*** at 12.

The trial court subsequently granted Purcell's request and entered a molded verdict. As to the breach of contract claim, the molded verdict provided as follows: "[W]e, the jurors …. find on the Complaint in favor of Purcell in the amount of $77,268.25 plus ongoing interest at a rate of 6% per day (or $10.19 per day) from this date until satisfied." Molded Verdict, 7/24/23.

In Pennsylvania, "judgment for a specific sum of money **shall** bear interest at the lawful rate from the date of the verdict or award, or from the

date of the judgment, if the judgment is not entered upon a verdict or award." 42 Pa.C.S.A. § 8101 (emphasis added). Moreover,

> [t]he purpose of post[-]judgment interest is to compensate a successful plaintiff for being deprived of compensation for his or her loss during the time between ascertainment of the damage and payment by the defendant. Giving the judgment debtor the benefit of an erroneous court ruling, during which time the judgment debtor is relieved from paying post-judgment interest, hampers the very purpose behind such a policy. Such a construction needlessly and, we find, unjustly benefits the recipient of an erroneous ruling, while depriving an innocent plaintiff of his or her rightful award.

Hutchinson v. Luddy, 946 A.2d 744, 752-53 (Pa. Super. 2008) (citations and quotation marks omitted).

Here, Purcell was successful in her breach of contract claim. Under section 8101, "the prevailing party is 'entitled to interest on a judgment for a specific sum of money from the date of the verdict.'" ***Young v. Lippl***, 251 A.3d 405, 423 (Pa. Super. 2021). While a dispute may exist regarding the amount due under section 8101, a plaintiff is nevertheless entitled to post-judgment interest.

Caples further takes issue with the court changing the calculation of pre-judgment interest awarded to Purcell on the breach of contract claim.

> It is well-settled that in contract cases, pre[-]judgment interest is awardable as of right. On this point, the Pennsylvania Supreme Court has held that the right to interest begins at the time payment is withheld after it has been the duty of the debtor to make such payment. The basic premise underlying the award of pre[-]judgment interest to a party centers on the fact that the breaching party has deprived the injured party of using interest accrued on money which was rightfully due and owing to the injured party.

Portside Investors, L.P. v. Northern Ins. Co., 41 A.3d 1, 15 (Pa. Super. 2011) (quotations and citations omitted). The right to pre-judgment interest "arises upon breach or discontinuance of the contract provided the damages are then ascertainable by computation and even though a bona fide dispute exists as to the amount of the indebtedness." ***Palmgree v. Palmer's Garage, Inc.***, 117 A.2d 721, 722 (Pa. 1955) (citations omitted).

Notably, Caples does not dispute the propriety of the breach date utilized by the court in computing pre-judgment interest owed. Rather, Caples merely argues the court erred in re-calculating the pre-judgment interest because the jury had already calculated an interest amount themselves. As pre-judgment interest is a matter of right, we can find no support for Caples' contention that we must accept a jury's attempt to calculate interest. Notably, in providing an interest amount on the verdict sheet, the jury did not include what interest rate they were using, or what date they calculated interest from. Using the jury's seemingly random calculation of pre-judgment interest does not comport with the well-established principle that pre-judgment interest accrues at the time payment has been wrongfully withheld by the debtor. ***See Portside Investors***, 41 A.3d at 15. Allowance of such interest "does not depend upon discretion[,] but [i]s a legal right ... which arises upon breach of discontinuance of the contract." ***Palmgree***, 17 A.2d at 722 (citations omitted). As the interest rate and date on which interest should begin is set

by statute, the court did not err in recalculating the amount of interest owed by law. Accordingly, Caples is due no relief on this claim.

Next, we address Caples' claim that the trial court should have permitted Caples to present evidence at trial relevant to her claim for punitive damages, and whether the trial court should have submitted the issue of punitive damages to the jury. Pertinently, in Caples' amended counterclaim filed on November 5, 2020, she sought claims for breach of fiduciary duty and fraud/intentional misrepresentation. Caples requested punitive damages for both counts.

Our standard of review in assessing an award of punitive damages is well-settled.

> Punitive damages will lie only in cases of outrageous behavior, where defendant's egregious conduct shows either an evil motive or reckless indifference to the rights of others. Punitive damages are appropriate when an individual's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton, or reckless conduct.
>
> The determination of whether a person's actions arise to outrageous conduct lies within the sound discretion of the fact-finder and will not be disturbed by an appellate court so long as that discretion has not been abused.

J.J. DeLuca Co., Inc. v. Toll Naval Associates, 56 A.3d 402, 415-16 (Pa. Super. 2012) (citation omitted).

Here, the trial court acknowledged portions of Purcell's testimony highlighted by Caples to prove the requisite "outrageous" conduct for the jury to receive the issue of punitive damages. The court found that despite Caples

inserting the words "intentional", "willful", "reckless", and "malicious" to describe the testimony, the use of those words alone did not mean the testimony actually met those thresholds. ***See*** Trial Court Opinion, 6/10/23, at 33.

We agree with the trial court that while it is undisputed that this testimony was relevant to the underlying counts of fraud and breach of fiduciary duty, it simply did not rise to the level of "outrageous" conduct sufficient to support a punitive damages claim. ***See id.*** We echo the trial court's commiseration in finding the testimony more illustrative of the unfortunate breakdown of the family unit, rather than meeting the high bar to be characterized as "intentional", "willful", "reckless", and "malicious." ***See id.***

Caples further argues that the court erred in precluding admission of Exhibits D-29 and D-42 as evidence relevant to the punitive damages issue. First, Caples describes Exhibit D-29 as a letter in which Purcell stated she was "done" with Caples and demanded that Caples return the Healthcare POA to only having Purcell named as her agent. Caples contends this letter is "highly relevant to proving Caples' entitlement to punitive damages because it shows Purcell's intent to willfully and intentionally no longer assist her mother in a positive way while still serving as her agent, as well as showing Purcell's vindictive attitude, her knowledge that she can control Caples, and how she was in a confidential relationship with Caples." Appellee's Brief, at 70. Next, Caples explains that Exhibit D-42 is text messages between Purcell and

D'Alessandro, in which D'Alessandro tells Purcell about Caples' concern over not having something in writing to show her debt to Purcell is satisfied, Caples being very upset and not sleeping, and pleas for Purcell to speak with her sisters. Caples argues these text messages show Purcell's knowledge of Caples' stress and anxiety regarding not knowing what was going on with the loan, and calls Purcell's blame-shifting response in the messages "vindictive." ***See id.*** at 71.

The trial court noted these exhibits were not found to be relevant of the underlying claims and, again, did not meet the threshold of illustrating the requisite "outrageous" conduct necessary for a punitive damages claim. We again join with the court commiserating that these exhibits are "at best, … a sad reflection on the breakdown of this once close family." Trial Court Opinion, 6/10/23, at 34. We sympathize that situations like this involving close family members can be extremely difficult and unfortunate. However, we appreciate the court's mindfulness of the fine line between emotional considerations and the legal analysis required of the jury as fact-finder in this matter, and cannot find the court erred in doing so.

Finally, as we conclude the court did not err in not submitting the punitive damages claim to the jury, we find Caples' claim that the court erred by precluding discovery of Purcell's net worth is without merit. As punitive damages were not submitted to the jury, there was no reason for the jury to consider Caples' net worth. In other words, as Caples did not meet her burden

to be able to submit the issue of punitive damages to the jury, the discovery of net worth never became necessary.

As we stated above, the outrageous conduct necessary to send the issue of punitive damages to the jury was not present in this case. Therefore, evidence of net worth was not discoverable and was not relevant in fixing the amount of compensatory damages. ***See, e.g., Feld v. Merriam***, 485 A.2d 742, 748 (Pa. 1984). Accordingly, Caples is due no relief on her punitive damages issue.

We have reviewed the parties' briefs, the relevant law, the certified record, and the well-written trial court opinion, regarding Caples' remaining issues raised on appeal. We commend the trial court for its exceptional review and have determined that the trial court's opinion comprehensively disposes of those issues, with appropriate references to the record and without legal error. Therefore, we affirm the remaining issues based on the trial court's opinion. ***See*** Trial Court Opinion, 6/16/23, at 39-40, 41-42 (addressing Caples' post-trial motion for compulsory non-suit on breach of contract claim); ***see id.*** at 31-34 (addressing punitive damages); ***id.*** at 34-39 (addressing that the issue regarding the $23,873.70 was decided as a matter of law and not by the jury); ***id.*** at 44-45 (addressing issue of Caples' discovery deposition); ***id.*** at 45-47 (addressing evidentiary challenge regarding physician testimony); ***id.*** at 47 (addressing evidentiary challenge regarding evidence of Purcell's contacts with Caples after Caples' move to Alabama).

In conclusion, after careful review of all issues raised by the parties, we conclude the trial court properly denied Purcell's motion for JNOV and Caples' post-sentence motions, and affirm the judgment.

Judgment affirmed.

PJ Lazarus, Judges Stabile, Nichols, McLaughlin and Neuman join the Memorandum. Judge Bowes concurs in the result. Judge Beck files a Concurring Dissenting Memorandum in which Judge Dubow joins.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

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IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CIVIL DIVISION

KP INVESTMENTS, LLC, Plaintiff	)	Case No.: 2019-C-1595
v.	)	
CAROLE CAPLES and KIMBERLY D'ALESSANDRO, Defendants	)	

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CIVIL DIVISION

KC PROPERTY INVESTMENTS, LLC, Plaintiff	)	Case No.: 2019-C-1627
v.	)	
CAROLE CAPLES and KIMBERLY D'ALESSANDRO, Defendants	)	

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CIVIL DIVISION

KATHERINE M. PURCELL, Plaintiff	)	Case No.: 2019-C-1929
v.	)	
CAROLE CAPLES, Defendant	)	

KP Investments, LLC v. Caples and D'Alessandro: 2019-C-1595; KC Property Investments, LLC, v. Caples and D'Alessandro: 2019-C-1627; Purcell v. Caples: 2019-C-1929; Caples v. Purcell: 2021-C-2083

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CIVIL DIVISION

CAROLE LEE CAPLES, Plaintiff	)	Case No.: 2021-C-2083
v.	)	
KATHERINE M. PURCELL, Defendant	)	

****

APPEARANCES:

Kevin T. Fogerty, Esquire
Matthew J. Troxell, Esquire
For KP Investments, LLC
KC Property Investments, LLC
Katherine M. Purcell

William J. Fries, Esquire
Tracey A. Shreve, Esquire
For Carole Lee Caples
Kimberly D'Alessandro

****

OPINION

MELISSA T. PAVLACK, J.

A jury trial was held in the above-captioned consolidated cases from January 23, 2023 through January 31, 2023. Currently before the court for disposition are the post-trial motions filed by all parties to the consolidated cases.

FACTS

Carole Caples (Caples) is the mother of Katherine Purcell (Purcell), Kimberly D'Alessandro (D'Alessandro), and Christine Cullen (Cullen). Notes of Testimony (N.T.)[1] Vol. V, p. 46. In 2010, Caples lived in Maryland, but wanted to downsize and live closer to family. N.T. Vol. II, p. 72; Vol. V, p. 115. On February 5, 2010, Caples purchased a home located at 3214 S. 5th Street, Whitehall, Pennsylvania (Whitehall Property), located less than a mile from Purcell and her family's home. The deed to the Whitehall Property was transferred to Caples and Purcell as joint tenants with the right of survivorship. N.T. Vol. II, pp. 105-107, Vol. V. p. 50; Exhibit P-15. Caples put Purcell on the deed because her deceased husband believed it was good practice to put another family member's name on documents like deeds. N.T. Vol. V, p. 52. In addition, Purcell was added to the deed so Purcell could streamline the inheritance process by selling the house and distributing the proceeds in accordance with Caples' wishes if Caples passed away. N.T. Vol. III, p. 204. At that time, Caples wished her estate to be equally distributed between her three daughters. N.T. Vol. V, p. 52.

Purcell advanced money to Caples to purchase the Whitehall Property; Caples immediately paid Purcell back with the proceeds of the sale of Caples' Maryland home. N.T. Vol. II, p. 208, Vol. V p. 51. In addition, Caples paid all bills and utilities associated with the

[1] The jury trial was heard on the following days and citations to the notes of testimony are by volume number as follows:
January 23, 2023, N.T. Vol. I
January 24, 2023, N.T. Vol. II
January 25, 2023, N.T. Vol. III
January 26, 2023, N.T. Vol. IV
January 27, 2023, N.T. Vol. V
January 30, 2023, N.T. Vol. VI
January 31, 2023, N.T. Vol. VII

Whitehall Property. N.T. Vol. II, 208. Purcell never resided at the Whitehall Property and never paid bills or utilities related to that home. N.T. Vol. II, pp. 228-229, Vol. III p. 31.

In 2012, Purcell began two investment companies, KP Investments, LLC (KP) and KC Property Investments, LLC (KC), the purpose of each company was to purchase, renovate and rent properties in the Baltimore, Maryland area. N.T. Vol. II, p. 74. Caples became a 2% member in KP with an initial investment of $1,500 and a 50% member in KC with an initial investment of $75,898.89. N.T. Vol. Vol. II, pp. 76, 79; Exhibits P-6, P-8. Accounts for KP and KC were opened with the Pennsylvania State Employees Credit Union (PSECU) and Purcell and Caples were listed as authorized signers on both accounts; both were authorized signers as of April 15, 2019. N.T. Vol. II, p. 202, Vol. IV, pp. 23-24. On March 6, 2019, Caples sold her membership interest in KP to her grandson Corey Purcell for $2,400. N.T. Vol. II, pp. 84-85, 87-88; Exhibit P-3.

In 2018, following hip surgery and rehabilitation and a second multi-day hospitalization for illness, Caples decided she wanted to move to Fellowship Community, a continuing care retirement community. N.T. Vol. III, pp. 212-218, Vol. II, pp. 115, 224-225. On May 11, 2018, Caples executed a Fellowship Community Independent Living Residency Agreement; she subsequently moved into independent living at Fellowship Community on July 1, 2018. Vol. II, pp. 116-117, Vol. III, p. 154; Exhibit P-19.

In order to enter Fellowship Community, Caples had to pay an entrance fee of approximately $203,000. N.T., Vol. II, p. 118, Vol. IV, pp. 190, 195. Purcell agreed to loan Caples $192,850 in order for Caples to pay the entrance fee. A promissory note for $192,850 was signed by Caples and Purcell on July 1, 2018 (Note). N.T. Vol. II, pp. 134, 136, Vol. IV, p. 195;

Exhibit P-20. The Note included an attached Loan Amortization Schedule Calculator that required Caples to make monthly payments to Purcell in the amount of $975.60 per month for 240 months beginning on November 1, 2018. N.T. Vol. II, pp. 134-135, 206, 226-227, 241; Exhibit P-20.

Also in 2018, while Caples contemplated moving into Fellowship Community, but while she still resided at the Whitehall Property, Caples requested to update her estate planning; Purcell took Caples to meet with Gail Shearer, Esquire. N.T. Vol. II, p. 120. On May 21, 2018, a General Power of Attorney for Carol Caples was executed appointing Purcell as her agent; Purcell accepted the appointment. N.T. Vol. II, p. 121, N.T. Vol. III, p. 20; Exhibits P-32, D-2. Caples updated her will on the same date, but maintained the same estate plan as previously documented which was to distribute her estate equally to each of her three daughters. N.T. Vol. II, p. 125; Exhibit P-33. The will included an attestation by Caples, Attorney Shearer, and Robin Kovaleski that included, in part, that Caples was of sound mind and under no constraint or undue influence. *Id.*

On October 11, 2018, Stanley Vasiliadis, Esquire, prepared a new Power of Attorney for Caples appointing Purcell as her agent; Purcell accepted the appointment. N.T. Vol. II, pp. 127-129, 206, 234; Exhibits P-32, P-35. In addition, a health care power of attorney was executed naming Purcell as agent and D'Alessandro and Cullen as alternative agents.

On October 15, 2018, a subsequent meeting was held at Attorney Shearer's office. Although the meeting was originally to correct mistakes on the estate planning documents related to Cullen's address, Caples decided she wanted to designate Purcell, D'Alessandro and Cullen as co-agents. A new health care power of attorney was executed appointing all three

sisters as agents, not in the alternative. N.T. Vol. III, pp. 190-195, 197, Vol. V p. 69; Exhibit P-37. Purcell was unhappy about this arrangement. N.T. Vol. II, pp. 157-162; Vol. V., pp. 197-199.

While living in Fellowship Community, Caples sold her Whitehall Property and on October 18, 2018, closed on the Whitehall Property. N.T. Vol. III, p. 224. The net proceeds from the sale of the Whitehall Property were $262,519.75. N.T. Vol. II, pp. 227-228; Exhibit P-17. At closing, a refund for overpayment of a sewer bill was issued in the amount of $63.33. N.T. Vol. III, p. 56. At closing, Purcell and Caples each received half of the proceeds of the sale, each receiving $131,259.88 in proceeds and each receiving $31.67 for the sewer refund. N.T. Vol. III, pp. 30-31, 54, 56, 58. A document was signed by both Purcell and Caples at the time of closing indicating that they each received 50% of the proceeds of the sale. N.T. Vol. II, pp. 235-236; Exhibit P-17.

After the closing and settlement on the Whitehall Property, Caples wanted to know how much she owed Purcell to pay off the Note from the Fellowship Community loan; D'Alessandro texted Purcell and requested the payoff amount, but did not receive a response. N.T. Vol. III, pp. 228-229. D'Alessandro took Caples to Bank of America to deposit Caples' check and Caples again inquired how much she owed Purcell. D'Alessandro called Purcell to get the information, but Purcell did not know the amount and said she would have to check her records. N.T. Vol. III, pp. 229-230. Caples deposited her $131,259.87 share of the proceeds of the sale of her home into an account Caples shared jointly with D'Alessandro. N.T. Vol. II, p. 238.

From October 18, 2018 to November 24, 2018, Purcell received communications from both D'Alessandro and Cullen requesting the payoff figure for Caples because Caples was

feeling very anxious about owing Purcell money. N.T. Vol. II, pp. 237-240, 249. Purcell did not respond to D'Alessandro, Cullen or Caples about the loan amount until November 24, 2018.

On November 24, 2018, Purcell invited Caples to Purcell's home. Purcell instructed Caples to write a check to Purcell for $100,000, to sign a check payable to Caples for $30,850, and for Caples to sign a new Loan Amortization Schedule Calculator. N.T. Vol. V, pp. 63-64; Exhibits P-21, P-22, D-37. The $100,000 check was paid toward the principal of the Note. A new Loan Amortization Schedule Calculator was attached to a copy of the $100,000 check and included a new principal of $92,850, with monthly payments of $469.71, to be paid over 20 years, i.e., November 2038. N.T. Vol. II, pp. 139-141; Exhibit P-21. A handwritten notation was added to the original Note documenting the $100.000 payment and new Loan Amortization Schedule Calculator. The handwritten notation was signed by Purcell, Caples and Deirdre Lockman. N.T. Vol. II, p. 139. In addition, Caples deposited $30,850 to a PSECU account in the joint names of Caples and Purcell (8699 Account) in order for monthly loan payments to be automatically paid in the amount of $469.71 from that account to Purcell's money market account for a duration of over five years. Vol. II, pp. 142-143, 184; Exhibits P-23, D-45.

During this time, Purcell continued to have concerns about the logistics of the three sisters being co-agents and how that could be problematic during an emergency situation. Purcell wanted the healthcare power of attorney to name only Purcell as agent with D'Alessandro and Cullen as alternative agents. Purcell's requests for such change went unanswered, and, therefore, on January 14, 2019, she resigned as health care power of attorney agent. N.T. Vol II, p. 161; Exhibit P-38.

Thereafter, on January 20, 2019, Purcell removed $28,528.39 of the $30,850 from the 8699 Account and placed it into Purcell's personal PSECU account she held with her husband (0213 Account). N.T. Vol. III, pp. 33-36; Exhibits D-45, D-46, D-52. The remaining balance in the 8699 Account was $1,412.35. Exhibit D-45.

Purcell then made automatic monthly payments in the amount of $469.71 from that joint 8699 Account to the 0213 Account Purcell shared with her husband. N.T. Vol. II, pp. 142-143, 184, Vol. III, p. 35. Monthly payments in the amount of $469.71 were made from the 8699 Account on February 7, 2019, March 7, 2019 and April 7, 2019 to the 0213 Account. Exhibits D-47, D-48, D-49, D-50, D-51, D-52. However, the 8699 Account did not have enough funds to cover the April 7, 2019 loan payment. Therefore, on April 5, 2019, Purcell transferred $469.71 from her 0213 Account to the 8699 Account; on April 7, 2019, Purcell transferred the same amount back to her 0213 Account. Exhibit D-51.

On February 21, 2019, Caples, Cullen and Purcell met with William J. Fries, Esquire. At that time, the October 11, 2018 Power of Attorney naming Purcell as agent was revoked by Notice of Revocation of Power of Attorney dated February 21, 2019. N.T. Vol. II, pp. 163-164, III, pp. 22-23, 37-38, 41; Exhibit D-8. In addition, a February 21, 2019 Power of Attorney appointed D'Alessandro and Cullen as agents for Caples. N.T. Vol. Vol. II, pp. 163-164; Exhibit P-41. As of that date, Purcell was aware she was no longer Caples' agent and that D'Alessandro and Cullen were Caples' agents.

From December 2018 through February 2019, Purcell admitted that D'Alessandro and Cullen continually asked her to provide them information on Caples finances, but Purcell refused to provide any information. N.T. Vol. II, pp. 152-152, 162, Vol. IV, p. 113; Exhibit D-41.

D'Alessandro, Cullen and Attorney Fries sent Purcell a letter on February 26, 2019, instructing Purcell to turn over account information; Purcell refused stating in a letter that Caples was competent and the information should be obtained from Caples. N.T. Vol. III, pp. 38-41; Exhibits D-9, D-10. Purcell never sent any information to Caples' agents, D'Alessandro and Cullen, explaining why she was holding Caples' money. N.T. Vol. III, p. 52.

In March of 2019, Caples moved out of Fellowship Community and moved to Alabama with D'Alessandro. N.T. Vol. IV, pp. 44-45. D'Alessandro began to help Caples understand where her money was located. N.T. Vol. IV, pp. 19-25. D'Alessandro and Caples discovered that Caples' name was on three PSECU accounts and she was an authorized signer on each account: the 8699 Account, the KP Account, and the KC Account.

On April 11, 2019, after discovering more than $28,000 had been removed from the 8699 Account into a personal account owned by Purcell, D'Alessandro contacted PSECU to determine Caples' options regarding the three PSECU accounts. After learning the accounts could not be frozen, D'Alessandro withdrew the remaining balance of $473.12 from the 8699 Account in order to prevent Purcell from taking additional funds from Caples. N.T. Vol. IV, pp. 43-44, 65, 73, 77; Exhibits D 49, D-51. In addition, D'Alessandro removed $25,000 from the KP business account and $20,000 from the KC business account and put them in an account she set up in Caples' name with D'Alessandro as joint owner. N.T. Vol. II, pp. 89-91, 103-104, Vol. IV, pp. 22-28, 65; Exhibits P-4, P-13, P-14, D-90. Purcell was not informed that the funds had been removed. N.T. Vol. IV, p. 80. The $45,000 from the business accounts remains in the Caples and D'Alessandro PSECU account with a balance of $45,177.54. N.T. Vol. IV, pp. 28-31; Exhibit D-90.

Although Purcell retained the $28,528.39 in her 0213 Account, on May 10, 2019, Purcell sent Caples' agents a letter stating Caples was in default for not making monthly loan payments. N.T. Vol. II, p. 171; Exhibit P-23. At the time of trial, no additional payments on the Note had been made.

Purcell began to notice memory loss in Caples beginning in 2016. On August 27, 2018, Purcell was told by Dr. Jacobus that Caples has Alzheimer's disease without behavioral disturbance. N.T. Vol. II, pp. 215-216, Vol. III, p. 236, Vol. V. p. 138. Dr. Robert M. Gordan, Ph.D. opined that Caples' suffered from a weakened intellect during the time Purell served as Caples' power of attorney. Exhibit D-95, pp. 37-38.

PROCEDURAL HISTORY

Caples v. Purcell; 2021-C-2083 (breach of fiduciary duty)

Procedurally, this case began with the filing of a Petition to Compel Respondent, Purcell, to file an Accounting Pursuant to 20 Pa.C.S.A. § 5610 at Docket File Number 2019-0897 in the Orphans' Court Division of the Court of Common Pleas, Lehigh County. Cullen and D'Alessandro, as co-agents for Caples, requested an accounting of Purcell's activities as agent under the May 21, 2018 Power of Attorney of Caples, that included:

1. The circumstances regarding the issuance of a check for $100,000 on November 26, 2018, from the checking account of Caples, including the purpose of the check and the disposition of the proceeds;
2. The withdrawal of funds from the PSECU account of Caples;

3. The disposition of the net settlement proceeds check of $262,519.75 received on October 18, 2018, from the sale of the Whitehall Property, including the 50% share of Caples;
4. A complete accounting and copies of all documentation regarding the limited liability corporations established for the real estate located at Barkley Street, Baltimore, Maryland;
5. A complete accounting and documentation concerning the limited liability corporation established for the real estate located at Lafayette Street, Baltimore, Maryland;
6. Documentation concerning an account that was to be established in the name of Caples for the benefit of her three children; and
7. Information concerning a "trickledown" account believed to have been established by Purcell using assets of Caples.

See Petition to Compel Respondent Katherine M. Purcell to File an Accounting Pursuant to 20 Pa.C.S.A. § 5610, filed with the Clerk of Orphans' Court Division on May 14, 2019, pp. 3-4.

In addition to requesting the above accounting, Cullen and D'Alessandro asserted that Purcell acted contrary to the best interests of Caples, acted in bad faith, and beyond her scope of authority, and otherwise violated her duties as agent for her principal. *Id.* Pursuant to an agreement of the parties, an order was entered requiring Purcell to provide an accounting. An Accounting was filed on August 30, 2019; Cullen and D'Alessandro subsequently filed objections to the accounting on September 18, 2019. Also on September 18, 2019, Cullen and D'Alessandro filed a Petition for Purcell's Breach of Fiduciary Duties as Agent for Caples. Purcell responded to both the objections and the petition.

On June 25, 2020, Purcell filed a Petition for Dismissal for Lack of Orphans' Court

Jurisdiction of (A) Caples' Objections to Respondent Purcell's Accounting Dated August 30, 2019, and (B) Petition for Respondent Purcell's Breach of Fiduciary Duties as Agent for Caples. After Cullen and D'Alessandro's response to Purcell's Petition and after argument held thereon, the Honorable J. Brian Johnson, by order dated August 19, 2020, granted Purcell's Petition and dismissed the objections to the accounting and the petition for breach of fiduciary duties for lack of Orphans' Court jurisdiction. The dismissal of the petition for breach of fiduciary duties was without prejudice to Caples filing a civil action raising a counterclaim in any civil actions as to the same subject matter. After Cullen and D'Alessandro's motion for reconsideration was denied by Judge Johnson, the issue of jurisdiction was appealed to the Pennsylvania Superior Court.

On August 16, 2021, the Superior Court vacated the orphans' court order that dismissed Caples' Petition for breach and remanded to the orphans' court to transfer the Petition for Breach to the civil division of the Court of Common Pleas of Lehigh County; the order was affirmed in all other respects. *Non-Precedential Decision* filed August 16, 2021 and Order filed October 21, 2021 to 1802 EDA 2020.

Pursuant to the Superior Court's Order and by Order dated December 8, 2021, the orphans' court transferred the Petition for Respondent Purcell's Breach of Fiduciary Duties as Agent for Caples to the civil division of this court. The transferred civil division docket number is 2021-C-2083.

KP v. Caples, D'Alessandro; 2019-C-1595 (conversion/theft of funds, unjust enrichment)

On May 21, 2019, KP brought suit against Caples and D'Alessandro for conversion/theft of funds and unjust enrichment. KP is a limited liability company, and as of March 27, 2019, Purcell was a 98% interest member and managing member and Corey Purcell, her son, was a 2%

interest member. The lawsuit asserted that Caples and D'Alessandro illegally transferred bank funds in the amount of $25,000 from KP's business checking account with PSECU to a joint account of Caples and D'Alessandro within the same credit union.

On October 30, 2019, Caples and D'Alessandro filed an answer with new matter to Purcell's complaint. KP replied to the new matter on November 25, 2019.

KC v. Caples, D'Alessandro; 2019-C-1627 (conversion/theft of funds, unjust enrichment)

On May 23, KC Property Investments, LLC (KC) filed suit against Caples and D'Alessandro for conversion/theft of funds and unjust enrichment. KC is a limited liability company, in which from its inception the members have been Purcell (50% interest) and Caples (50% interest). The lawsuit asserted that Caples and D'Alessandro illegally transferred bank funds in the amount of $20,000 from KC's business checking account with PSECU to a joint account of Caples and D'Alessandro maintained at the same credit union.

On October 30, 2019, Caples and D'Alessandro filed an answer with new matter to Purcell's complaint. KC replied to the new matter on November 25, 2019.

Purcell v. Caples; 2019-C-1929

On June 21, 2019, Purcell filed a breach of contract action asserting that Caples borrowed $192,850 from Purcell in order for Caples to enter Fellowship Community. Caples executed a promissory note dated July 1, 2018, in the amount of $192,850; a $100,000 payment was made on the loan making the principal balance $91,587. Purcell asserted that Caples breached the terms of the Note by failing to make the monthly payments of $469.71. Purcell sought judgment in the amount of $91,948.33 as of June 18, 2019 plus pre- and post-judgment interest at the rate of 6%.

On October 30, 2019, Caples filed an answer, new matter and counterclaim claiming that Purcell unlawfully took $131,259.88 from the proceeds of the sale of the Whitehall Property and unlawfully took $31.67 from a sewer refund from the Whitehall Property. Caples asserted that at the time Purcell unlawfully took the money, Purcell was acting as Caples' power of attorney and was in a confidential relationship with her. Caples averred that Purcell's behavior was egregious and Caples was entitled to punitive damages.

Purcell replied to the new matter and filed new matter on November 25, 2019. Caples filed a counter-reply on December 16, 2019.

On October 27, 2020, Caples filed a motion to amend her counterclaim, which was granted on November 2, 2020. Caples' Answer with New Matter and Amended Counterclaim were filed on November 5, 2020 and included the following: Count I - Breach of Fiduciary Duty and Count II – Fraud/Intentional Misrepresentation. Purcell filed a reply with new matter on December 11, 2020; and Caples filed her counter-reply on December 31, 2020.

Consolidation

By Order dated October 8, 2019, and based upon the stipulation of the parties, this court consolidated case numbers 2019-C-1595, 2019-C-1627, and 2019-C-1929 for the purposes of discovery of trial. By Order dated January 25, 2022, and upon agreement of the parties, 2021-C-2083 was consolidated with the three consolidated cases.

At the conclusion of the jury trial, the jury entered the following verdicts on January 31, 2023, which were subsequently filed on February 1, 2023:

1. The jury found that Caples and D'Alessandro used, possessed or deprived KP of $25,000 in property belonging to KP without consent and without lawful justification and found it

would be inequitable under the circumstances for Caples or D'Alessandro to retain the property. The jury awarded $25,000 in favor of KP and against Caples and/or D'Alessandro.

2. The jury found that Caples and D'Alessandro used, possessed or deprived KC of $20,000 in property belonging to KC without consent and without lawful justification and found it would be inequitable under the circumstances for Caples or D'Alessandro to retain the property. The jury awarded $20,000 in favor of KC and against Caples and/or D'Alessandro.
3. The jury found that Caples breached the loan agreement between her and Purcell and awarded $70,201.80 in favor of Purcell and against Caples as the amount of money Caples still owes Purcell on the loan agreement.[2]
4. The jury did not find Caples proved her claim for fraud against Purcell regarding the disposition of the proceeds from the sale of the Whitehall Property.
5. The jury found that Caples proved her claim for breach of fiduciary duty against Purcell regarding the disposition of the proceeds from the sale of the Whitehall Property and awarded $131,291.54 in favor of Caples and against Purcell.

See Verdict signed January 31, 2023, and filed with the Clerk of Judicial Records, Civil Division, on February 1, 2023.

On February 9, 2023, KP, KC, and Purcell filed a Motion for Post-Trial Relief. In

[2] The jury determined the balance due by taking the $192,850 loan amount and subtracting payments in the amounts of $100,000, $28,528.39, and 2,348.55 and adding interest to the remaining $61,973.06 for a total of $70,201.80.

response, on February 17, 2023, Caples, through her agents Cullen and D'Alessandro, and D'Alessandro individually, filed a Motion for Post-Trial Relief Pursuant to Pa.R.C.P. 227.1(c). Pursuant to this court's scheduling order, the notes of testimony of the jury trial were transcribed, briefs and responsive briefs were filed and argument on the post-trial motions were heard. The post-trial motions are ripe for disposition.

KP, KC, and Purcell raise the following issues in their post-trial motion:

1. Should judgment notwithstanding the verdict be entered in favor of Purcell and against Caples on Caples' breach of fiduciary duty claim based on the disposition of the proceeds from the sale of the Whitehall Property given the absence of a fiduciary duty owed in that regard by Purcell to Caples?
2. Should judgment notwithstanding the verdict be entered in favor of Purcell and against Caples regarding the disposition of the proceeds from the sale of the Whitehall Property as Caples titled the Whitehall Property in both her name and Purcell's name, and there is no basis for any breach of fiduciary duty claim to contradict the assumption of joint ownership arising from that titling of that Property?
3. In the alternative, should a new trial be awarded to Purcell in light of the error in providing an improper breach of fiduciary duty jury instruction, given the absence of evidence giving rise to the existence of any fiduciary duty in the first place?
4. In the alternative, should a new trial be awarded to Purcell in light of the error in barring the admission of evidence (Caples' estate planning documents September 25, 2019, and testimony of Caples' from her deposition) that she had changed her will on September 25,

2019, in consideration of Purcell having received one-half of the proceeds from the sale of the Whitehall Property?

5. In the alternative, should a new trial be awarded to Purcell in light of the error in allowing the deposition testimony of Dr. Gordan, considering his testimony was never linked to any jury instruction or the verdict slip, and Caples alleged weakened intellect was not relevant to any issues in the case?
6. In the alternative, should a new trial be awarded to Purcell in light of the error in denying Purcell's motion to strike [Caples'] jury trial demand?
7. Should the court mold the Verdict to include pre- and post-judgment interest, payable to the KP, KC, and Purcell on the monies awarded to each of them at the pre-judgment mandatory statutory legal rate of 6% per year?

Caples, through her agents Cullen and D'Alessandro, and D'Alessandro individually, raise the following issues in their post-trial motion:

1. Whether the trial court erred by failing to permit Caples to introduce evidence relevant to Caples' claim for punitive damages against Purcell and by failing to submit the issue of whether Caples was entitled to punitive damages to the jury.
2. Whether the trial court erred by ruling that Caples' claim to the $23,873.70 that was taken by Purcell from the 8699 Account could not be submitted to and decided by the jury?
3. Whether the trial court erred by failing to enter a compulsory non-suit or a judgment notwithstanding the verdict and finding that Purcell committed fraud/intentional misrepresentation against Caples as a matter of law?

4. Whether the trial court erred when it failed to find that, as a matter of law, there was no breach of contract by Caples because it was undisputed that Caples had made all necessary payments under the loan agreement and Purcell simply chose not to use the money given to her by Caples to make payments under the loan agreement?
5. Whether the trial court erred when it failed to dismiss the claims against D'Alessandro when there was no evidence presented at trial that D'Alessandro, in her individual capacity, and not as agent for Caples, removed and retained for her benefit funds in the KC and KP PSECU bank accounts.
6. Whether the trial court erred by failing to enter a compulsory non-suit or a judgment notwithstanding the verdict on KP and KC's conversion claims when, as a matter of law, KP and KC could not prove conversion since they failed to prove that there was no lawful justification for the removal of funds and they failed to prove that either Caples or D'Alessandro acted with bad faith?
7. Whether the trial court erred by failing to enter a compulsory non-suit or a judgment notwithstanding the verdict on KP and KC's unjust enrichment claims when, as a matter of law, the evidence presented at trial demonstrated that it would not be inequitable for Caples to retain the funds that were removed from the KP and KC accounts?
8. Whether the trial court erred by entering into evidence inflammatory, incomplete, and prejudicial portions of Caples' discovery deposition testimony when Caples was available to testify at trial (and, in fact, did testify)?

9. Whether the trial court erred when it limited Dr. Daniel Spatz's testimony by prohibiting him from giving his opinions and testifying fully on all of his opinions and medical judgments regarding his former patient, Caples?
10. Whether the trial court erred by prohibiting Caples from eliciting testimony and presenting evidence related to Purcell's behavior and conduct with respect to how she treated Caples and how she prioritized her own interests and finances over her mother's health and welfare when this testimony and evidence was relevant to the breach of fiduciary duty, fraud, and punitive damages claims?
11. Whether the trial court erred by prohibiting Caples from introducing evidence and testimony related to Purcell's contacts with Caples after Caples moved to Alabama because this evidence and testimony were highly relevant to show Purcell's financial motivation and lack of care for her mother, as well as to directly contradict her statements regarding her concern for her mother?
12. Whether the trial court must mold the verdict to include pre- and post-judgment interest?

STANDARD OF REVIEW

There are two grounds upon which a judgment notwithstanding the verdict may be entered: (1) where the moving party is entitled to judgment as a matter of law; and/or (2) where the evidence was such that no two reasonable minds could disagree that the outcome could have been rendered in favor of the moving party. *Eichman v. McKeon*, 2003 Pa. Super. 185, 824 A.2d 305, 311 (2003), app. denied, 576 Pa. 712, 839 A.2d 352 (2003).

When considering a motion for judgment notwithstanding the verdict, the evidence must be considered in the light most favorable to the verdict winner, and he must be given the benefit of every reasonable inference of fact arising from the evidence and any conflict in the evidence must be resolved in his favor. *Lahr v. City of York*, 972 A.2d 41 (Pa. Cmwlth., 2009). If there is any basis upon which the jury could have properly made its award, a denial of the motion for judgment notwithstanding the verdict is required. *Smith v. Renaut*, 564 A.2d 188, 191 (Pa. Super, 1989).

This court only has the duty to grant a new trial if it determines that the judicial process has resulted in a serious injustice, as where there has been an error of law or where the verdict is against the clear weight of the evidence. *Autstin v. Ridge*, 435 Pa. 1, 255 A.2d 123, 125 (1969). The Pennsylvania Supreme Court has examined the appropriate standard of review of a motion for new trial and indicated that the trial court should follow a two-step process in responding to a request for a new trial. *See Harman v. Borah*, 562 Pa. 455, 756 A.2d 1116 (2000).

First, the trial court must determine whether a factual, legal or discretionary mistake was made during the trial. *Harman*, 756 A.2d at 1122. If it is determined that a mistake was made, the trial court must then evaluate whether the mistake provided sufficient basis for granting a new trial. The Pennsylvania Supreme Court noted that:

> The harmless error doctrine underlies every decision to grant or deny a new trial. A new trial is not warranted merely because some irregularity occurred during the trial or another trial judge would have ruled differently; the moving party must demonstrate to the trial court that he or she has suffered prejudice from the mistake.

Id.; See also Bey v. Sacks, 2001 Pa. Super. 357, 789 A.2d 232, 237 (2002).

Additionally, a trial court's rulings as to evidentiary questions are controlled by the sound discretion of the trial court. Those rulings will not be disturbed unless a clear abuse of discretion is shown. *Sutherland v. Monongahela Valley Hosp.*, 2004 Pa. Super. 245, 856 A.2d 55, 59

(2004). An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion, the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence or the record, discretion is abused. *Sutherland*, 56 A.2d at 59. For an errant ruling on evidence to merit a new trial, "it must have been harmful or prejudicial to the complaining party. *Jacobs v. Chatwani*, 922 A.2d 950, 966 (Pa. Super. 2007). "Evidentiary rulings which did not affect the verdict will not provide a basis for disturbing the jury's judgment." *Yacoub v. Lehigh Valley Medical Assoc., P.C.*, 805 A.2d 579, 585 (Pa. Super. 2002), *quoting Detterline v. D'Ambrosio's Dodge, Inc.*, 763 A.2d 935, 938 (Pa. Super. 2000) and *Foflygen v. Allegheny General Hosp.*, 723 A.2d 705, 708 (Pa. Super. 1999), *appeal denied* 740 A.2d 233 (Pa. 1999).

DISCUSSION

KP, KC and PURCELL POST-TRIAL MOTIONS:

Waiver issue

We begin our review of the post-trial motions by turning to Caples' assertion raised in the Brief in Opposition to Plaintiff's Motion for Post-Trial Relief that KP, KC and Purcell waived review of all of the issues raised in their Post-Trial Motion because they filed a blatantly defective brief that failed to include a recitation of the facts of record and failed to rely on facts of record to support their arguments. Specifically, Caples argues that KP, KC and Purcell failed to follow Lehigh County Local Rule 210(1) that requires "[e]ach brief shall contain (1) a history of the case, (2) a statement of the pertinent facts, (3) a statement of the questions involved, and (4) the argument.

While non-compliance with the Pennsylvania Rules of Civil Procedure cannot be excused when parties have made no attempt at conformity, *Sahutsky v. H.H. Knoebel Sons,* 566 Pa. 593, 782 A.2d 996, 1001 (2001), trial courts may choose, however, to overlook an issue raised post-trial in a procedurally imperfect manner and address the issue on its merits. *Id.*; *see also D.L. Forrey & Assocs., Inc. v. Fuel City Truck Stop, Inc.*, 2013 Pa. Super. 140, 71 A.3d 915, 920 (2013) (stating, procedurally flawed post-trial motion that presents trial court with issues addressed on merits in opinion are not waived). Additionally, Pa.R.C.P. 126, which is unaltered by Lehigh County Local Rules, provides, "[t]he rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action or proceeding to which they are applicable. The court at every stage of any such action or proceeding may disregard any error or defect of procedure which does not affect the substantive rights of the parties." Pa.R.C.P. 126.

While Caples is critical of Purcell, the court does not agree with Caples' assertion that Purcell has made it impossible for the court to review the requests. Although Purcell does not have a specific heading entitled "Statement of Pertinent Facts", the pertinent facts are recited by Purcell at various parts of the Memorandum of Law filed in Support of Motion for Post-Trial Relief and are presented in such a way that the court is able to review Purcell's stated requests. Purcell's stylistic approach to a brief may not be the same as that employed by Caples. Nonetheless, Purcell has satisfied the briefing requirements and Caples' request that the court hold that Purcell waived issues is denied.

Issues regarding Breach of Fiduciary Duty

In three of Purcell's questions presented she asserts that this court should enter judgment notwithstanding the verdict or, in the alternative, grant a new trial on the breach of fiduciary duty

claim. The premise for the judgement notwithstanding the verdict request being that there was 1) an absence of a fiduciary duty owed by Purcell to Caples at the time of the sale of the Whitehall Property; and 2) no basis for any breach of fiduciary claim to contradict the assumption of joint ownership arising from the titling of the Whitehall Property. Likewise, Purcell argues that a new trial should be granted because the jury instruction on the breach of fiduciary duty claim should only have been given if it had been proven at trial that Purcell exercised the powers granted to her in either of the Powers of Attorney in connection with the disposition of the sale proceeds from the Whitehall Property. Purcell proffers the judgment notwithstanding the verdict request as a matter of law and not as a failure to meet the evidentiary standard for a breach of fiduciary claim. In all three, Purcell is critical of whether a fiduciary duty existed.

The fundamental flaws in Purcell's arguments here relate to the assertion that no fiduciary duty was owed by Purcell to Caples since Purcell was not acting as Caples' agent and not exercising powers under either Power of Attorney at the time that the Whitehall property was sold on October 18, 2018. This premise by Purcell is in error. Additionally, Purcell's interpretations of the ruling of the Orphans' Court of Lehigh County and then addressed by the Superior Court are misplaced.

As part of the Orphans' Court action, Caples' Petition for Purcell's Breach of Fiduciary Duties as Agent for Caples was dismissed by the Orphans' Court for lack of jurisdiction by the court. This dismissal was without prejudice to Caples filing a civil action or raising a counterclaim in the then pending civil actions as to the subject matter of the breach of fiduciary duty claim. On appeal, the Superior Court agreed that the Orphans' Court did not have jurisdiction over the Petition, but disagreed with the dismissal. Instead, the Superior Court

remanded the case back to the Orphans' Court to issue an order transferring the case to the Civil Division. In that case, both the Orphans' Court and in the Superior Court specifically addressed the jurisdiction of the Orphans' Court. The courts did not address the substantive claim of the breach of fiduciary duty as that claim was explicitly transferred to the Civil Court for disposition.

However, and noteworthy, in the Order from the Honorable J. Brian Johnson dated August 19, 2020, it was specifically stated that Purcell occupied a confidential relationship with Caples.[3] Moreover, Judge Johnson opined, in the subsequent opinion, that dismissing the case from Orphans' Court "does not preclude Caples from continuing to advance the same alleged breaches of fiduciary duty in the three cases in the Civil Division . . . regarding transactions that occurred during Purcell's tenure as agent for Caples. *In re: Power of Attorney of Carole Lee Caples,* 262 A.3d 495 (Pa. Super. 2021).

Contrary to the Orphans' Court case, our jury was charged with the duty to reach a verdict on the breach of fiduciary claim regarding transactions that had occurred during Purcell's tenure as agent for Caples. That duty was, in our opinion, sanctioned by both the Orphans' Court Judge and the Pennsylvania Superior Court. The Superior Court, in the Orphans' Court appeal, was not asked to opine about the merits of a breach of fiduciary duty claim in a civil action, nor did they do so in their opinion. The Superior Court upheld the determination that the Orphans' Court did not have jurisdiction over the breach of fiduciary duty claim. The rationale that followed by the Superior Court was, in our opinion, specific to an evaluation of the asserted

[3] "While it is true that Katherine M. Purcell's status as agent under power of attorney is presumptive evidence that she occupied a confidential relationship with Carole Lee Caples and may well subject Katherine M. Purcell's dealings with her principal to a higher degree of scrutiny, it does not confer the Orphans' Court with jurisdiction to determine the validity of those transactions. *Orphans' Court Order dated August 19, 2020 and filed August 20, 2020, at footnote 1.*

jurisdiction claim before the Orphans' Court. We do not believe that it relates to an evaluation by the Civil Court of a breach of fiduciary claim. For this evaluation, we are guided by the Pennsylvania Supreme Court.

In *Yenchi v. Ameriprise Financial, Inc.*, 161 A.3d 811 (Pa. 2017), the Supreme Court evaluated instances where a fiduciary duty arises and wrote:

> A fiduciary duty is the highest duty implied by law. *Miller v. Keystone Ins. Co.*, 535 Pa. 531, 636 A.2d 1109, 1116 (1994) (Cappy, J., dissenting). A fiduciary duty requires a party to act with the utmost good faith in furthering and advancing the other person's interests, including a duty to disclose all relevant information. *See Basile v. H & R Block, Inc.*, 563 Pa. 359, 761 A.2d 1115, 1120 (2000); *Young v. Kaye*, 443 Pa. 335, 279 A.2d 759, 763 (1971) ("When the relationship between persons is one of trust and confidence, the party in whom the trust and confidence are reposed must act with scrupulous fairness and good faith in his dealings with the other and refrain from using his position to the other's detriment and his own advantage."); *Sylvester v. Beck*, 406 Pa. 607, 178 A.2d 755, 757 (1962); *McCown v. Fraser*, 327 Pa. 561, 192 A. 674, 676-77 (1937); *In re Null's Estate*, 302 Pa. 64, 153 A. 137 (1930), *see also* Black's Law Dictionary (10th ed. 2014) (defining a fiduciary duty as "a duty to act with the highest degree of honesty and loyalty toward another person and in the best interest of the other person"). This highest duty will be imposed only where the attendant conditions make it certain that a fiduciary relationship exists. *Leedom v. Palmer*, 274 Pa. 22, 117 A. 410, 412 (1922) ("[T]he evidence to sustain a confidential relation must be certain; it cannot arise from suspicion or from infrequent or unrelated acts[.]"); *In re Erdeljac's Estate*, 388 Pa. 327, 131 A.2d 97, 100 (1957); *In re King's Estate*, 369 Pa. 523, 87 A.2d 469, 472 (1952).
>
> In some types of relationships, a fiduciary duty exists as a matter of law. Principal and agent, trustee and cestui que trust, attorney and client, guardian and ward, and partners are recognized examples. *See, e.g., McCown v. Fraser*, 327 Pa. 561, 192 A. 674, 676-77 (1937); *Young*, 279 A.2d at 763. The unique degree of trust and confidence involved in these relationships typically allows for one party to gain easy access to the property or other valuable resources of the other, thus necessitating appropriate legal protections.
>
> Where no fiduciary duty exists as a matter of law, Pennsylvania courts have nevertheless long recognized the existence of confidential relationships in circumstances where equity compels that we do so. *See Darlington's Appeal*, 5 W.N.C. 529, 86 Pa. 512 (1878). Our courts have found fiduciary duties in

circumstances where the relative position of the parties is such that the one has the power and means to take advantage of, or exercise undue influence over, the other. The circumstances in which confidential relationships have been recognized are fact specific and cannot be reduced to a particular set of facts or circumstances. *Scott,* 316 A.2d at 885. We have explained that a confidential relationship "appears when the circumstances make it certain the parties do not deal on equal terms, but, on the one side there is an overmastering influence, or, on the other, weakness, dependence or trust, justifiably reposed[.]" *Frowen v. Blank,* 493 Pa. 137, 425 A.2d 412, 416-17 (1981). In these cases, which have typically been brought in courts of equity, if a confidential relationship was found to exist, then the burden shifts and the fiduciary has to demonstrate that there has been no breach of trust. *Id.* Transactions between persons occupying a confidential relationship are voidable, and the party seeking to benefit from such a transaction must demonstrate that his or her actions were at all times "fair, conscientious, and beyond the reach of suspicion." *Young,* 279 A.2d at 766; *Matter of Estate of Evasew,* 526 Pa. 98, 584 A.2d 910, 913 (1990).

While cases involving fiduciary relationships are necessarily fact specific, they usually involve some special vulnerability in one person that creates a unique opportunity for another person to take advantage to their benefit. This Court has recognized that while disease or advancing age "do not by themselves create a confidential relationship with another," such limitations "may support an inference of confidentiality" if they bear on a party's "capacity to understand the nature of the transaction in question." *Scott,* 316 A.2d at 886. Family relationships or close personal friendships, while also not dispositive of the existence of a confidential relationship, have also often played significant roles in particular determinations. *Silver v. Silver,* 421 Pa. 533, 219 A.2d 659, 662 (1966) (stating that kinship, while not dispositive, is a factor "which cannot be ignored").

Where one party lacks the ability to understand the nature and terms of the transaction and simultaneously reposes their complete trust in the other party based upon well-established relationships, this circumstance provides an opportunity for the second party to exercise undue influence over the first and, thus, effectively control the decision-making process to their advantage. In *Frowen,* for example, the sale of a farm for an unreasonably low price was set aside after recognition of a confidential relationship between, on the one hand, an elderly and infirm eighty-six-year-old widow with little formal education and, on the other, neighbors who had befriended her. *Frowen,* 425 A.2d at 415-16. Similarly, in *Brooks v. Conston,* 356 Pa. 69, 51 A.2d 684 (1947), after the unexpected death of her husband, a widow with no experience in business matters agreed to sell the family's business assets, at an unfair price, to a "warm family friend" who advised her to do so without any appraisal of their value. *Id.* at 687-88.

Undue influence resulting in a loss of control has also been found to exist when one party places their complete and unhesitating trust in the other party, and in so doing effectively cedes their decision-making authority to the other party. In *Young*, for example, an octogenarian (Young) with no knowledge of the intricacies of state and federal tax laws, effectively ceded control of the financial aspects of the corporation he owned to someone (Brooks) he considered to be a close friend and trusted advisor. *Young*, 279 A.2d at 761. Young routinely signed, unquestioningly, corporate (and individual) income tax returns, corporate financial statements, and other corporate letters and financial documents, all prepared by Brooks. *Id.* After the IRS issued a deficiency assessment against the corporation, Brooks advised Young that the assessment could be avoided if he transferred all of his shares in the corporation to him (Brooks) "for tax purposes only." *Id.* Relying solely on Brooks' advice, Young signed a certificate transferring all 10,000 shares of the corporation to Brooks, which Brooks then sold to a third party for $50,000. *Id.* This Court held that the transfer of the stock to Brooks was not an arm's-length transaction, as Young's overwhelming reliance on Brooks' tax advice created a situation in which Brooks had a unique opportunity to take advantage of Young. *Id.* at 763. We accordingly reversed the equity court's decision, voided the Young-to-Brooks transaction, and held that Young had a superior claim to the stock than did the third party. *Id.* at 760.

Conversely, even where special vulnerabilities exist, this Court has not recognized the existence of a confidential relationship if the person continued to act on his or her own behalf and did not succumb to any "overmastering influence" of another. For instance, in *Jenne v. Kennedy*, 379 Pa. 555, 109 A.2d 307 (1954), this Court refused to void the sale of a house by an eighty-five year old mother to her daughter, concluding that there was not "the slightest shred of testimony that she was overpowered, dominated, or unduly influenced in her judgments by this defendant." *Id.* at 309. In *Scott*, we found no confidential relationship existed between a sister and her brother, even though the sister, while in intensive care, had signed a bank card giving her brother access to her funds. He also later sold her car. *Id.* at 885-86. This Court determined that even during her infirmity, she continued to manage her own affairs and knowingly directed her brother's actions on her behalf, thus negating any possibility of a confidential relationship. *Id.* at 886 ("Mrs. Scott's mental powers were undiminished during the time she was in intensive care."). And in *In re Estate of Dunlap*, 471 Pa. 303, 370 A.2d 314 (1977), this Court found that no confidential relationship existed between a father and son where the evidence showed that the father conducted his own banking business and executed the codicil to his will in his son's absence. *Id.* at 317 ("appellant's evidence describes an individual independently handling his own affairs").

This analysis and direction from the Supreme Court, read in conjunction with the Orphans' Court Order, the Orphans' Court Opinion, the Superior Court Opinion, and the vast majority of the testimony presented at trial regarding the history of dealings between Purcell and Caples, leads this court to the conclusion that there could be no doubt that there existed a fiduciary relationship between Purcell and Caples. As such, Purcell was not entitled to judgment as a matter of law. Likewise, there was evidence presented on both sides of the case that reasonable minds could certainly disagree as to the outcome. Accordingly, since Purcell has not convinced this court that either judgement notwithstanding the verdict or a new trial are warranted, the breach of fiduciary duty claim properly went to the jury for decision.

Admission of Evidence

Purcell raises two issues regarding evidentiary rulings by the court. The first relates to the court barring the admission of evidence and testimony regarding Caples changing her Will on September 25, 2019, in consideration of Purcell having received one-half of the proceeds from the sale of the Whitehall Property. The other pertains to the court permitting the testimony of Dr. Gordon.

Evidence is relevant if:

(a) it has any tendency to make a fact more or less probable than it would be without the evidence; and

(b) the fact is of consequence in determining the action.

Pa.R.E. 401.

A trial court's rulings as to evidentiary questions are controlled by the sound discretion of the trial court. Those rulings will not be disturbed unless a clear abuse of discretion is shown. *Sutherland v. Monongahela Valley Hosp.*, 2004 Pa. Super. 245, 856 A.2d 55, 59 (2004). An abuse

of discretion is not merely an error of judgment, but if in reaching a conclusion, the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence or the record, discretion is abused. *Id.* For an errant ruling on evidence to merit a new trial, "it must have been harmful or prejudicial to the complaining party. *Jacobs v. Chatwani*, 922 A.2d 950, 966 (Pa. Super. 2007). "Evidentiary rulings which did not affect the verdict will not provide a basis for disturbing the jury's judgment." *Yacoub v. Lehigh Valley Medical Assoc., P.C.*, 805 A.2d 579, 585 (Pa. Super. 2002), *quoting Detterline v. D'Ambrosio's Dodge, Inc.*, 763 A.2d 935, 938 (Pa. Super. 2000) and *Foflygen v. Allegheny General Hosp.*, 723 A.2d 705, 708 (Pa. Super. 1999), *appeal denied* 740 A.2d 233 (Pa. 1999).

Regarding the Will change, Purcell argues that the jury should have been allowed to hear evidence and consider that Caples acknowledged Purcell's right to keep the one-half net sale proceeds in exchange for being deprived of her one-third estate share, and to preclude this was highly prejudicial to Purcell. In this regard, the court did not find it to be relevant for the jury to consider actions taken by a party after the time that the cause of action arose. Additionally, Purcell has not illustrated to the court how that evidence would have had any tendency to make a fact that is of consequence to the jury determining the causes of action in this case more probable.

Next, regarding the testimony of Dr. Gordon, Purcell asserts that it should have been precluded. In support of this assertion, Purcell argues that, because Dr. Gordon had never seen nor treated Caples, and because he based his opinions solely on the medical notes of another doctor who had examined Caples, Dr. Gordon was incapable of testifying regarding Caples'

mental state on the date of the sale of the Whitehall Property and the disbursement of the proceeds.

"An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on a subject, they need not be admissible for the opinion to be admitted." Pa.R.E. 703.

Fundamentally, Dr. Gordon, an expert in the field of psychology, reviewed medical records, penned a report based upon the records reviewed and opined to a medical degree of certainty during his testimony; all of which were appropriate and within the proper standards for evidence presented by experts in a trial.

Purcell also argues that Dr. Gordon was not capable of opining regarding Caples' mental capacity specifically on October 18, 2018 and thus his testimony should have been barred and precluded as irrelevant. Dr. Gordon did, in fact, opine that Caples was of a weakened intellect during the time that Purcell was her named agent under the May 21, 2018 and October 11, 2018 Powers of Attorney. There was no dispute that Purcell remained Caples' Power of Attorney from May 21, 2018 until the February 21, 2019 revocation. The relevance of this testimony is directly connected to the elements of the breach of fiduciary duty claim concerning the actions of Purcell toward Caples.

There was neither an error of law nor an abuse of discretion by the court in permitting the testimony of Dr. Gordon.

Demand for Jury Trial

Next, Purcell argues that the court erred in denying Purcell's Motion to Strike Caples' demand for jury trial. On December 18, 2020, Caples filed and served her written demand for a jury trial. Pursuant to Pennsylvania Rule of Civil Procedure 1007.1(a) the demand was timely filed. Purcell asserts that Caples waived any right to a jury trial by filing claims for both legal and equitable relief. Purcell offers that a claim for breach of fiduciary duty sounds in equity.

The court believes that the claim for breach of fiduciary duty is just as applicable to an action at law. "The equity jurisdiction of Pennsylvania court is triggered only when an adequate remedy is not available at law." *Petrecca v. Allstate Ins. Co.,* 797 A.2d 322, 326 (Pa. Super. 2002). In the instant case, Caples specifically sought remedy at law in praying for relief in the nature of monetary damages. Equitable relief was not sought by Caples. Likewise, the jury was able to formulate a monetary damage amount to award Caples under the breach of fiduciary duty claim. Therefore, adequate remedy was available to Caples at law. Accordingly, it would have been error to deny Caples the right to a jury trial.

CAPLES' POST-TRIAL MOTIONS:

Punitive Damages Issue

Caples asserts that it was error for the court to deny Caples' request for punitive damages going to the jury. In Caples' Amended Counterclaim filed on November 5, 2020, she sought the claims for Count I - Breach of Fiduciary Duty, and Count II – Fraud/Intentional Misrepresentation. In the prayer for relief of both of those counts, Caples requested punitive damages.

"Punitive damages are appropriate when an individual's actions are of such an outrageous nature as to demonstrate intentional, willful, wanton, or reckless conduct." *J.J. DeLuca Co. v. Toll Naval Associates,* 56 A.3d 402, 415–416 (Pa. Super. 2012). Wanton misconduct or reckless indifference "means that the actor has intentionally done an act of an unreasonable character, in disregard of a risk known to him or so obvious that he must be taken to have been aware of it, and so great as to make it highly probable that harm would follow." *Weston v. Northampton Personal Care. Inc.,* 62 A.3d 947, 961 (Pa. Super. 2013) (quoting *Smith v. Brown,* 283 Pa. Super. 116, 120, 423 A.2d 743, 745 (1980)). "Thus, in Pennsylvania, a punitive damage claim must be supported by evidence sufficient to establish that (1) a defendant had a subjective appreciation of the risk of harm to which the plaintiff was exposed and that (2) he acted, or failed to act, as the case may be, in conscious disregard of that risk." *Hutchison v. Luddy,* 582 Pa. 114, 124, 870 A.2d 766, 772 (2005).

Correctly stated by Purcell, punitive damages may be awarded against a person to punish outrageous conduct and to deter him or her or others like them from similar conduct. Outrageous conduct is an act done with bad motive or with reckless indifference to the interests of others. *Weston v. Northampton Personal Care, Inc.,* 62 A.3d 947, 961 (Pa. Super. 2013). The outrageous fashion of ones' conduct can be due to their evil motive. *Doe v. Wyoming Valley Health Care System, Inc.* 987 A.2d 758 (Pa. Super. 2009).

Punitive damages are an extreme remedy available only in the most exceptional circumstances. It is the court's duty to determine whether the party seeking punitive damages has presented sufficient evidence to support a punitive damages award before submitting the issue of such damages to the jury. *Id.*

Caples presents an abundance of examples where the testimony, according to Caples, rose to the level of illustrating the requisite outrageous conduct for the jury to receive the issue of punitive damages. While Caples can insert the descriptive words of "intentional", "willful", "reckless", and "malicious" as she describes the testimony and evidence presented to the jury, that alone does not meet the threshold for the court to conclude that the testimony and evidence was sufficient to support a punitive damages award and thus submit that issue to the jury. While the testimony and evidence detailed by Caples, which was admitted during trial, was certainly relevant to the underlying counts of fraud and breach of fiduciary duty, it did not rise to the level of outrageous conduct sufficient to support the punitive damages claim. Most of the examples given by Caples highlight actions that occurred subsequent to the actions giving rise to the fraud and breach of fiduciary duty claims. While they may illustrate the frustration of the parties in dealing with each other to gain information and documentation as well as the unfortunate breakdown of the family unit, they do not illustrate such outrageous conduct that can appropriately be categorized as "intentional", "willful", "reckless", and "malicious".

Next, Caples asserts, in this same vein, that the court erred in precluding the admission of Exhibits D-29 and D-42 as they related to the punitive damages issue. In support, Caples asserts that Exhibit D-29 was a letter in which Purcell stated that she was "done" with Caples and demanded that Caples return the Healthcare Power of Attorney to only Purcell as her named agent; and that Caples felt she was under Purcell's control. Exhibit D-42 was a series of texts messages between Purcell and her sister, D'Alessandro, regarding failed efforts by Caples to connect with Purcell, Caples concerns about a writing illustrating that her debt was satisfied,

Caples being very upset, not sleeping, being on the verge of tears, and pleas for Purcell to speak to her sisters.

These exhibits were not found to be relevant. They did not offer probative information for the jury to assess the underlying claims and they did not illustrate the requisite outrageous conduct relative to the punitive damages claim. At best, they were a sad reflection on the breakdown of this once close family. In this case, the court had to be very mindful of the fine line that could easily have been crossed such that the jury would consider evidence that would only go to emotional considerations and not to the legal analysis required of the jury. These exhibits illustrated emotions that were not relevant to the jury's considerations and, thus, they were not admitted into evidence.

Finally, Caples asserts that it was error for the court to preclude discovery regarding Purcell's net worth. Discovery of net worth would only have been permitted in the event Caples was able to support her contention that punitive damages were at issue in the case. At no time in the proceedings was Caples able to meet that burden. Thus, the discovery of net worth never became appropriate.

$23,873.70 Issue not Decided by the Jury

Caples argues that it was error for the court to preclude the jury from deciding the issue of the $23,873.70 removed by Purcell from the 8699 Account which had been titled jointly between Purcell and Caples. Caples argues that it was error for the court to find that the $23,873.70 belonged to Purcell as a matter of law. When initially addressed in testimony during the trial, Caples' attorney was cross-examining Purcell about the transfer as follows:

Q Could you turn to Exhibit 35, please, Ms. Purcell?

(Defendants' Exhibit No. 35 was received.)

BY THE WITNESS:

A I am there.

Q Is this a -- is this the joint PSECU account, number 8699?

A Correct.

Q And you were the joint owner of this account, even at the time of this statement, correct?

A Correct.

Q How long had you had this joint account with your mother?

A I believe since -- it was either since 2010 or 2012. It was since the inception of the account.

Q Were there three share accounts, if you will, being that this was a credit union?

A Yes.

Q Okay. The first was the regular share, second was the checking, and the third one was a money market account, correct?

A Correct.

Q So if you turn to the second page, please. Okay. For an entry on October 7th of 2018, we see that this statement indicates a home banking withdrawal transfer to Katherine Marie Purcell for $23,873.70?

A Correct.

Q Do you see that?

A Yes, I do.

Q So in addition to what we've been talking about with the money from the house, you also transferred to your own account almost $24,000 on October 7th, eleven days before the closing. Is that --

MR. FOGERTY: Your Honor, objection. There's no claim in the case relating to this money.

N.T., Vol. II, pp. 253 - 254.

The court permitted this exhibit and this inquiry of questioning because Caples' attorney represented to the court that it was relevant to the issues raised in the Orphans' Court Petition and the court was mindful of the transfer by the Superior Court to the Civil Court for disposition of the breach of fiduciary duty claims.

In this regard, the following was stated:

MR. FRIES: Your Honor, under the power of attorney, it is prohibited commingling of funds. All right. And if the Orphans' Court case is here, the power of attorney was in effect and there was a duty on the part of the agent not to commingle funds. We had two powers of attorney in effect. One May 21st --

THE COURT: Okay. Before you – I understand where you're going. Where's that in the pleading? Are you suing for abuse of the power of attorney commingling funds?

MR. FRIES: Yes, Your Honor. That's --

THE COURT: Where? Where's that?

MR. FRIES: That's part of – that's part of the Orphans' Court petition which is before the Court. Paragraph 20, a confidential relationship. As a result of that confidential relationship, a breach of fiduciary duties. Paragraph 33, acting in a way to create conflict

of interest. Number 33, breaching your duties by retaining monies that rightfully belong to the petitioner. Number 34, improper commingling of funds. That's what happened here, Your Honor. The agent had no right to -- if her contention is, Your Honor, that those were my funds, under the --under the power of attorney document and under the statute, she had no right to commingle her own funds with those of her mother. That's what she --precisely what she did with respect to that transaction, and that's pled in the Orphans' Court petition.

N.T. Vol. II, pp. 261-263.

The decisions of the court in this regard were made after gaining clear understanding from Caples' attorney that there was no further testimony or evidence to be garnered from any witness on this issue.

THE COURT: Okay. So I want to address this issue that Attorney Fogerty raised with regard to the account and the $23,873.70. Attorney Fries, have I heard all testimony from your side of the case with regard to that?

MR. FRIES: Testimony. Yes. We have -- I have argument on that, Your Honor, because the testimony that was presented shows that it was not just Ms. Purcell who made -- who claimed to have made contributions to that account. And there is no testimony as to those -- what the specific contributions were to each -- each party. So it's our position, Your Honor, that that -- those funds are not belonging to one party; but they are the funds of Mrs. Caples, because they were held in an account for Mrs. Caples, to which basically the Purcells used it to move money back and forth. So it's our position that those funds belong exclusively to Mrs. Caples.

THE COURT: Where did we have testimony to that?

MR. FRIES: We had testimony -- well, we don't have testimony from Mrs. Caples because she doesn't remember. But --

THE COURT: Right.

MR. FRIES: You know, the –

THE COURT: We have no testimony from your side of the table about contributions into that account, right?

MR. FRIES: Correct, Your Honor.

N.T. Vol. V, pp. 167-169.

Because this was a joint account in the names of Purcell and Caples, the court initially permitted testimony and evidence of the account under Caples' asserted claims filed in the Orphans' Court and subsequently joined into the instant action. Then, however, upon hearing all the testimony, it was clear that, as a matter of law, there had been no comingling of funds and that the funds all belonged to Purcell. Additionally, the premise upon which Caples' attorney stated that their cause of action could be proven was not, in fact, the case. The idea of improper commingling was dispelled by the fact that Purcell testified credibly that the account in question was established in either 2010 or 2012 which was long before Purcell became Caples' power of attorney. Caples then seemed to be offering the line of questioning and the account to illustrate some improper taking of $23,873.70 by Purcell from Caples. Caples' brief in support of this post-trial motion specifically focuses on the entitlement to the stated funds and the removal of the money. Nowhere is there argument regarding commingling. Caples argues in the post-trial motion that the court must order a new trial on the issue of whether Caples is entitled to the $23,873.70 that was removed by Purcell from the 8699 Account. Caples does not even brief the

asserted premise of the commingling issue. Other than commingling, no other claims were specifically pled in any of the counterclaims or in the Orphans' Court petition. Therefore, it was proper for the court to prevent Caples from asserting for the first time at trial a claim that had not been properly raised in a pleading before the court.

Caples post-trial motions regarding compulsory non-suit or judgment notwithstanding the verdict

A motion for compulsory nonsuit allows a defendant to test the sufficiency of the plaintiff's evidence and may be entered only in cases where it is clear that the plaintiff has not introduced sufficient evidence to establish the necessary elements of the proffered cause of action. *Seels v. Tenet Health System,* 167 A.3d 190 (Pa. Super. 2017). In making that determination, the trial court must afford the plaintiff the benefit of all reasonable inferences arising from the evidence, *Church v. Tentarelli,* 953 A.2d 804 (Pa. Super. 2008), and must resolve any conflict in favor of the plaintiff. *Bugosh v. Allen Refractories Company,* 932 A.2d 901 (Pa. Super. 2007). A compulsory nonsuit is proper only where the facts and circumstances compel the conclusion that the defendant is not liable upon the cause of action pleaded by the plaintiff. *Hoffa v. Bimes,* 954 A.2d 1241 (Pa. Super. 2008).

There are two grounds upon which a judgment notwithstanding the verdict may be entered: (1) where the moving party is entitled to judgment as a matter of law; and/or (2) where the evidence was such that no two reasonable minds could disagree that the outcome could have been rendered in favor of the moving party. *Eichman v. McKeon*, 2003 Pa. Super. 185, 824 A.2d 305, 311 (2003), app. denied, 576 Pa. 712, 839 A.2d 352 (2003).

When considering a motion for judgment notwithstanding the verdict, the evidence must be considered in the light most favorable to the verdict winner, and he must be given the benefit

of every reasonable inference of fact arising from the evidence and any conflict in the evidence must be resolved in his favor. *Lahr v. City of York*, 972 A.2d 41 (Pa. Cmwlth., 2009). If there is any basis upon which the jury could have properly made its award, a denial of the motion for judgment notwithstanding the verdict is required. *Smith v. Renaut*, 564 A.2d 188, 191 (Pa. Super, 1989).

Fraud/intentional misrepresentation claim

Caples asserts that she presented sufficient, convincing evidence that she was entitled to a verdict in her favor on the fraud/intentional misrepresentation claim. Caples asserts that the actions of Purcell by the evidence presented meet all the elements of fraud and require that the court reverse the jury's verdict and find for Caples. Although Caples argues that this is to be done as a matter of law, she addresses the issues and presents her argument in the nature of asserting that the evidence was such that no two reasonable minds could disagree that Caples should have prevailed on the fraud/intentional misrepresentation claim. What Caples disregards here is that Purcell offered contradictory evidence regarding this fraud/intentional misrepresentation claim.

At no point did Caples seek a directed verdict regarding this fraud/intentional misrepresentation claim. The claim properly proceeded to the jury for verdict. The jury was free to believe all, part, some or none of the evidence presented at trial as well as determine the credibility and weight of the evidence presented. The jury was entitled to believe or disbelieve the parties. After weighing the evidence presented, the jury found that Caples had not proven her claim for fraud/intentional misrepresentation against Purcell. Caples has not illustrated anything more than testimony presented on her side of the case.

In considering the evidence presented in the light most favorable to the verdict winner, Purcell, and giving Purcell the benefit of every reasonable inference of fact and resoling any conflict in the evidence in favor of Purcell, there certainly was a basis upon which the jury could have properly made its award. Thus, Caples' motion for judgment notwithstanding the verdict regarding the fraud/intentional misrepresentation claim is denied.

Breach of loan agreement action

Caples argues that it was error for the court to deny a compulsory nonsuit against Purcell on her breach of loan claim against Caples.[4] Therefore, Caples seeks judgment notwithstanding the verdict on the breach of the loan agreement claim.

The elements of a breach of contract claim are: (1) a contract; (2) breach of duty imposed by the contract; and (3) resulting damages. *Romutis v Borough of Ellwood City,* 246 A.3d 361 (Pa. Cmwlth. 2021).

Here, in Caples' brief in support of the post-trial motion, she asks the court to review the evidence in the light most favorable to Caples. She presents no law to support that the analysis would take place in the light most favorable to Caples. In fact, the law dictates that, in the analysis of a compulsory nonsuit, the trial court must afford Purcell the benefit of all reasonable inferences arising from the evidence, and must resolve any conflict in favor of Purcell. In the request for judgment notwithstanding the verdict the evidence must be considered in the light most favorable to the Purcell, and she must be given the benefit of every reasonable inference of fact arising from the evidence and any conflict in the evidence must be resolved in her favor.

[4] Here Caples also seeks that the court should grant a new trial on the punitive damages issue asserted by Caples against Purcell for her conduct. This request will not be addressed again by the court as it was previously reviewed in full above.

There was no error by the court in denying the request for compulsory nonsuit where Purcell had introduced sufficient evidence to establish the loan agreement, non-payment by Caples and the resulting damages.

There is no basis upon which to grant the motion for judgment notwithstanding the verdict. While Caples offered defenses to the claims of Purcell, those were not such that no two reasonable minds could disagree that the outcome could have been rendered in favor of Caples. There certainly was testimony and evidence presented supporting the jury's award. Thus, the motion for judgement notwithstanding the verdict must be denied.

Conversion and unjust enrichment against Caples and D'Alessandro (combining 5, 6 and 7 of Caples and D'Alessandro's post-trial motions)

Here Caples asserts that it was error for the court to deny the compulsory nonsuit raised at the end of Purcell's case regarding the claims of conversion and unjust enrichment filed against D'Alessandro. As such, Caples seeks judgment notwithstanding the verdict on these claims.

Conversion is defined as the deprivation of another's right to property in, or use or possession of, a chattel, or other interference therewith, without the owner's consent and without lawful justification. *Spector Gadon & Rosen, P.C. v. Rudinski, Orso & Lynch,* 231 A.3d 923 (Pa. Super. 2020).

For unjust enrichment a plaintiff must prove: (1) benefits were conferred on defendant by plaintiff; (2) appreciation of such benefits by defendant; and (3) acceptance and retention of such benefits under such circumstances that it would be inequitable for defendant to retain the benefit without payment of value. *Meyer, Darragh, Buckler, Bebenek & Eck, P.L.L.C. v. Law Firm of Malone Middleman, P.C.,* 179 A.3d 1093 (Pa. 2018).

Caples and D'Alessandro offer the evidence of the defenses that were presented to the jury after Purcell had rested her side of the case. D'Alessandro asserts that Purcell had not established the elements against D'Alessandro in her individual capacity. Here D'Alessandro states that as a fiduciary she was acting solely on behalf of the principal when the funds were removed from the accounts. None of those defenses would have been properly considered by the court in determining the compulsory nonsuit request. Those defenses were properly before the jury and considered by the jury in rendering their verdict. Nonetheless, at the point of requesting a compulsory nonsuit, Purcell had presented testimony and evidence sufficient to establish the requisite elements of conversion and unjust enrichment.

Exhibit P-4 illustrated the withdrawal of the $25,000 from KP. Exhibit P-13 illustrated the withdrawal of the $20,000 from KC. Exhibit P-14 illustrates the deposit of the $25,000 and $20,000 into the bank account held in the joint names of Caples and D'Alessandro. The exhibits presented regarding KP and KC (P-1, P-2, P-6, P-7 and P-8) supported Purcell's assertions that the actions of Caples and D'Alessandro were without the owner's consent and without lawful justification to make the withdrawals. All of these exhibits analyzed affording Purcell the benefit of all reasonable inferences arising from the evidence supported that Purcell had introduced sufficient evidence to establish the necessary elements of the proffered causes of action. There was no error by the court in denying the request for compulsory nonsuit.

In this instant again, judgment notwithstanding the verdict is not warranted. Here again, Caples, and D'Alessandro with her, claim entitlement to judgement notwithstanding the verdict as a matter of law, yet they present their arguments in the nature of asserting that the evidence was such that no two reasonable minds could disagree. With these issues as well, there was

sufficient contradictory evidence presented during the course of the trial such that the jury was free to render their verdict based upon their evaluation and weighing of the evidence in relation to the law as given to them.

Caples discovery deposition testimony

The issue of Mrs. Caples discovery deposition was the subject of argument by the attorneys on many days. Purcell's attorney sought to have it admitted, yet he never published it to the jury. From the outset, Purcell's attorney indicated that he would not be reading the questions and answers to the jury. He indicated that his only intent was to reference it for later argument. N.T. Vol. III, pp. 10-19, 130. Pursuant to the Pennsylvania Rules of Civil Procedure, the court permitted the admission of the version requested by Purcell's attorney (Exhibit P-54) as well as another version of it admitted as Exhibit D-96. Specifically on January 31, 2023, Caples attorney stated:

> MR. FRIES: Your Honor, I have no objection to that exhibit, subject to the ongoing objection that I had concerning the admissibility of the deposition. So without waiving that objection, I don't object to 96.

N.T. Vol. VII, p. 3.

The court ruled that the deposition of a party could be admitted under Rule of Civil Procedure 4020(a)(2) which permits it to be used at trial by the adverse party for any purpose. Interestingly, though, it was never read into evidence by Purcell in the case. At most, it was used to question D'Alessandro about her presence during her mother's deposition and her mother's desire to move to Fellowship Community. N.T. Vol. IV, pp. 56-57. This was summarized again by Purcell's attorney in his closing argument. N.T. Vol. VII, p. 35.

Regarding review of the evidentiary rulings made by the court, Caples has not presented any argument to support a conclusion that the court abused its discretion in making this evidentiary ruling. There was no showing that the law has been misapplied or overridden, that the court's judgment was manifestly unreasonable or the result of partiality, prejudice, bias or ill-will. In the alternative, if there was an abuse of discretion, Caples has failed to present how the transcript, albeit admitted but never seen by the jury, was harmful or prejudicial to Caples. Hence, there is no correlation between the transcript and a resulting effect upon the verdict.

Dr. Spatz's testimony

Caples next contends that it was error to limit the testimony of Dr. Daniel Spatz, M.D. to his observations and not his opinions and diagnoses. The issue of the breadth of testimony and evidence concerning the mental status, forgetfulness or diminished capacity of Caples was reviewed by the court in response to Purcell's motion in limine filed on November 5, 2021. After briefs and argument on the motion, the court issued the Order of September 12, 2022 which provided in part "Defendants are barred and precluded from offering evidence of or making reference to any supposed diminished capacity, forgetfulness or mental status of Carole Lee Caples except to present the testimony of Dr. Paula Jacobus and Dr. Robert Gordon." Order of September 12, 2022. Caples filed a motion for reconsideration on September 19, 2022. Following briefs and argument, the court vacated the September 12, 2022 order and issued the order of January 3, 2023 deferring ruling on the November 5, 2021 motion in limine to the time of trial. The court specifically noted, "[t]he court is not precluding Defendants from calling any of their stated witnesses at this time." Order of January 3, 2023.

At trial, Purcell offered Dr. Spatz as a lay witness.

> If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:
>
> (a) Rationally based on the witness's perception;
> (b) Helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
> (c) Not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

Pa.R.E. 701.

Caples offered another witness, Dr. Robert Gordon, to testify as an expert in the fields of clinical psychology, psychoanalysis, and clinical and forensic psychology. It was additionally noted by Caples' attorney that Dr. Gordon had testified in various other jurisdictions regarding issues of weakened intellect and a diminished capacity on the part of individuals. Exhibit D-95, p. 20. Purcell's attorney had no questions of Dr. Gordon on credentials. Thus, he was accepted as the expert in the proffered fields.

Dr. Gordon gave extensive testimony regarding Caples. He opined regarding her mental capacity and weakened intellect. Although Caples' attorney argued that Dr. Spatz, as a lay witness, could offer testimony not only about his observations, but also about his diagnosis and medical judgment, the court did find that the opinions of Dr. Spatz would have been based upon scientific, technical or other specialized knowledge within the scope of Rule 702. Thus, without an expert report from Dr. Spatz and offering his testimony as an expert witness, the court was not of the opinion that Dr. Spatz could offer anything other than his observations of Caples.

Caples has not presented a clear abuse of discretion by the court regarding this ruling. Since the testimony of the expert witness, Dr. Gordon, was received and heard by the jury on precisely the same conclusions that Caples wanted Dr. Spatz to attest, the testimony of Dr. Spatz,

even if admissible would have been duplicative. Thus, Caples can show no harm or prejudice since the conclusions were presented to the jury by Dr. Gordon.

Caples' Exhibits D-29 and D-42 and Purcell attending Caples' deposition

Here, Caples asserts that Exhibits D-29, D-42, and testimony regarding Purcell's presence at Caples' deposition should have been admitted into evidence in support of the underlying causes of action. In the court's discretion, these exhibits and testimony were not determined to be relevant to the elements of the causes of action. To the extent that Caples asserts that the court's rulings impacted the breach of fiduciary duty claim, that cannot be established since Caples prevailed on that claim. Thus, the evidentiary rulings had no affect on the verdict and cannot provide a basis for asserting an abuse of discretion by the court.

As for the relevance of the proposed evidence and testimony to the fraud/intentional misrepresentation claim, Caples argues that they illustrate Purcell's motives to deceive and control Caples, Purcell's true motives regarding her behavior toward her mother and her financial motives. These assertions regarding motive do not persuade the court that they were relevant to the cause of action as the motive of Purcell is not an element to the cause of action for fraud/intentional misrepresentation. No where in the instructions to the jury would they have been told to consider the motive of the party as something that they needed to weigh in performing their duty as jurors.

PURCELL AND CAPLES POST-TRIAL MOTIONS:

Molding of the Verdict

Purcell and Caples each request that the court mold the verdict to include interest. "A trial court may mold a jury verdict to include interest owed, even when the issue is not submitted to the

jury." *Pittsburgh Const. Co. v. Griffith*, 834 A.2d 572, 591 (Pa. Super. 2003). The court grants this request for both parties.

DATE: June 16, 2023

BY THE COURT:



MELISSA T. PAVLACK, J.

IN THE COURT OF COMMON PLEAS OF LEHIGH COUNTY, PENNSYLVANIA
CIVIL COURT DIVISION

File No.: 2021-C-2083 Petitions - Other

Carole Lee Caples
- VS -
Katherine M Purcell

Copies of this Order were e-mailed/mailed to all counsel of record and pro se litigants on 6/20/2023.

236 NOTICE

Pursuant to Pa.R.C.P. § 236, notice is hereby given that an order, decree, or judgment in the above captioned matter has been entered.

Andrea E. Naugle
Clerk of Judicial Records

NOTICE: All parties and counsel must maintain correct and current contact information, INCLUDING E-MAIL ADDRESSES, with the Clerk of Judicial Records Civil Division as well as through E-File & Serve.

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