Circuit Court for Charles County
Case No. C-08-CV-19-000863

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0324

September Term, 2020

IN RE: THE ESTATE OF ADAM BRANDON

Berger,
Arthur,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed April 12, 2021

This case concerns competing claims to assets in the estate of Adam Brandon, who died intestate. The claimants are the decedent's father and the decedent's cousins. Although the laws of intestate succession dictate that the father should inherit the assets, the cousins claim that the father relinquished his right to those assets some 30 years ago, in a separation agreement with the decedent's mother.

The Circuit Court for Charles County granted the father's motion for summary judgment. The cousins appealed. We shall affirm.

FACTUAL AND PROCEDURAL BACKGROUND

The decedent, Adam Brandon, was the adopted son of appellee Christopher Brandon and the late Patricia Brandon (née Moss).

Patricia[1] was one of the two daughters of Ida Moss. Ida's other daughter, Sherry Moss, was Adam's biological mother and the mother of Randy Katz Berger and the appellants, Barry and Dennis Katz. Barry, Dennis, and Randy are Adam's biological siblings and his adoptive cousins.

In 1982, Patricia and Christopher adopted Adam. In 1989, Patricia and Christopher were divorced.

Before their divorce became final, Christopher and Patricia entered into a Voluntary Separation and Marital Property Settlement Agreement (the "Separation Agreement"). The Separation Agreement contained two paragraphs that concerned the parties' rights in each other's property. The first, which Barry and Dennis refer to as the

[1] For ease of reference, we shall refer to the parties by their first names. We intend no disrespect.

"Disclaiming Paragraph," is included in the "Separation" section of the Separation Agreement. It states:

> That except for the rights and obligations specifically reserved herein, the parties, for themselves and for their respective heirs, personal representatives, and assigns, do hereby mutually release, waive, surrender and assign unto the other, his or her heirs, personal representatives and assigns, all claims, demands, accounts and causes of action which either of them may have against the other, and they hereby do further mutually release, waive, surrender, and assign to the other, his or her heirs, personal representatives, and assigns, all the right[,] title, interest and claim which said parties might now have or which they may hereto or hereafter have or acquire as the husband, wife, widower, widow, or next of kin, successor or otherwise, in and to any property, either real, personal or both, that either of said parties may own, or may hereafter acquire, or in respect of which either of said parties have, or may hereafter have any rights, title or claim or interest, either direct or indirect, including any rights of dower, statutory thirds, halves or legal shares, separate maintenance, support or alimony, and widow's or widower's rights, or to participate in any way in the enjoyment of any of the real or personal estate of which the other may be possessed at the time of his or her death, or any right to receive any legal right or interest whatsoever therein, including the right to administer the estate of the one so dying.

Both parties agree that a purpose of the Disclaiming Paragraph was to ensure that neither spouse could assert a claim to any rights in the other's property or estate if one spouse died between the effective date of the Separation Agreement and the date of the divorce.

The second paragraph, which Barry and Dennis refer to as the "Renouncing Paragraph," is included in the "Spousal Support" section of the Separation Agreement. It states:

> The Husband understands that the Wife may be the future beneficiary of assets owned by her mother. The Husband also understands that any and all of this property is non-marital property as defined in Section 8-201 of the Annotated Code of Maryland, Family Law Article,

> and he renounces any interest in or claims to any share in such property or its value.[2]

Ida Moss died, testate, in 2002, and Patricia administered her estate, with the assistance of counsel. In her will, Ida had made a $30,000 gift to Dennis and split her remaining assets between Adam and Patricia. Patricia's counsel, however, proceeded as though Ida had died intestate and Patricia was her sole heir. Thus, Patricia seems to have distributed the assets of Ida's estate to herself. *See Attorney Grievance Comm'n v. Karambelas*, ___ Md. ___, 2021 WL 1227812, at *3 (Apr. 4, 2021).[3]

Patricia died, testate, in 2011, leaving her entire estate to Adam. In administering Patricia's estate, Adam discovered that Ida's estate had been distributed incorrectly, as though Patricia had been Ida's only heir. Adam petitioned to reopen Ida's estate and was appointed as the successor personal representative.

The Orphans' Court for Montgomery County refused to admit Ida's will to probate because of limitations. Thus, the estate had to be administered as an intestate estate, in which Adam's adoptive cousins (Sherry Moss's children) were beneficiaries. *Attorney Grievance Comm'n v. Karembelas*, ___ Md. ___, 2021 WL 1227812, at *7.

For the following seven years, Adam and his cousins, Randy, Barry, and Dennis, litigated over the remaining assets of Ida's estate. In September 2018, Adam settled with

[2] Under Maryland Code (1984, 2012 Repl. Vol.), § 8-201(e) of the Family Law Article, "marital property" generally does not include property "acquired by inheritance or gift from a third party."

[3] The Court of Appeals has disbarred Patricia's attorney because of his misconduct in the handling of Ida's estate, which included the misappropriation of estate assets. *See Attorney Grievance Comm'n v. Karambelas*, ___ Md. ___, 2021 WL 1227812, at *17.

Randy and purchased her interest in Ida's estate. In December 2018, Adam settled with Barry and Dennis and purchased their interests in Ida's estate.

Adam, Dennis, and Barry entered into a Settlement and Mutual Release Agreement ("Mutual Release"). In that document, Barry and Dennis agreed to

> release and forever discharge Adam . . . from any and all manner of actions and actions, cause and causes of action, suits, debts . . . and all claims asserted or which could have been asserted, or in any way related or connected to the Estate, Ida, the Estate Case or the management of this Estate by Adam.

Adam made individual payments of $246,996.35 to both Barry and Dennis in exchange for their interests in Ida's estate.

On March 15, 2019, Adam died, intestate, as the sole owner of the assets of Ida's estate. At the time of his death, Adam's potential heirs were his father, Christopher; his biological siblings and legal cousins, Randy, Barry, and Dennis; and his aunt, Christopher's sister.

Following Adam's death, Dennis filed a petition to open Adam's estate in the Orphans' Court for Charles County and was appointed as Adam's personal representative. Christopher learned of Dennis's appointment, objected, and moved that he be appointed as the personal representative of Adam's estate. In his motion, Christopher argued that he had a "higher priority" to be named as successor personal

representative to Adam's estate under Md. Code (1974, 2011 Repl. Vol., 2014 Supp.), § 5-104 of the Estates and Trusts Article ("ET").[4]

Barry and Dennis opposed Christopher's motions, claiming that Christopher should not be named as personal representative because, they said, he was "excluded from taking any property that is in the Adam Brandon estate that belonged or derived

[4] Under ET § 5-104, "in appointing a successor personal representative," the court is required to abide by the following order of priority:

(1) The personal representatives named in a will admitted to probate;

(2) The personal representatives nominated in accordance with a power conferred in a will admitted to probate;

(3) The surviving spouse and children of an intestate decedent, or the surviving spouse of a testate decedent;

(4) The residuary legatees;

(5) The children of a testate decedent who are entitled to share in the estate;

(6) The grandchildren of the decedent who are entitled to share in the estate;

(7) Subject to §§ 3-111 and 3-112 of this article, the parents of the decedent who are entitled to share in the estate;

(8) The brothers and sisters of the decedent who are entitled to share in the estate;

(9) Other relations of the decedent who apply for administration;

(10) The largest creditor of the decedent who applies for administration;

(11) Any other person having a pecuniary interest in the proper administration of the estate of the decedent who applies for administration; or

(12) Any other person.

from Ms. Ida Moss." They relied on the provisions of the Separation Agreement in which Christopher disclaimed or renounced any interest in Patricia's property, including her expected inheritance from Ida. In their view, the Separation Agreement prevented Christopher from ever obtaining any interest in any of the assets of Ida's estate, whether in his capacity as Patricia's husband or in any other capacity.

The orphans' court determined Christopher to be the sole heir of Adam's estate and appointed Christopher as the successor personal representative of Adam's estate.

On September 23, 2019, Barry and Dennis appealed the orphans' court decision to the Circuit Court for Charles County. Christopher responded by moving for summary judgment on December 30, 2019. In his motion, Christopher contended that there were no material facts in dispute and that he was entitled to judgment as a matter of law because (1) he is Adam's sole heir under ET section 3-104,[5] and (2) the Separation Agreement between Patricia and Christopher did not prevent him from inheriting Ida's property through Adam's estate. Additionally, Christopher argued that Barry and Dennis did not have standing to enforce the Separation Agreement.

Barry and Dennis opposed the motion for summary judgment. They argued that there were material facts in dispute and that the circuit court should consider extrinsic evidence to interpret the Separation Agreement. They also argued that they had standing

[5] Under ET section 3-104, an intestate estate is distributed first to a surviving spouse; if there is no surviving spouse, then to the surviving parents equally or to the surviving parent, if there is only one surviving parent. ET § 3-104(a)-(b)(1)-(2). If there are no surviving parents, the intestate estate is distributed to the issues of the parents, by representation. ET § 3-104(b)(3).

as Adam's "rightful heirs" and as intended third-party beneficiaries of the Separation Agreement. On March 5, 2020, the circuit court denied Christopher's motion for summary judgment.

During discovery, Christopher learned of the Mutual Release between Adam, Barry, and Dennis. This discovery prompted Christopher to file a second motion for summary judgment on March 31, 2020. In this second motion, Christopher renewed his first motion for summary judgment and argued that Barry and Dennis had waived their rights to Adam's estate through the Mutual Release in their litigation against Adam. Barry and Dennis filed an opposition to Christopher's motion, in which they restated their initial argument that the Separation Agreement contained an "infinite renunciation" of Ida's property and argued that the Mutual Release "does not renounce [their] inheritance from Adam."

The Circuit Court for Charles County held a remote motions hearing on May 11, 2020. During the hearing, Barry and Dennis argued that the court should not grant summary judgment on the basis of the arguments in Christopher's earlier motion for summary judgment, because the court had previously heard those arguments and denied the motion. Barry and Dennis also argued that the Mutual Release in their settlement agreement with Adam did not prevent them from inheriting from Adam's intestate estate.

At the conclusion of the motions hearing, counsel for Barry and Dennis stated that he "had no idea" that they "were going to be arguing the first summary judgment motion[.]" The circuit court judge reminded counsel that Christopher "had incorporated those same arguments in the second" motion for summary judgment, but added that if he

"ha[d] anything else to say," he could "do that now." Counsel for Barry and Dennis stated that he "didn't know whether the Court had any questions about the first summary judgment motion," but that he did not "have any more to say about it." The judge stated that she did not have any further questions.

The following day, the circuit court granted summary judgment to Christopher, concluding that he is the sole heir of Adam's estate, that the relevant paragraphs of the Separation Agreement are unambiguous, that Christopher's disclaimer and renunciation did not "follow the property or run with the property," and that Barry and Dennis did not have standing to enforce the Separation Agreement because they are not third-party beneficiaries of the agreement.

On May 26, 2020, Barry and Dennis filed this timely appeal.

QUESTIONS PRESENTED

On appeal, Barry and Dennis present five questions, which we have consolidated and rephrased:

I. Whether Barry and Dennis have standing to litigate as heirs to Adam's estate or as intended third-party beneficiaries to the Separation Agreement.

II. Whether the circuit court may grant a motion for summary judgment on the same grounds that the court had previously denied a motion for summary judgment.

III. Whether the circuit court erred in granting Christopher's motion for summary judgment and concluding that the disclaimer and renunciation in the Separation Agreement did not run with the Ida Moss property.[6]

[6] Barry and Dennis presented the following questions for review:

(continued)

For the reasons stated below, we conclude that, while Barry and Dennis have standing to litigate as interested parties and potential heirs to Adam's estate, the circuit court properly granted Christopher's motion for summary judgment because Christopher did not forever disclaim or renounce his interest in Ida's estate in the Separation Agreement. We also conclude that the circuit court may grant a motion for summary judgment on the same grounds on which summary judgment had previously been denied.

STANDARD OF REVIEW

We review a circuit court's grant of summary judgment de novo to determine whether the trial court was legally correct. *East v. PaineWebber, Inc.*, 131 Md. App. 302, 308 (2000), *aff'd*, 363 Md. 408 (2001). "'In making our analysis, we do not accord deference to the trial court's legal conclusions.'" *Id.* (quoting *Lopata v. Miller*, 122 Md. App. 76, 83 (1998)). "Because we review the court's grant of summary judgment *de*

1. Whether the Court erred in overturning a prior summary judgment denial by another circuit court judge, when the previously denied summary judgment motion was not before the court.

2. Whether the Court abused its discretion in overturning a prior summary judgment motion denial by another circuit court judge.

3. Whether the Court erred in granting summary judgment to Christopher Brandon, when there were material facts in dispute.

4. Whether the Court erred in granting summary judgment to Christopher Brandon on the grounds that the Settlement did not forever renounce an interest in the Ida Moss property.

5. Whether the Court erred in deciding the Appellants did not have standing to litigate.

novo, we must first decide whether a genuine dispute of material fact exists." *Fraternal Order of Police Montgomery Cty. Lodge 35, Inc. v. Manger*, 175 Md. App. 476, 493 (2007). If there are material facts in dispute, "we resolve them in favor of the non-moving party." *Harford Cty. v. Saks Fifth Ave. Distrib. Co.*, 399 Md. 73, 82 (2007). "If there are no material facts in dispute, the aim of the review is to determine whether the summary judgment decision was correct as a matter of law." *Id.*

DISCUSSION

I. Barry and Dennis Have Standing

Before discussing the circuit court's grant of summary judgment, we must address the threshold issue of whether Barry and Dennis have standing to proceed with this litigation. The circuit court ruled that Barry and Dennis lacked standing to enforce the Separation Agreement "because they are not third-party beneficiaries of the Agreement."

Assuming for the sake of argument that Barry and Dennis are not third-party beneficiaries of the Separation Agreement, we disagree that they lack standing to litigate the question of Christopher's right to Adam's estate. Because Barry and Dennis could inherit Adam's intestate estate if Christopher, for any reason, became unable to take the estate, Barry and Dennis have standing as interested persons.[7]

[7] Christopher also argues that Barry and Dennis lack standing because they had renounced their interest in Adam's estate in the Mutual Release. As the circuit court did not consider the Mutual Release in granting summary judgment, we do not consider Christopher's argument based on that document. *See, e.g., Gresser v. Anne Arundel Cty.*, 349 Md. 542, 552 (1998) ("[i]t is a general rule that in appeals from the granting of a motion for summary judgment, absent exceptional circumstances, Maryland appellate (continued)

Under the ET section 2-102(c), "[a]n interested person may petition the [orphans'] court to resolve any question concerning an estate or its administration." The term "interested person" generally includes the decedent's heirs. *See* ET § 1-101(i)(1)(iv).

An "heir" is defined as "a person entitled to property of an intestate decedent pursuant §§ 3-101 through 3-110 of this article." ET § 1-101(h). When there is no surviving spouse, a decedent's estate is "divided equally among the surviving issue, by representation." ET § 3-103. If there is no surviving issue or spouse, the estate is distributed to the decedent's surviving parents; if there are no surviving parents, the estate is distributed to the decedent's grandparents; and if there are no surviving grandparents, then the estate is distributed to the issue of the grandparents, by representation. ET § 3-104(a)-(d).

If Adam's surviving parent, Christopher, is prohibited from inheriting the portion of Adam's estate that he received from Ida Moss, then Barry and Dennis, as the issue of Adam's grandparents, are Adam's heirs under ET section 3-104(c)(ii)(3). As such, Barry and Dennis are interested persons with standing to challenge the distribution of Adam's estate. Christopher's superior claim to Adam's estate as Adam's only surviving parent does not limit the ability of Adam's other heirs to challenge Christopher's claim.

Christopher argues that he alone should be considered Adam's heir because of his superior claim to Adam's estate. He relies on *Fry v. Yeatman*, 207 Md. 379, 388 (1955),

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courts will only consider the grounds upon which the lower court granted summary judgment").

which states that, to have standing, an interested person must be more than "merely a possible successful suitor." A contingent heir has standing, however, to challenge the interest of the party with the "superior" claim, especially if the contingent heir would inherit the estate if the challenge was successful. *See Cook v. Grierson*, 380 Md. 502, 505 (2004) (holding that the children of a convicted murderer had standing to bring an action to determine whether the common-law "Slayer's Rule" prohibited them from inheriting from their grandfather, the decedent).

In this case, if Barry and Dennis could prove that the Separation Agreement barred Christopher from ever inheriting any of Ida's property from anyone (and not just from Patricia), they (and presumably their sister as well) would be entitled to inherit half of the assets that passed to Adam from the estate of Ida Moss.[8] Unlike in *Fry v. Yeatman*, where the Court determined the appellant's interest in the decedent's estate was "too remote" because the appellant could inherit the estate only if she was successful in two or three other lawsuits, Barry and Dennis, here, would inherit part of Adam's estate if they succeed in the present lawsuit. *See Fry v. Yeatman*, 207 Md. at 384. Christopher's superior claim to Adam's intestate estate does not prevent Barry and Dennis, as Adam's intestate heirs, from challenging Christopher's claim. Therefore, the circuit court erred in concluding that Barry and Dennis lacked standing to proceed in this action.[9]

[8] As the issue of Adam's paternal grandparents, Christopher's sister (Adam's aunt) would inherit the other one-half share of the assets of Ida's estate.

[9] Because we conclude that Barry and Dennis have standing as interested persons, we need not decide whether they also have standing as third-party beneficiaries of the Separation Agreement.

II. The Circuit Court Had Authority to Grant the Renewed Motion for Summary Judgment

Barry and Dennis argue that the circuit court erred in granting Christopher's motion for summary judgment on the same grounds that summary judgment had previously been denied. They are wrong.

This Court has repeatedly held that "summary judgment may be granted at a later point in a case, even though denied at an earlier one." *Joy v. Anne Arundel Cty.*, 52 Md. App. 653, 661 (1982). "[T]he denial of a motion for summary judgment . . . does not preclude submission of it at a later point in the proceedings." *Ralkey v. Minn. Mining & Mfg. Co.*, 63 Md. App. 515, 522 (1985), *aff'd*, 369 Md. 518 (2002).

"'[W]hile the trial judges may choose to respect a prior ruling in a case, they are not required to do so.'" *Azarian v. Witte*, 140 Md. App. 70, 85 (2001) (quoting *Ralkey v. Minn. Mining & Mfg. Co.*, 63 Md. App. at 522-23); *see also Gertz v. Anne Arundel Cty.*, 339 Md. 262, 273 (1995) (quoting *State v. Frazier*, 298 Md. 442, 449 (1984)) ("[a]s a general principle, one judge of a trial court ruling on a matter is not bound by the prior ruling in the same case by another judge of the court"); Md. Rule 2-602(a)(3) (in general, "an order or other form of decision, however designated, that adjudicates fewer than all of the claims in an action (whether raised by original claim, counterclaim, cross-claim, or third-party claim), or that adjudicates less than an entire claim, or that adjudicates the rights and liabilities of fewer than all the parties to the action . . . is subject to revision at any time before the entry of a judgment that adjudicates all of the claims by and against all of the parties").

Here, Christopher filed his second motion after learning that Barry and Dennis had entered into the Mutual Release with Adam. Christopher was permitted to include his original arguments in his second motion, and the circuit court had discretion to consider both the new and the renewed arguments. As a circuit court may grant a motion for summary judgment that had been previously denied by the same court, the circuit court did not err in granting Christopher's second motion for summary judgment.

Barry and Dennis argue that they did not receive "adequate notice" that the circuit court would grant Christopher's motion for summary judgment based on the grounds presented in Christopher's first motion. Barry and Dennis contend that because the judge did not provide "sufficient notice" that she was "concerned with the issues of the First Motion," the court abused its discretion. Therefore, Barry and Dennis argue that they were "deprived" of the "opportunity to mainly prepare for rearguing the First Motion." *Id.*

Despite their claims, Barry and Dennis had more than adequate notice that Christopher had renewed the claims argued in the first motion. Christopher's second motion for summary judgment specifically stated that he "renews" the earlier motion, "based upon all of the facts and arguments made therein." In his memorandum in support of his second motion, Christopher restated his original argument that the Separation Agreement did not prevent him from inheriting the assets of Ida's estate that Adam had inherited. In these circumstances, it is difficult to imagine what else Christopher could have done to inform his adversaries that he was reasserting the arguments in his initial motion.

In fact, Barry and Dennis recognized that Christopher had renewed his argument, as their opposition to the second motion for summary judgment included a reassertion of the arguments that they had made in opposition to Christopher's first motion. The majority of their opposition memorandum reasserted their argument that the Separation Agreement prevents Christopher from ever inheriting any of the assets of Ida's estate. Thus, we see no merit in the claim that Barry and Dennis were "deprived . . . of the opportunity to mainly prepare for rearguing the First Motion."

Furthermore, when Barry and Dennis informed the circuit court at the end of the motions hearing that they "had no idea we were going to be arguing the first summary judgment motion," the circuit court asked Barry and Dennis if they had "anything else to say" and informed them that, if they did have more to add, they could "do that now." Yet, rather than reargue their contentions regarding the Separation Agreement, as initially raised in the first motion, Barry and Dennis stated that they did not "have any more to say about it." In short, Barry and Dennis had sufficient knowledge of the arguments before the circuit court during the motions hearing and the circuit court provided Barry and Dennis with ample opportunities to be heard.

III. The Circuit Court Did Not Err in Granting Summary Judgment

Lastly, Barry and Dennis argue that the circuit court erred on the merits in granting summary judgment. Barry and Dennis contend, first, that the court erred because there are material facts in dispute and because the Separation Agreement is ambiguous; therefore, they argue that they should have had the opportunity to present extrinsic evidence of the meaning and intent of the agreement. Second, Barry and Dennis

argue that, even if there are no material facts in dispute, the circuit court erred in granting summary judgment because Christopher had unambiguously renounced his interest in Ida's property in the Separation Agreement.

In granting summary judgment, the circuit court held that the disclaimer in the Separation Agreement is unambiguous and that it "did not follow the property or run with the property after the disclaimer took effect." In other words, the court held that Christopher gave up any interest in Patricia's expected inheritance from Ida, but did not give up his right to take title to Ida's former assets through some other method, such as by inheriting them from his son. The circuit court, thus, held that "there is no dispute of material fact, and Christopher Brandon is entitled to judgment as a matter of law." We agree with the circuit court's conclusion that there are no material facts in dispute, that the relevant paragraphs of the Separation Agreement are unambiguous, and that the Separation Agreement does not prevent Christopher from inheriting Ida's property through Adam's estate.

A. The Circuit Court Properly Found No Material Facts In Dispute

In general, under Maryland Rule 2-501(f), summary judgment shall be granted if "there is no genuine dispute as to any material fact and . . . the party in whose favor judgment is entered is entitled to judgment as a matter of law." A material fact "is one that will alter the outcome of the case, depending upon how the fact-finder resolves the dispute." *Ragin v. Porter Hayden Co.*, 133 Md. App. 116, 133 (2000) (citing *King v. Bankerd*, 303 Md. 98, 111 (1985)). While the court views material facts "in the light most favorable to the non-moving party," the non-moving party "must present more than

'mere general allegations which do not show facts in detail and with precision.'" *Id.* (quoting *Beatty v. Trailmaster Prods., Inc.*, 330 Md. 726, 738 (1993)); *see Shaffer v. Lohr*, 264 Md. 397, 404 (1972) (citing *Frush v. Brooks*, 204 Md. 315, 320-21 (1954)) ("general allegations which do not show the facts in detail and with precision are insufficient to prevent the entry of a summary judgment").

In their brief, Barry and Dennis present a list of fourteen factual assertions that they argue are material and in dispute. These include assertions that Christopher had not supported Adam financially during his childhood; that Christopher mistreated Adam while Christopher and Patricia were married; that Ida supported Patricia and Adam financially; that Ida had also financially supported Christopher; that Christopher owed Patricia payments for spousal support at the time of Patricia's death; and that Christopher's attorneys were the "principal drafters" of the Separation Agreement.

These allegations, even if in dispute, are not material. Christopher's status as an intestate heir does not depend on whether he may have had a strained personal and financial relationship with Adam, Patricia, or Ida. If Adam had prepared a will before his death, he could have considered these factors and chosen to give all or part of his estate to someone other than Christopher. In the absence of a will, however, Adam's estate goes to the person designated in the Estates and Trusts Article – his father – regardless of what Adam might have intended. Therefore, the fourteen factual assertions did not preclude summary judgment.

Barry and Dennis also argue that the disputed facts are material "to a determination of whether the Renouncing Paragraph forever renounced [Christopher's

interest in] the Ida Moss Property." Under the parol evidence rule, however, this Court will consider the extrinsic evidence, such as the disputed facts, in interpreting the Separation Agreement only if the agreement is ambiguous. *See, e.g.*, *Sierra Club v. Dominion Cove Point LNG, L.P.*, 216 Md. App. 322, 332 (2014).

"The determination of whether language is susceptible of more than one meaning includes a consideration of 'the character of the contract, its purpose, and the facts and circumstances of the parties at the time of execution.'" *Calomiris v. Woods*, 353 Md. 425, 436 (1999) (quoting *Pacific Indem. v. Interstate Fire & Cas.*, 302 Md. 383, 388 (1985)). When a contract is unambiguous, "'its plain meaning will be given effect[,]'" *Herget v. Herget*, 319 Md. 466, 470 (1990) (quoting *Aetna Cas. & Sur. Co. v. Insurance Comm'r*, 293 Md. 409, 420 (1982)), and the Court will not "look to 'what the parties thought that the contract meant or intended it to mean.'" *Calomiris v. Woods*, 353 Md. at 445 (citing *General Motors Acceptance Corp. v. Daniels*, 303 Md. 254, 261 (1985)).

Barry and Dennis seem to argue that the Separation Agreement is ambiguous because they disagree that Christopher renounced Ida Moss's property only as long as Patricia owned it. Yet, "the mere fact that the parties disagree as to the meaning . . . does not necessarily render [a contract] ambiguous." *Sierra Club v. Dominion Cove Point LNG, L.P.*, 216 Md. App. at 334; *see Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. 405, 419 (2014) (inner citations omitted) ("an agreement [does not] become ambiguous merely because two parties, in litigation, offer two different interpretations of its language"). Rather, "a written contract is ambiguous if, when read by a reasonably prudent person, it is susceptible of more than one meaning." *Calomiris v. Woods*, 353

Md. at 436. Barry and Dennis have no plausible response to the circuit court's conclusion that the Separation Agreement is unambiguous.[10]

Barry and Dennis also argue that the court should have considered extrinsic evidence concerning the drafting of the Separation Agreement. According to their proffer, that evidence would establish that Christopher drafted the agreement and, hence, that it should be construed against him.

Barry and Dennis fail to recognize that a court may consider extrinsic evidence about the drafting of an agreement and may construe the agreement against the drafter only if it first finds that the agreement is ambiguous. *See*, *e.g.*, *Credible Behavior Health, Inc. v. Johnson*, 466 Md. 380, 399 (2020). Barry and Dennis have not established that the Separation Agreement is ambiguous. Therefore, the circuit court did not err in declining to consider evidence concerning the drafting of the agreement.

B. The Circuit Court Correctly Concluded that the Separation Agreement Does Not Prevent Christopher From Inheriting Ida Moss's Assets from His Son

Despite their contention that the Separation Agreement is ambiguous, Barry and Dennis are frequently ambivalent on that issue. For example, they cite the Renouncing Paragraph, in which Christopher acknowledged that Patricia's expectancy in Ida's estate

[10] Barry and Dennis suggest that because a court must resolve all inferences in their favor in deciding a motion for summary judgment, the circuit court was required to adopt the interpretation of the agreement that was most favorable to them. If they were correct, which they are not, a court could never grant summary judgment in a case involving a nonfrivolous dispute about the meaning of an agreement.

was not marital property.[11] They contend that the Renouncing Paragraph had "no other purpose" but to ensure that Christopher could never inherit any part of Ida's estate from anyone. Similarly, they assert that "[t]he Renouncing Paragraph must have been intended to renounce" any interest in Ida's assets if they came into "Adam's hands" "after Patricia's death." In their view, the Renouncing Paragraph did not merely renounce Christopher's right to inherit from Patricia, because he had given up that right in the Disclaiming Paragraph.[12]

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[11] The renouncing paragraph states:

> The Husband understands that the Wife may be the future beneficiary of assets owned by her mother. The Husband also understands that any and all of this property is non-marital property as defined in Section 8-201 of the Annotated Code of Maryland, Family Law Article, and he renounces any interest in or claims to any share in such property or its value.

[12] The Disclaiming Paragraph states:

> That except for the rights and obligations specifically reserved herein, the parties, for themselves and for their respective heirs, personal representatives, and assigns, do hereby mutually release, waive, surrender and assign unto the other, his or her heirs, personal representatives and assigns, all claims, demands, accounts and causes of action which either of them may have against the other, and they hereby do further mutually release, waive, surrender, and assign to the other, his or her heirs, personal representatives, and assigns, all the right[,] title, interest and claim which said parties might now have or which they may hereto or hereafter have or acquire as the husband, wife, widower, widow, or next of kin, successor or otherwise, in and to any property, either real, personal or both, that either of said parties may own, or may hereafter acquire, or in respect of which either of said parties have, or may hereafter have any rights, title or claim or interest, either direct or indirect, including any rights of dower, statutory thirds, halves or legal shares, separate maintenance, support or alimony, and widow's or widower's rights, or to participate in any way in the enjoyment of any of the real or personal estate of which the other may be possessed at the time of his

(continued)

We find those arguments unconvincing, as did the circuit court. The Disclaiming Paragraph contains a broad, mutual release of each spouse's rights in the other's property, including their rights to inherit property from each other. The Renouncing Paragraph, by contrast, affirms Christopher's understanding that he, in his capacity as Patricia's spouse, had no marital property interest in her expected inheritance from her mother, Ida Moss, and thus had no rights in it that he could release. The Renouncing Paragraph contains nothing that might prevent Christopher from receiving any part of that inheritance through some means other than an assertion that it somehow constituted marital property. Nor does the Renouncing Paragraph state or imply that Christopher was prohibited from ever taking title to any of the assets that Patricia might inherit from her mother, if those assets passed to Christopher's son under Patricia's will and then to Christopher himself under the laws of intestate succession.

It is true that, in the Renouncing Paragraph, Christopher goes on to "renounce[] any interest in or claims to any share in" Patricia's expected inheritance from her mother, "or its value." Citing this language, Barry and Dennis argue that if the Renouncing Paragraph were not construed to prevent Christopher from ever receiving any part of the assets that Patricia might inherit from her mother, the Renouncing Paragraph would merely duplicate the Disclaiming Paragraph, in which Christopher released any "right[,] title, interest and claim" that he had or might acquire, as Patricia's husband, "in and to

> or her death, or any right to receive any legal right or interest whatsoever therein, including the right to administer the estate of the one so dying.

any property" that she "may hereafter acquire." In other words, Barry and Dennis argue unless the Renouncing Paragraph means what they say it means, it would be surplusage.

We disagree. The Renouncing Paragraph performs the important independent function of affirming that Christopher had no marital property interest in a specific thing – Patricia's expected inheritance, which was apparently worth a considerable amount of money. To the extent that the Renouncing Paragraph covers ground that the Disclaiming Paragraph also covers, it is no more duplicative than the Disclaiming Paragraph itself, in which: the parties not only release their rights, but "waive, surrender, and assign" them; the releases apply not only to any "right" in the other's property, but to their "title, interest and claim" in it; the parties release their rights not only as "husband, wife, widower, [or] widow," but also as "next of kin, successor or otherwise"; and the releases, which by their terms apply to the parties' rights as spouses, are nonetheless said to apply to a number of specific and unspecific spousal rights, such as "dower, statutory thirds, halves or legal shares, separate maintenance, support or alimony, and widow's or widower's rights," or the right "to participate in any way in the enjoyment of any of the real or personal estate of which the other may be possessed at the time of his or her death." The Separation Agreement is not unusual in taking a belt-and-suspenders approach to the extinguishment of rights, whether real or arguable.

Quoting the circuit court, Barry and Dennis ask, "If the Renouncing Paragraph 'did not follow the property or run with the property . . . after the disclaimer took effect,' when did it have any effect?" The answer is that the Renouncing Paragraph had an effect as soon as the Separation Agreement became binding, because it affirmed that

Christopher had no marital property interest in Patricia's expected inheritance. In so doing, the Renouncing Paragraph ensured that Christopher could not and would not assert a claim to Patricia's expectancy.

Barry and Dennis repeatedly assert that the Separation Agreement says things other than what it plainly says. For example, they assert:

> Under the Disclaiming Paragraph, Christopher's renunciation did not stop at Patricia's death. He cannot inherit Patricia's estate property[,] including her interest in the Ida Moss Property.

Nothing in the Disclaiming Paragraph supports that assertion. In the Disclaiming Paragraph, Christopher gave up his rights in Patricia's estate if she predeceased him before the divorce became final. Thus, Christopher gave up his right to his spousal share as Patricia's spouse or to inherit Patricia's property under the laws of intestate succession. He did not give up the right to inherit property from anyone else.

Barry and Dennis also assert that Christopher cannot inherit part of Ida Moss's estate "from anyone to whom it devolves, including Adam." As support, they cite the language of the Disclaiming Agreement, in which Christopher gave up "any right to receive any legal right or interest whatsoever therein." In that phrase, the key term, "therein," refers to "the real or personal estate of which the other may be possessed at the time of his or her death." In this case, therefore, "therein" refers to the real or personal estate of which Patricia may have possessed at the time of her death. Accordingly, Christopher gave up "any right to receive any legal right or interest whatsoever" in the real or personal estate of which Patricia may be possessed at the time of her death. He did not give up the right to inherit from his son's estate.

In summary, Barry's and Dennis's arguments are, in our view, unavailing. In the Separation Agreement, Christopher gave up his rights in Patricia's property and affirmed that her expected inheritance was not marital property in which he had an interest as her spouse. Christopher did not, however, give up his right to inherit assets from his son Adam – even if some of those assets were the ones that Patricia expected to inherit (and did inherit) from her mother.

For these reasons, the circuit court did not err in concluding that Christopher's disclaimer and renunciation did not run with Ida's property and in granting summary judgment in Christopher's favor.

JUDGMENT OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED; APPELLANTS TO BEAR ALL COSTS.