Circuit Court for Prince George's County
Case No. CAE 19-27124

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 734

September Term, 2021

IN THE MATTER OF JOE LOUIS BUTLER

Reed,
Beachley,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: June 10, 2022

This case comes to us in an unusual procedural posture. Appellant, First Maryland Disability Trust ("FMDT"), is a non-profit corporation that specializes in the administration of "self-settled special needs trusts" ("SSNT"), which are trusts created for beneficiaries with disabilities. FMDT, which was never made a party to the proceedings in the Circuit Court for Prince George's County, entered its appearance for the first time when it noted an appeal so that it could challenge an order awarding appellee Lolita Oglesby reimbursement for certain legal fees she paid to the Elder and Disability Law Center ("EDLC"). According to the appealed order, that reimbursement is to come from an SSNT for which FMDT is the trustee. FMDT asks us to vacate and remand the court's order awarding Ms. Oglesby $16,989.98 for legal fees.

We agree with FMDT that we must vacate the court's order and remand for further proceedings because FMDT, a necessary party, was never served with process nor given an opportunity to participate.

FACTS AND PROCEEDINGS

Because FDMT was not a party to the proceedings in the circuit court, it relies on the pleadings and orders contained in the record for its recitation of facts. Accordingly, our factual and procedural background will similarly rely on those documents.[1]

In June 2019, Joe Butler was admitted to FutureCare Pineview ("FutureCare"), a long-term care facility, in order to receive nursing and ventilator care. Apparently, Mr.

[1] We note that Ms. Oglesby filed a non-compliant brief in our Court.

Butler required a ventilator and was entirely dependent on medical staff for his daily needs. In August 2019, Ms. Oglesby, Mr. Butler's niece, petitioned the circuit court for appointment as guardian of the person and property of Mr. Butler.

In November 2019, while Ms. Oglesby's petition was pending, Medicare terminated Mr. Butler's coverage, meaning that there was no source to pay for his medical care. Consequently, on December 6, 2019, FutureCare filed an application for Long Term Care Medical Assistance ("MA") seeking Medicaid eligibility for Mr. Butler's cost of care both retroactively and going forward. FutureCare expected the MA to cover most, if not all, of the costs for Mr. Butler's care. Thus, securing the MA was mutually beneficial to both FutureCare and Mr. Butler.

The Department of Social Services ("DSS") was tasked with reviewing the MA Application. In order to verify Mr. Butler's Medicaid eligibility, DSS sent FutureCare a Request for Information to Verify Eligibility (the "DSS Request") on December 29, 2019. Unfortunately for FutureCare, it did not possess all of the information needed to complete the DSS Request. Accordingly, FutureCare made efforts to contact Ms. Oglesby in order to obtain the required information. Those efforts were unsuccessful.

In the meantime, the circuit court granted Ms. Oglesby's petition for guardianship on January 24, 2020, and shortly thereafter, Ms. Oglesby filed her own MA application with DSS while FutureCare's MA application was still pending. This apparently caused confusion, which resulted in DSS voiding Ms. Oglesby's application because FutureCare's application remained open and pending.

FutureCare became concerned that it would not be able to obtain the necessary information from Ms. Oglesby before its MA application expired on May 31, 2020.[2] Accordingly, in April 2020, FutureCare hired the law firm Bodie, Dolina, Hobbs, Friddell & Grenzer, P.C. (the "Bodie Firm") to contact Ms. Oglesby and obtain the information necessary to complete the DSS Request for the MA application.

By April 30, with the MA application still incomplete, FutureCare hired the law firm Holloway and Sullivan LLC (the "Holloway Firm") to file a Motion to Remove Ms. Oglesby as the Guardian of Joe Butler. On May 11, with the MA Application still not complete, the Bodie Firm filed a Complaint for Injunctive Relief and Motion for Temporary Restraining Order in order to compel Ms. Oglesby to produce the information necessary to complete the DSS Request. The circuit court granted the request for a temporary restraining order ("TRO") and ordered Ms. Oglesby to respond to the DSS Request.

In response to the court's order, communications commenced between FutureCare and Ms. Oglesby. Ms. Oglesby thereafter hired the EDLC to help her comply with the court's order. In addition to helping her complete the MA application, the EDLC also helped Ms. Oglesby spend down Mr. Butler's assets to comply with the $2,500 limit for eligibility.

[2] The pleadings indicate that a party must complete an MA application within six months of receipt of the DSS Request or the application will "expire."

With only a few weeks remaining before the MA application was set to expire, the Bodie Firm and the EDLC worked together to obtain all the necessary information for the DSS Request and the MA application. During this timeframe, Mr. Butler's remaining cash assets of $27,160.30 were paid to FutureCare as a spend down.

As a result of the efforts of FutureCare and its attorneys, as well as Ms. Oglesby and her attorneys, the MA application (including the DSS Request) was successfully and timely submitted, resulting in a full approval of Medicaid coverage for Mr. Butler. Notably, this coverage applied both prospectively and retroactively. Consequently, FutureCare owed Mr. Butler a refund for the $27,160.30 spend down he paid prior to being granted Medicaid eligibility.

Apparently anticipating this refund, on June 29, 2020, Ms. Oglesby established an SSNT for Mr. Butler through FMDT with FMDT as trustee. As noted above, SSNTs are trusts established for people with disabilities or special needs using the person's own assets and income for funding. Typically, such trusts are established and managed by a nonprofit association. 42 U.S.C. § 1396p(d)(4)(C)(i). "A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts." 42 U.S.C. § 1396p(d)(4)(C)(ii). Generally, parents, grandparents, or legal guardians will establish accounts within these trusts for the benefit of a disabled person. 42 U.S.C. § 1396p(d)(4)(C)(iii). Upon the death of the beneficiary, whatever funds remain in the account are paid to the State to cover the costs of medical assistance which

the State paid on behalf of the beneficiary. 42 U.S.C. § 1396p(d)(4)(C)(iv). Notably, the SSNT at issue in this case contains the following language:

> **[*FMDT*] *Establishes This Supplemental Needs Trust*.** [FMDT] establishes this First Maryland Disability Trust as a supplemental needs trust for management and investment purposes pursuant to Section 1917(d)(4)(C) of the Social Security Act, as amended, 42 U.S.C. § 1396p(d)(4)(C), for the benefit of individuals with disabilities. Notwithstanding any other provision of this Restated Declaration of Trust, the following provisions apply:
>
> ***3.1.1 No power to compel***. No person shall enjoy any right, title, interest or privilege to compel [FMDT] to make a distribution of assets or income from the Trust estate or from a Trust Sub-Account to the Beneficiary thereof or for his or her benefit.
>
> ***3.1.2 Not available***. No asset or income held by the Trust or in any Trust Sub-Account shall be available to a Beneficiary except upon distribution by the Trustee.
>
> ***3.1.3 No obligation of support***. [FMDT] in its fiduciary capacity has no obligation of support for any Beneficiary of the Trust and is to use the assets and income of the Trust or of any Trust Sub-Account for the supplemental needs and care of a Beneficiary.

Thus, the SSNT here provides that FMDT is solely responsible for the distribution of assets held in the trust, and that FMDT, in its discretion, may make distributions from the trust for the benefit of the beneficiary.

After FutureCare remitted the $27,160.30 to the SSNT, Ms. Oglesby and her attorneys entered into a settlement agreement (the "Agreement") with FutureCare and its attorneys to resolve any outstanding controversies and to divide the $27,160.30 refund to pay for attorney fees. The Agreement proposed dividing the refund as follows:

1. Holloway & Sullivan LLC (4%): $1,086.40
2. [The Bodie Firm] (55.5%): $15,073.96

3. The [EDLC] (40.5%): $10,999.92[3]

The Agreement specifically states that "FMDT has agreed to honor any [c]ourt-ordered reimbursement of counsel fees. FMDT will be included as an interested party to any petitions for counsel fees and will be provided copies of all pleadings/fee petitions." Notably, FMDT was not a party to the Agreement.

Following the execution of the Agreement, FutureCare and its attorneys (both the Bodie and Holloway Firms), and Ms. Oglesby and the EDLC filed a Joint Petition for Allowance of Counsel Fees (the "Joint Petition"). The Joint Petition recounted the facts stated above, and requested the court to approve the release of funds from the SSNT to pay counsel fees. Consistent with the Agreement, the Joint Petition described FMDT as "an interested party to these proceedings[,]" but it is clear that FMDT was not a party to the execution of the Joint Petition, nor is there any indication that the parties provided copies or served FMDT with the Joint Petition.

In an order dated November 17, 2020, but not entered until January 6, 2021, the court granted the Joint Petition. Copies of this order were mailed to Ms. Oglesby, the EDLC, and attorneys for FutureCare. Similar to the Agreement and the Joint Petition, there is no indication that a copy of the court's order was provided to FMDT.

Despite this lack of notice, FMDT did indeed distribute the $27,160.30 refund as provided in the Agreement. Nevertheless, FMDT vehemently disputes the notion that it

[3] For reasons unclear on this record, this sum adds up to only $27,160.28.

agreed to honor "*any* court-ordered fees" as provided in the Agreement. In its brief, FMDT claims that, in exercising its discretion as trustee, it simply agreed to reimburse the parties with respect to the $27,160.30 refund amount as a necessary expense for securing Mr. Butler's Medicaid coverage. Thus, although FMDT paid the $27,160.30, it contends that it was never *required* to issue these funds. In any event, FMDT does not challenge the $27,160.30 disbursement that it has already made; instead FMDT challenges the *additional* award of $16,989.98 to Ms. Oglesby that FMDT asserts it never agreed to pay and was never permitted to challenge.

This separate award of $16,989.98 came about as follows. After the court signed its order regarding the $27,160.30 refund, but before that order was docketed, on November 22, 2020, Ms. Oglesby filed a Notification of Legal Counsel Paid-In-Full and Terminated in which she asserted that she personally paid the EDLC the $10,999.92 it was owed as part of the refund from Futurecare, and requested that the SSNT remit $10,999.92 directly to her. Accordingly, on February 12, 2021, the circuit court issued an order staying its November 17, 2020 order as to the fees awarded to the EDLC. The court also scheduled a hearing for May 12, 2021, to resolve this issue. Following the hearing, the court ordered FMDT to pay $10,999.92 directly to Ms. Oglesby.

Two weeks after this hearing, on May 26, 2021, Ms. Oglesby filed a Petition for Reimbursement of Remaining Legal Fees (the "Reimbursement Petition"). According to her Reimbursement Petition, Ms. Oglesby claimed that she paid the EDLC a total amount

of $27,989.90[4] in attorney fees, and requested FMDT to remit to her the remaining balance of the attorney fees: $16,989.98.[5] As noted above, it is this sum—Ms. Oglesby's request for an additional $16,989.98 in attorney fees—that FMDT challenges in this appeal. Although Ms. Oglesby provided notice of the Reimbursement Petition to the EDLC, she did not provide any notice to FMDT.

In response to Ms. Oglesby's Reimbursement Petition, on June 22, 2021, the circuit court issued an order (the "Operative Order") instructing FMDT to reimburse Ms. Oglesby the sum of $16,989.98 for the legal fees she paid to the EDLC. FMDT was to use proceeds from the sale of Mr. Butler's real property that were deposited into the trust to make this payment. Unlike every other relevant document and order mentioned above, the Operative Order was mailed to FMDT.

In response to the Operative Order, FMDT entered its appearance and timely noted an appeal.

DISCUSSION

In its brief, FMDT challenges the Operative Order, arguing that because it is an interested and necessary party to the proceedings, the circuit court erred in ordering it to pay Ms. Oglesby $16,989.98 from the SSNT where it was never served with notice nor

[4] The Reimbursement Petition indicates that Ms. Oglesby paid the EDLC $28,938.90, but that the EDLC refunded the escrow balance of $949.00, leaving Ms. Oglesby with $27,989.90 in actual fees.

[5] $27,989.90 in paid fees minus $10,999.92 reimbursed from the trust equals $16,989.98.

joined as a party to the Reimbursement Petition. We agree.

Maryland Rule 2-211 provides in relevant part:

> (a) Except as otherwise provided by law, a person who is subject to service of process shall be joined as a party in the action if in the person's absence
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> (1) complete relief cannot be accorded among those already parties, or
>
> (2) disposition of the action may impair or impede the person's ability to protect a claimed interest relating to the subject of the action or may leave persons already parties subject to a substantial risk of incurring multiple inconsistent obligations by reason of the person's claimed interest.

In *Mahan v. Mahan*, 320 Md. 262, 273 (1990), the Court of Appeals affirmed the principle that, where a necessary party is not given an opportunity to participate in the proceedings, any judgment rendered must be vacated. There, the Court of Appeals considered whether to vacate a declaratory judgment where a decedent's brother, who possessed an arguable interest in the decedent's trust and was therefore a necessary party, was never served with notice or given an opportunity to intervene. *Id*. at 271. Despite the fact that the decedent's brother did not intervene until after the circuit court issued its judgment, the Court of Appeals noted, "Failure to join a necessary party constitutes a defect in the proceedings that cannot be waived by the parties, and may be raised at any time, including for the first time on appeal." *Id*. at 273 (citing *Kaliopulus v. Lumm*, 155 Md. 30, 37-38 (1928)). Relying on Rule 2-211 as well as a corollary provision in the Courts and Judicial Proceedings Article, the Court stated, "The primary purposes of the requirement that necessary parties be joined are 'to assure that a person's rights are not adjudicated unless that person has had his 'day in court' and, to prevent 'multiplicity of litigation by

assuring a determination of the entire controversy in a single proceeding." *Id*. at 272 (quoting *Bender v. Sec'y, Md. Dep't of Pers.*, 290 Md. 345, 351 (1981)). Because of his arguable interest in the trust, the Court held that the brother was a necessary party, and accordingly vacated the judgment so that he could "be made a party" to the proceedings. *Id*. at 273.

Here, there is no dispute that FMDT is an interested party to the proceedings concerning assets in Mr. Butler's SSNT. In Maryland, "[t]he general rule in cases of trust is, that in suits respecting the trust property, brought either by or against the trustees, the *cestuis que trust*, (or beneficiaries,) as well as the trustees, are necessary parties." *Hawkins v. Chapman*, 36 Md. 83, 98 (1872) (quoting 2 Story's Eq. Juris., Sec. 207)); *see also* W. W. Allen, *Trust Beneficiaries as Necessary Parties to Action Relating to Trust or its Property*, 9 A.L.R.2d 10 § 2 (1950) ("The general rule in suits respecting the trust property, brought either by or against the trustees, is that the beneficiaries, as well as the trustees, are necessary parties[.]"); 76 Am. Jur. 2d *Trusts* § 602 (2022) ("The trustee is the legal owner of trust property, and as such, the trustee is the proper party for actions affecting title to trust property. A trustee is a necessary party to any suit or proceeding involving a disposition of trust property or funds[.]" (footnote omitted)); 90A C.J.S. *Trusts* § 784 (2022) ("Proper parties defendant in a suit to establish or enforce a trust include the trustee as the legal owner of the trust property . . . . In a suit to establish or enforce a trust, all parties in interest must be joined as defendants, such as the trustee" (footnotes omitted)). Furthermore, Maryland Rule 10-103(f)(2) provides that, in the context of fiduciary

proceedings, an "interested person" includes the creator of the fiduciary estate.[6] As noted above, FMDT created the SSNT at issue here and is therefore an interested party pursuant to Rule 10-103(f)(2). Indeed, the Joint Petition acknowledges that "FMDT is an interested party to these proceedings." The Agreement also acknowledges that FMDT is an interested party: "FMDT will be included as an interested party to any petitions for counsel fees and will be provided copies of all pleadings/fee petitions."

Because FMDT is undisputedly an interested party, and because it was neither served nor given an opportunity to participate in the proceedings regarding Ms. Oglesby's Reimbursement Petition, we must vacate the Operative Order. *Mahan*, 320 Md. at 273. On remand, FMDT shall be "made a party" and availed the opportunity to be heard and participate in the proceedings. *Id*. Fundamental notions of due process require no less. *Cf. Griffin v. Bierman*, 403 Md. 186, 197 (2008) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprize interested parties of the pendency of the action and afford them an opportunity to present their objections." (quoting *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306, 314 (1950)).

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY VACATED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY LOLITA OGLESBY.

[6] "In connection with a guardianship of the property or other fiduciary proceedings, 'interested person' means . . . the creator of the fiduciary estate." Md. Rule 10-103(f)(2).