

Circuit Court for Frederick County
Case No. C-10-CV-19-000152

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1154

September Term, 2019

SHERRIE LYNN SMITH

v.

TAMMY SUE KEYSER

Reed,
Wells,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: March 8, 2021

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

Sherrie Lynn Smith (“Smith”) appeals a decision of the Circuit Court for Frederick County upholding the denial of her Motion to Reconsider an Order dismissing her Petition to Remove Tammy Sue Keyser (“Keyser”) as Personal Representative of the Estate of the parties’ mother (“the Estate”). As most issues were not properly preserved for our review, we have rephrased slightly the two relevant questions as follows:

- I. Did the Circuit Court abuse its discretion in declining to reconsider and revise the Orphans’ Court’s dismissal of Smith’s Motion to Reconsider the Petition to Remove Personal Representative
- II. Did the Circuit Court abuse its discretion in upholding the Orphans’ Court’s award of attorneys’ fees?

For the reasons set forth below, we affirm the circuit court.

BACKGROUND & PROCEDURAL HISTORY

Keyser was designated by her mother, Peggy S. Keyser, in her will to be appointed her personal representative. Peggy Keyser died on April 15, 2015. Keyser was appointed Personal Representative of the Estate, and opened the Estate on April 20, 2015. The Estate was closed on May 26, 2015.

On August 24, 2018, Smith filed a Petition to Remove Keyser as Personal Representative of the Estate and Appointment of Smith as Successor Personal Representative of the Estate (“the Petition”) in the Orphans’ Court. Keyser subsequently filed a Motion to Dismiss the Petition, supported by an exhibit containing an opinion

from the Circuit Court reviewing Smith’s allegations in a separate case.¹ Smith failed to oppose the Motion to Dismiss or file a response. The Orphans’ Court granted the unopposed Motion to Dismiss on January 3, 2019. Smith did not appeal the Order, but instead filed a Motion to Reconsider, asking the Orphans’ Court to revise its grant of the unopposed Motion to Dismiss by changing the dismissal from with prejudice to without prejudice, and to vacate the award of attorneys’ fees to Keyser. The Orphans’ Court denied the motion, and Smith appealed to the Circuit Court for Frederick County. After a hearing, the court upheld the denial of the Petition by the Orphans’ Court.

This timely appeal follows.

DISCUSSION

This Court reviews the denial of a motion for reconsideration for abuse of discretion. *Miller v. Mathias*, 428 Md. 419, 438 (2012). Abuse of discretion occurs “where the ruling under consideration is ‘clearly against the logic and effect of facts and inferences before the court,’ or when the ruling is ‘violative of fact and logic.’” *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (Citations omitted). “An appeal from the denial of a motion asking the court to exercise its revisory power is not necessarily the same as an appeal from the judgment itself.” *Estate of Vess*, 234 Md. App.

¹ Smith alleged that there was newly discovered assets in the Estate that rightfully belonged to her. Smith sought to reopen the Estate to assess funds in the Estate that had not been previously accounted for. After the Orphans’ Court denied Smith’s Petition to Reopen the Estate, she appealed to the Circuit Court. While that case was pending, Smith filed this Petition. The Circuit Court ultimately determined that there was no indication that there were any assets that qualify as newly discovered property and affirmed the Orphans’ Court.

173, 204 (2017) (Internal citations and quotations omitted). “The scope of review is limited to whether the trial judge abused his [or her] discretion in declining to reconsider the judgment.” *Id.* (Internal citations and quotations omitted). “The trial judge has boundless discretion not to indulge this all-too-natural desire to raise issues after the fact that could have been raised earlier but were not or to make objections after the fact that could have been made earlier but were not.” *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 484 (2002).

Smith argues that the court erred by sustaining the Orphans’ Court’s dismissal of the Petition with prejudice and awarding attorneys’ fees. Smith spends most of her argument explaining that she had a good faith basis for filing the Petition, thus the court should not have denied her appeal on the basis that she filed her Petition without substantial justification. Despite numerous arguments directed towards the Orphans’ Court and the failure to hold a hearing on her Petition, the only relevant judgment before us is the Circuit Court’s order declining to revise the order to dismiss with prejudice and award attorneys’ fees.

Notwithstanding the fact that the circuit court did not set forth reasoning for the determination that Smith’s Petition was filed without substantial justification, “[t]he exercise of a judge’s discretion is presumed to be correct, he is presumed to know the law, and is presumed to have performed his duties properly.” *Cobrand v. Adventist Healthcare, Inc.*, 149 Md. App. 431, 445 (2003 (Internal citations omitted)). The circuit court’s is not required to state “each and every consideration or factor” and the failure to

do so does not constitute an abuse of discretion “so long as the record supports a reasonable conclusion that appropriate factors were taken into account in the exercise of discretion.” *Id.*

In making the decision regarding Smith’s Motion for Reconsideration, the circuit court should have considered “whether there was a reasonable indication that [Smith] had a meritorious defense.” *Grimberg v. Marth*, 338 Md. 546, 554 (1995). At a hearing held on February 7, 2019, the court heard arguments from both parties. Keyser detailed the convoluted history between the parties, including Smith’s numerous attempts to reopen the estate. Keyser reviewed the comprehensive opinion by Judge Nicklas who determined there was no basis to conclude there was newly discovered property, and thus no asset necessitating reopening the estate. In coming to this determination, Judge Nicklas reviewed every asset that Smith claimed were newly discovered and all records produced, and could not find “a single indication” that any assets qualify as newly discovered property, “so that even if the personal representative had been dismissed, there exists no asset necessitating reopening a closed estate.” The court also reviewed Keyser’s Motion to Dismiss the Petition that was unopposed as Smith failed to file a response or opposition. After reviewing this information, the court clearly determined that Smith did not have a meritorious claim, and the Petition was filed without substantial justification.

We review an award of attorneys’ fees under an abuse of discretion standard. *Steinhoff v. Sommerfelt*, 144 Md. App. 463, 487 (2002). In assessing the award for attorneys’ fees, the court reviewed the aforementioned evidence, in addition to the

Affidavit from Keyser’s attorney, detailing the attorney fees incurred for opposing the Petition to Remove. The Affidavit also included a timesheet illustrating counsel’s services rendered. Smith admitted she deliberately did not oppose the Motion to Dismiss because it was “an exercise in futility” and would have willingly dismissed the Petition had Keyser requested this. The court determined that the unjustified filing of the Petition warranted the imposition of attorneys’ fees. After reviewing all of the evidence, we find no abuse of discretion in its award of attorneys’ fees to Keyser.

We are satisfied from our review of the record that the Circuit Court did not abuse its discretion in declining to entertain Smith’s Motion to Reconsider and awarding attorneys’ fees.

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