

Circuit Court for St. Mary's County  
Case No. 16580

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 567

September Term, 2016

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ROBERT L. BAKER

v.

JOSEPH M. BAKER

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Nazarian,  
Arthur,  
Friedman,

JJ.

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Opinion by Nazarian, J.

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Filed: August 4, 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.

Robert Baker (“Robert”) challenges a May 26, 2016 Order of the Orphan’s Court for St. Mary’s County denying his petition and motions to remove Samuel C. P. Baldwin as administrator of his mother Viola Baker’s (“Mother”) estate.<sup>1</sup> He advances a broad array of challenges, variously attacking the orphan court’s operation of its courtroom, its authority to make decisions with only two judges available, and its discretionary decisions to limit Mr. Baldwin’s authority and retain Mr. Baldwin as the administrator of Mother’s estate, despite a history of representation that Robert claims constitutes a conflict of interest. We affirm.

## I. BACKGROUND

Mother died intestate on December 7, 2013, and the orphan’s court appointed Robert the personal representative of her estate. Disputes about Robert’s administration of the estate arose among Robert and his siblings, and these led his brother Joseph to file a Petition for Removal of Personal Representative and Appointment of a Disinterested Third Party Personal Representative on September 22, 2014. In a hearing in the orphan’s court on December 23, 2014, Joseph, Robert, and their sisters Rebecca and Cynthia, through their attorneys, came to an agreement disposing of Joseph’s petition. The siblings agreed that they would attempt to choose unanimously a personal representative to replace Robert within 21 days of the hearing date, and that if they couldn’t agree on a candidate in 21 days the court would appoint one for them. The court approved the agreement. But the parties

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<sup>1</sup>We refer to members of the Baker family by first name (including Robert Baker, Joseph Baker III, Rebecca Baker, and Cynthia Baker) or family title (Viola Baker, as “Mother”) to avoid confusion.

could not agree on a replacement within 21 days, and on January 27, 2015, the court appointed Mr. Baldwin as Successor Personal Representative.

On February 11, 2015, Robert, acting *pro se*, filed a Petition to Remove Mr. Baldwin as Personal Representative. The court scheduled a hearing on the motion for April 28, 2015. But before the hearing date, on February 24 and 25, Robert filed a Notice of Appeal and an Amended Notice of Appeal, respectively, appealing the order removing him as personal representative and appointing Mr. Baldwin as successor. Also on February 24, 2015, and in light of Robert's petition, the orphan's court amended Mr. Baldwin's role in Mother's estate from personal representative to special administrator. On March 10, 2015, the orphan's court issued an order postponing the April 28 hearing and staying the matter until Robert's appeal was addressed by this Court.

On February 11, 2016, we issued an unreported opinion resolving Robert's February 24 and 25, 2015 appeal. *In re: Estate of Baker*, No. 2667, Sept. Term 2014 (Md. App. Feb. 11, 2016). In that opinion, we affirmed the order removing Robert and appointing Mr. Baldwin. *Id.*, slip op. at 1. We found that Robert had agreed to the terms of the plan to choose a replacement for him at the December 23, 2014 hearing, despite his contention that he hadn't. *Id.*, slip op. at 11–12.

On July 21, 2015, Robert filed two more motions to remove Mr. Baldwin, one from the personal representative position and the other from the special administrator position. On May 24, 2016, the orphan's court held a hearing on Robert's petition and motions to remove Mr. Baldwin. Robert, Joseph, and Mr. Baldwin were all present. On May 26,

2016, the orphan's court produced an order denying Robert's February 11, 2015 petition and both of his July 21, 2015 motions. Robert appealed. We introduce additional facts as necessary for our discussion below.

## II. DISCUSSION

Robert challenges the May 26, 2016 Order of the orphan's court denying his petition and motions to remove Mr. Baldwin as personal representative of Mother's estate. He presents six issues in his brief<sup>2</sup> that we have condensed and reordered. *First*, Robert argues

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<sup>2</sup> Robert phrased the Questions Presented in his brief as follows:

1. When the Appellant filed a motion to remove Mr. Baldwin as Personal Representative of the Estate, was it appropriate for the Orphans Court to respond to Appellant's motion by naming Mr. Baldwin as Special Administrator of the Estate?
2. In its order denying the appellant's motions to remove Mr. Baldwin as Special Administrator and/or Personal Representative of the Estate, did the orphan's court fail to consider bias and a conflict of interest on the part of Mr. Baldwin against the Appellant?
3. Is the appointment of Mr. Baldwin by the Orphan's court as Personal Representative or as Special Administrator of the estate in violation of the Maryland Rules of Professional Conduct, 1.7?
4. Did the Orphan's court rule on this matter without the requisite three judges as required?
5. Did the Orphan's Court give instructions that improperly restricted the Appellants ability regarding the amount and/or type of questions the Appellant could raise at hearing?

that Mr. Baldwin was appointed improperly as personal representative of Mother’s estate because the appointment occurred pursuant to a settlement to which Robert did not agree. *Second*, he contends that the orphan’s court erred in naming Mr. Baldwin as special administrator of the estate after he filed the petition to remove Mr. Baldwin as personal representative. *Third*, Robert contends that for an order from the orphan’s court to be valid, three judges must sit at the hearing and sign off on the order, and that neither of these requirements was met for the May 26, 2016 Order. *Fourth*, he argues that the orphan’s court should not have prevented him from asking Mr. Baldwin questions at the May 24, 2016 hearing. *Fifth and finally*, Robert contends that Mr. Baldwin has a conflict of interest with Robert that precludes him from serving as personal representative of Mother’s estate.

We review for abuse of discretion orphan’s court’s decisions involving the powers of an administrator or the conduct of hearings. *See Ehrlich v. Grove*, 396 Md. 550, 560–61 (2007). Abuse of discretion occurs “where no reasonable person would take the view adopted by the trial court or when the court acts without reference to any guiding rules or principles. It has also been said to exist when the ruling under consideration appears to have been made on untenable grounds[.]” *North v. North*, 102 Md. App. 1, 13 (1994) (internal citations and quotations omitted). We review decisions of law *de novo*, in this case whether an orphan’s court has the authority to make decisions with only two judges sitting. *See Lamone v. Schlakman*, 451 Md. 468, 479 (2017).

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6. Is the appointment of Mr. Baldwin in accordance to the terms which the appellant agreed to, regarding the appointment of a successor personal representative?

**A. Mr. Baldwin’s Appointment As Personal Representative Is Not At Issue In This Appeal.**

Robert argues *first*, implicitly through a question he raises in his brief, that Mr. Baldwin was appointed according to terms of a settlement agreement to which Robert did not actually agree. This issue is not currently before us. Indeed, we already addressed it in our February 11, 2016 opinion. *See In re: Estate of Baker*, No. 2667, slip op. at 7–8. In that opinion, we found that Robert agreed with his siblings that together they would attempt to find a personal representative to replace him, and that if they were unable to agree on a successor, the court would step in and appoint one. *Id.*, slip op. at 10–11. We found that the court approved the agreement and then acted in accordance with it, first by giving the siblings time to find a replacement, and then by stepping in and appointing Mr. Baldwin. *See id.* And because the May 26, 2016 Order and the record of *this* case do not revisit the issue of whether Mr. Baldwin’s appointment was proper, we decline to address it here. *See* Md. Code (2006, 2013 Repl. Vol.), § 12-501(a) of the Courts & Judicial Proceedings Article (requiring a final order of the court from which an appeal may be taken); *Bussell v. Bussell*, 194 Md. App. 137, 147 (2010).

**B. The Orphan’s Court Did Not Abuse Its Discretion By Naming Mr. Baldwin Special Administrator Of Mother’s Estate.**

Robert contends *second* that the orphan’s court improperly redesignated Mr. Baldwin as special administrator to Mother’s estate. He argues the redesignation was improper because it occurred “while the motion to remove Mr. Baldwin as Personal Representative was being considered.” We disagree.

Maryland Code (2001, 2011 Repl. Vol.), § 6-401 of the Estates and Trusts Article

(“ET”) authorizes Orphan’s Courts to appoint special administrators to estates:

(a) *When appointed.* — Upon the filing of a petition by an interested party, a creditor, or the register, *or upon the motion of the court*, a special administrator may be appointed by the court whenever it is necessary to protect property prior to the appointment and qualification of a personal representative *or upon the termination of appointment of a personal representative* and prior to the appointment of a successor personal representative.

(b) *Qualifications.* — A suitable person may be appointed as a special administrator, but *special consideration shall be given to persons who will or may be ultimately entitled to letters as personal representatives* and are immediately available for appointment.

(emphases added). By the plain language of the statute, orphan’s courts have authority to appoint special administrators *sua sponte*, and are required to give special appointment consideration to people entitled to be personal representatives. In *Banashak v. Wittstadt*, 167 Md. App. 627, 652 (2006), we described a scenario in which the appointment of a special administrator might be appropriate:

The reason for the diminution of the [personal representative’s] authority is self-evident. In the controversy-free environment of administrative probate, the personal representative and the heirs are presumptively one happy family, working toward a common goal. Governmental (judicial) supervision of the process can be relatively minimal, simply requiring that some basic rules be followed and that appropriate costs be paid.

When the process downshifts into the more combatic mode of judicial probate, however, the supervisory reins are pulled far tighter. A caveat may pit one group of expectant beneficiaries against another, and *the fear frequently arises*

*that the administrator of the estate may be favoring one group against the other or even favoring his own interests against them both. In an atmosphere thus rife with confrontation and the possibly hair-trigger outbreak of conflict, the Orphan's Court understandably circumscribes the administrator's discretionary authority and intervenes more actively. An erstwhile personal representative will be constrained to act with the more limited authority of a special administrator, or he may simply be replaced by a court-appointed special administrator. Carrick v. Henley, 44 Md. App. 124, 131 (1979)[.]*

(emphases added). The situation here fits neatly within the statute and case law. The orphan's court decided that Mr. Baldwin shouldn't have full authority to operate the estate while Robert's petition to remove him was pending, so it reduced Mr. Baldwin's authority by redesignating him special administrator of Mother's estate in the meantime. In doing so, the court effectively suspended his appointment as personal representative temporarily. The court's actions were authorized and reasonable, and we find no error.

**C. Two Orphan's Court Judges May Hear A Case And Fully Adjudicate It If A Third Judge Is Not Available.**

Robert argues *third* that the orphan's court must have three judges to hold a hearing and to make legally binding decisions. He is incorrect. ET § 2-106 provides an orphan's court full authority to act and operate when it only has two judges as it would if it had three judges.

**D. The Orphan's Court Did Not Abuse Its Discretion When It Limited Robert's Ability To Question Mr. Baldwin.**

Robert argues *fourth* that the orphan's court improperly limited his ability to interrogate Mr. Baldwin at the May 24, 2016 hearing on his motion to remove Mr. Baldwin



as administrator of Mother’s estate. Robert misapprehends the operation of a courtroom in a motions hearing.

Orphan’s courts follow the Maryland Rules. *See* ET § 2-104 (“The Maryland Rules for the summoning of a witness, and for depositions and discovery, apply to all actions.”); *see also* ET § 2-102(b) (“The court may not establish rules of practice and procedure inconsistent with the Maryland Rules or with any statute.”). Under Rule 5-611, courts have broad control over the presentation of evidence and management of court proceedings. They are tasked with “(1) mak[ing] the interrogation and presentation [of evidence] effective for the ascertainment of the truth, (2) avoid[ing] needless consumption of time, and (3) protect[ing] witnesses from harassment or undue embarrassment.” Rule 5-611.

To remove a personal representative, as Robert petitioned, the court must find that the representative:

- (1) Misrepresented material facts in the proceedings 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 his 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(b)(6) of this article; or
- (6) Has failed, without reasonable excuse, to perform a material duty pertaining to the office.

ET § 6-306. Robert’s petition to remove Mr. Baldwin as personal representative alleges no misrepresentation of material fact, disregard of the court’s orders, incompetence, mismanagement of the estate, or failure of a material duty. Nor did Robert make out a *prima facie* case for removing Mr. Baldwin as representative in his argument at the May 24, 2016 hearing. The record reveals that the court concluded that there were no material facts in dispute, and that further presentation of evidence was not necessary. And since “[i]t is a well-established principle that trial judges are presumed to know the law and to apply it properly,” *Aventis Pasteur, Inc. v. Skevofilax*, 396 Md. 405, 426 (2007) (citation and internal quotations omitted), we presume here that the sitting judges acted within their discretion to control their courtroom by limiting Robert’s ability to put on evidence. We see no abuse of discretion.

**E. Mr. Baldwin Does Not Have A Conflict Of Interest With Robert That Requires His Removal As Personal Representative Or Special Administrator Of Mother’s Estate.**

*Fifth* and *finally*, Robert argues that because Mr. Baldwin represented him in a previous matter, Mr. Baldwin has a conflict of interest that should preclude him from acting in an administrative capacity with respect to Mother’s estate. Robert cites the Maryland Attorneys’ Rules of Professional Conduct (“MARPC”) covering conflicts of interest as support for his contention. Robert again misapprehends the law.

Mr. Baldwin’s law firm represented Robert in the filing of a Petition for Guardianship of Mother from approximately October 2005 to August 2006. On August 18, 2006, after providing Robert notice of his intent to withdraw as counsel, firm lawyer

Troy C. Hansen filed a Motion to Withdraw with the circuit court, and the court granted the motion on August 25, 2006. At that time, Mr. Baldwin’s affiliation with Robert’s guardianship petition matter ceased. The court did not enter any orders relating to Robert’s guardianship petition until over a year later, on August 31, 2007. Mother’s estate did not open until April 21, 2014, almost eight years after the firm withdrew from representing Robert in the guardianship petition.

MARPC 1.9 covers an attorney’s responsibilities to former clients. MARPC Rule 1.9(a). It states in relevant part:

An attorney who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person’s interests are materially adverse to the interests of the former client . . . .

*Id.* Matters are substantially related “if they involve the same transaction or legal dispute or if there otherwise is a substantial risk that confidential factual information as would normally have been obtained in the prior representation would materially advance the client’s position in the subsequent matter.” MARPC Rule 1.9, cmt. 3.

By representing Robert in his guardianship petition for Mother and later administering Mother’s estate, first as personal representative and then as special administrator, Mr. Baldwin did not create a conflict of interest. Although both matters *could* have involved marshaling the same assets, Mr. Baldwin’s firm withdrew its affiliation from Robert’s guardianship matter well before the guardianship was granted and Robert gained power over Mother’s assets. Mr. Baldwin was only affiliated with his firm’s representation of Robert while Robert *filed the petition* for guardianship. Guardians are

only appointed when disabled persons “lack[] sufficient understanding or capacity to make or communicate responsible decisions concerning [their] person[s],” and Robert’s petition would have only involved proving Mother’s lack of capacity, his qualification for the position, and that no less restrictive means of intervention were available. ET §§ 13-705(b), 13-707. None of that information would be of use to Mr. Baldwin as administrator of Mother’s estate.

Robert attempts to color his conflict of interest contentions with details of Mr. Baldwin’s personal animus towards him, but points to no findings of the circuit court or evidence in the record to back them up. Robert’s petition and motions to remove Mr. Baldwin as administrator of Mother’s estate demonstrate that Robert was upset about his own removal from the position, but do not reveal a conflict of interest. Accordingly, we find that the orphan’s court did not abuse its discretion when it denied Robert’s motion to remove Mr. Baldwin as administrator of Mother’s estate.

**JUDGMENT OF THE ORPHAN’S COURT  
FOR ST. MARY’S COUNTY AFFIRMED.  
APPELLANT TO PAY COSTS.**