

Orphans' Court for Baltimore County
Estate No. 205199

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

NO. 1349, SEPTEMBER TERM, 2020

SHEILAH F. BROUS

v.

FARIDEH MIRMIRAN

NO. 388, SEPTEMBER TERM, 2021

IN RE: ESTATE OF FRED F. MIRMIRAN

(On Motion for Reconsideration)

Graeff,
Kehoe
Adkins, Sally D.,
(Senior Judge, Specially Assigned)
JJ.

Opinion by Kehoe, J.

Filed: January 27, 2022

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. *See* Md. Rule 1-104.

In these consolidated appeals, we consider three judgments rendered by the Orphans' Court of Baltimore County in the Estate of Fred Fereidoun Mirmiran. The appellant and cross-appellee is Sheilah F. Brous, one of Mr. Mirmiran's children. The appellee and cross-appellant is Farideh Mirmiran, his surviving spouse and the personal representative/special administrator of his estate.

Ms. Brous raises three issues for our consideration, which we have reordered and reworded for purposes of analysis:

Appeal No. 1349, Sept. Term 2020:

1. Did the orphans' court err in awarding interim counsel fees and expenses to Ms. Mirmiran's attorneys?

Appeal No. 388, Sept. Term 2021:

2. Did the orphans' court err when it granted in part and denied in part Ms. Brous's petition to transmit issues to the Circuit Court for Baltimore County?
3. Did the orphans' court err in denying Ms. Brous's petition for a supplemental inventory and accounting of the Estate's assets?¹

¹ Ms. Brous, who is the appellant/cross-appellee, articulates the issues as follows:

1. Did the Orphans' Court err in denying Appellant's Petition to require Appellee to file a supplemental inventory and accounting of the Estate's assets?
2. Did the Orphans' Court err in denying Appellant's Petition to transmit all issues of fact that had been raised in her Caveat Petition to the Circuit Court for trial before a jury?

In her cross-appeal, Ms. Mirmiran raises an additional issue, which we have reworded:

Did the orphans' court err in transmitting issues to the circuit court as to matters not in genuine dispute?

For the reasons that follow, we conclude:

(1) The orphans' court did not err when it granted the petition for interim attorneys' fees.

(2) The court erred when it did not transmit some of the issues requested by Ms. Brous for the reasons stated by the court.

(3) The orphans' court did not abuse its discretion when it denied Ms. Brous's petition for a supplemental inventory and accounting of the Estate's assets.

3. Did the Orphans' Court err in awarding interim counsel fees and expenses to the Personal Representative's attorneys?

Ms. Mirmiran, who is the appellee/cross-appellant, sets out the following issues:

1. Whether the Orphans' Court properly declined to transmit issues to the Circuit Court that were not subject to any genuine dispute?

2. Whether the Orphans' Court erred in transmitting issues to the Circuit Court on which there is no genuine dispute?

3. Whether the Orphans' Court properly denied Ms. Brous' Petition for an Accounting?

4. Whether the Orphans' Court properly authorized Mrs. Mirmiran to pay fees generated in connection with her successful defense of the Petition to Remove?

BACKGROUND

It isn't necessary for us to resolve any of the numerous factual disputes between the parties to address the issues presented in this appeal. What follows provides context to the parties' appellate contentions.

For many years prior to his death, Fred Mirmiran was a successful businessman and investor. He was a principal in Johnson, Mirmiran & Thompson, Inc. ("JMT"), an engineering firm headquartered in Hunt Valley. Mr. and Ms. Mirmiran had been married for more than thirty years prior to his death in 2019. Ms. Brous is one of his children from a previous marriage.

In December 2016, Mr. Mirmiran and Ms. Mirmiran signed a document titled "Asset Transfer Agreement." In it, they waived their respective rights to claim elective shares of one another's estates pursuant to former title 2, subtitle 3 of the Estates and Trusts Article. Additionally, Mr. Mirmiran agreed to transfer to Ms. Mirmiran 50% of his interests in various investment accounts identified in the agreement. The value of the assets to be transferred to Ms. Mirmiran was stated to be \$3,629,184. Section 3.3 of the agreement provided that none of Mr. Mirmiran's remaining assets were to "pass" to Ms. Mirmiran "unless [he] structures his testamentary plan so that [she] inherits any or all of those assets." The agreement also recites that the parties were represented by separate counsel in connection with its negotiation and execution. Marshall B. Paul, Esquire, represented Mr. Mirmiran, and Jeffrey D. Renner, Esquire, was Ms. Mirmiran's counsel.

About nine months after the asset transfer agreement was executed, Mr. Paul referred Mr. Mirmiran to one of his partners, Jeffrey S. Glaser, Esquire, for advice and assistance in preparing a will and other estate planning documents. Messrs. Glaser and Mirmiran met on September 28, 2017 to discuss these matters and, on November 17, 2017, Mr. Glaser mailed a draft will to his client. It does not appear that Mr. Mirmiran had any further communications with Mr. Glaser regarding the terms of the proposed will. At some point, Mr. Mirmiran signed the draft version of the will. On July 10, 2018, he asked Richard Smulovitz and Kathryn Hammel to attest to his signature. They did so. Messrs. Mirmiran and Smulovitz had been close friends and coworkers for many years and Ms. Hammel had been Mr. Mirmiran's administrative assistant, also for many years. Under the terms of the 2018 will, all of Mr. Mirmiran's property passed to Ms. Mirmiran if she survived him. Ms. Mirmiran and Paul were designated as co-personal representatives.²

Mr. Mirmiran passed away on June 20, 2019. Shortly thereafter, Ms. Mirmiran submitted the 2018 will for probate. The orphans' court opened an administrative probate proceeding on September 4, 2019. With this as background, we turn to an overview of the relevant proceedings in the orphans' court.

² After Mr. Mirmiran's death, Mr. Paul renounced his right to be appointed as co-personal representative.

Ms. Mirmiran filed an inventory on February 27, 2020, which stated that the assets of the estate had a total value of \$291,878.41. On the next day, Ms. Brous filed a petition to caveat the will. In it, she asserted that:

- the value of her father's assets were substantially in excess of the figure reported in the inventory and could be as high as \$50 million;
- the 2018 will was not signed by him;
- the 2018 will was not attested;
- the 2018 will was neither read by him nor read to him;
- Mr. Mirmiran lacked testamentary capacity, at the time the 2018 will was executed; and
- Mr. Mirmiran's signature on the will had been procured by undue influence, fraud and deceit practiced upon him by Ms. Mirmiran and unnamed "others acting in concert with her."

On March 3, 2020, Ms. Brous filed a petition to remove Ms. Mirmiran as personal representative. After a hearing, the orphans' court denied the petition on September 24, 2020. On October 6, 2020, Ms. Brous filed a notice of appeal of the orphans' court's decision to the circuit court. She dismissed this appeal on November 6, 2020.

On March 23, 2020, Mrs. Mirmiran filed a response to the caveat petition. In it, she denied each of the allegations contained in Ms. Brous's caveat petition pertaining to the validity of the 2018 will, its execution, Mr. Mirmiran's testamentary capacity, and that his signature was obtained by fraud, undue influence or deceit. On the same day, the orphans' court issued a scheduling order that contained the following deadlines:

- disclosure of Ms. Brous's experts: July 23, 2020;
- disclosure of Ms. Mirmiran's experts: August 24, 2020;

- completion of all discovery: September 23, 2020
- petitions to transmit issues: October 23, 2020.

Ms. Mirmiran filed requests for production of documents and interrogatories. Ms. Brous did not respond to this discovery in a timely fashion.³

On July 6, 2020, Mrs. Mirmiran filed a petition for an interim award of attorney’s fees along with her first administration account. Ms. Brous filed exceptions to the fee request. On December 22, 2020, the orphans’ court granted the request for attorney’s fees in part and deferred a decision on the remainder. We will address this in part 1 of our analysis.

On September 29, 2020, that is, after the close of discovery but before the deadline for filing petitions to transmit issues, Ms. Mirmiran filed a motion for summary judgment as to all issues raised in the caveat petition. After a hearing the orphans’ court denied the motion on December 22, 2020. The court’s ruling is the subject of part 2 of our analysis.

On October 2, 2020, Ms. Brous filed a petition to transmit issues relating to the caveat petition to the circuit court for trial by jury. On January 28, 2021, the orphans’ court granted the petition in part and denied it in part. We will address the orphans’ court ruling in part 2 of our analysis.

³ On or about November 2, 2020, that is after the scheduling order’s deadlines expired, Ms. Brous provided what Ms. Mirmiran characterizes as “evasive and incomplete” responses to the latter’s interrogatories.

On November 20, 2020, Ms. Brous filed a motion asking the orphans' court to issue a revised scheduling order "to permit additional discovery on all contested issues." The court denied this motion on December 22, 2020.

Finally, on February 8, 2021, Ms. Brous filed a petition for a supplemental inventory and accounting, which was denied by the orphans' court on May 11, 2021. This is the subject of part 3 of this opinion.

ANALYSIS

1. The interim attorneys' fee award

On July 6, 2020, Ms. Mirmiran filed a petition for allowance of attorneys' fees for legal services rendered to the estate from the time that the estate was opened to May 31, 2020. Among other things, she sought permission to pay her counsel \$30,995.72 for professional fees and expenses incurred "in relation to the litigation matters[.]" The "litigation matters" were identified in the petition as the caveat proceeding and Ms. Brous's motion to remove Ms. Mirmiran as personal representative.

Ms. Brous filed exceptions. At a hearing on multiple matters on September 23, 2020, the orphans' court deferred ruling on the exceptions to give Ms. Brous an opportunity to respond to material disclosed by Ms. Mirmiran at the hearing. Another hearing was scheduled for November 23, 2020. On November 18, 2020, Ms. Brous' counsel served subpoenas on the law firm representing Ms. Mirmiran seeking all of its time and billing records pertaining to Mr. Mirmiran's estate up to the date of the hearing. Counsel also

served a subpoena on Alexander Hassani, Esquire, for all of his records pertaining to his representation of Mr. Mirmiran. Ms. Brous asserted that Mr. Hassani had been Mr. Mirmiran’s estate planning advisor for many years prior to the events giving rise to this litigation. Counsel for both Ms. Mirmiran and Mr. Hassani filed motions to quash the subpoenas, which the orphans’ court granted. The court explained that the subpoenas were not timely filed and additionally sought documents that were not “relevant to what the Court has to consider today.” The court also refused to permit Ms. Brous to call Ms. Mirmiran’s lead counsel as a witness so that he could be cross-examined about the request for fees.

On December 22, 2020, the orphans’ court issued a memorandum and order that: (1) deferred ruling on Ms. Mirmiran’s request for attorneys’ fees related to the caveat proceeding until “final disposition of the [c]aveat proceedings”; (2) granted the request for fees and costs related to the administration of the estate in the amount of \$5,759.50; and (3) granted fees and expenses in the amount of \$17,385.72 for legal services relating to Ms. Brous’s motion to remove Ms. Mirmiran as personal representative. The third part of the court’s order is the focus of Ms. Brous’s appellate contentions.⁴

⁴ Ms. Brous also asserts that the court erred in awarding \$5,579.50 for fees and expenses incurred in the routine administration of the estate but doesn’t explain why. We see no error on the court’s part in granting that part of the fee request.

Ms. Brous relies principally upon *National Wildlife Federation v. Foster*, 83 Md. App. 484, 497 (1990). In that case, we identified three factors that should guide an orphans’ court’s analysis in deciding whether to grant a request for interim attorneys’ fees incurred in matters involving an assertion of breach of duty or other misconduct on the part of the personal representative. We explained that, before awarding fees in this scenario, a court should consider: (1) whether there was prima facie evidence that the personal representative would succeed on the merits and thus was defending or prosecuting the underlying action in good faith and with just cause; (2) whether greater injury would be done to the personal representative by denying the interim attorneys’ fees than would be done to the party opposing the interim attorneys’ fees if such fees were granted; and (3) whether the party opposing the request for an award would “suffer irreparable injury if the interim fees are awarded.” 83 Md. App. at 498–99. We also stated:

While broad discretion should be vested in the trial judge as to the quality and quantity of the evidence (e.g., affidavits, counter-affidavits, and documentary evidence might be used), the personal representative or other party seeking interim fees must be subject to examination and cross-examination.

Id. at 499.

Ms. Brous argues that the orphans’ court erred because it:

did not require any such evidence from [Ms. Mirmiran]. To the contrary, without being subject to any examination or cross-examination, [her lawyers were] awarded fees and expenses in the amount of \$23,145.22 (E 455), notwithstanding the requirement in *National Wildlife* that “the personal representative or other party seeking interim fees must be subject to examination and cross-examination.”

National Wildlife stands for the proposition that, if asked, a court must allow cross-examination of a party or counsel who seeks an interim award of attorneys' fees for a pending matter involving possible misconduct by the personal representative. However, Ms. Brous' invocation of *National Wildlife* is not appropriate as to the award of interim attorneys' fees and cost at issue in this appeal. The orphans' court denied the petition to remove on **September 24, 2020**. Ms. Brous appealed the orphans' court judgment to the circuit court. She dismissed that appeal on **November 6, 2020**. The orphans' court held its second, and dispositive, hearing on the request for fees and expenses on **November 23, 2020**, and the court issued its order awarding fees on **December 22, 2020**. By the time of the second hearing, it was indisputable that Ms. Mirmiran had prevailed on the motion to remove. Her ultimate success on the merits resolved any concern as to whether she had a good faith basis and just cause for opposing the petition to remove. There was no reason for the orphans' court to require testimony.

2. Transmitting issues

The parties' contentions as to whether the orphans' court erred in its disposition of Ms. Brous' petition to transmit issues can only be understood in the context of arguments and affidavits presented to the orphans' court regarding Ms. Mirmiran's motion for summary judgment on the caveat petition.

A. Ms. Mirmiran's motion for summary judgment

After the close of discovery, Ms. Mirmiran filed a motion for summary judgment as to each and every ground asserted in the caveat petition as a basis for setting aside the 2018 will. Among the exhibits attached to the motion were three affidavits.

The first was executed by Jeffrey Glaser, the lawyer who prepared the will that was accepted for probate. In summary, he averred that he met with Mr. Mirmiran to discuss a will. After that meeting, he had “no concerns” regarding Mr. Mirmiran’s testamentary capacity and “no doubts” as to whether “he was making decisions from his own free will and without any influence from any other person.” Ms. Mirmiran was not present at the meeting and he “never met or spoke with” her until they encountered one another at an orphans’ court hearing on September 23, 2020. Finally, Mr. Glaser stated that the will submitted for probate was “identical to the draft which I prepared based upon my discussions with Mr. Mirmiran and Mr. Mirmiran’s instructions to me and that I sent to Mr. Mirmiran at his office address on November 17, 2017.”

The second affidavit was from Richard Smulovitz, one of the attesting witnesses to the will submitted for probate. He related that he was the chief financial officer of JMT and had worked for that organization since 1990. He stated that he worked closely with Mr. Mirmiran from the day he started at JMT until the latter’s death and was his “close friend.” Throughout the time of their association, he “found Mr. Mirmiran to be a highly intelligent man.” Mr. Smulovitz confirmed that he had witnessed Mr. Mirmiran’s signature on his will on July 28, 2018 and that:

I have no doubt that in July 2018 Mr. Mirmiran understood his actions and was competent to execute a will or other legal document. I would not have agreed to witness his signature if I had any concerns about his cognitive abilities.

The third affidavit was from Heather Sateia, M.D. She stated: (paragraph numbering deleted):

I am a licensed physician in the State of Maryland specializing in internal medicine.

I was Mr. Fred Mirmiran's personal internist from 2015 until he passed away in 2019.

I personally examined and/or spoke to Mr. Mirmiran on the following dates: December 14, 2015, September 19, 2018, and June 25, 2018, among others.

Additionally, I have access to many years of documentation from his prior physician, Dr. Finucane, [an] internist and geriatrics specialist.

I attest to the fact that Mr. Mirmiran had never been diagnosed with dementia, nor did he demonstrate any symptoms of dementia or cognitive impairment.

Mr. Mirmiran was cognitively intact and was functioning at a very high level until his untimely passing.

Ms. Brous filed an opposition to the motion. Attached to her response were two exhibits⁵ that are particularly relevant to the issues raised in this appeal.

The first was an affidavit by Kathryn L. Hammel, Mr. Mirmiran's administrative assistant at JMT and one of the witnesses to his will. The affidavit stated that she had been

⁵ Ms. Brous also submitted her own affidavit. The orphans' court concluded the assertions in the affidavit relevant to the issues raised in the caveat petition would be inadmissible under Courts & Jud. Proc. § 9-116. In this appeal, Ms. Brous does not take issue with the court's ruling as to her affidavit.

Mr. Mirmiran’s personal assistant at JMT for nearly eighteen years up to the time of his death. Among her other duties, she scheduled “almost all” of his personal appointments, “including those with his physicians and health care providers.” Ms. Hammel stated that Mr. Mirmiran saw Dr. Sateia only rarely and then “primarily” for head colds and nasal problems. She averred that he had been seeing a psychiatrist, Abdul S. Malik, M.D., for a number of years for “psychological and emotional problems.”

Ms. Hammel also stated that, based on numerous conversations about the topic between herself and Mr. Mirmiran, his relationship with his spouse was troubled and acrimonious. He told Ms. Hammel that Ms. Mirmiran was attempting to gain control over his assets and objected to attempts by him to give gifts to Ms. Brous and his other children by prior marriages. Ms. Hammel also averred that Mr. Mirmiran had told her repeatedly that he was very close to Ms. Brous and that Ms. Mirmiran was attempting to interfere with his relationship with his daughter.

Finally, Ms. Hammel discussed Mr. Mirmiran’s mental state on July 10, 2018, which was the date that she attested to his signature on his will. She averred that “[a]t that point in his life, Mr. Mirmiran had considerable difficulty comprehending documents. He was under the care of a psychiatrist and he also was highly medicated, causing him to have

difficulty with clarity of his thoughts. . . . it seemed to me that he signed estate and asset documents because he was told to do so by his wife and son.^[6]”

The second affidavit was by John A. Moeller, who was the president and chief operating officer of JMT. He averred that he had a “friendly relationship” with Mr. Mirmiran since the 1980’s. He asserted that Mr. Mirmiran’s “mental capacity and memory had become seriously impaired for at least 5 years” before his death. He stated that Mr. Mirmiran “often appeared to be catatonic” at JMT board meetings.

The orphans’ court held a hearing on the motion for summary judgment on November 23, 2020.⁷ In a memorandum opinion and order dated December 22, 2020, the court concluded that the evidence, viewed in the light most favorable to Ms. Brous as the non-moving party, established “genuine disputes of fact that the trier-of-fact must resolve.” The court denied the motion for summary judgment.

B. Ms. Brous’ petition to transmit issues

On October 2, 2020, while Ms. Mirmiran’s motion for summary judgment was pending, Ms. Brous asked the orphans’ court to transmit six issues of fact to the Circuit Court for Baltimore County for a jury trial, which we have reformatted slightly:

⁶ This is apparently a reference to Arshia Mirmiran, who is Ms. Mirmiran’s son from a prior marriage.

⁷ Ms. Brous’s motion to remove Ms. Mirmiran as personal representative was another matter argued at that hearing.

1. Was the paper writing dated July 10, 2018, purporting to be the Last Will and Testament of Fred M. Mirmiran, signed by him and attested and subscribed in his presence by two or more credible witnesses?^[8]
2. Were the contents of the paper writing dated July 10, 2018, purporting to be the Last Will and Testament of Fred F. Mirmiran, read to or by him, or known to him at or before the time of the alleged execution thereof?
3. Was the paper writing dated July 10, 2018, purporting to be the Last Will and Testament of Fred F. Mirmiran, executed by him when he was legally competent to make a valid Will?
4. Was the paper writing dated July 10, 2018, purporting to be the Last Will and Testament of Fred F. Mirmiran, procured by undue influence exercised and practiced upon him by Farideh Mirmiran, and/or by some other person at her direction?
5. Was the paper writing dated July 10, 2018, purporting to be the Last Will and Testament of Fred F. Mirmiran, procured by fraud and deceit exercised and practiced upon him?
6. Is the paper writing dated July 18, 2018 the Last Will and Testament of Fred F. Mirmiran?

Ms. Mirmiran filed an opposition to petition, asserting, in effect, that Ms. Brous's petition was a ploy to avoid the effects of Ms. Mirmiran's motion for summary judgment, which, she argued, established that there were no contested issues of material fact before the court. Therefore, she argued, she was "entitled to dismissal of the Petition to caveat *as a matter of law.*" (Emphasis in original.)

⁸ Ms. Brous later withdrew her contention that Mr. Mirmiran did not sign the will. She did so without prejudice to all other averments of the caveat petition, including her assertion that the Mr. Mirmiran's signature was not properly attested.

The orphans' court deferred action on the petition for transmittal until it had resolved Ms. Mirmiran's motion for summary judgment which, as we have explained, the court denied. The court held a remote hearing on the petition to transmit issues on January 26, 2021. There were problems with the audio and so there are corresponding gaps in the transcript. Nonetheless, it is clear that the court was concerned about the factual bases for some of Ms. Brous's proposed issues. Ms. Brous argued that there was a basis for each issue and Ms. Mirmiran asserted that there were no disputed issues of fact at all before the court. According to her, transmission of any issue to the circuit court would be inappropriate. After the conclusion of the hearing, the court issued a memorandum opinion, which stated in pertinent part:

In reviewing all of the Motions and Opposition to Summary Judgment, Affidavits, and Interrogatories previously submitted, the Court believes that the only genuine issues of fact to be submitted to the jury concern competency of the Decedent, whether or not the Decedent was of sound and disposing mind and capable of executing a will and was the signature procured by fraud. Caveator's own witness does not dispute that the Decedent signed the will and [that it] was witnessed. The Court therefore will decline to submit those types of issues to the Circuit Court as they are just likely to confuse the legitimate issues to be presented.

The court entered an order transmitting the following issues to the circuit court:

- a) Was the paper writing dated July 10, 2018 and purporting to be the Last Will and Testament of Fred F. Mirmiran, executed by him when he was legally competent to make a valid Will?
- b) Was the paper writing dated July 10, 2018 and purporting to be the Last Will and Testament of Fred F. Mirmiran, executed by [him] when he was of sound and disposing mind and capable of executing a valid deed, contract or will?

c) Was the paper writing dated July 10, 2018 and purporting to be the Last Will and Testament of Fred F. Mirmiran, procured by fraud exercised and practiced upon Fred F. Mirmiran?^[9]

Within ten days of the filing of the court’s judgment, Ms. Brous filed a motion to “alter, amend, revise or reconsider” the court’s order. She argued that the court was required to submit all of the issues to the circuit court. The orphans’ court denied the motion on May 11, 2021. Ms. Brous filed a timely notice of appeal to this Court and Ms. Mirmiran filed a cross-appeal.

C. The parties’ contentions

Ms. Brous argues that the orphans’ court was required to submit the issues as framed by her to the circuit court. She argues that the orphans’ court did not have the authority to limit the issues only to “genuine issues of fact” as determined by the orphans’ court after its review of Ms. Mirmiran’s motion for summary judgment and her response to that motion. For her part, Ms. Mirmiran contends that the orphans’ court erred by submitting any issues to the circuit court. This is so, she says, for two reasons.

First, she argues that the record before the court as developed through her motion for summary judgment and Ms. Brous’s response revealed that there is no issue of fact regarding whether Mr. Mirmiran signed the will or whether he was unaware what he was

⁹ The court’s order also designated Ms. Brous as the plaintiff and Ms. Mirmiran as the defendant when the issues were tried in circuit court.

signing. Therefore, she contends, the orphans' court properly declined to transmit these issues to the circuit court.

Second, Ms. Mirmiran takes things a step further. She asserts that the record generated in the summary judgment proceeding did not establish “genuine issues” as to whether Mr. Mirmiran’s signature on the will was procured by fraud or undue influence. Ms. Mirmiran argues that the affidavits filed by Ms. Brous at best only “offered a suspicion” of undue influence and/or fraud.” And a “suspicion . . . is not a basis for submitting an issue to the jury.” In other words, it is Ms. Mirmiran’s view that the orphans’ court erred in transmitting *any* issues to the circuit court, and she wants us to so hold.

Ms. Mirmiran’s contentions are unpersuasive.

D. Transmitting issues

A petition to transmit issues to the circuit court is a procedure by which a party in some orphans’ court proceedings can refer disputes as to issues of fact as well as mixed issues of law and fact to the circuit court for resolution by a jury. *See, e.g., Kao v. Hsia*, 309 Md. 366, 373–74 (1987); *Nugent v. Wright*, 277 Md. 614, 618–19 (1976); *McSherry v. Wimsatt*, 116 Md. 652, 654 (1911); *Bridge v. Dillard*, 104 Md. 411, 421 (1906).

It is the long-settled law of this State that, when a party files a timely petition asking an orphans’ court to transmit issues of fact to the circuit court for resolution, the orphans’ court is required to do so. This was a holding of *Barroll v. Reading*, 5 H. & J. 175, 176 (1821), and it has been reiterated on numerous occasions by the Court of Appeals and this Court. *See, e. g. Shealer v. Straka*, 459 Md. 68, 98 (2018) (characterizing an orphans’

court’s duty to transmit issues as “imperative”); *Russell v. Gaither*, 181 Md. App. 25, 30 (2008) (Decisions by the Court of Appeals “have frequently emphasized the mandatory nature of the orphans’ court’s duty to transmit issues at the insistence of a party.”) (citing *Ades v. Norins*, 204 Md. 267, 272 (1954); *Flaks v. Flaks*, 173 Md. 358, 365 (1938); and *Schmidt v. Johnston*, 154 Md. 125, 133 (1928)).

The parties to this appeal disagree as to how an orphans’ court should go about deciding whether a proposed issue should be transmitted. On this point, the law is clear:

each issue [must] meet [these] tests: (1) Does the orphans’ court have jurisdiction of the subject? (2) Is the question properly before the orphans’ court? (3) Is the issue relevant and material to the question before the orphans’ court?

Kao v. Hsia, 309 Md. at 375; *Myers v. Hart*, 248 Md. 443, 447 (1968); *Banashak v. Wittstadt*, 167 Md. App. 627 675–76 (2006).

In determining whether a proposed issue is relevant to the dispute before the orphans’ court, the court should look to the allegations contained in the relevant *pleadings* before the court. This typically consists of the petition to caveat and the response filed thereto. As the Court explained in *Shealer*:

“[A]n orphans’ court derives issues of fact to be transmitted to the circuit court by looking to a petition to caveat and response. *See* [Philip L. Sykes, *Maryland Practice: Probate Law and Practice* (Washington Law Book Co., 1956)] § 221 (“An issue may be defined as a single, definite, and material question *framed from the allegations of a petition and the answer thereto.*”)

459 Md. at 100 (emphasis added in *Shealer*); *see also Kao*, 309 Md. at 375; *Nugent*, 277 Md. at 619 (“Issues involve questions of fact in dispute between the parties, to be

ascertained from the petition and answer[.]”); *Hegmon v. Novak*, 130 Md. App. 703, 712 (2000) (“An issue cannot be made up in any way except upon affirmative averment on one side and denial on the other. This collision of statement is its very substance and essence.”) (quoting *Kao*, 309 Md. at 377); *Fidelity Trust Co. v. Barrett*, 186 Md. 483, 489 (1946) (same).

Returning to the case before us, the parties do not dispute that Ms. Brous’ petition for transmitting issues was timely. *See* Est. & Trusts § 2-105(b).¹⁰ Once the petition was filed, the orphans’ court was under a mandatory duty to transmit the issues if they reflected disputes between the allegations made in the caveat and Ms. Mirmiran’s response. From our perspective, when the petition for transmitting issues was filed, the motion for summary judgment was rendered moot. The proper frame of reference for the orphans’ court to

¹⁰ Est. & Trusts § 2-105 states in pertinent part (emphasis added):

(a) In a controversy in the court, an issue of fact may be determined by the court.

(b)(1) At the request of an interested person made within the time determined by the court, the issue of fact may be determined by a court of law.

(2) *When the request is made before the court has determined the issue of fact, the court shall transmit the issue to a court of law.*

* * *

What is now subsection (b)(2) codifies long-established Maryland law that a party in a caveat proceeding “may request that issues be transmitted to the circuit court at any stage of the proceeding before final adjudication” of the petition to caveat. *Russell*, 181 Md. App. at 30 (citing, among other cases, *Humes v. Shillington*, 22 Md. 346, 358 (1864); *Pegg v. Warford*, 4 Md. 385, 393–94 (1853); *Barroll v. Reading*, 5 H & J 175, 176 (1821)).

decide whether the proposed issues reflected actual factual disputes was the petition for caveat and Ms. Mirmiran's response. It was the orphans' court's role to review them to see whether there were the requisite "affirmative averment[s] on one side and denial[s] on the other." *Kao*, 309 Md. at 377. The orphans' court erred by assessing the evidence presented in Ms. Mirmiran's motion and Ms. Brous' response to identify factual disputes.

As we have stated, the orphans' court declined to transmit four of Ms. Brous's proposed issues:

Was the paper writing dated July 10, 2018, purporting to be the Last Will and Testament of Fred F. Mirmiran, signed by him and attested and subscribed in his presence by two or more credible witnesses?

Were the contents of the paper writing dated July 10, 2018, purporting to be the Last Will and Testament of Fred F. Mirmiran, read to or by him, or known to him at or before the time of the alleged execution thereof?

Was the paper writing dated July 10, 2018, purporting to be the Last Will and Testament of Fred F. Mirmiran, procured by undue influence exercised and practiced upon him by Farideh Mirmiran, and/or by some other person at her direction?

Is the paper writing dated July 18, 2018 the Last Will and Testament of Fred F. Mirmiran?

On remand, the court must review the allegations in the petition to caveat and the response to determine if these matters were raised in the parties' pleadings. If they were, then these issues must be transmitted to the circuit court as well.

There are two additional aspects to the court's task. First, as we have explained, an issue must present an issue of fact or one of mixed law and fact. Issues that present "pure

question[s] of law” are not permitted. *See Kao*, 309 Md. at 375–76 (citing, among other cases, *Myers v. Hart*, 248 Md. 443, 447 (1968); *Forsythe v. Baker*, 180 Md. 144, 149 (1941); and *Dronenburg v. Harris*, 108 Md. 597, 617 (1908)). If any of the proposed issues relates solely to a legal issue, then the orphans’ court should not transmit it.

Second, issues must be unambiguous and premised upon a correct statement of the law. They must also be “susceptible to determination on a ‘yes or no’ basis by a jury or other trier of fact.” *Kao*, 309 Md. at 375 (also noting that “innumerable cases in this Court have emphasized that requirement.”). The orphans’ court did a commendable job of rewording the other issues to meet these standards and if the court concludes that any of the remaining issues should also be transmitted, the court should undertake the same editorial process. Additionally, some modification to the first issue may be necessary because Ms. Brous has withdrawn her contention that Mr. Mirmiran did not sign the will.¹¹

¹¹ Ms. Mirmiran makes some additional points in her brief.

She asserts that “the Court of Appeals in *Shealer v. Straka* . . . did not hold that an orphans’ court is deprived of its duty to review the record and ascertain whether there are genuine disputes merely by referencing a petition to caveat and the answer thereto.” This is correct insofar as it goes—the Court made no such *holding* because the orphans’ court in that case never attempted to transmit issues to the circuit court. However, as we noted in the main text, the Court *explained* that “[a]n issue may be defined as a single, definite, and material question *framed from the allegations of a petition and the answer thereto*.” 459 Md. at 100 (emphasis added in *Shealer*). We acknowledge that “the law . . . never is static.” *Chavis v. Blibaum & Assocs.*, ___ Md. ___ (No. 30, Sept. Term, 2020), 2021 WL 3828655, at *16 (filed August 27, 2021) (quoting Md. Rule 19-303.1, Comment [1]). Nonetheless, as intermediate appellate judges, we are not at liberty to shrug off a clear and definite statement of the law by the Court of Appeals.

3. The petition for a supplemental inventory and accounting

Our last issue concerns Ms. Brous’ petition for a supplemental inventory and accounting, which she filed on February 8, 2021. In her petition, she asked the orphans’ court “to enter an order requiring [Ms. Mirmiran] to file, under oath, a Supplemental Inventory, as well as a full and complete accounting of all assets owned by, or titled to, [Mr. Mirmiran], for the period from January 1, 2015” until the date of the first inventory filed in the estate proceeding.

The petition alleged that Ms. Mirmiran “has concealed and converted [Mr. Mirmiran’s] money, assets and other property to her own use” by means of “fraud and undue influence exercised by her and others on” Mr. Mirmiran, and that he was “in a confidential relationship with and highly dependent on her.”

The orphans’ court conducted a hearing on the petition on May 11, 2021. The substance of Ms. Brous’ arguments was that she was entitled to a supplemental inventory based upon the allegations in her petition. She did not present any evidence. For her part, Ms. Mirmiran

Ms. Mirmiran also argues that “taken to its logical conclusion, Ms. Brous’ position would render superfluous” Md. Rule 6-461(b), which permits summary judgment in orphans’ court proceedings. We do not agree. An orphans’ court should not entertain a motion for summary judgment in a caveat proceeding as long as a petition to transmit issues is pending. But parties can file such motions in circuit court after the issues are transmitted. *See Kao v. Hsia*, 309 Md. at 379; *Banashak*, 167 Md. App. at 683. (We express no opinion as to whether the general rule applies in a case in which a party moved for summary judgment in orphans’ court and the motion was denied.)

argued that Ms. Brous lacked standing to file her petition because she no longer qualified as an “interested person” in Mr. Mirmiran’s estate when she filed the petition. Alternatively, Ms. Mirmiran argued that Ms. Brous was barred by the doctrine of collateral estoppel from claiming that Ms. Mirmiran had wrongfully acquired assets from Mr. Mirmiran by means of fraud, undue influence, or abuse of a confidential relationship. Ms. Mirmiran pointed out that Ms. Brous had made essentially the same arguments in the latter’s earlier petition to remove her as personal representative.

In its comments from the bench, the court made it clear that it did not agree with Ms. Mirmiran’s standing argument or her contention that Ms. Brous was collaterally estopped from filing a petition for a supplemental inventory and accounting.¹² The court continued:

[O]n the issue to require a supplemental inventory under [Est. & Trusts §] 7-024, . . . I’m faced with a situation where you are alleging fraud but there is no evidence being produced that fraud was in fact perpetrated.

So the Court will deny the request requiring a supplemental inventory under 7-204 noting that after the caveat is heard at the Circuit Court, 7-204 says that at any time before the estate is closed an interested party may petition the court for revision of a value assigned to the item of inventory. So you are not precluded from filing for that. But I think the appropriate time would be after the caveat decision [is] made by the Circuit Court jury and at this time it will be premature absent any proof presented to the Court that Ms. Mirmiran fraudulently took assets from the decedent before he passed away.

¹² In her brief, Ms. Mirmiran argues that the orphans’ court was wrong on the standing and collateral estoppel issues. We leave those matters for another day.

Ms. Brous has appealed this judgment and argues to us that the court erred. She calls our attention to *Linthicum v Polk*, 93 Md. 84, 89-90 (1901); *Anderson v. Curran*, 155 Md. 538, 545 (1928); and *Kroll v. Fisher*, 182 Md. App. 55, 62 (2008). In each of these cases, the appellate court held that an accounting was appropriate. She asserts that the facts as alleged by her in her petition are similar to the facts in these cases. She is correct. But her appellate argument misses the point—the orphans’ court denied her petition because she failed to present any *evidence* that fraud had actually occurred.

An appellate court will disturb an orphans’ court’s decision regarding inventory and accounting matters only if the orphans’ court abused its discretion. *Peterson v. Orphans’ Court for Queen Anne’s County*, 160 Md. App. 137, 178 (2004) (citing *Harlan v. Hunter*, 170 Md. 513, 517 (1936)). A court abuses its discretion when

no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding rules or principles, or when the ruling is clearly against the logic and effect of facts and inferences before the court.

Gizzo v. Gerstman, 245 Md. App. 168, 201 (2020).

We hold that the orphans’ court did not abuse its discretion when it denied Ms. Brous’ petition because there was no evidence to support it while at the same time indicating that it might reconsider the issue if and when evidence of fraud or other misconduct surfaces.

CONCLUSION

For the reasons stated, we affirm the judgment of the orphans’ court awarding interim counsel fees to Ms. Mirmiran’s lawyers. We also affirm the court’s denial of Ms. Brous’s

petition for a supplemental accounting. We vacate in part the court's judgment regarding transmitting issues to the circuit court. On remand, the court will have to revisit its order consistent with this opinion.

Appeal No. 1349, September Term 2020:

THE JUDGMENT OF THE ORPHANS' COURT FOR BALTIMORE COUNTY IS AFFIRMED.

Appeal No. 388, September Term 2021:

THE JUDGMENTS OF THE ORPHANS' COURT FOR BALTIMORE COUNTY ARE AFFIRMED IN PART AND VACATED IN PART. THIS CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS ALLOCATED AS FOLLOWS: TWO THIRDS TO BE PAID BY APPELLANT/CROSS-APPELLEE AND ONE THIRD TO BE PAID BY APPELLEE/CROSS-APPELLANT.