

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0287

September Term, 2016

EDUCATIONAL FUNDING COMPANY,
INC.

v.

RACHEL COKINOS

Arthur,
Beachley,
Shaw Geter,

JJ.

Opinion by Beachley, J.

Filed: March 17, 2017

*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.

Appellant, Educational Funding Company, Inc. (“EFC”), appeals an order by the Orphans’ Court for Montgomery County¹ compelling it to produce documents pursuant to a subpoena *duces tecum* issued by appellee, Rachel Cokinos, in the underlying estate case. Appellant presents two questions for our review which we have reduced to a single question:

Whether the orphans’ court abused its discretion by granting appellee’s discovery request, thereby denying EFC’s motion for protective order?

We hold that the orphans’ court abused its discretion in ordering EFC to produce all documents sought by appellee in her subpoena *duces tecum*.

FACTUAL AND PROCEDURAL BACKGROUND

George Mark Cokinos (“Decedent”) died testate on April 12, 2014. Decedent’s Last Will and Testament (“Decedent’s Will”) named his brother, John Cokinos, as Personal Representative of his estate (“Personal Representative”). Decedent owned 25% of EFC’s stock at his death. Decedent’s Will instructed that his wife (appellee) and three children each receive 6.25% of his EFC stock. The shares were to be held in trust for each beneficiary in accordance with Decedent’s Will. Decedent’s Will also appointed appellee and the Personal Representative as co-trustees for each of the trusts it created.

¹ Montgomery County circuit court judges sit in rotation as the orphans’ court for that county. Md. Const., art. IV, § 20(b). When circuit court judges sit in the orphans’ court they “have and exercise all the power, authority and jurisdiction which the present Orphans’ Courts now have and exercise[.]” *Id.*

On May 26, 2015, Personal Representative filed the First Account for Decedent's estate. The First Account contained an itemized inventory of the estate's assets, and listed a 25% interest in EFC valued at \$1,267,650.00 on Schedule G. On July 29, 2015, appellee filed Exceptions to the First Account ("First Exceptions"). Of the five exceptions listed, the only exception relevant to this appeal is the following:²

Schedule G of the Inventory sets forth a 25% interest in Educational Funding Company, Inc., with a reported value of \$1,267,650.00. Upon information and belief, the Inventory is misstated in that the interest of the decedent was greater than 25% and the value of his interest is in excess of \$1,267,650.00.³

Pursuant to this exception, appellee served EFC with a subpoena *duces tecum* ("Subpoena"). The Subpoena included fifty-seven requests for documents ranging in dates from five years prior to the date of the Subpoena to the present. In separate motions, the Personal Representative and EFC sought a protective order, which appellee opposed.

On January 29, 2016, the orphans' court held a hearing regarding the motions for a protective order. At that hearing, EFC noted that Decedent's interest in the company had been appraised by Valuation Services, Inc. ("VSI"). EFC offered, subject to a protective order, to make available to appellee all documents that VSI had used to determine its appraisal value of EFC. EFC further offered to allow appellee to interview any corporate officers that VSI had interviewed during its evaluation. EFC objected, however, to the

² Of the other exceptions, two were withdrawn by appellee and two were stricken by the orphans' court.

³ At oral argument, appellee conceded that Decedent only owned 25% of the EFC stock.

disclosure of any records produced after Decedent's date of death because there was "no basis to seek current value of the stock," and "the only issue is date of death." On February 8, 2016, the orphans' court entered an order directing EFC to produce "the documents received and/or used by Valuation Services, Inc. in preparing its Valuation of a 25% Common Stock Interest in Educational Funding Company, Inc. Owned by the Estate of George Mark Cokinos as of April 12, 2014." The order also provided that, in the event appellee's expert believed the documents provided were "not sufficient to perform a valuation of the 25% interest in EFC owned by George Mark Cokinos on April 12, 2014," the expert could provide a statement to the orphans' court requesting additional documents and stating why those documents were needed.

On February 18, 2016, EFC provided appellee with the documents required by the order. On March 3, 2016, appellee filed a Line Regarding Order of February 8, 2016 Requesting Further Records of EFC ("Request"). The Request included the same fifty-seven requests for documents listed in the initial Subpoena. EFC and the Personal Representative filed oppositions to the Request. On April 1, 2016, without holding a hearing, the orphans' court entered an order requiring EFC to provide all of the requested documents. EFC timely noted this appeal.⁴

⁴EFC is not a party to the underlying estate litigation, and as a result would have no standing to challenge the April 1, 2016 order by appealing the final judgment in the estate case. *St. Joseph Med. Ctr. Inc. v. Cardiac Surgery Assocs., P.A.*, 392 Md. 75, 88 (2006). EFC is a party to this case only in respect to its Motion for Protective Order. After the orphans' court denied EFC's motion, all claims against EFC were effectively resolved. As

STANDARD OF REVIEW

“In Maryland, the rules of discovery ‘were deliberately designed to be broad and comprehensive in scope.’” *Falik v. Hornage*, 413 Md. 163, 182 (2010) (quoting *Ehrlich v. Grove*, 396 Md. 550, 560 (2007)). This broad scope allows:

[a] party [to] obtain discovery regarding any matter that is not privileged . . . if the matter sought is *relevant to the subject matter* involved in the action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party.

Md. Rule 2-402(a) (emphasis added). “Trial courts are vested with a reasonable, sound discretion in applying [the discovery rules][.]” *Falik*, 413 Md. at 182 (alteration in original) (citations and internal quotations omitted). Therefore, we consider the orphans’ court’s order in the present case under an abuse of discretion standard. *Id.* The orphans’ court abuses its discretion when “no reasonable person would take the view adopted . . . or when the court acts without reference to any guiding rule or principles.” *In re Adoption/Guardianship No. 3598*, 347 Md. 295, 312 (1997) (internal citations and quotations omitted). “An abuse of discretion may also be found where the ruling under consideration is clearly against the logic and effect of facts and inferences before the court . . . or when the ruling is violative of fact and logic.” *Id.* (internal citations and quotations omitted).

a result, the order was final as to EFC and appealable as a final judgment. *Id.* at 89. Appellee does not contest this issue.

DISCUSSION

EFC argues that the orphans' court abused its discretion by granting appellee's request for additional documents because the documents requested are "per se unnecessary for valuing the Estate's shares of EFC stock as of the date of Decedent's death."⁵ Appellee responds that because the transfer of EFC stock has yet to take place pursuant to Decedent's Will, she is entitled to "an additional appraisal of the business beyond its value at the time of her husband's death, particularly given the fact that the decedent died nearly three years ago." In her view, documents related to the financial affairs of EFC subsequent to the Decedent's death are relevant to determine the value of EFC stock "in contemplation of the future transfer [of the stock] to the beneficiaries." We agree with EFC that appellee's request for additional documents was overbroad and sought irrelevant information; accordingly, the orphans' court abused its discretion.

As a preliminary matter, we note what is at issue in the underlying estate case: appellee challenged the value and amount of Decedent's EFC stock listed in the inventory provided by the First Account. Under Md. Code (1974, 2011 Repl. Vol.), § 7-302 of the Estates and Trust Article ("ET"), the personal representative shall certify, in the initial

⁵ EFC also contends that the orphans' court's order should be reversed because appellee no longer contests that the estate holds a 25% interest in EFC. It argues the First Exceptions only challenge the percentage of EFC stock held by the estate, not its value and that this recent concession renders the exception moot. We disagree. It is not clear that this argument, raised for the first time on appeal, is properly before us. Even if it were, appellee's First Exception clearly challenges not only the percentage of EFC stock held by the estate, but also its value.

account of the estate, “[t]he total value of property [of decedent] shown in all inventories made prior to the date of the account.” ET § 7-201 provides that an inventory shall include “property owned by the decedent at the time of his death, listing each item in reasonably descriptive detail, and indicating its fair market value *as of the date of the death of the decedent[.]*” (Emphasis added). Because the statute mandates that an inventory reflect the fair market value of a decedent’s property as of the date of death, appellee’s challenge to the value of Decedent’s EFC stock listed in the First Account must be narrowly focused on the value of the EFC stock as of the date of Decedent’s death. Accordingly, documents not reasonably related to ascertaining the value of EFC’s stock as of April 12, 2014, are not relevant to the issue being litigated and therefore fall outside the scope of permissible discovery.

With this framework in mind, the orphans’ court’s order clearly grants the discovery of some categories of documents which are not relevant to a valuation of EFC stock as of April 12, 2014. For example, Item 9 requests “Cumulative General Ledger showing all transactions by account for the last 12 months.” No reasonable person could hold the view that transaction records from February 19, 2015 through February 19, 2016 (the date of appellee’s request) are relevant to determining EFC’s value as of April 12, 2014. Similarly, parts of the many requests for documents related to EFC’s activities during the last three or five years prior to the date of the request (February 19, 2016) are overbroad and irrelevant. We also agree with appellee’s concession at oral argument that appellant would not be required to create documents that do not currently exist.

We reject appellee's contention in her brief that documents relating to the financial affairs of EFC after the date of Decedent's death are relevant because EFC has continued its business operations. To the extent that appellee is claiming mismanagement of the company after April 12, 2014, those claims may be adjudicated in another proceeding or forum; they are not properly before the orphans' court on this record. Moreover, appellee's suggestion at oral argument that she has a reasonable basis for valuing the EFC stock as of the date of transfer by the estate to the trusts is not before us.⁶ As a result, we hold that the orphans' court abused its discretion in granting, without limitation, appellee's request for additional documents as contained in the fifty-seven separate requests.

It is not our function as an appellate court to determine what documents requested by appellee are relevant to the value of Decedent's EFC stock as of the date of his death. That determination must be made by the orphans' court on remand, preferably after hearing argument from the parties concerning relevance to the issue under consideration, i.e., the value of Decedent's EFC stock on the date of his death. While we recognize that discovery hearings of this nature can be arduous, time-consuming tasks, they are often necessary to establish the reasonable limits of discovery in contentious litigation.

⁶ At oral argument, appellee's counsel represented that in February, 2016, Decedent's EFC stock was transferred to the trusts established for the benefit of appellee and Decedent's three children. We note that those transfers are not reflected in the record of this case on appeal. Moreover, appellee, at oral argument, could not provide any legal or statutory basis to support her request to value the EFC stock as of a date other than Decedent's death.

JUDGMENT OF THE ORPHANS' COURT FOR MONTGOMERY COUNTY VACATED. CASE REMANDED TO THAT COURT FOR PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.