

Orphans' Court for Montgomery County
Estate No. W87973

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 807

September Term, 2022

IN THE MATTER OF THE ESTATE
OF DINESH O. PARIKH

Kehoe,
Leahy,
Ripken,

JJ.

Opinion by Kehoe, J.

Filed: May 18, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

Namish Parikh and Oxana Parikh, appellants, are before this Court for the sixth time. Together, they challenge two orders entered by the Orphans’ Court for Montgomery County relating to the administration of the estate of Dr. Dinesh O. Parikh. The first order denied Namish’s¹ petition to “frame” and transmit 42 issues to the circuit court for determination by a jury. The second order directed Namish and Oxana to appear for a hearing to show cause why they should not be declared vexatious litigants and made subject to a pre-filing order. The appellees are Lynn C. Boynton, the Personal Representative (formerly the Special Administrator) of the estate, and Tina Parikh-Smith, an interested person in the estate. Tina moved to dismiss the appeal, in part, arguing that the appeal taken from the show cause order is not a final judgment. Ms. Boynton joins the motion.

For the following reasons, we grant Tina’s motion to dismiss the appeal from the show cause order and will affirm the judgment of the orphans’ court that denied Namish’s petition to transmit issues. We further find that the appeals were filed in bad faith and without substantial justification and that Ms. Boynton is entitled to an award of attorneys’ fees and costs incurred in defending against them under Rule 1-341. We remand this matter to the orphans’ court to determine the amount of those fees and costs and to enter judgment accordingly.

¹ Because many of the individuals in this case have the same last name, we refer to them by their first names only for purposes of brevity and clarity. We mean no disrespect.

BACKGROUND

This Court has issued five prior opinions relating to the administration of the estate of Dr. Parikh: *In re Estate of Parikh*, No. 1226, September Term, 2017, (filed Jan. 16, 2019), *cert. denied sub nom. Matter of Estate of Parikh*, 464 Md. 597 (2019) (“*Parikh I*”); *Matter of Estate of Parikh*, No. 1480, September Term, 2017, (filed March 23, 2020), *cert. denied*, 469 Md. 665 (2020) (“*Parikh II*”); *Parikh et al. v. Boynton*, No. 2366, September Term, 2019, (filed April 7, 2021) (“*Parikh III*”); *Matter of Estate of Parikh*, No. 941, September Term, 2020, (filed Sept. 28, 2021), *cert. denied*, 477 Md. 158 (2022) (“*Parikh IV*”); and *Parikh v. Boynton*, No. 1057, September Term 2021 (filed April 20, 2022) (*Parikh V*). We draw liberally from the facts set out in those cases to provide this brief background.

The History of The Litigation

Dr. Parikh died in June 2016. This case began when Oxana, the former spouse of Dr. Parikh’s son, Namish, filed a petition for administration of a small estate and submitted what purported to be Dr. Parikh’s will for probate. The will left Dr. Parikh’s entire estate to Oxana, his former daughter-in-law and the mother of one of his grandchildren. It made no provision for his two children, Namish and Tina, nor his wife, Neelaben Parikh (“Neela”).

Tina petitioned to caveat the will, claiming fraud, and also petitioned for the removal of Oxana as personal representative. The orphans’ court held a hearing and, over Oxana’s objection, appointed Ms. Boynton as the special administrator of the estate.

Ms. Boynton initiated litigation in the circuit court against Oxana and Namish seeking the return of approximately \$1.14 million in Dr. Parikh's assets allegedly transferred by Oxana to Namish before Dr. Parikh died. By consent, those funds were deposited into the court registry.

Namish, Oxana, Tina, Neela, and Ms. Boynton thereafter mediated the dispute and entered into a settlement agreement providing for division of the estate assets as follows: 57% to Namish, 43% to Tina and Neela in accordance with an agreement between them, and reimbursement to Oxana for certain expenses. The orphans' court granted Tina's motion to enforce that agreement after Oxana and Namish repudiated it.

In *Parikh I*, we affirmed the orphans' court's approval of the settlement agreement. In *Parikh II*, we addressed issues related to the administration of the estate and reaffirmed the enforceability of the settlement agreement. In *Parikh III*, we affirmed the circuit court's orders rejecting appellants' claims alleging fraud, mistake, and irregularities in the caveat proceeding. We also granted Ms. Boynton's motion for sanctions under Rule 1-341, holding that she was entitled to recover attorneys' fees incurred in defending that appeal because it was filed in bad faith and without substantial justification. We remanded the case to the circuit court to determine the amount of attorneys' fees incurred by Ms. Boynton in defending the appeal and in responding to motions in the circuit court that were the subject of an outstanding motion for sanctions.

In *Parikh IV*, we addressed Oxana's and Namish's challenges to twenty-one separate orders issued by the orphans' court in the course of the administration of the estate and

affirmed each of them. *See Parikh IV*, 2021 WL 4439267, at *2–6. We also found for the second time that Ms. Boynton was entitled to an award of attorneys’ fees under Rule 1-341 for costs incurred defending the appeal, holding that appellants’ arguments were “baseless and entirely lacking in merit, and [that] they pursued th[e] appeal with the purpose of intentional harassment and delay of the administration of the estate.” *Id.* at *6. We remanded for the circuit court to determine the amount of the fees and costs incurred.

In *Parikh V*, we affirmed the circuit court’s judgment finding that Oxana and Namish had “filed multiple motions in the estate litigation in bad faith and without substantial justification” and awarding Ms. Boynton fees and costs incurred in defending the motions in the circuit court and on appeal. Slip op. at *1.

The Orders of the Orphans’ Court at Issue in the Current Appeal

On October 17 and 18, 2021, while *Parikh V* remained pending on appeal, Tina and Namish filed petitions in the orphans’ court that gave rise to this appeal. First, Tina filed a petition for injunctive relief seeking to have Oxana and Namish declared vexatious and frivolous litigants.² She asked the orphans’ court³ to enter an order requiring Namish and Oxana “to obtain court approval before filing motions, pleadings, or papers relating to the

² As mentioned, Ms. Boynton previously had filed a petition seeking the same relief, which the orphans’ court held in abeyance. *Parikh IV*, slip op. at 5.

³ The caption of Tina’s petition states that it is filed in the orphans’ court or the circuit court. Because the order to show cause was entered by the orphans’ court, we treat it as having been filed in that court.

administration of this estate.” Second, Namish filed a “First Petition[] and Request to Frame and Transmit Issues.” That petition rehashed arguments raised and decided in prior appeals⁴ relating to the enforceability and validity of the settlement agreement upheld by this Court in *Parikh I* and asked the orphans’ court to strike the agreement and to transmit 42 issues to the circuit court to be decided by a jury.

By an order signed May 26, 2022, and entered June 1, 2022, the orphans’ court denied Namish’s petition. The orphans’ court further found that the petition was filed in bad faith and without substantial justification, explaining:

there are no longer any fact issues for resolution by [the orphans’ court] – other than the amount of the attorney’s fees to be entered against NAMISH and OXANA for bad faith unjustified proceedings. Because there are no remaining fact issues, there are no issues to be framed for resolution by the Circuit Court[.]

The court directed Ms. Boynton to submit a petition itemizing the amounts incurred by her in opposing Namish’s petition. Namish noted a timely appeal from that order.

On November 23, 2023, the orphans’ court issued a show cause order in response to Tina’s petition directing Namish and Oxana to appear for a hearing on February 17, 2023,

⁴ For example, Namish contends that the settlement agreement was voided because Tina failed to convey all shares of certain stock within ten days after it was executed. This Court addressed the issue of the stock conveyance in *Parikh I* and again in *Parikh IV*, ultimately concluding that Tina’s conveyance of 57% of the shares to the estate, without objection from Ms. Boynton, satisfied the terms of the settlement agreement as Namish only was entitled to those shares of the stock. *See Parikh I*, slip op. at *12-13; *Parikh IV*, slip op. at *3.

to show cause why they should not be “designated as vexatious litigants[.]”⁵ Namish and Oxana noted a timely appeal from the show cause order.

ANALYSIS

I.

Appealability

“A party may appeal to the [Appellate Court of Maryland] from a final judgment of an orphans’ court.” Md. Code, Courts & Jud. Proc. (“CJP”) § 12-501(a). In the orphans’ court, final judgments are orders that “finally determine the proper parties, the issues to be tried and the sending of those issues to a court of law.” *Hegmon v. Novak*, 130 Md. App. 703, 709 (2000) (quoting *Schlossberg v. Schlossberg*, 275 Md. 600, 612 (1975)). Because we conclude that the order directing Namish and Oxana to appear for a hearing to show cause why they should not be declared vexatious litigants was not a final judgment of the orphans’ court, we dismiss that appeal.

Namish’s Petition to Frame and Transmit Issues

ET § 2-105(b) permits an interested party to request that an “issue of fact” be transmitted to the circuit court for decision. *See also* Md. Rule 6-434 (“In any proceeding, the orphans’ court, upon petition by a person with standing, may transmit

⁵ Tina attached a copy of the transcript of that hearing to her motion to dismiss the appeal. Namish and Oxana did not appear for the hearing. Tina and Ms. Boynton appeared with counsel. After hearing argument and taking judicial notice of a recent federal court decision declaring Namish and Oxana vexatious litigants in that forum, the orphans’ court took the matter under advisement.

contested issues of fact within its jurisdiction for trial to the circuit court of the county in which the orphans' court is located.”). This Court has explained that “[a] decision by an Orphans' Court to deny the transmittal of issues is a final judgment within the contemplation of [CJP] § 12-501, as surely as would be the affirmative grant of such an order.” *Banashak v. Wittstadt*, 167 Md. App. 627, 688 (2006). Namish's contentions that the orphans' court erred in declining to transmit his issues are comprehensively without merit.

The issues that Namish sought to transmit to the circuit court for determination by a jury, all of which related to the validity and enforceability of the settlement agreement, were not appropriate for transmission because they were barred under the law of the case doctrine. This doctrine precludes parties from relitigating issues that were raised and decided on appeal *or* could have been presented in the previous appeals of the same case. *Fidelity-Balt. Nat. Bank & Tr. Co. v. John Hancock Mut. Life Ins. Co.*, 217 Md. 367, 372 (1958); *Holloway v. State*, 232 Md. App. 272, 282 (2017). Thus, “once an appellate court rules upon a question presented on appeal, litigants *and lower courts* become bound by the ruling, which is considered to be the law of the case.” *Scott v. State*, 379 Md. 170, 183 (2004) (emphasis added; footnote omitted). This Court's prior decisions conclusively determined all outstanding issues relating to the settlement agreement, which we held was binding and enforceable. The orphans' court did not err when it declined to transmit Namish's proposed issues to the circuit court.

The Issuance of the Show Cause Order

Namish and Oxana appeal from the show cause order directing them to appear for the February 17, 2023 hearing and show cause why they should not be declared vexatious and frivolous litigants. That process comports with *Riffin v. Circuit Court for Baltimore County*, 190 Md. App. 11 (2010), which held that a circuit court has authority under Md. Rule 15-502(b) to issue a pre-filing order, *sua sponte* or on motion of a party, to control vexatious and frivolous litigants, but that the court must afford the litigants notice and an opportunity to be heard before granting a pre-filing injunction.⁶ Because the show cause order did not determine proper parties, the issues to be tried, or the sending of an issue to a court of law and plainly was not intended to be final as it anticipated further action on Tina's petition, it is not properly before us for review.⁷

⁶ The authority of an orphans' court to issue a pre-filing order has not yet been addressed by this Court or the Supreme Court of Maryland and, for the reasons explained, is not properly before us in this appeal.

⁷ Ms. Boynton asks this Court to enjoin Namish and Oxana from noting any future appeals until one of two events occurs: 1) an accounting and distribution pursuant to the terms of the settlement agreement or 2) the entry of an order declaring Namish and Oxana vexatious litigants. Even if this Court had the authority to so order, an issue of first impression that we decline to reach, we would not do so here because Tina's petition to declare the appellants vexatious litigants remains pending for decision in the orphans' court.

II.

Sanctions

Ms. Boynton asks us to find that this appeal was filed in bad faith and without substantial justification. Maryland Rule 1-341 constitutes a limited exception to the American Rule by permitting the award of attorneys' fees when an action is brought by the offending party in bad faith or without substantial justification. *Christian v. Maternal-Fetal Med. Assocs. of Md., LLC*, 459 Md. 1, 18 (2018). It is primarily a deterrent against abusive litigation and is "considered an 'extraordinary remedy' which should be exercised only in rare and exceptional cases." *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 105 (1999) (quoting *Black v. Fox Hills N. Cmty. Ass'n, Inc.*, 90 Md. App. 75, 83 (1992)). Bad faith in the context of Rule 1-341 means litigating "with the purpose of intentional harassment or unreasonable delay." *Id.*

For the same reasons enunciated in *Parikh III* and *Parikh IV*, this appeal satisfies that threshold. Appellants' continued attacks on the validity of the settlement agreement, which has been reaffirmed on multiple occasions, are both without substantial justification and are intentional efforts to delay the administration of the estate. Their conduct has been sanctioned by this Court twice and, most recently, by the orphans' court in its order denying Namish's petition to frame and transmit issues. We hold that this appeal was taken in bad faith and without substantial justification and that sanctions are appropriate pursuant to Md. Rule 1-341.

In summary, we affirm the judgment of the orphans' court denying Namish's petition to transmit issues to the circuit court. We dismiss Namish's and Oxana's appeal of the show cause order. We hold that both appeals were taken in bad faith and without substantial justification. We remand to the orphans' court to determine the amount of fees and costs incurred by Ms. Boynton in defending this unjustified and frivolous appeal and to enter a judgment based on the court's findings.

THIS APPEAL IS DISMISSED IN PART. THE JUDGMENT OF THE ORPHANS' COURT FOR MONTGOMERY COUNTY IS AFFIRMED. THIS CASE IS REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION.

COSTS TO BE PAID BY APPELLANTS.