IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
March 28, 2023 Session

ESTATE OF WILLIE HAROLD HARGETT ET AL. v. CHARLOTTE R. HODGES BROWN

Appeal from the Chancery Court for Sumner County
No. 2019-CV-39 Louis W. Oliver, Chancellor

No. M2022-00250-COA-R3-CV

A decedent's estate sued his girlfriend for the proceeds of his life insurance policy, items from his home that were missing or damaged, and money withdrawn from his credit union account. The trial court found for the estate on the basis of fraud, conversion, and undue influence. The girlfriend appealed. We affirm in part, reverse in part, vacate in part, and remand.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court Affirmed in Part; Reversed in Part; Vacated in Part and Remanded

J. STEVEN STAFFORD, P.J., W.S., delivered the opinion of the court, in which D. MICHAEL SWINEY, C.J. and ARNOLD B. GOLDIN, J., joined.

Robert J. Turner and Matt A. Bromund, Nashville, Tennessee, for the appellant, Charlotte R. Hodges Brown.

Carol Soloman and Dominic J. Leonardo, Nashville, Tennessee, for the appellees, John D. Towe, Melissa Ann Martin, Faith Renee Hargett, Robbie Jo Hargett, and the Estate of Willie Harold Hargett.

OPINION

I. FACTUAL AND PROCEDURAL BACKGROUND

This appeal involves the estate of Willie Hargett ("Decedent"). Decedent and Plaintiff/Appellee Robbie Hargett ("Wife") were married in May 1984 and have one adult

daughter, Plaintiff/Appellee Faith Hargett ("Daughter").[1] Decedent and Wife experienced marital difficulties, culminating in Wife moving into her own apartment in early December 2016. No divorce action was filed. Decedent provided no support to Wife other than paying the initial deposit for her apartment and moving Wife's clothing and some furniture from the marital home. At some point prior to Wife moving out, Decedent and Defendant/Appellant Charlotte Hodges Brown ("Appellant") met online and began a relationship. Appellant moved into the home with Decedent in late December 2016.

Decedent was diagnosed with lung cancer in February 2018. In April 2018, Decedent directed an attorney to prepare various legal documents. A general durable power of attorney and a durable power of attorney for healthcare were created, both of which designated Appellant and John Towe, a longtime friend of Decedent, as co-attorneys-in-fact. While Daughter had previously been named the beneficiary on Decedent's credit union account, Appellant was added to the account in October 2018 and named as the sole pay-on-death beneficiary.

Also in October 2018, Decedent began the process to retire. Prior to retirement, Decedent had a $250,000.00 supplemental life insurance policy through his employer. Upon retirement, that policy reduced to $10,000.00. In November 2018, Decedent applied to reinstate the additional life insurance benefits. A letter dated November 20, 2018, was sent to Decedent's address from his insurance company, indicating that his claim for $50,000.00 in Basic Group life insurance and $200,000.00 in optional group life insurance had been approved.[2]

Decedent was hospitalized in early December 2018 and died a couple days later, on December 5. The funeral was held December 12. A detainer warrant was issued by the Sumner County General Sessions Court against Appellant on December 20. Decedent's estate was then opened in the Sumner County Chancery Court ("the trial court") on January 8, 2019. On January 10, 2019, Decedent's estate was granted a judgment for possession and Appellant was evicted from the marital home.[3]

A petition was filed in the trial court on March 26, 2019, seeking damages and a temporary restraining order against Appellant. The petition was filed in the name of Decedent's estate, Wife, as surviving spouse and next of kin, Daughter, John Towe, and Melissa Martin (collectively, "Appellees"). Appellees raised as causes of action: intentional conversion, fraud or intentional misrepresentation, fraud, tortious interference

[1] Because Robbie Hargett and Faith Hargett share the same last name, we will refer to them by their relationship to Decedent. We intend no disrespect.

[2] The letter also indicated that a claim for $20,000.00 in Optional Dependent life insurance had been approved. This policy was not discussed in this case.

[3] At some point, Appellant's son, brother, and sister-in-law had come to stay in the home and were also evicted.

with a contract, and forgery.[4] The petition focused on two main aspects of Decedent's estate: his life insurance proceeds and items and money missing from the marital estate.

First, Appellees alleged that Appellant had fraudulently been named as Decedent's life insurance beneficiary. In February 2018, Decedent named Mr. Towe, a longtime friend, as the insurance beneficiary via a beneficiary-designation form submitted to his employer's human resources department. Decedent orally instructed Mr. Towe to use the proceeds to pay off Decedent's debts and then provide the reminder to Daughter and her child. Then in March 2018, Decedent used the same process to update the policies so that Mr. Towe was the primary beneficiary, Mr. Towe's significant other, Ms. Martin, was the first contingent beneficiary, and Appellant was the second contingent beneficiary. Appellees take no issue with Mr. Towe being the primary beneficiary.

But in October 2018, two additional changes were purportedly made to Decedent's policy. On October 1, a beneficiary-designation form was submitted with Decedent's employer, naming Appellant as Decedent's "life partner" and the sole primary beneficiary of the life insurance benefits. Then on October 10, another form was filed, again listing Appellant as the sole insurance beneficiary.[5] Appellees argued that the signatures on these two beneficiary-designation forms did not match those of earlier forms. Mr. Towe and Ms. Martin both submitted affidavits with the complaint, stating that they believed Appellant was only concerned with Decedent's money and that Mr. Towe was meant to be the primary beneficiary of Decedent's life insurance.

Appellees also hired an expert to examine the October 2018 life insurance beneficiary-designation forms and determine the authenticity of those naming Appellant as Decedent's beneficiary. The expert, Ms. Marty Pearce, noted in her report that she compared the two newest forms to the two earlier forms and three additional known signatures. Ms. Pearce stated in her report, which was attached to Appellees' complaint, that the October forms were most likely signed by someone other than Decedent and that the "evidence is persuasive and points strongly" towards the signer of the October forms being "an imposter." Appellees argued that the October 2018 beneficiary-designation forms should be set aside as void and requested that the insurance proceeds be paid to Decedent's estate or to Mr. Towe as the appropriately designated beneficiary.

The second issue raised in Appellees' complaint involved the contents of Decedent's credit union account and items missing from the marital home. During the course of Decedent's hospitalization, Appellant withdrew $3,500.00 from Decedent's account, although Appellees noted that several of Decedent's bills had not been paid for

[4] Mr. Towe also raised a separate breach of contract claim.

[5] The second beneficiary-designation form was completed as part of Decedent's retirement process. The form indicated that Decedent was a "retiree" rather than an "employee," noted the form applied to basic life insurance and supplemental life insurance, and did not include an address for Appellant.

the two months prior to his death. Appellees also alleged that when Wife and Daughter returned to the marital home in January 2019, they discovered several items of value were missing. Appellees stated that the missing items belonged to Decedent's estate or were separate property belonging to Wife. Appellees asserted that Appellant had either converted these items directly or used her position as power of attorney to transfer title into her own name after Decedent's death. As relief, Appellees requested that the missing items be held in a constructive trust along with the life insurance proceeds.

Trial was eventually held July 28 and 29, 2021. Wife testified regarding her estimation of the value of several items she believed were missing from the home upon her January 2019 return. Wife also described instances of damage in the home that she had paid to have repaired. These included a set of Appellant's keys that were found in the septic tank pipe and a series of holes poked into the bottom of the swimming pool. On cross-examination, Wife also admitted that the house was otherwise undamaged and many items of personal property remained in the home after Appellant moved out. Wife was unable to identify any of the signatures on the four beneficiary-designation forms as belonging to Decedent.

Ms. Pearce, as a "forensic handwriting expert," testified next and provided her opinion that the signatures on the October 2018 beneficiary-designation forms were not authentic. Ms. Pearce testified that a signer's medical condition could affect their handwriting. While she was on the stand, counsel for Appellant provided Ms. Pearce with several documents from the record, including several from the same date as one of the October forms, and requested that she analyze the signatures in comparison to those included in her report. Ms. Pearce stated that that it would be "not at all professional" to "make any kind of assumption" without a complete analysis of the documents. After counsel for Appellees objected to the request, the trial court declined to require Ms. Pearce to formulate an opinion on the authenticity of the provided documents "on the fly." Counsel for Appellant requested to make an offer of proof by explaining that his intent was to have Ms. Pearce explain whether her conclusion regarding the authenticity of the signature on the October 10, 2018 beneficiary-designation form would be affected by comparing it to other uncontested forms from the same day. Once the trial court left the courtroom, counsel for Appellant continued to cross-examine Ms. Pearce regarding her impressions of the documents in an offer of proof.

There were several inconsistencies between Appellant's testimony at trial and her earlier deposition. Primary among the inconsistencies was Appellant's testimony regarding her withdrawals from the bank account to which she had been added in October 2018. Eventually, she stated that some of the money was used to pay Decedent's bills, but the largest withdrawal—$3,500.00 withdrawn the day before Decedent died—was ultimately used to cover her moving expenses. Appellant testified that she believed the majority of the items inside the home were hers so she took them with her after Decedent died, but that she did not take any items from outside the home. Appellant further testified that she had

filled out the October 2018 beneficiary-designation forms, but that Decedent had signed the forms.

At the close of Appellees' proof, Appellant moved to dismiss the case. The trial court orally found that sufficient proof existed in the record to sustain the allegations in the complaint. By order of January 27, 2022, the trial court generally denied the motion, but found that "there ha[d] been no sufficient proof of any intentional misrepresentation on the part of [Appellant], and therefore [Appellees'] charge of fraud or intentional misrepresentation must be limited to fraud as it pertains to alleged forgery of the beneficiary documents and the titles."[6]

At the end of trial, the trial court directed both Appellees and Appellant to submit proposed findings of fact and conclusions of law. The trial court entered its final order on January 29, 2022. Therein, the trial court stated that Appellant lacked credibility based on the inconsistencies in her testimony. The trial court found that Appellant had a confidential relationship with Decedent "which she fostered and exploited for her own benefit." The trial court also found that the October 2018 insurance beneficiary-designation forms were not authentically signed by Decedent. The trial court concluded that "[f]raud was committed in the preparation and presentation of the forms" and so the October forms were set aside in favor of the March form naming Mr. Towe as primary beneficiary, Ms. Martin as first contingent beneficiary, and Appellant as second contingent beneficiary. Mr. Towe was therefore found to be the appropriately designated beneficiary of the total life insurance benefit of $250,000.00. The trial court ordered that the proceeds be placed into a constructive trust, with Mr. Towe being instructed to ensure Decedent's debts were paid and then distribute the remainder to Daughter.

Appellant was found responsible for $37,050.00 in damaged or converted property from Decedent's home and for $3,500.00 in funds taken from Decedent's credit union account. These amounts were offset against the $7,100.00 owed by Appellees to reimburse Appellant for Decedent's funeral expenses. Thus, Decedent's estate received a judgment of $33,450.00 (i.e., $37,050.00 + $3,500.00 - $7,100.00) and Mr. Towe received a judgment of $250,000.00 to be placed in a constructive trust. This appeal followed.

II. ISSUES PRESENTED

Appellant raises the following issues on appeal, taken from her brief with minor alterations:

> 1. Whether the trial court abused its discretion in restricting cross-examination of the forensic document examiner and excluding testimony

[6] The written order did not contain the trial court's oral statement that it was dismissing Mr. Towe's breach of contract claim as to any contract between Appellant and Mr. Towe.

regarding other known documents signed by Decedent on the same day as the challenged insurance designation.

2. Whether the trial court abused its discretion in relying upon the forensic document examiner's opinion to conclude that Decedent was the victim of a fraud and forgery committed by Appellant to thwart his wishes for his life insurance policy proceeds.

3. Whether the trial court abused its discretion in accepting the unsupported speculation of [Wife] as to the contents and value of the contents of Decedent's personal property at Decedent's home at the time of his death.

4. Whether the trial court abused its discretion in concluding that Appellant exercised undue influence over Decedent during, and before, his final illness.

III. STANDARD OF REVIEW

After a non-jury trial, we review the judgment of the trial court de novo upon the record, giving a presumption of correctness to the factual findings of the trial court. ***In re Estate of Baker v. King***, 207 S.W.3d 254, 263 (Tenn. Ct. App. 2006) (citing Tenn. R. App. P. 13(d)). We will not disturb a trial court's finding of fact unless the evidence preponderates otherwise, such that the evidence "support[s] another finding of fact with greater convincing effort." ***Hollar v. Hollar***, No. M2014-02370-COA-R3-CV, 2015 WL 7748967, at *3 (Tenn. Ct. App. Nov. 30, 2015) (citations omitted). No presumption of correctness applies to a trial court's conclusions of law, which are reviewed de novo. ***Id.***

IV. ANALYSIS

A.

We begin with Appellant's issues regarding the testimony of Appellees' expert witness. "It is well-settled in Tennessee that '[t]he propriety, scope, manner, and control of the examination of witnesses is a matter within the discretion of the trial judge, which will not be interfered with in the absence of an abuse thereof." ***Brown v. Christian Bros. Univ.***, 428 S.W.3d 38, 47 (Tenn. Ct. App. 2013) (quoting ***Coffee v. State***, 188 Tenn. 1, 216 S.W.2d 702, 703 (1948)). Likewise, "a trial court's decisions regarding the admissibility of expert evidence are reviewed for an abuse of discretion." ***State v. Cannon***, 642 S.W.3d 401, 437 (Tenn. Crim. App. 2021) (citing ***State v. Schiefelbein***, 230 S.W.3d 88, 130 (Tenn. Crim. App. 2007); ***State v. Rhoden***, 739 S.W.2d 6, 13 (Tenn. Crim. App. 1987)), *perm. app. denied* (Jan. 14, 2022). As the Tennessee Supreme Court has explained:

> An abuse of discretion occurs when a court strays beyond the applicable legal standards or when it fails to properly consider the factors customarily used to guide the particular discretionary decision. A court abuses its discretion when it causes an injustice to the party challenging the decision by (1)

> applying an incorrect legal standard, (2) reaching an illogical or unreasonable decision, or (3) basing its decision on a clearly erroneous assessment of the evidence.

Lee Med., Inc. v. Beecher, 312 S.W.3d 515, 524 (Tenn. 2010) (citations omitted).

The admission of expert testimony is governed by Tennessee Rules of Evidence 702 and 703.[7] *See* ***Daubert v. Merrell Dow Pharms., Inc.***, 509 U.S. 579, 113 S. Ct. 2786, 125 L. Ed. 2d 469 (1993); ***McDaniel v. CSX Transp., Inc.***, 955 S.W.2d 257 (Tenn. 1997). Under this framework, the trial court "essentially functions as a 'gatekeeper' when ruling on the admissibility of expert testimony." ***Dowdy v. BNSF Ry. Co.***, No. W2021-01003-COA-R3-CV, 2023 WL 3000863, at *3 (Tenn. Ct. App. Apr. 19, 2023) (quoting ***Payne v. CSX Transp., Inc.***, 467 S.W.3d 413, 453–58 (Tenn. 2015)). First, the trial court must determine whether the witness is "qualified as an expert by knowledge, skill, experience, training, or education" to offer an opinion on the issue at hand that "will substantially assist the trier of fact." Tenn. R. Evid. 702. Then, the trial court must ensure that the facts and data forming the basis of the expert's opinion "adequately support[] the expert's conclusion." ***State v. Stevens***, 78 S.W.3d 817, 834 (Tenn. 2002); *see* Tenn. R. Evid. 703 ("The court shall disallow testimony in the form of an opinion or inference if the underlying facts or data indicate lack of trustworthiness."). No question has been raised in this appeal regarding the expert's qualifications; instead, Appellant's first argument focuses on the reliability of Ms. Pearce's testimony.

Our Supreme Court, in ***McDaniel***, set forth the following list of factors for determining the reliability of scientific evidence:

> (1) whether scientific evidence has been tested and the methodology with which it has been tested; (2) whether the evidence has been subjected to peer review or publication; (3) whether a potential rate of error is known; (4) whether . . . the evidence is generally accepted in the scientific community; and (5) whether the expert's research in the field has been conducted independent of litigation.

955 S.W.2d at 265. However, not all expert testimony can be adequately evaluated with these factors, in which cases courts should also consider "the straightforward connection between the expert's knowledge and the basis for the opinion such that no 'analytical gap' exists between the data and the opinion offered." ***Pruitt v. State***, No. W2019-00973-CCA-R3-PD, 2022 WL 1439977, at *72 (Tenn. Crim. App. May 6, 2022) (quoting ***Stevens***, 78

[7] Of course, expert evidence also must be relevant before it is admissible. As stated in Rule 401, "[r]elevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

S.W.3d at 835). These considerations "establish that something less than complete accuracy is acceptable. Where to draw that line is a decision to be made by the trial court in exercising its discretion after considering all the relevant factors." ***Cannon***, 642 S.W.3d at 441 (explaining that no part of the admissibility framework "conditioned the admissibility of expert opinion testimony on it being unassailable"). And indeed, once the threshold of admissibility has been met, "[a]ny deficiencies in the theory, methodology, or application can be explored on cross-examination, and the [trier of fact] can then give the opinion whatever weight it deems appropriate." ***Id.***

Here, Appellees' expert, Ms. Pearce, testified to the lengthy process used to formulate her opinion on a signature's authenticity. Ms. Pearce explained that, in this case, she spent approximately six days comparing the signatures on the October 2018 beneficiary-designation forms to the other documents she had been provided. She testified that her process involves looking at "everything about the writing: the strokes, the formation, the movement, the fluidity." Ms. Pearce described several differences between the known signatures and the October 2018 forms before stating her belief that the signatures were most likely signed by someone other than Decedent. To be sure, as this issue was not appealed, we do not take issue with the trial court allowing Ms. Pearce to testify as a handwriting expert and offer her opinion as to the authenticity of the signatures on the October 2018 beneficiary-designation forms.

On cross-examination, Appellant's counsel attempted to impeach the reliability of Ms. Pearce's testimony, first by asking whether knowing that Decedent had died of cancer shortly after signing the questioned documents would impact her opinion. Ms. Pearce testified that, although she did not have her notes regarding the instant case with her, she typically takes a signer's age and health into consideration during her examination of documents. When asked whether having different known signatures would affect her analysis, Ms. Pearce testified that she could not know whether her analysis would change without first examining the other known documents. Appellant's counsel then attempted again to impeach the reliability of Ms. Pearce's testimony by having her opine as to the authenticity of several uncontested signatures, some of which were from the same date as one of the October forms. The trial court refused to require Ms. Pearce to conduct a handwriting analysis of the newly provided documents while on the stand. Appellant asks us to find error in this decision. Respectfully, we do not.

Appellant argues that her inability to conduct a "vigorous cross-examination" meant that "countervailing proof was excluded," such that only the "self-interested opinion" of Appellees and "the carefully curated opinion of their hired handwriting analysis expert" was presented to the trial court. However, this argument is unavailing; Appellant had the opportunity to present other evidence to counter Ms. Pearce's testimony. Ms. Pearce's report explaining her methodology and opinion was included as an attachment to Appellees' March 26, 2019 complaint. No objection was raised to the report. Neither party disputes that adequate time existed for discovery, yet, for whatever reason, Appellant

chose not to conduct any discovery regarding Ms. Pearce's expert testimony. *See* ***White v. Vanderbilt Univ.***, 21 S.W.3d 215, 225 (Tenn. Ct. App. 1999) ("Identifying an expert as a testifying witness in accordance with Tenn. R. Civ. P. 26.02(4)(A) has the practical effect of waiving the protection of Tenn. R. Civ. P. 26.02(4)(B) and of making the expert available to be deposed." (internal citations omitted)). No additional documents containing Decedent's known signature were provided to Ms. Pearce prior to trial in July 2021. So any opinion Ms. Pearce had offered from the stand as to the authenticity of the additional signatures supplied by Appellant at trial would not have resulted from the lengthy, in depth analysis she used to determine that of the October 2018 forms.

Appellant insists that the availability of cross-examination as a means of exploring deficiencies in the "theory, methodology, or application" of expert opinion testimony, ***Cannon***, 642 S.W.3d at 441, permits her to require an expert to perform an on the stand analysis that would ordinarily take days or weeks. To be sure, Appellant was entitled to impeach the reliability of Ms. Pearce's testimony through cross-examination. However, trial courts are tasked with ensuring that "any and all scientific testimony . . . is not only relevant, but reliable." ***Id.*** at 438 (quoting ***Daubert***, 509 U.S. at 589). By not allowing this "on the fly" opinion, the trial court refused to consider expert testimony that was not the result of expert analysis and would therefore have been unreliable; the data forming the basis of the expert's opinion simply could not have "adequately support[ed] the expert's conclusion." ***Stevens***, 78 S.W.3d at 834; *see* Tenn. R. Evid. 703.

It is clear from our review of the trial transcript that Appellant and her counsel did not believe that the trial court should have given any weight to Ms. Pearce's testimony regarding the ultimate issue, namely whether the October 2018 signatures were authentic. Nevertheless, the invitation in Rule 703 for courts to assess the trustworthiness of the facts and data relied upon by an expert "is not a back-door route to usurpation of the role of . . . the finder of fact or a medium for assessing the credibility of the witness and weight to be afforded to expert testimony." ***Scott***, 275 S.W.3d at 410 (citing ***McDaniel***, 955 S.W.2d at 265). Moreover, the admissibility of expert testimony falls within the discretion of the trial court. ***Cannon***, 642 S.W.3d at 437. We cannot say that the trial court applied an incorrect legal standard or based its decision on a clearly erroneous assessment of the evidence. ***Lee Med., Inc.***, 312 S.W.3d at 524. The trial court did not abuse its discretion by making the logical decision to keep out what would have amounted to an unreliable expert opinion.

Having concluded that the trial court did not err by not requiring Ms. Pearce to conduct a handwriting analysis "on the fly," we turn to Appellant's second issue regarding Ms. Pearce's testimony: whether the trial court erred in relying on the expert testimony to find that the October 2018 beneficiary-designation forms were not authentically signed by Decedent. Like decisions governing the admissibility of testimony, "[t]he weight, faith and credit to be given to any witness's testimony lies in the first instance with the trier of fact. The credibility accorded will be given great weight by the appellate court." ***Hollar***, 2015 WL 7748967, at *3 (quoting ***Koch v. Koch***, 874 S.W.2d 571, 577 (Tenn. Ct. App. 1993)).

We also give great weight to a trial court's factual findings that rest on determinations of credibility. ***Id.***; ***In re Estate of Baker***, 207 S.W.3d at 263.

> As our Supreme Court has instructed regarding witness credibility:
>
> > When credibility and weight to be given testimony are involved, considerable deference must be afforded to the trial court when the trial judge had the opportunity to observe the witnesses' demeanor and to hear in-court testimony. Because trial courts are able to observe the witnesses, assess their demeanor, and evaluate other indicators of credibility, an assessment of credibility will not be overturned on appeal absent clear and convincing evidence to the contrary.

Hughes v. Metro. Gov't of Nashville & Davidson Cnty., 340 S.W.3d 352, 360 (Tenn. 2011) (citations omitted). The trier of fact "is not bound to accept an expert witness's testimony as true, and it may reject any expert testimony that it finds to be inconsistent with the credited evidence or is otherwise unreasonable." ***Roach v. Dixie Gas Co.***, 371 S.W.3d 127, 150 (Tenn. Ct. App. 2011) (citing ***Dickey v. McCord***, 63 S.W.3d 714, 720–21 (Tenn. Ct. App. 2001)); *see also* ***England v. Burns Stone Co.***, 874 S.W.2d 32, 38 (Tenn. Ct. App. 1993) (explaining that "the trier of fact may place whatever weight it chooses upon [expert] testimony").

Here, the trial court was presented with a handwriting expert with decades of experience and court appearances, including some before the trial court itself. The trial court was able to visually compare the October 2018 beneficiary-designation forms to other documents with Decedent's signature, including those documents with which Appellant attempted to impeach Ms. Pearce's opinion. As Appellant points out, the trial court was made aware of the health of Decedent prior to his death, the other documents signed by Decedent on the same date as the most recent contested form, and the falling out between Mr. Towe and Decedent. Indeed, the trial court heard testimony from numerous witnesses with varying levels of self-interest in the outcome of the trial, each of whom were asked to describe their understanding of Decedent's intentions regarding his life insurance proceeds. Only the testimony of Appellant was offered to contradict Ms. Pearce's expert opinion. However, in its final order the trial court found that Appellant lacked credibility due to the inconsistencies in her testimony. Although the trial court did not make an express finding regarding the credibility of Ms. Pearce's testimony, it stated that her testimony as an expert assisted its determination that the October 2018 forms were not signed by Decedent.

"We defer to the credibility determinations of the Trial Court absent clear and convincing evidence to the contrary[.]" ***Robbins v. Robbins***, No. E2017-01427-COA-R3-CV, 2018 WL 3954323, at *20 (Tenn. Ct. App. Aug. 16, 2018); *see also* ***Kautz v. Berberich***, No. E2019-00796-COA-R3-CV, 2021 WL 1034987 (Tenn. Ct. App. Mar. 18, 2021) (noting that the same standard of review applies to implicit credibility findings). We

find no such evidence to the contrary here. So we conclude that the trial court did not abuse its discretion in relying on the expert testimony for its ultimate conclusion regarding the authenticity of the beneficiary-designation forms. This is the sole attack made by Appellant on appeal regarding the trial court's decision to set aside the October 2018 beneficiary-designation forms in favor of the March 2018 form naming Mr. Towe as primary beneficiary and the establishment of a constructive trust. Therefore, we affirm the trial court's decision to award Mr. Towe the $250,000.00 in life insurance proceeds to be placed into a constructive trust.

B.

Appellant next questions whether the trial court erred in relying on the testimony provided by Wife regarding the identification and valuation of property missing from Decedent's home after his death. Wife testified to two repairs she had been required to make after Appellant left the home. The bills for the repairs were included as exhibits at trial. Wife also testified to various items belonging to Decedent and his estate that were missing when she returned to the marital home in January 2019. The only proof set forth to establish the value of these items was Wife's testimony.

"The party seeking damages has the burden of proving them." ***Andrews v. Sprinkle***, No. M2012-02242-COA-R3-CV, 2013 WL 5498093, at *16 (Tenn. Ct. App. Sept. 30, 2013) (quoting ***Overstreet v. Shoney's, Inc.***, 4 S.W.3d 694, 703 (Tenn. Ct. App. 1999)). While the *existence* of damages may "never be based on speculation or conjecture," the *amount* of damages need only be proven with reasonable certainty. ***Helton v. Lawson***, No. E2018-02119-COA-R3-CV, 2019 WL 6954180, at *10 (Tenn. Ct. App. Dec. 18, 2019) (citing ***Overstreet***, 4 S.W.3d at 703; ***Church v. Perales***, 39 S.W.3d 149, 172 (Tenn. Ct. App. 2000)). The proof as to the amount of damages "need not be exact or mathematically precise. Rather, the proof must be as certain as the nature of the case permits and must enable the trier of fact to make a fair and reasonable assessment of the damages." ***Andrews***, 2013 WL 5498093, at *13 (quoting ***Overstreet***, 4 S.W.3d at 703).

It is well settled that an owner of property is able to testify to the value of the property. Tenn. R. Evid. 701(b); ***Airline Const. Inc. v. Barr***, 807 S.W.2d 247, 254 (Tenn. Ct. App. 1990). Generally, however, "[t]here must be some evidence, apart from mere ownership, that this 'value' is a product of reasoned analysis." ***Airline Const. Inc.***, 807 S.W.2d at 256 (giving no weight to property owner's testimony regarding diminution in value damages when he did not state how he arrived at the arbitrary figure). "Mere ownership is not, by itself, sufficient to make the valuation opinion." ***Corbitt v. Amos***, No. M2011-01916-COA-R3-CV, 2012 WL 4473963, at *4 (Tenn. Ct. App. Sept. 27, 2012) (concluding that wife's testimony was not competent evidence regarding fair market value of marital property when there was "nothing in the record" to support her opinion of prior value and "no explanation or proof" as to her calculation of decrease in value). Indeed, "a property owner's opinion regarding valuation cannot be given any weight where it is clear

that the owner's testimony is founded on pure speculation." ***Hudson v. Hudson***, No. W2015-01519-COA-R3-CV, 2016 WL 7155055, at *4 (Tenn. Ct. App. Dec. 7, 2016) (citing ***Sikora v. Vanderploeg***, 212 S.W.3d 277, 284 n.5 (Tenn. Ct. App. 2006)); *see also* ***Union Ry. Co. v. Hunton***, 114 Tenn. 609, 88 S.W. 182, 187 (1905) (noting that witnesses testifying as to the value of property must "have some knowledge on which to base their opinion. If they have such knowledge, the fact that it is slight will go to the weight of their testimony, rather than to its competency; but if they are not acquainted with, or have no knowledge of, the matter in question, so that their opinion can in no way aid the jury, the court should refuse to permit them to give an opinion which would necessarily be a mere guess or conjecture.").

No argument has been raised here regarding the existence of damages; Appellant only questions the proof supporting the amount of damages she was ordered to pay.[8] In its final order, the trial court found that Appellant was responsible for the "damage and/or conversion of personal property" from Decedent's home as follows:

Tools	$25,000.00
Pool damage repair	4,900.00
Plumbing septic repair	250.00
Gun	400.00
Jewelry	1,300.00
Television	500.00
Enclosed trailer	2,200.00
Car haul trailer	2,500.00
TOTAL	$37,050.00

Bills for the cost of repairing damage to the pool and the septic system were entered into evidence. The values for the remaining items came from Wife's testimony. Wife admitted during cross-examination that some of the values she testified to were "just a guess."[9] Wife was "not sure" about the $800.00 value of Decedent's watch and could only say that the remainder of his jewelry was worth "probably around" $500.00. Wife provided no basis for her $500.00 value for the living room television. Wife testified that she "would imagine" that the enclosed trailer that was purchased after she left the marital home was

[8] Although Appellant frames her issue as involving the trial court's reliance on Wife's testimony "as to the contents and value of the contents" of Decedent's home, the actual focus of her argument is only on Wife's valuation of the items. *See* ***Childress v. Union Realty Co.***, 97 S.W.3d 573, 578 (Tenn. Ct. App. 2002) ("[W]hen a party raises an issue in its brief, but fails to address it in the argument section of the brief, we consider the issue to be waived." (citation omitted)).

[9] Specifically, Wife testified as follows:

> Q: And all of the values you've testified to today, they're just a guess, aren't they?
> A: Yes.

worth $2,000.00, but that she "[didn't] know." And Wife offered no support for her belief that the flatbed car-hauler trailer was worth $2,500.00.

However, our review of the record reveals that Wife did establish a basis for some of the values she provided. Wife testified that prior to his death, Decedent owned roughly $135,000.00 in tools, including a car lift and several toolboxes. Wife stated that she helped pay for the tools over the course of the marriage. Wife testified that around half of the smaller tools, at least $25,000.00 worth, were missing when she regained access to Decedent's home. Wife also testified that there had been "something like" at least five guns in the home, including one handgun that she had purchased for Decedent as an anniversary present. The trial court allowed for the recovery of the value of only the gun Wife had purchased.[10]

Wife's testimony as to her involvement in the purchase of Decedent's tools and the anniversary handgun, as well as the bills for repairs to the home, provide "some evidence, apart from mere ownership," that these values are the "product of reasoned analysis." ***Airline Const. Inc.***, 807 S.W.2d at 256. The proof regarding the value of these items was "as certain as the nature of the case permits" and "enable[d] the trier of fact to make a fair and reasonable assessment of the damages." ***Andrews***, 2013 WL 5498093, at *13. But we cannot find in the record any evidence to support Wife's testimony regarding the value of Decedent's jewelry, television, or trailers. It is true that Wife and Decedent were married for more than thirty years. They lived together for most of that time, including roughly four years at the home Decedent was living in at the time of his death. However, Wife had not lived together with Decedent for the two years prior to his death. And Wife freely admitted that she was merely guessing. We cannot say that these values were founded on anything other than "pure speculation." ***Hudson***, 2016 WL 7155055, at *4. Thus, the trial court erred in giving Wife's testimony any weight regarding these values. ***Id.***; ***Corbitt***, 2012 WL 4473963, at *4 (finding that "an owner's valuation testimony is not competent evidence of value if it is based on pure speculation or an erroneous standard"); ***Union Ry. Co.***, 88 S.W. at 187.

The awards for the tools, repairs, and gun had adequate support and are affirmed. But without the benefit of Wife's admittedly speculative testimony, there was no evidence in the record to support the trial court's award of $1,300.00 for jewelry, $500.00 for a television, or $4,700.00 for the two trailers. So these awards are reversed. *See* ***Airline Const. Inc.***, 807 S.W.2d at 276 (reversing the award for diminution of value after giving

[10] We note that although Wife testified that, altogether, the missing guns were worth around $2,500.00, she did not provide a value for the handgun that she had purchased. Appellant has not appealed the individual values assigned to the missing or converted items, but that the trial court relied upon Wife's speculative testimony in its valuation. It appears that Wife did have some knowledge regarding the purchase of the gun for which recovery was granted. So Appellant's argument lacks merit here, as the trial court chose not to simply award Wife the value she testified to for all of the guns, but only the portion thereof that was not pure speculation.

no weight to property owner's speculative testimony). The amount owed by Appellant to Decedent's estate for the damage or conversion of Decedent's property is therefore reduced from $37,050.00 to $30,550.00.

C.

Finally, we address Appellant's issue regarding whether the trial court erred in finding that she exercised undue influence over Decedent. In its final order, the trial court found that the October 2018 insurance beneficiary-designation forms were not signed by Decedent and that "[f]raud was committed in the preparation and presentation of the forms." The trial court then found that "[f]urther, and in the alternative, [Appellant] had a confidential relationship with [Decedent] that gave her the ability to exercise dominion and control over [Decedent], especially considering his weakened health condition." The trial court found that Appellant "utilized her confidential relationship and undue influence" to have her name added to Decedent's credit union account in October 2018. Thus, the trial court ordered Appellant to reimburse Decedent's estate for the $3,500.00 withdrawn from that account shortly before Decedent's death. Appellant argues that there was no undue influence in her being named the beneficiary of Decedent's life insurance policy or her being added to Decedent's credit union account. Appellant also argues that the trial court erred in discussing undue influence at all, as it was not raised as a cause of action by Appellees. Although Appellees oppose the argument that undue influence was not proven, they do not rebut Appellant's argument that undue influence was not properly tried.

It is well settled that "a judgment is void where it is rendered 'wholly outside of the pleadings, and no binding consent thereto is shown in the record.'" ***In re John B.***, No. M2019-02022-COA-R3-JV, 2020 WL 6075704, at *4 (Tenn. Ct. App. Oct. 15, 2020) (quoting ***Andrews v. Fifth Third Bank***, 228 S.W.3d 102, 107 (Tenn. Ct. App. 2007)). Indeed, "[t]he purpose of pleadings is to give notice to all concerned regarding what may be adjudicated, [so] a judgment beyond the scope of the pleadings is beyond the notice given the parties and thus should not be enforced." ***Solima v. Solima***, No. M2014-01452-COA-R3-CV, 2015 WL 4594134, at *6 (Tenn. Ct. App. July 30, 2015) (quoting ***Brown v. Brown***, 281 S.W.2d 492, 497 (Tenn. 1955)). However, our courts "have the authority to grant appropriate relief to a prevailing party even if that relief was not demanded in the pleadings if the issue was tried by consent." ***Renken v. Renken***, No. M2017-00861-COA-R3-CV, 2019 WL 719179, at *4 (Tenn. Ct. App. Feb. 20, 2019) (citing Tenn. R. Civ. P. 54.03 (stating that "every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in the party's pleadings; but the court shall not give the successful party relief, though such party may be entitled to it, where the propriety of such relief was not litigated and the opposing party had no opportunity to assert defenses to such relief.")). Accordingly, parties may agree to try matters not asserted in the pleadings by consent. "When issues not raised by the pleadings are tried by consent, 'they shall be treated in all respects as if they had been raised in the pleadings.'" ***Id.*** (quoting Tenn. R. Civ. P. 15.02).

We first note that undue influence was found only in the alternative as to the October 2018 insurance beneficiary-designation forms. As we have discussed, the trial court properly relied on the testimony of Appellees' expert as well as its own credibility determinations to find fraud in the preparation and presentation of the forms. The finding of fraud resolves the insurance beneficiary issue, so the alternative finding of undue influence is superfluous. And undue influence does not factor into the trial court's finding that Appellant was responsible for the conversion of property from Decedent's home. However, the trial court does rely solely on its finding of a confidential relationship and undue influence in requiring Appellant to reimburse Decedent's estate for the $3,500.00 withdrawn from Decedent's credit union account. There can be no dispute that undue influence was not raised as a cause of action in Appellees' complaint. Thus, we must determine whether the issue of undue influence regarding the credit union account was tried by consent.

In their appellate brief, Appellees offer no argument at all that undue influence was tried by consent. In their argument that undue influence had been proven at trial, Appellees focus on the circumstances surrounding Appellant being named as the beneficiary of Decedent's life insurance proceeds. As to the credit union account, Appellees include only a single sentence stating that Appellant was added to Decedent's account less than two months before Decedent's death. It is not this Court's duty to comb through the appellate record to find support for a party's assertions, let alone a defense a party has not raised; as we have repeatedly stated, "[j]udges are not like pigs, hunting for truffles that may be buried in the record, or for that matter, in the parties' briefs on appeal." ***Nunley v. Farrar***, No. M2020-00519-COA-R3-CV, 2021 WL 1811750, at *6 (Tenn. Ct. App. May 6, 2021) (internal quotation marks and citation omitted) (declining to search the entire record for factual support for appellee's assertions where its appellate brief was deficient).

Nevertheless, it is clear from the record that the parties did not try undue influence by consent. The only time undue influence is mentioned in the transcript is in response to Appellant's counsel's oral motion to dismiss. Undue influence was not listed among the causes of action Appellant was seeking to dismiss. But Appellees' counsel explained that Appellees "would ask that [the proceeds from Decedent's life] insurance be held in a constructive trust if [the trial court] does find that there has been a forgery or a fraud or potentially some undue influence." The money withdrawn from Decedent's credit union account was only addressed during the opposition to the motion to dismiss in relation to whether Appellees had provided support for their conversion cause of action. Undue influence was not discussed elsewhere in the record.[11] It is true that Appellant testified

[11] Although a transcript of the trial is in the record, it does not contain the parties' opening statements. Thus, we are unable to determine if the issue of undue influence was broached at the start of trial. However, Appellees bore the burden of supplementing the record if they deemed any part of the record omitted on appeal necessary. *See* Tenn. R. App. P. 24(a).

regarding being named as Decedent's co-attorney in fact, as well as her benefitting from being named as Decedent's life insurance beneficiary. Yet there is no proof in the record that only goes toward the existence of undue influence regarding the credit union account—there is substantial overlap between the evidence used to support Appellees' fraud and conversion causes of action and that which could have supported an undue influence action.

The purpose of pleadings is to provide notice of the issues to be tried so the parties may prepare to present evidence related to those issues. ***Solima***, 2015 WL 4594134, at *6. When combined with Appellees' failure to provide any argument that the parties tried the issue of undue influence by consent, our review of the record leaves us reluctant to say that Appellant had proper notice of the cause of action. Therefore, we conclude that the trial court erred by basing its judgment in any part on a finding of undue influence. As discussed above, the only aspect of the judgment for which undue influence was the only support concerned the money withdrawn from Decedent's credit union account.

While undue influence was not a proper basis for the trial court to award Decedent's estate damages related to the credit union account, that is not to say that no basis was alleged for damages in this context. Rather, Appellees' complaint and their arguments at trial indicate that conversion, rather than undue influence, was the basis for this claim. The trial court, however, does not appear to have ruled on whether conversion was shown as to the withdrawal from Decedent's credit union account in particular, relying erroneously on undue influence instead. Because the trial court did not specifically rule on this claim, we conclude that the appropriate remedy is to vacate the trial court's $3,500.00 award to Decedent's estate for the withdrawal from Decedent's credit union account and remand to the trial court for reconsideration. *See* ***Whalum v. Shelby Cnty. Election Comm'n***, No. W2013-02076-COA-R3-CV, 2014 WL 4919601, at *3 n.3 (Tenn. Ct. App. Sept. 30, 2014) ("This Court's jurisdiction is appellate only. Accordingly, we are constrained to only review those issues that have been decided by the trial court in the first instance." (citing ***Reid v. Reid***, 388 S.W.3d 292, 294 (Tenn. Ct. App. 2012) ("The jurisdiction of this Court is appellate only; we cannot hear proof and decide the merits of the parties' allegations in the first instance.")).

We note that there appears to be no dispute over the amount at issue regarding the credit union withdrawal. Nor has any issue been raised regarding the trial court requiring the estate to reimburse Appellant for the $7,100.00 cost of Decedent's funeral. Thus, the sole issue on remand is whether the total award to Decedent's estate includes the $3,500.00 withdrawal and so totals $26,950.00 (i.e., $30,550.00 + $3,500.00 - $7,100.00), or whether the total award to Decedent's estate does not include the $3,500.00 withdrawal and so is reduced to $23,450.00 (i.e., $30,550.00 - $7,100.00). *See* ***In re Alexis S.***, No. E2020-00405-COA-R3-PT, 2020 WL 6375876, at *2 (Tenn. Ct. App. Oct. 30, 2020) (explaining that "the scope of a trial court's authority upon remand is limited to the directions contained in the mandate from the appellate court." (internal quotation marks and citation omitted)); ***Melton v. Melton***, No. M2003-01420-COA-R10-CV, 2004 WL 63437, at *5 (Tenn. Ct.

App. Jan. 13, 2004) (noting that "appellate courts have the power to remand cases with limiting instructions to the trial courts.").

V. CONCLUSION

The judgment of the Sumner County Chancery Court is affirmed in part, reversed in part, vacated in part, and remanded to the trial court for further proceedings consistent with this Opinion. The costs on appeal are taxed one-half to Appellant Charlotte R. Hodges Brown and one-half to Appellee the Estate of Willie Harold Hargett, for which execution may issue if necessary.

S/ J. Steven Stafford
J. STEVEN STAFFORD, JUDGE