

Orphans' Court for Montgomery County
Case No.: W101565

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 91

September Term, 2023

IN RE: THE ESTATE OF
JOSE DARIO JOYA MIGUEL

Beachley,
Ripken,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: May 14, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

This appeal stems from a dispute about the administration of the estate of Jose Dario Joya Miguel (“the Estate” or, for Jose Dario Joya Miguel individually, “Decedent”). Jose Sandoval (“Sandoval”), acting in his capacity as personal representative of the Estate, appealed from an order by the Orphans’ Court for Montgomery County which vacated a prior order approving a civil settlement which involved the Estate. While this appeal was proceeding, the orphans’ court removed Sandoval from his role as personal representative and replaced him with Elizabeth McInturff (“McInturff”). McInturff, who is an attorney, entered her appearance in this Court on behalf of “the office of the personal representative” and simultaneously filed a notice of voluntarily dismissal. This Court issued the mandate, and Sandoval moved for reconsideration shortly thereafter. We then rescinded the mandate, reinstated the appeal, and directed Sandoval and McInturff to file preliminary briefs addressing a single question: Whether Sandoval has standing to continue this appeal.¹

For the following reasons, we shall dismiss the appeal.

FACTUAL AND PROCEDURAL BACKGROUND

Decedent died intestate on September 21, 2019, when he was struck by a motor vehicle while changing a tire. Decedent’s sole heir was his minor child, Q., who lived in El Salvador with his maternal grandmother.² Sandoval was Decedent’s brother-in-law and was seriously injured in the same accident that resulted in the passing away of Decedent.

¹ This Court originally phrased the question: “[W]hether a former personal representative whose interests are adversely affected by an Orphans’ Court’s order vacating its prior order has standing to maintain an appeal from that order in their individual capacity when they are removed as personal representative while that appeal is pending[.]”

² To protect the minor child’s identity, we refer to the child as “Q.”

In January of 2020, Sandoval initiated probate proceedings in the Orphans’ Court for Montgomery County, as Decedent was domiciled in that county at the time of his death. Sandoval was appointed personal representative of the Estate.

The driver of the vehicle that caused the death of Decedent and injured Sandoval was insured by USAA Casualty Insurance Company (“USAA”). At the time of the accident, the vehicle was covered by a policy with liability limits of \$300,000 per person and \$500,000 per accident. USAA accepted liability for the accident and agreed to tender its policy limits to settle all claims stemming from the accident.

Sandoval petitioned the orphans’ court to approve the settlement. Sandoval sought to have \$300,000 paid to himself individually, and \$200,000 paid to the Estate, which would be held for Q. until Q. reached the age of 21. Sandoval’s petition also sought reimbursement for a \$4,500 funeral bill and \$1,500 bond premium, as well as \$60,000 in attorneys’ fees, to be paid from the Estate’s portion of the settlement.

Sandoval was represented by the same attorney, John J. O’Neill, Jr. (“O’Neill”), for all three related claims and proceedings.³ Despite Sandoval having no relationship with Q., O’Neill did not seek to have a guardian appointed for Q. to represent Q.’s individual interest in the settlement.

The orphans’ court held a hearing on Sandoval’s petition in August of 2022. The court questioned the settlement breakdown and the potential conflict of interest arising

³ Specifically, O’Neill represented Sandoval: (1) in Sandoval’s individual capacity in his personal-injury claim stemming from the accident; (2) in his capacity as personal representative for the Estate’s civil claim stemming from the accident; and (3) in his capacity as personal representative during the administration of the Estate.

from Sandoval’s dual role as personal representative and individual claimant to the same pool of liability insurance. The court was particularly concerned that the attorneys’ fees were coming only out of the Estate’s—and, through it, Q’s—portion of the settlement. O’Neill explained to the court that the fee was only for his work performed on the probate matter. O’Neill had waived his fees associated with Sandoval’s personal-injury claim so that Sandoval’s health insurance provider would waive its substantial lien on the settlement. The day after the hearing, the orphans’ court entered an order approving Sandoval’s settlement petition and directing that the Estate hold its funds in escrow on behalf of Q.

USAA issued Sandoval a check for his portion of the settlement in November of 2022. Sandoval was not able to execute a release on behalf of Q., however, so USAA petitioned the orphans’ court to appoint a guardian of Q.’s property. The court held a hearing on USAA’s petition in January of 2023, at which Sandoval agreed it was appropriate for a guardian to be appointed for Q. The court also expressed concern that no one had accepted the settlement terms on Q’s behalf and thus, *sua sponte*, vacated its earlier order approving the settlement.

The court entered a written order in January of 2023, vacating the August 2022 order that approved the settlement petition. The January of 2023 order also appointed Robert McCarthy (“the Guardian”) as guardian of Q.’s property until Q. reached the age of majority. Sandoval moved for reconsideration, which was denied by the court. This timely appeal followed.

While this appeal was pending, in March of 2023, the Guardian petitioned to remove

Sandoval as personal representative of the Estate alleging breach of fiduciary duty. Following a hearing in August of 2023, the court granted the Guardian’s petition, removed Sandoval as personal representative, and appointed McInturff as successor personal representative. The court, in the same order, denied Sandoval’s request for a stay pending appeal.

Sandoval then sought a stay from this Court in August of 2023, which was denied. Contemporaneously, McInturff filed a “Line Entering Appearance” and “Notice of Dismissal” under Maryland Rule 8-601(a). In response, we dismissed the appeal and issued the mandate. Following a motion for reconsideration filed by Sandoval, this Court agreed to consider Sandoval’s argument, and directed preliminary briefing to determine whether Sandoval has standing to continue to maintain this appeal.

DISCUSSION

I. THIS APPEAL WAS PROPERLY REINSTATED.

In her preliminary brief, McInturff, the current personal representative of the Estate, contends that as she properly voluntarily dismissed this appeal, this Court had no discretion to reinstate such appeal. McInturff’s argument is premised on the belief that, when she filed the notice of voluntary dismissal, she was acting as the appellant. She is mistaken.

Under Maryland Rule 8-401(b), “[t]he proper person may be substituted for a party on appeal in accordance with Rule 2-241.” Rule 2-241(a)(6) allows for a proper person to be substituted for a personal representative who is removed. The procedure is straightforward:

Any party to the action, any other person affected by the action, the

successors or representatives of the party, or the court may file a notice in the action substituting the proper person as a party. The notice shall set forth the reasons for the substitution and, in the case of death, the decedent's representatives, domicile, and date and place of death if known. The notice shall be served on all parties in accordance with Rule 1-321 and on the substituted party in the manner provided by Rule 2-121, unless the substituted party has previously submitted to the jurisdiction of the court.

Md. Rule 2-241(b). Then, “[w]ithin 15 days after the service of the notice of substitution, a motion to strike the substitution may be filed.” Md. Rule 2-241(c). If this procedure is not strictly followed, “we have discretion to ‘take such . . . action as justice may require.’” *Grimstead v. Brockington*, 417 Md. 332, 350 (2010) (quoting Md. Rule 2-241(d) (ellipses in original)); *see also Gen. Motors Corp. v. Seay*, 388 Md. 341, 344 (2005) (“[T]he Maryland Rules are ‘precise rubrics’ which are to be strictly followed.”).

Here, McInturff did not substitute herself into Sandoval’s place as the appellant in this appeal because she did not file a Notice of Substitution under Rule 2-241(b). Instead, she filed a “Line Entering Appearance” asking to enter her appearance “on behalf of the office of the Personal Representative for the Estate” and to “remove the appearance of [O’Neill] as counsel for the office of the Personal Representative for the Estate[.]” However, at the time McInturff filed her documents with this Court, Sandoval still occupied “the office of the Personal Representative for the Estate.” Contrary to McInturff’s assertion in her brief, it is not “the office of the personal representative [that] holds this [a]ppeal,” and neither is it “the office itself that has the ultimate authority to maintain or dismiss the [a]ppeal.” “The office of the personal representative” is neither an “individual” nor a “person” within the meaning of the Maryland Rules, and so “the office itself” has no authority or ability to act in judicial proceedings. *See* Md. Rule 1-202(l) (defining

“individual”) and (u) (defining “person”). Instead, the office grants the authority McInturff describes to the individual who occupies it, which is why it is necessary to substitute a proper person for a personal representative who has been removed. *See* Md. Code, Est. & Trusts § 7-401(y); *see also* Md. Rule 2-241(a)(6).

Ultimately, despite having been removed as personal representative by the orphans’ court, Sandoval was—and still is—the appellant in this appeal. Rather than substituting herself for Sandoval in the capacity of personal representative, McInturff’s filing, as written, sought to substitute her as his *counsel*. *See* Md. Rules 2-132 and 8-402 (detailing the procedures for entering the appearance of and substituting counsel). Consequently, when McInturff filed the Notice of Dismissal she was purportedly—albeit unintentionally—doing so on behalf of Sandoval, which, given that she was not his attorney, she had no authority to do. *Cf.* Md. Rule 1-331 (authorizing “a party’s attorney” to act on their behalf).

Thus, because the procedures for substituting the proper person for a party were not strictly followed, “we ha[d] discretion to ‘take such . . . action as justice [] require[d].’” *Grimstead*, 417 Md. at 350 (quoting Md. Rule 2-241(d) (ellipses in original)). We exercised that discretion by rescinding the mandate and reinstating the appeal to determine whether it could still proceed.⁴

⁴ In his brief, Sandoval seems to contend that the orphans’ court lacked jurisdiction to remove him as personal representative while this appeal was pending. The orphans’ court, like all trial courts, “retain[s] fundamental jurisdiction over a matter despite the pendency of an appeal.” *See Kent Island, LLC v. DiNapoli*, 430 Md. 348, 361 (2013) (citations omitted). That said, the court “may not exercise its jurisdiction in a manner that, ‘in effect,

(continued)

II. SANDOVAL LACKS STANDING TO MAINTAIN THIS APPEAL.

Although it was properly reinstated, we must still dismiss this appeal because Sandoval, in his capacity as personal representative, lacks standing. As a general principle, only a party aggrieved by a judgment may take an appeal from that judgment. *See, e.g., Wolfe v. Anne Arundel Cnty.*, 374 Md. 20, 25 n.2 (2003); *Pattison v. Corby*, 226 Md. 97, 101 (1961) (“[O]ne is not an aggrieved party so as to be entitled to appeal unless the judgment or order appealed from was rendered on a matter in which the appellant has some interest or right of property.”). Predecessor statutes to Cts. & Jud. Proc. § 12-501 expressly restricted the right of appeal to a party “who may deem himself aggrieved” by an order of the orphans’ court. *See Knight v. Princess Builders, Inc.*, 393 Md. 31, 45 (2006). Although the legislature has omitted the language regarding an “aggrieved” party from later versions of the statute, the Supreme Court of Maryland has made clear that its “prior decisions restricting a personal representative’s right to appeal remain unaltered.” *Webster v.*

precludes or hampers [this Court] from acting on the matter before it[.]” *Brethren Mut. Ins. Co. v. Suchoza*, 212 Md. App. 43, 66 (2013) (quoting *Jackson v. State*, 358 Md. 612, 620 (2000)). *See also* Md. Code, Cts. & Jud. Proc. § 12-701(a)(2) (“An appeal from an orphans’ court . . . does not stay any proceedings in the orphans’ court that do not concern the issue appealed, if the orphans’ court can provide for conforming to the decision of the appellate court.”). Rulings made in violation of this general rule, however, are “inappropriate *exercises* of jurisdiction [and regarded as] voidable on appeal, rather than as an inherently void excess of fundamental jurisdiction itself.” *Downes v. Downes*, 388 Md. 561, 575 (2005) (emphasis in original). Here, the orphans’ court acted within its general authority to remove and substitute personal representatives, so its order is not void *ab initio* for lack of jurisdiction to enter it. *See Cnty. Comm’rs of Carroll Cnty. v. Carroll Craft Retail, Inc.*, 384 Md. 23, 45–46 (2004). Whether Sandoval is correct regarding the court’s exercise of jurisdiction regarding the order removing him is an issue upon which he would be required to note an appeal. *Id.* On review of the orphans’ court’s docket, he did not do so. Accordingly, that issue is not before us for appellate review.

Larmore, 270 Md. 351, 353 (1973).

When a court directs the distribution of estate property, “a personal representative is bound to make distribution in accordance with that court’s order, since the personal representative is fully protected by it.” *Id.* at 354 (citations omitted). Although heirs or legatees might be aggrieved by the distribution order, the personal representative is “in no way aggrieved” by it, and so lacks standing to appeal from such order. *Id.*; *see also Harris v. Brinkley*, 33 Md. App. 508, 515 (1976) (dismissing personal representative’s appeal from order determining decedent’s heirs on the ground that “the personal representative is protected in making the distribution in accordance with an order of the court, and the appeal will in no way benefit the estate”).

It is, of course, possible for a person serving as personal representative to be aggrieved individually by an orphans’ court’s order. Our Supreme Court squarely addressed those very circumstances in *Alston v. Gray*, 303 Md. 163 (1985). Alston was the personal representative of the estate of her brother, who died intestate. *Id.* at 165. She had petitioned the orphans’ court for instructions regarding the distribution of the estate after learning that her brother may have fathered a child before his death. *Id.* The orphans’ court determined that the decedent should be recognized as the child’s father, directed Alston to list the child as an interested party, and ordered her to distribute the estate property to the child under the law of intestacy. *Id.* at 166. Alston appealed, but “[s]he specifically noted the appeal in her representative capacity.” *Id.* Although Alston was not only the personal representative but also a potential heir, the Supreme Court dismissed the appeal on its own initiative because she “did not specifically note an appeal in her individual capacity.” *Id.*

at 169.

As our Supreme Court explained, “[i]n considering appeals of court orders construing a will or determining distribution of an estate, [the Court] ha[s] consistently decreed that an executor or personal representative is *not* an aggrieved party entitled to appeal.” *Id.* at 166 (emphasis in original) (citations omitted). The Court opined that “an unlimited right of appeal, in the hands of the executor or representative, could seriously deplete a small estate and might delay indefinitely the distribution of estate assets to deserving heirs.” *Id.* at 167. The Court observed that Alston, as a potential heir, “could very well have brought an appeal from the Orphans’ Court, had she so chosen, in her individual capacity” or perhaps in a dual capacity. *Id.* But the Court held that “a personal representative must specifically note an appeal in her individual or other capacity, before arguing issues relating to that dual role[.]” *Id.* at 168. This remains the law in Maryland.

Throughout this case, Sandoval sought the orphans’ court’s approval of the settlement—and opposed vacating that approval—solely in his capacity as the personal representative. Sandoval may have been aggrieved, individually, by the orphans’ court vacating the settlement because he may now be personally liable for O’Neill’s attorneys’ fees, *see Peterson v. Orphans’ Ct. for Queen Anne’s Cnty.*, 160 Md. App. 137, 173–74 (2004), or because it may affect the settlement breakdown, but he did not appeal in that capacity. Sandoval’s notice clearly indicates he appealed only in his capacity as personal representative.

To be sure, this case presents a situation inverse to prior cases. In those cases, the personal representative appealed from an order directing the distribution of property,

whereas, here, Sandoval appealed from an order vacating such an order. Sandoval makes much of this distinction in his brief. He contends that, although he was “fully protected” by the court’s first order approving the settlement and directing distribution, the second order vacating the first “took away his protection.” Sandoval cites no authority for that proposition—and we have found none—but we conclude that this is a distinction without a difference. At the bottom line, the court’s order was still, in effect, “determining distribution of an estate,” *Alston*, 303 Md. at 166, by directing Sandoval—as personal representative—not to distribute the property in the manner previously decreed. It follows, then, that he is just as protected in following that order as he would have been following the prior order before it was vacated.

Accordingly, as personal representative, Sandoval “is *not* an aggrieved party entitled to appeal” from the orphans’ court’s order determining the distribution of estate property since he is fully protected by it. *Alston*, 303 Md. at 166 (emphasis in original). Because Sandoval “specifically noted the appeal in [his] representative capacity,” and did not “specifically note an appeal in [his] individual or other capacity,” Sandoval cannot assert rights he may have been able to assert in those other capacities. *Id.* at 166, 168. Therefore, we shall dismiss the appeal.

**APPEAL DISMISSED. COSTS TO BE
DIVIDED EQUALLY BETWEEN
SANDOVAL INDIVIDUALLY AND
THE ESTATE.**