

Circuit Court for Montgomery County
Sitting as the Orphans' Court
Case No: W108517

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 515

September Term, 2023

IN RE: THE ESTATE OF
RITA ANNE RADER

Wells, C.J.,
Albright,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: January 17, 2025

*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).

On October 25, 2022, appellant Rhonda Canale, as the Personal Representative for the Estate of Oscar Feinsilber, filed with the Montgomery County Register of Wills a claim against the Estate of Rita Anne Rader, appellee.¹ That claim was disallowed. Subsequently, Ms. Canale filed in the Circuit Court for Montgomery County, sitting as the Orphans’ Court (“the Orphans’ Court”), a “Petition for Allowance of Disallowed.” On October 14, 2023, the Orphans’ Court held a hearing on the Petition. Four days later, the Orphans’ Court filed an order dismissing Ms. Canale’s claim as time barred. This timely appeal followed.

ISSUE PRESENTED

The sole issue presented for our consideration is whether the Orphans’ Court erred in dismissing Ms. Canale’s claim.² For the reasons set forth below, we conclude the Orphans’ Court did not err and accordingly affirm its dismissal of the claim.

¹ The Rader Estate did not file a brief in this appeal. Ms. Canale is proceeding on appeal, as she did below, in proper person.

² Ms. Canale set forth the following two questions:

- (1) You have to file your claim in a timely manner. Why did you file the claim almost a year after Rita passed?
- (2) We can go into speculation about all the finances, but why would the Court want to do that?

FACTUAL AND PROCEDURAL BACKGROUND

Ms. Canales’ father, Oscar M. Feinsilber, married Rita Anne Rader on January 23, 2015.³ At some point prior to their marriage, Mr. Feinsilber showed signs of dementia. Ms. Canale claimed that on August 12, 2015, Ms. Rader obtained power of attorney for Mr. Feinsilber. She handled “all of his finances.” In August 2018, Mr. Feinsilber entered an assisted living facility that cost \$6,000 per month. Ten months later, he was moved to another assisted living facility that “cost the same plus any incidentals he needed.” Ms. Canale claimed that Mr. Feinsilber’s “monthly total wages were \$4,321.20 to include his pension and social security.”

Ms. Rader died on October 6, 2021, and shortly thereafter, an estate was opened (“the Rader Estate”). According to Ms. Canale, weeks before Ms. Rader’s passing, Ms. Rader changed her Last Will and Testament leaving nothing for Mr. Feinsilber or his care. After Ms. Rader died, Ms. Canale sought to obtain guardianship of her father. She intended to claim, on her father’s behalf, his elective share of the Rader Estate so that he could continue to be cared for at the assisted living facility where he was residing. It is unclear from the record before us whether that was, in fact, done. Ms. Canale claimed she was awarded temporary guardianship of her father and was awaiting “full and permanent Guardianship” when he died on December 5, 2021.

³ For the purpose of this appeal, and to place the issue presented in context, we set forth facts obtained from Ms. Canale’s claim against the Rader Estate, the “Petition for Allowance of Disallowed,” and statements made at the April 14, 2023, hearing before the Orphans’ Court.

An estate was opened for Mr. Feinsilber (“the Feinsilber Estate”) and, on June 2, 2022, Ms. Canale was appointed personal representative. She maintains that once she received letters of administration, she was “finally able to gather [her] dad’s bank statements for his account at M&T Bank in Maryland.” After reviewing bank statements, Ms. Canale discovered the following transactions in which she claims Ms. Rader allegedly withdrew or wrote checks “for extraordinary amounts of money from [Mr. Feinsilber] as his Power of Attorney”:

- 1) 7/31/2017 - \$10,000.00 (Check # 1380 – Payable to Signal Financial Rita Anne Rader’s Individual Account)
- 2) 7/31/2017 - \$100,000.00 (Check #1424 – Payable to Rita A. Rader)
- 3) 1/17/2018 - \$35,000.00 (Check #1485 – Payable to Rita A. Rader)
- 4) 9/26/2019 - \$95,000.00 (Counter Withdraw)

On October 25, 2022, Ms. Canale filed a claim against the Rader Estate asserting that it should pay to the Feinsilber Estate \$240,000 “that was exploited from” Mr. Feinsilber’s “finances.” The claim included a letter dated October 21, 2022, in which Ms. Canale set forth details relating to the claim and copies of four bank statements. The Rader Estate denied the claim.⁴

On December 5, 2022, Ms. Canale filed a “Petition for Allowance of Disallowed” (“the Petition”) in which she asked the Orphans’ Court “to grant the entire disallowed amount of \$240,000.00” to the Feinsilber Estate. The Rader Estate requested that the Petition be dismissed on the ground that it was untimely and barred by § 8-103 of the

⁴ The docket entries do not show that the claim was disallowed, but the parties do not dispute that it was, in fact, disallowed.

Estates and Trusts (“ET”) Article of the Maryland Code,⁵ and because Ms. Rader was a joint owner of the funds in question.

At an April 14, 2023, hearing on the Petition, Ms. Canale argued that her claim was not barred by ET § 8-103 because the Statute Against Financial Exploitation (“SAFE”) Act, ET §§ 13-601–609, which provides for claims based on the financial exploitation of a susceptible adult, includes a five-year statute of limitations.⁶ Ms. Canale acknowledged that the subject bank account was owned jointly by Ms. Rader and Mr. Feinsilber but argued that Ms. Rader abused her power of attorney and that “there was no possible way

⁵ ET § 8-103 provides, in pertinent part:

(a) Except as otherwise expressly provided by statute with respect to claims of the United States or the State, a claim against an estate of a decedent, whether due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, is forever barred against the estate, the personal representative, and the heirs and legatees, unless presented within the earlier of the following dates:

(1) 6 months after the date of the decedent’s death; or

(2) 2 months after the personal representative mails or otherwise delivers to the creditor a copy of a notice in the form required by § 7-103 of this article or other written notice, notifying the creditor that the claim will be barred unless the creditor presents the claim within 2 months after the mailing or other delivery of the notice.

⁶ The SAFE Act was adopted by the Legislature in Acts 2021, ch. 311, § 1, and took effect on October 1, 2021. Section 13-607(a) of the SAFE Act provided, in relevant part:

(a) Except as provided in subsection (b) of this section, an action under this subtitle shall be commenced within 5 years after the susceptible adult or older adult, or the susceptible adult’s or older adult’s representative discovers or, through the exercise of reasonable diligence, should have discovered the facts constituting financial exploitation.

that [her] dad knew that she was taking that money.” Ms. Canale asserted that after Ms. Rader died, her grandson, who was then the owner of Ms. Rader’s bank account, would not withdraw money from that account to pay for Mr. Feinsilber’s care. But, when questioned by the judge about whether Mr. Feinsilber was taken care of in the two months between Ms. Rader’s death and his own death, Ms. Canale stated, “Yes. Ultimately, he was taken care of.”

Counsel for the Rader Estate argued that there was nothing in the SAFE Act that expanded the time limit set forth in ET § 8-103 for filing a claim against an estate and that Ms. Canale’s claim, filed almost a year after Ms. Rader’s death, was time barred. Ms. Canale responded that she did not file the claim within six months because she “wasn’t a personal representative at that time.” It took her six months to get a bond, and she did not become personal representative until June 2, 2022. She claimed she was not able to start researching until she obtained letters of administration.

At the conclusion of the hearing, the Orphans’ Court judge ruled that Ms. Canale’s petition was time barred, stating:

Ms. Canale, I don’t see any indication of financial exploitation. I understand your position, but this was a joint account. There was no prohibition against either of them putting money in or taking money out.

And there’s no indication - - more importantly, there’s no indication that your father was not cared for. He was in a facility that was paid. His care was paid for. He was at no disadvantage or exploited in any way such that he was left without adequate care or resources to take care of him. And unfortunately, he passed shortly after his wife did.

Again, the bottom line is that this was a joint account that they were both on, that had been opened, it looks like, for many years so there was no prohibition against either of them accessing the money in the account.

So, I cannot find that the SAFE Act applies in this instance nor that the five-year statute of limitations applies. This is a claim against an estate that is barred pursuant to Section 8-103 of the Estates and Trusts Article. All claims must be filed, the shorter of, however the statute reads, the shorter of six months after the decedent's death or yes, six months after the decedent's death, or two months after the personal representative delivers the notice to all creditors as required under the statute.

So, I don't see this as a case of financial exploitation. The facts that have been presented do not rise to that level. It appears to be that this is a claim that was filed late, for whatever reasons, and I understand your reasons that the claim was filed late, but the claim was filed late and, as a result, is time barred.

DISCUSSION

Ms. Canale contends that the Orphans' Court erred in dismissing the Petition on the ground that it was barred by ET § 8-103. In addition, she argues that the Orphans' Court improperly rejected her contention that "there was financial abuse in the form of exploitation against" her father pursuant to the provisions of the SAFE Act, and the five-year limitations period set forth in that Act should have applied so as to allow her claim to proceed. We disagree and explain.

A. Standard of Review

In *Matter of Watkins*, we stated the standard to review decisions of the Orphans' Court as follows:

In reviewing the decision of the Orphans' Court, we defer to its findings of fact and will not set them aside unless clearly erroneous. *See* Md. Rule 8-131(c) (governing the standard of review for actions tried without a jury); *see also Pfeufer v. Cyphers*, 397 Md. 643, 648, 919 A.2d 641 (2007) ("It is well

settled that the findings of fact of an Orphans’ Court are entitled to a presumption of correctness.”) (internal quotations omitted). The Orphans’ Court’s resolution of questions of law, however, are not entitled to deference and are reviewed *de novo*. See Md. Rule 8-131(c); *Clancy v. King*, 405 Md. 541, 554, 954 A.2d 1092 (2008) (clearly erroneous standard “does not, of course, apply to legal conclusions”) (citation omitted).

241 Md. App. 56, 70 (2019).

B. Nonclaim Provision of ET § 8-103

In dismissing the case as barred by ET § 8-103, the Orphans’ Court did not consider any factual matters outside the pleadings. The only necessary considerations were the date of Ms. Rader’s death and the date on which Ms. Canale’s claim was filed because ET § 8-103(a) is not merely a statute of limitations; it is a “nonclaim statute.” *Imbesi v. Carpenter Realty*, 357 Md. 375, 377 (2000); *Nimro v. Holden*, 222 Md. App. 16, 17 (2015). ““It extinguishes the right to sue, not merely the remedy.”” *Imbesi*, 357 Md. at 385 (quoting *Nowell v. Larrimore*, 205 Md. 613, 624 (1954)). In other words, the time limitation for claims against an estate is part of the right to make a claim “and not merely a limitation of remedy.”⁷ *Kann v. Kann*, 344 Md. 689, 714 (1997).

“The purpose of the nonclaim statute is to expedite the administration of decedents’ estates.” *Imbesi*, 357 Md. at 382 (citing *Greentree v. Fertitta*, 338 Md. 621, 629 (1995)). As we have noted, placing a general limitation on the presentation of claims against a decedent’s estate “corrects the injustices caused by the common-law rule of abatement of

⁷ Although compliance with the six-month timeline to file a claim against an estate is part of the right to make a claim, we recognize that “non-compliance may be waived by the personal representative.” *Legum v. Brown*, 395 Md. 135, 151 (2006).

actions by death while preserving the executor’s interest in the prompt settlement of a decedent’s estate.” *First Nat. Bank of Md. v. Shpritz*, 63 Md. App. 623, 634 (1985), *cert. denied*, 304 Md. 297 (1985). “The nonclaim statute not only benefits the legatees but also protects the personal representative from liability for claims not filed within the time and in the manner prescribed.” *Imbesi*, 357 Md. at 382 (quoting *Burket v. Aldridge*, 241 Md. 423, 429 (1966)) (internal quotations omitted).

In light of the undisputed fact that Ms. Canale’s claim was filed beyond the six-month time period set forth in ET § 8-103(a), the Orphans’ Court did not err in determining that it was barred. Ms. Canale’s claim was, in fact, extinguished by that nonclaim act. There is no authority allowing an extension of the statutory time period, application of the discovery rule, or any exception for actions under the SAFE Act. Accordingly, dismissal of Ms. Canale’s claim was proper.

C. SAFE Act Claim

Even if Ms. Canales’s claim was not time barred, she would fare no better. The Orphans’ Court determined that she failed to establish a prima facie case of financial exploitation under the SAFE Act. The Orphans’ Court judge considered statements at the hearing made by Ms. Canale and counsel for the Rader Estate relating to the subject bank account and Mr. Feinsilber’s care from the time of Ms. Rader’s death to the time of his own death. The bank statements that were attached to the initial claim presented to the Rader Estate showed that the account was jointly owned by Ms. Rader and Mr. Feinsilber. At the hearing, counsel for the Rader Estate noted that the account was jointly owned, and

when the judge asked Ms. Canale if the subject bank account was a joint account, she acknowledged that it was a joint account. In addition, when questioned by the judge as to any detriment suffered by Mr. Feinsilber after Ms. Rader’s death, Ms. Canale acknowledged that he was not left homeless or without medical care, he remained in the facility where he had been residing, and “he was taken care of” until the time of his death.

For those reasons, the Orphans’ Court properly concluded that Ms. Canale was unable to establish a prima facie case of financial exploitation under the SAFE Act. Moreover, as we have already noted, even if Ms. Canale had established a prima facie case of financial exploitation, there is no authority to show that an action pursuant to the SAFE Act extends the time for filing a claim set forth in ET § 8-103(a). The Orphans’ Court properly denied the Petition in favor of the Rader Estate.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY SITTING
AS THE ORPHANS’ COURT AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**

The correction notice(s) for this opinion(s) can be found here:

<https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0515s23cn.pdf>