

Circuit Court for Baltimore City
Case Nos. 24-C-20-005220 & 24-C-01-00001

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

Nos. 380 & 387

September Term, 2021

DIANA & YOLANDA WINKLER

v.

VERONICA SHANNON

Graeff,
Shaw,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: January 6, 2022

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

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.

This case arises from a dispute regarding the administration of the estates of Effie and Eustace Thornton. Appellants, Diana Winkler and her daughter, Yolanda Winkler (collectively, the “Winklers”), were the initial personal representatives for the respective estates. In 2018, Yolanda Winkler was removed as the personal representative for Mr. Thornton’s estate, and Veronica Shannon, appellee, was appointed as the estate’s successor personal representative. In 2020, the Orphans’ Court for Baltimore City ruled that the Winklers had misappropriated and improperly distributed funds from the respective estates.

The Winklers each filed a *de novo* appeal in the Circuit Court for Baltimore City, and the court heard both appeals in a single hearing. Following that hearing, the circuit court found that the Winklers had breached their fiduciary duties, and the court ordered them to repay to the respective estates the amounts they had misappropriated.

The Winklers noted separate appeals to this Court, filing nearly identical briefs, and we consolidated their cases into the instant appeal. On appeal, the Winklers present several questions for this Court’s review,¹ which we have consolidated into a single question, as follows:

¹ Appellants, Diana Winkler and her daughter, Yolanda Winkler (collectively, the “Winklers”), phrased the questions as:

1. Was the Appellant presentation of facts and documents such as the Will of Effie Thornton legally and properly considered given the authorized allocation allotted in the Will and her authority in the presence of a dispute?

Did the circuit court err in ordering the Winklers to repay money to the estates for which they were the personal representative?

For the reasons set forth below, we conclude that the circuit court did not err in finding that the Winklers breached their fiduciary duties to the respective estates and ordering them to make payments to the estates. We shall affirm the judgment against Diana Winkler with regard to the estate of Effie Thornton. With respect to Yolanda Winkler, however, the court erred in calculating the amount she owes to Eustace Thornton's estate, and therefore, we shall reverse the judgment against Yolanda Winkler with regard to the estate of Eustace Thornton and remand for further proceedings consistent with this opinion.

FACTUAL AND PROCEDURAL BACKGROUND²

Eustace and Effie Thornton were husband and wife. On February 20, 1997, Eustace

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2. Was the length of time between the death of the decedents and the alleged claims of the beneficiary not worthy of being considered?
 3. Can the value of items never entered into the estate or appraised be considered in a judgment?
 4. Does the monetary value ordered by Orphans and the Circuit Court of Baltimore City take in account the net present value of the proceeds today?

² Veronica Shannon, appellee, did not file a brief in this case. Accordingly, we shall treat the facts, as revealed in the record extract and the Winklers' brief, as undisputed. *See Rector v. Azzato*, 74 Md. App. 684, 687 n.2 (1988) ("Since appellee did not file a brief, we treat the facts as revealed in the record extract and appellant's brief as undisputed."); *McHugh & Assoc. v. Com. & Farmers Bank*, 59 Md. App. 519, 522 (1984) ("Appellee did not file a brief. Therefore, based on our review of the record extract and the appellant's brief, we will treat the above facts as undisputed.").

Thornton died without a will.³ He was survived by his wife, Effie Thornton, and their nine children, one of whom was Diana Winkler.

Two months later, on April 12, 1997, Effie Thornton died with a will. The will named Mrs. Thornton's son, Ernest Wall, as personal representative of her estate, and Diana Winkler as the successor personal representative.

I.

Estate of Eustace Thornton

On June 4, 1997, Yolanda Winkler, daughter of Diana Winkler and granddaughter of Eustace and Effie Thornton, filed in the Orphans' Court a Petition for Administration of a Small Estate, seeking to be appointed the personal representative of Eustace Thornton's estate, based on her status as his granddaughter, with the consent of his children. A listing of real and personal property stated: "Li[tigation] only." The Register of Wills issued an order that day, providing that the estate would be administered as a small estate, with Yolanda Winkler serving as personal representative.

II.

Estate of Effie Thornton

On July 24, 1997, after receiving consent from Ernest Wall, Diana Winkler filed, in the Orphans' Court, a petition for probate to be the personal representative of Effie Thornton's estate. The petition was granted, Diana Winkler was named personal

³ The Winklers allege that Eustace Thornton had a will, but it "disappeared from the Baltimore City Register of Wills."

representative, and Effie Thornton's will was admitted to probate. According to the will, Ida Thornton, Effie Thornton's daughter, would be allowed to live in Effie Thornton's Baltimore City home (the "Home") for up to two years following Effie Thornton's death. After that time, the Home would be sold, and the proceeds would be distributed evenly to Effie Thornton's nine children. The will provided that, should any of Ms. Thornton's children die, any proceeds the deceased child would have received upon Ms. Thornton's death should be given to the deceased child's children.

III.

Orphans' Court Proceedings Involving Yolanda Winkler and the Estate of Eustace Thornton

On June 14, 2017, the Register of Wills sent a letter to Yolanda Winkler, stating that she needed to submit a "Gross Distribution Sheet" and additional paperwork regarding "additional assets that have come into the decedent's estate to date." On July 25, 2017, after Ms. Winkler failed to file the necessary paperwork, the Orphans' Court issued a show cause order directing Ms. Winkler to show cause in writing why she should not be removed as personal representative. The Orphans' Court subsequently sent notice of a hearing on the court's motion to have Ms. Winkler removed as personal representative. On December 14, 2018, following a hearing at which Ms. Winkler failed to appear, the Orphans' Court issued an order removing Ms. Winkler as personal representative and appointing Veronica Shannon, one of Eustace Thornton's children, as successor personal representative of the estate of Eustace Thornton.

On June 14, 2019, Ms. Shannon filed, in the Orphans' Court, a petition requesting that Yolanda Winkler reimburse the estate monies received since 1997 on behalf of Eustace Thornton as part of a settlement related to his exposure to asbestos. Ms. Shannon alleged that she had asked Ms. Winkler about settlement proceeds, but Ms. Winkler denied receiving them. She had, however, received \$73,563 in settlement money, which should have been distributed to Mr. Thornton's heirs but was not.

On November 4, 2019, after a hearing, the Orphans' Court granted Ms. Shannon's petition and ordered Yolanda Winkler to pay \$500 per month to Ms. Shannon "until the [e]state is made whole." The court also ordered Yolanda Winkler to submit a list of all expenses paid from the assets of Eustace Thornton's estate to Effie Thornton's estate. The court ordered that a hearing be held regarding the estates of Eustace Thornton and Effie Thornton, on January 6, 2020.

On November 25, 2019, Yolanda Winkler submitted a written response, stating that, at the time of Eustace Thornton's death, he owned personal property valued at "about \$100,000 or more," which various family members had taken from the Home following her grandparents' deaths. Ms. Winkler asked that the value of those items "be considered for reimbursement" to the estate. She stated that, "[w]hile on his death bed and as he took his last breath," he said that she should use his money and property as she saw fit, and his family members should receive nothing. Ms. Winkler stated that she used a portion of the \$73,563 from an asbestos settlement to pay expenses for the estate and to assist the family. Those expenses included: \$12,000 for property taxes from 1997–2007; \$3,800 for property

insurance from 1997–2007; \$1,080 for ground rent from 1997–2007; \$20,496 for property maintenance and utility expenses from 1997–2007; \$600 to Hechinger’s; \$6,115 for funeral expenses for Eustace Thornton; \$5,007 for funeral expenses for Effie Thornton; \$4,109 in funeral expenses for Dwayne Thornton, Sr.; \$2,500 for a plaque for Effie and Eustace Thornton’s graves; and \$5,511 in fees for the personal representative.

On December 2, 2020, after a hearing,⁴ the Orphans’ Court entered an order finding that Yolanda Winkler had misappropriated estate funds in the amount of \$67,216.18. It further found that Ms. Winkler had already reimbursed the estate in the amount of \$5,886.74, and it ordered judgment against Yolanda Winkler in the amount of \$61,329.47. Ms. Winkler subsequently filed a *de novo* appeal in the circuit court.

IV.

Orphans’ Court Proceedings Involving Diana Winkler and the Estate of Effie Thornton

After the Orphans’ Court ordered judicial review of Effie Thornton’s estate, it notified Diana Winkler of the proceedings and ordered her to submit a written account of all money received and distributed from the sale of the Home. On January 21, 2020, Ms. Winkler provided a written response showing that the Home had been sold in December 2006 for \$113,825.99. By that time, five of Ms. Thornton’s children had died.⁵ Ms.

⁴ The record reflects that the Orphans’ Court held a hearing on September 9, 2020, but we do not have a transcript of this hearing.

⁵ Catherine Ranson died in 2006, leaving four children. Ida Thornton died in 2006, leaving four children. Mender Montgomery died in 2000, leaving two children. Dwayne

Winkler stated that the proceeds from the sale of the Home were subsequently distributed as follows: \$23,000 to herself; \$23,000 to Veronica Shannon, daughter of Effie Thornton; \$23,000 to Josephine Knox, daughter of Effie Thornton; \$23,000 to Ernest Wall, son of Effie Thornton; \$4,300 to the children of Catherine Ranson, one of Effie Thornton's deceased children; and \$1,500 to one child of Ida Thornton, another of Effie Thornton's deceased children. The remaining funds, according to Ms. Winkler, were spent on various expenses related to the administration of the estate.

On November 24, 2020, after a hearing,⁶ the Orphans' Court found that Diana Winkler had misappropriated funds from Effie Thornton's estate in the amount of \$48,995.17. The court found that, in distributing \$23,000 to only four of Ms. Thornton's children, Ms. Winkler had overpaid those heirs by \$12,248.79 and had failed to pay any money to Ms. Thornton's four other heirs. It ordered a judgment against Diana Winkler in the amount of \$48,995.17 and ordered: (1) that the estates of Dwayne Thornton, Mender Montgomery, Kathleen Ranson, Ida Thornton, and Eustace Thornton, Jr., are each owed \$10,751.21; and (2) that Shaun Ranson received \$300, Terrance Ranson received \$1,000, Patrick Ranson received \$2,000, Orlando Ranson received \$2,000, and Gregory Thornton received \$1,500. Ms. Winkler subsequently filed a *de novo* appeal in the circuit court.

Thornton died in 2004, leaving two children. Eustace Thornton, Jr., died in 2004, leaving no children.

⁶ The record indicates that a hearing was set for September 9, 2020 for judicial review of the estate. As indicated, we do not have a transcript of this proceeding.

V.

De Novo Appeals in the Circuit Court

On April 19, 2021, the circuit court held a joint hearing on Yolanda and Diana Winkler's *de novo* appeals of the Orphans' Court's judgments. At that hearing, the court accepted into evidence the records from the Orphans' Court, which included the letters of accounting sent by Yolanda and Diana Winkler to the Orphans' Court.

As to Eustace Thornton's estate, Mark Weisner, an Assistant Attorney General representing the Orphans' Court, proffered that, between the time of Mr. Thornton's death in 1997 and 2019, Yolanda Winkler had received \$73,334 in asbestos settlement assets that were supposed to be distributed to Mr. Thornton's heirs under the laws of intestate, given that Mr. Thornton died without a will. Ms. Winkler had failed to distribute those assets. The Orphans' Court ordered Ms. Winkler to distribute \$67,219 to the family, representing the settlement assets minus \$6,115 paid for Mr. Thornton's funeral expenses. None of the \$67,219 had been distributed in accordance with the Orphans' Court's order. Ms. Winkler turned over a checking account that had a balance of \$5,886, which left \$61,333 owed to the estate.

As to Effie Thornton's estate, Mr. Weisner stated that the Home, which was the only disputed asset in her estate, was sold for \$113,825.99. According to Effie Thornton's will, the proceeds of the sale of the Home should have been split evenly among Ms. Thornton's nine children, with an equal share going to each of the four living children and the same

amount going to the estates of each of the five deceased children.⁷ Instead, Ms. Winkler overpaid the living children and underpaid the estates of the deceased children. The Orphans' Court found that each of the children and the estates of the deceased children were entitled to \$10,751, and each of the living children were overpaid by \$12,248. Because Ms. Winkler was the personal representative of Effie Thornton's estate, and she had had made the distributions in violation of Ms. Thornton's will, the difference that was owed to the estates of the five deceased children, \$48,995, was Ms. Winkler's responsibility. The Orphans' Court entered a judgment against her in the amount of \$48,995.

Yolanda Winkler made an opening statement on behalf her mother regarding Effie Thornton's estate. She noted that Effie Thornton's will was filed with the Baltimore City Register of Wills with a stipulation regarding the sale of the Home, and all living siblings "signed off" on the stipulation. She also noted that allegations "regarding misappropriations" were being made 25 years after all beneficiaries received the stipulated settlements from the sale of property and after all funds were exhausted. She asserted that there was no evidence of misappropriation, and the difference that was owed to the estates of the five deceased children, \$48,995, "negates records filed with the Orphan's Court as evidence of expenses allowed and distributions made against the estate." She requested dismissal and that the court close the case.

⁷ As discussed, *infra*, the circuit court correctly noted that one of Effie Thornton's deceased children, Eustace Thornton, Jr., had no children, and therefore, pursuant to the will, the proceeds from the sale of the Home should have been divided in eight shares.

Yolanda Winkler then made an opening statement regarding Eustace Thornton's estate. She stated that "many other persons" took valuables and other possessions from the Home after Mr. Thornton died, including his piano, antique guns, family photos, clothes, approximately \$30,000, jewelry, and two cars. The total value of these items was approximately \$100,000, and they "cannot be replaced or reimbursed."

Ms. Winkler stated that she used the proceeds from the asbestos settlements to assist Diana Winkler and her family with various expenses, including maintenance of the Home until it was sold, taxes, and "selling all business and physical matters." She also had used the money for her aunts and uncles, "who lack funds to pay for any funeral." She stated that these documented expenses were provided to the Orphans' Court, but it never considered them. Ms. Winkler stated that Eustace Thornton preceded Effie Thornton in death, which left Ms. Thornton's will "as the authoritative document in the distribution of any proceeds from [her] grandfather's case."

Yolanda Winkler denied that she had failed to distribute the asbestos settlement assets. She asserted that "[t]here was a distribution of the remaining funds that were left in the account. Veronica Shannon received them and she chose not to disburse them even after being directed to disburse those funds." She also asserted that, if Ms. Shannon did disburse asbestos settlement funds, she did not disburse them to everyone because her mother, Diana Winkler, was entitled to a portion of those funds and received nothing.

The parties then presented evidence regarding the estate of Eustace Thornton. Mr. Weisner introduced Exhibit 1, a "gross distribution sheet," which listed all of the asbestos

settlement funds that have been paid since 1997 and showed that \$73,336.10 in settlement funds had been received by Yolanda Winkler as personal representative of Eustace Thornton's estate. Exhibit 2 was a letter from Yolanda Winkler dated November 25, 2019, providing an accounting of the settlement funds that she received. The letter indicated that Ms. Winkler received \$73,363 in settlement funds and took "a number of expenses" that were "completely unrelated" to Mr. Thornton's estate. Such expenses included, among other things, "property taxes, property insurance, ground rent, [and] property maintenance" for the Home. Mr. Weisner argued that those expenses were not allowable because the Home was not included in Mr. Thornton's estate. Ms. Winkler also listed funeral expenses for Effie Thornton, funeral expenses for her uncle, a burial plot for Effie and Eustace Thornton, and personal representative commissions. Mr. Weisner asserted that Mr. Thornton's estate was not responsible for funeral expenses related to other family members and for funeral expenses related to Ms. Thornton. The court stated that it interpreted Mr. Weisner as asking the court to enter an order that was the same as that entered by the Orphans' Court.

The court then accepted into evidence as Joint Exhibit 1, the record of the Baltimore City Register of Wills. Yolanda Winkler asked the court to review several documents, including letters she sent to the Orphans' Court on January 16 and 21, 2020, showing expenses that were paid. She testified that family members came to the Home when she was not there and took things, including expensive tools and a piano. She stated that her aunt, Veronica Shannon, has the piano, and her cousin, Sean Ranson, took tools and

equipment from the Home worth more than \$20,000. A neighbor had called her mother, Diana Winkler, after witnessing Mr. Ranson taking all the tools out of Eustace Thornton's backyard shed. The neighbor knew that Diana Winkler was the personal representative for Effie Thornton's estate and that she "was the responsible daughter who [Ms. Thornton] entrusted everything with." At the hearing before the Orphans' Court, Mr. Ranson did not dispute that he took the equipment.

As to the denial of personal representative fees, Yolanda Winkler stated that she did not know she had to file with the Orphans' Court and report estate assets. She noted that she was "very young" when she was given the responsibility of serving as personal representative and was "totally uneducated in terms of what it meant to be a representative and to handle estate accounts."

Several members of the Winkler family testified at the hearing. Patrick Ranson, grandson of Eustace and Effie Thornton, testified that Yolanda Winkler received \$73,332.10 in asbestos settlement funds, and he and the other heirs did not find out about the asbestos settlements until 2018. He stated that Ms. Winkler "did not do what she was supposed to do as the executor." He also stated that Yolanda Winkler and her mother, Diana Winkler, "were in cahoots together in regard to [the] money," and she "did not disburse a dime to any of her aunts and uncles," which "she was supposed to."

Gregory Thornton, eldest grandson of Eustace and Effie Thornton, testified that he moved into the Home in 2004 to help his ill mother, Ida Jane Thornton, who resided there at the time. His mother took care of his grandparents, and he helped maintain the Home.

When his mother passed away in 2006, his “aunts got together” and “started battling over the house.” People came into the Home and started stealing pictures, taking guns, and removing items out of the attic. He asserted that Yolanda and Diana Winkler “should have got together, got lawyers, [and] make sure to distribute everything the right way,” but “it wasn’t distributed like that.”

Veronica Shannon, the youngest daughter of Eustace and Effie Thornton, testified that, for 21 years, Yolanda Winkler had told her and her siblings that “there was no asbestos money.” After the alleged misappropriations of the asbestos settlement funds were brought to light, Ms. Shannon called Ms. Winkler, who stated to her: “I’m the heir of the estate, and I have the right to the money and you all don’t deserve a damned thing.” Ms. Shannon testified that Ms. Winkler is not the rightful heir of Eustace Thornton’s estate, and Ms. Winkler and her mother are “thieves and liars.” Ms. Shannon asserted in this regard that most of their expense-related documents are “false, made up and unprofessionally prepared.”

The parties also presented evidence regarding the estate of Effie Thornton. Mr. Weisner noted that the Home, the proceeds of the sale of the Home, and a savings account with a balance of \$1,975 were among the assets that were inventoried in Ms. Thornton’s estate. The Home was sold in 2007 for \$113,825.99. The proceeds of the sale, plus the \$1,975 in savings, amounted to \$115,800. Diana Winkler claimed expenses of \$12,956.13, leaving approximately \$102,844 for distribution to Effie Thornton’s four living children and the estates of each of the five deceased children. Mr. Weisner stated that the

grandchildren received a total of \$5,900, leaving Ms. Thornton's children and the estates of her deceased children with \$10,751.21 each. Because Diana Winkler had distributed \$23,000 only to Ms. Thornton's four living children, they were overpaid by \$12,248.79.

Diana Winkler testified that Gregory Thornton lived in the Home with his mother, Ida Jane Thornton, but "he didn't give his mother not one penny." She also asserted that he did not take care of his mother, he did not pay the taxes on the Home, and he did not pay the water bill. Instead, Ms. Winkler "took care of all of that."

Regarding the distribution of the proceeds from the sale of the house, Diana Winkler testified that the children of Eustace and Effie Thornton "came together at a meeting" and "decided that the children get more than the grandchildren because of the fact that [they] took care of [their] mother and father." And Ms. Winkler decided "to do what they say we're going to do." The agreement between the children of Eustace and Effie Thornton was not in writing. Ms. Winkler noted that she filed for bankruptcy and cannot afford to pay the other beneficiaries. She never attempted to get back the money that she initially overpaid to the living siblings.

At the conclusion of the hearing, the circuit court stated that it was taking the matter under consideration. The court stated that it wanted to review in greater detail the records from the Orphans' Court, including Effie Thornton's will.⁸

⁸ The Winklers allege that the circuit court failed to consider Effie Thornton's will. That allegation is not supported by the record, as the will was part of the record from the Orphans' Court, and the circuit court expressly referenced the will and its provisions in its judgment in Diana Winkler's case.

VI.

**Circuit Court's Ruling as to
Yolanda Winkler and the Estate of Eustace Thornton**

On May 4, 2021, the circuit court issued a written order finding that Yolanda Winkler had improperly exercised her power over Eustace Thornton's estate and was liable for breach of her fiduciary duty. The court found, based on Ms. Winkler's written response to the Orphans' Court, that the total value of the estate's assets was \$173,363.⁹ Pursuant to Md. Code Ann., Est. & Trusts Art. ("ET") § 8-105 (2018 Repl. Vol.), Ms. Winkler was authorized to pay the following expenses of the estate: \$6,115 for Eustace Thornton's funeral expenses; \$5,511 for a personal representative fee; and \$1,200 for property taxes owed by Mr. Thornton on the Home in 1997, the year that he died. This totaled \$12,826, leaving a remaining balance of \$160,537. Pursuant to ET § 3-102, that balance should have been distributed as follows: \$40,000, plus one half of the remainder, \$60,268.50, to Effie Thornton's estate, and the remaining \$60,268.50 to Eustace Thornton's nine children, with each child receiving an equal share of \$6,696.50. The court found that, based on Ms. Winkler's written response, she failed to make any of those payments and that, as a result, she was responsible for reimbursing the estate. Accordingly, after deducting \$5,886.74 that Ms. Winkler paid to the estate when she was removed as personal representative, the

⁹ Ms. Winkler stated that the estate's assets included a piano, cash, jewelry, cars, and other items valued at "about \$100,000 or more." Additionally, there was \$73,363 from an asbestos settlement.

court ordered Ms. Winkler to pay \$154,650.26 to the estate of Eustace Thornton, with payments to be made in monthly installments of \$500, beginning June 1, 2021.

VII.

Circuit Court's Ruling as to Diana Winkler and the Estate of Effie Thornton

On May 4, 2021, the circuit court issued a separate written order with respect to Diana Winkler, finding that she had improperly exercised her power over Effie Thornton's estate and was liable for breach of her fiduciary duty. The court found that Effie Thornton died with a will and provided that, after two years, the Home was to be sold and "proceeds were to be equally divided among the surviving descendants, and/or the children of deceased descents, if any."

The court noted that Ms. Winkler had attached a document to the Orphans' Court stating that she received \$113,825.99 from the sale of the Home in 2006,¹⁰ with distributions as follows: \$23,000 to Veronica Shannon; \$23,000 to Josephine Knox; \$23,000 to Ernest Wall; \$23,000 to Diana Winkler; \$2,000 to Patrick Ranson; \$300 to Shaun Ranson; \$1,000 to Terrence Ranson; \$2,000 to Orlando Ranson; and \$1,500 to Gregory Thornton. The attachment also listed the following expenses: \$2,250 for Cynthia Thornton's funeral; \$1,590 for Dwayne Thornton's funeral; \$7,592.10 for plaques for deceased family members; \$2,572.89 for burial markers for Effie and Eustice Thornton; \$45 for ground rent; \$44.16 for a register fee; \$97.65 for an advertising fee for Effie

¹⁰ The Home was sold in 2007.

Thornton's funeral; \$104 for a Daily Record fee; \$275 for a property appraisal; \$200 for a probate fee; and \$5,511 for a personal representative fee.

With respect to the distribution of the \$113,825.99 received from the sale of the Home,¹¹ the court found, based on the undisputed testimony, that

at the time of the sale of the [H]ome, five of the children had died: Linda Thornton died in 2000, survived by two children; Eustace Thornton, Jr. died in 2004, without children; Dwayne Thornton died in 2004, survived by two children; Catherine Ranson died in 2006, survived by four children; and Ida Thornton died in 2006, survived by four children. Thus, the proceeds of the sale of the [Home] should have been divided by eight and distributed as follows: \$14,228.24 to Ernest Wall; \$14,228.24 to Veronica Shannon; \$14,228.24 to Josephine Knox; \$14,228.24 to Diane Winkler; \$14,228.24 to be divided evenly among the children of Linda Thornton; \$14,228.24 to be divided evenly among the children of Dwayne Thornton; \$14,228.24 to be divided evenly among the children of Catherine Ranson; and \$14,228.24 to be divided evenly among the children of Ida Thornton. Thus, the distribution made by Ms. Winkler . . . was improper.

The court found that Ms. Winkler was liable for breach of fiduciary duty as a personal representative to interested persons, and it ordered her to pay \$50,112.96 to the estate of Effie Thornton, with payments to be made in monthly installments of \$500, beginning June 1, 2021.¹²

¹¹ The court stated that it would address only the distribution of the proceeds from the sale of the Home because it was the only issue presented to the court for review.

¹² The court calculated this amount, as follows: "The children [of] Catherine Ranson were underpaid in the amount of \$8,928.24; the children of Ida Thornton were underpaid \$12,728.24; no payments were made to the children of Linda Thornton or the children of Dwayne Thornton; collectively, these interested person were underpaid \$50,112.96."

DISCUSSION

I.

Parties' Contentions

The Winklers argue that the circuit court erred in ordering them to repay money to the estates for which they served as personal representative.¹³ In their brief, they set forth the statement of the case, the statement of facts, and the standard of review. They then set forth their argument, which in its entirety consists of the following two sentences:

It has been 20+ years since the passing of Eustace and subsequently Effie Thornton. All items and proceeds have been properly expended and disbursed except for any proceeds the current [e]xecutor for Eustace Thornton, Veronica Shannon has received and is receiving from his ongoing [a]sbestos [c]ase.

Some context for their argument is found in the statement of facts, which indicates with regard to Diana Winkler and the estate of Effie Thornton that the Home was sold and “all proceeds were distributed in accordance to a family meeting held once the [H]ome was sold in 2006.” With regard to Yolanda Winkler and the estate of Eustace Thornton, the statement of facts indicates that proceeds from Mr. Thornton’s asbestos settlement were used “to cover all expenses and debts against the estate prior to the selling of the family home,” and the remaining proceeds, which totaled \$5,886, were given to the successor personal representative, Veronica Shannon, upon Yolanda Winkler’s removal as personal

¹³ As noted, although the Winklers filed separate briefs in their respective cases, those briefs were virtually identical, which led to a consolidation of both appeals. Thus, for the sake of clarity, we will present the Winklers’ arguments as if they were made together.

representative. The standard of review section also cites Md. Code Ann., Cts. & Jud. Proc. Art. (“CJ”) § 5-101 (2020 Repl. Vol.), stating that it provides that the statute of limitations for beneficiary claims is three years.

II.

Analysis

A.

Standard of Review

There are two modes of appeal from Orphans’ Courts: (1) to the Appellate Court of Maryland pursuant to CJ § 12-501;¹⁴ and (2) to the circuit court as a *de novo* appeal pursuant to CJ § 12-502. *See Rome v. Lowenthal*, 290 Md. 33, 34 (1981). Where, as here, a party chooses a *de novo* appeal to the circuit court, the party retains the right to appeal to this Court. *Brees v. Cramer*, 322 Md. 214, 219 n.2 (1991).

In reviewing the circuit court’s decision here, we note that, in “an action tried without a jury, we review the judgment of the trial court ‘on both the law and evidence.’” *Balt. Police Dep’t v. Brooks*, 247 Md. App. 193, 205 (2020) (quoting *Banks v. Pusey*, 393 Md. 688, 697 (2006)); *see also* Md. Rule 8-131(c). “The appellate court ‘will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.’” *Thornton Mellon LLC v. Adrienne Dennis Exempt Tr.*, 478 Md. 280, 309 (2022) (quoting

¹⁴ At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Md. Rule 8-131(c)). Issues of law, however, are reviewed *de novo*. *Brooks*, 247 Md. App. at 205.

B.

**Circuit Court's Order Regarding
Diana Winkler and the Estate of Effie Thornton**

We begin with the circuit court's order regarding Diana Winkler and the estate of Effie Thornton. The sole asset at issue is the Home, which was sold in 2006 for \$113,825.99. According to Effie Thornton's will, the proceeds of that sale should have been distributed evenly to Ms. Thornton's nine children, or if a child was deceased, that child's children. Four of Ms. Thornton's children were alive when the Home was sold and five of her children were deceased. One of the deceased children died without children of his own. Thus, according to the terms of the will, Diana Winkler should have divided the proceeds from the sale of the Home into eight equal shares, distributing those shares to Ms. Thornton's four living children and the children of Ms. Thornton's four deceased children.

Diana Winkler, however, distributed the proceeds primarily to Ms. Thornton's four living children, with minor distributions to some grandchildren. In doing so, she failed to make the appropriate distributions pursuant to the will, and the court properly found that she breached her fiduciary duty as personal representative. As such, Ms. Winkler is liable for that breach. *See* ET § 7-403(a) ("If the exercise of power concerning the estate is improper, the personal representative is liable for breach of the fiduciary duty of the personal representative to interested persons for resulting damage or loss to the same extent

as a trustee of an express trust.”). The court therefore did not err in ordering Ms. Winkler to pay money to the interested parties who suffered damages as a result of her breach. *Id.*

The Winklers suggest that Diana Winkler is not responsible for any damages because she distributed the proceeds from the sale of the Home in accordance with “a family meeting” that was held following the sale of the Home. As personal representative to Effie Thornton’s estate, however, Ms. Winkler was responsible for distributing the proceeds in accordance with Ms. Thornton’s will. *See Att’y Grievance Comm’n of Md. v. Storch*, 445 Md. 82, 90 (2015) (“A personal representative is under a general duty to settle and distribute the estate in accordance with the terms of the decedent’s will and the estates of decedents law, and do so expeditiously.”). Because Ms. Winkler did not follow the terms of the will, the circuit court did not err in determining that Ms. Winkler breached her fiduciary duty and is liable for that breach.

Diane Winkler also contends that any claims made against the estate are barred by the three-year statute of limitations set forth in CJ § 5-101. Ms. Winkler, however, did not make that argument below, and therefore, it was not decided by the circuit court.¹⁵ Accordingly, this contention is not preserved for our review, and we will not address it.

¹⁵ Yolanda Winkler did note that the claim against Diana Winkler was being made “25 years later,” and she asked: “Is there a statute of limitations? And what is it?” This is not sufficient to constitute an argument that the statute of limitations barred the claim.

See Md. Rule 8-131(a) (“Ordinarily, the appellate court will not decide any [] issue unless it plainly appears by the record to have been raised in or decided by the trial court.”).¹⁶

C.

**Circuit Court’s Order Regarding
Yolanda Winkler and the Estate of Eustace Thornton**

With respect to Yolanda Winkler and the estate of Eustace Thornton, the issue raised related to the money received from an asbestos settlement, which totaled \$73,336. Because Eustace Thornton died without a will, that money should have been distributed according to the laws of intestate, minus certain legitimate claims against the estate. *See* ET § 8-105; *see also* ET § 3-101 *et seq.*

The circuit court, however, valued Eustace Thornton’s estate at \$173,363 and ordered Yolanda Winkler to pay \$154,650.26 to the estate. Although the court did not expressly state how it arrived at its initial valuation, it appears from the record that it considered \$73,363 attributable to the asbestos settlement, and \$100,000 based on Ms.

¹⁶ We do note that CJ § 5-101 provides that a civil action must be filed within three years “unless another provision of the Code provides a different period of time within which an action shall be commenced.” Section 10-103 of the Estates and Trusts Article states, in pertinent part, that a personal representative is discharged from any claim or demand of any interested person “[i]f no action or proceeding involving the personal representative is pending one year after the close of the estate[.]” ET § 10-103(a)(1). The statute also provides that the one-year limitations period does not apply in cases of “fraud, material mistake, or substantial irregularity” on the part of the personal representative. ET § 10-103(a)(2). Here, even if the issue were preserved for review, it does not appear that the estate was closed, and therefore, there would not be a statute of limitations argument pursuant to ET § 10-103.

Winkler's assertion that various family members had taken approximately \$100,000 in personal property from the Home.

There was not, however, sufficient evidence, or any argument, that those latter items were part of Mr. Thornton's estate. The sole issue presented against Yolanda Winkler was her failure to distribute the money from the asbestos settlement. Under these circumstances, we conclude that the circuit court erred in including the property alleged to be taken from the Home valued at \$100,000 to be included in the judgment against Yolanda Winkler.

With respect to the undisputed asbestos proceeds in the amount of \$73,363, the circuit court properly credited Yolanda Winkler for using some of the asbestos money to pay legitimate claims, which included \$6,115 for Eustace Thornton's funeral, \$5,511 for a personal representative fee, and \$1,200 for property taxes owed by Mr. Thornton. The court found, however, that the vast majority of Ms. Winkler's claimed expenses were not legitimately related to the administration of the estate. The court found that Ms. Winkler should have distributed the remaining balance of \$60,537 to Mr. Thornton's heirs, but she had failed to do so. The court determined that Ms. Winkler had therefore misappropriated those funds and breached her fiduciary duty. After giving Ms. Winkler credit for the \$5,886.74 that she had forfeited after her removal as personal representative, the court found that Ms. Winkler was responsible for repaying the balance of the asbestos money, or \$54,650.26, to the estate.

We cannot conclude that the circuit court erred in making that ruling. As noted by the court, Yolanda Winkler should have distributed \$60,537 from the asbestos settlement to Mr. Thornton's heirs. Instead, Ms. Winkler used the bulk of that money to pay for various expenses in the years following Mr. Thornton's death. Although Ms. Winkler claims that those expenses were related to the administration of Mr. Thornton's estate, she has presented no evidence to support that claim. The court's decision to deny those claims and to find Ms. Winkler liable was not clearly erroneous.¹⁷

Accordingly, we reverse the circuit court's judgment as to Yolanda Winkler and remand to the circuit court to issue an order for judgment against Yolanda Winkler in the amount of \$54,650.26.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY IN CASE NO. 24-
C-20-005220 (DIANA WINKLER)
AFFIRMED. JUDGMENT IN CASE NO. 24-
C-1-00001 (YOLANDA WINKLER)
REVERSED AND CASE REMANDED FOR
FURTHER PROCEEDINGS CONSISTENT
WITH THIS OPINION. COSTS TO BE
PAID ½ BY DIANA WINKLER AND ½ BY
YOLANDA WINKLER.**

¹⁷ The statute of limitations argument similarly is not preserved. See Md. Rule 8-131(a). Moreover, if the issue had been preserved, testimony regarding Yolanda Winkler's repeated denials that there was no asbestos settlement, if credited by the trier of fact, could result in a finding of fraud, material mistake, or substantial irregularity.