

Orphans' Court for Talbot County
Estate No.: 23812

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2122

September Term, 2022

IN RE: THE ESTATE OF EDMUND
ANTHONY CUTTS, JR.

Berger,
Leahy,
Wilner, Alan M. (Senior Judge),
Specially Assigned,

JJ.

Opinion by Wilner, J.

Filed: October 17, 2023

*This is an unreported opinion. It may not be cited as precedent within the rule of stare decisis. It may be cited for persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This case arises from a dispute over the procedure for establishing the value of a one-third ownership interest (145 shares) in a family-owned corporation known as Cutts and Case, Inc., which operates a shipyard, described also as a commercial marina, in Oxford, Maryland. The company specializes in the design, construction, restoration, operation, and sale of custom yachts and other boats.

BACKGROUND

The one-third interest in dispute was owned by Edmund A. Cutts, who died on February 27, 2021. The decedent operated the business with his brother Ronald Cutts who also owned (and still owns) a one-third interest in the company and was designated in Edmund's Will as the Personal Representative of Edmund's Estate. The remaining one-third interest is owned by Edmund's and Ronald's sister, Linda Featherman. The business had been started by their father more than 50 years earlier. Ms. Featherman once lived and worked at the shipyard, but it is alleged that, after Edmund's death, Ronald evicted her and terminated her employment.

Edmund had three daughters – Sarah, Charlotte, and Sophie – who are appellants here. In his Will, Edmund created trusts for those children who, when the Will was signed in 2010, were still in their teens.¹ The trust was to last until they reached the age

¹ At the time the Will was signed in October 2010, Sarah was 19, Charlotte was 17, and Sophie was 15.

of 22. Ronald was appointed in Edmund's Will as the trustee of those trusts. By the time Edmund died, all three children had reached that age.

The core of the dispute was triggered by a petition filed in the Orphans' Court for Talbot County by Ronald in September 2021. In that petition, Ronald asserted that (1) there was very little liquidity in the Estate, (2) Edmund's one-third interest in the shipyard had been appraised by Angela Assadi, a practicing certified public accountant who was also a Certified Valuation Analyst and a Master Analyst in Financial Forensics, to be worth \$455,170, and (3) that Edmund's Will expressly granted Ronald, as Personal Representative, the authority to sell Edmund's one-third interest. He requested that the court enter an Order approving **his** purchase of that interest for the appraised amount of \$455,170.

Ms. Assadi's appraisal stated the value of the interest **as of the date of Edmund's death** (February 27, 2021) on a non-controlling, non-marketable basis. Appraising the value on a non-controlling, non-marketable basis reduced the value by more than 40 percent – 11.8 percent for lack of control and 30 percent as a discount for marketability, or lack thereof.

The daughters, appellants here, filed exceptions to the petition on October 14, 2021, contending that, in the inventory filed in August 2021, the one-third interest was valued at \$461,197 and that there were several irregularities in the methodology used by Ms. Assadi. Although they generally agreed that the Estate's one-third interest should be

sold, they asked the Court to set the matter for a hearing but give them 90 days to obtain independent appraisals and to order Ronald to provide to their attorney all the draft appraisals and communications with appraisers regarding appraisals obtained by the Estate.

On March 1, 2022, the daughters filed a petition in the Orphans' Court to transmit to the Circuit Court 10 issues generated by Ronald's petition to the Orphans' Court. *See* Code, Estates & Trusts Article, § 2-105(b). Included among those issues were (1) whether Ronald's attempt to purchase the daughters' interest over their objection constituted self-dealing, (2) what was the value of their interests, (3) whether Ms. Assadi's appraisal accurately reflected the fair value of their interest, and (4) whether Ronald's request to purchase that interest on a purported date-of-death valuation instead of "current value" is fair, reasonable, and in keeping with [Ronald's] fiduciary duties. *See* Item 10(a), (b), (c), and (j).

Ronald responded that (1) the daughters' attorney had urged Ronald to purchase the interest "once we have the [Date of Death Inventory] valuation," (2) that they failed to obtain an independent appraisal, (3) that Maryland law requires that "fair market value" be as of the date of death, citing Code, Estates & Trusts Article §§ 7-201(a) and 7-202(e)(1) for the proposition that "fair market value" for purposes of valuing Estate assets differs from "fair value" in that it takes into account discounts for (i) the lack of ability to rapidly convert an ownership stake into cash (marketability) and (ii) lack of

control, namely, that “a minority interest in the business impacts the amount of control the seller has over operating or financial decisions such as selling the business” and that a discount accounts for that lack of control.

Ronald did not object to a certification of issues to the Talbot County Circuit Court but restated the issues to be certified in a different way and insisted that the valuation be based on the fair market value of the various items of property owned by Cutts and Case, Inc. as of the date of Edmund’s death.

The Orphans’ Court held a hearing on the motion to certify on June 28, 2022. After much bantering, the court entered an order, agreed to by the parties, staying the proceeding for 60 days to allow the parties to negotiate an agreeable purchase price for Edmund’s one-third share, provided that the daughters would furnish Ronald with their appraisal of the value of that interest within 30 days, and that the appraisal would contain details of the value of the land and personal property of the corporation.

On July 21, 2022, counsel for the daughters sent to counsel for Ronald a **draft** of an evaluation conducted by Wilcoxon Consulting, LLC, noting that the draft “will change” depending on the valuation of approximately 20 vessels. In contrast to Ms. Assadi’s valuation of \$451,370, Wilcoxon valued the one-third interest at \$913,180. That was followed on August 22, 2022 by an appraisal of the 20+ boats. In comparison with the Estate’s appraisal of \$495,000, the daughters’ appraiser, Karen Alt, valued those

boats, which she regarded as rare antiques, at \$1,395,000. Altogether, the appraisal of the Estate's one-third interest was valued at \$1,220,000.

The next significant event was a November 29, 2022 Order by the Orphans' Court certifying three questions to the Circuit Court: (1) What is the fair market value of Cutts and Case, Inc. (Cutts) as a going concern, including goodwill, **as of the date of Edmund's death**, February 27, 2021; (2) What is the fair market value of the real estate and tangible personal property and vessels owned by Cutts as of February 27, 2021; and (3) What is the appropriate **discount** for the decedents minority interest in Cutts? Ronald was declared the plaintiff, and the daughters were declared the defendants. **E499**

That produced a swift response in the form of a motion by the daughters to alter or amend that Order complaining that the valuation should **not** be as of the date of death, that adjustments should **not** be limited to a minority discount but consider as well the prospect of a control premium, and that the court should consider as well the propriety of Ronald's conduct as Personal Representative. Ronald responded, citing Code, Estates & Trusts Article, §7-201 for the requirement that Estate assets be valued as of the date of death and contending that there was no impropriety in his effort to purchase his brother's one-third share. The Court denied the daughters' motion and affirmed the November Order certifying the three questions. That, in turn, produced this appeal.

ANALYSIS

Date of Death

Ronald’s position is that the date of the decedent’s death is the date as of which Estate assets must be valued because the General Assembly, by statute, has said so, and, indeed it has said so, not just once but multiple times throughout the Estates & Trusts Article of the Code. Section § 7-201(a), dealing with the duty of the personal representative to prepare and file an inventory of the property owned by the decedent, requires a listing of each item, “indicating its fair market value as of the date of the death of the decedent.” Section 7-202(a)(1), dealing with appraisals, requires that “the value of each item listed in the inventory shall be fairly appraised as of the date of death.” Subsection 7-202(e)(1), authorizes the personal representative to employ appraisers to assist in ascertaining fair market value “as of the date of death of the decedent.”

That carries over, at least in part, to supplemental appraisals as well. Section 7-203, dealing with reappraisals and supplementary inventories, requires the personal representative to make a supplementary inventory or appraisal showing the market value “as of the date of the death of the decedent” or a revised market value, but only if property not included in the original inventory comes to the knowledge of the personal representative or the personal representative learns that the value indicated in the original inventory is erroneous or misleading.

Maryland Rule 6-403 (a) follows the statutory approach. When an appraisal is required, it directs the appraiser to list each item appraised “and its market value as of the date of death of the decedent . . .” *See* also Rule 6-404 incorporating that requirement with respect to the information report required from the personal representative.

There is nothing unclear or ambiguous about those provisions. The value assigned to an item must be the value the item had on the date of the decedent’s death. The value assigned can be revised if shown to be erroneous or incomplete in some way but not to switch it to a value it had on a different date. Section 7-204 allows a court to require an “appropriate” revision of the value assigned to an item of inventory on petition of an interested person, and, on at least one occasion, the Court of Appeals ordered an Orphans’ Court to do so if it found that an item excluded from the inventory belonged to the decedent and should have been included. *See Fowler v. Brady*, 110 Md. 204 (1909).

It is rare, however, that anything, including statutes and Rules, is ever perfect. *See* the discussion in *Gibber on Estate Administration 7th Edition* at 358-362 (2021), noting the impact of various taxes on valuations fixed as of the date of death. It does not appear, however, that the circumstances addressed by Mr. Gibber, were at play in this case.²

² Mr. Gibber notes that, although the inventory value is initially established as of the date of death, there is an obligation to revise that value to reflect market value “because of the impact of inheritance taxes on the procedure.” *See Gibber*, § 4.42 at 360. He notes, as well, the Register’s ability to petition the court for a positive revision of the value in order to collect additional inheritance taxes, which the Register has a duty to collect. *See* § 443 at 361.

Appellants want their interest appraised at a later date because it was worth more at that time. If the value had substantially declined, we presume they would have preferred that it be valued as of the date of death. We find no error in the certification Order's specification that the one-third share be valued as of the date of Edmund's death. The valuation initially assigned to an asset certainly can be adjusted when circumstances warrant, but the ultimate figure must reflect what the asset was worth on the date of the decedent's death. If there is to be a change in that, the Legislature knows how to make it.

Control Premium

Question 3 in the certification Order asked the Circuit Court to determine the appropriate **discount** for Edmund's minority (one-third) interest in the company. Appellants complain that the question should have included a determination of whether the court should also consider whether, as an alternative, there should be a control **premium**. They argue that, because Ronald already owns a one-third share of the company and apparently has no plans to dispose of it, if he purchases Edmund's share, which he said he intended to do, he will own a majority of the stock and will not be a minority owner.

The nature and impact of "control" in the context before us was discussed in *Estate of Godley*, 286 F.3d 210 (4th Cir. 2002) which involved a valuation for Federal tax purposes. The court there noted that a closely held company frequently has no ready market for its shares and that the amount a buyer is willing to pay is often not based

solely on asset values or net worth but more on things such as managerial control, the ability to sell the shares, and other risks.

“Control,” the court held, has been defined as an interest that allows the shareholder unilaterally to direct corporate action, select management, decide the amount of distribution, rearrange the corporation’s capital structure, decide whether to liquidate, merge, or sell assets. *Id.* at 215. Those powers, the court added, support applying a premium to a controlling block of the stock to reflect the inherent value of that controlling interest, but the absence of them, due to the lack of such control supports a minority **discount**, because a minority owner usually has no voice in the management of the company. *Id.*

Question 3 certified by the Orphans’ Court necessarily focused on its assumption that what was to be valued was only a one-third interest – a minority interest – and that the only issue was how much of a **discount**, if any, should be allowed. The court knew, of course, but ignored the fact, that Ronald intended to purchase that interest and, if he did, he would have a controlling interest in the company, which might justify a **premium** but certainly not a **discount**. There was, of course, no absolute assurance that Ronald (or Ms. Featherman, who, at one point also indicated an interest) would purchase Edmund’s shares, but that was unquestionably the most likely one that had driven the entire debate, and everyone knew it. It was error for the Orphans’ Court to ignore that prospect and fail to certify that question as well.

This is not just an artificial legalism. Appellants – Edmund’s children – were the principal beneficiaries of his estate. His Will clearly reflects his prime interest in protecting them. There were two appraisals of Edmund’s share, one double the other, in large part, though not entirely, because of the 40 percent discount Ronald insisted upon on the theory that it was a minority interest and a minority stockholder has no control over the company, ignoring the fact that, if he purchased the interest from the estate, he would be in total control of the company. But the fundamental basis for allowing either a discount or a premium is what the stock would be worth if and when he purchased it – a premium if he did purchase it and take control of the company and a discount if he did not. Both prospects should have been certified to the Circuit Court.

Personal Representative’s Conduct

The essence of appellants’ complaint regarding Ronald’s conduct is essentially one of conflict of interest – self-dealing – attempting to purchase Edmund’s one-third interest for himself at the lowest, rather than the highest, possible price. This Court commented on this in *Madden v. Merc.-Safe Dep. & Tr. Co.*, 27 Md. App. 17, 33 (1975):

“When a person, natural or corporate, is a party to or otherwise profits from a transaction with a trust or other estate of which he is a fiduciary, as when he buys from or sells to the trust, or acts as a broker in the sale, he is self-dealing. The courts generally hold that such a transaction, in the absence of full disclosure and consent of all beneficiaries, is voidable by the beneficiaries, with no need to show unfairness,” (citing *McDaniel v. Hughes*, 206 Md. 206 (1955)).

Appellants complained to the Orphans' Court that Ronald was remiss in asking that court to approve his purchase of Edmund's share at a discount of more than 40%. At that point, there was evidence that the interest, if conveyed to Ronald, was worth a great deal more and merited a positive adjustment rather than a negative one because it would have placed him in control of the company and its assets.

Depending on which appraisals the Circuit Court found reliable, there was evidence from which that court could find either a discount or a premium to be appropriate. The Circuit Court erred in limiting the transfer to only a discount. So long as Ronald remains a prospective purchaser of Edmund's interest, both issues – discount and premium – should have been certified. We shall remand the case for the Orphans' Court to amend its certification in conformance with this Opinion.

**CASE REMANDED TO ORPHANS'
COURT FOR TALBOT COUNTY WITH
INSTRUCTIONS TO AMEND THE
CERTIFICATION ORDER IN
CONFORMANCE WITH THIS OPINION;
APPELLEE PERSONALLY TO PAY THE
COSTS.**