

Circuit Court for Montgomery County,
Sitting as the Orphans' Court
Case No. W81613

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2626

September Term, 2018

EDGAR C. BRADFORD

v.

HELEN M. SMITH

Fader, C.J.,
Leahy,
Eyler, Deborah S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, Deborah S., J.

Filed: March 18, 2020

*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.

In the Orphans' Court for Montgomery County, Edgar Bradford, the appellant, filed a motion to remove Helen Smith, Esquire, the appellee, as successor personal representative of the Estate of Christine Bradford ("Estate"), Mr. Bradford's deceased mother. Ms. Smith is counsel for the Estate's largest creditor, Brooke Grove Rehabilitation and Nursing Center ("Brooke Grove"). The court denied the motion and Mr. Bradford noted this appeal, asking whether that ruling was in error. Ms. Smith has filed a motion to dismiss the appeal and to strike portions of Mr. Bradford's brief, appendix, and record extract.

We shall deny the motions and affirm the judgment of the orphans' court.

FACTS AND PROCEEDINGS

The decedent, Christine Bradford, died testate on October 14, 2014, while a patient at Brooke Grove. Her Will, executed on September 13, 2013, named Mr. Bradford and Loyce Bradford ("Ms. Bradford"), the decedent's daughter, as joint beneficiaries of the Estate, and named Mr. Bradford as personal representative of the Estate.

On October 27, 2014, in the Orphans' Court for Montgomery County, Mr. Bradford filed a petition for administration of a regular estate. On the attached schedule of Estate assets, he listed as the only significant assets the decedent's house, at 1413 Morningside Drive in Silver Spring ("the Property"), which was unencumbered and was valued at approximately \$315,000, and \$5,000 in a checking account.

The decedent had been a patient at Brooke Grove for ten months prior to her death. On November 24, 2014, Brooke Grove filed a claim against the Estate for \$84,798.31 in medical bills the decedent had incurred during her stay. Other creditors filed claims totaling just under \$13,000. Attorneys who initially represented the Estate were discharged at Mr. Bradford’s request. They filed a claim for \$6,643 in fees and costs, which was allowed.

On December 2, 2014, Mr. Bradford was appointed personal representative of the Estate.

More than a year later, in February 2016, Ms. Bradford disclaimed any interest in the Estate. As she had no children, Mr. Bradford became the sole beneficiary under the Will.

On December 30, 2016, the law firm then representing the Estate moved to withdraw, alleging that its attorneys had advised Mr. Bradford that the “only way to satisfy the creditors of the Estate” was to sell the Property, but that Mr. Bradford had refused to do so. He preferred to “obtain a loan in order to be able to continue to reside in the [Property].” Counsel had attempted, without success, to obtain a loan on his behalf.

The motion to withdraw was granted on January 9, 2017. The law firm made a claim for \$19,493 in attorneys’ fees.

On February 16, 2017, Brooke Grove filed a petition to remove Mr. Bradford as personal representative of the Estate, alleging that he had breached his fiduciary duties by failing to pay the claims that had been allowed. It asked to be appointed as successor

personal representative pursuant to Md. Code (2011 Repl. Vol., 2014 Supp.), section 5-104 of the Estates and Trusts Article (“ET”). Alternatively, Brooke Grove asked the orphans’ court to order Mr. Bradford to sell the Property.

On June 9, 2017, the orphans’ court held a hearing on the pending motions. It ruled from the bench that Brooke Grove’s claim was allowed in full and that Mr. Bradford would be given 45 days to obtain financing to pay the allowed claims or to enter into a listing agreement to sell the Property.

Five days later, on June 14, 2017, in direct contradiction to the court’s oral ruling, Mr. Bradford executed a deed on behalf of the Estate transferring the Property to himself for no consideration. On June 19, 2017, the orphans’ court issued its order memorializing the oral rulings it had made during the June 9, 2017 hearing. Then, on June 22, 2017, the orphans’ court entered an order allowing Brooke Grove’s claim of \$84,798.31 and granting the attorneys’ fees claim of \$19,493.30.

On July 14, 2017, Mr. Bradford recorded the deed transferring the Property to himself.

On July 17, 2017, the orphans’ court entered an order directing Mr. Bradford to appear and show cause why he should not be removed as personal representative for failing to file the third account.

On July 25, 2017, Brooke Grove filed an emergency petition seeking to enforce the court’s June 19, 2017 order, for declaratory relief, and to remove Mr. Bradford as personal representative. It alleged that Mr. Bradford was not authorized to transfer the

Property to himself and that doing so violated the court's order and was a fraudulent conveyance, to the detriment of the Estate's creditors. It also pointed out that it recently had learned that Mr. Bradford had been convicted of a third-degree sex offense in 2007 and is a registered sex offender, and that in his petition for probate he had answered, under penalties of perjury, that he had not been convicted of any serious crime. Brooke Grove requested, among other things, that the letters of administration granted to Mr. Bradford be revoked, that he be removed as personal representative, and that a successor personal representative be appointed.

On August 18, 2017, Mr. Bradford filed a notice that within 20 days he would resign as personal representation. On September 20, 2017, he filed his "Statement of Resignation" with the court. The next day, he filed a motion seeking the appointment of Ms. Bradford as successor personal representative or, if she was not able or eligible, to have the attorney for the Estate substituted. The court held a hearing that day on its show cause order. It removed Mr. Bradford as personal representative and appointed Ms. Smith, who, as noted above, was one of the lawyers representing Brooke Grove, as successor personal representative. An order to that effect was issued that day. An order also was issued that day granting Brooke Grove's motion to remove Mr. Bradford as personal representative. Mr. Bradford did not note an appeal from either order.

As it turned out, when Mr. Bradford transferred the Property from the Estate to himself, there were tax liens for delinquent federal and state income taxes enrolled against him in Montgomery County. Fearing that the tax liens had attached to the

Property when Mr. Bradford conveyed it to himself, and would remain attached even if Mr. Bradford were to re-convey the Property to the Estate, Brooke Grove and Ms. Smith on behalf of the Estate filed suit in the Circuit Court for Montgomery County against Mr. Bradford and others, including the IRS and the State of Maryland, under the Maryland Fraudulent Conveyances Act, seeking to have the transfer from the Estate to Mr. Bradford declared void and the Estate declared the Property's owner. The case was removed to the United States District Court for the District of Maryland. On December 4, 2018, the court granted summary judgment in favor of the plaintiffs in the case. It voided the conveyance from the Estate to Mr. Bradford and ruled that the tax liens no longer were attached to the Property. Mr. Bradford noted an appeal to the Fourth Circuit Court of Appeals.

Meanwhile, on April 11, 2018, Mr. Bradford, acting *pro se*, filed a petition to remove Ms. Smith as successor personal representative. He alleged that Brooke Grove, through Ms. Smith, had “committed prejudice to the Estate, collusion, and breach of trust and bad faith[.]” Specifically, he claimed that Brooke Grove had contacted the IRS and the State of Maryland about his “personal taxes” and had “ma[de] deals” with them in violation of his “personal credit protection,” of consumer protection laws, and of HIPAA. He asked the orphans’ court to reinstate him as personal representative. He also complained that he had been charged \$6,000 for copies of his mother’s medical records.

In a supplement to his petition filed two days later, Mr. Bradford further alleged that during the decedent’s stay at Brooke Grove, she had been given opioids without

informed consent; the medicines had caused her to sustain bed sores and other maladies; Brooke Grove and the pharmaceutical companies that manufactured the opioids had committed Medicare fraud by charging the federal government \$15,000 or more for the opioids; and Ms. Smith knew the side effects of the drugs. He demanded that a list of the drugs that were given to the decedent be produced and seemed to be demanding that Brooke Grove's claim against the Estate, which already had been allowed, be reduced or retroactively disallowed.

Brooke Grove filed an opposition setting forth the history of the case and the fraudulent conveyance case, which at that time was still pending in federal district court. It asserted that Mr. Bradford's delinquent taxes were a matter of public record and that whatever discussions it had had with representatives of the IRS and the State of Maryland about his delinquent taxes concerned a possible settlement of the fraudulent conveyance case, which was appropriate. It emphasized that the petition did not allege any facts giving rise to cause to remove Ms. Smith as successor personal representative under ET section 6-306(a).

On September 7, 2018, the orphans' court held a hearing on the petition. Mr. Bradford, who appeared *pro se*, repeatedly expressed concerns about the care the decedent had received at Brooke Grove and complained that Brooke Grove was thwarting his attempts to obtain an itemized bill for the charges for her care and copies of her medical records. The orphans' court judge attempted to redirect him to his request that Ms. Smith be removed as successor personal representative, asking him directly "why

Helen Smith should be removed as personal representative[?]" He replied, "[c]ontacting the IRS, and the State of Maryland about my personal taxes."

By order entered that same day, the orphans' court denied Mr. Bradford's petition. This timely appeal followed.¹ We shall include additional facts as necessary to our resolution of the issues.

MOTION TO DISMISS

In January 2019, after Brooke Grove and Ms. Smith had obtained the Property for the Estate free and clear of Mr. Bradford's tax liens, Ms. Smith, on behalf of the Estate, brought a wrongful detainer eviction action against Mr. Bradford and Ms. Bradford, in the District Court of Maryland for Montgomery County. The Estate sought to have Mr. and Ms. Bradford removed from the Property, so it could be sold. Ms. Smith contends there was an agreement placed on the record in that case that Mr. Bradford would dismiss this appeal. She further contends that Mr. Bradford has breached that agreement, and therefore this appeal should be dismissed as not permitted by law.

¹ Md. Code (1973, 2013 Repl, Vol., 2018 Supp.), section 12-501(a) of the Courts and Judicial Proceedings Article permits direct appeals to this Court "from a final judgment of an orphans' court." A final judgment of an orphans' court is unlike a final judgment from a court of general jurisdiction and includes "all judgments, orders, decisions, etc. which . . . finally determine the proper parties, the issues to be tried and the sending of those issues to a court of law." *Banashak v. Wittstadt*, 167 Md. App. 627, 657 (2006). The grant or denial of a petition to remove a personal representative for cause has been treated as final and appealable. *See Ayers v. Liller*, 65 Md. App. 178 (1985)(appeal from denial of petition to remove personal representative taken to circuit court and appeal from reversal of orphans' court decision taken to this Court).

The district court case was scheduled for trial on March 6, 2019. Mr. Bradford appeared *pro se*, Ms. Smith on behalf of the Estate appeared through counsel, and Ms. Bradford did not appear at all. (Apparently a default judgment was entered against her.) At some point during the proceedings (which is not made clear from the briefs), the parties began discussing an agreement. The following ensued:

THE COURT: Okay, what's the, what do you think the status of the agreement is of the case, agreement?

[COUNSEL FOR THE ESTATE]: The agreement would be that there would be a consent judgment by Mr. Bradford. I would stay execution for 30 days, the default judgment against Loyce Bradford would stayed [sic] as well for 30 days. As part of Mr. Bradford's consent, he would agree to waive his appeal in the Court of Special Appeals, of, his appeal of the Orphans' Court order where he sought to remove Ms. Smith as personal representative of the estate.

THE COURT: That's some other case. That's nothing to do with this case.

[COUNSEL FOR THE ESTATE]: That's not, not in this case.

THE COURT: Okay.

* * *

[COUNSEL FOR THE ESTATE]: And he would also waive his appeal of a fraudulent conveyance action that was removed to the U.S. District Court, and Mr. Bradford appealed to the 4th Circuit. So both those appeals, he would agree to waive and dismiss to the extent they are not already dismissed.[²]

THE COURT: Is that your understanding, Sir?

²In fact, the appeal to the Fourth Circuit in the fraudulent conveyance case already had been dismissed by that court, on February 25, 2019, for lack of prosecution.

MR. BRADFORD: Yes, Your Honor.

THE COURT: Okay, so I'm gonna enter judgment for possession. There's a stay for 30 days, no one can regain possession for 30 days. Yes, Sir?

MR. BRADFORD: We have agreed that if we are moving along to work this out, and pay the money to them, if we need more time we will agree to do that. We have agreed.

THE COURT: That's a hard agreement for me to enforce, but.

[COUNSEL FOR THE ESTATE]: Right, I said I'd work with them. But I need that deadline, in case it's not fruitful.

THE COURT: Okay.

MR. BRADFORD: For the, I just want to be on agreement along the same page. If we're working there, I've got mortgage to pay one fifty, if we're working towards getting him the rest of the money, we'll —

THE COURT: Sir, that's really too vague to enforce. You're gonna say, I'm working, he's gonna say, you weren't working enough. It won't really be enforceable. You certainly have the right to try to work, work it out. You have the right to take his word. But if he decides what you are doing isn't enough, I don't think what you're telling me, is something the Court can enforce and delay if he, if in his opinion you're not doing enough.

MR. BRADFORD: I don't want a trial today.

THE COURT: Okay, well I'm gonna pass the case.

MR. BRADFORD: No, no. Let, let's, let's sign it Your Honor.

THE COURT: Okay.

MR. BRADFORD: And get out of here.

THE COURT: *There's an agreement on the record, there's a stay for 30 days. You can still try to work something out.*

MR. BRADFORD: Yes.

THE COURT: All right, thank you.

(Emphasis added).

That same day, the court entered a judgment of possession in favor of the Estate, which stated that the judgment would be stayed for 30 days. A handwritten notation on the judgment reads, “Agreement on Record.” There is nothing in the judgment directing Mr. Bradford to dismiss this appeal (or giving him additional time to reach an agreement beyond the 30 days).

More than 30 days after the district court judgment was entered, Mr. Bradford was evicted from the Property. Thereafter, Ms. Smith held an auction of the Property. It sold on November 22, 2019 for \$388,000.

As is evident, Mr. Bradford did not dismiss this appeal. In June 2019, the Estate filed a motion to enforce the March 6, 2019 judgment, asking the district court to order Mr. Bradford to dismiss this appeal. That motion was denied because Mr. Bradford had noted an appeal to the circuit court from the district court judgment, which still was pending. The appeal to the circuit court was dismissed on July 29, 2019. On September 23, 2019, the Estate renewed its motion to enforce the judgment. Through counsel, Mr. Bradford appeared and argued that the district court did not have jurisdiction to order him to dismiss this appeal. By order entered on November 1, 2019, the district court denied the Estate’s motion. The Estate did not note an appeal from that order.

In her brief in this Court, filed on November 13, 2019, Ms. Smith moved to dismiss this appeal under Rule 8-602(b)(1), as not being allowed “by these Rules or any other law[.]” She maintains that because Mr. Bradford entered into a consent judgment whereby he agreed to waive his right to prosecute this appeal in exchange for the Estate’s agreeing to forbear on enforcing the district court judgment for 30 days, this appeal is not allowed by law and must be dismissed. She does not cite any case law to support her motion.

Mr. Bradford responds that the March 6, 2019 district court judgment of possession does not state on its face that he agreed to dismiss this appeal, and therefore the appeal is allowed by law. He argues that the Estate should have moved the district court to amend the judgment “to add the language it now seeks to enforce.”

“Consent judgments have attributes of both contracts and judicial decrees.” *Smith v. Luber*, 165 Md. App. 458, 470 (2005) (citation omitted). A “consent judgment memorializes the agreement of the parties, pursuant to which they have relinquished the right to litigate the controversy in exchange for a certain outcome and/or, perhaps expedience.” *Long v. State*, 371 Md. 72, 83 (2002). “A consent judgment is a valid contract between the parties that is judicially enforceable.” *Kirby v. Kirby*, 129 Md. App. 212, 220 (1999) (citation omitted).

The consent judgment in question was issued by the District Court of Maryland for Montgomery County, and therefore that court had jurisdiction to enforce it. In fact, the Estate moved that court to enforce the judgment by ordering Mr. Bradford to dismiss

this appeal, and the court denied the motion. We have not been made privy to the reasons why the court ruled as it did but suffice it to say that it ruled.³ The proper means to challenge that ruling would be by appealing it; no appeal was taken.

Even if the discussion on the record had amounted to an agreement by Mr. Bradford to dismiss this appeal, and that agreement was part of the judgment that was entered, we do not have jurisdiction to enforce the district court's order. The district court denied the Estate's motion to enforce the order and, as noted, the Estate did not appeal that ruling to the circuit court, which would have had jurisdiction to determine whether that ruling was in error. This Court cannot exercise the jurisdiction of the circuit court that was not invoked.

Accordingly, the motion to dismiss will be denied.

DISCUSSION

On the merits, Mr. Bradford contends the orphans' court erred by denying his petition to remove Ms. Smith as successor personal representative of the Estate because, as counsel for Brooke Grove, the largest creditor of the Estate, she had a conflict of interest.

Preliminarily, Ms. Smith asserts that this issue is not preserved for review, a position Mr. Bradford counters in his reply brief.

³ We note that the district court made plain during the hearing that the agreement of the parties that the court was incorporating into the judgment was that the judgment would not be enforced for 30 days.

Rule 8-131(a) states, in relevant part: “Ordinarily, the appellate court will not decide any [non-jurisdictional] issue unless it plainly appears by the record to have been raised in or decided by the trial court, but the Court may decide such an issue if necessary or desirable to guide the trial court or to avoid the expense and delay of another appeal.”

In his written petition to remove Ms. Smith as successor personal representative, and in his supplement to that petition, Mr. Bradford did not argue that Ms. Smith should be removed as personal representative due to a conflict of interest. At the hearing, the topic was alluded to only once. After complaining that the cost of having the decedent’s medical records copied was exorbitant, Mr. Bradford said, “[Ms. Smith is] one of the lawyers that represent the nursing home. They can’t be part of the problem, and part of the solution; that’s another issue.” That was the only mention of a potential conflict, and there was no follow up. Indeed, during oral argument before this Court, the only examples given by counsel for Mr. Bradford of potential conflicts of interest on Ms. Smith’s part concerned petitions for attorneys’ fees that had not yet been filed when the ruling that is now on appeal before this Court was made.

We understand that Mr. Bradford was representing himself in that proceeding. Nevertheless, the rules of procedure applied to him. *See Tetrick v. Layman*, 95 Md. App. 62, 68 (1993) (“The principle of applying the rules equally to *pro se* litigants is so accepted that it is almost self-evident.”) If Mr. Bradford was of the view that, as counsel for the Estate’s largest creditor, Ms. Smith had a conflict of interest that warranted her removal as successor personal representative, he should have argued that, and not merely

made a vague allusion to it. Because no such argument was made, it is not plain from the record below that the issue was raised by Mr. Bradford and it is clear that the court made no ruling on it. As the issue is not preserved, it is not properly before us for decision.

Even if the issue were preserved for review, however, Mr. Bradford would fare no better. A judgment of an orphans' court denying a petition to remove a personal representative will not be set aside unless it is clearly erroneous. *Ayers v. Liller*, 65 Md. App. 178, 183 (1985). Mr. Bradford has not shown clear error, or any error, on the part of the orphans' court in its refusal to remove Ms. Smith as successor personal representative.

The Estates and Trusts Article permits the largest creditor of an estate to serve as personal representative. ET section 5-104, entitled "Order of right to letters," sets forth an order of priority the orphans' court shall observe in, among other decisions, appointing a successor personal representative. The tenth priority class is "The largest creditor of the decedent who applies for administration." With respect to a predecessor statute, the Court of Appeals explained that Maryland law confers "the right . . . for the appointment of an administrator by a person having a claim against the estate, if there are no relations or if those first entitled to letters fail to apply." *Burket v. Aldridge*, 241 Md. 423, 427 (1966). The reason this right exists is to allow the creditor to protect his claim. *See Barton v. Tabler*, 183 Md. 227, 231 (1944).

In his brief, Mr. Bradford complains that the court should have known that there was an adversary relationship between him and Brooke Grove, as evidenced by Brooke

Grove’s lack of transparency regarding billing and medical records and its poor treatment of the decedent before she died. To the extent these concerns were raised during the hearing, the court addressed them, telling Mr. Bradford that his complaints were not about the administration of the Estate but instead seemed to be about a possible medical malpractice action, which the court would have no jurisdiction over. This was not an erroneous response to these concerns.

Mr. Bradford further asserts that the court did not consider ways to reduce the “inherent risks” to the Estate of giving the largest creditor oversight over it. He complains that these risks later came to fruition, invoking the agreement he claims was reached in the district court wrongful detainer eviction action. Specifically, he argues that he eventually was able to obtain financing with which to purchase the Property, but Ms. Smith would not work with him and give him time to arrange a purchase; instead, she put the Property up for auction because that would bring more money to the Estate than if the Property were sold to him.

Quite beyond the fact that none of these “inherent risks” arguments were raised or could have been raised before the orphans’ court in the motion to remove Ms. Smith as successor personal representative, it is evident that they have no merit. A brief reading of the colloquy in the district court case makes plain that there was no agreement that Ms. Smith would work with Mr. Bradford to bring about his purchase of the Property, and as subsequent events have shown, the auction of the Property brought a healthy return that

was above its estimated value when the probate action was filed. Ms. Smith appears to have acted to benefit the Estate, which was her duty.

Finally, Mr. Bradford asserts that the orphans' court should have circumscribed Ms. Smith's powers in her role as personal representative, without saying in what way, and complains about the court's later approval of various fee petitions, none of which are before this Court.

The Estates and Trusts Code sets forth the grounds for removal of a personal representative. ET section 6-306(a) states:

A personal representative shall be removed from office upon a finding by the court that he:

- (1) Misrepresented material facts in the proceeding leading to his appointment;
- (2) Willfully disregarded an order of the court;
- (3) Is unable or incapable, with or without his own fault, to discharge the duties and powers effectively;
- (4) Has mismanaged property;
- (5) Has failed to maintain on file with the register a currently effective designation of an appropriate local agent for service of process as described in § 5-105(c)(6) of this article; or
- (6) Has failed, without reasonable excuse, to perform a material duty pertaining to the office.

From the record in this case, there is nothing that was presented to the orphans' court in Mr. Bradford's written filings or oral presentation that required the court to remove Ms. Smith as successor personal representative of the Estate, under the standards set forth in ET section 6-306(a). Accordingly, we shall affirm the order of the court

denying Mr. Bradford's motion to remove Ms. Smith as successor personal representative.⁴

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, SITTING
AS THE ORPHANS' COURT, AFFIRMED.
COSTS TO BE PAID BY THE
APPELLANT.**

⁴ Ms. Smith has moved to strike portions of Mr. Bradford's brief, appendix, and record extract because they contain facts and materials that are not relevant to the orphans' court's order from which he appealed. We exercise our discretion to deny that motion.