

Circuit Court for Prince George's County
Case No. CAL16-28749

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2347

September Term, 2016

ANGELA JACKSON

v.

APRIL NICKENS

Wright,
Reed,
Shaw Geter

JJ.

Opinion by Reed, J.

Filed: May 30, 2018

*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.

This is an appeal from the denial, by the Prince George’s County Circuit Court, of a Motion to Revise Judgment by Angela Jackson (“Appellant”). Appellant, the surviving spouse of Ronald Jackson (“Decedent”), filed a complaint alleging that April Nickens (“Appellee”), breached her fiduciary and statutory duty as personal representative of Decedent’s estate by failing to distribute Appellant’s statutory share. In response, Appellee moved to dismiss for failure to state a claim for which relief can be granted. The circuit court issued an order granting the motion to dismiss. Appellant then filed a Motion to Revise Judgment, and Appellee filed an opposition thereto. The circuit court denied Appellant’s Motion to Revise Judgment. On July 6, 2017, this Court issued an Order denying Appellant’s Motion to Revise Judgment but further ordered that issues on appeal be limited to whether the circuit court abused its discretion when it denied Appellant’s Motion to Revise Judgment. Appellant presents two questions for our review, which we have rephrased for clarity:

1. Whether the circuit court erred in denying Appellant’s Motion to Revise Judgment because Appellant did not file exceptions before the Register of Wills.
2. Whether the circuit court erred in ruling Appellee did not breach any fiduciary or statutory duties.

For the reasons below, we answer these questions in the negative and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On January 8, 2014, Decedent died. His will was executed on March 27, 2010 and with a codicil executed on September 24, 2013. In his will, Decedent designated Appellee as

the personal representative of his estate (“the estate”). The codicil recognizes Appellant as Decedent’s wife as of October 5, 2012 but does not leave her any property.

On February 4, 2014, Appellee petitioned to probate a small estate¹ in the Prince George’s County Register of Wills. The estate comprised of, among other things, two parcels of real property, namely 6647 24th Place, Hyattsville, Maryland, 20782 (“6647 24th Place”) and 1842 Cedarwood Court, Landover, Maryland 20786 (“1842 Cedarwood”). Also included in the estate were two vehicles, specifically a 2005 Ford Crown Victoria (“Crown Victoria”) and a 2008 Toyota Scion (“Scion”). Appellant was listed as an interested person of the estate. On May 2, 2014, Appellant filed an election to receive a statutory share of the estate, petitioned for spousal allowance and reimbursement for Decedent’s funeral expenses.

Several hearings were held, in the Orphan’s Court of Prince George’s County, to resolve arguments over title and remaining ownership of Decedent’s personal effects. On July 9, 2015, the initial hearing was held regarding Appellant’s request for spousal allowance and reimbursement for funeral expenses. The hearing was continued to September 24, 2015 to allow time for both parties to meet at Appellant’s home, which she shared with Decedent, to go through Decedent’s paperwork and get the mileage on Decedent’s vehicles.

¹ A small estate is any property of the decedent established to have a value of \$50,000 or less at the date of decedent’s death. Md. Code Ann., Estates and Trusts, § 5-601(a). Similarly, the property of the decedent may also be considered a small estate when it has been established to have a value of \$100,000 or less as of the date of decedent’s death and, the surviving spouse is the sole legatee or heir of the decedent. Md. Code Ann., Estates and Trusts, § 5-601(c).

At the second hearing, on September 24, 2015, it was revealed that Appellant refused to let Appellee into her home to discuss Decedent's paperwork and confirm the mileage on Decedent's vehicles. Nonetheless, Appellee agreed to give title of the Crown Victoria to Appellant as satisfaction of her spousal allowance. Appellant then argued that the vehicle was equitably hers because she made payments on the auto loan during Decedent's lifetime through an account in her name. Accordingly, Appellant was ordered to provide bank statements as proof of payment on the Crown Victoria. Appellant timely filed the documentation. The bank statements showed that Appellant transferred the auto loan to a personal loan in Decedent's name. Thus, the orphan's court determined the Crown Victoria belonged to the estate. The orphan's court also determined that Appellant was entitled to reimbursement for paying Decedent's funeral expenses.

On June 1, 2015, a final hearing was held to address Appellee's Motion for Default Judgment. Appellee argued that Appellant failed to submit court-ordered documentation regarding the Crown Victoria. While Appellee claimed she received no notice of the bank statements, the orphan's court confirmed Appellant had timely filed the documentation, and thus the motion was moot.

Appellee next argued that reimbursement for funeral expenses should be offset by a home insurance payment to repair the roof of Appellant's home. Lastly, Appellee alleged that some of Decedent's personal effects were missing from the home, namely an Invicta watch, Schwinn bicycle, a weight bench, camera equipment, furniture, and Decedent's wedding band from his marriage to Appellee's mother. In response, Appellant admitted

she either donated or discarded the items without notifying any of Decedent's children. At the conclusion of the hearing, the orphan's court asked parties to submit written arguments.

On December 2, 2015, the orphan's court entered an order, awarding Appellant spousal support less the value of the Crown Victoria. Further, Appellee was ordered to reimburse Appellant for Decedent's funeral expenses less the value of the bicycle, watch and weight bench. The other personal effects were not included in the estate's accounting.

On July 15, 2016, Appellant filed a complaint against Appellee in the Circuit Court for Prince George's County. Specifically, Appellant alleged Appellee breached her fiduciary and statutory duties as a personal representative by failing to distribute Appellant's statutory share of the estate. On August 12, 2016, the estate closed. On the same day, Appellee moved to dismiss the complaint, alleging a failure to state a claim upon which relief can be granted because the Register of Wills determined the estate was insolvent. Appellant then filed an opposition to the Appellee's Motion to Dismiss on August 26, 2016. On September 30, 2016, a hearing was held regarding Appellant's complaint. The circuit court entered an Order on October 5, 2016 dismissing Appellant's complaint. The order held that Appellant failed to file any exceptions to the valuations of the estate's assets and that Appellee did not breach any fiduciary or statutory duty. The Order also found the estate probated before the Orphan's Court was involved.

On October 26, 2016, Appellant filed a Motion to Revise Judgment, to which Appellee filed an opposition. Appellant's motion was later denied at a hearing held on December 12, 2016. On January 6, 2017, Appellant filed a timely appeal to the denial of the Motion to Revise Judgment under Maryland Rule §2-535(a). In response, Appellee

filed a Motion to Dismiss for Summary Affirmance on June 9, 2017. Subsequently, this Court issued an Order denying Appellant’s Motion on July 6, 2017. This appeal is taken from the trial court’s denial. We shall include additional detail in the following discussion.

STANDARD OF REVIEW

“Denial of a motion to revise judgment is appealable, but the only issue before the appellate court is whether the trial court erred as a matter of law or abused its discretion in denying the motion.” *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458 (1997). Abuse of discretion is defined as “discretion manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *Jenkins v. City of College Park*, 379 Md. 142, 165 (2003) (emphasis not included). To determine whether there has been abuse of discretion, appellate courts evaluate the “nature of the [alleged] error, the diligence of the parties, and all surrounding facts and circumstances . . .” *Id.* Accordingly, “[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.” *Id.* at 164 (quoting *Schmerling v. Injured Workers’ Ins. Fund*, 368 Md. 434, 443–44 (2002) (alterations added).

DISCUSSION

I. Appellant’s Failure to File Exceptions with the Register of Wills

A. Parties’ Contentions

Appellant first contends that the circuit court erred in denying her Motion to Revise Judgment due to her failure to file any exceptions to the valuations of the estate’s real property. Specifically, Appellant argues that she did not file any exceptions because she

did not receive any notices from Appellee. Appellee argues that Appellant received all notices to which she was entitled and thus the circuit court did not abuse its discretion. We agree.

B. Analysis

The trial court has “unrestricted discretion” to exercise its revisory power where a timely motion has been filed after the entry of judgment. *Platt v. Platt*, 302 Md. 9, 13 (1984) (citing *Maryland Lumber Co. v. Savoy Constr. Co.*, 286 Md. 98, 102 (1979)). Maryland Rule 2-535(a) provides, “On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action which it would have taken under Md. Rule 2-534.” Md. Code Ann., Rule §2-535(c). After thirty days of entry of judgment, the judgment is enrolled, limiting the appellate court’s revisory power to reviewing issues of fraud, irregularity, or mistake. *See Tandra S. v. Tyrone W.*, 336 Md. 303, 314 (1994). A motion under this rule is not to be used to challenge the legality of the trial court’s underlying decision. *Cf. In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475 (1997) (“Except to the extent that they are subsumed in that, the merits of the judgment itself are not open to direct attack. In order to challenge the judgment itself, a timely appeal must be taken from it.”). Accordingly, “[t]he rationale behind strictly limiting a court’s revisory power is that in today’s highly litigious society, there must be some point in time when a judgment becomes final.” *Tandra S. v. Tyrone W.*, 336 Md. 303, 314 (1994).

1. Notice

Appellant first alleges that the circuit court erred in denying her Motion to Revise Judgment due to her failure to file exceptions to the valuations of the estate’s real property. Appellant contends that her failure is solely due to Appellee not providing any notice of the valuation of the estate’s real property. We are not persuaded.

Generally, the personal representative of an estate must provide written notice to all interested persons of the filing of the account. *See Carrier v. Crestar Bank, N.A.*, 316 Md. 700 (1989) (citing Estates & Trusts Article §7-501(a) (“Unless waived by the court for good cause shown, the personal representative shall give written notice to all interested persons of the filing of an account with the court.”)). For the probate of a small estate, personal representatives must file a list of interested persons of the estate, together with the original petition. Section 5-602 of the Estate and Trusts Article provides the requirements for a petition for administration of a small estate:

A petition for administration of a small estate may be filed by any person entitled to administration pursuant to § 5-104 of this title and shall contain, in addition to the information required by §§ 5-201 and 5-202 of this title:

- (a) A statement that the petitioner has made a diligent search to discover all property and debts of the decedent;
- (b) A list of the known property and its value;
- (c) A list of the known creditors of the decedent, with the amount of each claim, including contingent and disputed claims;
- (d) A statement of any legal proceedings pending in which the decedent was a party.

Md. Code Ann., Estate and Trusts, § 5-602. Equally, the Register of Wills must send, by first class mail, legal notices to all interested persons. *See* Md. Code Ann., Estates and Trusts, § 6-210. Interested persons may be executors named in a will, a personal representative, a legatee, or the decedent’s heirs. Md. Code Ann., Estate and Trusts, § 1-101(i). In other words, any person with a property interest may challenge the accounting by filing exceptions. *See Carrier v. Crestar Bank, N.A.*, 316 Md. 700 (1989). Section 7-501(b) of the Estates and Trusts Article provides,

Exceptions to an account must be filed with the register within 20 days of the approval of the account by the court. Exceptions may not be filed concerning an item which has become final and binding under § 7-502 of this subtitle. Copies of exceptions shall be mailed by the exceptant to the personal representative.

Md. Code Ann., Estate and Trusts, § 7-501(b). Ultimately, notice of filing an account is used to provide “information [to interested persons] rather than for a formal purpose . . .” *Rolfe v. Clark*, 269 Md. 14, 19 (1973).

Appellant alleges the circuit court did not consider lack of notice as a legal justification for not filing exceptions. To the contrary, the circuit court did consider the argument but clearly rejected it. After reviewing the Register of Wills file, the circuit court determined that the Register of Wills sent to all interested persons notice of the valuations of the estate’s assets and debts. At no point during the lengthy litigation of this case did Appellant file any timely exceptions. Thus, the circuit court did not abuse its discretion for denying Appellant’s Motion to Revise Judgment on these grounds.

II. Breach of Fiduciary Duty

A. Parties' Contentions

Appellant next contends that the circuit court also erred in ruling Appellee did not breach a fiduciary or statutory duty by failing to value the property as required by Section 5-601 of the Estates and Trusts Article. Appellee argues that this issue is not properly before this Court. We agree. Nonetheless we hold there was no breach of fiduciary duty.

B. Analysis

Personal representatives are fiduciaries who are the legal representatives of all interested persons of an estate. Md. Code Ann., Estates and Trusts, § 7-101(a). Generally, personal representatives have a duty to consider the aims of all interested persons and creditors of the estate. *See Ferguson v. Cramer*, 349 Md. 670 (1998). The Court of Appeals quoted A.J. GIBBER, *GIBBER ON ESTATE ADMINISTRATION 1-3* (3d ed.1991) to identify the specific fiduciary duties of a personal representative which include:

1. The exercise of the care, skill and diligence of a reasonably prudent person dealing with his or her own property;
2. The exercise of good faith and loyalty to all the beneficiaries;
3. The lack of self-dealing;
4. The exercise of reasonable watchfulness over investments;
- and
5. The maintenance of full, accurate and precise records.

Kann v. Kann, 344 Md. 689, 708 (1997).

We agree with Appellee that the property valuation issue is not properly before this court. Indeed, this is not the first time Appellant has disputed the value of the estate's property. The first instance was in Appellant's Opposition to the Appellee's Motion to

Dismiss. Appellant contested Appellee’s valuation of the property and provided property estimates from Zillow.com². The appraisals stated that, as of August 26, 2016, 6647 24th Place was valued at \$274,078.00 and 1842 Cedarwood Court was valued at \$140,629.00. The second instance was on September 30, 2016; the initial hearing on Appellee’s Motion to Dismiss the Complaint. There, Appellant once again argued that the value of the properties listed in the estate were not appraised as required under Section 5-601(d) of the Estates and Trust Article. The section clarifies that value of property of an estate is, “determined by the fair market value of property less debts of record secured by the property, as of the date of death, to the extent that insurance benefits are not payable to the lien holder or secured party for the secured debt.” Md. Code Ann., Estate and Trusts, § 5-601(d). Appellee accepted the property valuation provided by the Register of Wills, valuing 6647 24th Place at \$147,100.00 and 1842 Cedarwood Court at \$135,500.00. The third instance was on December 12, 2016; the final hearing on Appellee’s Motion to Dismiss. Appellant argued that the Register of Wills should not have used the taxation assessments State Department of Assessments and Taxation (“SDAT”) to determine the value of the property because it is significantly less than the properties’ fair market value. Appellant believes that had a proper appraisal been conducted, she would have received the statutory share to which she is entitled.

Unfortunately for Appellant, repeatedly arguing that the accounting of the estate was done incorrectly does not amount to filing a timely exception as required under Section

² Zillow.com is a real estate data base company that provides property value estimates.

7-501(b). The Court of Appeals in *In re Adoption/Guardianship No. 93321055/CAD*, 344 Md. 458, 475 (1997) has established that a Motion to Revise Judgment may not be used as a vehicle to directly attack the underlying ruling of the circuit court. Once the motion is appealed, we may only review whether the circuit court abused its discretion.

We hold that the circuit court did not abuse its discretion in ruling that Appellee did not breach any fiduciary duty by using the SDAT tax values to value the real property. During the hearing on Appellant's Motion to Revise Judgment, the circuit court found that the Register of Wills accepted the SDAT tax values as the fair market value of the property. The court recognized that a personal representative has the option to use the Register of Wills' appraisal to avoid the expense of an appraisal. Moreover, the Register of Wills reviewed the mortgage documents to verify valuations. The circuit court did, however, note the possibility that the appraisals may have faults. Nevertheless, absent any exceptions to the contrary, the circuit court was well within its discretion to rule Appellee valued the property as required and thus did not breach any fiduciary duty. As such, the circuit court did not abuse its discretion in denying Appellant's Motion to Revise Judgment.

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