UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2238

September Term, 2015

JEANNE ELLIS

v.

SAMIRA JONES

Berger,
Beachley,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: March 6, 2017

This case originated with a petition to caveat the last will and testament of John Moore, filed by Jeanne Ellis in the Orphans' Court for Prince George's County. The orphans' court granted Ellis's petition to caveat. Samira Jones filed an appeal to the Circuit Court for Prince George's County. In addition, Jones filed in the orphans' court a motion to admit an earlier will into probate. The orphans' court denied Jones's motion. Jones filed a second appeal to the Circuit Court for Prince George's County. Following a *de novo* trial, the circuit court ruled in favor of Jones with respect to the first appeal and remanded the matter to the orphans' court for further proceedings. The circuit court did not reach the issues involved in the second appeal. Ellis appealed to this Court.

Ellis presents three questions for our review on appeal, which we have rephrased as follows:

1. Whether the circuit court erred in denying Ellis's motion to dismiss the appeal on the basis that Jones failed to pay required filing fees, failed to properly transmit the record on appeal, and/or failed to submit a certificate of service with her notice of appeal.

2. Whether the circuit court erred in failing to affirm the orphans' court's rulings as challenged in Jones's notices of appeal when the circuit court's ruling was not based upon the arguments raised in Jones's notices of appeal.

3. Whether the circuit court erred by finding that Ellis was adopted.

For the reasons explained herein, we shall affirm in part and reverse in part the judgment of the circuit court and remand for further proceedings consistent with this opinion.

FACTS AND PROCEEDINGS

John Moore, the decedent whose last will and testament forms the basis of this action, died on April 21, 2012. On May 3, 2012, Jones filed a purported will allegedly signed by Moore on February 8, 2012 ("the 2012 will") with the Prince George's County Register of Wills. Jones also filed a proof of custody, petition for administration of a regular estate, and a required list of interested persons. The will nominated Jones to serve as executor and identified Jones as Moore's "niece."[1] In the list of interested persons, Jones identified her relationship to Moore as "niece." Jones listed Ellis as Moore's "heir" and Ellis's relationship to Moore as "daughter." The 2012 will identified Ellis as Moore's child and specifically provided that "[i]t is requested that Jeanne Ellis be disinherited from my will." The 2012 will left nearly all of Moore's property to Jones, in trust.

On June 12, 2012,[2] Ellis filed a petition to caveat the 2012 will. Ellis challenged Moore's competency to execute the 2012 will. Ellis further argued that the attestation of the 2012 will did not comply with Maryland law and that Jones exercised undue influence over Moore. In response, Jones, *pro se*, filed a one-page letter on June 28, 2012. On July 23, 2012, Jones filed a purported last will and testament of Moore dated August 31, 2011 ("the 2011 will"). The 2011 will also named Jones executor and left virtually all of

[1] Jones is Moore's great-niece by marriage, being the granddaughter of Moore's late wife's sister.

[2] The date stamp on the petition to caveat reflects a filing date of June 12, 2011, which appears to be a clerical error. The docket entries from the Prince George's County Register of Wills show a filing date of June 12, 2012, and the parties agree that the petition to caveat was filed on June 12, 2012.

Moore's property to Jones, although it did so directly rather than through a trust. On November 15, 2012, Ellis filed an amended petition to caveat. The amended petition to caveat added an allegation relating to an alleged sham trust.

On August 12, 2013, the caveat trial commenced before the orphans' court. At the end of the first day of trial, Ellis testified that she believed she had been adopted by her step-father.[3] Ellis testified that she learned that Moore was her biological father in April of 1974 and that she believed that she had been legally adopted by her mother's husband, Carl Ellis. This issue was significant because, under Maryland law, an individual who has been adopted by another party is no longer considered the child of his or her biological parent under the intestacy laws. Md. Code (1974, 2011 Repl. Vol.), § 1-207(a) of the Estates and Trusts Article ("ET").[4] The orphans' court stayed the proceedings so that both parties could investigate the adoption issue and present additional evidence.

Thereafter, Jones filed additional evidence with the court relating to the adoption issue. Jones submitted a letter (hereinafter referred to as "the Mensch letter") dated October 9, 1974, addressed to Carl B. Ellis, Jr., and Rachel Ross Ellis (Ellis's mother). The letter provided in relevant part:

> Enclosed herewith is a certified copy of a "Final Decree of Adoption[,"] the original of which was signed by Judge Draper on September 27, 1974.

[3] The entirety of transcript from the orphans' court caveat trial is not in the record of the present appeal, given the *de novo* nature of the circuit court appeal. The portion of the transcript including this portion of Ellis's testimony has been included in the record.

[4] ET § 1-207(a) includes an exception providing that if a stepparent adopts a child, the parental relationship between the child and the spouse of the stepparent/biological parent of the child is not severed.

> By the terms of this decree the adoptee shall henceforth be known as JEANNE MICHELLE ELLIS.
>
> I am retaining, for my file, one additional certified copy of this decree -- should the need arise for you to have this copy, please advise and I will forward it to you.

Jones also submitted a copy of an adoption order from the Superior Court of the District of Columbia. The quality of the copy is very poor and barely legible, but appears to provide that Jeanne Ellis was adopted by Carl B. Ellis, Jr. Jones requested that the orphans' court find that Ellis had been adopted and dismiss the caveat.

Ellis also submitted evidence relating to the adoption issue. Ellis filed a letter dated September 3, 2013, from the Registrar of Vital Records Division of the District of Columbia Department of Health. The letter provided that the Department had a birth record on file for Jeanne Michelle Ross, with a birth date of September 21, 1956, and that the parents listed on the birth record were Rachel Mae Ross and John Moore. The letter provided that the office "does not have a record of adoption for Ms. Ross . . . ."

On September 24, 2013, the orphans' court denied Jones's motion to dismiss the caveat, finding "lack of evidence of a legal adoption of" Ellis. The orphans' court further ordered that the caveat matter be set back in for a hearing. The caveat trial resumed on February 25, 2014. At the close of the hearing, the orphans' court issued its ruling that (1) denied the admission of the 2012 will to probate, (2) granted Ellis's amended petition to caveat, (3) removed Jones as personal representative, (4) appointed Ellis as successor personal representative, and (5) ordered Jones to return all estate property. The orphans' court's oral ruling was memorialized in a written order dated March 11, 2014.

On March 7, 2014, Jones filed a notice of appeal ("the first appeal"), in which she challenged the caveat ruling but not the orphans' court's ruling regarding the adoption of Ellis. The notice of appeal did not include a certificate of service but was accepted by the clerk for filing. Jones did not initially pay the filing fee associated with the first appeal. Jones ultimately paid the filing fee on June 30, 2014. On April 17, 2015, Ellis moved to dismiss Jones's appeal, arguing that the appeal was untimely filed for several reasons, namely: (1) because it lacked a certificate of service, (2) because Jones failed to pay the filing fee, and (3) because the record was not transmitted within the time allowed by law.

While the first appeal was pending in the circuit court, Jones filed a motion to admit the 2011 will into probate in the orphans' court, arguing that "in the interest of justice, this newly discovered Will, dated August 31, 2011, should be admitted for probate." The orphans' court denied the motion on April 22, 2014. Jones filed a motion to alter or amend on April 22, 2014. Jones also filed a second notice of appeal ("the second appeal") on April 22, 2014. Jones never paid the filing fee associated with the second notice of appeal. On July 16, 2014, the orphans' court transmitted the record to the circuit court, which triggered the creation of the circuit court case captioned *In re: Estate of John Moore*, Case No. CAL14-17989 ("the *de novo* appeal"). [5]

The *de novo* appeal began before the circuit court on June 15, 2015. Ellis filed a motion in limine the same day, seeking, *inter alia*, to exclude evidence pertaining to the

[5] The circuit court did not formally consolidate the two separate appeals from the orphans' court, but the record transmitted pertained to both appeals and the circuit court addressed issues related to both appeals at the *de novo* hearing.

adoption issue. Ellis asserted that the circuit court should consider only the specific issues identified in the two notices of appeal. The circuit court heard argument on Ellis's motion to dismiss as well as on the motion in limine. The court reserved its ruling on Ellis's motion to dismiss and permitted argument on the adoption issue.

The *de novo* trial continued on November 2, 2015. At the conclusion of the trial, the circuit court denied Ellis's motion to dismiss. The circuit court issued its oral ruling, finding that Ellis had been adopted. The circuit court did not rule on the issues relating to the appeal of the orphans' court's denial of Jones's motion to admit the 2011 will. Instead, the circuit court remanded the issues relating to the 2011 will to the orphans' court for further proceedings in light of the circuit court's ruling on the adoption issue.[6] The circuit court's ruling was memorialized in a written order dated December 21, 2015. This appeal followed.

DISCUSSION

I.

We first consider whether the circuit court erred by denying the motion to dismiss filed by Ellis. A party may choose to appeal a decision of an orphans' court to either the circuit court or to the Court of Special Appeals. Md. Code (1974, 2013 Replacement Vol.),

[6] The circuit court explained, with respect to the issues relating to the 2011 will:

> I am going to leave that to the Orphans' Court judges. I have taken no testimony on that. So it would be unfair for me to say that [the 2011 will should have been admitted into probate].

§§ 12-501 and 12-502 of the Courts and Judicial Proceedings Article ("CJP"). In this case, Jones elected to appeal the decisions of the orphans' court to the circuit court in both the first and second appeals. Pursuant to Maryland Rule 7-503, an appeal from a ruling of an orphans' court to a circuit court "shall be filed within 30 days after entry pursuant to Rule 6-171 of the judgment or order from which the appeal is taken."[7]

Jones filed her first appeal on March 7, 2014. Although the notice of appeal did not include a certificate of service, it was accepted for filing and was docketed. Maryland Rule 6-108(b) expressly provides as follows:

> The register shall **not** accept for filing any petition or paper requiring service unless it is accompanied by **(1) a signed certificate showing the date and manner of service as prescribed in Rule 6-125** or (2) a signed statement that, for reasons set forth in the statement, there is no person entitled to service. A certificate of service is prima facie proof of service.

(Emphasis added.) Rule 6-125(b) provides that "[a] certificate of service shall be filed for every paper that is required to be served." Ellis maintains that, because the notice of appeal

[7] Rule 6-171 provides:

> (a) After determination of an issue, whether by the court or by the circuit court after transmission of issues, the court shall direct the entry of an appropriate order or judgment.
>
> (b) The register shall enter an order or judgment by making a record of it in writing on the file jacket, or on a docket within the file, or in a docket book, according to the practice of each court, and shall record the actual date of the entry. That date shall be the date of the order or judgment.

lacked the certificate of service required by Rules 6-108(b) and 6-125(b), Jones's first notice of appeal was untimely filed.[8] As we shall explain, we agree with Ellis.

We discussed the certificate of service requirement set forth in Rule 1-323, which mirrors the language of Rule 6-108(b), at length in *Lovero v. Da Silva*, 200 Md. App. 433 (2011).[9] We explained that it "is the duty of the clerk to record any such pleading or paper as filed and entered on the docket of the case in question." *Id.* at 443. We explained that, in general "the clerk has no discretion in the matter and no right to make a judicial determination of whether the paper complies with the Rules or ought to be filed." *Id.* We described various deficiencies that have been held not to prevent the acceptance and filing of a pleading by a clerk, including lack of a proper caption, improper court name or docket number, and improper certificate of service. *Id.* We emphasized that "[t]he *only exception* to the duty of the clerk to file a pleading or paper, regardless of a defect or deficiency, is the requirement of Rule 1–323 that the 'clerk shall not accept for filing' a pleading or paper

[8] Ellis further maintains that the first notice appeal should have been dismissed because of Jones's untimely payment of filing fees and the delay in transmittal of the record. In light of our determination that the appeal was not properly before the circuit court due to the absent certificate of service, we shall not reach Jones's other issues relating to the filing of the first notice of appeal.

[9] Rule 1-323 provides:

> The clerk shall not accept for filing any pleading or other paper requiring service, other than an original pleading, unless it is accompanied by an admission or waiver of service or a signed certificate showing the date and manner of making service. A certificate of service is prima facie proof of service.

requiring service that does not contain 'an admission or waiver of service or a signed certificate showing the date and manner of making service.'" *Id.* at 443-44. (Emphasis added.)

We reviewed the history of Rule 1-323, observing that "in each iteration of the rule the clerk is directed not to 'file' any paper or pleading requiring service that does not contain the appropriate proof of service." *Id.* at 445. We discussed the importance of the certificate of service requirement, commenting that "Rule 1-323 serves the function of assuring the court that procedural due process is accorded to the parties at every step of the litigation process." *Id.* at 446. We explained that "[w]ithout the assurance of notification to each party, the foundation of the impartial administration of justice by the courts begins to crumble." *Id.* For these reasons, we held "that a pleading or paper required to be served by Rule 1-321[10] that does not contain an admission or waiver of service or a signed certificate showing the date and manner of making service cannot become a part of any court proceeding, and the clerk is mandated by Rule 1–323 'not [to] accept for filing' such pleading or paper." *Id.* at 446-47. We further held that, "where a clerk accepts for filing a notice of appeal that does not contain any certificate of service, and thus should have been rejected under Rule 1-323, such defective notice of appeal is not 'filed' within the meaning of Rule 8–202(a)." *Id.* at 450. As such, we dismissed the appellant's appeal as untimely filed.

[10] Rule 1-321 provides, in relevant part, that "[e]xcept as otherwise provided in these rules or by order of court, every pleading and other paper filed after the original pleading shall be served upon each of the parties."

Our reasoning in *Lovero* applies to the present case and dictates the same result. Maryland Rule 6-108(b) mirrors the language of Rule 1-323 in barring a register of wills from accepting any filing that lacks a certificate of service. Rule 6-108(b) serves the same function as Rule 1-323 in assuring procedural due process to all parties. Pursuant to Rule 6-108(b), the register of wills is precluded from "accept[ing] for filing any petition or paper requiring service unless it is accompanied by (1) a signed certificate showing the date and manner of service as prescribed in Rule 6-125 or (2) a signed statement that, for reasons set forth in the statement, there is no person entitled to service." Accordingly, we hold, similarly to *Lovero*, that where a register of wills accepts for filing a notice of appeal that does not contain any certificate of service, and thus should have been rejected under Rule 6-108(b), such defective notice of appeal is not 'filed' within the meaning of Rule 7-503, which requires that a notice of appeal from an orphans' court to a circuit court be filed within thirty days.

It is not disputed that Jones's first notice of appeal lacked a certificate of service. No notice of appeal containing a certificate of service was filed within thirty days of the orphans' court's February 25, 2014 ruling. We hold, therefore, that Jones's first appeal was not properly before the circuit court. Accordingly, the circuit court erred by denying Ellis's motion to dismiss the first appeal.

Jones asserts that Ellis was not prejudiced by the absent certificate of service, tardy payment of filing fees, and delayed transmission of the record. Prejudice is irrelevant in the context of the certificate of service issue. As we have explained, a notice of appeal lacking a certificate of service is not "filed" under Rule 7-503, regardless of whether a

party has been prejudiced by the absent certificate of service. We, therefore, reject Jones's prejudice argument. [11]

II.

We next turn to issues relating to Jones's second notice of appeal. Ellis maintains that the circuit court erred by denying her motion to dismiss Jones's second notice of appeal of the orphans' court's denial of Jones's motion to admit the 2011 will into probate. Ellis asserts that the appeal should have been dismissed because Jones failed to pay the mandatory filing fees and because the record was not transmitted within the time prescribed by Rule 7-505. We disagree that the circuit court was required to grant Ellis's motion to dismiss the second appeal.

A. Filing Fees

Maryland Rule 7-505(d) sets forth the mandatory filing fees for appeals from an orphans' court to a circuit court as follows:

> The appellant shall deposit with the Register of Wills the fee prescribed by Code, Courts Article, § 7-202 unless the fee has been waived by an order of court or the prepayment of prepaid costs has been waived in accordance with Rule 1-325.1. The filing fee shall be in the form of cash or check or money order payable to the clerk of the circuit court.

[11] In light of our determination that the first appeal was not properly before the circuit court due to the certificate of service deficiency, we need not address the filing fees and transmission of record issues as they relate to the first appeal.

Ellis asserts that because Jones failed to pay the applicable fees, her appeal should have been dismissed. Jones concedes that the fees were not timely paid but asserts that the failure to pay fees did not warrant dismissal of her appeal.

We addressed a similar issue in the case of *Bond v. Slavin*, 157 Md. App. 340 (2004), albeit in the context of failure to pay fees in compliance with Maryland Rule 8-201.[12] In *Bond*, the appellee argued that an appeal was untimely due to the appellant's failure to pay the filing fee until after the deadline for filing an appeal. *Id*. at 350. The appellee argued that the notice of appeal was not actually filed until the fee was paid. *Id.* We expressly rejected this argument, explaining:

> According to Md. Code, Cts. & Jud. Proc. § 2-201(b) (2003), the clerk has no duty "to record any paper filed with him [or her]" until costs are paid. We are persuaded that to "record" means to "docket," rather than to "file." If an

[12] Rule 8-201 pertains to an appeal to this Court, rather than to the circuit court, and provides:

> (a) By Notice of Appeal. Except as provided in Rule 8-204, the only method of securing review by the Court of Special Appeals is by the filing of a notice of appeal within the time prescribed in Rule 8-202. The notice shall be filed with the clerk of the lower court or, in an appeal from an order or judgment of an Orphans' Court, with the register of wills. The clerk or register shall enter the notice on the docket.
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> (b) Filing Fees. At the time of filing a notice of appeal in a civil case . . . an appellant shall deposit the fee prescribed pursuant to Code, Courts Article, § 7-102 with the clerk of the lower court . . . .
>
> (c) Transmittal of Record. After all required fees have been deposited, the clerk shall transmit the record as provided in Rules 8-412 and 8-413. The fee shall be forwarded with the record to the Clerk of the Court of Special Appeals.

> appellant fails to pay the filing fee, the clerk is not required to docket the Notice, but the clerk is required to file it. "The only authority that a clerk has to refuse to accept and file a paper presented for filing is that contained in Md. Rule 1-323." *Director of Fin. v. Harris*, 90 Md. App. 506, 511, 602 A.2d 191 (1992).
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> "The date that a pleading or paper is 'filed' is the date that the clerk receives it...." PAUL V. NIEMEYER & LINDA M. SCHUETT, MARYLAND RULES COMMENTARY 47 (3d. ed. 2003). "A pleading or paper is filed by actual delivery to the clerk . . . ." *Id.* Rule 8-201 does not provide that failure to pay the filing fee prohibits a Notice of Appeal from being "filed." We therefore hold that, except for notices of appeal that fail to comply with the certificate of service requirement of Md. Rule 1-323, the notice of appeal is filed on the date that the clerk receives the notice, not the date on which the clerk receives the filing fee.

Bond, *supra*, 157 Md. App. at 351-52 (footnotes omitted). We further commented that, pursuant to Rule 8-203(a)(3), an appellee may move to have a notice of appeal stricken for failure to pay a filing fee, and that a court is permitted to strike the notice. *Id.* at 352. In *Bond*, however, as in this case, the appellees did not move to have the notice of appeal stricken, nor did the court strike the notice of appeal.

In our view, the same conclusion that we reached in *Bond* is appropriate in the present case. Indeed, Rule 6-108, governing acceptance of papers by a register of wills, expressly provides that "[e]xcept as otherwise provided in section (b) of this Rule [pertaining to the certificate of service requirement], a register of wills shall not refuse to accept for filing any paper on the ground that it is not in the form mandated by a Rule in this Title." The register of wills was required to accept Jones's notice of appeal despite the

missing filing fee. Accordingly, we reject Ellis's assertion that Jones's second notice of appeal was untimely due to Jones's failure to pay the filing fee.

B. Transmission of Record

Ellis further asserts that Jones's second appeal should have been dismissed because the record was not transmitted in the requisite time period. We are unpersuaded.

Maryland Rule 7-505 governs the transmittal of the record for an appeal from an orphans' court to a circuit court and provides:

> Unless a different time is fixed by order entered pursuant to this section, the Register of Wills shall transmit the record to the circuit court within 60 days after the date the first notice of appeal is filed. The filing fee shall be forwarded with the record to the clerk of the circuit court. For purposes of this Rule, the record is transmitted when it is delivered to the clerk of the circuit court or when it is sent by certified mail by the Register of Wills, addressed to the clerk of the circuit court. On motion or on its own initiative, the Orphans' Court or the circuit court for good cause show may shorten or extend the time for transmittal of the record.

In this case, the record was transmitted on July 16, 2014. Jones had filed her second notice of appeal on April 22, 2014.

Maryland Rule 7-507(e), governing dismissals of an appeal from an orphans' court to a circuit court, provides that "[o]n motion or on its own initiative, the circuit court *may dismiss* an appeal . . . [when] the record was not transmitted within the time prescribed by Rule 7-505, unless the court finds that the failure to transmit the record was caused by the act or omission of a judge, a Register of Wills, a clerk of court, or the appellee . . . ." (Emphasis added.)

First, we note that Rule 7-507 is styled as a permissive rather than a mandatory rule. The Court of Appeals has explained that a circuit court has "the discretion not to dismiss [an] appeal" for an appellant's "fail[ure] to order a transcript or provide the necessary record." *Williams v. Hous. Auth. of Baltimore City*, 361 Md. 143, 154 (2000). *Williams* involved an appeal from the district court to a circuit court rather than an appeal from an orphans' court to a circuit court. In our view, however, the circuit court has the same discretion in appeals from orphans' courts, given the permissive nature of the rule. On appeal, we will not disturb the circuit court's exercise of discretion with respect to this issue. Accordingly, we reject Ellis's assertion that the circuit court erred by denying her motion to dismiss Jones's appeal on the basis that the record was not transmitted in the requisite time period.

III.

For purposes of clarity, we set forth precisely what issues will properly be before the court on remand. In light of our determination that only the second appeal was properly before the circuit court, see *supra* Part I, we do not reach the merits of the issue relating to Ellis's adoption. Indeed, the adoption issue and the issues relating to Ellis's petition to caveat were not properly before the circuit court. As such, these issues are not properly before this Court on appeal.

Regrettably, our disposition of this appeal will not lead to finality in this case. Rather, we must remand to the circuit court for further proceedings. In light of its ruling on the adoption issue, the circuit court did not address the issue raised in the second appeal, i.e., Jones's appeal of the orphans' court's denial of the motion to admit the 2011 will to

probate. As we explained *supra* Part II, the circuit court did not err by denying Ellis's motion to dismiss the second appeal. Accordingly, we shall remand this case to the circuit court for the limited purpose of considering the narrow issue raised in Jones's second appeal, namely, whether the orphans' court erred by denying Jones's motion to admit the 2011 will to probate.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED IN PART AND REVERSED IN PART. CIRCUIT COURT'S ORDER ADDRESSING THE ADOPTION ISSUE VACATED. CASE REMANDED TO THE CIRCUIT COURT WITH INSTRUCTIONS TO DISMISS JONES'S FIRST APPEAL FOR LACK OF CERTIFICATE OF SERVICE. CASE REMANDED TO THE CIRCUIT COURT FOR CONSIDERATION OF THE ISSUE RAISED IN JONES'S SECOND APPEAL AND FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE DIVIDED EQUALLY BETWEEN THE PARTIES.