UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 309

September Term, 2016

IN THE MATTER OF THE ESTATE OF

STEPHEN TALLEY FOSTER, SR.

Meredith,
Berger,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: April 25, 2017

In this appeal, we are asked to consider whether an order of the Orphans' Court for Cecil County approving a final administration account constituted a final judgment subject to immediate appeal to the circuit court pursuant to Maryland Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article ("CJP"), § 12-502(a), even though the party seeking appellate review did not first file exceptions to the administration account in the orphans' court pursuant to Maryland Rule 6-417(f). We conclude that the filing of exceptions in the orphans' court is not a condition precedent to filing an appeal to the circuit court, and, consequently, the Circuit Court for Cecil County erred in dismissing the appeal noted by Stephen T. Foster, Jr., appellant.

QUESTION PRESENTED

Stephen T. Foster, Jr., presents one question for our review:

> Did the circuit court err by granting the personal representative's motion to dismiss the *de novo* appeal of the interested person by holding that a final judgment under [§] 12-502(a)(i) of the Courts and Judicial Proceedings [Article] is limited to an order resulting from an adjudication in the orphans' court?

We answer yes, and will reverse and remand the case to the Circuit Court for Cecil County for further proceedings.

FACTS & PROCEDURAL BACKGROUND

On November 21, 2014, Stephen T. Foster, Sr. ("Father"), passed away. Father left a last will and testament dated January 20, 2004 (the "Will"). The Will named the decedent's wife, Sharon R. Foster ("Wife"), as the personal representative of Father's estate. On February 11, 2015, Wife filed the Will with the Register of Wills for Cecil

County. Wife was subsequently named Personal Representative of Father's estate by the Orphans' Court for Cecil County, and, in that capacity, she is the appellee.

On August 11, 2015, Stephen T. Foster, Jr. ("Son"), filed a petition to caveat the Will. Son's petition, filed *pro se*, asserted:

> The alleged will filed with this court in February of 2015 and was admitted to probate by the state is fraudulent. I contend that the last page of the will that bares [sic] my father's signature was seperated [sic] from the preceeding [sic] pages and attached to a fraudulent front page that essentially disinherits myself and my sister, Tammy R. Cox.
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> This is evidenced by, but not limited to, the appearance of the top page being different than the back page. The ink appears more recently printed on the front page. The front paper is not as worn from folding etc. as the back page. There are obvious staple holes on the back page that do not correspond to the front page that shows the document was altered. The back page of this will contains my father's signature and those of the witnesses. The fraudulent front page has no signature of any kind . . . . It is obvious to me that the front page was placed after my father signed the real document. The new fraudulent front page specifically excludes myself and my sister Tammy R. Cox from any further interest in my father's estate outside of his guns. This was not my father's will.

On September 8, 2015, the Personal Representative filed a response to Son's petition to caveat, denying the allegations. On November 3, 2015, the Orphans' Court for Cecil County held a hearing on Son's petition to caveat. By order entered November 10, 2015, the orphans' court found the Will to be valid and dismissed Son's petition to caveat. Son did not file an order for appeal within 30 days after the date of that order.

On November 10, 2015, the Personal Representative filed an Amended First and Final Administration Account. The Amended First and Final Administration Account was approved by the orphans' court by order dated and filed November 17, 2015. Son did not

file any exception to the account in the orphans' court pursuant to Maryland Rule 6-417(f), which provides: "An exception shall be filed within 20 days after entry of the order approving the account and shall include the grounds therefor in reasonable detail. A copy of the exception shall be served on the personal representative." Rule 6-417(g) states: "If no timely exceptions are filed, the order of court approving the account becomes final."

On December 14, 2015, Son, through counsel, filed in the orphans' court an order for appeal to the Circuit Court for Cecil County, seeking to challenge the orphans' court's order approving the administration account. On December 17, 2015, the Personal Representative filed in the orphans' court a motion to strike and/or dismiss Son's order for appeal; the Personal Representative asserted that it was too late for Son to appeal the denial of the petition to caveat, and, because no exceptions to the account had been filed, the account could not be challenged on appeal. Son opposed the motion to strike and/or dismiss, and argued that he was entitled to seek *de novo* review in the circuit court. It appears that the orphans' court transferred to the case to the circuit court without expressly addressing the motion to strike.

On January 11, 2016, the Personal Representative filed in the Circuit Court for Cecil County a motion to dismiss Son's order for appeal. Citing *Anthony v. Clark*, 335 Md. 579, 582–83 (1994), the Personal Representative contended that Son was "time barred from appealing the Orphans' Court's Order denying the Petition to Caveat" because the November 10, 2015, order denying the petition to caveat was an appealable final judgment, and Son had not appealed this judgment within 30 days. The Personal Representative

further asserted that Son could not appeal the November 17, 2015, order approving the final administration account because there had been no "adjudication" of that issue by the orphans' court, and, according to the Personal Representative, "[w]ithout an adjudication, there is no final judgment [relative to the account]." The Personal Representative asserted that the proper procedure for challenging the account required that Son file exceptions in the orphans' court, which Son had not done. On February 29, 2016, Son filed an opposition to the Personal Representative's motion to dismiss, contending that the orphans' court's order of November 17, 2015, approving the administration account, was a final judgment, and, therefore, Son's order for appeal to the circuit court was timely.

On March 16, 2016, the circuit court held a hearing on the Personal Representative's motion to dismiss, and, at the conclusion of the hearing, granted the motion. *See* Maryland Rule 7-507(a) ("the circuit court may dismiss an appeal for any of the following reasons: (1) the appeal is not allowed by law; . . . ."). The circuit court explained its reasoning:

> [T]he statutory scheme after Governor's Commission rewrote all of the estate laws several years ago, was to provide a method whereby someone, an interested party, aggrieved by a decision, or an order more correctly, of the orphans' court has a way to raise the issue before the orphans' court for adjudication; and that was done by filing exceptions. Under the statute and the rules when one filed exceptions, for example, to an accounting, the court has to have a hearing and rule on it. And when the court rules on it, the court has to make findings with regard to whatever the issues that were presented by the exceptions to the accounting may have been.
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> If [Son] is correct in this case, then in every estate that is handled by administrative probate, there could be sandbagging going on. The type of sandbagging that could be going on is somebody could deliberately wait for the twenty days to expire, not take exceptions, and then take a *de novo* appeal to the circuit court and bypass the orphans' court's responsibility to, in the

> first instance, rule on that. It is not my belief that that was the intention of the legislature, nor of the Rules Committee.
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> The requirement to take exceptions is there for a reason. If, in fact, one could ignore the requirement to take exceptions, every mention of the statute and in the rules about exceptions amounts to a nullity, because there's no reason to obey it. It would also have the effect of removing the requirement of the --- or the ability of the orphans' court in the first instance to rule on a contested issue. So that the first opportunity for that matter to be adjudicated would be in the circuit court.
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> That is clearly to me not what the Estates and Trusts Article and Subtitle --- and Title 6 of the rules ever envisioned; because as I said, the requirement to take exceptions would be totally meaningless.
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> * * *
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> Secondly, I agree with [the Personal Representative's counsel] that there was no final order in this case that has ever been passed by the orphans' court in the sense of an judicial order, rather than a purely administrative order approving the accounting, which makes it very clear that the approval is subject to the twenty days to take exceptions.
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> So I think clearly the personal representative has the better of the argument. So I'm going to grant the motion to dismiss for all of those reasons.

After the circuit court granted the Personal Representative's motion to dismiss, Son noted an appeal to this Court.

STANDARD OF REVIEW

Because the circuit court's dismissal of Son's appeal was based upon the circuit court's interpretation of a statute and rule, we review the circuit court's ruling *de novo*. *Howard v. State*, 440 Md. 427, 434 (2014) ("An appellate court reviews without deference a trial court's interpretation of a statute or a Maryland Rule."). *See also Griffin v. Lindsey*, 444 Md. 278, 285 (2015) ("We review questions of law without deference [to the circuit

court].”); *Hartford Fire Insurance Company v. Estate of Robert L. Sanders*, ___ Md. App. ___ , ___, Slip op. at 20, No. 2013, Sept. Term, 2015 (filed March 2, 2017) (“we review [questions of law] *de novo*”).

DISCUSSION

Section 12-502 of the Courts and Judicial Proceedings Article governs appeals to the circuit court from “a final judgment of an orphans’ court.” It states:

Appeals to circuit court

(a)(1) (i) Instead of a direct appeal to the Court of Special Appeals pursuant to § 12-501 of this subtitle, a party may appeal to the circuit court for the county from a final judgment of an orphans’ court.

(ii) The appeal shall be heard *de novo* by the circuit court.

(iii) The *de novo* appeal shall be treated as if it were a new proceeding and as if there had never been a prior hearing or judgment by the orphans’ court.

(iv) The circuit court shall give judgment according to the equity of the matter.

(2) This subsection does not apply to Harford County or Montgomery County.

Time of appeal

(b)(1) An appeal pursuant to this section shall be taken by filing an order for appeal with the register of wills within 30 days after the date of the final judgment from which the appeal is taken.

(2) Within 30 days thereafter the register of wills shall transmit all pleadings and orders of the proceedings to the court to which the appeal is taken, unless the orphans’ court from which the appeal is taken extends the time for transmitting these pleadings and orders.

This Court observed in *Carrick v. Henley*, 44 Md. App. 124, 127 n.1 (1979): "If a party appeals to the Circuit Court under § 12-502(a) a further appeal may be made from the final order of that court to this Court."

Son contends that the circuit court erred in ruling that the November 17, 2015, order of the orphans' court approving the amended first and final administration account was not a final judgment that could be appealed to the circuit court pursuant to CJP § 12-502(a). He argues that the orphans' court's order was one that finally settled the rights of parties. He states in his brief: "[A] final Order approving an Amended First and Final Administration Account seeks final approval of Estate expenses that have been paid, documents the sources of income to the Estate, and provides for the final distribution of all monies and assets to certain legatees or heirs."

The Personal Representative, on the other hand, contends that the circuit court was correct in granting the motion to dismiss because, she argues, the order approving the administration account was not a final judgment. The Personal Representative emphasizes the seemingly mandatory language of Rule 6-417(f), which states: "An exception *shall* be filed within 20 days after entry of the order approving the account and shall include the grounds therefor in reasonable detail." (Emphasis added.) The Personal Representative asserts that, "[i]n the absence of exceptions, no hearing takes place and no adjudication is undertaken by the orphans' court." Therefore, the Personal Representative argues, because Son did not file any exceptions in this case, "[t]he orphans' court made no adjudication with respect to the approval of the amended first and final administration account," and no

final judgment was rendered when the orphans' court entered its order on November 17, 2015, approving the Personal Representative's administration account.

Addressing an argument relative to the appealability of an orphans' court's order in *Beyer v. Morgan State University*, 139 Md. App. 609, 630 (2001), we noted: "'A judgment generally is considered "final" if it determines and concludes the rights involved, or denies the appellant the means of further prosecuting [his] rights and interests in the subject matter of the proceeding.'" (Quoting *Hegmon v. Novak*, 130 Md. App. 703, 707 (2000)). We concluded that the orphans' court order being challenged in *Beyer* -- an order granting an attorney's fee petition filed pursuant to Maryland Rule 6-416(a) -- was final and appealable because it approved the immediate payment of legal fees to the attorney. We observed that "it was '"so far final as to determine and conclude the rights involved in the action, or to deny to the party seeking redress by the appeal the means of further prosecuting or defending his rights and interests in the subject matter of the proceeding."'" *Beyer*, *supra*, 139 Md. App. at 632 (quoting *Grimberg v. Marth*, 338 Md. 546, 551 (1995)). It was, we concluded, an order that "actually settled the rights of the parties." *Id*. at 632.

Like the orphans' court's orders in *Beyer*, the order approving the final administration account in this case actually settled the rights of the parties. Indeed, Rule 6-417(g), plainly states: "If no timely exceptions are filed, the order of the court approving the account becomes final." As we stated in *Beyer*, *supra*, 139 Md. App. at 631: "When analyzing a statute or rule, 'we seek to avoid constructions that are illogical, unreasonable, or inconsistent with common sense.' *Frost v. State*, 336 Md. 125, 137, 647 A.2d 106 (1994)

(citations omitted)." It would defy common sense to say that the final order entered by an orphans' court approving an administration account and distribution of the estate's assets is "final" under Rule 6-417(g), but not final for purposes of being appealable.

The Personal Representative seems to argue that a party who wishes to challenge an order of the orphans' court must make an irrevocable election: either file exceptions in the orphans' court, and then pursue a *de novo* appeal in the circuit court after the orphans' court rules on the exceptions, or else lose the right to pursue a *de novo* appeal in the circuit court. The Personal Representative argues in her brief:

> The orphans' court made no adjudication with respect to the approval of the amended first and final administration account. The order approving the account was a ministerial act of the court in processing an estate through administrative probate. Had Appellant followed the proper procedure and filed exceptions to the approval of the administration account within twenty days, then the orphans' court would have held a hearing and the order resulting from that adjudication would be an appealable final judgment.
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> Appellant argues that one in his position has the option of either filing exceptions within twenty days of an order approving an administration account or noting an appeal within thirty days of that same order. This view, however, would render the entire exceptions procedure a nullity.

This argument would have more merit if the only avenue of appeal available was an appeal on the record. When the appeal is on the record, an objecting party who did not file exceptions to an account would have failed to preserve appellate arguments for rejecting the account. But, when a party appeals to the circuit court pursuant to CJP § 12-502, that court hears the issues *de novo*, and any proceedings on exceptions in the orphans' court would have no effect on the appeal. As CJP § 12-502(a)(1)(iii) expressly provides: "The *de novo* appeal shall be treated as if it were a new proceeding and as if there had never been

a prior hearing or judgment by the orphans' court." There may be cases in which the objecting party believes that the issues can be litigated more effectively in a *de novo* hearing in the circuit court; in those cases, a requirement of filing exceptions as a condition precedent to filing the *de novo* appeal would result in unnecessary delay and expense. *Cf. Rome v. Lowenthal*, 290 Md. 33, 42 (1981) ("In [a *de novo* appeal pursuant to CJP § 12-502] a circuit court . . . is not engaged in an appellate review of whether the orphans' court made the proper determination upon the basis of what was before it, but is expected to make its own determination on the evidence brought before it. To require the preparation of a transcript of testimony would be to dictate the performance of a superfluous act.").

Our conclusion is consistent with our ruling in *Beyer*, *supra*, 139 Md. App. 609. In that case, we concluded that a *de novo* appeal to the circuit court could be pursued to challenge an order granting a petition for attorney's fees pursuant to Rule 6-416(a)(5) even though the party appealing had not filed exceptions to the fee petition. Like Rule 6-417(f), Rule 6-416(a)(5) imposes a time limit requiring that "[a]n exception shall be filed with the [orphans'] court within 20 days after service of the petition [for allowance of attorney's fees or personal representative's commissions]." And, like Rule 6-417(g), Rule 6-416(a)(6) provides that, "[i]f timely exceptions are not filed, the order of the [orphans'] court allowing the attorney's fees or personal representative's commissions becomes final." After the orphans' court issued an order granting Beyer's petition for attorney's fees and expenses. Morgan State appealed the order to the circuit court pursuant to CJP § 12-502(a), and argued that Beyer had failed comply with certain notice provisions of Maryland Rule

6-416. As noted, Morgan State had not filed any exceptions to Beyer's petition for attorney's fees -- as it was permitted to do under Rule 6-416(a)(5) -- prior to the orphans' court's issuance of its order. *Id*. at 632. Beyer contended on appeal that the orphans' court's order was not an appealable order (although she apparently did not expressly raise the lack of exceptions as a condition precedent to an appeal). *Id*. at 630. We disagreed with Beyer, and held that the orphans' court's order was a final appealable order, explaining:

> In this case, the order granting appellant's Attorney's Fee Petition was final on September 9, 1998, the day it was issued, because no exception was filed within 20 days of service of the petition. M[organ State] could have moved to vacate the order on the ground that it did not receive service, or proper service, of the petition. Alternatively, it could have noted an appeal to the circuit court from the order, within 30 days of its issuance. [CJP] § 12-502(a)(1)(i). M[organ State] opted to take a *de novo* appeal to the circuit court.

Id. at 632.

We concluded in *Beyer* that, even though Morgan State "could have raised" its argument regarding lack of notice in the orphans' court, the fact that it failed to do so "did not mean . . . that the order [approving the fee petition] was not final, and thus not appealable to the circuit court. The order finally determined the rights of the parties respecting the payment of a fee to [Beyer], as the personal representative (as well as payments to others that were requested by her). Accordingly, it was a final judgment."

Similarly, in this case, we conclude that, although Son was *permitted* to file exceptions to the administration account pursuant to Rule 6-417(f), nothing in that rule states that a party who fails to file exceptions is precluded from raising objections in a *de novo* appeal to the circuit court pursuant to CJP § 12-502. *Cf. Kaouris v. Kaouris*, 324 Md.

687, 715–16 (1991) (observing that, ordinarily, "[a] party is foreclosed from challenging, for the first time on appeal, the propriety of the exercise by a court of its power to act. Where, however, the appeal is from an orphans' court to a circuit court, pursuant to Courts Article § 12-502, the exercise of that orphans' court's power may be challenged in the circuit court even though the issue was not raised in the orphans' court. This is so because the matter is heard *de novo*.").

As was the case with respect to the orphans' court order at issue in *Beyer*, *supra*, 139 Md. App. at 632, once the orphans' court's order approving the amended first and final administration account was filed in this case on November 17, 2015, appellant had the right to note a *de novo* appeal to the circuit court within 30 days. On December 14, 2015, Son filed an order for appeal to the Circuit Court for Cecil County, within the 30 days allotted under § 12-502(b)(1). The circuit court erred in dismissing Son's appeal. We will remand the case for further proceedings.

We note, however, that we agree with the Personal Representative's assertion that Son timely appealed only the orphans' court's order approving the administration account; and Son did not note a timely appeal of the orphans' court's order that was entered on November 10, 2015, denying his petition to caveat. As the Court of Appeals made plain in *Anthony v. Clark*, *supra*, 335 Md. at 593, that order was final and appealable on the date it was filed, and "an appeal of that order should have been taken within thirty days of its entry." *Id*. Because Son did not file an order for appeal within 30 days after his petition to

caveat was denied on November 10, 2015, he lost the right to challenge that ruling on appeal.

JUDGMENT OF THE CIRCUIT COURT FOR CECIL COUNTY REVERSED; CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.