

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2572

September Term, 2013

IN THE MATTER OF THE ESTATE OF
W. BYRON SORRELL, DECEASED

Meredith,
Arthur,
Leahy,

JJ.

Opinion by Leahy, J.

Filed: March 2, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

On March 9, 2011, Judge W. Byron Sorrell (“Decedent”) passed away leaving behind a Last Will and Testament dated December 28, 2010 (the “Will”). Among other bequests, Craig Cohill (“Appellant”) was bequeathed “the land on the north side of Joe Tyler Road, including a large barn.” On March 18, 2011, Decedent’s duly appointed personal representative, Ms. Bonnie E. Taylor, filed a Petition for Probate of Decedent’s Estate in the Orphans’ Court for Anne Arundel County. Subsequently, Decedent’s daughter, Ms. Joan E. Sorrell, filed a caveat action, challenging the Will in the Orphans’ Court for Anne Arundel County.

In late August 2013, Ms. Sorrell and Ms. Taylor (“Appellees”), without the consent of the other named legatees, entered into a Will Contest Settlement Agreement and General Release for the caveat action that substantially altered the distributions under the Will. Soon thereafter, they sought the Orphans’ Court approval of that agreement through a joint petition. Over the objections of several legatees, the Orphans’ Court granted Appellees’ joint petition and approved the Settlement Agreement. Appellant, Mr. Cohill, now

challenges the decisions of the Orphans’ Court.¹ Mr. Cohill presents the following issues, which we have reordered and rephrased for clarity:²

- I. Did the Orphans’ Court err in granting the original Joint Petition when beneficiaries affected by the Settlement Agreement, including Appellant, were not served with the Joint Petition and had no opportunity to object to the Joint Petition or be heard by the Orphans’ Court before the Joint Petition was granted?
- II. Did the Orphans’ Court err in granting the Amended Joint Petition when legatees whose interests were affected by the Settlement Agreement, including Appellant, did not consent to the Settlement Agreement?

¹ Dale and Faith Moore did not file a notice of appeal in this matter, but they attempt, as *pro se Appellees*, to “come here before this Honorable Court in full support of Appellant, Craig Cohill.” We note that, under Maryland Rule 8-111(a), only parties adverse to the party first appealing the decision are designated as appellees. The Moores are neither appellants nor appellees. Md. Rule 8-111. Although no party has filed a motion to strike the Moores’ brief in this Court, we will disregard the brief pursuant to Rule 8-511. In so doing, we note that their *pro se* brief presents virtually no arguments or facts in addition to those presented in Mr. Cohill’s brief.

² Appellant’s brief presented the following questions:

- I. Whether the Orphans’ Court erred in granting the Joint Petition and/or abused its discretion denying Appellant’s Motion to Alter or Amend, when beneficiaries affected by the Settlement Agreement, including Appellant: (a) were not party to the Settlement Agreement; (b) were never served with the Joint Petition; and (c) never had an opportunity to object to the Joint Petition or be heard by the Orphan’s Court before the Joint Petition was granted?
- II. Whether the Orphans’ Court erred in granting the Amended Joint Petition, which was filed after the original Joint Petition was granted, when beneficiaries affected by the Settlement Agreement, including Appellant, were not party to the Settlement Agreement?
- III. Whether the Orphans’ Court erred in granting the Petitions, when there was no evidence to support the fairness and reasonableness of the Settlement Agreement?

- III. Did the Orphans’ Court err in approving the Settlement Agreement when there was no evidence to support the fairness and reasonableness of the Settlement Agreement?
- IV. Did the Orphans’ Court abuse its discretion by denying Appellant’s Motion to Alter or Amend?

Because we determine that, under the facts of this case, the failure to obtain the consent of all legatees whose beneficiary interests under the Will were modified was fatal to the Settlement Agreement, and that the personal representative improperly entered into an agreement in her official capacity that amounted to self-dealing and sought to avoid the intent of the testator, we hold that the Orphans’ Court erred in granting the joint petition approving the Settlement Agreement. Similarly, we hold that the Orphans’ Court abused its discretion by denying Appellant’s motion to alter or amend on legally incorrect grounds.

BACKGROUND

Last Will and Testament

On December 28, 2010, Decedent executed a Last Will and Testament. His Will appointed Bonnie E. Taylor as executrix and, in the event that she was unable or unwilling to serve in that capacity, appointed Craig Cohill as alternate executor. Article IV of Decedent’s Will contained the following bequests:

I direct all corpus of my estate, real, personal and mixed, including the parcel of waterfront land on the south side from the water, Parker’s Creek, to the dirt road, known as Joe Tyler Road, (which includes a dwelling), and any residue, including financial securities I may have or obtain before or after my death, to be bequeathed and paid to my devoted friend and Executrix, Bonnie E. Taylor.

Further I bequeath to [my] cousin, Craig Cohill, the land on the north side of Joe Tyler Road, including a large barn.

I also bequeath to my friends Dale and Faith Moore the parcel of land on the south side of Joe Tylor Road north of the parcel bequeathed to Mrs. Taylor divided by the drainage creek.

My Executrix is directed to disperse the exceptions as follows:

The exceptions:

If at the time of my death my daughter Joan Sorrell is living she is to receive whatever and all funds on deposit in M&T Bank in savings account #[XXXXXXXXXXXXXXXXX].

As for the siblings living at the time of my death, including Jeanne Dorr, Anne Dent and Doris Shoe, they shall share equally the funds on deposit in M&T Bank in saving[s] account #[XXXXXXXXXXXXXXXXX].

Finally, Decedent's Will provided that "[i]f anyone mentioned or otherwise should contest []this Last Will and Testament, their share will be given to St[.] James['] Parish, Lothian, Maryland." On March 9, 2011, Decedent passed away, and on March 18, Ms. Taylor, acting as Personal Representative, filed a Petition for Probate of Decedent's Estate in the Orphans' Court for Anne Arundel County.

Joan Sorrell's Petition to Caveat

On May 11, 2011, Decedent's daughter and legatee, Joan Sorrell, filed a petition to caveat the December 28, 2010 Will. Alleging that Decedent lacked testamentary capacity and that the Will was the product of undue influence by Taylor, Sorrell's petition to caveat stated, in pertinent part:

11. On or about November 11, 2009, [Decedent] executed a Last Will and Testament leaving his entire Estate to his daughter, Joan Sorrell. Ms. Taylor assisted in the drafting of that will, was present at its execution, and notarized it. . . .

* * *

17. On or about March 4, 2010, [Decedent] executed a Power of Attorney making Ms. Taylor his attorney in fact for financial matters. Witnesses to the document were advised that this was to be a temporary measure only until Joan Sorrell’s health would allow her to resume that role.

* * *

19. Prior to the execution of the alleged Will of 28, December[] 2010 [Decedent] remarked to many persons on several occasions that “my head is just not right anymore.”

* * *

21. On information and belief, Ms. Taylor practiced deceptive means to unduly influence and defraud including, but not limited to, impersonating Joan Sorrell in communications to enhance Ms. Taylor[’s] good standing with [Decedent] and others. Furthermore, she engaged in a course of conduct to isolate [Decedent] from his daughter, Joan Sorrell, other relatives and long time friends who might have interfered with Ms. Taylor’s efforts to unduly influence and defraud [Decedent] and his daughter, Joan Sorrell. On information and belief, he was also unduly influenced by Ms. Taylor and others to include Craig Cohill, Dale Moore and Faith Moore as beneficiaries of the Will dated 28 December, 2010.

* * *

24. Petitioner believes that the paper writing dated 28 Dec, 2010, purporting to be the Last Will and Testament of [Decedent] is not the Last Will and Testament of [Decedent] and that [Decedent] died intestate or leaving another Will because:

- (a) [Decedent], lacked testamentary capacity to make a Will when the writing was executed . . . ;
- (b) the writing was procured by the undue influence of Bonnie E. Taylor and/or others

Ms. Sorrell filed an amended petition on July 22, 2011. Thereafter, on August 18, 2011, Ms. Taylor filed a petition for issues in the Orphans’ Court presenting 22 separately enumerated questions regarding the execution and validity of the Will. On January 27,

2012, Ms. Sorrell filed her own petition for issues. On or about February 9, 2012, the parties to the caveat consented to have their issues transferred to the Circuit Court for Anne Arundel County and the Orphans' Court issued an order transmitting the issues on February 16, 2012. The original pleadings were filed in the circuit court on March 16, 2012.

On March 8, 2013, Ms. Sorrell filed a separate civil action against Ms. Taylor and her husband in the Circuit Court for Anne Arundel County alleging the improper use of Decedent's assets. Ms. Sorrell's complaint brought claims for breach of fiduciary duty, fraud, breach of a confidential relationship, unjust enrichment, conversion, and undue influence, among other counts. The civil action was based on transactions during the six months prior to Decedent's death in which Decedent gifted real property with a value of \$338,000.00 to Ms. Taylor, made her a joint owner of an M&T bank account containing \$170,000.00, and changed his Will to make her the primary beneficiary.

Agreement between Sorrell and Taylor

Prior to a hearing on the issues transferred to the circuit court, and, with the separate civil action still pending, Ms. Sorrell and Ms. Taylor entered into a Will Contest Settlement Agreement and General Release ("Settlement Agreement") agreeing that the Will dated December 28, 2010, was the valid Last Will and Testament of Decedent. In the Settlement Agreement, Ms. Sorrell and Ms. Taylor "agreed to settle and compromise their respective claims against each other," and both released and discharged "any and all claims . . . [between the parties] as now appear or as may appear at any time in the future, from the

beginning of Creation to the date of this Release[.]” On September 6, 2013, Ms. Sorrell filed lines of dismissal in the circuit court for both the caveat action and the separate civil action against Ms. Taylor.

The Settlement Agreement, signed by Ms. Sorrell and Ms. Taylor, altered the distribution of Decedent’s estate to the following:

A. One Hundred Twenty Five Thousand Dollars (\$125,000) to Craig Cohill and a total of Twenty Five Thousand Dollars (\$25,000) to Dale and Faith Moore (for a total of \$150,000), to be paid within thirty (30) days of the approval of this Agreement by the Court upon receipt of which they will no longer be interested persons of the Estate, having received distribution in full.

B. \$10,000 each to Jeanne Dorr, Anne Dent, and Doris Shoe (total of \$30,000) to be paid within thirty (30) days of the approval of this Agreement by the Court upon receipt of which they will no longer be interested persons of the Estate, having received distribution in full.

C. Sorrell is to receive the real property located at 5920 Sneed Drive, Deale, Maryland 21751, to be conveyed by Deed prepared and filed by the Personal Representative within forty five (45) days of the approval of this agreement by the Court.

D. The residuary is to be distributed 65% to Sorrell and 35% to Taylor. Partial distributions will be made within thirty (30) days of Orphans’ Court approval of this Agreement and \$100,000.00, after payment of the agreed upon fees as set forth in Paragraph 8 herein, will be retained by the Personal representative to wind down the administration of the Estate, the remaining balance of which will also be distributed in accordance with this provision, 65% to Sorrell and 35% to Taylor.

On September 13, 2013, Ms. Sorrell and Ms. Taylor filed their Joint Petition for Approval of Will Contest Settlement Agreement and General Release (“Joint Petition”) in the Orphans’ Court. This petition, however, contains no affidavit of service as to any other legatees or interested parties of the Estate. Nevertheless, on September 17, 2013, the

Orphans' Court granted the Joint Petition in a summary order. On September 19, 2013, Ms. Sorrell and Ms. Taylor filed a Joint Petition amended to contain a certificate of service affirming that on September 17 a copy of the amended Joint Petition was served on Craig Cohill, Dale and Faith Moore, Jeanne Dorr, Anne Dent, and Doris Shoe (the "Amended Joint Petition").

The Legatees Object

That same day, September 19, Legatees Dale and Faith Moore received both the Joint Petition and the Orphans' Court order granting the petition. On September 27, 2013, the Moores filed an objection to the Amended Joint Petition in the Orphans' Court. The Moores argued that they were not included in the negotiations of the Settlement Agreement and that they did not receive 20-days' notice to respond to the Joint Petition as required by Maryland Rule 6-431(e). Their objection stated, in part:

Pursuant to the terms of the December 28, 2010 Will, Article IV, Dale and Faith Moore are named as legatees to receive an interest in certain real property owned by the Decedent . . . located at 5920 Sneed Drive, Deale, Maryland 21751. According to the Amended Joint Petition filed September 17, 2013, the two-acre parcel bequeathed to Dale and Faith Moore (the Moores) has been assessed a *de minimis* value of \$25,000.00. This crammed down value is neither fair nor reasonable and sorely diminishes [Decedent's] desire to provide for the Moores.

* * *

Dale and Faith Moore had not previously petitioned the Court to be involved with the settlement negotiations as it was the Moores' understanding that Caveator, Joan E. Sorrell and Caveatee, Bonnie E. Taylor were negotiating settlement of that portion of the Estate [Decedent] had bequeathed to Bonnie E. Taylor, not the portion bequeathed to the Moores. Dale and Faith Moore's silence in this matter was not due to disinterest. It was due to the Moore's understanding and faith that the Estate was protecting

Dale and Faith Moore's interests while pursuing a resolution of the conflict between Caveator, Joan E. Sorrell and Caveatee, Bonnie E. Taylor by working to follow the Court's due process to ensure the fair and equitable disposition of [Decedent's] Estate in accordance with his wishes as set forth in his December 28, 2010 Will.

Instead, it appears [Ms. Sorrell and Ms. Taylor, who] would receive the bulk of the Estate under the Amended Joint Petition have agreed to enter into a settlement that excluded us from the negotiating process and simply determined on their own merit a *de minimis* value of the real estate portions [Decedent] willed to the Moores and Craig Cohill.

* * *

Granting the Order the same day the Amended Joint Petition was filed with the Court provided no time for any interested party of the Estate to receive notice, and makes it impossible for any legatee of the Estate of [Decedent] to respond to the *Amended Joint Petition for Court Approval of Will Contest Settlement Agreement and General Release*.

Dale and Faith Moore received notice of the *Amended Joint Petition for Court Approval of Will Contest Settlement Agreement and General Release* and *Order* granted by the Orphans' Court for Anne Arundel County on Thursday, September 19, 2013. It is apparent no consideration was granted to the Moores as legatees of the Estate of [Decedent]. Nor was there a fair and equitable value assessed to the real property [Decedent] bequeathed to the Moores.

(Emphasis in original).

On September 27, 2013, legatee Craig Cohill also filed a Motion to Alter or Amend, or in the Alternative, Revise the Order dated September 17, 2013, and a request for hearing.

Mr. Cohill argued, in part, that

[t]he Joint Petition was devoid of any notice to creditors or interested persons and, furthermore, was not served on any creditors or interested persons, such that these individuals were deprived of the right to file an exception to the Joint Petition. As a result, the Court's Order docketed on September 19, 2013 (less than a week after the Joint Petition was filed), was premature and should be stricken, because the interested persons and creditors were not served nor provided the requisite notice nor twenty (20) days to file a response.

Mr. Cohill provided, as an exhibit, a letter he received from the attorneys for Ms. Sorrell and Ms. Taylor dated October 24, 2012, which stated that an “informal structure” had been “tentatively worked out” for a settlement agreement, but “[a]t this juncture there is no written agreement because all persons who are to be impacted by a settlement, including [Mr. Cohill], must sign.” The letter concluded by advising Mr. Cohill of the following:

This case has been going on for nearly 18 months. In an effort to bring it to closure without undue additional expense, [Ms. Taylor] and [Ms. Sorrell] have reached the tentative agreement outlined above. However, if agreement with you cannot be reached, then the litigation will continue for at least several more months. You are encouraged to return this correspondence with a reasonable monetary proposal. We look forward to hearing from you as soon as possible.

However, by affidavit (dated September 26, 2013) Mr. Cohill acknowledged that he received that letter from counsel, but “at no point did [he] ever receive a copy of a proposed written agreement, and at no point did [he] ever agree to receive anything other than the real property that was to be distributed to [him] under the Will.” Mr. Cohill affirmed that he too was to receive a portion of the real property known as 5920 Sneed Drive, Deale, Maryland 21751 (the “Sneed Drive Property”). On October 4, 2013, Mr. Cohill filed his own objection to the Amended Joint Petition and request for hearing.

On October 8, 2013, Ms. Sorrell responded to Mr. Cohill’s motion to alter or amend, arguing that, because he was not a party to the caveat action, Mr. Cohill could not challenge the order approving the Settlement Agreement pursuant to Maryland Rules 6-461, 2-534, or 2-535. Regarding the approval of the Settlement Agreement, Ms. Sorrell maintained that Ms. Taylor, as personal representative, was charged with defending the interests of the

estate and the interests of the legatees, and that the legatees had the opportunity to be made parties to the caveat action but chose not to do so. That same day, Ms. Sorrell filed a response to Dale and Faith Moore’s objection to the Amended Joint Petition and made substantially the same arguments regarding the Moores’ alleged failure to intervene in the caveat action.

On January 28, 2014, the Orphans’ Court heard argument from the parties but made no findings on the record. On February 18, 2014, the Orphans’ Court entered its decision denying Mr. Cohill’s motion and objections, denying the Moores’ objections, and upholding its September 17, 2013 Order granting the Joint Petition.³ The Orphans’ Court order contains no factual findings or discussion of the law. The decision—which primarily addresses claims for attorneys’ fees between Ms. Sorrell, Ms. Taylor, and the Estate—simply states:

Further, in regards to the Objection to the Amended Joint Petition for Court Approval of Will Contest Settlement Agreement and General Releases, Dale and Faith Moore represented themselves and presented testimony on the issue.

In addition, attorneys John Strange and Tucker Meneely, representing Craig Cohill, provided statements objecting to the Amended Joint Petition Matthew Ballard, Esquire, provided testimony on behalf of [Joan Sorrell⁴],

³ At the January 28, 2014 hearing, the Orphan’s Court primarily addressed Attorneys’ fee issues that are not pertinent to the issues before this Court on appeal.

⁴ On February 24, 2014, Ms. Taylor, as personal representative, filed a petition requesting that the Orphans’ Court correct a misnomer in its February 18 decision. The Orphans’ Court corrected that misnomer the following day and entered an amended decision clarifying that Matthew Ballard appeared on behalf of Ms. Sorrell, not Ms. Taylor.

asking for approval of the Will Contest Settlement Agreement and General Release.

After hearing all statements by attorneys and other parties, the Court does hereby deny the Objections to Amended Joint Petition for Court Approval of Will Contest Settlement Agreement and General Releases and upholds the original Court order of September 17, 2013.

On February 24, 2014, Mr. Cohill filed a notice of appeal from the orders of the Orphans' Court dated September 17, 2013, and February 18, 2014, pursuant to Maryland Code (1973, 2013 Repl. Vol.) Courts and Judicial Proceedings Article § 12-501.⁵ Mr. Cohill filed an amended notice of appeal on February 25 to clarify that he was not appealing from the decisions of the court regarding attorneys' fees.

We include additional facts in the discussion relevant to the specific issues there examined.

DISCUSSION

In *Allen v. Ritter* we stated:

[o]n appeal from a final judgment of the Orphans' Court, “the ‘findings of fact of an Orphans' Court are entitled to a presumption of correctness.’ ” *Pfeufer v. Cyphers*, 397 Md. 643, 648, 919 A.2d 641 (2007) (quoting *New York State Library School Ass'n v. Atwater*, 227 Md. 155, 157, 175 A.2d 592 (1961)). An interpretation of law, however, is “not entitled to the same ‘presumption of correctness on review: the appellate court must apply the law as it understands it to be.’ ” *Id.* at 648, 919 A.2d 641 (quoting *Comptroller of the Treasury v. Gannett Co. Inc.*, 356 Md. 699, 707, 741 A.2d 1130 (1999)).

⁵ Maryland Code (1973, 2013 Repl. Vol.) Courts and Judicial Proceedings Article § 12-501(a) provides that “[a] party may appeal to the Court of Special Appeals from a final judgment of an orphans' court.”

I. Failure to Provide Interested Parties with Notice of the First Joint Petition

Appellant contends that because notice of filing the Joint Petition was not provided to all interested persons prior to the Orphans’ Court’s granting of the petition, the resulting order must be vacated. Appellees counter, arguing that “it was not necessary to serve Appellant with a copy of the Joint Petition.” Appellees point out that Maryland Rule 6-122(b)(1) provides that a petition filed under Title 6, Settlement of Decedents’ Estates of the Maryland Rules,

shall be filed with the Register of Wills[, and t]he petitioner may serve on any interested person and shall serve on the personal representative and such persons as the court may direct a copy of the petition, together with a notice informing the person served of the right to file a response and the time for filing it.

Further, Appellees maintain that no other rule or provision mandates that interested persons in an estate be notified of the filing of the Joint Petition.

We note, however, that the Estates and Trusts Article and Maryland decisional law generally favor notice to all interested persons of filings, payments, and developments in probate and caveat actions. *See, e.g.* Maryland Code (1974, 2011 Repl. Vol.), Estates and Trusts Article (“ET”) § 9-112 (“Distribution made by the court . . . the court shall . . . direct the giving of notice to all interested persons concerned”); Md. Rule 6-443 (“When the personal representative cannot obtain agreement from all interested persons entitled to distribution, . . . the personal representative may file with the court a request for a meeting, under the supervision of the court, of all interested persons entitled to distribution.”); ET § 7-502 (“The personal representative shall give written notice to . . . all interested persons

of a claim, petition, or other request which could result, directly or indirectly, in the payment of a debt, commission, fee, or other compensation to or for the benefit of the personal representative or the attorney for the estate.”); ET § 7-501 (“[T]he personal representative shall give written notice to all interested persons of the filing of an account with the court.”); ET § 5-403 (“Notice that judicial probate has been requested shall be given promptly by the register to all interested persons”); ET § 7-301 (“A personal representative shall file written accounts of his management and distribution of property at the times and in the manner prescribed in this subtitle, with a certification that he has mailed or delivered a notice of the filing to all interested persons.”).

In *Radcliff v. Vance*, the appellant filed a Motion for Order for Payment of a Debt in the Orphans’ Court for Prince George’s County, which was granted. 360 Md. 277, 280 (2000). Four months later, the appellee, an interested party, first learned of the motion and resulting order when her counsel reviewed the Register of Wills. *Id.* Citing ET § 7-502(a), appellee argued before the Orphans’ Court that the personal representative was required to give notice to all interested parties because he stood to personally benefit from payment by the estate. *Id.* at 283-84. The Orphans’ Court then vacated its earlier order. *Id.* at 284. The appellant then sought review of that decision. *Id.* Addressing the failure to provide notice of the motion, the Court of Appeals stated:

[T]here was “substantial irregularity in the proceeding.” An irregularity is a failure to follow required process or procedure. *See Early v. Early*, 338 Md. 639, 652, 659 A.2d 1334, 1340 (1995). It is settled that a failure to provide a required notice to a party is an irregularity in a proceeding in a circuit court under Rule 2-535. *See, e.g., Mutual Benefit Soc’y of Baltimore, Inc. v. Haywood*, 257 Md. 538, 541, 263 A.2d 868, 870 (1970); *Dypski v. Bethlehem*

Steel Corp., 74 Md. App. 692, 699, 539 A.2d 1165, 1169 (1988); *Alban Tractor Co. v. Williford*, 61 Md. App. 71, 79, 484 A.2d 1039, 1043 (1984). By direct analogy, such a failure is an irregularity in an orphans’ court as well. We hold that the irregularity was “substantial” in that the personal representative’s failure to give notice prevented [appellee] from opposing the motion to pay [appellant’s] fees before the order to pay was entered.

Id. at 292-93. Accordingly, the Court of Appeals affirmed the decision of the Orphans’ Court to vacate the order. *Id.* at 295.

Here, as in *Radcliff*, the joint petitioners stood to benefit personally from the action sought in the Orphans’ Court, and the failure to provide notice to the other interested parties prevented those interested parties from opposing the Joint Petition prior to its approval by the Orphans’ Court. The Parties agree, however, that notice of the Amended Joint Petition was received and a hearing was held in which the parties argued their objections. Thus, we do not perceive the same level of substantial irregularity as in *Radcliff*. Absent a rule mandating that all interested parties receive notice of a petition filed under Title 6, a directive from the court to provide such notice, or a substantial irregularity affecting the ability of the interested parties to assert their rights, we cannot say in this case that the Orphans’ Court erred by not requiring that notice be provided to all interested parties.

II. Failure to Obtain the Consent of All Legatees Whose Beneficiary Interests under the Will Were Modified

Appellant first contends that the Settlement Agreement—negotiated by Ms. Sorrell, as Petitioner for Caveat, and Ms. Taylor, as Personal Representative—was legally deficient because the Agreement was made without the consent of the other legatees. Appellant argues that, under Maryland law, a Will Contest Settlement Agreement that modifies the

distributions set forth in the Will must be agreed upon by all legatees whose interests would be modified by the agreement. Appellant argues that the exclusion of all interested parties, except for Ms. Sorrell and Ms. Taylor, renders the Settlement Agreement invalid.

Appellees maintain that, as Personal Representative, Ms. Taylor had the authority to enter into the Settlement Agreement without the approval of legatees whose interests were not changed. Regarding the portions of the Settlement Agreement that provided money in lieu of the land bequeathed to Mr. Cohill and the Moores, Appellees argue (1) that the Settlement Agreement provided sufficient rights for the legatees to attempt to enforce their rights under the Will;⁶ and (2) that the Personal Representative’s fiduciary

⁶ Appellee Taylor contends that the testamentary bequests to the Appellant and other legatees “have not been changed” because, under paragraph 6 of the Settlement Agreement the Appellant and other legatees theoretically had the opportunity to object to the proposed disbursement prior to the approval of the Orphans’ Court. This is, however, belied by the fact that the plain text of the agreement in no way suggests that the individual changes affecting other legatees are still negotiable among the parties. For example, paragraph 6A. provides:

6. Distribution of the Estate will be as follows, subject to the approval of this agreement by the Orphans’ Court for Anne Arundel County:
 - A. One Hundred Twenty Five Thousand Dollars (\$125,000) to Craig Cohill and a total of Twenty Five Thousand Dollars (\$25,000) to Dale and Faith Moore (for a total of \$150,000), to be paid within thirty (30) days of the approval of this Agreement by the Court upon receipt of which they will no longer be interested persons of the Estate, having received distribution in full.

Nowhere in the text of the Settlement Agreement is there any hint of the “three options” Appellee Taylor lists in her brief.

duty to protect the best interests of the Estate included the ability to settle the caveat action without the consent of legatees.

Both Parties cite to *Brewer v. Brewer*, 386 Md. 183, 194 (2005), for the proposition that it is well-settled that agreements to modify distributions in contested wills are allowed in Maryland. However, before applying the principles articulated in *Brewer* to the matter *sub judice*, it must be noted that the beginning of the discussion in *Brewer* states:

As a preface, it is important to note that the **Agreement at issue here was a private one among the five beneficiaries of the Estate that related solely to the distribution of non-trust Estate assets in which only they had an interest.** It neither created, eliminated, nor affected the value of any asset or liability of the Estate. Although Walter, Jr., one of the signatories, happened to be the personal representative of May's Estate and would ultimately be responsible for deeding the properties in conformance with the Agreement, he did not sign the Agreement in that official capacity. **This is not a case, then, of the personal representative compromising or settling a claim made against the Estate.**

Id. at 192 (emphasis added). Addressing the agreement among those five beneficiaries, which did not affect the interests of any other heirs or beneficiaries, the Court of Appeals noted that such agreements were valid so long as they were in compliance with “the requirements of basic contract law.” *Id.* at 196. The *Brewer* Court looked to an earlier decision in *Surratt v. Knight*, 162 Md. 14 (1932), for guidance in assessing the validity of such an agreement in the context of a will caveat proceeding. *Brewer*, 386 Md. at 192.

In *Surratt v. Knight*, after the decedent left his residuary estate to three charitable corporations, his daughter filed a caveat to the will. 162 Md. at 15. While the case was pending in that court, the residuary legatees and the daughter (i.e. all of the parties and

legatees) reached a settlement. *Id.* at 15-16. Reviewing the propriety of that agreement, the Court of Appeals stated:

These three legatees can do what they like **with their own** So, either before, during, or after the caveat to the will, it was competent **for all the testamentary beneficiaries** and next of kin of the testator, as they were *sui juris*, to renounce the provisions of the will and **agree, for a consideration**, that the residuary estate should be divided among them in specified proportions.

Id. at 17 (emphasis added) (citations omitted). Estate administration practitioners in Maryland today recognize that beneficiaries may alter distribution by entering a formal agreement “[i]f the beneficiaries are *all* in agreement.” See Allan J. Gibber, *Gibber on Estate Administration* § 10.84 (5th ed. 2008).

Likewise, allowing the “requirements of basic contract law” to control—as instructed in *Brewer, supra*—there must be a meeting of the minds by all of the parties to the terms of the agreement. See *Klein v. Weiss*, 284 Md. 36, 63 (1978) (“One of the essential elements for formation of a contract is a manifestation of agreement or mutual assent by the parties to the terms thereof; in other words, to establish a contract the minds of the parties must be in agreement as to its terms.” (citation omitted)); *L & L Corp. v. Ammendale*, 248 Md. 380, 385 (1968) (“The failure to agree on or even discuss an essential term of a sale indicates that the mutual assent required to make or modify a contract is lacking.”); *Harrison v. Prentice*, 183 Md. 474, 482 (1944) (“A meeting of the minds is required, not only to make a contract, but also to rescind or modify it after it has been made.” (citation omitted)). Crucially, “[a] contract can only impose obligation upon those

who are parties to it.” *Lake Shore Investors v. Rite Aid Corp.*, 55 Md. App. 171, 180 (1983), *aff’d*, 298 Md. 611 (1984).

It is clear from the record that Appellees, Ms. Sorrell and Ms. Taylor, sought to bargain away the beneficiary interests of the other legatees under the contested Will without the consent of those legatees. This was not a situation, as in *Surratt*, where all affected parties “renounce[d] the provisions of the will and agree[d], for a consideration,” to an alternative distribution. 62 Md. at 17. Rather, the Settlement Agreement sought to impose an obligation in the form of such a renunciation on the Appellant, and it is violative of basic contract principles. Thus, we hold that the Orphans’ Court erred in approving the Settlement Agreement.⁷

⁷ Although the Settlement Agreement was negotiated between both of the parties to the caveat action and, thus, not strictly negotiated *ex parte*, we also find it instructive that, regarding the settlement of estates, Maryland Rule 6-173 provides, in pertinent part:

The court shall not sign any order or grant any relief in an action upon an *ex parte* application unless:

- (a) an *ex parte* application is expressly provided for or necessarily implied by these rules or other law, or
- (b) the applicant has certified in writing that all persons who will be affected have been given notice of the time and place of presentation of the application to the court or that specified efforts commensurate with the circumstances have been made to give notice.

III. Duties of the Personal Representative to Achieve a Fair and Reasonable Distribution

Appellant argues that under Maryland law a personal representative cannot be a party, in her official capacity, to a Settlement Agreement that modifies the distributions set forth in the Will she is obligated to defend. ET § 7-101(a) provides:

- (a) A personal representative is a fiduciary. He is under a general duty to settle and distribute the estate of the decedent in accordance with the terms of the will and the estates of decedents law as expeditiously and with as little sacrifice of value as is reasonable under the circumstances. He shall use the authority conferred upon him by the estates of decedents law, by the terms of the will, by orders in proceedings to which he is party, and by the equitable principles generally applicable to fiduciaries, fairly considering the interests of all interested persons and creditors.

“A Personal Representative owes a duty to the beneficiaries of a will to act in the best interests of the Estate.” *Beyer v. Morgan State Univ.*, 369 Md. 335, 351 (2002) (citing *Ferguson v. Cramer*, 349 Md. 760, 769 (1998)). In *Beyer*, the Court elaborated on the duties of a Personal Representative stating:

In fulfilling this duty, the Personal Representative is obligated to exhibit the following qualities:

1. The exercise of the care, skill and diligence of a reasonably prudent person dealing with his or her own property;
2. **The exercise of good faith and loyalty to all the beneficiaries;**
3. **The lack of self-dealing;**
4. The exercise of reasonable watchfulness over investments; and
5. The maintenance of full, accurate and precise records.

369 Md. at 769 (emphasis added) (citing *Kann v. Kann*, 344 Md. 689, 708 (1997)).

In *Surratt*, the Court observed:

An executor is the personal representative of the testator, and, after probate, is charged with the duty to defend and maintain the validity of the instrument with loyalty and fidelity, and to complete the administration of

the estate in accordance with the terms of the will, under the law. **The executor therefore should not become a party to any shift or device whereby the will of his testator is collusively avoided**, or the intention of the testator is defeated or changed to effect a different disposition of his estate.

162 Md. at 16 (emphasis added) (citations omitted). We recognize, however, that this principle has not been applied to bar completely a personal representative from seeking a reasonable settlement agreement for a contested will. *Id.* at 17.

Appellees argue, citing to ET §§ 9-107, 9-112 and Rule 6-443, that the Estates and Trusts Article has established procedures which allow the personal representative to “seek the intervention of the Court to approve distributions when all interested persons do not agree to the proposed distribution.” However, none of those provisions fit the factual circumstances presented here. ET § 9-107 permits a personal representative or legatee to petition the court to partition property or direct the sale of property that cannot be partitioned without prejudice. ET § 9-112(a) provides, in part, that, “[i]f the personal representative cannot obtain agreement from all interested persons entitled to share in the distribution of the property, he may **apply to the court to make distribution.**” (Emphasis added). However, it also requires that notice be given to *all* interested persons and allows the court to “appoint two disinterested individuals, not related to the interested persons to make an appropriate division for distribution, or recommend to the court a sale of part or all of the property, and the court shall direct the distribution it considers appropriate.” ET § 9-112(a). The remaining subsections of § 9-112 allow *the court* to consider a sale of property in the estate or to direct and control distribution of the net estate. ET § 9-112(b)

& (e). Finally, Rule 6-443 empowers *the court* to set a meeting, under its supervision, “of all interested persons entitled to distribution.” The court may then “appoint two disinterested persons, not related to the distributees, to recommend a proposed distribution or sale,” and/or “issue an appropriate order of distribution or sale.” Md. Rule 6-443(c) & (d).

None of the provisions cited by Appellees contemplate what occurred in this case. Here, two legatees—one of whom was acting as personal representative—entered into a caveat settlement agreement that supplanted the Decedent’s Will, diminished the interests of other legatees who were not participants in the negotiations, and resulted in an entirely new distribution of the Estate beneficial to their own interests as individuals. Certainly, a personal representative may modify distributions in contested wills with the consent of all legatees whose interests are affected, *see, e.g., Brewer*, 386 Md. at 192-96, or petition the court to intervene where the legatees cannot agree on distribution, *see, e.g., ET* § 9-112. But there is no support for the proposition that a personal representative may abandon the duty to defend the will and negotiate a caveat settlement that disregards the clear intent of the testator and bargains away the interests of other legatees for her own advantage.⁸ Thus, where the personal representative has failed to provide the affected legatees with

⁸ Under the Settlement Agreement, personal representative Ms. Taylor received 35% of the residuary estate, \$100,000.00, and the end of the civil litigation against her (meaning she would retain the \$508,000.00 in assets already gifted to her by the deceased). The Caveator, Ms. Sorrell, received the entirety of the real property located at 5920 Sneed Drive and 65% of the residuary estate. The other 6 legatees received a total of \$180,000.00.

sufficient notice and details regarding the altered distribution and has not availed herself of any of the statutory or court rule processes for modifying a contested distribution, the personal representative was without the authority to enter into the Settlement Agreement in her official capacity, and the Orphans’ Court erred in approving the Settlement Agreement.

Fair and Reasonable Terms

Appellant argues that the Orphans’ Court abused its discretion by granting Appellees’ Joint Petition for Approval of Will Contest Settlement Agreement because the terms of the Settlement Agreement were neither fair nor reasonable. Because we determine, *supra*, that the Orphans’ Court erred in approving the Settlement Agreement—negotiated without the consent of all legatees whose interests were affected and improperly executed by the personal representative in her official capacity—we need not reach the issue of whether the terms of the Settlement Agreement were fair and reasonable.

Nevertheless, regarding the Appellee’s continued argument that the Settlement Agreement was in the best interests of all because of the unknown expense of subdividing the property, we note that all parties have conceded that subdivision of the property is possible and dividing the property was the clear intent of Decedent. However, should subdivision prove impossible such that “two or more heirs or legatees are entitled to distribution of undivided interests in property of the estate,” then pursuant to ET § 9-107 the personal representative may give notice to all interested legatees and request that the

court direct the sale of the “property which cannot be partitioned without prejudice to the owners.”

IV. Motion to Alter or Amend

As noted above, “the denial of a motion to alter or amend a judgment or for reconsideration is reviewed by appellate courts for abuse of discretion,” *RRC Ne., LLC v. BAA Maryland, Inc.*, 413 Md. 638, 673 (2010) (citation omitted). However, “trial judges do not have discretion to apply inappropriate legal standards, even when making decisions that are regarded as discretionary in nature.” *Wilson-X v. Dep’t of Human Res.*, 403 Md. 667, 675 (2008). Because we determine above, under a *de novo* standard of review, *see Pfeufer, supra*, 397 Md. at 648 (citation omitted), that the conclusions of law made by the Orphans’ Court regarding the legality of the Will Contest Settlement Agreement were legally incorrect, that court’s failure to consider the proper legal standard in denying Appellant’s motion to alter or amend constituted an abuse of discretion. *See Wilson-X*, 403 Md. at 675 (citation omitted).

ORDERS OF THE ORPHANS' COURT FOR ANNE ARUNDEL COUNTY GRANTING APPELLEES JOINT PETITION FOR COURT APPROVAL OF WILL CONTEST SETTLEMENT AGREEMENT AND GENERAL RELEASE, AND AMENDED JOINT PETITION FOR COURT APPROVAL OF WILL CONTEST SETTLEMENT AGREEMENT AND GENERAL RELEASE VACATED. ORDER OF THE ORPHANS' COURT DENYING APPELLANT'S MOTION TO ALTER OR AMEND VACATED.

**CASE REMANDED TO THE ORPHANS' COURT
FOR PROCEEDINGS CONSISTENT WITH THIS
OPINION.**

APPELLEES TO PAY COSTS.