

Orphans' Court for Talbot County  
Estate No. 21364

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 1299

September Term, 2022

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IN RE: ESTATE OF FREDRICK WILLIAM  
HEROLD

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Berger,  
Shaw,  
Eyler, James R.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Berger, J.

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Filed: March 1, 2024

\* 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 September 19, 2022, Fredrick William Herold, Jr. (“Appellant”) appealed from orders, entered by the Orphans’ Court for Talbot County, dismissing his exceptions to a final administration account filed in the estate of the late Fredrick William Herold, Sr. (“Decedent”). That same day, Appellant filed a “Request for Waiver of Prepaid Costs for Assembling the Record for an Appeal” (“Waiver Request”) via Form CC-DC-091. The orphans’ court denied that request on November 1, 2022. Appellant noted another appeal and presents one question (containing three subparts) for our review, which we have rephrased as follows:<sup>1</sup>

Whether the orphans’ court abused its discretion by denying Appellant’s Waiver Request without adequately explaining its reasons for doing so?

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<sup>1</sup> In his brief, Appellant presented the issue as follows:

1. Did the Talbot County Orphans’ Court abuse its discretion by denying my request to waive its costs to prepare the record for appeal?
  - a. Did the Orphans’ Court provide a legally sufficient explanation evidencing a finding on the merits regarding income eligibility for a waiver pursuant to Md. Rule 1-325.1 and Md. Rule 1-325?
  - b. Does the Appellant’s household income meet MLSC income guidelines for a waiver of prepaid appellate costs pursuant to Md. Rule 1-325.1 and Md. Rule 1-325?
  - c. Did the Orphans’ Court err when it failed to identify errors on Form CC-DC-091 and failed to allow me the opportunity to correct those alleged errors?

We answer this question in the negative and shall therefore affirm the judgment of the orphans' court.

### **BACKGROUND**

While the record before us does not disclose the parties' relation to the Decedent, in her appellate brief, Kristina V. Herold ("Appellee") represents that Appellant and she were his son and wife, respectively. On July 11, 2022, a "Sixth and Final Administrative Account" in the matter of the Decedent's estate was filed in the orphans' court. The court approved that account the following day. On August 1, 2022, Appellant filed exceptions to the account, which the court evidently overruled.<sup>2</sup>

Rather than seek *de novo* review of the orphans' court's judgment in the circuit court, Appellant noted a direct appeal to this Court on September 19, 2022 (the "Underlying Appeal").<sup>3</sup> Appellant's notice of appeal was accompanied by the Waiver

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<sup>2</sup> The relevant order was omitted from the record before us.

<sup>3</sup> Maryland Code (1973, 2020 Repl. Vol.), § 12-501(a) of the Courts and Judicial Proceedings Article ("CJP") permits "[a] party [to] appeal to the [Appellate Court of Maryland] from a final judgment of an orphans' court." Rather than taking a direct appeal to this Court, CJP § 12-502(a)(1) authorizes a *de novo* appeal to the circuit court from the "final judgment of an orphans' court" and provides:

(a)(1)(i) Instead of a direct appeal to the [Appellate Court of Maryland] under § 12-501 of this subtitle, a party may appeal to the circuit court for the county from a final judgment of an orphans' court.

(ii) The appeal shall be heard *de novo* by the circuit court.

Request, wherein he affirmed under penalty of perjury that “[t]here ha[d] been no material change in [his] financial situation since the waiver of prepaid costs was granted.”<sup>4</sup>

Apparently dissatisfied with the sufficiency of Appellant’s Waiver Request, the orphans’ court entered an order on October 4, 2022, which provided:

ORDERED, that on or before **November 1, 2022**, the Appellant, Fredrick W. Herold, Jr., provide additional information to support his affidavit of insufficient income including, but not limited to, pay stubs and/or documentation of any and all income received by all household members for the past three months (July 2022, August 2022, September 2022); all bank account statements for all household members for the same months; details of all monthly income and expenditures of all household members for the same months; the Appellant’s federal and state income tax returns for 2021 (including spouse’s tax returns if not filed jointly); and any additional documents that the Appellant contends support his affidavit of financial inability to pay court costs.

(Emphasis retained).

On October 24, 2022, Appellant supplemented his Waiver Request with affidavits executed by his spouse, Julie Herold, and himself, as well as both Julie’s pay stubs and his

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(iii) The de novo appeal shall be treated as if it were a new proceeding and as if there had never been a prior hearing or judgment by the orphans’ court.

(iv) The circuit court shall give judgment according to the equity of the matter.

(2) This subsection does not apply to Harford County, Howard County, or Montgomery County.

<sup>4</sup> As we will discuss *infra*, the record does not reflect that a prior waiver request was in fact granted.

bank statements for the preceding three months.<sup>5</sup> In his supplemental affidavit, Appellant averred:

1. The bank statements I have submitted reflect all of the income I received during the period requested by this [c]ourt between July 1, 2022[,] and September 30, 2022. I have not received any additional income during that time.
2. I have not made any alterations to the figures reported on my bank statements.
3. My wife and I have not filed or prepared a 2021 tax return.

In her affidavit, Julie attested:

1. I do not consent to the submission of my personal financial records in this matter because I am not an interested party and I have no control or direct interest in this litigation.
2. My bank records are private and do not evidence any additional income that is not already reported on my pay stubs. . . .
3. My husband and I have not filed or prepared a 2021 tax return.

The court denied Appellant’s Waiver Request on November 1, 2022, ruling:

ORDERED that the Request for Waiver of Prepaid Costs for Assembling the Record for an Appeal is DENIED for failure to fully complete Form CC-DC-091 and comply with this [c]ourt’s [o]rder dated October 4, 2022; and it is further

ORDERED that the Appellant has ten (10) days from the date of this Order to pay the costs associated with assembling the record. If the unwaived costs are not paid in full within ten (10) days, then the appeal will be considered withdrawn.

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<sup>5</sup> Because Appellee and Julie Herold share a surname, we will refer to the latter by her first name for purposes of clarity. We intend no disrespect by the informality.

Two days after entry of that order, the Talbot County Register of Wills sent Appellant a statement of costs associated with assembling the record for appeal. In a letter accompanying that statement, the register of wills advised him: “All monies must be received by this office on or before November 11, 2022, in order for the record to be transferred to the [Appellate Court of Maryland,] which must occur on or before November 19, 2022.” (Emphasis omitted). Rather than pay the required fee, Appellant noted the instant appeal on November 9, 2022.

### **DISCUSSION**

Appellant contends that the orphans’ court abused its discretion by denying his Waiver Request without “articulat[ing] a finding regarding [his] ability to afford duplication of the record for appeal.” Appellee responds that this case should be dismissed as moot because the Underlying Appeal was withdrawn and can no longer be revived. Alternatively, she rejoins that the court properly exercised its discretion “because . . . Appellant failed to satisfy the requirements of Maryland Rule 1-325.1 [by] fil[ing] an incomplete waiver request and fail[ing] to provide all supplemental documents the [o]rphans’ [c]ourt requested.”

#### ***Mootness***

As a preliminary matter, we must address whether the instant appeal should be dismissed as moot. According to Appellee, because Appellant failed to pay the fees pertaining to the Underlying Appeal within ten days of the date of the orphans’ court’s order denying his Waiver Request, the Underlying Appeal was withdrawn by operation of

law on November 11. As Appellant did not note a second appeal within 30 days of that alleged withdrawal, Appellee asserts that he waived the right to do so. Thus, Appellee reasons that even if we were to “reverse[] the [o]rphans’ [c]ourt and direct[] it to grant . . . Appellant’s . . . Waiver [Request],” our doing so “would not change the fact that the Underlying Appeal . . . cannot move forward,” rendering moot “all questions related to the [o]rphans’ [c]ourt’s decision to deny the . . . Waiver [Request.]”

A case is moot when “past facts and occurrences have produced a situation in which, without any future action, any judgment or decree the court might enter would be without effect.” *Cane v. EZ Rentals*, 450 Md. 597, 611 (2016) (quoting *Hayman v. St. Martin’s Evangelical Lutheran Church*, 227 Md. 338, 343 (1962)). See also *Tempel v. Murphy*, 202 Md. App. 1, 16 (2011) (“The test for mootness is whether a case presents a controversy between the parties for which the court can fashion an effective remedy.”). “This Court ordinarily does not render judgment on moot questions.” *La Valle v. La Valle*, 432 Md. 343, 351 (2013). Rather, “we generally dismiss moot actions without a decision on the merits.” *Green v. Nassif*, 401 Md. 649, 655 (2007) (quoting *Dep’t of Human Res., Child Care Admin. v. Roth*, 398 Md. 137, 143 (2007)).

Even if we were to assume, as does Appellee, that the Underlying Appeal was dismissed, the instant appeal would not be moot.<sup>6</sup> If the orphans’ court had not denied his Waiver Request, Appellant would not have been required to pay the unwaived costs

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<sup>6</sup> It is not at all clear from the record that the orphans’ court properly dismissed the instant appeal pursuant to Maryland Rule 1-325(c)(2)(C),

associated with assembling the record, and his failure to do so would not have constituted a valid basis for dismissing the Underlying Appeal. Thus, assuming, as Appellant contends, that the orphans' court abused its discretion in denying the Waiver Request, so too would it have erred in dismissing the Underlying Appeal (absent an independent basis for doing so). In other words, if we were to vacate or reverse the former judgment, the latter could not stand, and Appellant would be free to mount an appellate challenge to the orphans' court's denial of his exceptions to the final administration account of the Decedent's estate.<sup>7</sup> Accordingly, we decline Appellee's invitation to dismiss this appeal as moot and proceed instead to the merits of Appellant's argument.

### *The Merits*

Having dispensed with Appellee's mootness agreement, we turn now to the merits of this appeal. Appellant advances three interrelated arguments in support of his contention that the orphans' court abused its discretion by denying the Waiver Request. First, he claims that the court failed to "articulate a finding regarding [his] ability to afford duplication of the record for appeal" and thus "did not make the required financial determination[.]" Absent the orphans' court's first-level factual findings, Appellant next asserts that the denial was a *per se* abuse of the court's discretion, and he asks us to

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<sup>7</sup> We note in passing that assuming the notice of the Underlying Appeal was properly dismissed and Appellant failed to file a notice of appeal within 30 days thereafter, as required by Maryland Rule 8-202(a), that failure would not, as Appellee seems to suggest, deprive us of jurisdiction over the Underlying Appeal. *See Rosales v. State*, 463 Md. 552, (2019) ("Maryland Rule 8-202(a) is a claim-processing rule, and not a jurisdictional limitation on this Court.").

determine *de novo* whether his Waiver Request and supporting exhibits sufficiently established his indigence and consequent inability to pay the prepaid appellate cost. Finally, Appellant complains that the orphans’ court abused its discretion by “deny[ing] [his] [W]aiver [R]equest without first al[ert]ing [him] of deficiencies or requesting alternative documentation.”

Appellee responds that the court properly exercised its discretion in denying the Waiver Request “because . . . Appellant failed to satisfy the requirements of Maryland Rule 1-325.1 when he filed an incomplete waiver request and failed to provide all supplemental documents the [o]rphans’ [c]ourt requested.” With respect to Appellant’s assertion that he was entitled to notice of and an opportunity to cure any deficiencies in his Waiver Request before it was denied, Appellee rejoins that the court was “not required to point out [such] deficiencies . . . or otherwise aid . . . Appellant in his attempt to waive appellate fees,” and was, in fact, “statutorily precluded from doing so.”

“The grant or denial of [a] waiver application is vested within the sound discretion of the trial court and will not be disturbed absent a clear abuse of discretion.” *Davis v. Mills*, 129 Md. App. 675, 679 (2000). *See also Torbit v. State*, 102 Md. App. 530, 536 (1994). A court abuses its discretion when its decision is “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Nash v. State*, 439 Md. 53, 67 (2014) (quotation marks and citations omitted). An abuse of discretion also occurs “[w]hen a court has discretion and does not exercise it[.]” *State v. Alexander*, 467 Md. 600, 623 (2020). *See also 101 Geneva*

*LLC v. Wynn*, 435 Md. 233, 241-42 (2013) (“The court’s failure to exercise . . . discretion . . . ‘is, itself, an abuse of discretion[.]’” (quoting *G.E. Capital Mortg. Servs., Inc. v. Edwards*, 144 Md. App. 449, 455 (2002))). Accordingly, an appellate court will generally vacate or “reverse a decision that is committed to the sound discretion of a trial judge if . . . unable to discern from the record that there was an analysis of the relevant facts and circumstances that resulted in the *exercise* of discretion.” *Livingstone v. Greater Washington Anesthesiology & Pain Consultants, P.C.*, 187 Md. App. 346, 389 (2009) (emphasis retained) (quoting *Maddox v. Stone*, 174 Md. App. 489, 502 (2007)). *See also Nelson v. State*, 315 Md. 62, 70 (1989) (“If the judge has discretion, he must use it and *the record must show that he [or she] used it.*” (emphasis added)).

Maryland Rule 1-325.1 governs waiver of prepaid appellate costs in civil suits, and provides, in pertinent part:

(c) **Waiver.** —

(1) **Generally.** Waiver of prepaid costs under this Rule shall be governed generally by section (d) or (e) of Rule 1-325, as applicable, except that:

(A) the request for waiver of both the lower and appellate prepaid costs shall be filed in the lower court with the notice of appeal;

\* \* \*

(C) waiver of the fee charged for assembling the record shall be determined in the lower court;

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(F) if the appellant received a waiver of prepaid costs under Rule 1-325(e), the lower court . . . *may* rely on a supplemental affidavit of the appellant attesting that the information supplied in the affidavit provided under Rule 1-325(e) remains accurate and that there has been no material change in the appellant’s financial condition or circumstances.

Rule 1-325(e), in turn, provides:

**(e) Waiver of Prepaid Costs by Court. —**

(1) **Request for Waiver.** — An individual unable by reason of poverty to pay a prepaid cost and not subject to a waiver under section (d) of this Rule may file a request for an order waiving the prepayment of the prepaid cost. The request shall be accompanied by (A) the pleading or paper sought to be filed [and] (B) an affidavit substantially in the form approved by the State Court Administrator, posted on the Judiciary website, and available in the Clerks’ offices . . . .

(2) **Review by Court; Factors to be Considered.** — *The court shall review the papers presented and may require the individual to supplement or explain any of the matters set forth in the papers.* In determining whether to grant a prepayment waiver, *the court shall consider:*

(A) *whether the individual has a family household income that qualifies under the client income guidelines for the Maryland Legal Services Corporation for the current year, which shall be posted on the Judiciary website; and*

(B) *any other factor that may be relevant to the individual’s ability to pay the prepaid cost.*

(3) **Order; Payment of Unwaived Prepaid Costs.** — If the court finds that the party is unable by reason of poverty to pay the prepaid cost and that the pleading or paper sought to be filed does not appear, on its face, to be frivolous, it shall enter an order waiving prepayment of the prepaid cost. *In its order, the court shall state the basis for granting or denying the request for waiver.*

(Emphasis added).

We first addressed the issue of whether -- and to what extent -- courts must explain their reasons for denying requests to waive prepaid appellate costs over two decades before Maryland Rule 1-325 explicitly required that they do so. In *Torbit, supra*, 102 Md. App. at 534-36, we held that a court abuses its discretion by denying a prepayment waiver without providing an adequate written explanation of its reasons for doing so. *See also Davis*, 129 Md. App. at 679. Such an explanation is necessary, we reasoned, to permit a reviewing court to “determine whether the court’s decision amounts to an abuse of its discretion.” *Torbit*, 102 Md. App. at 536. We explained, however, that “the requirement . . . should not be an onerous one.” *Id.* at 537. Thus, while the circuit court’s summary denial of the waiver request in that case was deficient (““Denied the 27th day of January, 1994[.]””), we opined that “a brief, one line notation, such as ‘affidavit does not show that applicant is indigent’ or ‘complaint is patently meritless’ will normally suffice.” *Id.* at 536, 537. Thus, a written rationale for denying a waiver request need only be sufficient to permit meaningful appellate review of the ruling court’s discretionary call.

In *Davis, supra*, we reaffirmed *Torbit*’s holding. The plaintiff in that case filed a complaint in circuit court alleging various torts against the defendant. Accompanying that complaint was a motion requesting that the court waive “court costs and fees.” *Davis*, 129 Md. App. at 677. In support of his motion, the defendant “certified that he was unmarried, unemployed, owned no assets, was unable to pay the filing fees, and attached a financial statement[.]” *Id.* In denying the defendant’s motion, the court simply stated: ““A civil

action of this nature must be accompanied by the payment of \$90 court costs before processing.” *Id.* In reversing the circuit court’s ruling, we reasoned: “From this statement, we are unable to discern, within the framework of [CJP §7-201(a)] and [R]ule [1-325], the basis for the denial.” *Id.* at 680. Accordingly, we held “that the trial court’s refusal to explain its reasons for denying the motion constituted an abuse of discretion.” *Id.*

In this case, the orphans’ court neither summarily denied Appellant’s Waiver Request as did the court in *Torbit*, nor “simply appl[ied] some predetermined position” as did the court in *Davis Maddox*, 174 Md. App. at 502. Rather, the court explained that it denied the Waiver Request because Appellant neither completed the CC-DC-091’s affidavit of income nor complied with its ensuing order to furnish specific documents to corroborate his claim of indigence. On its face, this is precisely the sort of “one line notation” of which this Court has expressed its approval. *See Torbit*, 102 Md. App. at 537 (“[A] brief, one line notation, such as ‘affidavit does not show that applicant is indigent’ . . . will normally suffice.”).

Form CC-DC-091 contains two affidavits captioned “Affidavit of Continuing Eligibility” and “Affidavit of Income,” respectively, and instructs waiver applicants to complete the latter affidavit only if the former “does not apply[.]” (Emphasis omitted). Appellant completed the affidavit of continuing eligibility and in so doing affirmed that “[t]here ha[d] been no material change in [his] financial situation since the waiver of prepaid costs was granted.” Having completed this affidavit, Appellant left blank the affidavit of income, which requires applicants to provide itemized lists of (i) the sources

and corresponding amounts of their gross household income, (ii) the value of their assets, as well as (iii) the amount of their debts. The record does not reflect, however, that the orphans' court previously granted Appellant a waiver of prepaid costs.<sup>8</sup> In fact, the docket entries indicate that the orphans' court denied all of the waiver requests Appellant filed in his prior appeals in this case.

As it was merely permitted -- rather than required -- to order Appellant to supplement his Waiver Request, the orphans' court would not have abused its discretion by denying it outright. *See* Md. Rule 1-325(e)(2) ("The court shall review the papers presented and *may* require the individual to supplement or explain any of the matters set forth in the papers." (Emphasis added)). Instead, the court afforded Appellant an additional

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<sup>8</sup> In his brief, Appellant asserts: "Previously, this Court, the [Supreme] Court of [Maryland], and the Baltimore County and City Circuit Courts[] waived their costs due to indigence." In support of that claim, Appellant directs us to his record extract, which contains copies of four orders, none of which was entered by either the Orphans' or the Circuit Court for Talbot County. In fact, three of those orders were issued in cases distinct from the one now before us on appeal. The Supreme Court of Maryland entered the remaining order in a prior appeal of this case and thereby waived prepayment of the filing fee for Appellant's previously filed petition for certiorari (which petition the Court denied). The record before us, however, neither includes these orders nor reflects that their existence was ever made known to the orphans' court. Their inclusion in Appellant's record extract is, therefore, improper. *See Cochran v. Griffith Energy Serv. Inc.*, 191 Md. App. 625, 663 ("Facts outside the record cannot be argued to or considered by the trial court, and thus have no influence on its judgment. Accordingly, an appellate court must confine its review to the evidence actually before the trial court when it reached its decision."), *cert. denied*, 415 Md. 115 (2010); *Rollins v. Cap. Plaza Assocs., L.P.*, 181 Md. App. 188, 200 (An appellant "is 'not entitled to supplement the record by inserting into the record extract such foreign matter as she may deem advisable.'" (cleaned up) (quoting *Comty. Realty Co. v. Siskos*, 31 Md. App. 99, 102 (1976))), *cert. denied*, 406 Md. 746 (2008); *Campbell v. Lake Hallowell Homeowners Ass'n*, 152 Md. App. 139, 146 n.2, *cert. denied*, 378 Md. 614 (2003). Because these "documents do not form a legitimate portion of the record compiled in the trial court, . . . we cannot consider them." *Rollins*, 181 Md. App. at 200.

opportunity to “provide additional information to support his affidavit of insufficient income[.]” In so doing, the court instructed Appellant to submit, among other things:

[D]ocumentation of any and all income received by all household members for the past three months . . . ; *all bank account statements for all household members for the same months*; details of all monthly income and expenditures of all household members for the same months; [and] *the Appellant’s federal and state income tax returns for 2021* (including spouse’s tax returns if not filed jointly)[.]

(Emphasis added). That directive clearly coincided with Rule 1-325(e)(2), which expressly requires courts to consider “whether the individual has a *family household income* that qualifies under the client income guidelines.” Md. Rule 1-325(e)(2)(A). As he himself concedes, however, Appellant failed to comply with the court’s order by submitting neither Julie’s bank account statements nor their 2021 tax returns. Having thus twice deprived the court of information it otherwise would have been required to consider in making findings of fact regarding his alleged indigence, Appellant cannot now reasonably maintain that the court abused its discretion by declining to pluck such facts from thin air.

Finally, Appellant was not entitled to further supplement his Waiver Request with additional information in support thereof. As discussed *supra*, the orphans’ court, in its discretion, afforded Appellant an opportunity to do so in its October 4th order, which specified the additional information that he was required to produce. As Appellant failed to fully comply with that order, the court’s decision to withhold a second such opportunity was neither “well removed from any center mark” nor “beyond the fringe of what [we]

deem[] minimally acceptable.” *Nash*, 439 Md. at 67 (quotation marks and citation omitted).

For the foregoing reasons, we affirm the judgment of the orphans’ court.

**JUDGMENT OF THE ORPHANS’ COURT  
FOR TALBOT COUNTY 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/1299s22cn.pdf>