

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2237

September Term, 2015

LINDA ANN DOUGLAS

v.

CHARLENE JOHNSON

Arthur,
Reed,
Zarnoch, Robert A.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: July 11, 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.

After the death of her mother, Linda Douglas, appellant, was appointed as the personal representative of her mother’s estate. Soon after, disagreements between appellant and her brother, Robert Douglas III, arose regarding the administration of the estate. In particular, Mr. Douglas took exception to the appraisal appellant had submitted to the court for their mother’s house. Mr. Douglas requested that the court obtain an accurate appraisal of the estate’s real property. On April 28, 2015, the Orphans’ Court for Prince George’s County held a hearing on the appraisal issue. During the hearing, it became apparent to the court that extensive acrimony existed between appellant and her brother. As a result, the court removed appellant as the personal representative, and appointed Charlene Johnson, appellee, as the successor personal representative. Appellant appealed her removal to the Circuit Court for Prince George’s County, arguing that the Orphans’ Court never provided her with notice prior to removing her as the personal representative. Although the circuit court agreed with appellant that the Orphans’ Court did not follow the proper procedure prior to her removal, the court concluded that appellant’s removal was still the correct decision due to the significant acrimony between appellant and her brother.

Appellant appealed, and now presents one question for our review:

Did the circuit court err by removing appellant as personal representative?¹

¹ Appellant stated her questions presented in her brief as:

When the Circuit Court is confronted with a ruling of the Orphans’ Court which effectively disregards statutory law and which denied the constitutional right to
(Continued . . .)

For the following reasons, we answer no to this question and affirm the judgment of the circuit court.

BACKGROUND

On October 27, 2012, Sadie Douglas died intestate, leaving her two children, appellant and Mr. Douglas, as her only heirs. Appellant was appointed as the personal representative of her mother’s estate. On July 2, 2014, appellant filed the estate’s First Account with the Orphan’s Court. The First Account was later approved on February 26, 2015. Mr. Douglas, believing that the appraisal appellant received for the estate’s real property was too low, requested that the Orphan’s Court obtain an accurate market value appraisal of the property. The Orphan’s Court responded by scheduling a hearing to address the appraisal of the real estate. The notice sent out to the parties stated that the hearing was regarding the “Request for accurate appraisal of real property.” On April 28, 2015, the court held a hearing on the appraisal issue. During the hearing, the parties argued back and forth over what to do with their mother’s house, and it became clear to

(. . . continued)

reasonable notice and due process, it is incumbent upon the Circuit Court to rectify the imposed injustice and to correct the error on the part of the lower Court?

Rules 2-534 and 3-535(b) state: “On 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.

Did the Circuit Court err by holding a hearing on the issue of the removal of the Appellant as personal representative, as the Orphan’s Court never held a hearing on this issue, and the Circuit Court lacks jurisdiction in this matter, as the Orphans’ Court has original jurisdiction in issues concerning probate?

the court that the animosity between appellant and Mr. Douglas was extensive. Due to the acrimony between appellant and Mr. Douglas, the court decided to remove appellant as personal representative. On May 5, 2015, the court issued an order appointing appellee as the successor personal representative.

Appellant appealed her removal to the Circuit Court for Prince George’s County. On December 9, 2015, the circuit court held a non-jury trial on appellant’s removal as personal representative. Appellant’s counsel argued that the Orphans’ Court did not follow the proper procedure required prior to removing appellant, because she was never given notice prior to the hearing. Accordingly, appellant’s counsel argued that appellant should be reinstated as the personal representative and the case remanded back to the Orphan’s Court. Both appellant and Mr. Douglas testified to the court about their relationship. The court also listened to arguments from appellant’s counsel and appellee. The court agreed with appellant that the Orphan’s Court did not follow the proper procedure for removing a personal representative, because it did not give her notice prior to the hearing. However, due to the intense acrimony between the parties, the court concluded that appellant was unable to discharge the duties and powers of a personal representative effectively. Accordingly, the court affirmed the Orphan’s Court’s decision to remove appellant. The court issued a written order that same day finding:

While in a perfect world, the Orphan’s Court should have given notice to the personal representative that she could be removed at the hearing, the court finds based upon the pleadings, the presentation of the parties and counsel that under Md. Estates and Trusts 6-306; the personal representative should have been removed. The court in essence affirms the Orphan’s Court and

returns the case immediately to the Orphan’s Court for effective administration of this estate.

Appellant filed her notice of appeal on December 17, 2015.

STANDARD OF REVIEW

“When an action has been tried without a jury, the appellate court will review the case on both the law and the evidence. It will not set aside the judgment of the trial court on the evidence unless clearly erroneous, and will give due regard to the opportunity of the trial court to judge the credibility of the witnesses.” Md. Rule 8-131(c). “If there is any competent material evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous.” *YIVO Inst. For Jewish Research v. Zaleski*, 386 Md. 654, 663 (2005). “The appellate court must consider evidence produced at the trial in a light most favorable to the prevailing party and if substantial evidence was presented to support the trial court’s determination, it is not clearly erroneous and cannot be disturbed.” *Clickner v. Magothy River Ass’n Inc.*, 424 Md. 253, 266 (2012).

DISCUSSION

Appellant argues that the court did not follow the correct procedure as outlined in the Estates & Trusts Article when it removed her from her position as personal representative. Specifically, appellant was not given notice that she could be removed prior to the hearing. Appellant contends that the Orphan’s Court ruling should have been reversed and remanded by the circuit court, because the matter had not had a proper trial below in the Orphan’s Court. Appellant further argues that her removal was in error because she had performed all her duties accurately and timely.

During the December 9, 2015 hearing, the circuit court acknowledged that the Orphans’ Court did not follow the proper procedure before it removed appellant as personal representative. Specifically, the court looked to the Estates & Trusts Article, which provides that:

A hearing shall be conducted by the court prior to the removal of a personal representative. The hearing may be held on the motion of the court, on motion of the register, or on written petition of an interested person. **Notice of hearing shall be given by the register to all interested persons.**

Md. Code (1974, 2011 Repl. Vol.), Estates & Trusts Article (“ET”), § 6-306(c) (emphasis added). Under the language of the statute, it is clear that notice was required prior to the hearing on appellant’s removal. As appellant has argued, no notice was given that the hearing would involve her removal. The notice sent out by the Orphan’s Court only stated that the hearing would address Mr. Douglas’ “request for accurate appraisal of real property.” Thus, appellant is correct that the Orphans’ Court did not follow the proper procedure prior to conducting the hearing on her removal.

However, despite appellant’s contentions to the contrary, it was proper for the circuit court to conduct an independent hearing on her removal. The Maryland Code provides the following guidance with regard to appeals from the Orphans’ Court to the 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.

Md. Code (1973, 2013 Repl. Vol.), Courts and Judicial Proceedings Article (“CJP”), § 12-502(a) (emphasis added). As provided by the statute, the circuit court treated the appeal “as if there had never been a prior hearing or judgment by the orphans’ court.” CJP § 12-502(a)(1)(iii). In accordance with this provision, it proceeded to conduct its own hearing on whether appellant should be removed—a hearing that appellant had notice of. This *de novo* proceeding cured any defect in notice before the Orphans’ Court.

A personal representative may be removed from office if the court finds that he or she did one of the following things:

- (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(c)(6) of this article; or
- (6) Has failed, without reasonable excuse, to perform a material duty pertaining to the office.

ET § 6-306(a) (emphasis added). The court in the instant case relied upon ET § 6-

306(a)(3) in removing appellant as the personal representative. At the conclusion of the hearing, the court stated that:

Based on what I see, what I hear and what I read in these proceedings, there is no question in my mind here . . . **because of the acrimony between the two of them, without her fault because she will be self-dealing with this, is unable to discharge the duties and powers effectively.** The key is effectively. The key is effectively and the key word is effectively because in that situation I'm looking at it in the administration of justice, I'm looking at it from the interest of justice, I'm looking at it in judicial economy. I'm looking at effectively and it's very abundantly clear to this member of the bench that she cannot effectively do this because . . . of her personal problems with her brother and her brother's personal problems with her.

(Emphasis added).

The court's conclusion was supported by the evidence and testimony presented prior to and during the hearing. The acrimony between appellant and her brother is undeniable, and was thoroughly documented in the record. The court file contained many letters from appellant and her brother regarding their fights over the estate and protective orders back and forth against each other, which the court described as "three inches of acrimony."

The seemingly irreconcilable hostility was also detailed in the testimony given by the parties at the circuit court hearing. The testimony showed that appellant and her brother were both living in their mother's house, with appellant living downstairs and Mr. Douglas living upstairs. Despite living together, Mr. Douglas claimed that they had not spoken in about ten months. Both parties indicated to the court that they wanted the property for themselves. Mr. Douglas testified that appellant made several attempts at

having him removed from the house, including three false assault charges and seeking a protective order against him. Mr. Douglas further claimed that appellant purposefully obtained a low appraisal, so she could buy the house at a cheaper price. He also asserted that appellant had taken their mother's car and titled it in her name. Mr. Douglas alleged that personal property of the estate had gone missing under appellant's watch, including jewelry, paintings, and clothing. Mr. Douglas informed the court that appellant had told his employer that he was using PCP in an effort to extort him into signing over the house to her. Mr. Douglas also asserted that appellant possessed a serious mental disorder that had not been addressed. Finally, Mr. Douglas told the court that he could not trust appellant to handle the estate, and that a third party needed to be appointed as the personal representative.

Appellant admitted that she did tell Mr. Douglas' employer that he was using drugs, but claimed that she did so because his drug use made her sick and she wanted him to stop. Appellant denied that her lower appraisal was incorrect, arguing that Mr. Douglas' appraisal failed to account for several expensive repairs that the house required. Appellant testified that although she wanted to resolve things with her brother, she was unsure if they ever would. Appellant also informed the court that she preferred to just keep living in the house without having to put it on the market and pay for it.

The evidence presented to the court showed extensive acrimony between the two heirs, thus supporting the court's decision to remove appellant as personal representative. Appellant's counsel tried to argue that appellant could still stay on as personal

representative and sell the house despite the acrimony; however, it was clear from appellant’s own testimony that she had no interest in selling the house. As the court noted, it had been three years since the mother’s death and nothing had been done with the house. Based on these facts, it was apparent that appellant was unable to discharge her duties and powers effectively. ET § 6-306(a)(3). Although the court could have kept appellant in place as the personal representative if it found that “continuance would be in the best interests of the estate and would not adversely affect the rights of interested persons or creditors,” that was clearly not the case here. ET § 6-306(b). Due to the extensive acrimony between the two heirs, and the impediments to any progress in administering the estate, it was not in the best interests of the estate to keep appellant as the personal representative. Furthermore, the court was correct when it found that continuing appellant as the personal representative would adversely affect the estate.

**JUDGMENT OF THE CIRCUIT
COURT FOR PRINCE GEORGE’S
COUNTY AFFIRMED. COSTS TO BE
PAID BY APPELLANT.**