Circuit Court for Baltimore County
Case No. 03-C-17-10500

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2546

September Term, 2017

IN THE MATTER OF THE ESTATE OF
DELORES MEDIN-KNITZ

Kehoe,
Arthur,
Shaw Geter,

JJ.

Opinion by Kehoe, J.

Filed: March 1, 2021

Dennis E. Uhlfelder, in his capacity as the attorney-in-fact for his uncle, Philip Knitz, elected to take one-half of the net estate of Mr. Knitz's deceased wife, Delores Medin-Knitz in accordance with Maryland Code, (1974, 2017 Repl. Vol.) Estates and Trusts Article ("Est. & Trusts"), § 3-203. Marc G. Medin and Nancy M. Propper, Ms. Medin-Knitz's children and the personal representatives of her estate, filed a notice of disallowance on the ground that Mr. Uhlfelder did not have the authority to file a spousal election. The Orphans' Court for Baltimore County disallowed the election. Mr. Uhlfelder appealed the orphan's court decision to the Circuit Court for Baltimore County, which reversed. The personal representatives have filed this timely appeal and raise two issues, which we have rephrased:

> 1. Did Est. & Trusts § 3-204 permit the attorney-in-fact of a surviving spouse to file for the elective share on the surviving spouse's behalf?
>
> 2. Did the power of attorney at issue here authorize Mr. Ulhfelder to make the spousal election on Mr. Knitz's behalf?

The answer to the first question is no. Under the law existing on the date that the election was made, Est. & Trusts § 3-204 did not permit an agent operating under a power of attorney to make the spousal election on behalf of the surviving spouse. A spousal election could be made only by the surviving spouse or a court-appointed guardian of the surviving spouse who had been given explicit authority by the court to make the election. We do not reach the second issue.

Background

In 2012, Philip Knitz executed a Maryland statutory form power of attorney (the "2012 Power of Attorney") pursuant to Est. & Trusts § 17-202[1] that became effective immediately upon execution. The 2012 Power of Attorney designated Dennis E. Uhlfelder, Mr. Knitz's nephew, as the primary attorney-in-fact and Suzanne I. Knitz Gordon, Mr. Knitz's daughter, as the substitute attorney-in-fact.

Delores Medin-Knitz (the "Decedent") was Mr. Knitz's spouse. She died testate on December 9, 2016. The Orphans' Court admitted her will for administrative probate on February 24, 2017, and appointed her children from a prior marriage, Mr. Medin and Ms. Propper, as personal representatives (hereafter, we will refer to them as the "Personal Representatives").

At the time of her death, the Decedent and Mr. Knitz resided in a unit in a condominium located in Baltimore County. The Decedent owned an undivided two-thirds interest in the unit and Mr. Knitz owned the remaining one-third interest. The will created a testamentary trust to hold the Decedent's interest in the condominium for the benefit of Mr. Knitz during his lifetime. The trust permitted Mr. Knitz to live in the condominium as long as he paid its costs and expenses and used it as his primary residence. At Mr. Knitz's death or the termination of the trust, the condominium unit was to be sold and the Decedent's share of

[1] Est. & Trusts § 17-202 provides a statutory form for a financial power of attorney.

the proceeds was to be divided equally between Mr. Medin and Ms. Propper. The will also bequeathed the residue of Decedent's Estate to Mr. Medin and Ms. Propper.

One week after Ms. Medin-Knitz's death, Mr. Uhlfelder, in his capacity as Mr. Knitz's agent pursuant to the 2012 Power of Attorney, filed an election to take a spouse's statutory share of estate in the Register of Wills for Baltimore County. At this time, there was no guardianship proceeding initiated for Mr. Knitz and, indeed, no guardianship proceeding was ever filed. In April 2017, the Personal Representatives filed a Notice of Disallowance of Election to Take Statutory Share.

On October 4, 2017, the parties (other than Mr. Knitz) and their respective counsel appeared for a hearing before the orphans' court to determine the validity of the spousal election filed by Mr. Uhlfelder. The salient issue before the court was whether an attorney-in-fact had the authority to file a spousal election. The Personal Representatives argued that an election could be made only by the surviving spouse unless the surviving spouse was under a guardianship, and the guardianship court authorized the filing of the election. Mr. Uhlfelder contended that the law did not expressly prohibit an agent of the surviving spouse to make the election. So, because the validity of the 2012 Power of Attorney was not challenged, Mr. Uhlfelder asserted that he could make the spousal election on Mr. Knitz's behalf. Further, Mr. Uhlfelder maintained there was no need to initiate a guardianship proceeding for Mr. Knitz in order for him to make the election because there was a valid power-of-attorney.

The orphans' court concluded that Mr. Uhlfelder's attempt to file a spousal election was ineffective. The court explained that "[n]otwithstanding the valid power of attorney presented to the court, and cognizant of the strong public policy in favor of the surviving spouse's right to make an election this Court cannot ignore the plain, unequivocal language of Est. & Trusts § 3-204."

Mr. Uhlfelder appealed the orphans' court decision to the circuit court. Mr. Knitz passed away prior to the circuit court hearing.[2] Mr. Uhlfelder was appointed as the personal representative of Mr. Knitz's estate and pursued the appeal. At the hearing before the circuit court, the parties stipulated to the authenticity of the 2012 Power of Attorney and the spousal election form. There was no testimony and no other documents were admitted into evidence.

The circuit court reversed the orphans' court and remanded for further proceedings. The circuit court disagreed with the Personal Representatives' interpretation of Est. & Trusts § 3-204 for two reasons. First, the court concluded that Section 3-204's silence as to agents of the surviving spouse was not dispositive as to whether such an agent could make the election on the surviving spouse's behalf. The court reasoned that, because an agent acts on behalf of a principal, any action taken by the attorney-in-fact "is not inconsistent with the conclusion that the action was personal to the principal." To reach

[2] The condominium unit has been sold and the net proceeds are being held in escrow.

that conclusion, the court relied upon a passage from *Bunch v. Dicks*, 287 Md. 358 407 (1980).

Second, the court concluded that requiring Mr. Uhlfelder to be appointed as Mr. Knitz's guardian in order to make the election "is not consistent with Maryland public policy, and is not expressly required by statute." The court reasoned that the Personal Representatives' interpretation conflicted with a public policy that "encourages individuals to utilize advance planning, rather than have to resort to guardianship, to authorize a surrogate to make decisions when an individual is impaired or otherwise unable to act."

The Personal Representatives filed an appeal of the circuit court's judgment.

The Standard of Review

There are no factual disputes is this case; the issues in this appeal are legal, and specifically, involve statutory interpretation. We exercise de novo review of legal conclusions of the circuit court. *See, e.g., Miller v. Mathias*, 428 Md. 419, 450 (2012); *Reier v. State Dep't of Assessments & Taxation*, 397 Md. 2, 26 (2007).

Before turning to the merits of this appeal, we note that, in 2019, the General Assembly enacted two laws that amended the sections of the Estates and Trusts Article that are relevant to this case. The first to go into effect was chapter 197 of the Laws of 2019, which repealed and reenacted the Estate and Trusts Article with amendments. The chapter 197 amendments were non-substantive and became effective on October 1, 2019. *See* chapter 197, §§ 2 and 5.

The second bill passed by the Legislature was chapter 435 of the Laws of 2019 (H.B. 99). Chapter 435 made significant substantive changes to the law pertaining to spousal elections. However, the substantive provisions of chapter 435 were prospective only and took effect on October 1, 2020. *See* chapter 435 §§ 2 and 3.

Our analysis is based on the statutes as they existed at the time that the election was filed and when the orphans' and circuit courts rendered their judgments. To avoid cluttering up this opinion, we will generally refer to those statutes without the phrases like "the former version of § 3-204" or "§ 3-204 as it existed at the times relevant to the issues on appeal."

The parties' contentions

To this Court, the Personal Representatives present two arguments. They contend that Est. & Trusts § 3-204 did not permit an agent with power of attorney to make the spousal election on behalf of the surviving spouse. According to the Personal Representatives, the right to make the spousal election is "personal" to the surviving spouse, and so cannot be transferred or delegated to an agent. For support, the Personal Representatives look to the text of Est. & Trusts § 3-204 and the history of the spousal share statute. From these sources, the Personal Representatives conclude that Est. & Trusts § 3-204 must be strictly construed to allow only (1) the surviving spouse or (2) a court-appointed guardian to make the election.

Second, assuming that Est. & Trusts § 3-204 did permit an agent to make the election, the Personal Representatives contend that the 2012 Power of Attorney did not authorize Mr. Uhlfelder to do so on Mr. Knitz's behalf. They take the position that courts strictly

construe powers of attorney and that, absent express language authorizing the agent to act, the agent has no such authority to act. *See King v. Bankerd*, 303 Md. 98, 105 (1985); *see also* Est. & Trusts § 17-113(a)(3).

Mr. Uhlfelder presents four arguments as to why the circuit court did not err. First, he interprets Est. & Trusts § 3-204 differently, arguing that the plain language of the statute permitted someone other than the surviving spouse to make the spousal election. As Mr. Uhlfelder sees it, if the right to make the spousal election was not delegable, as the Personal Representatives assert, then § 3-204's language permitting a guardian to make the election on the surviving spouse's behalf would have been meaningless surplusage.

Second, Mr. Uhlfelder contends that the Court of Appeals adopted the view of other jurisdictions to allow agents to file for the spousal share in *Bunch v. Dick*, 287 Md. 358, 407 (1980).

Third, Mr. Uhlfelder makes a public policy argument. He asserts that allowing an agent to make the spousal election is consistent with Maryland's policy "of protecting the surviving spouse's right to receive the spousal elective share." *See Shimp v. Huff*, 315 Md. 624, 646 (1989).

Finally, Mr. Uhlfelder argues that the 2012 Power of Attorney gave him the authority to make the spousal election pursuant to the "claims and litigation" paragraph of the document, which authorizes the agent to "assert and maintain before a court or

administrative agency a claim, claim for relief, cause of action, counterclaim, . . . or other relief."[3]

Mr. Uhlfeder's contentions are not persuasive. As we will explain, the orphans' court's interpretation and application of Est. & Trusts § 3-204 was correct and consistent with clear and long-settled Maryland law.

Analysis

A.

At the time that the spousal election was filed, and in lieu of receiving property bequeathed by a decedent's will, a surviving spouse could elect to take a one-third share of the decedent's net estate if there is a surviving issue, and one-half of the estate if there is no surviving issue. Est. & Trusts § 3-203(b). *See Karsenty v. Schoukroun*, 406 Md. 469, 487 (2008) ("A surviving spouse, who is dissatisfied with her or his inheritance, has the right to 'receive an elective share of the decedent's estate, regardless of the provisions contained in the decedent's will.'") (quoting *Shimp v. Huff*, 315 Md. 624, 645-46 (1989)). The election had to be filed within the later of nine months after the date of the decedent's death, or six months after the first appointment of a personal representative under a will. Est. & Trusts § 3-206(a). Section 3-207(a) set out the manner in which the surviving spouse could elect the spousal share:

[3] The "claims and litigation" paragraph is part of the standard form financial power of attorney found in Est. & Trusts § 17-202.

> An election to take an elective share of an estate of a decedent shall be in writing and signed by the surviving spouse or other person entitled to make the election pursuant to § 3-204 of this subtitle, and shall be filed in the court in which the personal representative of the decedent was appointed.

A surviving spouse could waive the right to make the election "before or after marriage by a written contract, agreement, or waiver signed by the party waiving the right of election." Est. & Trusts § 3-206. But, because the spousal election was personal to the surviving spouse, the waiver could be effectuated only by the surviving spouse. *See Shimp*, 315 Md. at 646 ("[T]he right to receive the elective share is a personal right, which cannot be waived by the unilateral acts of others, including the actions of the deceased spouse."). The concept that the right to make the spousal election is personal to the surviving spouse was codified in Est. & Trusts § 3-204. That statute, which is the focal point of this appeal, stated:

> The right of election of the surviving spouse is personal to him. It is not transferable and cannot be exercised subsequent to his death. If the surviving spouse is under 18 years of age or under disability, the election may be exercised by order of the court having jurisdiction of the person or property of the spouse or person under disability.

A "personal right" is "[a] right that forms part of a person's legal status or personal condition, as opposed to the person's estate[.]" Black's Law Dictionary 1582 (11th Ed.); *see Kornmann v. Safe Deposit & Tr. Co. of Baltimore*, 180 Md. 270, 274 (1942) (The exercise of a personal right "depends wholly upon the individual[.]").

B.

We first address whether Est. & Trusts § 3-204 allowed an agent to make the spousal election on behalf of a surviving spouse by a power of attorney. The answer to that question lies in the proper statutory interpretation of the statute. The Court of Appeals has explained that:

> The primary goal of statutory construction is to discern the legislative purpose, the ends to be accomplished, or the evils to be remedied by a particular provision. In so doing, we look first to the normal, plain meaning of the language of the statute, read as a whole so that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory. If the language of a statute is clear and unambiguous, we need not look beyond the statute's provisions and our analysis ends. Where the language of the statute is ambiguous and may be subject to more than one interpretation, however, we look to the statute's legislative history, case law, purpose, structure, and overarching statutory scheme in aid of searching for the intention of the Legislature.
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> * * *
>
> We, however, do not read statutory language in a vacuum, nor do we confine strictly our interpretation of a statute's plain language to the isolated section alone. Rather, the plain language must be viewed within the context of the statutory scheme to which it belongs, considering the purpose, aim, or policy of the Legislature in enacting the statute. We presume that the Legislature intends its enactments to operate together as a consistent and harmonious body of law, and, thus, we seek to reconcile and harmonize the parts of a statute, to the extent possible consistent with the statute's object and scope.

Koste v. Town of Oxford, 431 Md. 14, 25-26 (2013) (cleaned up).

Our statutory analysis begins with the plain language of Est. & Trusts § 3-204, which read (emphasis added):

> The right of election of the surviving spouse is *personal* to him. It is not transferable and cannot be exercised subsequent to his death. If the surviving spouse is under 18 years of age or under disability, *the election may be exercised by order of the court having jurisdiction of the person or property of the spouse or person under disability*.

Stated differently, Est. & Trusts § 3-204 allowed only two individuals to make the spousal election: (1) the surviving spouse or (2) a court-appointed guardian for the surviving spouse who has been expressly granted that authority by the court.

Section 3-204 was noticeably silent regarding "agents."[4] Undeterred, Mr. Uhlfelder tries to implant "agent" into the text of Est. & Trusts § 3-204. To drive his point home, he looks to the phrase contained in Est. & Trusts § 3-207: "An election to take an elective share of an estate of a decedent shall be in writing and signed by the surviving spouse *or other person entitled to make the election pursuant to § 3-204 of this subtitle . . .*" (emphasis added). Mr. Uhlfelder interprets this passage to imply that "someone other than the spouse may claim the spousal election on their behalf."

The first problem with this argument is that Mr. Uhlfelder does not take into consideration the conditional phrase "pursuant to § 3-204 of this subtitle." As we have just explained, § 3-204 restricted who may file for the elective share on the surviving spouse's

[4] That the General Assembly identified one category of individuals to make the election on behalf of a surviving spouse—*i.e.*, a guardian—is indicative of the legislative intent that others—*e.g.*, agents acting pursuant to powers of attorney—do not have the authority to do so. *See WFS Financial, Inc. v. Mayor and City Council of Baltimore*, 402 Md. 1, 14 (2007) (discussing the doctrine of *inclusio unius est exclusio alterius*); *see also Chow v. State*, 393 Md. 431, 458 (2006) ("Maryland has long accepted the doctrine [that] the expression of one thing is the exclusion of another.")

behalf, and "agents" were not included in that concise and exclusive list. Mr. Uhlfelder's second hurdle is that he equates "guardian" and "agent," an altogether inaccurate comparison that overlooks the significant distinctions between a court-appointed guardian and an agent holding power of attorney.[5] Therefore, we decline to read the word "agent" into the statute.

For these reasons, we conclude that the text of Est. & Trusts § 3-204 was plain and unambiguous. Section 3-204 did not permit a surviving spouse's agent to make an election on behalf of the surviving spouse.

C.

The history of the spousal election statute provides additional support for our holding. *See Mayor and City Council of Baltimore v. Chase*, 360 Md. 121, 131 (2000) ("[I]n the interest of completeness we may, and sometimes do, explore the legislative history of the

[5] An agent created through a power of attorney and a guardian are distinct roles and arise from different geneses. The Maryland General and Limited Power of Attorney Act, codified in Title 17 of the Estates and Trusts Article, governs powers of attorney. An "agent" is defined as "a person granted authority to act for a principal under a power of attorney, whether denominated an agent, attorney-in-fact, or otherwise." Est. & Trusts § 17-101(b)(1).

The law surrounding guardianship is found in Titles 13 and 13.5 of the Estates and Trusts Article. A "guardian" is defined as "a guardian of an estate appointed by a court under Subtitle 2 of this title to manage the property of a disabled person or minor or a guardian of a person appointed by a court under Subtitle 7 of this title, according to the context in which it is used." Est. & Trusts § 13-101(i). Unlike an agent, a guardian is not an agent of the principal; rather, "the court is the guardian; an individual who is given that title is merely an agent or arm of that tribunal in carrying out its sacred responsibility." *Kicherer v. Kicherer*, 285 Md. 114, 118 (1979).

statute under review even when we determine that a statute is free from ambiguity." (internal quotation marks omitted)).

When Mr. Uhlfelder filed the election, the right of a surviving spouse to make a spousal election was statutory. *See* Est. & Trusts §§ 3-202 – 208; *Karsenty v. Schoukroun*, 406 Md. 469, 487 (2008). But that was not always the case.

The right has its origins in the common law rights of dower and curtesy:

> At early common law, a widow had two important rights that protected her from being disinherited: a dower right to one-third of her husband's legal interests in real estate, which he could not devise by will or transfer during his lifetime without her consent; and a right to one-third of her husband's personal estate. The latter right could not be devised away from her. If the husband devised his personal property, the widow could recover her share of it "in opposition to her husband's testament."

Karsenty, 406 Md. at 504 n. 25 (citing *Griffith v. Griffith's Executors*, 4 H. & McH. 101, 118-121 (Gen. Ct. May Term 1798)). Such protection for widows was necessary because women, at that time in our history, were deprived of virtually all property rights upon marriage. *See* Angela M. Vallario, *Spousal Election: Suggested Equitable Reform for the Division of Property at Death*, 52 CATH. U. L. REV. 519, 527 (2003) ("*Vallario*"). Under the common law right to dower, the "husband could not alienate the wife's dower interest, nor could it be used to satisfy her husband's debt" without first obtaining the wife's consent. *Vallario*, at 527. Dower's counterpart, curtesy, worked in a roughly analogous manner, giving the husband the right "upon his wife's death, to a life estate in the land that his wife owned during their marriage, assuming that a child was born alive to the couple." BLACK'S LAW DICTIONARY 482 (11th ed. 2019); *see also Harris v. Whitely*, 98 Md. 430,

443 (1904) ("[T]he husband's estate curtesy in his wife's realty . . . [was] fixed by the birth of a child alive[.]"); *Porter v. Bowers*, 55 Md. 213, 215 (1881) (same).

Over time, the concepts of dower and curtesy were formalized and modified by statute "in an effort to expand spousal protection from a life estate in real property to an outright interest in real and personal property." *Vallario*, at 526. The first such statute in Maryland was enacted in 1798. *See* Laws of Maryland, Ch. XIII, Sec. 2 (1798). The 1798 statute, codifying only the right of dower, permitted a widow to renounce any bequest made to her in her late-husband's will in favor of one-third of the husband's personal property. The statute read:

> A widow shall be barred of her right of dower in land, or share in the personal estate, by any such devise, or bequest, unless within ninety days after the authentication or probate of the will, she shall deliver, or transmit to the court where such authentication or probat [sic] hath been made, a written renunciation in the following form, or to the following effect:
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> > "I, A.B. widow of _____ _____, late of _____, deceased, do hereby renounce and quit all claim to any bequest or devise made to me by the last will of my husband, exhibited and proved according to law; and I elect to take, in lieu thereof, my dower, or legal share of the estate of my said husband, A.B."
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> But by renouncing all claim to a devise or bequest, or diveses or bequests of personal property, made to her by the will of her husband, she shall be entitled to one-third part of the personal estate of her husband, which shall remain after payments of his just debts, and claims against him, and no more.

Laws of Maryland, Ch. 101, sub-ch. 13 (1798) (formatting altered).

This statute:

> [C]hanged the common law: under it when a man dies leaving a will making valid gifts of real and personal estate to his wife, she has not, as she had at

> common law, a vested right to dower and to her thirds of his personalty, but her vested rights are under the will by virtue of the statute law.
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> This act gives to the husband the power to extinguish the common law rights of his widow unless she thinks proper to renounce the will, and to effect the husband's object the wife need not declare her assent, but if she desires to defeat it she must do so by an express dissent.

Collins v. Carman, 5 Md. 503, 504 (1854).

Maryland's spousal election statute remained largely unchanged for the next century. *See* Md. Code of Public General Laws, Art. 93, § 285 (1860); Art. 93, § 292 (1888); Art. 93, § 298 (1904); *but see* Art. 93, § 310 (1924) (extending the spousal election statute to allow husbands to claim a one-third share in the estate as well as widows). During this period, the Court of Appeals reviewed the spousal election statute in several cases, interpreted its provisions, and consistently upheld three principles regarding the statutory right for a widow to renounce a bequest in her husband's will: that the statute was to be strictly construed, that the right to renounce the will was personal to the widow, and that a spousal election could not be made after the widow's death.

In *Collins*, the husband died, leaving a bequest to his widow of $50 per month for the remainder of her life. 5 Md. at 504. The widow, who was deemed "insane," received the benefit of the bequest for four years after her late-husband's death. *Id*. After the widow died, the administrator of her estate renounced the will on the widow's behalf pursuant to the spousal election statute. *Id*. The primary issue before the Court of Appeals was whether a spousal election could be made by the widow's administrator after her death. *Id*. at 514.

The Court held that a spousal election made after the widow's death was invalid. The Court determined that, once the statutory period to renounce the will had lapsed, the late husband's bequest to the widow ceased upon her death. *Id*. This application of the spousal election statute aligned it with the purpose of the dower rights—*i.e.*, "to ensure her a comfortable maintenance and support during [the widow's] life[.]" *Id*. at 522.

Notably, the Court did not permit an exception to this principle because the widow was incapacitated. It reasoned that the administrator of the widow's estate was not permitted to renounce the will past the deadline because "infants and lunatics, and others laboring under disabilities, and which hold that where the performance of a condition is necessary to save an estate or to vest an estate, those under disabilities must perform or observe the condition according to its terms, just as those under no disabilities." *Id*. at 518. For support of that proposition, the Court cited *Boone's Representatives v. Boone*, 3 Har. & McH. 95 (1791), in which the General Court of Maryland held that a widow's representatives did not have the right to renounce the will after the widow's death because the right to do so was "intended entirely for her benefit and personal privilege." *Id*. at 520 (citing *Boone*, 3 H. & McH. at 95.).

The Court did not, however, address whether a surviving spouse could renounce a bequest in a will through a court-appointed guardian. That issue was addressed, in part, over a half-century later in *Kernan v. Carter*, 132 Md. 577 (1918).

In *Kernan*, the husband died, leaving behind his wife, who, had been declared to be "*non compos mentis* and incapable of acting for and in her own behalf" approximately

twenty-five years earlier. *Id.* at 579. At the time this case was decided, the spousal election statute, codified as Md. Code Art. 93, § 302 read:

> A widow shall be barred of her right of dower in land or share in the personal estate by any such devise or bequest, unless within six months after the first grant of administration upon her husband's estate she shall deliver or transmit to the court or register of wills where administration has been granted a written renunciation in the following form, or to the following effect.
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> * * *

132 Md. at 588.

After the statutory deadline for renouncing the will passed, the widow, through her next of friend, renounced the will.

The Court considered whether the widow could renounce the husband's will after the expiration of the six-month deadline provided by Art. 93, § 302, and, if so, whether the widow's renunciation could be made by the widow's guardian. 132 Md. at 588. Construing § 302 strictly, the Court held that the widow could not renounce the will past the statutory deadline, even though she was not competent. *Id*. at 588–89. The Court also touched on the guardianship issue. Looking to *Collins* and *Boone*, the Court concluded that the widow's guardian could not renounce the will on the widow's behalf past the statutory deadline. *Id*. at 535. However, the Court suggested that an equity court with jurisdiction

over the disabled spouse had the authority to make an election.[6] *Id*. at 535. The Court observed that *Collins* and *Boone*:

> expressly left open the question whether a court of equity can make the election, or renunciation, during her life and in proper time, which manifestly means within the time fixed by the statute, it does not preclude an application to a court of equity within that time and as this bill was filed over 3 years beyond that time.

132 Md. at 592.

This question was answered in 1933, when the General Assembly enacted Art. 93, § 311A (Ann. Code of the Pub. Gen. Laws of Md. 1933). Section 311A explicitly authorized a guardian to file for the elective share on behalf of a surviving spouse (emphasis added):

> The renunciation as provided in § 311 may be made by the guardian of an infant spouse, *when authorized so to do by the court having jurisdiction of the infant's estate,* or may be made on behalf of an incompetent *when authorized by the equity court having jurisdiction of the person* of said incompetent. The time for renunciation by any spouse may be enlarged before its expiration by an order of the orphans' court where the will was probated, for a further period of not exceeding six months upon any one application, upon a petition showing reasonable cause and on notice given to such persons and in such manner as the orphans' court may direct.

As a prominent commentator on Maryland probate law of that era explained, it was the law of Maryland that:

[6] Maryland law has long had statutory mechanisms in place for the appointment of guardians for the protection of disabled individuals. *See, e.g.*, *Nutter v. Black*, 225 Md. App. 1, 13 (2015) ("Maryland's first comprehensive statute for the protection of disabled persons was . . . enacted as Chapter 72 of the Laws of 1785.") (citing *In re Estate of Rachel Colvin*, 3 Md.Ch. 278, 282 (1851), and Joan L. O'Sullivan and Diane E. Hoffman, *The Guardianship Puzzle: Whatever Happened to Due Process*? 7 Md. J. Contemp. Legal Issues 11, 13–24 (1996)).

> A widow or widower who is of lawful age and mentally competent must execute a renunciation in person. It cannot be executed by an administrator of a deceased spouse. If a widow dies within the time allowed her for making her election . . . her representatives are bound by the will. If the surviving spouse is an infant, the renunciation may be made by a guardian, when authorized by the Court having jurisdiction over the infant's estate. If the widow or widower be insane at the time of the election, the committee or trustee, when authorized by the Equity Court having jurisdiction of the incompetent, shall have the power to file the renunciation, or the Court itself may do so

1 Philip L. Sykes PROBATE LAW AND PRACTICE 173 (1956).

In 1969, and as a result of recommendations contained in the *Second Report of Governor's Commission to Review and Revise the Testamentary Law of Maryland, Article 93 Decedents' Estates* (1968) submitted to the General Assembly by the "Henderson Commission,"[7] the Legislature undertook a comprehensive recodification of Maryland's testamentary and probate law. In its second report, the Henderson Commission provided the Legislature with proposed language for the original versions of what are now codified as titles 1 through 11 of the Estates and Trusts Article as well as an explanatory commentary. For this reason, the Court of Appeals and this Court look to the second report

[7] The Commission was (and is) generally referred to as the "Henderson Commission" in recognition of its chair, the Honorable William L. Henderson, a former Chief Judge of the Court of Appeals. The Commission was established in 1965 for the purpose of making recommendations to the General Assembly regarding Maryland's inheritance tax, probate and testamentary law. *See Piper Rudnick LLP v. Hartz*, 386 Md. 201, 222 (2005); *Allen v. Ritter*, 196 Md. App. 617, 626–27 (2010), *aff'd*, 424 Md. 216 (2011). The Henderson Commission's story is told in greater detail in Shale D. Stiller and Roger D. Redden, *Statutory Reform in the Administration of Estates of Maryland Decedents, Minors and Incompetents*, 29 Md. L. Rev. 85, 87–88 (1969).

for insight into the proper interpretation of those parts of the Estates and Trusts Article enacted at the Commission's suggestion. *See, e.g., Kelly v. Duvall*, 441 Md. 275, 283 (2015); *Kortobi v. Kass*, 410 Md. 168, 181 (2009); *Russell v. Gaither*, 181 Md. App. 25, 32–33 (2008).

Relevant to the issues in the present case, the Commission recommended that the Legislature enact what eventually was codified as Est. & Trusts § 3-204. The Commission's suggested language for the proposed statute was adopted by the General Assembly. The Commission commented that the proposed statute was "basically in accord with [existing MD. CODE ANN. (1957) Article 93] §§ 329 and 330."[8] Second Report at 39.

In summary, there is nothing in the legislative history of former Est. & Trusts § 3-204 that suggests that the 1969 recodification of Maryland's testamentary and probate laws was

[8] At the time, Article 93 § 329 read in pertinent part:

> A surviving husband or widow shall be barred of his or her right of dower in land or share in land or share in the personal estate by any such devise or bequest, unless within thirty (30) days after the expiration of notice to creditors in the wife's or husband's estate, as the case may be, he or she shall deliver or transmit to the court or register of wills where administration has been granted a written renunciation in substantially the following form or to the following effect . . . .

Section 330 stated in relevant part:

> The renunciation as provided in Section 329 may be made by the guardian of an infant spouse, when authorized to do so by the Court having jurisdiction of the infant's estate, or may be made on behalf of an incompetent when authorized by the equity court having jurisdiction of the person of said incompetent. . . ..

intended to alter long-standing Maryland law that a right to make an election was personal to the surviving spouse and had to be exercised by him or her unless the spouse was a minor or an adjudicated incompetent. The Henderson Commission neither recommended nor did the General Assembly enact language to permit agents of a surviving spouse under a power of attorney to make the election on the surviving spouse's behalf. Indeed, at no point in Maryland's history, either by common law, statute, or judicial interpretation thereof, was an attorney-in-fact permitted to renounce a will and make the election on behalf of the surviving spouse.

Mr. Uhlfelder's invocations of *Shimp v. Huff*, 315 Md. 624 (1989) ("*Shimp II*") and *Bunch v. Dick*, 287 Md. 358 (1980), do not change this result.

Shimp arose out of a joint will executed in 1974 between Lester Shimp and his first wife, Clara Shimp. The 1974 will provided that each gave to the other all of the property owned by him or her at the time of his or her death and further provided that, upon the death of the surviving spouse, all of the surviving spouse's property would be given to various members of their respective families. *Id.* at 627–68. In *Shimp v. Shimp*, 287 Md. 372, 387 (1980) ("*Shimp I*"), the Court held that Lester, the surviving spouse, had the right to revoke the 1974 will but that will had created a contract enforceable against his estate by the beneficiaries named in it. After *Shimp I* was filed, Lester married Lisa Mae Shimp. Lester died about seven months later without making a new will. After his death, the personal representatives designated in the 1974 will submitted that will for probate. 287 Md. at 629. Lisa Mae Shimp then filed a declaratory judgment action, seeking a

declaration, among other things, that she had the right to claim a spousal share of Lester's estate.

In resolving an issue of first impression in Maryland, the Court of Appeals concluded:

> [W]e find the question of priorities between a surviving spouse and beneficiaries under a contract to make a will should be resolved based upon the public policy which surrounds the marriage relationship and which underlies the elective share statute. [T]the right of a person to transfer property upon his death to others is not a natural right but a privilege granted by the State. . . . The Legislature on several occasions has limited this right by enacting restrictions such as those contained in [Est. & Trusts] § 3–203, which grants a surviving spouse the right to receive an elective share of a decedent's estate, regardless of the provisions contained in the decedent's will. In addition, § 3–204 suggests that the right to receive the elective share is a personal right, which cannot be waived by the unilateral acts of others, including the actions of the deceased spouse. These statutes and principles of law suggest *that there is a strong public policy in favor of protecting the surviving spouse's right to receive an elective share. . . .*

Shimp II, 315 Md. at 645–46 (cleaned up; emphasis added).

Mr. Uhlfelder relies on the italicized language. The Court's analysis in *Shimp II* certainly makes it clear that there is a strong public policy to *protect* a surviving spouse's right to receive an elective share. But *Shimp II* does not address the issue that is before us in this appeal, which is *how* a surviving spouse must assert such a claim.

The issue in *Bunch v. Dick*, 287 Md. 358 (1980), was a variation on the facts presented in *Collins v. Carmen*, 5 Md. 503 (1854), which we have previously discussed. In *Bunch*, the surviving spouse, Grace Dick, signed an election to assert a spousal claim against her deceased husband's estate but died before the claim was filed in the orphans' court. The

claim was subsequently filed within the deadline for filing a spousal election. *Id.* at 259–60. The Court concluded that the claim was not timely filed:

> It is clear that under [Est. & Trusts §] 3-207 three elements are required to occur before a valid election can be made. There must be a writing renouncing under the will, signed by the surviving spouse and filed in the court which appointed the personal representative of the decedent. Here, the parties agree that Grace executed a proper instrument and that she died prior to its being filed. The appellants contend that the act of filing is only ministerial and the failure to file during the lifetime of the surviving spouse should not invalidate Grace's election. However, our reading of the statute makes it clear that a signed but unfiled document is not an election; it is the filing of the writing which gives it force and effect.
>
> The appellant's retort is that the document was filed, though after her death, by her representative. The short answer to this is that [§] 3-204 dictates that the right of election is personal, non-transferable and may not be exercised after the death of the electing spouse. Therefore, a document which at the time of death of the surviving spouse does not constitute an election cannot become an election thereafter, even though filed within the statutory period described in [§] 3-206. Here even if we regard the appellants as agents of the surviving spouse, such agency terminated when the surviving spouse died.

Id. at 361.

In reaching this conclusion and among other cases, the Court relied upon *In Re Banks' Will*, 31 N.Y.S.2d 652 (Sur. Ct. 1941). The spouse, who was residing in Ireland, executed an election to file against the estate of her deceased spouse who, at the time of his death, lived in New York. She mailed the properly executed election to her lawyer in New York but delivery was delayed because of disruptions to trans-Atlantic shipping caused by German U-boat activity. Her lawyer filed the election within the statutory deadline but by that time, the surviving spouse had died. *Id.* at 654–55. The surrogate noted that, under

New York law, "there are three essential acts or steps prescribed to make an election effective, *i. e*., "(1) an expression of dissent to the terms of the will in the form of an instrument executed by the surviving spouse, commonly known and referred to as a notice of election; (2) service of the notice upon the representative of the estate; [and] (3) filing and recording of a copy of the notice with proof of service in the surrogate's court." *Id.* at 654. All of these actions "must be performed by the spouse herself *or her duly authorized agent or attorney in fact* during her lifetime." *Id.* at 655 (emphasis in original omitted, our emphasis added). Mr. Ulhfelder suggests that the italicized passage supports his position in this case. We are not persuaded.

In both *Bunch v. Dick* and *Banks*, the surviving spouse signed the election but died before it was filed. Because the surrogate stated that an election had to be executed by the surviving spouse, *Banks* is ambiguous as to whether it was the law of New York that an agent could sign an election or whether New York permitted an agent to serve and file an election after it had been executed by the surviving spouse. Mr. Uhlfelder's brief is silent on the issue and, in light of that silence, it is not for us to resolve the ambiguity.[9] Therefore, as relevant to the case before us, *Banks* stands only for the unremarkable proposition that

[9] "[W]here a party fail[s] to cite any relevant law on an issue in its brief, [appellate courts] will not "rummage in a dark cellar for coal that [may or may not] be there." *HNS Development, LLC v. People's Counsel for Baltimore County*, 425 Md. 436, 459, 42 A.3d 12 (2012) (quoting *Konover Prop. Trust v. WHE Assocs*., 142 Md. App. 476, 494, 790 A.2d 720 (2002) ((cleaned up)

a surviving spouse, after executing an election, need not personally file it for the election to be effective.[10]

The orphans' court was correct when it decided that the spousal election filed by Mr. Ulhfelder was ineffective.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS REVERSED. APPELLEE TO PAY COSTS.

[10] We are aware, of course, that chapter 435 of the Laws of 2019 repealed Est. & Trusts §§ 3-203–208 in their entirety. Currently, Est. & Trusts § 3-405(b)(3) authorizes an attorney-in-fact to exercise a surviving spouse's right to file a spousal election if the instrument creating the power of attorney specifically authorizes the attorney in fact to do so and the "the surviving spouse is a minor or incapacitated within the meaning of § 17-101(c) of this article." Est. & Trusts § 17-101(c) defines "incapacity" as:

> the inability of an individual to manage property or business affairs because the individual:
>
> (1) Meets the grounds required for the appointment of a guardian of the property of a disabled person described in § 13-201 of this article; or
>
> (2) Is:
>
> (i) Missing;
>
> (ii) Detained, including incarcerated in a penal system; or
>
> (iii) Outside the United States and unable to return.

Section 3-405(c) permits interested parties to the deceased spouse's estate to file timely objections and, if they are filed, the orphans' court must hold a hearing to determine whether the election is in the best interests of the surviving spouse.

Finally, as we have previously noted, chapter 435 stated that it was to be "construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any estate of a decedent who died before [its] effective date," which was October 1, 2019. *See* chapter 435 of the Laws of 2019 §§ 2 and 3.