Circuit Court for Charles County
Case No. C-08-CV-18-000848

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3293

September Term, 2018

DARRYL ANTHONY TAYLOR

v.

MARION FISHER, et al.

Fader, C.J.,
Reed,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.

Filed: November 9, 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.

This family dispute is, at its heart, an issue of contract interpretation, with some procedural questions peppered in. Darryl Anthony Taylor appeals from the decision of the Circuit Court of Charles County denying approval of a redistribution agreement regarding the estate of his father, Charles Rodney Taylor.[1] Appellees Marion Fisher and Alice Y. Johnson are the Co-Personal Representatives of the Estate. The parties jointly submitted for approval a redistribution agreement ("Settlement Agreement" or "Agreement") to the Orphans' Court for Charles County, to settle Darryl's objections to the Estate's management. The orphans' court refused to approve the Agreement, which Darryl appealed *de novo* to the Circuit Court for Charles County. The circuit court likewise declined to give its approval.

[1] Hereinafter we refer to members of the Taylor family by first name. We do so for clarity and mean no disrespect by this informality.

Darryl's timely appeal presents five questions for our review,[2] which we have consolidated and rephrased: [3]

1. Did the circuit court err in denying approval of the Settlement Agreement?

2. Did the circuit court err in denying Darryl's revisory motion without a hearing?

For the reasons below, we answer these in the negative, and shall therefore affirm the circuit court.

[2] After briefing was completed in this Court, Co-Personal Representatives moved to strike Darryl's reply brief on the ground that it was filed over two months late. We exercise our discretion to grant the motion. *See* Md. Rule 8-502(a)(3).

[3] Darryl phrased the Questions Presented as follows:

1. "Whether the Clerk of the Circuit Court Erred When the Interested Parties Failed To Comply With Md. Rule 1-321 and 1-323 where there was no proper filing of a certificate of service to parties and thus the Circuit Court lacked jurisdiction to deny approval of the parties' settlement agreement and mutual release."

2. "Whether the Clerk of the Circuit Court erred in accepting and filing the documents of Shadonna Gibson who was neither a party or interested person solely because she stated she had Power of Attorney."

3. "Whether the Circuit Court erred in denying approval of the parties' Settlement Agreement and Mutual Release."

4. "Whether the Circuit Court abused its discretion by denying a hearing Appellant's Motion To Alter, Amend, Revise And/Or Vacate its February 5, 2019 Order and the Request For A Hearing Pursuant to Md. Rule 1-311(f)."

5. "Did the trial court err and violate the Darryl Taylor's right to due process of law by rendering judgment at the close of the parties' filings without allowing him to have his hearing on his Motion, To Alter, Amend, Revise, And/Or Vacate Judgment And Other Appropriate Relief and Request for A hearing filed pursuant to Md. Rule 2-535."

FACTS AND PROCEDURAL HISTORY

Charles died on January 16, 2011, and in accordance with his probated Will, Appellees were appointed as the Estate's Co-Personal Representatives. A personal representative's duty includes filing written accounts with the court detailing the management of the estate and distribution of the estate's property. *See* Md. Code (1974, 2017 Repl. Vol.), § 7-301 of the Estates and Trusts Article ("ET"). The Personal Representatives duly filed these accounts with the Charles County Register of Wills, detailing additions to and disbursements from the Estate. Interested Persons also received the periodic accounts. The Interested Persons here—the inheritors named in Charles's Will—are his surviving siblings and Darryl.[4] Once the orphans' court approves the account, an interested person has twenty days to file "exceptions"—any objections. *See* Md. Rule 6-417(f).

Around August 15, 2017, the Co-Personal Representatives filed the eleventh interim account, anticipating that it would be the penultimate filing. It was approved on August 29, but two weeks later, Darryl filed objections and requested a hearing. Soon after, he filed amended objections, petitioning for the Co-Personal Representatives' removal, and

[4] The Will identifies Charles's siblings: Sadonia A. Taylor, Thomasine A. Lynch, Alice Y. Johnson, Juasita E. Taylor, Phillipa D. Taylor, Gail B. Taylor, Emerson W. Taylor, Harold W. Taylor, and Royce Gregory Taylor. We understand that Royce Taylor is deceased.

the Will's revocation.[5] A hearing on the objections occurred on April 3, 2018, during which the Personal Representatives and Darryl informed the court that they had reached a mediated settlement agreement and mutual release. The parties filed the Settlement Agreement—without the other Interested Persons' signatures—on May 23, 2018. The orphans' court denied approval of the Settlement Agreement, because it was not signed by all the Interested Persons and was "contrary to the will of the decedent." Darryl appealed *de novo* to the circuit court.

The Will And The Settlement Agreement

The Will directs that Charles's nine siblings and the Personal Representatives be given the option to buy any of his tangible personal property, and then instructs the Personal Representatives to sell the remaining personal property and split the proceeds equally between Charles's surviving siblings. As to real property, Charles bequeaths his Indian Head house to Darryl. The Will also says: "[m]y inheritance of property deeded to my deceased mother Edith V. Taylor, Bumpy Oak Road, La Plata, will be divided equally to my living siblings." All other real estate is to be sold and the proceeds distributed between all the Interested Persons. As is customary, the Will accords broad powers to the Personal Representative:

[5] Issues surrounding Darryl's deceased mother's assets are at the heart of his complaint. Darryl's mother, Agnes Varie Short Taylor, died intestate in 2007. No estate was opened for her assets. In July 2017, Darryl became concerned that Appellees were mismanaging his father's estate, as he was receiving notices about his mother's assets, which he alleges had been wrongfully collected by Appellees and included in Father's estate.

> [M]y Personal Representatives shall have with respect to my estate particularly the power [to] invest and reinvest, sell, assign, mortgage, exchange, lease, transfer or otherwise dispose of all or any part of my estate, all in her sole discretion without application to, the approval of, or the ratification by, the court having jurisdiction over the administration of my estate.

The Will also directs that the Personal Representatives "each receive 10% administration fees or the amount determined by law[,] whichever is higher."

The terms of the Settlement Agreement, *inter alia*, called for: (1) a ten percent commission for the Personal Representatives up to $10,000, (2) $10,000 to Johnson and Fisher for "reimburse[ment] for counsel fees[;]" (3) counsel for the Personal Representatives and counsel for Darryl to "work together to submit the twelfth and final accounting[;]" (4) Darryl to receive "the jewelry belonging to Charles [] and Agnes []" except a specified ring; (5) Fisher to pay Darryl $20,000 relating to a dispute over Charles's Navy Federal Credit Union accounts; (6) Darryl to "agree to the sale of the Livingston Road property along with the other [I]nterested [P]ersons . . . and receive his share[;]" [6] and (7) after all other agreed payments are made, the balance of the estate to be paid to Darryl.[7]

The Agreement was contingent on two approvals: "in consideration of the following mutual promises and covenants contained herein, subject to approval of the Charles County

[6] The record does not fully identify this property.

[7] From Darryl's share, $9,675 will go to his counsel.

Orphans' Court and that no objections of the interested persons who are also known as the purported beneficiaries of the Estate . . . ."

Circuit Court Appeal

The Show Cause Order

Upon receiving the appeal from the orphans' court, the circuit court issued a show cause order directing the Interested Persons to respond with any reasons why the Settlement Agreement should not be enforced.[8] The court invited the Interested Persons to meet with both parties' counsel at the courthouse, but the record does not reflect what happened during that meeting. We do know that it did not produce a signed Settlement Agreement.

The Interested Persons timely filed their Response, objecting to the Agreement:[9]

> We the Interested Persons . . . believe that the Settlement Agreement . . . should not be approved and enforced. We agree with the [orphans' court] that the "Settlement Agreement and Mutual Release" is contrary to the Will . . . . We did not sign or agree to the "Settlement Agreement and Mutual Release" then, and we do not agree with it now. . . .
>
> Further, the proposed terms of the "Settlement Agreement and Mutual Release" **DISINHERITS** the remaining Interested Persons without their consent; **WE DO NOT CONSENT** to being disinherited from the Will[].

[8] A show cause order directs the "persons on whom it is served to show cause in writing on or before a specified date why the court should not take the action described in the order." Md. Rule 10-104.

[9] The record is unclear as to signatures. The Response has signature slots for six Interested Persons: Sadonia, Alda, Phillipa, Gail, Emerson (c/o Shadonna Gibson, POA), and Harold. On the copy filed with the circuit court, Phillipa and Harold's signatures are missing. Copies of the Response in the extract, however, contain Harold and Phillipa's signatures.

(emphasis in original). At the January 29, 2019 show cause hearing, the circuit court ruled:

> I find that the contract, the Settlement Agreement, and mutual [re]lease is unambiguous, and that I am limited to the . . . four corners of the contract in my review.
>
> I find that the review of the contract indicates that the contract is subject to the approval of the Charles County Orphans' Court, it states that in the wherefore clause and the eight additional paragraphs.
>
> Therefore, the—since the Orphans' Court did not approve the settlement agreement and mutual release, the settlement agreement and mutual release is unenforceable.

The court also recognized the second—independent—contingency in the settlement agreement: "I find that the mutual release and settlement agreement still required no objections of the interested persons as a contingent clause in the contract."[10] The circuit court issued a written order on February 5, 2019 declining to enforce the Agreement stating the same reasons. This Order also denied Darryl's motion for a jury trial and scheduled a hearing on his remaining objections. Darryl appeals that order.

[10] In the words of the court:

> So even if this Court did have authority under the agreement, and I read the agreement in a liberal context, to have—this Court would have authority to approve it. I find that this Court would be unable to approve it because the interested persons had filed objections in this case. I find that both the approval of the Charles County Orphans' Court and no objections of the interested persons made this a contingent contract. A contingency which has not been fulfilled, therefore I am denying the motion to enforce the settlement agreement and mutual release.

The Motions To Revise

On March 5, Darryl moved to "alter, amend, revise and/or vacate judgment and other appropriate relief." The thrust of this Rule 2-535 motion consisted of the assertions that Shadonna Gibson "made an illegal court filing" as she filed the Interested Persons' Response because she was not an Interested Person or an attorney, and that Gibson and the clerk of court violated Maryland Rules in regard to the filing. The circuit court denied the motion, which Darryl also appeals.

DISCUSSION

Question 1

Before we reach the question of whether the circuit court's denial was proper, we first address two preliminary issues: (1) the orphans' court's decision, and (2) the necessity of court approval of a redistribution agreement.

First, Darryl claims that neither the orphans' court, nor the circuit court, had the authority to refuse approval of the Settlement Agreement, as judicial approval is not required for a redistribution agreement to supersede a will.[11] Darryl appealed the orphans' court's decision to the circuit court, which heard his appeal "as if it were a new proceeding and as if there had never been a prior hearing or judgment by the orphans' court." Md. Code (2006, 2020 Repl. Vol.), § 12-502 of the Courts and Judicial Proceedings Article

[11] Except in Harford and Montgomery counties, parties may choose one of two methods to obtain appellate review of an orphans' court decision, either appealing to the circuit court for that county, or directly to the Court of Special Appeals. *See* Md. Rule 6-463; *Estate of Vess*, 234 Md. App. 173, 193–94 (2017).

("CJP"). Thus, "by its express terms, § 12-502 contemplates that, when a case has been appealed from an orphans' court to the circuit court, the Court of Special Appeals will review the judgment of the circuit court, and not that of the orphans' court." *Kaouris v. Kaouris*, 324 Md. 687, 714 (1991).

Second, Darryl relies on *Brewer v. Brewer*, 386 Md. 183 (2005), to assert that "judicial approval [is] not required before a distribution agreement [can] supersede a properly probated will." In *Brewer*, the Court of Appeals confirmed that Maryland recognizes and allows redistribution agreements based on "the ability of competent beneficiaries to reach an agreement to distribute an Estate in a manner different from that set forth in the Will." *Id.* at 194. A redistribution agreement, however, "is generally executed *between or among parties with an interest in the decedent's property* . . . ." *See* 31 Am. Jur. 2d Executors and Administrators § 40 (citing *Jernigan v. Jernigan*, 138 P.3d 539, 547 (Ok. 2006)) (emphasis added). The Court of Appeals in *Brewer* specifically noted that the redistribution there was among *all* of the Will's beneficiaries, and "not a case, then, of the personal representative compromising or settling a claim made against the Estate." *Brewer*, 386 Md. at 192.

Here, not all of the Interested Persons were party to the Agreement. Rather, it was a contract between Darryl and the Co-Personal Representatives. Because this contract would alter the rights of beneficiaries not party to it, the Agreement cannot supersede the Will without court approval. *See Ferguson v. Cramer*, 349 Md. 760, 769 (1998) ("[T]he primary goal of the personal representative is 'to serve the interests of the estate, not to

promote the objectives of one group of legatees over the interests of conflicting claimants.'").

This deficiency also informs our interpretation of the Agreement—without consent from all Interested Persons, the Agreement is not effective to defeat the disposition of the estate as called for in the Will. *See Brewer*, 386 Md. at 196–97 ("[R]edistribution agreements are permissible and, so long as they comply with the requirements of basic contract law, neither the personal representative nor the court has any authority to disapprove or veto them . . . ."). The interpretation of an unambiguous contract is a question of law, and therefore we review the Agreement without deference to the circuit court's decision. *See Calomiris v. Woods*, 353 Md. 425, 434 (1999) ("The determination of ambiguity is one of law, not fact . . . .").

A contract requires an offer by one party and acceptance by the other. That is, "[a]cceptance of an offer is requisite to contract formation, and common to all manifestations of acceptance is a demonstration that the parties had an actual meeting of the minds regarding contract formation." *Cochran v. Norkunas*, 398 Md. 1, 23 (2007). In order to supersede the provisions of a will by changing the terms of distribution, there must be a meeting of the minds between *all* the will's beneficiaries. That did not happen here, as multiple Interested Persons did not sign the Agreement. Despite the broad powers given to a Personal Representative, she cannot assent to a Redistribution Agreement for the estate beneficiaries. *See Surratt v. Knight*, 162 Md. 14, 16 (1932) ("An executor is the personal representative of the testator, and, after probate, is charged with the duty to defend and

maintain the validity of the instrument with loyalty and fidelity, and to complete the administration of the estate in accordance with the terms of the will, under the law. The executor therefore should not become a party to any shift or device whereby the will of his testator is collusively avoided, or the intention of the testator is defeated or changed to effect a different disposition of his estate.").

Moreover, as the circuit court correctly noted, the Agreement contained two "contingencies," or conditions precedent. A condition precedent in a contract is "a fact . . . which, unless excused, must exist or occur before a duty of immediate performance of a promise arises." *Gebhardt & Smith LLP v. Maryland Port Admin.*, 188 Md. App. 532, 567 (2009) (cleaned up). The main condition not satisfied here was that the Agreement is "subject to . . . no objections of the interested persons . . . ."[12] Despite Darryl's contention that the Agreement is not contingent upon implied consent—i.e., the lack of objections by the Interested Persons—the Agreement unambiguously says otherwise. The Interested Persons very clearly objected to the Agreement's enforcement, evidenced not just by their refusal to sign it, but also their written objections submitted to the circuit court. We shall therefore affirm the circuit court's refusal to enforce the Agreement.

[12] The other contingency, the approval of the orphans' court, similarly leads to the Agreement's failure. We agree with the circuit court that—even allowing for that court's approval to substitute for the orphans' court approval—approval was rightly withheld.

Question 2

Darryl filed a Rule 2-535[13] revisory motion asking the circuit court to vacate the February 5 Order. He argues that Shadonna Gibson, daughter of Interested Person Emerson Taylor and his attorney-in-fact, illegally practiced law in filing on the Interested Persons' behalf when she is not licensed to practice law in Maryland. Specifically, he asserts violations of Maryland Rules 1-323 and 1-321. The Co-Personal Representatives countered that the Response satisfied Rule 1-323, and that any error in service was harmless. The circuit court, without a hearing, denied Darryl's motion. Darryl appeals that denial, asserting the same arguments as he did in his Rule 2-535 motion, and that the perceived violations result in a "jurisdictional defect." He seeks to have this Court "strike and remove all documents filed by Shadonna Gibson in the Circuit Court" pursuant to Rule 1-311. The Co-Personal Representatives maintain that the Rule 2-535 motion was properly denied.

Maryland Rule 2-535 provides that "[o]n motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity." The Court of Appeals has clarified what procedure is required in Rule 2-535 hearings:

> Unlike Rule 2-534, Rule 2-535 is not specifically referenced in Rule 2-311 and, thus, even though it too addresses the court's revisory power, permitting the court to "take any action that it

[13] The stylization of Darryl's motion, to "Alter, Amend, Revise and/or Vacate Judgment," implicates the circuit court's revisory powers under both Rule 2-534 and Rule 2-535. The motion was filed beyond Rule 2-534's deadline, however, so we shall treat is as a Rule 2-535 motion.

> could have taken under Rule 2-534," a motion pursuant to it does not require a hearing to be granted.

Miller v. Mathias, 428 Md. 419, 441 (2012). As there is no requirement for a hearing, we review the decision to deny a Rule 2-535 hearing for abuse of discretion. *See Wells v. Wells*, 168 Md. App. 382, 394 (2006). An abuse of discretion is one "well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *North v. North*, 102 Md. App. 1, 14 (1994).

Rule 1-323

Maryland Rule 1-323 directs the clerk of court to only accept "pleading[s] or other paper[s] requiring service" if they are accompanied by "an admission or waiver of service or a signed certificate showing the date and manner of making service." Md. Rule 1-323. "If such a certificate is attached to the paper, the clerk must file the paper, leaving it then to the parties or the court to deal with any deficiency." *Director of Finance of Baltimore City v. Harris*, 90 Md. App. 506, 514 (1992). Here, the last page of the Response includes a "Certificate of Service," which includes the manner and date of service. The clerk, therefore, complied with Rule 1-323 by duly filing the Response.

Rule 1-321

Next is the allegation that Gibson violated Rule 1-321. Gibson is not an attorney, so when she filed the Response of the Interested Persons, she filed it *pro se*. The rules of procedure in Maryland apply to all parties, whether they are represented by counsel or not. *See Tetrick v. Layman*, 95 Md. App. 62, 68 (1992). Maryland Rule 1-321 requires that "every pleading and other paper filed after the original pleading shall be served upon each

of the parties. If service is required or permitted to be made upon a party represented by an attorney, service shall be made upon the attorney . . . ." Appellees concede that Gibson erroneously served Darryl with the Response rather than his counsel, so we shall accept that Gibson violated Rule 1-321. Gibson's error, however, does not create a jurisdictional question, but one of prejudice.[14]

Darryl must establish that the service error prejudiced him. *See Crane v. Dunn*, 382 Md. 83, 91 (2004) ("It is the policy of this Court not to reverse for harmless error and the burden is on the appellant in all cases to show prejudice as well as error."). Darryl has not established prejudice. He filed a timely reply to the Response. Moreover, he was fully able to present his arguments against the Response to the circuit court on January 29, 2019 at the show cause hearing.

Rule 1-311

Darryl alleges that the clerk and court erred by accepting documents filed by Gibson, when she was neither a party nor licensed attorney. He asserts that the circuit court should have stricken all filings made by Gibson due to her alleged violation of Maryland Rule 1-311.

Rule 1-311 states:

[14] Darryl erroneously relies on *Lovero v. Da Silva*, 200 Md. App. 433 (2011) to argue this is a jurisdictional issue. In *Lovero*, the Court of Special Appeals never gained jurisdiction over an appeal because the putative plaintiff did not file a timely notice of appeal. *Id.* at 451. *See* Md. Rule 8-201(a). Here, the circuit court's jurisdiction to review the orphans' courts decision had been properly established.

> **(a) Requirement.** Every pleading and paper of a party represented by an attorney shall be signed by at least one attorney who has been admitted to practice law in this State and who complies with Rule 1-312. Every pleading and paper of a party who is not represented by an attorney shall be signed by the party.
>
> ***
>
> **(c) Sanctions.** If a pleading or paper is not signed as required (except inadvertent omission to sign, if promptly corrected) or is signed with intent to defeat the purpose of this Rule, it may be stricken and the action may proceed as though the pleading or paper had not been filed. For a wil[l]ful violation of this Rule, an attorney is subject to appropriate disciplinary action.

A power of attorney gives the attorney-in-fact the right to act on another's behalf only to the extent that is permitted by law. Under Maryland Code (1989, 2018 Repl. Vol.), § 10-601(a) of the Business Occupations & Professions Article ("BOP"), "a person may not practice, attempt to practice, or offer to practice law in the State unless admitted to the Bar." Practicing law includes "giving legal advice," "representing another person before a unit of the State government," and "preparing . . . [a] document that is filed in a court or affects a case that is or may be filed in a court . . . ." BOP § 10-101(h). Gibson's filing of documents on behalf of her father may have constituted the unlawful practice of law. But such determination is not at issue in this case.[15]

For purposes of this case, it is only material that the Response does not violate Rule 1-311 because it includes the signatures of the parties not represented by an attorney. *See*

[15] The authority to initiate such a charge is accorded to Bar Counsel under Maryland Rule 19-703. The matter would never reach this Court.

Md. Rule 1-311. The Response includes the signatures of four Interested Persons, including Gibson's father, whose signature is right next to hers. Moreover, Rule 1-311(c) states that "[i]f a pleading or paper is not signed as required . . . it *may* be stricken." (emphasis added). The Court of Appeals has interpreted the word 'may' to be "understood as permissive, as opposed to mandatory, language." *Brodsky v. Brodsky*, 319 Md. 92, 98 (1990). The circuit court was therefore not required to strike the filing. The absence of a signature of a person authorized by law to sign a filing is irregular, but it does not make the document null and void. *See State v. Romulus*, 315 Md. 526, 539 (1989) ("A pleading is not a nullity because of the lack of a proper signature . . . . [Such] is considered a mere irregularity or formal defect which can be remedied.") The court, then, was within its discretion in accepting the Response.

Jury Trial

Darryl briefly argues that the circuit court abused its discretion by denying his request for a jury trial.[16] At the show cause hearing, the circuit court explained that "[o]n a *de novo* appeal . . . you're not entitled to a jury trial." Moreover, the court expressed that it could not find anything in Maryland rules or statutes that allows for a jury trial when an orphans' court decision is appealed *de novo* to the circuit court. We could not either. As Gibber on Estate Administration states:

[16] In their brief, the Co-Personal Representatives concede that Darryl's Notice of Appeal included the denial of his request for a jury trial, but argue that "Appellant's brief does not include the issue as one of the questions presented for review." While technically correct, Darryl did present the question of whether the circuit court erred in denying his revisory motion, and that motion included his prayer for a jury trial. We shall address it.

> Framing and transmitting issues from the Orphans' Court to the circuit court allows for a jury trial. However, there is no right to a jury trial on a *de novo* appeal, even if the matter was heard in a bench trial in the orphans' court.

Allan J. Gibber, *Gibber on Estate Administration* § 2.103 (6th ed. 2018). We are inclined to agree with Mr. Gibson, a well-respected expert on Maryland probate law. In any event, Darryl would not be entitled to a jury trial because the Agreement is unambiguous in that it is contingent on the implied consent by the Interested Persons—shown by absence of objection within the Show Cause period—and indisputably, this did not occur. Without a dispute of material fact, there is no need for a jury trial.

CONCLUSION

For the reasons discussed above, the Settlement Agreement is unenforceable. The circuit court did not err in denying its approval, nor did it abuse its discretion in denying Darryl's revisory motion. We affirm.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. MOTION TO STRIKE APPELLANT'S REPLY BRIEF GRANTED; COSTS TO BE PAID BY APPELLANT.