Circuit Court for Baltimore County
Case No. 03-C-16-3555

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2349

September Term, 2016

MARK SMOOT

v.

DOUGLAS WANNALL

Wright,
Beachley,
Fader,

JJ.

Opinion by Fader, J.

Filed: February 23, 2018

We are asked to decide whether an orphans' court's decision that certain real and personal assets belonged to a decedent individually, and not in her capacity as trustee, at the time of her death is entitled to preclusive effect.[1] The Circuit Court for Baltimore County held that it is. We disagree, at least in part. Because orphans' courts lack fundamental jurisdiction to determine title to real property of any value or to personal property with a value in excess of $50,000, the orphans' court's order is not entitled to preclusive effect as to any such assets. The circuit court thus erred in entering summary judgment on the ground of res judicata.

BACKGROUND

The D. Lynne Crawford Revocable Trust

On May 21, 2013, D. Lynne Crawford, the decedent, executed the D. Lynne Crawford Revocable Trust (the "Trust"). The Trust designated Ms. Crawford as trustee and the appellant, Mark Smoot, as successor trustee upon her death. Section 2.05 of the Trust Agreement provides in relevant part that "[a]ll property subject to this instrument from time to time is referred to as the 'trust estate' and shall be held, administered, and distributed according to this instrument. The trust estate consists of the property . . . that is listed in *Schedule A*," as well as any property later transferred. Schedule A, titled "Schedule of Property," identifies three pieces of real property and eight financial accounts,

[1] Appellant identifies the single question presented for review in his appeal as "Whether the Circuit Court for Baltimore County erred in granting summary judgment that the declaratory action was barred by *res judicata* and/or collateral estoppel."

all of which are identified as "trust property . . . subject to the trust thereunder." ("Trust Schedule A").

The Orphans' Court Proceedings

Ms. Crawford died in December 2013. Following some initial procedural steps not relevant here, the orphans' court appointed the appellee, Douglas Wannall, as personal representative of her estate; appointed W. Randolph Shump, Mr. Smoot's attorney, as special administrator of the estate; and admitted to probate a will dated April 26, 2013 (the "Will").

Initial wrangling over Ms. Crawford's estate appears to have focused on a residuary clause in the Will that purported to devise the remainder of Ms. Crawford's estate to the Trust. After a hearing, the orphans' court held that the residuary clause was "invalid and void" because the Trust was not created until three weeks after the Will was executed. The Circuit Court for Baltimore City affirmed, as did we in an unreported opinion. *Shump v. Wannall*, No. 0619, Sept. Term 2015 (Oct. 4, 2016).

The ruling on the invalidity of the residuary clause did not finally resolve the parties' dispute as to ownership of property as between the probate estate and the Trust. As of the summer of 2014, an inventory valued Ms. Crawford's estate at $738,820.42. In October 2014, Special Administrator Shump filed a revised inventory that removed certain real properties and financial accounts from the estate, reducing its value to $254,143.67. The parties have not enlightened us as to exactly what assets were included on either the original or revised inventories, but it is undisputed that the removed assets were all: (1) listed on Trust Schedule A; and (2) titled in Ms. Crawford's name at the time of her death.

Mr. Wannall filed exceptions to the revised inventory, claiming that the removed assets were all property of the probate estate. Messrs. Smoot and Shump responded that because the removed assets appear on Trust Schedule A, they constitute trust property and so were not part of the probate estate. After a hearing, the orphans' court issued an order striking the revised inventory. The court held that because the assets at issue were not retitled in the name of the trust before Ms. Crawford's death, they were not transferred into the trust and so had to be included in the probate estate.[2]

The Declaratory Judgment Action

Over a year later, Mr. Smoot filed in the Circuit Court for Baltimore County a complaint seeking a declaratory judgment concerning whether the assets listed on Trust Schedule A "are assets of, or belong to, the Crawford Trust." Mr. Wannall moved for summary judgment, claiming that res judicata and/or collateral estoppel barred the action. After a hearing, the circuit court granted the motion. Observing that the orphans' court had determined that the "assets in question were probate assets of the decedent, [and] that they were not assets of the trust," the circuit court agreed with Mr. Wannall "that this is not a question of titling." Instead, the court held, the question was whether the assets were

[2] The orphans' court's order held that "all assets titled in the name of the decedent at the time of her death shall be included in the decedent's estate, as retitling of real property and financial accounts before death was required to transfer those assets into trust." Messrs. Smoot and Shump appealed the orphans' court decision to the Circuit Court for Baltimore City, which dismissed for lack of standing. In an unreported opinion, this Court reversed that ruling as to Mr. Smoot and remanded the case for further proceedings. *Smoot v. Wannall*, No. 02428, Sept. Term 2015 (Mar. 13, 2017). Based on a review of the docket, it does not appear that any proceedings have yet occurred on remand.

probate assets, which was within the jurisdiction of the orphans' court. Mr. Smoot appealed.

DISCUSSION

We review de novo a circuit court's grant of summary judgment. *Reiter v. Pneumo Abex, LLC*, 417 Md. 57, 67 (2010); *Walk v. Hartford Cas.*, 382 Md. 1, 14 (2004). In reviewing a grant of summary judgment, we independently review the record to determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. *Jurgensen v. New Phoenix*, 380 Md. 106, 114 (2004). We review the record in the light most favorable to the non-moving party and construe any reasonable inferences that may be drawn from the facts against the movant. *Id.*

THE CIRCUIT COURT ERRED IN GIVING PRECLUSIVE EFFECT TO THE ORPHANS' COURT'S DETERMINATION OF OWNERSHIP OF THE ASSETS LISTED ON TRUST SCHEDULE A.

A. Res Judicata Precludes a Party from Relitigating a Claim That Was Previously Resolved in a Final Judgment on the Merits by a Court of Competent Jurisdiction.

The Court of Appeals most recently explored the related but distinct doctrines of res judicata and collateral estoppel in *Bank of New York Mellon v. Georg*, 456 Md. 616, 175 A.3d 720, 749-51 (2017). Res judicata, or claim preclusion, "'is an affirmative defense that precludes the same parties from relitigating any suit based upon the same cause of action because the second suit involves a judgment that is conclusive.'" *Id.* at 749 (quoting *Powell v. Breslin*, 430 Md. 52, 63 (2013)). Collateral estoppel, or issue preclusion, applies when "'an issue of fact or law is actually litigated and determined by a valid and final

judgment, and the determination is essential to the judgment.'" *Id.* at 750 (quoting *Colandrea v. Wilde Lake Cmty. Ass'n, Inc.*, 361 Md. 371, 387 (2000)). Whereas collateral estoppel precludes a party from litigating only the specific issue that was actually decided in the prior action, res judicata "'is a final bar to any other suit upon the same cause of action, and is conclusive, not only as to all matters that have been decided in the original suit, but as to all matters which . . . could have been litigated in the first suit.'" *Lizzi v. Washington Metro. Area Transit Auth.*, 384 Md. 199, 207 (2004) (quoting *Alvey v. Alvey*, 225 Md. 386, 390 (1961)).

Here, the parties agree that the claim raised in the declaratory judgment action is the same claim that the orphans' court decided: whether the property listed on Trust Schedule A was trust property or property properly included in the probate estate. "When a prior court has entered a final judgment as to the matter sought to be litigated in a second court, the claim analysis is usually uncomplicated." *Anne Arundel Cty. Bd. of Educ. v. Norville*, 390 Md. 93, 108 (2005).[3] Such is the case here. Res judicata is the appropriate doctrine to apply.[4]

[3] In cases in which the first decision did not enter judgment on the same matter, thus requiring an analysis of whether two claims raise the same "cause of action" for purposes of res judicata analysis, Maryland courts utilize a "transactional approach" that asks whether "the two claims or theories are based upon the same set of facts." *Norville*, 390 Md. at 109. Here, the two claims are based on identical facts.

[4] Our analysis would not be different if we were to apply collateral estoppel. Both doctrines depend on the existence of a final judgment rendered by a court of competent jurisdiction. *Rourke v. Amchem Prod., Inc.*, 384 Md. 329, 358-59 (2004) ("'A fundamental precept of common-law adjudication, embodied in the related doctrines of collateral estoppel and res judicata, is that a 'right, question or fact distinctly put in issue and directly

Res judicata applies if three elements are satisfied: "(1) the parties in the present litigation are the same or in privity with the parties to the earlier action; (2) the claim in the current action is identical to the one determined in the prior adjudication; and (3) there was a final judgment on the merits in the previous action." *Georg*, 175 A.3d at 725 (quoting *Powell*, 430 Md. at 63-64). Res judicata "derives from 'the sound and obvious principle of judicial policy that a losing litigant deserves no rematch after a defeat fairly suffered in adversarial proceedings.'" *Norville*, 390 Md. at 109 (quoting *Astoria Fed. Sav. & Loan Ass'n v. Solimino*, 501 U.S. 104, 107 (1991)). It "is designed to avoid the 'expense and vexation attending multiple lawsuits, conserve judicial resources, and foster reliance on judicial action by minimizing the possibilities of inconsistent decisions.'" *deLeon v. Slear*, 328 Md. 569, 580 (1992) (quoting *Murray Int'l Freight Corp. v. Graham*, 315 Md. 543, 547 (1989)).

Preclusive effect, however, is only applied if the final judgment at issue "was rendered by a court of 'competent jurisdiction.'" *Simpkins v. Ford Motor Credit Co.*, 389 Md. 426, 440 n.23 (2005) (quoting *Moodhe v. Schenker*, 176 Md. 259, 268 (1939)); *see also, e.g.*, *Norville*, 390 Md. at 108 (requiring "a prior and final judgment on the merits, rendered by a court of competent jurisdiction in accordance with due process requirements"); *FWB Bank v. Richman*, 354 Md. 472, 492 (1999) (requiring a "valid final

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determined by a court of competent jurisdiction . . . cannot be disputed in a subsequent suit between the same parties or their privies . . . .'") (quoting *Montana v. U.S.*, 440 U.S. 147, 153 (1979)). The dispositive question in this case under either doctrine is thus whether the orphans' court is "of competent jurisdiction" to determine that the assets listed on Trust Schedule A belonged to Ms. Crawford individually, and not in her capacity as trustee of the Trust, at her death.

judgment on the merits by a court of competent jurisdiction"); *Ugast v. La Fontaine*, 189 Md. 227, 230 (1947) (requiring a final judgment "rendered upon the merits, without fraud or collusion, by a court of competent jurisdiction"). Thus, "where a given matter becomes the subject of litigation in, and of adjudication by, a court of competent jurisdiction," parties are required to "bring forward their whole case," and cannot thereafter "open the same subject of litigation" in another action. *State v. Brown*, 64 Md. 199, 204 (1885) (quotation omitted).

Mr. Wannall contends that all elements necessary for application of res judicata are present here. Mr. Smoot does not contest that the first two elements are met, but argues that the orphans' court's order does not constitute a valid, final judgment that is entitled to preclusive effect. This, he contends, is because the orphans' court was not of "competent jurisdiction" to determine what is effectively a title dispute as between the trust and the probate estate over the assets listed on Trust Schedule A.[5] Mr. Wannall disagrees. He asserts that although the orphans' court lacks jurisdiction to determine title to real property, that is not what the orphans' court did here. Title, he asserts, was at all relevant times indisputably held by Ms. Crawford, and so passed by law to the personal representative of her estate. The orphans' court thus did not decide title; it merely acknowledged it. To

[5] Mr. Smoot argues that he should not be penalized here for his failure to raise the issue of the orphans' court's jurisdiction before the orphans' court, because subject matter jurisdiction can be raised at any time. *Derry v. State*, 358 Md. 325, 334 (2000). Although true as a general proposition, Mr. Smoot is making that argument in the wrong case. In this action, Mr. Smoot raised the issue of the orphans' court's jurisdiction as a central point in his opposition to Mr. Wannall's motion for summary judgment. As a result, waiver is not an issue in this appeal. Whether his failure to raise that argument before the orphans' court effects a waiver in that separate appeal is an issue that is not before us.

resolve this dispute, we must consider the fundamental jurisdiction of the orphans' court as it pertains to disputes regarding the title and ownership of real and personal property.

B. Orphans' Courts Lack Jurisdiction to Determine Title to Real Property or to Personal Property Valued in Excess of $50,000.

The orphans' courts are tribunals of special limited jurisdiction and may only exercise the authority and power expressly provided to them by law. *Piper Rudnick LLP v. Hartz*, 386 Md. 201, 216 (2005); *Comptroller of Treas. v. Russell*, 284 Md. 174, 177 (1978); *Crandall v. Crandall*, 218 Md. 598, 600 (1959). Before an orphans' court may exercise jurisdiction, the facts necessary to provide it with jurisdiction "'must affirmatively appear upon the face of the[] proceedings.'" *Kaouris v. Kaouris*, 324 Md. 687, 693 (1991) (quoting *Talbot Packing Corp. v. Wheatley*, 172 Md. 365, 369 (1937)). On the other hand, the General Assembly also intended to confer on the orphans' court sufficient power and jurisdiction to render effective the powers expressly granted to it. *Kaouris*, 324 Md. at 693-94. Thus, the orphans' court has "broad authority within the area of its express jurisdiction." *Id.* at 694.

Section 2-102(a) of the Estates & Trusts Article establishes the fundamental powers of the orphans' courts: "The court may conduct judicial probate, 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." The court, however, "may not, under the pretext of incidental or constructive authority, exercise jurisdiction not expressly conferred" by law. Md. Code Ann., Est. & Trusts § 2-102(a).

The Court of Appeals has long and consistently recognized that orphans' courts lack fundamental jurisdiction to resolve questions of title to real and, until recently, personal property, to the point of declaring that "[n]o principle is more firmly established than that an orphans' court has no jurisdiction to determine title to real property." *Preissman v. Harmatz*, 264 Md. 715, 720 (1972) (superseded by rule on other grounds). The Court has similarly recognized the corollary principle that "when an orphans' court is unable to afford a complete and adequate remedy" as a result of limitations on its jurisdiction, "equity will assume jurisdiction." *Id.*

Longstanding precedent confirms the orphans' courts' lack of jurisdiction to determine title to real property, and the consequent need to resolve such disputes in other courts. Thus, in *Wingert v. State*, the Court of Appeals approved the orphans' court's decision to refrain from determining title to land that had been omitted from a probate estate's inventory, observing that "[i]t has been repeatedly held by this court that the Orphans' Courts of this State are without jurisdiction to try and determine questions of title to real estate . . . ." 125 Md. 536, 543 (1915). In that case, the issue was the valuation of a decedent's real property for the purpose of calculating the amount of a collateral inheritance tax due on the property. *Id.* at 537-38. After determining that certain real estate that had transferred at the decedent's death had been omitted from the inventory, the orphans' court issued an order requiring, in relevant part, that the administrators file an amended inventory that would include the omitted property. *Id.* at 538. The Court of Appeals affirmed the orphans' court's jurisdiction to order the amended inventory for the limited purpose of enforcing the estate tax. *Id.* at 541-42. The Court also, however,

"entirely concur[red]" with the orphans' court's decision to "decline[] to hear and determine the question of title" to the omitted properties, as that was beyond the court's jurisdiction. *Id.* at 543. The Court thus made clear that while an orphans' court's jurisdiction may include oversight of proceedings in which questions of ownership arise, the orphans' court still lacks authority to resolve those questions.

The Court reaffirmed this principle three years later in *McComas v. Wiley*, which concerned the claim of brothers of a deceased woman to her family farm after she and her husband died together in a train accident. 132 Md. 406, 409 (1918). The Court observed that, contrary to the brothers' claims, the ownership of the family farm was disputed. *Id.* at 408-10. The Court of Appeals therefore affirmed the orphans' court's dismissal of the brothers' petition for lack of jurisdiction, holding that the "question of title" that was involved in the proceeding "was beyond the jurisdiction of the orphans' court to hear and determine." *Id.* at 410. And in *Talbot Packing*, the Court held that a probate court had no jurisdiction to make a "determination of the title or ownership" of a piece of property as between the administrators of the estate and a corporation. 172 Md. at 370-71. Instead, the administrators or the corporation would need to bring a separate action in a forum empowered to resolve the dispute. *Id.* at 372.

More recent cases adhere to the same principle. In *Preissman*, an individual asked the orphans' court to set aside a contract he had entered into for the purchase of a leasehold property. 264 Md. at 716-17. The opposing party argued that because the action was tantamount to a challenge to the marketability of title to the property, the orphans' court lacked jurisdiction. *Id.* at 717-18. The Court of Appeals agreed, holding that the orphans'

court was "powerless to act," requiring the assumption of jurisdiction by a court of equity. *Id.* at 720. And in *Elder v. Smith*, the Court of Appeals overturned an orphans' court's order releasing a lien on real property because "the orphans' court is without jurisdiction to consider questions of title to real property." 412 Md. 288, 306 (2010). In that case, a former wife had reduced a marital award against her husband to judgment before his death, but did not record it as a lien on his real property until after his death. *Id.* at 290. The orphans' court determined that the lien was improper, and ordered that it be released. *Id.* at 291-92. Although the Court of Appeals agreed that the lien was improper, it held that the orphans' court had exceeded its authority, and that "the release of the lien must be effected in a different manner." *Id.* at 307.

Until relatively recently, orphans' courts were similarly prohibited from deciding questions of title to personal property as well.[6] Thus, in *Fowler v. Brady*, the Court of Appeals overturned an orphans' court determination that a yoke of oxen and a horse did not belong to the decedent at his death. 110 Md. 204, 204-05 (1909). The Court held that because of the ownership dispute the orphans' court lacked jurisdiction to order that the property be struck from the estate's inventory. *Id.* at 205; *see also Tribull v. Tribull*, 208 Md. 490, 503 (1956) (holding that orphans' court lacked jurisdiction to determine dispute as to validity of transfer of bank account just before decedent's death); *Noel v. Noel*, 173

[6] A longstanding exception to the rule, grounded in the orphans' court's responsibility to oversee the actions of administrators, provides orphans' courts with jurisdiction to determine questions of title where a person interested in the estate charges the administrator with concealing or withholding property that belongs to the estate. *See generally Kerby v. Peters*, 172 Md. 1 (1937); *Linthicum v. Polk*, 93 Md. 84 (1901); *Gibson v. Cook*, 62 Md. 256 (1884).

Md. 147, 151 (1937) (holding that although orphans' court had jurisdiction to address claims that administratrix had concealed assets, it lacked jurisdiction to make a "determination of title to personalty between conflicting claims on behalf of the estate of the intestate" and the intestate's mother and sister); *Kerby*, 172 Md. at 7 ("[I]t has been repeatedly held that the orphans' court has not jurisdiction to determine questions of title to personal property" except where there are allegations of wrongdoing.); *Gibson v. Cook*, 62 Md. 256, 259-60 (1884) (holding that dispute over whether money belonged to estate or administrator "could only be settled by another tribunal," because the orphans' court "could not decide a question of title").

Perhaps unsurprisingly, this constrained jurisdiction has led to significant judicial inefficiencies. Although "the administration and distribution of the personal estate of an intestate should generally be in the orphans' court," the limited powers of the orphans' courts have frequently rendered them inadequate, requiring recourse to equity courts. *Noel*, 173 Md. at 162. In 1994, in an effort to eliminate *some* of those inefficiencies, the General Assembly expanded the jurisdiction of the orphans' courts by enacting what became § 1-301(b) of the Estates & Trusts Article: "The [orphans'] court may determine questions of title to personal property not exceeding $20,000 in value for the purpose of determining what personal property is properly includable in an estate that is the subject of a proceeding

before the court." 1994 Md. Laws ch. 706 § 1. The $20,000 limitation was increased in 2009 to $50,000. 2009 Md. Laws ch. 515.[7]

The General Assembly has thus expanded the jurisdiction of the orphans' courts to determine questions of title to personal property that does not exceed $50,000 "for the purpose of determining what personal property is properly includable in an estate." It has, however, otherwise left undisturbed the longstanding limitation on the power of orphans' courts that prohibits them from determining questions of title to real property of any value or to personal property that exceeds $50,000.

C. The Orphans' Court Has Authority to Decide Certain Matters "Necessarily Incidental" to Its Express Authority.

To carry out their powers under §§ 2-102 and 2-103 of the Estates and Trusts Article, orphans' courts generally have jurisdiction to decide issues that are "necessarily incident" to their core responsibilities. *Radcliff v. Vance*, 360 Md. 277, 286 (2000). Thus, orphans' courts have been held to have authority to construe statutes for the purpose of determining which assets should be included in a bequest, *Willoner v. Davis*, 30 Md. App. 444, 449 (1976), *aff'd sub. nom.*, *Davis v. Davis*, 278 Md. 534 (1976); to interpret a marital

[7] The Fiscal Note accompanying the bill that became Chapter 515 explained the rationale for the expansion:

> The Estate and Trust Law Section Council of the Maryland State Bar Association indicates that the $20,000 limit on the value of personal property with respect to which the orphans' court can make determinations of title limits the ability of orphans' courts to efficiently determine many personal property controversies. Interested persons alternatively have to take such controversies to circuit court, which can take longer and be more expensive.

Dep't of Legis. Srvcs., Fiscal & Policy Note (Revised), at 2, H.B. 399 (2009 Session).

settlement agreement to determine a spouse's entitlement to share in an estate, *Kaouris*, 324 Md. at 716 (1991); to determine next of kin, *Longerbeam v. Iser*, 159 Md. 244, 247 (1930); *McComas*, 132 Md. at 410; and to order an accounting of a personal representative's management of an estate, *Kroll v. Fisher*, 182 Md. App. 55, 62 (2008). Orphans' courts cannot, however, decide ancillary issues that are not essential to administering an estate. *See, e.g.*, *In re Adoption/Guardianship of Tracy K.*, 434 Md. 198, 206 (2013) (stating orphans' court has no authority over issues that are "not incidental to administering probate").

Both parties focus our attention on, and claim support from, the Court of Appeals's decision in *Kaouris*, in which the Court discussed at length the incidental authority of orphans' courts. 324 Md. 687. At issue in *Kaouris* was whether the orphans' court possessed the authority to interpret a marital settlement agreement. A decedent's widow filed a claim in the orphans' court for a family allowance and an election to take her intestate share of the decedent's estate. *Id.* at 710-12. The decedent's personal representative argued that not only had the widow waived her interest in the estate pursuant to the agreement, but that the orphans' court lacked authority to interpret the document "due to the complexity involved in the construction of the agreement." *Id.* at 712-13. That argument relied on the decision of the Court of Appeals in *Clarke v. Clarke*, which held that "'[i]f a substantial issue as to the meaning of a will exists, involving ambiguous or intricate provisions, construction of the will is generally for the equity court and beyond the authority of the orphans' court.'" *Kaouris*, 324 Md. at 706 (quoting *Clarke v. Clarke*, 291 Md. 289, 294 (1981)).

Examining its precedents, the Court of Appeals concluded that whether an orphans' court has authority to interpret a written document depends on what a party is asking the court to do and whether the court's construction is "consistent with, and in furtherance of, an express grant of power" to the orphans' court. *Kaouris*, 324 Md. at 706. If interpreting such a document is in furtherance of an express grant of power, it is within the authority of the orphans' court to do it, incidental to its express authority. *Id.* at 709. If, on the other hand, the party asks the orphans' court to do something that is not within the court's express authority, then the court lacks the authority to interpret a written document in service of it. *Id.* Viewed that way, whether an orphans' court may interpret a written document incidental to its exercise of express jurisdiction does not go to the fundamental jurisdiction of the orphans' court—i.e., to the power of the court to act—but to the propriety of the court's exercise of that jurisdiction. *Id.* at 708-10. Thus, the Court's statement in *Clarke* that interpretation of a complex agreement was "beyond the authority of the orphans' court," 291 Md. at 294, should really be understood to mean not that the orphans' court lacked jurisdiction to interpret the agreement, but that it should, in propriety, have deferred to the circuit court as to that interpretative question in that case.

The Court of Appeals's decision in *Kaouris* guides our analysis in this case. Contrary to Mr. Wannall's claim, however, we cannot simply jump straight to the question of whether the orphans' court's determination regarding the assets listed on Trust Schedule A was incidental to its exercise of an express grant of authority. That is because, in considering the power of an orphans' court, determinations of title to property are fundamentally different from the interpretation of written documents.

D. The Orphans' Court's Decision Is Not Entitled to Preclusive Effect.

Relying on *Kaouris*, Mr. Wannall argues that the orphans' court's decision that the property listed on Trust Schedule A did not transfer to the Trust during Ms. Crawford's lifetime was incident to its authority to determine what assets are in the estate and to determine the amount of commissions to which he is entitled. Although there is some facial appeal to that argument, it ignores a fundamental difference between the authority to interpret written agreements that was at issue in *Kaouris* and the authority to make a determination about ownership that is at issue here. As clear as the Court of Appeals was in *Kaouris* that the authority of orphans' courts to interpret written agreements is not a question of fundamental jurisdiction, the Court of Appeals has been equally clear in the long line of cases discussed above that orphans' courts lack fundamental jurisdiction to determine title to real property or to personal property with a value in excess of $50,000. Thus, unlike in *Kaouris*, incidental authority cannot provide authorization to perform a task that is expressly forbidden to orphans' courts. If it could, it is difficult to imagine that such an exception would not entirely swallow the rule and eviscerate the limitations the Court of Appeals has recognized, and which the General Assembly has largely left in place. We therefore hold that an orphans' court's determination of title to real property or to personal property in excess of $50,000 is not entitled to preclusive effect.

One final issue we must address is Mr. Wannall's contention that the orphans' court did not overstep its jurisdiction here because it only decided ownership, not title. We find no merit in this contention. The cases discussed above establish that orphans' courts lack

the authority to determine the rightful owner of property, which is precisely what is at issue here. The parties appear to agree that Ms. Crawford held title to the property at issue in her own name at the time she executed the Trust Agreement, and that she took no steps to formally transfer record title to the Trust during her lifetime.

Mr. Smoot contends that the Trust nonetheless owns the property because such steps are unnecessary where the settlor of a trust transfers assets to herself as the trustee. In that circumstance, he argues, title effectively passes from the settlor as an individual to the settlor as trustee without the need for any formal retitling of the assets.[8] The orphans' court rejected that argument, thus effectively determining that title had not passed from Ms. Crawford individually to herself as trustee during her lifetime. Because such a determination exceeds the fundamental jurisdiction of the orphans' court, it is not entitled to preclusive effect.

The decision we reach today is that the orphans' court's order of February 20, 2015 is not entitled to preclusive effect as to the ownership of the assets listed on Trust Schedule A to the extent that those assets are real property or personal property with a value in excess of $50,000. For clarity, and in light of the pendency of the appeal from the orphans' court order that remains pending on remand from this court, we do not decide, or express any opinion with regard to: (1) the merits of Mr. Smoot's contention that the assets on Trust

[8] Among other authorities, Mr. Smoot relies for this argument on *Sieling v. Sieling*, 151 Md. 536, 550 (1926) and the Restatement (Third) of Trusts § 10(c), which he quotes as providing that "[i]f the owner of property declares himself or herself trustee of the property for . . . the declarant and one or more others, a trust is created, even though there is no transfer of title to the trust property to another . . . ."

Schedule A passed to the Trust at the time the Trust Agreement was executed without the need for retitling; (2) whether the orphans' court's order might have preclusive effect with respect to certain assets listed on Trust Schedule A if such assets constitute personal property with a value of $50,000 or less; and (3) whether the orphans' court's order has validity for the limited purpose of calculating Mr. Wannall's commission, even though it lacks preclusive effect as discussed herein.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED AND REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION; COSTS TO BE PAID BY APPELLEE.