Circuit Court for Anne Arundel County
Case No. C-02-CV-17-003850

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 69

September Term, 2018

ON MOTION FOR RECONSIDERATION

IN THE MATTER OF THE ESTATE OF
PETER A. CASTRUCCIO

Wright,
Graeff,
Nazarian,
JJ.

Opinion by Graeff, J.

Filed: September 17, 2019

This Court is once again asked to review matters related to a protracted dispute between Sadie M. Castruccio, appellant, and Darlene Barclay, appellee, the residuary beneficiary under the will of Ms. Castruccio's deceased husband, Dr. Peter A. Castruccio.[1] Following Dr. Castruccio's death in February 2013, and Ms. Castruccio's challenge to the validity of his will, Ms. Castruccio requested, and was granted, several extensions of the period to elect a spousal share of Dr. Castruccio's estate ("the Estate").

On November 2, 2017, the orphans' court granted Ms. Castruccio's 17th request for an extension, which extended the deadline to request a statutory share until February 1, 2018. Ms. Barclay appealed the extension to the Circuit Court for Anne Arundel County.

[1] This Court has reviewed multiple cases involving the administration of Dr. Castruccio's estate (the "Estate"), including: *Castruccio v. Estate of Peter Adalbert Castruccio*, No. 2622, Sept. Term 2014 (filed Feb. 3, 2016), *cert. denied*, 447 Md. 298 (validity of deeds that conveyed parcels of land to Dr. Castruccio), *cert. denied*, 447 Md. 298 (2016); *Castruccio v. the Estate of Peter Aldabert Castruccio*, 230 Md. App. 118, 128–29 (2016) (validity of Dr. Castruccio's will), *aff'd*, 456 Md. 1 (2017); *Castruccio v. Estate of Peter A. Castruccio*, No. 862, Sept. Term 2015 (filed Dec. 20, 2016) (contempt sanctions against Ms. Castruccio and the award of attorneys' fees to the Estate); *Estate of Castruccio v. Castruccio*, No. 623, Sept. Term 2015 (filed July 11, 2017) (Ms. Castruccio's attempt to remove John Greiber, Esq. from his role as personal representative of the Estate); *Castruccio v. Estate of Castruccio*, 239 Md. App. 345 (2018) (Ms. Barclay's entitlement to portions of the Estate), *cert denied*, 463 Md. 149 (2019); *Castruccio v. Barclay*, No. 1234, Sept. Term, 2017 (filed Dec. 17, 2018) (whether Ms. Castruccio's claim of negligent breach of notarial duty against Darlene Barclay in connection with the transfer of properties was barred by the statute of limitations, *res judicata*, and collateral estoppel); *Castruccio v. Estate of Castruccio*, No. 1651, Sept. Term, 2017 (filed Feb. 14, 2019) (validity of civil contempt sanction against Ms. Castruccio), *cert. denied*, Pet. Docket No. 66, Sept. Term, 2019 (filed June 21, 2019); *Barclay v. Castruccio*, No. 2488, Sept. Term, 2017 (filed March 21, 2019) (whether Ms. Castruccio's litigation against Ms. Barclay and the Estate amounted to intentional interference with an expectancy).

By February 1, Ms. Castruccio had neither elected her spousal share in the Estate nor filed a petition to extend the time to make her election. On February 6, Ms. Barclay filed in the circuit court a Notice of Withdrawal of Appeal.

On February 22, Ms. Castruccio filed a motion asking the circuit court to deny Ms. Barclay's "request" to dismiss the appeal, grant Ms. Castruccio's motion for summary judgment, and enter an order extending the time to elect her spousal share. On February 23, 2018, the circuit court ordered that the appeal be dismissed.

On appeal, Ms. Castruccio presents the following question [2] for this Court's review:

Did the circuit court err in dismissing the appeal?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

[2] In her brief, Ms. Castruccio raised the following three questions:

1. Did the trial court err in dismissing the appeal?

2. Did the trial court err in failing to rule on Sadie's motion for summary judgment?

3. Should the time for filing a request for extension of the spousal election be equitably tolled?

At oral argument, however, counsel for Ms. Castruccio agreed that the only issue properly before this Court was whether the circuit court erred in dismissing the appeal. Accordingly, that is the only issue we will address.

BACKGROUND

Dr. Castruccio died on February 19, 2013, at the age of 89. He was survived by his wife of 60 years, Ms. Castruccio. The couple had no children.

Dr. Castruccio left a six-page will at his death, which left cash bequests to Darlene Barclay, a longtime employee of his, and two other people. The will provided that the "rest and remainder" of the Estate go to Ms. Castruccio, on the condition that she survive Dr. Castruccio and that "she [make] and execute[] a will prior to [Dr. Castruccio's] death." The will also contained a residuary clause, stating that, if Ms. Castruccio "does not have a valid will filed with the Register of Wills of Anne Arundel County dated prior to" Dr. Castruccio's death, "all the rest and residue of" the Estate shall go to Ms. Barclay. As this Court has explained, these terms required that Ms. Castruccio "meet three conditions" before she could recover under the will: (1) she "had to survive her husband"; (2) she "had to make and execute a will"; and (3) she "had to file her will with the Register of Wills of Anne Arundel County." *Castruccio v. Estate of Castruccio*, 239 Md. App. 345, 376–77 (2018), *cert. denied*, 463 Md. 149 (2019).

At the time of Dr. Castruccio's death, Ms. Castruccio had not filed a will with the Register of Wills. Therefore, under the terms of Dr. Castruccio's will, the residuary of the Estate passed to Ms. Barclay. *Id.* at 354.

Pursuant to Md. Code. (2017 Repl. Vol.) § 3-203 of the Estates and Trusts Article ("ET"), a surviving spouse of a decedent may take a percentage share of the decedent's estate in lieu of property left to the spouse in the will. ET § 3-206 sets a time deadline for such an election. Here, Ms. Castruccio had until nine months after Dr. Castruccio's

February 19, 2013, death to elect a statutory share of the Estate, in lieu of taking under the will. [3]

"For good cause shown," the orphans' court "may extend the time for election for a period not to exceed three months at a time." ET § 3-206(a)(2)(ii). Neither the orphans' court nor the circuit court has discretion, however, to grant an extension request that was not made within the time initially allowed or extended by a previous order. *Downes v. Downes*, 388 Md. 561, 565–66, 576 (2005).

On October 23, 2013, approximately one month prior to the deadline, Ms. Castruccio filed a request for an extension to take the elective share, which the circuit court granted. Over the next four years, Ms. Castruccio filed multiple additional requests for an extension. The orphans' court granted each request.

On November 2, 2017, the orphans' court granted Ms. Castruccio's 17th petition for an extension. On November 30, 2017, Ms. Barclay filed an appeal to the Circuit Court for Anne Arundel County.

[3] Md. Code. (2017 Repl. Vol.) § 3-206 of the Estates and Trusts Article ("ET") provides, in pertinent part, as follows:

> The election by a surviving spouse to take an elective share shall be made within the later of:
>
> (i) Nine months after the date of the decedent's death; or
> (ii) Six months after the first appointment of a personal representative under a will.

Here, the personal representative under the will, John Graeber, was appointed on February 27, 2013. The later date under ET § 3-206(a)(1) is nine months after Dr. Castruccio's death on February 19, 2013.

Ms. Castruccio did not take any action with respect to the statutory share by the end of the three-month extension deadline. On February 6, 2018, Ms. Barclay filed a motion to voluntarily dismiss her appeal with the circuit court. The next day, February 7, 2018, Ms. Castruccio filed with the orphans' court an additional request for an extension.

On February 22, 2018, Ms. Castruccio filed an opposition to Ms. Barclay's "motion/request to withdraw appeal" and a motion for summary judgment. She requested that the circuit court

> (a) DENY [Ms. Barclay's] Motion/Request to Dismiss this appeal, (b) either (i) treat [the] motion as an abandonment of any opposition to [Ms. Castruccio's request for an extension], or (ii) GRANT [Ms. Castruccio's] Motion for Summary Judgment and, [in] either case[,] enter an Order extending the time within which [Ms. Castruccio] may elect her spousal share for a period not [to exceed] three-months from the date of such Order.

On February 25, 2018, the circuit court entered an "ORDER GRANTING DISMISSAL OF APPEAL." The order stated that, upon consideration of Ms. Barclay's filing a Notice of Withdrawal of Appeal and Ms. Castruccio's opposition, the "appeal is hereby DISMISSED pursuant to MD Rule 7-507(a)(5)."

This appeal followed.

DISCUSSION

Ms. Castruccio contends that the circuit court had discretion under Maryland Rule 7-507(a)(5)[4] to prevent Ms. Barclay from voluntarily withdrawing her appeal. Ms.

[4] As stated *infra*, Maryland Rule 7-507(a) provides:

> (a) **Grounds.** On motion or on its own initiative, the circuit court may dismiss an appeal for any of the following reasons:

Castruccio has not cited, nor have we found, any Maryland case in which an appellate court has determined that a lower court has discretion to dismiss an appeal that was voluntarily withdrawn. And, as explained *infra*, we do not interpret Rule 7-507(a) as affording the circuit court such discretion.

The proper interpretation of the Maryland Rules is "'appropriately classified as a question of law,"' which we review *de novo*. *Lisy Corp. v. McCormick & Co., Inc.*, 445 Md. 213, 221 (2015) (quoting *Pickett v. Sears, Roebuck & Co.*, 365 Md. 67, 77 (2001)). We apply the "'same well-established canons of construction that we use when interpreting statutes."' *State v. Graham*, 233 Md. App. 439, 450 (2017) (quoting *Dove v. State*, 415 Md. 727, 738 (2010)). The Court of Appeals has set forth the rules of statutory construction as follows:

> We have long held that "[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature." *Williams v. Peninsula Reg'l Med. Ctr.*, 440 Md. 573, 580, 103 A.3d 658, 663 (2014) (citation omitted). Our primary goal "is to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by the statutory provision[.]" *Bd. of Cty. Comm'rs v. Marcas, L.L.C.*, 415 Md. 676, 685, 4 A.3d 946, 951 (2010) (citation omitted). As we have so often explained, in undertaking this endeavor:
>
> > [W]e begin with the normal, plain meaning of the language of the statute. If the language of the statute is unambiguous and clearly consistent with the statute's apparent purpose, our inquiry as to legislative intent ends ordinarily and we apply the statute as written, without resort to other rules of construction. We neither

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* * *

> (5) the appeal has been withdrawn because the appellant filed a notice withdrawing the appeal or failed to appear as required for trial or any other proceeding on the appeal[.]

> add nor delete language so as to reflect an intent not evidenced in the plain and unambiguous language of the statute[.] . . . We, however, do not read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute's plain language to the isolated section alone. Rather, the plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute. . . .
>
> Where words of a statute are ambiguous and subject to more than one reasonable interpretation, or where the words are clear and unambiguous when viewed in isolation, but become ambiguous when read as part of a larger statutory scheme, a court must resolve the ambiguity by searching for legislative intent in other indicia, including the history of the legislation or other relevant sources intrinsic and extrinsic to the legislative process. In resolving ambiguities, a court considers the structure of the statute, how it relates to other laws, its general purpose, and the relative rationality and legal effect of various competing constructions.

Espina v. Jackson, 442 Md. 311, 321–22 (2015) (quoting *Bd. of Cty. Com'rs of St. Mary's Cty. v. Marcas, L.L.C.*, 415 Md. 676, 685–86 (2010)). Finally, in interpreting a rule, we give it a '"reasonable interpretation, not one that is absurd, illogical or incompatible with common sense."' *Dunham v. Univ. of Md. Medical Center*, 237 Md. App. 628, 654–55 (quoting *State v. Bey*, 452 Md. 255, 265 (2017)), *cert. denied*, 461 Md. 507 (2018).

Rule 7-507(a) sets forth the grounds for dismissing an appeal from the orphans' court to the circuit court. It provides:

> On motion or on its own initiative, the circuit court may dismiss an appeal for any of the following reasons:
>
> (1) **the appeal is not allowed by law**;
>
> (2) the appeal was not properly taken pursuant to Rule 7-502;
>
> (3) the notice of appeal was not filed with the Register of Wills within the time prescribed by Rule 7-503;

> (4) the record was not transmitted within the time prescribed by Rule 7-505, unless the court finds that the failure to transmit the record was caused by the act or omission of a judge, a Register of Wills, a clerk of court, or the appellee;
>
> (5) **the appeal has been withdrawn because the appellant filed a notice withdrawing the appeal** or failed to appear as required for trial or any other proceeding on the appeal; or
>
> (6) the case has become moot.

(Emphasis added.). As explained below, we conclude that the circuit court properly dismissed the appeal pursuant to Rule 7-507(a)(1) and (a)(5).

I.

Notice Withdrawing Appeal

Ms. Castruccio argues that the use of the word "may" in Rule 7-507(a) shows that the court has discretion whether to dismiss an appeal when the appellant files a notice withdrawing the appeal. Ms. Barclay disagrees. She asserts that she "had the right to unilaterally withdraw the circuit court appeal," and the court had no authority to prevent her from doing it.

In addressing whether the court has discretion to deny a dismissal under Rule 7-507(a)(5), we begin with the plain meaning of the rule. *See Espina*, 442 Md. at 321. As this Court stated in *Joshi v. Kaplan, Freeland, Schwartz & Bloomberg, P.C.*, 72 Md. App. 694, 699 (1987), the "use of the words 'may" or 'shall' does not definitively resolve the interpretation of a statute or rule." Rather, "[p]roper construction of the word 'may' can only be determined by 'viewing it in the context in which [the word] is used."' *Id.* (quoting *Planning Comm. v. Silkor Corp.*, 246 Md. 516, 524 (1967)).

In the context of Rule 7-507(a), the word "may" does not refer exclusively to discretionary acts. For example, Rule 7-507(a)(1) states that the circuit court may dismiss an appeal that "is not allowed by law." If the appeal "is not allowed by law," the court would not have discretion to allow it to proceed. Additionally, Rule 7-507(a)(3) provides that the circuit court may dismiss an appeal when the "notice of appeal was not filed . . . within the time prescribed by Rule 7-503." Until recently, a timely filed appeal was deemed to be a jurisdictional requirement to review. *See Rosales v.* State, 463 Md. 522, 564–65 (2019) (detailing cases holding that untimely filing of a notice of appeal precluded appellate review); *Estate of Vess*, 234 Md. App. 173, 195 (2017) (citing Rule 7-502(a) for the proposition that review of a judgment from the orphans' court to the circuit court may be obtained only if the notice of appeal is timely filed).[5] Accordingly, we conclude that the use of the term "may" in Rule 7-507(a) does not indicate that the court always has discretion to deny the voluntary withdrawal of an appeal.

We also note, as Ms. Barclay points out, that the language of Rule 7-507(a)(5) refers to an appeal having "been withdrawn" by the appellant filing a notice withdrawing the appeal. We agree with Ms. Barclay that the "use of the past participle 'withdrawn' is critical because it indicates that the filing of the notice of withdrawal itself effectuates the withdrawal." In that regard, we note that "Maryland has long permitted an appellant to

[5] In *Rosales v. State*, 463 Md. 552, 564–65 (2019), the Court of Appeals held that, contrary to its prior holdings, the requirement under Maryland Rule 8-202(a) that an appeal from the circuit court be noted within 30-days of the entry of final judgment was not jurisdictional in nature. This change occurred after Rule 7-507(a) went into effect, and therefore, when Rule 7-507(a) was adopted, the dismissal of an untimely filed appeal from the orphans' court to the circuit court was mandatory.

dismiss his appeal voluntarily without leave of court." *Carroll Cty. Dept. of Soc. Servs. v. Edelmann*, 320 Md. 150, 166 (1990). Pursuant to the language in Rule 7-507(a)(5), the court did not have discretion to override Ms. Barclay's dismissal of the appeal.[6]

Accordingly, we hold that, when an appellant files a notice of withdrawal of appeal in the context of Rule 7-507(a)(5), the court does not have authority to continue with the appeal. The circuit court did not err in dismissing the appeal.

II.

Appeal Not Allowed By Law

Alternatively, we conclude that Ms. Barclay's appeal of the November 2, 2017, order granting Ms. Castruccio's petition for an extension was an improper interlocutory

[6] In support of our conclusion, we note that the rules relating to dismissals of appeals from the orphans' court were intended to be consistent with other civil cases. *See* Minutes, Court of Appeals Standing Committee on Rules of Practice and Procedure, Feb. 9, 2007, at 73, *available at* https://www.mdcourts.gov/sites/default/files/minutes-rules/2-9-07.pdf [https://perma.cc/9UE2-XWNX]. At the time it was initially adopted, Rule 7-507(a) tracked the language in Rule 7-114, which provided for dismissals of appeals to the circuit court from District Court. Rule 7-114, however, recently was changed to provide for "mandatory" and "discretionary" bases for dismissal. Rule 7-114(e) provides that the circuit court "shall" dismiss an appeal if "an appeal to be heard de novo was withdrawn" prior to trial. The Committee stated that the change from "may" to "shall" was made "to bring clarity" to the fact that certain of the situations listed, including an appellant's withdrawal of the appeal, are "jurisdictional in nature" and require dismissal. *See* Court of Appeals Standing Committee on Rules of Practice and Procedure, Notice of Proposed Rules Changes (Feb. 6, 2018) at 9–10, *available at* https://mdcourts.gov/sites/default/files/rules/reports/195threport.pdf [https://perma.cc/5268-HU92].

appeal to the circuit court. Accordingly, the circuit court properly dismissed the appeal as one "not allowed by law." Rule 7-507(a)(1).[7]

Pursuant to Md. Code (2013 Repl. Vol.) § 12-502(a)(1) of the Courts and Judicial Proceedings Article ("CJ"), a party may appeal to the circuit court "from a *final judgment* of an orphans' court." (emphasis added). As this Court has explained: "The converse proposition is not stated but is implicit: an appeal may not be taken to the circuit court from an order of the orphans' court that does not constitute a final judgment." *Beyer v. Morgan State Univ.*, 139 Md. App. 609, 630 (2001), *aff'd*, 369 Md. 335 (2002).

To constitute a final judgment,

> an order must have three attributes: (1) it must be intended as an unqualified, final disposition of the matter in controversy; (2) it must adjudicate or complete the adjudication of all claims against all parties; and (3) the clerk must make a proper record of the order or judgment in accordance with the dictates of Rule 2-601.

Hegmon v. Novak, 130 Md. App. 703, 708 (2000). In other words, a "final judgment is any judgment or order which is 'so far final as to determine and conclude the rights involved in the action, or to deny to the party seeking redress by the appeal the means of further prosecuting or defending his rights and interests in the subject matter of the proceeding.'"[8] *Grimberg v. Marth*, 338 Md. 546, 551 (1995) (quoting *In Re Buckler*

[7] Although the parties did not address the appealability of the orphans' court's order in their briefs, this Court "will consider a problem relating to the finality of a judgment *sua sponte*." *Med. Mut. Liability Ins. Soc. of Md. v. B. Dixon Evander and Assoc.*, 331 Md. 301, 306 n.6 (1993). *Accord Stevens v. Tokuda*, 216 Md. App. 155, 165 (2014).

[8] Md. Code (2013 Repl. Vol.) § 12-101(f) of the Courts and Judicial Proceedings Article ("CJ") defines "final judgment" as: "a judgment, decree, sentence, order,

Trusts, 144 Md. 424, 427 (1924)). *Accord Anthony v. Clark*, 335 Md. 579, 588 (1994) (A final judgment in the orphans' court must be "intended as an unqualified, final disposition of the matter in controversy.").

Here, the November 2, 2017, order granting Ms. Castruccio's extension to elect her statutory share was not a final adjudication of the claims regarding the Estate, and therefore, it was not a final judgment.[9] Accordingly, the circuit court properly dismissed the case.

JUDGMENT OF THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

determination, decision, or other action by a court, including an orphans' court, from which an appeal, application for leave to appeal, or petition for certiorari may be taken."

[9] On January 6, 2017, the circuit court issued a declaratory judgment interpreting Ms. Castruccio's will as barring Ms. Castruccio from any right to recover under the will. *See Castruccio*, 239 Md. App. at 353. On November 14, 2018, this Court affirmed that decision. *Id.* at 348.