UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2004

September Term, 2015

IN THE MATTER OF THE ESTATE OF
DIANE Z. KIRSCH

Wright,
Arthur,
Shaw Geter,

JJ.

Opinion by Arthur, J.

Filed: June 7, 2017

Before her death, Diane Kirsch attempted to convey a partnership interest to a trust for the benefit of her companion, Wayne Cullen. A federal district court determined that the partnership agreement prohibited the transfer to Mr. Cullen and that the attempted transfer became void upon Ms. Kirsch's death. The Fourth Circuit affirmed that determination.

In the aftermath of those rulings, the Orphans' Court for Montgomery County concluded that Ms. Kirsch could not transfer the partnership interest to Mr. Cullen through her will. The orphans' court directed Mr. Cullen, as the personal representative of Ms. Kirsch's estate, to distribute the interest in kind to Ms. Kirsch's brother and heir-at-law, Paul V. Zehfuss.

Mr. Cullen noted an appeal from that order, solely in his capacity as personal representative of the estate. When a question arose as to Mr. Cullen's standing to appeal as personal representative, he moved to dismiss his own appeal, contending that he had not appealed from a final judgment.

For the reasons explained in this opinion, we conclude that the order directing the distribution of the asset was a final judgment within the meaning of the statute concerning appeals from the orphans' court. Nonetheless, we also conclude that, in his capacity as personal representative, Mr. Cullen lacks standing to challenge the order to the extent that it directs the distribution of the asset. Although Mr. Cullen has standing to challenge other aspects of the order in his capacity as personal representative, we conclude that he has identified no error.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Lee Graham Shopping Center Limited Partnership

The Lee Graham Shopping Center is a business located in Falls Church, Virginia. Dr. Paul E. Zehfuss and a co-founder established the business in 1969 as a general partnership. In 1984, they converted the business into a limited partnership under Virginia law.

Dr. Zehfuss, who died in 1985, conveyed some of his interest in the partnership to family members, including his daughter, Ms. Kirsch. As a limited partner, Ms. Kirsch accumulated a 21 percent interest in the partnership.

A written partnership agreement governed the partners' rights and obligations. The agreement provided that a limited partner could assign a partnership interest in only one of two ways.

First, a partner could transfer an interest, "whether inter vivos or by will," to a limited class of close family members: a "spouse, parent, descendant, or spouse of a descendant, or [] a trust of which any of [those] persons are beneficiaries."

Second, a partner could sell an interest upon receiving a "bona fide offer" from a third-party purchaser. Before accepting such an offer, however, the partner was required to give the other partners and the partnership the opportunity to match the offer – in effect, a right of first refusal. If no party exercised the right of first refusal and matched the offer within specified time periods, the selling partner would be free to complete the sale.

Under either of the two methods, the assignee could not become a partner without

the approval of the other partners.

B. Ms. Kirsch's Will and the Diane Z. Kirsch Family Trust

On October 5, 2010, Ms. Kirsch executed a will and amended a trust agreement for a revocable trust of which she was the trustee. The combined purpose of these instruments was to make Mr. Cullen the primary recipient of her assets upon her death.[1]

An asset of Ms. Kirsch's revocable trust was her 21 percent interest in the limited partnership. Upon Ms. Kirsch's death, the trust directed that Mr. Cullen would succeed her as trustee and that the bulk of the trust's assets, including the partnership interest, would pass to a separate trust that had been created for Mr. Cullen's benefit.

Ms. Kirsch's will recited that she was unmarried and had no children. She appointed Mr. Cullen as the personal representative of her estate and empowered him to control estate assets during its administration. She devised all of her tangible personal property to Mr. Cullen. In the residuary clause of the will, she devised the remainder of her property to her revocable trust (and ultimately, therefore, to the trust that she had created for Mr. Cullen's benefit).

By 2011, Ms. Kirsch had been diagnosed with terminal cancer. She died on January 22, 2012.

[1] Ms. Kirsch's will identified Mr. Cullen as her "friend." In a probate petition, Mr. Cullen described himself as Ms. Kirsch's "significant other." In his brief, Mr. Cullen describes himself as Ms. Kirsch's "longtime companion." Whatever the correct description of the relationship might be, the legally significant fact is that they did not marry one another or otherwise become family members.

Several months after Ms. Kirsch's death, Mr. Cullen, as successor trustee of Ms. Kirsch's revocable trust, purported to assign the 21 percent partnership interest from her trust to the trust that was created for his benefit. In addition, Mr. Cullen asked the partnership to make him a limited partner. The partnership responded by informing Mr. Cullen of the transfer restrictions from the 1984 partnership agreement, including the restriction on Ms. Kirsch's ability to assign an interest to anyone besides a "spouse, parent, descendant, or spouse of a descendant, or [] a trust of which any of [those] persons are beneficiaries."

C. Initial Probate Proceedings and Related Litigation in Federal Court

In June 2012, Mr. Cullen filed a petition for administrative probate of Ms. Kirsch's will in Montgomery County. The petition identified three interested persons: (1) Mr. Cullen, as the personal representative and as a legatee; (2) Mr. Cullen, as the successor trustee of Ms. Kirsch's revocable trust; and (3) Mr. Zehfuss, as the only potential heir-at-law. The Register of Wills sent notice of the proceedings to Mr. Zehfuss.

At the end of 2012, Mr. Zehfuss and the other partners converted their business into a limited liability company: Lee Graham Shopping Center, LLC. Much like the 1984 partnership agreement, the LLC's new operating agreement prohibited members from assigning their interests in the company, except through a gift to certain permitted family members or through the process by which the other partners and the partnership could match any bona fide offer from someone other than a permitted family member.

In February 2013, Lee Graham Shopping Center, LLC, filed suit in the United

States District Court for the Eastern District of Virginia. The company sought a declaration that under the partnership agreement Ms. Kirsch did not have the authority to transfer her interest to a revocable trust for Mr. Cullen's benefit and that Mr. Cullen had no authority to transfer the partnership interest from the revocable trust to his own trust. As defendants, the company named the Kirsch estate, Ms. Kirsch's revocable trust, and Mr. Cullen's trust. Mr. Cullen counterclaimed against the company and raised additional claims against the partnership, Mr. Zehfuss, and the other members of the company.

The federal district court granted summary judgment in favor of the company. *Lee Graham Shopping Ctr., LLC v. Estate of Kirsch*, 2013 WL 11740208 (E.D. Va. Oct. 3, 2013). The court determined that, "under the clear terms" of the partnership agreement, the "transfer of a limited partner's interest to a non-family member is only possible . . . pursuant to the procedure for bona fide offers." *Id.* at *1. Because Mr. Cullen was not one of the family members to whom Ms. Kirsch could assign her interest, and because there had been no bona fide offer to purchase the interest, the court reasoned that Ms. Kirsch could not assign her interest to Mr. Cullen's trust through her revocable trust. *Id.* The court concluded that "[Ms. Kirsch's] transfer of her partnership interest to the Trust became void on the date of [her] death," and "[t]herefore, upon [her] death, . . . her limited partnership interest was a personal asset that is now a part of the Estate of Diane Z. Kirsch." *Id.*[2]

[2] The district court dismissed each of Mr. Cullen's counterclaims on the merits, except for a state-law claim that the company was wrongfully withholding the income attributable to Ms. Kirsch's interest. *Lee Graham Shopping Ctr., LLC v. Estate of Kirsch*,

Shortly after the federal district court's decision, Mr. Cullen submitted an inventory and first account for the estate in Montgomery County, and Mr. Zehfuss filed exceptions. Mr. Zehfuss contended that because of the transfer restrictions in the partnership agreement, the interest could not pass to Mr. Cullen under the will. Therefore, Mr. Zehfuss contended, the interest should pass to him by intestate succession. He excepted to Mr. Cullen's failure to list the partnership interest as an estate asset, his failure to indicate the value of that asset, and his failure to include Mr. Zehfuss on an "updated" list of interested persons that Mr. Cullen had filed a few months earlier.

Mr. Cullen, as the personal representative, opposed the exceptions. He contended that Mr. Zehfuss lacked standing to take exceptions, because, he said, Mr. Zehfuss was no longer an "interested person" under Maryland estate law. *See generally* Md. Code (1974, 2011 Repl. Vol.), § 1-101(i)(4) of the Estates and Trusts Article ("E&T") (stating that an heir is an interested person "even if the decedent dies testate, except that an heir of a testate decedent ceases to be an 'interested person' when the register has given notice" to the heir as required by statute). At Mr. Cullen's request, the orphans' court stayed the matter pending the outcome of his appeal of the district court judgment in the United States Court of Appeals for the Fourth Circuit.

Meanwhile, Mr. Cullen submitted a second account. Mr. Zehfuss filed exceptions to the second account, which incorporated his earlier exceptions to the first account.

In February 2015, the Fourth Circuit affirmed the district court's judgment. *Lee*

2013 WL 11740208, at *2. The district court declined to exercise supplemental jurisdiction over that claim and dismissed it without prejudice. *Id.*

Graham Shopping Center, LLC v. Estate of Kirsch, 777 F.3d 678 (4th Cir. 2015). The appellate court upheld the district court's conclusion that the partnership agreement prohibited a partner from transferring his or her interest to anyone besides a few permitted family members, unless the other partners and the partnership have had the right to match a bona fide offer from the potential transferee. *Id.* at 682-83. The court reasoned that the purpose of the transfer restrictions was to protect the "family ownership" of the business "by providing that[,] before an outsider can purchase a Partnership interest, a right of first refusal must be given first to the Partnership and then to existing partners." *Id.* at 683. The court concluded that the agreement prohibited the transfer of Ms. Kirsch's interest to a trust for the benefit of Mr. Cullen, who was not a member of Ms. Kirsch's family. *Id.* at 683-84.[3]

D. Dispute over the Distribution of the Estate Asset

After the Fourth Circuit issued its decision, Mr. Zehfuss asked Mr. Cullen, as personal representative, to assign Ms. Kirsch's 21 percent interest to him. Mr. Zehfuss asserted that the interest should pass to him by intestate succession, because the federal courts had determined that Ms. Kirsch could not assign the interest to Mr. Cullen.

A few days later, Mr. Cullen submitted an information report in connection with

[3] In a lengthy footnote, the Fourth Circuit disposed of ten additional issues that Mr. Cullen had raised in that appeal. Those issues included Mr. Cullen's contention that "the Partnership ha[d] converted at least $37,800.00, plus interest, in distributions that rightfully belong to Cullen as the owner of the Interest[.]" *Lee Graham Shopping Ctr., LLC v. Estate of Kirsch*, 777 F.3d at 680 n.2. The court stated that it had "independently reviewed the record" and had determined that Mr. Cullen's contentions "ha[d] either been waived or ha[d] no merit." *Id.*

the probate proceedings. The report continued to list Ms. Kirsch's 21 percent interest as an asset that would pass to Ms. Kirsch's revocable trust, of which he was the successor trustee. For the first time, he estimated the value of that asset to be $865,000.

At the same time, Mr. Cullen executed a "Purchase and Sale Agreement," in which he agreed to sell the interest from the Kirsch estate to the Cullen trust for $1.6 million. The agreement identified the seller as Wayne Cullen, as personal representative of the estate of Ms. Kirsch, and the buyer as Wayne Cullen, as trustee of the separate trust that Ms. Kirsch had created for his benefit. The agreement included an acknowledgement that Mr. Cullen, as the buyer, had delivered to himself, as the seller, a deposit for $160,000, representing 10 percent of the purchase price. Mr. Cullen signed the signature page twice, as "Wayne Cullen, Personal Representative" and as "Wayne Cullen, Trustee."[4]

Mr. Cullen sent a notice to Mr. Zehfuss, informing him of the offer to purchase the 21 percent interest in the company. Mr. Cullen asserted that the company and its members had 60 days under the terms of the LLC's 2013 operating agreement to match

[4] The agreement spans 20 pages. Among other things, it states that the balance of the purchase price will be paid in accordance with the terms of a note that authorized Mr. Cullen to confess judgment against himself in case of a default. Mr. Cullen as buyer agreed to mediate any disputes with himself as seller and, if mediation did not succeed, to arbitrate any claims against himself. Mr. Cullen as buyer also agreed to indemnify himself as seller for attorneys' fees and related expenses that he incurred in enforcing his rights against himself under the agreement. The agreement required that notices be sent in writing "by email, telecopier or by certified mail, return receipt requested, postage prepaid" to "Wayne Cullen, Personal Representative" or to "Wayne Cullen, Trustee" at identical addresses. As counsel for the respective parties, the agreement identified two attorneys who were members of the same firm. The record includes no information about whether their client waived any conflict of interest.

the $1.6 million offer.

E. The Petitions to the Orphans' Court

On April 3, 2015, Mr. Zehfuss filed a petition in the orphans' court, seeking to compel Mr. Cullen to distribute the 21 percent interest, in kind, to Mr. Zehfuss. Mr. Zehfuss asserted that the interest could not pass to Mr. Cullen under the residuary clause of the will and that it was now an intestate asset. Mr. Zehfuss also asserted that Mr. Cullen was "refusing to follow" the federal rulings and "engaging in self-dealing by attempting to transfer the 21% [interest] for his own benefit." To facilitate the requested distribution, Mr. Zehfuss attached a proposed form of assignment.

Mr. Cullen countered with his own petition to the orphans' court. He asserted that Mr. Zehfuss lacked standing to petition the orphans' court or to take exceptions to the accounts. On the merits, Mr. Cullen contended that the federal rulings did not require him to distribute the interest to Mr. Zehfuss as Ms. Kirsch's heir under the law of intestate succession. He argued that, as the personal representative, he could sell the interest (to himself) and distribute the sale proceeds (back to himself) through the residuary clause of the will. Mr. Cullen asked the court to deny or dismiss Mr. Zehfuss's petition and exceptions, to authorize his proposed sale of the interest, and to approve his first and second accounts.[5]

[5] While those petitions were pending, Mr. Cullen submitted a third account, which listed the 21 percent interest as an estate asset with an estimated value of $865,000. Elsewhere in the account, Mr. Cullen reported that the estate had received a $160,000 deposit in connection with the agreement to sell the interest for $1.6 million. Mr. Zehfuss took exceptions to the inclusion of both of those items in the third account. Among other

A few weeks before the scheduled hearing on the petitions, Mr. Cullen attempted to shift the forum from the orphans' court to the circuit court. He filed a petition to transmit issues to the circuit court in accordance with section 2-105 of the Estates and Trusts Article.[6] Simultaneously, he filed a declaratory judgment complaint in the circuit court regarding mostly the same issues. Pending the outcome of his action in the circuit court, he moved to stay the orphans' court proceedings.

In his new submissions, Mr. Cullen contended that the orphans' court lacked the power to decide the proper distribution of Ms. Kirsch's interest in the business. He theorized that the federal courts had interpreted only the 1984 partnership agreement, that the current controversy involved the interpretation of the operating agreement for the new LLC, and that the orphans' court had no "jurisdiction" to decide the applicability of the restrictions in the 2013 LLC agreement. Despite his assertions that the orphans' court lacked jurisdiction, he nonetheless asked it to transmit those issues, which it could not do unless it had jurisdiction. In addition, Mr. Cullen argued that the circuit court should decide whether Mr. Zehfuss had standing in the orphans' court and whether Maryland estate law permitted Mr. Cullen to sell the estate property to the Cullen trust.

In Mr. Cullen's declaratory judgment complaint in the circuit court, he named Mr.

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things, he pointed to the "vast discrepancy" between the $865,000 estimate and the $1.6 million offering price as an indication that the purchase agreement was "a sham transaction."

[6] In orphans' court proceedings, E&T § 2-105(b) allows an "issue of fact" to "be determined" by the circuit court ("a court of law") "[a]t the request of an interested person made within the time determined by the court[.]"

Zehfuss as a defendant, as well as Lee Graham Shopping Center, LLC, and each of the members identified in the 2013 operating agreement.[7] For the most part, the counts in the declaratory judgment complaint duplicated the matters in the petition to transmit issues. The complaint, however, contained a final count, not covered by the petition to transmit issues, which concerned Mr. Cullen's claim that the company was wrongfully withholding income and distributions attributable to Ms. Kirsch's 21 percent interest. He requested a variety of remedies based on that claim, including the establishment of a constructive trust, an accounting, and damages.

Mr. Zehfuss filed his opposition to the petition to transmit issues one day before the scheduled hearing in the orphans' court. In addition to challenging the timeliness of the request to transmit issues, Mr. Zehfuss argued that none of the issues in that petition were eligible for transmission to the circuit court.

F. The Orphans' Court's Determination on the Distribution of the Asset

The orphans' court took the matters under advisement after a non-evidentiary hearing on September 11, 2015. Two weeks later, the court entered an order granting Mr. Zehfuss's petition to compel the distribution of the interest to Mr. Zehfuss, in kind. The order denied Mr. Cullen's motion to dismiss Mr. Zehfuss's petition on the ground that he was not an "interested party," the petition to transmit issues to the circuit court, and the

[7] The 2013 operating agreement had listed an "LGSC Money Market Account" as a member and the owner of the 21 percent interest formerly owned by Ms. Kirsch. Although it is doubtful that a money market account is a juridical entity that is capable of suing and being sued, Mr. Cullen named the account as a defendant in the declaratory judgment action.

motion to stay the orphans' court proceedings pending the adjudication of the declaratory judgment complaint in circuit court. The order also denied all other relief requested at the hearing.

In its opinion, the orphans' court wrote that the "principal question" before it was "whether [Ms. Kirsch's] 21% interest in the Lee Graham Shopping Center . . . passes under the residuary clause of her will and, therefore, to her long-term companion, Wayne Cullen[,]" or whether the interest is "intestate property, and thus distributable in kind to [Mr. Zehfuss], her brother." The court concluded that, in deciding the proper distribution of that asset, it had the power to construe the 1984 partnership agreement and the 2013 operating agreement for the LLC that owned Lee Graham Shopping Center. The court reasoned that the federal court decisions "d[id] not, in specific terms, direct that [Ms. Kirsch's] 21% interest in the Shopping Center must pass outside the will by intestate succession." But the court reasoned that "the logic of those decisions, and th[e] court's independent review of the pertinent documents, result[ed] in that conclusion." (Footnote omitted.)

The orphans' court went on to determine that Mr. Cullen's other arguments either lacked merit or had become moot in light of the determination that the partnership interest was intestate property. The court concluded that Mr. Zehfuss, as the intestate heir, was an interested person with respect to the intestate property. The court reasoned that, because the asset was intestate property, it was unnecessary to transmit any of Mr. Cullen's proposed issues to the circuit court. Finally, the court concluded that Mr. Cullen's petition to frame and transmit issues was untimely and otherwise deficient in

any event.

Mr. Cullen made a timely motion to alter or amend the judgment. He asked the court to reconsider its decision on the merits and to conduct an evidentiary hearing regarding the effect of the 2013 operating agreement. Alternatively, he asked the court to revise the opinion to address issues that the court had not expressly addressed, including whether the transfer should be conditioned on Mr. Zehfuss's payment of certain taxes and expenses. He raised a number of arguments that he had not clearly raised in his earlier filings, including a complaint that the proposed form of assignment improperly required him to give a warranty of title to the 21 percent interest. On November 4, 2015, the orphans' court entered an order denying his motion to alter or amend, without further explanation.

Two weeks later, Mr. Cullen filed a notice of appeal in the orphans' court, solely in his capacity as personal representative.

G. The Motions to Dismiss the Personal Representative's Appeal

Shortly after Mr. Cullen noted his appeal, Mr. Zehfuss moved to dismiss it. He argued that Mr. Cullen, as the personal representative, lacks standing to challenge the decision regarding distribution of estate property. He relied on *Webster v. Larmore*, 270 Md. 351, 354 (1973), which holds that a personal representative cannot maintain an appeal from an order directing the distribution of estate assets, because a personal representative, as such, is "in no way aggrieved" by such an order and is "fully protected" from liability by complying with the order.

Mr. Cullen opposed the motion, arguing that he had the right to appeal as the

personal representative or, alternatively, that this Court should permit him to substitute himself, in a different capacity, as the appellant. This Court denied the motion, but granted the parties leave to address the issue in their briefs, which they did.[8]

Shortly before oral argument, Mr. Cullen took the unusual step of moving for a partial dismissal of his own appeal for "lack of subject matter jurisdiction." In his motion, he contended that the orders from which he had appealed – the order resolving the petitions for distribution and the order denying reconsideration of that decision – were not properly appealable. He asked that "all matters appealed in this case," except for the denial of his petition to transmit issues, be "dismissed without prejudice" and remanded to the orphans' court.

Mr. Zehfuss opposed Mr. Cullen's motion for a partial dismissal. Mr. Zehfuss commented that Mr. Cullen's motion was "somewhat baffling" in light of Md. Rule 8-601(a), which permits an appellant to voluntarily dismiss his or her own appeal without permission from a court. He argued that Mr. Cullen's real goal was to obtain a ruling that it was not too late for him to file a proper notice of appeal from the order of September 22, 2015, in his capacities as an individual or trustee.

[8] In March 2016, after Mr. Zehfuss moved to dismiss this appeal, Mr. Cullen filed a second notice of appeal of the rulings that he has challenged in this case. In the second notice of appeal, Mr. Cullen attempted to address Mr. Zehfuss's attack on the first notice of appeal by asserting that he was appealing individually, as trustee of Ms. Kirsch's revocable trust, and as trustee of the separate trust that Ms. Kirsch had created for him. Mr. Zehfuss moved to strike the second notice of appeal as untimely, and the orphans' court granted his motion. Mr. Cullen responded by filing a third notice of appeal, this time from the order striking his second notice of appeal. The third appeal is pending before this Court as a separate case: *Wayne Cullen v. Paul V. Zehfuss*, No. 1096, September Term, 2016.

Before oral argument, this Court issued an order denying Mr. Cullen's "Motion to Dismiss Appeal for Lack of Subject Matter Jurisdiction." In the order, we declined to decide the merits of Mr. Cullen's jurisdictional argument, but noted that "the judgments of the orphans' court" appeared to have been "properly appealable judgments at the time the appeal was noted."

QUESTIONS PRESENTED

Appealing as personal representative of the estate, Mr. Cullen challenges the order directing him to distribute Ms. Kirsch's interest in the entity that owns the Lee Graham Shopping Center to Mr. Zehfuss. Mr. Cullen asks this Court to reverse that order or, in the alternative, to vacate the order and direct the orphans' court to transmit issues to the circuit court. He presents four tendentious questions, which we have condensed and restated as follows:

I. Did the orphans' court err in ordering that the 21 percent interest must pass by intestate succession to Mr. Zehfuss because of the transfer restrictions in the governing documents?

II. Did the orphans' court err in finding that Mr. Zehfuss was an "interested person"?

III. Did the orphans' court err in interpreting Mr. Cullen's contract to sell the 21 percent interest to himself, in not transmitting issues to the circuit court, in not conducting an evidentiary hearing, in requiring Mr. Cullen to give a warranty of title to the 21 percent interest, and in not requiring Mr. Zehfuss to pay his share of estate expenses and taxes before the transfer of the 21 percent interest?[9]

[9] We have set out Mr. Cullen's questions presented, in their entirety, in an appendix to this opinion.

Before considering these questions, we must first address the parties' contentions that some or all of these questions are not properly before this Court.

Both parties contend that this Court should not review the substance of the orphans' court's decision on the petitions for distribution, but they advance different rationales for that conclusion. Mr. Zehfuss argues that the orphans' court's judgment is final, but that Mr. Cullen cannot appeal from it in his role as personal representative. Mr. Cullen initially asserted that he has the right to appeal in his representative capacity, but later changed course and argued that the order (or at least most of it) was not final and therefore not appealable by anyone. He contends that we have no power to consider any of the issues in his appeal, except the orphans' court's denial of his petition to transmit issues.

Despite the timing of Mr. Cullen's unusual motion to dismiss his own appeal,[10] this Court has an obligation to resolve questions as to its jurisdiction. *See In re Joseph N.*, 407 Md. 278, 286 (2009). We shall first address the contentions that the orphans' court did not enter an appealable judgment.

DISCUSSION

A. Finality of the Orphans' Court's Judgment

Appellate jurisdiction in this State "except as constitutionally authorized, is determined entirely by statute, and . . . therefore, a right of appeal must be legislatively

[10] Mr. Cullen's last-minute challenge to this Court's jurisdiction is reminiscent of his petition to transmit issues, which, as the orphans' court noted, he had "filed on the eve of [the] hearing." In both instances, Mr. Cullen sought to forestall the court from deciding the issues that, for months, he had been asking the court to decide.

granted." *Seward v. State*, 446 Md. 171, 177 (2016) (citation and quotation marks omitted). In cases decided by a circuit court, Maryland Code (1974, 2013 Repl. Vol.), § 12-301 of the Courts and Judicial Proceedings Article ("CJP"), grants a right of appeal from "a final judgment." In civil cases in the circuit courts, parties ordinarily must await the entry of a final judgment adjudicating all claims against all parties before taking an appeal. *See, e.g.*, *Miller Metal Fabrication, Inc. v. Wall*, 415 Md. 210, 220 (2010); *Silbersack v. ACandS, Inc.*, 402 Md. 673, 678 (2008).

For proceedings in the orphans' court, CJP § 12-501(a) provides: "A party may appeal to the Court of Special Appeals from a final judgment of an orphans' court."[11] But although the term "final judgment" appears in both CJP § 12-501 and CJP § 12-301, "the concept of an appealable 'final judgment' for purposes of orphans' court proceedings is very different from the concept of a final judgment in conventional civil litigation." *Green v. McClintock*, 218 Md. App. 336, 363 n.24 (2014) (citing *Banashak v. Wittstadt*, 167 Md. App. 627, 656-58 (2006); *Hegmon v. Novak*, 130 Md. App. 703, 709 (2000)). For example, Md. Rule 2-602(a), which expresses the principle that an order in a civil case is not a final judgment unless it adjudicates all of the claims by and against all of the parties, does not apply to an orphans' court's judgment. *Banashak*, 167 Md. App. at 657 n.15 (citing *Schlossberg v. Schlossberg*, 275 Md. 600, 612 n.8 (1975)).

In probate proceedings, "adjudicative decisions as to bits and pieces of the larger

[11] As an alternative to a direct appeal, CJP § 12-502(a)(1) authorizes a de novo appeal in the circuit court from a final judgment of an orphans' court. That option is not available in Montgomery County (CJP § 12-502(a)(2)), where the circuit court judges sit as the orphans' court for the county. *See* Md. Const. Art. IV, § 20(b).

enterprise may be the only court judgments ever rendered," so "[a]ppeals from some, though not from all, of the adjudicative decisions taken along the way may be necessary[.]" *Banashak*, 167 Md. App. at 659. The interests of efficiency are often better served by requiring aggrieved parties to take immediate appeals of some orders pertaining to estate administration, rather than by allowing parties to create uncertainty by seeking to invalidate court orders long after they have occurred (and after persons have taken action in justifiable reliance on them). *See Green v. McClintock*, 218 Md. App. at 363 & n.25.

The "unusual definition" (*Hegmon*, 130 Md. App. at 709) of finality has deep roots. Well before the enactment of CJP § 12-501, the Court of Appeals held that a wide variety of orders in probate proceedings are appealable, including "'an order granting or refusing to grant issues,'" and "'an order directing the mode of distribution of a decedent's estate among his creditors.'" *Banashak*, 167 Md. App. at 658 (quoting 1 Phillip L. Sykes, *Probate Law and Practice* § 243, at 251-52 (1956)). The Court of Appeals has determined that the term "final judgment" in CJP § 12-501 was not intended to alter the prior substantive law regarding which orphans' court orders are appealable. *Schlossberg*, 275 Md. at 612; *see Hall v. Coates*, 62 Md. App. 252, 255 (1985).

Under this modified final judgment rule, an orphans' court order that "'finally determine[s] the proper parties, the issues to be tried and the sending of those issues to a court of law'" is a final judgment. *Hegmon*, 130 Md. App. at 709 (quoting *Schlossberg*, 275 Md. at 612). Among other things, the order in question here denied Mr. Cullen's petition to transmit issues to the circuit court. Hence, the order was a final judgment at

least to the extent that it refused to transmit issues. *See Russell v. Gaither*, 181 Md. App. 25, 28 n.2 (2008) ("[t]here is no doubt that an order refusing to transmit issues is an appealable final judgment") (citing *Nugent v. Wright*, 277 Md. 614, 616 (1976); *Banashak*, 167 Md. App. at 688). In fact, Mr. Cullen acknowledges that the denial of his petition to transmit issues is an appealable final judgment, but he contends that the simultaneous orders regarding distribution are not yet final. Mr. Cullen is incorrect, because we cannot review the denial of his petition to transmit issues without reviewing other rulings as well.

The court's primary ground for refusing to transmit issues was that its other rulings made the proposed issues immaterial. The court wrote: "In light of the court's decision that the 21% interest in the Shopping Center is intestate property as a matter of law, there is no need to transmit Cullen's proposed 'issues' to the circuit court[.]" It would be impracticable to review the denial of the petition to transmit issues unless the reviewing court had the power to address the rulings on which the denial was based. The orders concerning distribution of the asset are so "inseparably involved" with the rulings on the petition to transmit issues that those matters "should be considered together." *Frey v. Frey*, 298 Md. 552, 556-57 (1984); *see also Davis v. Attorney Gen.*, 187 Md. App. 110, 128 (2009) (holding that interlocutory rulings can be challenged on an appeal to the extent that those rulings "directly control and are inextricably bound to" an appealable order).

Independently of the petition to transmit issues, however, we conclude that the orphans' court issued a final judgment within the meaning of CJP § 12-501 when it ruled

on the parties' petitions for distribution. Generally, an order of the orphans' court is sufficiently "final" within the meaning of CJP § 12-501 if it actually settles the rights of parties. *See Schlossberg*, 275 Md. at 607, 611; *Hall v. Coates*, 62 Md. App. at 255. In addition, an orphans' court's order is a final judgment if it "is 'so far final as to determine and conclude the rights involved in the action, or to deny to the party seeking redress by the appeal the means of further prosecuting or defending his rights and interests in the subject matter of the proceeding.'" *Grimberg v. Marth*, 338 Md. 546, 551 (1995) (holding that orphans' court order entered final judgment under CJP § 12-501 by denying reconsideration of an order requiring a personal representative to pay an appraiser for an appraisal of estate property).

By that standard, the orphans' court entered a final judgment, within the meaning of CJP § 12-501, when it entered its order directing the distribution of the asset. The central question before the court was whether the 21 percent interest should be distributed in kind to Mr. Zehfuss, or whether it could be sold to the Cullen trust (with the sale proceeds being returned to Mr. Cullen under the terms of the will). The court resolved that question by granting Mr. Zehfuss's petition to compel the distribution of the asset, denying Mr. Cullen's counter-petition to authorize the sale of the asset, denying Mr. Cullen's petition to transmit issues to the circuit court, and denying Mr. Cullen's motion to stay the orphans' court proceedings. To dispel any doubt about whether the court intended to render a final decision on the matter, the order expressly denied "[a]ll other relief requested at the hearing . . . that [wa]s not specifically granted."

In sum, the order granted all relief requested in Mr. Zehfuss's petition, while

denying all relief requested in Mr. Cullen's petitions. The order was "in its nature a final order . . . deciding and settling the very matter in controversy between the parties, and determining the question of right in issue in the [case]." *Nally v. Long*, 56 Md. 567, 571 (1881) (holding that order directing distribution of the balance of an estate among creditors was a final judgment). It unequivocally settled the parties' rights in the 21 percent interest in the entity that owns the Lee Graham Shopping Center.[12]

Mr. Cullen has identified no authority that would undermine the proposition that an order directing a personal representative to distribute estate property is a "final judgment of an orphans' court" under CJP § 12-501. Nevertheless, he argues that the orders regarding distribution are not yet final, because, he says, there are "numerous unresolved claims" between the parties that are "directly related to the subject matter[.]"

[12] Maryland courts have often entertained appeals from orphans' court orders pertaining to the distribution of estate assets without expressly explaining why those orders qualify as final judgments. *E.g. Knight v. Princess Builders, Inc.*, 393 Md. 31, 38-39 (2006) (describing appeal from order directing personal representative to sell estate property as an appeal from a "final judgment"); *YIVO Inst. for Jewish Research v. Zaleski*, 386 Md. 654, 662 (2005) (describing appeal from denial of petition for personal representative to make a distribution as an appeal from a "final judgment"); *Carrier v. Crestar Bank, N.A.*, 316 Md. 700, 711 (1989) (citing CJP § 12-501 as the statutory basis for an appeal from an order striking a party's exceptions to a proposed distribution); *Simpson v. Piscano*, 288 Md. 560, 564 (1980) (considering appeal from orphans' court order determining that the personal representative should distribute estate to some heirs to exclusion of others); *Allen v. Ritter*, 196 Md. App. 617, 625 (2010) (describing appeal from order requiring beneficiaries to sign releases prior to distribution of estate funds as an appeal from a "final judgment"); *Segal v. Himelfarb*, 136 Md. App. 539, 541-42 (2001) (considering appeal from order "pertaining to the distribution of assets," in which the orphans' court determined that assets must pass to decedent's heirs rather than to the contingent beneficiaries of the will); *Willoner v. Davis*, 30 Md. App. 444, 445, 449 (1976) (considering appeal from order regarding distribution of estate among biological and adopted children of decedent).

Mr. Cullen says that he and Mr. Zehfuss will "continue to feud" about other matters that are connected to the distribution. Despite having taken this very appeal, he now insists that "the parties' purpose is more akin to that of the general jurisdiction courts in that they are clearly seeking an 'apocalyptic last judgment' that will determine the rights and responsibilities which exist between them." (Footnote omitted.)

The reference to an "apocalyptic last judgment" comes from Judge Moylan's opinion in *Banashak v. Wittstadt*, 167 Md. App. at 659, in which he drew a distinction between ordinary civil litigation, which typically ends in a decisive (or "apocalyptic") judgment that resolves all claims involving all parties, and the "fundamentally different legal environment" of orphans' court litigation, in which "adjudicative decisions as to bits and pieces of the larger enterprise may be the only court judgments ever rendered[.]" *Id.* Hence, the fundamental flaw in Mr. Cullen's argument is that it attempts to evaluate the finality of an orphans' court judgment using a definition inappropriately borrowed from civil cases in the circuit court. "[T]he two definitions of 'final judgment' are not even in the same ballpark, and the careful practitioner should scrupulously confine each to its own unique arena." *Id.* at 658. Because Mr. Cullen has cited no authority that supports his latest theory of when the order regarding distribution will become final, we agree with Mr. Zehfuss that "none of the allegedly 'unresolved matters' detract from the finality" of the judgment.

Most of the "unresolved matters" do not relate to the asset-distribution issue that was actually before the orphans' court but to collateral issues of estate administration. One issue involves Mr. Cullen's third account, which listed the value of the 21 percent

interest as $865,000, and to which Mr. Zehfuss raised additional exceptions. Another issue involves Mr. Cullen's motion for a protective order regarding certain disclosures related to his valuation of the asset. Still another involves the valuation of assets, which might affect the allocation of taxes and estate administration expenses between the parties and might affect Mr. Cullen's commissions as personal representative. Another involves the estate's right to about $40,000 in distributions, which Mr. Cullen claims is "a separate asset subject to distribution" under the will. Finally, Mr. Cullen informs us that, months after the orphans' court resolved the petitions, Mr. Zehfuss filed additional exceptions, asserting that he should inherit two other partnership interests that are part of the estate.

These loose ends do not undermine the finality of the orphans' court's decision; rather, they illustrate the basic nature of estate administration. In probate proceedings, "the need for judicial adjudicative intervention is frequently intermittent and only on a very *ad hoc* basis." *Banashak*, 167 Md. App. at 659. For this very reason, the definition of a "final judgment" in an orphans' court proceeding is unlike the definition used in ordinary civil litigation. *See id*. The proper time to challenge the distribution of an asset is when the orphans' court orders the distribution, not when all accounts are ultimately settled. *See Green v. McClintock*, 218 Md. App. at 363 (reasoning that, where delaying the time to appeal would threaten to invalidate an orphans' court's disbursements long after they occur, parties may be required to immediately exercise their right to appeal).

Mr. Cullen further suggests that the orphans' court did not fully adjudicate the issue of asset distribution, because, he says, "the form and content of the assignment remain[] in dispute and unresolved." To the contrary, the orphans' court granted Mr.

Zehfuss's petition, which included a proposed assignment, and denied Mr. Cullen's counter-petition, which included certain objections to that proposed assignment. The court later denied Mr. Cullen's motion to alter or amend, which raised other objections to the proposed assignment. Both orders were unqualified; at no time did the orphans' court indicate that it intended to issue any subsequent order regarding the form of the assignment. Thus, the allegedly "unresolved" dispute over the assignment concerns the content of the court's order, not whether the court's decision on the matter was final. Indeed, in his brief, Mr. Cullen argues that the orphans' court ordered what he deems to be an improper assignment.

To summarize, there is no merit to Mr. Cullen's last-minute contention that the judgment from which he appealed was not final. At a minimum, the orphans' court issued a final judgment by denying his petition to transmit issues. Independently, an orphans' court order directing a personal representative to distribute an estate asset is a final judgment under CJP § 12-501. The orphans' court rendered a final judgment on the petitions when it ordered Mr. Cullen to distribute the estate asset in kind to Mr. Zehfuss.

B. Standing to Appeal from the Judgment as Personal Representative

After the orphans' court entered a judgment on the petitions for distribution, Mr. Cullen took a timely appeal.[13] Mr. Zehfuss contends that the appeal should be dismissed because Mr. Cullen noted his appeal solely in his capacity as personal representative.

[13] Mr. Cullen moved to alter or amend within 10 days of the judgment and then noted his appeal within 30 days after the court denied that motion. His notice of appeal is timely under Rule 8-202(c). *See Edery v. Edery*, 213 Md. App. 369, 383-84 (2013).

Mr. Zehfuss argues that the personal representative is not aggrieved by the distribution order and therefore that Mr. Cullen lacks standing to challenge the order in that capacity.

As a general principle, only a party aggrieved by a judgment may take an appeal from the judgment. *See, e.g.*, *Wolfe v. Anne Arundel Cnty.*, 374 Md. 20, 25 n.2 (2003); *Pattison v. Corby*, 226 Md. 97, 101 (1961) ("one is not an aggrieved party so as to be entitled to appeal unless the judgment or order appealed from was rendered on a matter in which the appellant has some interest or right of property"). Predecessor statutes to CJP § 12-501 expressly restricted the right of appeal to a party "who may deem himself aggrieved" by an order of the orphans' court. *See Knight v. Princess Builders, Inc.*, 393 Md. 31, 46 (2006); *Wright v. Nugent*, 23 Md. App. 337, 356-57 (1974), *aff'd*, 275 Md. 290 (1975). The legislature omitted the language about an "aggrieved" party from later versions of the statute, evidently considering it to be unnecessary. *Princess Builders*, 393 Md. at 46-48; *Wright v. Nugent*, 23 Md. App. at 357 (citing *Webster v. Larmore*, 270 Md. 351, 353 (1973)). Thus, the statute is still "construed in the light of the restrictive gloss imposed by the Court's [prior] decisions." *Wright v. Nugent*, 23 Md. App. at 357 (citing *Webster*, 270 Md. at 353); *see Princess Builders*, 393 Md. at 47.

In that line of decisions, the Court of Appeals routinely dismissed appeals taken by executors or administrators from orders regarding the disposition of estate property, on the ground that an executor or administrator, as such, is not aggrieved by such an order. *See Buchwald v. Buchwald*, 175 Md. 103, 114 (1938) (where appellant appealed both as an individual and as executor from decree invalidating certain clauses of will, holding that the appeal taken as executor needed to be dismissed); *Surratt v. Knight*, 162 Md. 14,

16-17 (1932) (holding that executor had no right to appeal from dismissal of executor's complaint challenging settlement between heir and residuary legatee); *Smith v. Warrenfeltz*, 116 Md. 116, 121 (1911) (holding that executrix lacked standing to appeal from order directing her to sell estate property where she appealed only in her capacity as executrix, even though executrix was also a legatee under the will); *Grabill v. Plummer*, 95 Md. 56, 60-61 (1902) (holding that administratrix had no right to appeal from order directing payment of certain costs out of portion of estate passing under the will because administratrix had no interest in the subject matter); *Johns v. Caldwell*, 60 Md. 259, 262 (1883) (holding that administrator had no right to appeal from order directing administrator to sell and distribute estate property because the administrator "had no interest in resisting the order, and no right to refuse to obey it").

Despite this line of authority, Mr. Cullen theorizes that a personal representative has standing to take an appeal to "defend the validly documented wishes of the testator." Seeking support, he quotes certain language from *Surratt v. Knight*, a case that actually undercuts his theory. In *Surratt*, 162 Md. at 17, the Court held that an executor was not entitled to appeal from the dismissal of his suit challenging a settlement between the residuary legatees in the decedent's will and the decedent's children. The Court acknowledged that the executor had a "duty to defend and maintain the validity of the instrument with loyalty and fidelity, and to complete the administration of the estate in accordance with the terms of the will" (*id.* at 16), but it did so only in the context of explaining why that duty alone did not give the executor standing to complain about the ultimate division of the residue of the estate between the interested parties.

In contending that Mr. Cullen lacks standing, Mr. Zehfuss primarily relies on *Webster v. Larmore*, 270 Md. 351 (1973) (*Webster II*). In response, Mr. Cullen argues that his appeal is more like a previous appeal taken in the same case in *Webster v. Larmore*, 268 Md. 153 (1973) (*Webster I*). An examination of those cases demonstrates that *Webster II*, which directly concerns a personal representative's standing to appeal from a distribution order, is the controlling authority here.

In *Webster I*, 268 Md. at 156, a personal representative had defended a decedent's will in a caveat proceeding brought by the decedent's heirs. The personal representative took an appeal after a jury determined that the decedent lacked testamentary capacity when the will was executed. *Id*. Without any discussion of standing, the Court considered the appeal and held that the circuit court should have entered judgment in the personal representative's favor on the issue of testamentary capacity. *Id.* at 168-69.

After the case returned to the orphans' court, the personal representative requested an order authorizing the distribution of the residue of the estate to the heirs of the residuary beneficiary. *Webster II*, 270 Md. at 352. The orphans' court rejected that request, concluded that the will had been revoked upon the decedent's divorce, and ordered the personal representative to distribute the residue of the estate to the decedent's next of kin. *Id*. The orphans' court also purported to authorize the personal representative to take an appeal at the estate's expense. *Id.* The Court of Appeals dismissed the personal representative's appeal on the ground that he was not aggrieved by the distribution order. *Id.* at 354.

Although the applicable statute no longer expressly stated that a party must be

"aggrieved" by an orphans' court ruling in order to appeal, the Court explained that its "prior decisions restricting a personal representative's right to appeal remain unaltered." *Id.* at 353. The Court opined that if it permitted appeals from parties who are not aggrieved, it "would open the door to appeals presenting issues which might well be moot, or seeking opinions on abstract propositions." *Id.* When a court directs the distribution of estate property, the Court said, "a personal representative is bound to make distribution in accordance with that court's order, since the personal representative is fully protected by it." *Id.* at 354. The Court concluded that, although the heirs of the residuary beneficiary might have been aggrieved by the distribution order, the personal representative was "in no way aggrieved" by it. *Id.*; *see also Harris v. Brinkley*, 33 Md. App. 508, 515 (1976) (following *Webster II* and dismissing personal representative's appeal from order determining decedent's heirs on the ground that "the personal representative is protected in making the distribution in accordance with an order of the court, and the appeal will in no way benefit the estate").

In sum, the Court in *Webster II* concluded that a personal representative had no right to appeal from an order requiring the personal representative to distribute estate property to intestate heirs rather than through a will.

Contrary to Mr. Cullen's assertions, the proceedings in this case were not equivalent to the caveat proceeding in *Webster I*, which allowed a personal representative to appeal a ruling concerning the invalidity of the will. In this case, there is no question at all about the validity of Ms. Kirsch's will; the question is whether the transfer restrictions in the partnership agreement prevented Ms. Kirsch from conveying an asset

to Mr. Cullen. To the extent that the orphans' court directed the distribution of that asset to Mr. Zehfuss, Mr. Cullen, as personal representative, has no standing to appeal: the personal representative is not aggrieved by the order, but rather is "fully protected." *Webster II*, 270 Md. at 354.[14]

In scattershot fashion, Mr. Cullen's response includes a collection of other reasons why he believes that he, as the personal representative, is entitled to challenge an order regarding the distribution of estate property. He asserts that the order affected the "value" of the estate because it denied his request to sell the asset to himself (before redistributing the sale proceeds to himself, as the residuary beneficiary of the estate). He claims that he is personally aggrieved because he "will be deprived of the added commissions he might receive on a sale of the 21% Interest." For the most part, he fails to present these arguments with enough particularity for this Court to evaluate them. *See Ochoa v. Dep't of Pub. Safety & Corr. Servs.*, 430 Md. 315, 328 (2013) (declining to consider party's argument where party quoted one case in support of a proposition but made no effort to apply the case or to develop the argument in a meaningful way).

In any event, this is not the first case to hold that a personal representative, as such, may not appeal from an orphans' court order rejecting his or her attempt to sell estate property. In *Knight v. Princess Builders, Inc.*, 162 Md. App. 526 (2005), *aff'd*, 393

[14] Mr. Cullen cites *Wright v. Nugent*, 277 Md. 614 (1976), in which a personal representative appealed from an order, in a caveat proceeding, framing certain issues involving the validity of the will. *Id.* at 616-18. The Court reasoned that the order was final and appealable, but did not discuss the issue of standing. Contrary to Mr. Cullen's suggestion, *Wright v. Nugent* does not hold that that a personal representative has unlimited standing to challenge any ruling on a request to transmit issues.

Md. 31 (2006), a personal representative entered into a contract to sell estate property to a third-party purchaser, but the orphans' court ordered that the property should be sold to one of the decedent's heirs. *Id.* at 528. This Court held that "a contract purchaser whose right to purchase [] estate property has been adversely affected by an orphans' court order is aggrieved and therefore has standing to appeal[.]" *Id.* at 537. But even though the personal representative was a party to the contract, the Court concluded he was not aggrieved and had no standing to appeal. *Id.* at 537 n.5.[15] It follows that Mr. Cullen would have had standing to appeal as the trustee who had agreed to purchase the asset for his trust, but does not have standing to appeal in his capacity as the personal representative who was selling the asset.

Taking a different approach, Mr. Cullen contends that, even if he lacks standing as a personal representative, his notice of appeal in that capacity should be effective to allow him to maintain an appeal in his individual capacity and on behalf of the Kirsch and Cullen trusts. He cites *Lowenthal v. Rome*, 57 Md. App. 728, 737-38 (1984), in which this Court held that certain children were proper parties to an appeal where the phrase "*et al.*," which had been used to identify the children, was "included in the title of the notice of appeal," but "inadvertently omitted from the body of the order for appeal." He also cites *Hartz v. Hartz*, 248 Md. 47, 50 n.1 (1967), in which the Court of Appeals declined

[15] The Court of Appeals upheld this Court's conclusion that the contract purchaser had standing to appeal. *Knight v. Princess Builders, Inc.*, 393 Md. 31, 49 (2006). The Court did not address this Court's separate conclusion that the personal representative lacked standing.

to dismiss an executor's appeal on the ground that he had noted an appeal in his own name without expressly designating himself as the executor. Neither of those cases addressed the situation here, where the appellant participated in the case in a representative capacity and noted an appeal in his representative capacity alone.[16]

The Court of Appeals squarely addressed those very circumstances in *Alston v. Gray*, 303 Md. 163 (1985). Alston was the personal representative of the estate of her brother, who died intestate. *Id.* at 165. Alston had petitioned the orphans' court for instructions regarding the distribution of the estate after learning that her brother may have fathered a child before his death. *Id.* The orphans' court determined that the decedent should be recognized as the child's father, directed Alston to list the child as an interested party, and ordered Alston to distribute the estate property to the child under the law of intestacy. *Id.* at 166. Alston appealed, but she "specifically noted [her] appeal in her representative capacity." *Id.* Although Alston was not only the personal representative but also a potential heir, the Court of Appeals dismissed the appeal on its own motion because she "did not specifically note an appeal in her individual capacity." *Id.* at 169.

The Court explained that, "[i]n considering appeals of court orders construing a will or determining distribution of an estate," it has "consistently decreed that an executor or personal representative is *not* an aggrieved party entitled to appeal." *Id.* at 166 (citing

[16] Mr. Cullen incorrectly suggests that *Lowenthal* and *Hartz* involve the joinder or substitution of a party-appellant. To no avail, Mr. Cullen also cites Md. Rule 2-241, the general rule for substitution of parties under circumstances that are not present here, such as where a person dies, becomes incompetent, or is removed from a position.

Webster II, 270 Md. at 354; *Buchwald*, 175 Md. at 114; *Surratt*, 162 Md. at 17). The Court opined that "an unlimited right of appeal, in the hands of the executor or representative, could seriously deplete a small estate and might delay indefinitely the distribution of estate assets to deserving heirs." *Id*. at 167. The Court observed that Alston, as a potential heir, "could very well have brought an appeal from the Orphans' Court, had she so chosen, in her individual capacity" or perhaps in a dual capacity. *Id.* But the Court held that "a personal representative must specifically note an appeal in her individual or other capacity, before arguing issues relating to that dual role[.]" *Id.* at 168.[17]

This Court reached a similar result in *Frater v. Paris*, 156 Md. App. 716 (2004). In that case, two personal representatives attempted to appeal from an order that effectively increased a widow's statutory share in excess of what the personal representatives had proposed. *Id.* at 719-20. After reviewing *Webster II*, *Alston*, and other cases, this Court dismissed their appeal, observing that there was "no appeal by any of the legatees" whose legacies would be reduced by the order. *Id.* at 720-23. Even though one of the personal representatives was "also a legatee," that personal representative had appeared in the orphans' court and in this Court "only in his capacity as a personal representative." *Id.* at 723 n.4.

[17] In dissent, Judge Eldridge summarized the majority's holding in these terms: "The majority determines that there is no proper party-appellant because Alston, who is both the personal representative and an heir at law, described herself as personal representative in the order of appeal and failed to note specifically on the order her individual capacity." *Alston*, 303 Md. at 169 (Eldridge, J., dissenting).

We are bound to follow *Webster II* and *Alston*. Throughout this case, Mr. Cullen opposed Mr. Zehfuss's petition to distribute the estate property in his capacity as the personal representative. Mr. Cullen is a legatee under the will, as well as the trustee and ultimate beneficiary of the trusts created by Ms. Kirsch, but he did not appeal in those capacities; as Mr. Cullen acknowledges, he appealed only "in his capacity as personal representative of the Estate[.]" As personal representative, however, Mr. Cullen "is *not* an aggrieved party entitled to appeal" (*Alston*, 303 Md. at 166) from the order determining the distribution of estate property. Because he "specifically noted the appeal in [his] representative capacity" (*id.* at 166), and did not "specifically note an appeal in [his] individual or other capacity" (*id.* at 168), Mr. Cullen cannot assert whatever rights he may have been able to assert in those other capacities. Accordingly, we grant Mr. Zehfuss's motion to dismiss the appeal to the extent that it concerns the portions of the order that direct the distribution of estate assets.[18]

C. Other Aspects of the Orphans' Court's Judgment

By noting an appeal solely in his capacity as personal representative, Mr. Cullen limited the scope of his appeal to challenges that he could raise in that capacity. In other words, Mr. Cullen is involved in this appeal only in his capacity as the distributor of the asset, and not as a potential distributee. Although he primarily seeks to challenge the

[18] Not only did Mr. Cullen appeal solely in his capacity as personal representative, but it appears that he participated in the case in the orphans' court solely in that capacity as well: he filed his petition on the issue of distribution, a supplemental petition, his petition to transmit issues, and his motion to alter or amend in his capacity as personal representative.

determination that he is not entitled to receive the asset, he raises further complaints about other aspects of the judgment. At least some of his remaining complaints include challenges that he would appear to have some interest in pursuing as personal representative of the estate.

For that reason, we deny Mr. Zehfuss's request for dismissal of the entire appeal. Instead, we will consider Mr. Cullen's additional challenges to aspects of the judgment other than the determination of who should receive the asset. *See Peterson v. Orphans' Court for Queen Anne's County*, 160 Md. App. 137, 165-79 (2004) (holding that personal representative was not aggrieved by certain rulings and lacked standing to challenge those rulings, even though the Court expressed no doubt as to the personal representative's standing to challenge a contemporaneous ruling by the orphans' court). Upon review, however, we see no merit in his various arguments that the orphans' court erred in those other aspects of the judgment.

1. Payment of Estate Taxes and Administration Expenses

Chief among his complaints, Mr. Cullen asserts that the orphans' court "deprive[d] the estate of the means to pay the taxes it owes" and that he could be exposed to personal liability for those taxes. Mr. Cullen argues that, if Mr. Zehfuss receives the 21 percent interest in the entity that owns the Lee Graham Shopping Center, Mr. Zehfuss will be obligated to pay a share of estate taxes and administration expenses attributable to that asset. Because the asset is not liquid and its value has not been determined, Mr. Cullen says that he has no means to guarantee that Mr. Zehfuss will pay those taxes and expenses.

For that reason, Mr. Cullen made a conditional request that, if the court ordered the distribution to Mr. Zehfuss, it should also require Mr. Zehfuss to pay estate taxes attributable to the interest and to reimburse the estate for expenses related to determining those taxes. In response, Mr. Zehfuss expressly stated that he was "prepared to pay those obligations," but that Mr. Cullen had not provided him with a tax return or other information about the amounts that he would owe. The orphans' court granted Mr. Zehfuss's requests without any discussion of the issue of taxes.

In his motion to alter or amend, Mr. Cullen renewed his request that "any assignment of the 21% interest to Zehfuss be contingent on payment of his share of expenses and taxes." In response, Mr. Zehfuss reaffirmed his obligations, but maintained that Mr. Cullen had not given him the documentation that he needed to determine the amounts. The court denied the motion to alter or amend, without expressly addressing the issue.

On appeal, Mr. Cullen asserts that the orphans' court erred by failing to require Mr. Zehfuss to pay taxes and expenses in advance of the distribution. Although we understand why Mr. Cullen requested that relief, he fails to offer any argument about why the orphans' court was legally required to grant his request. He cites no statute or other authority establishing a requirement that the recipient of an in-kind distribution must pay taxes and expenses in advance of the distribution, and particularly in advance of his

receipt of any information necessary to compute any tax obligation.[19]

We see no reason to conclude that the court erred or abused its discretion by denying Mr. Cullen's request. "'[T]he most fundamental principle of appellate review [ ] is that the action of a trial court is presumed to have been correct and the burden of rebutting that presumption is on the party claiming error first to allege some error and then to persuade us that that error occurred.'" *State v. Chaney*, 375 Md. 168, 183-84 (2003) (quoting *Fisher v. State*, 128 Md. App. 79, 104 (1999)). The reviewing court will never presume error (*see Chaney*, 375 Md. at 184), nor will it independently seek out law to sustain an appellant's unsupported assertions of error. *See Rollins v. Capital Plaza Assocs., L.P.*, 181 Md. App. 188, 202 (2008) (citing *von Lusch v. State*, 31 Md. App. 271, 285 (1976)). Under the circumstances, Mr. Cullen has failed to demonstrate that the orphans' court erred by refusing to require advance payments from Mr. Zehfuss.

2. Personal Warranty of Title

Separately, Mr. Cullen contends that the orphans' court erred by ordering him to distribute the interest in a way that he says "unlawfully required the personal representative to give a personal warranty of title." Because Mr. Zehfuss's proposed assignment included a recital that "Wayne Cullen, the personal representative, holds legal title of the interest," Mr. Cullen asserts that the order might expose him "to personal liability for breach of warranty." In Mr. Cullen's counter-petition, however, he did not

[19] Mr. Cullen's petition to the orphans' court cited only "E&T § 7-308," a section that does not appear to exist. In his appellate brief, he cites E&T § 9-103, which governs the order of abatement for inheritances and legacies.

complain that the assignment included an improper warranty of title. Only in his motion to alter or amend did Mr. Cullen argue that the proposed assignment "effectively constitute[d] a warranty of title to the interest, which a Personal Representative cannot give."[20]

Because Mr. Cullen first objected to the "warranty of title" in his post-judgment motion, our review of this issue is limited to deciding whether the court abused its discretion in refusing to alter or amend its judgment. *See Steinhoff v. Sommerfelt*, 144 Md. App. 463, 483-84 (2002). Neither Mr. Cullen's post-judgment motion nor his appellate brief have offered any reason why Mr. Cullen could not have raised his objections to the allegedly improper warranty of title before judgment. Therefore, assuming that the assignment included an improper warranty, the orphans' court was within its discretion to decline to reconsider the issue. *See Morton v. Schlotzhauer*, 449 Md. 217, 232 n.10 (2016) (explaining that a court "does not abuse its discretion when it declines to entertain a legal argument made for the first time in a motion for reconsideration that could have, and should have, been made earlier, and consequently was waived").

3. Denial of Request for an Evidentiary Hearing

Mr. Cullen goes on to contend that the orphans' court erred by failing to conduct

[20] In support of that assertion, Mr. Cullen cited *Preissman v. Harmatz*, 264 Md. 715, 723-24 (1972), in which the Court of Appeals held that a purchaser of real property was "not entitled to demand from an executor or trustee a deed containing a covenant of special warranty because executors and trustees can convey no better title than they have, and are without power in their representative capacity to bind the estate."

an evidentiary hearing to determine whether his offer to sell the 21 percent interest to the Cullen trust was a "bona fide offer" under the 2013 operating agreement. Mr. Cullen, however, did not request an evidentiary hearing until after the court had already entered judgment against him. The court did not abuse its discretion in denying the post-hearing (and post-judgment) request for an evidentiary hearing. *See Steinhoff v. Sommerfelt*, 144 Md. App. at 484 (explaining that a trial judge has essentially "boundless discretion" to decline to consider issues raised "after the fact that could have been raised earlier but were not"); *accord Li v. Lee*, 210 Md. App. 73, 97 (2013), *aff'd*, 437 Md. 47 (2014). Moreover, a trial court is not required to hold a hearing before it denies a motion to alter or amend a judgment. *See In Re Adoption/Guardianship of Joshua M.*, 166 Md. App. 341, 357 (2005); *Hill v. Hill*, 118 Md. App. 36, 44 (1997).

4. Jurisdictional Limits of the Orphans' Court

Mr. Cullen further contends that the orphans' court "exceeded its jurisdiction" by construing the restrictions of the two operating agreements for the Lee Graham Shopping Center. He asserts that he is aggrieved as personal representative because the distribution order may be "void *ab initio* and subject to collateral attack." There is no merit to his contention that the orphans' court exceeded its jurisdiction.

An orphans' court has the express power to "direct the conduct of a personal representative, and pass orders which may be required in the course of the administration of an estate of a decedent." E&T § 2-102(a). "[O]nce it is determined that the subject matter, incident to which a document must be construed, is within the jurisdiction of the orphans' court, that court is empowered to interpret that written document." *Kaouris v.*

Kaouris, 324 Md. 687, 709 (1991).

Mr. Cullen correctly conceded that the court had the authority to determine whether Ms. Kirsch's interest should pass under the will, and the partnership and LLC agreements bear on Ms. Kirsch's ability to convey the interest to Mr. Cullen in her will. Therefore, Mr. Cullen's arguments concern "the propriety of the court's acting, not its jurisdiction, *i.e.*, its power to proceed." *Id.* The orphans' court did nothing improper in construing the agreements that governed Ms. Kirsch's ability to convey the asset in question: the federal courts had already issued a binding interpretation of the restrictions from the 1984 partnership agreement, and Mr. Cullen could not identify any material difference between those restrictions and the restrictions in the 2013 LLC agreement.

5. Failure to Transmit Issue Regarding Income from Asset

Finally, Mr. Cullen contends that the orphans' court erred by "refusing to transmit the issue of the Estate's entitlement to seek judgment in connection with the income from [Ms. Kirsch's] 21% interest and effectively ordering that the income belongs to [Mr. Zehfuss] by intestate succession[.]" Specifically, Mr. Cullen asserts that Lee Graham Shopping Center, LLC, wrongfully withheld over $40,000 of income attributable to Ms. Kirsch's 21 percent interest. Mr. Cullen claims that the income is a "separate asset" of the estate. He complains that the orphans' court "simply ignored that issue" when it "properly" should have been transmitted it to the circuit court.

The short answer to Mr. Cullen's contention is that the orphans' court had no reason to transmit that issue because Mr. Cullen never asked it to do so. His petition asked the orphans' court to transmit four issues, which overlapped with the first five

counts of his declaratory judgment complaint in the circuit court. In the final count of the declaratory judgment complaint, Mr. Cullen alleged that the company was wrongfully withholding income from the estate and asked the circuit court to compel the company to distribute that income. In his petition to transmit issues, Mr. Cullen mentioned that the company (which was never a party to the orphans' court proceedings) was required to pay the income to the estate "regardless of the outcome of the other issues in this case." But he added: "The obligations regarding such distributions are *not* before this Court but should be decided as part of the comprehensive relief that can be afforded by the Circuit Court." (Emphasis added.) In other words, Mr. Cullen himself said that the issue of distributions was not before the orphans' court.

The orphans' court ultimately denied Mr. Cullen's petition to transmit the other four issues, concluding that his proposed issues were moot in light of the court's determination that Mr. Cullen should receive the interest by intestate succession. The court did not mention Mr. Cullen's separate claim against the company for the income related to the interest. Because Mr. Cullen never asked the court to transmit that issue, he has no basis to complain that the court erred by failing to transmit it. *See, e.g.*, *In re Kaleb K.*, 390 Md. 502, 512-13 (2006) (holding that party failed to preserve issue for appellate review where there was "nothing in the record to indicate that the issue . . . was presented to or decided by" the trial court as part of its ruling). In fact, even if Mr. Cullen had requested an order requiring the company to turn over the income to the estate, the orphans' court could not have granted that relief, because the company was not a party to the orphans' court proceedings.

CONCLUSION

Mr. Cullen noted an appeal from a final judgment of the orphans' court. Because he appealed solely in his capacity as personal representative, however, he lacks standing to challenge the court's determination as to the distribution of estate property. Although he also complains about aspects of the judgment other than the determination of the proper recipient of the asset, he has established no error in those other aspects of the judgment.[21]

APPELLANT'S MOTION TO DISMISS APPEAL DENIED; APPELLEE'S MOTION TO DISMISS APPEAL GRANTED IN PART AND DENIED IN PART; JUDGMENT OF THE ORPHANS' COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[21] For the first time on appeal, Mr. Cullen argued that the transfer restrictions should have prevented Mr. Zehfuss from receiving the 21 percent interest, because he is Ms. Kirsch's brother, and not her "spouse, parent, [or] descendant, or [the] spouse of a descendant." We need not address that argument, because Mr. Zehfuss's right to the interest involves the propriety of the orphans' court's distribution order, which Mr. Cullen (as personal representative) has no standing to challenge. In any event, Mr. Cullen failed to preserve the argument, because he failed to present it to the orphans' court. Md. Rule 8-131(a).

APPENDIX

In his brief, Mr. Cullen set forth the following four questions:

I. Did the Orphans' Court err in ordering that the decedent's expressly disinherited brother would receive her business interest by intestate succession due to the business-agreement restraints when the decedent's will had a residuary clause and the court had alternatives to in-kind distribution that would have been in compliance with the dictates of the will, the business agreements, and applicable law?

II. Did the Orphans' Court err in interpreting a sales contract when it did not have jurisdiction to do so, in failing to transmit the contract, income-distribution and related issues to a court that had jurisdiction, in failing to conduct an evidentiary hearing on the issues surrounding the contract, and then improperly ignoring the terms of the contract and requiring the personal representative to make a personal warranty of title in assigning Diane's 21% interest to her disinherited brother without requiring him to pay his required share of estate expenses and estate tax?

III. Did the Orphans' Court err in refusing to transmit the issue of the Estate's entitlement to seek judgment in connection with the income from Diane's 21% business interest and in effectively ordering that the income belongs to the disinherited brother by intestate succession?

IV. Did the Orphans' Court err in finding that Diane's disinherited brother was an "interested person" with standing to participate in its proceedings?