Orphans' Court for Calvert County
Case No. 14578

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1428

September Term, 2021

IN THE MATTER OF THE ESTATE OF
JAMES BRADLEY CURTIN, JR.

Graeff,
Friedman,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: August 23, 2022

This appeal arises from the decision of the Orphans' Court for Calvert County relating to administration of the Estate of James Bradley Curtin, Jr. ("Mr. Curtin" or "the decedent"). Specifically, appellant, James Bradley Curtin, III ("JBC III"), the Personal Representative of the Estate, challenges the court's ruling on his Petition for Litigation of Counsel Fees, as well as its ruling on the Exceptions to the Second and Final Administrative Account filed by the decedent's wife, Adrienne Curtin, appellee.

JBC III presents the following questions for this Court's review, which we have rephrased slightly, as follows:

1. Did the orphans' court err in awarding only a partial amount of appellant's Petition for Litigation of Counsel Fees?

2. Did the orphans' court err in disallowing appellant's $39,128 expenditure for remodeling the Mandela property?

For the reasons set forth below, we shall affirm the judgments of the orphans' court.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Curtin married Mrs. Curtin on December 30, 2006. Mr. Curtin died on September 4, 2018.

In September, Mrs. Curtin filed a March 7, 2013 will with the Calvert County Register of Wills ("the will"). In the will, the decedent appointed his son, JBC III, as his personal representative. The decedent made several specific bequests, including a "Remington 742 Woodsmaster" gun to Mrs. Curtin, which was the only bequest to her in the will. The decedent bequeathed all the rest of his tangible personal property and the remainder of his Estate to his four children, including JBC III. The will directed JBC III,

as the decedent's personal representative, to pay the expenses of the decedent's last illness and his funeral expenses.

On September 28, 2018, Mrs. Curtin filed an Election to Take Statutory Share of Estate.[1] On March 19, 2019 and April 1, 2019, she filed claims against the Estate for the funeral expenses she incurred following the decedent's passing, and for mortgage payments she made on his rental property.

On May 13, 2019, the Estate filed a Petition to Set Aside Elective Share and Other Ancillary Relief, alleging that Mrs. Curtin had executed a prenuptial agreement that likely would prohibit Mrs. Curtin's elective share. The petition stated:

> [The decedent] provided his daughter, Karen Hood, a copy of a "Schedule B" which he told her was from his prenuptial agreement with [Mrs. Curtin] (the "Schedule B"). He instructed Ms. Hood to preserve a copy of the Schedule B. The Schedule B states: "The following represents a full and complete disclosure by JAMES B. CURTIN, JR. of the nature and extent of his various property interests and sources of income" and then lists his various assets.
>
> On or about September 6, 2018, [Mrs. Curtin's] daughter (Nancy Rodriguez) told another of [the decedent's] daughters, Sharon Yatsko, that she had a copy of the prenuptial agreement.

The petition stated that, during the decedent's life, he suffered from multiple health problems, including cancer, congestive heart failure, and undiagnosed chronic pain. In the summer of 2018, the decedent's health deteriorated, and he eventually was placed in

[1] Pursuant to the statute in effect at the time of these proceedings, Md. Code Ann., Est. & Trusts Art. ("ET") § 3-203(b) (2017 Repl. Vol.), a surviving spouse had options: "Instead of property left to the surviving spouse by will, the surviving spouse may elect to take a one-third share of the net estate if there is also a surviving issue, or one-half of the net estate if there is no surviving issue." ET § 3-203(b).

hospice care at his home. On August 13, 2018, amidst discussions with an attorney, Rosemary Keffler, about a new will, Debra Norfolk, one of the decedent's daughters, overheard the decedent say that "it was not correct that [Mrs. Curtin] was the beneficiary of [his] Edward Jones accounts." Ms. Norfolk also overheard Mrs. Curtin acknowledge the existence of a prenuptial agreement. The decedent died on September 4, 2018.

The petition described conflict between JBC III and Mrs. Curtin during the time JBC III attempted to administer the Estate, including that Mrs. Curtin did not permit JBC III to perform an inventory of the decedent's assets, did not permit him to obtain some items on the decedent's real property (the "Mandela property"), and failed to release the decedent's property until JBC III retained counsel. On October 5, 2018, JBC III was officially appointed the Personal Representative of the Estate.

JBC III sent a letter, on behalf of the Estate, to Mrs. Curtin's counsel, Ms. Keffler, requesting various things, including: (1) that she tender a copy of her prenuptial agreement with the decedent; (2) that she "[r]efrain from withdrawing, transferring, closing, or otherwise accessing the decedent's assets or accounts"; (3) that she forward any rental payments and leases from the Mandela property; and (4) that she return all of the decedent's items from the Mandela property, as well as the guns identified in the will as specific bequests. The petition stated that Ms. Keffler sent a letter in response, indicating that Mrs. Curtin "[r]emembered visiting an attorney regarding a prenuptial agreement, but did not recall whether she and [the decedent] signed one. She alleged she had consulted with her priest who had indicated 'the Catholic Church frowned upon such agreements.' Mrs. Curtin

alleged she could not find a copy." The Estate sent another letter to Ms. Keffler, stating that she "had met with [the decedent] for an Estate planning meeting in August 2018 and should have arguably requested a copy of any prenuptial agreements between [the decedent] and [Mrs. Curtin] as part of such a meeting." The Estate requested a copy of Ms. Keffler's file for those services and "requested Ms. Keffler remove herself as Mrs. Curtin's attorney in the Estate matter," due to a conflict of interest in **"**representing Mrs. Curtin in proceedings relating to [the decedent's] [E]state."

JBC III contacted the financial institutions listed in Schedule B of the alleged prenuptial agreement after Mrs. Curtin failed to provide documents related to those accounts. Community Bank produced documents stating that the decedent's savings account was owned jointly with Mrs. Curtin since at least April 2018. The petition alleged that Mrs. Curtin was added as a joint owner of the checking account on August 18, 2018 "after [the decedent] was being treated by [h]ospice with palliative care and approximately two weeks before he passed away."[2]

With respect to the decedent's Edward Jones accounts, the documents produced showed that, after the decedent was hospitalized in July 2018, he designated Mrs. Curtin as the sole beneficiary of all three accounts, with the decedent's children named as contingent beneficiaries. The Estate sought documentation relating to these accounts. The petition requested, among other things, that the orphans' court: (1) grant the petition; and

[2] Mrs. Curtin, however, attached to her response to the petition discussed *infra*, a document showing that she had been a joint owner of the Community Bank savings account since 2005.

(2) enter an order requiring Mrs. Curtin to produce the alleged prenuptial agreement and items of the Estate in Mrs. Curtin's possession.

On May 30, 2019, Mrs. Curtin filed a response to the petition, arguing that the petition was a personal attack and JBC III failed to provide any evidence in support of the allegations contained therein. With respect to the alleged prenuptial agreement, Mrs. Curtin stated that the couple discussed executing a prenuptial agreement, and they consulted with an attorney and their priest prior to their marriage. She stated that the couple were "devout Catholics who attend[ed] Mass weekly." They abandoned their discussion and ceased drafting a prenuptial agreement after "[t]hey were informed by their priest that they could not have a ceremonial Catholic Mass wedding if they entered into a pre-nuptial agreement."

Mrs. Curtin argued further that the petition was inaccurate in suggesting that Mrs. Curtin manipulated the decedent "into changing his beneficiaries and account ownership during his final days." With respect to a meeting between the decedent and a representative of Edward Jones, Mrs. Curtin was not present in the room during the discussion, and the couple did not discuss the account or any change in beneficiary after the representative left. Mrs. Curtin stated that the couple had a history of holding their bank accounts jointly throughout their marriage.

Mrs. Curtin stated that the decedent's personal property had been given to his children, and the Estate's allegations that she had been uncooperative were false. She had paid for the funeral and had not yet been reimbursed for her expenses. Finally, Mrs. Curtin

requested, among other things, that the orphans' court: (1) deny the Estate's petition; and (2) grant her Election to Take Statutory Share of Estate and calculate the elective share to which she was entitled.

On July 2, 2019, the Estate filed the First Administrative Account. On October 15, 2019, the orphans' court issued an order denying the Estate's Petition to Set Aside Elective Share and Other Ancillary Relief. The court ordered that Mrs. Curtin's claims against the Estate for funeral expenses be allowed in full, and her claim for mortgage payments be allowed in part because one of the payments "was arranged prior to the decedent's death." On November 13, 2019, the Estate noted an appeal to the circuit court.

The circuit court ordered the parties to attend mediation, and they subsequently reached a settlement agreement. The parties agreed, among other things, to the following terms: (1) dismissal of the appeal in the circuit court; (2) payment of $10,000 to Mrs. Curtin for spousal allowance; (3) the Estate's withdrawal of its objection to Mrs. Curtin's claim for an elective share; and (4) payment of $10,000 to Mrs. Curtin to satisfy the sums awarded to her by the orphans' court. With respect to litigation costs and attorney's fees, the agreement provided:

> [Mrs. Curtin] agrees to be solely responsible for any costs and attorneys' fees she incurred in any way associated with [her] [c]laims, the Petition, and/or the Appeal. The Estate shall seek reimbursement for its costs and attorneys' fees incurred for general Estate administration and those in any way associated with [Mrs. Curtin's] [c]laims, the Petition, and/or the Appeal by way of a Petition to be filed with the Orphans' Court to which [Mrs. Curtin] may, but is not obligated, to dispute.

On January 8, 2021, and on May 11, 2021, JBC III and the Estate's attorney, Christopher Staiti, filed two Petitions for Allowance of Counsel Fees. The January 8, 2021 petition requested $36,610 in "litigation expenses incurred during the administration of the Estate." It asserted that, pursuant to Md. Code Ann., Est. & Trusts Art. ("ET") § 7-603 (2017 Repl. Vol.), JBC III was "entitled to receive expenses and distributions from the Estate for litigation fees instituted on behalf of the Estate as the litigation was 'in good faith and with just cause.'" The petition alleged that JBC III expended litigation costs pursuing efforts to obtain pertinent Estate documentation from Mrs. Curtin after she failed to provide "sufficient or complete documentation" necessary for the administration of the Estate, including a copy of the prenuptial agreement and documentation regarding the decedent's accounts and other assets.

With respect to the documents obtained from financial institutions concerning the decedent's accounts, the documents showed that Mrs. Curtin was appointed the joint owner and/or made sole beneficiaries of those accounts when the decedent was medicated shortly before his death. The petition argued that "[t]hese changes were inconsistent with [the decedent's] express statements throughout his life that he wanted his biological children to equally inherit and that he and [Mrs. Curtin] had a prenuptial agreement." Accordingly, counsel submitted written discovery requests, took depositions, and requested records from the decedent's lawyers and financial advisor. These actions were taken for the benefit of the Estate to "effectuate the testator's intent," and the personal representative pursued these actions in good faith and with just cause.

On May 11, 2021, JBC III and Mr Staiti filed a second petition for counsel fees, requesting $22,641.84 for services rendered in the administration of the decedent's Estate. The services included resolution of claims filed against the Estate, identification of the Estate's assets, preparation of the Petition for Probate, list of interested persons, information report, First and Second administrative accounts, as well as other matters. The petition noted that the "maximum gross commissions allowable in this Estate," based on its total assets of $320,868.16, was $13,351.25.

The Estate also filed the Second and Final Administrative Account, listing gross assets of $320,868.16 (with the value of the Mandela property listed as $295,000) and Estate expenses of $336,153.89. "Administrative Expenses" were listed as $69,251.84, including attorneys fees of $59,251.84 and distribution of $10,000 to Mrs. Curtin, allegedly paid on February 10, 2020, pursuant to the parties' agreement.

On June 1, 2021, Mrs. Curtin filed: (1) Response to Petition for Litigation Counsel Fees; (2) Response to Petition for Counsel Fees; and (3) Exceptions to the Second and Final Administrative Account. In the Response to the Petition for Litigation Counsel Fees, Mrs. Curtin argued that litigation was not pursued in good faith and was without just cause. She argued that the core issue throughout the litigation was "the enforcement of a pre-nuptial agreement that never existed." She asserted that these actions were a waste of the court's time and the Estate's assets because she had testified twice under oath that there was no prenuptial agreement. In any event, the family's alleged understanding of the existence of

a prenuptial agreement was not a "sufficient basis to accrue thousands of dollars of attorney fees on subpoenas and [out-of-state] depositions" in search of this alleged agreement.

With respect to efforts made relating to the Edward Jones accounts, Mrs. Curtin alleged that the personal representative's actions were improper because the accounts were not part of the Estate to be probated. The orphans' court lacked jurisdiction over those accounts so that any counsel fees or other expenses incurred in relation to those accounts were not attributable to the Estate. Additionally, Mrs. Curtin had provided documentation showing that she had been a joint owner on the decedent's Community Bank account since 2005, and therefore, efforts taken by the personal representative to subpoena records to show that Mrs. Curtin was suddenly appointed as a joint owner in 2018 shortly before the decedent's death was "baseless and another meritless fishing expedition." Mrs. Curtin argued that "the pursuit of this litigation at the cost of making th[e] Estate insolvent, demonstrates the malicious intent for which this action was filed and the unreasonableness to continue it for three (3) hearing days."

In the Response to the Petition for Counsel Fees regarding the administration of the Estate, Mrs. Curtin argued that $22,641.84 was an unreasonable amount and "nearly double the customary formula as provided in [ET § 7-601]." She noted that the total attorney's fees requested was $59,251.84, which made the Estate insolvent. She argued that the petition made blanket generalized statements without showing how the services were a benefit to the Estate.

Mrs. Curtin stated that "the administrative probate action of this [E]state should have been simple," and it "should not have required any extraordinary efforts to probate." In her Exceptions to the Second and Final Administrative Account, Mrs. Curtin stated that, contrary to what was stated in the accounting, she did not receive $10,000. She also was not paid her $10,000 spousal allowance as agreed, but instead, the Estate "made payments to contractors and debts out of priority order in violation of" ET § 8-105.[3] Mrs. Curtin asserted that the Estate paid Patuxent Contracting Services, LLC $39,128 to remodel the Mandela property, a "home that only yielded $35,044.63 to the Estate." Additionally, she argued that the accounting was "not supported with proper documentation."

On August 24, 2021, the parties appeared before the orphans' court for a hearing. Mrs. Curtin's counsel argued that the two $10,000 payments due to Mrs. Curtin pursuant to the parties' agreement had not been made, including the one that was represented to have been paid. Additionally, fees were paid out of priority of the spousal allowance, including $39,000 to Patuxent Contracting for allegedly remodeling the Mandela property. Counsel noted that the company was owned by John Hood, the decedent's son-in-law and an interested person under the will. She stated that there was a $15,000 loss on the property because the Estate recovered $285,000 from the sale of the property, after approximately

[3] ET § 8-105 provides the order for priority for satisfying claims when there are insufficient funds in the Estate to pay all claims. The statute prioritizes payment of spousal allowance over "taxes due by the decedent." ET § 8-105(a)(5) & (6).

$40,000 spent on remodeling the property, which was originally purchased for $300,000.[4] Counsel noted also that there was no repair bill or "bids showing the different bids contracting for those repairs." And given counsel's understanding that the renter for the Mandela property left it in "immaculate condition," she argued that there was no need to pay $40,000 to "themselves," with no documentation in support.

With respect to the petition for litigation expenses, Mrs. Curtin's counsel argued that the litigation was made in bad faith and that the amount requested was unreasonable. Counsel advanced the same arguments made in the response to the petition, including that the hunt for an alleged prenuptial agreement was without merit. Overall, counsel argued that the prosecution of the action by the personal representative was frivolous, unnecessary, and "a form of harassment," and therefore, the Estate should not assume the litigation costs.

Counsel for JBC III argued that the existence of a prenuptial agreement was properly litigated because three independent sources confirmed the existence of an agreement. The records from Davis, Upton and Palumbo (i.e., the law firm that prepared the will) showed that a prenuptial agreement was mentioned, Mrs. Curtin's daughter stated that her mother made an agreement, and "[t]here were texts among the heirs acknowledging the existence of a prenup." Counsel stated that people were not forthcoming, and attempts to subpoena, depose, or request production of documents were met with objections and motions to quash, and the prenuptial agreement was never recovered.

[4] Counsel stated that the house sold for $295,000, but there was a seller credit of $10,000, for a total at settlement of $285,000.

Additionally, the Estate grew suspicious of the sudden retitling of the decedent's approximately 20-year-old Edward Jones account, so investigation of that change was with just cause. Counsel argued further that the Mandela property was not in an immaculate condition. With respect to fees, counsel stated that he "made sure to include details in the accounting records of all the times spent, on behalf of the Estate and [his] clients." With respect to the $10,000 payment to Mrs. Curtin that was represented on the Second and Final Accounting, that was an error on counsel's part.[5]

On October 5, 2021, the orphans' court issued its order. The court made the following findings of facts:

> - The Petition for Litigation of Counsel Fees is exorbitant and "shocks the conscience of the Court," considering there was sanctioned mediation between parties.
>
> - The Petition for Allowance of Counsel Fees is overstated by Nine Thousand Five Hundred Fifty-One 97/100 Dollars ($9,551.97).
>
> - The Remodeling Invoice to Patuxent Contacting Services, LLC brought to attention in open court without refutation, was an improper expenditure to a company owned by the Personal Representative's brother-in-law, who is also the decedent son-in-law and spouse to a legatee of said Estate. The court takes notice that this expenditure was without documentation for repairs in the amount of Thirty Nine Thousand One Hundred Twenty-Eight 00/100 Dollars ($39,128.00), and was not reflected in the Sales Contract. Again, this act by the Personal Representative "shocks the conscience of the Court", compared to the amount of monies cleared from the sale of subject

[5] After the hearing, in response to the court's request, counsel submitted a copy of the sale contract for the Mandela property. He also submitted photos showing the condition of the Mandela property and advised the court that he made the $10,000 payment to Mrs. Curtin immediately following the Exceptions hearing.

real property. Such an act by a fiduciary could be determined as a breach and result in cause for removal.

- There is a clear initiative by the Personal Representative to deliberately diminish the Estate, thus eliminating the Family Allowance, pursuant to Estates & Trusts 3-201(a), and Right to Elective share, pursuant to Estates & Trusts 3-203, and any distribution to the residuary legatees.

Based on these factual findings, the court's order stated as follows:

ORDERED, that the Petition for Litigation of Counsel Fees BE and IS hereby DENIED, and it is further,

ORDERED, that the Petition for Counsel Fees BE and IS hereby allowed in the amount of Twenty Two Thousand Six Hundred Forty-One 00/84 Dollars ($22,641.84), with Nine Thousand Five Hundred Fifty One 97/100 Dollars ($9,551.97), of this allowed amount to be considered as litigation fees, and it is further,

ORDERED, that the expenditure of Remodeling Invoice to Patuxent Contracting Service, LLC in the amount of Thirty Nine Thousand One Hundred Twenty-Eight 00/100 Dollars ($39,128.00) BE and IS hereby DlSALLOWED, and it is further,

ORDERED, that the Second and Final Administration Account of James Bradley Curtin, Ill, Personal Representative, BE and IS hereby DENIED, as stated and that he SHALL file an Amended Second and Final Account on/or before November 16, 2021, taking into consideration all of the stipulations set forth in this Order, and subject to audit by the Register of Wills.

This appeal followed.[6]

[6] Pursuant to Md. Code Ann., Cts. & Jud. Proc. Art. § 12-501 (2020 Repl. Vol.), "[a] party may appeal to the Court of Special Appeals from a final judgment of an Orphans' Court."

STANDARD OF REVIEW

This Court has outlined the standard of review of an orphans' court decision as follows:

> On appeal from a final judgment of the Orphans' Court, "the 'findings of fact of an Orphans' Court are entitled to a presumption of correctness.'" *Pfeufer v. Cyphers*, 397 Md. 643, 648 (2007) (quoting *New York State Library School Ass'n v. Atwater*, 227 Md. 155, 157 (1961)). An interpretation of law, however, is "not entitled to the same 'presumption of correctness on review: the appellate court must apply the law as it understands it to be.'" *Id.* at 648 (quoting *Comptroller of the Treasury v. Gannett Co. Inc.*, 356 Md. 699, 707 (1999)).

Allen v. Ritter, 196 Md. App. 617, 625 (2010) (parallel citations omitted), *aff'd on other grounds*, 424 Md. 216 (2011).

DISCUSSION

I.

Litigation Expenses

JBC III contends that the orphans' court erred in denying the Petition for Allowance of Litigation Fees, asserting that he acted in good faith, with just cause, and with the intent to effectuate the decedent's intent.[7] In support, he reiterates the arguments he made to the orphans' court, asserting that he was forced to litigate due to Mrs. Curtin's "deceptive and dishonest behavior."

[7] JBC III challenges only the denial of his petition for litigation expenses in the amount of $36,610; he does not challenge the court's ruling on the Petition for Counsel Fees in the amount of $22,641.84 for the administration of the Estate.

Mrs. Curtin contends that "the administrative probate action of this Estate should have been simple," noting that the decedent died with a will, there were limited assets in the Estate, and "a spousal election was made." She asserts that the expenses were unnecessary and a "very expensive fishing expedition" trying to find a non-existent prenuptial agreement and getting information regarding accounts that were not part of the Estate to be probated. Mrs. Curtin argues that the $59,251.84 in total attorney's fees was close to 48 percent of the Estate, rendered the Estate insolvent, and is "completely outside any test for reasonableness."

We review an orphans' court's award of attorney's fees for an abuse of discretion. *Peterson v. Orphans' Ct. for Queen Anne's Cnty.*, 160 Md. App. 137, 175 (2004). There is an abuse of discretion when the circuit court's decision is "'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Devincentz v. State*, 460 Md. 518, 550 (2018) (quoting *North v. North*, 102 Md. App. 1, 14 (1994)).

Pursuant to ET § 7-401(y)(1), a personal representative is authorized to prosecute an action "for the protection or benefit of the [E]state." "When a personal representative . . . defends or prosecutes a proceeding in good faith and with just cause," he or she "shall be entitled to receive necessary expenses and disbursements from the Estate regardless of the outcome of the proceeding." ET § 7-603. *Accord Est. of Castruccio v. Castruccio*, 247 Md. App. 1, 28 (2020); *Piper Rudnick LLP v. Hartz*, 386 Md. 201, 218 (2005).

Here, JBC III argues that he pursued litigation in good faith and with just cause, asserting the same grounds that he raised below. The orphans' court heard this evidence and was not persuaded, finding that the fees requested were "exorbitant and 'shocks the conscience of the court.'"

"The existence of good faith and just cause is a question of fact to be determined by the orphans' court based upon all of the evidence." *Piper Rudnick LLP*, 386 Md. at 229–30. Based on the evidence here, we cannot conclude that the orphans' court was clearly erroneous in rejecting JBC III's claim that he acted in good faith and with just cause, or that the court abused its discretion in denying the Petition for Litigation Counsel Fees in the amount of $36,610.[8]

II.

Remodeling Expenditure

Appellant next contends that the court erred in disallowing the expenditure for the remodeling invoice to Patuxent Contracting. He asserts that this expense "was proper and reasonable in light of the condition of the Mandela Property." He attaches to his brief, for the first time in this litigation, a list of remodeling costs and argues that the repairs increased the value by nearly $30,000 from the inventory value.

[8] As indicated, the court granted the separate Petition for Counsel Fees in the administration of the Estate, allowing fees in the amount of $22,641.84, with $9,551.97 "of this allowed amount to be considered as litigation fees."

Mrs. Curtin contends that the orphans' court's finding that "the payment of $39,128.00 to Patuxent Contracting shocks the conscience" was supported by the evidence. She argues that the Second and Final Administrative Account filed by the Estate did not detail the expenditures with any specificity or provide documentation until this appeal, and even that document is not on letterhead or signed by anyone, and it does not add up to the $39,128.00 listed on the settlement sheet.[9] Mrs. Curtin notes that the contract to Patuxent was not an arm's length transaction because the company is owned by an interested party, and the total expenses incurred left the Estate insolvent, which suggests that the Estate "was not honest and operating in good faith at mediation," where it agreed to pay her a total of $20,000.

The orphans' court made the following findings with respect to appellant's remodeling costs:

> The Remodeling Invoice to Patuxent Contacting Services, LLC brought to attention in open court without refutation was an improper expenditure to a company owned by the Personal Representative's brother-in-law, who is also the decedent son-in-law and spouse to a legatee of said Estate. The court takes notice that this expenditure was without documentation for repairs in the amount of Thirty Nine Thousand One Hundred Twenty-Eight 00/100 Dollars ($39,128.00), and was not reflected in the Sales Contract. Again, this act by the Personal Representative "shocks the conscience of the Court," compared to the amount of monies cleared from the sale of subject real property. Such an act by a fiduciary could be determined as a breach and result in cause for removal.

[9] As Mrs. Curtin notes, the itemized bill provided in the Estate's appellate brief adds up to $36,163, not $39,128, as reported in the August 23, 2019 settlement statement by the American Land Title Association.

The court additionally found that there was "a clear initiative by the Personal Representative to deliberately diminish the [E]state, thus eliminating the Family Allowance, pursuant to [ET § 3-201(a)], and Right to Elective Share, pursuant to [ET § 3-203], and any distribution to the residuary legatees."

ET § 7-401(j) authorizes a personal representative to pay "taxes, assessments, and other expenses incident to the administration of the Estate." ET § 7-401(n) states that "[a] personal representative may invest in, sell, mortgage, pledge, exchange, or lease property." A personal representative, however, is required to act in the Estate's best interest and should exercise "the care, skill and diligence of a reasonably prudent person dealing with his or her own property." *Beyer v. Morgan State Univ.*, 369 Md. 335, 351 (2002). *Accord Att'y Grievance Comm'n of Md. v. Woolery*, 456 Md. 483, 498 n.8 (2017).

The record supports the court's findings regarding a lack of documentation regarding the repairs. In the Second and Final Administrative Account, the list of Estate assets included $295,000 for the adjusted value of the sale of the house. In support, a document from the title company was included, which listed on one line of a multiple-page document a payment of $39,128 to Patuxent Contracting Services, LLC. Counsel for Mrs. Curtin stated that she was not provided any supporting documentation, and she argued that this expenditure should not be approved.

At the hearing, the court requested a copy of the contract of sale. Counsel provided this contract after the hearing, as well as photos of the property after the tenant was removed. No itemized document was ever provided, however, explaining the repairs that

were done to the property, until this appeal. And, as Mrs. Curtin notes, even the unsigned statement of costs attached to the brief on appeal does not add up to the costs claimed below.

Although it is not unusual to make repairs to a property prior to sale, and it would not, by itself, be a bar to recovery that the company making the repairs was an interested party, the record here, which indicates conflict between the parties, permitted a finding of improper motives. In addition to payment to an interested party, with no documentation in support, the record indicates that the repairs were of limited value to the Estate, and they, and other claimed expenses, had the effect of depleting the Estate and preventing Mrs. Curtin from getting the payments agreed to by the parties in their Settlement Agreement.[10] We cannot conclude, under the circumstances of this case, that the court erred or abused its discretion in granting Mrs. Curtin's Exceptions and disallowing this expense.

JUDGMENTS OF THE ORPHANS' COURT FOR CALVERT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[10] As indicated, pursuant to the Settlement Agreement, Mrs. Curtin was to receive $20,000, i.e. $10,000 reimbursement of funeral expenses incurred, and another $10,000 for the spousal share of the Estate. The Second and Final Administrative Account, however, provided that she would not receive $10,000 for her spousal allowance because there were insufficient funds in the Estate to pay it.