UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0222

September Term, 2014

DIANE TURECAMO CAREY

v.

JOHN J. RYAN

Berger,
Leahy,
Nazarian,

JJ.

Opinion by Nazarian, J.

Filed: July 24, 2015

We consider, for the fourth time, the rancorous dispute between John J. Ryan and Diane Turecamo Carey over the estate of Vincent B. Turecamo, Ms. Carey's father. After extensive litigation in the Orphan's Court and Circuit Court for Anne Arundel County, and three decisions from us, Ms. Carey appeals a decision of the Orphan's Court and the resulting dismissal of her appeal to the circuit court for failing to seek relief that can be granted and failing to follow the proper procedure on a Motion for Contempt and Removal. Ms. Carey's status as *pro se* litigant notwithstanding, the circuit court properly dismissed the case, and we affirm.

I. BACKGROUND[1]

Ms. Carey is the sole child of Vincent B. Turecamo and Caroline B. Turecamo. Toward the end of their lives, the Turecamos stayed in an extended care facility. Although they were unable to pay for some of their expenses, as they did not have many liquid assets, Mr. Ryan covered the excess expenses at the extended care facility with the expectation that he would be reimbursed after their house was sold. Mr. and Mrs. Turecamo both passed away in 2006. The Orphans' Court for Anne Arundel County named Mr. Ryan and Ms. Carey as co-personal representatives of Mr. Turecamo's estate.

[1] We borrow liberally from *Carey v. Ryan*, No. 1062, September Term, 2013, filed April 9, 2015 ("*Carey III*") for the statement of the case. In *Carey III*, we considered whether the circuit court erred in denying Ms. Carey's "Motion to Hold Mr. Ryan in Contempt and Motion to Remove Mr. Ryan as Personal Representative." We concluded there was no error and affirmed. For future reference, we refer to the current appeal as "*Carey IV*."

To reimburse Mr. Ryan for the expenses he paid on the Turecamos' behalf, a demand note for $300,000 was prepared from the estate to Mr. Ryan. Both Mr. Ryan and Ms. Carey signed the note on behalf of the estate. However, Ms. Carey soon contested the validity of the demand note, and that led to the first appeal to this Court. In *Carey v. Ryan*, No. 2472, September Term, 2009 (filed June 7, 2011) ("*Carey I*"), we held that the note was valid and enforceable.

Starting in 2008, Ms. Carey refused to sign several essential documents associated with the estate, including checks to renew the personal representatives' bond and documents for two administration accounts. The lawyer for the estate wrote to the Orphan's Court, alleging that Ms. Carey's refusal to sign made administration of the estate impossible. The court responded by issuing a Show Cause Order requiring Ms. Carey to show why she should not be removed as co-personal representative. Ms. Carey appealed the order, and on September 24, 2010, after a hearing, the circuit court removed her as personal representative. The circuit court found that her "fail[ure] to file her administration accounts, to sign them, and to file them as required, and [her] failure to sign a bond constitutes [a] failure to perform a material duty."

Ms. Carey appealed that decision of the circuit court to us, and we considered it in *Carey v. Orphans' Court for Anne Arundel County*, No. 880, September Term, 2011, filed April 29, 2013 ("*Carey II*"). We affirmed her removal as personal representative and agreed that her failure to perform her duties justified her removal. Further, we likened her actions to "going on strike," and found that "[a] co-personal representative is not permitted

to 'go on strike' because she disagrees with the other fiduciaries as to the handling of the estate."

On May 24, 2013, Ms. Carey submitted a "Motion for Contempt and Removal of John J. Ryan, Personal Representative for the Estate of Vincent B. Turecamo." The Orphan's Court denied the motion, and she appealed to the circuit court, which affirmed. She appealed to us again, and in *Carey III* we affirmed based on (1) her continued failure at the circuit court level to give any substantive reasons to support Mr. Ryan's removal and (2) our legal conclusion that we cannot review a trial judge's decision not to hold a party in contempt.

While *Carey III* was pending, Ms. Carey sought a show cause hearing in the Orphan's Court. The court held the hearing on October 8, 2013. The court found that the show cause order was moot, and denied the "Motion for Contempt and Removal" and "Motion that John J. Ryan did not Comply with Orphan's Court Order of May 2, 2013":

> 1. [T]he show cause for failure to file the Amended First Account and Second & Final Account is hereby moot as both documents were filed on October 4, 2013.
>
> 2. [T]he Motion for Contempt and Removal of John J. Ryan, personal representative is hereby DENIED.
>
> 3. [T]he Motion that John J. Ryan did not comply with Orphan's Court Order of May 2, 2013 and to file a Bond is hereby DENIED.

Ms. Carey appealed to the circuit court, and the court heard the case on March 14, 2014. The court denied Ms. Carey's motions because (1) Mr. Ryan had not received notice of the hearing, and (2) even if he did had received notice, the court could not grant the

relief that Ms. Carey requested. Undaunted, Ms. Carey filed a notice of appeal on April 11, 2014.[2]

II. DISCUSSION

Ms. Carey appears to challenge the circuit court's denial of her motions.[3] We find no errors. The Orphan's Court addressed three issues during the October 8, 2013 hearing: *first*, the show cause order for Mr. Ryan's failure to file the Amended First Account and

[2] Ms. Carey also submitted a "Motion Offering Important Additional Supplemental Information To Be Added To The Previous Motion For Consideration Filed In The Court Of Special Appeals On March 20, 2015, Regarding The Personal Representative, John J. Ryan's, Fiduciary Responsibility Of Her Father's Estate's BB & T Bank Account" on April 8, 2015. We have considered her motion, and hereby deny it—it normally is inappropriate for us to consider materials not before the circuit court on appeal, and given the issues before us, these materials do not warrant an exception to that general rule.

[3] We say "appears" because Ms. Carey failed to include a "Questions Presented" statement in her brief, as Rule 8-504(a) requires. A brief must contain "[a] statement of the questions presented, separately numbered, indicating the legal propositions involved and the questions of fact at issue expressed in the terms and circumstances of the case without unnecessary detail." Md. Rule 8-504(a)(3). In *Monumental Life Ins. Co. v. U.S. Fidelity and Guar. Co.*, 94 Md. App. 505 (1993), we noted the importance of presenting a clear argument, and concluded that "the effect of noncompliance with Rule 8-504—as in the case where a brief does not contain the party's argument but merely makes reference to an argument contained elsewhere—is … [that] the appellate court may dismiss the appeal or make any other appropriate order with respect to the case." *Id.* at 544 (citing Md. Rule 8-504(c)). In light of Ms. Carey's *pro se* status, though, we will refrain from dismissing the case on this basis and will proceed to consider the merits.

She also fails to provide a statement on the standard of review or any case law to support her arguments. The Court of Appeals has held that failure to include "[a] concise statement of the applicable standard of review for each issue" as well as "argument in support of the party's position on each issue" can constitute a waiver. *HNS Development, LLC v. People's Counsel for Baltimore Cnty.*, 425 Md. 436, 458 (2012) (citing Md. Rule 8-504(a)(5-6)). We are also "disinclined to search for and supply [the party] with authority to support its bald and undeveloped allegation[s]." *Id.* at 459. Again, we will make allowance for Ms. Carey being *pro se*, and consider the issues regardless.

Second & Final Account, *second*, the Motion for Contempt and Removal, and *third*, the motion titled "Motion that John J. Ryan did not Comply with Orphan's Court Order of May 2, 2013." The Motion for Contempt and Removal was not considered by the circuit court because that issue was on appeal in, and since has been decided by, *Carey III*. That leaves us with the first and third issues to address here.

Because the dismissal of Ms. Carey's show cause order was based on procedural deficiencies, we review *de novo*. "Where a case involves the application of Maryland statutory and case law, our Court must determine whether the lower court's conclusions are 'legally correct' under a *de novo* standard of review." *Meyr v. Meyr*, 195 Md. App. 524, 545 (2010) (quoting *Clancy v. King*, 405 Md. 541, 554 (2008) (internal quotations omitted)).

A. The Show Cause Order For Failure To File The Amended First Account And Second & Final Account Was Properly Deemed Moot By The Orphan's Court.

The Orphan's Court declined to consider the show cause order during the hearing on October 8, 2013, finding instead that the issue was moot:

> The show cause hearing of the Court is being held today, Tuesday, October 8, 2013 on the *Estate of Vincent B. Turecamo*, number 62440, for failure to file an amended first and second and final account. However, *that really is moot today because the account was filed October 4th*. So the show cause part of this hearing has been satisfied.

(Emphasis added.) An issue "is moot if, at the time it is before the court, there is no longer an existing controversy between the parties, so that there is no longer any effective remedy

which the court can provide." *Mercy Hosp., Inc. v. Jackson*, 306 Md. 556, 561 (1986) (quoting *Attorney Gen. v. A.A. School Bus*, 286 Md. 324, 327 (1979)).

Under this standard, the Orphan's Court did not err in deeming this issue moot. There was neither an existing controversy at the time of the hearing nor an effective remedy that the Orphan's Court could provide. The Show Cause Order, issued by the Orphan's Court on May 2, 2013, required only that Mr. Ryan file the Amended First and Second Account with the court. Mr. Ryan did so to the court's satisfaction on October 4, 2013. We will not question the Orphan Court's "standard practice, that as long as the amended documents are in fact filed, reviewed by the trust clerk, and accepted by the trust clerk as being in the appropriate format and executed appropriately, they do render [the Show Cause Order] moot." The Orphan's Court's acceptance of materials it requests on its own Show Cause Order is a matter of discretion. The fact that Mr. Ryan filed materials after the July 26, 2013 court-imposed deadline doesn't change the outcome; whether or not a sanction should be addressed against Mr. Ryan would be appropriately decided under Ms. Carey's "Motion that John J. Ryan did not Comply with Orphan's Court Order of May 2, 2013," which we consider next.[4]

[4] Moreover, even if the contempt petition were not moot, we would follow our decision in *Carey III* and the Court of Appeals's decision in *Pack Shack v. Howard County* and hold that the right to appeal constructive contempt cases is limited solely to the alleged contemnor, not to the party who unsuccessfully sought to hold the other in contempt. *Pack Shack*, 371 Md. 243, 254 (2002) (finding that Md. Code (1974, 2013 Repl. Vol.), § 12-304 of the Courts & Judicial Proceedings Article "clearly and unambiguously limits the right to appeal in contempt cases to persons adjudged in contempt").

B. The Circuit Court Did Not Err In Finding That Ms. Carey's Failure To Follow Proper Procedure Barred Consideration Of Her Motion.

Ms. Carey contends, correctly, that she had the right to ask the court to sanction Mr. Ryan for not cooperating with an order of the court. "When a party or circuit court is confronted with an uncooperative party, the party or circuit court may seek to compel the party's cooperation, or punish the party." *Station Maintenance Solutions, Inc. v. Two Farms, Inc.*, 209 Md. App. 464, 481 (2013) (quoting *Fisher v. McCrary Crescent City, LLC*, 186 Md. App. 86, 113 (2009)). That said, the court is not *required* to pursue punishment or sanction: the "circuit court *may* pursue direct [or constructive] civil or criminal contempt sanctions." *Id.* (quoting *Fisher*, 186 Md. App. at 113) (emphasis added). Mr. Ryan's failure to comply with the May 2, 2013 Order in the time allotted could, potentially, be found to be "constructive contempt"—contempt not directly committed in the presence of a judge—and in a constructive contempt case a court "must give the accused contemnor an opportunity to challenge the alleged contempt and show cause why a finding of contempt should not be entered." *Id.* at 482 (quoting *Fisher*, 186 Md. App. at 119).

Rule 15-206 governs the procedure for constructive civil contempt proceedings. Under Rule 15-206(b)(2), "[a]ny party to an action in which an alleged contempt occurred" can initiate a contempt proceeding as long as a petition is filed under Rule 15-206(c)(1). If the court does not "find[] that a petition for contempt is frivolous on its face, the court shall enter an order providing for (i) a prehearing conference, or (ii) a hearing, or (iii) both." Md. Rule 15-206(c)(2). Then, "[t]he order, together with a copy of any petition and other

document filed in support of the allegation of contempt, shall be served on the alleged contemnor." Md. Rule 15-206(d). If the court "makes a finding of contempt, the court shall issue a written order that specifies the sanction imposed for the contempt. In the case of a civil contempt, the order shall specify how the contempt may be purged." Md. Rule 15-207(d)(2).

In *Jones v. State*, the Court of Appeals noted the importance of procedural safeguards for an alleged contemnor, holding specifically that he "is entitled to receive notice of the alleged violation." 351 Md. 264, 273 (1998). In that case, the Court found it sufficient that the contemnor had been served with both a petition "setting forth the precise nature of the contempt," and the show cause order. *Id.* at 274.

In this case, Mr. Ryan was not served, and there is no indication in the record that he had any knowledge of the nature of the contempt allegations against him. His confusion is understandable too, given Ms. Carey's perpetual filings. The circuit court found that "Mr. Ryan was not served with a civil contempt in the Orphan's Court proceeding just as he was not served with a civil order for contempt in this proceeding," and the record supports these findings. Ms. Carey's argument that Mr. Ryan must have had constructive notice because of his counsel's presence at the hearing—"since his attorney … was present, it should have been obvious that Mr. Ryan received notification, as well and had knowledge of this scheduled Hearing"—doesn't overcome the failure of service. Even if Mr. Ryan had constructive knowledge that the hearing was scheduled, that does not mean he was fully informed of the contempt charges. Under Rule 15-206(d), Mr. Ryan must have been served, at a minimum, with both the court order and a copy of Ms. Carey's petition.

We disagree that it was the responsibility of the court to (1) inform her of the service requirement, (2) to fulfill the service requirement independently, and (3) to decide for Ms. Carey the appropriate remedy. Under Rule 15-206, Ms. Carey's decision to initiate a constructive civil contempt proceeding imposed upon her the responsibility to submit a sufficient petition to the court. It is true that "had the Court issued a show cause order, and Mr. Ryan was served the order and summons," the court could have considered the issue, but it was Ms. Carey's responsibility to initiate the process correctly. We and the trial courts apply procedural rules to *pro se* plaintiffs with some flexibility, but we do not require the trial courts and their clerks' offices to anticipate parties' needs or correct mistakes on their own.

Even if Mr. Ryan had been served, we also find no error in the court's finding that it "cannot grant the relief requested by [Ms. Carey]." Ms. Carey seeks again to put the burden of determining the appropriate relief onto the court:

> So when [the circuit judge] posed the question to Ms. Carey, as to what her, "Purge" would be, … it would not be up to Ms. Carey to set the "Purge", but up to all the Honorable Judges who had issued Mr. Ryan the ORDERS back in 2010, i.e.; Three (3) Orphans' Court Judges.

But the purpose of contempt is to bring the contemptuous party into compliance:

> A civil contempt proceeding is intended to preserve and enforce the rights of private parties to a suit and to compel obedience [to] orders and decrees primarily made to benefit such parties. The proceedings are generally remedial in nature and are intended to coerce future compliance. Thus, a penalty in a civil contempt must provide for purging.

Young v. Fauth, 158 Md. App. 105, 110 (2004) (quoting *Dodson v. Dodson*, 380 Md. 438, 448 (2004)) (emphasis added). After the original contempt petition became moot, Ms. Carey bore the burden of identifying the prejudice and appropriate relief. But by that point, the accountings had been filed, and Ms. Carey had not, so far as we can determine, identified any other form of continuing harm that a contempt order could purge. Given the absence of discernible available relief, we cannot say that the circuit court erred in denying her motion.

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