

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2638

September Term, 2015

CATHERINE J. REHKEMPER

v.

TIMOTHY P. O'BRIEN, SUCCESSOR
PERSONAL REPRESENTATIVE

Leahy,
Beachley,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: January 13, 2017

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

On March 11, 2014, the Orphans’ Court for Prince George’s County granted petitions for litigation costs for appellee and Successor Personal Representative Timothy O’Brien (“O’Brien”). Appellants (or “Ruddy” as we will explain below), the Interested Persons to the decedent’s estate, filed a notice of appeal to the Circuit Court for Prince George’s County, challenging the granting of those petitions. Before the circuit court could hear that appeal, however, the orphans’ court struck the Interested Persons’ notice of appeal. Ruddy appealed the striking of the Interested Persons’ notice of appeal to the circuit court. O’Brien moved to dismiss that appeal. The circuit court held a hearing and granted O’Brien’s motion, dismissing the appeal. Ruddy appeals that dismissal, and asks us to consider two interrelated questions which we rephrase as: 1) whether the trial court erred in not adjudicating the new trial *de novo*; and 2) whether the trial court erred in requiring appellants to produce the entire record on appeal. We hold that the trial court did not abuse its discretion in dismissing the appeal for failure to pay the costs and transmit the record.

FACTS AND PROCEEDINGS

On January 31, 2003, Catherine H. Ruddy passed away. Ruddy, an Interested Person and legatee, represents the appellants, many of the Interested Persons and legatees

of Catherine H. Ruddy’s estate.¹ Since her passing, the appellants, through Ruddy, have appealed six times from rulings by the orphans’ court to the circuit court, and three times to our Court. Many of those appeals concerned the award of statutory commissions and attorney’s fees to the former Personal Representative.²

On August 21, 2013, O’Brien filed two petitions in the orphans’ court: one for the allowance of litigation costs incurred in a previous *de novo* appeal; and the other for attorney’s fees and litigation expenses. Ruddy filed exceptions to the petitions on September 9, 2013. In two separate orders, both dated March 11, 2014, the orphans’ court granted O’Brien’s petitions for litigation costs and attorney’s fees.³

Ruddy disagreed with the orphans’ court’s order and filed an “Order For Appeal” to the circuit court on April 9, 2014. The Prince George’s County Register of Wills wrote to Ruddy and informed him that he needed to pay \$1,506.50 to prepare the record. Shortly thereafter, on June 5, 2014, Ruddy filed a motion with the orphans’ court to limit the record

¹ The appellants consist of Joseph C. Ruddy, Jr. (“Ruddy” as referenced *supra*), the attorney of record on appeal, and Ruddy’s children: Catherine Rehkemper, Joseph C. Ruddy, III, John Ruddy, Rosemarie Ruddy, James Ruddy, Bridgid Hartman, Paul Ruddy, Theresa Ruddy, Joanne Ruddy, William Ruddy, and Joseph Ruddy, Jr. There are other legatees of Catherine Ruddy’s estate who are not parties to this litigation.

² We note that Timothy O’Brien is not the only Personal Representative in this case who has faced opposition to his award of attorney’s fees. The former Personal Representative, George Meng, faced similar opposition when the appellants appealed his award of attorney’s fees to this Court. *See Catherine H. Rehkemper, et al. v. Christopher R. Dwyer and Courtenay M. Ruddy*, Case No. 178, Sept. Term 2009 (filed May 14, 2010).

³ We acknowledge that O’Brien also filed a petition for the approval of his Amended Eighth and Final Administrative Account, which appellants also opposed. However, that matter is not before us.

for his appeal to the circuit court. O’Brien opposed the motion and argued that Ruddy needed to pay the cost of preparing the entire record. On June 17, 2014, the orphans’ court denied Ruddy’s motion to limit the record on appeal and struck Ruddy’s April 9, 2014 appeal to the circuit court, presumably for failing to pay for and produce the record pursuant to Maryland Rule 6-464(a)(2).

On July 16, 2014, Ruddy filed yet another “Order For Appeal” to the circuit court, “on the issues that include, but are not limited to, denying [Ruddy’s] Motion to Limit Record on Appeal De Novo to the Circuit Court To All Original Papers Filed ‘In the Action’ in the Orphans’ Court, and dismissing and/or striking the Notice of Appeal/Order For Appeal filed on April 9, 2014.”

Once in the jurisdiction of the circuit court, O’Brien moved to dismiss Ruddy’s appeal, which Ruddy opposed. On December 30, 2015, the circuit court heard argument on the motion to dismiss Ruddy’s July 16, 2014 appeal. The circuit court found that Ruddy failed to pay the costs of the record and also failed to transmit the record within sixty days as required under Maryland Rule 7-507. Accordingly, the circuit court granted O’Brien’s motion and dismissed the appeal on procedural grounds. Ruddy timely appealed that decision to this Court.

STANDARD OF REVIEW

The Court of Appeals has explained that, “[w]ith respect to procedural issues, a trial court’s rulings are given great deference and [o]nly upon a clear abuse of discretion will a trial court’s rulings in this arena be overturned.” *Jenkins v. City of College Park*, 379 Md.

142, 164 (2003) (internal quotation marks omitted) (quoting *Schmerling v. Injured Workers' Ins. Fund*, 368 Md. 434, 443-44 (2002)). In defining what constitutes an abuse of discretion, the Court of Appeals has stated that it is “discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *Id.* at. 165 (quoting *In re Don Mc.*, 344 Md. 194, 201 (1996)). “That is to say, an abuse of discretion occurs when a decision is ‘well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.’” *Consol. Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 219 (2011) (quoting *King v. State*, 407 Md. 682, 711 (2009)).

DISCUSSION

Ruddy frames his appeal in terms of whether the circuit court erred in failing to apply the correct standard of review. Ruddy correctly notes that, pursuant to Md. Code (1973, 2013 Repl. Vol.) § 12-502 of the Courts and Judicial Proceedings Article (“CJP”), the circuit court hears *de novo* the appeal of a final judgment from the orphans’ court. To resolve this appeal, however, we need look no further than Maryland Rule 7-507. This rule states, in relevant part:

(a) Grounds. On motion or on its own initiative, *the circuit court may dismiss an appeal for any of the following reasons:*

- (1) the appeal is not allowed by law;
- (2) the appeal was not properly taken pursuant to Rule 7-502;
- (3) the notice of appeal was not filed with the Register of Wills within the time prescribed by Rule 7-503;

- (4) *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;*
- (5) the appeal has been withdrawn because the appellant filed a notice withdrawing the appeal or failed to appear as required for trial or any other proceeding on the appeal; or
- (6) the case has become moot.

Maryland Rule 7-507 (emphasis added).

The circuit court, in dismissing the case, stated,

Motion to Dismiss Appeal filed by the Successor Personal Representative is granted for failure to pay the costs of the record and to transmit the appeal within 60 days. I am not predicating upon a failure to pay the \$145 fee⁴ but the result is the same. This case is dismissed and closed statistically.

Maryland Rule 7-507 grants a trial court the discretion to dismiss an appeal from the orphans' court if the record has not been timely transmitted. We have consistently held that the word "may" connotes discretion. *See Heit v. Stansbury*, 199 Md. App. 155, 158 (2011) (stating that the word "'may' . . . connotes a discretionary act, *i.e.*, one that is not required."), *Wells v. Wells*, 168 Md. App. 382, 393 (2006) (stating that, "The decision whether to enter a default judgment, as the word 'may' connotes, is discretionary."). We cannot say that the circuit court's decision is "manifestly unreasonable, or exercised on untenable grounds or for untenable reasons." *Jenkins, supra*, at 165. Therefore, the circuit court did not abuse its discretion in dismissing Ruddy's appeal.

⁴ The \$145 filing fee refers to the fee required under Maryland Rule 7-505(d) to appeal from the orphans' court to the circuit court.

**JUDGMENT OF THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**