

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 941

September Term, 2020

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IN THE MATTER OF THE ESTATE OF  
DINESH O. PARIKH

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Graeff,  
\*\*Gould,  
Eyler, Deborah S.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Gould, J.

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Filed: September 28, 2021

\*\* Steven B. Gould, now serving on the Court of Appeals, participated in the hearing and conference of this case while an active member of this Court; he participated in the adoption of this opinion as a specially assigned member of this Court.

\*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.

Appellants, Oxana Parikh and Namish Parikh, are no strangers to this Court, as they have filed no less than ten appeals relating to the estate of Dr. Dinesh O. Parikh. In this appeal, they challenge orders of the Orphans’ Court for Montgomery County relating to the administration of Dr. Parikh’s estate. Lynn C. Boynton, the Personal Representative (formerly the Special Administrator) of the estate (“SA Boynton”), and Tina Parikh are appellees.

Appellants’ previous appeals were consolidated and decided in: *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*”); and *Parikh et al. v. Boynton*, No. 2336, September Term, 2019 (filed April 7, 2021) (“*Parikh III*”).

For the reasons explained below, we hold that Oxana<sup>1</sup> lacks standing to pursue this appeal. We, therefore, do not address the merits of the various arguments raised in her brief. As to the issues raised in Namish’s brief, we affirm the orphans’ court’s decisions.

### **BACKGROUND FACTS AND LEGAL PROCEEDINGS**

The background facts and legal proceedings have been set forth in detail in our three previous opinions in this matter and we shall not restate the full background of the case

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<sup>1</sup> We intend no disrespect by calling the parties by their first names. We do so only for clarity.

here. We recount only those facts relevant to the resolution of the issues before us in this appeal.

Dr. Parikh's will left his entire estate to Oxana, his son's ex-wife, and designated her as the personal representative of his estate. The will made no provision for Dr. Parikh's children, Namish and Tina, or his wife, Neela. Tina filed a petition to caveat the will, claiming that fraud had been committed on her father's estate. Over Oxana's objection, the orphans' court appointed SA Boynton as special administrator of Dr. Parikh's estate. SA Boynton filed a complaint in the circuit court against Oxana and Namish, seeking an accounting of Dr. Parikh's assets and the return of approximately \$1.14 million allegedly transferred to Namish by Oxana prior to Dr. Parikh's death.

Oxana, Namish, Tina, Neela, and SA Boynton mediated their dispute and reached a settlement, which provided for the division of the estate, after expenses, as follows: 57% to Namish; 43% to Tina and Neela in accordance with an agreement between them; and reimbursement to Oxana for certain expenditures. Oxana and Namish subsequently repudiated the settlement agreement, prompting Tina to file an emergency motion to enforce the agreement, which the orphans' court granted.

In *Parikh I*, this Court affirmed the orphans' court's approval of the settlement agreement. The Court of Appeals denied *certiorari*. In *Parikh II*, we addressed issues pertaining to the administration of the estate and re-affirmed our holding in *Parikh I* that the enforceability of the settlement agreement constituted the law of the case. In *Parikh III*, we affirmed the circuit court's orders rejecting appellants' claims alleging fraud, mistake, and irregularities in the caveat proceeding.

On October 21, 2020, the orphans’ court entered fifteen orders denying various forms of relief requested by Oxana. She noted an appeal from those orders. On January 12, 2021, the orphans’ court conducted a hearing on “all outstanding pending motions.” Namish and Oxana did not attend that hearing. Following the hearing, the court issued six additional orders, and Namish noted an appeal.

## DISCUSSION

### I.

#### OXANA’S LACK OF STANDING

At the motions hearing on January 12, 2021, the orphans’ court found that Oxana lacked standing to challenge the administration of the estate because, pursuant to the settlement agreement, she was not a beneficiary of the estate. The court explained that following this Court’s affirmance of the order enforcing the settlement agreement in *Parikh I* and the Court of Appeals’ denial of *certiorari*, Oxana’s status as an uninterested person was established beyond dispute. The court further explained that Oxana’s interest in the estate was limited to the issue of the award of attorneys’ fees against her:

Those oppositions will be . . . denied in their entirety, the basis being that the party is not here to promote the position, and equally so that [Oxana], whose motion, I believe is solely, solely in her name, these, this opposition has no standing in this case. Given the Court of Special Appeals finding that the settlement agreement entered into by the parties and found by this Court to be valid and enforceable, the Court of Special Appeals having affirmed that, renders [Oxana] without standing to proceed on any matters related to this estate, . . . except to the extent that she may be personally held liable potentially for attorneys’ fees; so she does not forfeit an opportunity to oppose or express her views on that.

The orphans’ court entered the following order consistent with its ruling at the hearing:

ORDERED, this Court finds that Oxana has been offered and rejected the expense reimbursement to which she is entitled under the mediation agreement. As such, she is no longer an “interested person” in this Estate, except in connection with the award of attorney’s fees against her.

Section 1-101(i) of the Estates and Trusts Article (“ET”) of the Maryland Annotated Code (1974, 2017 Repl. Vol.) defines an “interested person” as:

- (i) A person named as executor in a will;
- (ii) A person serving as personal representative after judicial or administrative probate;
- (iii) A legatee in being, not fully paid, whether the legatee's interest is vested or contingent;
- (iv) An heir even if the decedent dies testate, except that an heir of a testate decedent ceases to be an “interested person” when the register has given notice pursuant to § 2-210 or § 5-403(a) of this article; or
- (v) An heir or legatee whose interest is contingent solely on whether some other heir or legatee survives the decedent by a stated period if the other heir or legatee has died within that period.

An “interested person,” is permitted to “request judicial probate” of the will. *McIntyre v. Smyth*, 159 Md. App. 19, 31 (2004). Conversely, “a person who receives nothing under the terms of a will has no interest in the administration of the estate, including the appointment of the personal representative.” *Id.* at 33.

Because Oxana is not an “interested person” within the meaning of ET § 1-101(i), she has no standing to challenge the administration of the estate, with the exception of the

award of attorneys’ fees against her. Accordingly, we shall not address the merits of her claims.<sup>2</sup>

## II.

### NAMISH’S APPEAL

#### A.

#### DOCKET 413

Namish challenges the order granting SA Boynton’s petition for entry of judgment in the amount of \$1,606.58 for costs incurred by the estate for the printing of briefs and appendices in connection with the four appeals filed by appellants, consolidated by this Court and decided in *Parikh I*. He contends that Docket 413 is “inconsistent” with Docket 208, because SA Boynton was previously paid costs for the appeal in *Parikh I*.

In *Parikh II*, we affirmed the orphans’ court’s order approving SA Boynton’s First Notice of Payment (Docket 208). *Parikh II*, slip. op. at 31. SA Boynton’s First Notice of Payment represented costs she incurred in connection with the litigation and the appeal in *Parikh I*, specifically “the circuit court filing fee, postage, printing costs for briefs and appendices,” for which she was seeking payment from the estate. *See id.* at 25.

On January 26, 2020, SA Boynton petitioned the court on behalf of the estate for reimbursement of costs, specifically “printing costs for briefs and appendi[c]es” incurred

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<sup>2</sup> Namish did not notice an appeal of the orphans’ court’s orders dated October 21, 2020, nor did he address those orders in his brief.

by the estate in connection with *Parikh I*, pursuant to this Court’s mandate in *Parikh I*.<sup>3</sup> SA Boynton’s petition stated that “[t]he recovery of judgment for printing costs paid by the Estate is to the benefit of 43% residual beneficiary Tina. Namish will indirectly benefit by paying the judgment for costs, because 57% of the monies will eventually be disbursed to him.”

The court’s order approving the First Notice of Payment authorized the estate to pay SA Boynton from the estate corpus. The court’s order approving the payment of costs from appellants to the estate was not duplicative of the previous payment to SA Boynton. The estate was simply reimbursed for costs it already paid to SA Boynton. Accordingly, there was no error or abuse of discretion in the court’s order.

**B.**

**DOCKETS 414 AND 419**

Dockets 414 and 419 pertain to Namish’s refusal to cooperate with SA Boynton in the administration of the estate. Namish challenges the orphans’ court’s order approving SA Boynton’s petition requiring that Namish and Oxana sign a proposed release prior to distribution to Namish of his share of the estate assets. Namish also challenges the order granting SA Boynton’s request that Namish provide his social security number to the estate for purposes of distribution of his share of the Duke Energy stock, and ordering that he

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<sup>3</sup> Maryland Rule 8-607(a) provides that the prevailing party on appeal is entitled to costs, unless otherwise directed by the court. Maryland Rule 8-608 provides that costs associated with reproducing briefs and record extracts are generally allowable costs.

cooperate with the estate to effect the transfer to him of all shares of stock to which he is entitled or risk a contempt proceeding, including the possibility of incarceration.

As we stated above, the settlement agreement provided for the distribution of the assets of the estate with 43% to Tina and 57% to Namish. *Parikh I*, slip. op. at 6. Specifically, with respect to the Duke Energy stock, the orphans' court's order enforcing the settlement agreement provided that Tina was to convey all shares of Duke Energy stock within ten days of payment to the estate of the funds held in the Registry of Court.

Tina asserts that, following this Court's decision in *Parikh I* affirming the settlement agreement, and on the advice of Duke Energy and her bank, she conveyed 57% of the Duke Energy stock to the estate and retained 43% of the stock. Tina indicates that SA Boynton did not object to the manner of her conveyance of stock to the estate and there is no basis to set aside the settlement agreement.

On May 22, 2019, following the issuance of this Court's opinion in *Parikh I*, SA Boynton advised Namish that the estate required his social security number in order to complete the transfer of the Duke Energy stock to him, and for income tax reporting purposes in connection with fiduciary income tax returns which must be filed by the estate. Namish refused to provide SA Boynton with his social security number. SA Boynton filed a petition seeking further direction from the court to require Namish to provide his social security number to the estate.

The orphans' court granted SA Boynton's petition requiring Namish to provide his social security number to the estate for purposes of distribution to him of his share of the Duke Energy stock, and further ordering that he cooperate in negotiating any checks



payable to him by the estate. The order further indicated that should Namish fail to provide his social security number as ordered, he would be subject to a finding of contempt, including, but not limited to, incarceration. In that case, the order provided SA Boynton, at her discretion, would be entitled to sell from the estate all remaining shares of the Duke Energy stock to which Namish might otherwise be entitled.

Namish argues that he is not required to provide his social security number to the estate because the settlement agreement, which provided for the distribution of the estate assets, is void and is no longer enforceable, and therefore, the performance of his obligations under the agreement and orphans' court order are excused. He contends that Tina's failure to comply with the term of the settlement agreement requiring her, within ten days of execution of the agreement, to convey 100% of the Duke Energy stock to the estate voided the agreement, and, consequently, Oxana inherited 100% of the estate.

Namish's latest attempt to challenge the enforceability of the settlement agreement is without merit. The settlement agreement has been affirmed in all three previous opinions in this matter, and is, as a matter of law, the controlling law of this case. As we stated previously in *Parikh II*: "Once an appellate court has answered a question of law in a given case, the issue is settled for all future proceedings." *Parikh II*, slip op. at 11 (cleaned up) (quoting *Stokes v. American Airlines, Inc.*, 142 Md. App. 440, 446 (2002)). "The law of the case doctrine 'prevents trial courts from dismissing appellate judgment and re-litigating matters already resolved by the appellate court' in a case involving the same parties and the same claims." *Id.* at 11-12.

Namish’s contention that the settlement agreement is void because Tina failed to convey the entirety of the Duke Energy stock to the estate within ten days of the return of the monies to the estate from the Registry of Court, is an issue that could have been raised and decided in *Parikh II* or *Parikh III*. Because Namish failed to challenge the enforceability of the settlement agreement when that issue was previously decided by this Court, the issue is waived.

We note that in *Parikh I* and *Parikh II*, we reiterated the orphans’ court’s authority to pass orders regulating the administration of the estate:

ET § 2-102(a) provides, “The [Orphans’ Court] may conduct judicial probate, direct the conduct of a personal representative, and pass orders which may be required in the course of the administration of an estate of a decedent.” In other words, the Orphans’ Court has authority to “administer the estates of deceased persons,” “entertain petitions of interested persons and resolve their questions concerning an estate or its administration,” and “pass orders relating to the settlement and distributions of the estate.” *Kaouris v. Kaouris*, 324 Md. 687, 695 (1991).

*Parikh I*, slip. op. at 31; *Parikh II*, slip. op. at 16. Thus, even if Namish had not waived the issue, we would conclude that the court’s order requiring Namish to provide his social security number to the estate for purposes of distribution, fits squarely within its powers under ET § 2-102(a).

Namish contends that the court issued conflicting orders concerning SA Boynton’s petition requiring that Namish and Oxana sign a proposed release prior to distribution to Namish of his share of the estate assets. Docket 414 ordered that the ruling on the petition was to be held in abeyance until the time of the filing of a final accounting, after the

resolution of all pending appeals, while Docket 419 ordered that SA Boynton was entitled to the signing of a release by Namish and Oxana. It stated:

SA Boynton shall, in all events, at her discretion [b]e entitled prior to the disbursement or transfer of funds to Namish or Oxana, to require the signing of a Release by both Namish and Oxana, for such funds, in accordance with Maryland Code Annotated, Estates and Trusts, 9-111 which states that “[o]n making a distribution, a personal representative may, but is not required, to obtain a verified release from the heir or legatee.”

In Docket 419, the court recognized that, pursuant to ET § 9-111, SA Boynton has the authority to require the signing of a release prior to the disbursement of funds. In Docket 414, the court specified that the proposed release would be approved by the court following the filing of a final accounting and the resolution of outstanding appeals. Dockets 414 and 419 did not conflict – one order addressed the timing of the approval of a proposed release, while the other addressed SA Boynton’s authority to require a release from appellants.

### C.

#### **DOCKETS 417 AND 418**

Namish appeals the orphans’ court’s order holding in abeyance SA Boynton’s petition to declare Namish and Oxana as vexatious and frivolous litigants (Docket 417). A court’s order to hold a matter in abeyance is not a final, appealable judgment. “A party may appeal to the Court of Special Appeals from a final judgment of an orphans’ court.” Md. Code Ann., Courts & Judicial Proceedings (“CJP”) § 12-501 (1974, 2002 Repl. Vol.). 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) (citation omitted); *accord Banashak v. Wittstadt*, 167 Md. App. 627, 657 (2006).

The orphans’ court indicated that the Administrative Judge of the Orphans’ Court was the appropriate authority to decide SA Boynton’s petition to declare Namish and Oxana vexatious and frivolous litigants. Because the order did not determine the proper parties, the issues to be tried or the sending of an issue to a court of law, it was not an appealable, final judgment. Therefore the order is not properly before us on review.

Namish also appeals the orphans’ court’s denial of SA Boynton’s petition for a first and final accounting. The court found that it was not appropriate to characterize an accounting as “final” while an appeal was pending (*Parikh III* was pending at the time) and orders entered in connection with the hearing on January 12, 2021 would likely result in further appeals. The court determined that it was “fair and proper and in the best interest of the Estate to continue to hold substantial sums pending resolution of all matters on appeal.”

Here, the court’s order denying SA Boynton’s request for a first and final accounting did not determine the proper parties, the issues to be tried or the sending of issues to a court of law. The order contemplated further action by the court, indicating that the court intended to issue a subsequent order once appellants’ appeals were exhausted. By its terms, the order was not an appealable final judgment; therefore, it is not properly before us for review.

**D.**

**DOCKET 340**

Namish challenges the court’s order denying Oxana’s petition to remove Judge Jordan and transfer the estate matter to Baltimore City. We addressed this issue in connection with Oxana’s appeal in *Parikh II*. See *Parikh II*, slip. op. at 21-24 That decision remains the law of the case and we shall not revisit it. *Id.* at 10-11.

**III.**

**SANCTIONS**

SA Boynton argues that appellants have acted in bad faith and without substantial justification in the filing of this appeal, and she requests an award of attorneys’ fees and costs incurred in the defense of this appeal. She contends that appellants “continue to try and create procedural mayhem in all [c]ourts[,]” by conducting a “war of attrition.”

An award of sanctions under Maryland Rule 1-341 “is an extraordinary remedy, intended to reach only intentional misconduct.” *Talley v. Talley*, 317 Md. 428, 438 (1989). Such an award is intended to eliminate the abuses in the judicial process. *Kelley v. Dowell*, 81 Md. App. 338, 341 (1990). “In the context of Rule 1-341, bad faith exists when a party litigates with the purpose of intentional harassment or unreasonable delay.” *Barnes v. Rosenthal Toyota, Inc.*, 126 Md. App. 97, 105 (1999) (citing *Seney v. Seney*, 97 Md. App. 544, 554 (1993)).

This appeal is appellants’ fourth appeal, and their third following our affirmance of the order enforcing the settlement agreement in *Parikh I*. Appellants continue to attack the validity of the settlement agreement, despite our repeated affirmation of the settled law

governing this case. Appellants' arguments were baseless and entirely lacking in merit, and they pursued this appeal with the purpose of intentional harassment and delay of the administration of the estate. Appellants should have dismissed this appeal following our decision in *Parikh III*, in which we awarded sanctions under Rule 1-341. By failing to do so, they maintained this appeal in bad faith and without substantial justification.

SA Boynton is entitled to an award of reasonable attorneys' fees for the costs incurred in defending against this frivolous appeal. Pursuant to Rule 1-341, we shall grant SA Boynton's motion for attorneys' fees. As we did in *Parikh III*, we will remand the matter to the circuit court to determine the amount of fees awarded to SA Boynton. The amount awarded shall be determined by the circuit court on remand.

**JUDGMENTS OF THE ORPHANS' COURT  
FOR MONTGOMERY COUNTY AFFIRMED.  
CASE REMANDED TO DETERMINE THE  
AWARD OF FEES TO SA BOYNTON. COSTS  
TO BE PAID BY APPELLANTS.**