Circuit Court for Montgomery County
Case No. Civ-430408

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1132

September Term, 2018

LEE MESTRE

v.

ALBERT BRANSON, ET AL.

Fader, C.J.
Berger,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: October 18, 2019

This case is before us on appeal from a judgment of the Circuit Court of Montgomery County denying appellant Lee Mestre's petition for reimbursement of costs and attorney's fees she purportedly incurred as trustee of the 10 North Fourth Street Trust (the "Trust"). The Appellees are Mestre's paternal uncles: David Branson, Albert Branson, and Robert Branson. The controversy that underlies this appeal stems from a long-standing intra-family dispute that has resulted in the filing of at least seven separate actions in the courts of Maryland and Delaware. The dispute centers upon the status of a beach house in South Bethany Beach, Delaware (the "Property"). Mestre presents four issues[1] for our review on appeal, which we have consolidated as the following single issue:

[1] The questions, as presented by Mestre, are:

> 1. Whether the Court erred when it dismissed Lee Mestre's claim for reasonable fees and expenses under the Maryland Discretionary Trust Act, Estates and Trusts, Title 14, § 14-405(m)(1), "the Act"?
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> 2. Whether the Court erred when it took judicial notice of Delaware law *sua sponte* and:
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> > a. stated on June 8, 2018, that the Delaware Order of April 26, 2018 (E100 - 103) was a "final" order in the absence of a stay or supersedeas bond,
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> > b. the Branson brothers' counsel stated that the Order had not been recorded,
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> > c. the Branson brothers' counsel stated correctly that Lee Mestre could file a Notice of Appeal on or before June 14, 2018,
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> > d. a motion for a stay could have been timely filed,

Whether the circuit court erred by denying Mestre's petition for reimbursement of trustee fees after the Delaware court had determined that trust held no interest in the Property.

For the reasons explained herein, we shall affirm.

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e. a supersedeas bond was unnecessary in the absence of a money judgment but a motion for a bond could have been timely filed,

f. Lee Mestre was denied an opportunity to file a motion for a stay or bond and the Court inferred that such an attempt would be futile,

g. the Court's statement concerning futility was contrary to the Delaware Rules and Article IV, §24 of the Delaware constitution,

h. Lee Mestre's request for a continuance to confer with counsel was denied,

i. the request for seven days to Brief the issue of a stay or bond was denied,

j. the Court granted an oral motion to dismiss without prior notice, and,

k. the decision of the Delaware Supreme Court issued on January 30, 2019, did not support the Court's rationale for dismissal.

3. Whether the Court erred when it denied due process to Lee Mestre and dismissed her petition for reasonable fees for the reasons stated herein?

4. Whether the Maryland Judiciary violated Title 18, Judges and Judicial Appointees, Chapter 100, Maryland Code of Judicial Conduct, Rules Governing the Performance of Judicial Duties, Rule 18-102.9, concerning ex parte communications, in that on information and belief a Delaware Vice Chancellor consulted with the Maryland Judiciary, none of the permissible exceptions apply, the consultation was not reported and the consultation was prejudicial to Lee Mestre?

FACTS AND PROCEEDINGS

A brief discussion of the status of the Property and the history of the Trust is necessary to provide the appropriate context for our discussion. We set forth the following background as cogently summarized by the Supreme Court of Delaware in *Branson v. Branson*, Case No. 280, 2018, 2019 WL 193991 (filed January 14, 2019) (unpublished opinion):

> Vincent Branson [(counsel for appellant Lee Mestre)] and the appellees (collectively, the "Brothers" and, with their sister, who is not a party to this action, the "Siblings") are four of the five children of Dorothea Branson, who died in 2001. The appellant Lee Mestre is Vincent's daughter. Ownership of the property at issue has been the subject of several protracted litigations between the parties in Delaware and Maryland. There have been allegations of bad faith and misconduct by both sides. Ultimately, though, the present appeal arises from an *in rem* action brought by the appellees to quiet title to the cottage.
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> ***Factual Background and the Prior Delaware Litigation***
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> The factual background of this matter has been set forth more fully in decisions of the Court of Chancery in the prior litigations. In brief, Dorothea and the Siblings' father divorced in 1969. The Siblings' father acquired the cottage in 1974 and later transferred ownership to the Siblings. A series of transfers among the Siblings and Dorothea later occurred, but no deeds were executed or recorded; as a result of those transfers, by 1990, Dorothea owned 75% of the cottage and Albert owned 25%.
>
> Dorothea died in 2001. Her will left all of her estate, in equal shares, to the Siblings. The Brothers' sister disclaimed her interest in the estate, and the estate was divided in equal shares among the four Brothers. Vincent took his share entirely in cash or stock; Albert, David, and Robert each received at least part of his share in the form of an ownership interest in the cottage. In September 2004, Vincent initiated an

action in the Court of Chancery alleging that (i) Robert, Albert, and David had agreed to sell him the cottage and seeking specific performance of that agreement or, alternatively, damages for breach of contract, and (ii) he did not receive his full and final share of Dorothea's estate in cash or stock and he therefore inherited an interest in the cottage. After trial, the Court of Chancery found that there was no enforceable oral agreement for the sale of the cottage and that Vincent had received his full share of the estate in cash or stock and had no ownership interest in the cottage. This Court affirmed on appeal.

The property records continued to suggest that Vincent had an ownership interest in the cottage despite the Court of Chancery's 2010 ruling that he did not. Thus, in 2012, Albert, David, and Robert filed a separate action seeking to quiet title. They did not proceed *in rem*, however. For that reason, the Court of Chancery held that the title would be quieted only *in personam* with respect to Vincent. On September 19, 2013, the Court of Chancery entered an order incorporating the 2010 ruling that Vincent had no interest in the cottage, granting summary judgment to quiet title against Vincent *in personam*, and ordering cancellation of a *lis pendens* filed by Vincent in January 2012. This Court affirmed on appeal.

The Maryland Litigation

In February 2014, Mestre brought an action against her uncle, David, and her father, Vincent, in the Circuit Court for Montgomery County, Maryland. In that action, Mestre alleged that she was a third-party beneficiary of a 1992 oral agreement between Dorothea and Albert, under which Albert would live in the cottage rent-free for his life and would maintain the cottage as a family vacation home, and the cottage would then pass to Dorothea's grandchildren upon Albert's death. On August 28, 2014, when David had not yet been served, the Maryland Court entered an order approving a partial settlement of the case, which dismissed one of the two counts of the complaint, as to Vincent only. The August 2014 Maryland Order incorporated a settlement agreement that created a Maryland trust, the 10 North Fourth Street Trust (the "Trust"), which purportedly was funded with Vincent's interest in the cottage. The Order further provided that Vincent would

execute a quitclaim deed to Mestre as trustee of the Trust. Vincent executed a quitclaim deed that was dated October 8, 2014 and recorded with the Sussex County Recorder of Deeds on October 24, 2014. That deed from Vincent to Mestre clouded title to the property yet again, despite the Court of Chancery's rulings in 2010 and 2013 that Vincent had no interest in the property.

On December 4, 2014, the Maryland Court entered an order dismissing the action with prejudice with respect to Vincent (but not David). The December 2014 Maryland Order incorporated a settlement agreement that Mestre and Vincent had signed on or about November 13, 2014. That settlement agreement recited various "facts," including that Mestre was a third-party beneficiary of a 1992 agreement between Dorothea and Albert under which "Albert in exchange for rent-free use for life agreed to maintain the family vacation home for as long as he could for the benefit of the family and that at his death the home would pass to the grandchildren of Dorothea." In January 2015, Mestre voluntarily dismissed the action she had filed in 2014, in which David remained as the sole defendant; a few days later, Mestre filed a new, similar action in the same Court, with David as the sole defendant. Like the 2014 action, Mestre's 2015 complaint alleged that Mestre and Dorothea's other grandchildren were third-party beneficiaries of the purported 1992 agreement between Dorothea and Albert.

The Maryland Court held a three-day bench trial in June 2016. At the close of Mestre's case, David moved for judgment under Maryland Rule of Civil Procedure 2-519. The Court granted that motion, applying Delaware law and holding that Mestre had failed to prove the existence of the alleged 1992 agreement, and entered judgment for David.

The Present Action

Because of clouds that remained on the title, including the 2014 quitclaim deed from Vincent to Mestre, on September 15, 2015, Albert, David, and Robert initiated this case in the Court of Chancery against Mestre and Vincent. The complaint asserted, among other causes of action, a claim for a declaratory judgment that there was no binding 1992 agreement between Dorothea and Albert and that neither

> Mestre nor Vincent nor the Trust had any interest in the cottage. In May 2016, the plaintiffs filed an amended complaint asserting an *in rem* quiet title action.
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> On or about September 7, 2017, following significant motion practice, the Court of Chancery issued a rule to show cause why the appellees' petition for quiet title should not be granted and set a hearing on the petition for October 13, 2017. The rule to show cause was issued to Mestre and Vincent, who had objected to the petition, and also provided for notice to any unknown defendants by publication and a posting on the property. Following the hearing on October 13, 2017, the Court issued a briefing schedule for all objections. After the scheduled briefing was complete, the Court scheduled a final hearing on the petition to quiet title for March 7, 2018; that hearing was later continued at Mestre's request because of inclement weather.
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> The Court of Chancery held the final hearing on the petition to quiet title on April 4, 2018. The Court found the ownership of the property to be as follows: Albert Branson, 46.40% tenant-in-common interest; Robert Branson, 31.87% tenant-in-common interest; and David Branson, 21.73% tenant-in-common interest. The Court found that Vincent, Mestre, and the Trust "hold no interest in the subject property as of the date of this Order." The Court ordered that the Sussex County Recorder of Deeds (i) record a copy of the Court's order in the Office of the Recorder of Deeds, "as conclusive evidence of said ownership," and (ii) remove from its records all documents recorded by "Vincent Branson, Lee Mestre, the 10 North Fourth Street Trust, and/or their representatives, creating an encumbrance on the title." Mestre and Vincent appeal from the Court's order.

Branson, *supra*, 2019 WL 193991 at *1-3 (footnotes and citations omitted). On January 14, 2019, the Supreme Court of Delaware affirmed the Court of Chancery's ruling in the quiet title action. *Id.*

On February 24, 2017, in her capacity as Trustee of the 10 North Fourth Street Trust (the "Trust"), Mestre filed a Petition for Reimbursement of Fees and Expenses Incurred in

the Performance of Fiduciary Duties" (the "Petition") in the Circuit Court for Montgomery County. Mestre sought reimbursement for fees and expenses incurred in the administration of the Trust and "request[ed] that indemnification be accomplished by placing a lien on [the Property]." A hearing was held in the circuit court on May 4, 2017 at which the circuit court addressed discovery issues. At the hearing, the court was advised of the then-pending quiet title action in the Delaware Court of Chancery that would address the status of the Property in which the Trust purportedly held an interest. In light of the pending Delaware case, the circuit court continued the hearing on Mestre's Petition until October 6, 2017.

The hearing date was subsequently postponed several times while the parties and the circuit court awaited a ruling from the Delaware Court of Chancery in the quiet title action. The Delaware Court of Chancery issued its judgment in the quiet title action on April 26, 2018. As discussed *supra*, the Delaware court found the ownership of the Property to be as follows: Albert Branson, 46.40% tenant-in-common interest; Robert Branson, 31.87% tenant-in-common interest; and David Branson, 21.73% tenant-in-common interest. *Branson*, *supra*, 2019 WL 193991 at *3. The Delaware Court of Chancery expressly found that Vincent, Mestre, and the Trust "hold no interest in the subject property as of the date of this Order" and ordered the Sussex County Recorder of Deeds to take action accordingly.

On June 8, 2018 (after the Delaware Court of Chancery issued its ruling on the quiet title action but before the Supreme Court issued its affirmance), the circuit court held a hearing on Mestre's Petition. Based on the disposition of the Delaware quiet title action,

the Appellees orally moved to dismiss Mestre's petition. The circuit court granted the motion to dismiss. The court's oral ruling was memorialized in a written order docketed June 18, 2018. Mestre timely appealed.

DISCUSSION

Contrary to the various issues presented by Mestre on appeal, the core issue before us on appeal is whether a trustee can obtain reimbursement from trust property when the courts of another state have determined that the trust at issue owns no interest in the Property. As we shall explain, the circuit court did not err by dismissing Mestre's petition in light of the fact that the Delaware courts had determined that the Trust held no interest in the Property.

When reviewing a circuit court's grant of a motion to dismiss, we apply the following standard of review:

> "The proper standard for reviewing the grant of a motion to dismiss is whether the trial court was legally correct. In reviewing the grant of a motion to dismiss, we must determine whether the complaint, on its face, discloses a legally sufficient cause of action." In reviewing the complaint, we must "presume the truth of all well-pleaded facts in the complaint, along with any reasonable inferences derived therefrom." "Dismissal is proper only if the facts and allegations, so viewed, would nevertheless fail to afford plaintiff relief if proven."

Kaye v. Wilson-Gaskins, 227 Md. App. 660, 674 (2016) (quoting *Higginbotham v. Pub. Serv. Comm'n of Md.*, 171 Md. App. 254, 265-66 (2006) (additional quotation and citation omitted)). "When moving to dismiss, a defendant is asserting that, even if the allegations

of the complaint are true, the plaintiff is not entitled to relief as a matter of law." *Heist v. E. Sav. Bank, FSB*, 165 Md. App. 144, 148 (2005).

The law governing a trustee's entitlement to reimbursement for expenses is set forth in Md. Code (1974, 2017 Repl. Vol.), § 14-405 of the Estates and Trusts Article ("ET"). The statute provides, in relevant part, that "[e]xcept as otherwise provided in the registration, declaration, or other instrument of transfer creating the trust, or by court order, a trustee . . . [i]s entitled to **reimbursement from trust property** for reasonable expenses incurred in the performance of fiduciary services . . . ." ET § 14-405(m) (emphasis supplied). "Satisfaction of the trustee's right to indemnification can be accomplished by lien; that is, the trustee gains a security interest in the trust's assets upon incurring reasonable and proper expenses on the trust's behalf." *Hastings v. PNC Bank, NA*, 429 Md. 5, 28 (2012).

In this case, however, Mestre sought reimbursement through the imposition of a lien on the Property. Critically, the Delaware Court of Chancery had ruled that the Trust held no interest in the Property. Mestre cites no authority to support the position that a lien may be imposed on non-trust property to pay a trustee's expenses. Indeed, such a position would defy logic. Instead, Mestre asserts that the circuit court erred by relying upon the Delaware court's ruling in the quiet title action.

Mestre contends that the Delaware court's ruling in the quiet title action should not have been given effect in Maryland because the time for filing a notice of appeal had not yet expired and that the circuit court erred by concluding that the Delaware order was final.

Under Delaware law, "[t]he question of whether an opinion embodies a final decision depends on whether the judge has or has not clearly declared his intention in this respect in his opinion. If the language of the judgment evidences the judge's intention that the judgment be final, then the judgment is final." *Plummer v. R.T. Vanderbilt Co.*, 49 A.3d 1163, 1167 (Del. 2012) (quotations and citations omitted). The Court of Chancery's April 26, 2018 order in the quiet title action provides that the "IT IS HEREBY ORDERED" that the Property is owned by Albert, Robert, and David Branson and that "Vincent Branson, Lee Mestre, and the 10 North Fourth Street Trust hold no interest in the subject property as of the date of this Order." The order further provides that "[t]he entire title is vested solely in Albert E. Branson, David J. Branson, and Robert J. Branson, as tenants-in-common, as of this date." The order concludes, "IT IS SO ORDERED this 26th day of April, A.D., 2018." The language clearly evidences the judge's intention that the judgment be final.

The Full Faith and Credit Clause, set forth in Article IV of the United States Constitution, provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." *Inrock Drilling Sys., Inc. v. Drill Tech, Inc.*, 223 Md. App. 771 (2015); *see also* Md. Code (1974, 2013 Repl. Vol.) § 11-801 of the Courts & Judicial Proceedings Article ("CJP") (setting forth the Uniform Enforcement of Foreign Judgments Act). Section 11-804 of the Courts and Judicial Proceedings Act sets forth the grounds for a stay of enforcement of a foreign judgment pending on appeal:

> The court shall stay enforcement of the foreign judgment until an appeal is concluded, the time for appeal expires, or a stay of execution expires or is vacated if the judgment debtor:
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> > (1) Shows the court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted; and
> >
> > (2) Proves that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

Mestre requested before the circuit court the opportunity to brief the status of the Delaware appeal, but the circuit court denied Mestre's motion. The circuit court observed that the Delaware Chancery court had issued its order in the quiet title action on April 26, 2018. The circuit court observed that the Delaware court had "ruled in April" and the decision had "neither been stayed nor bonded since then." The circuit court explained, "I probably could reasonably infer that those ships have sailed."[2]

On appeal, Mestre asserts that there is no deadline for the filing of a motion to stay under Delaware law and that she could have filed a motion to stay the Delaware quiet title judgment subsequent to the June 8, 2018 hearing in the circuit court. At the time the circuit

[2] At the time of the hearing before the circuit court, over thirty days had passed since the Court of Chancery's ruling. Under Delaware law, a notice of appeal must be filed within thirty days of the Court of Chancery's ruling. *See* Del. Code Ann. Tit. 10, § 145 ("No appeal from a final judgment or decree of the Court of Chancery shall be received or entertained in the Supreme Court unless the praecipe or notice of appeal is duly filed in the office of the Clerk thereof within 30 days after the date of the judgment or decree."). The circuit court was advised there had been "some technical problem" with the notice of appeal and the Delaware court permitted the resubmission of the notice of appeal by June 14, 2018. Mestre and Branson indeed resubmitted the notice of appeal and the appeal in Delaware proceeded.

court issued its ruling in this case, however, the Delaware order in the quiet title action had not been stayed. In our view, this is dispositive. Because the Delaware order had not been stayed, the circuit court did not err by relying upon the Delaware Court of Chancery's determination that the Trust held no interest in the Property, and, therefore, that Mestre could not seek reimbursement of expenses via the imposition of a lien on the Property. [3]

Mestre emphasizes that the Supreme Court of Delaware observed that "the Court of Chancery did not make any ruling regarding the creation or validity of the Trust, and the Court [of Chancery's] decision quieting title to the cottage did not affect the Maryland Court's continuing jurisdiction over the Trust." In our view, this language fails to support Mestre's position that she was somehow entitled to place a lien on the Property. Regardless of the validity of the Trust itself and Maryland's continuing jurisdiction over it, the fact remains that the Delaware Court of Chancery quieted title in the Property in favor of David, Albert, and Robert Branson and determined that the Trust held no interest in the Property. The Trust may be valid, but it has no title to the Property per the Delaware court's ruling, nor has Mestre identified any evidence of other assets held by the Trust.[4]

[3] Regardless of any academic analysis we may undertake with respect to the status of foreign ruling in a case that is pending on appeal although not stayed, we emphasize that the Court of Chancery's ruling in the quiet title action has been affirmed by the Delaware Supreme Court. Even if we were to assume *arguendo* that the circuit court improperly relied upon the Court of Chancery's ruling in June of 2018, it is beyond dispute that the Court of Chancery's ruling, which was affirmed by the Delaware Supreme Court, is now entitled to enforcement in the Courts of Maryland.

[4] At the June 8, 2018 hearing before the circuit court, Vincent Branson stated that, in addition to the Property, the Trust "contain[ed . . . $5,000, [and] . . . the bank account for money . . . ." On appeal, Mestre makes no reference whatsoever to the $5,000.00 or

Mestre further asserts that the circuit court denied her due process when it dismissed her petition for fees without permitting her to present any evidence and pursuant to an oral motion rather than a written motion. The circuit court granted the appellees' motion to dismiss Mestre's petition pursuant to Maryland Rule 2-322(c) for failure to state a claim upon which relief could be granted. Contrary to Mestre's assertions, the court did not consider evidence and the motion was not construed to be a motion for summary judgment under Rule 2-501. Rather, the sole issue before the circuit court was a purely legal determination, namely, whether Mestre was entitled to obtain reimbursement for trustee expenses by the placing of a lien on non-Trust property.[5] Unlike Rule 2-501, Rule 2-322 contains no requirement that a motion be submitted in writing. We are further unpersuaded by Mestre's contention that the circuit court's ruling denied her due process. Mestre appeared at the hearing (albeit via telephone) and both she and her attorney were provided with the opportunity to be heard. The circuit court did not, therefore, violate Mestre's right to due process.

any other sum of money owned by the Trust. We recognize that if there were funds held by the Trust, those funds may have been relevant to Mestre's petition for fees, but because Mestre has not presented any appellate arguments relating to these issues, we shall not address the implications of any potential additional trust assets. *See Anne Arundel Cty. v. Harwood Civic Ass'n, Inc.*, 442 Md. 595, 614 (2015) ("'[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal.'") (quoting *Klauenberg v. State*, 355 Md. 528, 552 (1999)).

[5] Mestre asserts that there were "disputed facts," but our review of the record leads us to disagree with Mestre. To be sure, the parties disagree about certain underlying historical facts regarding the dispute regarding the Property, but there were no disputed facts relevant to the disposition of the legal issue before the court.

Finally, Mestre asserts that the circuit court violated the Maryland Code of Judicial Conduct by engaging in impermissible *ex parte* communications with a Delaware Vice Chancellor.[6] This issue, having been neither raised before nor decided by the circuit court, is not properly before us on appeal. *See* Maryland Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court . . . . "). Accordingly, we shall not address it.

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

[6] The alleged consultation arose not in the context of this fee petition case, but in an earlier case between the parties in Montgomery County.