Circuit Court for Montgomery County,
Sitting as the Orphans' Court
Case No. W81613

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1718

September Term, 2019

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EDGAR C. BRADFORD

v.

HELEN SMITH, PERSONAL REPRESENTATIVE OF THE ESTATE OF CHRISTINE BRADFORD, et al.

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Arthur,
Beachley,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Salmon, J.

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Filed: January 19, 2021

This case has a long and somewhat complicated history. There are two appellees: Helen Smith ("Ms. Smith"), Personal Representative of the Estate of Christine Bradford, and Fedder and Garten Professional Association ("Fedder and Garten"). Helen Smith is also a member of the Fedder and Garten law firm. The appellant is Edgar C. Bradford, the sole legatee, and the former personal representative of the Christine Bradford Estate ("the Estate").

In 2017, Ms. Smith and Fedder and Garten, were retained by the Estate's largest creditor, Brooke Grove Foundation, Inc., d/b/a Brooke Grove Rehabilitation & Nursing Center ("Brooke Grove") to remove Mr. Bradford as the personal representative of the Estate. In that lawsuit, Brooke Grove proved that Mr. Bradford, while serving as personal representative, took various actions that seriously damaged the Estate. As a result of that lawsuit, the damages caused to the Estate[1] by Mr. Bradford's actions were remedied.

The Circuit Court for Montgomery County, sitting as the Orphans' Court for Montgomery County ("the Orphans' Court"), appointed Ms. Smith to serve as Mr. Bradford's replacement as personal representative of the Estate. Both prior to her appointment and afterwards, Ms. Smith and Fedder and Garten performed legal services that benefitted Brooke Grove but also benefited the Estate.

[1] In *Castruccio v. Estate of Castruccio,* 230 Md. App. 118, 124 n.3 (2016), *aff'd* 456 Md. 1 (2017), we noted that an "estate" is technically just a collection of assets and liabilities and not a juridical entity like a corporation or an LLC.

Ms. Smith and her firm filed a petition in the Orphans' Court in which they sought attorney's fees for the work that Fedder and Garten had done prior to her appointment that benefitted both Brooke Grove and the Estate. She and Fedder and Garten also sought attorney's fees for legal services performed in administrating the Estate and by filing and prosecuting actions against Mr. Bradford after her appointment. Mr. Bradford opposed the petition for attorney's fees. His two main objections were based on the contentions that: 1) no attorney's fees should be awarded for work done that benefitted Brooke Grove even if the legal services also benefitted the Estate; and 2) the petition for attorney's fees should be denied because the petition did not separate the fees that were charged for services rendered that benefitted Brooke Grove from those that were charged for Ms. Smith's administration of the Estate.

The Orphans' Court granted 70% of the fees requested for services rendered by the petitioners prior to Ms. Smith's appointment as personal representative and 100% of the fees requested for the period between Ms. Smith's appointment and the date of the petition.

Mr. Bradford filed this timely appeal. Two issues are presented:

1) Whether the Orphans' Court erred in awarding Fedder and Garten attorneys' fees, to be paid out of the Estate, for legal services incurred in representing Brooke Grove?

2) Whether Fedder and Garten may recover its attorney's fees, out of the Estate's assets, for defending against Mr. Bradford's challenges to Fedder and Garten's attorney's fees?

## I.

## *BACKROUND FACTS*[2]

Christine Bradford died on October 14, 2014, while a patient at Brooke Grove. In her will, she named Mr. Bradford, her son, as her personal representative. The beneficiaries named in the will were Mr. Bradford and his sister, Loyce Bradford, who later renounced her rights as a beneficiary.

On October 27, 2014, Mr. Bradford filed a petition for administration of the Estate in which he listed only two assets. One was a house located at 1413 Morningside Drive, in Silver Spring, Maryland ("the Property"), which he listed as being worth $315,000. The other asset was a checking account with a $5,000 balance. The Orphans' Court granted Mr. Bradford's petition.

In November 2014, Brooke Grove filed an $84,798.31 claim in the Orphans' Court against the Estate for medical care and services provided to the decedent prior to her death. That lawsuit was filed on behalf of Brooke Grove by the law firm of Bodie, Dolina, Hobbs, Friddell & Grenzer, P.C. (the "Bodie Firm").

The Bodie Firm engaged in negotiations with Mr. Bradford in an effort to settle the debt action. In May 2016, Mr. Bradford, as personal representative of the Estate, executed

[2] Ms. Smith and Mr. Bradford were previously before this Court in *Bradford v. Smith*, No. 2626, Sept. Term 2018 (Md. App. March 18, 2020). In that case, a panel of this Court affirmed the Orphans' Court's denial of Mr. Bradford's request to remove Ms. Smith as personal representative of the Estate. The unreported opinion in that case was written by the Honorable Deborah S. Eyler. In part I of this opinion, we have, in many instances, quoted without direct attribution from the "Facts and Proceedings" section of Judge Eyler's opinion.

a settlement agreement whereby the Estate agreed to repay the monies owed to Brooke Grove pursuant to a **s**chedule that required it to pay off the indebtedness at the rate of $500 per month. No monies were paid pursuant to that agreement. On November 7, 2016, Brooke Grove entered into a revised settlement agreement with Mr. Bradford, as personal representative of the Estate, in which Brooke Grove agreed to settle all claims against the Estate in exchange for the Estate paying Brooke Grove $60,000 within 30 days. The Estate breached the revised agreement by failing to make any payment. Accordingly, Brooke Grove rescinded the agreement.

Because Mr. Bradford, in his capacity as personal representative, had breached two settlement agreements and because Mr. Bradford steadfastly refused to sell the Property to pay off the Estate's debts, Brooke Grove filed, in the Orphans' Court, a "Petition to Remove Personal Representative or Compel Sale of Real Property." The petition was filed on February 16, 2017 by two law firms: Fedder and Garten, and the Bodie Firm.

On June 9, 2017, the Orphans' Court held a hearing on the pending petition. The judge orally ruled that Brooke Grove's claim in the amount of $84,798.31 was allowed in full and that Mr. Bradford would be given 45 days to obtain financing to pay the allowed amount or to enter into a listing agreement to sell the Property.

Five days later, on June 14, 2017, Mr. Bradford executed a deed on behalf of the Estate that transferred the Property to himself for no consideration. On June 19, 2017, the Orphans' Court issued an order memorializing the oral ruling it had made at the conclusion of the June 9, 2017 hearing. Three days later, on June 22, 2017, the Orphans' Court entered an order allowing Brooke Grove's claim of $84,798.31 and granting attorney's fees to the

law firm representing Mr. Bradford (as personal representative of the Estate) in the amount of $19,493.30.

Mr. Bradford, on July 14, 2017, recorded in the land records of Montgomery County, the deed transferring the Property to himself.

On July 25, 2017, Brooke Grove, by its counsel, Fedder and Garten, and the Bodie Firm, filed an emergency petition in the Orphans' Court seeking to enforce the June 19, 2017 court's order, for declaratory relief and to remove Mr. Bradford as personal representative. The emergency petition alleged that Mr. Bradford was not authorized to transfer the Property to himself, the conveyance of the Property was fraudulent, and that the transfer of the Property violated the Court's prior order to the detriment of the Estate's creditors.[3] Brooke Grove also requested, among other things, that a successor personal representative be appointed.

On September 20, 2017, Mr. Bradford filed a "Statement of Resignation" with the Orphans' Court in which he resigned as personal representative. The following day he filed a motion seeking the appointment of his sister, Loyce Bradford, as successor personal representative, or if she was not able or eligible to serve, to have the attorney that he had hired to represent the Estate to be substituted as personal representative. The Orphans' Court held a hearing on September 21, 2017, after which it removed Mr. Bradford as personal representative and appointed Ms. Smith as the successor personal representative.

[3] Besides Brooke Grove, there were four other creditors; the total amount of the other claims was $12,965.09.

She was eligible to be appointed because she represented the Estate's largest creditor. After removing him as personal representative, the Court admonished Mr. Bradford as follows:

> You have caused all these problems. And it's -- your family is going to suffer because of that. I hope you're aware of that. Because the only [thing] I can think now is the new personal representative is going to be paid and they're going to be paid out of the assets of the estate, thus reducing even more by what will go to your family.
>
> And they, there's a whole procedure they're going to have to undertake to resolve this, which is going to cause more expense. So, you sitting there jiggling, trying to get your attorney's attention right now to try to convince me to do something you want to do, isn't going to happen today. . . .

After Mr. Bradford transferred the Property to himself, it was discovered that there was a preexisting federal tax lien against Mr. Bradford of over $91,000 and a Maryland tax lien of approximately $31,000. Fearing that the tax liens had attached to the Property and that the liens would remain attached even if Mr. Bradford were to re-convey the Property to the Estate, Brooke Grove and Ms. Smith, on behalf of the Estate, filed suit in the Circuit Court for Montgomery County against Mr. Bradford and others, including the Internal Revenue Service ("IRS") and the State of Maryland, seeking to have the transfer from the Estate to Mr. Bradford declared void and the Estate declared to be the Property owner.

Because the IRS was a party-defendant, the suit, at the request of the IRS, was removed to the United States District Court for the District of Maryland.

On December 4, 2018, United States District Court Judge Paul W. Grimm granted summary judgment in favor of the plaintiffs. Judge Grimm voided the conveyance from the Estate to Mr. Bradford and ruled that the tax liens no longer were attached to the Property. Both Mr. Bradford and the IRS noted an appeal to the United States Circuit

Court of Appeals for the Fourth Circuit from that ruling. Mr. Bradford's appeal was subsequently dismissed by the Court and the IRS later withdrew its appeal.

Meanwhile, on April 11, 2018, Mr. Bradford, acting *pro se*, filed a petition to remove Ms. Smith as successor personal representative. That petition named only Ms. Smith as a defendant. He alleged that Brooke Grove, through Ms. Smith, had "committed prejudice to the Estate, collusion, and breach of trust and bad faith[.]" Specifically, he claimed that Brooke Grove had contacted the IRS and the State of Maryland about his "personal taxes" and had "ma[de] deals" with them in violation of the personal credit protection afforded him by consumer protection laws and by "HIPAA." He asked the Orphans' Court, *inter alia*, to reinstate him as personal representative of the Estate.

In a supplemental petition, Mr. Bradford further alleged that during the decedent's stay at Brooke Grove, she had been given opioids without informed consent and that medication administered to her caused her to sustain bed sores and other maladies. In addition, he alleged that Brooke Grove and the pharmaceutical companies that manufactured the opioids had committed Medicare fraud by overcharging the federal government for the opioids. He demanded that a list of the drugs that were given to the decedent be produced and seemed to demand that Brooke Grove's claim against the Estate, which already had been allowed, be retroactively disallowed.

On September 7, 2018, the Orphans' Court held a hearing on the petition. Mr. Bradford, who appeared *pro se*, repeatedly expressed concern about the care his mother had received at Brooke Grove and complained that Brooke Grove was thwarting his attempt to obtain an itemized bill for the charges for her care and copies of her medical

records. When the Orphans' Court judge asked Mr. Bradford why he contended Ms. Smith should be removed as the personal representative, he replied: "[c]ontacting the IRS, and the State of Maryland about my personal taxes."

By order entered that same day, the Orphans' Court denied Mr. Bradford's petition. Mr. Bradford promptly filed an appeal to this Court, which was unsuccessful. *See supra* note 2.

After the fraudulent conveyance action in federal court was concluded, the Estate, by its counsel, Fedder and Garten, brought a wrongful detainer eviction action against Mr. Bradford and his sister, Loyce Bradford, in the District Court of Maryland for Montgomery County. The action was brought because the Property had not been properly maintained, making it hard to sell with Mr. Bradford still living there and because Mr. Bradford had been living on the Property rent-free since his mother's death. When the matter was called for hearing in the district court, a consent judgment was put on the record. In exchange for the Estate giving Mr. Bradford and his sister a 30-day extension, Mr. Bradford agreed to "waive his appeal in the Court of Special Appeals . . . [from] the Orphans' Court order" in which he sought to have Ms. Smith removed as personal representative. In accordance with the agreement, which was put on the record, the district court entered a judgment of possession in favor of the Estate but stayed the judgment for thirty days.

Mr. Bradford did not abide by the provisions in the consent agreement to dismiss the appeal nor did he leave the Property within 30 days. As a result, Ms. Smith, on behalf of the Estate, was required to file suit to have him evicted. That suit was successful.

On June 21, 2019, Fedder and Garten and Ms. Smith jointly filed a petition in Orphans' Court seeking reimbursement in the amount of $5,640.54 for expense monies advanced to the Estate. Additionally, appellees sought to be paid from the Estate $18,999 for services rendered between January 6, 2017 through and including September 21, 2017, when Ms. Smith was appointed personal representative of the Estate plus $50,341.50 for services rendered between September 21, 2017 and the date of the petition. The petition stated that Ms. Smith, along with several other Fedder and Garten lawyers, rendered legal services in this matter for a total of 225.20 hours billed. Of those hours, only 15 were for ordinary services rendered to the Estate by Ms. Smith as personal representative. The remaining billable hours were in connection with "extraordinary litigation expenses" provided in regard to litigation in which Mr. Bradford was involved.

On July 18, 2019, the Property, which was not encumbered by either a mortgage or deed of trust, was sold at public auction for $388,000.[4]

A hearing concerning the fee petition was held in the Orphans' Court on October 18, 2019. After hearing oral argument of counsel, together with the testimony of Ms. Smith and an expert called by the appellees to prove that the fees requested were fair, reasonable and necessary, the Orphans' Court, in an oral ruling, stated, in pertinent part:

> I find that all these, everything done for the [E]state as the personal representative, and all the litigation costs, were fair and reasonable, and

[4] While Mr. Bradford lived at the Property, he did not pay the property taxes. To protect the Property from going to tax foreclosure sale, Ms. Smith, as personal representative, asked Brooke Grove to advance monies for the property taxes. Brooke Grove did so and also advanced money to pay for property insurance on the Property, which Mr. Bradford had not paid.

> supported preserving the assets of the [E]state. And so I will definitely grant the petition for those fees.
>
> As to fees prior to appointment [which amounted to $18,999] . . . [i]t seems like for the most part everything is concerning seeking the [P]roperty for her client, filing the petition [to remove Mr. Bradford as personal representative] that . . . had to be filed.
>
> It's done, you know, in rather short course[.] . . . [T]he first bill is January 6th, and then a filing on February 16th. A petition for removal of personal representative, which was appropriate and was in good faith, and was very much endorsed by this Court.
>
> So I do find all these matters appropriate. I find that the fee amounts, again, [Ms. Smith]'s a practitioner for I think 14 years[.] . . . I find her amounts reasonable, along with other attorneys for lesser amounts, it's appropriate.
>
> But I will reduce the amount for pre-appointment down to 70 percent of the billables from before the date of appointment, just because the Court's, I think that's being very conservative for the [E]state. Just to give more confidence as to appropriateness, and I think I was well within my rights to grant all of it, but I won't do so.

As mentioned, appellees billed $18,999 for legal services performed pre-appointment. The reduction by 30%, reduced the pre-appointment legal fees to $13,299.30 ($18,999 x .30 = $5,699.70) ($18,999 - $5,699.70 = $13,299.30). The post-appointment part of the bill was $50,341.50. Thus, the total amount of attorney's fees awarded was $63,640.80 ($13,299.30 + $50,341.50)[5]

[5] The court also awarded Fedder and Garten $5,575.65 for costs that the firm advanced. In this appeal, Mr. Bradford does not dispute the propriety of that award.

## I.

### *Standard of Review*

"An orphans' court is a tribunal of special limited jurisdiction and can exercise only the authority and power expressly provided to it by law." *Piper Rudnick LLP v. Hartz*, 386 Md. 201, 216 (2005). "As such, an orphans' court has the power to direct the allowance of counsel fees out of the estate only when authorized by statute." *Id*. "An orphans' court must exercise sound judgment and discretion in determining whether to award counsel fees." *Id*. at 216-17. *See also Lusby v. Nethken*, 262 Md. 584, 585 (1971).

Two statutes authorize the Orphans' Court to allow attorney's fees to be paid from an estate: Md. Code (1974, 2017 Repl. Vol., 2019 Supp.), Estates & Trusts Articles ("E&T") §§ 7-602 and 7-603. Section 7-602 reads:

> **Compensation for services of an attorney.**
>
> (a) *In general*. – An attorney is entitled to reasonable compensation for legal services rendered by the attorney to the estate or the personal representative or both.
> (b) *Petition*. – (1) On the filing of a petition in reasonable detail by the personal representative or the attorney, the court may allow a counsel fee to an attorney employed by the personal representative for legal services.
> (2) The compensation shall be fair and reasonable in the light of all the circumstances to be considered in fixing the fee of an attorney.
> (c) *Considered with commissions*. – If the court shall allow a counsel fee to one or more attorneys, it shall take into consideration in making its determination what would be a fair and reasonable total charge for the cost of administering the estate under this article, and it shall not allow aggregate compensation in excess of that figure.

Section 7-603 provides:

> **Expenses of estate litigation**. When a personal representative or person nominated as personal representative defends or prosecutes a proceeding in

> good faith and with just cause, the personal representative or person nominated as personal representative shall be entitled to receive necessary expenses and disbursements from the estate regardless of the outcome of the proceeding.

"The decision to allow attorney's fees is dependent upon the Orphans' Court's exercise of its discretion to approve all, some, or none of the requested fees." *Beyer v. Morgan State Univ.*, 369 Md. 335, 353 (2002). *See also Piper Rudnick LLP*, 386 Md. at 216-17 (citing *Wolfe v. Turner*, 267 Md. 646, 653 (1973)); *Lusby v. Nethken*, 262 Md. at 586. The Orphans' Court determination must be based upon the evidence offered as well as "a consideration of the tests held generally applicable in fixing the size of a fee; and from a breach of discretion on its part, an appeal will lie to [the appellate courts]." *Dessel v. Goldman*, 231 Md. 428, 431 (1963) (citing *American Jewish Joint Distribution Committee v. Eisenberg*, 194 Md. 193, 199-200 (1949)). *See also Beyer*, 369 Md. at 353; *Wolfe*, 267 Md. at 653. Interpretation of the law by the Orphans' Court, however, is reviewed by an appellate court *de novo*. *In re Watkins*, 241 Md. App. 56, 70 (2019).

## II.

### *Analysis of First Issue Presented*

Mr. Bradford contends that "Fedder and Garten is not entitled to any fees" for representing Brooke Grove. In support of that contention, he argues:

> E&T § 7-602 provides that "[a]n attorney is entitled to reasonable compensation for legal services rendered by the attorney *to the estate or the personal representative* or both." E&T § 7-602(a) (emphasis added). Similarly, E&T § 7-603 allows "the personal representative" to seek "expenses and disbursements, but only when the "*personal representative* ... defends or prosecutes a proceeding in good faith and with just cause." E&T § 7-603 (emphasis added). Since Brooke Grove is neither the "estate" nor

> the "personal representative," the applicable statutes do not authorize an award of counsel fees to Fedder & Garten for representing Brooke Groove.

(Footnote omitted.)

Mr. Bradford's argument continues:

> Here, the statute clearly and unambiguously allowed Fedder & Garten to seek "reasonable compensation for legal services rendered . . . to the estate or the personal representative or both." E&T § 7-602(a). *See also id*. § 7-602(b)(1) (authorizing the Orphans' Court to "allow a counsel fee to an attorney *employed by the personal representative* for legal services" (emphasis added)). As there is no statutory authority to support an award of counsel fees for representing Brooke Grove, the Orphans' Court erred as a matter of law and its decision should be vacated.

The appellees contend that Mr. Bradford is mistaken in his interpretation of E&T § 7-602. According to appellees, where the assets of an estate are protected from dissipation as the result of an action brought for the benefit of the Estate by someone other than the personal representative, the payment of attorney's fees from the estate is permitted. For the aforementioned proposition, appellees cite *Clark v. Rolfe*, 279 Md. 301, 307 (1977) and *Battley v. Banks*, 177 Md. App. 638, 659 (2007). Appellees contend that Fedder and Garten's representation of Brooke Grove is a perfect example of the application of the rules set forth in *Clark v. Rolfe* and reiterated in *Battley v. Banks*. The appellees make the following argument:

> Prior to Ms. Smith's appointment as Personal Representative, the Estate was in woeful condition: Mr. Bradford had done nothing to satisfy the Estate's creditors and instead fraudulently conveyed the Estate's largest asset in direct violation of the Orphans' Court's Order. Brooke Grove retained Fedder and Garten to set in motion the events that led to the recovery of the Estate's largest asset. Without Fedder and Garten's legal services rendered to Brooke Grove, Ms. Smith would not have been appointed Personal Representative, Mr. Bradford would have remained as Personal Representative, the Property would never ha[ve] been returned to the Estate in the fraudulent conveyance

> litigation, Mr. Bradford would never have been evicted, the Property would never have been sold, and the Estate's creditors would never have been satisfied. Brooke Grove's efforts, and Fedder and Garten's representation, were clearly services rendered and beneficial to the Estate.[6]

(Reference to record extract omitted.)

The facts in *Clark*, insofar as here pertinent, are set forth below. Bertha G. Rolfe died testate, leaving an estate worth almost one million dollars. She made certain specific monetary bequests, but left the residuary estate to her six children in equal shares. The personal representative filed in the Orphans' Court a fourth account in which he asked for various commissions and $30,000 in attorney's fees. The surviving beneficiaries hired an attorney who filed, on their behalf, exceptions to the fourth account. They contended that certain commissions had been overpaid by the personal representative and that the attorney's fees requested were too high. 279 Md. at 303-04. As a result of the exceptions having been filed, the estate saved almost $30,000 because certain commissions and attorney's fees charged to the estate were disallowed by the Orphans' Court. *Id*. at 304. Relying on E&T § 7-602, the Orphans' Court awarded counsel for the six beneficiaries $3,000 in attorney's fees to be paid out of the estate. *Id*. On appeal, the personal representative argued that § 7-602 contemplated that only the attorney hired by the estate may be allowed a counsel fee from the estate. *Id*. at 304. The six residuary legatees disagreed and argued that the exceptions to the fourth account presented by their counsel

[6] Legal services rendered by Fedder and Garten in defending Ms. Smith from Mr. Bradford's unsuccessful efforts to have her removed as personal representative benefitted the Estate. *See Piper Rudnick LLP*, 386 Md. at 236.

resulted in a saving to the estate of approximately $29,800 and warranted the payment of a fee by the estate. *Id*. at 304-05.

In *Clark*, the Court of Appeals agreed with the six beneficiaries, saying:

> We have no hesitancy in concluding that under the same statutory provision [E&T § 7-602], in the rare case where the assets of an estate are increased in value or protected from dissipation as the result of an action brought by someone other than the personal representative for the benefit of the estate as a whole, the orphans' court, in the exercise of its discretion, may allow the payment of a counsel fee from the assets of the estate. To reach any other conclusion would be to seriously hamper a successful attempt to bring a recalcitrant personal representative to account or to remove one for breach of his fiduciary duty.
>
> We are satisfied that the orphans' court did not abuse its discretion when it ordered the payment by the estate of a fee of $3,000.00 to a law firm whose efforts prevented an improper diversion of nearly $30,000.00 in estate assets.

*Id*. at 307.

In his brief, Mr. Bradford does not make reference to the language just quoted, which constituted the holding of the Court in *Clark*. Instead, he relies on an excerpt from an earlier part of the opinion where the Court said: "[O]ur cases indicate that in a rare instance, an orphans' court may, in its discretion, allow a fee to counsel for an interested party who acts to protect or enhance the estate and not to advance the interest of his client, *compare* 2 P. Sykes, [Probate Law and Practice], § 887 at 41-43." 279 Md. at 305-06 (emphasis added).

Based on the emphasized language in the above excerpts, Mr. Bradford appears to contend, although he does not say so explicitly, that if counsel for an interested party performs services that benefit the estate, counsel cannot recover fees if the services also

advanced the interest of his or her client. If that is Mr. Bradford's contention, we reject it because this contention is contrary to the holding in *Clark* where the attorney for the interested parties performed services that benefitted both the estate and his clients.

In *Battley v. Banks*, this Court applied the holding in *Clark*. That case had its origin in 2002 when Dorothy Battley executed a will naming her nephew, Robert Battley, as personal representative. Not long thereafter, Ms. Battley became disabled from dementia and Michael G. Banks was appointed guardian of Ms. Battley's property. 177 Md. App. at 643.

After Ms. Battley died in 2004, Mr. Banks prepared a final accounting and proposed distribution of Ms. Battley's assets. *Id*. The circuit court entered an order "discharging [Mr.] Banks as the guardian of Ms. Battley's property and directing him to transfer 'all assets at the time of [her] death' to the person 'to be appointed' personal representative of her estate." *Id.*

Over a year went by without any action having been taken by anyone to open an estate for the decedent. Therefore, Banks filed a petition for judicial probate in the Orphans' Court requesting, *inter alia*, that he be appointed the personal representative of Ms. Battley's estate. *Id*. at 644. About two weeks later, Robert Battley filed Ms. Battley's will with the Register of Wills. The will named him as personal representative. *Id*. After a hearing, the Orphans' Court ordered that the will be admitted to probate and appointed Robert Battley as personal representative in accordance with the will. *Id*. at 645.

Subsequently, the Orphans' Court held a hearing to consider Mr. Banks's request for, *inter alia*, $300 in attorney's fees for opening the estate. The Orphans' Court granted

the request for attorney's fees. *Id*. at 646. In *Battley*, this Court affirmed the award of the fees, saying:

> ET § 7-602(a) is relevant. That section states that "[a]n attorney is entitled to reasonable compensation for legal services rendered by him to the estate and/or the personal representative." Generally, such services must "have been rendered 'for the protection or benefit of the estate.'" *Banashak v. Wittstadt*, 167 Md. App. 627, 666 (2006) (quoting ET § 7-401(y)). And services rendered "for the protection or benefit of the estate" include "the rare case where the assets of an estate are increased in value or protected from dissipation as the result of *an action brought by someone other than the personal representative for the benefit of the estate as a whole*. . . ." *Clark v. Rolfe*, 279 Md. 301, 307 (1977) (emphasis added).
>
> That was the case here. The orphans' court found that Banks's actions, for which he was charging $300 in attorneys' fees, were for the benefit of Ms. Battley's estate. It stated during the hearing that "[t]here's really no dispute, is there, that Mr. Banks had to open the estate . . . I don't believe for one second that Mr. Banks would have gone to the trouble to open an estate, [if] in fact Ms. Battley had a will and he said, 'No, no, don't bother Mr. Banks, I've got a will and I'm going to go ahead and file this and we'll take care of the stuff that's in the nursing home, and we'll get it out of your basement.'" When appellant pointed out that there had been a dispute over the appointment of the personal representative and that Banks had lost, the court responded that "the fact of the matter is that Mr. Banks did render services in the amount of $300 to the estate at the beginning of this whole thing. Whether he continued on as personal representative is a different issue."

*Id*. at 659-60.

Based on *Clark* and *Battley* it is clear that Mr. Bradford is wrong when he says in his brief that "[t]here is no statutory authority [that] allowed the Orphans' Court to award counsel fees for representation of any party other than 'the estate or the personal representative.'"

In neither Mr. Bradford's opening nor reply brief does he attempt to distinguish *Battley*. In regard to the exception to the usual rule set forth in *Clark*, he argues:

"[a]lthough this judicial exception runs directly contrary to the plain language of E&T §§ 7-602 & 7-603, Brooke Grove never actually incurred any legal fees while represented by Fedder and Garten." We interpret this argument to mean that because Fedder and Garten never billed Brooke Grove for attorney's fees, no fees were ever incurred by it and therefore the appellees are not entitled to payment. We reject that argument.

To reiterate, the exception to the usual rule that is here applicable, as set forth in *Clark*, is that "where the assets of an estate are . . . protected from dissipation as the result of an action brought by someone other than the personal representative for the benefit of the estate as a whole, the orphans' court, in the exercise of its discretion, may allow the payment of a counsel fee from the assets of the estate." 279 Md. at 307. Mr. Bradford cites no authority to support his contention that in order for the exception to be applicable, Brooke Grove must prove that it was billed for the services its attorneys performed that benefitted the Estate. Notably, in *Clark,* there is no indication that the attorney for the six residuary legatees ever billed his clients for the work he performed on their behalf. Moreover, we can think of no good reason why Brooke Grove, in order to invoke the exception, should be required to first receive a bill from counsel, pay it, and then ask the Orphans' Court to reimburse it for the amounts paid. As we said in *Estate of Castruccio v. Castruccio,* 247 Md. App. 1, 39 (2020), "'[t]he law, in its majesty, is not designed to require futile action or idle gestures'" (quoting *Clark v. Wolman*, 243 Md. 597, 600 (1966)).

In summary, we agree with appellees that Mr. Bradford is wrong when he asserts that Fedder and Garten "is not entitled to any fees" for representing Brooke Grove. We also agree with the Orphans' Court that the work done by Fedder and Garten, although it

benefitted Brooke Grove, also directly benefitted the Estate because those legal services preserved the assets of the Estate. As the appellees argue, if Brooke Grove had not taken action, the Estate's largest asset (the Property) would not have been available to pay off creditors or for any other purpose.

Mr. Bradford makes another argument that is premised on the validity of the assertions that we have just rejected. He phrases that argument as follows:

> As Fedder & Garten is not entitled to recover fees for representing Brooke Grove, the question becomes: What amount represents "reasonable compensation for legal services rendered by the attorney to the estate or the personal representative or both" in accordance with E&T § 7-602(a)? A total of 225.20 hours were "billed" by Fedder & Garten for its representation of [Ms. Smith] and Brooke Grove, but neither [Ms. Smith] nor [their] expert could determine which legal services were performed on behalf of which client[.]

Under the circumstances of this case, there was no need to determine which legal services were performed on behalf of Brooke Grove and which were performed on behalf of the Estate. As mentioned, the Orphans' Court ruled that 70% of the amount requested for the period between the date that Fedder and Garten was retained and the date that Ms. Smith was appointed personal representative, was for services that benefitted the Estate and, after her appointment on September 21, 2017, all the services rendered benefitted the Estate. In his brief, Mr. Bradford does not contend that the Orphans' Court was clearly erroneous when it made that 70% finding nor does he claim that the Orphans' Court was clearly erroneous when it found that all the legal services rendered post-appointment, benefitted the Estate. Instead, he steadfastly maintains, contrary to the holdings by the Court of Appeals in *Clark* and by this Court in *Battley*, that if the services benefitted Brooke

Grove, appellees cannot seek reimbursement from the Estate for fees charged for such services.

In regard to the award of attorney's fees, an additional issue arises from what appellees said in their brief and what Mr. Bradford said in his reply brief. In their brief, in footnote eight, the appellees state: "Mr. Bradford has not challenged the costs Fedder and Garten sought or the reasonableness of the amount of fees or hours expended on the various tasks in representing either the Personal Representative or Brooke Grove." In his reply brief, Mr. Bradford disagrees saying that he "has challenged the reasonableness of fees and hours expended by Fedder and Garten. . . . Specifically, [a]ppellant has questioned the reasonable compensation [a]ppellee[s] [are] entitled to collect for services rendered[.]"

In support of that last contention, Mr. Bradford points to one sentence in his opening brief in which he asked the question "[w]hat amount represents 'reasonable compensation for legal services rendered by the attorney to the estate or the personal representative or both' in accordance with E&T § 7-602(a)?" He goes on to add in his opening brief that "[t]he only entry not challenged in this appeal were costs of $5,575.65[.]" Mr. Bradford also points out in his reply brief that at various places during the hearing regarding the fee petition, his counsel challenged the reasonableness of counsel fees. Moreover, Mr. Bradford argues in his reply brief that the appellees failed to meet their burden of showing that the fees were expended in "good faith" and with "just cause."[7]

[7] The petition for fees here at issue was brought pursuant to E&T § 7-602. Under that section, in contrast to E&T § 7-603, there is no "good faith" or "just cause" (continued)

It is true that in the Orphans' Court Mr. Bradford did contend that the legal fees were not fair or reasonable but, for our purposes, that is irrelevant because Mr. Bradford, in his opening brief, did not raise the issue of whether the Orphans' Court erred in ruling that the fees were fair and reasonable. More important, he did not put forth any argument as to that issue. It is a basic rule that:

> [a]n appellant is required to articulate and adequately argue all issues the appellant desires the appellate court to consider in the appellant's initial brief. It is impermissible to hold back the main force of an argument to a reply brief and thereby diminish the opportunity of the appellee to respond to it.

*Oak Crest Village, Inc. v. Murphy*, 379 Md. 229, 241-42 (2004). Because Mr. Bradford, in his opening brief, did not argue the issue of necessity or reasonableness of the fees, that issue is not preserved for our review.[8]

requirements. There is a requirement that the fees charged be fair and reasonable. E&T § 7-602(b)(2). In the Orphans' Court, appellees called Roland Schrebler as an expert witness. Mr. Schrebler testified that since 1991 he had been a practicing attorney with a specialty in estates and trusts matters. Counsel for Mr. Bradford did not take issue with Mr. Schrebler's qualifications. Mr. Schrebler testified that the fees here at issue were fair, reasonable and necessary and that the expenditures were made in good faith. That testimony, which the Orphans' Court evidently believed, was clearly sufficient for the appellees to meet their burden of showing that the fees charged were fair and reasonable. Mr. Bradford called no witnesses to contradict the testimony of Mr. Schrebler.

[8] Even if it was appropriate to bring up this issue for the first time in a reply brief, appellant would not have succeeded as to that issue. Appellant puts forth no argument in his reply brief to support an argument that the Orphans' Court erred in finding that the fees charged were fair, reasonable and necessary. Md. Rule 8-504(a)(6) requires a party to present "[a]rgument in support of the party's position," which appellant failed to do. *See Darling v. State*, 232 Md. App. 430, 465-66 (2017).

For the reasons set forth above, we hold that the Orphans' Court did not err in granting appellees an award of attorneys' fees in the amount of $63,640.80 to be paid out of the estate.

## III.

### *Analysis of Second Issue Presented*

The parties to this appeal have asked us to exercise our discretion under Rule 8-131(a) to decide the issue of whether appellees are entitled to recover the attorneys' fees incurred in defending in the Orphans' Court and in this Court, Mr. Bradford's challenge to their fee petition. The parties recognize that once this appeal concludes, there will inevitably be another fee petition by appellees seeking such an award.

Maryland Rule 8-131(a) provides that except for certain jurisdictional issues, an appellate court will ordinarily "not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" There is however, an exception to this rule that allows an appellate court to "decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal." We agree with the parties that this is one of the rare instances where, to save time and expense, we should invoke the exception set forth in Md. Rule 8-131(a) and set forth our views as to this issue.

Both parties, to some extent at least, rely on *Piper Rudnick LLP v. Hartz*, *supra*. 386 Md. at 207. In that case, the decedent, Sigmund Stanley Hartz, executed a will naming Brian Goldman as the personal representative of his estate. The beneficiaries of the estate were the decedent's wife and children. The estate was worth about 4.5 million dollars.

Eventually, the relationship between Mr. Goldman and the beneficiaries became acrimonious. *Id*. at 208-210. When the beneficiaries filed an action in the Orphans' Court to have him removed as personal representative, Mr. Goldman hired the law firm of Piper Rudnick LLP to represent him. After a trial in the Orphans' Court, Mr. Goldman was removed as the personal representative, but on appeal, this Court reversed and reinstated Mr. Goldman as personal representative. *Id*. at 211. A petition for attorneys' fees and expenses was filed by Mr. Goldman, in which he asked the Orphans' Court for permission to pay, out of the estate assets, over $589,000, which was the amount charged by Piper Rudnick for attorneys' fees and expenses. *Id*. at 212. The Orphans' Court denied the petition in its entirety. Piper Rudnick and Mr. Goldman appealed directly to this Court. In a 2003 unreported opinion, a panel of this Court held that in order for an Orphans' Court to decide whether to approve fees incurred by the personal representative in prosecuting or defending proceedings, the Orphans' Court must first determine whether the litigation was "for the protection or benefit of the estate." *Id*. at 213 (quotation marks omitted). "Next, the orphans' court must determine whether the prosecution or defense was in good faith and with just cause." *Id*. (quotation marks omitted). The Orphans' Court, on remand, denied the petition of Mr. Goldman and Piper Rudnick, stating that "this Court has determined that the litigation expenses incurred were *not* for the protection or benefit of the Estate." *Id*. at 214 (quotation marks omitted). Piper Rudnick and Mr. Goldman noted a timely appeal after which the Court of Appeals granted *certiorari* on its own initiative. 383 Md. 256 (2004).

After a lengthy and very thorough examination of the legislative history of E&T §§ 7-602 and 7-603, the Court of Appeals held that ET § 7-603 "does not include an independent 'benefit to the estate' requirement." 386 Md. at 218. Thus, the interpretation of § 7-603 by a panel of this Court was wrong. Nevertheless, in deciding whether the actions of the attorneys who represented the estate acted in good faith and with just cause, the Orphans' Court can consider whether the legal services rendered benefitted the estate. *Id*. *See also Estate of Castruccio*, 247 Md. App. at 40. And, benefit to the estate is not limited to monetary benefit. 386 Md. at 232.

In *Piper Rudnick LLP*, the Court held that a personal representative who defends successfully an attempt to remove him or her is acting for the benefit of the estate. 386 Md. at 236. "To hold otherwise, . . . most often would put the personal representative in an impossible situation, between the obligation to protect the testator or court's intent and a personal financial predicament." *Id*. Ultimately, the Court held that Goldman "acted in good faith and with just cause" and, accordingly, the judgment of the Orphans' Court was reversed and Piper Rudnick was awarded the fees and expenses it sought. *Id*. at 236, 238.

Appellant admits that there is no benefit of the estate requirement contained in E&T § 7-603. Nevertheless, in explaining why fees for litigating fees should not be allowed to be paid out of the Estate, the only argument made in either his opening or reply brief is that the legal services rendered in defending against his challenge to the fee petition did not benefit the Estate. Standing on its own, that argument would not make sense. Therefore, we interpret Mr. Bradford's position to be that in this case, the fact that the legal

services rendered in opposing his fee challenge did not benefit the Estate demonstrates that the appellees did not act with good faith and with just cause.

Mr. Bradford quotes from the *Piper Rudnick LLP* decision as follows:

> A personal representative whose expenses are incurred in pursuit of his personal interest, rather than a substantial estate interest, is not acting to benefit the estate.[19]

386 Md. at 232.

Footnote 19 in the *Piper Rudnick LLP* case reads as follows:

> For example, we have held that an executor claiming money or property from an estate may not be allowed attorney's fees. *See Hayden v. Stevens*, 179 Md. 16, 19 (1940) (holding under Md. Code (1939), Art. 93 § 5, that the executor advancing his own personal claim against the estate was not acting "for and on behalf of the estate"). We also have held that administrators who are aware that their letters of administration were granted prematurely or improvidently are not entitled to counsel fees from the estate, because they pursued their personal interests and did not benefit the estate. *See Sullivan v. Doyle*, 193 Md. 421, 431-32 (1949) (holding that the letters of administration granted to a person who misled decedent's daughter into renouncing her right to administer the estate should have been revoked and that counsel fees should not have been allowed); *Horton v. Horton*, 158 Md. 626, 633-35 (1930) (affirming the revocation of a person's appointment and holding under Article 93 § 5 that she was not entitled to counsel fees, because she knew that the other potential administrators had not received notice of her application for letters of administration).
>
> Other state courts have held that a personal representative who incurs counsel fees in pursuit of his or her personal interest does not benefit the estate. *See In re Estate of Estes*, 654 P.2d 4, 14 ([Ariz.Ct.App.]1982); *In re Estate of Stephens*, 574 P.2d 67, 73 ([Ariz.Ct.App.]1978); *In re Estate of Painter*, 671 P.2d 1331, 1334 (Colo.App.1983); *In re Estate of Eliasen*, 668 P.2d 110, 117 ([Idaho]1983); *In re Estate of Kolouch*, 911 P.2d 779, 786 ([Idaho.Ct.App.]1996); *In re Estate of Wulf*, 526 N.W. 2d 154, 156-57 (Iowa 1994).
>
> The Comment accompanying the Henderson Commission's proposed § 7-603 supports the position that <u>personal representatives acting in pursuit of their personal interest are not acting to benefit the estate and are unlikely</u>

> to be acting in good faith. The Henderson Commission's Comment stated, "Litigation prosecuted by a personal representative for the primary purpose of enhancing his prospects for compensation would not be in good faith. This follows [§ 3-720 of the Uniform Probate Code] and represents the Maryland law. See §§ 6 and 49A (Md.)." Henderson Commission Report at 120. Section 6 was the former Article 93 § 5 cited in *Hayden*, *Horton*, and *Sullivan.* *See* Md. Code (1957, 1964 Repl. Vol.), Art. 93 § 6. The first sentence of the Henderson Commission's Comment is a verbatim quote from the Editorial Board Comment to § 3-720 of the Uniform Probate Code. Other states have cited the Uniform Probate Code's Comment in holding that a personal representative who pursued his personal interest did not act in good faith. *See In re Estate of Odineal*, 368 N.W.2d 800, 801, 804 ([Neb.]1985) (citing the Uniform Probate Code's Comment as quoted in Nebraska's statute and holding that the trial court could determine that a personal representative did not act in good faith when the legal work was aimed only at generating a fee); *Oliver v. City of Larimore*, 540 N.W.2d 630, 634 (N.D.1995) (relying on the Uniform Probate Code's Comment and holding that a personal representative was not entitled to counsel fees for one of the law firms he hired, because that law firm pursued his personal interest in increasing his commissions).

386 Md. at 232-33 n.19 (emphasis added).

The first three Maryland cases mentioned in the first paragraph of footnote 19, all dealt with requests for attorney's fees made in the Orphans' Court by petitioners who relied on Md. Code (1939) Art. 93, Sections 5 and 7. Those sections of Article 93 were later recodified and became E&T § 7-602. *Piper Rudnick LLP*, 386 Md. at 227-28. Unlike § 7-603, § 7-602 does have a benefit of the estate requirement. *Id*. In those Maryland cases, the services rendered did not benefit the estate, and as a consequence, their claim for attorney's fees were denied. Under E&T § 7-603, it does not matter if the services rendered benefitted the estate so long as the "personal representative defends or prosecutes a proceeding in good faith and with just cause[.]"

There are some cases, to be sure, where the fact that a personal representative defends or prosecutes a proceeding solely for his/her benefit demonstrates a lack of good faith. An example is provided in two out-of-state cases cited in footnote 19 of the *Piper Rudnick LLP* decision, namely, *In re Estate of Odineal*, 368 N.W.2d at 804, where the services rendered were aimed only at "generating a fee"; and, *Oliver v. City of Larimore*, 540 N.W.2d at 634, where the law firm hired by the personal representative attempted to have the estate pay for legal services provided by the law firm to pursue the personal interest of the personal representative in increasing his commissions. Appellant cites no case or other authority that stands for the proposition that the fact that the services rendered did not benefit the Estate, standing alone, is sufficient to show that the fee petitioner did not act in good faith or with just cause.

For purposes of this opinion, we will assume, *arguendo*, that when Ms. Smith incurred attorney's fees for defending Mr. Bradford's challenge to the fee petition in the Orphans' Court and in this Court, she did not directly benefit the Estate.[9] With that

[9] Appellees argue that "although not a requirement to an award of fees under Section 7-603, the defense of Mr. Bradford's fee challenge indirectly benefitted the Estate." That argument has merit. We agree with the reasoning of the Court in the *Estate of Trynin*, 782 P.2d 232 (Cal. 1989). That case construed a statute similar to E&T § 7-603. The California statute allowed state administrators to be awarded fees "for conducting the ordinary probate proceedings and 'such further amount as the court may deem just and reasonable for extraordinary services.'" *Id*. at 232. The California Supreme Court held:

> We conclude that [the probate statute] authorizes courts in probate proceedings to award such compensation and that a contrary rule would ultimately be deleterious to decedents' estates and heirs because attorneys would be reluctant to perform services necessary to the proper administration

(continued)

assumption we turn to a discussion of the meaning of the words "good faith" and with "just cause."

What the Court of Appeals said in *Piper Rudnick* in this regard, is apposite:

> *Black's Law Dictionary* 235 (8th ed. 2004) defines "just cause" as a "legally sufficient reason." In *In re Estate of Goldman*, 813 N.E.2d 784 (Ind.App. 2004), the intermediate appellate court concluded that "[w]here, as here, the party contesting the validity of a will wins the trial on the merits, the will contest presumably was brought with 'just cause.'" *Id*. at 787-88.
>
> The concepts of "good faith" and "just cause" are intertwined. In *Management Personnel Serv. v. Sandefur*, 300 Md. 332 (1984), an employment case, we quoted *Black's Law Dictionary* 775 (5th ed. 1979), which defined just cause in part as a "cause outside legal cause, which must be based on reasonable grounds, and there must be a fair and honest cause or reason, regulated by good faith." *Id*. at 340.

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> of decedents' estates if the compensation awarded for their services could be effectively diluted or dissipated by the expense of defending against unjustified objections to their fee claims.

*Id*. at 233.

The Court went on to say:

> [T]he most compelling argument for permitting recovery of fee-related fees is that a contrary rule would effectively deny full and fair compensation to attorneys and thereby discourage qualified and competent counsel from undertaking to perform extraordinary services for bankruptcy or decedents' estates. . . . While fee litigation confers no immediate or direct benefit on the estate, it becomes a necessary incident to the attorney's work for the estate, and so compensable, when unjustified challenges are raised to a fee claim. Probate attorneys can hardly be expected to work for nothing, and if they have no reasonable assurance of full and fair compensation, they will be reluctant to undertake extraordinary services on behalf of decedents' estates.

*Id*. at 238.

> While we hold that § 7-603 does not contain an independent "benefit to the estate" requirement, we consider whether "benefit to the estate" is a relevant factor for an orphans' court's determination of good faith and just cause. An Arizona intermediate appellate court has concluded that while the Arizona probate statute contains no benefit to the estate requirement, whether one acts to benefit the estate is a factor to be considered in assessing good faith. In *In re Estate of Gordon*, 87 P.3d 89 ([Ariz.Ct.App.]2004), the court discussed the significance of the benefit to the estate concept. Concluding that the determination of "good faith" is an objective inquiry as opposed to a subjective one, the court explained as follows:
>
> > "An objective determination of the state of mind possessed by an actor in connection with his conduct is usually accomplished by examining all the circumstances surrounding the conduct. From these circumstances the fact-finder can infer the relevant state of mind which, as regards § 14-3720 good faith, would be the motive and purposes of the personal representative in conducting litigation and whether she was honest in her dealings. And it is important to note that among the circumstances to be considered would be any subjective expressions by the personal representation regarding her motives, purposes, or honesty-in-fact. While not controlling, these expressions are relevant and must also be included for consideration when conducting an objective inquiry."

386 Md. at 231-32.

A determination as to whether the appellees defended Mr. Bradford's fee challenge in good faith and with just cause is a fact question to be determined in the first instance by the Orphans' Court. *Id*. at 229-30. On remand, the Orphans' Court, applying the law as set forth in *Piper Rudnick LLP* (386 Md. at 229-32), should first determine whether appellees acted in good faith and with just cause in defending against the fee challenge. If it is determined that appellees did act in good faith and with just cause, they are entitled to reasonable attorneys' fees for necessary services. *See Estate of Castruccio*, 247 Md. App. at 43. In this regard, the Court should apply the factors set forth in Md. Rule 19-301.5. *Id*. at 43-51.

Additionally, what we said in *Estate of Castruccio* is relevant:

> Maryland courts are permitted to consider relevant factors besides those set forth in Rule [19.30]1.5 when calculating a reasonable fee award. *Monmouth Meadows Homeowners Ass'n, Inc. v. Hamilton*, 416 Md. [325] at 337-38 [(2010)], (stating that "[a] trial court also may consider, in its discretion, any other factor reasonably related to a fair award of attorneys' fees"); *accord CR-RSC Tower I, LLC v. RSC Tower I, LLC*, 429 Md. 387, 465 (2012); *Ochse v. Henry*, 216 Md. App. 439, 452-53 (2014). On remand, the circuit court should consider several other aspects of the Castruccio litigation in determining an appropriate attorneys' fee award.
>
> First, the circuit court should consider the actions of the beneficiaries in relation to the litigation. Courts allow large fee awards if the beneficiaries or other interested parties have prolonged or complicated the litigation. *See Skinner v. Morrow*, 318 S.W.2d 419, 425 (Ky.Ct.App. 1958) (affirming "liberal" fee for administrator's attorney because the "litigation was prosecuted with exceeding vigor by the attorney for the paternal heirs," and "much of the litigation was needless and useless, and ... unnecessarily large" through no "fault of the administrator or its attorney"); *In re Bush's Estate*, 230 N.W.2d 33, 43 ([Minn.]1975) (affirming large award for probating substantial estate because the beneficiaries had prolonged the litigation); *In re Estate of Burch*, 586 A.2d 986, 987-88 ([Pa.Super.Ct.]1991) (affirming substantial fee because the prolonged estate litigation was caused by negotiations with disinherited heirs, disputes between claimants, and acrimony between executors); *Segall v. Shore*, 236 S.E.2d 316, 319-20 ([S.C.]1977) (affirming large fee award for executor's attorneys in ongoing litigation of five years that involved a "lack of cooperation and resistance" by the beneficiaries).

Id. at 64-65.

Lastly, on remand, the Orphans' Court may consider the size of the Estate. In this regard, it is relevant that a significant portion of the Estate has melted away, although it

apparently is still solvent.[10] Indisputably, however, the reduced worth of the Estate was caused almost entirely by Mr. Bradford's misconduct.

**JUDGMENT AFFIRMED; CASE REMANDED TO THE CIRCUIT COURT FOR MONTGOMERY COUNTY SITTING AS THE ORPHANS' COURT FOR MONTGOMERY COUNTY FOR FURTHER PROCEEDINGS CONSISTENT WITH THE VIEWS EXPRESSED IN THIS OPINION; COSTS TO BE PAID BY APPELLANT.**

[10] So far, including the fee petition at issue in this case, the Estate has incurred fees and expenses of approximately $90,000. In addition, the Bodie Firm apparently intends to file a fee petition for services it performed, *inter alia*, in bringing the suit to force Mr. Bradford to return the Property to the Estate and the suit to remove Mr. Bradford as personal representative.