Orphans' Court for Baltimore County
Estate No. 201814

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1488

September Term, 2020

IN RE: ESTATE OF RAYMOND LEE MCLAUGHLIN

Arthur,
Leahy,
Zic,

JJ.

Opinion by Arthur, J.

Filed: December 13, 2021

In litigation arising from an unauthorized transfer of her elderly father's assets, a daughter executed a broad, general release of all "claims, actions, causes of action, demands, rights," etc. against any other party to the litigation, including the personal representative of her father's estate. Later, she challenged her father's will by filing a petition to caveat.

The personal representative (who had become the special administrator because of the petition to caveat) moved for summary judgment. He contended that the unambiguous language of the release barred the petition to caveat. The Orphans' Court agreed.

The daughter appealed. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On August 8, 2014, Raymond Lee McLaughlin executed a simple, three-page will. In that will, Mr. McLaughlin left all of his assets to his second wife, June Lee McLaughlin ("June"),[1] provided that she survived him. If she did not survive him, Mr. McLaughlin directed that his assets be divided among his four children and his daughter-in-law.[2] The will revoked an earlier will, made in 1993, in which Mr. McLaughlin left his assets in trust for June for the duration of her life, but directed that they be distributed to his four children upon her death.

[1] Because the case involves several people with the same last name, we refer to them by their first names. We mean no disrespect.

[2] The will incorrectly identifies one of the children as Robin Buffington. Mr. McLaughlin had a child named Robin, but her last name is Corey or Corey-Elliott.

At the same time that he executed the new will, Mr. McLaughlin also executed a durable power of attorney. The power of attorney is not in the record, but we surmise that it empowered June to act on his behalf. It clearly did not authorize any of his children to act on his behalf.

On approximately October 6, 2017, Mr. McLaughlin executed three new powers of attorney. Although these powers of attorney are not in the record either, we surmise that they purported to authorize one or more of Mr. McLaughlin's children to act on his behalf. Under the authority of the powers of attorney, the children received hundreds of thousands of dollars from Mr. McLaughlin's account at Morgan Stanley and from a joint account in his and his wife's names at the same institution.

When June learned that the children had received funds from those accounts, she filed two actions in the Circuit Court for Baltimore County: (1) a petition to establish a guardianship over her husband's property; and (2) an action to recover the money that the children had received from the Morgan Stanley accounts. The circuit court consolidated the two actions.

After a five-day bench trial, the circuit court entered a declaratory judgment in the consolidated actions. In the judgment, which is dated July 25, 2018, the court declared that Mr. McLaughlin possessed the requisite mental capacity to execute the power of attorney dated August 8, 2014 (which he executed simultaneously with his will); that Mr. McLaughlin did *not* possess the requisite mental capacity to execute the powers of attorney dated October 6, 2017; that Mr. McLaughlin did *not* possess the requisite mental

capacity to consent to the transfer of assets from his Morgan Stanley account and his joint account with his wife at Morgan Stanley; and that those transfers were invalid. The court imposed a constructive trust on the assets that the children had improperly received in those transfers and ordered the children to return the assets within 30 days. The children appealed.

On October 26, 2018, while the appeal was pending, Mr. McLaughlin died. On January 11, 2019, John R. Kominski, Jr., the personal representative named in Mr. McLaughlin's 2014 will, opened an estate with the Register of Wills for Baltimore County.

On April 3, 2019, after the estate had been opened and while the appeal was pending, the children entered into a settlement agreement with Mr. Kominski, in his capacity as their father's personal representative, and June. In the recitals to the agreement, the parties expressly referred to Mr. McLaughlin's 2014 will, his recent death, and the opening of his estate.

Paragraph 3 of the settlement agreement contained a broad, general release, which we quote, in full, because of its importance to this decision:

> 3. Release of Claims. The Parties (including their related, affiliated or controlled entities, and all of their directors, officers, members, managers, partners, agents, assigns, spouses, heirs, successors, past and present, and the respective successors, executors, administrators and any legal and personal representatives) hereby fully release and discharge each other (including their related, affiliated or controlled entities, and all their directors, officers, members, managers, partners, agents, assigns, spouses, heirs, successors, past and present, and the respective successors, executors, administrators and any legal and personal representatives) of and from all claims, actions, causes of action, demands, rights, agreements, promises,

> liabilities, losses, damages, costs and expenses, of every nature and character, description and amount, either known or unknown, without limitations or exceptions, which any Party had, may now have or may hereinafter acquire against the other, whether asserted or not, through and including the Effective Date of this Agreement. This includes, without limitation, all claims arising directly or indirectly from or based on any cause, event, transaction, act, omission, commission, occurrence, condition or matter, of any kind or nature whatsoever arising under, occurring by reason of, or in any way relating to the acts and events giving rise to the Litigation and/or Claims filed therein. This release is intended to be read and interpreted as broadly as possible, and is meant to extinguish and end the Litigation and its Claims between and among the Parties. However, the provisions of this Paragraph do not pertain to any Claim that any Party may have against any person and/or entity that is not a signatory hereto, including, but not limited to, Morgan Stanley and/or any of its related, affiliated or controlled entities, and all of their directors, officers, members, managers, partners, agents, assigns, successors, whether past and present.

In brief summary, through paragraph 3, the children released Mr. Kominski, in his capacity as the fiduciary of their father's estate, "of and from all claims, actions, causes of action, demands, rights," etc., "of every nature and character, description and amount," which the children "had, may now have or may hereinafter acquire against" him, "whether asserted or not," from the beginning of time until the effective date of the agreement. The release "included," but was not limited to, any claims "in any way relating to the acts and events giving rise to" the litigation that the parties were settling.[3] The release was "intended to be read and interpreted as broadly as possible," and it was "meant to extinguish and end the litigation that the parties were settling and the claims in that litigation."

[3] The phrase "including, without limitation," is a pleonasm – an example of unnecessary verbosity. The verb "including" already "implies" that the ensuing "list is only partial." Bryan A. Garner, *A Dictionary of Modern Legal Usage* 287 (1987).

In addition to agreeing to this broad, general release, the parties to the settlement agreement agreed not to file suit to assert any claims that they had released:

> 6. Covenant Not to Sue. The Parties agree not to cause claims to be made against any other Party with any court, administrative agency or other forum for any matter within the scope of this Agreement, including the Release set forth above.

As the result of the release and the covenant not to sue, Mr. Kominski gave up the right to assert survival claims against the children, for damages that their father allegedly suffered as a result of the expropriation of assets from the Morgan Stanley accounts. The children expressly disclaimed any interest in the funds that they had received from those accounts.

On August 26, 2020, one of Mr. McLaughlin's children, Ramona McLaughlin ("Mona"), filed a petition to caveat his 2014 will. She requested that the 2014 will be declared invalid and that the earlier will, from 1993, be admitted to probate.

The filing of the petition to caveat had the effect of relegating Mr. Kominski to the status of a special administrator. *See* Md. Code (1974, 2017 Repl. Vol.), § 6-307(a)(1) of the Estates and Trusts ("E&T") Article; *Estate of Castruccio v. Castruccio*, 247 Md. App. 1, 24 n.5 (2020). If the petition were successful, Mr. Kominski would be divested altogether of his status as a fiduciary of the estate, because his status derived solely from the 2014 will.

Mr. Kominski responded to the petition by moving for summary judgment. In support of his motion, he argued that Mona had released her right to challenge her

father's will in the settlement agreement that ended the litigation concerning the unauthorized transfer of assets from her father's accounts.

While the motion for summary judgment was pending, Mona petitioned to transmit issues to the circuit court for a trial by jury. *See* E&T 2-105(b)(2) (requiring the orphans' court to transmit issues of fact to a court of law when the request is made by an interested person before the court has determined the issue of fact).

On January 27, 2021, the Orphans' Court for Baltimore County granted Mr. Kominski's motion. In a written decision, the court agreed that Mona had released her right to challenge her father's will in what the court characterized as a claim against the estate. The court added that Mona had covenanted not to sue Mr. Kominski, in his capacity as personal representative, in any court, including the orphans' court.

Having granted the motion for summary judgment (and thus having found that there was no genuine dispute as to any material fact), the orphans' court denied Mona's petition to transmit issues to the circuit court.

Mona took a timely appeal to this court, pursuant to Maryland Code (1974, 2020 Repl. Vol.), § 12-501(a) of the Courts and Judicial Proceedings Article.

QUESTIONS PRESENTED

Mona presents the following questions for review:

I. Whether the Orphans' Court erred as a matter of law in determining that a prior Settlement Agreement's scope applied to the Petition to Caveat, ignoring the release's specific limiting language?

II. Whether the Orphans' Court erred as a matter of law in determining that there were no ambiguities as to the scope of the prior release, given the release's specific limiting and conflicting language?

III. Whether the Orphans' Court erred in failing to transmit to a jury the issues on the disputed material facts surrounding the ambiguity and scope (intent) of the Settlement Agreement's release?

IV. Whether the Orphans' Court erred as a matter of law in determining that a Petition to Caveat Constitutes a Claim Against an Estate subject to the release in the first instance?

Because we perceive no error, we shall affirm the judgment.

DISCUSSION

A. Standard of Review

When a party moves for summary judgment, the court "shall enter judgment in favor of or against the moving party if the motion and response show that there is no genuine dispute as to any material fact and that the party in whose favor judgment is entered is entitled to judgment as a matter of law." Md. Rule 2-501(f).

The issue of whether a trial court properly granted summary judgment is a question of law. *See, e.g.*, *Butler v. S & S P'ship*, 435 Md. 635, 665 (2013) (citation omitted). In an appeal from the grant of summary judgment, this Court conducts a de novo review to determine whether the circuit court's conclusions were legally correct. *See, e.g.*, *D'Aoust v. Diamond*, 424 Md. 549, 574 (2012). The relevant inquiry is well known:

> When reviewing a grant of summary judgment, we determine whether the parties properly generated a dispute of material fact and, if not, whether the moving party is entitled to judgment as a matter of law. This Court considers the record in the light most favorable to the nonmoving

> party and construe[s] any reasonable inferences that may be drawn from the facts against the moving party. A plaintiff's claim must be supported by more than a scintilla of evidence[,] as there must be evidence upon which [a] jury could reasonably find for the plaintiff.

Blackburn Ltd. P'ship v. Paul, 438 Md. 100, 107-08 (2014) (citations and quotation marks omitted).

B. <u>Interpretation of Releases</u>

"[R]eleases in this State are contractual." *Bernstein v. Kapneck*, 290 Md. 452, 458-59 (1981). In general, "[t]he construction of a written contract is a question of law, subject to *de novo* review by an appellate court." *Young v. Anne Arundel County*, 146 Md. App. 526, 585 (2002).

"Courts in Maryland apply the law of objective contract interpretation, which provides that '[t]he written language embodying the terms of an agreement will govern the rights and liabilities of the parties, irrespective of the intent of the parties at the time they entered into the contract, unless the written language is not susceptible of a clear and definite understanding.'" *Dumbarton Improvement Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. 37, 51 (2013) (quoting *Slice v. Carozza Props., Inc.*, 215 Md. 357, 368 (1958)); *accord Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. 405, 417 (2014). "Our task, therefore, when interpreting a contract, is not to discern the actual mindset of the parties at the time of the agreement, but rather, to 'determine from the language of the agreement itself what a reasonable person in the position of the parties would have meant at the time it was effectuated.'" *Dumbarton Improvement Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. at 52 (quoting *General Motors Acceptance Corp. v. Daniels*, 303 Md. 254,

261 (1985)); *accord Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. at 417. "[C]onventional rules of construction dictate that when the scope of the agreement is stated in clear and unambiguous language, the words utilized to express this breadth should be given their ordinary meaning as there is no room for interpretation." *Bernstein v. Kapneck*, 290 Md. at 459.

"[T]he determination of ambiguity is one of law, not fact, and that determination is subject to *de novo* review by the appellate court." *Calomiris v. Woods*, 353 Md. 425, 434 (1999); *accord Ocean Petroleum Co., Inc. v. Yanek*, 416 Md. 74, 86 (2010); *Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. at 416-17. Under the objective view of contracts, "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; *accord Dumbarton Improvement Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. at 53; *Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. at 418.

Nonetheless, "'[a]n ambiguity does not exist simply because a strained or conjectural construction can be given to a word.'" *Dumbarton Improvement Ass'n v. Druid Ridge Cemetery Co.*, 434 Md. at 53 (quoting *Belleview Constr. Co. v. Rugby Hall Cmty. Ass'n*, 321 Md. 152, 159 (1990)); *accord Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. at 419. Nor does an agreement become ambiguous merely because two parties, in litigation, offer different interpretations of its language. *Diamond Point Plaza Ltd. P'ship v. Wells Fargo Bank, N.A.*, 400 Md. 718, 751 (2007); *accord 4900 Park*

Heights Ave. LLC v. Cromwell Retail 1, LLC, 246 Md. App. 1, 29 (2020); *Huggins v. Huggins & Harrison, Inc.*, 220 Md. App. at 419.

C. The Orphans' Court Did Not Err in Granting Summary Judgment

Mr. Kominski asserts that the settlement agreement is unambiguous and that it extinguishes Mona's right to challenge her father's will. Mona agrees, at least provisionally, that the agreement is unambiguous, but she asserts that it leaves her free to challenge her father's will. In our judgment, the agreement is unambiguous, and it unambiguously prohibits Mona from challenging her father's will.

There is no question that Mona and Mr. Kominski were parties to the earlier litigation. Therefore, there is no question that Mona released Mr. Kominski from something. What did she release him from? According to the settlement agreement, she released him from "all claims, actions, causes of action, demands, rights, agreements, promises, liabilities, losses, damages, costs and expenses, of every nature and character, description and amount, either known or unknown, without limitations or exceptions, which [Mona] had, may now have or may hereinafter acquire against [Mr. Kominski], whether asserted or not, through and including the Effective Date of [the] Agreement," on April 3, 2019.

It would be something of a challenge to write a release that is broader than this one. But the drafters of the settlement agreement rose to that challenge: they inserted an additional clause directing the reader that the release "is intended to be read and interpreted as broadly as possible." In a language that puts a premium on understatement,

we would call this release "expansive." Even Mona agrees that the release "appears broad and all inclusive."

The language of this expansive release easily encompasses the petition to caveat Mr. McLaughlin's will, which is mentioned in the settlement agreement itself, and which had been already admitted to probate when Mona, Mr. Kominski, and others signed the agreement. The caveat proceeding is a "claim" or a "right" against Mr. Kominski in his capacity as the fiduciary of Mr. McLaughlin's estate. The mere filing of the caveat petition transformed Mr. Kominski from a personal representative into a special administrator. If successful, the caveat petition would oust Mr. Kominski from his position as the fiduciary of the estate. Thus, the petition required him to defend himself and the validity of the will on which his powers and duties depend. Understandably, he engaged counsel to do so. And although E&T § 7-603 requires a court to allow Mr. Kominski to recover "necessary expenses and disbursements from the estate" if he "defends . . . a proceeding in good faith and with just cause," Mr. Kominski faced at least some risk that the court might not approve all of the fees that he incurred, and thus that he might remain personally liable for the fees incurred in defending himself and fulfilling his obligation to defend the validity of the will. *See, e.g.*, *Estate of Castruccio v. Castruccio*, 247 Md. App. at 62.

The caveat petition, therefore, was clearly a "claim" or a "right" against Mr. Kominski in his capacity as the fiduciary of the estate. Accordingly, the orphans' court correctly concluded that Mona released her right to bring the caveat petition when she

signed the settlement agreement. For the same reason, the orphans' court correctly concluded that Mona breached the covenant not to sue when she brought the caveat proceeding.

In advocating for a contrary conclusion, Mona points to the language stating the release "is meant to extinguish and end the Litigation and its Claims between and among the Parties." She argues that this language, which comes immediately after the injunction to read and interpret the release "as broadly as possible," means that the release is limited to claims in the earlier litigation and that it does not encompass the caveat petition.

Mona's contention has no merit. Two sentences before the clause that Mona cites, the parties had released one another from "*all* claims, actions, causes of action, demands, rights, agreements, promises, liabilities, losses, damages, costs and expenses, of every nature and character, description and amount, either known or unknown, without limitations or exceptions, which any Party had, may now have or may hereinafter acquire against the other, whether asserted or not, through and including the Effective Date of [the] Agreement." (Emphasis added.) One sentence before the clause that Mona cites, the parties agreed that the release was not limited to the acts and events giving rise to the litigation over the Morgan Stanley accounts or the "Claims filed therein." Under the principle that the greater includes the lesser, this broad, expansive release of "all" claims includes the subset of claims that the parties had asserted or could have asserted against one another in the litigation over the unauthorized withdrawals from the Morgan Stanley accounts. Thus, in affirming that the release was meant to "extinguish and end the

Litigation and its Claims between and among the Parties," the parties were simply expressing something that was already implicit in the earlier language. They were not limiting the scope of the release.

Mona goes on to argue that, in the section of the settlement agreement that recites the consideration for the settlement, she and her siblings agreed to "disclaim" any interest in the assets that they had received by way of the unauthorized transfers from their father's accounts. She argues that this "disclaimer" would be "meaningless and superfluous" if the broad, general release were construed, in effect, to "disclaim" an interest in her father's estate. She suggests that the "specific" language of the "disclaimer" "conflict[s]" with the "broad" language of the release and that the specific should prevail over the general.

This contention, too, has no merit. It is undoubtedly true that the consideration for the settlement agreement included the McLaughlin children's agreement to relinquish any interest in the funds that had been misappropriated from their father's accounts. There is, however, no requirement that a release be congruent with the consideration given for the release. Because "releases in this State are contractual, it follows that, in the absence of constitutional, statutory or clear important policy barriers, parties are privileged to make their own agreement and thus designate the extent of the peace being purchased." *Bernstein v. Kapneck*, 290 Md. at 458-59. In this release, Mona and her siblings unambiguously released all existing "claims" and "rights" against their father's personal

representative, not merely "claims" or "rights" relating to the assets that they had received without their father's authorization.[4]

In a fallback position, Mona contends that the orphans' court erred in concluding that the settlement agreement is unambiguous. In support of that contention, Mona reiterates the arguments that she previously asserted in support of her argument that the unambiguous language of the settlement agreement exempted the caveat petition from its scope. Her arguments are no more persuasive than they were in their original form.

In our judgment, no reasonable person would conclude that a broad, general release of "all claims" and "all rights" is limited to the claims asserted in earlier litigation merely because the release affirms that it encompasses the claims in the earlier litigation. Similarly, no reasonable person would conclude that a broad, general release is limited to the rights that a party disclaimed as the stated consideration for the release. The orphans' court did not err in reaching the legal conclusion that the settlement agreement is unambiguous, and that it unambiguously releases Mona's right to assert a caveat petition.

[4] Mona also argues that "the term 'disclaimer' is a term of art in estate proceedings." She cites E&T § 9-201(d), which defines a "disclaimed interest" to mean "the interest that would have passed to the disclaimant had the disclaimer not been made." Mona fails to recognize that the settlement agreement, in which the term "disclaimer" appears, did not occur in the context of an estate proceeding. In any event, Mona did not disclaim an interest in her father's estate. Instead, Mona released claims and rights against Mr. Kominski in his capacity as the personal representative of her father's estate, including the right to file a petition to caveat her father's will. If Mona has no interest in her father's estate, it is not because she disclaimed her interest, but because he left nothing to her under the 2014 will.

Nor did the orphans' court err in declining to transmit issues to the circuit court. Because the release is unambiguous, there were no issues of material fact before the orphans' court. Instead, the only issue before the court was a legal question concerning the correct interpretation of the release. Consequently, there were no factual issues for the orphans' court to transmit. *See Dronenburg v. Harris*, 108 Md. 597, 617 (1908) ("it is the duty of the [] court[] to refuse to submit to the jury an issue that presents only a question of law[]"); *Vickers v. Starcher*, 175 Md. 522, 530 (1938) ("issues which submit questions of law to a jury are improper").

In her final argument, Mona contends that a caveat petition is not a "claim" against an estate. From that premise, she concludes that the release did not relinquish her right to pursue the caveat petition.

Mona did not make this argument in the orphans' court. Hence, she has not preserved it for appellate review. *See* Md. Rule 8-131(a). We cannot fault the orphans' court for failing to credit an argument that Mona did not make.

But even if Mona had preserved her argument, we would conclude that it has no merit.

"[A]n 'estate' is technically just a collection of assets and liabilities and not a juridical entity like a corporation or an LLC." *Estate of Castruccio v. Castruccio*, 247 Md. App. 1, 28 n.8 (2020) (citing *Castruccio v. Estate of Castruccio*, 230 Md. App. 118, 124 n.3 (2016), *aff'd*, 456 Md. 1 (2017)). "[T]he defendant in the caveat proceedings [is], technically, [the personal representative] in his capacity as personal representative."

Castruccio v. Estate of Castruccio, 239 Md. App. 345, 350 n.1 (2018) (citing *Castruccio v. Estate of Castruccio*, 230 Md. App. at 124 n.3).

In the settlement agreement, Mona relinquished all "claims" or "rights" against Mr. Kominski, in his capacity as the personal representative of her father's estate, as long as those "claims" or "rights" were in existence at the time of the agreement. The right to contest Mr. McLaughlin's will was obviously in existence at the time of the agreement, because Mr. McLaughlin had died, his will had been admitted to probate, Mr. Kominski had become his personal representative under the will, and Mr. Kominski (as personal representative) was threatening to assert additional claims against Mona and her siblings. In the settlement agreement, therefore, Mona, clearly relinquished the right to contest her father's will.

JUDGMENT OF THE ORPHANS' COURT FOR BALTIMORE COUNTY AFFIRMED; APPELLANT TO PAY COSTS.